



## **The Biden Administration's Proposed Defense Budget Risks Conflict with International Law**

19 May 2022

In March, President Biden released his annual budget proposal, including what would be one of the largest budgets for defense in United States history: \$813 billion with nearly \$51 billion allocated to nuclear weapons spending. The proposed four percent increase to military defense, including vast nuclear modernization, sharply contravenes Biden's campaign pledges. Biden, while on the campaign trail, said the United States "does not need new nuclear weapons" and promised that his administration would work to reduce "reliance and excessive expenditure on nuclear weapons."<sup>1</sup> Moreover, **President Biden's proposed budget not only represents costly and perilous policy priorities, but it also could bring about serious violations of international law**, including of United States' treaty obligations under the Nuclear Non-Proliferation Treaty (NPT).

Failure to reduce the role of nuclear weapons in national security policy amounts to failure to comply with commitments made by the United States and other nuclear weapon states (NWS) in the Final Documents of the 2000 and 2010 NPT Review Conferences. The modernization programs undertaken by the United States and other NWS, and the resulting qualitative nuclear arms race, disregard the legal obligation in Article VI of the Nuclear Non-Proliferation Treaty to negotiate an end to the nuclear arms race at an early date and the achievement of nuclear disarmament.<sup>2</sup>

Furthermore, enormous nuclear weapon budgets violate the spirit, if not the letter, of Article 26 of the United Nations Charter, which calls for "the least diversion for armaments of the world's human and economic resources."<sup>3</sup>

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<sup>1</sup> Council for a Livable World, "[Presidential Candidates: Joe Biden](#)" (2019); see also Robert Burns, Associated Press, "[Biden says he would push for less U.S. reliance on nuclear weapons for defense](#)," PBS News Hour (Sept. 21, 2020).

<sup>2</sup> "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." [Treaty on the Non-Proliferation of Nuclear Weapons](#), Art. VI (1968).

<sup>3</sup> "In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments." [United Nations Charter](#), Art. 26 (1945).

**The United States military budget is greater than the next 11 states' defense budgets combined. In 2019, when the United States allocated over \$35 billion to nuclear weapon programs, it spent nearly as much as the other eight nuclear weapon possessor states combined.**<sup>4</sup>

President Biden's proposal, strongly supporting continued nuclear modernization efforts, threatens the viability of the Nuclear Non-Proliferation Treaty—generally considered the cornerstone of the nonproliferation regime—which is already under severe pressure. Refusing to follow-through on treaty commitments would also violate the very basic obligation of states parties to a treaty, under the principle of *pacta sunt servanda*, to perform the treaty in good faith.

Nuclear weapon developments intended to provide more "flexibility" or "options" multiply the number of situations for the possible threat or actual use of nuclear weapons. **The use of nuclear weapons intrinsically violates the fundamental international humanitarian law principles of distinction,<sup>5</sup> proportionality, and precaution.<sup>6</sup>** This is true even in the circumstance of a "limited" use of one or more nuclear weapons near an urban area, which would likely cause massive civilian deaths, long-term environmental destruction, and risk escalation into large-scale nuclear war and devastation, particularly as between the United States and Russia with their doctrines of launch-on-warning. The various egregious scenarios contemplated for the use of nuclear weapons are antithetical to "elementary consideration of humanity"<sup>7</sup> and the "dictates of public conscience."<sup>8</sup> **As the International Court of Justice has found, a credible threat to use such weapons is itself unlawful, insofar as it signals the intent and readiness to commit such an illegal act.<sup>9</sup>**

The president's budget allocates over \$34 billion to modernization of the nuclear triad, including full funding for a new generation of fixed-silo nuclear intercontinental ballistic missiles (ICBMs).<sup>10</sup> The extreme vulnerability of these sitting duck targets increases the danger of nuclear war by accident or miscalculation and by creating "use them or lose them" pressure in response to what could be a false alarm. Currently, both the United States and Russia keep hundreds of nuclear missiles on "launch on warning" alert, ready to be fired on a few minutes notice. The scientific data on nuclear winter shows

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<sup>4</sup> ["Enough is Enough: 2019 Global Nuclear Weapons Spending,"](#) International Campaign to Abolish Nuclear Weapons, May 2020.

<sup>5</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 95 (July 8).

<sup>6</sup> See generally Charles J. Moxley Jr., John Burroughs, and Jonathan Granoff, [Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty](#), 34 *Fordham Int'l L.J.* 595 (2011); See also Council of Delegates of the International Red Cross and Red Crescent Movement, [Resolution 1](#), 26 November 2011, Geneva.

<sup>7</sup> *Legality of the Threat or Use of Nuclear Weapons*, supra, ¶ 79.

<sup>8</sup> Part of the Martens Clause, most recently codified in Protocol I to the Geneva Conventions, Art. 1(2). See *Legality of the Threat or Use of Nuclear Weapons*, supra, ¶ 78.

<sup>9</sup> ["End the War, Stop the War Crimes,"](#) Lawyers Committee on Nuclear Policy, Second Statement on the Russian Invasion of Ukraine, 21 April 2022. See *Legality of the Threat or Use of Nuclear Weapons*, supra, ¶¶ 48, 78.

<sup>10</sup> [Defense Budget Overview](#), United States Department of Defense, Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer (March 2022).

that the United States and Russia are thereby threatening not only their own survival but also that of the entire human species. These ICBMs, newly renamed "the Sentinel," would extend this vulnerability for more than half a century, until 2075. The UN General Assembly has repeatedly passed, by overwhelming majorities, resolutions calling on nuclear weapon states to lower missile alert status,<sup>11</sup> which the United States and Russia have ignored. These proposed appropriations increase the risk of both threat and use of nuclear weapons and thus of violations of international humanitarian law and human rights law, in particular the right to life.<sup>12</sup>

Furthermore, these massive expenditures for nuclear weapons are not even necessary or militarily useful, given the substantial extent to which the United States' extraordinarily accurate and effective conventional weapons are able to address military targets for which nuclear weapons might in earlier times have been considered.

**The United States must change course, drastically reduce defense spending, halt its exorbitant nuclear modernization programs, make a serious re-commitment to the fulfillment of its obligations under the Nuclear Non-Proliferation Treaty, and seek to lead other nuclear weapon states to do the same.**

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<sup>11</sup> See "Reducing nuclear danger," Document [A/C.1/76/L.7](#) (6 October 2021).

<sup>12</sup> UN Human Rights Committee's General Comment No. 36 on the right to life as codified in Article 6 of the International Covenant on Civil and Political Rights (ICCPR) reads: "The threat or use of weapons of mass destruction, in particular nuclear weapons...is incompatible with respect for the right to life and may amount to a crime under international law. *States parties must*...respect their international obligations to *pursue in good faith negotiations in order to achieve the aim of nuclear disarmament*..." (paragraph 66, emphasis added). [CCPR/C/GC/36](#) (3 September 2019).