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NATO's Nuclear Posture Review
Should Europe end nuclear sharing?

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1. Introduction

NATO is secretly reviewing its nuclear weapons posture. During the Alliance's ministerial meetings in spring 2002 recommendations resulting from the review will be presented for approval. NATO's review follows a major U.S. Nuclear Posture Review presented on January 9 and a much wider debate since details of the classified document became public in March.

According to the U.S. document, "DoD [the Pentagon] will not seek any change to the current [NATO] posture in FY02 but will review both issues to assess whether any modifications to the current posture are appropriate to adapt to the changing threat environment. A plan is already underway to conduct a NATO review of U.S. and allied dual capable aircraft in Europe and to present recommendations to Ministers in summer of 2002. Dual capable aircraft and deployed weapons are important to the continued viability of NATO's nuclear deterrent strategy and any changes need to be discussed within the alliance." [1]

Thus, within the next one or two months NATO is preparing major decisions on the future of the Alliance's nuclear posture. The public knows about this review only because parts of the classified U.S. document was leaked. Questions likely to be addressed include the following:

- Should the Alliance's sub-strategic nuclear weapons play a role in fighting terrorism and proliferation, and if so, what is that role?
- Will the Alliance exclude or reserve the option to use nuclear weapons against non-nuclear states and/or non-state actors? Would the Alliance be prepared to use them in a pre-emptive manner or would they be used only in retaliation? Will NATO move towards integrating advanced non-nuclear and nuclear strike capabilities for such purposes?
- Should NATO members prepare for the procurement of a new generation of dual-capable aircraft (DCA), capable of delivering U.S. nuclear weapons made available to some non-nuclear NATO countries in times of war, and thus signal that NATO will maintain such a capability to well beyond 2050?
- Are changes necessary to the current posture and deployment of sub-strategic

weapons? Is it possible to reduce the number of DCAs and weapons deployed, since relations with Russia do no longer require the numbers and capabilities still existing?

- Do new risks resulting from terrorism and proliferation and possibly new roles assigned to NATO's nuclear posture require changes to the current deployment?
- Should new roles possibly assigned to NATO's nuclear arsenal result in changes to the Alliance's intelligence collection efforts and adaptations of NATO's nuclear targeting system? Will NATO need new types of nuclear weapons some time in the future?
- Which impact would the changes recommended have in respect to arms control and non-proliferation?

While additional questions might come up, the examples mentioned indicate that the decisions under preparation are far-reaching. The administration of George W. Bush might be well prepared to – just as a matter of principle – turn to their European counterparts asking them a hypothetical, but at the same time more and more realistic question: Is NATO Europe – as a last resort - prepared to ease the American burden if it comes to the decision to use nuclear weapons? This question has a very practical side: Are those European nations that are capable of using U.S. nuclear weapons during times of war also prepared to do so:

- in a counter-terrorism or counter-proliferation scenario?
- independent of whether the strike's target is a state or a non-state-actor operating out of the territory of a state?

Two conclusions are clear: The results of NATO's review process will impact on the future role of nuclear weapons as much as on the future opportunities for nuclear disarmament and non-proliferation. A third conclusion depends on Europe's answer to some of the "hypothetical questions" likely to be asked by Washington. Is Europe willing and/or capable to answer some questions differently?

The Bush administration's skepticism against, if not negative attitude towards, arms control and non-proliferation is well-known. Many European nations are deeply skeptical about resorting to primarily military reactions. They would prefer to fight the risks resulting from proliferation by strengthening non-proliferation. However, they have not yet come up with an alternative approach suggesting their own set of measures to meet the main criterion the U.S administration is likely to accept: Do the European ideas credibly contribute to reducing the risks posed by terrorism and/or proliferation?

This policy note does not pretend to solve that dilemma by suggesting a possible European conceptual approach. It discusses a single measure that could become part of such an approach: Should Europe's non-nuclear NATO members that are participating in NATO nuclear sharing give up the technical capability to employ sub-strategic nuclear weapons in times of war? This questions runs counter to those questions likely to be raised during NATO's nuclear review. However, it represents one option for working on a European approach.

2. The proposal

The simple answer is: Yes. Those European nations having a capability to use U.S. nuclear weapons in times of war, should and could revoke that capability. They can do so. If they would do so, for the first time non-nuclear nations – beyond rejecting to become nuclear powers - would make a substantial contribution to support the declared common goals of strengthening nuclear non-proliferation and nuclear disarmament.

Those non-nuclear NATO members that have the technical capacity to use nuclear

weapons in times of war can renounce it without losing security or political influence – and ought to do so in accordance with the Alliance's 2000 Summit Communiqué as well as the results of the 2000 NPT Review Conference. Nevertheless, they could continue to play their role in NATO nuclear planning. All six nations concerned can jointly take that decision. If a joint decision is not reached, important NATO members like Germany should pioneer the idea. According to this policy note, such a step

- would constitute a central new impulse for nuclear disarmament. It would facilitate the process towards additional steps of nuclear disarmament which could for the first time open the way for dismantling thousands of sub-strategic nuclear weapons that are no longer needed or useful;
- would be an important contribution to strengthening the nuclear non-proliferation regime since it removes the cause for doubts whether nuclear sharing is in compliance with the Non-Proliferation Treaty (Art I and II);
- would contribute to reducing the role of nuclear weapons in NATO's strategy. The Alliance's nuclear policy could be better brought in line with the 1996 ruling of the International Court of Justice.

This policy note presents additional findings important for European governments having to consider such a move:

- Nuclear consultation rights remain in effect if non-nuclear NATO members renounce the technical capability to use nuclear weapons in case of war.
- Nuclear deterrence remains effective, as does intra-Alliance solidarity which finds its expression in sharing the risks, roles, and responsibilities resulting from NATO's nuclear strategy.
- The internal cohesion of the alliance will benefit since the repeated debates about zones of different security will become irrelevant once all non-nuclear NATO members are participating in the Alliance's nuclear policy in a homogeneous way.
- Finally, the divergent national nuclear interests within NATO to some extent will be harmonized; this can be used constructively to reinforce the non-proliferation and disarmament policies of the Alliance.

3. Nuclear sharing in NATO

Nuclear sharing aims at assuring the non-nuclear NATO member states that they have a voice in the process of nuclear planning and decision-making. It is a reassuring expression that the nuclear powers do not hold a complete monopoly on the Alliance's nuclear policy. Rather the interests of the non-nuclear states have to be taken into account. NATO's nuclear sharing arrangements consist of two mechanisms, one political and one technical.

The political mechanism consists of co-operation and consultation between nuclear and non-nuclear members of the Alliance in the Nuclear Planning Group and its subordinated bodies within NATO. This group discusses questions of nuclear strategy and operational planning, analyses deployment measures and determines consultation mechanisms for the actual use of nuclear weapons. The Nuclear Planning Group was founded in 1966 prior to the signing of the Non-Proliferation-Treaty (NPT), ensuring that the interests of NATO's non-nuclear members would be preserved after entry into force of the treaty. The group initially consisted of four permanent members (U.S., UK, Italy, Germany, granting them a considerable weight) and four rotating members. Since 1979 the NPG is open to all

NATO's Nuclear Weapons Storage System (April 2002)[1]

Airbase	Country	Number of vaults	Max number of weapons	Units and Status
Buechel	GE	11	22	33rd Fighter Bomber Wing, Tornado aircrafts operated by German Air Force, nuclear vaults are operational; USAF maintenance: 852.MUNSS
Ramstein AB	GE	54	108	86th Airlift Wing, USAF C-130 Maintenance Section, vaults operational
Kleine Brogel AB	BE	11	22	10th Wing Tactical, F-16 operated by Belgian Air Force, vaults operational; USAF maintenance: 52.MUNSS
Volkel AB	NL	11	22	1st Fighter Bomber Wing, F-16 operated by the Royal Dutch Air Force, vaults operational, maintenance 752.MUNSS
RAF Lakenheath	UK	33	66	48th Fighter Wing, F-15E operated by USAF, vaults operational
Aviano AB	IT	18	36	31st Fighter Wing-16 operated by USAF, vaults operational
Ghedi-Torre AB	IT	11	22	6th Wing, Tornado aircraft operated by Italian Air Force; vaults operational; USAF maintenance: 31.MUNSS
Araxos AB	GR	6	12	116th Combat Wing, A7E aircraft operated by Greek Air Force, vaults operational; US-maintenance: 731.MUNSS
Incirlik AB	TR	25	50	Rotational USAF units, vaults operational
Memmingen AB	GE	11	0	34th Fighter Bomber Wing, Tornado aircraft operated by German Air Force; nuclear vaults on caretaker status; location to be closed in 2003; no USAF maintenance unit
Noervenich AB	GE	11	0	31st Fighter Bomber Wing, Tornado aircraft operated by German Air Force; nuclear vaults on caretaker status; no USAF maintenance unit
Murted AB Akinci	TR	6	0	4th Wing, F-16 operated by Turkish Air Force; vaults on caretaker status; no USAF maintenance unit
Balikesir AB	TR	6	0	9th Wing, F-16 operated by Turkish Air Force; vaults on caretaker status; no USAF maintenance unit
Total	**NATO**	**214**	**360****	

* plus one additional training vault.

** Up to 360 weapons can be stored, although the actual number of weapons might be significantly lower. Estimates assume 150 to 180 weapons. Experts assume that during peacetime one vault at each base contains training weapons, used to exercise on-base nuclear procedures and flight training. Most, if not all of the weapons in storage are B-61 10 free falling bombs.

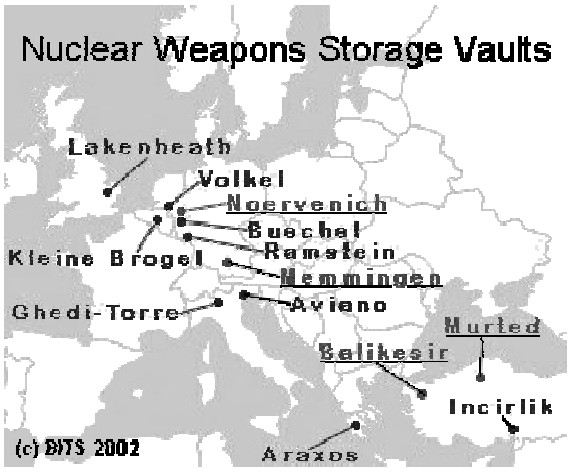
[1] USAF Electronic Systems Center, Cryptologic Systems Group: WS3 Sustainment Program, Hanford AirForce Base, 3.3.2000, Information obtained under the Freedom of Information Act by Joshua Handler, Princeton University; Department of the US Air Force, 11th Wing, Information obtained under the Freedom of Information Act by Joshua Handler, Princeton University, released 01/30/1998; Department of the US Air Force, Headquarters US Air Forces in Europe, Information obtained under the Freedom of Information Act by Joshua Handler, released 12/02/1997; Der Spiegel, No. 16/98, 04/13/98, p.135; USAF Electronic Systems Center: Press Release, Hanscom, 18.7.1995; USAF Electronic Systems Center: Communication to BASIC, Hanscom, 20.11.1996; US Congress, House Defense Appropriations Subcommittee, DoD Appropriations for FY 1987, Part 5, p.216; US Congress, House Defense Appropriations Subcommittee, DoD Appropriations for FY 1990, part 7, p.479; Institut für Internationale Politik: Die Atomare Planung der NATO nach dem Ende des Kalten Krieges, Wuppertal, 1990

NATO members and they have been given equal standing. The Nuclear Planning Group is the central political mechanism of nuclear sharing. It has served as a forum to address and clarify differences of NATO members concerning nuclear issues.

The other component of nuclear sharing is technical. Some of the non-nuclear NATO member states do have the capability to conduct a nuclear attack, using U.S. nuclear weapons and national delivery means during times of war. At present six of the Alliance's non-nuclear members are equipped with nuclear-capable systems. Today these delivery systems are specially equipped aircraft, so-called dual capable aircraft (DCA), that can carry both conventional and nuclear weapons. Their crew members are being specifically trained in peace time to prepare and conduct the use of nuclear weapons. The nuclear weapons are owned by the U.S. and stored locally at the airports of European partner nations. During peace time the weapons remain under the sole control of the U.S. Air Force and will only be transferred to the allied forces in case of war. Technical nuclear sharing emerged in the late 1950s and early 1960s, when the U.S. sold nuclear capable launch-systems for the use of American nuclear weapons to non-nuclear members of the Alliance. Bilateral agreements, so-called Programs of Cooperation (PoC), were concluded between the U.S. and non-nuclear states. Most of them remain in force until today.

Air Force units in Belgium, Germany, Greece, Italy, the Netherlands, and Turkey are technically capable of using U.S. nuclear weapons; previously Canada and France also participated in such programs. Other non-nuclear NATO members like Iceland, Denmark, Norway, and Spain participate only in the political mechanisms of nuclear sharing, while rejecting the deployment of nuclear weapons on their territory during peace - time. Canada deliberately ended its participation in technical nuclear sharing in 1989. NATO's new members Poland, Hungary, and the Czech Republic also participate only in the political mechanisms.

As of 2002 up to 360 U.S.-B-61 nuclear free-fall bombs can be deployed on operational European air-bases. Twelve are housing dual capable aircraft. Four "caretaker" air-bases are equipped to host an additional 68 US nuclear weapons, but do not do so under current levels of operational readiness. Six operational and four bases on caretaker status can host nuclear weapons for use with non-nuclear Allied aircraft, two bases are used by USAFE only and one could operate both, US and Turkish aircraft. (see table on p.4) provides an overview of where and how many weapons can be stored. It also names the US and NATO Air Force units involved.



Cartaker locations are underlined

The nuclear weapons storage systems in Europe, so called vaults, are to be modernized by 2005. Modernization will keep them operational until 2018. Documents released by the U.S. Air Force in 2001 provide a description of this modernization effort. Among other things data-processing and encryption will be updated at estimated costs of $ 10.1 million. Costs will be finally shared among NATO member states via the Alliance's infrastructure budget. Possibly this decision is to be taken as part of the NATO review currently underway.

Most of the Alliance's dual capable aircraft will reach the end of their useful service-life some time during the next decade. Tornado-

and F-16 aircraft will subsequently be phased out. Germany will replace its nuclear capable Tornado aircraft by the Eurofighter Typhoon in two phases until 2015. Italy has similar plans. Belgium and the Netherlands are already considering how to replace their F-16s. Greece operates even older A-4 aircraft and will have to replace them some time in the future. Turkey's F-16s are the newest ones. As of today, none of the successor aircraft discussed is under development or procurement as a DCA. The Eurofighter is conventional only, and since the Royal Air Force gave up its nuclear bombs there has been no demand for making the aircraft nuclear capable. The Joint Strike Fighter (JSF), considered by many F-16 users as a successor to their DCAs, so far has been planned as a non-nuclear aircraft. However, the option has been retained to add a nuclear delivery capability. According to the Nuclear Posture Review (NPR) the new U.S. administration intends to use this option in order to allow for a conventional-only use of the F-16s, once the JSF enters service in 2012 or later. NATO's nuclear posture review will be used to discuss this question. It will de facto prepare a decision on the longer term future of NATO's nuclear sharing arrangements.

4. A unified status for non-nuclear allies

Nuclear deterrence equally protects all NATO member states. It is neither dependent on a member state's possession or storage of nuclear weapons on its soil nor on its capability to launch them in case of war. The Alliance reaffirmed this policy with regard to its new members. The same protection applies to them as it does to all other NATO member states. There are no zones of different nuclear security within the alliance, no different classes of membership. This applies despite the politically binding reassurance of NATO in the NATO-Russia Founding Charter of 1997 that

- no nuclear weapons will be deployed in the respective states, and
- that no infrastructure for the deployment of nuclear weapons will be maintained, and
- no new infrastructure for such weapons will be constructed.

In addition, then-U.S. Secretary of State Albright and then-Secretary of Defense Cohen during Congressional Hearings confirmed that the Alliance has no intention to

- train pilots from the new member states for nuclear missions;
- provide special equipment for nuclear-capable aircraft to the new member states;
- demand that new members acquire nuclear-capable aircraft;
- conclude Programs of Co-operation with new members.[2]

NATO's pledges with regard to the new members are politically binding and technically not reversible in the short term.

The example of the new NATO members demonstrates that NATO's nuclear security guarantee is not dependent on technical capability of individual member states to drop U.S. nuclear weapons in case of war in support of the Alliance's nuclear strategy. Neither do any disadvantages arise for their participation in the Nuclear Planning Group, nor on their influence on nuclear planning and consultations within the Alliance. This has been exemplified when Canada gave up its capability to use nuclear weapons on Canadian nuclear delivery systems.

This fact raises an interesting question: Is it possible and useful to harmonize the participation of all non-nuclear member states in the implementation of NATO's nuclear strategy? The possibility emerges because one argument, made at the time when nuclear sharing was created, is no longer valid: The capacity to provide launcher systems for the use of nuclear weapons is no longer a prerequisite for full participation in nuclear

consultations and decision-making. If this old argument was still true, NATO's assurance to its new members that their renunciation of any technical nuclear capability does not imply a second rate status, would be simply untrue.

Another argument for changing NATO's nuclear policy is that there are no compelling security reasons anymore for the need of non-nuclear states to have a capability to use nuclear weapons in times of war. The credibility of deterrence is not dependent on such a capability. With the Cold War over, the Western world has reached such a degree of security over the past decade that a serious and comprehensive military and especially nuclear threat does no longer exist. NATO began to take this development into account by significantly reducing the number of nuclear warheads deployed in Europe. Those weapons remaining primarily serve the purpose of maintaining the capability of the non-nuclear European states to use nuclear weapons in times of war. The associated costs for both, the U.S. Air Force providing the weapons and for the European Air Forces, providing the delivery systems, are extraordinarily high. New risks resulting from either terrorism or proliferation are much different from traditional Cold War threats. However, given the enormous conventional superiority of NATO as well as the continued reliance on strategic nuclear weapons for deterrence purposes, it is very difficult to imagine what a non-nuclear nation's capability to employ nuclear weapons could add to the credibility of the Alliance's deterrent.

Thus the question remains whether this capacity is still required to ensure a fair sharing of the roles, risks and responsibilities among NATO members in nuclear policy. During the Cold War this connection was considered important in order to avoid a situation in which nuclear-armed U.S. ground forces would have to fight alongside non-nuclear European forces. Fears that this might happen and invite attacks primarily on the non-nuclear armed European forces contributed to the decision to couple European consultation rights under nuclear sharing with some nation's technical capability to employ nuclear weapons in times of war.

Again, the situation changed considerably after the end of the Cold War. All armies in Europe and North America since have been completely de-nuclearised. This raises the question whether under the present, very different conditions a fair distribution of roles, risks, and responsibilities remains guaranteed, and whether the capability of a few non-nuclear NATO members to use nuclear weapons in times of war is an indispensable precondition for the European nations to assume their fair share. Traditionally, the debate within NATO is centering around the question of whether the European members are sufficiently participating in the roles, risks and responsibilities.

Undoubtedly, U.S. forces in Europe and the forces of the European NATO members are militarily more threatened than the territory of the United States or Canada. This applies to conventional threats as well as to potential risks resulting from the proliferation of weapons of mass destruction. Yet it applies only to a limited extent to risks emanating from asymmetric warfare undertaken by state or terrorist forces.[3] The risks attached to the provision of bases for dual-capable aircraft (including U.S. aircraft, possibly operating outside NATO's authority) remain with the European side. Therefore, the non-nuclear European NATO members states are incurring rather a greater than a smaller risk, but at least their fair share in the risk. They assume their fair share of responsibility by politically supporting the NATO-strategy of nuclear deterrence, and by participating in the formulation and implementation of NATO's nuclear strategy jointly with the nuclear states in the Nuclear Planning Group. With regard to their nuclear role, the non-nuclear states are not (and have never been) in a position to provide an equal "share". Given their status and obligations

under the Non-Proliferation-Treaty, this is simply not possible, hence clearly illegal. Accordingly, the U.S. never recommended that non-nuclear European NATO members assume a greater role than agreed under the nuclear sharing arrangements. Yet European deficiencies are being criticized by the U.S. solely in the conventional area. This opens an interesting opportunity: If the European states capable of providing nuclear capable delivery aircraft renounce this capability, they could offer dozens of additional aircraft for NATO's conventional operations. At the same time their capacity to participate in potential nuclear operations remains. Meanwhile NATO considers the provision of infrastructure, air space, logistics, and aircraft for electronic surveillance or escort fighter aircraft as legitimate forms of participation within such an operation.

Finally, another traditionally important argument in support of NATO nuclear sharing has to be challenged: It links the deployment of U.S. troops to the presence of U.S. nuclear weapons. In short: "No nukes, no troops". The idea to withdraw U.S. substrategic nuclear weapons from Europe would also call into question the presence of U.S. troops. Yet again the argument has lost its validity. It is only in Europe that the U.S. are still basing both troops and nuclear weapons. While only troops are deployed in both Japan and South Korea, there are no longer any nuclear weapons. Nothing ever transpired during the Gulf War that the U.S. urged or convinced Saudi Arabia to agree to the deployment of nuclear weapons on its soil to make possible the deployment of U.S. troops to fight Iraq. In other words, the presence of U.S. troops does not depend on the simultaneous presence of nuclear weapons.

Consequently, the non-nuclear allies in NATO could abandon their nuclear weapons employment capability and continue to participate in nuclear planning and consultation of the alliance without being afraid to

- lose influence over NATO nuclear policy or
- be held responsible for an insufficient assumption of roles, risks and responsibilities[4] or
- inevitably provoke a discussion about the withdrawal of U.S. troops from Europe.

Such a step would lead to a harmonization of the European non-nuclear states' participation in NATO's nuclear strategy. At the same time it would signal that these non-nuclear states continue to bear political responsibility for the concept of nuclear deterrence and to represent their nuclear weapons-related interests in the Nuclear Planning Group. They thereby would increase the internal coherence of the Alliance and its political capacity to act. In the longer term the non-nuclear members might become aware of their common interests with respect to NATO's nuclear policy and thus could prepare joint positions on the future role of nuclear weapons within the Alliance. Concerns by new member states about being sufficiently involved in NATO's nuclear policy would prove to be superfluous, as would any endeavors on their part to increase their status through the purchase of nuclear-capable aircraft. There will be no inner circle of non-nuclear members left, that are more involved than others in the Alliance's nuclear policy. A crucial and burdensome factor in NATO-Russia relations will lose its relevance for the decisions about the future of NATO enlargement expected for the Alliance's Prague Summit in November 2002.

5. Creating an incentive for nuclear disarmament

The renunciation of the technical capability to employ nuclear weapons under NATO nuclear sharing could also prove a major contribution to nuclear disarmament. While the Bush administration is deeply skeptical about or even against entering new legally binding arms-control agreements limiting

U.S. flexibility to do whatever the administration decides to be favorable, the European NATO members have an ongoing interest in continued nuclear disarmament. European and U.S. interests meet, when it comes to eliminating thousands of tactical or sub-strategic nuclear warheads representing remnants of the Cold War. The majority of these weapons rests (and rusts) in Russia's arsenal. Western proliferation concerns often concentrate on these weapons. NATO's non-nuclear members can facilitate the necessary bilateral U.S.-Russian process of discussing reductions to these arsenals. In 1997 in Helsinki, Russia and the United States for the first time announced their intention to talk about further measures to reduce tactical nuclear systems, as well as verifiable nuclear warhead dismantling. Yet concrete and visible steps are still to be announced. While the Bush administration's proposal for a new strategic framework for cooperation with a no longer hostile Russia should ease a solution, U.S. reluctance to enter legally binding agreements makes such an endeavor more complicated at the same time.

If the non-nuclear NATO states declare their willingness to give up their capability to use nuclear weapons, the process of including tactical nuclear weapons into disarmament could be eased. Their move could open the option to withdraw most if not all remaining U.S. sub-strategic nuclear warheads from Europe and thus send a positive signal to Russia: Russia's long-standing demand to eliminate sub-strategic nuclear weapons that can reach Russian territory could be granted and thus, in turn, could entice Moscow to begin discussions about increased transparency on and mutual reductions of tactical nuclear weapons.

Despite their relatively small number, the tactical nuclear warheads still deployed in Europe do have a high symbolic value in this context. This would also apply to their withdrawal. To facilitate it will be a signal that European security after the end of the East-West conflict does no longer depend on the deployment of American nuclear weapons in Europe. This would be an important confidence-building measure and might open the perspective to de-nuclearize NATO-Russia relations.

In the past, the fact that important non-nuclear states in Europe have retained the ability to use American nuclear weapons in case of war, be it for political or status reasons, has been one of the principle political obstacles standing in the way of U.S.-Russian negotiations about reducing or eliminating tactical nuclear weapons. These non-nuclear states have thus made their peculiar contribution to prevent negotiations about a reduction or elimination of these weapons from occurring. Today they can similarly contribute, but in a positive fashion, to make possible such negotiations and facilitate a successful outcome. The precondition would be that these states, in recognizing the changed situation after the end of the Cold War, declare their political will to give up the technical aspects of nuclear sharing.

Indirectly this step would have even greater significance. It could be decisive for the final outcome of the next round of U.S.-Russian nuclear arms reductions. Will it contain only some further modest limits to strategic launch systems? In this case it would further reduce the number of operational nuclear weapons by a few thousand, yet it would not determine what happens with the nuclear warheads themselves. This is the character of the unilateral moves suggested by the Bush administration in the context of the Nuclear Posture Review. Or will future new agreements be more comprehensive and far-reaching? The possibility to include tactical nuclear weapons and verifiable warhead dismantling is not yet entirely foreclosed. It is up to the European non-nuclear NATO members to push this door open. In addition, progress has been made on developing warhead dismantling verification technologies. It should be technically possible to conduct non-intrusive verification based on surveying the warhead containers entering a

dismantling facility and the pit-containers leaving that facility.

Such a move could comprise thousands of additional nuclear warheads and include them in the process of dismantling. Since the economic situation is making it difficult for Russia to put a priority on financing expensive arms reduction measures, an offer of technical and financial support to accompany such a move would be appropriate. U.S. Senator Richard Lugar has made this suggestion for years. This could increase Russia's willingness to make its tactical arsenal transparent and to promote its reduction with Western support. It is exactly here that the non-nuclear states of NATO would act in their own best interest if they would contribute to such an offer.

Abandoning the technical aspects of nuclear sharing would not only have a positive impact on the nuclear arms reduction process, it would also strengthen the nuclear non-proliferation regime.

6. Strengthening non-proliferation

NATO's nuclear sharing arrangements have been a burden on the nuclear non-proliferation regime. This is true especially for the Non-Proliferation Treaty (NPT), the core part of the regime. For many years the non-aligned states have considered nuclear sharing as a violation of the NPT. During war times nuclear sharing would permit the use of nuclear weapons by states that have joined the NPT as non-nuclear states. This directly contradicts the obligations described in article II of the NPT, while the U.S. as nuclear state would violate Article I of the NPT. Aside from criticizing the lack of interest in speedy nuclear disarmament on the part of nuclear states, this argument about the possible violation of the NPT in times of war has recently become a continuously raised point of contention.[5]

The last review conference on the NPT was held in New York City in April 2000. More than one hundred states again criticized the nuclear sharing arrangements within NATO. NATO's member states were called upon to abandon nuclear sharing[6], in order to fully comply with their obligation under Articles I and II of the NPT. Nuclear sharing was criticized as a loophole to circumvent the restrictions of the NPT. The non-aligned states consider the transfer of control over nuclear weapons in case of war as a special case of proliferation, becoming visible for instance if U.S. nuclear weapons were flown to their targets by German Tornado pilots. They remind NATO that Articles I and II of the NPT permit no exceptions, and that the NPT is equally binding for all parties to the treaty in times of peace and war.[7] Both the U.S. and its NATO partners reject that interpretation and emphasize that nuclear sharing is legal under the NPT. They contend that during peacetime, the nuclear warheads remain strictly under U.S. control. According to their view, in case of war the NPT is no longer binding. There has never been a serious attempt to overcome these conflicting views.

NATO nuclear sharing undermines the credibility of the NPT. The doubts of the non-aligned states can only be put aside if one were to share the conviction of NATO that the cryptic formulations in additional interpretations which some NATO partners produced when signing the treaty, and which the U.S. stated in the national ratification process, can justify the lawfulness of nuclear sharing. In that case the NPT would be even more seriously weakened: The legality of the NPT ratification process could be called into question by many parties to the treaty, since they were unaware of these interpretations, their relevance, and their true meaning when they signed and ratified the NPT.[8]

It would mean a considerable strengthening of the NPT if the non-nuclear members of NATO were to take the initiative to remove these obstacles to the credibility of the NPT by renouncing their capability to use nuclear weapons in times of war. They could remove any doubts about their willingness to comply

with NPT regulations. The need to forge agreement among the NPT members about whether nuclear sharing constitutes breach of the treaty or not would disappear. Even more importantly, the credibility of the non-proliferation regime would be seriously strengthened at a time when many fear that the results of the U.S. Nuclear Posture Review will – in the mid to longer term – seriously weaken world-wide non-proliferation efforts by enhancing the likelihood of proliferation. As a case in point, members of the Bush administration have publicly discussed whether the U.S. should stick to its politically binding obligations under the Negative Security Assurances, which were both crucial and instrumental to obtaining the unconditional and unlimited extension of the NPT in 1995.

A non-proliferation regime with different rights and obligations cannot be stable in the longer term. Therefore a renunciation of the technical aspect of nuclear sharing presents an unequivocal signal that NATO member states recognize the universal validity of the NPT. Their voluntary renunciation would be a strong indication to all parties to the NPT that the role of nuclear weapons within NATO strategy is being reduced, not expanded.

7. NATO nuclear policy and international law

According to the legal opinion published by the International Court of Justice, the present operational plans for nuclear sharing violate international law. This 1996 decision not only categorizes any use of nuclear weapons as a grave violation of international law, it includes already the threat of nuclear strikes.[9] This ruling by the ICJ delegitimizes the nuclear policy of the past 50 years.

A renunciation of nuclear capability by the non-nuclear NATO states would contribute to making NATO regulations more congruent with international law. However, complete congruence would not yet be achieved.

The ICJ opinion is not a binding legal ruling regarding norms of international law. Rather the ICJ, according to the UN-Charter, is carefully evaluating on the basis of constitutional criteria what is compatible with international law and what is not. As an international organization, NATO cannot afford to dismiss these norms..

With regard to the political legitimacy, which is tied to legal norms, it is equally essential that nuclear sharing with non-nuclear NATO members is restricted to nuclear planning and consultations. This would make it easier for NATO to return to a policy of using nuclear weapons as a "means of last resort", as stated in London in 1990, in case the existence of one or more NATO members was threatened with physical annihilation.. This is the only situation in which the judges of the ICJ have not unanimously ruled the threat of using nuclear weapons to be illegal. To conclude that it would be legal, however, would contradict both the letter and the spirit of the ICJ ruling.

8. Final remarks

A final effect of the renunciation of the technical aspects to nuclear sharing by non-nuclear NATO members would be to create a homogeneous status for all non-nuclear NATO states. In the longer term this will lead them to jointly formulate common interests with regard to nuclear policy and to more effectively articulate and assert them. This applies to all aspects of nuclear policy, including arms control, disarmament and non-proliferation policy.

In addition, such a move would clarify the stand, taken by the European nations, towards their priorities. These are to be found in

- strengthening non-proliferation rather than counter-proliferation,
- reducing the role of nuclear weapons rather than adding new roles and responsibilities,

- actively safeguarding the arms-control acquis and
- acting constructively to further additional steps of nuclear disarmament.

NATO's ongoing review of the Alliance's nuclear posture will put the European resolve and credibility at a test. NATO's European non-nuclear members will have to position themselves, only weeks after the NPT-PrepCom ends.

Endnotes

[1] DoD/DoE, Nuclear Posture Review, Washington, Jan.8, 2001, p.44 (quoted from Excerpts from the Nuclear Posture Review, available at www.globalsecurity.org).

[2] Questions for the Record submitted by Senator Harkin to Secretary of State Albright, Senate Appropriations Committee, Washington DC, 21 October 1997; see also: Questions for the Record submitted by Senator Harkin to Secretary of Defense Cohen, Senate Appropriations Committee, Washington DC, 21 October 1997.

[3] This part of the argument was written in 2000.

[4] It remains possible that some political and military leaders in non-nuclear states, which have a capability to use nuclear weapons, will stick to that capability for principal reasons, citing an overarching political rationale or status reasons.

[5] For the arguments raised by the non-aligned states, especially their criticism of technical nuclear sharing, see Martin Butcher, Otfried Nassauer et al., Questions of Command and Control – NATO, Nuclear Sharing and the NPT, PENN Research Report 2000.1, Berlin/London/Washington March 2000.

[6] See Rebecca Johnson, NPT-Briefing No. 13, 15 May 2000.

[7] Statement of Ambassador Zahran before the Third Session of the PrepCom for the 2000 NPT Review Conference, New York, 12 May 1999.

[8] The U.S. interpretation of the NPT and its supposed compliance with technical nuclear sharing was relayed to the European allies in time before the negotiations. However, most the other participants and signatories only received this information 8 days after the treaty was opened for signature in July 1968. On the compatibility of NPT and technical nuclear sharing see: Martin Butcher, Otfried Nassauer et al., NATO Nuclear Sharing and the NPT, Questions to be Answered, PENN Research Note 97.1, Brussels/Berlin, June 1997, p.6f.

[9] For the text of the IJC legal opinion see IALANA (eds), Atomwaffen vor dem Internationalen Gerichtshof, Münster: LIT, 1997.

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