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Questions of Command and Control: *NATO, Nuclear Sharing and the NPT*

PROJECT ON EUROPEAN NUCLEAR NON-PROLIFERATION

British American Security Information Council (BASIC)
Berlin Information-centre for Transatlantic Security (BITS)

Questions of Command and Control: NATO, Nuclear Sharing and the NPT

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Acknowledgements

The authors would like to thank the many people who provided help of various kinds during the researching of this report. They include: Nicola Butler, for research, advice and writing help during the five years of this project; Christine Kucia, for proofing, editing and other advice; former BITS analysts Henrietta Wilson and Dr. Oliver Meier, for research assistance; Dr Georg Schoefbaenker and Stephen Young, for writing and research help at earlier phases of this project. Finally, those diplomats (serving and retired), necessarily anonymous, who have discussed this report and its conclusions with the authors at various stages in the research and writing process.

Much of the primary source research for this report was done by Tanya Padberg during her time at BASIC. Without her long work at the National Security Archive, much of the documentation on which this report is based would still not have come to light.

Support

This report was made possible with the generous support of the W. Alton Jones Foundation, the John D. and Catherine T. MacArthur Foundation, the Ploughshares Fund and the Joseph Rowntree Charitable Trust.

Published by the Project on European Nuclear Non-Proliferation (PENN), March 2000

ISBN: 3-933111-04-8

Price £7.00, \$10.00, DM 15,00

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Acronyms and Abbreviations

ACDA	Arms Control and Disarmament Agency
DoD	Department of Defense
ENDC	Eighteen Nation Disarmament Committee
MC	Military Committee
MLF	Multilateral Force
NAC	New Agenda Coalition
NAC	North Atlantic Council
NAM	Non-Aligned Movement
NCA	National Command Authority (US)
NATO	North Atlantic Treaty Organisation
NNWS	Non-Nuclear-Weapon States
NPG	Nuclear Planning Group
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSA	Negative Security Assurance
NWFZ	Nuclear Weapon Free Zone
ANWFZ	African Nuclear Weapon Free Zone
CENWFZ	Central European Nuclear Weapon Free Zone
NWS	Nuclear Weapon States
PDD	Presidential Decision Directive
PENN	Project on European Nuclear Non-Proliferation
PrepCom	Preparatory Committee
RevCon	Review Conference
SACEUR	Supreme Allied Commander Europe
START	Strategic Arms Reduction Treaty
UN	United Nations
WMD	Weapons of Mass Destruction
WTO	Warsaw Treaty Organisation

Questions of Command and Control: NATO, Nuclear Sharing and the Non-Proliferation Treaty

“Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosives or 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 explosive devices, or control over such weapons or explosive devices”.

— Article I, Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

“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 explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other explosive devices”.

— Article II, Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

Recommendations

We have had some setbacks since the last review in 1995 – from the Indian and Pakistani nuclear tests to continued Iraqi defiance of the UN Security Council and aggressive procurement efforts by some determined proliferators. On the other hand, we have made clear progress in helping to keep the ex-Soviet stockpile under control, in implementing modern systems of export controls, in freezing North Korean plutonium production, in strengthening compliance mechanisms, in establishing additional regional nonproliferation arrangements and in expanding adherence to the treaty. We have also made steady progress toward the ultimate goal of eliminating nuclear weapons.

— *Madeleine Albright*, International Herald Tribune, 7 March 2000

The problem is them, not us. This has been the Western approach for almost the whole time that the nuclear Non-Proliferation Treaty (NPT) has existed. The problem is us, too. This is one of the main conclusions drawn in this report. Us, the nuclear weapon states and us, the Western countries allied with nuclear weapon states in NATO. It is far from clear that NATO's nuclear and non-nuclear members are in full compliance with their commitments under Articles I and II of the NPT, which they at the same time perceive as the cornerstone of the nuclear non-proliferation regime.

NATO's nuclear sharing arrangements might well violate the spirit, if not the letter, of the NPT. NATO's forthcoming new military strategy might not only prolong, but even increase, the likelihood that NATO might *de facto* violate the NPT by actually using nuclear weapons under the Alliance's nuclear sharing arrangements. NATO, nuclear sharing and the NPT – this a clear case for command and control.

This Research Report recommends:

- NATO should agree to withdraw US sub-strategic nuclear weapons from Europe e.g. in the context of making them part of a future treaty on nuclear disar-

mament, such as START III. In so doing, in addition all nuclear weapons would be finally removed to the territory of the country owning them.

- NATO's non-nuclear members should agree to give up the technical capability to use US nuclear weapons in times of war. This would make a strong contribution to safeguarding and strengthening the NPT, but not eliminate NATO consultations on nuclear weapon issues. Thus all non-nuclear members of NATO would contribute to NATO's sharing risks roles and responsibilities in the same way.
- NATO should introduce or agree to a statement by the NPT Review Conference to the effect that the Treaty would be binding to all State parties "under any circumstances".

A combination of these steps could resolve existing doubts over the legality of NATO nuclear sharing under the NPT.

However, if NATO intends to continue the practice of nuclear sharing, the onus is on NATO member states to first, demonstrate that these arrangements are in compliance with the NPT; and second, convince other NPT parties to develop a consensus to this effect.

NATO members, as a prerequisite for such a discussion should therefore publish and disseminate to all NPT parties:

- a clear definition and description of its understanding of the circumstances under which the NPT is no longer controlling.
- all relevant documents governing NATO nuclear sharing, such as intra-alliance bilateral and multilateral agreements, alliance guidelines for consultations on nuclear issues, relevant alliance politico-military and military strategy documents as well as all other documents and records of Military Committee or NAC decisions that might be relevant to understand NATO nuclear sharing arrangements.

The documentation should give:

- a clear picture of what is shared and by which procedures.
- a concise description of all consultation and decision-making procedures and authorities involved in nuclear sharing arrangements.
- complete documentation of all attempts by NATO member states, individually or collectively, to communicate the US and NATO interpretation of the NPT on nuclear sharing to other NPT parties.

This Research Report also recommends that NPT parties undertake intensive discussions at the 2000 NPT Review Conference to resolve the problem of NATO compliance with NPT articles I and II. The aim of such talks would be to reach agreement by consensus at the 2000 NPT Review Conference.

The 2000 NPT Review Conference should give serious consideration to proposals that call for the adoption of a joint interpretation stating that the NPT is binding during war and peace and that no exceptions to this rule will be construed.

Concerning NATO military strategy developments this research note concludes:

- It would be in the best interest of the NPT, and in the security interests of all NATO members, for NATO ministers to move slowly. Indeed, they would be wise to reject MC400/2 if it includes any widening in the role of nuclear weapons, and especially if it includes the potential for use of nuclear weapons in counter-proliferation missions.
- At minimum NATO should to delay political approval of MC400/2 until after the NATO arms control, disarmament and non-proliferation policy review has come to a conclusion; NATO's military strategy should take full advantage of the arms control and disarmament options developed under this review. On the other hand, NATO's military strategy should not be used to limit the scope or the results of the arms control policy review.
- In the interests of transparency, and of the preservation of the NPT, NATO should make public its MC400 series of documents, including MC400/2, as previous core military strategy documents such as the MC14 or MC48 series of documents have now been made public. There is no reason to object to such transparency if nothing objectionable or controversial is contained in the MC400 documents.

Executive Summary

More than 100 nations including South Africa, Egypt and the entire Non-Aligned Movement, have consistently expressed concern that members of NATO, especially Belgium, Germany, Greece, Italy, the Netherlands and Turkey, as well as the United States, are themselves nuclear proliferators, acting against the intent and even the letter of the nuclear Non-Proliferation Treaty.

These concerns arise because, under NATO nuclear sharing arrangements, European non-nuclear-weapon states (NNWS) could be given wartime access to some of the 180 American-owned and controlled nuclear free-fall bombs stored in Europe. In fact, pilots from these NNWS states are already trained to fly nuclear missions and their aircraft are equipped to allow them to do so.

All of this is done in the name of NATO's nuclear sharing arrangements. NATO recently reaffirmed this policy at its April 1999 Summit in Washington, when the Alliance stated that: "A credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require widespread participation by European Allies".

At the 1997 Non-Proliferation Treaty (NPT) PrepCom diplomats were, for the first time, presented with historical evidence concerning nuclear sharing in the PENN publication, *NATO Nuclear Sharing and the NPT – Questions to be Answered*. This report used declassified US documents to demonstrate to NPT members why NATO needed to be questioned over possible breaches of Articles I and II of the NPT, and why further clarification was necessary as to whether NATO nuclear sharing should be considered legal or illegal under the NPT.

[See Section 1.2, "The 1997 PrepCom"]

NATO's sharing arrangements for nuclear war in Europe seem anachronistic in today's world. It is hard to imagine an American president ever agreeing to hand a nuclear weapon over to a Belgian or other

European fighter pilot. Nevertheless, NATO countries agree that these arrangements are indispensable. Thus, one concrete result of these arrangements is their impact on the position of NATO's NNWS when it comes to nuclear arms control and disarmament. Non-nuclear European NATO countries fail to support disarmament initiatives in the UN or other fora, such as the NPT.

From the point of view of many states party to the NPT, the NATO arrangements constitute *de facto* – and are also possibly *de jure* – violations of the Treaty.

However, the US and NATO refute this. Secretary of State Madeleine Albright said that the participation by NATO NNWS in the activities of the Nuclear Planning Group:

[I]n no way contravenes Article I of the NPT. This question of NPT Article I and its impact on NATO nuclear forces was debated at length during the negotiation of the NPT. All concerned accepted that the final language of Article I would not preclude the type of nuclear planning, basing, and consultative arrangements that have taken place in NATO since NPT entry-into-force in 1970.

[See Section 1.5, "US Rejection of Any Impropriety by NATO"]

The legal status of the nuclear sharing arrangements depends on whether NPT states accept the US's legal view of how these arrangements are compatible with the Treaty.

NATO members argue that nuclear sharing is in compliance with Articles I and II of the NPT on the basis of an interpretation that the NPT does not apply during "general war".

[See Section 2.5, "General War"]

However, both the argument that NATO's sharing arrangements were approved by NPT signatories in 1970,

and that ‘general war’ ends the validity of the NPT have been challenged by non-nuclear-weapon states. It is far from clear that most NPT signatories even knew of the NATO arrangements when signing the Treaty.

In February 1969, six months after the NPT signing ceremony, then Deputy Director of the US Arms Control and Disarmament Agency (ACDA), Adrian Fisher, told the Senate Foreign Relations Committee that the core document containing the US legal point of view on nuclear sharing, the *Questions and Answers* attached to a letter “were made available to key members of the ENDC [Eighteen Nation Disarmament Committee, which negotiated the NPT]. They have *now* been made available to all members of the UN [] There has been no indication of objections.” By depositing this statement in the US Senate records, it was assumed to be known by all NPT signatories. However, since even ‘key ENDC members’ appear to have been unaware of the details of nuclear sharing arrangements or the existence of Programs of Cooperation, the value of the Questions and Answers to them would have been limited. Others knew even less. It is likely, for example, that Ireland ratified the NPT on 1 July 1968, without any prior information on these US and NATO interpretations. The question that remains is whether states would have objected to signing the NPT had they been aware of the full implications of the US interpretation. Would the NPT be the globally accepted Treaty it is if all nations would have been fully aware of the US interpretations at the time they decided to join the NPT?

[See Section 2.3, “When Were UN Members Informed?”]

In 1999, rhetorical criticism of NATO policy was translated for the first time into action. Egypt formally proposed that the Preparatory Committee of the 2000 Non-Proliferation Treaty (NPT) Review Conference adopt an interpretation of the Treaty that would outlaw current NATO policies:

The delegation of Egypt proposes that the PrepCom recommend that the 2000 Review Conference state in clear and unambiguous terms that Articles I and II of the Treaty on the Non-Proliferation of Nuclear Weapons

allow for no exceptions and that the NPT is binding on State parties in times of peace and in times of war alike.

[See Section 1.4, “The 1999 PrepCom”]

The nuclear sharing arrangements that NATO now seeks to protect are controversial principally because they are clearly *de facto* proliferation in times of war. Under the US/NATO interpretation of the Treaty, Russia, with the acquiescence of Belarus, could re-introduce nuclear weapons on the territory of Belarus for wartime use by Belarussian armed forces; China could create nuclear sharing arrangements with North Korea, or Pakistan, not a member to the NPT, theoretically could do the same with Afghanistan, a non-nuclear member to the NPT. Simply put, NATO has established and continues to maintain a pattern it surely does not want others to emulate.

[See Section 2.4, “What Constitutes Control”]

These questions are coming increasingly to the fore because the US is pushing NATO to expand the role of nuclear weapons in Alliance policy. Nominally non-nuclear-weapon states in NATO could then become involved in nuclear war fighting missions against actual or possible possessors of all types of Weapons of Mass Destruction (WMD) who use, or threaten to use, them.

[See Section 3.0, “NATO Nuclear Doctrine After the Cold War: Changes in NATO Nuclear Strategy in 1999”]

According to US military doctrine, “the fundamental purpose of US nuclear forces is to deter the use of weapons of mass destruction” (nuclear, chemical, and biological) and their means of delivery by hostile governments and non-state actors. The objective is to enhance freedom of action for US and allied forces in out-of-area missions as well as to protect US and allied territories. The mission includes retaliatory strikes once opponents have used weapons of mass destruction. Moreover, it does not exclude preemptive offensive missions. This new strategy was adopted by the US in 1997, when President Clinton issued Presidential Decision Directive 60.

[See Section 3.2, “US Perspectives on NATO Nuclear Strategy”]

The key question is whether the NNWS NATO members who participate in nuclear sharing programs are prepared to accept this new US doctrine. If they do, and allow inclusion of this doctrine in NATO's new military strategy document, MC400/2, currently under development, they would declare their preparedness to use nuclear weapons in a regional conflict short of 'general war'. Nuclear weapons could be used against an opponent, who is a NNWS, but owns other types of WMD or just their means of delivery. In such a case, NATO's NNWS would be in clear and direct violation of the NPT. NATO sources have indicated to the authors that NATO's draft new military strategy, which is currently close to adoption, does not rule out this option.

[See Section 3.1, "Future Directions for NATO Strategy"]

NATO sources have also confirmed to the authors that NATO's new doctrine could bring the Alliance members into conflict with both the NPT and Negative Security Assurances given to NNWS. They are

aware that the Alliance's own arms control and disarmament review, currently underway, could be severely undermined or restricted by the new strategy. Furthermore, NATO's new military doctrine might be heavily criticized for the severe blow it would deal to the global non-proliferation regime. However, NATO might argue that strengthening uncertainty for proliferators about NATO's possible reactions in case of the use of weapons of mass destruction helps to effectively deter the use of WMD and thus increases stability. Now, it simply remains to be seen whether NATO will adopt a widened role for nuclear weapons in MC400/2, its core military strategy document due for approval during spring 2000.

[See Section 3.4, "Threats to the Nuclear Non-Proliferation Regime"]

The purpose of this report is to examine these questions, their implications for the Non-Proliferation Treaty, and to propose solutions to some of the problems they pose.

C H A P T E R O N E

**The Debate Over
Nuclear Sharing Since 1995**

“A credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require **widespread participation by European Allies involved in collective defence planning in nuclear roles**, in peacetime basing of nuclear forces on their territory **and in command, control and consultation arrangements**”. (Emphasis added)

— NATO Strategic Concept,
Paragraph 63, April 1999.

The international debate over NATO nuclear policy in general, and NATO nuclear sharing arrangements in particular, has built steadily since 1995. The non-proliferation implications of these arrangements have come to disturb more and more states party to the Non-Proliferation Treaty (NPT). Under NATO policy, the US presently deploys up to 180 nuclear weapons in Europe.¹ These weapons are intended for delivery by US aircraft, and by aircraft belonging to NATO members which are non-nuclear-weapon states (NNWS) during peacetime.²

At the same time, NATO members regard the NPT as the cornerstone of the non-proliferation regime.³ NATO states worked hard to achieve their goal of indefinite extension of the NPT in 1995. They continue to emphasize the importance of Treaty interpretations that do not allow loop-holes through which proliferation might take place amongst other states.

All NATO members are committed to exposing possible Treaty violations to international criticism and sanction. There is also growing support in NATO for decisive counter-action, including the possibility of offensive military counter-proliferation operations. NATO members clearly perceive a Treaty prohibiting nuclear proliferation to be in their national interests.

Criticism of NATO nuclear policy in general, and nuclear sharing in particular, has been growing since the 1995 Review and Extension Conference of the NPT. In papers and a research note, members of the Project on European Nuclear Non-Proliferation (PENN) have provided evidence that questions the compatibility of NATO nuclear sharing with the commitments NATO’s member states entered into under Articles I and II of the NPT. Evidence was made available in increasing detail as more declassified and other historical documentation emerged. This evidence was used in 1995, and at the three Preparatory Committees (PrepComs) for the 2000 Review Conference of the NPT (RevCon), to question the NATO policy.

1.1 Nuclear Sharing Debates from 1995 to 1999: International Concern Over Nuclear Proliferation in NATO

At the 1995 NPT Review and Extension Conference, several State parties raised serious concerns as to whether NATO nuclear sharing arrangements comply with Articles I and II of the Treaty. During the debate that ensued, NATO members proposed that the report of the Conference endorse NATO nuclear sharing arrangements. NATO members offered language stating that, “existing security arrangements are implemented in full compliance with Articles I and II of the treaty”, and that the “provisions of Articles I and II are fully compatible with the commitment undertaken by State parties in existing security arrangements.”⁴

Mexico recorded its reservations on the subject of nuclear sharing, asking for clarification from NATO nations about allegations in reports by Greenpeace and BASIC/CESD about NATO nuclear sharing. Both Belgium and Germany responded that they had not

¹ Otfried Nassauer, Oliver Meier, Nicola Butler, and Stephen Young, *US-NATO Nuclear Arsenals*, BASIC-BITS Research Note, February 1997, and Martin Butcher, Otfried Nassauer and Stephen Young, *Nuclear Futures: Western European Options For Risk Reduction*, BASIC Research Report 98.5, December 1998.

² For a more complete description of NATO nuclear sharing arrangements, see Section 2.0 below.

³ See, *inter alia*, *Final Communiqué of the Ministerial Meeting of the North Atlantic Council*, NATO, Brussels, 8 December 1998, M-NAC-2(98)140.

⁴ NPT/CONF.1995/MC.I/1,9qua.

breached the NPT and that the allegations were groundless.⁵ Nonetheless, the Non-Aligned Movement⁶ later took up the Mexican concerns in language which was included in the draft report from Main Committee I. The draft stated that:

5. The Conference acknowledges the declarations by the nuclear-weapon States that they have fulfilled their obligations under Article I, [with exceptions noted by the international community. The Conference underscores the need for nuclear-weapon States to remain in full compliance with the letter and spirit of Article I...]⁷

Many other non-NATO countries took a different perspective from NATO nations, proposing that the Conference note that “among State parties there are various interpretations of the implementation of certain aspects of Articles I and II which need clarification”.⁸ Another proposal was for language expressing “grave concern” about NATO nuclear sharing and the Conference being “convinced that such acts run counter to the spirit and letter of the Treaty”.⁹ Seven out of eight draft proposals for language highlighted the fact that there is no joint interpretation of Articles I and II. These proposals either called for clarification and additional information or more generally reminded all State parties to ensure that they live up to their commitments under Articles I and II.

The Conference was unable to agree a text and the report of Main Committee was never accepted by the Conference as whole. Indeed, the Conference was never able to agree a review document, in part because of disagreements between NNWS and nuclear-weapon states (NWS) on Article I and Article II questions.

1.2 The 1997 PrepCom: NATO Expansion Prompts Concerns Over Nuclear Strategy

The 1995 debate on nuclear sharing was short and no agreement was reached. NATO members hoped the question would simply not be raised again. However, the compatibility of NATO nuclear sharing with Articles I and II of the NPT caused serious debate at the 1997 PrepCom. PENN members presented diplomats with a memorandum containing a series of questions on NATO nuclear sharing, which was the basis for the debate that took place at the PrepCom.

Furthermore, NATO expansion prompted general concern about the NPT and NATO nuclear policies and strategy. Belarus, China and Russia objected to NATO enlargement. Belarus proposed a nuclear-weapon-free zone in Central and Eastern Europe.¹⁰ China and Russia suggested that states with nuclear weapons deployed outside their borders should withdraw all these weapons to their own territory.¹¹

South Africa was even more explicit. South African representatives expressed concern “about the non-proliferation implications of the plans for the expansion of NATO.... The planned expansion of NATO would entail an increase in the number of non-nuclear-weapon States which participate in nuclear training, planning decision-making and which have an element of nuclear deterrence in their defence policies.”¹²

In 1997, the prospect of the admittance of the Czech Republic, Hungary and Poland to NATO and a resulting increase in the number of countries eligible to participate in NATO nuclear sharing and nuclear policy planning worried some NNWS. This concern made the question of NPT compliance more relevant, despite assurances that NATO does not intend to

⁵ Contemporaneous Notes taken by BASIC staff during the Third Session, Main Committee I, 21 April 1995.

⁶ The Non-Aligned Movement is a group of some 110 nations, mostly from the developing world, who defined themselves as non-aligned during the Cold War, being part neither of the Western nor Soviet blocs.

⁷ NPT/CONF.1995/MC.I, *op. cit.*

⁸ NPT/CONF.1995/MC.I/1,9

⁹ NPT/CONF.1995/MC.I/1,9bis.

¹⁰ NPT/CONF.2000/PC.I/1,9. See also Rebecca Johnson, “Substantive Debate Concludes”. 1997 NPT Briefing 5, *Disarmament Intelligence Review*, April 1997.

¹¹ NPT/CONF.2000/PC.I/32, pp. 81 and 95.

¹² “Statement by the Permanent Representative of South Africa, Ambassador K. J. Jele, to the First Preparatory Committee Meeting for the Year 2000 Review Conference of the Treaty On The Non-Proliferation of Nuclear Weapons”, 8 April 1997, New York.

deploy nuclear weapons in the territory of new member states.¹³

NATO's strategy, last revised at the Washington Summit in April 1999, requires the widespread participation of NNWS members in nuclear sharing during peacetime, crisis and war. It still requires several NNWS members to be prepared to take control of US nuclear warheads in time of war.

In addition to repeatedly stating that it does not intend to station nuclear weapons on new members' territory, NATO clarified in the NATO-Russia Founding Act that it will not construct new nuclear storage facilities in these countries. In the Founding Act, NATO members reiterated the "three no's" in which they have "no intention, no plan and no reason to deploy nuclear weapons on the territory of new members".¹⁴ This agreement, however, is not legally binding. The US Administration points out that: "NATO retains its right to modify its nuclear posture or policy should circumstances warrant".¹⁵

The Czechs, Hungarians and Poles have now joined the NATO Nuclear Planning Group and its subordinate bodies and participate in nuclear consultation during exercises and crisis.

The 1997 PrepCom ended without any agreement on proposals on substantive issues that could be passed on to the 1998 PrepCom or the 2000 RevCon.

1.3. The 1998 PrepCom: First Proposals Tabled to End Nuclear Sharing

The debate in 1997 was carried over and deepened at the 1998 PrepCom meeting. The PENN publication,

NATO Nuclear Sharing and the NPT – Questions to be Answered, presented historical evidence concerning nuclear sharing to diplomats for the first time. This report used declassified US documents to show why NATO needed to be questioned over possible breaches of Articles I and II of the NPT, and why further clarification was necessary as to whether NATO nuclear sharing should be considered legal or illegal under the NPT. Several countries used this information to question the practice of nuclear sharing and make proposals to reconcile NATO nuclear sharing with NPT Articles I and II. For example, the 113-member Non-Aligned Movement (NAM) proposed that the PrepCom agree to the following:

The States Parties agree that the strict observance of the terms of Article I remains central to achieving the shared objectives of preventing under any circumstances further proliferation of nuclear weapons and preserving the Treaty's vital contribution to peace and security.¹⁶

The working paper called on NWS parties to the NPT to "reaffirm their commitments to the fullest implementation" of Articles I and II, and

to refrain from nuclear sharing with nuclear-weapons States, non nuclear-weapon States, and States not party to the Treaty for military purposes *under any kind of security arrangements*.¹⁷ (Emphasis added)

Criticism also came from Egypt. While "certain interpretations of the NPT... would have the Treaty apply only in times of peace," Egypt called for the 2000 Review Conference to clearly state that there should be no

¹³ Hungary, Poland, and the Czech Republic were formally admitted as NATO members on 12 March 1999.

¹⁴ NATO/Russia, "Founding Act on Mutual Relations, Cooperation and Security between the North Atlantic Treaty Organization and the Russian Federation", Paris, 27 May 1997, p.8.

¹⁵ "Question for the Record Submitted by Senator Harkin to Secretary Albright", Senate Appropriations Committee, Washington, 21 October 1997. See also, "Questions for the Record Submit-

ted by Senator Harkin to Secretary of Defense Cohen", Senate Appropriations Committee, Washington, 21 October 1997.

¹⁶ Working Paper Presented by the Members of the Movement of the Non-Aligned Countries, Parties to the Treaty, 1998 Preparatory Committee for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, 28 April 1998.

¹⁷ *Ibid.*

exceptions allowed to Articles I and II, and that the NPT is legally binding under all circumstances.¹⁸ The contrast with NATO positions was sharp. As these illustrations demonstrate, there is a clear need to reconcile NPT obligations with NATO nuclear sharing.

As in 1997, the 1998 PrepCom ended without agreement on Article I and II issues, or indeed any substantive questions.

1.4 The 1999 PrepCom: NATO Nuclear Sharing Under the Microscope

From the opening day of the 1999 PrepCom, representatives of NATO nations felt themselves under pressure. Challenging the basis of NATO nuclear sharing, the Non-Aligned Movement (NAM) for the second year in a row submitted a Working Paper, which contained proposals for review document language on Article I and II identical to the previous year.

Algeria, backing the NAM position, strongly criticized “[T]he very recent adoption of the [NATO] Strategic Concept which reaffirms the essential importance of nuclear weapons in security and the preservation of peace, contradicting by word and deed the hopes cherished by many countries”.¹⁹ Mongolia warned that the Alliance’s new Strategic Concept could provoke other nuclear weapon states to adopt similar policies while NNWS might question the utility of the NPT.

The New Agenda Coalition (NAC) for the first time joined the criticism of NATO and nuclear sharing. In their statement to the general debate, they criticized lack of progress to disarmament and the fact that “.. the continued possession of nuclear weapons has been rationalised. Nuclear doctrines have been reaffirmed”.²⁰ The NAC further emphasized that any loophole in

Treaty interpretation that might allow for nuclear sharing must be closed, stating that “it must be stressed that all the articles of the NPT are binding on all States Parties and at all times and in all circumstances”.²¹

In 1999, rhetorical criticism of NATO policy was translated for the first time into action. Egypt formally proposed that the Preparatory Committee of the 2000 Non-Proliferation Treaty (NPT) Review Conference adopt an interpretation of the Treaty that would outlaw current NATO practices and possible future European Union nuclear weapons cooperation. Referring to Articles I and II of the NPT, which prohibit the transfer of nuclear weapons from nuclear weapon states to non-nuclear-weapon states, Egypt emphasized that:

Neither Article I nor Article II suffer any exceptions.

Notwithstanding the clear and unambiguous nature of Articles I & II of the NPT, NATO’s so-called ‘Nuclear Sharing’ arrangements and its concepts regarding nuclear deterrence, as reflected in its latest declaration on the occasion of its fiftieth anniversary, raise significant doubts over the extent of compliance of some NATO members with the provisions of both of these Articles and the extent of conformity and compatibility of commitments undertaken by participants in such arrangements with the provisions of the NPT.

Furthermore, Egypt is concerned about proposals for a Europeanized nuclear force based on the policy of ‘concerted deterrence’. These questions need to be addressed by these nuclear and non-nuclear-weapon States.

¹⁸ Statement by Dr. Mahmoud Karem at the 1998 Preparatory Committee for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons, cited in Rebecca Johnson, “Reviewing the NPT: Problems and Processes”. Acronym Report #12, September 1998.

¹⁹ Statement by Ambassador Baali of Algeria to the Third Session of the Preparatory Committee for the 2000 Review Conference

of the Treaty on the Non-Proliferation of Nuclear Weapons, 12 May 1999.

²⁰ *New Agenda Statement*, para. 11, Ambassador Luiz Tupy Caldas de Moura of Brazil, 12 May 1999

²¹ *New Agenda Statement*, para. 13, Ambassador Luiz Tupy Caldas de Moura of Brazil, 12 May 1999.

*The delegation of Egypt proposes that the PrepCom recommend that the 2000 Review Conference state in clear and unambiguous terms that Articles I and II of the Treaty on the Non-Proliferation of Nuclear Weapons allow for no exceptions and that the NPT is binding on States Parties in times of peace and in times of war alike.*²²

Egypt's intimate involvement in the negotiations that created the NPT in the 1960's gives particular weight to its concerns today. South Africa also made a statement criticizing NATO policies and the revised Strategic Concept adopted at the 1999 NATO Summit in Washington. This recalled their earlier concerns "placed on record at the previous two PrepComs about the non-proliferation implications of an expanded NATO [] in the light of the outcome of the Washington Summit which has, for the time being, left the policy of nuclear sharing unchanged".²³

The Chair carried these concerns into the two draft working papers he presented to PrepCom participants. The first stated that

7. Reaffirmation by non-nuclear-weapon States Parties to the Treaty, of their commitments to the fullest implementation of Article II and to refrain from nuclear sharing with nuclear-weapon States, non-nuclear-weapon States, and States not party to the Treaty for military purposes under any kind of security arrangements.²⁴

The Chair's second draft statement included a paragraph which reads

8. Affirmation that all the articles of the Treaty on the Non-Proliferation of Nuclear Weapons are binding on all States Parties and at all times and in all circumstances.

The 1999 PrepCom ended in acrimony, barely avoiding complete failure. In part, this was because NATO members could not bring themselves to accept any criticism of their policies and practices. In the end, participants were only able to agree the minimum of procedural points necessary to allow the 2000 Review Conference to take place.

However, concern in the NPT process over nuclear sharing spilled over in 1999 into the United Nations. The New Agenda resolution, which passed the First Committee and then General Assembly, includes as one of its points the phrase, "Stressing that each article of the NPT is binding on the respective States Parties at all times and in all circumstances", a clear reference to the debate over nuclear sharing.²⁵

1.5 The US Rejection of Any Impropriety by NATO in Relation to the NPT

The debate over nuclear sharing in the NPT forum, together with proliferation concerns over NATO expansion, has forced alliance members and the US in particular into a defensive position. US government members have been obliged to answer criticism that they are promoting proliferation through NATO policy.

Some NNWS have argued that by tying new member states into nuclear planning and deterrence, NATO is engaging in a form of nuclear proliferation.²⁶ US Sec-

²² Statement by Ambassador Zahran, before the Third Session of the PrepCom for the 2000 NPT Review Conference, New York, 12 May 1999.

²³ Statement by the Republic of South Africa at the 1999 Meeting of the Preparatory Committee for the 2000 nuclear Non-Proliferation Treaty Review Conference on Cluster I Issues, New York, 12 May 1999.

²⁴ *Chairman's Working Paper*, Third Session of the Preparatory Committee for the 2000 Review Conference of the Parties to the

Treaty on the Non-Proliferation of Nuclear Weapons, 14 May 1999.

²⁵ Resolution 54/54G, *Towards a Nuclear-Weapon Free World: The Need for a New Agenda*, 1 December 1999.

²⁶ "Questions for the Record Submitted by Senator Harkin to Secretary of Defense Cohen", Senate Appropriations Committee, Washington, 21 October 1997. See also, "Statement by the Permanent Representative of South Africa, Ambassador K.J. Jele", *op cit*.

retary of Defense William Cohen responded to these criticisms by saying that “there are no ‘Non-Proliferation Treaty problems associated with NATO expansion.’”²⁷ He went on to note that since the new members are all signatories to the NPT, attempts by these states to receive, manufacture or otherwise acquire nuclear weapons, “would break their commitment to the NPT, whether they were in NATO or not”.²⁸

In response to the same question, US Secretary of State Madeleine Albright said that the participation by NATO NNWS in the activities of the Nuclear Planning Group:

[I]n no way contravenes Article I of the NPT. This question of NPT Article I and its impact on NATO nuclear forces was debated at length during the negotiation of the NPT. All concerned accepted that the final language of Article I would not preclude the type

of nuclear planning, basing, and consultative arrangements that have taken place in NATO since NPT entry-into-force in 1970.²⁹

However, at the time of signing the NPT, non-NATO signatories were not made aware of the US interpretation (shared by NATO allies) preserving the Alliance’s nuclear sharing arrangements and stating that the NPT would not be controlling in time of war; neither were they made aware of what exactly constitutes nuclear sharing. For example, diplomatic sources have revealed that Sweden signed the NPT in 1968 with the assumption that other European powers would also relinquish their programs for acquiring nuclear weapons.³⁰ However, the US interpretation that in wartime NATO allies could become nuclear-weapon powers contravened Sweden’s (and probably other nations’) basic reason for signing.³¹

²⁷ “Questions for the Record Submitted by Senator Harkin to Secretary of Defense Cohen”, *op. cit.*

²⁸ *Ibid.*

²⁹ “Questions for the Record Submitted by Senator Harkin to Secretary of State Albright”, *op. cit.*

³⁰ Jan Prawitz, communications with the authors, 20 February 1999. Mr. Prawitz was a member of the Swedish delegation to the 1985 NPT Conference.

³¹ This argument is elaborated upon in section 2 below.

C H A P T E R T W O

**NATO Nuclear Sharing:
What it is, and How it Came About**

The debate in the NPT over nuclear sharing makes a detailed understanding of the nature of NATO's nuclear sharing arrangements essential.

2.1 Nuclear Sharing or Proliferation?

During the late 1950's and the early 1960's, intense discussions were held within NATO on what form of nuclear sharing to establish within the Alliance. Some European allies – Germany among them – pressed the US to allow them some kind of participation in nuclear planning, decision-making, and command and control, since they wanted a minimum of a strong say in decisions that could put the very existence of their nations at stake. However, the declared NWS wanted to limit access to nuclear weapons by other parties. As a compromise, the system of “nuclear sharing” was established in NATO in the mid-1960s, and its basic functions have remained unchanged ever since.

As early as 1964, a once top-secret description of US policy outlined the consequence of deploying nuclear weapons on aircraft owned by non-nuclear members of NATO. It read: “As a result of NATO's commitment to the nuclear mode of defence, the non-nuclear NATO partners in effect become nuclear powers in time of war”.³²

The Nuclear Planning Group (NPG) was formed in 1966 to allow European NATO allies participation in nuclear decision-making as well as in discussions about the Alliance's nuclear policy and doctrine. The NPG's “Political Principles”, last updated in 1992, contain guidelines for nuclear planning, selective use of nuclear weapons and major nuclear response, consultations, and considerations for the employment of nuclear weapons.³³

European NATO members were given a political role in decisions on the use of nuclear forces under NATO

command. However, they could not order their use. The US National Command Authority (NCA) retains the launch codes for use of US weapons in Europe and elsewhere. Thus the US NCA has ‘positive control’ over all these weapons: they cannot be armed without a US presidential decision.

In peacetime, all US weapons strictly remain under custody of US forces. However, in 1969, then Chairman of the Joint Chiefs of Staff General Earle G. Wheeler told the Senate Armed Services Committee that: “All [nuclear] weapons in NATO with the exception, of course, of those possessed by the British, are under our custody and control at all times, and will remain so until there is a war, at which time *the President can authorize the release of these weapons to our allies*”.³⁴ (Emphasis added) In other words, once the President has given the order to use nuclear weapons, control over some US nuclear weapons can be handed over to non-nuclear NATO allies. After the order has been given and the aircraft has taken off with one (or more) armed weapon(s) on board, the weapon is no longer under national US command and control. Instead, the allied pilot now has full control over the weapon (or weapons) and has sole responsibility for delivering the weapon to its (predetermined) target. This is a form of nuclear proliferation, if under very special circumstances. Through the nuclear sharing arrangements, allied pilots are fully trained for nuclear missions, while training with dummy nuclear warheads during peacetime.

2.2 Would Such a Step Violate the NPT?

“The treaty deals only with what is prohibited, not with what is permitted”.³⁵

The “release” of US nuclear weapons to NATO allies would appear to be inconsistent with Articles I and II of the NPT. However, NATO members continue to argue that their nuclear sharing arrangements are fully

³² Charles E. Johnson, “U.S. Policies on Nuclear Weapons”, Washington, 12 December 1964, partially declassified in 1991 (Lyndon B. Johnson Library).

³³ Martin Butcher *et al. op. cit.*, p.33.

³⁴ “Military Implications of the Treaty on the Non-Proliferation of Nuclear

Weapons”, Hearing before the US Senate Armed Services Committee, 91-2, 27 and 28 February 1969, p.23.

³⁵ “Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together With Answers Given by the United States”, cited in: NPT Hearings, US Senate, 90-2, p.262.

compatible with the Treaty. In fact, the argument about whether NATO nuclear sharing arrangements are compatible with the NPT dates back to the negotiation of the Treaty itself.

The question of NATO nuclear sharing arrangements was at the center of US-Soviet negotiations on Articles I and II of the NPT. Originally, the US State Department discussed the creation of a Multilateral Force (MLF) which would have involved some type of “joint ownership, manning, and command of a NATO strategic force”.³⁶ The Soviets strongly opposed the MLF, but were quiet on the question of nuclear sharing arrangements. It seems likely that there are two reasons for this. First, the US threatened to give up negotiating a NPT if the Soviet Union objected to nuclear sharing. And second, although the Soviets could not foresee circumstances in which they would wish to create a Warsaw Treaty Organisation (WTO) MLF, the NATO nuclear sharing precedent might, if necessary, have proved useful for the Soviets in the WTO context, as it made possible similar arrangements within the WTO.

It is likely that the widespread objections to the MLF and to nuclear sharing arrangements in general led the US and its allies to observe very tight secrecy when it came to the details of NATO’s sharing arrangements. In some cases, NATO allies were even forbidden to discuss these arrangements amongst themselves; only bilateral discussions with US authorities were permitted.³⁷

In May 1966, President Lyndon Johnson was reported to have instructed the State and Defense Departments “to seek new forms for nuclear coordination within NATO that might be less objectionable to the Soviets than an MLF”.³⁸ The compromise language for

Articles I and II which was eventually agreed was intended by the US to close the option of an MLF or any multilateral nuclear-weapons entity, but not to preclude the existing NATO sharing arrangements, including the newly formed NPG.

During the negotiations, the US informed the Soviet Union that a Treaty interpretation, indicating that allied consultation and “two-key” arrangements would not be barred, was essential for its allies. The Soviets were told that an interpretation to this effect would be made public during Senate hearings on the Treaty. They were told that if they publicly disagreed with this interpretation, the US would have to reconsider its position of support for the Treaty.³⁹

The background of US opinions of Articles I and II were forwarded to Secretary of Defense Clark Clifford prior to the NPG meeting at The Hague on 18-19 April 1968. Under Secretary of State Nicholas Katzenbach wrote: “I believe you should be familiar with the US interpretations of Articles I and II of the Non-Proliferation Treaty regarding alliance arrangements for nuclear defense. The FRG [Federal Republic of Germany] has requested in particular that we make it clear that the realization of the NPT will not affect the work of the NPG”.⁴⁰ In other words, the US and its NATO allies did not expect their mutual defense arrangements to be constrained by new treaty commitments.

The key document on the US interpretation of Articles I and II is entitled *Questions on the Draft Non-Proliferation Treaty asked by US Allies together with Answers given by the United States*. (See Annex 1.) The *Questions and Answers* document was enclosed with a letter from Secretary of State, Dean Rusk, to President Johnson

³⁶ Spurgeon M. Keeny, Jr., “*The Non-Proliferation Treaty*”, 24 December 1968, Original Classification: Top Secret.

³⁷ For example, Canada was forbidden by the US from discussing the basing of nuclear weapons at Canadian bases in the Federal Republic of Germany, and also from discussing arrangements for authorization of use. These were details Canada would have been prepared to share, but for the US ban. For greater detail on this issue, see John Clearwater, *Canadian Nuclear Weapons*, p. 44, Dundurn Press, Toronto, 1998. This book is a detailed treat-

ment of Canada’s nuclear weapons relationship with the US in NATO and NORAD.

³⁸ Spurgeon M. Keeny, Jr., *op. cit.*, pp.74-75.

³⁹ Spurgeon M. Keeny, Jr., *op. cit.*, p.80.

⁴⁰ Evans Gerakas, David S. Patterson, and Carolyn B. Yee (eds.) “*Arms Control and Disarmament*”, Foreign Relations of the United States, 1964-1968. Volume X. United States Government Printing Office, Washington, 1997, p.573.

and thus is often referred to as the Rusk letter. It was transmitted to the Senate on 9 July 1968, along with other relevant documents, for consideration during the Senate ratification hearings on the NPT. According to available documents, this was first time the US made public its interpretation of the NPT, eight days after the NPT signing ceremony had taken place, at which the first 56 nations had signed the Treaty.

The *Questions and Answers* was designed to give an interpretation of the NPT which allowed NATO nuclear sharing, based on the idea that the Treaty dealt only with prohibited matters. They indicate four areas that the Treaty “does not deal with” and therefore, in the US view, does not prohibit.

The first question asked what may and may not be transferred under the Treaty. The US answered that the Treaty prohibits the transfer of nuclear bombs, warheads or nuclear explosive devices, but “does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems or control over them”.⁴¹ This interpretation was intended to allow continued cooperation on development of delivery systems and continued allied procurement of missiles, artillery systems and aircraft capable of delivering US nuclear weapons under NATO nuclear sharing arrangements.

The second question asked whether the treaty prohibits nuclear defense planning among NATO members. The US position stated that the NPT “does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results”.⁴² This answer was designed to allow information exchange within NATO’s system of nuclear sharing. This includes NNWS participation in Programs of Cooperation, drafting target plans, obtaining information about how different weapons

would be used against different targets, and other aspects of the work of the Nuclear Planning Group, such as consultations on the use of nuclear weapons.⁴³

The third question was the most crucial one. It asked whether the Treaty prohibits the deployment of US nuclear weapons on NNWS NATO allies territory. In the US view, the NPT “does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling”.⁴⁴

This answer, that the NPT “would no longer be controlling” once a decision has been made “to go to war”, is crucial to the US interpretation. The US definition of “control” over the weapons, meaning that the weapons cannot be launched without a decision of the US president, is also critical. Thus, “control” over US nuclear weapons would only be transferred to NATO allies in the event of war, when the US considered that the Treaty was no longer binding.

However, the implication of this interpretation is that the use of US nuclear weapons by allied forces would be illegal under the NPT if the Treaty was binding in wartime. Non-NATO diplomatic sources who confirmed knowledge of the Nuclear Planning Group have also stated that they knew nothing about nuclear sharing agreements at the time of signing and ratifying the NPT. However, they did know of these arrangements nearly 20 years later, when they included fresh language to the effect that the NPT would be controlling “under any circumstances” in the 1985 NPT Review Document. The formula was intended to close the NATO nuclear sharing loophole, and to ensure that all countries understood the NPT to be controlling at all times.⁴⁵

⁴¹ “*Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together With Answers Given by the United States*”, op. cit.

⁴² *Ibid.*

⁴³ Question four dealt with the legality of a European nuclear force, coming to the conclusion that a multilateral European force would contravene the Treaty, but that a future federated European state could become a NWS, assuming the NWS ob-

ligations of the UK and France. This is not the subject of this report. The full text of the answer is found in Annex 1.

⁴⁴ *Ibid.*

⁴⁵ Jan Prawitz, communications with the authors, 20 February 1999. Mr. Prawitz was a member of the Swedish delegation to the 1985 NPT Conference.

Three issues of political importance arise from the *Questions and Answers*. The first issue is the question of which states were informed of these interpretations of the draft NPT, how and when they were informed, and whether they can be considered to have consented to the US interpretations. The second issue results from weaknesses in the US definition of “control”. The third concerns the question of when the Treaty is considered to be “controlling”.

2.3 1968: When Were UN Members Informed?

As early as 1966 Leonard Meeker, Legal Adviser to the US Department of State warned: “*Should we decide to leave the wartime exception implicit we would want to make perfectly clear at Geneva what we were doing, lest we later be accused of having negotiated a treaty under false pretenses*”.⁴⁶

In February 1969, eight months after the NPT signing ceremony, then Deputy Director of the US Arms Control and Disarmament Agency (ACDA) Adrian Fisher told the Senate Foreign Relations Committee that the *Questions and Answers* “were made available to key members of the ENDC [Eighteen Nation Disarmament Committee – the multilateral forum conducting negotiations on the treaty]. They have *now* been made available to all members of the UN, and an indication that this is the way the United States proposed to proceed. There has been no indication of objections”.⁴⁷ (Emphasis added) By depositing this statement in the US Senate records, it was assumed to be known by all NPT signatories.⁴⁸ However, since even “key ENDC members”, such as the Swedes, appear to have been unaware of the existence of the details of NATO’s nuclear sharing arrangements, such as the Programs of Cooperation, the value of the Questions and Answers to them would have been limited. The US and its NATO allies were asking other nations to sign the NPT knowing they would be unaware of

NATO plans to circumvent the Treaty, and making a pretense of informing of NATO’s intentions with a somewhat cryptic set of reservations.

The *Questions and Answers* had been shown to NATO allies in early April 1967, 13 days prior to tabling of the draft treaty text at the Geneva-based ENDC. Therefore, NATO’s non-nuclear members were informed in time to indicate their consent or dissent to the US NPT interpretation. However, it appears, that with all likelihood they were the only non-nuclear nations which were fully in a position to do so at the time.

Despite intensive efforts, the authors of this report were unable to obtain evidence which demonstrated that the contents of the *Questions and Answers* were distributed to all UN members prior to 1 July 1968, when the first 56 nations signed the NPT or that the *Questions and Answers* was made publicly available prior to 9 July 1968. In a letter written by Under Secretary of State Nicholas Katzenbach to the Secretary of Defense dated 10 April 1968, it was made clear that it was deliberate policy to ensure the Rusk letter interpretations should become available to other signatories only after the Treaty was signed. “We do not believe it would be in our interest or that of our allies to have a public discussion of the US interpretations prior to the time when the NPT is submitted to the Senate for advice and consent”.⁴⁹

Fisher implies that the US was somewhat selective in revealing the details of its interpretations. He told the Senate Foreign Relations Committee that the *Questions and Answers* document was “seen by the Soviets and key members of the ENDC before it was made public and there was no objection. In view of the fact it is public, and has been referred to on a public hearing, I assume all countries in the world are on notice of our intention”.⁵⁰

⁴⁶ Leonard Meeker, “Proposed Revised Articles of US Non-Proliferation Treaty, Memorandum”, US Department of State, Office of the Legal Advisor, Lyndon B. Johnson Library, 6 July 1966, original classification: confidential.

⁴⁷ “Non-Proliferation Treaty”, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.340.

⁴⁸ *Ibid.*, p.262.

⁴⁹ Evans Gerakas, et. al. *op. cit.*, p.574.

⁵⁰ “Non-Proliferation Treaty”, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.340.

As a consequence, states which were neither NATO members nor “key ENDC-members” may have had no formal notification of the details of the US interpretation prior to the publication of the US Senate hearings covering NPT ratification at the earliest – considerably after many states had signed the Treaty. It is highly likely, for example, that Ireland (the country which proposed the UN resolutions that led to the NPT) ratified the NPT on 1 July 1968 without prior information on this interpretation. Indeed, diplomatic sources involved at the time recall that the US deliberately acted to hide the *Questions and Answers* from members of the NAM until after the signing of the NPT.

In effect, it is likely that those nations which sent representatives to US Senate hearings on NPT ratification, and gathered the relevant documents prior to or during the meeting, had access to the Rusk letter once the US ratification process was underway. Those who did not may have seen the document only after the proceedings of the hearings were available in print.

Further, an important omission in the process is that the US did not deposit its interpretation when it signed the NPT. It is common practice for states to deposit their reservations and interpretations about a treaty upon submission of articles of ratification to the depositary body or state. Eighteen countries did so prior to or upon signing the NPT, some non-nuclear NATO members even referring indirectly to the *Questions and Answers*. The US, however, did not deposit any declaration, and consequently not informed additional countries of its interpretation.

Therefore, the question arises as to how non-NATO members could have given informed consent to nuclear sharing arrangements, the details of which remain classified to this day. Fisher admitted that even the Soviets had not “indicated acquiescence or agreement because they can’t be asked to agree about cer-

tain arrangements that we keep secret”.⁵¹

Back in 1966, then US Secretary of Defense Robert McNamara had promised that the US was willing, “to make every effort to explain both our nonproliferation and our NATO nuclear sharing policies and to demonstrate beyond any reasonable doubt that there is no conflict between them”.⁵² Neither the US nor NATO appears ever to have lived up to this commitment. For non-NATO members it must have been difficult or even impossible to judge or comment on the validity of US interpretations concerning nuclear sharing.

Therefore, in order to determine the validity of US interpretations and the continuance of nuclear sharing under them, the US must state publicly which governments were informed about the contents of the *Questions and Answers*, and when they were informed. The question that remains is whether State parties would have objected to signing the NPT had they been aware of the full implications of the US interpretation. Would the NPT be the globally accepted treaty it is, if all nations would have been fully aware of the US interpretations at the time they decided to join the NPT?⁵³

2.4 What Constitutes Control?

“The treaty should be void of any loop-holes which might permit nuclear or non-nuclear powers to proliferate, directly or indirectly nuclear weapons in any form”.

— Principle (a), UN General Assembly Resolution 2028 (XX), 19 November 1965.

In 1965, the United Nations General Assembly called for a non-proliferation treaty that was “void of loop-holes”. However, by interpreting the NPT as dealing “only with what is prohibited” and not with what is allowed, the US introduced a major loop-hole for nu-

⁵¹ *Ibid.*, p.364.

⁵² US-Congress, Joint Committee on Atomic Energy: Nonproliferation of Nuclear Weapons, Washington 1966, p.77.

⁵³ Authors of this paper from BASIC and BITS have spoken with several former US officials involved with the negotiation of the NPT. None disagreed with the line of reasoning as expressed here, but none felt able to publicly criticize this policy.

clear sharing. This directly contradicts the demand in the Treaty that it should be “In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons”.⁵⁴

All US administrations have consistently argued that NATO shared nuclear command and control is legal because the US guarantees to maintain positive control over all its nuclear weapons in peacetime.

It is this interpretation that allows NATO NNWS to make every preparation in peacetime for the employment of nuclear weapons during war. Moreover, this interpretation introduces a loop-hole in the NPT that others may follow. For example, Belarus, a former Soviet republic, stated that the NPT was the “moral and legal guideline... that finalized the political decisions” behind its renouncement of its nuclear weapon regime.⁵⁵ However, Russia, with the acquiescence of Belarus, could reintroduce nuclear weapons on the territory of Belarus for use by Belorussian armed forces. China could decide to create nuclear sharing arrangements with North Korea, or Pakistan (not an NPT party) could do the same with Afghanistan, a NNWS party to the NPT. All this would be consistent with the US interpretation of the Treaty, supported by NATO allies. Simply put, NATO has established a pattern it does not want others to emulate.

Even the US definition of “control” poses other questions with regard to the NPT: what precautions has NATO taken to avoid a national pilot violating NATO orders after take off? What if he were to execute a mission different from his orders, such as a mission ordered by national rather than NATO authorities? What precautions has NATO taken to ensure all pilots return to their home base if a decision is taken to break-off nuclear operations?

To further complicate the situation: to whom would the control of nuclear weapons be transferred when the decision is taken that NATO would go nuclear? Earlier discussions have focused on the question of whether loading a fully armed nuclear bomb onto an aircraft piloted by a citizen of a NNWS would constitute a transfer of control over the nuclear weapon to that NNWS. This question is legitimate, but it is not the only question that needs to be answered. In wartime, NATO’s national air force units would be assigned to the Alliance, a multinational entity. The US interpretation itself states that “the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity”.⁵⁶ Yet no discussion has taken place as to whether a transfer of nuclear weapons to a multinational entity, such as NATO, would be legal under the NPT in wartime. This is why the wartime exclusion question is of core importance.

2.5 Does the Treaty Apply in Time of War?

The US interpretation made public in the Rusk letter indicated that the Treaty would not be binding once a decision had been made to “go to war”.⁵⁷ Internal US interpretations at the time and statements by US officials indicate that this was taken to mean ‘general war’. (See below)

The US government was aware that NATO arrangements were in conflict with Treaty provisions, so it had created a fallback position. During the NPT negotiations, the US pushed strongly to include wording which, in its interpretation, would make the Treaty invalid in times of war. In a 1966 secret memorandum, Adrian Fisher explained how the US should proceed with respect to this problem:

Under these bilateral arrangements [within NATO], the US nuclear weapons available for

⁵⁴ Treaty on the Non-Proliferation of Nuclear Weapons, preambular paragraph 3, 1968.

⁵⁵ Statement by Uladzimir Syanko, Minister of Foreign Affairs of the Republic of Belarus at the NPT Review and Extension Conference Plenary Meeting, New York, 18 April 1995.

⁵⁶ “Questions on the Draft Non-Proliferation Treaty Asked by U.S. Allies Together With Answers Given by the United States” *op.cit.*, p.262

⁵⁷ *Ibid.*

use by allied forces assigned to NATO in the event of hostilities could, of course, be transferred to those forces in that event. This would be justified under the Atomic Energy Act on the ground that, when a war broke out, the President could exercise his power, as Commander-in-Chief, without regard to the ban on transfer contained in the Act. **A similar interpretation would make a non-proliferation treaty inapplicable also. (Emphasis added)**

The purpose of such a treaty, as the preamble could be expected to express it, would be to prevent the spread of nuclear weapons and, by this measure among others, to avoid the outbreak of nuclear war anywhere in the world. Thus the treaty has its application in time and in a situation when no conflict has broken out and when it continues to be possible to prevent such a conflict. Once general hostilities involving nuclear weapons have occurred, however, the point of prevention has been long passed, and the purpose of the treaty can no longer be served. In such circumstances the treaty would not apply, and a nuclear power would be free to transfer nuclear weapons to an ally for use in the conflict”.⁵⁸

As a result of the US position, the preamble of the NPT now states that the general purpose of the Treaty is “to avert such a war”. It does not, however, state that the Treaty is no longer controlling in time of war.

During negotiations in 1966 Leonard Meeker, Legal Adviser to the US Department of State warned: “*Should we decide to leave the wartime exception implicit we*

would want to make perfectly clear at Geneva what we were doing, lest we later be accused of having negotiated a treaty under false pretenses”.⁵⁹

Despite this, the US interpretation was expressed even in the *Questions and Answers* in very general terms. On 11 July 1968, Dean Rusk explained the US position further, stating: “I think... that this is simply a recognition of what today is almost an element of nature, and that is that, in a condition of general war involving the nuclear powers, treaty structures of this kind that were formerly interposed between the parties would be terminated or suspended”.⁶⁰

Nonetheless, the US administration did not provide a clear-cut definition of ‘general war’. Instead, Rusk simply gave an example of a conflict that would not relieve the signatories of compliance: “*At the other extreme would be a limited, local conflict, not involving a nuclear-weapon-state. In this case the treaty would remain in force*”.⁶¹

The concept of ‘general war’ is incorporated in the famous NATO doctrine of ‘flexible response’, adopted in MC14/3 in December 1967. This paper, based on guidance issued by Ministers in May 1967 at the Defence Planning Committee, was the strategy in place during the final stages of negotiation of the NPT, and indeed until 1991. NATO regarded ‘general war’ as something unlikely because of the NATO deterrent. However, this definition also revealed that general war was now seen as a major conventional war leading to nuclear attack, to deter which NATO could threaten a ‘general nuclear response’.

[I]t is unlikely that the Soviet Union will deliberately initiate a general war or any other aggression in the NATO area that involves a clear risk of escalation to nuclear war.⁶²

⁵⁸ Adrian Fisher, “Memorandum for Mr. Bill Moyers, Subject: Working Group Language for the Non-Proliferation Treaty: Relationship to Existing and Possible Allied Nuclear Arrangements”, 30 September 1966. Original classification: Secret - Exdis, pp.4-5.

⁵⁹ Leonard Meeker, “Proposed Revised Articles of US Non-Proliferation Treaty, Memorandum”, US Department of State, Office of the Legal Advisor, Lyndon B. Johnson Library, 6 July

1966, original classification: confidential.

⁶⁰ “Non-Proliferation Treaty”, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 10, 11, 12 and 17 July 1968, p.27.

⁶¹ “Non-Proliferation Treaty”, Hearings before the Committee on Foreign Relations, US Senate, Executive H, 90-2, 18 and 20 February 1969, p.424.

⁶² MC14/3 (Final), Paragraph 11, 12 December 1967.

Unlike in earlier strategies, ‘general war’ and nuclear war are no longer absolutely identical. This remains the case today. The US definition of ‘general war’ has remained unchanged since at least 1974. The DoD dictionary refers to ‘general war’ as “Armed conflict between major powers in which the total resources of the belligerents are employed and the national survival of a belligerent is in jeopardy”.⁶³ There is no definition of ‘major powers’ given. From this it is clear that a ‘general war’ can begin as conventional war, and can become a nuclear war at NATO’s instigation. This was made clear in MC14/3:

In the event of a full-scale conventional aggression, indicating the opening of general hostilities on any sector of the NATO area, the forces of the Alliance should, if necessary, respond with nuclear weapons on the scale appropriate to the circumstances.⁶⁴

The term occurs, without explanation, in the 1991 NATO Strategic Concept. Paragraph 43 reads: “While in the new security environment a general war in Europe has become highly unlikely, it cannot finally be ruled out”.⁶⁵

The US and NATO should state publicly whether they still cling to the concept of “general war”, and if so, what its definition of that concept is. Only this kind of transparency will allow other NPT parties to understand in what circumstances NATO views the Treaty as no longer binding, and whether they believe that this is acceptable under the NPT. Unless this step is taken, other countries will not know if and when NATO would, in effect, create six new nuclear-weapon states.

This issue concerned some diplomats in the 1980s as well. A more restrictive interpretation that Articles I and II apply “under any circumstances” was agreed by consensus in the Final Document of the third NPT Review Conference in 1985. While this final consensus statement is politically rather than legally binding, the 1985 wording was confirmed by the UN Security Council in its 1991 resolution on Iraq. The Gulf War was a regional conflict with the potential for involving weapons of mass destruction.

The US is the only country that has explicitly stated that, once a general war has begun, it would no longer feel bound by the NPT. It has thus created a loop-hole by which it could withdraw from the Treaty without the three month notice period required by NPT Article X. In addition, the US approach implicitly creates a loop-hole for NNWS members of NATO to withdraw from the Treaty and receive US nuclear weapons in the event of war.

Furthermore, NATO is able to create the very conditions under which it would no longer feel bound by the NPT. By retaining the option of first use of nuclear weapons, the interpretation allows the US to decide unilaterally when ‘general war’ has come and thus when it can withdraw from its NPT commitments without prior notice. The first use of nuclear weapons by the US and NATO during a conflict would not occur “unless and until a decision were made to go to war”. The US view is that “in such circumstances the treaty would not apply, and a nuclear power would be free to transfer nuclear weapons to an ally for use in the conflict”.⁶⁶

⁶³ US Department of Defense Manual JP 1-02

⁶⁴ MC14/3 (Final) Paragraph 35 b., 12 December 1967.

⁶⁵ NATO, “The Alliance’s New Strategic Concept”, Rome, 7 November 1991, S-1(91)85.

⁶⁶ Adrian Fisher, *op.cit.*

C H A P T E R T H R E E

**NATO Nuclear Doctrine
Since the End of the Cold War**

The New Strategic Concept of 1991

In its 1991 Strategic Concept, NATO agreed that it required “widespread participation by European Allies involved in collective defence planning in nuclear roles, in peacetime basing of nuclear forces on their territory and in command, control and consultation arrangements”.⁶⁷ The remaining US tactical nuclear weapons deployed in Europe were now said to play a ‘political’ rather than a military role. They symbolized the US commitment to Western Europe as well as European countries’ commitment to share the risks and roles of extended deterrence. In the 1991 Strategic Concept, this link between US nuclear weapons and US commitment to Europe was expressed as follows: “The presence of North American conventional and US nuclear forces in Europe remains vital to the security of Europe, which is inseparably linked to that of North America”.⁶⁸

US officials make two arguments for maintaining US tactical nuclear weapons in Europe. First, the US will not withdraw its remaining nuclear weapons unless US troops are also withdrawn. Second, US nuclear weapons cannot be withdrawn from NATO Europe because of the opposition from non-nuclear-weapon states who perceive these weapons as the ultimate guarantee of extended deterrence. This rationale is reflected in MC400 approved in December 1991.⁶⁹ This is the core military strategy document implementing the 1991 NATO Strategic Concept.

MC400/1: Reinterpreting the 1991 Strategic Concept

At the North Atlantic Council meeting on 3 June 1996, NATO approved a revised version of that core military strategy, called MC400/1. MC400/1 commits the Alliance to maintain a reduced, but more flexible, nuclear posture for the foreseeable future. It neither mentions nor revokes NATO’s long-standing policy of

retaining the option of “First Use” of nuclear weapons. Nuclear weapons are described as having an essential stabilizing role in Europe, guarding against uncertainties (such as risks resulting from proliferation of weapons of mass destruction) and serving as a hedge, in case a substantial military threat to NATO re-emerges.⁷⁰

NATO no longer maintains detailed plans for the use of nuclear weapons in specific scenarios. Instead, like the US, it is developing a so-called “adaptive targeting capability”.⁷¹ This capability is designed to allow major NATO commanders to develop target plans and nuclear weapons employment plans on short notice, during a contingency or crisis, from pre-developed databases containing possible targets.

Changes in NATO Nuclear Strategy in 1999

The themes from MC400/1 were taken up in the Strategic Concept agreed at the Washington Summit in April 1999, which however, left the Alliance’s nuclear doctrine largely unchanged. The language adopted by NATO’s leaders is very similar to that used in 1991 NATO’s Strategic Concept. However, some textual changes have been made, the amount of language on nuclear issues has been somewhat reduced, and the Alliance committed itself to continue to review its nuclear policy. There is a debate as to whether the changes in the Strategic Concept leave the door open for adapting the implementation of Alliance strategy in line with US nuclear doctrine outlined *inter alia* in Presidential Decision Directive 60 (PDD 60). PDD 60 was issued by President Clinton in November 1997. This highly classified document gave new guidelines to the US military on targeting nuclear weapons. According to reports, the new PDD allows for the use of nuclear weapons against “rogue” states – those suspected of developing weapons of mass destruction.⁷²

⁶⁷ NATO, *op. cit.*

⁶⁸ Ibid

⁶⁹ For background on the evolution of NATO’s strategy since the end of the Cold War, see Rob de Wijk, “*NATO at the Brink of the New Millennium*”, Brassey’s, London/Washington, 1997 and Otfried Nassauer “Neue NATO-Strategie” in Erich Schmidt-Enboom and Jo Angerer (eds), *Siegermacht NATO*, Berg am See,

1993, pp. 37-115.

⁷⁰ Otfried Nassauer, *et al.*, *op. cit.*

⁷¹ For an examination of US policy, see Hans Kristensen, *op. cit.*

⁷² For a description of this policy see below, and for more detailed treatment of the topic, see Hans Kristensen, *Nuclear Futures: Proliferation of Weapons of Mass Destruction and US Nuclear Strategy*, BAsIC Research Report 98.2, March 1998.

As expected by observers, the language describing when NATO would consider using nuclear weapons was changed. It now reads:

The Allies concerned consider that, with the radical changes in the security situation, including reduced conventional force levels in Europe and increased reaction times, NATO's ability to defuse a crisis through diplomatic and other means or, should it be necessary, to mount a successful conventional defence has significantly improved. The circumstances in which any use of nuclear weapons might have to be contemplated by them are therefore extremely remote.⁷³

While this represents a small change from the 1991 formula where nuclear use was said to be "even more remote" than in the past, the wording represents a defeat for those in the Alliance who had wished a commitment on the No First Use of nuclear forces. Far from moving in the direction of No First Use, NATO is unable to agree even a return to the formula of the London Summit of 1990, where nuclear weapons were said to be weapons of "last resort".⁷⁴

However, most of the language has been untouched:

73. The fundamental purpose of the nuclear forces of the Allies is political: to preserve peace and prevent coercion and any kind of war. They will continue to fulfill an essential role by ensuring uncertainty in the mind of any aggressor about the nature of the Allies' response to military aggression. They demonstrate that aggression of any kind is not a rational option. The supreme guarantee of the security of the Allies is provided by the strategic nuclear forces of the Alliance, particularly those of the United States; the independent nuclear forces of the United King-

dom and France, which have a deterrent role of their own, contribute to the overall deterrence and security of the Allies.

135. A credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require widespread participation by European Allies involved in collective defence planning in nuclear roles, in peacetime basing of nuclear forces on their territory and in command, control and consultation arrangements. Nuclear forces based in Europe and committed to NATO provide an essential political and military link between the European and the North American members of the Alliance. The Alliance will therefore maintain adequate nuclear forces in Europe. These forces need to have the necessary characteristics and appropriate flexibility and survivability, to be perceived as a credible and effective element of the Allies' strategy in preventing war. They will be maintained at the minimum level sufficient to preserve peace and stability.⁷⁵

The 1999 Strategic Concept does not reiterate the political assurances given to Russia in 1997, that NATO would not deploy nuclear weapons in the Alliance's new member states during peacetime. [See Annex 5: Concerns Prompted by NATO Expansion.]

These developments in NATO strategy, based on previous changes in US doctrine have led observers to wonder if further shifts are underway in the direction of US national nuclear strategy. These concerns are prompted by Paragraph 41 of the Alliance's Strategic Concept which states that: "By deterring the use of NBC weapons, they [Alliance forces] contribute to Alliance efforts aimed at preventing the proliferation of these weapons and their delivery means."⁷⁶

⁷³ NATO: The Alliance Strategic Concept, Paragraph 64, April 1999.

⁷⁴ Paragraph 18, *London Declaration On A Transformed North Atlantic Alliance*, Issued by the Heads of State and Government par-

ticipating in the meeting of the North Atlantic Council, London, 5-6 July 1990.

⁷⁵ NATO: The Alliance Strategic Concept, April 1999.

⁷⁶ NATO: The Alliance Strategic Concept, Para. 41, April 1999.

If “Alliance forces” in the above text were to include both conventional and nuclear forces, NATO would have prepared the ground for an extension of the role of nuclear weapons in NATO strategy in the future. NATO would in that case see nuclear weapons as a tool in the fight against proliferation. This formula would appear to leave the door open to the use of nuclear weapons against those possessing, or even thought to possess, nuclear or other WMD and their means of delivery, a doctrine the US is widely believed to have already adopted in US national nuclear strategy. US spokesmen refuse to rule out the use of nuclear weapons against potential adversaries who use, or threaten the use, of nuclear weapons or other WMD, even non-state actors. The US aims to have national doctrine incorporated into NATO policy, and historical precedent makes this a likely development.

3.1 Future Directions for NATO Nuclear Strategy: Between Disarmament and Tactical Nuclear Use

Only weeks before the international community reviews progress made on the world’s cornerstone document on nuclear nonproliferation, the NPT, new information has emerged that NATO might be in the process of substantially widening the role of nuclear weapons in the future conflicts. Nuclear weapons might be given a role in deterring or attacking possessors or possible users of WMD and the means of their delivery. While this widened role has already been assigned to nuclear weapons in the US national strategy, in NATO’s strategy their present role remains more limited, because European countries remain more cautious on these issues than the US.

The change in strategy might occur as early as Spring 2000, in the period around the NPT Review Conference. Preparations for this change are well advanced. NATO is currently reviewing its classified cornerstone military strategy document, designated MC400. NATO’s Military Committee (MC) has readied a new version of this document, MC400/2, incorporating

changes that result from the Alliance’s Strategic Concept adopted during the Washington Summit in 1999. MC400/2 was in NATO’s “silent procedure” in February 2000, which means that it has been adopted by the highest military body of the Alliance, the Military Committee and is now under preparation to obtain political approval. If no objections are raised to the contents, the document can be put forward for final political approval. This will happen in two steps, first at Ambassadorial level and then on Ministerial level. The first, Ambassadorial scrutiny, of MC400/2 is likely to come as soon as March 2000. NATO aims to have final approval by the North Atlantic Council (NAC) in Foreign Ministers session on 24-25 May 2000, when the NAC meets in Florence, shortly after the end of the NPT Review Conference.

NATO sources have confirmed that the process is well advanced, and that the draft version of MC400/2 will contain sufficient language to allow the US to interpret the document as being in accordance with US national nuclear strategy. It is believed, that the new document does not rule out using nuclear weapons against the possessors of biological and chemical weapons. According to a Reuters report of March 14, the document states that “An appropriate mix of forces” – i.e. conventional and nuclear forces – should be available to the Alliance when facing a threat by any WMD.⁷⁷ There is some question as to whether Ambassadors are ready, at the time of writing to push ahead, but no problems are expected in bringing the document before Ministers in May. One Senior NATO Diplomat told the authors that “It hasn’t been the subject of much debate. There’s general acceptance that the best deterrent is one that keeps a potential adversary guessing. So there’s never been a decision to rule it out”.⁷⁸

If NATO nuclear weapons are given a widened role against all WMD the likely severe political consequences will affect both the international non-proliferation regime, and the future of nuclear arms control. By adopting such a policy:

⁷⁷ Paul Taylor, *Analysis – NATO Accused of Widening Nuclear Role*, Reuters News Service, 14 March 2000.

⁷⁸ Interview with Senior NATO Diplomat, 14 March 2000.

- NATO's nuclear members would be signaling that they are prepared to violate the commitment under the Negative Security Assurances, they gave to the NNWS in 1995 in order to ensure the unconditional and indefinite extension of the NPT;
- NATO's non-nuclear members who participate in NATO's nuclear sharing arrangements, if ever conducting a nuclear mission against a non-nuclear opponent, armed with other WMD, would clearly breach the NPT and violate their commitments under Article II of the NPT. This would be true even if such an operation were based on NATO's highly controversial unilateral interpretation of the legality of the Alliance's sharing arrangements under the NPT;
- The US would be demonstrating that it has the political will to violate Article I of the NPT, by providing nuclear weapons to NATO NNWS during such an operation; and,
- The NATO arms control review process would be deeply undermined. The new strategy would remove many options, such as the withdrawal of tactical nuclear weapons from Europe or adoption of a No First Use policy as a confidence building measure, which logically would form part of the review.

The net affect of a new strategy would be to dramatically undermine confidence in the nuclear non-proliferation regime. Furthermore, by adopting such policies within a classified military strategy document NATO's military planners would pre-empt the possible results of the Alliance's current review of NATO's nuclear nonproliferation, arms control and disarmament policy, which is scheduled to present recommendations and options to NATO ministers by December 2000, although the review will continue for a further year. The agreement of a widened role for the Alliance's nuclear posture in May 2000 would make it extremely difficult in December to suggest any arms

control and disarmament measures of substance that might cut into the nuclear posture or significantly affect its role.

NATO sources that spoke with the authors admitted that there might be problems with the NPT, and of Negative Security Assurances given by nuclear-weapon-states. The Senior NATO Diplomat interviewed said "It's an uncomfortable topic that people prefer not to discuss. It does raise questions, I know, under the NPT, the negative security assurances".⁷⁹

Paragraph 41 of the 1999 Strategic Concept stops short of openly assigning NATO's nuclear posture a role in offensive military counter-proliferation operations. However, it assigns nuclear weapons a role in deterring the threat of all weapons of mass destruction. Furthermore it does not indicate, that nuclear weapons might not be used against the owners of WMD and their means of delivery.

There is good reason to believe that NATO is abandoning some of this ambiguity. While an examination of the text of MC400/2 is the only way to be certain that elements of US national nuclear strategy have been incorporated, the text is classified and will probably remain so for many years. However, precedent throughout NATO's history indicates that where the US leads, NATO will follow - particularly in the field of nuclear strategy.

In 1999, the DoD told Senator Harkin that: "US national nuclear policy is established by the President of the United States and is in no way influenced by allies." The answer continues: "**NATO nuclear policy has historically been consistent with US nuclear policy**". [Emphasis added] The answers also reveal that: "US strategic and theater nuclear doctrine is established by the President and set forth in a series of increasingly detailed documents. (deleted) US nuclear doctrine applies equally to US forces stationed or deployed anywhere in the world, to include those in Europe".⁸⁰

⁷⁹ Interview with Senior NATO Diplomat, 14 March 2000.

⁸⁰ Answer to Question 39, asked by Senator Harkin during a Sen-

ate Armed Services Committee Hearing, 11 May 1999.

Indeed, from an historical perspective, NATO has followed suit if the US changed its national strategy. A close reading of developments in NATO policy from the 1950s onwards shows this link. The time lag between the development of a new US strategy of 'flexible response', and its adoption by NATO in MC14/3, was around six years.⁸¹ Time lags in the 1950's were much shorter.

3.2 US Perspectives on NATO Nuclear Strategy

The US is creating new roles for nuclear weapons. Based on the Nuclear Posture Review and the 1997 National Security Strategy, the newest version of the National Military Strategy foresees a change in the role of NATO-deployed nuclear weapons. Strategic nuclear forces serve

as a vital hedge against an uncertain future, a guarantor of our security commitments to our allies, and a deterrent to those who would contemplate developing or otherwise acquiring their own nuclear weapons. Strategic weapons remain the keystone of US deterrent strategy. A mix of forward deployed non-strategic nuclear and conventional weapons adds credibility to our commitments.⁸²

The rationale for maintaining non-strategic nuclear weapons is shifting. While NATO still perceives the function of nuclear weapons to be primarily a link between the US and its European allies and a symbol of intra-Alliance solidarity, US armed forces increasingly perceive the arsenal deployed in Europe as a mere add-on to the role of US strategic forces.

Changes in the role of nuclear weapons in the US national strategy have led to this difference. The proliferation of weapons of mass destruction and their

possible use against the US and its allies gained greater prominence in the first half of the 1990s. The US National Security Strategy of 1995 highlights:

The United States will retain the capacity to retaliate against those who might contemplate the use of weapons of mass destruction, so that the costs of such use will be seen as outweighing the gains. However, to minimize the impact of proliferation of weapons of mass destruction on our interests, we will need the capability not only to deter their use against ourselves or our allies and friends, but also, where necessary and feasible to prevent it. This will require improved defensive capabilities. To minimize the vulnerability of our forces abroad to weapons of mass destruction, we are placing a high priority on improving our ability to locate, identify and disable arsenals of weapons of mass destruction, production and storage facilities for such weapons, and their delivery systems.⁸³

While the National Security Strategy does not mention that nuclear weapons might be used against WMD, it insinuates that the use of nuclear weapons is not ruled out. Developing fresh US military doctrine, the Joint Chiefs of Staff made use of the freedom to interpret such language. According to the Joint Chiefs of Staff's new US *Doctrine for Joint Theater Nuclear Operations*, "the fundamental purpose of US nuclear forces is to deter the use of weapons of mass destruction" (nuclear, chemical, and biological) and their means of delivery by hostile governments.⁸⁴ The objective is to enhance freedom of action for US and allied forces in out-of-area missions as well as to protect US and allied territories. The mission also includes retaliatory strikes once opponents have used weapons of mass destruction.⁸⁵

⁸¹ For a discussion of developments in NATO strategy up to 'Flexible Response', see *NATO Strategy Documents 1949-1969*, edited by Dr. Gregory W. Pedlow, Chief, Historical Office, Supreme Headquarters Allied Powers Europe, in collaboration with NATO International Staff Central Archives, published May 1999 on the internet at www.nato.int.

⁸² Joint Chiefs of Staff, *National Military Strategy*, Washington, September 1997.

⁸³ The White House, *National Security Strategy*, Washington, 1995, pp 14-15.

⁸⁴ Joint Chiefs of Staff, *Doctrine for Joint Theater Nuclear Operation*, JP 3-12, Washington, 18 December 1995, p. v.

⁸⁵ For a more detailed description of these developments in US nuclear doctrine see Hans Kristensen, *op. cit.*

Retaining the option for 'First Use' is often justified as the logical consequence of a policy of deterring, and possibly retaliating against, the use of biological and chemical weapons by actors who do not possess nuclear weapons. However, US proponents do not exclude pre-emptive nuclear use to eliminate enemy WMD, their means of delivery and supporting infrastructure "before they can be employed against friendly forces. For these reasons, offensive operations against enemy WMD and their delivery systems should be undertaken once hostilities become inevitable or commence".⁸⁶ The First Use of tactical nuclear weapons is now considered an option within offensive counter-proliferation missions and as part of an emerging doctrine for managing crises. President Clinton's PDD 60 also reflects the increased role of US nuclear weapons in offensive counter-proliferation.⁸⁷

Changes in the role of sub-strategic (and strategic) nuclear weapons in the US national strategy during the late 1990's also indicate that the US no longer limits the threat to use nuclear weapons against states or government-controlled targets. Official US documents highlight the dangers of non-state actors acquiring and threatening to use weapons of mass destruction.⁸⁸ These non-state actors (such as terrorists, organized crime, transnational companies or fanatic religious groups) have come to the attention of US military planners. The US Joint Chiefs of Staff's list of 'likely targets' for US sub-strategic weapons now includes "non-state actors (facilities and operation centers) that possess WMD", along with underground facilities or WMD owned by enemy governments.⁸⁹

To the authors' knowledge, the United States is the only nuclear-weapon state considering the use of nuclear weapons against non-state actors. Even though

the likelihood of use against terrorist targets is extremely remote, the shift is significant. It encourages military planners to study such options and to present them to politicians for consideration. In addition, non-state actors generally operate on state territory. The Joint Chiefs of Staff do not explain whether this fact would legally limit the use of nuclear weapons to US territory, or whether targeting against other countries would be considered as well.

However, if NATO were to adopt a military strategy that gives nuclear weapons a role against all types of weapons of mass destruction, as in the US, military planners and military staffs are likely include this role and elaborate on it during their daily work. It will play a role when collecting targeting information for nuclear weapons, gathering intelligence, creating scenarios in which nuclear weapons might be used, in exercises, while training soldiers and while developing decision-making options for presenting them to politicians, when they should ever have to decide on how to react to a WMD threat. It is easy to predict that the planners concerned with these tasks will develop schools of thinking about the role nuclear weapons will have under such circumstances. Some will see nuclear weapons as pure deterrence, others will tend to begin developing more or less sophisticated war-fighting models.

3.3 What Action Will NATO Take This Year?

The core question for the months to come is: will NATO adapt the recent US national strategy during 2000? There are good reasons to believe that this would be both imprudent for NATO's future and contrary to international treaty commitment of NATO's member

⁸⁶ Joint Chiefs of Staff, *Doctrine for Joint Theater Nuclear Operations*, JP 3-12.1, Washington, 9 February 1996, p. III-8.

⁸⁷ First reported in R. Jeffrey Smith, "Clinton Directive Changes Strategy on Nuclear Arms", *Washington Post*, 7 December 1997, p.1.

⁸⁸ See for example: Joint Chiefs of Staff, *Joint Nuclear Operations*, JP 3-12, Washington, 18 December 1995; Joint Chiefs of Staff, *Concept for Future Joint Operations*, Washington, May 1997; Department of Defense, *Proliferation: Threat and Response*, Washington, May 1997.

⁸⁹ Joint Chiefs of Staff, *Doctrine for Joint Theater Nuclear Operations*, *op. cit.*, pp. VIII, III-6, III-7. After BASIC and BITS published this fact in August 1998, a DoD spokesperson noted that "we are confident that we can mount an effective response to terrorism without using nuclear weapons" but added "Nevertheless, we do not rule out in advance any capability available to us. I stress that these policies have to do with a situation in which the US our allies or our forces have been attacked with chemical or biological weapons" (See DoD Spokesperson Fax to B. Bender, 26 August 1998).

states under the NPT. Most importantly, it would be seriously damaging to all attempts to safeguard the non-proliferation regime and make future progress on nuclear arms control. However, NATO sources have indicated to the authors that adapting to the US national strategy into NATO is likely.

While the US has moved its national doctrinal developments a long way towards integrating nuclear weapons into offensive counter-proliferation missions, its European NATO allies have been more cautious. Since 1994, two senior NATO bodies have studied counter-proliferation. Their recommendations, as well as a special set of NATO force goals agreed in late 1996, focused only on improving intelligence capabilities and defensive military and non-military measures against the threat from weapons of mass destruction. No requirements for action on new conventional or nuclear offensive military capabilities were developed. This clearly reflects the more cautious course of action in the European NATO countries.

Most European countries are hesitant to follow the US path of active engagement in offensive counter-proliferation, especially if nuclear weapons are involved. European countries still perceive nuclear weapons as a tool of deterrence or a last resort; almost all cannot imagine giving these weapons a role in counter-proliferation. This is particularly true in the case of targeting non-state actors with WMD capabilities. In fact, serious European questions about the future of US nuclear weapons in NATO may be raised if US pressure to include such options into NATO's officially acknowledged and agreed military options were to be mounted. Thus similar to earlier disputes between US and European perceptions of the role of nuclear weapons, the US is likely to make sure that NATO adopts a language that does not rule out actions in accordance with US national strategy and assume that the US perspective will prevail under the pressure of taking concrete decisions in an actual crisis. Even if the concepts are adopted into NATO strategy, and plans

are laid on the basis of this strategy, European NATO members will remain immensely reluctant to ever sanction the use of nuclear weapons for counter-proliferation operations.

3.4 NATO Threats to the Nuclear Non-Proliferation Regime

European reluctance is well founded in an understanding of potentially serious problems for the nuclear non-proliferation regime if the US is successful in imposing its national strategy on the Alliance. These difficulties include:

Counter-Proliferation and Negative Security Assurances (NSAs)

The nuclear-weapon states have pledged in Negative Security Assurances not to use nuclear weapons against non-nuclear-weapon states unless allied with a nuclear-weapon state. Recent US statements have seriously undermined the credibility of such guarantees. The risk now is that NATO adoption of US policies will further undermine NNWS faith in the NPT as a guarantor of their security from nuclear weapons, or in the value of participation in Nuclear Weapon Free Zones (NWFZ). This argument was put well by Jack Mendelsohn in *Arms Control Today*:

The 1995 U.S. NSA reads:

The United States affirms that it 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 attack on the United States, its territories, its armed forces or other troops, its allies, or on a State toward 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.⁹⁰

⁹⁰ The first official U.S. declaration of negative security assurance was in 1978 at the UN. These assurances were reaffirmed by the five declared nuclear-weapon states in April 1995 and taken note of in UN Security Council Resolution 984. In addition, as a signatory

of the Protocols, the U.S. has pledged not to use or threaten to use nuclear weapons against any state Party to the treaties of Rarotonga (South Pacific Nuclear Weapons Free Zone), Tlateloco (Latin America NWFZ) and Pelindaba (Africa NWFZ).

It is important to note that the NSA makes no exceptions to allow for a nuclear response to a chemical or biological weapons attack.

NATO's First Use doctrine against conventional forces is clearly contrary to the NPT-related NSA commitments of the United States, Britain and France. In addition, the United States, the key NATO nuclear power, maintains the option to use nuclear weapons in response to a chemical or biological weapons attack, and implies that NATO has the same policy. While this policy had been present in U.S. Defense Department documents in the early 1990s, it was articulated in April 1996 by Robert Bell, senior director for defense policy and arms control at the National Security Council at the time of the U.S. signature of a protocol to the African Nuclear-Weapon-Free-Zone (ANWFZ) Treaty. Protocol I of the so-called Treaty of Pelindaba pledges the United States not to use or threaten to use nuclear weapons against any treaty party. Bell, however, said U.S. signature "will not limit options available to the United States **in response to an attack by an ANWFZ party using weapons of mass destruction**". [Emphasis added.] In December 1998, Walter Slocombe, under secretary of defense for policy, stated: "It is simply an issue of making sure that we continue to maintain a high level of uncertainty or high level of concern, if you will, at what the potential aggressor would face if he used [CBW] **or indeed took other aggressive acts against the alliance**".⁹¹ [Emphasis added]

For the United States, the most powerful nation in the world, and by implication NATO, the most powerful conventional alliance, to insist that they need the threat of first use of nuclear weapons to deter potential ad-

versaries raises the question why other, much weaker nations, confronted by hostile neighbors, do not need them as well. Moreover, a U.S. and NATO First Use policy against, in effect, conventional, chemical and biological weapons suggests that nuclear weapons have many useful military roles. This reinforces the value and prestige attributed to nuclear weapons and undermines efforts by the United States and other key NATO countries to persuade non-nuclear-weapon states to refrain from developing their own nuclear arsenals.⁹²

Clearly, the value of the NPT and of NWFZ treaties is brought into question by US policy. The question is now whether it is likely to be fatally undermined, for example, in the context of the African NWFZ by an extension of this policy to NATO as a whole.

Counter-Proliferation Missions Under Sharing Arrangements and NPT Articles I and II

Is it possible that NATO non-nuclear-weapon states could become involved in offensive counter-proliferation missions? The answer would seem to be, possibly, yes. As we have seen, the Alliance Strategic Concept continues to require that European allies demonstrate solidarity with the US in nuclear policy:

The achievement of the Alliance's aims depends critically on the equitable sharing of the roles, risks and responsibilities, as well as the benefits, of common defence.⁹³

A credible Alliance nuclear posture and the demonstration of Alliance solidarity and common commitment to war prevention continue to require widespread participation by European Allies involved in collective defence planning in nuclear roles, in peacetime basing of nuclear forces on their territory and in command, control and consultation arrangements.⁹⁴

⁹¹ Interview with Walter Slocombe, under secretary of defense for policy, December 11, 1998. This sentence clearly shows that undersecretary Slocombe sees no difference between US national policy and NATO policy, although the two are not identical.

⁹² Jack Mendelsohn, *NATO's Nuclear Weapons: the Rational for No First Use*, Arms Control Today, July-August 1999 at www.armscontrol.org.

⁹³ NATO: The Alliance Strategic Concept, para. 42, April 1999.

⁹⁴ NATO: The Alliance Strategic Concept, Paragraph 63, April 1999.

The integration of European and US armed forces in Europe, under the command of NATO's top commander, the Supreme Allied Commander Europe (SACEUR), means that if NATO decides on a military action then many Alliance countries are involved in consequent operations. NATO air operations against the Former Yugoslavia provide an excellent example. The Alliance was keen to have as many of its members participating as possible. Thus NATO's non-nuclear weapon states participating in NATO nuclear sharing could well be asked to provide their means of delivery, if NATO ever were to take the decision to use nuclear weapons against an opponent who possesses or used biological or chemical weapons. Would such a situation allow it to be argued that the NPT is no longer controlling? NATO argues that in 'general war' the NPT is no longer controlling and it becomes legal to arm European allies with nuclear weapons. However, NATO accepts that in circumstances short of 'general war' this would be contrary to the NPT.

Without a 'general war', NNWS participation in counter-proliferation missions involving the use of nuclear weapons would certainly be in violation of the NPT. Article II would be breached by the NNWS NATO members, and Article I by the US. This is so, even by US and NATO interpretations. NATO sources have confirmed to the authors that they understand this point thoroughly. In addition, diplomatic sources who participated in the original negotiations confirmed that any interpretation allowing nuclear use against other WMD possessors would indeed contradict NATO's interpretation of the NPT. In reviewing Senate and other historical records they added that the US saw the interpretation of when the NPT is 'controlling' in the *Questions and Answers* only in the context of deterring a nuclear-weapon state.

This argument is strengthened by the action taken by the US to allow for the war time exception interpretation. As Adrian Fisher suggested, the Preamble of the Treaty says, *inter alia*, that:

“Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war...”

The State Parties agreed to the Treaty. Thus even in the context of the unilateral interpretations of the Rusk-letter there is no way to argue, that war with a non-nuclear opponent could trigger a situation in which the US and its allies no longer have a need to feel bound by the Treaty.

NATO v. Rusk: Perceptions on the NPT and Multilateral Control of Nuclear Weapons

Some NATO officials argue privately that any participation by nuclear sharing nations in a NATO counter-proliferation operation using nuclear forces would be legal, even short of a 'general war'. They reason that since the pilots would not be acting in a national capacity, but as NATO soldiers, and NATO as a non-signatory is not bound by the NPT, the transfer of nuclear weapons would be legal. This argument is clearly spurious. Firstly, the US would still be in breach of Article I. Secondly, the pilots still serve in their national armed forces, whereas NATO is an alliance. As has been seen in Section 2, even the Rusk interpretation states that transfer of control to a multilateral entity, such as NATO, would be illegal.

International Perceptions of NATO Actions

The NAM, and many New Agenda countries have already displayed considerable concern after learning more about NATO nuclear sharing. As described in Section 1, there have already been calls for a declaration or interpretation of the NPT to be issued that would make it clear that the arrangements within NATO are illegal. Significant concern has been expressed about NATO's nuclear strategy as a whole, and when NAM and NAC countries learn about a possible widening of the role of nuclear forces in Alliance policy, it is likely that criticism of NATO within the NPT process will not only be perceived as justified, but become even stronger.

Widening the Role of Nuclear Weapons and the Future of the NPT

As a consequence of the inaction of the NWS, the NPT is a Treaty in some difficulty. A Canadian Government policy paper on the NPT, prepared in ad-

vance of the 2000 Review Conference and shown to the authors, records that the NPT is a “treaty under stress”. It then goes on to give the adoption of the new NATO strategy as one of the reasons for that stress.

Adoption of MC400/2 and the widening of the role of nuclear weapons in NATO strategy can only increase that stress. The US government argues that no state will abandon the NPT because non-proliferation is in the security interest of all signatories to the Treaty. The adoption by NATO of a counter-proliferation role for nuclear weapons, attacking the basis of the NPT and NSA’s, brings that assumption into doubt. In the future, if chemical or biological weapons possession (or potential possession) is enough to prompt a possible NATO nuclear strike on a country, that country might lose interest in restraint – it might well learn a new lesson: there is no deterrent other than the nuclear deterrent. It could therefore decide to go nuclear. NATO is in danger of acting as a spur to nuclear proliferation, exactly the end that its Strategic Concept says it is aimed at avoiding.

Widening the Role of Nuclear Weapons and the Future of NATO’s Arms Control Review

Adoption of MC400/2 in the spring of 2000, if it were to include the widening of the role of nuclear weapons in NATO policy, as the authors understand is the current proposal, would clearly undermine the nuclear arms control policy review that NATO is currently undertaking. Certain outcomes of that review would be precluded, for example:

- Withdrawal of tactical nuclear weapons from Europe, either unilaterally or as part of a deal for their elimination in a treaty with Russia, would be made much more difficult, if not impossible. Therefore much of the basis of the 1997 Helsinki package of an agreed framework for future deep cuts would be invalidated.

- NATO support for NWFZ’s would be seen to be meaningless, and any engagement made by NATO to respect the African NWFZ in particular would be extremely suspect. The status of Negative Security Assurances by NATO nations would be thrown into doubt.
- The already blurred distinction between nuclear and non-nuclear members of NATO would be blurred still further, calling into question the good faith of all Alliance members in their adherence to the Treaty.
- Adoption of a No First Use policy by NATO would, by definition, no longer be an option that NATO could pursue as a confidence and security building measure.

NATO sources who spoke with the authors confirmed that adoption of MC400/2 would indeed close off options that could otherwise be considered in the arms control policy review. The implication is that the order in which these two processes were taken forward by the Alliance was intended to have that effect.

Will NATO Push Ahead?

The US is pushing NATO to agree to widened nuclear tasks within the new MC400/2 interpretation of the Strategic Concept. They seem to have the upper hand at the time of writing over those countries more interested in arms control and verifiable disarmament will prevail. The debate will be complicated. However, elements in the US military support reducing the role of non-strategic nuclear weapons. Air Force General Eugene Habiger, commanded-in-chief of US Strategic Command, stated in March 1998, “It is time for us to get very serious about tactical nuclear weapons. If you look at the gross numbers of tactical nuclear weapons that are in Russia today, we must begin to parlay that element into START III, and I have every expectation that we will”.⁹⁵ In a CBS TV show in early

⁹⁵ Quoted in Elaine Grossman, “STRATCOM Chief Calls for START III Limit on Tactical Nuclear Weapons”, in *Inside the Pentagon*, 9 April 1998, p.6.

2000 he reiterated these concerns: “The fact that we have not been able to get to lower and lower levels of nuclear weapons is troubling to me”.⁹⁶ The role of European nations in NATO will also be important. Traditionally, they have been prepared to go along with US policy in the interests of Alliance unity. However, on this occasion they are being asked to participate in a policy that would violate commitments under the NPT, even by the somewhat dubious interpretation they themselves accepted thirty years ago. Whether they are ready to go so far remains to be seen.

It would only be in the best interest of the NPT, and in the security interests of all NATO members, that NATO ministers should move slowly. Indeed, they

would be wise to reject MC400/2 if it includes any role for nuclear weapons in operations against opponents armed with biological or chemical weapons, and at least to delay it until after the arms control policy review reports, if it in any way limits options for the arms control review.

In the interests of transparency, and of the preservation of the NPT, NATO should now make public the MC400 series of documents, including MC400/2, as previous core military strategy documents such as the MC14 and MC48 series have now been made public. There is no reason to object to such transparency if nothing objectionable or controversial is contained in the MC400 documents.

⁹⁶ General Eugene Habiger, in *The Missiliers*, CBS *60 Minutes II*, January 2000. Further detail at www.cbs.com.

Annex 1: Questions on the Draft Non-Proliferation Treaty Asked by US Allies together with Answers Given by the United States (1967)

144. Q. What may and what may not be transferred under the draft treaty?

A. The treaty deals only with what is prohibited, not with what is permitted. It prohibits transfer to any recipient whatsoever of “nuclear weapons” or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use. It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads.

146. Q. Does the draft treaty prohibit consultations and planning on nuclear defense among NATO members?

A. It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results.

147. Q. Does the draft treaty prohibit arrangements for the deployment of nuclear weapons owned and controlled by the United States within the territory of non-nuclear NATO members?

A. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.

149. Q. Would the draft prohibit the unification of Europe if a nuclear weapon state was one of the constituent states?

A. It does not deal with the problem of European unity, and would not bar succession by a new federated European state to the nuclear status of one of its former components. A new federated European state would have to control all of its external security functions including defense and all foreign policy matters relating to external security, but would not have to be so centralized as to assume all governmental functions. While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity.

Annex 2: Programs of Cooperation

Part of the arsenal of tactical nuclear weapons that the US maintains in Europe has, since the 1950s, been retained for use by NATO member states. The armed forces of these states are trained for nuclear weapon missions. Belgium, Germany, Greece, Italy, the Netherlands and Turkey participate in NATO nuclear weapons sharing, the extent of which is defined in bilateral treaties with the US.

Stationing of nuclear components of nuclear weapons, the warheads, as well as their transfer to NATO allies at times of use, is governed under bilateral “Agreements for Cooperation for Mutual Defense Purposes”^a between the US and the state concerned.

The agreement with the Netherlands, for example, states that:

“Each party will communicate to or exchange with the other party such classified information as is jointly determined to be necessary to:

- A) the development of defense plans;
- B) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;
- C) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and
- D) the development of delivery systems compatible with the atomic weapons which they carry.”^b

The agreement with the Netherlands is typical, containing the same clauses as other NATO nuclear cooperation agreements.

The coordination of NATO policy is achieved through the Nuclear Planning Group, established in 1967, which meanwhile gives all states to NATO that choose to participate a say in planning the nuclear strategy of the alliance.

^a At least 11 such “Agreements” were concluded with NATO (Effective date: 12 March 1965), Australia (14 August 1957), Belgium (5 September 1962), Canada (27 July 1959), France (9 October 1961), Federal Republic of Germany (27 July 1959), Greece (11 August 1959), Italy (24 May 1961), Netherlands (27

July 1959), Turkey (27 July 1959), United Kingdom (4 August 1958).

^b Article II of Netherlands, Atomic Energy: Cooperation for Mutual Defence Purposes, Signed at the Hague, 6 May 1959, entered into force 27 July 1959.

Annex 3: Nuclear Weapons in NATO Europe

During the early 1950's, the United States first introduced nuclear weapons into Europe for its own forces. Beginning in the late 1950s, however, additional US weapons were deployed to equip allied forces of some NATO countries. At the height of the Cold War, the total of US nuclear weapons stored in Europe exceeded 7,000 warheads. In recent years, the number of US tactical nuclear weapons has been massively reduced. The Cold has come to an end. Currently, only air-launched B61 bombs remain. It is likely that fewer than 180 of these weapons are now deployed in Europe.

They are stored in the United Kingdom and on the territory of the six NNWS members of NATO which are parties to bilateral Programs of Cooperation with the US: Belgium, Germany, Greece, Italy, the Netherlands and Turkey. During the 1960's and 1970's nuclear weapons were also allocated to Canadian forces based in Germany. Until the 1990's some US nuclear weapons were also allocated to UK Army units stationed in Germany.

Under NATO nuclear sharing agreements, some of these weapons are deployed for use on aircraft of non-nu-

NATO Nuclear Weapons Storage Sites (1998)

Air Base	Country	Number of vaults	Operational Date	Base Operated by
Araxos Air Base	Greece	6	Completed ^a	Greek Air Force
Aviano Air Base	Italy	18	22 January 1996	US Air Force
Balikesir Air Base	Turkey	6 ^b	Completed ^a	Turkish Air Force
Brüggen Air Base	Germany	10 ^c	12 June 1995	Royal Air Force
Büchel Air Base	Germany	11	9 August 1990	German Air Force
Gheddi-Torre Air Base	Italy	11	Completed	Italian Air Force
Incirlik Air Base	Turkey	25	Completed ^a	Turkish/US Air Force
Klein Brogel Air Base	Belgium	11	3 April 1992	Belgian Air Force
RAF Lakenheath	UK	33	18 November 1994	US Air Force
RAF Marham	UK	24 ^c	14 May 1995	Royal Air Force
Memmingen Air Base	Germany	11 ^b	9 August 1990	German Air Force
Noerenich Air Base	Germany	11 ^b	28 June 1991	German Air Force
Ramstein Air Base	Germany	54 ^d	24 January 1992	US Air Force
Murted Air Base Akinci	Turkey	6 ^b	Completed ^a	Turkish Air Force
Volkel Air Base	Netherlands	11	13 September 1991	Netherlands Air Force
Total	NATO-Operated	214		
Total	UK-Operated	34^c		

^a According to the Department of the US Air Force, completion of these bases was scheduled for April 1998, but this has not yet been confirmed in publicly released documents. The Headquarters of the US Air Forces in Europe, in information released on 12 February 1998, lists Ghedi Torre as operational but not Araxos, Akinci, Balikesir or Incirlik. However, it is believed that installation is now complete at all bases.

^b According to the Department of the US Air Force, these sites are in caretaker status. Apparently, no weapons are currently stored at these sites.

^c By April 1998, the Royal Air Force had removed from service its WE-177 nuclear free-fall bombs. By August 1998, the last British free fall bombs were dismantled. NATO command and the UK have declared that the RAF sites at Brüggen and Marham are no longer needed and will be deactivated. The RAF plans to withdraw entirely from Brüggen by 2002.

^d Does not include one additional training vault.

clear NATO countries in wartime. The six NNWS members of NATO listed above currently maintain one Air Force unit each, equipped with dual capable aircraft and pilots trained and ready to conduct NATO nuclear missions.

The following non-nuclear countries' units are all earmarked for nuclear missions: German Tornado fighter-bombers at Buechel Air Base, Dutch F-16 aircraft at Volkel Air Base, Belgian F-16 Falcons at Kleine Brogel, Greek F-

16s at Araxos, Turkish F-16s and Italian Tornados at Ghedi Torre.

In addition to these air force units, Germany and Turkey also operate additional nuclear capable units. These units are on air bases operating on nuclear caretaker status, *i.e.*, on a reduced readiness in peacetime. These arrangements, in effect, turn NNWS into nuclear weapons states in time of war via the nuclear sharing arrangements.

NATO Wings Maintaining Nuclear Weapons				
Air Base	Unit	Type of Aircraft	Aircraft Operated By	US Units
Araxos Air Base, Greece	116 th Combat Wing	A-7 E	Greece	731 st MUNSS (former 716th)
Aviano Air Base, Italy	31 st Fighter Wing	F-16	USA	31 st Logistics Group (HQ)
Balikesir Air Base, Turkey ^a	9 th Wing	F-16	Turkey	none, 39 th Logistics Group responsible
Büchel Air Base, Germany	33 rd Fighter Bomber Wing	Tornado	Germany	817 th MUNSS
Ghedi-Torre Air Base, Italy	6 th Wing	Tornado	Italy	31 st MUNSS (former 616th)
Incirlik Air Base, Turkey		on rotation	USA	39 th Logistics Group (HQ)
Kleine Brogel Air Base, Belgium	10 th Wing Tactical	F-16	Belgium	52 nd MUNSS
RAF Lakenheath, United Kingdom	48 th Fighter Wing	F-15 E	USA	48 th Equipment Maintenance Section
Memmingen Air Base, Germany ^a	34 th Fighter Bomber Wing	Tornado	Germany	none, 817 th MUNSS responsible
Murted Air Base Akinci, Turkey ^a	4 th Wing	F-16	Turkey	none, 39 th Logistics Group responsible
Noervenich Air Base, Germany ^a	31 st Fighter Bomber Wing	Tornado	Germany	none, 817 th MUNSS responsible
Ramstein Air Base, Germany	86 th Airlift Wing	C-130 Maintenance Section	USA, Theater Transport, Vault Maintenance	86 th Munitions Flight
Spangdahlem Air Base, Germany	52 nd Fighter Wing(?)	F-16	USA	52 nd Logistics Group (HQ)
Volkel Air Base, The Netherlands	1 st Fighter Bomber Wing	F-16	Netherlands	752 nd MUNSS

^a Caretaker status, reduced readiness in peacetime

Annex 4: Example of a Specific Basing Agreement for US Nuclear Forces in Europe

The agreement below covered the equipment of CF-104 Starfighters of the Royal Canadian Air Force in Europe with US nuclear weapons. It is typical of the detailed agreements covering such matters that the US has concluded on a bilateral basis with selected NATO allies.

SECTION I INTRODUCTION

1. Purpose.

The purpose of this Royal Canadian Air Force (RCAF)/United States Air Force in Europe (USAFE) Arrangement, hereinafter referred to as “this agreement”, is to establish and describe the procedures governing the receipt, storage, maintenance, transport, loading, delivery, salvage, custody, security and control of nuclear weapons for RCAF CF104 strike squadrons assigned to the Supreme Allied Commander Europe (SACEUR), in order to provide an operational capability while ensuring compliance with applicable United States laws and regulations, (such as the United States Atomic Energy Act of 1954, as amended), the Allied Commander Europe Plan for the NATO Special Ammunition Storage Program dated 30 Mar 61, and applicable Canadian laws and regulations as well as the provisions of applicable United States and Canadian agreement with the Host Nation.

2. Authority.

This agreement implements and is subject to the provisions of the Canada/United States agreement effected by the exchange of Notes 125 (Canada) and 58 (United States) dated 16 Aug 63, and support the North Atlantic Council Declaration and Communiqué (Document PC/10, NATO Ministerial Meeting of 1619 December 1957).

3. Policy.

This agreement prescribes the procedures necessary for both the USAFE and RCAF to exercise their respective and joint responsibilities under the aforementioned Government to Government agreement. The RCAF and USAFE each assume responsibility for insuring compliance with the terms of this agreement by their own personnel and any non-RCAF/USAFE personnel sponsored by them, respectively.

SECTION II GENERAL

1. Stationing of Forces

In the implementation of this agreement, the USAFE will station custodial detachments comprising a mutually agreed number of military personnel and personnel serving with, employed by, or accompanying the forces (dependents),

equipment and other material on agreed Royal Canadian Air Force (RCAF) bases or elsewhere in Allied Command Europe (ACE) area made available by the RCAF, and will use such agreed bases and facilities for agreed military purposes. These USAFE forces will hereinafter be referred to as the Custodial Detachments.

2. Customs

The RCAF will arrange for customs formalities to be carried out on the Canadian bases for US personnel and materiel in accordance with applicable intergovernmental agreements.

3. Nuclear Weapons Support and Control.

- a. Nuclear weapon support will be provided to RCAF nuclear delivery units in support of NATO defence plans. The time of deployment of custodial detachments to custodial storage sites will depend upon the attainment of operational readiness by RCAF delivery units and the availability of adequate storage and administrative facilities and other support as mutually agree herein.
- b. The US forces will retain custody of all US nuclear weapons and will release US nuclear weapons to the RCAF only in accordance with NATO defence plans, SACEUR directives, and US national control procedures. Custodial and operational procedures for U.S. owned training weapons will be as prescribed by USAF.

4. Command Jurisdiction.

The presence of the USAF at the “agreed bases will not alter the command responsibility and authority of the RCAF Base Commander; but with respect to the custodial detachment, all functions of command will be the sole responsibility of the Custodial Detachment Commander. The Custodial Detachment Commander will ensure compliance with all applicable RCAF directives provided such directives are not in conflict with or prevent the exercise of the Custodial Detachment Commander’s responsibilities.

5. Support and Costs.

- a. The RCAF will provide at no cost to the United States or personal cost to the individual US personnel, all land, facilities, services, supplies, and other logistic and admin-

istrative support required by this agreement unless otherwise specifically stated therein. The cost of salaries and allowances of US military personnel and such equipment and training as the United States has agreed to furnish will be borne by the United States Government.

- b. Common items of administrative and logistical support, such as billeting, messing, transportation, mail service, etc., will be provided by the RCAF to United States personnel and their dependents to the same standard and on the same basis as that provided for equivalent Canadian personnel. USAF peculiar support requirements, such as clothing sales, courtmartial jurisdiction, administrative proceedings, etc., will be provided from USAF sources. The responsible USAF Commander will conclude necessary arrangements and required agreements with the RCAF and appropriate USAF agencies.

SECTION III COMMUNICATIONS

1. General.

- a. All point-to-point communications will be through NATO/national channels, except that the USAF will, at its own expense, install, equip, maintain and operate a communications facility for separate US National channels.
- b. Nuclear weapons will not be made available on the storage site until communications consistent with SHAPE criteria are available, and above cited US communications are operational.
- c. All communications equipment and services (telephone, teletypewriters, cable, longlines and like facilities) will be arranged for by the RCAF, except as otherwise provided herein.
- d. US personnel will be assigned as part of the custodial detachments for the equipment, operation, and maintenance of US communication facilities for use of the custodial detachment. Cost of this US provided equipment and its installation and maintenance will be borne by the US.

2. Responsibilities.

- a. The USAF will provide, operate, and maintain US communications facilities, together with the US national cryptographic equipment and documents required for the cryptographic section of these facilities for use of the custodial detachment.
- b. The RCAF will provide, operate, and maintain:
 - (1) Speech communications between the storage site, the alert area, and the custodial detachment administrative area on the associated RCAF base, including all required terminal equipment.

- (2) Teletypewriter communications through prescribed NATO/National channels for access into higher echelon NATO channels and into a US military communications station at a designated transfer point. These facilities will be made available for utilization by the Custodial Detachment Commander as required.

- (3) Mobile communications equipment as required in paragraphs 7 and 14 of Annex A.

- (4) Long distance official telephone service for the custodial detachment through NATO/National channels. Where NATO/National facilities will not provide required service, such official calls, if deemed urgent by the Custodial Detachment Commander, may be placed for the USAF element through existing civil facilities, and charges so incurred will be paid by the RCAF. The USAF signatory to this agreement gives assurances that such calls placed through civil facilities will be restricted to occasions of real urgency and will investigate fully and evidence indicating that such restriction is not being observed.

- c. The RCAF will ensure that all communications facilities are available to coincide with the installation and operational dates of the US element at the selected RCAF base.
- d. The RCAF will provide and maintain an operating area for the USAF cryptographic facility physically secured in accordance with existing NATO standards. This area must be collocated with the administrative area of the custodial detachment.

SECTION IV SUPPORT

1. Installations.

- a. The RCAF will be responsible for obtaining and making available without cost to the US all land areas required by the USAF, and will assure that provision is made for the construction of required structures and facilities in accordance with NATO criteria. To the extent that North Atlantic Council approves the establishment of nuclear stockpile sites under NATO Common Infrastructure, the apportionment of costs will be subject to NATO Infrastructure procedures.
- b. Buildings and facilities not scheduled by NATO but required by the USAF to fulfil the terms of this agreement will be provided by the RCAF. These will be provided in accordance with standards agreed by the Custodial Detachment Commander and the RCAF Base Commander and use will be made of existing RCAF buildings to the maximum extent possible.

2. Materiel.

- a. Technical tools and equipment required by the USAF custodial detachment to perform its mission will be provided by the USAF.
- b. For items of equipment other than those covered by “a” above, the USAF will provide a list of applicable items to be supplied by the RCAF. These will include all furnishings and equipment required in the facilities provided. This list will be subject to agreement between the RCAF and USAFE. The items supplied will remain RCAF property and be subject to RCAF materiel accounting procedures.
- c. Replacement items of equipment, when required, will be provided through the same procedures used in obtaining original items as outlined in paragraph “a” and “b” above.
- d. Support services required by the custodial detachment, such as laundering and dry cleaning of organizational property, maintenance, fuels, lubricants, and repair of vehicles and equipment, will be provided by the RCAF.

3. Transportation.

- a. The RCAF will provide:
 - (1) the following vehicles in operational condition for continuous use outside the ammunition storage area, on and off base, in support of the custodial detachment. The custodial detachment will provide drivers for these vehicles.
 - 1 ea auto, motor sedan, 4door
 - 2 ea 1/2ton pickup truck,
 - 1 ea approximately 15 passenger bus
 - 1 ea EOD vehicle, 4wheel drive
 - (2) The following vehicles in operational condition for continuous use within the ammunition storage area. The custodial detachment will provide drivers for these vehicles.
 - 2 ea 1/2 ton pickup truck
 - 1 ea forklift, 6000 lb minimum capacity
 - 2 ea trailer stake body, 4' x 8' bed
 - (3) Permission and licensing of custodial detachment personnel in accordance with RCAF regulations to drive RCAF vehicles.
 - (4) When available other such vehicle support as required.
 - (5) On request of the USAFE but at no cost to the USAF, freight shipment within ACE area of military equipment associated with USAF nuclear support of RCAF Strike Units. This will include all loading, unloading, packing, unpacking, and temporary storage of such freight shipment.
 - (6) Payment of transportation costs for official travel of custodial detachment personnel on temporary duty re-

lated to USAF nuclear support of RCAF Strike Units.

- (7) Daily transportation for dependent children to locally operated US or Canadian dependent schools on the same basis as that provided for Canadian dependent children.
- b. The USAF will provide:
 - (1) Shipments of personal effects of USAF personnel and dependents arriving at or departing from agreed bases.
 - (2) Transportation for USAF personnel arriving at or departing from the agreed bases on permanent change of station.

4. Personnel Support.

- a. Personnel Supplies: Items of personal supplies and equipment not otherwise provided for under Para 2, above, including weapons, ammunition, and clothing, for USAF personnel, shall be the responsibility of the USAF.
- b. Housing:
 - (1) Bachelor Officers, NCO's and Airmen or those not accompanied by dependents will be provided furnished quarters without cost to the individual or to the U.S. Government.
 - (a) Officers will be provided billets in the RCAF BOQ on the same basis as that provided equivalent Canadian personnel. Service charges such as for laundry may be assessed at the same rates as for Canadian personnel.
 - (b) NCO's and Airmen will be billeted in the assigned USAF barracks.
 - (c) U.S. and Canadian authorities recognize that the above facilities do not meet NATO criteria for dormitory and administrative facilities. Should these facilities not prove sufficient due to an increase in the size of the custodial detachment, a requirement for use of these facilities by Canadian Forces, or other pertinent reason, the RCAF will apply for NATO common infrastructure funding for Type “C” dormitory and administrative facilities authorized.
 - (2) The RCAF will provide furnished quarters to US personnel accompanied by dependents to the same standard and on the same basis as that provided for equivalent Canadian personnel. The total cost of rental charges to USAF personnel for RCAF controlled housing will not exceed the current USAF housing allowance.
- c. Recreation Facilities: The RCAF will:
 - (1) Permit USAF personnel to use all existing athletic and recreational and day room facilities.
 - (2) Make available to USAF personnel the privilege of membership in all RCAF clubs and messes for officers, NCO's, and others, according to rank. USAF membership in messes, clubs and or institutes will be

in accordance with RCAF regulations governing such membership, including mess and club dues.

- d. Schools: Dependent children of US personnel will be permitted to attend RCAF dependent schools on the same basis as dependent children of RCAF personnel. Where an RCAF dependent school does not exist, adequate school facilities, including maintenance and custodial services, utilities and other operating costs, will be provided by the RCAE Administration of the dependent school or schools so provided will be the responsibility of the US.
- e. Medical Support: The RCAF will provide: Medical support to USAF personnel and their dependents in accordance with existing arrangements.
- f. Food Service: The RCAF will provide messing on a repayment basis to US personnel on ration strength (not separate rations) to the same standard and on the same basis as that provided to comparable Canadian personnel. US personnel not on ration strength (on separate rations) will pay scheduled meal prices.

5. Maintenance and Utilities.

- a. The RCAF will provide all necessary maintenance of land areas, roads, utilities, structures, and facilities occupied by the USAF, and will furnish and operate all civil engineering services required by the USAF, including but not limited to utilities (such as electricity, heat, water, gas, and sewage disposal), janitorial service, trash disposal, and snow and ice removal.
- b. The RCAF will make minor modifications and alterations to structures and facilities to meet USAF requirements as mutually agreed between the Custodial Detachment Commander and the RCAF Base Commander. Major modifications, alterations, or additions will be as mutually agreed between the USAF and the RCAF. Restoration, rehabilitation, and repair of structures and facilities as required upon termination of occupancy by the USAF, will be a RCAF responsibility, except that the USAF will reimburse the RCAF for willful or negligent damage over and above fair wear and tear caused to such structures and facilities by US personnel.

6. Fire Protection.

- a. The RCAF will furnish fire protection, including fire fighting personnel and equipment, for USAF material and personnel. Except as indicated below, fire prevention measures and inspections will be the responsibility of the RCAF.
- b. The RCAF will provide crash and rescue equipment and personnel trained for fire protection within the USAF restricted areas and in the proximity of nuclear weapons particularly those weapons under conditions of alert or transport. The USAF will be responsible for fire preven-

tion methods and inspections in the areas described above and will provide to the RCAF personnel, in accordance with US disclosure procedures, special information and instructions necessary for performance of their duties. The RCAF will implement USAF provided procedures for preventing and combating fires that might threaten nuclear weapons.

SECTION V INFORMATION ACTIVITIES

1. General.

Publicity relating to joint CanadianUS defence plans and operations will be governed by the provisions of the USCanadian Notes of 19 and 24 February 1951, except that access by members of press or other news media to areas containing nuclear weapons will be jointly approved by the appropriate RCAF and USAF commanders.

2. Release of News.

- a. The RCAF Base Commander, prior to releasing any information concerning the USAF or its personnel at the agreed bases, will obtain clearance from the Custodial Detachment Commander. If the information is of possible general interest, (i.e., other than "spot news" as defined in the aforementioned notes of 19 and 24 February 1951) clearance will be obtained through the ACIC I Air Division, RCAF, who will coordinate such request for clearance with the Commander in Chief, United States Air Force in Europe, with Supreme Allied Commander, Europe, and with the appropriate Canadian government agencies as applicable.
- b. The Custodial Detachment Commander, prior to releasing any information concerning the RCAF or its personnel at the agreed bases, will obtain clearance from the RCAF Base Commander. If the information is of possible general interest, clearance will be obtained from Headquarters USAF, which will coordinate such request for clearance with the AOC I Air Division, RCAE and with SACEUR.

SECTION VI SAFETY

1. Nuclear Weapons.

- a. The USAF will provide all necessary information pertaining to safety rules and procedures governing nuclear weapon operations in accordance with US National disclosure policy and established transmission or retransmission channels. The RCAF Base Commander will furnish the Custodial Detachment Commander any pertinent Canadian safety regulations. When such regulations are made available they will be forwarded to appropriate US agencies for evaluation.

- b. The USAF and the RCAF will be responsible for compliance with United States Nuclear Weapon System Safety Rules and procedures for nuclear weapon operations. The USAF and the RCAF also agree to comply with any noninconsistent Canadian safety regulations and with any provisions of Annex B, hereto, entitled "Alert Procedures for RCAF Nuclear Strike Forces", for each weapon systembomb combination.
- c. The RCAF will certify to the Custodial Detachment Commander that the armament system of each delivery vehicle meets the standards prescribed and approved by the USAF. Such certification will be made by the RCAF Base Commander or his designated representative prior to placing the delivery vehicle on Quick Reaction Alert and at any time that the armament system is modified or affected by other changes in the delivery vehicle configuration subsequent to original certification. No modification will be made to the weapon control, monitor suspension or release system without USAF approval. The RCAF will report any failure of weapon control, monitor, suspension or release system to appropriate USAF agencies.
- d. The RCAF and the USAFE will establish a nuclear safety inspection system. (see Annex C) USAF assisted by the RCAF will conduct inspections in accordance with Annex C to insure that nuclear safety rules and procedures are being followed.
- e. The Custodial Detachment Commander will designate an USAF Nuclear Safety Officer who, in conjunction with the RCAF Nuclear Safety Officer, will advise the RCAF Base Commander on matters pertaining to nuclear safety. However, any documents pertaining to nuclear safety and containing Restricted Data or Formerly Restricted Data will be passed to the RCAF in accordance with procedures established under "The Agreement Between the United States of America and the Government of Canada for Cooperation on Uses of Atomic Energy for Mutual Defence Purposes") dated 22 May 1959 as amended. The authority of the Custodial Detachment Commander with respect to the determination of the nonadherence to United States Nuclear Weapon Safety Rules and procedures is final. Whenever he determines that a nuclear hazard exists, he will immediately notify the RCAF Base Commander of the situation, then place in storage the weapon involved, or take other appropriate action until the situation is corrected.
- f. Protection from weapon radiological hazards, including detection and decontamination (exclusive of the nuclear weapon storage area which is the responsibility of the Custodial Detachment Commander) is the responsibility of the RCAF Base Commander. The Custodial De-

tachment Commander will be responsible for providing the necessary information on the nature of the hazard to the RCAF Base Commander.

- g. USAF and RCAF personnel who control, handle, have access to, or control access to nuclear weapons, or nuclear weapon control systems, must be certified as acceptable in accordance with the criteria of the Human Reliability Programme (HRP) as specified in respective USAF and RCAF orders.

2. Munitions Destruction, Neutralization, or Disposal.

- a. The USAF will be responsible for destruction, neutralization, or disposal of all US munitions which may be provided within the framework of this agreement and which require the services of qualified technicians.
- b. The RCAF will provide assistance as requested by the Custodial Detachment Commander.
- c. Recovery of nuclear weapons, including warhead sections, will be accomplished by USAF personnel with the RCAF furnishing movement security as provided in Annex A, para 14, as appropriate.

SECTION VII SECURITY

1. General.

Minimum security standards and basic security responsibilities as set out in Annex A are established in accordance with the overall security plan for nuclear weapons and are contained in Annex C, SHAPE 6430/20 "Allied Command Europe Plan for the NATO Special Ammunition Storage Programme". The Custodial Detachment Commander and the RCAF base Commander will maintain contact, exchange releasable regulations and security procedures and keep fully informed of all matters affecting security of the base and of US and Canadian property and personnel connected therewith.

- a. USAF Responsibility: The Custodial Detachment Commander will maintain custody of and control access to the nuclear weapons and US owned training weapons, and will establish exclusion areas, to which only designated US personnel will normally be admitted. As used in this agreement, custody is defined as the guardianship and safekeeping of nuclear weapons and their components, including source and special materials. This includes:
 - (1) Accountability for warheads and materials classified Restricted Data or Formerly Restricted Data which remain with the US as US property.
 - (2) Control of access to the warheads or material classified Restricted Data or Formerly Restricted Data in that it would take an act of force against a US National, and therefore against the US Government, to obtain or use the warheads or materials classified as

Restricted Data or Formerly Restricted Data, or obtain information concerning them.

- b. Royal Canadian Air Force Responsibility: The RCAF is responsible for the general security of the agreed bases and external security of all land areas, structures, and other facilities made available by the RCAF for the use of the USAF. External security, for the purpose of this arrangement, is defined as protection against enemy forces, saboteurs, paramilitary forces or other unauthorized personnel.

2. Law Enforcement.

The RCAF will be responsible for all normal military police activities involving Canadian or US military personnel. Security violations or other offenses will be investigated and handled in accordance with the NATO SOFA or any subsequent intergovernmental agreement which may supplement or supersede it. Copies of base regulations of a police or security nature applicable to US personnel will be furnished for dissemination to all US personnel.

3. Emergency Plans.

The RCAF commander responsible for the security of an area in which US nuclear weapons are located will prepare, in coordination with the US custodial detachment commander in the area, plans for the evacuation of all nuclear weapons with minimum delay in event of subversive activity, disaster, civil riot, or any similar emergency.

- a. Such plans will indicate the conditions in which an emergency may be considered to exist. Regardless of the condition or the type of the emergency, nuclear and US owned training weapons will remain under US custody until release is authorized in conformance with R-Hour or SHour release procedures.
- b. US personnel are responsible for destruction of US nuclear weapons when such action becomes necessary. Destruction orders issued by US custodial detachment commanders will be in accordance with joint plans.

SECTION VIII CLAIMS

Claims for property loss or damage, personal injury or death, in connection with the operation of this agreement, shall be dealt with in accordance with the provisions of the NATO SOFA or any other subsequent intergovernmental agreement which may supplement or supersede it.

SECTION IX ANNEXES

Attached hereto are Annexes A, B and C, which form an integral part of this agreement.

Annex A – Minimum Security Standards.

Annex B – Alert Procedures for RCAF Nuclear Strike Forces.

Annex C – USAFE and RCAF Nuclear Safety Inspection System.

SECTION X ENTRY INTO FORCE.

The present agreement enters into force upon signature. (signed by)

G.P Disosway
General, USAF
Commander in Chief
United States Air Force Europe
31 January 1964

D.A.R. Bradshaw
Air Vice Marshal
for Chief of the Air Staff
Royal Canadian Air Force
31 January 1964

ANNEX B

ALERT PROCEDURES FOR RCAF NUCLEAR STRIKE FORCES.

Certain SACEUR designated RCAF strike squadrons will have US nuclear weapons readily available for use in accordance with procedures established by SACEUR and subject to USCINCEUR custody and release. Such squadrons are required by SACEUR to provide a specific number of aircraft on Quick Reaction Alert (QRA). The agreement establishes those responsibilities and procedures which must be followed to effect proper safety, custody and release for SACEUR committed RCAF units. These procedures will assure compliance with US Nuclear Weapon System Safety Rules and are considered the minimum essential to safeguard and control the nuclear weapons involved. However, both the USAF and the RCAF will comply with any additional restrictions or temporary limitations involving the weapon system when such are imposed by competent authority.

1. General.

The storage, handling, maintenance, loading, downloading, access or any other operation involving US nuclear weapons will be governed by the approved US Nuclear Weapon System Safety Rules as augmented by USCINCEUR/CINCUSAFE and associated technical documents. Both USAFE and the RCAF will comply with and abide by these safety rules and the associated weapon system technical orders, checklists, or equivalents thereof approved by the USAF.

- a. USAFE will provide the safety rules and appropriate technical publications as early as possible to facilitate the training of RCAF strike unit personnel and in no case later than assignment to QRA status.
- b. The RCAF will insure expeditious distribution of these documents or changes thereto through national channels to the strike units.

2. Alert Posture.

A portion of the SACEUR committed RCAF force will be placed on QRA during peacetime conditions in order to

provide SACEUR with a capability to launch high priority strikes in a minimum of time. During periods of increased international tension, SACEUR may declare conditions of advanced alert which require increased numbers of aircraft on QRA. The number of aircraft committed to QRA and the rate of force generation required by SACEUR announced alerts will be as specified in the SACEUR NSP.

3. Training.

- a. **Practice Alerts.** Those weapon systems and crews which are on normal peacetime QRA will be subject to “nonnotice” peacetime alert exercises at periodic intervals. Such exercises will be held to a minimum consistent with the maintenance of the required readiness posture. The purpose of these practice alerts is to check the reaction time of the crews and custodial detachment personnel and to train them for safe and rapid response to an actual alert situation. During these exercises all actions required up to, but not including, connecting external power or turning on internal aircraft power may be performed. No change will be made to the alert configuration of the weapon and no power will be applied to the weapon system. All procedures for starting the aircraft engines and subsequent actions required will be simulated unless such action is specifically permitted in the approved US Nuclear Weapon System Safety Rules.
- b. **Operational Readiness, Exercises, inspections, and Tactical Evaluations:** To develop and maintain the capability to meet SACEUR’s force generation requirement (increased readiness), periodic full scale Emergency War Plan operational readiness exercises, inspections, unit tactical evaluations involving the weapon system, crews and custodial detachment personnel who are not on QRA will be conducted. Through these exercises weapon ground transportation and loading personnel are trained to perform safely and quickly tasks which would be required to generate additional forces under increased readiness conditions. During these exercises, inspections or evaluations, training weapons, inert practice bombs or war reserve weapons may be used.
 - (1) If war reserve weapons are used, the following criteria will apply:
 - (a) The procedures contained in paragraph 4 of this Annex which are applicable to a particular phase of the operation will be implemented.
 - (b) The weapon will be downloaded as soon as practicable.
 - (c) Adequate security will be provided all weapons.
 - (d) The “ARMSAFE” switch, or the “READYSAFE” switch will remain in the safe position.
 - (2) In all such exercises, regardless of the type of weapon or trainer used, security and access requirements will be the same as for war reserve weapons.

4. Procedures and Responsibilities Under Conditions of Quick Reaction Alert:

- a. During any operation involving US nuclear weapons or weapon loaded aircraft minimum of two (or more if specifically directed) authorized persons will be present. In each instance personnel must be capable of detecting incorrect or unauthorized procedures with respect to the task to be performed and familiar with pertinent safety and security requirements. The total number of personnel performing these functions will be held to a minimum consistent with the operation being performed.
- b. Appropriate commanders will ensure that rigid administrative and security control procedures are constantly and vigorously enforced for all areas containing weapons.
- c. **Weapons Storage:** Custodial detachments will store, maintain, inspect, modify and checkout all nuclear weapons and US owned training weapons in accordance with approved US technical publications. Only approved test equipment and procedures will be used to perform electrical tests on such weapons.
- d. **Weapons Maintenance and Configuration:**
 - (1) At any time a decrease in weapon reliability is suspected the weapon will be returned to the storage area for verification or maintenance.
 - (2) The Custodial detachment will thoroughly check all nuclear weapons to be placed on alert prior to delivery to the alert site.
 - (3) The RCAF will have no responsibility for maintenance of weapons other than final load checks and settings.
- e. **Weapons Loading and Downloading:**
 - (1) The Custodial detachment will:
 - (a) Respond to the NATO formal and military alert requirements.
 - (b) Not apply power from the aircraft or external source to any loaded weapon prior to receipt of the SACEUR/ USCINCEUR RH-1A or SUIA message or receipt of instructions from an authorized source for the purpose of weapon maintenance, test, checking or setting, or as authorized in the US Nuclear Weapon System Safety Rules.
 - (c) Monitor all weapon loading and load checks.
 - (d) Brief all alert aircrew, loading crews, USAF technicians and USAF custodians on the hazards associated with the inadvertent application of power and improper weapons handling.
 - (e) Provide a minimum of one USAF Weapon Custodian for each weapon/weapon system during ground transportation, loading, downloading and alert operations.
 1. One custodial agent may have custody of two

nuclear weapons provided they are not separated by more than 100 feet (30m), there are no intervening obstacles and visual and physical surveillance of each weapon or weapon system is possible.

- (f) Monitor compliance by RCAF of applicable US approved safety rules and procedures.
- (g) Provide a qualified weapon technician to monitor and assist RCAF during each weapon loading/downloading.
- (2) The RCAF will:
 - (a) Provide only properly certified aircraft for loading of nuclear weapons or US-owned training weapons.
 - (b) Accomplish all loading, downloading and post load check procedures in accordance with approved USAF technical instructions and checklists or USAF approved RCAF equivalents.
 - (c) Keep to a minimum the towing of weapon loaded aircraft. During this operation the cockpit will be manned by the aircraft commander.
 - (d) Assure that no one is allowed entry to the QRA No Lone Zone or access to a weapon loaded aircraft unless accompanied by the assigned aircraft commander, designated weapon technician and a USAF custodian. A No Lone Zone is defined as the area clearly designated and lettered when no lone (single) individual is permitted access. The No Lone Zone is generally a circle around the weapon loaded aircraft of sufficient size to ensure that no part of the aircraft extends beyond that circle. In no case will the No Lone Zone be smaller than an area bounded by lines drawn between wing tips, tail, and nose of the aircraft.
 - (e) Insure that a qualified crew member checks the weapon for readiness prior to scramble.

f. Weapons Release:

- (1) The Custodial detachment will provide an Alert Duty Officer on duty at all times that the RCAF strike unit is on QRA. The Alert Duty Officer will:

- (a) Receive and authenticate the USCINCEUR portion of the SACEUR/USCINCEUR release message, then release US atomic weapons to the strike unit in conformance with SACEUR/USCINCEUR implementing instructions. It is mandatory that the SACEUR/USCINCEUR RH1A or SU1A release message be received in its entirety and authenticated prior to release of atomic weapons. If the SACEUR/USCINCEUR release message is received by the custodial detachment prior to receipt of this message by the RCAF Strike Unit through NATO National channels, the entire message will be provided by the custodial detachment to the RCAF duty officer.
- (b) Personally notify the USAF custodian(s) at the alert aircraft of the authority to release weapons.
- (c) Notify the duty custodians at the storage area of the authority to release the remainder of the weapons assigned to the strike unit.
- (2) When requested, the RCAF will assist in security and access control of the US Nuclear Release Materials Safe. The RCAF guard will ensure that access to this safe is gained only in the presence of a minimum of two US personnel, one of which must be a commissioned officer or warrant officer. A US Nuclear Release Materials Safe is a combination lock safe which contains US nuclear weapon release materials. When this safe is in position it will be in the centre of a clearly marked US Exclusion Zone.

g. Evacuation or Destruction of Nuclear Weapons:

The custodial detachment will:

- (1) Prepare necessary plans in coordination with the RCAF to provide a capability for the evacuation or destruction of US nuclear weapons to prevent their loss by enemy action or any other unauthorized action.
- (2) If required, supervise and execute the evacuation/destruction of US nuclear weapons.
- (3) If required, recall previously released weapons for evacuation/destruction as directed by USCINCEUR or as deemed necessary.

Annex 5: Concerns Prompted by NATO Expansion

NATO's extended deterrence now covers new members and they are eligible to participate in NATO nuclear sharing. Both Russia and critics of NATO nuclear sharing have expressed concern about this aspect of enlargement. Russia fears that NATO could retain the option to threaten its territory with nuclear weapons deployed closer to Russian borders. On the other hand, non-nuclear-weapon states have noted that expansion will increase the number of countries dependent on nuclear deterrence.⁹⁷

NATO frequently reiterates that it has “no plan, no reason and no intention” to deploy nuclear weapons on the territory of its new members. However, it has been unwilling to make this commitment legally binding. Russian nervousness on this point has been increased by the attitude of some NATO members. For example, in late October 1999, Hungarian Prime Minister Victor Orban told journalists that there was no question that NATO needed nuclear weapons because of uncertainties over Russia. Furthermore, he said that despite NATO policy, Hungary is ready to accept NATO nuclear deployments in a crisis. NATO spokespeople would only say that at present this was unnecessary. A spokesman for President Yeltsin criticized the Hungarian statement as a direct violation of the NATO-Russia Founding Act.⁹⁸

Negotiations between NATO Secretary-General Javier Solana and Russian Foreign Minister Yevgeni Primakov led to the “Founding Act on Mutual Relations, Co-operation and Security between NATO and the Russian Federation”. During the negotiations, US Secretary of State Madeleine Albright set out the US position on its nuclear weapons in Europe for the US Senate Armed Services Committee:

As you know, Russia would also like us to make absolute commitments in the charter about the deployment of nuclear and conventional forces on the territory of new members. But we will not compromise on this issue.

All we have done, and all we will do, is to restate unilaterally existing NATO policy: that in the current and foreseeable security environment, we have no plan, no need, and no intention to station nuclear weapons in the new member countries, nor do we contemplate permanently stationing substantial combat forces.⁹⁹

However, Russian concerns continued to focus on the possibility of infrastructure preparations for crisis and wartime deployments of nuclear weapons. As a result, within the NATO-Russia Founding Act, NATO elaborated slightly on its position. The Alliance stated “it has no intention, no plan, and no reason to establish nuclear weapons storage sites on the territory of those members, whether through construction of new nuclear storage facilities or the adaptation of old nuclear storage facilities”.¹⁰⁰

During Senate hearings on ratification of NATO enlargement, Albright and US Secretary of Defense William Cohen added some additional “no’s” to the first three. Both confirmed that there are no plans to:

- train new members states’ pilots in nuclear missions during peacetime,
- nuclear certify these countries’ aircraft, or
- transfer equipment or infrastructure to support these countries’ dual-capable aircraft in a nuclear role.¹⁰¹

⁹⁷ See, for example, “Statement by the Permanent Representative of South Africa, Ambassador K.J. Jele, to the First Preparatory Committee Meeting for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons”, 8 May 1998.

⁹⁸ *Hungarian Prime Minister Says Hungary Would Consider NATO Nukes*, and *Russia Unnerved by Hungary Remarks*, Reuters Newswire, 30 October 1999. Further details can be found at www.nautilus.org in their *NATO Nuclear Flash* section.

⁹⁹ Secretary of State Madeleine K. Albright, “Prepared statement before the Senate Armed Services Committee, Subject: NATO

Enlargement”, US Department of State, Washington, D.C., 23 April 1997

¹⁰⁰ NATO-Russia, “Founding Act on Mutual Relations, Cooperation and Security between the North Atlantic Treaty Organization and the Russian Federation”, Paris, 27 May 1997, p.8.

¹⁰¹ “Question for the Record Submitted by Senator Harkin to Secretary of State Albright”, Senate Appropriations Committee, Washington, 21 October 1997. See also, “Questions for the Record Submitted by Senator Harkin to Secretary of Defense Cohen”, Senate Appropriations Committee, Washington, 21 October 1997.

Furthermore, they stated that the US does not intend to conclude bilateral Programs of Co-operation with the new member states.¹⁰² Finally, Albright and Cohen made clear that new members would not be required to buy nuclear-capable aircraft.¹⁰³ Practically speaking, these two points mean that whatever NATO nations might wish to do, the current policy cannot be easily reversed. In total, these politically binding commitments provide Russia with some reassurance that NATO has no option for a quick breakout from the self-constraints entered under the Founding Act.

However, the new members to NATO will contribute to the development and implementation of NATO's strategy, including its nuclear component. New members will also be eligible

to join the Nuclear Planning Group (NPG) and its subordinate bodies (NPG Staff Group, High Level Group, and the Senior-Level Weapons Protection Group), and to participate in nuclear consultations during exercises and crisis.¹⁰⁴

In addition, NATO has made it clear that "new members will be expected to support the concept of deterrence and the essential role nuclear weapons play in the Alliance's strategy of war prevention as set forth in the Strategic Concept."¹⁰⁵ It is therefore not surprising that the candidates for NATO membership have been some of the most determined opponents of proposals for a Central European Nuclear-Weapon-Free Zone.

— MB, ON, TP

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

ISBN: 3-933111-04-8

The Project on European Nuclear Non-Proliferation (PENN) is a network of research and disarmament organizations from many European countries. PENN members research and analyze European nuclear weapons, proliferation and non-proliferation questions. PENN organizes seminars and meetings, and publishes papers and a regular newsletter.

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