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THE BEGINNING OF THE END...? DEVALUING DETERRENCE

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There is a deeply held commitment among the members of the International Commission on Nuclear Non-Proliferation and Disarmament to full and verifiable nuclear disarmament. However, the Commissioners all have long and distinguished careers in public life, which also makes them realists. There is widespread evidence that a massive wave has already built up among the public, academics and at least some decision-makers around the world supporting the ultimate goal of a world with zero nuclear weapons, and the Commission will be doing what it can to ensure that that wave grows higher and becomes unstoppable. The problem is, of course, that there have been similar waves in the past. The venerable Campaign for Nuclear Disarmament is nearly as old as the Bomb itself! Yet we still have a world with more than 23,000 nuclear weapons. Chillingly enough, the more than 9000 nuclear weapons which are still operationally deployed have a collective firepower equivalent to more than 150,000 of the atomic bombs which destroyed Hiroshima a little over 64 years ago.

The curious thing is—with the possibly exceptions of Iran and North Korea who are concerned with national pride and guarding against regime change—the leaders of just about all the nuclear-armed states appear to agree that the only remaining value of their nuclear arsenals is to deter others from using theirs. But it is a strange, circular argument when they are in effect arguing that as State A, they are keeping their nukes to deter States B, C, D and so on, who argue in turn that they are only keeping their nukes to deter State A! National leaders such as US President Obama and Australian Prime Minister Rudd have realised the emptiness of this snake-eating-its-tail logic. Equally, they realise that nuclear responses are impossible against nuclear attacks by terrorist groups, and that it is only by removing nuclear weapons completely that you will ever be able to eliminate the fear of terrorists acquiring nuclear weapons and actually using them.

But Obama is also a realist, and there is no possibility of the United States surrendering all of its nuclear weapons when other states retain theirs. This is key to understanding the whole process. It will achieve little to simply criticise the nuclear-weapons states and their allies for clinging to what are seen by others as false or counter-productive theories, or motivated by unwarranted concerns. Those concerns, whatever else they might be, are real and substantial to those who hold them, and simply cannot be put aside and ignored. They must be taken into account and a very real effort be made to convince those states that there is no incompatibility between nuclear disarmament and their national security.

President Obama has also suggested that a world with zero nuclear weapons is an unlikely possibility in his lifetime. The Commission may not be quite that pessimistic, but there is a widely-held, somewhat fatalistic view in it that this goal will likely take decades to achieve. Nevertheless, this does not mean that we cannot start taking some first, substantive steps now.

An important step in this regard would be to undermine and devalue the concept of nuclear deterrence on which continued retention of, and attempts to acquire, nuclear weapons is principally based. The nuclear armed states—and perhaps others apart from them—evidently regard nuclear deterrence as the cornerstone of their strategic stability. Yet, far from guaranteeing stability, deterrence rests on shifting sands, subject to the serendipity of geostrategic winds, and more often than not making the countries with nuclear arms more of a target than those without. Whatever their motives were for acquiring nuclear weapons, as more countries also acquire them, the risk of their inadvertent use is multiplied unless every nation equally seriously invests in effective command and control structures, stringent export controls and the safety and security of the nuclear weapons and their infrastructure. It has to be said in this regard that the record is very mixed indeed.

And of course it is not only the nuclear armed states that have a direct stake in nuclear deterrence. At the very least, this is because of the conditions attaching to some of the existing negative security assurances given by one nuclear armed state which do not cover allies of other nuclear armed states in certain circumstances. More obviously, however, it is allied states which have been given *positive* security assurances which include the undertaking by a nuclear armed state that it will use its nuclear weapons to defend that ally in case it is the target of a nuclear attack or even, in some cases, attack by chemical or biological weapons, that are most vitally concerned. This in a nutshell is extended nuclear deterrence, and the most obvious countries to benefit from such assurances are US allies in NATO and countries such as Australia, Japan and South Korea.

Lest it be thought that it is only the United States and its allies which are caught in this situation, it should be borne in mind that Russia in the CIS Collective Security Treaty of 1992 offered a similar nuclear umbrella to other CIS members. However, not all members took up the offer, and others have subsequently renounced it. Today, only Belarus, Armenia, Tajikistan, Kazakhstan, Kyrgyzstan and Uzbekistan now come under the Russian nuclear umbrella (with the CIS itself having been renamed the Collective Security Treaty Organization in 2002). Britain in the now somewhat distant past also backed it security commitments in Asia with nuclear weapons, stationing some in Malaysia. However, those days are now long gone, and the number of Britain's sole remaining submarine launched nuclear forces severely reduced. Apart from British, French commitments to NATO, none of the other nuclear armed states includes a nuclear component in their security arrangements with other countries.

In the case of US allies, , the umbrella of extended US nuclear deterrence over Japan is perhaps the most overt and oft-repeated, particularly by elements in Japan. In the case of Australia, however, the situation is rather less clear-cut. The basic document underpinning the Australia–United States security alliance is the 1951 ANZUS Treaty. And the relevant article is Article IV which provides: "Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes." There is no mention of a nuclear attack or response, and indeed that article is even notably vague when it comes to a clear statement of what the other parties would actually do should Australia ever be attacked with *conventional* weapons.

Needless to say, exactly what it does mean has been the subject of discussion for most of the nearly 60 years since it was written. It has always been assumed that the US would spring to Australia's defence if it were attacked, though fortunately this has never been called into operation in practice. Equally, it has been assumed that this rather vague undertaking includes specifically the extension of the US nuclear deterrence to Australia in case of need. But the United States has never confirmed that this is so. Indeed, Kim Beazley—a former Australian Defence Minister—referred somewhat disparagingly in a 2003 paper in the Australian Journal of International Affairs[1] to "Two decades of struggle to get the United States to clarify its extended deterrence guarantee to Australia" without result.

At the time when he was Minister, Australia was evolving a more self-reliant defence posture, but successive Defence White Papers and associated Ministerial statements consistently made an exception for continuation of the assumed US nuclear umbrella. The basis for assuming the guarantee was that there seemed to be—again in Beazley's words—"the cheerful Australian assumption that no enemy of Australia's could not guarantee the United States would not aid its Antipodean ally, and that would do". There also seemed to be an equally cheerful Australian assumption that Australia was highly unlikely to be the target of a nuclear attack, despite the presence on Australian soil of a number of highly sensitive US defence-related installations. In other words, if we were not going to be attacked with nuclear weapons, it probably didn't matter anyway whether the US nuclear umbrella was going to be unfurled over us in practice.

But reliance on the US nuclear umbrella continues. Despite repeated public commitments by the Australian Government to the goal of nuclear disarmament, and indeed despite actions by it such as the creation of the International Commission on Nuclear Non-Proliferation and Disarmament, the 2009 Australian Defence White Paper not only repeats Australia's reliance on extended US nuclear deterrence, but also expresses unqualified understanding of continuing United States' reliance on its nuclear deterrence capability to underpin US strategic power. And it also makes clear that it is the Australian Government's judgement that stable nuclear deterrence will continue to be a feature of the international system for the foreseeable future.

Australia might have reason to be cheerful, given its relative geographical isolation and not particularly high defence profile in geopolitical—as opposed to regional—terms. But the same cannot be said for countries such as Japan which have as close neighbours the unpredictable emerging nuclear-armed North Korea, and the massive and also nuclear-armed China, with both of which it has had a long and uneasy relationship. So for many in Japan, the question of continued reliance on the US nuclear umbrella is a matter of life and death, regardless of Japan itself having been the sole victim to date of nuclear attack and despite the commitment of successive Japanese governments to the goal of nuclear disarmament. It remains to be seen how far the newly elected Japanese government may change this reliance.

[1] Beazley, Kim. "Whither the San Francisco alliance system?" *Australian Journal of International Affairs*, Vol. 57, No. 2, pp. 325-338, July 2003.

In discussions with a number of NATO representatives in Brussels earlier this year, the author received very firm and clear indications that the Eastern Europeans in particular are adamantly opposed to any change in NATO's current nuclear posture which is, of course, heavily reliant on US—and to a much lesser extent, British and French—nuclear forces and the extended deterrence they provide. Those same states are equally opposed to any attempt to resurrect the Ukrainian proposal for a nuclear weapons free zone in Europe.

It is probably also useful to point out in this general context that Australia is perhaps the exception to the presumed rule that if the nuclear umbrella were withdrawn too quickly, it might itself seek to acquire nuclear weapons. That was certainly the case in the 1950s and '60s when active consideration was given to Australia's acquisition of nuclear weapons, regardless of the ANZUS Treaty and the US nuclear umbrella. However, sanity prevailed, and it can be fairly confidently predicted that is not a prospect likely to raise its head ever again in Australia.

But that may not be the case elsewhere. Despite all the arguments that it would be against their national and trading interests, Japan has enormous reserves of plutonium and an advanced space rocket program, both of which could be relatively quickly converted to military uses if Japan felt its fundamental security interests were no longer guaranteed. The same has to be said for countries such as Turkey and even, potentially, South Korea which has already given up a covert nuclear weapons program once before, twenty years ago.

The longer term solution to the security concerns of such countries is of course to resolve the issues which give rise to the concerns in the first place. But the automatic assumption by such states that if they no longer feel protected by their allies, their only viable alternative is to acquire nuclear weapons themselves, needs to be addressed. And again, the value placed by such states on the concept of nuclear deterrence is central.

Nor is the US nuclear umbrella restricted to 'old' Allies. In late July, US Secretary of State Clinton offered to extend a US defence umbrella over the Gulf states in response to any nuclear attack by Iran. She was careful not to use the term 'nuclear umbrella' though some have obviously interpreted it that way, despite the fact that the US has conventional military supremacy over every other state by a considerable margin and could presumably meet a nuclear attack with an overwhelming conventional response. Moreover, Egypt was quick to reject such an offer, no doubt seeing it also as a US ploy to diminish regional concerns which extend very much to Israel, as well possibly as curbing the desire of some Arab states to acquire civilian nuclear power reactors which are seen by more than a few in Washington—and elsewhere—as masking a desire to also obtain a military nuclear capacity.

The only conclusion that can be reached on all this is that, while extended nuclear deterrence may have served the very useful purpose of halting nuclear proliferation in the past—since allied countries felt themselves to be under the shelter of a nuclear umbrella—it is in fact today a significant hurdle in the path of nuclear disarmament.

Leading by example might go a certain way in diminishing the security concerns of such states. As Australia's own watered-down version of the US 'Four Horsemen' said in April this year:

> "Australia should prepare for a world free of nuclear weapons by 'walking the talk'. We should reduce the role of nuclear weapons in our security policies, as we call on nuclear weapon states to do. The international safeguards on which we depend to ensure our uranium does not contribute to proliferation need substantial strengthening and universal application. Our reliance on the 'extended nuclear deterrence' provided by the US should be reviewed so that Australian facilities and personnel could not contribute to the possible use of nuclear weapons."[2]

At the very least, other countries in a similar position should be encouraged to do the same.

Obviously, the whole set of problems would be resolved if the draft Nuclear Disarmament Convention currently on the table were adopted tomorrow. There will of course be many legalistic quibbles over different aspects of it—though this is part and parcel of the negotiating process with regard to any multilateral convention. But overall, it is a very sound and valuable piece of drafting, and ideally, it would be good to see negotiations begin upon it tomorrow. Indeed, we should still be taking every opportunity to encourage decision-makers to do so. Unfortunately, however, the reality is that it is unlikely to happen any time soon.

So we have to look instead to a number of interim steps that will both pave the way and build momentum towards such a Convention. And again we come back to the need to devalue the concept of deterrence. Attacking it outright is probably pointless since the states concerned have heard all the arguments before. However, the time might currently be more propitious for somewhat more circuitous arguments to take hold.

One way might be to promote among the nuclear-armed states the notion that they should give unconditional negative security assurances to all non-nuclear weapons states—that they would not use their nuclear weapons against any of those states under any circumstances whatever. The idea of negative security assurances is not, of course, new. Many of the nuclear armed states have already given such assurances but they are all conditional in one way or another. As already mentioned some contain exceptions where the non-nuclear weapon state is an ally of another nuclear-armed state. Even China's overtly unconditional assurance is questionable, since it does not apply to territories it considers to be part of itself. Thus it is by no means clear that China's assurance extends to either Taiwan or even India, one of whose states it claims as its own.

Unconditional security assurances would almost undoubtedly reduce the desire of new states to acquire nuclear weapons. They would thus serve a valuable non-proliferation purpose. But in addition, by reducing the possibility of the 'nuclear club' expanding, they would also reduce at least some of the need by the nuclear-armed states to retain their own weapons as a deterrent to proliferation. In other words, they could give impetus to disarmament, as opposed to only non-proliferation.

However, negative security assurances only apply to non-nuclear weapon states, and the nuclear-armed states would certainly not regard them as being inconsistent with their

[2] Malcolm Fraser, Gustav Nossal, Barry Jones, Peter Gration, John Sanderson and Tilman Ruff. "It's time to get serious about ridding the world of nuclear weapons", *Sydney Morning Herald*, 8 April 2009.

maintaining nuclear weapons as deterrents against other nuclear-armed states. So the nuclear-armed states would need to be encouraged to give special security assurances to each other. This would most usefully take the form of a 'no first use' commitment—that they would not be the first to use nuclear weapons for any reasons against each other, or for that matter, against any other state. Again, the concept of 'no first use' is not new and has been pursued for many years by countries such as India and China—with China being the only state to have made such a commitment (though its sincerity is often questioned). A Chinese/Soviet agreement on the subject in the 1980s is thought to have been largely for propaganda purposes, at least from the Soviet point of view.

Such a commitment would subtly, but hopefully irrevocably, start turning the paradigm of nuclear deterrence on its head. In the first place, it could potentially do away with the concept of extended nuclear deterrence since the non-nuclear weapon states would have less reason to fear a nuclear attack from other nuclear armed states who were not the one holding the nuclear umbrella over them. In effect, a 'no first use' commitment would become a universal positive security assurance, thus replacing extended deterrence which is essentially alliance-based. This in turn could reduce general threat perceptions around the world, and correspondingly reduce any desire by particular states to acquire nuclear weapons for themselves.

If you think about it, a combination of unconditional negative security assurances and 'no first use' commitments could potentially give far more confidence to the non-nuclear weapon states than any reduction in the size of current nuclear arsenals. This is because to the non-nuclear weapon states, the continuing existence of a few hundred nuclear weapons would in effect be just as threatening as several thousands.

Of course the nuclear armed states themselves would also have less fear of a nuclear attack, and thus much less need to maintain their forces on high or 'hair trigger' alert as many still do to this day, despite the end of the Cold War. As a corollary, many weapons could be taken out of operational deployment, and even have their nuclear cores separated from their warheads and put into storage. Potentially, it could also see the elimination of tactical nuclear weapons, including the so-called 'bunker busters', which are designed primarily for first use. Gradually, and hopefully, the importance placed on nuclear weapons will be lessened in national security strategies. At the very least, 'no first use' would give countries such as the United States, which tends to lecture others about the dangers of nuclear proliferation, a rather more legitimate basis on which to preach its message than the current double standards position it pursues.

'No first use' would also facilitate, by making less threatening, significant reductions in nuclear arsenals, given that nuclear armed states could otherwise potentially be more motivated to use small numbers of nuclear weapons which remained to them on the 'use it or lose it' principle. Meanwhile, they would be able to retain their nuclear comfort blanket until such time that they felt confident enough to contemplate giving it up entirely. Indeed, they would not be barred from actually using nuclear weapons in retaliation against another nuclear armed state who breaks the rules and is the first to use its own nuclear weapons. It might also be noted that if the 'no first use' commitment contained a threat, implicit or

overt, that the other nuclear-armed states would attack the transgressor, this would reduce even further the risk that the 'no first use' commitment would be broken in the first place.

'No first use' it has to be said requires no special form. One option might be for the UN Security Council to adopt a resolution under Chapter VII of the UN Charter prohibiting the first use of nuclear weapons against nuclear armed states, or all states without exception. A variant of this would ban use of nuclear weapons altogether against non-nuclear armed states—or only those which are Party to the NPT. The Resolution could even go on to declare such an action a crime against humanity, expanding the jurisdiction of the International Criminal Court accordingly. There is considerable merit in this idea, and it has the singular advantage of not requiring a determination of who is or is not a nuclear weapon state, which would thus get around the posture of nuclear ambiguity adopted by Israel. While it is in addition a way of providing negative security assurances to non-nuclear armed states, it would also—given the binding nature of Security Council decisions under Chapter VII—establish a new international legal norm.

However, there has been considerable criticism in recent years of the Security Council, with its limited membership, arrogating to itself legislative powers which many believe are *ultra vires* the UN Charter. Given that the five permanent members, who can wield a veto, are also all nuclear weapon states, this route would also presume the backing of these states, or at least their willingness not to apply the veto to such a Resolution. The well-know position of the United States on the International Criminal Court is further reason to doubt the possibility of success for that particular aspect of this suggested approach.

Another option would for the 'no first use' commitment to be made unilaterally by each of the nuclear-armed states, and it could even be limited to apply only to states which have made similar commitments so as to encourage commitments by all relevant states. But a strong case could be made that making such a commitment in treaty format would give non-nuclear weapon states greater confidence, and give the commitment a multilateral status in international law, even it would be largely unverifiable and unenforceable. Strictly speaking in any case, verification measures are unnecessary in a treaty such as this, given that that one of its principal functions is as a confidence-building measure.

The widest option would be a 'no first use' commitment to all states without conditions. But this may not attract support from at least some of the nuclear armed states. A perhaps more workable option may be for the commitment only to apply to other Parties to the treaty itself. This would make the commitment less open-ended for nuclear armed states agreeing to it, and act as an incentive for a wide number of states to adhere to it.

Nevertheless, there continue to be the arguments from some nuclear-armed states against such a treaty, or indeed, even a unilateral commitment. The author has prepared for the International Commission on Nuclear Non-proliferation and Disarmament the draft text of a 'no first use' treaty which can be found on the Commission website www.icnnd.org and further detail can be found there. But like a short Chinese draft treaty on the subject long before mine, and despite repeated calls by India for such a treaty, it does not appear that such a draft will go anywhere fast.

Some have said that it is premature or otherwise untimely. One senior and very eminent US statesman earlier this year said that while he could see the intrinsic value of this particular draft treaty, he would not be able to recommend it to the Obama Administration at this time because it would distract attention away from other pressing issues such as US ratification of the CTBT and its own nuclear posture review. The importance of obtaining US ratification of the CTBT cannot, of course, be questioned. But the two ideas are not in competition, and it is not to be expected in any case that a 'no first treaty' will spring into existence overnight.

Others have criticised the draft because it can be seen as conferring continuing legitimacy on the retention of nuclear weapons by the nuclear armed states. That may be so, but it ignores the fact that you have to start somewhere; that 'no first use' is a corollary to negative security assurances; and that the value of nuclear deterrence would be significantly undercut.

Yet others have seen a draft such as distracting attention away from encouraging negotiation of a full nuclear disarmament treaty. But this in turns begs the whole question of whether a phased approach is likely to be more effective in the long run than a comprehensive approach, albeit one which openly acknowledges that negotiation of such a convention is like to take a considerable time. As stated at the outset, while it would be ideal to see negotiation of a nuclear disarmament treaty begin tomorrow, realistically this is unlikely to happen when even such a relatively minor preliminary step as a 'no first use' commitment still attracts so much consumer resistance.

In other words, it seems inevitable that the process of seeking total elimination of nuclear weapons needs to be broken into manageable steps. There are already many perceptions out there that it such a move would be a leap into the unknown and these perceptions need to be countered. However, the number of states that must cooperate to make nuclear abolition feasible is too great, their views at the moment too varied, and the issues too complex, to allow anything but incremental movement. On this subject, as elsewhere in public policy, inertia tends to be the norm, and achieving major change a relative rarity. Moreover, even if achieved, sustaining any major change is even more extraordinarily difficult. In addition, for many, the preferred alternative to an incremental approach is not more rapid change of the type inherent in the proposal for the nuclear weapons convention, but maintaining the status quo. However, doing nothing in the case of nuclear weapons is simply not an option.

There is, however, one very real, practical obstacle to achieving a universal 'no first use' commitment, and that relates to how to bring in North Korea and Pakistan. North Korea, of course, will happily continue rattle its nuclear sabre and threaten first use until it gets whatever it is really after. Pakistan actually maintain a 'first use' doctrine in relation to India.

However, it is to be hoped that an international consensus on, and acceptance of, 'no first use' by the other nuclear armed states will put pressure on Pakistan and North Korea as the only holdouts. Secondly, military leaders in Islamabad and Pyongyang will be very well aware that a weaker military power can never come out better after the first use of nuclear weapons against another—and better armed—nuclear state. In other words, first use by

either Pakistan or North Korea against a nuclear adversary that also happens to have superior conventional and substantial nuclear capability would be nothing short of suicide for them. And if they were honest enough with themselves, acceptance of this reality would demonstrate to them the futility of retaining a first use posture. Thirdly, if the 'no first use' commitment were, as suggested above, accompanied by comprehensive and unconditional security assurances, as well as by conventional arms control measures, it should hopefully reduce, if not fully eliminate, the threat perceptions of those two states. This would be even more the case if there were to be a treaty that outlawed the use of nuclear weapons altogether.

That brings us to the final point. If such a 'no first use' commitment is ever made, then after a time, if the commitment is not broken by any of the nuclear-armed states and confidence amongst them consequently grows, it would be time to move to the more ambitious step of a treaty on the non-use or threat of use of nuclear weapons. India has been introducing resolutions into the UN General Assembly on the subject since 1982 to little effect. And, again, a draft treaty on this subject has been prepared for ICNND which can also be found on the Commission website, together with a detailed explanatory note. Suffice it to say, however, that such a treaty would in effect mark the death knell of the concept of nuclear deterrence. The nuclear-armed states could still retain their nuclear arsenals, but there would be little point in doing so if they had legally bound themselves never to use them. And no country currently without such weapons would any longer want to acquire them since they would no longer be able to be used as a weapon, or as a deterrent either. The only exception might involve retention of small nuclear arsenals to retaliate against breaches of the treaty. However, this would be both unfortunate in a moral and profoundly human sense, and defeat the very purpose of such a treaty.

Such a treaty would also answer once and for all the conundrum left unanswered by the International Court of Justice in its Advisory Opinion on nuclear weapons in 1996. While the majority decision of the Court was to find that the use of nuclear weapons was contrary to aspects of the UN Charter and elements of international humanitarian law, it was unable to say definitively that their use would be illegal if the very existence of the state using them was in question. However, it did say that this lacuna should be plugged by development of an international legal principle or treaty which directly answered the question. Of course, a treaty banning the use or threat of use of nuclear weapons would constitute such a plug.

Sitting here in the world of 2009, the idea of such a treaty sounds more than a little idealistic and fanciful. But hopefully, with steps such as negative security assurances and 'no first use'—plus any advances in international efforts to curb terrorism and otherwise address causes of inequity in the world—the geopolitical outlook will have changed dramatically enough for the nuclear-armed states to realise that it is indeed possible to achieve a world with zero nuclear weapons.