

Options for Declaratory Nuclear Policy

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In May 2010 the Coalition Government agreed to a number of commitments in the Final Document of the 2010 NPT Review Conference, including in Action 5.c, a commitment to "further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies".¹

The government subsequently announced its intention "re-examine the UK's declaratory policy as part of the strategic defence and security review...We have decided that the time is right to look again at our policy – the US has done the same in its recent nuclear posture review – to ensure that it is fully appropriate to the political and security context in 2010 and beyond".²

The government recognises that for the majority of states the legitimacy and effectiveness of further non-proliferation measures under the NPT is *dependent* upon further concrete and irreversible steps by the nuclear weapon states (NWS) towards nuclear disarmament.³ Devaluing nuclear weapons in the security policies of the NWS is widely recognised as an essential process along the road to nuclear disarmament.⁴ Changes in declaratory policy that further restrict the role and therefore the value of nuclear weapons is acknowledged as an important part of this process exemplified by recent changes in US declaratory policy set out in the Obama administration's April 2010 Nuclear Posture Review.⁵

The purpose of reviewing declaratory nuclear policy is therefore to have a positive impact on progress towards a nuclear weapons-free world by restricting and devaluing the role of nuclear weapons in national security policies and the ambit of the 'logic of nuclear deterrence', by building confidence in the NPT and NWS commitments to a nuclear weapons-free world, and by fostering greater cooperation on nuclear disarmament and non-proliferation.

¹ NPT/CONF.2010/50 (Vol. I), Final Document Volume I, "Conclusions and Recommendations for Follow-on Action", 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (New York: United Nations, May 2010), p. 21.

² House of Commons, *Hansard*, May 26, 2010, Column 182.

³ Nina Rathbun, "The Role of Legitimacy in Strengthening the Nuclear Non-Proliferation Regime", *The Nonproliferation Review*, 13(2), 2006, p. 236; James Acton and George Perkovich, *Abolishing Nuclear Weapons*, (London, Routledge for IISS, 2008), p. 109.

⁴ See 2000, Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/28 (Parts I and II), United Nations, New York, May 2000, p. 15; Hans Blix, *Weapons of Terror: Freeing the World of Nuclear, Biological and Chemical Arms*, Weapons of Mass Destruction Commission, Stockholm, June 2006, p. 88; Evans, G. and Kawaguchi, Y., *Eliminating Nuclear Threats - A Practical Agenda for Global Policymakers*, International Commission on Nuclear Non-Proliferation and Disarmament, Canberra and Tokyo, November 2009, p. 63.

⁵ Department of Defense, *Nuclear Posture Review* (Washington, D.C.: US Department of Defense, April 2010).

This working paper sketches provisional options for UK declaratory policy from very limited change to a more radical reappraisal and the political and operational issues involved.

1. Declaratory nuclear policy

Declaratory nuclear policy constitutes formal statements of the general circumstances under which the use of nuclear weapons will or will not be *contemplated*. The principal function is to enhance the credibility of nuclear deterrent threats by signalling the gravity of particular forms of aggression to would-be adversaries whilst reassuring other states that they will not be subject to nuclear coercion or attack beyond the parameters of aggressive behaviour identified.⁶

Declaratory statements are deliberately ambiguous as to the precise conditions under which nuclear use might be considered in order to generate uncertainty in the mind of a potential adversary on the probability of a nuclear response. For many advocates of nuclear deterrence this is the essence of credible (i.e. believable) nuclear deterrent threats: the “threat that leaves something to chance”.⁷

Declaratory policy statements therefore reflect government conceptions of the role, utility and value of nuclear weapons and the effectiveness of nuclear deterrent threats in addressing current and future threats to national security and international stability.

Shaping nuclear norms and operational plans

Declaratory nuclear policy performs two additional functions. First, as Sagan argues, it shapes national and international norms that limit appropriate circumstances for issuing nuclear deterrent threats and legitimate scenarios for potential use of nuclear weapons.⁸ Norms are important because although they do not directly determine or ensure state actions, they do establish circumscribed collective expectations about appropriate and therefore legitimate behaviour.⁹ The non-proliferation norm, for example, may not prevent states that are determined to possess nuclear weapons from acquiring them but it does represent a collective expectation of appropriate behaviour based on the non-proliferation of nuclear weapons, which in turn provides a vital framework for legitimising condemnation of and sanctions against norm violators. Without the NPT regime the norm against nuclear proliferation would lack a robust and legitimate foundation.¹⁰ Greater attention should therefore be paid to the potential effect of declaratory nuclear policy on non-proliferation objectives rather than solely on deterrence calculations.¹¹

⁶ David Gompert, Dean Wilkening and Kenneth Watman, *U.S Nuclear Declaratory Policy: The Question of First Use* (Santa Monica, CA: RAND, 1995), p. 7.

⁷ Thomas Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1960). See chapter 8, “The Threat that Leaves Something to Chance”.

⁸ Scott Sagan, “The Case for No-First Use”, *Survival*, 51(3), 2009, p. 172

⁹ See Ann Florini, “The Evolution of International Norms”, *International Studies Quarterly*, 40(3), 1996, p. 366; Peter Katzenstein, Alexander Wendt, et al., “Norms, Identity, and Culture in National Security”, in Peter Katzenstein, (ed.) *The Culture of National Security: Norms and Identity in World Politics*, (New York, Columbia University Press, 1996), p. 54; Vaughn Shannon “Norms are what States Make of them: The Political Psychology of Norm Violation”, *International Studies Quarterly*, 44(2), June 2000, p. 295.

¹⁰ See Jayantha Dhanapala, *Multilateral Diplomacy and the NPT: An Insider's Account*, (New York: United Nations, 2005) chapter 7.

¹¹ *Ibid.*, p. 164.

Second, declaratory policy provides “the intellectual background for the classified guidance given to military leaders in development of operational nuclear war plans [and] weapons-alert procedures” and by extension the requirements for current and future nuclear forces.¹² As Feiveson and Hogendoorn argue, the broader the circumstances in which the US *might* use nuclear weapons as reflected in declaratory policy “the less ardently will the U.S. military develop strategies, tactics and weapons to deal with various hypothetical contingencies, and the sharper will be the arguments for the military to use nuclear weapons in some crisis”¹³ In May 2009, for example, the Commander of US Strategic Command declared that nuclear weapons could be used to respond to a cyber attack against the US because ‘all options would be on the table’ in any attack against the US – a prime example of the policy of ‘calculated ambiguity’ expanding the remit of nuclear deterrent threats.¹⁴

2. UK declaratory policy

The UK has formally restricted the circumstances under which it would contemplate using nuclear weapons in a number of ways. First, in 1995 the nuclear weapon states (NWS) issued ‘negative security assurances’ (NSA) there were noted in United Nations Security Council Resolution 984 (1995).¹⁵ The UK’s statement declared that “The United Kingdom will not use nuclear weapons against non-nuclear-weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons except in the case of an invasion or any other attack on the United Kingdom, its dependent territories, 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” with the caveat that “Her Majesty’s Government does not regard its assurance as applicable if any beneficiary is in material breach of its own non-proliferation obligations under the Treaty on the Non-Proliferation of Nuclear Weapons.”¹⁶

The last part of the assurance referring to a non-nuclear weapon state “in association or alliance with a nuclear-weapon State” is often referred to as the ‘Warsaw Pact clause’ designed to exempt from the NSA an attack on a nuclear weapon state by a member of the now defunct Warsaw Pact acting with the full support of the Soviet Union with large Soviet forces and tactical nuclear weapons on their territory.¹⁷

Second, the UK has legally codified its NSA for nearly 100 countries by ratifying the protocols annexed to the Treaties establishing nuclear weapon-free zones in Latin America and the Caribbean,

¹² Scott Sagan, “The Case for No-First Use”, *Survival*, 51: 3, 2009, p. 165. This area is routinely distinguished as ‘Operational policy’ referring to decisions and doctrine affecting the size, diversity, configuration, deployment pattern and alert status of deployed nuclear forces.

¹³ Harold Feiveson and Ernst Jan Hogendoorn, “No First Use of Nuclear Weapons”, *The Nonproliferation Review*, Summer 2003, p. 6.

¹⁴ Elaine Grossman, “U.S. General Reserves Right to Use Force, Even Nuclear, in Response to Cyber Attack”, *Global Security Newswire*, May 12, 2009. Available at < http://gsn.nti.org/gsn/nw_20090512_4977.php>.

¹⁵ These reflected statements first articulated by the NWS in 1978.

¹⁶ “Letter dated 6 April 1995 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General”, United Nations Security Council statement S/1995/262, April 6, 1995, p. 3.

¹⁷ Malcolm Chalmers, *Nuclear Narratives: Reflections on Declaratory Policy*, Whitehall Report 1-10 (London: Royal United Services Institute, 2010), p. 25.

the South Pacific and Africa. This will increase by 15 more countries if the UK resolves outstanding differences to enable signature of the protocols to the Treaties establishing the South-East Asia and Central Asia Nuclear Weapon-Free Zones.¹⁸

Many non-nuclear weapon states want to codify this 'negative security assurance' in a legally binding international treaty. The 118-member Non-Aligned Movement (NAM) reiterated its long-standing policy at the 2010 NPT Review Conference that "pending the total elimination of nuclear arsenals, efforts for the conclusion of a universal, unconditional and legally binding instrument on security assurances to the Non-Nuclear Weapon States Parties to the Treaty should be undertaken as a matter of priority".¹⁹

Third, the UK has tacitly accepted the judgement of the 1996 International Court of Justice (ICJ) Advisory Opinion on the "Legality of the Threat or Use of Nuclear Weapons". The ICJ stated that the rules of humanitarian law applicable in armed conflict are fundamental and constitute intransgressible principles of international customary law, including that the use of force in self-defence must be proportionate to the armed attack, necessary to respond to it, distinguish between combatants and non-combatants (civilians) and not cause unnecessary suffering.²⁰ The 1949 Geneva Conventions and their 1977 Additional Protocol form the core of intentional humanitarian law and have been ratified by the UK.²¹

The Court's Advisory Opinion concluded that "the threat or use of nuclear weapons would generally be contrary to the rules of international law, and in particular the principles and rules of humanitarian law" applicable in armed conflict because the destructive blast, incendiary and radiation effects of nuclear weapons cannot be contained either in space or time.²² It could not, however, "conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an *extreme circumstance of self-defence, in which the very survival of a State would be at stake*" (emphasis added).²³ The UK does not dispute that international humanitarian law applies to the use of nuclear weapons and has incorporated the notion of "extreme circumstances of self-defence" into its declaratory nuclear policy statements²⁴.

Given the importance attached to the legality of the use of UK armed forces, nuclear declaratory policy should be consistent with these sets of commitments: humanitarian law applicable in armed conflict, the 1995 NSA, and undertakings in nuclear weapon-free zone treaties.

¹⁸ Foreign and Commonwealth Office, *Lifting the Nuclear Shadow* (London: HMSO, 2010), p. 35.

¹⁹ Statement by H.E. Dr. R.M Marty M. Natalegawa, Minister for Foreign Affairs of the Republic of Indonesia, on behalf of the NAM States Party to the NPT, May 3, 2010, United Nations, New York.

²⁰ See Rabinder Singh, QC, and Professor Christine Chinkin, 'The Maintenance and Possible Replacement of the Trident Nuclear Missile System: Joint Opinion', Matrix Chambers, December 2005, pp. 6-8.

²¹ House of Commons, *Hansard*, January 10, 200, Column 95W.

²² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion at the request of the UN General Assembly, ICJ Reports, July 8, 1996, para 95.

²³ *Ibid.*, para 97.

²⁴ For example, House of Commons Defence Committee, *The Future of the UK's Strategic Nuclear Deterrent: The Strategic Context: The Government's Response to the Committee's Eighth Report of 2005-06*, HC 1558, (London: HMSO, July, 2006), p. 3.

3. UK nuclear weapons policy

Current nuclear weapons policy envisages nuclear use in a range of circumstances, including first use against state and non-state actors and all forms of WMD to defend a broad array of 'vital interests'. The Labour government's 2006 Defence White Paper on *The Future of the United Kingdom's Nuclear Deterrent* elaborated the general nuclear use scenarios:

- 1) To deter and counter aggression towards British/NATO vital interests or nuclear coercion/blackmail by major powers with large nuclear arsenals (presumably Russia).
- 2) To deter and counter aggression by 'emerging nuclear states' ('rogue' states) to enable regional interventions if necessary.
- 3) To deter and counter state-sponsored acts of nuclear terrorism. The 'state-sponsored' codicil is important and the Government acknowledges that Trident "is not designed to deter non-state actors" acting alone.²⁵

The last iteration of declaratory policy was articulated by then-Defence Secretary Des Browne in December 2007. He stated that "The UK's nuclear weapons are not designed for use during military conflict but instead to deter and prevent nuclear blackmail and acts of aggression against our vital interests that cannot be countered by other means. It is a key part of our deterrence posture that we retain ambiguity about precisely when, how and at what scale we could contemplate use of our nuclear deterrent. We would only consider using nuclear weapons in self-defence – including the defence of our NATO allies – and even then only in extreme circumstances. That has been and will remain our policy."²⁶

The two key terms in Browne's statement are 'vital interests' and 'cannot be countered by other means'. The 2006 Defence White Paper does not define 'vital interests', but the 1998 Strategic Defence Review and 2003 Defence White Paper include the deterrence of threats to the security of the European continent; global economic interests based on the free flow of trade, overseas and foreign investment and key raw materials; the safety and security of British citizens living and working overseas and its Overseas Territories; and general international stability.²⁷ This conception of 'vital interests' extends far beyond extreme threats to the survival of the nation.

The term 'cannot be countered by other means' can be construed as code for deterring and if necessary responding to CBW or massive conventional attack. In fact, British nuclear weapons are not only meant to deter possible threats from other nuclear forces, but also the threat from chemical and biological weapons. The 2006 Defence White Paper suggests that one of the reasons for retaining nuclear weapons was because "most industrialised countries have the capability to develop chemical and biological weapons."²⁸ In the build up to the 2003 Iraq War defence secretary

²⁵ House of Commons, *Hansard*, October 19, 2005, column 841; Ministry of Defence (MOD) and Foreign & Commonwealth Office (FCO) *The Future of the United Kingdom's Nuclear Deterrent*, Cm 6994, (London: HMSO, December 2006), p. 19.

²⁶ House of Commons, *Hansard*, December 3, 2007, Column 56W.

²⁷ Ministry of Defence, *Strategic Defence Review*, Cm 3999 (London: HMSO, 1998), chapter two, paras 18-20; Ministry of Defence, *Delivering Security in a Changing World*, Cm 6041-I (London: HMSO, 2003), p. 4.

²⁸ MoD and FCO, *The Future of the United Kingdom's Nuclear Deterrent*.

Geoff Hoon also claimed that Britain was prepared to use nuclear weapons in response to the use of chemical or biological weapons by Iraqi forces.²⁹

Furthermore, the UK does not rule out the first use of nuclear weapons in a conflict. Britain's nuclear forces are formally committed to NATO under the terms of the 1962 Nassau Agreement that facilitated that purchase of the US Polaris submarine-launched ballistic missile (SLBM) system and subsequently Trident for the Royal Navy. This remains the case today. In 2006 then-defence secretary Des Browne stated that "A policy of no first use of nuclear weapons would be incompatible with our and NATO's doctrine of deterrence".³⁰

4. Options for the UK

A number of options present themselves to the UK as the self-styled 'most progressive' of the five NPT-recognised nuclear weapon states.

Option 1: No Change

UK policy could remain unchanged and based on the 1995 negative security assurance and the expansive parameters for potential nuclear use outlined in the 2006 Defence White Paper, including responding to, or even to pre-empting, an attack using chemical or biological as well as nuclear weapons or massive conventional force by a state or state-sponsored terrorist group against a range of vital interests extending beyond the survival of the state.

Option 2: Follow the US

The UK could follow the US lead and mirror the policy set out in the April 2010 Nuclear Posture Review. This stated that the role of US nuclear weapons in deterring and responding to major conventional, biological, or chemical weapon attacks had declined significantly with the development of advanced conventional military weapons and major improvements in missile defences and counter-WMD capabilities. The new policy now declares that "the United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the Nuclear Non-Proliferation Treaty (NPT) and in compliance with their nuclear non-proliferation obligations".³¹

The new policy rolls back post-Cold War planning for the potential use of nuclear weapons for counter-proliferation missions against chemical, biological or massive conventional attack from 'rogue' states.³² For the first time, the US is now explicitly committed not to use nuclear weapons

²⁹ Transcript from the *Jonathan Dimbleby Programme*, March 24, 2001 cited in Paul Rogers, *Iraq: Consequences of a War*, Oxford Research Group, October 2002.

³⁰ House of Commons, *Hansard*, May 22, 2006, Column 1331W.

³¹ Department of Defense, *Nuclear Posture Review* (Washington, D.C.: US Department of Defense, April 2010), p. 16.

³² See Thomas Reed (former Secretary of the Air Force), Testimony before the House of Representatives Committee on Armed Services, 8 April 1992 (Washington, D.C.: Government Printing Office, 1992); Hans Kristensen, "Targets of Opportunity: How Nuclear Planners Found New Targets for Old Weapons", *Bulletin of the Atomic Scientists*, vol. 53 no. 5 (September/October 1997); *Nuclear Posture Review (Excerpts)*, Globalsecurity.org, Washington, D.C., 2002, cited as p. 16. Retrieved from <<http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>> on November 24, 2004; Hans Kristensen, *White House Guidance Led to New Nuclear Strike Plans Against Proliferators, Document Shows*, Strategic Security Blog, Federation of American Scientists, November 11, 2007, Retrieved from <http://www.fas.org/blog/ssp/2007/11/white_house_guidance_led_to_ne.php> on December 2, 2007;

against NPT-compliant non-nuclear weapons states, even if they attack with chemical or biological weapons or massive conventional force. The US has also removed the so-called 'Warsaw Pact clause' from its 1995 negative security assurance.

For the UK this would mean eliminating the 'Warsaw Pact clause' from the 1995 negative security assurance, explicitly precluding the use of nuclear weapons in response to a chemical, biological or major conventional attack by NPT-compliant non-nuclear weapons states, but retaining the option of nuclear first use in response to a CBW or major conventional attack by a NWS or NNWS in 'material breach' of the NPT, however that may be defined.³³

Option 3: Sole purpose

A 'sole purpose' declaration would build on US policy and explicitly declare that the only reason for deploying nuclear weapons is to deter their use by others. States covered by a 'sole purpose' declaration would not be subjected to nuclear attack in a conflict even if they used CBW or a mounted a major conventional attack. The 2009 report of the International Commission on Nuclear Non-Proliferation and Disarmament, for example, suggests a declaration to the effect that "the sole purpose of the possession of nuclear weapons is to deter the use of such weapons against one's own state and that of one's allies."³⁴

This could be limited to different categories of states. First, it would clearly apply to all NNWS in compliance with NPT obligations. Second, it could also apply to non-nuclear weapon states parties to the NPT in 'material breach' of their NPT commitments. Third, it could apply to the recognised nuclear weapons states within the NPT. Fourth, it could apply to *de facto* nuclear weapon states outside the NPT, although restricting the declaration to States Parties to the NPT signals the benefits of NPT membership to non-signatories and possible future recidivists.³⁵ The latter two categories would, however, be controversial given the major conventional military capabilities of some nuclear-armed states and suspected CBW programmes.

A sole purpose declaration could also be restricted to states thereby eliminating planning for the potential use of nuclear weapons in response to a state-sponsored nuclear terrorist attack. The prospect of deterring state-sponsored terrorist groups that receive substantial support from a host country with the threat of a nuclear retaliatory attack lacks credibility. Terrorist groups, state-sponsored or not, are extremely difficult to deter because they are inherently revisionist and may regard even failed attacks as superior to inaction.³⁶ Plausible deniability, the limits of nuclear

History of the United States Strategic Command: 1 June 1992 - 2 October 2002, Offut Air Force Base, Nebraska, Strategic Command, 2004, p. 70; and *Joint Doctrine for Nuclear Operations (draft)*, U.S. Joint Chiefs of Staff, Washington, D.C., p. III-2.

³³ See John Carlson, "Defining Noncompliance: NPT Safeguards Agreements", *Arms Control Today*, May 2009. Available at <www.armscontrol.org/act/2009_5/Carlson>.

³⁴ "Eliminating Nuclear Threats", International Commission on Non-Proliferation and Nuclear Disarmament, Australia and Japan, 2009, p.173.

³⁵ Alexei Arbatov, "Non-First Use as a Way of Outlawing Nuclear Weapons", paper prepared for the International Commission on Nuclear Non-Proliferation and Disarmament, November 2008.

³⁶ *Non-Nuclear Strategic Deterrence of State and Non-State Adversaries*, DFI International for the Defense Threat Reduction Agency, Washington, D.C., October 2001, p. 15.

forensics, the difficulty of determining and demonstrably establishing linkages between non-state actors and state sponsors make the prospect of an immediate retaliatory nuclear strike incredible.³⁷

The Obama administration stated in the 2010 NPR that for states possessing nuclear weapons and those deemed not in compliance with the NPT, “there remains a narrow range of contingencies in which U.S. nuclear weapons may still play a role in deterring a conventional or CBW attack against the United States or its allies and partners”. As a consequence the Obama administration was *not* prepared to formally declare that the *sole purpose* of US nuclear weapons is to deter *nuclear* attack on the US or its allies.³⁸

Option 4: No-first use

The UK could commit to never use nuclear weapons first in a conflict, thereby removing the option of a pre-emptive nuclear first strike from UK the roster of nuclear use scenarios. The Labour government considered a no-first use policy in the 1998 Strategic Defence Review but ruled it out.³⁹ As noted earlier, then-defence secretary Des Browne declared in 2006 that such a policy would be incompatible with current UK and NATO nuclear deterrence doctrine. This could supplement a ‘sole purpose’ declaration or current negative security assurances.

A no-first use policy would mean that the UK would no longer threaten pre-emptive use of nuclear weapons to destroy actual or incipient WMD capability, or to engage in ‘signalling’ during a severe crisis by firing a ‘sub-strategic’ ‘shot across the bows’ to signal intent to escalate to a full nuclear exchange unless aggression ceases.⁴⁰

A no-first use policy for NATO theatre nuclear forces has been raised on a number of occasions by senior US statesmen in the early 1980s and German, Dutch and Canadian governments in the late 1990s.⁴¹ More recently in 2010 former Senator Sam Nunn argued that NATO should now reconsider its declaratory policy and examine whether a no-first use policy for tactical nuclear weapons would enable “greater transparency, accountability and consolidation of both US and Russian tactical nuclear weapons inventories” as part of NATO review of its Strategic Concept due to be released in November 2010.⁴²

Option 5: No WMD first use

A broader formulation would forgo the concept of ‘sole purpose’ in favour of a no-first use pledge covering chemical, biological, and nuclear weapons as a discrete category of weapons of mass destruction. The current nuclear negative security assurance caveat could be extended to exempt those states not in compliance with, or in material breach of, the Chemical Weapons Convention

³⁷ *Ibid*, p. 21.

³⁸ See Department of Defense, *Nuclear Posture Review* (Washington, D.C.: US Department of Defense, April 2010), pp. 16-17.

³⁹ House of Commons, *Hansard*, January 11, 1999, Column 13.

⁴⁰ See Steven Miller, “The Utility of Nuclear Weapons and the Strategy of No-First Use”, paper presented at a Pugwash meeting on *No First Use of Nuclear Weapons*, November 15-17, 2002, London.

⁴¹ See McGeorge Bundy, George Kennan, Robert McNamara and Gerard Smith, “Nuclear Weapons and the Atlantic Alliance”, *Foreign Affairs*, 60, 1982, pp. 753-768; Wade Boese, “Germany Raises No-First Use Issue at NATO Meeting”, *Arms Control Today*, Vol. 28, November-December 1998. See also Richard Ullman, “No First Use of Nuclear Weapons”, *Foreign Affairs*, 50, 1972, p. 673.

⁴² Sam Nunn, “NATO Nuclear Policy and Euro-Atlantic Security”, *Survival*, 52: 2, 2010, p. 16.

(CWC) and the Biological and Toxin Weapons Convention (BTWC) as well as the NPT.⁴³ This approach leaves open the possibility of nuclear retaliation in response to a CBW attack but forecloses for the UK the option of either pre-emptive or retaliatory nuclear use in response to a massive conventional attack. Dowty advocates this approach by arguing that despite the qualitative difference in the destructive capacity of CBW and nuclear weapons, “so long as chemical or biological weapons function as ‘the poor man’s nuclear weapons’ arms control in the various categories of WMD is intertwined”.⁴⁴ He argues that preaching abstinence of CBW by the NWS while “clinging to a nuclear oligopoly is indeed, as non-Western nations in particular point out forcefully, condescending, discriminatory, and ultimately unacceptable”.⁴⁵ He therefore argues that WMD should be stigmatised as an integrated category and that the next logical step in this process is a no-WMD-first use pledge.⁴⁶

Option 6: A very last resort

As noted above, the 2006 Defence White Paper stipulates that UK nuclear weapons are deployed to deter threats to the country’s ‘vital interests’. Current conceptions of ‘vital interests’ described in the 1998 SDR and 2003 Defence White Paper do not appear to correspond to the ICJ Advisory Opinion that “the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”. The government could therefore outline in further detail the ‘vital interests’ that warrant nuclear protection in ‘extreme circumstances’ and to unequivocally link the potential use of nuclear weapons to the survival of the state. Malcolm Chalmers has used the formulation of ‘a very last resort’ to describe the circumstances in which nuclear weapons might be employed. This option would still, however, allow for the first use of nuclear weapons in circumstances when the very existence of the state was incontrovertibly under threat.⁴⁷

This form of declaratory policy draws a distinction between contemplating nuclear use in response to the *effect* of an attack irrespective of the perpetrator and means employed, as opposed to circumscribing a particular means of attack, e.g. CBW, or particular types of aggressor, e.g. NNWS in ‘material breach’ of NPT commitments.

Political realities of possible nuclear use

There are good reasons for implementing change. First, a robust case can be made that the UK would only ever consider using its nuclear weapons in a very limited set of circumstances. In fact, the only potentially credible, justifiable and conceivable scenario (in terms of the Prime Minister’s willingness to ‘push the button’) for use of nuclear weapons is in retaliation for a major nuclear

⁴³ Arbatov, “Non-First Use”, p. 10.

⁴⁴ Alan Dowty, “Making ‘No First Use’ work: Bring all WMD Inside the Tent”, *The Nonproliferation Review*, Spring 2001, p. 80.

⁴⁵ *Ibid.*, p. 81.

⁴⁶ *Ibid.*, p. 84.

⁴⁷ Chalmers, *Nuclear Narratives*, p. 33.

Variables		Options					
		Option 1: No change	Option 2: Follow the US	Option 3: Sole purpose	Option 4: No-first use	Option 5: No WMD-first use	Option 6: Very last resort
Target groups covered by declaratory assurances	NNWS	x	x	x	x	x	x
	NWS			?	?	?	
	NNWS in alliance w/NWS		x	x	x	x	
	Non-NPT states			?	?	?	
	State-sponsored NSAs			?	?	?	
	NNWS in material breach			?	?	?	
Nuclear retaliation permitted for	Nuclear attack	x	x	x	x	x	x
	Conventional attack	x	?				
	CBW attack	x	?			x	
	No first use				x	x	
	Limit to state survival						x

Table 1. Declaratory policy variables and options

strike or a conventional/CBW war against the UK that threatens the very survival of the state, i.e. the UK government will be destroyed through military defeat and hostile occupation and/or UK society as we know it will be bombed past the point of recovery.

A decision to actually use nuclear weapons would, in reality, only be taken *as a very last resort* when the survival of the nation was under imminent threat. Currently the only prospect of an attack having this type of effect is the extremely remote possibility of nuclear strike. But the UK does not face a significant nuclear threat to the survival of the state and hasn't done so since the mid-1990s.⁴⁸ Even in the context of a CBW attack by a regional 'rogue' state, the credibility and utility of UK nuclear deterrent threats against CBW use such states is highly questionable.⁴⁹

Furthermore, the *first use* of nuclear weapons by a Western power for anything other than national survival would likely terminate the international norm against the use of nuclear weapons that has held since 1945. This would give rise to a considerable danger that nuclear use by Western and non-Western states could become legitimate and routine leading to further nuclear proliferation.

⁴⁸ Cabinet Office, *The National Security Strategy of the United Kingdom: Update 2009 – Security for the Next Generation*, Cm 7590 (London: HMSO, June 2009).

⁴⁹ Ritchie, "Deterrence Dogma".

Crossing the nuclear threshold first and breaching the nuclear 'taboo' would place Britain in a far less stable and predictable world and strip it of international legitimacy and authority.⁵⁰

5. Legal instruments

The political impact of declaratory policy could be maximised by cementing policy in international and domestic law. As noted above, the Non-Aligned Movement has been pressing for negotiation of a universal, legally-binding negative security assurance in treaty form and the UK has already extended such a legal undertaking to nearly 100 states through nuclear weapon-free zone treaty protocols.

Prohibiting in international law the first use of nuclear weapons (in effect prohibiting their use at all) would go some considerable way to devaluing nuclear weapons and mark a significant step towards the goal of prohibiting possession through a future Nuclear Weapons Convention.⁵¹

Rebecca Johnson takes a different and more inclusive approach by arguing that the use of nuclear weapons be declared a crime against humanity. This "would have major impact in taking nuclear weapons off the lustrous list of objects of political status and desire. They would then truly be treated as weapons of terror that no sane or civilized person would want or be able to use".⁵² She goes on to explore approaches that could be taken to achieve this goal, such as amending the definition of 'crimes against humanity' in the 1998 Rome Statute that established the International Criminal Court, a UN Security Council resolution recognising the use of nuclear weapons as a crime against humanity, or national legislation to declare any use of nuclear weapons as a crime against humanity. "Once such unilateral declarations had reached critical mass", Johnson argues, "the norm would become effectively embedded into customary international law."⁵³

Furthermore, even absent a universal no-first use treaty the government could enact domestic legislation restricting the war powers of the Prime Minister, including the use of nuclear weapons. In the 1970s Ullman mooted the possibility of legislation stipulating that the US government may not initiate the use of nuclear weapons without receiving prior Congressional authorisation.⁵⁴

In the UK after the controversial decision to invade Iraq in 2003 there has been pressure to revisit the Royal prerogative powers that enable the government to declare war and deploy armed forces to conflicts abroad without the backing or consent of Parliament. The House of Lords' 2006 report on *Waging War: Parliament's Role and Responsibility* noted the many calls for "a requirement that Government should always seek Parliament's approval when taking action in future conflicts."⁵⁵

⁵⁰ "US Coercion in a World of Proliferating and Varied WMD Capabilities: Final Report for the Project on Deterrence and Cooperation in a Multi-tiered Nuclear World", (Washington, D.C., DFI International/SPARTA, Inc for the Defense Threat Reduction Agency, February 2001), p. 40; Ivan Oelrich, "Missions for Nuclear Weapons after the Cold War", (Washington, D.C., Federation of American Scientists, January 2005), p. 32.

⁵¹ Arbatov, "Non-First Use".

⁵² Rebecca Johnson, "Security Assurances for Everyone: A New Approach to Deterring the Use of Nuclear Weapons", *Disarmament Diplomacy* No. 90. Spring 2009.

⁵³ Ibid.

⁵⁴ Richard Ullman, "No First Use of Nuclear Weapons", *Foreign Affairs*, 50, 1972, p. 681.

⁵⁵ House of Lords, *Waging War: Parliament's Role and Responsibility*, HL Paper 236-I (London: HMSO, 2006), p. 5.

This could potentially incorporate restrictions on the use of nuclear weapons into domestic law and Ullman's argument that the Executive seek authorisation for the use of nuclear weapons from the legislative branch of government.

Conclusion

The political realities of the utility and credibility of UK nuclear deterrent threats, the limited nature of contemporary WMD threats to the survival of the state, and the circumstances in which the Prime Minister would likely authorise use of nuclear weapons provide a permissive environment for a far more restrictive declaratory nuclear policy than present. This is reinforced by the opportunity to shape nuclear policy norms that further devalue the currency of nuclear weapon in international politics. Furthermore, changes in operational practice reinforced by legally-binding restrictions on nuclear use would further devalue nuclear weapons within military establishments, buttressing political devaluation at the declaratory level.

The government must therefore decide where on the spectrum of ambiguity, with maximum deterrence at one end and maximum reassurance at the other, it should pitch its declaratory nuclear policy. In doing so it must ask whether it is more important for long-term global nuclear risk management to err on the side of expansive nuclear deterrent threats to mitigate a range of possible WMD threats to 'vital interests' based on abstract theorising of nuclear deterrent effects that have, thankfully, never been empirically tested, or reassurance to devalue nuclear weapons and in theory bolster the nuclear non-proliferation regime and reinforce political progress towards a world free-nuclear weapons that may, however, never be realised

Incentives for erring on the side of reassurance are supported by the reality that changes in declaratory policy can be reversed if threat perceptions change, although ignoring declaratory policy in a confrontation with an adversary would entail political/reputational costs. The US 2010 NPR, for example, insists that the new declaratory policy will remain under review given "the catastrophic potential of biological weapons and the rapid pace of bio-technology development" to generate a significant and direct biological weapons threat to the US".⁵⁶ Second, even if a very restrictive declaratory policy is adopted, the fact that nuclear weapons remain in its possession would still levy a residual ambiguity and uncertainty in the mind of an adversary intent on using CBW or massive conventional force against the UK, its allies or forces. The possibility of a nuclear response could never be *entirely* discounted.

The 2009 report of the International Commission on Nuclear Non-Proliferation and Disarmament urged all nuclear weapons states to declare in the short term that, at the very least, "the sole purpose of retaining the nuclear weapons they have is to deter others from using such weapons against them or their allies (while giving firm assurances to such allies that they will not be exposed to unacceptable risk from other sources, including in particular chemical and biological weapons)."⁵⁷ Over the longer term the Commission urged that "pending the ultimate elimination of nuclear weapons, is that every nuclear-armed state makes a clear and unequivocal 'no first use' declaration, committing itself to using nuclear weapons neither preventively or pre-emptively against any

⁵⁶ Department of Defense, *Nuclear Posture Review* (Washington, D.C.: US Department of Defense, April 2010), p. 17.

⁵⁷ Evans and Kawaguchi, "Eliminating Nuclear Threats", p.161.

possible nuclear adversary, keeping them available only for use, or threat of use, by way of retaliation following a nuclear strike against itself or its allies".⁵⁸ If the long-term aim is to devalue and subsequently delegitimise nuclear weapons prior to their eventual elimination then, as Subrahmanyam notes, "the first essential step nuclear-armed nations must take is to adopt the no-first use policy. No weapon considered legitimate is ever likely to be eliminated".⁵⁹

But whichever formulation is selected, it should stipulate quite explicitly that the UK would only ever use nuclear weapons in strict accordance with humanitarian international law applicable in armed conflict in accordance with the 'rules-based' international system it claims to promote.

⁵⁸ Ibid, p. 172.

⁵⁹ K. Subrahmanyam, "The Case for No-First Use: An Exchange", *Survival*, 51:5 2009, p. 32.

