



Nuclear Threats and Nuclear Sharing Versus the Non-Proliferation Regime
Lawyers Committee on Nuclear Policy
2 August 2022

This 10th Review Conference of the Nuclear Non-Proliferation Treaty occurs amidst an undeniably grim backdrop. The NPT and the wider non-proliferation regime face myriad challenges. One of the NPT nuclear-armed states is making illegal and reckless threats of nuclear force; making a mockery of negative security assurances issued to non-nuclear weapon states; and making plans for a new nuclear sharing agreement contrary to the letter and spirit of the NPT. More broadly, the NPT nuclear-armed states are engaged in qualitative and in some cases quantitative nuclear arms racing, arms control agreements have vanished or are at risk, no new nuclear arms control and disarmament negotiations are in sight, and for the first time a plan to proliferate highly enriched uranium-fueled submarines is in play.

The landscape today of heightened distrust, a growing nuclear arms race, and the ongoing Russia-Ukraine war, including credible nuclear threats, underscores the fundamental necessity of nuclear abolition. As Lawyers Committee on Nuclear Policy has maintained now for decades, a way must be found to commence multilateral negotiations on the global elimination of nuclear arms in accordance with the nuclear disarmament obligation under the NPT and general international law. The goal will never be achieved if a process to achieve it never truly starts.

In response to current developments, states parties to the NPT should strongly condemn any and all threats to use nuclear weapons and support strengthening negative security assurances. Further, they should oppose the creation of new nuclear sharing arrangements and support termination of existing arrangements that pre-date the NPT. Both types run contrary to Articles I and II of the NPT. Nuclear threats and nuclear sharing help shape an environment antithetical to fulfillment of disarmament obligations, and a failure to effectively address them would further strain an increasingly tenuous non-proliferation regime. States parties should also oppose the plan to proliferate HEU-fueled submarines.

I. Threats of Nuclear Force

Since the last Review Conference in 2015, multiple states have exchanged dangerous threats to apply nuclear force. In addition to being outrageously provocative and unwise, nuclear threats are contrary to international law, defy the NPT commitment made to reduce the role of nuclear weapons, and undermine implementation of the long-standing disarmament obligation.

Most recently, the Russian Federation issued thinly-veiled threats of nuclear force against any state that would interfere in its ongoing war of aggression against Ukraine, promising "consequences you have never seen." In 2017, the United States and the DPRK exchanged incendiary threats of mass destruction. The Russian nuclear threats are illegal first of all because they are part of and indeed help enable an illegal war, a war that violates the UN Charter's prohibition of threat or use of force against the territorial integrity and political independence of any state. But they and other threats, like those issued by the US and DPRK, are also illegal because *any* threat to use nuclear weapons is a threat to commit an illegal action. That is so whether the threat is issued by an aggressor state or a defender state.

As the International Court of Justice explained in its 1996 Advisory Opinion, if use of a weapon would not meet the requirements of international humanitarian law governing the conduct of warfare, the threat of such use would be contrary to that law.¹ While the nuclear-armed governments have yet to accept the illegality of use of nuclear weapons under international humanitarian law, that truth is widely recognized. Most centrally, nuclear weapons cannot meet the requirements of discrimination between military targets and civilian persons/infrastructure and avoidance of severe destruction of the environment.²

Nuclear threats must be considered credible for illegality to be apparent.³ In the case of Russia v. Ukraine, Russia is backed by the world's largest nuclear warhead arsenal and its head of state issued the above-quoted threat at the start of an actual conflict. Russia's credibility when threatening nuclear force is not in question, and President Putin's statement constituted an illegal threat against states that might intervene on behalf of Ukraine, and at least indirectly Ukraine as well. The 2017 threats exchanged by the United States and DPRK were also credible and illegal. Much more than is commonly understood, war on the Korean Peninsula and beyond was a real possibility that year.

¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 78 (July 8). For a more extensive analysis of the legal status of threats to use nuclear weapons, see "[Threats to Use Nuclear Weapons: Unacceptable and Illegal](#)," International Association of Lawyers Against Nuclear Arms, TPNW/MSP/2022/NGO/16, 9 June 2022.

² For a recent discussion of authorities and law bearing on the illegality of use of nuclear weapons, see "[End the War, Stop the War Crimes](#)," Lawyers Committee on Nuclear Policy, 21 April 2022, pp. 5-6.

³ See Ariana Smith, "[Post-1996 Scholarly Interpretations of the Legal Status of Threat of Force](#)," Lawyers Committee on Nuclear Policy, December 2018.

Threats to use nuclear weapons furthermore counteract and weaken existing commitments made by NPT states parties in 2000⁴ to reduce the "role for nuclear weapons in security policies to minimize the risk that these weapons will *ever* be used," and to engage with all nuclear weapons states in processes leading to the "total elimination" of their arsenals. These commitments were affirmed in the 2010 Review Conference Action Plan, as nuclear weapons states committed to "accelerate concrete progress" on nuclear disarmament.⁵ Credible threats, particularly in the context of an active war, instead *increase* the role of nuclear weapons in state policy and jeopardize productive processes among nuclear weapons states to fully disarm.

II. Negative Security Assurances

The Russian invasion of Ukraine backed by nuclear threats has demonstrated the urgent need to strengthen negative security assurances issued in 1995 by the five NPT nuclear-armed states and acknowledged by UN Security Council resolution 984.⁶ The Russian assurance provides:

Russian Federation will not use nuclear weapons against non-nuclear-weapon States parties to the [NPT], except in the case of an invasion or any other attack on the Russian Federation, its territory, its armed forces or other troops, its allies or on a State towards which it has a security commitment, carried out or sustained by such a non-nuclear-weapon State in association or alliance with a nuclear-weapon State.⁷

Since Ukraine is being supplied by three nuclear weapon states, the United States, United Kingdom, and France, and is carrying out attacks on Russian armed forces, the letter of this assurance does not provide adequate protection to Ukraine against the threat or use of nuclear weapons.⁸ While such threat or use remains contrary to international law based on the International Court of Justice Advisory Opinion and developments since that opinion, it is desirable for Russia, France, the United Kingdom, and the United States to strengthen their negative security assurances.

Accordingly, as has long been advocated, negative security assurances should be reformulated to remove conditions on their application and to include a commitment not to threaten use of nuclear weapons as well as not to use them. Assurances provided in 1995 by the United States,⁹

⁴ [Final Document](#), 2000 NPT Review Conference, NPT/CONF.2000/28 (Vol. I), p. 15 (emphasis supplied).

⁵ [Final Document](#), 2010 NPT Review Conference, NPT/CONF.2010/50 (Vol. I) p. 21.

⁶ S/RES/984, 11 April 1995.

⁷ A/50/151, S/1995/261, 6 April 1995.

⁸ Relatedly, Russian threats and actions violate the 1994 Budapest Memorandum on security assurances.

⁹ A/50/153, S/1995/263, 6 April 1995.

United Kingdom,¹⁰ and France¹¹ are similar to that provided by Russia. China is the only one of the five states that in 1995 attached no conditions to its assurance and included the element of non-threat, stating: "China undertakes not to use or threaten to use nuclear weapons against non-nuclear-weapon States or nuclear-weapon-free zones at any time or under any circumstances."¹² Fortunately, there is movement in the direction of the Chinese assurance.

Since its 1995 assurance, in policy statements the United States has added the element of non-threat and removed the condition regarding association with a nuclear weapon state. Thus its 2018 Nuclear Posture Review states:

The United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the NPT and in compliance with their nuclear non-proliferation obligations.¹³

However, a qualification is added:

[T]he United States reserves the right to make any adjustment in the assurance that may be warranted by the evolution and proliferation of non-nuclear strategic attack technologies and U.S. capabilities to counter that threat.¹⁴

A 2015 UK policy statement is essentially parallel to that of the United States.¹⁵

There are two problems with the US approach. One is the question of who decides whether a state is in compliance with its non-proliferation obligations, and what is the degree of non-compliance at issue. The second is that the qualification regarding non-nuclear strategic attack technologies, such as biological weapons or cyber weapons, undermines the straightforward nature of the bargain: States that have renounced nuclear weapons deserve assurances that those weapons will not be used against them.

Uncomfortable as it may be for some policymakers, the right and wise thing to do is to make an unconditional promise to non-nuclear weapon states and to deal with any complications or extraordinary circumstances as they arise. It need hardly be said that with their conventional military capabilities, the nuclear weapon states are well equipped to respond to such circumstances. To this end, LCNP supports the Arms Control Association recommendation that an action plan emerging from Review Conference deliberations include:

¹⁰ A/50/152 S/1995/262, 6 April 1995.

¹¹ A/50/154, S/1995/264 6 April 1995.

¹² A/50/155, S/1995/265, 6 April 1995.

¹³ Office of the Secretary of Defense, [Nuclear Posture Review](#), February 2018, p. 21.

¹⁴ *Id.* The 2010 [US Nuclear Posture Review Report](#), April 2010, p. viii, included the identical assurance with a similar qualification pertaining to possible adjustment in light of biological weapons developments.

¹⁵ [National Security Strategy and Strategic Defence and Security Review 2015](#), ¶ 4.69, p. 35.

A call for the five NPT nuclear-armed states to update their 1995 negative security assurances and to jointly or individually affirm that they will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the NPT.¹⁶

This approach would not preclude strengthening protocols to regional nuclear-weapon-free zone treaties; those protocols provide (qualified) non-use guarantees. Nor would it preclude pursuit of a treaty on negative security assurances. However, updating the 1995 negative security assurances is a straightforward response to the recently demonstrated inadequacy of those assurances, and it should be demanded by NPT states parties.

III. Nuclear Sharing

A 25 June 2022 public conversation between President Vladimir Putin of Russia and President Alexander Lukashenko of Belarus signaled that the two countries are planning a nuclear sharing arrangement similar to that which the United States has with several NATO countries.¹⁷ Putin indicated that Russia would train Belarusian pilots to operate Russian-supplied bombers already possessed by Belarus that would be modified to be capable of delivering Russian-supplied nuclear bombs. If the NATO nuclear sharing approach is followed, the bombs would remain under Russian control unless the decision were made to use them and they were loaded on aircraft to be flown by Belarusian pilots.¹⁸ Putting this arrangement into effect would take some time, possibly years. Putin and Lukashenko also announced the planned deployment of nuclear-capable Iskander missiles in Belarus, which from a military point of view would be equally or more concerning to NATO.

Russia-Belarus nuclear sharing is an alarming potential development that should be vigorously criticized by NPT states parties. If implemented, nuclear sharing and deployment of Iskander missiles may cause NATO to revise its policy of not basing nuclear weapons in post-Cold War NATO states, Poland and others. That could mean deepened reliance on and entrenchment of nuclear weapons on the NATO side, and then correspondingly on the Russian side. Russia-Belarus nuclear sharing could also reinforce trends towards development and deployment of enhanced nuclear weapons delivery systems.

¹⁶ “The Necessity of a Meaningful Action Plan on Article VI of the NPT,” Arms Control Association, Civil Society Statement, 5 August 2022.

¹⁷ See Nikolai Sokov, “[Russian-Belarus nuclear sharing would mirror NATO’s – and worsen Europe’s security](#),” Bulletin of the Atomic Scientists, 1 July 2022. The day after the meeting between Putin and Lukashenko, a Kremlin spokesperson said only a technical capability to deliver nuclear arms was discussed; however, he may only have been referring to the Iskander missiles whose deployment was also announced at the meeting. See “[Putin did not tell Lukashenko about the transfer of nuclear missiles to Minsk](#),” RIA Novosti, 28 June 2022 (unofficial translation of title).

¹⁸ Pavel Podvig noted on Twitter that the nuclear bombs could be stored in Russia. <https://twitter.com/russianforces/status/1540978468594323458>, 26 June 2022.

Moreover, a failure to collectively condemn Russia-Belarus nuclear sharing as incompatible with the NPT could help set the stage for eventual nuclear sharing arrangements elsewhere in the world, notably in the Asia-Pacific region and in the Middle East. Over the years, there has been occasional speculation about the possibility of such arrangements; this speculation has more plausibility now in view of the disruption to the international system caused by the Russian invasion of Ukraine as well as the DPRK's ongoing development of its nuclear arsenal. In fact, a nuclear sharing arrangement with the United States is now being publicly discussed in Japan based on an early 2021 proposal by the late Shinzo Abe.¹⁹

The incompatibility of nuclear sharing with the NPT is based on a straightforward application of NPT Articles I and II. Article I requires NPT nuclear-armed states "not to transfer to any recipient whatsoever nuclear weapons ... or *control* over such weapons directly, or indirectly." It further requires the nuclear-armed states "not *in any way* to *assist*, encourage, or induce any non-nuclear-weapon State to ... acquire nuclear weapons ... or *control* over such weapons."²⁰ Article II imposes the corollary obligation on NPT non-nuclear weapon states not to be the recipient of any such transfer or assistance.

These provisions should be read in light of NPT Review Conference commitments made subsequent to the 1995 decision to indefinitely extend the NPT. Action 1 of the 2010 Action Plan commits all states parties "to pursue policies that are *fully* compatible with the Treaty and the objective of achieving a world without nuclear weapons."²¹ The 2000 Final Document

reaffirms that the *strict observance* of the provisions of the Treaty remains central to achieving the shared objectives of preventing, *under any circumstances*, the further proliferation of nuclear weapons and preserving the Treaty's vital contribution to peace and security.²²

Those commitments weigh against the already implausible argument, offered in 1967-1968 by the United States in defense of NATO nuclear sharing, that control of nuclear weapons is not exercised by the non-nuclear weapon state in question until the bombs are turned over for delivery.²³ A policy that plans for a blatant violation of the NPT in the event of war is not a policy "fully compatible" with the treaty. Moreover, the NPT applies in "any circumstances," including war.

¹⁹ See "[Abe suggests Japan start 'nuclear sharing' discussion](#)," The Asahi Shimbun, 28 February 2022.

²⁰ Emphasis supplied.

²¹ Final Document, 2010 NPT Review Conference, NPT/CONF.2010/50 (Vol. I), p. 20 (emphasis supplied).

²² Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28 (Parts I and II), Part I, Review of the operation of the Treaty, Articles I and II and first to third preambular paragraphs 1, p. 2, ¶ 5.

²³ See "Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together with Answers Given by the United States," 28 April 1967, Tab A to 232. [Letter From the Under Secretary of State \(Katzenbach\) to Secretary of Defense Clifford](#), 10 April 1968, Office of the Historian, Foreign Relations of the United States, Historical Documents 1964-1968.

Other post-1995 NPT commitments also bear on the question. Establishment of a Russia-Belarus nuclear sharing arrangement would run counter to the 2000 commitment to a "diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination."²⁴ It also would not show good faith in implementing and pursuing another 2000 commitment: "The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process."²⁵

A separate post-1995 development is the establishment of the Treaty on the Prohibition of Nuclear Weapons. Article 1(g) rules out any "stationing, installation or deployment" of nuclear weapons on the territory of a state party. This could be a significant constraint in some cases, existing or future. For example, the Philippines is a military ally of the United States, but as a TPNW state party it is barred from entering into a nuclear sharing arrangement.

Under the NPT, does NATO nuclear sharing stand as a precedent that justifies the establishment of new nuclear sharing arrangements? The answer is "No," but NPT states parties must energetically assert the incompatibility of new arrangements with the NPT, as was not done with respect to NATO nuclear sharing when the NPT was brought into effect.

Prior to the signing of the NPT in 1968, the United States had nuclear sharing arrangements with a number of NATO members, including five that still today participate in such arrangements: Belgium, Germany, Italy, the Netherlands, and Turkey, though the exact status of the arrangement with Turkey is unclear.²⁶ As already indicated, the essence of this peculiar arrangement is that pilots of participating countries are trained to operate aircraft to deliver US-supplied nuclear bombs; additionally, for some countries the aircraft are supplied by the United States. The bombs normally remain in US custody, and their use in war must be authorized by the US president.²⁷ Replacement of aircraft with more advanced models is ongoing or planned in Belgium, Germany, Italy, and the Netherlands.²⁸

The United States and NATO intended to carry forward nuclear sharing after the NPT entered into force. The Soviet Union, which was most concerned with excluding NATO from obtaining control of nuclear forces, acquiesced in the US interpretation that Articles I and II as negotiated would not exclude nuclear sharing with *individual* NATO states. As noted by a 1997 paper

²⁴ Final Document, 2000 NPT Review Conference, *supra*, p. 15.

²⁵ *Id.*

²⁶ See Hans Kristensen and Matt Korda, "[United States nuclear weapons, 2022](#)," Nuclear Notebook, Bulletin of the Atomic Scientists, 10 May 2022.

²⁷ *Id.*

²⁸ *Id.*

produced by several non-governmental organizations, "NATO Nuclear Sharing and the NPT,"²⁹ in addition to the Soviet Union, certain members of the Eighteen Nation Disarmament Committee (the predecessor to the Conference on Disarmament) were advised of the US interpretation at some point prior to the interpretation being made public.

The NPT was opened for signature on 1 July 1968. The interpretation was made public in hearings before the Senate on 9 July 1968. It was not made part of a formal international statement by the United States in connection with signature or ratification. So far as we know, no state made a formal objection to the interpretation in connection with signature or ratification or otherwise in the period leading up to the NPT's entry-into-force. Some or many states may simply have been unaware of the interpretation. However, at the 1995 NPT Review and Extension Conference and in subsequent NPT meetings up to the present, nuclear sharing has been a matter of controversy.³⁰ The Non-Aligned Movement recommends that this Review Conference

underscore the necessity of the full and non-discriminatory implementation of articles I and II of the Treaty by all States parties, in particular nuclear-weapon States, to prevent the proliferation of nuclear weapons and other nuclear explosive devices, including through nuclear weapon-sharing with other States under any kind of security and military arrangements or alliances.³¹

If NPT states parties now communicate clearly and forcefully that new nuclear sharing arrangements, post-1970 entry into force and post-1995 extension, are not compatible with the NPT, that will be important in terms of policy and also would put the legal issues in a new light. Moreover, the NPT as negotiated in 1968 has acquired new meanings in the post-Cold War era in light of the 1995 extension decision and accompanying commitments and the commitments adopted at the 2000 and 2010 Review Conferences, some of which are discussed above. Relevant here is Article 31(3)(b) of the Vienna Convention on the Law of Treaties, which provides that in interpreting a treaty, there shall be taken into account, *inter alia*, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."

²⁹ Martin Butcher, Nicola Butler, Oliver Meir, Otfried Nassauer, Dan Plesch, Georg Schofbanker and Stephen Young, Austrian Study Center for Peace and Conflict Research, Berlin Information-centre for Transatlantic Security, British American Security Information Council, Centre for European Security and Disarmament, "NATO Nuclear Sharing and the NPT - Questions to be Answered," June 1997 ("NATO Nuclear Sharing"). An online version is at <http://www.bits.de/public/researchnote/rn97-3.htm>. This publication is a valuable source of information and analysis.

³⁰ See *id.* re 1995 and 1997 NPT meetings. It is striking and relevant that for a number of years Russia has characterized nuclear sharing as contrary to the NPT, for example in this 29 April 2019 [statement](#), p. 3, at the third preparatory session for the 10th NPT Review ("violation of the NPT through notorious NATO 'nuclear sharing' activities").

³¹ Recommendation 29, 9 November 2021 Non-Aligned Movement [working paper](#) on recommendations for the Final Document of the 10th NPT Review Conference.

In no case should the argument that the United States put forward more than five decades ago in support of its interpretation of Articles I and II be accepted or promulgated. According to that argument, nuclear sharing does not "involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling."³² The contention that the NPT would not be legally binding in time of war, qualified as "general war" in testimony before the Senate,³³ is legally wrong, unworkable, and dangerously destabilizing, as explained in non-governmental papers prepared over two decades ago in connection with the question of whether NATO nuclear sharing should be terminated.³⁴ As noted earlier, the contention was implicitly rebuked by the 2000 NPT Final Document reaffirmation that "*strict observance*" of treaty provisions is "central" to "preventing, *under any circumstances*, the further proliferation of nuclear weapons."³⁵

In summary, at this Review Conference NPT states parties should strongly express opposition to a Russia-Belarus nuclear sharing arrangement on both policy and legal grounds. They should also call for the termination as soon as practicable of NATO nuclear sharing. Ending NATO nuclear sharing would remove a model and rationale for the establishment of such arrangements elsewhere.

IV. AUKUS Submarine Deal

Another proliferation risk issue before the Review Conference relates to the Australia-United Kingdom-United States (AUKUS) submarine deal. As presently planned, Australian submarine reactors would be fueled with weapons-grade highly enriched uranium (HEU). This unprecedented transfer by nuclear weapon states of tons of weapons-usable HEU to a non-nuclear weapon state may not violate the express terms of the NPT; however we, alongside other non-governmental organizations, urge member states to close this "loophole." Although parties to the AUKUS deal have said there will be adequate safeguards against diversion of the fuel to weapons purposes, that assertion has been questioned:

China has filed two working papers³⁶ raising doubts as to whether the transfer can be adequately safeguarded and alleging that the AUKUS deal threatens the Southeast Asia and South Pacific Nuclear-Weapon-Free Zones. The Netherlands, Norway, and South Korea have filed a working

³² "Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together with Answers Given by the United States," *supra*.

³³ See "NATO Nuclear Sharing," *supra*.

³⁴ "NATO Nuclear Sharing," *supra*; John Burroughs, "[Two Legal Issues Confronting NATO and the Non-Proliferation Regime](#)," Lawyers Committee on Nuclear Policy, 3 May 1999, pp. 11-13.

³⁵ Final Document, 2000 NPT Review Conference, *supra*, p. 2, ¶ 5 (emphasis supplied).

³⁶ "[Nuclear non-proliferation](#)," NPT/CONF.2020/WP.29, 29 November 2021; and "[Nuclear-weapon-free zones and nuclear issues in the Middle East](#)," NPT/CONF.2020/WP.30, 29 November 2021.

paper,³⁷ not specifically mentioning submarines, which argues generally that limiting the locations and use of HEU is important to maintenance of the non-proliferation regime. In past years US policy has also recognized the validity of this view, e.g. in the campaign to replace HEU in civilian reactors.³⁸

Even assuming safeguards are sufficient, we share widespread concern over the precedent that would be set by the HEU transfer at a time when several other states—including Iran—are also seeking to acquire nuclear-fueled submarines. Member states should seek to uphold and strengthen the NPT by opposing any extension of uses for HEU, specifically calling on the parties to the AUKUS submarine agreement to substitute the use of non-weapons grade low enriched uranium (LEU) as reactor fuel.

In summary, Lawyers Committee on Nuclear Policy urges NPT member states to uphold the non-proliferation/disarmament regime by:

- Strongly condemning any and all threats of nuclear force;
- Supporting the strengthening of negative security assurances issued in 1995 by the five NPT nuclear-armed states, which should *unconditionally* affirm that they will not use or threaten to use nuclear weapons against non-nuclear weapon states that are party to the NPT;
- Opposing new nuclear sharing arrangements, and supporting the termination of existing ones; and
- Opposing any extension of transfer and use of highly enriched uranium.

³⁷ "[Minimizing and eliminating highly enriched uranium in civilian stocks and use,](#)" NPT/CONF.2020/WP.14, 8 November 2021.

³⁸ Frank N. von Hippel, "[The Australia-UK-U.S. Submarine Deal: Mitigating Proliferation Concerns,](#)" Arms Control Today, November 2021, pp.10-11.