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Nuclear Weapons Policy and International Law

Paul Nitze was the archetypical Cold Warrior and nuclear weapon strategist. As the author of NSC-68 commissioned by President Truman in 1950 he helped set the ground rules for the Cold War and the thermonuclear confrontation. In this Report he wrote in 1950: “In the absence of effective arms control it would appear that we had no alternative but to increase our atomic armaments as rapidly as other considerations make appropriate.” But in addition to being an outstanding national leader Paul Nitze was someone who could recognize change and respond to it. In the last op-ed that he wrote at the age of 92 in 1999 entitled “A Danger Mostly To Ourselves” he said.

I know that the simplest and most direct answer to the problem of nuclear weapons has always been their complete elimination. My “walk in the woods” in 1982 with the Soviet arms negotiator Yuli Kvitsinsky at least addressed this problem on a bi-lateral basis. Destruction of the arms did not prove feasible then but there is no good reason why it should not be carried out now.”

Senator Sam Nunn in an article in the Financial Times in December 2004 pointed to the immense danger that exists as a result of the fact that fifteen years after the end of the Cold War the United States and Russia still maintain, on fifteen minutes alert, long range strategic missiles equipped with immensely powerful nuclear warheads capable of

devastating each other's societies in thirty minutes. In 1995 Russia mistook the launch of a test rocket in Norway as a submarine launched nuclear missile aimed at Moscow and came within two minutes of ordering a retaliatory nuclear strike on the United States. Senator Nunn said in his article that our current nuclear weapon policies which in effect rely on the deteriorating Russian early warning system continuing to make correct judgments as it did during the Cold War "risks an Armageddon of our own making."

And former Defense Secretary William Perry, a scientist not given to exaggeration, said not long ago that in his judgment there could be a greater than 50 percent chance of a nuclear detonation on U.S. soil in the next decade.

The Nuclear Non Proliferation Treaty (NPT) is the centerpiece of world security. President John F. Kennedy truly feared that nuclear weapons might well sweep all over the world. In 1962 there were reports that by the late 1970s there would be 25-30 nuclear weapon states in the world with nuclear weapons integrated into their arsenals. If that had happened there would be many more such states today--in September of 2004, the Director General of the International Atomic Energy Agency (IAEA), Mohamed El Baradei, estimated that more than 40 countries now have the capability to build nuclear weapons. Under such conditions every conflict would carry with it the risk of going nuclear and it would be impossible to keep nuclear weapons out of the hands of international terrorist organizations they would be so widespread.

But such weapon proliferation did not happen and the principal reason that it did not was the negotiation of the NPT and its entry into force in 1970, buttressed by the policies of extended nuclear deterrence -- the nuclear umbrella -- followed by the United States and the Soviet Union with their Cold War Treaty Allies. Indeed since 1970, at

least until now, there has been very little nuclear weapon proliferation. In addition to the five nuclear weapon states recognized by the NPT -- the United States, Britain, France, Russia and China, three states, India, Pakistan, and Israel and perhaps North Korea have built nuclear weapon arsenals -- but India and Israel were already well along in 1970. This is far from what President Kennedy feared.

But the success of the NPT was no accident. It was rooted in a carefully crafted central bargain. In exchange for a commitment from the nonnuclear weapon states (today more than 180 nations, most of the world) not to acquire nuclear weapons and to submit to international safeguards to verify compliance with this commitment, the NPT nuclear weapon states pledged unfettered access to peaceful nuclear technologies and undertook to engage in nuclear disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals. It is this basic bargain that for the last three decades has formed the central underpinnings of the international nonproliferation regime.

However, one of the principal problems with all this has been that the nuclear weapon states have never really delivered on the disarmament part of this bargain and the United States in recent years appears to have largely abandoned it. The essence of the disarmament commitment was that pending the eventual elimination of nuclear weapon arsenals the nuclear weapon states would agree to a treaty prohibiting all nuclear weapon tests, would undertake obligations to drastically reduce their nuclear arsenals and would significantly reduce the role of nuclear weapons in their security policies. None of this has been accomplished 35 years later. As Mohammed El Baredi has said “we must abandon the unworkable notion that it is morally reprehensible for some countries to

pursue weapons of mass destruction and acceptable for others to rely on them for security. . . if the world does not change course, we risk self destruction.”

And now the other side of the bargain has begun to fall apart. India and Pakistan eroded the NPT from the outside by each conducting a series of nuclear weapon tests in 1998 and declaring themselves to be nuclear weapon states. India, Pakistan and Israel maintain sizable unregulated nuclear weapon arsenals outside the NPT. The U.S. - India joint declaration last July, which among others things implicitly recognized India as a nuclear weapon state contrary to the NPT, has not helped. North Korea withdrew from the NPT in 2003 and may have built up to eight or nine nuclear weapons. The DPRK has now agreed in principle to return to the NPT and to negotiate an end to its nuclear weapon program, but even if this should some day happen, under current international arrangements can we ever be certain that North Korea has in fact declared and eliminated whatever nuclear weapons they may have? The A. Q. Khan secret illegal nuclear weapon technology transferring ring based in Pakistan has been exposed but who can be sure that we have seen more than the tip of the iceberg? Iran is suspected of having a nuclear weapon program and admitted in late 2003 that contrary to its IAEA safeguards agreement it failed to report its acquisition of uranium enrichment technology. Negotiations have not yet resolved this issue.

Indeed the Iranian case appears to be growing more serious. Iran recently broke off negotiations with the European Union and announced that it would begin “research” into uranium enrichment. Russia offered a “compromise” proposal to resolve the impasse between Iran and the E.U. by offering to provide enrichment services on its territory of Iranian converted uranium, returning the uranium enriched to reactor grade to

Iran for its use as fuel for a nuclear power reactor. Iran was initially cool to this proposal but later a senior Iranian official made positive comments about it to a senior Russian official while stopping short of indicating acceptance of the proposal. In addition, China has now publicly supported this outcome.

Meanwhile, the United States and European Union states had planned at the Board meeting of the IAEA on February 2nd to press for referral of Iran to the United Nations Security Council for consideration of sanctions. The United States has been seeking such a result at the IAEA for the last two years and organized a meeting of the five permanent members of the Security Council in London a few weeks ago for this purpose. France and the United Kingdom were recent converts to this position largely because of Iran's behavior in the negotiations and its decision to conduct uranium enrichment research, but they were perhaps also influenced by extreme statements about Israel by Iran's President, which have been twice condemned by the Security Council. Russia was reluctant to go the Security Council as witnessed by its response to Iran's positive comments about its proposed compromise. China did not rule out going to the Security Council but has made it unmistakably clear that it is opposed to sanctions. Indeed perhaps it is unlikely that either Russia or China would ever support Security Council sanctions on Iran for its nuclear program. The question appears to be whether they would abstain or veto on a Security Council vote on sanctions. And if sanctions are adopted with Russia and China abstaining there is some likelihood that they would privately circumvent the sanctions. It should be kept in mind that Russia recently signed a one billion dollar military aid contract with Iran and hopes to make billions more selling Iran nuclear power reactors. For China, Iran supplies approximately 15 percent of

China's energy needs, an increasingly necessary component in view of the ongoing expansion of China's energy requirements and their difficulty in finding sources elsewhere as evidenced by the failed UNOCAL acquisition.

The P-5 met again Monday, January 30, in London and agreed to recommend that the IAEA Board decide on February 2 to "report" to the Security Council Iran's noncompliance and what Iran should do to come into compliance. The Board did make that decision on February 2nd but not by consensus as is normally the case. The Security Council will take jurisdiction of the issue in March. If during the interim the Russian compromise proposal is agreed or Iran comes into compliance pursuant to the IAEA Report, Council action will be favorable, if not sanctions will be considered. The Director General of the IAEA will supply a report to the Board in early March as to steps taken by Iran to come into compliance. In the meantime Iran has announced withdrawal from voluntary cooperation with IAEA inspectors and the resumption of uranium enrichment – albeit, according to IAEA inspectors, with "less than five" centrifuges (out of a reported total of 164) when many thousands are needed, sixty thousand according to Iranian officials. A thousand centrifuges run for several years might be able to make the 20 to 25 kilograms of highly enriched uranium for one nuclear weapon, but something on the order of the 60,000 number would be necessary for industrial scale enrichment. Iran has now explicitly rejected the Russian "compromise" proposal.

But is it wise to take Iran to the Security Council over this issue at this time? Last fall a newspaper close to Iran's Supreme Leader, Ayatollah Khamenei, in a front page editorial declared that if taken to the Security Council a first step for Iran would be to withdraw from the NPT. In the past few days the President of Iran has implied that the

Iran might withdraw from the NPT, although the Foreign Ministry the next day stated that Iran remains committed to the NPT. Iranian nuclear weapons are not a near-term threat. In general, intelligence estimates seem to indicate that the capability to build a bomb is five to ten years off. Some experts have said in view of Iran's apparent determination to acquire a fully developed and complete nuclear fuel-cycle, as opposed to pursuing a crash course to build a bomb, initial nuclear weapon capability might not be achieved for as long as fifteen years.

And why might Iran want the nuclear fuel cycle and the attendant option to construct nuclear weapons? Such a capability seems to be seen by some as the hallmark of a modern state and a number of states already have this capability. States such as Brazil and, recently, Ukraine have emphasized its importance. Such a capability would of course significantly enhance Iranian military and political influence in the Middle East region. Given Iranian government past and present links to terrorist organizations, the threat of providing such organizations with a nuclear weapon—unlikely to be realized in my opinion—could enhance Iran's clout in the world—as perhaps seen from Teheran. And there are security concerns. Iran faces nuclear weapon states on three sides, as well as American military forces on three sides and is a charter member of the “Axis of Evil.” But finally and perhaps arguably most important in the end, it is because Iranians are a proud people, heirs to the Persian Empire, and they seem to want respect more than anything else, according to Ken Pollock in his recent book “The Persian Puzzle.”

The nuclear program is very popular in Iran. It appears that some countries believe that ultimately the only way that they can gain respect in this world, as President Lula of Brazil declared during his election campaign, is to acquire nuclear weapons — or

at least be seen as able quickly to do so. During the Cold War, nuclear weapons distinguished Great Powers from others countries. The permanent members of the Security Council are the five recognized nuclear weapon states. Forty years ago Great Britain and France both asserted that status was the real reason that they were building nuclear weapons. This high political value of nuclear weapons has not changed since the Cold War. India asserted in 1998 that it was now a big country, it had nuclear weapons. The world significantly lost interest in Ukraine once it gave up the nuclear weapons left on its territory after the collapse of the Soviet Union. The political value of nuclear weapons probably will remain high and may in the end cause the NPT to fail, unless of course over time it can be drastically reduced. Likely the only way that this can happen is for nuclear weapons to be delegitimized. This is what was supposed to happen pursuant to the central bargain of the NPT which increasingly appears unlikely to be realized.

In view of all this it may now simply be too late to attempt to change the course of nations and return to policies which will strengthen and support the NPT and the international nonproliferation regime. With the potential breakdown of the NPT and the ensuing likelihood of widespread nuclear proliferation that President Kennedy so rightly feared an increasing possibility, with nuclear tension a growing threat with thousands of strategic nuclear weapons still on high alert and a Russian early warning system continuing to decline in effectiveness, it may be too late for nuclear arms limitation. In the interest of the security and safety of us all, perhaps a way must be found to proceed directly to the elimination of nuclear weapons, as Paul Nitze suggested over six years ago.

A possible course of action could be for the President of the United States to call for an extraordinary session of the United Nations General Assembly and ask to address the Assembly. In his speech the President could call for the world-wide elimination of nuclear weapons and request that the Security Council be charged to carry out this task. The Security Council could then call for the negotiation of a treaty to eliminate nuclear weapons. This would require world-wide intrusive on-site inspection and probably security guarantees to a number of states such as Israel, Iran, Pakistan and North Korea on the edge of conflicts and where nuclear programs are or may be present. North Korea would return to the NPT as a nonnuclear weapon state. There would need to be an agreement by all states to apply economic and, if necessary, military pressure to any state that did not comply with this program or that subsequently violated the negotiated arrangements. In an interim stage the five NPT nuclear weapon states and the three other longtime holdouts from the NPT would be required to eliminate almost all of their arsenals down to very low levels. A second and later stage would require elimination of weapons but these eight states would be allowed to keep a relatively limited amount of nuclear explosive material (highly enriched uranium or plutonium) which could be converted into a small number of weapons as a hedge. This could amount to roughly enough material for five weapons each for India, Pakistan, and Israel, fifteen weapons each for Britain, France, and China and thirty weapons each for the United States and Russia. The material would be maintained under very high levels of national security protection at designated depositories and also be under international safeguards implemented by IAEA inspectors. Under various programs all other nuclear explosive material would be eliminated worldwide. Such an arrangement would take a long time to

negotiate and even longer to implement but we must try for the hour is late. A final stage, years in the future, could be the verifiable elimination of the retained fissile material.

Some might say that this is unrealistic, how could we ever hope that the United States government would even contemplate such a thing? I would say in response that we must remember that it is only governments that can eliminate nuclear weapons, not civil society. So we must press for and hope for the best and remember that nothing good is ever impossible. Who would have thought that the zero missile option proposed by President Reagan in 1981 would ever happen? Who would have thought the Cold War would end in the foreseeable future? Who would have thought that the Soviet Union would cease to exist? But all of these things did happen.

But in order to achieve the elimination of nuclear weapons and to establish a peaceful and secure world community in the 21st century, the United States must lead; there is no alternative. But for this to happen the United States must be believed and trusted. On September 12, 2001, the United States had the trust and support of the entire world. Now, in the wake of exaggerated intelligence claims; rejection of international treaty arrangements such as the Comprehensive Nuclear Test Ban Treaty, the Ottawa Convention on land mines, the International Criminal Court, the Kyoto Protocol on global warming, and others; an invasion of Iraq opposed by the world community; rejection by some of the rules of international humanitarian law and the Geneva Protocols on the treatment of prisoners of war; and the prison scandals in Iraq and elsewhere; that support and trust is gone and the United States is reviled and feared in many quarters of the world. Senator John McCain said a few months ago that “America’s position in the

world is at an all-time low.” How can we regain the trust of the world community? How can we return to our historic destiny of keeping the peace and fostering the development of the community of nations, democracies, free market economies, the international rule of law, international institutions, and treaty arrangements?

Among other things we should:

First, end our intervention in Iraq in the best way that is possible and practical. The future of Iraq belongs to the Iraqis, we cannot ensure it for them, only the Iraqis can build a new Iraq. At an early date we must firmly and carefully turn over the struggle against the insurgency to the Iraqis as urged by former Defense Secretary Melvin Laird in his article in an issue of Foreign Affairs a few months ago. Our presence is what feeds the insurgency, he notes, and our steady, gradual, but inexorable withdrawal would strengthen the confidence and ability of the Iraqi security forces to stand up to the insurgency.

Second, to recognize that in the wake of the Cold War the world has fundamentally changed, the nation state system that has dominated international life for the last 350 years is rapidly deteriorating. Perhaps some 50 to 70 nations around the world are inexorably slipping into the category of failed states. We cannot go it alone. Since the end of the Cold War there has been roughly one major nation building intervention every two years. Poverty, disease, cultural misunderstandings and machine-gun societies around the world are central national security threats; these are the principal causes of international terrorism and the primary weapons in the battle against terror and declining world order are economic, political, social, cultural and diplomatic, and only rarely military. Reconstruction in failed states is one thing, it is relatively well

understood but in many cases development, of necessity involving institution building, is essential to return failed states to a level where they can function. But to quote the well-known historian Francis Fukayama “any honest appraisal of where the ‘state of the art’ lies in development today would have to conclude that although institutions may be important we know relatively little about how to create them.” But one thing that we do know is “Coalitions, in the form of support from a wide range of other countries and international organizations . . . are important for a number of reasons.”

And third, for over fifty years the United States pursued a world order built on rules and international treaties that permitted the expansion of democracy and the enlargement of international security. Earlier this year in a speech before the American Society of International Law the Secretary of State said that when the United States respects its “international legal obligations and supports an international system based on the rule of law, we do the work of making this world a better place, but also a safe and more secure place for America.” We should take such steps as ratifying the Comprehensive Nuclear Test Ban Treaty, joining the Ottawa Land Mine Convention, becoming a part of the International Criminal Court and establishing ourselves again as strong advocates of the international rule of law.

In this way we can regain our historic role and we can and we will effectively lead the world community to a safe, secure, stable and just Twenty-first Century.