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## BASIC NOTES

2 June 2003

### Is NATO coming under pressure to amend its nuclear policy?

NATO watchers are becoming increasingly concerned that the evolving nuclear strategy of the United States and the United Kingdom will have an impact on the alliance's nuclear policy and practice, as it has done in the past. Although unlikely to be under discussion at the Foreign Ministers meeting in Madrid on 3/4 June, this subject should not continually be brushed under the carpet by member states in the interests of presenting a united front to a largely unquestioning media and uninformed public.

Counter-proliferation doctrine is now being progressively implemented as a core justification for the necessity of pre-emptive and preventive strategies by the US administration, including provisions for the use of nuclear weapons against chemical or biological weapons and facilities. Aggressive diplomacy backed by threat of military intervention, potentially with nuclear weapons, is now the dominant paradigm promoted by the Bush administration. Consequently, international law and existing treaty agreements and obligations are being downgraded at best, discarded at worst.

Some observers, commentators and national policy makers support this paradigm shift. Some do not. The issue for NATO member states is whether to acquiesce with these developments and to continue with an opaque and ambiguous nuclear policy or to argue for clarification and adherence to international norms. A contradiction at the heart of NATO nuclear policy is exemplified in the words of Mohamed El Baradei, the Director General of the International Atomic Energy Agency (IAEA):

"A crucial step in moving towards nuclear disarmament will be to re-examine the long-standing doctrine of nuclear deterrence. The doctrine remains deeply entrenched in the national security strategies of all the nuclear weapon states, and continues to be relied on by many non-nuclear weapon states through the so-called nuclear umbrella arrangements, as an important feature of the security portfolio."<sup>[1]</sup>

The supremacy of international norms over national interpretations was highlighted in Chairman Ambassador Molnar's summary of the recent Non-Proliferation Treaty (NPT) PrepCom in Geneva when he reaffirmed that each article of the NPT is "binding on all member states at all times and in all circumstances" and that it is imperative that all member states be held accountable with respect to their strict compliance with all their obligations. Much was made of the requirement for the Non-Nuclear Weapon States (NNWS) to comply with their obligations and the consequences that might befall them for non-compliance. Conversely, many statements referred to the requirements for the Nuclear Weapon States (NWS) to comply with

their obligations under the NPT but without clear suggestions of what might follow for obvious acts of non-compliance.

Clearly, ambiguity may be preferable for European NATO members and Canada to challenging US counter-proliferation strategies and engaging in public debate, particularly at a time when efforts are being made to heal NATO disagreements and a growing transatlantic rift. Nevertheless, US Assistant Secretary of State John S. Wolf said in his opening statement in Geneva, "There must be serious consequences for those who violate their NPT commitments." And in a later Cluster 1 paper, the United States called for greater focus on compliance with Articles I and II, both how to strengthen them and clearer guidance on what constitutes a violation.[2] The US submission stated that, "The NPT must be more than an international norm. It must be enforced. We must insist on strict observance of the Treaty and adopt policies that will encourage compliance." The US also called for attention to dealing with "low level cheating not involving nuclear material." Of course, these comments were specifically targeted 'overseas' but they surely apply closer to home as well.

There is an emerging consensus (outside NATO) that NATO's nuclear sharing arrangements are obvious acts of non-compliance under Articles I and II of the NPT. The United States needs to explain how the possibility of some of its estimated 150 tactical nuclear weapons based in Belgium, Germany, Italy, the Netherlands and Turkey for wartime use on board non-nuclear allies' dual-capable aircraft complies with their obligation not to transfer control of nuclear weapons, directly or indirectly, to NNWS. Those five nations need to explain how the possible delivery of US nuclear weapons, via their dual-capable aircraft during wartime, complies with their obligations not to receive the transfer of nuclear weapons, directly or indirectly, from NWS. They also need to explain, why training their pilots for such missions are not preparations for optional non-compliance during times of war.

The US and the UK delegations to the NPT PrepCom dismissed suggestions that their evolving nuclear strategies undermined the security assurances that both countries have given to NNWS not to target them with nuclear weapons.[3] There is no stated exemption here for NWS to attack NNWS deemed to be in possession of chemical or biological weapons. Yet, National Security Presidential Directive 17 implies the opposite.[4] During the PrepCom no explanations were offered, no debate was engaged. At the very least, the Negative Security Assurances (NSAs) have been downgraded by developments and in official statements or strategy documents. In future the mere reiteration of these politically binding assurances will no longer suffice, but demonstration of a willingness to make NSAs legally-binding provisions intended to strengthen the NPT might. Similarly, NNWS within NATO need to address this anomaly. How would they view an alliance they are party to threatening to use nuclear weapons against NNWS which may be accused of, or found to be producing chemical or biological weapons?

In a Cluster 1 paper at the recent NPT PrepCom, Canada undertook an important step to strengthen the NSAs in reaffirming that the 1999 Strategic Concept remains the basis for NATO's nuclear policy. The Canadian paper stated, "Nor is it NATO policy that nuclear weapons may be used against non-nuclear weapon States parties to the NPT, except as provided in the language of the Negative Security Assurances affirmed in 1995 by the three NATO nuclear-weapon States." The inclusion of such a statement in the final communiqué from Madrid would assuage fears that NATO nuclear policy may be under review for amendment to more closely align with US nuclear policy.

Despite past promises of open publication, most of NATO's nuclear related strategy papers are classified. This proved true again in 2002, when sections of the classified 2001 US Nuclear Posture Review were leaked.

The leaked documents state that a NATO review of dual-capable aircraft was due to report to a NATO-Ministers' meeting in summer 2002. The Final Communiqué from the NATO Ministerial meeting of the Defence Planning Committee/Nuclear Planning Group of June 2002 stated, "we provided guidance to further adapt NATO's dual-capable aircraft posture" and "we continue to place great value on the nuclear forces based in Europe and committed to NATO which provide essential political and military linkage between the European and the North American members of the Alliance." However no details on the guidance were given to the public and what was decided, once more remained classified.

While these statements could be read to indicate a change in nuclear policy is being considered, there is nothing to indicate that the provisions of the NPT take precedence over the policy agreements of NATO. Discussion on the future role of NATO nuclear weapons continues to be conducted behind closed doors and progress made will probably be presented for review or approval to the Defence Planning Committee and Nuclear Planning Group meeting of NATO's Defence Ministers in Brussels, one week after the Foreign Ministers meeting in Madrid.

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[1] Speech at the Non-Proliferation Conference of the Carnegie Endowment for International Peace, November 2002.

[2] Article 1 states that each nuclear weapon State party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices. Article II states that each non-nuclear weapon State party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

[3] United Nations Security Council resolution 984 (1995) on Security Assurances point 1 states: "Takes note with appreciation of the statements made by each of the nuclear-weapon states...in which they give 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;"

[4] The classified version of The Strategy to Combat Weapons of Mass Destruction, NSPD 17, was leaked to the *Washington Times*. See Kravev, N. "Bush Approves Nuclear Response," *Washington Times*, January 31, 2003.

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