

## CHAPTER 11

### NUCLEAR AND OTHER RETALIATION AFTER DETERRENCE FAILS

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This chapter discusses whether or not the United States is likely to launch a nuclear retaliatory attack against an enemy that has used weapons of mass destruction (WMD) against U.S. interests and whether or not the United States *should* launch such a nuclear counterattack or retaliate by conventional means.<sup>1</sup>

The term “weapons of mass destruction” clearly has utility as a shorthand way of referring to nuclear, biological, and chemical weapons. It has certainly caught on. To the extent that it leads to the conclusion that nuclear, biological, and chemical weapons are essentially the same, and in a different category from everything else, it can be misleading as well.

A nuclear weapon is not the same as a biological weapon or a chemical weapon. Several Americans died in October 2001 as a result of an anthrax attack through the U.S. mail. While this constituted the use of a WMD and while the result created widespread fear and some loss of life, one cannot fairly call the attack “mass destruction.” At the same time, al Qaeda’s use of airplanes on September 11, 2001, as fuel-air bombs against skyscrapers resulted in the deaths of some 3,000 people. Surely this was “mass destruction” as an effect. Recognizing this effect, some commentators have said that the airplanes were “turned into” WMD, and officials have taken security measures to prevent airplanes from again being turned into such weapons. The same surely is true at nuclear power plants and chemical factories. In these cases, one might say that things have the “potential” to become WMD. But this is complicated, too, because insofar as mass destruction is concerned, a WMD in the sense of a nuclear, biological, or chemical weapon is something that exists only as potential until it is used. But before such a weapon is used, it nevertheless *exists*, and its existence has an effect on people that is very different from the effect of airliners, nuclear power plants, and chemical factories.

It is important to see the ways in which things are similar, but not at the expense of seeing the ways in which they differ. And one must always avoid the deformative temptation of theory, namely, to take a particular situation in the here-and-now, to describe it abstractly, and to suppose that it thereby poses broad abstract and general questions.

So if the question is what to do with or about nuclear weapons or other WMD, we should closely examine the categories of situations we may face—what is known to be possible—before venturing any general conclusions.

Here, then, are some possibilities:

1. Actions involving nonstate actors and/or state actors acting covertly:
  - 1.1. A conventional bombing attack against U.S. interests abroad, killing: 1) many people but few Americans; or 2) hundreds of Americans.
  - 1.2. A conventional bombing attack against the United States homeland killing 1) a few Americans; or 2) hundreds of Americans.
  - 1.3 A non-WMD attack against the United States homeland killing thousands of Americans.
  - 1.4. A biological attack somewhere in the world sickening/killing 1) hundreds/dozens including a few Americans; 2) thousands/hundreds including some Americans; 3) tens of thousands/thousands including many Americans.
  - 1.5. A biological attack on the United States homeland sickening/killing 1) hundreds/dozens of Americans; 2) thousands/hundreds of Americans; 3) tens of thousands/thousands of Americans.
  - 1.6. A chemical attack somewhere in the world killing 1) many people including a few Americans; 2) thousands of people including hundreds of Americans.
  - 1.7 A chemical attack on the United States homeland killing 1) a few Americans; 2) hundreds of Americans; 3) thousands of Americans.
  - 1.8 Detonation of a radiological weapon immediately killing a number of Americans and causing an unknown number of excess future cancer deaths.

- 1.9 Detonation of a single small nuclear weapon somewhere in the world killing 1) thousands including hundreds of Americans 2) tens of thousands including thousands of Americans.
- 1.10 Detonation of a single small nuclear weapon on the United States homeland killing 1) thousands of Americans 2) tens of thousands of Americans.
- 1.11 Detonation of a series of nuclear weapons including some on the United States homeland and killing hundreds of thousands.
2. Actions taken openly by state actors (acts of war).
  - 2.1 Use of chemical or biological weapons against U.S. forces, killing 1) a few Americans 2) hundreds of Americans 3) thousands of Americans.
  - 2.2 Use of conventional weapons against U.S. civilians at home, killing 1) hundreds 2) thousands.
  - 2.3 Use of chemical weapons against U.S. civilians at home, killing 1) hundreds 2) thousands.
  - 2.4 Use of biological weapons against U.S. civilians at home, sickening/killing 1) hundreds/dozens of Americans 2) thousands/hundreds of Americans 3) tens of thousands/thousands of Americans.
  - 2.5 Detonation of a radiological weapon immediately killing a number of Americans and causing an unknown number of excess future cancer deaths.
  - 2.6 Detonation of a small nuclear weapon against U.S. forces, killing thousands.
  - 2.7 Systematic attack using battlefield nuclear weapons against U.S. forces, killing 1) thousands 2) tens of thousands.
  - 2.8 Detonation of a single nuclear weapon in a U.S. city, killing tens of thousands.
  - 2.9 Systematic attack using strategic nuclear weapons against counterforce targets in the United States, killing hundreds of thousands.
  - 2.10 All-out assault using strategic nuclear weapons against counterforce and countervalue targets in the United States, killing scores of millions.

This catalogue of horrors illustrates the variety of potential attacks the United States faces and is not an exhaustive list. For example, it

does not enumerate certain plausible combinations, such as wartime use of chemical weapons on the battlefield and detonation of a single nuclear weapon in the homeland as a demonstration for purposes of coercion. It is also possible that during wartime, an attack on the homeland might occur without certain knowledge of who was responsible for it. I would also note that notwithstanding the specificity of the list above, the scenarios still remain abstract. A nerve agent attack on a subway system is a chemical attack in accordance with 1.7.1-3 or 2.3.1-2, but so would the poisoning of a city's water supply, even though they are very different problems. Policymakers facing situations in any one of these enumerated categories will face very real particular cases; yet in advance of the fact, the only real possibility is to think in terms of categories of attack.

I would suggest that this list poses two questions: What should we do to prevent these things from happening? And, what should we do if one or more of them happens anyway?

We come, then, to the most common answer to both questions; in a word, deterrence. We will threaten action so devastating in response the eventualities, including but not limited to those listed above, that no one will take such actions for fear of unleashing the promised response. This is the doctrine of Mutual Assured Destruction, according to which a nuclear power strives to maintain an "assured second-strike capability" that allows it to annihilate an enemy who has launched even a massive nuclear surprise attack. Short of MAD, we seek to deter the use of even a single nuclear weapon by the possession of nuclear weapons capable of reaching any nation from which an attack might come. The prospect that the United States might "incinerate" an attacker keeps everyone in line.<sup>2</sup>

For the moment, let us assume the truth of MAD's premise that the possession of nuclear weapons deters others from using nuclear weapons. This has obvious application to cases 2.6-10 above. But what about the other cases? Is deterrence operating in those cases, and if so, where does it come from? What is doing the deterring?

To begin with, it is clear that whatever may be deterring the use of biological weapons or chemical weapons, it is not the biological or chemical weapons capability of the United States. Earlier in the 20th century, the United States incorporated in-kind deterrence

in its defense policies, insofar as President Roosevelt articulated a policy not of “no first use” of chemical weapons, implicitly allowing for retaliation in-kind. But now, the United States is a party to the Biological and Toxin Weapons Convention of 1972, and the Chemical Weapons Convention of 1993, each intended to ban the stockpiling and use of these forms of WMD. In the 1925 Geneva Convention, parties foreswore the use of chemical and biological agents, but research and development continued, perhaps in the context of deterrence, though perhaps simply in pursuit of military advantage on the battlefield. The 1972 and 1993 conventions effectively foreclosed the pursuit of such military advantage as well as in-kind deterrence, at least among those willing to be bound by their international undertakings. Senior Bush administration officials previewing a mid-September 2001 Afghanistan options briefing intended for the president came upon a slide that said “Thinking Outside the Box—Poisoning Food Supply.” They were appalled and ordered it deleted.<sup>3</sup>

There is also the question of achieving deterrence through the threat of a nuclear response to a chemical or biological attack.<sup>4</sup> The attempt to deter by this means is very much an open question. For example, on the eve of the first Gulf War, Secretary of State James A. Baker III delivered a note to Iraq’s Foreign Minister Tariq Aziz, warning the Saddam regime that any use of chemical or biological weapons by Iraq against coalition forces could bring nuclear retaliation. The name subsequently given to this policy was “calculated ambiguity.” There was, no use of such weapons by Iraq in 1991.

Although officials of the second Bush administration discussed reiterating the threat “to use any means at our disposal to respond to any use of WMD” in the aftermath of the 9/11 attack,<sup>5</sup> one should perhaps be cautious about concluding too much from the 1991 episode. The Baker message also warned Iraq that setting oil wells on fire could provoke a nuclear response. Should this be an addition to our catalogue of WMD possibilities, a conventional attack against vital economic interests of the United States? Perhaps not, in that Saddam did burn the wells but was not penalized for it.

But it is further possible that Saddam refrained from using chemical weapons against coalition forces in response to the threat of nuclear retaliation. The psychology here is somewhat complicated.

If the threat of nuclear retaliation deterred Saddam from doing something he would otherwise have done, namely, using chemical weapons, why didn't the same threat of nuclear retaliation deter him from torching the oil wells?<sup>6</sup>

One could perhaps argue that Saddam concluded that the United States was bluffing on the oil wells—that there was no way the United States could seriously think that a nuclear response to burning oil fields was warranted, appropriate, acceptable to the international community, etc.—but that the United States was deadly serious about its warning on the use of chemical weapons. Certainly, the latter warning was more emphatic. This argument is certainly possible, though not without difficulty on its own terms. If Saddam Hussein would be deterred by the threat of nuclear retaliation, he also would be deterred, according to most applications of deterrence theory, by the mere possibility of nuclear incineration, i.e., the possibility that the United States is not bluffing. It's hard (though not impossible) to argue that the same threat of retaliation both deterred him and failed to deter him. The proposition that Saddam rationally calculated our true intentions correctly is no better founded than the claim that the Baker ultimatum had no effect on Saddam's calculations, and that he simultaneously decided a) not to use chemical weapons, and b) to burn the oil wells for reasons largely unrelated to the U.S. nuclear threat.

Speculation about Saddam's rational calculation of true U.S. intentions is further complicated by the contention after the fact by senior Bush administration officials that they were bluffing—that they had no intention of responding to the use of chemical or biological weapons against U.S. forces with a nuclear strike against Iraq.<sup>7</sup> If Saddam concluded that he faced nuclear annihilation over chemical or biological weapons usage but not over setting oil fires, he concluded wrongly.

And this leads to the final problem. In general, the threat of using of nuclear weapons in response to attack is at best a "declaratory policy." Even if Bush administration officials had been sincere when they issued their threats rather than engaged in a bluff, we do not know what the response to the use of chemical weapons by Iraq would have been. The notion that Saddam was deterred by the U.S. threat raises the age-old problem of how to prove deterrence

worked. This is usually framed as a matter of the impossibility of proving a negative, namely, that someone didn't do something because of a warning about consequences. I would like to embellish the problem by suggesting that "consequences" here is very heavily freighted for something with no actuality. We are asked to equate the *threat* "If A, then B" with the *reality* of "If A, then B," when the proposition is never tested by A (or in the case of the oil wells, where it was tested only to have the actuality turn out to be "If A, then not B"). The point is that notwithstanding anything and everything that has been said beforehand, "A" would give rise to a *decision-point* at which one would choose "B" or "not B." If "A" does not arise, there is no basis for assuming that the decision is "B" rather than "not B." (The assertion that the "mere possibility" of "B" deters "A" is an attempt to wiggle around this difficulty.)

At most, one can know that one *is* bluffing, that one will not do what one says one will do if provoked, having ruled it out (that is, having reached the decision point in advance).<sup>8</sup> But in the absence of the provocation, one does not reach the moment of decision, and so one cannot be said to have decided. "Declaratory policy" is not policy, in the strong sense of established practice; it is declaration.<sup>9</sup>

Deterrence is generally thought to be an exercise in which one party tries to persuade another party not to undertake a particular action by making the perceived potential costs of the action unacceptably high.<sup>10</sup> The deterring party promises to sufficiently annul the benefit of the action by counteraction to make the action pointless. Thus there is a substantial literature on what it takes to make a deterrent credible in the eyes of the party that one is seeking to deter.<sup>11</sup>

This focus of attention is important. It reminds us that there is no sense in which the possession of a "deterrent" automatically deters. We must inquire into the mind of the party we wish to deter in order to determine whether deterrence is working.<sup>12</sup> But in another sense, the focus is incomplete. Before we spend too much time on the mind of the party meant to be deterred, we should focus on the details of what's going on in the mind of the party trying to do the deterring.

If a deterrent works better because it is more credible, then the exercise of proving it credible to the party one wishes to deter begins

with the effort to persuade *oneself* that it is credible. Credibility begins at home. So we ask ourselves the following question: What would we do if someone launched an all-out nuclear attack on us? Or, what would we do in certain horrendous circumstances short of all-out nuclear attack? The answer we proffer is that we would unleash fury in return, up to the limit case, the complete annihilation of our enemy.

And we do a number of things to demonstrate our intention, *first of all to ourselves*. We build an arsenal of vast power. We ensure that the inevitable vulnerabilities of any given component of it are offset by capabilities in other components. We have the “triad;” the ability to deliver strategic nuclear weapons by land-based missile, by long-range bomber, or by submarine-based missile. We develop weapons systems across a wide range of potential utility, from short-range nuclear artillery shells to intermediate-range missiles to multiwarhead long-range missiles. We have explosive power at our disposal in all magnitudes of which nuclear weapons are capable, from small charges for the local battlefield to the behemoth city incinerators of Armageddon.<sup>13</sup> We have sought and achieved greater and greater precision in our targeting, enabling us to reduce the size of our warheads while still ensuring that the targets we are seeking will be destroyed. And we have “hardened” our nuclear facilities as well as command-communications-control (C3) links to the national command authority in order to withstand the worst an enemy offers and yet be able to strike back.<sup>14</sup>

This is not just a matter of hardware, of course. There is an extensive body of military doctrine on how use the weapons effectively. War games simulate every imaginable contingency to test these doctrines. The U.S. Strategic Command headquarters at Offutt Air Force Base in Nebraska, one of nine unified commands world wide, has 2,500 personnel and coordinates the nuclear warfighting capability of personnel and equipment ranging in location from the White House and the Pentagon to *Minuteman* missile silos in Wyoming, Montana, and North Dakota, to strategic submarine bases in Georgia and Washington, to communications satellites miles overhead.<sup>15</sup> The literature of military affairs journals takes up warfighting questions at the unclassified level and the Pentagon is

full of classified studies on the subject, from the January 10, 2002, “Nuclear Posture Review” on down.

Beyond the capacity to wage nuclear war in response to a nuclear or other attack, the United States approaches the subject with a certain élan as well. Consider the mythos that has grown up around the “football,” the satchel containing the nuclear attack codes that is carried by a military officer who shadows the president of the United States at all times in case of surprise attack. Or consider further the psychological testing of military personnel who have nuclear warfighting responsibilities. We do not want a madman in close proximity to these weapons. Neither do we want someone unwilling, in a pinch, to unleash incineration when ordered.

All of this is very real. There is no doubt that the United States *could* unleash all-out nuclear war. One day the drill *could* turn out to be the real thing and the hardware, personnel, doctrine, and élan (“yes, sir, it is necessary, lawful, and just to fire this missile”) *could* come together as planned. The worst-case *scenario* of planners’ nightmares could simply be the worst case—global devastation. We have ensured that all of this is entirely possible.

We set out to persuade others about what we would do. But the first order of business in doing so is to persuade *ourselves*. It is not surprising that we were able to do so, nor is the fact that we have done so very illuminating. Whenever we found something that was less than convincing in our nuclear weaponry or our doctrine, we tried to replace it or improve upon it. The problem is that while the apparatus is real, in relation to the central question—what would the United States do if attacked in certain ways?—it is only a simulacrum, an elaboration of a central contention that could never be proved by the apparatus because the construction of the apparatus presupposes it, namely, that we would retaliate with everything we have.

The conceptual problems of nuclear deterrence get worse. Once we have satisfied ourselves that we know what we will do (even though we don’t), we turn the inquiry to whether our adversary is, in fact, persuaded. All too often, this is a neglected aspect of assessing nuclear deterrence. It is tempting to conclude that the deterrent—the vast apparatus of nuclear retaliation we have constructed—deters in itself. But it is not the deterrent, the thing, that deters. What deters is

the *idea* that the deterrent is effective in the mind of the party whom we are seeking to deter. So we have to inquire whether our effort to deter has the effect of deterring.

This is problematic for two reasons. First, a party may refrain from taking an action, in particular an action from our list above, for any number of reasons. Consider the case of the United States and the United Kingdom. It is not meaningful to suggest that the reason the UK has refrained from undertaking a nuclear attack on the United States is that the UK fears massive retaliation in return. Surely, the bonds of friendship between the two peoples count for something. This friendship is far more than an epiphenomenon concealing the underlying reality that the UK is deterred by the nuclear weapons of the United States and that the United States is deterred by the UK's. One could make a similar point about why Canadian intelligence services are unlikely to launch covert terrorist attacks from the menu above against the United States.<sup>16</sup> If it is not nuclear deterrence in the form of the fear of massive retaliation that is working in these cases, we are clearly unjustified in ascribing the work of deterrence to *all* cases in which matters do not come to blows. "Peace" is no proof that deterrence is working. "Peace" is no more than a precondition for the question of whether it is deterrence or something else that has kept the peace.

The second problem is that the assessment of whether our adversaries are persuaded that we would retaliate is actually not much different from the question of whether we have persuaded *ourselves* that we would retaliate. Faced with evidence, for example, that an adversary doubted our willingness to retaliate, we might redouble our efforts to persuade. And no doubt we would continue until we were persuaded that our adversaries were persuaded—which is to say, we are once again engaged in an exercise in persuading ourselves that we would act in the manner we want to believe we would act. This is not a hard sell.<sup>17</sup>

The reason we set out to persuade ourselves that we would retaliate massively if necessary is that we know that unless we convince ourselves that we were prepared to wage all-out nuclear war in the limit case, we have little hope of persuading our adversaries of the same. In other words, our real purpose is and has always

been to deter. It turns out that we have never been interested in the question "What would we do if . . .?" Our question all along has been, "How do we persuade our potential adversary not to attack us?" Our answer from the beginning has been "by persuading him that the benefit of attacking us could never outweigh the cost" and, at the limit, "by persuading him that we will annihilate him." Our persuasive power has been assumed from the beginning to rest on our belief that we would retaliate. The purpose of our belief is to persuade. Unfortunately, the disclosure of this fact, which we knew perfectly well all along to have been true but which we, in effect, chose to disregard, colors our inquiry significantly. We have taken one possible answer to the question "What would we do if . . .?" and maintained it, not because we know it to be our answer, but because we think it would be best for us if others believe it is our answer.

We therefore maintain the position we do in order to ensure that the result is what we desire, namely, a peace that we ascribe to deterrence—a situation in which we are not attacked.<sup>18</sup> Without an intention to deter, in fact, what we are doing makes no sense.<sup>19</sup> Since we do not as a general rule believe that our intentions are expansionist and aggressive, we are clearly not acquiring a nuclear arsenal for offensive purposes. (Whether everyone else shares this interpretation is another question, as is the question of whether these weapons have served a coercive purpose short of detonation.) No, the apparatus exists for the purpose of persuading ourselves that we have persuaded others that, at the limit, they risk massive nuclear retaliation if they attack us. We have a nuclear arsenal not for the purpose of fighting nuclear wars but for the purpose of demonstrating the capability of assured destruction to any potential adversary. This is a product of our desire to persuade our adversaries not to attack us, which in turn we measure by how persuaded we are that they are persuaded. If we think that they *don't* think that they risk annihilation, we take further action to demonstrate that they face that possibility. We enhance our capabilities in the pursuit of credibility. This in turn comes down to the question of whether we are persuaded that we will do what we say we will do, namely retaliate massively at the limit. This, we demonstrate to ourselves through the acquisition of the capability of assured destruction. Nuclear deterrence, and at the limit the doctrine of mutual assured

destruction, is thus a closed circle of self-persuasion that coexists with nuclear weapons not going off.

Let us now disrupt the equilibrium of deterrence by returning to the catalogue of horrors above. What could trigger nuclear retaliation? In the first place, it seems highly unlikely that any sort of conventional attack would result in a decision to retaliate with nuclear weapons. The record on the subject is clear. The oil field fires in the first Gulf War did not trigger such retaliation despite a warning to that effect from the United States. The United States did not respond to terrorist attacks traceable to Muammar Qaddafi's Libya in the 1980s with a nuclear attack, but rather with a conventional strike (and one that fell well short of any serious attempt at "regime change.") Moreover, in the wake of the destruction of 9/11, no one seriously proposed the use of nuclear weapons. This cannot be said to have been solely a product of the problem of what to do against terrorist organizations, which are not state actors.<sup>20</sup> Very quickly, the United States determined to take action to topple the Taliban government, but the use of nuclear weapons was never part of the planning, even against al Qaeda targets, for example around Tora Bora.<sup>21</sup> If a nuclear strike against a legitimate military target, such as a concentration of al Qaeda and Taliban fighters in an area remote from civilians, is out, a retaliatory strike for 9/11 aimed at a civilian population or at a military target located near civilians is hard to imagine.

In the second place, as we have discussed above, if it seems inconceivable that a chemical or biological attack would be met in kind, it is hard to see how such an attack would be met with nuclear retaliation. Nuclear weapons are generally agreed to be the most severe WMD in terms of their lethality and the horror they arouse. Retaliation for a chemical or biological attack by nuclear weapon would be seen as an escalation. It seems far more likely that the United States in such a case would settle on a course of defeating the responsible parties militarily, whether in a conventional war against a state actor or against a state harboring nongovernmental terrorist actors. The goal might be punishment in the form of limited military action, but it would more likely be regime change for the state in question and the eradication of the terror network in a manhunt to the death.

A radiological attack would constitute the use of a “nuclear” weapon because it disperses radioactive material. Even here, however, it seems more likely that the response would be the same as it would be to a chemical, biological, or a massive conventional attack: regime change and manhunt.

We come now to the nuclear scenarios, ranging from a single limited blast up to an all-out assault by a Cold War-sized arsenal. We know what we have said we would do, but we said this for a specific reason: to deter. Our purpose was to try to prevent what we are now hypothesizing was not prevented. Another way to put this is that we have failed in our effort to deter. The threat of nuclear retaliation and at the limit, assured destruction, has not prevented nuclear attack. Now what?

It is entirely clear that the parties responsible for unleashing a nuclear attack on the United States must be counterattacked and, if possible, destroyed. There would be at least three compelling reasons for doing so: first, punishment; second, incapacitation, so that the same parties could not undertake future attacks; third, deterrence again—to send a message to any persons contemplating similar action that they face death if they proceed.

It is possible that a retaliatory nuclear strike would be effective in achieving the desired destruction. In the case of state actors, destruction is near-certain.

This is the decision-point. We could retaliate with nuclear weapons. But would we really want to do that? This is an important question across the range of reasons for counterattacking.

In relation to *punishment*, whom would we be punishing? First of all, we would hope to eliminate members of a regime or a terrorist group within the zone of total destruction. But we also eliminate many innocent persons, specifically, civilians. It is hard to see what the justification for punishing the civilians would be, unless populations are somehow to be held accountable for the rulers they have. Such a doctrine would run counter to a century’s worth of international effort to distinguish civilians from soldiers in order to protect the former.<sup>22</sup>

What is true of nuclear punishment is also true of nuclear *incapacitation*. We would destroy the capacity of the attackers to repeat their actions, but at the cost of the lives of many people who

did not participate in the attack and who would not be agents in any future attack. One presumes that the decision to launch a nuclear attack on the United States was not put to a plebiscite. The actual number of persons involved in such a decision would be tiny, yet the number of the dead following a retaliatory nuclear strike would be very high.

Finally, *deterrence*. The temptation is to think of a nuclear counterstrike as a “restoration” of deterrence. But there are problems here. We might say that we have to *do* now what we *said* we would do before—namely, launch a retaliatory strike up to the limit case of complete destruction—in order to establish that we meant business in the first place. Except that we said we would retaliate to try to prevent what occurred, namely a nuclear attack.

“Deterrence” cannot be said to have completely failed because of the attack. It is possible that some parties refrained from attacking the United States with nuclear weapons solely because they believed that we would do what we said and destroy them. If we fail to retaliate, there is a risk that such a party would conclude that it could “safely” launch a nuclear attack now. But a party that would be deterred in the first case would in all likelihood consider the totality of the U.S. response in calculating whether it should remain deterred or attack. Such a party would likely remain deterred by the prospect of violent regime change or manhunt to the death, because avoidance of those outcomes led the party to decide to be deterred by the prospect of nuclear retaliation in the first place.

But if we decide to launch a retaliatory nuclear strike, we should not do so under the illusion that we are “restoring” deterrence. Our deterrent, in the case of an attacking party, did not deter, and so “deterrence” cannot be said to have ever described the relationship between the United States and the state or party launching the nuclear attack. *And it is the emergence or existence of such parties that is the problem.* Launching a nuclear counterattack against an undeterrable party may reinforce the seriousness of our purpose in relation to *deterrable* parties—the ones who never doubted the price they would pay for attacking the United States would be too high. But nuclear retaliation will do nothing to restore “deterrence” in relation to undeterrable actors—those who would risk violent regime change or manhunt to death in order to attack us with nuclear weapons.

But what about the limit case—an all-out nuclear surprise attack on the United States killing perhaps 100 million people?<sup>23</sup> What then?

It is reasonable to begin by asking whether this question is anything but entirely theoretical. The obvious counterclaim vis-à-vis the United States in the 21st century is China. Several comments here will have to stand in for a full discussion of the subject, which is beyond the scope of this chapter. First, to the extent that China needs to be deterred from attacking the United States (or perhaps Taiwan), the United State currently enjoys overwhelming conventional military superiority that would likely deter any deterrable party. Second, China may have the potential to become a rival to the United States on the scale of the Soviet Union, but there is no reason to assume it will become such a rival nor is there reason to act now as if it is such a rival. Third, it is difficult to imagine a government developing a Soviet-sized nuclear capability, which would require formidable economic resources, without also developing a certain bourgeois attachment to the preservation of its own society. Some argue that the Soviet example disproves this proposition, since Soviet military planners contemplated fighting and winning a nuclear war.<sup>24</sup> But what military planners are contemplating is not necessarily identical to what political leaders are contemplating. As it turned out, the Soviet external empire and then Russia's "near abroad" fell away without the arrival of a nuclear crisis-point. One might reasonably hope that any such future arsenal would have deterrence as its purpose just as the U.S. arsenal has deterrence as its purpose.

But hope is not policy. One could resort to a literal reading of the adage, *Fiat justitia, pereat mundus* ("Let justice be done, though the world should perish"). But for many decades now, presidents and senior officials have chafed for options other than all-out nuclear war. As Henry Kissinger noted of his initial review of strategic doctrine when he became National Security Advisor to newly-elected President Richard Nixon in 1969:

It was all very well to threaten mutual suicide for purposes of deterrence, particularly in case of a direct threat to national survival. But no President could make such a threat credible except by conducting a diplomacy that suggested a high irrationality. . . . And if deterrence failed and the

President was finally faced with the decision to retaliate, who would take the moral responsibility for recommending a strategy based on the mass extermination of civilians?<sup>25</sup>

Kissinger sought a doctrine of “strategic sufficiency” based on “not only the destruction of civilians but of military targets as well.”<sup>26</sup>

Over time the bias has shifted markedly from the destruction of civilians and some military targets besides, to the minimization of civilian casualties in all military operations. This is consistent with treaty obligations and doctrinally enshrined in the military rules for the conduct of war. On March 5, 2003, a senior defense official from U.S. Central Command offered a remarkable Pentagon briefing on “Targeting and Collateral Damage” setting out current U.S. practices: “[O]ur intent is to have a process that not only looks to determine the target’s validity, if you will, but then find a means to strike that target to gain the desired military effect without creating an undue effect on noncombatants or surrounding structures.”<sup>27</sup>

Some within the military take this argument to lengths that would no doubt astound general officers of generations past: “A military commander is morally obligated to do as much as he can to preserve the lives of all noncombatants, even if significantly increasing the risk to his own soldiers.”<sup>28</sup> It is also fair to say that to the extent that “state practice” shapes international law, the recent practice of the United States in such conflicts as the Kosovo air campaign, the war in Afghanistan, and the second Iraq war has established that the United States feels obligated to be mindful of civilian casualties and refrains from attacking legitimate military targets where the military benefit would not outweigh the risk to civilians. Massive nuclear retaliation against civilian targets would be difficult to square with this pattern of practice, even in extremis. It is not entirely clear that an order to launch a retaliatory strike—the planned or anticipated result of which would be tens to hundreds of thousands or millions of civilian deaths—would be lawful and therefore binding.

Nuclear stockpiles worldwide have been shrinking, from a peak level of over 65,000 warheads in 1986 to about 20,000 in 2002.<sup>29</sup> Under the 2002 Strategic Offense Reductions Treaty (the Moscow Treaty), the United States and Russia pledge to reduce the total number of warheads on each side to 1,700-2,200 by 2012.<sup>30</sup> The quantities remaining are sufficient on the *pereat mundus* question,

at least insofar as their general detonation would likely create a world in which many of the survivors would envy the dead. This reduction in arsenals is related to the concern for civilian welfare in conventional warfare. The yields of nuclear weapons also have been reduced as the accuracy of their delivery systems has increased. At one time in the history of strategic thinking about nuclear weapons, war planners considered that civilian casualties were desirable as “a ‘bonus’” when going after military targets. Henry S. Rowen noted in 1975, “[C]ollateral damage is now being seen increasingly as a ‘minus.’”<sup>31</sup> Yield reduction was by no means a necessary corollary of increased accuracy.

But increased accuracy in delivery systems is obviously something with broader application. It is an indication of the multiplicity of conventional options military planners and policymakers have at their disposal. A detailed discussion of these changes is beyond the scope of this chapter.<sup>32</sup> Suffice it to say that conventional U.S. military power, as displayed in Afghanistan and Iraq, is capable of extraordinarily swift victory in effecting “regime change”—and with minimal U.S. casualties and civilian casualties.

As Nathan Leites once asked, in the context of an argument against “assured destruction”-style nuclear retaliatory strikes, “[W]ill the enemy’s attack on us not have revealed him as one with whom we would not like to continue cohabiting the world?”<sup>33</sup> That such an enemy must be defeated is certain. What has changed is the means we have at our disposal to remove that enemy from the world. These means are by no means exclusively nuclear.

As Leites dryly notes, “beginning another effort at establishing a peaceful world with huge destruction without obvious reason might not increase the chance of success.”<sup>34</sup> In all but cases 2.9 and 2.10 above, those scenarios involving large-scale nuclear attack on the United States by a state actor, U.S. nuclear weapons have little plausible deterrent value because the United States would be highly unlikely to use them. The response against such an aggressor would be regime change and manhunt to the death, the prospect of which will sufficiently deter all those who are deterrable by the threat of nuclear retaliation. Moreover, the threat of nuclear retaliation may even be counterproductive, insofar as such threats distract military planners from preparing and using non-nuclear military options.<sup>35</sup>

Cases 2.9 and 2.10 invite the question of whether a nuclear counterattack would be more effective than a non-nuclear counterattack in terms of both defeating the enemy and “establishing a peaceful world.” Under no circumstances would an all-out, “assured destruction” counterattack meet these criteria. It is conceivable that limited nuclear strikes against military targets would be sufficiently more effective than non-nuclear attacks and justify the ensuing greater “collateral damage,” i.e., the civilian casualties. It is also possible that further research will result in mini-nukes whose effective use against military targets would generate no civilian casualties. If developed, they may come to be accepted as unexceptional and legitimate weapons for use in wartime – though it seems just as likely that the norm of nonuse of nuclear weapons would persist. And for now, nuclear weapons have a well-entrenched place, indeed pride of place, in the odious category of WMD.

We have sufficient conventional power to deter those susceptible to being deterred. It is doubtful that our assertion that we are prepared to use nuclear weapons targeting civilians across a broad range of contingencies adds much to our efforts to deter. It also seems likely that such threats will be revealed as empty once a decision point arrives. We might be better off by ceasing our efforts to persuade ourselves we will go nuclear, putting the weapons in deep freeze, and augmenting our ability to deal death to precisely those whom we need to kill, and no others.

## ENDNOTES - CHAPTER 11

1. Note that the questions under consideration here are posed not generally but specifically with regard to the United States in the international environment at the present moment. It would be a misuse of the conclusions here to apply them without substantial further examination to historical situations, to other countries at the present moment, or to a future international environment that differs markedly from the present.

2. Mearsheimer and Walt use this term in making the case that Saddam Hussein would have remained effectively deterred from smuggling a nuclear weapon to a terrorist network by the possibility of nuclear retaliation. John J. Mearsheimer and Stephen M. Walt, “An Unnecessary War,” *Foreign Policy*, January/February 2003, pp. 50-59. The discourse of nuclear deterrence often employs evocative language. Glaser and Fetter, for another example, refer to a “rogue state” risking “complete annihilation” by attacking with a nuclear weapon. Charles L. Glaser and Steve Fetter, “National Missile Defense and the Future of U.S. Nuclear Weapons

Policy," *International Security*, Vol. 26, No. 1, Summer 2001, pp. 40-92. One possible explanation for this is that those undertaking the discussion do not wish to be accused of euphemism in relation to the horror of nuclear war. Another, however, is that the florid language is itself meant to further the project of deterrence. Imagine not just death but "incineration," not just destruction or annihilation but "complete annihilation." The case that the language is not descriptive but rather proffered for political reasons is strengthened by the fact that scenarios envisioning all-out countervalue nuclear war, mutually assured destruction (MAD), nevertheless anticipates many millions of survivors in addition adds to the many millions of dead. See, e.g., endnote 23 below. Payne cites a 1979 Office of Technology Assessment estimate of what he calls "extreme circumstances" resulting in 160 million dead. Keith B. Payne, *Deterrence in the Second Nuclear Age*, Lexington, Kentucky: University Press of Kentucky, 1996, p. 6. The Census Bureau pegs U.S. population as of July 1 that year at just over 225 million., This figure is available at <http://www.census.gov/population/estimates/nation/popclockest.txt>.) In this "extreme" scenario, then, 65 million would have survived, or more than a quarter of the U.S. population at the time.

3. Bob Woodward, *Bush at War*, New York: Simon and Schuster, 2002, pp. 100.

4. Gompert, for example, advocates explicitly threatening a nuclear response to a chemical or biological attack. David G. Gompert, "Sharpen the Fear," *Bulletin of the Atomic Scientists*, Vol. 56, No. 1, January/February 2000, pp. 22-23.

5. Woodward, p. 218. Woodward is paraphrasing the formulation offered by Vice President Dick Cheney. According to a report in the *Washington Times*, January 31, 2003, the classified National Security Presidential Directive 17, the public version of which was released as "National Strategy to Combat Weapons of Mass Destruction" and is available at <http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>. It included the sentence: "The United States will continue to make clear that it reserves the right to respond with overwhelming force—including potentially nuclear weapons—to the use of [weapons of mass destruction] against the United States, our forces abroad, and friends and allies."

6. Sagan notes, in opposition to the conclusion that the nuclear threat deterred Saddam, "[I]t is crucial to remember that the January 9, 1991, Bush letter . . . did not threaten a devastating response only in retaliation to Iraqi use of chemical or biological weapons; Bush also listed Iraqi support for terrorist activities or the destruction of the Kuwaiti oil fields as actions that would cause the U.S. public to 'demand the strongest possible response.' Although Iraq did not use chemical or biological weapons during the war, Saddam Hussein did order terrorist attacks against U.S. targets, and Iraqi special forces did set fires throughout the Kuwaiti oil fields. It is therefore by no means self-evident that U.S. deterrent threats were effective in January 1991, because two of the three actions that Bush said the United States would 'not tolerate' were actually taken by Iraq during the last days of the Gulf War." Scott D. Sagan, "The Commitment Trap," *International Security*, Vol. 24, No. 4, Spring 2000, pp. 85-115.

7. See the discussion in Payne, pp. 81-87.

8. This contention may also be problematic. I posit a decision point in advance of the possible occurrence of "A" at which decision makers conclude "if A or if not A, then not B"—or, more simply, "in relation to A, not B." Sagan argues that the threat of nuclear retaliation in response to a chemical or biological attack may make such retaliation more likely, whether leaders think they are bluffing or not, because they create a "commitment trap, in which U.S. leaders would feel compelled to use nuclear weapons after a biological or chemical attack because they believe that adversaries and allies perceive that the U.S. reputation for honoring its commitments was at stake." As will be clear from my argument here, I am less concerned about this danger than Sagan, because in my view such threats are not credible. But insofar as I am posing a normative question as well, namely, what the United States *should* do under certain circumstances, I certainly agree with Sagan that the United States *should not* issue such threats because it *should not* act to make good on them.

9. "What cannot be used, cannot deter. Then policy reveals itself as only declaratory." Paul Ramsey, *War and the Christian Conscience*, Durham, NC: Duke University Press, 1961, p. 244.

10. Similarly, "Deterrence works, if it does, by persuading a potential aggressor that the risks of retaliation attached to the contemplated act of aggression outweigh its benefits." Gregory V. Kavka, *Moral Paradoxes of Nuclear Deterrence*, Cambridge: Cambridge University Press, 1987, p. 48. The etymology of "deter" gives rise to a common but in my view inadequate definition, namely, to dissuade through fear, specifically, of punishment. Fear is one reason one might be dissuaded, but it is not the only possible reason, except in a very weak sense. Party A might be deterred from doing X simply because it would be difficult or expensive, having been made the more so by B. If this is fear, it does not rise to the level of existential fear of the sort one associates with nuclear weapons. Another definitional issue is that the term "deterrence" is commonly used in two senses. On one hand, "deterrence" describes the *effort* on the part of the would-be deterrer to deter. On the other, "deterrence" describes the condition said to result from such a successful effort. That we try to deter is not in doubt. In this sense, deterrence has actuality. But its actuality in this sense tells us nothing about whether deterrence has actuality in the second sense.

11. See the discussion in Patrick M. Morgan, *Deterrence Now*, Cambridge: Cambridge University Press, 2003, pp. 15-20, 101-105.

12. See my extended discussion in Tod Lindberg, "Deterrence and Prevention," *Weekly Standard*, Vol. 8, No. 20, February 3, 2003.

13. For a brief description of the current U.S. arsenal, see Robert S. Norris, *et al.*, "U.S. Nuclear Forces, 2003," *Bulletin of the Atomic Scientists*, Vol. 59, No. 3, May/June 2003, pp. 73-76.

14. "The USSTRATCOM Command Center is a specially-designed, two-level, 14,000-square-foot reinforced concrete and steel structure containing the critical

information management and communication systems to provide the commander of USSTRATCOM an assured capability to manage forces world wide. In time of war, the underground would be sealed off. An underground emergency power supply, a well supplying an emergency water source, and rations would allow continuous operations without outside support for an extended period of time. Electromagnetic pulse protection is provided for critical command, control and communications equipment as well as supporting utilities. This allows the USSTRATCOM Commander to continuously exercise command over USSTRATCOM forces, even in the disturbed electromagnetic environment which would follow a high altitude nuclear burst." U.S. Strategic Command Office of Public Affairs, Fact File, "Command Center," Offutt Air Force Base, Nebraska. Available at: <http://www.stratcom.mil/factsheetshtml/commandctr.htm>.

15. This information is available at the U.S. Strategic Command website, <http://www.stratcom.mil/>.

16. My argument here and throughout is constructivist in character, as against the realism or neorealism typically underlying nuclear deterrence theory. "Would it be rational today for Canada to assume the worst about U.S. intentions? Or even France about German ones?" Alexander Wendt, *Social Theory of International Politics*, Cambridge, UK: Cambridge University Press, 1999, p. 109.

17. "Because nuclear threats could be controlled and adjusted by changing the force structure, it was considered relatively easy to identify how to adjust the forces as necessary to ensure deterrence stability. Consequently, the effectiveness of U.S. deterrence policy could be maintained with confidence." Payne, p. 71.

18. As Walzer notes, "The strategy [of deterrence] works because it is easy. Indeed, it is easy in a double sense: not only don't we do anything to other people, we also don't believe that we will ever have to do anything. The secret of nuclear deterrence is that it is a kind of bluff. Perhaps we are only bluffing ourselves. . . ." Michael Walzer, *Just and Unjust Wars*, Second Edition, New York: Basic Books, 1992, p. 271.

19. See Kavka's discussion of "deterrent intentions," "those *conditional intentions* whose existence is based on the agent's desire to thereby deter others from actualizing the antecedent condition of the intention [emphasis added]." Kavka, p. 20. Kavka's concern is the morality of making a threat that one knows it would be immoral to carry out, what he calls a "Special Deterrent Situation", p. 16). My main difference with Kavka concerns the ontological status of a "conditional intention." I don't think a "conditional intention" can properly be called an "intention" when there is *no* intention to actualize it no matter what the conditions.

20. See Tod Lindberg, "How to Fight a Superpower," *Weekly Standard*, Vol. 7, No. 16, December 31, 2001.

21. To my knowledge, no public accounts of internal Bush administration deliberation about war plans in response to the 9/11 attack have mentioned the contemplation of use of nuclear weapons. More generally, some have discussed

the possibility of use of battlefield nuclear weapons by the United States if the latter found itself in danger of losing a major strategic objective, i.e., in military extremis. Also, the Pentagon proposes developing so-called "mini-nukes" with yields of less than five kilotons as a supplement to the B61-11 "bunker buster," and the Bush administration proposed a substantial 11.4 percent increase in the nuclear weapons research and development budget from Fiscal 2003 to Fiscal 2004. See *Physics Today*, Vol. 56, No. 6, May 2003, pp. 27-28, 33. But would the United States actually use such weapons? No bunker has, after all, come under attack by the B61-11. McKivergan argues that the United States should have the capability of preemptively destroying a hardened underground production facility for WMD. Daniel McKivergan, "The No-Nukes Party," *Weekly Standard*, Vol. 8, No. 37, June 2, 2003. But such an attack would amount to a preemptive nuclear first strike of the sort that the nuclear-armed United States did not launch, for example, against the infant Soviet nuclear program. As Sagan notes, "The first use of any nuclear weapon in combat since World War II would be a norm-shattering event throughout the world."

22. For an overview, see the "International Humanitarian Law" section of the International Committee of the Red Cross's website at: [http://www.icrc.org/web/eng/siteeng0.nsf/iwpList2/Humanitarian\\_law](http://www.icrc.org/web/eng/siteeng0.nsf/iwpList2/Humanitarian_law).

23. "[T]he emphasis in [Secretary of Defense Robert] McNamara's statements on nuclear forces and doctrine shifted after 1963 to that of Assured Destruction. The doctrine held that a nuclear exchange would, with high probability, result in over 100 million fatalities in both the United States and the U.S.S.R. . . . The principal test of the adequacy of the U.S. strategic force came to be the ability of our programmed force to produce civil damage, even against a greater than expected threat. The damage criterion settled on by McNamara for determining the size of the strategic force was the destruction of 20-25 percent of the Soviet population and 50 percent of its industrial capacity." Henry S. Rowen, "Formulating Strategic Doctrine," Part III of Vol.4, Appendix K to *The Report of the Commission on the Organization of the Government for the Conduct of Foreign Policy*, Washington, DC: U.S. Government Printing Office, 1975, p. 227.

24. Richard Pipes, "Why the Soviet Union Thinks It Could Fight and Win a Nuclear War," *Commentary*, Vol. 64, No. 1, July 1977, pp. 21-34. Another possible exception to my generalization here might be a government rich enough in exploitable natural resources to afford a large-scale nuclear program without acquiring the bourgeois habits that typically underlie sufficient national wealth for such programs.

25. Henry Kissinger, *White House Years*, New York: Little, Brown, 1979, p. 216.

26. *Ibid.*, p. 217.

27. As one of many examples the official proffered during the briefing: "[A] Hellfire missile has only about a 40-pound warhead. So the circle that it might cause damage is relatively small: 60 or 70 feet. On the other hand, a 2,000-pound bomb

will create about 90 percent of its effect out to about 600 feet of the target. And so, depending on the kinds of weapons you would use, you would place a circle over the target and then look to see what's in the circle. In the case of our example here, we see a civilian housing structure, a hospital, and a mosque. And those are, 1) noncombatant facilities, and in the case of a mosque or hospital, 2) a protected facility. And so we want to make sure that we don't inadvertently cause damage to those facilities while we're striking that target. . . . Can we make that circle smaller, for example? Can we mitigate the effect of the weapon?" The briefing transcript is available at: [http://www.defenselink.mil/news/Mar2003/t03052003\\_t305targ.html](http://www.defenselink.mil/news/Mar2003/t03052003_t305targ.html).

28. Michael A. Carlino, "The Moral Limits of Strategic Attack," *Parameters*, Vol. 32, No. 1, Spring 2002, pp. 15-30. At the time of publication, the author was a major in the U.S. Army.

29. Robert S. Norris and Hans M. Kristensen, "Global Nuclear Stockpiles, 1945-2002," *Bulletin of the Atomic Scientists*, Vol. 58, No. 6, November/December 2002, pp. 103-104.

30. The treaty text is available at: <http://www.state.gov/p/eur/rls/or/2002/10471.htm>.

31. Rowen, p. 221.

32. For an overview, see Bruce Berkowitz, *The New Face of War: How War Will Be Fought in the 21st Century*, New York: Free Press, 2003. For a consideration of the effect of the "revolution in military affairs" on deterrence, see Morgan, pp. 203-237.

33. Nathan Leites, "Once More About What We Should Not Do Even in the Worst Case: The Assured Destruction Attack," California Seminar on Arms Control and Foreign Policy Discussion Paper, June 1974, p. 10.

34. *Ibid.*

35. "[T]he current policy of calculated ambiguity—with its over-reliance on the nuclear 'big stick'—is a cop-out. America is paying full price for this half-policy, the result of which is that the Armed Forces may be strategically unprepared to respond when the time comes." Harry W. Conley, "Not with Impunity: Assessing U.S. Policy for Retaliating to a Chemical or Biological Attack," *Essays 2001: Chairman of the Joint Chiefs of Staff Strategy Essay Competition*, Washington, DC: National Defense University Press, pp. 23-37. The paper includes an excellent discussion of "calculated ambiguity."