

January 2021

Tenth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

No-First Use of Nuclear Weapons: An Exploration of Unilateral, Bilateral and Plurilateral Approaches and their Security, Risk-reduction and Disarmament Implications

Working paper submitted by NoFirstUse Global¹

As a civil society organisation, NoFirstUse Global has the honour of submitting a Working Paper on “No-First Use of Nuclear Weapons: An Exploration of Unilateral, Bilateral and Plurilateral Approaches and their Security, Risk-reduction and Disarmament implications” to the 2022 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

It is imperative that, while in pursuit of our common objective of establishing a nuclear weapon free world, nuclear war does not occur. This Working Paper examines the potential of no-first-use policies to significantly reduce that risk while concurrently expediting the achievement of a nuclear-weapon free world.

Risk reduction is not a new topic to the NPT review process. Most recently, Action 5(d) of the Action Plan of the 2010 NPT Review Conference called on nuclear-weapon States Parties to “*discuss policies that could prevent the use of nuclear weapons and eventually lead to their elimination, lessen the danger of nuclear war and contribute to the non-proliferation and disarmament of nuclear weapons.*” Herein, we focus on no-first-use as a policy particularly worthy of attention in that discussion.

This Working Paper is complementary to, and builds upon, risk-reduction and disarmament measures discussed in 2022 NPT Review Conference Working Paper 5 entitled ‘Taking forward Nuclear Disarmament’ submitted by Brazil on behalf of the New Agenda Coalition, Working Paper 9 entitled “A nuclear risk reduction package” submitted by the members of the Stockholm Initiative, Working Paper 10 entitled “Recommendations for Consideration by the tenth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons” submitted by the members of the Non-Proliferation and Disarmament Initiative, Working Paper 20 entitled “Nuclear disarmament” submitted by the members of the Group of Non-Aligned States Parties to the NPT and Working Paper 33 entitled “Strategic risk reduction” submitted by China, France, the Russian Federation, the United Kingdom of Great Britain and

¹ **NoFirstUse Global** is a platform and network co-founded by the Abolition 2000 working group on nuclear risk reduction (UK/International), Basel Peace Office (Switzerland/International), Beyond the Bomb (USA), Initiatives pour le désarmement nucléaire (France), Peace Depot (Japan), People for Nuclear Disarmament (Australia), PragueVision Institute for Sustainable Security (Czechia), World Future Council (Germany/International) and Zona Libre (Mexico/Philippines) and joined by 74 other participating organizations. Website: <https://nofirstuse.global>.

Northern Ireland and the United States of America.

In addition, this paper notes the joint statement of China, France, the Russian Federation, the United Kingdom, and the United States of America made on 3 January 2022 in which the five Nuclear-Weapon-States affirmed *“that a nuclear war cannot be won and must never be fought”*.² It explores the feasibility and significance of adopting no-first-use policies as an initial measure to help fulfil this objective.

1. What is No-First Use?

No-first use is a commitment never to use nuclear weapons first under any circumstances, whether as a pre-emptive attack or first strike, or in response to a non-nuclear attack of any kind. It differs from “sole purpose” in two ways: a) no-first-use rules out any pre-emptive nuclear strike against the nuclear forces of an adversary, and b) no-first-use does not prescribe a specific response to nuclear attack. In its most widely accepted form, the sole purpose of nuclear weapons is to deter a nuclear attack and, failing that, to retaliate³ whereas no-first-use does not necessarily imply nuclear retaliation in response to a nuclear strike. Other options can also be considered.

2. What are the Current Policies of the Nuclear-armed and Allied States?

Regarding the Nuclear-Weapon States party to the NPT, China maintains a general no-first-use policy, while France, Russia, the United Kingdom and the United States maintain options for the first use of nuclear weapons in loosely defined circumstances. In addition, Russia and China have a mutual no-first-use policy with regard to each other. These policies are expressed in various policy statements:

- On 16 October 1964, when it became a nuclear-weapon state, **China** stated that it would *“not be the first to use nuclear weapons at any time or under any circumstances”*.⁴ China has maintained this policy since then.
- In its 2014 Military Doctrine the **Russian Federation** stated:
*“The Russian Federation shall reserve the right to use nuclear weapons in response to the use of nuclear and other types of weapons of mass destruction against it and/or its allies, as well as in the event of aggression against the Russian Federation with the use of conventional weapons when the very existence of the state is in jeopardy.”*⁵
On 16 July 2001, the **Russian Federation** and **China** signed a Treaty of Good-Neighbourliness and Friendly Cooperation in which they pledged that *“they will not be the first to use nuclear weapons against each other nor target strategic nuclear missiles against each other”*.⁶
- In its 2018 Nuclear Posture Review, the **United States** stated:
“The highest U.S. nuclear policy and strategy priority is to deter potential adversaries from nuclear attack of any scale. However, deterring nuclear attack is not the sole purpose of nuclear weapons. Given the diverse threats and profound uncertainties of the current and future threat environment, U.S. nuclear forces play the following critical roles in U.S. national security strategy. They contribute to the: deterrence of nuclear and non-nuclear attack; assurance of allies and partners;

² The White House, “Joint Statement by the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races”, 3 January 2022 ([bit.ly/3zohAE2](https://www.whitehouse.gov/the-press-office/2022/01/03/joint-statement-by-the-leaders-of-the-five-nuclear-weapon-states-on-preventing-nuclear-war-and-avoiding-arms-races/)).

³ Robert Einhorn, “No First Use of Nuclear Weapons Is Still a Bridge too Far, But Biden Can Make Progress Toward That Goal”, Brookings Institution, October 2021 (<https://brook.gs/3pfUoEB>).

⁴ “Statement by the People’s Republic of China on 16 October 1964,” *People’s Daily*, 17 October 1964.

⁵ Embassy of the Russian Federation to the United Kingdom, “The Russian Military Doctrine”, 29 June 2015 ([bit.ly/348yAmf](https://www.mfa.gov.uk/foreign-policy/our-foreign-policy/russian-foreign-policy/russian-military-doctrine)).

⁶ Treaty of Good-Neighbourliness and Friendly Cooperation Between the People’s Republic of China and the Russian Federation, 16 July 2001 ([bit.ly/3mfUaM2](https://www.mfa.gov.uk/foreign-policy/our-foreign-policy/russian-foreign-policy/treaty-of-good-neighbourliness-and-friendly-cooperation-between-the-peoples-republic-of-china-and-the-russian-federation)).

achievement of U.S. objectives if deterrence fails; and capacity to hedge against an uncertain future.”⁷

There is currently an ongoing nuclear posture review (NPR) in the United States.

- In his February 2020 declaration the **French** President stated:
“our nuclear deterrence force remains, as a last resort, the key to our security and the guardian of our vital interests. [...] Should there be any misunderstanding about France’s determination to protect its vital interests, a unique and one-time-only nuclear warning could be issued to the aggressor State to clearly demonstrate that the nature of the conflict has changed and to re-establish deterrence.”⁸
- The **United Kingdom** doctrine, spelled out in the March 2021 Integrated Review of Security, Defence, Development, and Foreign Policy, states that:
“While our resolve and capability to do so if necessary is beyond doubt, we will remain deliberately ambiguous about precisely when, how and at what scale we would contemplate the use of nuclear weapons.”⁹

Countries under United States extended deterrence relationships, i.e. NATO countries, Australia, Japan and South Korea accept the nuclear use policy of the United States for the possible defence of their countries, without ruling out the option of first-use of nuclear weapons for such defence. The 2010 **NATO** Strategic Concept, for example, states:

“The circumstances in which any use of nuclear weapons might have to be contemplated are extremely remote. As long as nuclear weapons exist, NATO will remain a nuclear alliance.... 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 strategic nuclear forces of the United Kingdom and France, which have a deterrent role of their own, contribute to the overall deterrence and security of the Allies.”¹⁰

Regarding nuclear-armed states that are not party to the NPT, India has a declared no-first-use policy, Pakistan has not ruled out the possibility of first use of nuclear weapons, and the policies of Israel and the DPRK are ambiguous:

- **India’s** policy states that it *“will not be the first to initiate a nuclear first strike but will respond with punitive retaliation should deterrence fail”*.¹¹
- **Pakistan** has not formally declared an official nuclear use doctrine. However, the Pakistani Ambassador to the United Nations stated in 2002 that *“Pakistan would not attack India unless it was first attacked but it had never subscribed to the doctrine of ‘no first use’ of nuclear arms.”*¹²
- **Israel** has a policy of deliberate ambiguity and only regularly states that it *“will not be the first country to introduce nuclear weapons to the Middle East.”*¹³
- **The Democratic People’s Republic of Korea (DPRK)’s** 2013 Law on Consolidating the Status of [a] Self-Defensive Nuclear Weapons State infers a no-first-use policy as it provides that its nuclear

⁷ U.S. Department of Defense, “U.S. Nuclear Posture Review”, 2 February 2018 ([bit.ly/3p4pLC9](https://www.dodig.mil/reports-and-testimony/publications/2018-02-02-us-nuclear-posture-review)).

⁸ Elysée, “Speech of the President of the Republic on the Defence and Deterrence Strategy”, 7 February 2020 ([bit.ly/3mf7XCj](https://www.elysee.fr/fr/actualites/2020/02/07/discours-du-president-de-la-republique-sur-la-strategie-de-defense-et-de-deterrence)).

⁹ United Kingdom Government, “Global Britain in a Competitive Age - Integrated Review of Security, Defence, Development, and Foreign Policy”, March 2020 ([bit.ly/3F5dZgs](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523412/ir-2020-03.pdf)).

¹⁰ NATO Strategic Concept 2010 (para. 17-18) ([bit.ly/3pXx9Qi](https://www.nato.int/docu/strat/concept2010.htm)).

¹¹ Embassy of India to the United States, “Draft Report of National Security Board on Indian Nuclear Doctrine”, 17 August 1999 ([bit.ly/3qSs9eO](https://www.india.gov.in/docs-media/draft-report-of-national-security-board-on-indian-nuclear-doctrine)).

¹² The Dawn, “Islamabad refuses to accept ‘no first strike’ doctrine”, 31 May 2002 ([bit.ly/3HzECef](https://www.dawn.com/news/100000)).

¹³ Israeli Ministry of Foreign Affairs, “Interview with PM Netanyahu on CNN-Piers Morgan Tonight Show”, 17 March 2011 ([bit.ly/32QYavU](https://www.mfa.gov.il/press/2011/03/17-march-2011-interview-with-pm-netanyahu-on-cnn-piers-morgan-tonight-show)).

weapons “serve the purpose of deterring and repelling the aggression and attack of the enemy against the DPRK [Democratic People’s Republic of Korea] and dealing deadly retaliatory blows at the strongholds of aggression until the world is denuclearized... The nuclear weapons of the DPRK can be used only by a final order of the Supreme Commander of the Korean People’s Army to repel invasion or attack from a hostile nuclear weapons state and make retaliatory strikes.”¹⁴ In practice, the DPRK has made nuclear threats to “deter” any attack against the country or leadership regardless of whether or not that attack would be undertaken with nuclear weapons, conventional forces or other means.¹⁵

3. What Are the Security Reasons Given for the First-use Option?

The nuclear-armed states which maintain first-use options ascribe two main security roles and benefits to this policy and practice. The primary role is to deter a non-nuclear attack, i.e., a conventional attack or an attack using other weapons of mass destruction. A secondary role for some of the nuclear-armed states is to better deter a potential first strike from an adversary by maintaining a capacity to pre-empt it.

4. What are the Risks of First-use Policies?

First, it is not evident that first-use policies actually deliver the desired aims. There is the danger that the adversary will not take the escalation threat seriously, i.e., deem it a bluff. After all, if the aim of first use is to reverse the tide of conventional battle, second use could just as well reverse the reversal. And indeed, the most basic premise of nuclear deterrence policy is that any nuclear attack must be responded to in kind, or worse. While the first-use threat might indeed be a bluff, in the specific circumstance in which the bluff is called, it might prove politically too costly to back down. The concept of “ambiguity” only exacerbates this problem. It is all too easy to overstep fuzzy red lines. The threat of pre-empt suffers from the same perception problem, plus several others.

This problem is well known; however, its alleged solution is much less well known: escalation dominance. The idea is that the adversary should appreciate that in any exchange he will always come out the worse. Indeed, this should hold at every “rung in the escalation ladder” – by some reckoning there are over 20 such rungs. As with strategic weapons, any such reach for dominance will elicit a counter reach, resulting in an arms race. When the NPT term in force was extended indefinitely in 1995, the perception was that nuclear arms racing was a thing of the past, while that was largely true of the goal of strategic dominance, it is not the case for escalation dominance. Thus, the most basic *quid pro quo* of the NPT, “cessation of the nuclear arms race at an early date” is grievously overdue.

A nuclear-armed state which believes that it exercises escalation dominance may believe it can successfully deter conventional attack or dominate the battlefield. If that belief is well founded it ought to work, but if the adversary does not share that belief, the danger described previously once again applies. Today it is dubious that any of the major nuclear adversaries is in a position of meaningful

¹⁴ North Korean Economy Watch, “2013 Plenary Meeting of WPK Central Committee and 7th Session of Supreme People’s Assembly” cited in Bruce Klingner, “North Korea’s Nuclear Doctrine: Trusted Shield and Treasured Sword”, Heritage Foundation, 18 October 2021 ([herit.ag/3eT6uh4](https://heritage.org/3eT6uh4)).

¹⁵ In July 2017, for example, DPRK leader Kim Jong Un announced a threat to strike the US with nuclear weapons if the US attempted to depose of him as leader or threaten the DPRK regime. The official DPRK press statement affirmed that “*The DPRK legally stipulates that if the supreme dignity of the DPRK is threatened, it must preemptively annihilate those countries and entities that are directly or indirectly involved in it, by mobilizing all kinds of strike means including the nuclear ones.*” CNN, “North Korea promises nuclear strike on US if regime is threatened”, 25 July 2017 ([cnn.it/3n1gSI9](https://www.cnn.com/2017/07/25/asia/nk-nuclear-us/index.html)).

dominance. The added danger is that they might not accept this and assert the freedom to escalate to nuclear warfare with impunity, only to pay a terrible price (not to mention all the innocent bystanders around the world).

The 1985 Reagan-Gorbachev declaration that *“a nuclear war cannot be won and must never be fought”* is immediately followed by: the two nations *“shall not seek military superiority.”* This was an acknowledgment of across-the-board mutual deterrence. The reaffirmation by Presidents Biden and Putin after their June 2021 summit¹⁶ and the 3 January 2022 statement by the five Nuclear-Weapon States¹⁷ both lack these additional words and are weaker for it.

Second, policy options for the first use of nuclear weapons increase threat perceptions and tensions among nuclear-armed and allied states, undermining whatever deterrent value they might have meant to have. First-use policy options of one state or alliance and the operational measures to enable this first-use option can be perceived as threatening by their adversaries, leading to similar first-use policies and operational measures in response. In addition, first-use policies by an adversary can increase one’s sense of vulnerability, including of one’s nuclear forces, prompting consideration of additional operational or policy measures such as launch-on-warning, increasing further the risk of nuclear weapons being used.

First-use options also increase the risks that nuclear weapons could be used once an armed conflict erupts, whether by malice (intentional escalation), miscalculation, misinformation, malfeasance (unauthorised use) or malfunction (accidental use). Such options include the possibility that a nuclear-armed state might launch a nuclear strike in response to a conventional threat or to a threat from other weapons of mass destruction, or even to neutralise a potential nuclear threat in a pre-emptive strike.

Maintaining such a first-use option involves operational measures to enable quick decisions to use nuclear weapons in a variety of circumstances. Such operational measures include empowering the head of state or government to exercise sole authority on nuclear weapons use and maintaining some weapons systems on high alert (fast operational readiness to use). Such a system gives less time to analyse information about an adversary’s apparent actions before having to decide on first use of nuclear weapons in ‘response’ to such actions. Such information might be incorrect, either through faults in the system or through malfeasance simulating an attack from an adversary. Results from nuclear-conflict simulations run by the ‘The Nuclear Biscuit’ demonstrate that decision-makers in such high-stress, short decision-making, conflict scenarios, with awareness of the first-use policy of the adversary, have a tendency to resort to nuclear-use options which would have disastrous results.¹⁸ The Chatham House Report ‘Too Close for Comfort: Cases of Near Nuclear Use and Options for Policy’ highlighted numerous incidents where current policies of first use and launch on warning nearly resulted in actual use, and that it was most likely luck and/or individual disobedience of protocol and political guidance that prevented such use.¹⁹

¹⁶ The White House, “U.S.-Russia Presidential Statement on Strategic Stability”, 16 June 2021 (bit.ly/34p76Jv).

¹⁷ The White House, “Joint Statement by the Leaders of the Five Nuclear-Weapon States on Preventing Nuclear War and Avoiding Arms Races”, 3 January 2022 (bit.ly/3zohAE2).

¹⁸ ‘The Nuclear Biscuit’, a collaboration between experts from American University School of International Service, Institute for Peace Research and Security Policy at the University of Hamburg and Princeton University, uses a Virtual Reality (VR) experience to better understand decision-making during a nuclear crisis. Using VR to immerse participants in a crisis scenario, the project analyses which retaliatory options people consider valid, plus the information, advice, and other variables that are likely to prove important as people seek to make decisions in situations of high stress and uncertainty. See <https://sgs.princeton.edu/thenuclearbiscuit> and *The Guardian*, “15 Minutes to Save the World: A Terrifying Journey into the Nuclear Bunker”, 14 December 2021 (bit.ly/3J4LFgy).

¹⁹ Chatham House, “Too Close for Comfort: Cases of Near Nuclear Use and Options for Policy”, April 2014 (bit.ly/3JfMOSC).

5. What Would Happen in Case of a First Use of Nuclear Weapons?

Nuclear weapons today are many times more destructive than those used against Hiroshima and Nagasaki in 1945. A single nuclear weapon could destroy a major metropolis and kill most of its inhabitants. In addition to the loss of lives and property, a nuclear detonation would likely result in profound social, economic, and political disruption.²⁰ As described above, this would most likely provoke a nuclear retaliation. Nuclear conflict is likely to be particularly prone to spiralling escalation. The horrific damage one sustains from nuclear explosions is likely to feel, close up, much more horrific than the damage done to the faraway adversary. This creates a tendency to overcompensate by both parties, ending only when one or both parties run out of further means to escalate. Indeed, if nuclear-armed countries were conducting a first strike, they might well launch multiple nuclear weapons, not just one, to destroy military and economic targets, and to try (most likely unsuccessfully) to pre-empt a retaliatory attack against them. Several nuclear explosions against targets in, or close to, modern cities would kill tens of millions of people and could generate climatic consequences in the ensuing years and decades which would dwarf the climate change we are currently experiencing from carbon emissions.

It was when US President Reagan and Soviet President Gorbachev became aware of the risks and catastrophic consequences of nuclear weapons being used that prompted their joint statement in 1985. This understanding was reflected by the Final Document of the 2010 NPT Review Conference that expressed *“its deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons.”* The next step is to ensure that a nuclear war is never started, through global no-first use commitments.

6. How Does No-first Use Reduce the Risk of Nuclear Weapons Being Used?

The immediate benefit of no-first-use is that confrontations between nuclear rivals do not suffer from the instabilities described above. Foremost is that the adversary of a no-first-use-policy state does not have to fear a pre-emptive nuclear attack. No rushed consideration of conducting his own pre-emptive attack is necessary. This applies doubly so when both adversaries are no-first-use states like China and India.

No first use carries with it a responsibility to establish with certainty that a nuclear attack has occurred. For this reason, launch on warning is incompatible with no-first-use. One would also want to rule out that an explosion was accidental or that the attack was unauthorized, or even based on a serious misunderstanding. In such instances, ‘tit-for-tat’ retaliation might not make good sense.

If a country were in actuality attacked by nuclear weapons, its political and military leaders would have to consider what purpose would be gained by a nuclear response, which could make the situation even worse. For example, the initial attack might not be massive enough to trigger a global famine, but retaliation in kind would take the world across that threshold.

Most hopeful of all, if no-first use was adopted by all nuclear-armed states, this would rule out any intentional use of nuclear weapons by them. If no one fires first, then no one fires (unless there is an accidental launch). It is also an important measure to strengthen the norm against any use of nuclear

²⁰ International Committee of the Red Cross, “Humanitarian impacts and risk of use of nuclear weapons”, 29 August 2020 (bit.ly/3q2yYdv).

weapons and a significant step towards a more comprehensive prohibition on any use, threat of use, and possession of nuclear weapons.

Regarding, measures to prevent unintended, first use policies make them difficult to agree upon and implement. no-first-use policies provide an environment in which risk reduction measures can be adopted readily and practiced effectively.

7. How Can No-first Use Policies Contribute to the Achievement of Nuclear Disarmament?

Maintaining first-use policies create barriers for the nuclear-armed states to participate in good faith processes for nuclear abolition. The first-use option means that they believe that they need to retain nuclear weapons for a wide range of security scenarios – not just to deter a nuclear attack. If they adopt no-first use or sole purpose policies, it means that their nuclear arsenals are considered suitable only to counter the nuclear weapons of others. They can therefore enter into negotiations for complete nuclear disarmament, as long as these negotiations include the establishment of robust and effective verification and enforcement measures to ensure that all nuclear-armed states disarm, disable and destroy their nuclear weapons according to an agreed timeframe towards a nuclear-weapon free world. Even if no-first use policies do not immediately result in negotiations for complete elimination of nuclear weapons, they would serve as a “confidence-building measure” that establishes greater trust among nuclear-armed countries, making it easier to work together to reduce nuclear risks and ultimately eliminate all nuclear weapons.

8. What Are the Options to Make No-first Use Operational?

No-first use policies can be adopted unilaterally, bilaterally, or multilaterally.

- Unilateral no-first use policies can enhance security by lowering the threat level posed by a state’s nuclear forces and demonstrating that these forces are only for deterrence, not for nuclear attack.
- Bilateral no-first use agreements or reciprocal declarations further enhance the security of the states making the declarations as they increase the security guarantee that nuclear weapons will not be used first against them by the State with which they have made the agreement.
- A multilateral no-first use agreement, such as one by the five Nuclear-Weapon States parties to the NPT, would further enhance national, regional and global security against the first use of nuclear weapons, and would open the door to multilateral negotiations leading to a more comprehensive prohibition on use and on the phased elimination of nuclear weapons under international verification and monitoring.

As the China/Russia no-first-use agreement illustrates, bilateral treaties could be negotiated and concluded between each Nuclear-Weapon State and each other one individually (although such treaties among allied states would not make much sense). This approach would be similar to the bilateral agreements on the establishment of dedicated communication lines (“hotlines”) concluded between most nuclear-armed states. For the sake of increased global security, such bilateral agreements should be extended to non-NPT nuclear-armed states. The advantage of bilateral agreements is that they can be tailored to the specific needs and threat perceptions of the parties.

A multilateral no-first use agreement among the Nuclear-Weapon States – with or without their allies – would offer the advantage of being inclusive and thus build mutual confidence. It could include detailed provisions as to definitions and modalities of verification, especially for consequential measures of nuclear

risk reduction. It would pave the way for more ambitious measures of nuclear disarmament. It would at the same time respond to the long-standing demand from Non-Nuclear Weapon States to receive legally binding and harmonised “negative security assurances”: since the first use of nuclear weapons would be prohibited among nuclear-armed states, *a fortiori* it would apply to Non-Nuclear Weapon States.

All the approaches are useful and lack of progress in one should not become an excuse for failing to progress on others. Contrariwise, progress on any one of them should facilitate progress on the others.

9. How Can No-first Use Strengthen Non-nuclear Options for Security?

No-first use policies reduce tensions between adversaries but cannot by themselves prevent aggression nor resolve the conflicts that can lead to war. In their Declaration on the Commemoration of the Seventy-fifth Anniversary of the United Nations of 21 September 2020, all Member States of the United Nations reaffirmed that “*the ongoing armed conflicts and threats against international peace and security must be urgently resolved through peaceful means.*”²¹ This is in accordance with the United Nations Charter which requires Member States to resolve international conflicts through peaceful means (Article 2) and which provides a range of approaches and mechanisms for doing so (Chapter VI, Articles 33-38). The 2020 declaration affirms that “*The diplomatic toolbox of the Charter needs to be used to its full potential.*”

In its 1996 Advisory Opinion, the International Court of Justice cited Article 2 of the UN Charter as one of the requirements in international law which render the threat or use of nuclear weapons generally illegal and contributes to a customary legal obligation to negotiate in good faith, and achieve, the complete elimination of nuclear weapons. Reliance on the threat or use of nuclear weapons, and particularly the first use of nuclear weapons, should therefore be phased out. The use of UN and other non-nuclear mechanisms for advancing diplomacy, preventing aggression, and resolving international conflicts can assist in this process. Article 33 of the UN Charter outlines some of the processes available in the UN ‘diplomatic toolbox’ including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Security without reliance on nuclear weapons can be achieved through better use of these processes, and the mechanisms established for their use, including the International Court of Justice, Permanent Court of Arbitration, UN mediation through the Good Offices for the UN Secretary-General, International Criminal Court and many regional bodies like the Organization for Security and Cooperation in Europe. One concrete measure to ensure better use of these processes would be for all UN Member States to accept the compulsory jurisdiction of the International Court of Justice.²² Note that better use and strengthening of non-nuclear options for security should not be seen as pre-requisites to adopting no-first use policies, nor to undertaking negotiations in good faith for nuclear disarmament. On the contrary, the availability of such non-nuclear options removes the excuses often put forward by nuclear armed states for lack of progress that they must wait for better conditions for nuclear disarmament. The availability of these options indicates that these conditions are already present – just not fully utilised.

²¹ UN General Assembly, “Declaration on the Commemoration of the 75th Anniversary of the United Nations”, doc. A/Res/75/1, 21 September 2020 (bit.ly/3J9S22c).

²² Seventy-three UN Member States have submitted declarations to the International Court of Justice confirming that they recognize the jurisdiction of the Court as compulsory, *ipso facto*, and without special agreement, in relation to any other State accepting the same obligation, according to Art. 36, para. 2, of the Statute. Jurisdiction of the Court can also be established by reciprocal agreement of two parties, or by including such jurisdiction in an international agreement/treaty for disputes arising under that agreement.

10. Is No-first Use only a Declaratory Measure?

One of the objections to a no-first use policy is that it is merely declaratory, easily reversible, not verifiable, and thus not credible. In fact, the existing doctrines of the Nuclear-Weapon States also include declaratory aspects, about the conditions of their possible first use of nuclear weapons against nuclear-armed states and even Non-Nuclear Weapons States (conditional “negative security assurances”). Why would declarations about the use of nuclear weapons be more credible than declarations about their non-use?

In fact, beyond the declaratory aspects, adopting a no-first use policy would require meaningful changes to the types and categories of nuclear weapons Nuclear-Weapon States deploy pending their elimination. One tangible way to strengthen the credibility of the no-first use policy is to take all nuclear weapons off high-alert, meaning they are no longer ready to launch on a moment's notice. Another is to eliminate all land-based intercontinental ballistic missiles, which are quintessential nuclear first-strike weapons, and prioritize the kinds of systems that would be used only in response to a nuclear attack. Thus, no-first use would contribute both to nuclear risk reduction and nuclear disarmament. All prior planning would go into the dustbin and all exercises involving first use would be permanently cancelled.

11. How Can No-first Use Be Compatible with the Security of Nuclear-Weapon States and their Allies?

Regarding the hypothesis of use of nuclear weapons in case of conventional, chemical, biological, or cyber attack, it is worth recalling that Vice President Joe Biden stated in 2017 that, given the US non-nuclear capabilities and the nature of today's threats, “*it is hard to envision a plausible scenario in which the first use of nuclear weapons by the United States would be necessary or make sense*”.²³ Since other Nuclear-Weapon States consider that nuclear deterrence is meant to protect their “vital interests”, it is clear that only the use of nuclear weapons would endanger such interests while the level of their conventional forces would allow them to deter or respond to other threats without using nuclear weapons. Let us remember that the five Nuclear-Weapon States also happen to be among the states with the largest military expenditures, and the top producers and exporters of conventional armaments.²⁴

As recalled particularly in the United States doctrine, one of the reasons mentioned to retain the option of first use of nuclear weapons in case of conventional attack is to offer protection to allies within the concept of extended deterrence. It is important to be clear that no-first-use does not mean an end to the geographic extent of deterrence coverage, but rather to limiting the type of coverage offered. It is alleged that US allies are opposed to a policy of no-first use because they fear to fall victims of conventional attacks. Recent initiatives by civil society organisations have revealed that within countries that are allied to the United States, there is a considerable number and range of prominent personalities, including legislators and former military and political leaders, who support the US adopting a no-first use policy, and who assert that the current first-use option makes their countries and alliances less secure. Indeed, they uphold that retaining an option of first use of nuclear weapons to protect them escalates tensions and risks, stimulates countermeasures, and turns their countries into potential targets of nuclear retaliatory strikes. Joint statements making these points include:

- an open letter sent to Presidents Biden and Putin before their 16 June 2021 summit, endorsed by over 1,200 political, military and religious leaders, legislators, academics and scientists and other

²³ The White House, “Remarks by the Vice President on Nuclear Security”, 11 January 2017 (bit.ly/3shq9ix).

²⁴ Stockholm International Peace Research Institute (SIPRI), “World Military Spending Rises to almost \$2 Trillion in 2020”, 26 April 2021 (bit.ly/3mh5LKx); “Business as Usual? Arms Sales of SIPRI Top 100 Arms Companies Continue to Grow amid Pandemic”, 6 December 2021 (bit.ly/3GLUsC6); and “Trends in International Arms Trade 2020”, March 2021 (bit.ly/3yEoh4G).

representatives of civil society²⁵

- an open letter sent to President Biden and leaders of the US Congress by 35 parliamentarians from NATO countries²⁶
- an open letter sent to President Biden by some 700 scientists including 21 Nobel Laureates²⁷
- a joint letter by 22 Japanese organizations and another 47 individual experts supporting no-first-use²⁸
- and an open letter to the States Parties of the NPT with over 600 endorsers.²⁹

Indeed, any protection from attack with conventional weapons or other weapons of mass destruction would be offset to a large degree by the increased insecurity resulting from the higher risks of a nuclear exchange, and by the increased tensions and conflicts resulting from the nuclear threats posed by policies and preparations for first use. In addition, the nuclear disarmament obligation affirmed by the International Court of Justice in its July 1996 Advisory Opinion requires countries, including Non-Nuclear-Weapon States, relying on the threat or use of nuclear weapons to replace this defence policy with other forms of security to facilitate nuclear disarmament. Adoption of no-first use policies can be undertaken in conjunction with other confidence-building and common security measures to ensure that such policies do not diminish the security of the Nuclear-Weapon States and allied states.

As we learned the hard way from our lack of preparedness for the COVID-19 pandemic, our tendency to not address low-probability/high-consequence threats – despite ample warning – can lead to disaster. We must do better in heeding the warnings of nuclear catastrophe before it is too late. The potential erosion of perceived security in abandoning first-use options would be more than offset by the increased security gained by no-first-use policies in reducing the risk of nuclear war, decreasing tensions between nuclear-armed states and improving the prospect of establishing a nuclear-weapon free world, which must also be counted as a huge plus.

13. What Can the NPT Review Conference Decide?

Based on precedents, particularly the Final Documents of the 2000 and 2010 NPT Review Conferences, in its Final Document the 2022 Review Conference could:

- Welcome the 3 December 2021 statement of the Nuclear-Weapon States (NWS) Parties in which: *“They recognized their responsibility to work collaboratively to reduce the risk of nuclear conflict. They intend to build on their fruitful work on strategic risk reduction within the P5 Process in the course of the next NPT review cycle, in order to reduce the likelihood of nuclear weapons use. This is complementary to the NPT’s overarching goals and is consistent with the NWS’ long-term efforts towards disarmament and the ultimate goal of a world without nuclear weapons with undiminished security for all”*³⁰

²⁵ “Open Letter sent to Presidents Biden and Putin in advance of their 16 June 2021 summit” (bit.ly/3p3Dg4N and bit.ly/3mfeUmT).

²⁶ “Open Letter sent to President Biden and Leaders of the US Congress” by 35 parliamentarians from NATO countries, 29 November 2021 (bit.ly/3q3UuOP).

²⁷ “Open letter sent to President Biden” by 700 scientists, 16 December 2021 (bit.ly/3p73Zh2).

²⁸ “Don’t Oppose a Biden Administration’s Declaration of No First Use and Sole Purpose: An open letter from Japanese organizations and individuals requesting that the leaders of the Japanese ruling and opposition parties not oppose the Biden administration’s declaration of no first use/ sole purpose”, 7 September 2021 (bit.ly/34eMrre).

²⁹ “Fulfil the NPT: From nuclear threats to human security, an Open Letter to the States Parties of the Nuclear Non-Proliferation Treaty” (bit.ly/31tIT3x).

³⁰ U.S. Department of State, “Joint Communiqué of the Non-Proliferation Treaty P5 Nations”, 3 December 2021 (bit.ly/3FcxSID).

- Call on the Nuclear-Weapon States to report to future Preparatory Committee meetings on the course of their discussions and the conclusions they have reached
- Welcome the reaffirmation of the 1985 Reagan-Gorbachev declaration that “*a nuclear war cannot be won and must never be fought*” by the heads of State or government of the five Nuclear-Weapon States on 3 January 2022 and call on them to include the words that followed: “*not to seek military superiority*”
- Urge the Nuclear-Weapon States and states possessing nuclear weapons to review their nuclear postures and policies with a view to increasing strategic stability and reducing the risk of nuclear war whether by malfeasance, miscalculation, malfunction, or malware; and include the adoption of a policy of no-first-use of nuclear weapons and the consequential measures related to their acquisition and deployment of nuclear weapons and the implementation of other risk reduction measures
- Call on the Nuclear-Weapon States to adopt unilateral no-first use policies, announce bilateral no-first use arrangements and/or conclude a multilateral no-first use agreement amongst each other
- Call on the Conference on Disarmament to include informal discussions on this issue in the framework of its deliberations on nuclear disarmament.