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ON THE WAY TO NO-FIRST-USE

The recent Foreign Affairs article of McGeorge Bundy, George F. Kennan, Robert S. McNamara and Gerard Smith was a welcome contribution to the two-decade debate over the first use of nuclear weapons. But the contribution was made rather more by their authority and experience, weighing in on the side of no-first-use, than by anything new they said. Significantly, they stopped short of espousing a no-first-use declaration. Instead, they urged that it be given "careful study" in the confidence that this would confirm that it was "time to move decisively toward" a prohibition on first-use. Their view is that "what is important today is to begin to move in this direction."

Now in fact the world has been moving steadily in this direction: through the lengthening precedent (now 37 years old) against the first-use of nuclear weapons and through the ever-rising popular antipathy toward nuclear weapons. What ideas might the article have offered about how to accentuate this trend besides the further study called for, and the related exhortation to strengthen, or rearrange, conventional defense in Europe?

Make no mistake about it, way-stations to a no-first-use declaration may well be required. The world does have a chance of avoiding a nuclear first-use itself. But persuading nations to *forswear in advance* that they will ever use nuclear weapons first is not going to be easy. It involves persuading them that there is a positive value in forswearing an option in advance—an option that many deem to have "detering" significance. Moreover, since conventional war does not really lend itself to calculation—even to the limited extent that does nuclear war—it is not easy to imagine an overriding consensus that one has enough conventional forces to handle *all* legitimate vital interests.

Finally, it is important to emphasize way-stations to a no-first-use declaration because some of them may even be better and more reliable in inhibiting first-use than the declaratory doctrine of no-first-use itself. Even once enunciated, a declaratory policy could be changed.

The way-station to no-first-use which FAS has emphasized in the past is "no-one-decision-maker." We noted that first-use, unlike retaliatory nuclear war, does not require instantaneous response. In its original form, we urged a policy in which the United States President would, by law, be required to secure the quiet or public approval of a majority of a special Committee of Congressmen before escalating a conventional war into nuclear war via an American first-use of nuclear weapons.* We have reprinted within from earlier newsletters in 1972 and 1975 how this would work, to remind our readers, and the Congress, of this possibility in these new times. (see page 3)

But this is only an instance of many proposals that try to address the anti-democratic absurdity that one leader could take an action leading to the death of a billion. For example, in conventional conflicts involving NATO, we believe that the American President can escalate to nuclear weapons without the permission of the Government of the NATO country from which America would fire the nuclear weapons (or on whose territory these nuclear weapons would be detonated.) One obvious possibility for moving toward a no-first-use policy is to give such a nation a veto over any first-

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*This proposal was first made in January 1972 in our newsletter and was endorsed, at that time, by such persons as Adrian Fisher, Marvin L. Goldberger, Leslie H. Gelb, Morton H. Halperin, George W. Rathjens, Herbert Scoville, Jr., Jeremy J. Stone, Richard H. Ullman and Herbert F. York.

ARMS RACE ISSUE HEATING UP

Besides reprinting some material on no-first-use, which appears ever more timely, this issue contains a personal memoir on the freeze debate of the 1969-70 period which many freeze supporters may find relevant and amusing. More serious is an article on the Cuban missile crisis and how it might recur in the light of the Pershings threatening Moscow and the Soviet threat to retaliate in one fashion or another (pg. 5)

Meanwhile, the Federation has definitively opposed the Clinch River Breeder reactor with a broad consensus that includes even some of the strongest proponents of nuclear power itself. Chairman Frank von Hippel, who has led the fight on this issue, recounts our position on page 7.

The Federation is deeply engaged in the freeze debate and, as noted last month, in support of the Kennedy-Hatfield freeze resolution. In this connection, readers should know that we do not consider the freeze in opposition, in any fashion, to ratification of SALT II—which a large majority of members supported, and wanted ratified, notwithstanding criticisms of it. Indeed, your FAS office is arguing that the freeze campaign assists the ratification of SALT II and not only by building a constituency for arms control. In addition, it encourages the Soviets not to rock the boat by breaching their SALT II limits. It holds out the prospect of a freeze agreement if only they will await the growing U.S. consensus for arms control. Members are encouraged to comment on this and other positions within by letter.

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use on, or from, its territory!

More generally, it is evident that, if a NATO first-use of nuclear weapons occurs anywhere in NATO territory, nuclear powers such as Britain and France can expect to be attacked pre-emptively by the Soviet Union to preclude their firing their nuclear weapons in the general escalation likely to follow. Should they not be given a firm veto over the beginnings of nuclear escalation?

Indeed, all NATO nations with nuclear weapons on their territory, whether or not they are nuclear powers themselves, are likely to be attacked in the same way following any American first-use. In short, they also have a right to get, or to demand, vetoes over first-use. But, as NATO now stands, such consultation is not mandatory if the crisis is big enough and, in any case, the consultation does not include vetoes.

A widening circle of mandatory consultations over first-use is more likely to occur than is a sudden announcement of no-first-use by America.

This is partly because these consultative way-stations have the benefit, for strategists, that they do not foreclose the option of first-use, or demand a change in our pledge to use all available means to help our NATO allies. On the other hand, equally fortunate, they do provide firm mechanisms to preclude first-use—mechanisms that are, paradoxically, stronger than the declaratory policy to which they lead.

No doubt there are way-stations other than these consultative ones. We encourage all readers to send in suggestions for methods of moving toward the goal of a no-first-use declaration. But, in the end, the most anomalous aspect of our nuclear policy is that we permit first-use to be decided by a single individual when there is time to consult. This at least has to be—and can be—changed.

VOICES OF CONGRESSIONAL CONCERN

Senator Sam Nunn (D., Georgia): "In a Warsaw Pact attack, the initial shock of conventional fighting, probably with some initial military setbacks, combined with the desire to insure a U.S. nuclear commitment, could result in enormous and possibly irresistible pressure to use nuclear weapons at the outset."

pg. 3, *Policy, Troops and the NATO Alliance*
April 2, 1974

Report to Foreign Relations Committee: (concluding words) "...the security of the United States itself is inextricably linked to nuclear weapons in Europe, first of all because the weapons are American, and secondly, because their use perhaps could, and more probably would, involve U.S. strategic nuclear forces and thus, in turn, inevitably produce a U.S.-Soviet nuclear exchange." □

—Report of Richard Moose and James Lowenstein
December, 1973

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NO-ONE-DECISION-MAKER STATEMENT

(reprinted from January 1972 newsletter)

Congress now has before it the "War Powers Act of 1971". The Act provides that, in the absence of a declaration of war, the Armed Forces shall not be employed for more than thirty days except as provided for in specific legislation enacted by Congress for that purpose. Further, the President is required to make periodic reports to the Congress not less often than every six months. Legislation of this kind is desirable. As the Act indicates, the "collective judgment" of Congress and the President ought to apply to the "initiation" and to the "continuation" of hostilities.

We wish to point out that, in at least one particular, a war powers act should also limit the President's right to *conduct* hostilities.* We have in mind the President's right to turn conventional hostilities into nuclear war, through an act of American nuclear escalation. This is a matter on which "collective judgment" of Congress and President ought to apply as well. And there would be time for Congress to share with the President the responsibility for such escalation, since no conventional conflict demands an *immediate nuclear* response.

It is present U.S. policy to threaten to *initiate* the use of nuclear weapons if necessary. The United States has not, for example, announced that it would never use nuclear weapons first (the so-called no-first-use policy which has been announced by the People's Republic of China). Quite the contrary, especially in NATO affairs, the United States has declared that it would use battlefield nuclear weapons — even in the absence of enemy use — if our forces were being overrun by conventional attack. The Federation of American Scientists opposes such "first-use" policies and has long supported a policy in which the United States would forswear such first use.

No One Man Should Escalate

We do not wish to restate here our reasoning. But we believe that many who do not agree with us would nevertheless still agree that the responsibility for such nuclear escalation is too great a responsibility for one man alone, or even for one branch of Government. We propose that the Congress should require the President to secure its consent before employing nuclear weapons except after the use (or irrevocable launch) of nuclear weapons by an adversary.** Whether or not the Congress votes the President a declaration of war — or just continuing authority to engage in hostilities — Congress should retain control over the conventional or nuclear quality of the war.

We should be clear about what such a requirement would do, and what it would not do. It would not — and this is critically important — tie the hands of the President in the event that the United States or its allies are attacked with nuclear weapons. This is because it does not affect our nuclear *retaliation* power. Thus it would not in the slightest erode the effectiveness of our *deterrent*. The retaliatory power of our own nuclear force is the strongest assurance that we have — in the absence of a guaranteed enforceable international ban on all nuclear weapons — that nuclear weapons will not be used against us. We would not want

to limit the deterrent effect of that retaliatory power in the slightest.

Ample Time for Consultation

With regard to Europe, the President would have ample time to obtain Congressional authorization if a European crisis develops that would require the use of nuclear weapons. The President could even request authorization from Congress before he had made any final decision to use nuclear weapons. He could inform the Congress that a situation could develop in which he would want to use nuclear weapons, and he could ask for this prior approval. The authority could even be sought in advance of a conflict if our intelligence indicated the imminent outbreak of large-scale conventional hostilities.

It should be noted that even our allies, who rely upon us for a nuclear deterrent, do not wish nuclear war unleashed on their territories, and worry that the finger on the nuclear trigger may be too quick. This is why, ever since the early 1960s, we have concentrated on increasing the capabilities of our conventional military forces with the express purpose of raising the nuclear threshold.

We have built up these strong conventional forces precisely in order that we should never be rushed to the brink of nuclear war — to guarantee that there will be time for careful deliberation. The sort of legislation which we propose would ensure that the Congress, as well as the circle of advisers immediately around the President, would share in this deliberation. It should be recognized, moreover, that the requirement of Congressional authorization before escalation to nuclear war would give the President another potentially powerful instrument of policy. The granting of such authorization in the midst of a crisis would constitute for our adversaries a warning of the gravest sort — a warning even more effective, and at the same time less risky, than the so-called "demonstration use" of nuclear weapons which are advocated by some strategists as an alternative to massive nuclear attack.

Requiring Congressional authorization would also inhibit rumors that the United States was about to use nuclear weapons in one world crisis or another. In several such crises (the Korean War and the Indochina War at the times of Dien Bien Phu and at the time of Khesahn), the rumor had gone around the world that the United States was about to use nuclear force. Such rumors can be dangerous and politically costly.

We repeat the all-important point we wish to emphasize: *no conventional conflict demands an immediate nuclear response*. There *will* be time for Congress to share with the President the responsibility for nuclear escalation, if escalation is being considered. And the nuclear escalation issue warrants the broadest possible deliberation.

It goes without saying that the first use of nuclear weapons would offend the conscience of mankind: the U. N. General Assembly called this "a crime against mankind" in a vote of 55 to 20. But such use would also be a crime against our own national security. If we were to break a now-established 26-year-old precedent against the use of nuclear weapons, the risk would rise substantially that nuclear weapons would someday be used against us — if not in the conflict at hand, then in some later conflict. It is not sensible for the strongest nation in the world to encourage the use of a weapon with the potential to become — as the Colt revolver became in the Old West — the "great equalizer". □

*Such restrictions are fully in accord with our treaty obligations, all of which make American action conditional on Constitutional requirements; i.e., Congressional consent.

**We would consider a nuclear armed enemy bomber, or ICBM, that was irrevocably launched as nuclear weapon "use" so that the firing of defensive nuclear weapons would not be inhibited.

CONSTITUTIONAL ASPECTS: NO-ONE-DECISION-MAKER

There can be little serious doubt that the Founding Fathers viewed their commander-in-chief as one who would work under the guidance of the legislature, whenever this guidance was both feasible and desired by the legislature.

The Continental Congress gave George Washington a commission on June 19, 1775, that terminated by saying:

"And you are to regulate your conduct in every respect by the rules and discipline of war (as herewith given you) and punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress of the said United Colonies or a committee of Congress for that purpose appointed."

True, the Constitution was drafted later and there was unhappiness about how the system of Congressional oversight had worked during the Revolutionary War. But the men who wrote this commission were not suddenly going to turn around and give the commander-in-chief complete and total authority to do whatever he pleased whenever a declaration of war was passed. As Henry Steele Commager put it, everyone

"including Washington himself took for granted the supremacy of the civil over the military power..."

In the Federalist Papers, the commander-in-chief was described by Hamilton as providing

"nothing more than the Supreme Command and direction of the military and naval forces, as First General and Admiral..."

Obviously, there had to be a supreme commander. But this does not imply that he can command anything and everything once the war starts, if the legislature did not agree.

McGeorge Bundy Asserts Congressional Power

As McGeorge Bundy put it in hearings on War Powers:

"I think that Congress would be most unwise to attempt to tell a field commander how to fight a specific battle, but I think it has every right to assert itself on broad questions of place, time, and the size of forces committed."

"The war powers are shared; the Constitution writes it that way; history shows it that way; and we have allowed the process of that sharing to break down."

(April 26, 1971, U.S. Senate)

The overriding power of Congress in this—as in every other area—is made clear also by the Constitutional "necessary and proper" provision that the legislature may:

Make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof."

And as Justice Goldberg has testified:

"The President has no war—constitutionally, has no warmaking powers except perhaps to repel, as I have said earlier, a surprise attack, an emergency following which he must immediately go to Congress.

There is no question that under the necessary and proper clause Congress may legislate in this area."

(U.S. Senate, October 6, 1971)

A pre-eminent authority on the commander-in-chief

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DOD RELIES UPON AEC STATUTE TO JUSTIFY FIRST-USE ANYTIME

In 1946, the Congress passed a law giving the President authority to:

"...direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense."

This statute becomes understandable only in the context of safeguards of that day. Civilian control in 1946 was taken to mean that nuclear weapons should remain in the custody of the civilians (AEC) for as long as possible to prevent any mad general from deciding to launch a nuclear war on his own. In pursuit of this philosophy, AEC nuclear weapons custodians were placed on aircraft carriers, strategic air command bases and whatever. They were instructed not to release the nuclear weapons to the military unless shown a proper authorization stemming from the President.

Eight years later, Congressman Chet Holifield, who had been involved in the drafting of the provision, made this comment in the Congressional Record (House July 21, 1974—H10688). He noted that this section:

"...grants to the President the authority to transfer from civilian hands to the military atomic weapons when they are needed to be transferred for the defense of the Nation. That particular provision was written in especially so that no trigger-happy general could take one of these atomic bombs and start dropping it anywhere in the world and start an atomic war.

"We wrote that provision in because we realized that the atomic weapon so far exceeds in capacity to destroy normal weapons that we must put a solemn obligation on the President that the President alone can designate when and where an atomic weapon is to be used."

Today the provision is largely irrelevant because the AEC custodians no longer guard weapons on their bases. Nevertheless, this anachronistic statute—which was designed in any case not to give the President any new authority but to guard against misuse of military authority—now is being quoted as authority for the President to use nuclear weapons whenever he wants.

This is how DOD put it in a letter of Sept. 25, 1975 from the Acting General Counsel L. Niederlehner to FAS:

"Under section 91 of the Atomic Energy Act of 1954, as amended, the President has direct control over the number and type of atomic weapons produced and the extent to which such weapons shall be transferred to the Department of Defense for such use as he, the President, deems necessary in the interest of national defense. Under the Constitution of the United States, the President is designated as Chief Executive as well as Commander-in-Chief of the Armed Forces. As Commander-in-Chief he is empowered and has the duty to take measures as he deems necessary to protect the country against its enemies in the event of armed conflict."

DOD refused to expand on this letter. But it also seems to be using as authority the fact that an early Fulbright-sponsored version of no-first-use without Congressional authorization was defeated in Congress. □

IS AMERICA PUSHING ITS LUCK? LESSONS OF THE CUBAN MISSILE CRISIS

In 1963, during the Cuban Missile Crisis, Secretary of Defense McNamara wondered how many more sunsets he was destined to see. Secretary of State Rusk said, about a plan for airstrikes, "If we don't do this, we go down with a whimper. Maybe it's better to go down with a bang." Ambassador Llewellyn Thompson told his wife that he would let her know where to go if the Capital were evacuated. This was the mood, as revealed in Elie Abel's *The Missile Crisis* (Lippincott, 1966), where he concludes, "how close we came to Armageddon, I did not fully realize until I started researching this book."

Now it appears that we are back on the escalator to another such crisis. In November, a former Deputy SHAPE Commander, General Lothar Domrose, admitted that the Pershing missile could destroy Moscow from German territory. He told a visitor that, if the Soviet Union did not like this, they could negotiate about it! Now Brezhnev *does* seem to be negotiating, but with threats to put Washington under the same five-minute gun.

Today both sides are focused more than ever before on the vulnerability of command and control and on "decapitation" of command authorities. Thus, these threats could be much more potent today, despite the existing overkill, than were the 40 missiles in Cuba two decades ago—missiles conceded by then-Secretary of Defense McNamara to have no special military significance.

Worst of all, this Administration is more hysterical about such things and already feels strategically cornered. If a sober individual like former Secretary of State Rusk can view missiles in Cuba as an apocalyptic show of force, we can only guess what Secretary of State Haig would think.

In a recent speech, another former Secretary of State, Edmund S. Muskie, described precisely what may now occur:

"If something is not done *soon* to break this degenerative trend, we and the Soviets may have a serious confrontation not unlike the Cuban missile crisis—but in which the Soviets will vow 'not another humiliation' and our leaders will vow 'no confirmation of a changed balance of power' with no on-going high-level negotiations, no communication process to fall back on, and no political basis for any compromise."

Soviet officials have long suffered what they consider to be the indignities of American impudence—a term under which they lump, among other things, much of that double standard in which, in fact, we have often indulged ourselves. The U.S.S.R. was to be strangled in its cradle, rolled back, threatened with massive retaliation and contained. Because most of our officials have never been to Russia (as theirs have not, with few exceptions, ever been here), the points of view on both sides are startlingly different. To take one example, Moscow has a well-attended museum devoted to the Allied invasion of Russia. But, one would wager, no more than 20% of our Congress even

know that American troops ever invaded Russia! (It was in 1917, you dummies.)

As a consequence of this latent resentment, and for other reasons, America is going to have a hard time insisting on a double standard in an age of parity. If we push our luck with strategic developments that upset the Russians, they will, in this age, be able easily to find analogous developments that deeply upset us. And herein lies the danger.

It is to be hoped that the Russian government will keep clearly in mind the unpredictable quality of American government decisions, and the dynamic interplay between popular opinion and political exigencies. At one point during the missile crisis, even President Kennedy was moved to remark that he might have been "impeached" if he had not prevented deployment of these missiles.

Very possibly, in this instance, the European peace movement will save the world from the possibility of another Cuban missile crisis by preventing the deployment of the Pershings, if not the cruise missiles. But the potential for other such incidents is much greater than most people realize, especially in periods of rhetorical confrontation between the two sides and heightened sensitivities.

The urgency of reaching an overall settlement of the arms race has never been so clearly underlined for many years as it is by these recent events. The public has the right to be genuinely alarmed. One more Cuban missile crisis could be our last. □

MUST THE PRESIDENT CONSULT NATO ON FIRST USE?

In meetings in 1962, 1968 and 1969, NATO decided on secret guidelines for the use of nuclear weapons. All requests for such use either by NATO commanders, or members' governments, or possibilities for their use in defense of NATO by nuclear powers in NATO, would be referred immediately to the NATO governments and to the NATO Defense Planning Committee (composed of all NATO nations except France).

Governments would express their view on the consequences of use or non-use, the methods of use, the political and military objectives, and so on. The views would be communicated to the nuclear power concerned and its decision would be relayed, in turn, to the allied governments, the NATO council and the major NATO commanders. There are classified estimates of the time required to complete this consultation.

In these discussions, special weight would be given to the views of the country on—or from—which the weapons would be used, and to the country providing the weapons and to the country firing them.

Voting in the NATO Council has always been unanimous and official NATO publications note that NATO is composed of sovereign nations that have relinquished none of their independence, so that decisions are taken by "common consent"—not by majority vote. However, the basic NATO Treaty, which does specify a

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AS THE FOURTH FREEZE OPPORTUNITY OPENS, REFLECTIONS ON THE THIRD

In 1969, my wife and I visited Moscow to lobby for disarmament and, in particular, to urge a ban on anti-ballistic missile systems. To my embarrassment, I was invited by former IAEA Chairman, Vasily Emelyanov, to write an article on arms control for that newsless organ, *Moscow News*. With visions of Congressional Committees embarrassing me in later life, I agreed with reluctance while insisting that not a single word be changed by the editors. A faded clipping of this 1969 article recently surfaced by accident. Under the banner of "A U.S. and a Soviet Scientist Speak on Disarmament," I see my picture and that of my Soviet counterpart, Igor Glagolev, who, if memory serves, later defected from the Soviet Union at his first opportunity.

But my article was entitled "Freeze the Arms Race at Once" and, in support, it says:

"Senator Mike Mansfield of Montana, leader of the Democratic Majority, said recently that the United States and the Soviet Union should begin the talks with simultaneous declarations calling for an interim moratorium on further deployment of all strategic weapons. On the Republican side, Senator Charles Percy of Illinois has made a similar proposal."

After pointing out (I was no fool) that Lenin would have loved the idea, the article went on to note:

"In 1955 and again in 1960, there were launch windows for disarmament. Today we have the third and the best opportunity to halt the arms race."

All one had to do, this article indicated, was to stop ABM and MIRV, the two reciprocal demons that were destabilizing the balance.

One trouble was that Soviet officials were unwilling to raise the question of MIRV publicly. One observer said they were "fixated on MIRV like a puppy on a bone but equally unable to speak." In fact, however, when they did say something, no one wanted to hear. I have good reason to know this as it almost cost me my job.

At a distinguished black-tie gathering of 70-some persons in America's Council on Foreign Relations, a high Soviet official *did* say something about MIRV. (By now, I forget exactly what.) No doubt the Administration has multiple (illicit) copies since, although the talk was off-the-record and under a non-attribution rule, many Administration members were there and obviously they told their bosses. When, however, Senator Edward Brooke, who was leading a large anti-MIRV Senate coalition, began to make inquiries inside the Administration, as to whether or not these comments indicated Soviet interest in negotiating MIRV, the Administration was furious.

The Council on Foreign Relations was called and efforts were made to get me fired as its arms control research associate. It was alleged that I must have been the one who told Senator Brooke, and that the private telling of this (legislative branch) official was a violation of the Council's rules.

The next year, in 1970, I well remember accidently run-

ning into Senator Brooke outside the door of the Foreign Relations Committee meeting room in the Capitol. He was standing there, like a candidate on the hustings, so as to greet (and thus lobby) each entering Senate member. The Committee, I suddenly realized, was meeting to mark up his anti-MIRV resolution! He was subsequently disappointed to learn that Senator John Sherman Cooper had substituted, for his MIRV flight test ban, a freeze: a complete halt "of the further deployment of offensive and defensive nuclear strategic weapon systems."

It appears now that the Committee was encouraged in this dramatic action, in executive session, by the then-Director of the Arms Control and Disarmament Agency (ACDA) Gerard C. Smith, who had been thinking of an agreement to "Stop Where We Are" (SWWA) and was even urging it on President Nixon.

As the freeze resolution was passing the Senate by a vote of 76-3, President Nixon told a press conference that the Senate resolution "simply says that the United States and the Soviet Union should try to negotiate a freeze on offensive and defensive missiles." In fact, the Brooke-Cooper resolution did not say that both countries should "try" for this; it resolved that the President "should propose. . .an immediate suspension."

And what of the Soviets? What did they say? They weren't saying much those days, certainly not publicly. There was an April 7th Pravda article signed with the authoritative signature "Observer." It gave hints, I felt, that a halt to MIRV and ABM might be possible. But rereading it now, I can see that the hints were not of such substance as others would have found persuasive.

Things are different now. The Russians are no longer so afraid to make proposals and voice concerns. The Kennedy-Hatfield proposal for negotiating a freeze is now at the *fourth* window of opportunity for doing something substantial about the arms race. And popular pressures are rapidly rising. But so are the risks of war. This could be our last chance. □

—Jeremy J. Stone

(Continued from page 5)

Council, does *not* specify its voting procedure and Article 5 of the Treaty would seem to give any nation the right to take any action it wishes:

"The parties agree that. . .each of them. . .will assist the Party or Parties so attacking by taking forthwith, individually and in concert with the other Parties, such action as *it* deems necessary. . ." (italics added)

In the NATO guidelines, three contingencies are discussed: Soviet nuclear attack; Soviet conventional attack of such magnitude as to suggest general hostilities against NATO but uncontainable with NATO conventional means; Soviet conventional attack, uncontainable by conventional means but not covered by the case above. In the first two cases, nuclear weapons may be used *without* prior consultation with the NATO Council, if time does not permit. (This fact is evidently classified but can be clearly read between the lines of official documents.) In the latter case, however, the decision to use nuclear weapons *would* require "prior consultation". □

FAS OPPOSES CLINCH RIVER BREEDER

A poll of the FAS Council and its concerned sponsors has revealed a consensus that, regardless of whether fission power is needed for the long-term, there is no need at this time for the U.S. government to commit itself to commercialization of breeder reactor technologies and therefore to build the demonstration Clinch River Breeder Reactor (CRBR).

The principal reasons for the development of this consensus are reduced expectations for the growth of U.S. nuclear generating capacity in the next decades and great increases in the projected capital cost differential between breeder and conventional reactors.

Current reactors only exploit efficiently the energy stored in the rare (0.7 percent of uranium) isotope, uranium 235. The original and only justification for the breeder was that it could exploit efficiently the energy stored in the relatively abundant (99.3 percent of uranium) isotope, uranium-238. This would make possible the exploitation of very low-grade uranium ores. A decade ago there was concern that the U.S. endowment of high-grade uranium ore might be quickly depleted if U.S. nuclear capacity grew to thousands of plants. The old U.S. Atomic Energy Commission was projecting a need for such an enormous nuclear generating capacity in the early part of the next century because it believed that total U.S. electricity consumption would increase to twelve times its current level by the year 2020 and that the bulk of this electricity would be generated by nuclear power plants.

In the past decade, however, it has become clear to all parties, including the electrical utilities and the federal government, that, due to rising electricity prices, the future growth rate of U.S. electrical consumption is unlikely to be much greater than that of the gross national product. As a result, even if nuclear power makes up a much larger share of the nation's electric generating capacity in the future, the number of nuclear power reactors is unlikely to increase to more than the equivalent of a few hundred units of today's one-million-kilowatt plants. This would, of course, still be a very large nuclear generating capacity—able to generate approximately the equivalent of the total U.S. electrical consumption today—but it would remain small enough so that it could be fueled for more than a century with U.S. resources of low-cost uranium, using current reactor types.

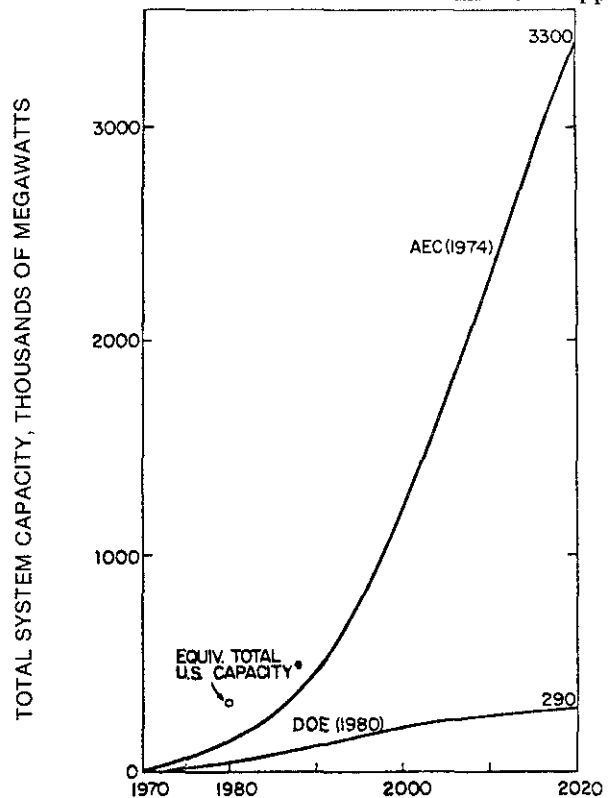
The old Atomic Energy Commission was also wrong in its projection of breeder costs. Cost analyses published by the U.S. Department of Energy in 1980, which are confirmed by France's experience in the construction of its commercial-sized demonstration reactor, the Super Phoenix, show that breeder reactors will not be economically competitive with conventional nuclear power plants until the price of uranium rises almost eight-fold. Yet the Department of Energy has projected that in 2020, the price of U.S. uranium for current reactors will still be at only half that level (the equivalent of only \$5.00 per barrel oil).

Since there is no economic rationale for commercializing breeder reactors in the foreseeable future, the Reagan Administration's proposal to construct the \$3.5 billion Clinch

River Reactor appears to be a waste of federal funds. It is of course very difficult to cancel any federally-funded construction project—even when it has become clear to all concerned that it is no longer needed. But, not only would construction of the CRBR be wasteful, it would also tend to legitimize the continuation of "research, the development" of programs around the world which involve the separation of plutonium from nuclear reactor fuel. Such programs were mostly initiated in response to U.S. Atomic Energy Commission's prediction of the imminence of a breeder-based "plutonium economy." Today they represent one of the principal headaches for those concerned about the proliferation of nuclear weapons.

If at some future time the breeder reactor appears the best technology to meet long-term energy needs, the energy locked up in the uranium-238 in the earth's crust, in enrichment plant "tailing" piles and in the spent fuel from today's reactors will still be there available for exploitation. Even assuming this, however, for the federal government to invest in a breeder demonstration program now, however, would be about as premature and pointless as it would have been one hundred years ago to demonstrate a synthetic fuels technology for possible commercialization today. □

—Frank von Hippel



US NUCLEAR GROWTH PROJECTIONS
*USING THE 80 PERCENT AVERAGE CAPACITY FACTOR ASSUMED BY THE AEC IN 1974.

THE SCENARIO-MAKERS SOBER UP

This graph shows the dramatic twelve-fold drop in the federal projections made between 1974 and 1980 for nuclear power growth. The circle in the lower left indicates the amount of nuclear capacity which, using the AEC's assumptions, would produce as much electricity as was produced by all types of U.S. electrical power plants in 1980.

(Continued from page 4)

powers of the President is Professor Louis Henkin of Columbia University. He has written as follows:

"Less confidently, whatever the President can do short of war, in war his powers as Commander-in-Chief are subject to ultimate Congressional authority to 'make' the war, and Congress can control the conduct of the war it has authorized. (One might suggest, even, that the President's powers during war are not 'concurrent' but delegated by Congress, by implication in the declaration or authorization of war.) It would be unthinkable for Congress to attempt detailed, tactical decisions, and as to these the President's authority is effectively supreme. But in my view, he would be bound to follow Congressional directives not only as to whether to continue the war, but whether to extend it to other countries and other belligerents, whether to fight a limited or unlimited war, today, perhaps, even whether to fight a 'conventional' or a nuclear war."

History Shows Few Conflicts

Of course, the examples provided by history are not sufficiently rich to expose many cases in which Congress was moved to exploit these powers; during this time, Presidential power has grown. Many now simply mouth the phrase "commander-in-chief" as an incantation, as if it constituted an unanswered argument that Congress has no role

once war begins.

But the War Powers Resolution, with all of its difficulties, constitutes a counterexample, since it limits the time that the President can fight undeclared wars.

All of the declared wars have emanated from joint resolutions (signed by the President) or statutes that provided very extensive powers indeed—so that there is little precedent for limiting declared wars. The result is that those Constitutional lawyers who put more weight on "accretion of power" and precedent than on the statements of the Founding Fathers sometimes assume declarations of war to provide unlimited powers. However, the very way in which the declarations are passed, as any other Joint Resolution or statute, suggests that Congress could write into them whatever it wanted. This is surely a much fairer presumption than to say that they cannot. And it is interesting to note that few doubt but that Congress could, if painfully and annually—control Executive Branch actions of very minor kinds by asserting that "no funds shall be spent" in the appropriations bills to do the things that Congress does not want done.

There seem, in short, to be these quite separate ways to establish that Congress has the power: historical interpretation of the debate over relevant war powers clauses by the Founding Fathers; the necessary and proper clause; and the power over appropriations. In the light of this multiplicity of methods of establishing Congressional authority, the authority seems undeniable. □

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