Compliance with the Treaty on the Non-Proliferation of Nuclear Weapons: The United States

July 2022

Introduction

This Briefing Paper summarises compliance by the United States with the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), identifying several instances of violation of the Treaty's provisions. Specifically, the United States has failed to comply with its international legal obligations to prohibit the transfer of nuclear weapons to any recipient, to pursue negotiations in good faith to end the nuclear arms race, and to negotiate in good faith for nuclear disarmament. It has also engaged in conduct that might assist a non-nuclear-weapon State to acquire nuclear weapons in the future.

Status as a Nuclear-Weapon State under the NPT

Under Article IX(3) of the NPT, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967. The Trinity test of 16 July 1945 in New Mexico was the first man-made nuclear explosion in history. The United States subsequently conducted 1,031 further nuclear explosive tests through to 1992. The final test—termed “Divider”—was conducted on 23 September 1992 at the Nevada Test Site as part of Operation Julin. The United States remains the only country to have used nuclear weapons in armed conflict.

In accordance with Article IX(2) of the NPT, the United States is one of the three Depositary States of the Treaty. It signed the Treaty on 1 July 1968 and ratified it on 5 March 1970, the same day as the Soviet Union, whereupon it entered into force. The United States possesses the second largest number of nuclear weapons of any State, behind the Russian Federation. As of mid-2022, the United States was reported to have a total of 5,428 nuclear warheads of which 1,644 are strategically deployed. A small number of nuclear bombs are deployed at air bases on five military allies, all members of the North Atlantic Treaty Organization (NATO).

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Prohibition on Assisting Non-Nuclear-Weapon States to Acquire Nuclear Weapons

Under Article I of the NPT, each nuclear-weapon State Party to the Treaty undertakes not to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices. The notion of assistance is broad in scope. Furthermore, Article III(2) obligates every State Party not to provide to any non-nuclear-weapon State source or special fissionable material or related equipment or material unless they are subject to the requisite Comprehensive Safeguards with the International Atomic Energy Agency (IAEA).

Compliant, with concerns

In the last five years, concern has been growing that the United States might breach this duty with respect to Saudi Arabia, a non-nuclear-weapon State Party to the NPT. In 2015, Saudi Arabia acquired a nuclear research reactor from Argentina. Under Article IV of the NPT, all States are entitled to benefit from the peaceful use of nuclear energy. In 2018, however, Crown Prince Mohammed bin Salman told a reporter that the kingdom would develop nuclear weapons if Iran were to do so. In March 2019, the Reuters news agency reported that US Secretary of Energy Rick Perry had approved, in secret, six authorisations for US companies to sell nuclear power technology and assistance to Saudi Arabia.

In January 2021, Saudi Arabia was described by Mark Fitzpatrick, who had earlier overseen non-proliferation policy at the US Department of State, as “the proliferation concern number one around the world”. Although Saudi Arabia is party to a Comprehensive Safeguards Agreement with the IAEA, its old Small Quantities Protocol to that Agreement suspends most inspection and reporting requirements.

Prohibition on Transferring Nuclear Weapons to Any Recipient

Under Article I of the NPT, each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices. This is a very broad prohibition that renders illegal the transfer of such devices not only to non-nuclear-weapon States but to any State or other entity. At the 2010 Review Conference of the NPT, the five nuclear-weapon States formally...

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“reaffirmed their commitment not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices".\textsuperscript{10}

**Not compliant**

The United States leased Trident missiles to the United Kingdom beginning in the 1980s.\textsuperscript{11} The UK warheads used in its Trident missiles are based closely on the US W76 warhead engineering design.\textsuperscript{12} A declassified US Department of Energy document that demonstrated that the UK warhead was similar enough to the W76 warhead to make its development an integral part of the W76 engineering, design, and evaluation schedule.\textsuperscript{13} Indirect transfer of nuclear weapons is prohibited under Article I of the NPT. This obligation must be implemented in good faith by both the United Kingdom and the United States.

In his statement to the UK House of Commons on 22 March 2021, UK Secretary of State for Defence Ben Wallace confirmed that each nuclear-weapon State to the NPT must develop its own nuclear weapons. He stated: “For clarity, the United Kingdom does not buy warheads from other countries. Under the nuclear proliferation treaty, warheads have to be developed within that very country itself.”\textsuperscript{14} Thus, the production of warheads using a design provided by the United States violates the prohibition on its transfer of nuclear weapons.

The United States has also stationed nuclear weapons in multiple countries as part of NATO’s nuclear sharing. These weapons would be delivered by host country aircraft and pilots in case of nuclear war.

**Duty to Negotiate in Good Faith to End the Nuclear Arms Race**

The first obligation in Article VI of the NPT obligates every State Party to the Treaty to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date”. A good faith interpretation of Article VI is that no nuclear-weapon State may seek to provoke or act to cause a new nuclear arms race.

**Not compliant**

In the wake of the collapse of the Soviet Union, a number of bilateral treaties were adopted that reflected the end of the First Cold War, and both the United States and the Russian Federation embarked on massive reductions in their nuclear forces.

\textsuperscript{13} Ibid.; and see also M. Clarke, “Does My Bomb Look Big in This?”, International Affairs, Vol. 80, No. 1 (2004), p. 37.
In 2002, however, the US withdrew from the 1972 Anti-Ballistic Missile (ABM) Treaty. The 1993 START II Treaty, which would have prohibited multiple independently targetable re-entry vehicles (MIRVs) on intercontinental ballistic missiles (ICBMs), never formally entered into force – a direct response by Russia to that withdrawal. Russia subsequently began building up its nuclear forces. Thus, in March 2021 the Minister of Foreign Affairs of Germany, Heiko Maas, stated: “The past has shown that if one side has more nuclear weapons, the other side will try to catch up. And that is the disastrous arms race we have been in for decades.”

Despite former U.S. President Barack Obama’s advocacy of a “world without nuclear weapons”, and his pledge to produce no new nuclear arms, the United States has engaged in the largest and most costly nuclear modernisation programme in history. The Ground-Based Strategic Deterrent (GBSD) programme is slated to replace the existing US ICBM force in 2029 and remain in service until 2075. Cost estimates for the GBSD are almost US$100 billion for its acquisition and a further US$264 billion over its lifetime. In August 2020, in a speech on the 75th anniversary of the bombing of Hiroshima, Joe Biden declared that: “As President, I will restore American leadership on arms control and nonproliferation as a central pillar of U.S. global leadership. ... And I will work to bring us closer to a world without nuclear weapons, so that the horrors of Hiroshima and Nagasaki are never repeated.”

In 2020, the UN General Assembly adopted Resolution 75/35 in which it reaffirmed “the importance and urgency of preventing an arms race in outer space and the readiness of all States to contribute to that common objective”. The resolution was adopted by 185 votes to 2, with only Israel and the United States voting against it. The corresponding resolution in 2021 was, however, adopted without a vote. The stationing of nuclear weapons in space or on the Moon is prohibited under the 1967 Outer Space Treaty to which the United States is a party.

The United States has more companies engaged in supporting the development of nuclear weapons than any other nation. Lockheed Martin, for instance, is responsible for the construction of the Trident II (D5) nuclear missiles for both the United Kingdom and the United States. In the financial year ending 31 December 2020, Northrop Grumman reported more than US$36.7 billion in sales, including a $13 billion, nine-year deal with the US Government for the GBSD that will fuel vertical proliferation for decades to come.

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17 “Germany’s Heiko Maas Criticizes UK Plans to Expand Nuclear Arsenal”, Deutsche Welle, 18 March 2021.
21 UN General Assembly Resolution 75/35, adopted on 7 December 2020 by 185 votes to 2 and no abstentions, operative para. 1.
22 UN General Assembly Resolution 76/22, adopted without a vote on 6 December 2021, operative para. 1.
24 Ibid., p. 60.
In his first budget request since taking office, President Joe Biden effectively proposed to continue “every part of the unnecessary and unsustainable nuclear weapons spending plans it inherited from the Trump administration”. This includes “the controversial additions made by President Trump to the Obama-era program, such as additional, more usable lower-yield nuclear capabilities.” Cost estimates for US expenditure on nuclear weapons range from $550 billion to more than $700 billion over the next decade.

The 2010 Review Conference of the NPT did not address the issue of a new nuclear arms race. No final document was issued at the 2015 Review Conference. The 2022 Review Conference—the Tenth of the Treaty—must address compliance with the obligation by the nuclear-weapon States head on.

The United States is a signatory but not a State Party to the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT). It is one of the Annex 2 States whose ratification is necessary in order to bring the CTBT into force. In 2010, at the Eighth Review Conference of the NPT, the United States pledged to complete its ratification of the CTBT, but has still not done so. In 2015, at the Ninth Review Conference of the NPT, the United States merely stated that: “We have clearly demonstrated our commitment to abide by the Comprehensive Nuclear Test Ban Treaty.” It did not reiterate its commitment to ratify the CTBT.

In 2020, the United States was said to have considered resuming explosive nuclear testing. To do so would violate its obligations as a CTBT signatory. Under international law, it is prohibited to every signatory to engage in conduct that would serve to defeat the object and purpose of a treaty. In a joint statement on 15 September 2016, the five NPT nuclear-weapon States declared that: “a nuclear-test explosion or any other nuclear explosion would defeat the object and purpose of the CTBT”. In June 2020, the Senate Armed Services Committee set aside US$10 million in its version of the National Defense Authorization Act for fiscal year 2021 to speed up preparations in case the United States decided to resume nuclear testing.

### Duty to Negotiate in Good Faith for Nuclear Disarmament

26 Ibid.
30 Art. 18, 1969 Vienna Convention on the Law of Treaties (VCLT). The United States is a signatory to the VCLT not a State Party but considers, through its practice in relation to other treaties, such as the 1998 Rome Statute of the International Criminal Court, this rule to be customary.
The second obligation in Article VI of the NPT obligates every State Party to the Treaty to “pursue negotiations in good faith on effective measures relating to ... nuclear disarmament”. In the common statement to the Ninth Review Conference of the NPT by the five permanent members of the UN Security Council, these five nuclear-weapon States asserted that there had been “very substantial progress on Article VI. The Cold War nuclear arms race has ended. Global stocks of nuclear weapons are at their lowest point in over half a century as the result of unprecedented efforts on the part of the nuclear-weapon States”.  

Today, none of these three assertions is correct.  

Not compliant

The 2015 statement already acknowledged the “need to pursue further efforts in the sphere of nuclear disarmament in accordance with Article VI of the NPT”.  

But in their common statement, the five nuclear-weapon States declared that: “We continue to believe that an incremental, step-by-step approach is the only practical option for making progress towards nuclear disarmament, while upholding global strategic security and stability.”

The 1987 Intermediate Nuclear Forces (INF) Treaty, which eliminated a class of nuclear weapons from Europe and required their physical destruction, entered into force in 1988. In 2019, however, the United States withdrew from the Treaty, causing it to come to an end. Short- and intermediate-range nuclear weapons might be reintroduced into Europe (and elsewhere) by the United States and the Russian Federation.

The United States launched a dedicated initiative “Creating an Environment for Nuclear Disarmament” (CEND) in 2019 in the lead-up to the NPT’s Tenth Review Conference. It invited other States to engage in a new dialogue to address the “deteriorating security conditions [that] have made near-term prospects for progress on disarmament bleak”. Under the CEND Initiative, three working groups have been created to tackle, respectively: the reduction of the perceived incentives for States to acquire or increase nuclear stockpiles; the functioning and effectiveness of existing nuclear disarmament mechanisms and institutions; and potential interim measures to reduce risks related to nuclear weapons. None is thus dedicated to promoting or facilitating negotiations as the NPT demands. The Initiative, which was widely considered a smokescreen to mask inaction, appears to be going nowhere, slowly.

The failure to launch any formal negotiations towards nuclear disarmament constitutes a serious violation of the duty to pursue nuclear disarmament in good faith.

34 Ibid., para. 6.
35 Ibid., para. 4.
37 Ibid.
In 2010, the Eighth Review Conference of the NPT, while welcoming achievements in bilateral and unilateral reductions by some nuclear-weapon States, noted with concern that the total estimated number of nuclear weapons deployed and stockpiled still amounted to several thousands.\(^{39}\) The Conference noted a reaffirmation by the nuclear-weapon States of their “unequivocal undertaking to accomplish, in accordance with the principle of irreversibility, the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI of the Treaty”.\(^{40}\) It is obligated that the United States engage in good faith towards this objective.

The 2011 New START Treaty with Russia was extended until February 2026 but it will then expire. The United States must initiate discussions for its replacement with both a bilateral and a multilateral treaty as a matter of urgency.

The United States voted against UN General Assembly Resolution 75/40 in December 2020 and has continued to be hostile to the TPNW. In the discussions in the First Committee of the Assembly in October 2021, France spoke on behalf of the five nuclear-weapon States, including the United States, declaring that “those States will not sign or ratify the Treaty, which fails to address key issues, ignores the international security”.\(^{41}\) In December 2021, the United States voted against the adoption of Resolution 76/34 on the TPNW, which calls upon “all States that have not yet done so to sign, ratify, accept, approve or accede to the Treaty at the earliest possible date”.\(^{42}\)


\(^{40}\) Ibid., para. 79.


\(^{42}\) UN General Assembly Resolution 76/34, adopted on 6 December 2021 by 128 votes to 42 with 16 abstentions.