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International Association of
Lawyers Against Nuclear Arms

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Joseph R. Biden Jr.
Former Vice President of the United States

August 11, 2020

Dear Vice President Biden:

We write to urge policies that we believe your administration should adopt in relation to nuclear weapons, assuming that you are elected President. Lawyers Committee on Nuclear Policy since 1981 has advocated for non-use and global elimination of nuclear weapons in accordance with international law.

In your January 11, 2017 remarks at the Carnegie Endowment for International Peace, you said: *“As a nation, I believe we must keep pursuing the peace and security of a world without nuclear weapons—because that is the only surety we have against the nightmare scenario becoming reality. This was a problem created by human ingenuity. So it can be solved with human ingenuity and a belief in our better angels.”* **We wholeheartedly agree.** We would add that the threat and use of nuclear weapons are unlawful,¹ and that this legal reality complements the policy reasons why reliance on nuclear weapons by any country is not in our national interest.

First, thank you for your support of New START. The loss of the treaty’s arsenal limitations and verification procedures would be a national security disaster, and every effort should be made to preserve them. **A follow-on or replacement treaty with Russia should be pursued that would provide for verified dismantlement of warheads as well as delivery systems, address all types of nuclear arms, including the novel systems the Russians say they are developing, and bring US and Russian arsenals to much lower levels.** To succeed, the United States must be prepared to address Russian concerns about missile defense, conventionally-armed missiles, and other matters.

Second, there is an urgent need to begin multilateral negotiations including China, as part of restoring the international arms control structure and **at long last to make real progress on meeting the Non-Proliferation Treaty Article VI obligation of good-faith negotiation of complete nuclear disarmament.** The world will never arrive at the verified, irreversible global elimination of nuclear arms if negotiations on that objective are not commenced.

Such negotiations should include serious attention to reducing the risk of use of nuclear weapons by accident or miscalculation, which is in fact the most likely way a nuclear war

¹ See, e.g., Charles J. Moxley, Jr., John Burroughs and Jonathan Granoff, “Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty,” *Fordham International Law Journal* (Vol. 34, No. 4, 2011), <http://lcnp.org/wcourt/Fordhamfinaljoint.pdf>.

could begin. At least five times in the decades since the Cuban missile crisis, we have come within minutes of accidental nuclear war, and in each instance it was because human or computer error had caused one side to believe it was already under attack.²

Numerous scientific reports over the last few years have warned that the danger of accidental war is increasing because of potentially disruptive new advances in technology. (Citations to and brief summaries of some of these reports are contained in a supplement to this letter.) The technological developments involved take a variety of forms, but have several points in common: They have the potential to shorten warning and decision times; they could become a bottomless money pit, draining further resources away from civilian needs; and they present complex issues requiring substantial time to resolve, so that negotiations, including expert level technical discussions, should begin as soon as possible.

Third, any policy review should include fundamentally reexamining the place of nuclear weapons in national security strategy. There has been an unacceptable trend toward treating nuclear arms as just another weapons system, to be integrated into overall planning, and this threatens to weaken the taboo against actual use, which has lasted since 1945. The recent decision to deploy “low yield” warheads on submarine-launched missiles creates an especially serious risk of miscalculation and should be reversed. **Much recent talk about “flexibility” and “options” reflects the dangerous delusion that nuclear escalation could be controlled. Instead, the United States should clearly reaffirm the Reagan-Gorbachev statement that a nuclear war cannot be won and must never be fought.**

As Lawyers Committee on Nuclear Policy has insisted for four decades, nuclear weapons cannot be used in accordance with international humanitarian law (the law of armed conflict) and human rights law; the protection of civilians, civilian infrastructure, and the environment required by law cannot be achieved. For that and other reasons, **US policy should be shaped by the imperative of the non-use of nuclear arms.³ That requires changes in doctrine, capability, and procedure, notably ending the president’s sole authority to use nuclear arms and consigning “launch under attack” to history. More broadly, it demands a stronger commitment to peace, diplomacy, international cooperation and the pacific settlement of disputes.**

Reducing the role of nuclear weapons would also help to reduce the risk of nuclear proliferation. The Non-Proliferation Treaty is already under severe strain in large measure due to the lack of progress on the disarmament commitments made pursuant to Article VI, including the 2010 and 2000 commitments by the nuclear weapons states to reduce their reliance on nuclear arms. An initiative to open multilateral negotiations, as urged above, would be extremely helpful here. So would be a clear statement by the United States that it has no intention of resuming nuclear weapons testing, and will seek to promote the entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The United States should additionally welcome the Treaty on the Prohibition of Nuclear Weapons as a constructive statement of the principles that should guide the abolition of nuclear arms.

Fourth, **review of nuclear weapons issues should include reexamining the commitment to land-based intercontinental ballistic missiles (ICBMs).** That commitment was made in an era of now-obsolete technology, when submarine-launched missiles were far less accurate, and before improvements in Russian

² See William J. Perry and Tom Z. Collina, *The Button: The New Nuclear Arms Race and Presidential Power from Truman to Trump*, BenBella Books 2020, pp. 59-65.

³ The imperative of non-use applies in second use scenarios as well as in first use scenarios. See John Burroughs, “International Law and the First Use of Nuclear Weapons,” Conference on Presidential First Use of Nuclear Weapons: Is it Legal? Is it Constitutional? Is it Just? Harvard University, November 4, 2017, pp. 3-5, <http://lcnp.org/pubs/2017/LCNP%20-%20Presidential%20First%20Use%20of%20Nuclear%20Weapons.pdf>. For remarks of other speakers, see <http://www.publicbooks.org/virtual-roundtable-on-presidential-first-use-of-nuclear-weapons/>.

missile accuracy greatly increased the vulnerability of fixed-base missiles.⁴ That vulnerability greatly increases the danger of accidental nuclear war by creating “use it or lose it” pressure for immediate response to what may be a mistaken warning.

If for political or other reasons it is judged that the ICBMs cannot rapidly be retired, at the very least we should reduce the danger of accidental war by taking them off “launch on warning” alert. It is reckless and morally indefensible to just continue as before, when, as noted above, we have already had several “close calls” with accidental nuclear war through human or computer error. A commission of retired military experts, chaired by a former commander of STRATCOM and Vice Chairman of the U.S. Joint Chiefs of Staff,⁵ has warned that the nuclear weapon states are “relying on a perpetually perfect run of good luck for their survival. By any objective reckoning, this is tempting fate beyond reason.”

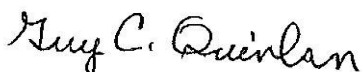
Further, there is no justification for perpetuating ICBMs deep into the century through the \$100 billion “Ground Based Strategic Deterrent” (GBSD). As the RAND Corporation⁶ and others have noted, a life extension of the existing missiles could be accomplished at a much smaller cost. The GBSD would be an enormous waste in what is already an excessive and unaffordable nuclear “modernization” program.

Fifth, efforts to reduce the danger of war should include critically reexamining, in addition to the ICBMs, programs that may be perceived by potential adversaries as first strike weapons or designed for war-fighting. They include the Long Range Stand-Off Air Launched Cruise Missile, the planned submarine-launched cruise missile, and hypersonic missiles. Regarding the latter, pursuit of a testing moratorium or ban should be considered.

Also needed is a realistic reappraisal of the missile defense program. Although there are serious questions about the effectiveness of missile defense even against lesser powers such as North Korea, and a former Secretary of Defense has characterized missile defense against peer adversaries as a “delusion,”⁷ mixed signals have unnecessarily amplified Russian and Chinese concerns about strategic imbalance. An example is President Trump’s statement, in connection with the release of the Missile Defense Review, that the goal is “to ensure that we can detect and destroy any missile launched against the United States — anywhere, anytime, anyplace.”⁸

A Biden administration will have a historic opportunity to reverse the trend of increasing nuclear danger and to move promptly and definitively toward a world free of nuclear weapons. That opportunity must not be lost.

Very truly yours,



Guy Quinlan, President



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⁴ See Perry and Collina, supra n. 2, at pp. 117-118; Union of Concerned Scientists, “Rethinking Land-Based Nuclear Missile: Sensible Risk-Reduction Practices for US ICBMs,” June 22, 2020, available through www.ucsusa.org

⁵ Global Zero Commission on Nuclear Risk Reduction, chaired by Gen. (Ret.) James Cartwright, available through www.globalzero.org

⁶ RAND Corporation, “The Future of the U.S. Intercontinental Ballistic Missile Force,” 2014

⁷ Perry and Collina, supra n. 2, at p. 149 et seq.

⁸ Remarks by President Trump and Vice President Pence Announcing the Missile Defense Review, January 17, 2019.