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IN FOCUS

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Authority to Launch Nuclear Forces

The U.S. President has sole authority to authorize the use of U.S. nuclear weapons. This authority is inherent in his constitutional role as Commander in Chief. The President can seek advice from his senior military leaders; those military leaders are then required to transmit and implement the orders authorizing nuclear use if the President decides to employ nuclear weapons. As General John Hyten stated in a congressional confirmation hearing, his job as the Commander of U.S. Strategic Command (STRATCOM) would be to give advice, while the authority to order a launch lies with the President.

General Mark Milley, then the Chairman of the Joint Chiefs of Staff (CJCS), made a similar point in a memorandum he provided to Congress in September 2021. He stated that he is a part of the "chain of communication," in his role as the President's primary military advisor, but he is not in the "chain of command" for authorizing a nuclear launch. He also stated that, if the President ordered a launch, the CJCS would participate in a "decision conference" to authenticate the presidential orders and to ensure that the President was "fully informed" about the implications of the launch.

The President, however, does not need the concurrence of either his military leaders or the U.S. Congress to order the launch of nuclear weapons. Neither the military nor Congress can overrule these orders. As former STRATCOM Commander General Robert Kehler has written, members of the military are bound by the Uniform Code of Military Justice "to follow orders provided they are legal and have come from competent authority." But questions about the legality of the order—whether it is consistent with the requirements, under the laws of armed conflict (LOAC), for necessity, proportionality, and distinction—are more likely to lead to consultations and changes in the President's order than to a refusal by the military to execute the order.

Nuclear Command and Control

According to the Department of Defense's 2020 *Nuclear Matters Handbook*, nuclear command and control (NC2) refers to "the exercise of [Presidential] authority and direction, through established command lines, over U.S. nuclear weapons operations." NC2 is enabled by a nuclear command, control, and communications (NC3) architecture that provides the President "with the means to authorize the use of nuclear weapons in a crisis and to prevent unauthorized or accidental use."

NC3 collects information on threats to the United States, communicates that information to the President, advises the President on response options, communicates the President's chosen response to the forces in the field, and controls the targeting and application of those forces. (For more information on elements of the U.S. NC3 system, see CRS In Focus IF11697, *Defense Primer: Nuclear Command, Control, and Communications (NC3)*.)

If the NC3 systems identified an attack or an anomalous event, the President would participate in an emergency communications conference with the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and other military leaders. They would offer the President details and an assessment of the possible incoming attack and explain the President's options. According to the DOD, "depending on the crisis situation, the President may consult with U.S. allies during the decision-making process."

According to one summary of the process, the President would then evaluate and respond to this information and decide whether to authorize the use of U.S. nuclear weapons. He would communicate his choices and provide this authorization through the Emergency Satchel (or nuclear "football")—a suitcase carried by a military aid who is always close to the President. The suitcase also reportedly includes a book with prepared war plans for certain targets. The President could choose from these prepared plans or, time permitting, ask STRATCOM to prepare an alternative.

If the President did choose to respond with a nuclear attack, he would identify himself to military officials at the Pentagon with codes unique to him. These codes are reportedly recorded on an ID card, known as the "biscuit," that the President carries at all times. Once identified, he would transmit the launch order to the Pentagon and STRATCOM. STRATCOM would then implement the order by preparing to launch the weapons needed for the selected option.

Options for Nuclear Use

Because this system was designed during the Cold War, it was, as former director of the CIA General Michael Hayden has stated, "designed for speed and decisiveness. It's not designed to debate the decision." Long-range missiles attacking the United States from Russian territory could reach U.S. territory in around 30 minutes; sea-based systems deployed closer to U.S. shores might arrive in half that time. If the United States wanted to retaliate before U.S. weapons, or, more importantly, the U.S. command and control system, were degraded by an attack, then the entire process of identifying, assessing, communicating, deciding, and launching would have to take place in less than that amount of time. Given that some time would be needed for mechanical or administrative steps, some analysts estimate that the President would have less than 10 minutes to absorb the information, review his options, and make his decision.

During the Cold War, U.S. doctrine argued that, to deter a Soviet attack, the United States would need to be able to retaliate even if the Soviet Union launched a massive attack with little warning. Hence, the United States planned for scenarios where the Soviet Union deployed thousands of nuclear warheads that could reach the United States. The

short time lines and preplanned responses provided the President with the option to launch U.S. weapons before most of the attacking warheads detonated on U.S. soil.

But, even during the Cold War, a large-scale Soviet attack was not the only possible scenario for the start of a nuclear war, and a massive U.S. response launched in under 30 minutes was not the only option available to the President. If the nuclear war escalated out of a conflict in Europe, or if the Soviet Union launched a more measured attack, the President might have more time to assess the threat and determine his response. Moreover, because U.S. bombers could fly away from their bases earlier in a crisis or conflict and U.S. submarine-based missiles might survive an attack on U.S. territory, the President could decide to delay the U.S. response. Nevertheless, some analysts have argued that a launch under attack was the preeminent option during the Cold War, and that the command and control system was designed to permit such a prompt launch of U.S. nuclear weapons.

The United States reviewed and revised its nuclear employment plans throughout the Cold War and since its end. According to nongovernmental analysts, more recent reviews have added options to the plans available to the President. While some options probably still provide responses to an attack from a nation, like Russia, with a large nuclear force, others might provide for more measured and discriminate responses, including with nonnuclear capabilities.

Another scenario could see the United States choose to use nuclear weapons prior to a nuclear attack against the United States or its allies, on a time line that did not reflect an imminent nuclear attack against the United States. The United States maintains calculated ambiguity and has never declared a "no first use" policy, and the President could order the first use of nuclear weapons. As discussed above, his military leaders may seek to adjust his orders to meet the laws of armed conflict, but there is, otherwise, no legal barrier to first use.

Ongoing Debates

In recent years, some Members of Congress and analysts outside government have discussed whether the Commander in Chief should have the sole authority to launch a nuclear attack in all circumstances. They agree that the President would not have the time to consult with Congress or seek approval from other officials if the United States were under attack with nuclear weapons. But, in an environment where the threat of a massive nuclear attack seems more remote than during the Cold War, some argue that the President could take the time to consult with Congress before launching nuclear weapons in less extreme circumstances.

Some analysts outside the U.S. government have also questioned whether the United States should retain the option to launch nuclear weapons promptly because the time pressures could lead to the accidental or inadvertent start of a nuclear war. They argue that the United States received false warning of nuclear attack several times during the Cold War, and if the President had responded to that warning within the 30-minute time line of a nuclear attack, it would have triggered global nuclear war. If the President could not launch the weapons in such haste, he would necessarily have the time to wait for more accurate or less ambiguous information. Other analysts stress the potential need for an explicit delayed response option.

Still others, however, argue that there is nothing inherently destabilizing or dangerous in the prompt launch options. The President has options to delay a response and await additional information. In addition, even in the current security environment, a President and his advisors would be unlikely to interpret ambiguous warning information as evidence of an all-out attack from Russia or another nation. Instead, they note that the presence of both prompt and delayed options bolsters deterrence by providing the President with the flexibility to choose the appropriate response to an attack on the United States or its allies.

Legislation

H.R. 669 and S. 1186, Restricting First Use of Nuclear Weapons Act of 2023.

H.R. 2603 and S. 1219, To Establish the Policy of the United States Regarding the No-First-Use of Nuclear Weapons.

H.R. 8902, To Direct the Secretary of Defense to Notify Congress Before Carrying Out an Order to Use a Nuclear Weapon Without a Declaration of War by Congress.

CRS Products

CRS In Focus IF10519, *Defense Primer: Strategic Nuclear Forces*

CRS In Focus IF12735, *U.S. Extended Deterrence and Regional Nuclear Capabilities*

CRS In Focus IF11697, *Defense Primer: Nuclear Command, Control, and Communications (NC3)*

CRS Legal Sidebar LSB10026, *Can Congress Limit the President's Power to Launch Nuclear Weapons?*

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