NATO's Nuclear Weapons Policy: Nuclear Sharing and the Nuclear Non-Proliferation Treaty[1]

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Abstract

In January 2002, the Bush Administration presented to Congress its Nuclear Posture Review (NPR). When leaked to the press in March, the NPR was shown to consider contingency plans to use nuclear weapons against seven countries. The NPR outlined a pre-emptive nuclear weapons doctrine, along with the need to research and develop new, more useable nuclear weapons for potential use against a range of targets. Although many of the recommendations were already part of US nuclear policy, the current US Administration is committed to achieving maximum flexibility in its nuclear weapons policy. Can the same be said of NATO? The Alliance's nuclear weapons policy is governed by the 1999 Strategic Concept and its military implementation in 2000 in MC400/2. Under NATO's nuclear sharing arrangements, European non-nuclear weapons states could be given wartime use of American-owned nuclear free-fall bombs stored in Europe. South Africa, Egypt and other states question how this is consistent with the Nuclear Non-Proliferation Treaty. NATO's decisions at the November 2002 Prague Summit will show how far they have resolved the conflicting pressures for change from the Bush Administration and many non-nuclear states.

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Statement by H.E. Mr Abdul S. Minty, Deputy Director-General Multilateral Affairs, South Africa, 44 April 2000, at the 2000 NPT Review Conference, 14 April-19 May 2000, New York

Mr President,

"It may be an exaggeration to say that the NPT is under threat, but it would be fair to say that developments since 1995 in areas directly related to, or having a direct impact on, the nuclear non-proliferation and nuclear disarmament provisions of the NPT contradict, and are counter productive to, the achievement of the NPT's objectives. I am here of course referring to:

- The continued, or even greater reliance, which is being placed on nuclear weapons in the strategic doctrines of the Nuclear Weapon States and their military alliance partners.

- The problems of compliance being confronted with the situations in Iraq and North Korea.

- The compliance implications of nuclear sharing in, as well as expansion of NATO. (Emphasis added)

- The nuclear test explosions conducted in South Asia.

- The delays that are experienced in bringing the START II into force and to commence negotiations on the START III.

- The potential repercussions of the proposals for a national missile defence system in the United States and the related proposals to modify the Anti-ballistic Missile (ABM) Treaty.

- The continuing difficulties being confronted on bringing the Comprehensive Nuclear Test-Ban Treaty (CTBT) into force.

- The continuing inability of the Conference on Disarmament (CD) in Geneva to commence its negotiations on a fissile material treaty (FMT).

Introduction

The 11 September attacks on the United States (US) highlighted the strategic vulnerability of the US and its allies. In response, the North Atlantic Treaty Organization (NATO) invoked Article 5 of the North Atlantic Treaty for the first time in the Alliance's history: Article 5 states that an attack on one ally "shall be considered an attack against them all". Despite this show of solidarity, many observers have commented that the current US Administration appears to have taken on a unilateralist stance in international relations and foreign and military policy. This can be seen in the US's attitude towards the Kyoto Protocol on climate change, its decision to withdraw from the 1972 Anti-Ballistic Missile Treaty in mid-December 2001, its failure to ratify the Comprehensive Test Ban Treaty (CTBT) and boycott of the November 2001 Special Conference on the CTBT Entry into Force, its dismissal of the Biological Weapons Convention verification protocol and its rejection of the International Criminal Court.[2]

These actions have met with opposition from many countries in Europe, some of which are NATO allies. Moreover, many countries fear that instead of bolstering arms control and non-proliferation arrangements to counter the growing threat of weapons of mass destruction (WMD) proliferation, the Bush Administration may inadvertently be adding to proliferation concerns. The leaking to the press of the US's Nuclear Posture Review (NPR) in early 2002 shows that the Pentagon continues to regards nuclear weapons as central to its strategic and deterrence capabilities. The US Administration is thus following a course of action that favours maximum flexibility in nuclear weapons policy, which has several consequences for US allies, particularly NATO members. In November 2002 the Alliance will meet in Prague to discuss NATO enlargement.

[2] Plesch argues in Sheriff and Outlaws in the Global Village that opposition to international law makes US policy anarchistic rather than unilateralist. Nassauer argues that this is a deliberate policy of deregulating international relations.

The 2002 US Nuclear Posture Review

On 8 January 2002, the Bush Administration presented to Congress its Nuclear Posture Review (NPR), based on the September 2000 Congressional request for a re-assessment of US nuclear weapons policy. The NPR[3] explicitly made clear the US need for a "capabilities-based force" to meet the post-Cold War challenges to US security.[4] When the 56 page NPR was leaked to the press in March, it indicated that the US still regards nuclear weapons as central to its strategic and deterrence capabilities. The NPR outlined a list of contingencies and targets where nuclear weapons might be used, including seven countries as potential nuclear targets: China, Russia, Iraq, North Korea, Iran, Libya and Syria.

US strategists responsible for the NPR also made recommendations for using nuclear weapons under three scenarios: against targets able to withstand non-nuclear attack; in retaliation for attack on the US with nuclear, biological or chemical weapons; or "in the event of surprising military developments". The NPR suggested that the Pentagon should be prepared to use nuclear weapons during an Arab-Israel conflict, an Iraqi attack on Israel, or its neighbours, a North Korean attack on South Korea or a military confrontation between China and Taiwan. It also made reference to contingencies requiring a "pre-emptive" nuclear strike against "rogue states", as well as plans to launch a nuclear strike to destroy stocks of WMD, such as biological and chemical weapons. The NPR also suggested the need for developing a new generation of nuclear weapons that could be integrated into US war-fighting strategy beyond deterrence. It recommended development of new nuclear weapons called the Robust Nuclear Earth Penetrator to be used against Hardened and Deeply Buried Targets: in a report sent to Congress in October 2001, the Pentagon recommended the need to defeat underground bunkers and WMD fabrication and storage facilities.

[3] For excerpts of the 2002 NPR, see Global Security, Special Weapons, Hot Documents: (http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm).

[4] Physicians for Social Responsibility, 'Dr. Strangelove Meets the Pentagon: The US Nuclear Posture Review, (http://www.psr.org/NPRfactsheet.html).

Yet much of the NPR's recommendations were already part of the US nuclear weapons policy before President Bush took office. Contingency plans for using nuclear weapons against non-nuclear "rogue states" have in all probability existed since the last NPR in 1994.[5] In 1996, the Joint Chiefs of Staff released a document entitled *Doctrine for Joint Theater Nuclear Operations*.[6] This document provided guidance for tactical nuclear force employment and included a list of "likely targets" for US nuclear weapons. These included enemy WMD and their delivery systems, as well as non-state actors (facilities and operation centres) that possess WMD.

Back in 1997, President Clinton issued the Presidential Decision Directive 60 (PDD 60). This classified document gave new guidelines to the US military on targeting nuclear weapons based on growing concerns about the proliferation of WMD. PDD 60 is thought to contain a widened scope for using nuclear weapons against organizations or states suspected of developing WMD.[7] Though the 2002 NPR made it clear that the US wants to maintain maximum flexibility in its "capabilities-based force", including the use of nuclear weapons against an array of targets, this was already part of US policy.

NATO's Nuclear Weapons Policy: the Strategic Concept

NATO's nuclear weapons policy is governed by the Strategic Concept and MC400/2. The Alliance's current nuclear weapons policy was agreed at the Alliance's Washington Summit in April 1999. It is founded on the 1991 Strategic Concept, which agreed that NATO's security required "widespread participation by European Allies involved in collective defence planning in nuclear roles, in peacetime basing of nuclear forces on their territory and in command, control and

[5] Mark Bromley, 'The Treat Posed by the US Development of New Low-Yield Nuclear Weapons', BASIC, 29 May 2002, (http://wwwbasicint/USNukePresentation0205.htm).
[6] Joint Chiefs of Staff, 'Doctrine for Joint Theater Nuclear Weapons', Joint Pub 3-12.1, 9-2-1996.
[7] Butcher, Nassauer, Padberg and Plesch, 'PENN Research Report 2000.1, 'Questions of Command and Control: NATO, Nuclear Sharing and the NPT', March 2000, available at (http://www.basicint.org/eurnato_nukepolicy.htm).

consultation arrangements".[8] After the end of the Cold War, the US unilaterally removed some of its tactical nuclear weapons from Europe. The remaining US tactical nuclear weapons deployed in Europe were now said to play a political rather than military role. These weapons symbolize the US commitment to Western Europe as well as European nations' commitment to share the risks and roles of extended deterrence.[9] In the 1991 Strategic Concept, the link between US nuclear weapons and US commitment to Europe was expressed as follows: "The presence of North American conventional and US nuclear forces in Europe remains vital to the security of Europe, which is inseparably linked to that of North America".[10] Nuclear weapons are therefore perceived as the ultimate guarantee of extended deterrence. This rationale is reflected in the MC400 document approved in December 1991, which is the core military strategy document implementing the 1991 NATO strategic Concept.

At the North Atlantic Council meeting on 3 June 1996, NATO approved a revised version of that core military strategy, MC400/1. The MC400/1 document committed the Alliance to maintain a reduced, but more flexible, nuclear posture for the foreseeable future. It neither mentions nor revokes NATO's long-standing policy of retaining the option of "First Use" of nuclear weapons. Nuclear weapons are described as having an essential stabilizing role in Europe, guarding against uncertainties (such as risks resulting from the proliferation of WMD) and serving as a hedge, in case a substantial military threat to NATO re-emerges (a politically unstable Russia). NATO no longer maintains detailed plans for the use of nuclear weapons in specific scenarios. Instead, the Alliance has developed a so-called "adaptive targeting capability", much like the US. This capability is designed to allow major NATO commanders to develop target plans and nuclear weapons employment tactics on short notice, during a contingency or crisis, from pre-developed databases containing possible targets.

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[8] The Alliance's New Strategic Concept, North Atlantic Council in Rome, 7-8 November (1991, Brussels: NATO), Press Communiqué S-1(91)85, see (http://www.nato.int/docu).
[9] Otfried Nassauer, 'NATO's Nuclear Posture Review: Should Europe end nuclear sharing?', Berlin Information-center for Transatlantic Security (BITS), Policy Note 02.1, April 2002, see (http:www.bits.de/public/pdf/pn02-1.pdf)
[10] The Alliance's New Strategic Concept, 1991.

The themes from MC400/1 were taken up in the Strategic Concept agreed at the Washington Summit in April 1999, although this left the Alliance's nuclear weapons policy largely unchanged. There is a debate as to whether the textual changes in the 1999 Strategic Concept leave the door open for adopting the implementation of the Alliance's strategy in line with US nuclear policy outlined in the PDD 60 document. The language describing when NATO would consider using nuclear weapons was changed slightly from 1991, but no commitment was made by NATO on the "No First Use" of nuclear weapons. The Alliance did not return to the formula of the London Summit of 1990, where nuclear weapons were said to be weapons of "last resort".[11] Nevertheless, most of the language contained in the 1999 Strategic Concept remained untouched. The 1999 document maintained that "the fundamental purpose of the nuclear forces of the Allies is political: to preserve peace and prevent coercion and any kind of war". It goes on to state that "the supreme guarantee of the security of the allies is provided by the strategic nuclear forces of the Alliance, particularly those of the US; and independent nuclear forces of the United Kingdom (UK) and France, which have a deterrent role of their own, contribute to the overall deterrence and security of the Allies."[12]

The 1999 Strategic Concept reveals that "a credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require widespread participation by European Allies involved in collective defence planning in nuclear roles, in peacetime basing of nuclear forces based on their territory and in command, control and consultation arrangements."[13] This is much the same as the 1991 Strategic Concept. The 1999 Strategic Concept says that nuclear forces based in Europe and committed to NATO provide an essential political and military link between the European and the North American members of the Alliance. Yet the document did not re-

[11] *London Declaration on a Transformed North Atlantic Alliance,* Issued by the Heads of State of Government participating in the meeting of the North Atlantic Council, 5-6 July 1990, para.18.
[12] The Alliance's Strategic Concept, North Atlantic Council in Washington DC, 23-24 April 1999.
[13] Ibid.

iterate the political assurances given to Russia in 1997, that NATO would not deploy nuclear weapons in the Alliance's new member states during peacetime.

These developments in NATO strategy, based on previous changes in US nuclear policy, led many observers to wonder if further shifts are underway in the direction of US national nuclear weapons policy. Paragraph 41 of the 1999 Strategic Concept stated that: "By deterring the use of NBC [nuclear, biological and chemical] weapons, they [Alliance forces] contribute to Alliance efforts aimed at preventing the proliferation of these weapons and their delivery means."[14] Indeed, if "Alliance forces" in the above text were to include both conventional and nuclear forces, NATO would have prepared the ground for an extension of the role of nuclear weapons in NATO strategy in the future. Whilst paragraph 41 of the 1999 Strategic Concept stops short of openly assigning NATO's nuclear posture a role in offensive military counter-proliferation operations, it assigns nuclear weapons a role in deterring the threat of all WMD.

Nor does the 1999 Strategic Concept indicate that nuclear weapons will not be used against the owners of WMD and their delivery systems. The only way to be certain that elements of US nuclear weapons doctrine have been incorporated into the 1999 Strategic Concept would be to examine the classified MC400/2. Yet NATO's history is indicative of the fact that where the US leads, NATO will follow – particularly in the field of nuclear strategy.[15] From a historical perspective, NATO has followed suit whenever the US changed its nuclear weapons policy. This is not surprising as US strategic and theatre nuclear doctrine is established by the US President and set forth in a series of increasingly detailed documents: this applies equally to US forces stationed or deployed anywhere in the world, including those in Europe.[16]

[14] Ibid. Paragraph 41.
[15] Butcher *et al*, PENN Research Report 2000.1.
[16] Answer to Question 39, asked by Senator Harkin during a Senate Armed Services Committee Hearing, 11 May 1999.

NATO's Nuclear Sharing Arrangements and the Nuclear Planning Group

NATO's nuclear sharing arrangements aim to ensure that the non-nuclear Alliance member states have a say in the process of nuclear planning and decision-making, which govern the Alliance's nuclear weapons policy. According to an observer at the Berlin Information-center for Transatlantic Security, this helps to ensure that the nuclear powers do not hold a complete monopoly on the Alliance's nuclear policy.[17] NATO's nuclear sharing arrangements consist of two mechanisms: one political and one technical.

The political mechanism consists of co-operation and consultation between nuclear and non-nuclear members of the Alliance in the Nuclear Planning Group (NPG) and its subordinate bodies within NATO. The NPG discusses questions of nuclear strategy and operational planning, analyses deployment measures and determines consultation mechanisms for the actual use of nuclear weapons. The NPG was founded in 1966, prior to the signing of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), ensuring that the interests of the Alliance's non-nuclear members would be preserved after the NPT entered into force in 1970. The NPG initially consisted of four permanent members (Germany, Italy, the US and the UK) and four rotating members. The Director of the NPG is always a US citizen. Since 1979, the NPG is open to all NATO members and they have been given equal standing. The NPG is the central political mechanism of nuclear sharing, and has served as a forum to address and clarify differences of NATO members concerning nuclear issues.

The technical mechanism of nuclear sharing allows those non-nuclear members of the Alliance that do not have the capability to conduct a nuclear attack to use US tactical nuclear weapons with national delivery systems during wartime. Technical nuclear sharing emerged in the late 1950s and early 1960s, when the US sold nuclear capable launch-systems for the use of US nuclear weapons to non-nuclear members of NATO. Under the Alliance's current nuclear sharing arrangements, the air forces of six non-nuclear European Alliance

[17] Otfried Nassauer, BITS, Policy Note 02.1, April 2002.

members are technically capable of using US nuclear weapons in wartime. In peacetime, aircrew members of Belgium, Germany, Greece, Italy, the Netherlands and Turkey are trained to prepare and conduct the use of nuclear weapons. Their air forces are equipped with nuclear-capable delivery systems – Dual Capable Aircraft (DCA) – that can carry both conventional and nuclear weapons. The nuclear weapons are owned by the US and stored locally at European nations' air force bases. The weapons remain under control of the US Air Force (USAF) and will only be transferred to the allied forces in wartime. The US National Command Authority (NCA) retains the launch codes for use of US nuclear weapons in Europe, as elsewhere. The NCA has 'positive control' over these weapons: they cannot be armed without a US presidential decision. Once the US President has given the order to use nuclear weapons, control over these armed weapons can be handed over to pilots of those non-nuclear allies participating in technical nuclear sharing and flown to the pre-arranged target.

Canada ended its participation in technical nuclear sharing in 1989. France, a declared nuclear weapons state, does not participate in the NPG. The UK, NATO's third nuclear power, participates in the NPG. Denmark, Iceland, Norway, Portugal, Luxemburg and Spain participate only in political nuclear sharing, while rejecting the deployment of nuclear weapons on their territory during peacetime. Four allies participating in technical nuclear sharing, Belgium, Germany, Italy, the Netherlands together with Norway form the NATO-5, an occasional grouping of non-nuclear Alliance member states that are sometimes critical of US nuclear policy at the UN. After expansion in 1999, the Czech Republic, Hungary and Poland joined the political mechanism of the NPG.

As of April 2002, theoretically up to 360 US-owned B-61 nuclear free-fall bombs can be deployed on nine operational European airbases. There are thirteen bases, twelve of which house DCA.[18] Of the thirteen bases with nuclear storage capabilities, four "caretaker" airbases are equipped to host an additional 68 US nuclear weapons, but do not do so under current levels of operational readiness. A total of six operational and four bases on caretaker status can host

[18] Information regarding the B-61 is from declassified sources cited in the BITS Policy Note 02.1.

US B-61 nuclear free-fall bombs for use with non-nuclear allied DCA, and two bases are used solely by the USAF. The nuclear weapons storage vaults in Europe are to be modernized by 2005, which will keep them operational until 2018. In total, there are 214 vaults that could house up to 428 B-61 bombs. [19]

The Alliance's nuclear sharing arrangements are therefore designed to give a unified status for non-nuclear allies. They are based on the premise that nuclear deterrence equally protects all NATO member states. It is neither dependant on a member state's possession or storage of nuclear weapons on its soil nor on its capability to launch them in case of war. The Alliance re-affirmed this policy with regard to its new members. The same protection applies to them as it does to all other NATO member states. There are no zones of different nuclear security within the Alliance, no different classes of membership.

NATO's Nuclear Sharing and the Nuclear Non-Proliferation Treaty (NPT)

The NPT is widely regarded as the cornerstone of the international nuclear arms control and disarmament regime. The NPT was signed on 1 July 1968 and entered into force on 5 March 1970. At present, the NPT comprises 187 States Party to the Treaty and only four countries remain outside the NPT: Cuba, which has no nuclear weapons programme, India, Israel and Pakistan, which do. All Alliance member states are Parties to the Treaty as either nuclear weapons states (NWS) or non-nuclear weapons states (NNWS). Under the NPT, NATO's NWS are France, the US and the UK; the rest are NNWS. The NPT's text contains eleven articles, although articles I and II are of significance here.

Article I of the NPT states that "Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosives or devices directly or indirectly: and not in any way to

[19] Up to 360 nuclear weapons can be stored, although the actual number of weapons might be lower. Estimates assume 150 to 180 weapons. Experts assume that during peacetime one vault at each airbase contains training weapons, used to exercise on-base nuclear procedures and flight training. Most, if not all of these weapons, are B-61 free-fall nuclear bombs.

assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other explosive devices, or control over such weapons or explosive devices".[20] Article II of the NPT states that "Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly: not to manufacture or otherwise acquire nuclear weapons or other explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other explosive devices.[21] In the event of war, NATO's nuclear sharing arrangements permit the transfer of nuclear weapons from a NWS (the US) to a NNWS (say Belgium). The NNWS would therefore receive nuclear weapons from a NWS. This would be conducted through the Alliance's current nuclear sharing arrangements. NATO's nuclear sharing arrangements would appear to violate the NPT by arranging the transfer of nuclear weapons between NWS and NNWS.

But the US interpretation of the NPT is that it would not be binding once a decision had been made to go to war. During the NPT negotiations, the US pushed strongly to include wording, which, in its interpretation, would make the Treaty invalid in times of war. By interpreting the NPT as dealing "only with what is prohibited" and not with what is allowed, the US introduced a major loophole for nuclear sharing. NATO's nuclear sharing arrangements are therefore permitted because the US maintains command and control of its nuclear weapons in peacetime. Indeed, successive US Administrations have consistently argued that NATO shared nuclear command and control is legal because the US guarantees to maintain positive control over all its nuclear weapons in peacetime. It is this interpretation that allows NATO NNWS to make every preparation in peacetime for the employment of nuclear weapons in war.

The US did not formally publish reservations of its interpretation of the NPT that is the normal way for states to express limitations they place on their

[20] Article I, the NPT, signed 1 July 1968, entered into force, 5 March 1970.
[21] Article II, NPT. Ibid.

support for a treaty. The key document on the US interpretation of articles I and II is entitled *Questions on the Draft Non-Proliferation Treaty Asked by US Allies together with Answers Given by the United states (1967)*.[22] This document was enclosed with a letter from US Secretary of State, Dean Rusk, to President Johnson. It was transmitted to the Senate on 9 July 1968, along with other relevant documentation, for consideration during Senate ratification hearings on the NPT. According to available documents, this was the first time the US made public its interpretation of the NPT, eight days after the NPT signing ceremony had taken place, at which the first 56 nations had signed the Treaty. At the time of the signing the NPT, however, non-NATO signatories were not made fully aware of the US interpretation, which was also shared by NATO allies, preserving the Alliance's nuclear sharing arrangements and stating that the NPT would not be controlling in time of war.

Besides, the US is the only country that has explicitly stated that, once a general war has begun, it would no longer feel bound by the NPT. It has created a loophole by which it could withdraw from the NPT without the three month notice period stipulated by Article X. The US approach implicitly creates a loophole for Alliance NNWS to withdraw from the NPT and receive US nuclear weapons in the event of war. Furthermore, NATO is able to create the very conditions under which it would no longer feel bound by the NPT. By retaining the option of "First Use" of nuclear weapons, the interpretation allows the US to decide unilaterally when "general war" has started and thus when it can withdraw from its NPT commitments without prior notice. The "First Use" of nuclear weapons by the US and NATO during a conflict would not occur "unless and until a decision were made to go to war". The US view is that "in such circumstances the treaty [NPT] would not apply, and a nuclear power would be free to transfer

[22] The NPT dealt only with prohibited matters, so the *Questions and Answers* document indicated four areas that the Treaty "does not deal with", and therefore, in the US view, does not prohibit.

nuclear weapons to an ally for use in the conflict".[23] This argument might also be used by a Third World NNWS to build nuclear weapons when it was at war.

The US asserts that it retains command and control of nuclear weapons in times of peace and war alike. Once the US President has given the order to use nuclear weapons, control over some US nuclear weapons can be handed over to non-nuclear NATO allies. Some NATO officials argue privately that any participation by nuclear sharing nations in a NATO counter-proliferation operation using nuclear forces would be legal, even short of a general war. They reason that since the pilots would not be acting in a national capacity, but as NATO soldiers, and NATO as a non-signatory is not bound by the NPT, the transfer of nuclear weapons would be legal.[24] The authors believe this argument is false. Firstly, the US would still be in breach of Article I of the NPT; secondly, the pilots still serve in their national armed forces, whereas NATO is an alliance – NATO officials have pointed out that NATO does not sign treaties, members do. Finally, the NPT negotiation in the 1960s precluded multilateral nuclear forces.

After general war has been declared and the order has been given to deploy allied aircraft with US nuclear weapon(s) on board, nuclear weapons are no longer solely under national US command and control. Instead, the allied pilot now has full control over the weapon(s) and has sole responsibility for delivering the weapon(s) to its predetermined target. The pilot in no way becomes a pilot of a multinational force, so the transfer of control of nuclear weapons to a multinational entity, such as NATO, would be deemed illegal under the NPT: the question is whether the NNWS is prepared to breach its obligations to the NPT.

Several States Party to the Treaty raised serious concerns as to whether NATO nuclear sharing arrangements comply with articles I and II of the NPT at the 1995 NPT Review and Extension Conference (RevCon). The compatibility of NATO nuclear sharing with Articles I and II caused serious debate at the 1997 NPT Preparatory Committee (PrepCom). NATO expansion prompted general

[23] Adrian Fischer, "Memorandum for Mr. Bill Moyers, Subject: Working Group Language for the Non-Proliferation Treaty: Relationship to Existing and Possible Allied Nuclear Arrangements", 30 September 1966. Original classification: Secret – Exdis, pp.4-5.
[24] Butcher *et al*, PENN Research Report 2000.1.

concern about the NPT and NATO nuclear doctrine. South Africa was even more explicit. Representatives from South Africa expressed concern "about the non-proliferation implications of the plans for the expansion of NATO….The planned expansion of NATO would entail an increase in the number of NNWS which participate in nuclear training, planning decision-making and which have an element of nuclear deterrence in their defence policies."[25] As in 1997, the 1998 NPT PrepCom ended without agreement on articles I and II.

At the 1999 NPT PrepCom the Non-Aligned States party to the NPT (Non-Aligned Movement or NAM) for the second year running submitted a working paper, which contained proposals for a review document language on articles I and II identical to the previous year.[26] Algeria, backing the NAM position, criticised the adoption by NATO of the 1999 Strategic Concept, which re-affirmed the essential importance of nuclear weapons. Mongolia warned that the Alliance's 1999 Strategic Concept could provoke other NWS to adopt similar policies while NNWS might question the unity of the NPT. The New Agenda Group (NAG) for the first time joined in the criticism of NATO and nuclear sharing arrangements.[27] The NAG emphasized that any loophole in the NPT's interpretation regarding nuclear sharing must be closed, stating that "it must be stressed that all the articles of the NPT are binding on all States Parties and at all times and in all circumstances".[28]

Criticism of NATO policy was translated for the first time into action. Egypt formally proposed that the 2000 NPT RevCon adopt an interpretation of the treaty that would outlaw current NATO practices and possible future European Union nuclear weapons co-operation. Egypt emphasized that neither Article I nor Article II of the NPT suffer any exemptions and criticised NATO's nuclear sharing arrangements and its concepts regarding nuclear deterrence, stating: "The delegation of Egypt proposes that the PrepCom recommend that the 2000

[25] "Statement of the Permanent Representative of South Africa, Ambassador K. J. Jele, to the First PrepCom Meeting for the Year 2000 RevCon of the NPT", 8 April 1997, New York.
[26] The NAM is a group of some 110 countries, mostly from the developing world, who define themselves as non-aligned during the Cold War, neither part of the Western nor Soviet blocs.
[27] Formally the New Agenda Coalition, the NAG consists of seven NNWS party to the NPT: Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden.
[28] *New Agenda Statement*, para. 13, Amb. Luiz Tupy Caldas de Moura of Brazil, 12 May 1999.

RevCon state in clear and unambiguous terms that Articles I and II of the NPT allow for no exemptions and that the NPT is binding on States Parties in times of peace and in times of war alike.[29] Although South Africa made a statement criticising NATO's policies, especially the 1999 Strategic Concept, the 1999 PrepCom ended in animosity, barely avoiding complete failure: this was in part due to NATO members' failure to accept criticism of their policies and practices.

At the 2002 NPT PrepCom, the NAM and the NAG submitted papers for each of the cluster and special issues sessions. Yet there was little new thinking and little evidence of strategies to take forward the implementation of the NPT obligations and the agreements undertaken in 1995 and 2000.[30] The NATO-5 also struggled to come up with a common position paper, though Germany put forward some proposals on non-strategic nuclear weapons. Still, the US argued that the Alliance's nuclear sharing arrangements are in compliance with articles I and II of the NPT on the basis that the NPT does not apply during "general war".

Nonetheless, defence officials from NATO's NPG have committed the Alliance to the binding obligations laid out in the 2000 NPT RevCon at the Ministerial Meeting of the Defence Planning Committee and the NPG, 7 June 2001. The Final Communiqué states: "We [the Alliance] re-affirm our commitment to work for further reductions of nuclear weapons, and our determination to contribute to the implementation of the conclusions of the 2000 NPT Review Conference."[31] This was agreed by the Bush Administration. Similar language was used in the December 2000 NPG communiqué following the 2000 NPT RevCon. This was the first time NATO had followed an NPT RevCon by including a commitment to contribute to implement NPT RevCon decisions.

[29] Statement of Ambassador Zahran, before the Third Session of the PrepCom for the 2000 NPT RevCon, New York, 12 May 1999.
[30] Rebecca Johnson, the Acronym Institute for Disarmament Diplomacy, 'The 2002 PrepCom: Papering over the Cracks?' *Disarmament Diplomacy*, Issue No. 64, May-June 2002.
[31] NATO Final Communiqué 2001: Press Release M-DPC/NPG-1(2001)87, 7 June 2001, (http://www.nato.int/docu/pr/2001/p01-087e.htm).

The June 2002 Alliance Ministerial Meeting and the Nuclear Planning Group

On 6 June 2002, a Ministerial Meeting of the Defence Planning Committee and the NPG took place at NATO Headquarters in Brussels. At this meeting the NPG provided guidance for further adaptation of NATO's posture on DCA, and re-affirmed the fundamental political purpose of the allies' nuclear forces: "to preserve peace and prevent coercion and any kind of war".[32] The Final Communiqué stressed that the NPG "continue to place great value on the nuclear forces based in Europe and committed by NATO, which provide an essential political and military linkage between the European and North American members of the Alliance." The NPG recalled that NATO's tactical nuclear forces have been reduced by over 85 per cent since 1991, and are maintained at the minimum level sufficient to preserve peace and stability. The High Level Group provided the Ministers with guidance to further adapt NATO's DCA deployment.

This text has been interpreted by one observer to possibly suggest that some US nuclear weapons in Europe might be re-located to the Southern Flank of the European Alliance, so as to permit more nuclear weapons deployed in the region nearest to "rogue" regimes in the Middle East. While the deployment of additional nuclear weapons to Europe is unlikely, a decision to re-activate for some time one or two "caretaker" bases on the Southern Flank may have been taken, even though this would require substantial investment in additional US security and maintenance personnel. However, the most likely debate on adaptation may have been dealing with the future of European-based DCA.[33]

In fact, most of the Alliance's dual capable aircraft will reach the end of their useful service-life sometime in the next decade. Tornado and F-16 aircraft will be subsequently phased out. Germany will replace its nuclear capable Tornado aircraft with *Eurofighter* Typhoon, as will Italy. Belgium and the Netherlands are already considering how to replace their F-16s. Greece operates A-4 aircraft and will have to replace them sometime in the future. Turkey's F-16s

[32] NATO Final Communiqué 2002: Press Release (2002)074, 6 June 2002, (http:www.nato.int/docu/pr/2002/p02-074e.tm).
[33] Comments from Otfried Nassauer, BITS.

are the newest ones. However, none of the successor aircraft discussed is under development or procurement as a DCA. The *Eurofighter* Typhoon is conventional only, and since the Royal Air Force gave up its nuclear bombs there has been no demand for making the aircraft nuclear weapons capable. The Joint Strike Fighter (JSF), considered by several F-16 users as a successor to their DCAs, is planned as a non-nuclear aircraft. But the option has been retained to add a nuclear delivery capability. According to the 2002 NPR, the US Administration intends to use this option in order to allow for a conventional-only use of the F-16s, once the JSF enters service in 2012 or later.[34]

Despite advocating the continuation of nuclear sharing arrangements and "adapting" DCA, the 6 June Final Communiqué notes that the NATO will continue to play a major role in the achievement of the Alliance's security objectives, along with arms control and non-proliferation. The ministers re-affirmed their determination to contribute to the implementation of the conclusions of the 2000 NPT RevCon. Ministers also welcomed the full discussion of issues at the 2002 NPT PrepCom. Still, the Alliance's Final Communiqué indicates that NATO remains committed to the 1999 Strategic Concept and current nuclear sharing arrangements. The June 2002 Ministerial Meeting concluded by stating that Alliance members will continue to share the burden of deploying nuclear weapons as stated in the 1999 Strategic Concept.

Future Nuclear Weapons Policy and the Implications for Non-Proliferation

In the 1991 Strategic Concept, NATO officials had already recognized that "alliance security must also take account of the global context" and that "alliance security interests can be affected by other risks of a wider nature, including proliferation of WMD, disruption of the flow of vital resources and actions against terrorism and sabotage".[35] In the 1999 Strategic Concept, the Alliance placed

[34] Otfried Nassauer, BITS, Policy Note 02.1, April 2002.
[35] The Alliance's New Strategic Concept, 1991, para. 12.

"acts of terrorism" at the top of the list of "other risks".[36] However, it is debateable whether or not containment and deterrence are applicable when dealing with threats such as terrorists and hostile states with WMD.

By autumn 2002 the US Administration will lay down its National Security Strategy, which is expected to add "pre-emption" and "defensive intervention" as formal options for striking at terrorists or hostile regimes that appear determined to use WMD against the US.[37] Indeed, on 6 June US Secretary of Defense Donald Rumsfeld warned NATO to face up to the dangers of WMD in the hands of terrorists. Rumsfeld said that pre-emptive action might be necessary to deal with rogue states and terrorist groups: Iraq, Iran and North Korea were named in a classified US briefing.[38] There is widespread belief in the Pentagon that deterrence is not sufficient to meet current security challenges. The US might consider using "pre-emptive" nuclear strikes or "defensive intervention" to counter the risks resulting from the proliferation of WMD, although European allies would prefer to fight proliferation by strengthening non-proliferation. Alliance members differ in their assessment of the danger posed by Iraq or Iran and there are strong doubts from European NATO allies about the US "axis of evil" concept.

Critics of the US Administration's National Security Strategy have suggested that "pre-emption" and "defensive intervention" might increase the pressure on both sides to act sooner rather than later. This could cause a crisis to escalate quickly and is potentially more complicated and dangerous than traditional retaliatory deterrence: a failed attack on WMD facilities that released chemicals, biological spores or radioactive material into the atmosphere would risk killing thousands of people, not only in the target nation, but in neighbouring countries. This goes beyond most planners' notions of acceptable collateral damage. A pre-emptive nuclear posture requires far better and far different intelligence than available at present. This comes at a time when the abilities of the intelligence services to do their job effectively have been questioned.

[36] The Alliance's Strategic Concept, 1999, para. 11.
[37] Thomas E. Ricks and Vernon Loeb, 'Bush Developing Military Policy of Sticking First', 10 June 2002, (http://www.washingtonpost.com/wp-dyn/articles/A22374-2002Jun9.html).
[38] Ian Black, 'Rumsfeld tells NATO to face up to terror danger', *the Guardian*, 7 June 2002.

Moreover, in terms of intelligence, NATO has neither the shared measures nor the mutual trust to make vital collaborative intelligence work effective.[39]

However, member states of the Alliance are under mounting US pressure to be able to fight terrorism and deploy its forces rapidly. The question remains whether such pre-emptive measures will be left to those Alliance members, such as France and the UK, which retain an independent nuclear force, or whether the Alliance's NNWS member states will be called upon to employ US-owned nuclear weapons with their aircraft. In the event of a pre-emptive nuclear strike, the US could ask those European NNWS member states of the Alliance involved in technical nuclear sharing whether they would be willing to ease the burden of the US if it comes to the decision to use nuclear weapons.[40] Given the US's interpretation of the NPT, this is a feasible question for the US to ask.

The answer to this hypothetical question depends on whether or not those European NNWS allies would ever really be prepared to use nuclear weapons in time of war. They could revoke their technical capability, which would be the first time that NNWS – beyond rejecting to become nuclear powers – would make a substantial contribution to support the declared common goals of strengthening arms control and nuclear non-proliferation. By giving up the technical capability to use nuclear weapons in times of war, Alliance NNWS would considerably strengthen the NPT. Moreover, the voluntary renunciation of the technical aspects of nuclear sharing arrangements presents an unequivocal signal that NATO member states recognize the universal validity of the NPT. This would send a clear message to Sates Parties to the NPT that the role of nuclear weapons within the 1999 Strategic Concept is being reduced, not extended.

NATO should recognize that political and technical nuclear sharing is incompatible with a universally applied, loophole-free NPT. It should recognize that by bringing new NATO members into the political process of nuclear sharing it is engaging in political proliferation that reinforces the double standards according to which western nuclear policies are good and others bad.

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[39] Hugo Young, 'Messy War on the New Masters of Armageddon', *the Guardian*, 13 June 2002.
[40] BITS Policy Note 02.1 explores many hypothetical questions on NATO's nuclear sharing.

Conclusion

NATO continues to place a high value on nuclear weapons. It especially values nuclear co-operation amongst its members. It has begun to consider new policies. These include, for the first time, consideration of implementing NPT decisions. They also include consideration of US policy for preparing for use of nuclear weapons against states and non-state actors acquiring WMD in the Third World. The logical result of the adoption of these US policies by NATO is that West European states could be asked by the US to participate in a US-led nuclear strike in order to provide alliance cohesion and burden sharing.

However, NATO itself is contributing to nuclear proliferation by bringing new members into its nuclear planning processes and to violate a plain reading of Articles I and II of the NPT by continuing to argue that there is a legal loophole that allows it to prepare to transfer US nuclear weapons to West European states in wartime. Leading non-nuclear states from many parts of the world have repeatedly expressed their concerns that NATO's own conduct should conform to a universally applied and loophole-free NPT. The decisions of the NATO Prague summit will be closely observed by members of the NPT and are likely to be discussed at the next NPT meeting in the spring of 2003.