

# Self-deterrence: Nuclear weapons and the enduring credibility challenge

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International Journal

2016, Vol. 71(1) 20–40

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DOI: 10.1177/0020702015618682

ijx.sagepub.com



## Abstract

In this article I argue that it is much harder to deter and compel non-nuclear states and terrorist groups through the threat of use of nuclear weapons than proponents of nuclear use contend. A counter-proliferation strategy relying on nuclear threat and preventive war has serious limitations and may well be a source of nuclear proliferation rather than non-proliferation. While the fear of a retaliatory attack constrains a nuclear state from using its nuclear weapons against another nuclear state, a nuclear state may not be able to mount and execute a nuclear retaliatory strike against a non-nuclear state or a non-state actor for reasons beyond military calculations. The nuclear state could be restrained by self-imposed reputational concerns arising from moral, legal, and other normative considerations. This form of restraint can be aptly termed “self-deterrence.” This article first elaborates the concept of self-deterrence and then explores the core reasons for its prevalence. There may be multiple reasons for self-deterrence, including domestic politics, bureaucratic politics, and leaders’ psychology, especially in terms of risk aversion. However, in light of the historical record—especially instances from US nuclear history—reputational considerations appear to be crucial in explaining self-deterrence. These reputational considerations derive largely from three sources: the tradition of non-use of nuclear weapons, moral restraints, and legal principles regarding the use of nuclear weapons. I conclude by arguing that deterrence theory and policy need to take into account this aspect of self-deterrence along with cultural, psychological, and domestic-level constraints that have been presented as challenges to that theory’s premises and applicability.

## Keywords

Nuclear weapons, non-use, ethics, morality, prudence

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Deterrence theory relies heavily on reputation. The credibility of a deterrer's threat, it is argued, lies in the state's reputation for the use of force against its adversaries in the past. Along with sufficient capability, credibility is necessary to achieve positive deterrence outcomes, and credibility comes from reputation for resolve. Further, deterrent effect and reputation are interdependent: as Thomas Schelling explains, past behaviour is key to the assessment of future behaviour. This is especially important when challengers are assessing the credibility of threats issued by a status quo power. Furthermore, a state is better able to achieve deterrence by sending costly signals; otherwise a challenger will not take its threats seriously.<sup>1</sup>

This theory of reputation has been contested by newer research on deterrence, which shows that there is no consensus on reputation in the literature. For instance, Jonathan Mercer finds no relationship between past reputation and future expectations of other states.<sup>2</sup> Daryl Press argues that backing down in a crisis does not affect the future credibility of the United States as deterrence theory and America's foreign policy positions assume.<sup>3</sup> This author is not convinced because works on nuclear deterrence rely heavily on examples drawn from the history of conventional deterrence. There are few instances of nuclear deterrence and compellence beyond the general deterrence that prevailed between the superpowers during the Cold War era. I argue that the limited examples of threats of nuclear use for deterrence and compellence reveal that a different kind of reputation plays a more prominent role than theorists have recognized thus far. This is especially the case with deterrence and compellent threats against non-nuclear adversaries. In fact, two types of reputation seem to be at work in the nuclear context: the reputation for potential use and the reputation for non-use. The latter is more prevalent in nuclear than conventional deterrence contexts. The reputation for non-use generates self-deterrence, with important consequences for the value of nuclear weapons as tools for deterrence and compellence. This article deals with reputation for non-use and its implications for deterrence and compellence. I offer an introductory discussion of this important phenomenon, long-neglected in the literature.

Understanding the reputation for non-use is critical for security relations in the post-Cold War era. The end of the Cold War has made superpower deterrence, based on mutual assured destruction, less salient, while complex deterrent relationships involving great powers and regional powers as well as non-state actors have emerged as prominent in official thinking and public discourse.<sup>4</sup> Since 1991, when faced with regional challengers seeking weapons of mass destruction, the United States has toyed with the idea of using nuclear threats in preventive or pre-emptive

1. Thomas Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), 124.

2. Jonathan Mercer, *Reputation and International Politics* (Ithaca: Cornell University Press, 1996).

3. Daryl Press, *Calculating Credibility: How Leaders Assess Military Threats* (Ithaca: Cornell University Press, 2007).

4. For the multidimensional aspects of deterrence in the contemporary international system, see T.V. Paul, Patrick M. Morgan, and James J. Wirtz, eds., *Complex Deterrence: Theory and Practice in the 21<sup>st</sup> Century* (Chicago: University of Chicago Press, 2009).

modes. This policy, christened “calculated ambiguity,” has since evolved.<sup>5</sup> In 1991, then-Defense Secretary Dick Cheney issued the top-secret Nuclear Weapons Employment Policy, which “formally tasked the military to plan for nuclear operations against nations capable of developing WMD,” resulting in the Single Integrated Operations Plan 93.<sup>6</sup> The Clinton administration widened the use of nuclear arms against states likely to use chemical and biological weapons. Clinton signed Presidential Decision Directive 60 in November 1997, permitting US nuclear strikes in retaliation to chemical or biological weapons use by enemy states.<sup>7</sup> The George W. Bush administration issued ambitious new policy guidelines that assigned three purposes to nuclear weapons: to deter; to pre-empt the use of weapons of mass destruction (WMD), including chemical and biological weapons; and to prevent WMD buildups by additional states. The last element assumed that deterrence might not work against rogue states and terrorist organizations and that, therefore, their WMD programs would have to be destroyed; and this might require nuclear use.<sup>8</sup> For example, in situations where an adversary’s hidden WMD capabilities and facilities are buried in deep bunkers not vulnerable to conventional strikes, the United States could resort to a limited nuclear strike.

The Obama administration made some important changes to this policy, but not to the extent of adopting a no-first-use policy or accepting the non-nuclear weapon states’ long-standing demand for an unequivocal negative security guarantee. In the 2010 Nuclear Posture Review (NPR) the administration did make explicit that “the United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the Nuclear Non-Proliferation Treaty (NPT) and in compliance with their nuclear non-proliferation obligations.”<sup>9</sup> Critics contend that the United States still continues nuclear planning against regional adversaries and that it has not yet fully adopted a “sole purpose” policy of nuclear weapons for deterrence only against a nuclear attack on the United States and its allies. While considering deterrence against nuclear attack the “fundamental” purpose of nuclear weapons,<sup>10</sup> the NPR makes it clear that “the United States is . . . not prepared at the present time to adopt a universal policy that

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5. It is true that the policy has in different forms existed from the days of Dulles, and it may well be partly the logic of nuclear strategies of countries such as Russia, China, India, Pakistan, Israel, France, and the UK although they have not articulated it as much as the US did. The behaviour of North Korea also lends credence to the usefulness the regime in Pyongyang sees in nuclear possession.
  6. Cited in Hans M. Kristensen, “Nuclear futures: Proliferation of weapons of mass destruction and US nuclear strategy” (BASIC Research Report 98.2, British-American Security Information Council, Washington, DC, March 1998), 10.
  7. R. Jeffrey Smith, “Clinton directive changes strategy on nuclear arms,” *Washington Post*, 7 December 1997, A1.
  8. US President, *The National Security Strategy of the United States of America* (Washington, DC, 17 September 2002); US White House, *National Strategy to Combat Weapons of Mass Destruction* (Washington, DC, December 2002).
  9. US Department of Defense, *2010 Nuclear Posture Report*, April 2010, 15.
  10. Aiden Warren, *Prevention, Pre-emption and the Nuclear Option: From Bush to Obama* (New York: Routledge, 2012), 159–160.

the ‘sole purpose’ of U.S. nuclear weapons is to deter nuclear attack on the United States and our allies and partners, but will work to establish conditions under which such a policy could be safely adopted.”<sup>11</sup> It is uncertain if the Strategic Command (STRATCOM) has removed several targets, including those of regional challengers, who are not yet nuclear weapons states.<sup>12</sup> It is also unclear if nuclear retaliation is off the list of options against chemical and biological attacks by regional adversaries. Although the US continues to cut the number of weapons as per the new Strategic Arms Reduction Treaty (START) commitments, it has embarked on a long-term plan of modernization of nuclear forces largely in response to China’s and Russia’s modernization.<sup>13</sup> We also have no way to predict whether or not the next administration will resurrect nuclear weapons as a key component of its defence strategy by jettisoning some of the commitments made by the Obama administration. The “usability of nuclear weapons school” exists among Congressional members, scientists at weapon laboratories, and military professionals. In sum, the United States has used, and to a large extent still uses implicitly, a nuclear threat against non-nuclear states.

A number of influential US scholars continue to argue for usable nuclear weapons and large-scale nuclear possession, often ignoring the constraints identified in this article. For instance, Lieber and Press contend that the US will inevitably have to fight against an adversary that has nuclear weapons and that it will therefore be imperative for the US to possess the right tools to ensure limited escalation.<sup>14</sup> Kroening argues that nuclear superiority can be translated to successful crisis outcomes for the possessor. This claim, however, is difficult to verify using mathematical models, as he does, and without in-depth qualitative case studies.<sup>15</sup> Heinrichs argues that by lowering nuclear numbers the US is giving reasons for other states to use them against the US in the battlefield.<sup>16</sup> Payne argues that targeting smaller regional adversaries and non-state actors might work, as happened in the case of

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11. US Department of Defense, *2010 Nuclear Posture Report*, April 2010, 16.
  12. It is reported that the current Operations Plan (OPLAN) 8010–08 targets at least six countries including Russia and China, the two declared nuclear states. The others are believed to be Iran, North Korea, and Syria with the sixth unknown. Hans M. Kristensen, “Obama and the nuclear war plan” (Washington, DC: Federation of the American Scientists Issue Brief, February 2010).
  13. Amy Wolf, “U.S. Strategic Nuclear Forces: Background, Developments and Issues,” 18 March 2015, <https://fas.org/sgp/crs/nuke/RL33640.pdf> (accessed 30 October 2015).
  14. Keir A. Lieber and Daryl G. Press, “The nukes we need: Preserving the American deterrence,” *Foreign Affairs* 88, no. 6 (2009): 39–51. See also Richard K. Betts, “The lost logic of deterrence: What the strategy that won the Cold War can—and can’t—do now,” *Foreign Affairs* (March/April 2013): 87–99.
  15. Matthew Kroening, “Nuclear superiority and the balance of resolve: Explaining nuclear crisis outcomes,” *International Organization* 67, no. 1 (January 2013): 141–171. See also Todd S. Sechser and Matthew Fuhrmann, “Crisis bargaining and nuclear blackmail,” *International Organization* 67, no. 1 (January 2013): 173–195; Bradley A. Thayer and Thomas M. Skyepek, “Reaffirming the utility of nuclear weapons,” *Parameters* 42, no. 4, 43 no. 1 (Winter-Spring 2013): 41–45.
  16. Rebecca L. Heinrichs, “Time to get serious about nuclear deterrence,” Hudson Institute, 1 July 2015, <http://www.hudson.org/research/11400-time-to-get-serious-about-nuclear-deterrence> (accessed 7 September 2015).

Saddam Hussein's decision not to escalate to chemical weapons use.<sup>17</sup> He ignores the fact that Saddam did break some of the thresholds, such as burning Kuwaiti oil fields, and had ordered his commanders to use chemical weapons if Baghdad fell. Despite the introduction of conventional prompt strike capabilities that can accurately detect and destroy opponents' command, control, and communication centres, nuclear weapons are still a dominant part of the strategies of nuclear states, including the United States.

I argue that self-deterrence considerations play a far more important role in questions of the use of nuclear weapons as deterrence and compellence against non-nuclear states and terrorist groups than proponents of nuclear use have recognized. A nuclear state may not be able to mount and execute a nuclear retaliatory strike against a non-nuclear state or non-state actor for reasons beyond military calculations. The nuclear state could be restrained by moral, legal, and other normative considerations.<sup>18</sup> This form of restraint can be aptly termed "self-deterrence."

There may be multiple reasons for self-deterrence, including tactical and strategic considerations, domestic politics, bureaucratic practices, and leaders' psychology, especially in terms of risk aversion. However, reputational considerations appear to be crucial in explaining self-deterrence in light of the historical record, especially instances from US nuclear history. These reputational considerations derive largely from three sources: the tradition of non-use of nuclear weapons, moral restraints, and legal principles regarding the use of nuclear weapons. Leaders can be directly and indirectly constrained by these factors, even if they do not always publicly acknowledge them. Deterrence theory and policy need to take into account this aspect of self-deterrence along with cultural, psychological, and domestic-level constraints that have been presented as challenges to the premises and applicability of deterrence theory.

## Broadening deterrence theory

There are four central components of deterrence theory (be it nuclear or conventional) in the inter-state context. First, there exists an intense conflict or rivalry between states, one in which the use of military force is a possibility. Second, states are rational actors and as such make cost-benefit calculations. Third, war can be prevented using a retaliatory threat that would make the costs of an attack much higher for a potential attacker than the benefits. Fourth, fearing unacceptable retaliatory threat or the inability to obtain victory, the challenger would abstain from mounting an attack. In order for deterrence to succeed, a deterrer should have sufficient capability; its threat should be credible; and it should be able to communicate the threat to its opponent.<sup>19</sup> Nuclear deterrence is

17. Keith B. Payne, "Maintaining flexible and resilient capabilities for nuclear deterrence," *Strategic Studies Quarterly* (2011): 13–29.

18. These factors operate in addition to the tactical or strategic unsuitability of the weapon concerned in most regional contexts.

19. These elements should operate across all classifications of deterrence relationships. For definitions of these different types of deterrent relationships, see Patrick Morgan, *Deterrence: A Conceptual Analysis* (Beverly Hills: Sage, 1983), 30; Morgan, *Deterrence Now* (Cambridge: Cambridge University Press, 2003), 8–22; Timothy Crawford, *Pivotal Deterrence* (Ithaca: Cornell University Press, 2003).

obtained when a challenger state refrains from war, fearing unacceptable nuclear retaliation.

Deterrence relies heavily on reputation for resolve. The challenger is deterred when it realizes that the defender has a strong will to carry out the threat and the reputation to do so, based on its past behaviour. The deterring state needs to send costly signals in order for deterrence threats to be credible because they are arguably more revealing of the intentions of a state than cheap signals.<sup>20</sup> Schelling gives the most cogent argument in support of reputation of this kind. He states that face is

a country's 'image' consisting of other countries' beliefs (their leaders' beliefs, that is) about how the country can be expected to behave. It relates not to a country's 'worth' or 'status' or even 'honor' but to its reputation for action. If the question is raised whether this kind of 'face' is worth fighting over, an answer is that this kind of face is one of the few things worth fighting over . . . 'Face' is merely the interdependence of a country's commitments; it is a country's reputation for action, the expectations other countries have about its behavior."<sup>21</sup> Deterrent threats to protect vital interests will be believable only if states are "willing to pay high costs for minor stakes."<sup>22</sup>

Thus, reputation is used in the deterrence literature in a straightforward manner involving resolve to use force, especially in terms of past behaviour having implications for future expectations of challengers.<sup>23</sup> Reputation for resolve is formed as a dispositional character of the state, and past behaviour to act is used to predict future behaviour.<sup>24</sup>

However, the ability to do something is different from the willingness to do something. For deterrence, you need both, but the latter is most crucial. Deterrence is a psychological relationship involving the deterrer and the challenger in which the former is threatening unacceptable punishment or denial of victory so that the target will refrain from offensive action. The psychological relationship assumes that the threatening party has the will and determination to inflict unacceptable punishment. However, this willingness to use force may be affected by factors that are beyond the purview of rational deterrence theory. Self-deterrence, then, refers to constraints on the decision maker against the use of retaliatory capability beyond reasons of a material and tactical/strategic nature.

20. Robert Jervis, *The Logic of Images in International Relations* (New York: Columbia University Press, 1970); James Fearon, "Domestic political audiences and the escalation of international disputes," *American Political Science Review* 88, no. 3 (September 1994): 77–92.

21. Schelling, *Arms and Influence*, 124.

22. Robert Jervis, Richard Ned Lebow and Janice Gross Stein, eds., *Psychology and Deterrence* (Baltimore: Johns Hopkins University Press, 1985), 9.

23. Barry Nalebuff, "Rational deterrence in an imperfect world," *World Politics* 43, no. 3 (April 1991): 315. I accept Mercer's definition of reputation as "a judgment of someone's character (or disposition) that is then used to predict or explain future behavior." Mercer, *Reputation and International Politics*, 6.

24. Mercer, *Reputation and International Politics*, 7.

Much of the mainstream literature on deterrence, developed during the Cold War era, focused on the military aspects of deterrence, ignoring the political dimensions. Mainstream scholars of deterrence tend to prefer a narrow, military-focused definition of deterrence to build a rigorous, cumulative literature on the subject. Leading scholar Patrick Morgan favours this approach, and argues that the definition of deterrence should be confined to “the threat of *military* retaliation to forestall a *military* attack.” He contends that the inclusion of other means to deter would conflate deterrence with other types of preventive measures and the inclusion of different purposes would “make deterrence equivalent to foreign policy as a whole.”<sup>25</sup>

While there is merit in maintaining a strict, military-based definition of deterrence, the case for a broader approach is also compelling. There is a slew of non-military means by which one state can deter another, be it a state or a non-state actor, and these non-military means might also be part of the calculations of a defender and a challenger in a conflict situation. As Jeffrey Knopf argues, “embracing a narrow concept could limit our ability to imagine alternative approaches and unnecessarily restrict the range of options we analyze.”<sup>26</sup>

One important aspect of a broader approach to deterrence could be an actor’s unwillingness to use coercive military power to achieve deterrent objectives due to fear of adverse non-military consequences. This inability to use existing capability due to fear of unwanted consequences is a form of deterrence that calls for further clarification.

## Defining self-deterrence

Self-deterrence can be defined as the *unwillingness to use coercive military power against an adversary, despite a declaratory threat to do so, due to self-imposed as opposed to other-imposed constraints*. Normal deterrence between two states is obtained when state A, wanting to use force, is restrained from doing so for fear of retaliation by state B. Self-deterrence, on the other hand, describes situations in which a powerful actor, even when it is capable of inflicting unacceptable punishment on an opponent, is held back due to factors that are not connected to capability or military retribution by the opponent. The actor expects that it would suffer more harm than is acceptable, even though that harm is not physical. That is, the state desists from using its military capability for such reasons as the fear of losing reputation among domestic and international audiences for acting contrary to normative, moral, or legal principles. Material calculations, such as the ability to use cheaper, less violent, and less imprecise alternatives for forceful retaliation, are not part of self-deterrence.<sup>27</sup> These considerations are often secondary to core

25. Morgan, *Deterrence: A Conceptual Analysis*, 29; Patrick M. Morgan, “Deterrence in foreign policy,” *Armed Forces & Society* 3, no. 4 (Spring 1977): 495–502.

26. Jeffrey W. Knopf, “Three items in one: Deterrence as concept, research program, and political issue,” in Paul, Morgan, and Wirtz, *Complex Deterrence*, 31–57.

27. Point raised by Patrick M. Morgan in personal communication.

deterrence axioms. As one scholar puts it, “Self deterrence focuses upon our hesitancy to inflict, not to receive the pangs of war.”<sup>28</sup>

Cold War-era nuclear strategists introduced the concept of self-deterrence in the deterrence literature as part of their debate on the merits of counterforce and counter-value strategies. Proponents of counterforce (targeting Soviet nuclear force sites as opposed to population centres) argued that under a counter-value strategy, the United States would be self-deterred in the event of a Soviet first strike on US nuclear installations, fearing a Soviet counterattack on its own population centres. Hence it had to develop effective counterforce capabilities and target Soviet missiles. Counter-value strategists argued that self-deterrence was a good thing, since it would encourage both sides not to engage in nuclear attacks in the first place. Strategist Albert Wohlstetter contended that counter-value threats would “paralyze the West, not the East.”<sup>29</sup> US officials grappled with the issue of self-deterrence, especially in the 1970s and 1980s. The warfighting strategies inherent in the Schlesinger Doctrine of 1974 and Jimmy Carter’s Presidential Directive (PD) 59 assumed that Moscow would not be deterred by the United States targeting Soviet population or industrial sites. They contended that a limited counter-city strategy would not appear to be credible to the Soviets since the United States would be unlikely to respond to a limited Soviet attack on American nuclear forces, in turn because the Soviets would retain some reserve forces for counterattack. Proponents of counter-value strategy argued that the “Soviet leaders could anticipate United States ‘self-deterrence’ under Minimum Deterrence and MAD and exploit this paralysis of the U.S. deterrence policy.”<sup>30</sup>

Despite this recognition of self-deterrence by some key scholars and policy-makers, the concept has not yet been developed fully. The notion of self-deterrence developed during the Cold War is very much tied to military retaliation and hence military-centred. It is unclear that there is much difference between self-deterrence used in this sense and deterrence in general, so it is unclear what is added by this concept of self-deterrence. This usage keeps nuclear strategy in the material realm, and misses an important non-material dimension. In particular, this may not be the most valuable way to explore self-deterrence in the contemporary world. I concur with Robert Jervis that the use of the term “self-deterrence” should be “limited to the cases in which a country is deterred by factors other than retaliation by others.”<sup>31</sup>

28. David A. Koplow, *Death by Moderation: The U.S. Military’s Quest for Useable Weapons* (Cambridge: Cambridge University Press, 2009), 39.

29. Albert Wohlstetter, “Bishops, statesmen, and other strategists on the bombing of innocents,” *Commentary* 75, no. 6 (June 1983): 15–35. On this debate, see Lee, *Morality, Prudence, Nuclear Weapons* (Cambridge: Cambridge University Press, 1993); Colin S. Gray, “Nuclear strategy: A case for a theory of victory,” *International Security* 4, no. 1 (Summer 1979): 54–87.

30. Keith Payne, *Deterrence in the Second Nuclear Age* (Lexington: University Press of Kentucky, 1996), 67.

31. Jervis, “Deterrence, rogue states and the U.S. policy,” in Paul, Morgan, and Wirtz, *Complex Deterrence*, 153.

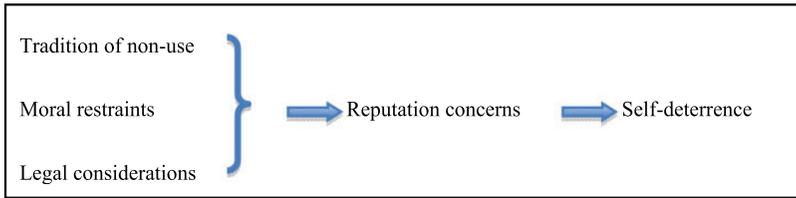
## The sources of self-deterrence

Although self-deterrence may operate in all kinds of deterrent relationships, it has the highest salience in the case of nuclear weapons, due to their immense destructiveness and the high level of material and normative consequences their use generates. An unwillingness to use nuclear capability may, of course, be the result of tactical or strategic cost/benefit calculations: the means applied may not produce the benefits desired at an acceptable cost. The use of nuclear weapons against a regional adversary may not be effective, for instance, in destroying its WMD facilities, buried deep underground, without causing high levels of collateral damage. It may cause major strategic problems for the attacker. The use of nuclear weapons could imply that the only way to avoid a nuclear attack is through nuclear arms, undermining the goal of non-proliferation. This form of “commitment trap,” discussed by scholars such as Scott Sagan, may work as a significant restraint against nuclear use.<sup>32</sup>

A major strategic reason for not using nuclear weapons would be political calculation. The United States, for instance, will have great difficulty in using nuclear weapons against regional powers for anything other than a similar threat from them. Even if the United States uses the weapon and devastates the country, it will then fall upon Washington to rebuild the defeated state. The humanitarian consequences would be horrendous, the military victory a shallow one. The United States would face tremendous difficulties in occupying a country that it had attacked with nuclear weapons even after its initial military victory, in operating its forces effectively, and more importantly, in obtaining popular support for such an action. For instance, since the 11 September 2001 attacks, the United States has been hoping to change hearts and minds in the Muslim world, and the use of nuclear weapons against Iraq or Afghanistan would have turned the same public, worldwide, against it, making its strategic goals illegitimate in the eyes of the world. The larger question is where does this sense of legitimacy and illegitimacy arise from as far as nuclear weapons are concerned? More importantly, why did US policymakers desist from nuclear use when they contemplated such use in a few known instances? Did non-military considerations play a prominent role in decision making?

Or is it purely casualty sensitivity that produces self-deterrence? The question arises whether this increased US sensitivity toward opponent casualties is due to instrumental or normative reasons. The change could be the result of both. The tactical and strategic bases of self-restraint thus are many and they are context dependent, and it is not my objective to go into them in detail. I argue that the concept of self-deterrence should not include pure tactical or strategic reasons for refraining from an attack; indeed, the concept highlights situations in which the

32. On this, see Scott D. Sagan, “The commitment trap: Why the United States should not use nuclear threats to deter biological and chemical weapons attacks,” *International Security* 24, no. 4 (Spring 2000): 85–115.

**Table 1.** The self-deterrence mechanism

capacity exists for a military action, but the prospective attacker chooses not to strike for largely non-military reasons.

Where does self-deterrence arise from, especially in the nuclear context? In the ensuing pages, I focus on three core sources of self-deterrence: the tradition of non-use, morality of nuclear weapons use, and legal concepts. As shown in the table below presenting the self-deterrence mechanism, the three normative factors generate important reputational concerns for the potential attacker who in turn refrains from using the nuclear capacity against a weaker adversary.

I examine instances where the United States considered using nuclear weapons against non-nuclear states, whether for counter-proliferation or warfighting purposes. I focus on these cases, rather than on confrontations with other nuclear states, because in the latter cases, it is clear that classical deterrence played the leading role. It is in confrontations with non-nuclear states where self-deterrence may have had an important impact.

## The tradition of non-use

A critical source of self-deterrence has emerged in the international arena from the rise of the tradition of non-use of nuclear weapons in the 1950s and the reputational costs involved in breaking this tradition. Some scholars have argued that a nuclear taboo has arisen, creating a normative stigma against nuclear use.<sup>33</sup> Others contend that nuclear non-use is not a stringent, social taboo-like prohibition, equivalent to the taboos against incest or cannibalism. However, in either view, there is consensus on a tradition of non-use—a settled expectation regarding the non-use of nuclear weapons.

This tradition began after Hiroshima and Nagasaki but grew more powerful with the atmospheric tests in the early 1950s that brought home to leaders of established nuclear states the dangers of nuclear weapons. Leaders and the general public began to view nuclear weapons as different from conventional weapons and as carrying immense dangers. A tradition in this sense is the time-honoured

33. The most representative work is Nina Tannenwald, *The Nuclear Taboo* (Cambridge: Cambridge University Press, 2007).

practice of non-use as a social obligation, followed by nuclear states since 1945. It took several more crises in the 1950s and 1960s to put the tradition on a stronger footing. Although it was once again challenged during the post-Cold War era, especially under the George W. Bush administration, it was not broken. The tradition contains an informal norm that arises partially from the material bases of the weapons concerned and the consequences of use as understood by decision makers. This realization came about in some measure due to the efforts of norm entrepreneurs or reputation generators such as scientists, strategists, peace movements, and non-aligned developing countries, actors that propagated the dangers of nuclear use, its immorality, and the material and non-material ramifications of nuclear war.<sup>34</sup> The tradition symbolizes a “habit of non-use” and it can generate self-deterrence.<sup>35</sup>

The tradition generates reputation costs for those decision makers who would consider breaking it. Leaders would fear that breaking the tradition of non-use would bring international revulsion and opprobrium toward them and their country. They would lose their legitimacy and the sympathy of their own citizens, which is often needed, especially if the war is with a smaller regional adversary. Opponents of the war would ensure that their reputation in front of world public opinion would suffer. Historians would judge them in an extremely harsh light if they broke the tradition for anything other than existential reasons.

Some key examples from US nuclear history can illustrate this source of self-deterrence. Harry Truman, the first US president who confronted the stark choices of nuclear weapons, stated in his memoirs, “The destruction of Hiroshima and Nagasaki was lesson enough for me. The world could not afford to risk war with atomic weapons.”<sup>36</sup> Truman rejected war plans prepared by the Joint Chiefs of Staff between 1946 and 1948 relying on nuclear weapons to prevent the Soviet Union from acquiring nuclear weapons. As Truman put it:

I don't think we ought to use this thing unless we absolutely have to. It is a terrible thing to order the use of something...that is so terribly destructive, destructive beyond anything we have ever had. You have got to understand that it isn't a military weapon...It is used to wipe out women and children and unarmed people, and not for military uses. So we have to treat this differently from rifles and cannon and ordinary things like that.<sup>37</sup>

Although the tradition was nascent during the Truman era, it is noticeable that reputation costs were among his reasons for not using nuclear weapons against the

34. For details, see T.V. Paul, *The Tradition of Non-use of Nuclear Weapons* (Stanford: Stanford University Press, 2009); T.V. Paul, “Taboo or tradition: The non-use of nuclear weapons in world politics,” *Review of International Studies* 6 (October 2010): 853–863.

35. Steven P. Lee, *Morality, Prudence and Nuclear Weapons*, 332.

36. Harry S. Truman, *Memoirs*, vol. 1, *Year of Decisions* (Garden City, NY: Doubleday, 1955), 524.

37. Quoted in David Lilienthal, *The Journals of David E. Lilienthal*, vol. 2, *The Atomic Energy Years, 1945–1950* (New York: Harper and Row, 1964), 391.

Soviet Union and in Korea against Chinese forces, despite recommendations by many of his advisers. These reputational costs arose from an increasing global understanding that the weapon was horrendous in its impact and that Hiroshima and Nagasaki should not be repeated.

President Dwight Eisenhower, despite using the nuclear card against China during the Korean War as well as the Quemoy–Matsu crises, was also reluctant to use nuclear weapons partially due to concerns of reputation and image. In response to proposals in US and French military circles to use nuclear weapons to relieve French forces at the fortress of Dien Bien Phu in Vietnam in 1954, Eisenhower responded, “You boys must be crazy. We can’t use those awful things against Asians for a second time in less than ten years. My God.”<sup>38</sup> The ongoing conflict with China and the USSR would push the Eisenhower administration to ponder nuclear use in limited wars involving the Communist countries. Administration officials debated the feasibility of nuclear use in limited wars at National Security Council (NSC) meetings in 1956. At a meeting in February 1956, in response to Admiral Arthur Radford, who had “called for greater flexibility in the employment of nuclear weapons for small wars,” Eisenhower replied that “the use of nuclear weapons would raise serious political problems in view of the current state of world opinion as to the use of such weapons.”<sup>39</sup>

President Lyndon Johnson talked about the tradition, for example, in one of his campaign speeches during the 1964 presidential campaign. Johnson fiercely opposed Republican candidate Barry Goldwater’s call for victory in the Cold War using nuclear weapons, especially in Vietnam. In September 1964 Johnston stated:

Make no mistake . . . there is no such thing as a conventional nuclear weapon. For 19 peril-filled years no nation has loosed the atom against another. To do so now is a political decision of the highest order. And it would lead us down an uncertain path of blows and counterblows whose outcome none may know. No President of the United States of America can divest himself of the responsibility for such a decision.<sup>40</sup>

The Johnson era showed the power of the tradition of non-use more vividly, as the administration refused to use nuclear weapons even when it was facing enormous difficulties in Vietnam. Further, Johnson rejected proposals for a nuclear attack on China to keep it from becoming a nuclear power.

The Nixon administration attempted to use nuclear threats to subdue the Vietnamese. The military plan *Operation Duck Hook* had called for

massive bombing of Hanoi, Haiphong, and other key areas in North Vietnam; the mining of harbors and rivers; the bombing of the dike system; a ground invasion of North Vietnam; the destruction—possibly with nuclear devices—of the main

38. Stephen E. Ambrose, *Eisenhower* (New York: Simon & Schuster, 1983), 2: 184.

39. “Memorandum of Discussion at the 277<sup>th</sup> Meeting of the National Security Council,” Washington, 27 February 1956, *Foreign Relations of the United States, 1955–1957*, vol. 19, 204.

40. Quoted in McGeorge Bundy, *Danger and Survival* (New York: Random House, 1988), 537.

North-South passes along the Ho Chi Minh trail; and the bombing of North Vietnam's railroad links with China. There was a separate, even more secret study dealing with the implications of using tactical nuclear weapons on the rail lines, the main funnel for supplies from the Soviet Union as well as China. In all, twenty-nine major targets in North Vietnam were targeted for destruction in a series of air attacks planned to last four days and be renewed, if necessary, until Hanoi capitulated.<sup>41</sup>

The plan was eventually shelved for a variety of reasons, of which the fear of adverse global reaction was one. Later, Nixon himself stated that if the United States had "chosen to go for a knockout blow by bombing the dikes or using tactical nuclear weapons, the resulting domestic and international uproar would have damaged our foreign policy on all fronts."<sup>42</sup> At a meeting in May 1972, in response to Nixon's comment that he did not care about civilian casualties, his National Security Advisor Henry Kissinger stated: "I'm concerned about the civilians because I don't want the world to be mobilized against you as a butcher."<sup>43</sup> Self-deterrence arising from reputational concerns appears a very powerful check on nuclear use against non-nuclear states, even for a realist such as Kissinger.

President George H.W. Bush, on the eve of the Persian Gulf War of 1991, decided not to use nuclear weapons against Iraq even if the latter used chemical and biological weapons. At a meeting with his advisers in Camp David in December 1990, Bush had decided that the United States would not retaliate with nuclear weapons in the event of a chemical or biological attack, but it would go after the regime.<sup>44</sup> The threat of regime removal was viewed as a more effective deterrent than nuclear retaliation, although US officials outwardly kept open the possibility of nuclear retaliation in order to gain deterrence value from a policy of "calculated ambiguity."

American officials debated the best strategy to deal with the threat of Iraq's biological weapons capabilities and potential for use of such weapons. Rick Atkinson states that to some US officials,

detonating a small nuclear warhead may be a legitimate employment of one weapon of mass destruction to negate another. Temperatures reaching at least twenty thousand degrees Fahrenheit in three seconds were believed necessary to ensure that no spores survived an attack.

Brigadier General Buster C. Glosson told Joint Chiefs of Staff (JCS) Chairman Colin Powell, "We both know there is one sure way to get the temperature hot enough," referring to thermonuclear weapons. "Yeah," the chairman replied, "but

41. Seymour M. Hersh, *The Price of Power: Kissinger in the Nixon White House* (New York: Summit Books, 1983), 120.

42. Richard M. Nixon, *No More Vietnams* (New York: Arbor House, 1985), 102.

43. White House tapes, 5 May 1972, quoted in Tannenwald, *The Nuclear Taboo*, 237.

44. James A. Baker III, *The Politics of Diplomacy: Revolution, War and Peace, 1989–1992* (New York: G.P. Putnam's Sons, 1995), 359.

we don't talk about that."<sup>45</sup> Powell also mentions in his memoirs that Defense Secretary Dick Cheney asked him about the nuclear option, to which he replied, "Let's not even think about nukes . . . you know we're not going to let that genie loose . . ." Cheney said, "Of course not. . . But take a look to be thorough and just out of curiosity." Powell formed a small group to study the nuclear options and "the results unnerved" him:

To do serious damage to just one armored division dispersed in the desert would require a considerable number of small tactical nuclear weapons. I showed this analysis to Cheney and then had it destroyed. If I had had any doubts before about the practicality of nukes on the field of battle, this report clinched them.<sup>46</sup>

To McGeorge Bundy, "The Gulf War has in fact reinforced that tradition [of non-use], and in ways more remarkable than the simple fact that no nuclear weapon was exploded."<sup>47</sup>

## Moral bases

A second non-military source of self-deterrence is moral constraint. Here the focus is on the near-universal moral revulsion against the use of nuclear weapons that has developed since the attacks on Hiroshima and Nagasaki in 1945. What is the basis of the moral/ethical claim against nuclear use? Peace groups and religious figures have long argued that any nuclear attack would be morally abysmal since the impact of such an attack would be catastrophic and disproportionate to the value of any political or military objective. The moral prohibition against the use of nuclear weapons is absolute, and to some, even the conditional intention to use them is immoral.<sup>48</sup>

Just war principles constitute the most important moral bases of nuclear self-deterrence. Nuclear pacifists argue that the use of nuclear weapons could result in a "holocaust of unimaginable fury and horrifying impact"<sup>49</sup> and that the after-effects would clearly violate all key just war principles, however limited the attack might be. These principles include discrimination or observance of non-combatant

45. Rick Atkinson, *Crusade: The Untold Story of the Persian Gulf War* (Boston: Houghton Mifflin, 1993), 89. See also George C. Wilson, "Worst case: Iraqi war goes nuclear," *National Journal* 34, no. 41 (12 October 2002): 2992–2993.

46. Colin L. Powell, *My American Journey* (New York: Random House, 1995), 738. However, it is argued that the commander-in-chief of the US-led coalition forces, General Norman Schwarzkopf, had asked at the outset of the campaign for the use of nuclear weapons to jam Iraqi communication and radar facilities, and that the Pentagon had hired consultants to study the option. *Newsweek*, 14 January 1991, cited in Barry R. Posen, "U.S. security policy in a nuclear-armed world," *Security Studies* 6, no. 3 (Spring 1997): 20.

47. McGeorge Bundy, "Nuclear weapons and the Gulf," *Foreign Affairs* 70, no. 4 (Fall 1991): 83.

48. Jeff McMahan, "Deterrence and deontology," *Ethics* 95, no. 3 (April 1985): 517–536; National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* (Washington, DC: National Conference of Catholic Bishops, May 1983).

49. James T. Johnson, *Can Modern War Be Just?* (New Haven: Yale University Press, 1984), 8.

immunity, proportionality, and reasonable chance of success. The first forbids the use of weapons against civilian targets, the second restricts retaliatory action to what is proportionate to the harm done by an opponent, and according to the third, for a military action to take place there must exist a reasonable chance of victory without incurring an overly high price in terms of lives and material costs.<sup>50</sup>

Moral principles, in this instance, could be observed on the basis of what Charles Beitz calls intuitive imposition requirements, “regardless of considerations of actual or possible resulting benefit” to the actor concerned.<sup>51</sup> Cohen and Lee argue that nuclear weapons fail to fit either “other-imposed” (e.g. constraints caused by limited capabilities) or “self-imposed” (prudential and moral) limits on war.<sup>52</sup> Moral theorists do not claim that states always follow these norms. Rather, they expect states to be constrained by moral considerations as part of their larger reasons for refraining from nuclear use. According to some, most leaders of established nuclear states have over time imbibed these moral norms. For one proponent, moral principles are first “embedded in specific international norms governing the use of force” and, at a second stage, “these norms constitute part of the structure of the international system itself and thereby become embedded in state interests.”<sup>53</sup> Since moral considerations could generate reputational concerns for the potential user of nuclear weapons, the moral calculations may be intertwined with rational self-interest.

What does nuclear history tell us about the role of morality in generating self-deterrence? Although it is often difficult to pinpoint precisely the role of morality, it seems to have entered in different ways into decision makers’ choices during the nuclear age. Drafted in 1950, NSC 68 contained passages that referred to moral considerations in rejecting a preventive nuclear war with the Soviet Union during the window of opportunity when the Soviets were still working on obtaining nuclear capability. It concluded that preventive war was “generally unacceptable to Americans” and that it would be “repugnant” and “morally corrosive.”<sup>54</sup> Truman’s stated reasons for non-use of nuclear weapons in Korea pertained to moral reputation and projection of America’s image as a peaceful nation. In his farewell radio address in 1953, Truman declared,

50. Bruce Russett, “Ethical dilemmas of nuclear deterrence,” *International Security* 8 (1984): 36–54. The classic work in this vein remains Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), who argues “nuclear weapons explode the theory of just war” (282).
51. Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), 56. See also Steven P. Lee, “The morality of nuclear deterrence: Hostage holding and consequences,” *Ethics* 95, no. 3 (April 1985): 550–551.
52. Avner Cohen and Steven Lee, “The nuclear predicament,” in Cohen and Lee, eds., *Nuclear Weapons and the Future of Humanity* (Totowa, NJ: Rowman and Allanheld, 1986), 1–37.
53. Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca: Cornell University Press, 2001), 4.
54. “NSC-68: United States Objectives and Programs for National Security,” 14 April 1950, reprinted in Thomas H. Etzold and John Lewis Gaddis, *Containment: Documents on American Foreign Policy, 1945–1950* (New York: Columbia University Press, 1978), 385–442.

Now, once in a while, I get a letter from some impatient person asking, why don't we get it over with? Why don't we issue an ultimatum—make all out war, drop the atomic bomb? For most Americans, the answer is quite simple: We are not made that way. We are a moral people. Peace is our goal, with justice and freedom. We cannot, of our own free will, violate the very principles that we are striving to defend.<sup>55</sup>

Evidence that is now available suggests that Truman was partially constrained by moral considerations, especially in using nuclear weapons a second time in Asia against North Korea and China.

It has been argued that both President Eisenhower and Secretary of State Dulles were less constrained morally. Eisenhower mixed military and moral reasons for initiating a preventive war against the Soviet Union.<sup>56</sup> To some, only a set of fortuitous circumstances prevented the administration from using nuclear weapons against China in 1953, prior to the armistice agreement that ended the Korean War. President Kennedy and Secretary of Defense McNamara were said to be morally constrained, while President Nixon and National Security Advisor Kissinger were less so in Vietnam.<sup>57</sup>

Although there are difficulties in isolating the role of moral considerations in decisions to refrain from the nuclear option, these may be subsumed under calculations of reputation and image. In my view, morality and reputation have been intertwined in the emergence and persistence of self-deterrence. American leaders such as Truman and Eisenhower, in particular, resisted the temptation to use nuclear weapons because of their fear that their reputations would suffer and that they would be characterized as “immoral beings” who had scant regard for “Asian lives.” Any theory of self-deterrence must incorporate the moral restraint leaders face while considering unlimited use of force, especially relying on nuclear weapons.

## Legal sources

A third normative source for self-deterrence is international law. Some legal scholars contend that the use of nuclear weapons is forbidden by international law, and as such non-use is a legal norm. Although analysts differ on the robustness of legal prohibitions against nuclear attacks, Boyle argues that nuclear use is illegitimate under Article V of the UN Charter, which prohibits the use of force except for legitimate self-defence. According to him, the use of nuclear weapons would grossly violate the international laws of humanitarian armed conflict and the Nuremberg

55. Harry S. Truman, “Farewell Address,” 15 January 1953, reprinted in Louis W. Koenig, *The Truman Administration: Its Principles and Practice* (New York: New York University Press, 1956), 287–288.

56. Scott A. Silverstone, *Preventive War and American Democracy* (New York: Routledge, 2007), 85.

57. For the approaches of these presidents to nuclear use, see Nina Tannenwald, “The nuclear taboo: The United States and the normative basis of the nuclear non-use,” *International Organization* 53, no. 3 (Summer 1999): 433–468.

principles that proscribe crimes against humanity.<sup>58</sup> Similarly, Weston concludes that the humanitarian components of the laws of war apply to nuclear weapons and that all potential uses of nuclear weapons violate international law. The pertinent sources of law in this respect are implicit treaty provisions, international customs, general principles, judicial decisions, UN declarations, and initiatives by international groups such as the Red Cross.<sup>59</sup>

According to one author, “the overall effect of contemporary international law is to create a normative environment that strongly discourages war initiation between law-abiding states.”<sup>60</sup> Even if international law cannot prevent war, it “provides a framework against which states’ actions are assessed, and imposes a heavy burden of justification.”<sup>61</sup> Another legal scholar contends that the circumstances under which nuclear weapons “might legitimately be used are very narrowly circumscribed, especially by the need to strictly observe international humanitarian law,” and that “any first use of such weapons would almost surely be illegitimate, as would any retaliatory use not strictly limited to the extent of the attack it was countering or that violates any of the other international rules as to the threat of use of force.”<sup>62</sup>

Customary laws restricting particular weapons or methods of warfare have been presented as setting legal precedents against the use of nuclear weapons. These include the 1868 St. Petersburg Declaration prohibiting the use of certain types of explosive projectiles; the 1899 Hague Declaration prohibiting the use of projectiles for the diffusion of asphyxiating or deleterious gases and the use of dum-dum bullets that expand or flatten in the human body; the 1907 Hague Convention prohibiting the use of poison or poisoned weapons and the laying of unanchored automatic contact mines; the 1925 Geneva Protocol banning the use of asphyxiating, poisonous, or other gases; the 1977 Environmental Modification Convention prohibiting military or any other hostile use of environmental modification techniques as the means of destruction, damage, or injury; and the 1981 Inhumane Weapons Convention banning or restricting the use of certain weapons with excessively injurious or indiscriminate effects.<sup>63</sup>

Further, a whole host of arms control and disarmament agreements are presented by some legal scholars as equivalent to limited but significant restraints on the development, acquisition, deployment, and use of nuclear weapons.

58. Francis A. Boyle, “The relevance of international law to the ‘paradox’ of nuclear deterrence,” *Northwestern University Law Review* 80 (1986): 1408.

59. Burns H. Weston, “Nuclear weapons versus international law: A contextual reassessment,” *McGill Law Journal* 28 (1983): 542–590.

60. Stephen A. Kocs, “Explaining the strategic behavior of states: International law as a system structure,” *International Studies Quarterly* 38, no. 4 (December 1994): 535–556.

61. Jutta Brunnee and Stephen J. Toope, “Slouching towards new ‘just’ wars: The hegemon after September 11<sup>th</sup>,” *International Relations* 18, no. 4, 2004: 405.

62. Paul C. Szass, “The International Law Concerning Weapons of Mass Destruction,” in Sohail H. Hashmi and Steven P. Lee eds., *Ethics and Weapons of Mass Destruction* (Cambridge: Cambridge University Press, 2004), 66.

63. Jozef Goldblat, “Making nuclear weapons illegal,” in Jozef Goldblat, Jack Steinberger, and Bhalchandra Udgaonkar, eds., *A Nuclear-Weapon Free World: Desirable? Feasible?* (Boulder: Westview Press, 1993), 154–155.

These include the 1959 Antarctic Treaty; the 1963 Partial Test Ban Treaty; the 1967 Tlatelolco and Outer Space treaties; the 1968 Nuclear Non-Proliferation Treaty; the 1971 Seabed Treaty; the 1974 Threshold Test Ban Treaty; the 1976 Peaceful Nuclear Explosions Treaty; the 1979 Moon Agreement; the 1985 Rarotonga Treaty; the 1987 Intermediate Range Nuclear Forces Treaty; and the 1991 Strategic Arms Reduction Treaty. Arguably, these treaties have placed cumulative legal restraints on the deployment and use of nuclear weapons in one context or another. To one advocate of the legal perspective, “the cumulative effect of generally accepted restraint on the use of weapons is such that nuclear war cannot be initiated with obedience to the rules of customary international law” and that even the second (retaliatory) use of nuclear weapons “must be subject to constraints specified in the humanitarian rules of armed conflict relating to belligerent reprisals.”<sup>64</sup>

From the legal perspective, among all the arms control treaties, the most important in this respect is the NPT. Legal scholars argue that the use of nuclear weapons against non-nuclear signatories would violate the letter and spirit of the NPT, especially the negative security pledges made by nuclear weapon states as part of their bargain while concluding the NPT in 1968 and extending it in perpetuity in 1995. The NPT is the key pillar of the non-proliferation regime, and it contains implicit promises that a non-nuclear state party to the treaty will not be targeted or attacked with nuclear weapons. Arguably, the evolution of the tradition of non-use has been helped by these no use pledges and the partial de-legitimization of nuclear weapons achieved through the nuclear non-proliferation regime. Two declared nuclear weapon states—the Soviet Union and China—unilaterally declared no-first-use policies, the former in 1982 and the latter immediately after its first nuclear explosion in 1964. The United States, Britain, and France have made conditional pledges to the effect that they would not use nuclear weapons against a state party to the NPT or any comparable binding international agreement, except in the case of a non-nuclear state launching an attack on these states or their allies that is carried out in alliance with a nuclear weapon state.<sup>65</sup> Although in 1993 Russia withdrew its unqualified no-first-use pledge of 1982, it had adopted a similar posture as Western nuclear powers, especially with respect to the non-use of nuclear weapons against non-nuclear states party to the NPT. The International Court of Justice (ICJ), in its non-binding advisory ruling in 1996, unanimously opined, “any use of nuclear weapons . . . should be compatible [with] . . . specific obligations under treaties and other undertakings which expressly deal with nuclear weapons.”<sup>66</sup> These obligations include the negative security assurances given by the United States and the other four nuclear weapon states to non-nuclear states party to the NPT, made in 1995 and beforehand.<sup>67</sup>

64. *Ibid.*, 156, 166–167.

65. Frank Blackaby, Jozef Goldblat, and Sverre Lodgaard. “No-first use of nuclear weapons,” *Bulletin of Peace Proposals* 15 (1984): 321–332.

66. International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, *I.C.J. Reports 1996*, para 105 (D), 44.

67. In 1998, a new nuclear weapon state, India, declared a no-first use policy as part of its nuclear doctrine.

Further, Article VI of the NPT calls upon nuclear weapon states to pursue disarmament in earnest, with the purpose of eventually eliminating atomic weapons. During the April 1995 UN conference which extended the treaty indefinitely, these commitments were reiterated by the nuclear weapon states.<sup>68</sup> The non-nuclear states gave up their sovereign right to acquire nuclear weapons on the basis of the explicit and implicit commitments by the nuclear states that they would act as responsible guardians and custodians of nuclear arms and would not use these weapons in violation of their commitments. The use of nuclear weapons against states party to the NPT would violate these legal commitments. From a purely legal perspective, since the NPT is near universal in its membership, it has become increasingly difficult for a nuclear weapon state to legally use its weapons against a signatory state. Further, the international community has bestowed on the permanent members of the Security Council, through Article 51 of the UN Charter, the responsibility to maintain order, peace, and security. Accordingly, these members, as the “legitimate” nuclear powers, have a legal and moral responsibility to make sure that WMD are not used by any state, including by themselves.

These arguments for nuclear restraint can be criticized because there are no strict legal prohibitions against nuclear use. The ICJ, in its July 1996 verdict, opined that neither customary nor conventional international law explicitly prohibits the use of nuclear weapons, although nuclear use could be considered to be a violation of international humanitarian law under most circumstances. The court was also unable to judge whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence.<sup>69</sup> The court did not clarify what constitutes an extreme circumstance of self-defence, thereby leaving its judgment open to interpretation by national leadership during times of crisis. Moreover, the NPT does not offer an explicit non-use pledge, a matter of great debate in recent years involving the United States and some NATO member states. Washington argues that the pledge of no-first use against non-nuclear states is a “political” and not a “legal” commitment, implying that under some circumstances it could break the political commitment that it has made.

Unlike moral constraints, examples from US nuclear history based on publicly available materials do not provide much direct evidence for legal considerations as the stated reasons for decision makers’ reluctance to use nuclear weapons. It should also be mentioned that many of these legal instruments or precedents did not exist in the 1950s, the decade when the United States contemplated nuclear use most often. It appears that leaders are reluctant to cite legal reasons for nuclear non-use, similar to the use of force, but they seem more concerned about moral repercussions, at least in their statements. However, one can discern by the reluctance of the

68. In a document entitled “Statement of Principles and Objectives for Nuclear Non-proliferation and Disarmament,” the five official nuclear weapon states pledged to make “systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.” *New York Times*, 12 May 1995, A10. Critics, however, argue that these declarations are not binding and, therefore, could be violated if deemed necessary.

69. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, paragraphs 105(A-E), 44.

nuclear powers, especially the United States, to offer unconditional no-first-use guarantees that they perceive these pledges as having an effect on the US's ability to use nuclear weapons for deterrence as well as compellence purposes. Unequivocal legal guarantees could force them to actively gain legal backing for nuclear use and constrain their option even further. This suggests that legal constraints may be indirectly affecting choices in the nuclear realm and thereby be a source of self-deterrence.

Among the three factors identified, the tradition of non-use and moral concerns seem to be most relevant in creating reputational constraints and disincentives on leaders who consider the use of nuclear weapons, especially against non-nuclear states. Legal considerations appear only in a general sense. The evidence I present is based on the few cases of nuclear threats by the United States, since this is the only country for which we have a substantial documentary record of nuclear decision making.

### **Why non-use reputation matters**

The three non-material considerations—the tradition of non-use, moral concerns, and legal principles—all generate reputation concerns for a potential user of nuclear weapons. Reputation here is used in its straightforward meaning: the general esteem in which a country and its leader are held by domestic and international opinion. States, like firms, worry about how they are perceived. The chief concern here may be that the use of nuclear weapons would be condemned worldwide and that the leader who orders such use could suffer irreparable reputational costs. The logic of appropriateness and the logic of consequences can intermingle in these instances.<sup>70</sup>

A global power like the United States has a considerable stake in maintaining its reputation and image. Although the Iraq invasion tarnished that image temporarily, much of the criticism has been on the decline of US reputation in the world as a result of the ill-conceived war. A nuclear attack on a smaller state, even if it were part of the so-called rogue group, would cause major reputation erosion for the United States. Robert Jervis argues that self-deterrence occurs against a very weak adversary that the United States wants to rebuild after the war. “Ironically, the disparity in military power between the United States and its rogue adversaries increases self-deterrence, especially because the United States may want to befriend or rebuild those it is currently coercing.”<sup>71</sup> In other words, the United States wants to appeal to various publics' opinions: its own, its allies', its opponent's, and the world's. The use of unnecessary force would mean that the United States would suffer reputation damage and the larger purpose of attack could fail.

70. For the distinction and interaction between the logic of consequences and the logic of appropriateness, see James G. March and Johan P. Olsen, “The institutional dynamics of international political orders,” *International Organization* 52, no. 4 (Autumn 1998): 943–969.

71. Jervis, “Deterrence, rogue states and the U.S. policy.”

This discussion suggests that the nuclear weapons states have been driven by two types of reputation: *deterrence reputation* versus *non-use reputation*. First, they are motivated by a reputation for resolve to use their weapons in order to signal retaliatory threat for deterrence vis-à-vis other nuclear states. Second, toward non-nuclear states, the reverse becomes the case; they are driven by a desire to signal non-use in order to project the image of benign intent and thereby prevent these states from seeking nuclear weapons.

## Conclusions

In the era of transnational terrorism, deterrence has become a more complex phenomenon. The inclusion of the function of nuclear weapons for prevention and pre-emption of chemical and biological weapons acquisition and use has generated even greater problems for the deterrence paradigm. There exists a tension in US policy between two strands of reputation, one for resolve and the other for appropriate behaviour. The international reputation and international image of the hegemonic power is simultaneously benign and malign. It may not want to use deadly force inappropriately, even when it is challenged, for reputation reasons. The sending of costly signals has become very difficult, and hence the operational validity of the conception of interdependence of threats and stakes is questionable.

The general conclusion is that deterrence and compellence using nuclear weapons are heavily constrained strategies especially vis-à-vis regional challengers suspected of holding or seeking WMD and largely ineffective vis-à-vis transnational terrorist groups. For the asymmetric challenger using terrorist means, capability-based retaliatory threat may have little meaning. The larger conclusion is that in the twenty-first century, due to the arrival of complex political dynamics, deterrence and the simple military-centric rationality assumptions behind it may not be easily translatable to policy options. National security policies need careful calibration and greater consideration for norms and principles in the twenty-first century.

## Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

## Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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