

**LEGALITY UNDER INTERNATIONAL
LAW OF THE UNITED KINGDOM'S
PURCHASE OF US F35A FIGHTER JETS
IN THE CONTEXT OF THE NPT**

JOINT OPINION



**Campaign
for Nuclear
Disarmament**



BRITAIN'S NUCLEAR EXPANSION BREACHES NUCLEAR NON PROLIFERATION TREATY

On 24 June 2025, the British government announced that it would be purchasing 12 nuclear-capable fighter jets from the US. "The purchase," it argued, "represents the biggest strengthening of the UK's nuclear posture in a generation. It also reintroduces a nuclear role for the Royal Air Force for the first time since the UK retired its sovereign air-launched nuclear weapons following the end of the Cold War. The UK will deploy the jets as part of NATO's nuclear Dual Capable Aircraft mission, strengthening NATO's nuclear deterrence posture."

This purchase means that Britain will be able to launch nuclear weapons from both sea – through its nuclear-armed submarines – and from the air. The purchase will also tie us closer to the Trump administration and increase the threat of nuclear weapons being used in war.

The F35A fighter jets have dual capability, designed to be able to launch conventional as well as new US B61-12 satellite-guided nuclear bombs. These bombs have now been stationed at NATO bases across Europe, and here at RAF Lakenheath in Suffolk. These B61-12 bombs have been designed by the US specifically for use on the battlefield, alongside conventional weapons. Yet each bomb has the destructive power to kill over 600,000 people and release toxic radiation that causes birth defects and generational cancers.

In this joint opinion, international law experts Professor Christine Chinkin & Dr Louise Arimatsu lay out a clear case that Britain's purchase of these nuclear-capable jets puts Britain in breach of its obligations under the nuclear Non-Proliferation Treaty (NPT).

They argue:

"[t]he decision of the UK to purchase F-35a fighter jets rather than any other model is precisely because the aircraft can 'deliver both conventional and nuclear weapons' and thereby enable the RAF to reacquire 'a nuclear role for the first time since 1998.' Reinstating a nuclear role for the RAF represents

a reversal of the UK's long-term commitment to nuclear disarmament, including under the NPT."

At a time of increasing global tensions and the rising threat of nuclear weapons being used in war, the British government should be doing everything possible to reduce this threat, not accelerate it. This includes abiding by and strengthening international arms control frameworks, like the nuclear Non-Proliferation Treaty, not undermining them.

This serious nuclear expansion will do nothing to make the British population safer. And it will make us poorer. The government's nuclear expansion is part of a dangerous war drive which is taking public funds away from essential public services and further cuts are planned.

Given the grave consequences of this expansion, including the breach of international law, it is deeply concerning that no opportunity was given for parliament to debate or vote on this decision before it was announced at the NATO summit in The Hague.

The government needs to heed this legal opinion and give parliament the opportunity to debate and vote on any expansion of Britain's nuclear weapons.

CND is, of course, campaigning for the government to reverse this disastrous decision. We believe Britain needs to pursue a foreign policy based on de-escalation, diplomacy, and international cooperation whilst tackling the real causes of insecurity. This means reversing the devastating poverty, deprivation and crumbling public services that mark our communities. It means building sustainable homes, investing in our health and education systems, and funding a just transition through green jobs, skills and infrastructure. This is the real path to security and prosperity.

Sophie Bolt
General Secretary,
Campaign for Nuclear Disarmament

INTRODUCTION

1. We are asked to advise the Campaign on Nuclear Disarmament (CND) on the legality under international law of the UK Government's announcement on 24 June 2025 that:

'The UK will purchase 12 new F-35A fighter jets... [which] can carry both nuclear and conventional weapons. ...

The purchase represents the biggest strengthening of the UK's nuclear posture in a generation. It also reintroduces a nuclear role for the Royal Air Force for the first time since the UK retired its sovereign air-launched nuclear weapons following the end of the Cold War.

The UK will deploy the jets as part of NATO's nuclear Dual Capable Aircraft mission, strengthening NATO's nuclear deterrence posture.'

2. More specifically advice is sought on whether the purchase of F-35A dual capable fighter jets and for the stated purpose constitutes a breach of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) including article VI.

3. We are asked to advise on these issues in the context of the Government's latest Strategic Defence Review (SDR) – released on 2 June 2025 – that sets out a commitment to operate, sustain, and renew the UK's nuclear capabilities with the announcement of a substantial investment of more than £15 billion in its nuclear forces.

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT)

4. The UK became a party to the NPT in 1968 and the Treaty came into force in 1970. In 2025 there are 191 states parties to the NPT. As a party to a treaty in force the UK is legally bound by its provisions.

5. The NPT is founded on three normative pillars corresponding to the object and purpose of the Treaty: non-proliferation (articles I, II and III); peaceful use of nuclear energy (articles IV and V); and disarmament (article VI). These

three pillars are reproduced in the preamble. The preamble urges co-operation of all states to attain the objective of article VI. The Treaty's travaux préparatoires show that the three pillars of the NPT should be understood to be presumptively juridically equal (D. Joyner, *Interpreting the Nuclear Non-Proliferation Treaty*, 2011, 32, 76).

6. Disarmament is addressed in article VI which states:

'Each of the parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective control.'

7. Article VI thus sets out obligations on states parties to pursue negotiations in good faith on effective measures relating to three specific results:

- cessation of the nuclear arms race at an early date;
- nuclear disarmament; and
- a treaty on general and complete disarmament under strict and effective control.

8. Article VI is applicable to all states parties to the NPT, but it is primarily directed at the obligations of the nuclear weapon states (NWS). The NPT negotiation history shows that these obligations were the subject of much discussion, but it can be briefly summarised. The first drafts of the Treaty prepared by the US and USSR addressed only non-proliferation. This did not satisfy other (non-nuclear weapon) states including Italy, India, Brazil, Scandinavian states, Canada, the then United Arab Republic and the Federal Republic of Germany who sought a provision within the Treaty relating to disarmament.

9. Eight non-aligned states together produced a statement of their conviction 'that measures to prevent the spread of nuclear weapons should, therefore, be coupled with or followed by tangible steps to halt the nuclear arms race and so limit, reduce and eliminate stocks of nuclear weapons and the means of their delivery.' In 1967 Mexico produced a draft text that included the obligation to pursue negotiations

in good faith toward nuclear disarmament outside the framework of general and complete disarmament.

10. In the UN General Assembly debate on the draft Treaty further objections were made to the lack of any tangible commitment to nuclear disarmament by the nuclear weapon states. Article VI was further revised before its inclusion in the adopted Treaty. Ultimately the US and USSR had in effect 'no choice' but to heed these views if they wanted a treaty. (E. Firmage, 'The Treaty on the Non-Proliferation of Nuclear Weapons', 63 *American Journal of International Law* (1969) 711, 733; International Law Association, Committee on Nuclear Weapons, Non-Proliferation and Contemporary International Law, 2nd report, 2014; G. Bunn, R.M. Timerbaev and J. Leonard, 'Nuclear Disarmament: How Much Have the Five Nuclear Powers Promised in the Non-Proliferation Treaty?' (1994) at (https://cisac.fsi.stanford.edu/publications/nuclear_disarmament_how_much_have_the_five_nuclear_powers_promised_in_the_nonproliferation_treaty).

11. The negotiation history makes it clear that article VI is a core component of the NPT, reflecting a 'strategic bargain' between those (many) states that renounced acquisition of nuclear arms and those states that then possessed them. (T. Graham, Correspondence, 'The Origin and Interpretation of Article VI', 15 *Nonproliferation Review* (2008) 7, 9). Its inclusion has been described as 'a testament to the tenacity of the non-nuclear-weapon States in demanding some form of quid pro quo for their renunciation of nuclear weapons.' (E. Firmage, 'The Treaty on the Non-Proliferation of Nuclear Weapons', 63 *American Journal of International Law* (1969) 711, 732). It means that 'the NPT is the only existing international treaty under which the major nuclear powers are legally committed to disarmament.' (T. Rauf, 'Nuclear Disarmament: Review of Article VI', in J. Simpson and D. Howlett (eds), *The Future of the Non-Proliferation Treaty*, 1995, 66, 67). Article VI is the 'only treaty provision in which NWS have undertaken a legal obligation to negotiate nuclear disarmament agreements. (M. Marin Bosch, 'The Non-Proliferation Treaty and its Future', in L. Boisson de Chazournes and P. Sands, eds), *International Law, the International Court of Justice and Nuclear Weapons*, 1999, 375).

12. It is necessary to determine whether the UK's stated intention to purchase F35A dual capable fighter jets (thereby reintroducing a nuclear role for the Royal Air Force) and for the stated purpose (to deploy the jets as part of NATO's nuclear Dual Capable Aircraft mission, strengthening NATO's nuclear deterrence posture) is compatible with the UK's obligations under article VI.

13. Although the NPT has been in force for 55 years and nuclear disarmament has not transpired, the Treaty has not terminated through desuetude. The 1995 Review and Extension Conference extended its duration indefinitely in accordance with article X (2) and the Review Conferences held at 5 yearly intervals have maintained its continuing validity.

14. The UN General Assembly and Security Council have both reiterated the continued applicability and centrality of the NPT. For instance, in recalling the 1996 Advisory Opinion of the International Court of Justice (ICJ) on the Legality of the Threat or Use of Nuclear Weapons, the General Assembly has adopted an annual resolution reminding states of their nuclear disarmament obligations pursuant to the NPT (most recently UNGA Resolution 79/50, 9 December 2024). Likewise, the Security Council has repeatedly recalled Resolution 1887, 24 September 2009, in which it underlined 'the need to pursue further efforts in the sphere of nuclear disarmament, in accordance with Article VI of the NPT' and calls on states parties 'pursuant to Article VI of the Treaty, to undertake to pursue negotiations in good faith on effective measures relating to nuclear arms reduction and disarmament' (UNSC Resolution 1887, 24 September 2009). The Security Council has 'recalled' Resolution 1887, most recently in Resolution 2569, 26 March 2021.

15. The UK itself accepts the continued applicability of the NPT to itself (UK Draft National Statement, PREPCOM 2025, 29 April 2025; UK National Report Pursuant to Actions 5, 20, and 21 of the Nuclear Non-Proliferation Treaty 2010 Review Conference, NPT/CONF.2020/PC.III/7, 25 April 2019, 4; see also Government Response to item 13 of the House of Lords Select Committee on International Relations Report, *Rising nuclear risk, disarmament and the Nuclear Non-Proliferation*

Treaty, 26 June 2019). In 2022, jointly with the other nuclear weapon states under the Treaty (the five permanent members of the UN Security Council) the UK has reaffirmed that 'we remain committed to our Nuclear Non-Proliferation Treaty (NPT) obligations, including our Article VI obligation "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."' (P5 Joint Statement of the Leaders of the Five Nuclear Weapon States on Preventing Nuclear War and Avoiding Arms Races, 3 January 2022 at <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/01/03/p5-statement-on-preventing-nuclear-war-and-avoiding-arms-races/>). At the start of the Tenth NPT Review Conference in August 2022 the UK, together with the US and France, reiterated its commitment to the 'the objectives contained in the statement of 3 January 2022 on Preventing Nuclear War and Avoiding Arms Races' and NPT in its 2021 Integrated Review: 'We are strongly committed to full implementation of the NPT in all its aspects, including nuclear disarmament, non-proliferation, and the peaceful uses of nuclear energy; there is no credible alternative route to nuclear disarmament.' (Integrated Review, p 78).

16. Whether the UK is in breach of its obligations under NPT article VI requires determining:

- the scope of those obligations through interpretation of article VI in accordance with principles of treaty interpretation; and
- whether the purchase of F35A fight jets to reintroduce a nuclear role for the Royal Air Force and to deploy the jets as part of NATO's nuclear Dual Capable Aircraft mission are in conformity with those obligations.

THE VIENNA CONVENTION ON THE LAW OF TREATIES

17. The principles relating to the law of treaties are largely codified in the Vienna Convention on the Law of Treaties, 1969, 1155 UNTS (VCLT). The UK is a party to the VCLT (ratified 25 June 1971), which came into force on 27 January 1980. The VCLT does not have retroactive effect (article 4) and therefore does not apply to the NPT, which came into force on 5 March 1970.

18. Some provisions of the VCLT have however been explicitly accepted by the International Court of Justice (ICJ) as constituting customary international law, including those on treaty interpretation and on material breach of a treaty, which thus provide the legal framework for interpretation and application of the NPT.

PRINCIPLES OF TREATY INTERPRETATION

19. The VCLT, articles 31-33 provide the basic principles of treaty interpretation that have been consistently accepted by the ICJ as reflective of customary international law (Maritime Delimitation in the Indian Ocean (Somalia v Kenya) 2017 ICJ Reports 3, para 63; see also International Law Commission (ILC), Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 2018, conclusion 2). The NPT, article VI must therefore be interpreted in accordance with these articles.

20. The VCLT, article 31 (1) provides that: 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.' The ICJ has asserted that the 'elements of interpretation – ordinary meaning, context and object and purpose – are to be considered as a whole.' (Maritime Delimitation in the Indian Ocean (Somalia v Kenya) 2017 ICJ Reports 3, para 63; Obligations on States in respect of Climate Change, Advisory Opinion, 23 July 2025, para 177).

21. The VCLT, article 31 (2) explains that: 'The context for the purpose of the interpretation of a treaty' includes 'its preamble and annexes'. In the case of the NPT, article VIII (3) makes explicit that the purposes of the Treaty are to be found in the preamble: five yearly reviews must take place 'with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised'. This brings the preamble directly into the obligatory provisions of the Treaty.

22. The VCLT, article 31 (3), specifies that: 'There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of

the treaty which establishes the agreement of the parties regarding its interpretation;'

23. Article VIII (3) NPT provides for Review Conferences to be held at five yearly intervals to take stock of the Treaty's operation 'with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised.' The Preamble warns against 'the devastation that would be visited upon all mankind by a nuclear war' before turning to the object and purpose of the Treaty including 'to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples' including by 'the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons', 'to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament' and 'urging the co-operation of all States in the attainment of this objective'.

24. Declarations and decisions of the Review Conferences do not constitute Treaty amendments (which are separately provided for in article, VIII (2)). However, they do constitute subsequent agreement between the parties about the interpretation and application of the Treaty. The International Law Commission (ILC) determined that the legal effect of decisions of Conferences of States parties depend upon their applicable rules of procedure but that 'such a decision may embody, explicitly or implicitly, a subsequent agreement under article 31, paragraph 3 (a), or give rise to subsequent practice under article 31, paragraph 3 (b), or to subsequent practice under article 32.' (ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 2018, conclusion 11). The ILC also noted that such decisions 'often provide a non-exclusive range of practical options for implementing the treaty.' This is precisely what the 2000 Review Conference did with its 'practical steps for the systematic and progressive efforts to implement article VI' that were reaffirmed by the 2010 Review Conference and added to by the Action Plan on Disarmament. These should thus be taken into account in the interpretation of the NPT. The failure by states parties to reach agreement on

a substantive outcome document in 2015 and 2022 does not detract from previously agreed outcome documents that remain cumulatively valid. The importance of the Final Documents agreed at the 2000 and 2010 NPT Review Conferences has been recognised by the UN General Assembly most recently in UNGA Resolution 79/50, 9 December 2024.

25. The VCLT, article 32 allows for recourse to the preparatory work (*travaux préparatoires*) of a treaty and the circumstances of its conclusion 'in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.'

STATE OBLIGATIONS UNDER NPT, ARTICLE VI

26. As outlined above, the *travaux préparatoires* of the NPT make clear the linkage between the commitment to non-proliferation and the obligations of all states to pursue negotiations towards nuclear disarmament. The importance of article VI has been recognised by commentators. It has been called 'the single most important provision of the treaty, however, from the standpoint of long-term success or failure of its goal of proliferation prevention'. (E. Firmage, 'The Treaty on the Non-Proliferation of Nuclear Weapons', 63 *American Journal of International Law* (1969) 711, 732).

27. Article VI was thus an integral part of the NPT package, not just an 'add-on' and must be 'interpreted in light of the object and purpose of the Convention and taking into account other provisions of the Convention' (*Whaling in the Antarctic (Australia v Japan)* 2014 ICJ Reports, 226 at para 55).

28. As stated above, the objectives of the NPT are found in the preamble. A number of preambular paragraphs make explicit the objective of disarmament:

- Declaring their intention to... undertake effective measures in the direction of nuclear disarmament,
- Urging the co-operation of all States in the attainment of this objective,
- Desiring to further the easing of international tension and the strengthening of trust between

States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.

29. These paragraphs highlight the importance of article VI to the object and purpose of the Treaty and make clear that the ordinary meaning of the wording is that parties will 'undertake effective measures in the direction of nuclear disarmament.' To this end they undertake 'to pursue negotiations in good faith.'

OBLIGATION TO NEGOTIATE IN GOOD FAITH

30. In 1996, the ICJ confirmed that the obligation contained in article VI, as reaffirmed by the 1995 NPT Review Conference 'remains without any doubt an objective of vital importance to the whole of the international community today.' (Legality of the Threat or Use of Nuclear Weapons, AO 1996 ICJ Reports, 226, para 103). The Court unanimously asserted that: 'There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective control' (dispositif paragraph 105. 2. F).

31. The Court asserted that this obligation goes beyond that of a 'mere' obligation of conduct for it is an obligation to achieve a precise result: 'nuclear disarmament in all its aspects... by the pursuit of negotiations on the matter in good faith.' (Legality of the Threat or Use of Nuclear Weapons, AO, 1996 ICJ Reports, 226, paras 99 and 102; see also M. Marin Bosch, 'The Non-Proliferation Treaty and its Future', in L. Boisson de Chazournes and P. Sands, (eds), *International Law, the International Court of Justice and Nuclear Weapons*, 1999, 375).

32. The obligation under NPT, article VI is thus not to disarm as such, but is a positive obligation to pursue in good faith negotiations towards this end, and to bring them to a conclusion. The ICJ has observed that even without any express agreement to negotiate in good faith, such obligation would be implicit. (Application of the Interim Accord of 13 September 1995 (the former

Yugoslav Republic of Macedonia v Greece) 2011 ICJ Reports 644, para 131).

33. The principle of good faith is unarguably a 'fundamental principle of international law' (R. Kolb, 'La bonne foi en droit international public: contribution à l'étude des principes généraux du droit', 2001, 112-113). Member states of the UN agree to 'fulfil in good faith' their obligations under the Charter. (UN Charter, article 2 (2)). The Declaration on Friendly Relations affirmed that states have the duty to fulfil in good faith their obligations under international agreements valid under 'generally recognized principles and rules of international law' (UNGA Resolution 2625 (XXV), 24 October 1970, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations).

34. Good faith is a basic principle governing the creation and performance of legal obligations whatever their source (Obligations of States in respect of Climate Change, AO, para 303). Good faith is core to the 'trust and confidence that are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.' (Nuclear Weapons (Australia v France) 1974 ICJ Reports, 253, para 46). It is spelled out in the VCLT which, in article 26, requires states to perform in good faith treaties to which they are parties and in article 31 to interpret those treaties in good faith.

35. The obligation of good faith has been described as not being one 'which obviously requires actual damage. Instead its violation may be demonstrated by acts and failures to act which, taken together, render the fulfilment of specific treaty obligations remote or impossible.' (G. Goodwin-Gill, 'State Responsibility and the 'Good Faith' Obligation in International Law', in M. Fitzmaurice and D. Sarooshi (eds) *Issues of State Responsibility before International Judicial Institutions*, 2004, 75, 84).

36. The ICJ and its predecessor, the PCIJ, have on many occasions stated that good faith with respect to negotiations requires states 'not only to enter into negotiations, but also to pursue them as far as possible, with a view

to concluding agreements.' (Railway Traffic between Lithuania and Poland, AO, 1931, PCIJ, Series A/B, No. 42, 116; Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece) 2011 ICJ Reports 644, para 132).

37. The Court has examined the requirements for good faith negotiations. It has explained that failure to reach agreement even after a long period of time is not of itself evidence of lack of good faith but there must be meaningful attempts. (Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece) 2011 ICJ Reports 644, para 134). Negotiation in good faith requires 'at the very least — a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute.' (Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) 2011 ICJ Reports 70, para 157). Parties should pay reasonable regard to the interests of others. (Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece), 2011 ICJ Reports 644, para 132). Taking no action that would make a successful outcome impossible, or unlikely, would constitute a breach of the obligation to negotiate in good faith. Doing nothing is not an option; nor is taking steps in the opposite direction. It also follows that taking any unilateral action to advance the state's own nuclear weapons capabilities – quantitatively or qualitatively – would be inconsistent with the obligation to act in good faith to negotiate 'on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control'. These two positions – taking unilateral steps to advance the state's nuclear weapons capabilities and the obligations set forth in article VI – are diametrically opposed to each other and irreconcilable.

38. In the following section we expand on the content and scope of the obligation to take effective measures toward disarmament as agreed by states, including the UK as a party to the NPT.

OBLIGATION TO TAKE EFFECTIVE MEASURES TOWARD DISARMAMENT

39. The Final Document of the Review Conference 2000 (NPT/CONF.2000/28 Parts I and II) agreed a landmark series of practical steps for systematic and progressive efforts to implement NPT, article VI and paras 3 and 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament'. Of particular relevance are steps 5, 6 and 9. Step 5 introduces the principle of irreversibility 'to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.' Step 6 encompasses: 'An unequivocal undertaking by the nuclear weapon states to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI.' Step 9 provides the basis for 'Steps by all the nuclear weapon States leading to nuclear disarmament in a way that promotes international stability, including:

- Further efforts by the nuclear weapon states to reduce their nuclear arsenals unilaterally;
- Concrete agreed measures to further reduce the operational status of nuclear weapons systems;
- A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination. (Final Document of the Review Conference 2000, Part I, Article VI and paras 3 and 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament', para 15.9).

40. These measures were intended as practical steps for parties to the NPT, specifically the nuclear weapons states, to achieve implementation of the Treaty and as such they come within the VCLT, article 31 (3). (ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 2018, conclusion 11). By agreeing on practical steps to advance nuclear disarmament states reaffirmed that the obligation in Article VI is not limited to mere negotiation but rather encompasses an obligation on them, individually and collectively, to take concrete and positive steps towards disarmament.

41. In 2010 the Review Conference reaffirmed 'the commitment of States parties to the effective implementation of the objectives and provisions of the Treaty,... and the Final Document of the 2000 Review Conference, adopted by consensus' building upon and reaffirming the validity of the 13 practical steps for implementation of article VI agreed in 2000. The Conference agreed an action plan for nuclear disarmament. This included a commitment by States parties 'to apply the principles of irreversibility, verifiability and transparency in relation to the implementation of their treaty obligations' (action 2). It reaffirmed the 'unequivocal undertaking of the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament' (action 3) and the 'urgent need' to implement the nine steps agreed in 2000. It called upon 'all nuclear-weapon States to undertake concrete disarmament efforts' and resolved that 'nuclear-weapon States commit to accelerate concrete progress on the steps leading to nuclear disarmament' as agreed in 2000 (2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document Volume I Part I, NPT/CONF.2010/50 (Vol. I), Conclusions and recommendations for follow-on actions, 19-21).

DISARMAMENT AND THE PRINCIPLE OF IRREVERSIBILITY

42. The principle of irreversibility was first introduced into the nuclear disarmament discourse with the adoption of the 2000 Final Document. Since then, it has regularly appeared in NPT outcome documents, adopted or not. For example, in the Final Document of the 2010 Review Conference states confirmed that they would 'apply the principles of irreversibility, verifiability, and transparency in relation to the implementation of their treaty obligations' (p.20) Likewise, and although a Final Document was not adopted following the Tenth NPT Review Conference in 2022, the Draft Document reaffirms the commitment 'to the strict application of the principle of irreversibility, verifiability and transparency in relation to the implementation of their disarmament obligations under the Treaty' (NPT/CONF.2020/CRP.1/Rev.2, 25 August 2022, para 15) and 'underscores the importance of the nuclear-weapon States' application of these principles in

the implementation of their Article VI obligations and related nuclear disarmament commitments under the Treaty' (para 112).

43. It has been maintained that 'nuclear disarmament as an irreversible goal was one of the main purposes for the conclusion of the NPT, as stated in its Preamble (paragraphs 8-12) and Article VI' (D. Fleck, 'Irreversibility in nuclear arms control and disarmament law?' 28(3) *Journal of Conflict & Security Law* (2023) 439). As a principle, irreversibility has commonly been employed to refer to a commitment not to reverse steps taken toward nuclear disarmament or not to re-arm: 'irreversibility is all about re-armament' (H. Elbahtimy, 'Approaching Irreversibility in Global Nuclear Politics' 6 *Journal for Peace and Nuclear Disarmament* (2023) 199).

44. States have individually and collectively affirmed their commitment to irreversibility in multiple statements on nuclear disarmament in the context of the NPT generally and article VI specifically. The UK itself has acknowledged the term to be 'a mainstream notion in the nuclear disarmament discourse' (Working paper submitted by Norway and the UK to the 2020 NPT Review Conference, 8 November 2021, 3). Since 2010, states have backed initiatives to study the concept of 'irreversibility' within the context of the NPT and to elaborate on the conceptual, operational, political, societal and legal aspects of the term. Most recently, in collaboration with Norway, the UK supported efforts to clarify how to apply the principle of irreversibility in practice (Working paper submitted by Norway and the UK to the 2020 NPT Review Conference, 8 November 2021) and, with other partner states, to build a common understanding of 'the application of irreversibility, in its technical, legal, normative and political dimensions' (Joint statement by Australia, Austria, Brazil, Ireland, Mexico, Norway the Philippines, Sweden, Thailand, and the United Kingdom (2024) NPT Prep Committee). States parties to the NPT are agreed on the need 'to build an understanding of the application of irreversibility measures in attaining and maintaining a world freed of nuclear weapons and to exchange information on the application of the principles of irreversibility in relation to the implementation of their Treaty obligations' (Draft Final Document following the Tenth Review Conference, 2022, para 27). This

work is focussed on injecting the principle of irreversibility with granularity.

45. In its application, the principle of irreversibility is concerned with practical and normative measures that function to limit and deter states from reversing measures/steps/processes taken towards nuclear disarmament. There is emerging evidence to suggest that such measures apply to nuclear warheads themselves; (for example, in 2002 the Acting Head of the UK delegation to the First Session of the 2005 NPT Prep Com announced: 'I am pleased to be able to announce today that the UK's last Chevaline warhead will be dismantled by the end of this month - part of our commitment to irreversibility in reductions in the UK's nuclear weapons'); to the weapons systems capable of delivering nuclear payloads (NAM Working Paper, NPT/CONF.2020/WP.20, 25); as well as to nuclear infrastructure for the production of weapons and nuclear testing sites (2015 NPT Review Conference, Report submitted by France, 12 March 2015). It follows that an increase in stockpiles, upgrading payloads, investing in new delivery systems for nuclear weapons, including the reinstatement and/or re-constitution of those formerly dismantled, re-investing in nuclear infrastructure for the production of weapons and re-introducing nuclear testing sites would all constitute breaches of the principle of irreversibility.

46. Irreversibility is expressly integrated into the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). Article 4 requires nuclear weapons states that join the Treaty to 'verify the irreversible elimination of their nuclear-weapons programme, including the elimination or irreversible conversion of all nuclear weapons-related facilities'. No nuclear weapons state is party to the TPNW, which currently has 94 signatories and 73 states parties; as noted above UK affirmed irreversibility to be a mainstream notion in the nuclear disarmament discourse. Irreversibility in the context of the TPNW is primarily concerned with ensuring that the quantifiable and qualifiable nuclear capabilities of a state are not reversible. This contrasts with irreversibility in its all-encompassing manifestation, which includes the adoption of transformative policies and law directed to dismantling the structural drivers of nuclearism

to secure a world forever free from nuclear weapons.

47. Any steps which undermine the overall objective of nuclear disarmament or which rendered that objective remote would be inconsistent with NPT, article VI. Likewise, any steps and/or measures to undermine or make meaningless the principle of irreversibility and the obligation to move toward disarmament would be inconsistent with the obligations owed under article VI.

BREACH OF TREATY

48. The legal regimes governing treaty breach are found in the VCLT and the secondary rules determining state responsibility for an international wrongful act attributable to the state.

THE VCLT, ARTICLE 60

49. The VCLT, article 60 dealing with material breach of a treaty has long been accepted by the ICJ as constituting customary international law. (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council 276 (1970), AO, 1971 ICJ Reports 16, 47; Fisheries Jurisdiction Case (United Kingdom v Iceland) 1974 ICJ Reports 3, para 36; Gabcikovo-Nagymaros Project (Hungary/Slovakia) 1997 ICJ Reports 7, para 4).

50. The VCLT, article 60 (3) defines a material breach as occurring in one of two ways: 'A material breach of a treaty, for the purposes of this article, consists in: (a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.'

51. Repudiation of a treaty involves the rejection of the treaty as a whole. (In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 (Croatia v Slovenia), Partial Award, 30 June 2016, para 213). The UK has not repudiated the NPT and has indeed repeatedly reaffirmed it for instance in the

words of the 2022 Joint Statement by the five permanent members of the Security Council and in its 2021 Integrated Review, as cited in para 15 above. Even the 2025 Strategic Defence Review acknowledges that the NPT 'is the cornerstone of the non-proliferation and disarmament regime and the only credible route to universal nuclear disarmament'.

52. Any determination of material breach must therefore be under VCLT, article 60 (3) (b), that is whether there is behaviour that violates a provision 'essential to the accomplishment of the object or purpose of the treaty.'

53. Article 60 (3) rests upon the importance of the provision violated, not on the intensity or gravity of the breach; it requires that the 'provision breached be essential for the accomplishment of the treaty's object and purpose' (In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 (Croatia v Slovenia), Partial Award, 30 June 2016, para 215). Accordingly, article 60 (3) 'does not permit responses against grave breaches of treaty provisions that are not essential' (B. Simma and C. Tamms, 'Reacting against Treaty Breaches', in D. Hollis, Oxford Guide to Treaties, 2nd ed, 2020, 568).

54. As discussed above, the NPT preamble describes the Treaty's objects and purposes. VCLT, article 31 (1) allows these to be considered in interpreting the ordinary meaning of the Treaty text. Preambular paragraph 8 declares the parties' intention 'to undertake effective measures in the direction of nuclear disarmament'. The linkage between the principles of non-proliferation and the obligation to negotiate towards nuclear disarmament is confirmed by the NPT negotiation history (discussed in paras 8-11 above) and the Final Documents of the 2000 and 2010 Review Conferences. Their applicability in interpretation of the Treaty is in accordance with the VCLT, articles 31 (3) (subsequent agreement or practice) and 32 (travaux préparatoires) and the ILC Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties. Article VI is thus a provision 'essential to the accomplishment of the object or purpose of the treaty.'

LAW OF STATE RESPONSIBILITY

55. In addition to the VCLT, article 60, the International Law Commission has addressed breach in its Articles on Responsibility of States for Internationally Wrongful Acts (UNGA Resolution 56/83, 12 December 2001). Article 12, defines the existence of a breach of an international obligation as occurring 'when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.' The ICJ has asserted that such breach includes 'failure to comply with treaty obligations.' (Gabcikovo-Nagymaros Project (Hungary/Slovakia) 1997 ICJ Reports 7, para 57). Unlike the VCLT, article 60 the ILC does not differentiate between material breach and non-material breach and article 12 applies to any non-conforming behaviour.

56. Article 13 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts spells out that there is a breach of an international obligation only if the 'State is bound by the obligation in question at the time the act occurs.' As a party to the NPT the UK is bound by article VI.

57. Whether there has been such failure is determined by asking whether the behaviour in question 'was in conformity' with the treaty requirements. 'This is flexible enough to encompass all forms of breach – whether the underlying obligation requires compliance with strict and detailed requirements or whether it merely sets a minimum standard of conduct; whether the breach completely disregards the obligation or is only partly contrary to what is required; whether the conduct amounts to acts, omissions or a combination of both. A determination of whether there has been a breach is achieved in all cases by comparing the conduct in fact engaged in by the state with the conduct legally prescribed by the relevant primary obligation. (J. Crawford, State Responsibility, 2013, 217).

58. An internationally wrongful act, including breach of a treaty, incurs state responsibility (Articles on Responsibility of States for Internationally Wrongful Acts, UNGA Resolution 56/83, 12 December 2001, article 1).

UK ACTIONS CONSTITUTING BREACH OF NPT, ARTICLE VI

59. Is the UK's policy to purchase F-35A fighter jets thereby reintroducing a nuclear role for the Royal Air Force and the intention to deploy those jets as part of NATO's nuclear Dual Capable Aircraft mission in accordance with the UK's obligations under NPT, article VI and more generally its obligation to act in good faith?

60. The decision of the UK to purchase F-35A fighter jets rather than any other model is precisely because the aircraft can 'deliver both conventional and nuclear weapons' and thereby enable the RAF to reacquire 'a nuclear role for the first time since 1998'. Reinstating a nuclear role for the RAF represents a reversal of the UK's long-term commitment to nuclear disarmament, including under the NPT. With the end of the Cold War, the UK took concrete steps towards nuclear disarmament including to 'withdraw from service and dismantle all [its] air-delivered nuclear weapons' (Peter Hain, the Minister of State, Foreign and Commonwealth Office, Hansard, 3 May 2000). This decision marked a reduction in the UK's nuclear weapons delivery system to a single method of delivery, namely, through the Royal Navy. The UK repeatedly highlighted the measures taken to reduce its reliance on nuclear weapons citing, in particular, steps taken to 'withdraw the UK's freefall nuclear bomb [known as the WE177]' thereby bringing to an end the nuclear role of the RAF (Statement by the Acting Head of the UK Delegation, First Session of the Prepcom for the 2005 NPT Review Conference, 9 April 2002 p5 and Second Session of the Prepcom 30 April 2003). More recently, in March 2025, the UK outlined the reductions it has made towards nuclear disarmament drawing particular attention to the fact that it is 'the only NWS to operate a single delivery system' (Draft National Report, Prepcom for the 2026 NPT Review Conference, 11 March 2025, 2-3) The purchase of the F-35A jets represent an expansion of the UK's nuclear weapons delivery system, reversing a decision taken over 25 years ago.

61. The UK also makes it unambiguous that the purchase and deployment of the F-35A jets is for the purpose of strengthening and enhancing NATO's nuclear capacity. Implicit in the announcement is the assumption that the

aircraft will be equipped with nuclear weapons, most probably US B61-12 nuclear bombs. Thus, rather than reducing its reliance on nuclear weapons, the UK is on a trajectory to enhance its nuclear capabilities including through the diversification of its nuclear weapons delivery systems and an increase and diversification of its arsenal of nuclear weapons that will follow as a result of its security arrangements with NATO.

62. The UK's unilateral announcement to purchase twelve new F-35A, reinstate a nuclear role for the RAF, and deploy those aircraft as part of NATO's nuclear Dual Capable Aircraft mission to strengthen NATO's nuclear deterrence posture is at variance with the conduct legally prescribed by NPT article VI, to undertake effective measures toward nuclear disarmament, a provision 'essential to the accomplishment of the object or purpose of the treaty.' (VCLT, article 60 (3) (b)). Nor is the announcement in conformity with the principle of irreversibility (Review Conference, 2000, step 5, para 39 above) or the expressed step of a 'diminishing role for nuclear weapons in security policies' (Review Conference, 2000, step 9, para 39 above).

63. Further, states parties to the NPT undertake to pursue negotiations towards nuclear disarmament; this is an obligation to be performed in good faith and has been characterised by the ICJ as an obligation of result. (Legality of Threat or Use of Nuclear Weapons, AO, 1996 ICJ Reports 226, para 99). Over 50 years after the coming into force of the NPT the UK has not undertaken such negotiations and its announcement to purchase F-35A fighter jets, reinstate a nuclear role for the Royal Air Force and the intention to deploy those jets as part of NATO's nuclear Dual Capable Aircraft mission indicate a contrary position.

64. The purchase of dual capacity F-35A jets coupled with the announcement that the aircraft would be deployed to strengthen and enhance NATO's nuclear capacity – while reaffirming the validity of the NPT (UK Draft National Report, 2026 NPT Review Conference Prepcom, para 60 above) do not constitute a good faith intention to negotiate. The UK is therefore in breach of NPT, article VI.

65. The breach of NPT article VI by the UK incurs state responsibility. In this context, it

should be noted that in 2017 the UK made a further reservation to its Declaration accepting the compulsory jurisdiction of the ICJ under article 36 (2) of the Statute of the ICJ. It states that the UK does not accept the jurisdiction of the Court in 'any claim or dispute that arises from or is connected with or related to nuclear disarmament and/or nuclear weapons, unless all of the other nuclear-weapon States Party to the Treaty on the Non-Proliferation of Nuclear Weapons have also consented to the jurisdiction of the Court and are party to the proceedings in question.' This seeks to ensure that its obligations under the NPT, article VI cannot be objectively adjudicated upon by the ICJ. This also runs counter to the obligation to pursue in good faith negotiations toward effective disarmament.

CONCLUSION

66. In our opinion, for the reasons set out above, the announcement by the UK government as set out in paragraph 1 above constitutes a breach of the NPT article VI.

FINAL REFLECTIONS

67. The UK reiterates its commitment to the NPT as the cornerstone of disarmament and its application to itself. It asserts its continued leadership within the NPT. Yet for fifty years since the adoption of the NPT and thirty years after the ICJ affirmed this to be an obligation of result, successive governments have failed to negotiate in good faith on effective measures for disarmament and on 'a treaty on general and complete disarmament under strict and effective control'. Instead it has in recent years expressed its intention to increase its nuclear capabilities and modernise its nuclear deterrent. It fails to uphold the resolutions on disarmament of the UN General Assembly. And along with the other permanent members of the Security Council, all NWS, it abuses its position of privilege and power by failing to give effect to its legal obligations as affirmed by the Council.

68. It challenged the admissibility of the Marshall Island's application to the ICJ alleging the UK to be in violation of NPT, article VI rather than accepting the opportunity for the Court to provide further clarity on the scope of those obligations. Following the Court's dismissal of the case the UK entered a new reservation to its

acceptance of the ICJ's jurisdiction under article 36 (2) of the Court's Statute effectively ensuring no such future proceedings. It regards the TPNW – a major step toward a nuclear-weapon free world – as divisive and ineffective since 'It believes that the best way to achieve the goal of global nuclear disarmament is through gradual multilateral disarmament, negotiated using a step-by-step approach and within existing international frameworks, specifically the Nuclear Non-Proliferation Treaty.' But it does not do this.

69. We have again analysed the legality of the UK's nuclear policy against the tenets of the treaty obligations it has itself accepted. The geo-political situation in 2025 is presenting challenges to the NPT but it remains in force and the UK remains bound by its provisions. We have no expectation that the Government will accept our conclusions. In sum we consider the hypocrisy that allows it to pursue its own modernised nuclear policy while asserting the unsuitability of other states to pursue theirs to be indicative of double standards and a defense policy lacking in morality.

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