

# Western States Legal Foundation

Information Bulletin

Spring 2004

## The So-Called “U.S. Record of Compliance”: Why The U.S. Numbers Game is Not Disarmament

“Article VI: The U.S. Record of Compliance,” a statement circulated to the participants in the 2004 NPT Preparatory Committee meetings by the United States government, asserts that

*The United States is in full compliance with all its NPT obligations, including Article VI. Large numbers of nuclear weapons and their delivery systems have been, and continue to be, eliminated. A gradual, step-by-step process toward nuclear disarmament is the proper and most effective course to pursue. The United States is on that course, and is making real achievements towards that end.*

The Nuclear Non-Proliferation Treaty entered into force thirty-four years ago. At that time, the United States, along with the Soviet Union and the United Kingdom, promised to negotiate in good faith for both the early cessation of the arms race, and the elimination of their nuclear arsenals – two separate but related obligations. The preamble of the NPT further clarified the disarmament intentions of the Treaty: “to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery...”

Nonetheless, for almost two decades, the nuclear

superpowers expanded their arsenals by many thousands of nuclear weapons, and developed an array of new ways of delivering them from the air, land, and sea. By the late 1980’s, there were approximately 70,000 nuclear weapons on earth, with more than 24,000 in the U.S. arsenal. The United States also possessed the most powerful and technologically advanced conventional forces.

The approach taken by the United States towards its own disarmament obligations looks only backward, towards those immense Cold War stockpiles. It expects us to accept the possession and constant modernization of thousands of nuclear weapons for many decades to come as meaningful progress towards disarmament. But this backward looking approach fails to address the nuclear dangers we are facing in the 21<sup>st</sup> century.

--First, we have the normalization of still objectively very large nuclear arsenals, with the largest nuclear weapons states preparing to keep thousands of nuclear weapons deployed indefinitely.

--Second, we have efforts to make nuclear weapons more useable in ordinary warfare. This is integrally linked to a move, on the part of the United States, away from a policy emphasizing diplomatic efforts to restrain nuclear weapons

*Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.*

Article VI, Treaty on the Non-Proliferation of Nuclear Weapons, Signed at Washington, London, and Moscow July 1, 1968. Entered into force March 5, 1970.

proliferation, and towards a counterproliferation policy mainly based on the threat of overwhelming force. This approach to the proliferation of nuclear weapons, particularly when conjoined with a declared (and acted upon) policy of unilateral preventive war, runs counter to the principles underlying the NPT. The NPT preamble also states that its goals are to be achieved “in accordance with the Charter of the United Nations,” and that “States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State...”

--Third, we have nuclear weapons states outside the NPT, with nuclear-armed militaries engaged in confrontations in the most volatile regions on earth. There is unlikely to be much progress on reducing these nuclear dangers without genuine progress on nuclear disarmament by the original nuclear weapons states.

--Fourth, and perhaps most dangerous, we have the integration of nuclear weapons, including eventually more useable nuclear weapons, into global warfighting systems that are taking a quantum leap in complexity, with more types of weapons that can strike halfway across the planet in hours or minutes, and more dependence on electronic systems that operate at speeds beyond human comprehension and that themselves will be the targets of new forms of deception and attack. There is the possibility in the long run of a bewildering array of interlocking arms races, and if these systems are used against each other by several states with high tech arsenals of a fog of war that increases the danger of a slide into nuclear catastrophe.

The United States asks us only to look at the numbers, and to measure progress mainly by a partial descent from the heights of insanity that the Cold War arsenals represented. They ask us to accept as adequate the “achievements” of the Strategic Offensive Reductions Treaty, (SORT), which requires only that the United States and Russia reduce *deployed strategic* nuclear arsenals to

between 1700 and 2200 warheads and bombs by 2012. Thousands more will be kept in various states of storage and readiness. There is no requirement that a single bomb, warhead, or delivery system be destroyed. There are no transparency or verification mechanisms and no milestones for reductions prior to 2012, when the treaty expires. There will also be unspecified numbers of non-strategic nuclear weapons, which are likely to grow more diverse in capabilities and intended missions.

It is important to think about what these numbers really mean. In an interview published in 1982, before nuclear arsenals reached their peak, Herbert York, a former U.S. arms control negotiator and nuclear weapons laboratory director, noted about the Cold War era that “[t]hroughout this period, most of our Presidents have taken the attitude when they’ve become President and really seen what the situation is, that my God, this is awful, these forces are simply beyond belief, beyond what is necessary...”<sup>1</sup> A 1990 U.S. Congressional Budget Office study estimated that

A total of 500 deliverable U.S. retaliatory warheads, for instance, could destroy ‘most [Russian] petrochemical, metallurgical, and heavy-machinery industry; all major [CIS] storage sites for ammunition, fuel, and other military supplies; all major tactical airfields; some troop concentrations; and all major [Russian] transportation nodes and choke points en route to the European and Far Eastern theaters,’ all garrisons for mobile strategic missiles; all primary strategic bomber bases and submarine pens; most strategic bomber dispersal bases; and most major fixed and mobile command posts.<sup>2</sup>

The 2002 Nuclear Posture Review (NPR) elevated the research and development infrastructure to one leg of a “new” strategic triad, intended to support both offensive strike capabilities (nuclear and non-nuclear) and “defenses” (active and passive). The United States continues to modernize its nuclear weapons research and production capabilities, to enable it to respond to “unanticipated

events or emerging threats,” which could “could call for new or modified warhead development, or for providing additional warheads for force augmentation.”<sup>3</sup> To assure its ability to “augment” its nuclear forces, the U.S. plans to build a new factory to produce as many as 450 plutonium pits per year in normal single shift operation, and considerably more if the government chose to operate a second shift.<sup>4</sup>

U.S. goals include the capability to modify existing weapons within eighteen months, and to develop new designs within three to four years.<sup>5</sup> Research already is proceeding on modification of nuclear weapons to provide additional capabilities. The U.S. claims in its statement that this work is “entirely conceptual,” but the U.S. in the recent past modified an existing nuclear weapon, the B61-11 bomb, to give it some earth penetrating capabilities, deploying it in the late 1990’s. Research is proceeding on a more effective earth penetrator, the Robust Nuclear Earth Penetrator (RNEP). Early indications are that this will not be a low-yield weapon. The Administration’s proposed budget request for the RNEP hardly is consistent with the ordinary understanding of “conceptual.” Its plans for the next fiscal year call for “subsystem tests and a full system test of the proposed design,” and the proposed program funding for through 2009 totals over 484 million dollars.<sup>6</sup>

In addition, there will be continued modernization of delivery systems, including more accurate strategic missiles. In the near term, for example, work is proceeding to provide “dramatically improved accuracy” for Trident submarine launched ballistic missiles, in order to provide “increased capabilities articulated in the NPR [nuclear posture review], such as prompt accurate strike, defeat of critical targets and selective nuclear options.”<sup>7</sup> The program “is intended to demonstrate a near-term capability to steer a SLBM warhead to Global Positioning Satellite (GPS)-like accuracy,” culminating in flight tests by 2007.<sup>8</sup> In the long term, the United States is analyzing alternatives for replacement of its land-based

nuclear missiles, asking contractors to consider approaches that will provide greater accuracy and perhaps other new capabilities as well, with the goal of “maintaining US qualitative superiority in nuclear warfighting capabilities in the 2020-2040 time frame.”<sup>9</sup>

Work also is going forward on a variety of technology upgrades intended to increase U.S. capabilities to plan and execute nuclear strikes, ranging from research on nuclear weapons effects on underground bunkers and chemical and biological warfare facilities to extensive upgrades in the computer software and hardware used to plan and execute nuclear strikes, including software to assess likely “collateral damage.”<sup>10</sup>

All of this is occurring in the absence of any negotiations for further reductions of nuclear arsenals, despite the fact that the one clear and unanimous holding of the 1996 opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons was that “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”<sup>11</sup>

There is no way to reconcile this resurgence of nuclear weapons development with disarmament. The U.S. position that Cold War stockpile numbers should be the yardstick for disarmament also makes little sense. By this logic, if the stockpiles had been twice as excessive, twice as insane, if the scenario spinners and the war planners and the arms industry lobbyists had been twice as successful in their efforts to accumulate more and more and more, we should be willing to wait twice as long for disarmament. The second nuclear arms race may not look like the first. Sheer numbers of nuclear weapons are less the goal than a new kind of military dominance that combines computing, aerospace technologies, and nearly unlimited capacities for raw destruction in devastating new ways. But it is an arms race nonetheless, and the world must end it, before it ends the world.

## **“Hard Evidence”: A Few Examples From a Very Long List**

After presenting a litany of purported “Hard Evidence” to support its record of compliance on Article VI, the April 29, 2004 U.S. statement concludes: “Arguments that the United States is not proceeding to fulfill its Article VI commitments have no factual basis.” We disagree. What the U.S. has done is to selectively manipulate “facts” of its choosing, making inappropriate comparisons, and situating them in a distorted historical and geopolitical context.

**Nuclear Weapons:** The U.S. states that it is now in the process of drawing down its operationally deployed strategic nuclear warheads to the level of 1700-2200, about one-third of the 2002 level.

**Fact:** At present, the U.S. stockpile contains approximately 7,000 operational nuclear warheads, including 5,886 strategic and 1,120 non-strategic warheads. Some 3,000 additional warheads are held in reserve, with a few hundred, under current plans, slated for dismantlement. The Bush administration continues to implement provisions of its 2002 Nuclear Posture Review (NPR), including phasing out weapons previously earmarked for retirement, developing new ballistic missiles, researching bombs and warheads with new capabilities, building new production facilities to manufacture them, and modernizing the nuclear command and control system. None of these activities are banned or limited by the 2002 Moscow Treaty. (U.S. Nuclear Forces, 2004, NRDC Nuclear Notebook, <http://www.thebulletin.org/issues/nukenotes/mj04nukenote.html>)

**Launchers and Delivery Systems:** The U.S. states that since 1999 it has deactivated 28 Peacekeeper ICBMs, with the remaining 22 scheduled for deactivation by October 2005.

**Fact:** According to the 2002 Nuclear Posture Review (NPR): “The elimination of the Peacekeeper ICBM will be phased to correspond with the introduction of the Trident II (D-5) missile in the Pacific. As they are eliminated, those Peacekeeper missiles remaining during the elimination process will be kept on alert to provide a necessary contribution to the U.S. portfolio of capabilities.” (Nuclear Posture Review p.54, excerpts posted by Globalsecurity.org at <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>)

**“De-Alerting”:** The U.S. states that it does not target any country with nuclear weapons.

**Fact:** The NPR, in setting forth requirements for U.S. nuclear strike capabilities, anticipated “immediate, potential or unexpected” contingencies involving Iraq, North Korea, China, Iran, Syria and Libya. It also identified Russia, though no longer an enemy, as a potential nuclear target. (Nuclear Posture Review p.16, excerpts posted by Globalsecurity.org at <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>)

**Fact:** More than 2,000 U.S. strategic nuclear warheads remain on hair-trigger alert, ready to instantly target locations around the globe upon receiving a few short computer signals. Land based nuclear missiles are ready to launch their deadly payloads within two minutes. U.S. Trident submarines continue to patrol the seas, ready to fire hundreds of the most destructive and precise weapons ever conceived, on fifteen minutes notice. (“Trapped in the Nuclear Math,” Bruce Blair, New York Times Op. Ed., June 12, 2000)

<http://www.cdi.org/issues/proliferation/blairnytimes6.12.00.html> See also: "Rogue States: Nuclear Red-Herrings," Bruce Blair's Nuclear Column, Dec. 5, 2003 <http://www.cdi.org/blair/russia-targeting.cfm>)

**U.S. Budgeting for Nuclear Weapons:** The U.S. states that defense spending on strategic nuclear forces has declined from 7% of the Defense Department's budget during the last years of the Cold War to less than 3% today.

**Fact:** The U.S. statement cites only the Department of Defense (DOD) budget, which covers delivery systems and command and control. The fact that some delivery systems now under consideration may be dual-use suggests that DOD funding may be underestimated. In any case, nuclear warhead and bomb research, development, testing and production is funded by the Department of Energy (DOE). The DOE budget request for nuclear weapons activities in fiscal year (FY) 2005 is \$6.6 billion, an increase of 5.4% over the 2004 appropriation. The 2005 request continues a steady decade long rise in nuclear weapons funding. The request is 130% higher than spending in 1995 for comparable activities. Accounting for inflation (constant dollars) the nuclear weapons budget has grown by 84% since 1995, when the NPT was indefinitely extended. (Fiscal Year 2005 Budget Request for Nuclear Weapons Activities, An Analysis for Tri-Valley CAREs by Dr. Robert Civiak, [http://www.trivalleycares.org/FY2005\\_Nuclear\\_Weapons\\_Budget\\_Request.pdf](http://www.trivalleycares.org/FY2005_Nuclear_Weapons_Budget_Request.pdf))

**So-Called "New" Nuclear Weapons: What We're Not Doing:** The U.S. states that it is not developing any new nuclear weapons.

**Fact:** The 2005 budget provides for upgrades to every nuclear weapon in the U.S. stockpile, requests \$336 million to manufacture and certify new plutonium pits, the first stage in a nuclear weapon, requests \$28 million for 2005 and \$485 million over five years to design a "Robust Nuclear Earth Penetrator," and requests \$30 for Enhanced Test Readiness to reduce the time needed to prepare for and conduct a full-scale underground nuclear test to 18 months. Civiak, *op. cit.*

**So-Called "New" Nuclear Weapons: The NPT Context:** The U.S. states that the NPT does not prohibit the nuclear weapons states from modernizing their nuclear forces while they possess nuclear weapons, and that it would be a novel interpretation of the NPT to assert that conceptual work on a "Robust Nuclear Earth Penetrator" or other new weapons designs is problematic under the NPT.

**Fact:** Article VI of the NPT has two distinct but related nuclear disarmament provisions. In 1970, the United States promised to negotiate in good faith for both the early cessation of the arms race, and the elimination of its nuclear arsenal. In 1995, in anticipation of the 1995 NPT Extension Conference, the United States, France, Russia and the United Kingdom declared that "the nuclear arms race has ceased." ("Declaration Dated 6 April 1995 by France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and The United States of America in Connection with the Treaty on The Non-proliferation of Nuclear Weapons," NPT/CONF.1995/20.) Modernization of existing nuclear weapons types and research and development of new weapons fuels and perpetuates the arms race, contrary to the 2000 commitment to a diminishing role for nuclear weapons in security policy and to the intent of Article VI.

Information Bulletin text by Andrew Lichterman, "Hard Evidence" sidebar by Jacqueline Cabasso

## Notes

1. Herbert York, Interview, April 1982, In Appendix, Robert Scheer, *With Enough Shovels: Reagan, Bush, and Nuclear War* (New York:1982) at 266
2. Bruce Blair, *The Logic of Accidental Nuclear War* (The Brookings Institution, Washington, D.C., 1993), citing U.S. Congressional Budget Office, *The START Treaty and Beyond* (1991) pp.14-15, 21.
3. Statement of Ambassador Linton F. Brooks, Under Secretary of Energy for Nuclear Security and Administrator, National Nuclear Security Administration, Before the Senate Armed Services Committee Subcommittee on Strategic Forces, 24 March 2004.
4. See generally U.S. Department of Energy, *Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility*, 2003
5. *Id.*
6. U.S. Department of Energy, National Nuclear Security Agency, FY 2005 Congressional Budget Request, Directed Stockpile Work, pp.63, 76.
7. See Statement of Rear Admiral Charles B. Young, Director, Strategic Systems Programs, before the Strategic Subcommittee of the Senate Armed Services Committee April 8, 2003.
8. See U.S. Navy, RDT&E Budget Item Justification Sheet (R-2 Exhibit), February 2003, PE 0101221N, Strategic Submarine and Weapons Systems Support, Project J0951
9. U.S. Air Force Space Command, Final Mission Need Statement, Land Based Strategic Nuclear Deterrent, AFSPC 001-00, January, 2002, p. 1
10. For an overview of current U.S. research and development aimed at making nuclear weapons more useable, see *Sliding Towards the Brink: More Useable Nuclear Weapons and the Dangerous Illusions of High-Tech War*, WSLF Information Bulletin, March 2003, <http://www.wslfweb.org/docs/nucpreppdf.pdf>
11. International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, General List No.95 (Advisory Opinion of 8 July 1996), sec. 105F

### More information about U.S. Nuclear Weapons Policies and Programs

***Sliding Towards the Brink: More Useable Nuclear Weapons and the Dangerous Illusions of High-Tech War***, WSLF information Bulletin, March 2003, <http://www.wslfweb.org/docs/nucpreppdf.pdf>

***Missiles of Empire: America's 21st Century Global Legions*** WSLF information Bulletin, Fall 2003  
<http://www.wslfweb.org/docs/missiles03.pdf>

***The Shape of Things to Come: The Nuclear Posture Review, Missile Defense, and the Dangers of a New Arms Race***, WSLF Special Report, April, 2002, <http://www.wslfweb.org/docs/shape.pdf>

#### Contact Us:

Western States Legal Foundation, 1504 Franklin St. Suite 202, Oakland, California 94612  
phone: (510) 839-5877 fax: (510) 839-5397 <http://www.wslfweb.org>