

## Article VI Non-Compliance

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### RECOMMENDATIONS OF THE WMD COMMISSION

**Recommendation 2:** All parties to the Non-Proliferation Treaty should implement the decision on principles and objectives for non-proliferation and disarmament... adopted in 1995. They should also promote the implementation of ‘the thirteen practical steps’ for nuclear disarmament that were adopted in 2000.

**Recommendation 20:** ...All nuclear-weapon states parties to the Non-Proliferation Treaty must take steps towards nuclear disarmament, as required by the treaty and the commitments made in connection with the treaty’s indefinite extension. Russia and the United States should take the lead....

#### Cessation of the Nuclear Arms Race

**Recommendation 23:** Any state contemplating replacement or modernization of its nuclear-weapon systems must consider such action in the light of all relevant treaty obligations and its duty to contribute to the nuclear disarmament process. As a minimum, it must refrain from developing nuclear weapons with new military capabilities or for new missions. It must not adopt systems or doctrines that blur the distinction between nuclear and conventional weapons or lower the nuclear threshold.

#### The Comprehensive Nuclear-Test-Ban Treaty

**Recommendation 28:** ...The United States, which has not ratified the [CTBT], should reconsider its position and proceed to ratify the treaty, recognizing that its ratification would trigger other required ratifications and be a step towards the treaty’s entry into force. Pending entry into force, all states with nuclear weapons should continue to refrain from nuclear testing....

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### **Cutting off Fissile Materials Production**

**Recommendation 26:** The Conference on Disarmament should immediately open the delayed negotiations for a treaty on the cut-off of production of fissile material for weapons without preconditions....

**Recommendation 27:** To facilitate fissile material cut-off negotiations in the Conference on Disarmament, the five Non-Proliferation Treaty nuclear-weapon states, joined by the other states possessing nuclear weapons, should agree among themselves to cease production of fissile material for weapon purposes. They should open up their facilities for such production to International Atomic Energy Agency safeguards inspections....

### **Diminishing Role of Nuclear Weapons in Security Policies**

**Recommendation 15:** All states possessing nuclear weapons should declare a categorical policy of no-first-use of such weapons. They should specify that this covers both pre-emptive and preventive action, as well as retaliation for attacks involving chemical, biological or conventional weapons.

### **Reduction of Operational Status of Nuclear Forces**

**Recommendation 17:** Russia and the United States should agree on reciprocal steps to take their nuclear weapons off hair-trigger alert and should create a joint commission to facilitate this goal. They should undertake to eliminate the launch-on-warning option from their nuclear war plans, while implementing a controlled parallel decrease in operational readiness of a large part of their strategic forces, through:

- reducing the number of strategic submarines at sea and lowering their technical readiness to launch while in port;
- storing nuclear bombs and air-launched cruise missiles separately from relevant airfields;
- storing separately nose cones and/or warheads of most intercontinental ballistic missiles or taking other technical measures to reduce their readiness.

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### **Nuclear Arms Reduction and Elimination**

**Recommendation 18:** Russia and the United States should commence negotiations on a new strategic arms reduction treaty aimed at reducing their deployments of strategic forces allowed under the Strategic Offensive Reductions Treaty by at least half. It should include a legally binding commitment to irreversibly dismantle the weapons withdrawn under the Strategic Offensive Reductions Treaty. The new treaty should also include transparent counting rules, schedules and procedures for dismantling the weapons, and reciprocal measures for verification.

**Recommendation 19:** Russia and the United States, followed by other states possessing nuclear weapons, should publish their aggregate holdings of nuclear weapons on active and reserve status as a baseline for future disarmament efforts. They should also agree to include specific provisions in future disarmament agreements relating to transparency, irreversibility, verification and the physical destruction of nuclear warheads.

**Recommendation 21:** Russia and the United States should proceed to implement the commitments they made in 1991 to eliminate specific types of non-strategic nuclear weapons, such as demolition munitions, artillery shells and warheads for short-range ballistic missiles. They should agree to withdraw all non-strategic nuclear weapons to central storage on national territory, pending their eventual elimination. The two countries should reinforce their 1991 unilateral reduction commitments by developing arrangements to ensure verification, transparency and irreversibility.

**Recommendation 22:** Every state that possesses nuclear weapons should make a commitment not to deploy any nuclear weapon, of any type, on foreign soil.

Article VI of the NPT obligates states parties to “pursue in good faith negotiations on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament.” The United States claims to be in compliance with this obligation largely based on the reduction of the size

of its arsenal from the Cold War era.<sup>1</sup> The total of U.S. warheads has declined from its peak of about 30,000 in 1967 to about 10,000, and will further decline to an estimated 6,000 in 2012.<sup>2</sup> Given that one bomb can devastate a city, and dozens a society, this reduction is essentially meaningless. Further, under current official plans the United States intends to rely on large, modernized nuclear forces for decades to come as a central component of its security posture. Plainly, the reduction in arsenal size is more a matter of efficiency and rationalization than working towards marginalization and elimination of nuclear weapons. Additionally, as detailed in this section, the United States is in flagrant violation of important post-Cold War commitments made under the NPT.

The WMD Commission is in accord with this view, emphasizing the failure to fulfill NPT commitments made in 1995 and 2000. As explained in section 1.2, at the 1995 Review and Extension Conference, in connection with the decision to extend the NPT indefinitely, states parties agreed to Principles and Objectives for Non-Proliferation and Disarmament. The Principles and Objectives record, among others, a commitment to implement Article VI through the “determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.”<sup>3</sup> At the 2000 Review Conference, states parties agreed to 13 “practical steps for the systematic and progressive efforts to implement Article VI” (*see box*). The WMD Commission observes regarding the 1995 promise that “it is easy to see that the nuclear-weapon states parties to the NPT have largely failed to implement this commitment.”<sup>4</sup> The Commission additionally points to a “loss of confidence in the [NPT] as a result of the failure of the nuclear-weapon states to fulfill their disarmament obligations under the treaty and also to honour their additional commitments to disarmament made at the 1995 and 2000 NPT Review Conferences.”<sup>5</sup>

This section surveys the U.S. record, with some reference to other countries, under two main headings taken from Article VI, first, cessation of the nuclear arms race, and second, nuclear disarmament. The latter is organized with reference to practical steps agreed in 2000.

### **The 13 Practical Steps**

Excerpted from the Final Document of the  
NPT 2000 Review Conference

The Conference agrees on the following practical steps for the systematic and progressive efforts to implement Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraphs 3 and 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”:

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1. The importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty.
2. A moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty.
3. The necessity of negotiations in the Conference on Disarmament on a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices in accordance with the statement of the Special Coordinator in 1995 and the mandate contained therein, taking into consideration both nuclear disarmament and nuclear non-proliferation objectives. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate commencement of negotiations on such a treaty with a view to their conclusion within five years.
4. The necessity of establishing in the Conference on Disarmament an appropriate subsidiary body with a mandate to deal with nuclear disarmament. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate establishment of such a body.
5. The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.
6. An unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI.
7. The early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the ABM Treaty as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions.
8. The completion and implementation of the Trilateral Initiative between the United States of America, the Russian Federation and the International Atomic Energy Agency.
9. Steps by all the nuclear-weapon States leading to nuclear disarmament in a way that promotes international stability, and based on the principle of undiminished security for all:

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- \* Further efforts by the nuclear-weapon States to reduce their nuclear arsenals unilaterally.
  - \* Increased transparency by the nuclear-weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to Article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament.
  - \* The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process.
  - \* Concrete agreed measures to further reduce the operational status of nuclear weapons systems.
  - \* A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons ever be used and to facilitate the process of their total elimination.
  - \* The engagement as soon as appropriate of all the nuclear-weapon States in the process leading to the total elimination of their nuclear weapons.
10. Arrangements by all nuclear-weapon States to place, as soon as practicable, fissile material designated by each of them as no longer required for military purposes under IAEA or other relevant international verification and arrangements for the disposition of such material for peaceful purposes, to ensure that such material remains permanently outside of military programmes.
  11. Reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control.
  12. Regular reports, within the framework of the NPT strengthened review process, by all States parties on the implementation of Article VI and paragraph 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, and recalling the Advisory Opinion of the International Court of Justice of 8 July 1996.
  13. The further development of the verification capabilities that will be required to provide assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a nuclear weapon-free world.

### *Cessation of the Nuclear Arms Race and Modernization of Nuclear Forces*

The first prong of the Article VI obligation is to negotiate in good faith the “cessation of the nuclear arms race at an early date.” In 1995, France, Russia, Britain, and the United States told the world that “the nuclear arms race has ceased” in a declaration issued at the Conference on Disarmament.<sup>6</sup> Unfortunately, this optimistic claim is not true.<sup>7</sup> Research and development is taking place in all states possessing nuclear weapons for purposes of replacing existing systems, increasing reliability over the long term, and enhancing military capabilities.<sup>8</sup> Among the research and development programs are the following. France reportedly is planning the deployment of new warheads whose concept was tested in 1995-1996 on new versions of its cruise and submarine-launched missiles.<sup>9</sup> Russia is developing new warheads for its most recent silo-based and mobile missiles, including one involving a maneuverable reentry vehicle.<sup>10</sup> The U.S. “Reliable Replacement Warhead” program aims to yield modified or new-design warheads.<sup>11</sup> Britain reportedly has a similar program for warheads deployed on U.S.-supplied Trident missiles based on submarines.<sup>12</sup> In March 2007, its parliament approved a plan to build a new generation of submarines.<sup>13</sup>

As part of its broader efforts to indefinitely maintain global military superiority, the United States continues to upgrade, modernize and replace its nuclear war-fighting capabilities. After Congress denied funding in two consecutive years for the Bush administration’s plan to develop a robust nuclear earth penetrator, more commonly known as the nuclear bunker-buster, U.S. weapons designers have turned to a larger project. The new centerpiece for the future U.S. nuclear stockpile is the Reliable Replacement Warhead (RRW), initially proposed in lieu of funding for research on “advanced concepts” (likely including low-yield weapons) and the nuclear bunker-buster.

The RRW program is examined in depth in section 2.3. In brief, it is intended to produce a family of new warhead designs, the components for which “would be designed to increase margins, provide for ease of manufacture and certification, and . . . improve our ability to ensure long-term confidence in the stockpile and reduce the likelihood of resumption of nuclear testing.”<sup>14</sup> A task force commissioned by the Secretary of Energy “endorses the immediate initiation of the modernization of the stockpile through the design of the Reliable Replacement Warhead. This should lead to a family of modern nuclear weapons, designed with greater margin to meet military requirements while incorporating state-of-the-art surety requirements.”<sup>15</sup> In March 2007, the Department of Energy selected a design for the first RRW warhead, to be deployed on submarine-launched Trident II missiles. Despite current congressional intentions, the U.S. program will enable research on improvement of military capabilities. It has been described by a top official as incubating future “revitalized” scientists able to design, develop, and produce a new warhead design with “different or modified military capabilities” within

three to four years of a decision to do so.<sup>16</sup> Exotic changes are not necessary to achieve significant advances in capability. Under the U.S. “lifetime extension program,” the main warhead for submarine-launched missiles is being given a capacity to destroy “hard targets” with a “ground burst” by modifying a sub-system in its reentry vehicle.<sup>17</sup> None of this is consistent with the NPT obligation of negotiating cessation of the nuclear arms race at an early date, or the unequivocal undertaking to eliminate nuclear arsenals made at the 2000 NPT Review Conference, or the 2000 commitment to a diminishing role of nuclear weapons in security policies. (For the U.S. position, *see box*.)

Although there is much uncertainty regarding the ultimate nature and direction of the RRW program, its implications are clear. The program is an enabler for changes in the U.S. nuclear weapons complex, currently going under the label “Complex 2030,” intended to implement the Bush administration’s “capabilities based” nuclear posture promoted in the 2001 Nuclear Posture Review (*see section 2.3*). The program would eventually lead to the replacement of every nuclear weapon in the U.S. arsenal, and require a return to large scale nuclear weapons production, suspended in the United States since 1989. When taken together with the modernization programs proposed and underway in the nuclear weapons complex and with respect to delivery systems (*see section 2.4*), the United States is set to recreate the Cold War era capacity to produce new nuclear weapons.

The bottom line is that the RRW program manifests an intention to maintain nuclear forces for decades to come. In 2002, the then head of the National Nuclear Security Administration (NNSA), John Gordon, testified that the Nuclear Posture Review “reaffirms that nuclear weapons, for the foreseeable future, will remain a key element of U.S. national security strategy.”<sup>18</sup> The NPR refers to studies on a new land-based intercontinental missile to be operational in 2020, a new submarine launched ballistic missile and nuclear-armed submarine in 2030, and a new heavy bomber in 2040, as well as “refurbished” or modified or new warheads for all of them.<sup>19</sup> This position was reiterated in early March 2006 by the current head of the NNSA, Linton Brooks, who declared that the “United States will, for the foreseeable future, need to retain both nuclear forces and the capabilities to sustain and modernize those forces.”<sup>20</sup> The United States and other nuclear weapon states claim in international forums that their modernization programs are intended to and will result in perpetuating existing military capabilities. To the extent this is true, planning and preparing for maintenance of nuclear forces for decades to come is contrary to the obligation to work in good faith for nuclear disarmament, as examined further below.

### ***Nuclear Disarmament***

As explained in section 1.2, the 13 practical steps unanimously adopted by the United States and other states participating in the NPT Review Conference in 2000 are an indispensable guide to assessing compliance with the Article VI

### **U.S. View of Nuclear Modernization under the NPT**

According to the U.S. State Department:

- The NPT does not prohibit nuclear weapons states from modernizing their nuclear forces. All of the nuclear weapons states have continued to modernize their nuclear weapons stockpiles during the period in which the NPT has been in effect. Given this history, it would be a novel and unfounded interpretation of the NPT to argue that such modernization is problematic under the NPT.
- One misperception is that work on ‘new’ types of nuclear weapons will necessarily lead to a resumption of nuclear testing. The United States is not planning to resume nuclear testing, nor improving its test readiness posture in anticipation of testing in connection with the development of new nuclear weapons in the future.... As a matter of policy, the United States continues to observe a nuclear testing moratorium and encourages other states not to test. The United States has gone to great expense to develop a Stockpile Stewardship Program to help ensure the safety and reliability of the United States nuclear weapons stockpile without testing. The United States does not support the Comprehensive Test Ban Treaty (CTBT) and will not become a Party to it, but does support the work of the CTBT Organization (CTBTO) Preparatory Commission and its Provisional Technical Secretariat with respect to the International Monitoring System (IMS).
- Another misperception is that, were U.S. research programs to lead to lower yield weapons, this would blur the line between conventional and nuclear weapons and make nuclear weapons use more likely. The United States has had low-yield nuclear weapons in its stockpile since the 1950s. Other nuclear weapons states also possess such weapons. There is no historical evidence that the possession of such weapons has made the use of nuclear weapons more likely.<sup>1</sup>

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1 “Article VI of the Non-Proliferation Treaty,” U.S. Department of State, Bureau of Arms Control, February 10, 2005.

obligation of good faith negotiations on effective measures relating to nuclear disarmament. This is so both because the practical steps are comprehensive,

sophisticated, and sensible, and because as a matter of international law, under Article 31 of the Vienna Convention on the Law of Treaties, they provide criteria for interpretation of Article VI. In particular, the principles animating those steps, namely those of verification, transparency, and irreversibility, along with the commitments to the CTBT, the FMCT, a diminishing role of nuclear weapons in security policies, and reduced operational status of nuclear forces, are essential to reduction of nuclear forces to low levels, leading to their elimination. That is not to say that every measure identified by the practical steps is necessary for compliance with Article VI; in some cases a step (*e.g.*, a subsidiary body in the Conference on Disarmament to deal with nuclear disarmament) is a reasonable but not a unique means of implementing the obligation. And in the cases of the ABM Treaty and the START process, U.S. actions have rendered the references moot in name, though not in substance. The following measures U.S. policies against key practical steps.

*Practical steps 1 and 2 - to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty; and a moratorium on nuclear-weapons-test explosions or any other nuclear explosions pending [its] entry into force.*

Negotiated in 1996, the CTBT has yet to enter into force. In order to so, it must be signed and ratified by 44 listed countries that have commercial or research nuclear reactors. Ten of the 44 states have yet to ratify the treaty. Of the ten, three nuclear weapon states, the United States, China, and Israel, have signed but not ratified the treaty; India, Pakistan, and North Korea, all possessing nuclear weapons, have not taken the first step of signing it. In 1999, the Senate failed to approve its ratification, and the Bush administration opposes its entry into force, though it has adhered to the moratorium on tests. In October 2006, North Korea conducted a test explosion of a nuclear device, the first such test by any country since 1998 tests by India and Pakistan. The North Korean test brought the importance of the CTBT into sharp relief.

The Preparatory Commission for the CTBT Organization has made great strides in developing the International Monitoring System, which will likely be completed in 2007. In a 2002 study, the U.S. National Academy of Sciences concluded that with a fully functioning monitoring system, clandestine nuclear explosions with a yield of more than one to two kilotons are detectable by technical means alone, and further found that any undetected low-yield explosions are not likely to significantly advance weapon development.<sup>21</sup> The CTBT would help check the spread of nuclear arms, constrain refinement of advanced arsenals, and protect the environment. It already has a substantial organizational and technical infrastructure. It would be an indispensable part of the architecture of a nuclear weapons-free world.

The WMD Commission places a strong emphasis on the CTBT, possibly overstating its value in facilitating nuclear disarmament. The CTBT preamble includes this provision:

Recognizing that the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects...

The preamble is correct in claiming that the ban does no more than “constrain” improvement. During 15 years of observing a moratorium on underground explosive nuclear testing, the United States has been able to upgrade its warheads, and in the instance of the B-61-11 it was able to produce a nuclear bomb with enhanced earth-penetrating capability, all without explosive testing. The RRW program promises to be the next step in this evolution, packaging a new series of nuclear weapons, possibly with new military capabilities and missions, designed and manufactured without explosive testing.

The RRW program could directly undermine the CTBT as well. According to Dr. Robert Civiak, a former Office of Management and Budget examiner with responsibility for oversight of spending on the nuclear weapons complex, the Department of Defense might not accept a new warhead design in the arsenal if it had not been tested.<sup>22</sup> Additionally, a Congressional Research Service report cites concerns of the National Nuclear Security Administration (NNSA) that, due to the constant changes being made to the current stockpile, the current system of Life Extension Programs, which would likely be replaced by the RRW program, are more likely than the RRW program to result in an eventual return to nuclear testing.<sup>23</sup> Either way, NNSA has not been able to confidently dismiss the possibility that nuclear testing will one day be required.

The United States should ratify the CTBT and work to persuade other countries to do so in order to bring the treaty into force. But it should also be recognized that the durability of the treaty will be in question if the United States and other nuclear weapon states insist on making nuclear weapons central to their security postures for decades to come. In contrast, the CTBT would be unassailable if those countries were on a path of marginalization, reduction, and elimination of their arsenals, as required by their NPT commitments and the disarmament obligation applying to all states.

*Practical step 3 - the necessity of negotiations in the Conference on Disarmament on a nondiscriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.*

An FMCT would permanently end production of fissile materials, primarily separated plutonium and highly enriched uranium (HEU), for use in weapons. It would affect most directly the countries possessing nuclear

weapons; NPT non-weapon states already are subject to a verified ban on diverting materials to weapons. Achievement of an FMCT would restrain arms racing involving India, China, and Pakistan, cap Israel's arsenal, and establish ceilings on other arsenals as well. A verified FMCT also would help build a stable framework for reduction and elimination of warheads and fissile material stocks, help prevent acquisition of fissile materials by terrorists, meet a key NPT commitment, and institutionalize one of the basic pillars of a nuclear weapon-free world.

Commencement of FMCT negotiations has been blocked since 1997 due to the failure of the Conference on Disarmament (CD) to agree on a program of work; when this blockage will be overcome remains uncertain (*see section 1.4*). As WMD Commission Recommendation 28 says, a step that would facilitate negotiations would be for countries possessing nuclear weapons to agree among themselves on cessation of production of fissile materials for weapons. This is especially true because there are difficult issues to be faced in negotiations, as outlined below. An informal moratorium on production of fissile materials for weapons already exists among Britain, France, Russia, and the United States; China is also believed to have stopped production.

In May 2006, the United States submitted a draft FMCT to the Conference on Disarmament along with a draft mandate for negotiations. While the draft treaty contains no verification requirements, the draft mandate does not preclude proposing them. It is not necessary that a mandate require that a treaty be verified, so long as this is subject to negotiation. If negotiations do begin, the United States should return to its long-established position that verification is imperative and feasible. The current U.S. position is that extensive verification mechanisms could compromise the core national security interests of key parties, would be so costly that many countries would be hesitant to implement them, and still would not provide high confidence in the ability to monitor compliance.<sup>24</sup> However, as the International Panel on Fissile Materials (IPFM) has observed, a verification system could initially focus on declared enrichment and reprocessing facilities in the weapon possessing states.<sup>25</sup> They could be monitored just as the same kinds of facilities are monitored through IAEA safeguards in non-weapon countries Brazil, Germany, the Netherlands, and Japan. The WMD Commission also holds that such verification is feasible.<sup>26</sup> Later stages of verification could focus on the more difficult task of confirming the absence of clandestine activities.

The U.S. draft is also deficient because it does not bar the conversion of the existing large stocks of civilian materials to weapons use and is silent on the existing large military stocks. As IPFM has demonstrated, these and other matters like HEU used in naval reactors are susceptible to practical approaches, within an FMCT, or in subsequent agreements reached within an FMCT framework, or in parallel negotiations. For example, an FMCT could provide that existing military materials declared "excess" to "military" needs would be subject to a verified ban on weapons use. Finally, due to

the enormity of the risks posed by the nuclear fuel-cycle, the United States should support renewable energy sources and energy conservation, and to this end should consider establishment of an international sustainable energy agency (*see section 3.2*).

### **The U.S.-India Nuclear Cooperation Deal**

In July 2005, President Bush and Indian Prime Minister Manmohan Singh announced the intent to create an arrangement under which India would accept safeguards on civilian but not military nuclear facilities in return for access to civilian nuclear fuel and technology.<sup>1</sup> The proposed deal would lift restrictions in place for three decades on U.S. and international nuclear-related trade with India due to its non-membership in the NPT. In December 2006, the U.S. Congress adopted and President Bush signed legislation that preliminarily approves the deal, pending its approval by the 45-state Nuclear Suppliers Group and negotiation of an agreement between India and the IAEA on application of safeguards.<sup>2</sup>

Unlike North Korea, now in the spotlight due to its acquisition of nuclear weapons, and Iran, whose nuclear energy program is closely scrutinized for weapons implications, India never joined the NPT. In negotiations on the NPT in the 1960s, India, along with other states such as Sweden and Mexico, sought legally binding provisions on nuclear disarmament applicable to the states then possessing nuclear weapons.<sup>3</sup> India proposed an article prohibiting the manufacture of nuclear weapons, and also an article affirming that nuclear weapon states would “undertake” nuclear disarmament measures.<sup>4</sup> In the end, India declined to join the NPT due to the vagueness of the Article VI disarmament promise and the lack of legally binding assurances of non-use of nuclear weapons against states that accepted the obligation not to acquire them.<sup>5</sup> In part, India did not regard the NPT as providing sufficient protection against China, which had tested a nuclear weapon in 1964.

The proposed deal with the U.S. would partially engage India in the non-proliferation system, because safeguards would be applied to additional reactors it designates as civilian. However, it undermines a core bargain of the NPT, that only countries renouncing nuclear weapons are promised access to peaceful uses of nuclear technology. Indeed, a provision of the Principles and Objectives for Nuclear Non-Proliferation and Disarmament adopted at the 1995 NPT Review and Extension Conference bars nuclear trade with India. Paragraph 12 states:

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New supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

The arrangement would also indirectly augment India's capability to produce fissile materials for weapons. India could import uranium for use in the civilian sector and devote its indigenous supply of uranium to weapons production if it so desires.<sup>6</sup> Thus the deal could promote arms racing between India and Pakistan, and India and China. The need to prevent arms racing in South Asia is highlighted by reports that Pakistan is constructing a new plutonium production reactor<sup>7</sup> and the announcement that the United States is going ahead with the long-blocked sale of F-16 fighter aircraft to Pakistan.<sup>8</sup>

Also disturbing is that the arrangement as currently configured seems to certify India as a member of a nuclear weapons club that shows few signs of transitioning out of existence. India commits to continue its moratorium on nuclear testing, but the deal does not require the U.S. or India to ratify the Comprehensive Nuclear-Test-Ban Treaty. While India commits to working with the United States for the adoption of a Fissile Materials Cut-off Treaty, pending its entry into force—not in sight since negotiations have not even begun—India is not required to stop producing fissile materials for weapons. In contrast, the United States, along with three other NPT nuclear weapon states (Britain, France, and Russia), has declared a halt to production of materials for weapons. India also does not commit to refrain from building additional nuclear weapons from existing or newly produced fissile material. No mention is made of the obligation to negotiate nuclear disarmament, binding on the United States by virtue of NPT Article VI and accepted by India by voting for UN General Assembly resolutions welcoming the advisory opinion of the International Court of Justice.<sup>9</sup>

Incentives for the United States to enter this arrangement are to build trade and investment involving India and to develop a strategic partnership with India vis-à-vis China. However, the potential for increased U.S.-India commerce exists on a large scale regardless of whether restrictions are ended on nuclear-related trade. And moving towards new alliance arrangements as a basis for international

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security is the wrong direction. It will increase the likelihood of disastrous conflict, even with nuclear weapons, and divert resources to armaments.

The WMD Commission calls for India and the United States to reassure the world about their support for non-proliferation and disarmament by committing to “promote and participate without delay in a verifiable [FMCT] ... and to ratify the [CTBT].”<sup>10</sup> We would go further: Minimal criteria for approval of the deal by the Nuclear Suppliers Group and final approval by Congress should be entry into force of the CTBT and a verified FMCT as well as India’s formal acceptance of the NPT obligation of good-faith negotiation of cessation of arms racing and nuclear disarmament.

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- 1 “Joint Statement Between President George W. Bush and Prime Minister Manmohan Singh,” The White House, Washington, D.C., July 18, 2005.
  - 2 Wade Boese, “Congress Exempts India From Nuclear Trade Rules,” *Arms Control Today*, January/February 2007.
  - 3 *Rule of Power or Rule of Law?* p. 22.
  - 4 Mohamed I. Shaker, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979, Vol. I*, Oceana Publications, New York, 1980, p. 569.
  - 5 *Rule of Power or Rule of Law?*, p. 24.
  - 6 See Zia Mian, A.H. Nayyar, R. Rajaraman, and M.V. Ramana, *Fissile Materials in South Asia: The Implications of the U.S.-India Nuclear Deal*, International Panel on Fissile Materials, Research Report No. 1, September 2006.
  - 7 Joby Warrick, “Pakistan Expanding Nuclear Program: Plant Underway Could Generate Plutonium for 40 to 50 Bombs a Year, Analysts Say,” *Washington Post*, July 24, 2006.
  - 8 Rhea Myerscough, “Update: United States and Pakistan Break F-16 Stalemate, Finalizing \$5 Billion Sale,” Center for Defense Information, Washington, D.C., October 4, 2006.
  - 9 *E.g.*, “Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons,” 2006 GA Resolution A/RES/61/83, adopted by a vote of 125 to 27 with 29 abstentions. The first operative paragraph “[u]nderlines once again the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” In a separate vote, that paragraph was approved by a vote of 168 to three, with five abstentions. India voted yes.
  - 10 *Weapons of Terror*, pp. 82-83.

*Practical step 5 - the principle of **irreversibility** to apply to nuclear disarmament, nuclear and other arms control and reduction measures; step 7—early entry into force and full implementation of START II and the conclusion of START III as soon as possible; step 9(b) increased **transparency** by the nuclear-weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to Article V; step 13—further development of **verification capabilities**.*

Perhaps the most serious instance of backsliding on the 2000 commitments is the U.S. abandonment, with Russian acquiescence, of application of the principles of verification, transparency, and irreversibility in bilateral reductions. These principles, explicit in WMD Commission recommendations, were not only endorsed in the practical steps for disarmament and subsequent General Assembly resolutions (*see section 1.2*), they were inherent in the decades-old history of arms control between the two countries, including the START process rejected by the Bush administration. The 2002 U.S.-Russian Strategic Offensive Reductions Treaty (SORT, also known as the Moscow Treaty) requires only that at a single point in time, December 31, 2012, deployed strategic warheads not exceed 2200 on each side. SORT does not require destruction of delivery systems or dismantlement of warheads. In contrast, START I required, and START II would have required had it entered into force, the destruction of delivery systems, and the 1997 Helsinki commitment to START III additionally envisaged accounting for and dismantling of warheads. Beyond the deployed strategic forces, and based in part on the retention of reduced delivery systems and warheads, the United States plans to retain large numbers of warheads in a “responsive force” capable of redeployment within weeks or months. As of early 2007, it is estimated that the United States has about 4,700 deployed nuclear weapons, with about 2,000 in the responsive force, and the remaining 3,000 scheduled for dismantlement.<sup>27</sup>

Closely related to the abandonment of irreversible reductions is the lack of treaty-required mechanisms for transparency and verification. SORT includes no provisions for verification of reductions or dismantling of warheads or delivery systems, leaving each country free to retain thousands of warheads in addition to those deployed. The two countries declared that they would make use of monitoring mechanisms under START to track reductions. But START expires in 2009, and SORT does not provide any schedule for reductions prior to 2012. A high priority therefore is for the United States and Russia to agree on means to verify and make irreversible the reductions. WMD Commission Recommendation 18 calls for negotiation of a new treaty that would further cut strategic forces and also provide for verified dismantlement of warheads withdrawn under SORT.<sup>28</sup> If necessary pending the new agreement, START could also be extended to provide some monitoring of SORT reductions and to continue limits on multiple-warhead land-based missiles.

In negotiating SORT, the Bush administration rejected a detailed

agreement spelling out transparency and verification measures on the grounds that Cold War-style arms control is no longer necessary and that the United States has no interest in determining together with Russia the size and composition of the two countries' arsenals. This approach overlooks that Cold War or no, the two countries need to regulate their nuclear relationship; "partnership" is not necessarily forever. Further, accounting for warheads and verifying reductions are essential to achieving marginalization and elimination of nuclear weapons globally (*see section 3.3*).

*Practical step 9(a) - further efforts by the nuclear-weapon States to reduce their nuclear arsenals unilaterally; and step 9(c) - the further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process.*

Following the end of the Cold War, Russia withdrew all Soviet-era nuclear weapons back to its territory. While in 1991 the United States and Russia engaged in reciprocal withdrawals of non-strategic weapons, the United States continues to deploy as many as 400 B61 non-strategic nuclear bombs in Europe.<sup>29</sup> The United States is the only state to maintain nuclear weapons on foreign territory. This situation persists despite the end of hostilities between the superpowers and repeated calls from Russia for withdrawal of that deployment. In Recommendations 21 and 22, the WMD Commission rightly calls for finalization and verification of the 1991 process and non-deployment on foreign territory. Further, the two countries should negotiate reduction of non-strategic weapons, either separately or together with strategic weapons (in fact, there is little meaningful distinction between the two categories). Other states with nuclear weapons will need to participate in this process as well.

*Practical step 9(d) - concrete agreed measures to further reduce the operational status of nuclear weapons systems.*

This commitment goes to the core of the nuclear dilemma. So long as the United States and Russia maintain many hundreds of nuclear warheads ready for immediate use and contend that this posture is essential to their security, implementation of the nuclear arms control and disarmament program will be highly problematic. The United States is estimated to maintain more than 1600 warheads ready for delivery within minutes of an order to do so, and Russia more than 1000 warheads similarly ready for launch.<sup>30</sup> It is an absolute scandal that, every moment of every day, the two countries remain locked in a Cold War-style nuclear standoff. Non-governmental experts have explained that the standoff can be defused through separation of warheads from delivery systems and other measures that lengthen the time required for a nuclear launch, from days to weeks to months.<sup>31</sup> An accompanying step is the elimination of the launch-on-warning option that requires nuclear forces

to be on hair-trigger alert. De-alerting would help alleviate risks associated with mistakes, coups, attacks on nuclear weapons facilities, false warnings, unauthorized launches, and hacking into command and control systems.

*Practical step 9(e) - a diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination.*

The United States claims to be in compliance with this commitment due to development of non-nuclear means for striking enemy targets and for defending against attacks, notably anti-missile systems. However, the increased emphasis in recent years on options for use of nuclear weapons in a widening range of circumstances, detailed in sections 2.2 and 2.4, makes nonsense of this claim. The classified but leaked 2001 Department of Defense Nuclear Posture Review is representative of other policy and planning documents. It states that nuclear weapons will be “integrated with new nonnuclear strategic capabilities” including advanced conventional precision-guided munitions,<sup>32</sup> suggesting a view of nuclear weapons as “simply another weapon.”<sup>33</sup> It plans for an enlarged range of circumstances under which nuclear weapons could be used, notably against non-nuclear attacks or threats. The NPR also states that nuclear weapons “could be employed against targets able to withstand nonnuclear attack, (for example, deep underground bunkers or bio-weapon facilities),” and contemplates their use in response to a biological or chemical attack.<sup>34</sup> Finally, the NPR refers to nuclear use in response to “surprising military developments” and “unexpected contingencies.”<sup>35</sup> Those new catch-all categories are virtually without limit.

The WMD Commission finds that the trends are very much in the wrong direction, observing that evolving doctrines

all risk lowering the threshold for the use of nuclear weapons. They expand the range of scenarios for the military use of such weapons and are an incentive to develop new nuclear weapons, all in direct contradiction of commitments made to strive for nuclear disarmament and all to the detriment of international security.<sup>36</sup>

In Recommendation 15, the Commission urges reversal of the trends and adoption of policies of no first use. That would be going in the right direction. However, at the end of the day, the United States and other countries with nuclear weapons need to acknowledge that there are no circumstances in which these instruments of terror rightly, lawfully and wisely should be used. That would also help generate the will to act on the undertaking to eliminate nuclear arsenals pursuant to Article VI.

### *Recommendations for U.S. Policy*

- The United States should implement Article VI of the Nuclear Non-Proliferation Treaty by supporting and working for the commencement of multilateral negotiations on the global elimination of nuclear forces, and working in particular with other states possessing nuclear arsenals to set in motion a process leading to such elimination.
- The United States should fully implement the Article VI obligation of negotiating cessation of the nuclear arms race at an early date and the commitment to a diminishing role of nuclear weapons in security policies. To this end, it should abandon the Reliable Replacement Warhead program, and refrain from any activities which may lead to the resumed production of nuclear weapons or development of nuclear weapons with improved military capabilities or for new missions.
- The United States should implement the substance of key commitments made at the 1995 and 2000 Nuclear Non-Proliferation Treaty Review Conferences by taking the following steps:
  - o Ratify the Comprehensive Test Ban Treaty, continue to observe the moratorium on explosive underground nuclear testing pending its entry into force, and work to persuade other countries to ratify the treaty in order to bring it into force.
  - o Negotiate with other countries a verified Fissile Materials Cut-off Treaty.
  - o Negotiate with Russia a new agreement on the deep, verified, and irreversible reduction of nuclear forces, with provisions for the verified dismantlement of warheads withdrawn from deployment under the 2002 Strategic Offensive Reductions Treaty (SORT). If necessary pending the new agreement, the Strategic Arms Reduction Treaty should be extended to provide some monitoring of SORT reductions and to continue limits on multiple-warhead, land-based missiles.
  - o Remove all U.S. nuclear weapons in Europe to U.S. territory pending their dismantlement, and work with Russia to complete and verify the 1991 process of withdrawal and elimination of non-strategic nuclear weapons. The United States and Russia should also negotiate reduction and elimination of all non-strategic nuclear weapons, either separately or together with strategic nuclear weapons.
  - o Stand down (de-alert) U.S. and Russian nuclear forces by

implementing measures, such as removal of warheads from delivery systems, that lengthen the time needed for launch of nuclear missiles or other use of nuclear weapons.

- The United States should acknowledge that in no circumstance may nuclear weapons be rightly or lawfully used.
- The United States should not enter a nuclear cooperation arrangement with India unless both the Comprehensive Test Ban Treaty and a verified Fissile Materials Cut-off Treaty have entered into force and apply to both countries, and India has formally accepted the Nuclear Non-Proliferation Treaty obligation of good-faith negotiation of cessation of arms racing and nuclear disarmament.