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PAPERS

Obstacles to No-First-Use*

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** While the author favours adoption of policies of no-first-use, and believe that the Western nuclear powers should have done so ten years ago, the remit of this paper is to present obstacles that must be overcome for such policies to be accepted. No attempt is made to refute the arguments of governments that reserve the right to use nuclear weapons first.*

Obstacles to no-first-use: weaknesses and vulnerabilities

Through their enormous investments in nuclear arms, the five permanent members of the UN Security Council have underlined the military and political significance that they attach to these weapons. Obviously, they believe that nuclear weapons enhance their national security and political status. During the tensest periods of the Cold War, East-West relations boiled down to little more than nuclear accountancy. Influenced by the same logic, other states were also tempted to acquire nuclear arms. Except for some years of uncertainty following the demise of the Cold War, when nuclear arsenals were much reduced, it soon became clear that this perception of the military and political functions of nuclear weapons would survive the old world order.

However, the usual *background* for seeking this source of strength has been unambiguous signs of weakness: most nuclear weapon programmes grew out of pervasive feelings of inferiority and insecurity. A quick look at nuclear history therefore suggests that an indispensable approach to the elimination of nuclear arms is to address and overcome the weaknesses and vulnerabilities that motivated their acquisition in the first place. This is also one of the most attractive and effective approaches to credible and consistent policies of no-first-use (NFU). Such policies are important intermediate goals on the way towards a nuclear weapon-free world. For, as the argument goes, if the role of nuclear weapons is confined to deterring others from using theirs, nobody would need them if nobody had them.

The United States

The United States is strong on many dimensions - culturally, technologically, economically and in terms of conventional as well as nuclear capabilities. When the Cold War was over; big power relations turned cooperative; and windows of opportunity opened up, it could afford to have a serious public discussion of nuclear disarmament to zero. The thrust of technological development had shifted from weapon platforms to sensors, information processing technologies and precision-guided munitions. The old focus on weapon platforms - which left the impression that capability gaps were diminishing, since state of the art platforms were ever more widely distributed - was misleading. Turning instead to the information revolution and the pioneering ways in which the US military was exploiting it, the impression was rather that the gap was widening. It was asserted - probably quite correctly so - that had all nuclear weapons been eliminated, the United States would have been more superior and secure than before. Add to this that further R&D on nuclear weapons seemed subject to the law of diminishing returns, and nuclear disarmament talks at the time were understandably dubbed "the end game". This assumption was proven incorrect, however. By 1993/94, the momentum of US-Russian nuclear disarmament had dissipated.

The United Kingdom and France

For the United Kingdom and France, nuclear weapons serve to underwrite their big power status. Their position as permanent members/veto powers of the UN Security Council rests on shaky ground. Had they not been nuclear weapon states (NWSs), their UN roles would have been glaring examples of historical inertia and UN inability to accommodate to new circumstances¹. For the UK and France, political status considerations are therefore of some particular importance. They do not have much else to invoke in order to maintain their current status, so they are vulnerable to quests for abolition. Especially in France, it has always been difficult to entertain the idea of nuclear disarmament to zero. France's withdrawal from NATO's military organization in the mid 1960s, and the independent foreign policy that it chartered at that time, rested to some extent on the nuclear weapon programme.

The Soviet Union / Russia

The Soviet Union built a huge nuclear arsenal to overcome its inferiority and vulnerability in relation to the United States. Russia - its economy being dramatically diminished and its conventional forces in dismal condition - has once again assigned a wider role to nuclear weapons to compensate for the weakness of its conventional forces.

China

When China conducted its first nuclear test in 1964, it issued a declaration of no-first-

use. The declaration was unconditional. This has remained Chinese policy ever since. After the Korean war, China has had confidence in its conventional forces. Its nuclear forces, on the other hand, remain modest, especially when compared to those of the United States. To retain a first use option would therefore make little sense.

While Russia withdrew the (Soviet) NFU declaration of 1982, its conventional inferiority vis-à-vis NATO being painfully obvious, President Yeltsin endorsed the principle of NFU in a bilateral communication with his Chinese counterpart. That happened at a time when Russia, for long assumed to be the stronger of the two, was on its way down and China on its way up. Today, the state of Russia's conventional forces suggests that if there is a confrontation with China, the hard decision to use or not to use nuclear weapons in defence of the borders would primarily be for Russia to make.

India, Israel, and Pakistan

As for the remaining three NWSs, India's nuclear programme has been justified in reference to China; Pakistan's in reference to India; and Israel feels vulnerable for lack of defensive, territorial depth.

After the Gulf war in 1991, Israel's conventional superiority in the Middle East seems more convincing than at any time before. Logically, it should therefore be willing to discuss a zone free of weapons of mass destruction (WMD)s in the region. However, for the Israeli's, conventional superiority is not reassuring enough to drop the existential deterrent. The vulnerabilities of tiny geographical size amidst much larger enemies make it premature to drop the nuclear insurance premium. Should things go wrong, Israel may simply be too small to absorb the failure: instead, its territory might be overrun and the state erased. In the view of Israeli governments, abolition therefore presupposes stable peace with the Arab states.

The apartheid regime in South Africa - feeling very exposed; its back against the wall - built nuclear weapons in the end of the 1970s. In the 1980s, another wave of Cold War gave it a lease on life before the regime crumbled, together with its nuclear weapons, when the Cold War faded. The regime in North Korea, also vulnerable, came close to nuclear weapon status and may even have crossed the threshold. Like South Africa, it seems willing to drop the nuclear option and allow internal reforms in favour of normalization with the outside world and associated security assurances.²

The pattern that emerges is clear. States tend to define their security concerns in reference to the strongest among the challengers. The threats that determine military planning are perceived to come from them. Thus, the Soviet Union feared the United States; China was concerned both about the Soviet Union and the United States; India has its eyes on China; and Pakistan fears India. The acquisition of nuclear weapons

has followed the same sequential logic. States that are conventionally inferior or concerned about their national or regime survival - currently Russia, Pakistan and Israel: North Korea possibly being in the same category - can not be expected to adopt policies of no-first-use.³

Obstacles to no-first-use: US hyperpower

The United States, the United Kingdom and France maintain the option of using nuclear weapons first. Non-Nuclear-Weapon States (NNWSs) have been exempted, unless they take part in armed attack together with a NWS. This remains French and British policy. When Soviet/Russian conventional forces fell in disarray Russia, too, adopted the same policy. These assurances of non-use against NNWSs have been inscribed into a Security Council resolution.⁴ Similar security assurances have been extended to members of nuclear weapon-free zones.

At the UN, the United States has not gone back on these commitments. Unilaterally, however, the Bush administration has made it clear that the exemptions no longer apply. During the Clinton administration, the use or threat of use of nuclear weapons to fight or deter chemical and biological weapons were neither confirmed nor denied. All options were on the table, but no contingency plans were made for such situations. Today, US policy explicitly allows for first use of nuclear weapons not only to cope with chemical and biological weapons: the US might also be the first to use nuclear weapons in conventional war scenarios.⁵

Neither are such uses confined to situations in which the United States has been or is about to be attacked.⁶ The focus today is on *preventive* action to change or eliminate unacceptable regimes.⁷ It is primarily for such purposes that the use of nuclear weapons is envisaged also in non-nuclear contexts, for instance to destroy hardened, underground targets. Thus, a main argument for resumption of nuclear testing is the need for more effective "bunker busters".

This unilateralist policy is based on the view that *the weapons* are not the problem. It all depends on in *whose hands* they are. Thus, US, British, French, Russian and also Indian nuclear weapons are fine, acceptable or tolerable; Pakistani nuclear weapons are worrisome because of internal political instabilities; the Chinese weapons are problematical; against Israeli nuclear weapons there are no objections for the time being; while any proliferation to other countries in the Middle East is unacceptable. It follows that the non-proliferation regime is pushed aside as being of lesser significance. This regime is an arms control regime, i.e. a regime that focuses on the weapons and tries to do away with them. Obviously, one cannot build a universal regime on estimations of responsible or irresponsible, favourable or unfavourable, good or bad regimes.

Clearly, the United States is further away from a policy of NFU than at any time before. The strength that made it possible to discuss abolition in the wake of the Cold War has become so overwhelming that constraints out of regard for other countries, or to sustain the viability of an international regime, is deemed unnecessary or even unwise. While others object to NFU because they feel weak and vulnerable, the US government has become a major obstacle for reasons of superior strength.

No-first-use and fluctuations in international affairs

Beyond the weaknesses and vulnerabilities of Russia, Pakistan, Israel and North Korea and the superior strength of the United States, there are a number of other, more specific obstacles to NFU as well. Some of them come and go with periods of opportunity and stalemate in international affairs.

Post-war periods are periods of opportunity. So, too, after the end of the Cold War. The big powers cooperated well enough for the UN Security Council to pass a series of important decisions on issues of war and peace. The nuclear arms race turned into nuclear disarmament. The 1995 NPT conference decided to extend this Treaty indefinitely. However, that decision was reached at the end of a period of good news. From the mid 1990s, big power relations began to deteriorate. The period of opportunity was over.

The 1990s offered objective conditions for the western nuclear powers to adopt policies of NFU. During the Cold War, NATO's policy of first use was justified in reference to perceived conventional inferiority. When the Soviet Union and the Warsaw Pact fell apart, and Russia's economic misfortune brought its military forces to the knees, conventional inferiority became a *Russian* problem. That made Russia drop its declaratory policy of NFU in favour of a first use policy similar to that of the Western powers. The Western powers, on the other hand, abandoned the logic they had propagated since the 1950s and retained the nuclear first use option on top of their newly won conventional superiority. By this logic, they would have been expected to drop the nuclear first use policy, since the rationale had gone. When they did not, this became the most arrogant part of their military postures.

Starting under President Clinton and gaining speed under President Bush, US unilateralism presents new obstacles to NFU. In short, this policy implies that the US is leaving international agreements and multilateral cooperation that may constrain its freedom of action. To many Americans, international agreements are nothing more and nothing else than the constellations of interests that created them. When interests change, the commitments may be abandoned. Multilateral cooperation likewise. Obviously, the US Government refrains from new international commitments that may get in the way of what it wishes to do. The world must be ruled, but preferably on

the basis of decisions made in Washington. Where others talk about *global* governance, the US increasingly practices *unilateral* governance.

The phenomenon is structural. It derives from the superior position of the US in world affairs. This position is unrivalled, so US unilateralism may last for long. In particular, US military might is unrivalled by a wide margin. President Bush asserts that the US *military* may strike any point on the globe and that it will not let its uniquely powerful position be jeopardized. Far from entertaining a new NFU commitment, the US has brought strategic arms control with Russia to a halt; distanced itself from the CTBT; made significant reservations in relation to the CWC; and chosen not to ratify the verification protocol to the BWT. More than anything else, US unilateralism has closed the window of opportunity of the early 1990s.

No-first-use and the fight against terrorism

Terrorists are difficult to locate. They can mix with others in urban environments. They may operate in mobile, loosely knit networks. So they can not be deterred or fought by nuclear weapons. Neither can they be rendered harmless by ABM systems, for they do not deliver their weapons by ballistic missiles.

States that conduct or support terrorism are another matter. They can be targeted, deterred or attacked. Whether they actually engage in terrorism may be hard to prove. By their very nature, terrorist activities are concealed. Fearing the consequences, states that are engaged in terrorism often try to erase all evidence. Proof is usually for the intelligence services to produce.

Intelligence lends itself to manipulation. Even if an act of terrorism can not be traced back to its source, allegations may be produced and used as *pretexts* for military attack on regimes that are considered hostile. Rogue states can most probably be deterred and defeated by conventional means, so use of nuclear weapons appears far-fetched. Nevertheless, the US keeps the option explicitly open. In the pursuit of regime change, the rogue regime should know that the full weight of the US military machine may be brought to bear on it.

The fight against terrorism has therefore made the US more alien to NFU. 11 September struck a raw nerve. In response, no weapons are proscribed and no escalation ruled out. The events that day also helped the missile defence programme along. Never mind that missile defence systems are irrelevant to such contingencies, since terrorists like Al Qaeda most certainly do not possess ballistic missiles. The sentiments that 11 September aroused, and the enormous focus on homeland security that followed, gave a boost to virtually all kinds of measures and technologies that may protect the United States from external attacks.

When presenting the rationale for the ABM Treaty of 1972, President Nixon said that if you have a shield, it is easier to use the sword. Deployment of ballistic missile defences of some significant effectiveness would put the United States in precisely that position. Such defences would expand the range of US military options without having to fear ballistic missile retaliation and humiliation. Against many opponents - in casu, but not only, rogue states - such a shield would arguably make it easier to activate the nuclear sword.

No-first-use and tactical nuclear weapons

Tactical nuclear weapons are intended for use in battlefield - and theatre - level operations. They are sometimes referred to as sub-strategic weapons. Typical delivery vehicles are artillery, short-range missiles and aircraft. Systems of longer range can also be made to impact directly on the battlefield. ⁸

Two factors make tactical weapons likely candidates for early use. First, their intended use on the battlefield in conjunction with conventional forces encourages their forward basing, especially in times of crisis. Second, concerns about the survivability of forward-based systems translates into an argument for predelegation of launch authority to lower level commanders, especially once hostilities commence. Therefore, during the Cold War it was duly noted that to make NFU declarations credible, nuclear weapons would have to be withdrawn from the borderlines in central Europe.

In recent years, there has been a renewed interest in tactical nuclear weapons in Russia, and a growing interest also in South Asia following the nuclear testing in India and Pakistan in 1998. These weapons are not regulated by arms control agreements. They are only subject to unilateral declarations made by the United States and the Soviet Union/Russia in 1991/1992.⁹ At the Helsinki summit of 2000, it was agreed that tactical nuclear weapons would be considered in START III. However, the commitment was vague, reflecting Russian reluctance, and the Strategic Offensive Reductions Treaty of 2002 says nothing about tactical weapons. In effect, this Treaty represents the end of nuclear arms control between the two leading nuclear powers. It is unilateralism in bilateral form.¹⁰

Unofficial estimates of Russian tactical nuclear weapons vary widely from 3000 to 20 000 warheads. For US forces, the number has been placed at anywhere from 730 to 7000.¹¹ High numbers, forward basing, a propensity to predelegate launch authority and lack of arms control regulations make them major impediments to credible NFU postures.

No-first-use and war scenarios

Escalation from conventional to nuclear war

Forward basing of nuclear weapons in conjunction with conventional forces carry considerable risks of escalation from conventional to nuclear war. When facing conventional defeat, escalatory pressures to try to stop the attacker by nuclear means may become irresistible, especially if the weapons are in danger of being destroyed or captured by the other side; if the field commanders already have the authority to launch them; and if there is a communications blackout. At some stage things may get out of hand, the force postures driving the political decision-makers. It ought to be the other way around.

During the Cold War, early escalation across the nuclear threshold - deliberately or inadvertent - was a much debated and much feared war scenario in Europe. While this concern has disappeared from Europe, it has popped up in South Asia. Little is known about the readiness and deployment patterns of Indian and Pakistani nuclear weapons, so escalatory propensities and risks are hard to assess. India is conventionally superior, so the decision to cross the nuclear threshold would probably be on Pakistani shoulders. If Pakistan bases its deterrent on strategic weapons, the nuclear threshold might be relatively high and the C3 system relatively good, but at the price of losing territory. If it is based on forward deployment of tactical nuclear weapons as well, territory will not easily be ceded, but the nuclear threshold will become lower and the likelihood of escalation - deliberately or inadvertent - higher. This is a high-risk posture well known from Europe - a gamble on the assumption that deterrence will work. In Europe it did, but the European experience provides no guarantee for others. If it fails, it may lead to early first use and total destruction of that which were to be defended.

If Pakistan moves on to deploy tactical nuclear weapons in forward positions, this would be a substantial material investment in the first use option. The further it goes down that road, the more it takes to revert to NFU.

Preemption

Between the five nuclear weapon states members of the UN Security Council, preemption is of hypothetical interest only. They have all developed significant second strike capabilities, so unacceptable destruction has been mutually assured.

In relation to China, the US missile defence programme has the potential of changing this calculation. The US has no clarified strategic relationship with the Asian giant. It does not seem content to stake it on mutually assured destruction. As long as China has a few tens of intercontinental ballistic missiles only, it is not inconceivable that a missile defence system may absorb the retaliatory capabilities surviving a US preemptive attack. If it comes to war, e.g. over Taiwan, such a first use scenario is not unthinkable. More realistic, however, a missile defence system may give the US a

degree of escalation dominance that makes other (non-nuclear) options less daring. It comes back to Nixon's reminder: If you have a shield, it is easier to use the sword.

Preventive action

As noted above, US strategy in relation to rogue states is not based on preemption. Preemption is something to be considered if an opponent is about to attack. Rogue states do not do that. They are not in a position to wage war against the United States, except that they may engage in terrorism. Clearly, if a state supports a terrorist attack on the United States in a way similar to that of the Taliban Government in Afghanistan, this may be read as an act of war invoking the right to self-defence in accordance with art. 51 of the UN Charter. However, the war on the Taliban was waged *in reaction* to the terror assault. It was not a matter of preemption.

In the case of Iraq, there is no convincing evidence that Saddam Hussein has supported terrorist activities against the Western world, and he is not about to attack the United States. A war to remove the Iraqi regime would be a matter of *prevention*. Preventive action has become a major tenet of US strategy. However important, Iraq is just the prime example - for the time being - of a much broader policy of regime change. If unacceptable regimes can not be ousted by other means, it may be done by military force.

It has been argued that nuclear weapons are not needed in such contingencies. This slightly misses the point, however. The Bush Administration, presiding over US hyperpower, sees no reason to proscribe any military option. This is not deemed desirable; Congress does not call for it; and no other power can press it do so. Self-imposed restraint is something states adopt when the distribution of power makes accommodation desirable, in the mutual interest. The global hegemon does not see much of a need to accommodate. It is too superior to see it that way.

No-first-use and the nuclear industry

NFU is not a static proposition. It is more than a doctrine: it is also a strategy to curb and constrain the nuclear sector and pave the way for nuclear disarmament. For if the role of nuclear weapons were confined to that of deterring others from using theirs, the prognosis for nuclear weapons research, development, maintenance and production - currently thriving on extended deterrence - would be bleaker. This is what the proponents would like to achieve, and this is what the material interests in nuclear weaponry oppose. NFU confronts the nuclear industry in the widest sense of the term. Therefore, the opposition to it is not limited to considerations of national security and political weight in international affairs, but comprises powerful economic interests as well.

Footnotes

1. Which is a widespread impression anyhow. If European integration proceeds, as is commonly assumed, a permanent seat for the EU may substitute for French and British membership. However, for the time being, SC reform discussions are stuck.
2. By collecting dust from the remote control vehicles at the radiochemical laboratory in Yongbyon and analyzing the isotopic decay, the IAEA established that North Korea had reprocessed spent fuel not only in 1990, as stated by the North Koreans themselves, but also in 1989 and 1991. It is widely assumed that North Korea may have reprocessed enough plutonium for 1-2 bombs.
North Korea's recent admission of a nuclear weapon programme based on uranium enrichment is difficult to assess, since there is very little public information about it.
3. Israel does not admit to having nuclear weapons. It keeps repeating that it will not be the first to introduce nuclear weapons in the Middle East. Much is known about its nuclear weapon programme, though. One of the main sources is Avner Cohen, Israel and the bomb, Columbia University Press, New York, 1998.
4. SC Res. 984 (1995) on security assurances against the use of nuclear weapons to non-nuclear-weapon states that are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.
5. See the Bush Administration's Nuclear Posture Review, leaked to the press in early 2002. <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>
6. Art. 51 of the UN Charter spells out the right to self-defence which, in the view of many international lawyers, should be understood to comprise the right to preempt, i.e. to take action when seeing that an attack is in the making.
7. The term 'regime change' is used mostly in reference to the list of rogue states, also described as despicable dictatorships or simply as bad guys. A more accurate reading would focus on regimes whose policies are incompatible with US national interests to such an extent that they become unacceptable.
8. The definition of 'tactical' vs. 'strategic' therefore centers on the way in which the weapons are used rather than their physical/technical characteristics. However, tactical use is highly correlated with short range. There remains an unresolved definitional debate at the interface between mode of use and range of delivery.
9. For a presentation and discussion of the genesis and contents of these declarations, see Joshua Handler, "The September 1991 Presidential Nuclear Initiatives and the Elimination, Storing and Security Aspects of TNWs", Time to Control Tactical Nuclear Weapons, UNIDIR, United Nations Headquarters, New York, September 2001.
These declarations do not provide for data exchange or any transparency and verification measures. It is therefore impossible to have confidence in their implementation and to ascertain the status of the remaining tactical nuclear weapons.
10. For a thorough analysis of this Treaty, see "Beyond the Moscow Treaty", testimony of John P. Holdren for the Committee on Foreign Relations, United States Senate, 12 September 2002.
11. William C. Potter, "Tactical Nuclear Weapons: the Nature of the Problem", paper

prepared for the UNIDIR conference on "Tactical Nuclear Weapons", Geneva, March 21-22, 2000.