

Revisiting Presidential Nuclear Autonomy

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Executive Summary: The United States (US) Nuclear Command and Control (NC2) system is no longer appropriate for the current global security environment. The NC2 system lacks adequate hard checks and balances on the president's use of nuclear weapons. Designed for decisiveness, there is no systemic barrier preventing the president from authorizing and ordering the launch of a nuclear weapon, regardless of the reason. As such, this memo proposes that Congress impose limits on the president's nuclear first-strike authority. Congressional approval should be required before the president can launch a nuclear strike. In addition, the Department of Defense should reduce its reliance on silo-based missile systems and increase its reliance on submarine-launched ballistic missiles (SLBMs). The high vulnerability of silo-based intercontinental ballistic missiles (ICBMs) to enemy nuclear strikes creates a 'use it or lose it' scenario, where ICBMs must be launched before they are destroyed. This increases pressure on the president to launch these missiles before they are destroyed, increasing the chance of miscalculation or launch if there is a false alarm. SLBMs are not subject to the same vulnerabilities. As more survivable assets, SLBMs reduce pressure on the president to act hastily, eliminating the chance of a poorly informed nuclear launch.

I. US nuclear forces

The United States possesses one of the world's largest, most advanced nuclear arsenals. The US nuclear arsenal is spread over three components, referred to as the "nuclear triad," from which nuclear warheads can be delivered to a target. The legs of this triad are sea, air, and land-based missile systems. Each leg has advantages, disadvantages, and trade-offs that diversify the US nuclear portfolio and response options.

The sea leg of the triad is nuclear submarines carrying submarine-launched ballistic missiles (SLBMs). Nuclear submarines are the "survivable" leg ("America's Nuclear Triad", n.d.), able to operate undetected for months and launch their weapons closer to an adversary's shores, shortening an enemy's time to react to a launch. This survivability gives the president and military commanders time to weigh their options.

The air leg, made up of strategic bomber forces, is touted as the "flexible" option ("America's Nuclear

Triad", n.d.). This leg of the triad can stay airborne for long periods and is limited only by air-to-air refueling capabilities and aircrew endurance ("America's Nuclear Triad", n.d.). Their payloads are flexible, capable of delivering a variety of nuclear munitions. They are highly controllable and can be recalled, scrambled, or placed on high alert. However, their launch and time to target are longer than silo-based intercontinental ballistic missiles (ICBMs) or SLBMs. The bombers are vulnerable to enemy anti-air defenses and interceptors, making them vulnerable in transit.

The land leg of the nuclear triad is the silo-based ICBMs. It is the rapid response option, capable of firing two minutes after receiving an authentic order. However, these missiles and their silos cannot move, and once launched, the order cannot be retracted, vastly reducing their survivability and flexibility. Because they are stationary and the most rapid firing of the nuclear options, these missiles would undoubtedly be among the first targets in a nuclear attack to prevent their launch. This creates a "use it

or lose it” mentality, which can pressure the president to act in haste to launch missiles before they are destroyed.

II. Presidential nuclear autonomy and global security

In an August 1945 memo from General Groves to General Marshall scheduling the third nuclear bombing of Japan, a note on the bottom reads, “It is not to be released over Japan without express authority from the President” (Eschner 2018). This marked the beginning of presidential control over nuclear weapon usage. However, it was not until the Kennedy Administration that the current NC2 system was developed and implemented (Eschner 2018). The NC2 system was designed around what was, at the time, the leading leg of the triad: silo-based ICBMs. A system prioritizing speed and decisiveness by concentrating authority on the presidential level was important during the Cold War when a decision would need to be made between 15 and 30 minutes after detecting an adversarial launch.

However, in the current international security climate, it is unlikely that the US will need to launch a preemptive (first) or retaliatory strike under duress quickly. In addition, the US has never declared a ‘no first use’ policy despite championing against their use and proliferation. The president’s retention of nuclear autonomy and the legal authority to launch first does little to reinforce the norm against nuclear weapons usage or strengthen the Nuclear Non-Proliferation Treaty (NPT). It also puts the president’s statements and attitudes regarding nuclear decisions under an ambiguous international microscope. These issues can be especially problematic if a president “speaks loosely about nuclear weapons” (Meier and Vieluf 2021, 24), complicating interpretations of their intentions domestically and internationally. Foreign powers could misconstrue remarks by presidents as aggressive or inflammatory (Meier and Vieluf 2021, 28–29), destabilizing the global nuclear order. Security guarantees dependent on the US nuclear umbrella could also be undermined (Meier and Vieluf 2021, 31–32), weakening the NPT as more countries seek nuclearization for their security.

Designed for speed and decisiveness under attack, the NC2 system lacks adequate hard checks and

balances on the president’s use of nuclear weapons. As a side effect of prioritizing speed and resolute decisions, the system is not set up to evaluate the rationality of orders. Indeed, no statutory barrier prevents the president from ordering and authorizing the launch of a nuclear weapon (Moniz and Nunn, n.d.). Systemically, the launch process works on a two-person rule throughout the entire chain of command except at the presidential level. The president is also not obligated, legally or otherwise, to involve anyone in the decision to use nuclear weapons. US Strategic Command (STRATCOM), the Joint Chiefs of Staff, and the Secretary of Defense can only attempt to guide the president’s decision until an order is given.

Opponents of limiting presidential authority state that limitations would undermine the credibility of US nuclear deterrence (Whitlark 2019, 140–41), but some analysts dispute this because US allies would still have faith in US conventional forces and willingness to retaliate with nuclear weapons (Wooll 2022, 2). Opponents also state that limitations are unnecessary because the current NC2 system is adequate and does not need additional checks. Proponents of this point to their faith that the NC2 would judge for itself if an order is ill-advised (Woodruff 2017). However, relying on the system to judge whether a launch order is ill-advised, and assuming that system would do so and stand down, is not enough. This position also opens presidential and commanding orders to potential insubordination when a launch is needed. Opponents of limiting presidential launch authority state that limitations would prevent the president from launching a preemptive nuclear strike (Betts and Waxman 2018, 3). However, such strikes are risky and rely on rock-solid intelligence of enemy intentions. They also run the risk of escalating a conflict into an all-out nuclear brawl should some of the enemy’s nuclear forces survive. Finally, opponents consider limiting the executive branch’s power to use nuclear weapons as unconstitutional (Betts and Waxman 2018, 3). Opponents also state that it is helpful to keep the ability to conduct war in the hands of a single person because military mobilization is quick (Whitlark 2019, 140). While Congress has the authority to declare war, the president can mobilize and deploy troops without Congressional approval. Nevertheless, a nuclear first strike is tantamount to an act of war, and only the

president can authorize a nuclear strike. In effect, because the president enjoys nuclear autonomy, the president retains an extrajudicial ability to conduct war despite that power constitutionally belonging to Congress.

Such autonomy places the most destructive weapons in the world in the hands of a single person. The likelihood of surprise nuclear attacks from an adversary is lower today during the Cold War, thanks to the survivability of US nuclear forces creating a credible deterrent. Thus, the US' current nuclear chain of command is no longer appropriate for the contemporary global security environment. This memo argues that the president should not retain nuclear first-strike autonomy and offers courses of action to stabilize and reinforce the US nuclear chain of command.

III. Policy recommendations

i. Policy option one: add more layers of verification to the NC2 system

Including the Secretary of Defense, the Attorney General, and the Commander of STRATCOM would add more layers of review and verification. The Secretary of Defense would authenticate and verify the order for STRATCOM, and the Attorney General would certify the legality of the use under international law. STRATCOM would then proceed with the launch process. Including the Secretary of Defense and Attorney General also guarantees their involvement in nuclear decision-making (Betts and Waxman 2018, 2), increasing civilian control over nuclear weapons.

Moniz and Nunn (n.d.) suggest increasing the number of persons consulted in the decision-making, including the Secretary of Defense, Secretary of State, the Joint Chiefs of Staff, the Commander of STRATCOM, the attorney general, and the director of national intelligence (DNI). The Secretary of State, the Joint Chiefs of Staff, and the DNI would be additional guiding, even competing, voices with the potential to sway the president's decision.

Increased consultations, however, do not address the underlying issues with the NC2 or presidential authority over the decision to launch a nuclear weapon. The order's legality would not be

questioned because the president still has the domestic legal authority to authorize their use, making the Attorney General's role inconsequential. The Secretary of Defense's only official role would be to authenticate and verify the order for STRATCOM, not to question the rationality of the order. Additionally, there is the possibility that the discussing party could fall into the trap of groupthink. In these cases, the president would effectively maintain nuclear autonomy.

Including specific criteria, such as verified intelligence of an adversary's launch or intention to launch imminently, could serve as a pre-launch checklist that is verified by the Secretary of Defense, Secretary of State, Attorney General, and DNI, ensuring that the US is well within its international rights to launch a nuclear weapon and preventing the president from ordering an unwise nuclear launch.

ii. Policy option two: no first use without a declaration of war from Congress

Allowing Congress to check the president's authority to order a preemptive nuclear strike would remove the ability of the president to begin a nuclear war. To launch a nuclear weapon, the president must make the case to Congress and obtain a declaration of war and approval for use before a nuclear launch can legally proceed.

This policy option has several stabilizing advantages over the status quo. First, the US has never adopted a 'no first use' policy, meaning the US President could order a nuclear attack anytime. This destabilizes the global nuclear order and places excess scrutiny on the actions and rhetoric of one person. Limiting the president's options to initiate a nuclear first strike by requiring the consent of Congress and a declaration of war means there is no longer one finger on the trigger. This option to require Congressional approval and a declaration of war before launching a nuclear weapon is well within Congress's constitutional war powers. A disadvantage is that the consent of a large legislative body would be required to launch a nuclear weapon in addition to the declaration of war. Congress could declare war but opt not to authorize a nuclear strike. These deliberations could reduce the nuclear credibility of the US (Moniz and Nunn, n.d., 3), creating situations where adversaries could use

nuclear threats or even small-yield tactical nukes against non-NATO countries where the risk of escalation is lower. It should be noted that this option has been presented before the House and the Senate as the Restricting First Use of Nuclear Weapons Act of 2017 and 2021, and 2017 and 2019, respectively. However, these bills failed after being referred to the Committee on Foreign Relations and receiving no votes.

This option also facilitates a move away from the nuclear triads vulnerable towards legs that are highly survivable. Survivability becomes a necessity for any potential retaliation. If the US is to retaliate to a nuclear strike, its assets must be able to survive Congressional deliberations.

iii. Policy option three: eliminate the land leg of the triad

Another option is ultimately moving away from highly vulnerable silo-based missiles to SLBMs. The threat of immediate retaliation during the Cold War prevented nuclear war. Neither side was willing to risk its demise. The same principles apply to today's multipolar nuclear order. However, nuclear submarines are more survivable than silo-based ICBMs and do not need to launch in the face of an incoming attack immediately.

Reliance on the high-vulnerability legs of the nuclear triad can introduce an element of frenzy to decision-making under nuclear threat. Because of the vulnerability, these forces are permanently kept at 'launch on warning' so the missiles can leave the silos before they are destroyed, hence the 'use it or lose it' approach. The deadline for a presidential decision to launch land-based missiles during an attack may be as little as six minutes, hardly enough time for a rational decision (Blair 2018, 9).

Moving to SLBMs reduces the potentially adverse effects of decision "jamming" that can occur with 'use it or lose it' systems (Blair 2018, 8). Jamming is when generals pressure the president to authorize a retaliatory nuclear strike during an attack to ensure that silo-based ICBMs can launch before incoming warheads destroy them (Blair 2018, 8). These systems that rely on 'launch on warning' create high-pressure situations that could lead to miscalculation, irrational decision-making (Blair 2018, 9), or decision paralysis. Increased reliance on

this leg allows for a longer deliberative process, reducing "jamming pressure" (Blair 2018, 9) and leading to more sound decision-making. The drawbacks to increasing reliance on SLBMs are that the submarines must consistently rotate into port for maintenance and crew changes, opening a window of potential vulnerability.

IV. Recommendations

This memo recommends policy option two, to require Congressional approval and a declaration of war before a first strike launch, and policy option three, to reduce reliance on high-vulnerability, silo-based ICBMs to prevent decision-making under duress. These amendments will reduce the chance of ill-informed or hasty nuclear launches by introducing hard checks on the president's authority and reducing reliance on low-survivability nuclear assets.

The Restricting First Use of Nuclear Weapons Act has been reintroduced to the House and Senate in 2023. Its provisions are simple: no first-use nuclear strike should be conducted absent a declaration of war by Congress. The bills accomplish this by denying the use of federal funds for conducting a nuclear first strike unless the strike is conducted under a war declared by Congress with the strike expressly authorized (Rep. Lieu and Sen. Markey 2023). While this is an excellent step, this memo proposes that any use of nuclear weapons should require Congressional approval in addition to a declaration of war. Removing this power from the president will reaffirm the US' position as a responsible nuclear state, strengthen the norm against using nuclear weapons, and demonstrate the US's commitment to international non-proliferation policies.

Due to its survivability, the submarine force is now the "premier leg of the strategic triad" (Blair 2018, 9). By drawing down its silo-based ICBMs annually, the US can more quickly shift over to the survivable and flexible legs of the triad. Policy option three also reduces miscalculations in the president's decision-making during a nuclear attack or false alarm scenario (Blair 2018, 9). Additionally, it reinforces the US' position as a responsible nuclear power by allowing the president and military leaders more time to deliberate on the best action.

With one of the most formidable nuclear arsenals in the world, the US can show that it is a responsible nuclear weapons state and set the global standard for responsible nuclear use. By adopting a

retaliatory posture and increasing legal checks on the president's authority to authorize a nuclear strike, the US can strengthen the norm against nuclear weapons usage and increase the validity of the NPT.

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