

## Congress' Nuclear Liability

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The grave decision to use nuclear weapons against a non-nuclear country will affect America for generations to come. Should it be made by the President alone?

The traditional role of US nuclear weapons, to deter a nuclear attack against our country or an ally, was changed by the Bush administration. [Congress was informed about it](#), but has not responded. No response is also a response.

The CRS (Congressional Research Service) Report for Congress of August 10, 2006, on "[US Nuclear Weapons: Changes in Policy and Force Structure](#)", reports that "the Bush administration has stated that the United States would develop and deploy those nuclear capabilities that it would need to defeat the capabilities of any potential adversary whether or not it possessed nuclear weapons".

The CRS report further states that "The emphasis on the development of penetrating nuclear weapons that can destroy hardened and deeply buried targets, along with the 'capabilities'-based approach that states the United States will seek the ability to destroy threatening capabilities possessed by any potential adversary, are a part of this new strategy."

Congress is on notice. The expanded role for nuclear weapons logically calls for a change in the decision-making process on when nuclear weapons should be used, at least in cases where no extreme urgency exists. Under current law, [the President has sole full authority to order their use](#), Congress has no say.

In response to these developments, [twenty two of the nation's most eminent physicists have just called on Congress](#) to "pass binding legislation to forbid the use of nuclear weapons by the United States against countries which do not possess nuclear weapons, except with explicit prior Congressional authorization for such action." The physicists point out that "in the case of non-nuclear adversaries there is no extreme urgency associated with response or preemption of nuclear attack against our country or our allies," and that "crossing the nuclear threshold, even with a low-yield weapon, would erase the 60-year-old taboo against the use of nuclear weapons and make their use by others more likely," with "disastrous consequences for United States and world security."

[The physicists also say that](#) "nuclear weapons are unique among weapons of mass destruction," that "the associated radioactive fallout could kill many thousands in other countries very far from the target," and that "there are no sharp lines between small 'tactical' nuclear weapons and large ones, nor between nuclear weapons targeting facilities and those targeting armies or cities." Physicists ought to know what they are talking about:

they created nuclear weapons.

In the looming confrontation with Iran, situations may well arise that call for the potential use of nuclear weapons under the new U.S. nuclear weapons policy; for example, "[To demonstrate U.S. intent and capability](#) to use nuclear weapons to deter adversary use of WMD." (CRS, p. 12).

The grave decision to use nuclear weapons against a non-nuclear country will affect America for generations to come. Should it be made by the President alone? Congress has the constitutionally assigned duty [to regulate the Armed Forces](#), and to legislate on matters of broad national interest. It also provides the funds [\[1\]](#), [\[2\]](#) to develop and deploy nuclear weapons [\[1\]](#), [\[2\]](#), and pays the salaries of the servicemembers who will push the buttons [\[1\]](#), [\[2\]](#).

[The "decider" in this case](#) is Congress: by deciding not to legislate on this issue, it is deciding that it is okay for the President to order the use of nuclear weapons even against non-nuclear-weapon countries under any circumstance the President judges appropriate. [Bush announced on April 18, 2006](#) that a nuclear strike on Iran is an option "on the table".

The physicists' letter states, "A decision that would have a major impact on the course of history and could ultimately threaten the survival of civilization should not be in the sole hands of the President unless absolutely unavoidable." So far, the United States Congress disagrees.

[The International Court of Justice has stated that](#) "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." Article 25 of the [International Criminal Court Statute](#) holds anybody that "aids, abets or otherwise assists" in the commission of a war crime criminally responsible, "including providing the means for its commission." Article 27 explicitly includes "a member of a Government or parliament."

That makes for [535 excellent reasons](#) why the United States should not join the International Criminal Court system.

*The author is one of 22 physicists signatories to [the letter to Congress referred to in the text](#).*

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