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## More Than Words: The Value of U.S. Non-Nuclear-Use Promises

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Last year, for the first time, the United States voted in the UN General Assembly against a traditional resolution calling for negotiation of legally binding negative security assurances (NSAs) by nuclear-weapon states. These are promises not to use nuclear weapons against nuclear Nonproliferation Treaty (NPT) states-parties that have promised not to acquire them. In the debate, the U.S. delegation explained that the United States “opposes a treaty on negative security assurances or any other binding instrument on security assurances.”<sup>[1]</sup>

U.S. military officials have long opposed explicit promises not to use nuclear weapons against countries that do not have them. Prior to the current administration, however, the U.S. government had rarely been so clear in stating its opposition. This new position is contrary to U.S. national interests.

U.S. superiority in conventional weapons and the advent of precision-guided munitions means that the United States does not need to use or threaten to use nuclear weapons to achieve its military goals effectively, even against those states that possess chemical or biological weapons. Indeed, the United States needs to be prepared to use nuclear weapons only in response to an attack with nuclear weapons. Moreover, the U.S. refusal to endorse NSAs only encourages additional countries, including U.S. enemies, to acquire nuclear weapons.

### Cold War Origins

A debate over NSAs began in the 1960s during the negotiation of the NPT. The nations that were being asked in the NPT to forgo pursuit of nuclear weapons wanted assurances that they would not be attacked with nuclear weapons if they gave up the option of having them. Developing countries that belong to the 115-member Nonaligned Movement (NAM) urged that the NPT contain a promise by NPT members having nuclear weapons (China, France, the Soviet Union, the United Kingdom, and the United States) not to use them against members that did not have them. In the United States, secret nuclear war plans probably did not target countries that did not have nuclear weapons, except perhaps for a few that had governments closely aligned with the Soviet Union or China. Nonetheless, the Joint Chiefs of Staff opposed such restrictions on their use of nuclear weapons, and the U.S. delegation to the NPT negotiations was not authorized to agree to any.<sup>[2]</sup>

Following the 1962 Cuban missile crisis and the revelation that the Soviet Union had deployed nuclear weapons with its troops on Cuban soil, several Latin American countries, spearheaded by Mexico and Brazil, successfully negotiated the Latin American and Caribbean Nuclear-Weapon-Free Zone Treaty, known also as the Treaty of Tlatelolco. Given the U.S. strategic interest in keeping Latin America free of nuclear weapons, Washington supported the treaty. On the insistence of the Latin American governments advocating the treaty, the United States eventually ratified a protocol to the treaty committing itself “not to use or threaten to use nuclear weapons against contracting states,” i.e., the parties to the Latin American treaty, none of which had nuclear weapons.<sup>[3]</sup>

But, the United States, fearing a Soviet-assisted attack from the Latin American region, qualified its treaty nonuse promise by stating that it would consider an armed attack (not necessarily a nuclear attack) by a Latin American treaty party that was assisted by a nation that had nuclear weapons to be incompatible with the Latin American treaty party's obligations under the treaty. This implied that, in the event of such an assisted attack, the United States could use nuclear weapons to reply even if no nuclear weapons had been used by the attacker.

Although not as unqualified as some Latin Americans had desired, the U.S. promise not to use nuclear weapons against Latin American countries gave the nonaligned states in other parts of the world incentives to seek nuclear nonuse commitments from the nuclear-weapon states, as the Latin Americans had done.<sup>[4]</sup> During the NPT negotiations in the 1960s, however, the United States successfully resisted attempts by nonaligned countries to provide, in the NPT itself, a commitment not to use nuclear weapons against countries that did not have them.

In 1978 the United States took a significant step toward the demands of non-nuclear-weapon states. It pledged not to use nuclear weapons against any non-nuclear-weapon NPT member unless attacked by such a member while that member was acting in alliance with a nation having nuclear weapons. Before the 1995 NPT review conference, which extended the life of the NPT indefinitely, U.S. officials knew that they would again be asked by those whose support they needed at the NPT extension conference to promise not to use nuclear weapons against any non-nuclear-weapon member of the NPT. To meet this demand on acceptable terms, the United States and the four other NPT nuclear-weapon states declared to the Security Council prior to the conference that each would not use nuclear weapons against NPT non-nuclear-weapon states. The United States restated its nonuse promise:

The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapon [NPT members] except in the case of an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies, or on a state towards which it has a security commitment, carried out or sustained by such a non-nuclear-weapon state in association or alliance with a nuclear-weapon state.<sup>[5]</sup>

France, Russia, and the United Kingdom, who are also permanent members of the Security Council, each made similar NSAs with a similar exception. China, the fifth permanent member, was broader in its NSA. It did not include this exception. Moreover, it included an explicit promise not to use nuclear weapons first.

Except for China, all of the permanent members of the Security Council (the P-5) said that these assurances were not legally binding promises. Later, at the 2005 NPT review conference, China urged eventual negotiation of "legally binding security assurances by nuclear-weapon states," the goal of the General Assembly resolution to which the first paragraph of this article refers.

These P-5 NSAs were part of the quid pro quo used to gain support from non-nuclear-weapon NPT members for the indefinite extension of the NPT in 1995. The United States, which had initiated the effort by the P-5 to provide the promises, saw them as necessary to secure broad support for the NPT's extension from the nonaligned NPT members. Extension required a majority vote, and nonaligned members represented 115 of the 189 NPT members.

Securing the extension of the treaty in 1995 was important for the P-5, hence their willingness to make nonuse promises to achieve its extension. These nonuse promises, however, have been weakened since 1995, except perhaps for the promise from China.

### **Taking Back the Promises: The Clinton and Bush Legacies**

Soon after the U.S. representative made the promise of nonuse before the Security Council in 1995, the Department of Defense began urging exceptions to it. Probably as a result of this view, the Clinton administration argued that even under a nonuse commitment in a treaty such as the Latin American nuclear-weapon-free zone treaty, the United States would not be bound to refrain from a nuclear response to a chemical or biological attack from a member of the nuclear-weapon-free zone. President Bill Clinton's secretary of defense, William Perry, said publicly that "if some nation were to attack the United States with chemical weapons, then they would fear the consequences of a response with any weapon in our inventory.... We could make a devastating response without use of nuclear weapons, but we would not

forswear that possibility.”<sup>[6]</sup>

In addition, NATO retained the option to use nuclear weapons first in future conflicts and, like the United States, reaffirmed its right to use nuclear weapons against a chemical or biological attack.<sup>[7]</sup> Thus, the United States and NATO refused to accept the NSAs as legally binding prohibitions on their use of nuclear weapons against non-nuclear-weapon NPT members.

Toward the end of his administration, Clinton approved a modification of the B61-11 nuclear warhead for use as a “bunker buster” to attack biological or chemical weapons stored underground in hostile countries, weapons that U.S. officials believed could threaten the United States and its allies. Potential enemies, including some nonaligned countries, were suspected of digging deep underground bunkers for the purpose of sheltering biological or chemical weapons from enemy attack. The proposed bunker-buster nuclear weapons were intended to destroy these bunkers and what they contained before the biological or chemical weapons could be used in an attack on the United States or its allies.

The Bush administration further changed U.S. nuclear weapons-use policy after the terrorist attacks of 2001. The Defense Department’s December 2001 Nuclear Posture Review (NPR), parts of which were made public in early 2002, reasserted the Clinton administration’s desire for earth-penetrating nuclear weapons to destroy biological weapons stored underground by an enemy. This position assumed first use of nuclear weapons in that engagement.

In response to questions raised by this provision of the 2001 NPR, a Department of State spokesperson repeated the 1995 NSA that had been given by the United States to help gain votes for the extension of the NPT that year. He added that “the policy says that we will do whatever is necessary to deter the use of weapons of mass destruction against the United States, its allies, and its interests. If a weapon of mass destruction is used against the United States or its allies, we will not rule out any specific type of military response.”

In September 2002, President George W. Bush issued a White House National Security Strategy (NSS) that declared that “rogue states and terrorists” were determined to acquire biological and chemical weapons and that the United States might one day need to use nuclear weapons to deal with such an acquisition. The statement seemed to call for the use of U.S. weapons, including nuclear ones, to destroy biological or chemical weapons before either could be used.

[W]e must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.... If the legitimacy of preemption [by the United States is to depend] on the existence of an imminent threat, [we] must adapt the concept of legitimate threat to the capabilities and objectives of today’s adversaries [who] rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.... The greater the threat, the greater the risk of inaction—and the more compelling the case for taking anticipatory action. To forestall such hostile attacks, the United States will, if necessary, act preemptively.<sup>[8]</sup>

Under this strategy, preemptive action by the United States might include the use of nuclear weapons to counter a chemical weapon attack or to destroy a potential enemy’s stocks of biological weapons before they could be used. In the December 2002 “National Strategy to Combat Weapons of Mass Destruction,” the Bush administration added that U.S. counterproliferation forces “must possess the full range of operational capabilities to counter the threat and use of [weapons of mass destruction] by states and terrorists against the United States, our military forces, and friends and allies.”<sup>[9]</sup>

These statements suggest that the United States reserves the right to first use of nuclear weapons to retaliate against attacks using chemical or biological weapons or to destroy enemy chemical or biological weapons stockpiles before they can be used in an attack.<sup>[10]</sup> Perhaps to implement such a strategy, the administration proposed a new nuclear warhead to Congress, the Robust Nuclear Earth Penetrator (RNEP). It was supposed to be used to attack “hard and deeply buried targets,” such as underground storage sites for biological and chemical weapons. Congress cut out the funds proposed by the Bush administration for the development of RNEP in the appropriations for the Department of Energy for the fiscal years 2005 and 2006. The department did not request such funds for fiscal years 2007 or 2008.

The Bush administration in various ways has said that it is not bound to refrain from the use of nuclear weapons against non-nuclear-weapon NPT states-parties who attack with biological or chemical weapons. Indeed, the United States may well have contributed to the failure of the 2005 NPT review conference by refusing even to discuss NSAs there.

If the security assurances provided by the United States to non-nuclear-weapon NPT members in 1995 appear to these members to have less value as result of the Bush administration's statements, will this reduce the motivation of some NPT members to stay within the NPT?

### **The Future of Negative Security Assurances**

To states without nuclear weapons not allied to states that do have them, a credible promise by the five NPT nuclear-weapon states not to use nuclear weapons against them should have value. Judging by the demands for such assurances from NAM, the largest caucus of NPT non-nuclear-weapon parties, the quest for legally binding NSAs will continue despite opposition from the United States and most of the P-5.

At the 2000 NPT review conference, these NAM states together with the New Agenda Coalition (NAC), a smaller coalition of non-nuclear-weapon nations formed in 1998 to advance nuclear disarmament, were successful in extracting a clear acknowledgement by all NPT parties, in particular the P-5, that legally binding NSAs would strengthen the nonproliferation regime. The final document of the 2000 review conference also called on the Preparatory Committee (PrepCom) for the 2005 review conference to make recommendations on this issue.

Despite several concrete proposals, including a draft nonuse protocol to the NPT submitted by the NAC, the PrepCom made no such recommendations. Indeed, the final PrepCom in 2004 reported Washington's perception that the post-September 11, 2001, security environment obviated "any justification for expanding NSAs to encompass global legally binding assurances." The U.S. delegation reacted to the PrepCom chairman's summary by stating emphatically, "We did not, do not, and will not agree as stated in the summary that efforts to conclude a universal, unconditional, and legally binding instrument on security assurances to non-nuclear-weapon states should be pursued as a matter of priority." This message foreshadowed Washington's position at the 2005 conference, where it asserted that "the very real nuclear threats from NPT violators and non-state actors" eclipses the "relevance of non-use assurances."

An acrimonious debate about security assurances was among the reasons for the failed 2005 NPT review conference. The United States refused even to discuss them seriously at this conference or at its preparatory meetings, saying:

[T]he end of the Cold War has further lessened the relevance of non-use assurances from the P-5 to the security of NPT [non-nuclear-weapon states], particularly when measured against the very real nuclear threats from NPT violators and non-state actors.... [L]egally binding assurances sought by the majority of states have no relation to contemporary threats to the NPT.[\[11\]](#)

### **Options for the Next Administration**

Attempts to negotiate NSAs with the United States under the Bush administration seem impractical, but the next U.S. administration needs to take up the issue in time for the 2010 NPT review conference. As with the 1995 conference, the United States should lead a P-5 initiative prior to the 2010 conference to reaffirm political pledges not to use or threaten to use nuclear weapons against non-nuclear-weapon states. To build confidence in its nuclear intentions, it should allow the conference to establish a mechanism to consider ways to provide legally binding NSAs. In this regard, a new administration could consider several options.

One option would be approval of another UN Security Council resolution going beyond the one adopted prior to the 1995 conference. Such a resolution of security assurances to NPT non-nuclear-weapon parties in full compliance with their obligations could include two key components. It could recognize that legally binding security assurances to non-nuclear-weapon NPT members in full compliance with their nonproliferation obligations would strengthen the nuclear nonproliferation regime and that the Security Council should consider taking action against any nation threatening to use nuclear weapons against a

non-nuclear-weapon NPT member. Although the first of these two parts would go a long way to address the concerns of many states that the United States and the other nuclear-weapon NPT members have weakened their NSA promises, the second statement would address the security of non-nuclear-weapon NPT members not aligned with any of the P-5.

In light of the Bush administration's insistence that the 1995 U.S. assurances, offered essentially to gain support for the indefinite extension of the NPT and recognized by the Security Council, are not legally binding on the United States, and that these assurances do not preclude the United States from preemptory attacks upon underground hiding places for biological or chemical weapons, the solemn declarations made by the United States and other P-5 members are now regarded as of little value by these non-nuclear-weapon NPT members. Unless a post-2008 U.S. administration wins back the confidence of these nonaligned states that U.S. nuclear policies are not aimed at them, any approach through the Security Council would be unappealing.

Another step would be to offer guarantees to countries in nuclear-weapon-free zones outside of Latin America. Other existing zones include Africa, Central Asia, the South Pacific, and Southeast Asia. The United States has not yet committed itself legally not to attack or threaten to attack with nuclear weapons members of these zones. This leaves many to believe that the United States is keeping the nuclear option open even for states that have, in addition to their NPT non-nuclear-weapon state obligations, declared that their own and their neighbors' territories must be free of nuclear weapons. A main driving force behind declaring these zones free of nuclear weapons is not to be threatened by states that have them.

Nuclear-weapon-free zones play an important role in strengthening the security of states that belong to such zones, but these zones remain complementary instruments to the global nuclear nonproliferation norm: the NPT. Pending the total elimination of nuclear weapons, only the NPT provides the framework for global assurances against the threat or use of nuclear weapons. Because amendment of the NPT is almost impossible, legally binding assurances could be more effectively addressed in a separate treaty or, better yet, a protocol to the existing NPT. Honoring only those assurances given to members of existing nuclear-weapon-free zones would exclude countries not covered by these zones or by other nuclear security arrangements.

A nuclear-weapon state could also provide unilateral security assurances to a non-nuclear-weapon state. This may be feasible in a few cases, but it could also send the wrong signal. North Korea has sought such a promise from the United States. If U.S.-North Korean negotiations produce such a promise, it should of course be conditioned on North Korea's observance of its commitment not to acquire nuclear weapons and to give up any that it now has. Such a promise, however, could send a dangerous message: the only way to extract assurances from the United States against the threat or use of nuclear weapons is to seek such weapons first. If other states, such as Iran, use similar nuclear brinkmanship, the nonproliferation regime could be blown apart.

Two other broader options could also be considered. One would be a new treaty containing promises by the P-5 not to use nuclear weapons against NPT-compliant non-nuclear-weapon members. Such a treaty has been proposed for negotiation at the Geneva-based Conference on Disarmament (CD). NPT outsiders India, Israel, and Pakistan, however, are active participants at this conference and would probably not agree to be excluded from the negotiations. At the same time, many non-nuclear-weapon states would be in principle opposed to accepting NSAs from these three nuclear-armed countries. In the eyes of NPT non-nuclear-weapon members, why should nonmember states with nuclear weapons gain the benefits of a nuclear nonuse promise? In addition, negotiating such a treaty in the CD would create yet another proliferation conundrum. Would Israel, which is a CD member, acknowledge its nuclear status and, as a result, be required to offer legally binding assurances to its Arab neighbors? Will its Arab neighbors accept Israel's status and its offer? The answer to both questions is likely to be no.

At the moment, the CD remains deadlocked over several issues, including whether to take up a Sri Lankan proposal that includes discussion of NSAs and possibly negotiation of such a treaty. The best option would probably be to negotiate a protocol to the NPT containing NSAs for all non-nuclear-weapon NPT members. The NAC submitted such a draft based on an earlier South African draft for consideration during the preparatory phase for the 2005 conference. The United States, however, categorically opposed it, and no serious negotiations on it resulted.



A protocol to the NPT has the advantage of limiting the recipients of the promise to non-nuclear-weapon NPT members and thereby providing a reward for joining and staying within the NPT. Surely, security assurances should only be available to states that have forgone the nuclear weapons option. Non-NPT states-parties and NPT states-parties aspiring to acquire or develop nuclear weapons in contravention of the treaty should not enjoy such security luxury. Security assurances granted only to non-nuclear-weapon states in full compliance with their NPT nonproliferation obligations will emphasize the basic principle that security is guaranteed by the NPT regime and not by nuclear weapons. This would strengthen the regime and confirm the validity of the NPT and its indefinite extension. Legally binding security assurances linked to the NPT would also build confidence among NPT state-parties, addressing concerns over possible scenarios in which some nuclear-weapon states may consider using these arms.

## Conclusion

Although it is too early to predict how the 2010 review conference will approach this thorny issue and what the outcome of the negotiations will be, a significant number of NPT delegations at the first PrepCom meeting for the 2010 conference, including the NAM,[\[12\]](#) the NAC, and close U.S. allies made specific proposals on security assurances.

The European Union, for instance, emphasized that both “positive and negative assurances can play an important role in the NPT regime and can serve as an incentive to forgo the acquisition” of weapons of mass destruction. The EU also committed itself to promote further consideration of security assurances. Italy called for additional efforts “to explore the possibility that existing security assurances may be complemented by a multilateral legally binding instrument.”

Canada argued that discussions of legally binding NSAs “would most logically take place in the context of the [NPT].” Canada also asked a number of pertinent questions, including whether the unilateral assurances made by the nuclear-weapon states in 1995 are still valid, given “new doctrines announced by some of them. If not, what if any assurances remain from these states?”

As a consequence of the emphasis placed on security assurances during the 2007 meeting of the PrepCom, the chairman stated in his summary of the deliberations that:

[s]tates parties noted that pending the elimination of nuclear weapons, the nuclear-weapon states should provide security assurances to the non-nuclear-weapon states that they would not use nuclear weapons against them. It was expressed that security assurances can play an important role in the NPT regime and can serve as an incentive to forgo the acquisition of weapons of mass destruction. It was emphasized that the need for NSAs, a key basis for the 1995 extension decision, remained essential and should be reaffirmed. Reaffirmations were expressed of commitments under Security Council Resolution 984 (1995).[\[13\]](#)

Although a number of delegations reacted to other parts of the chairman’s summary complaining that it incorrectly reflected the discussions at the meeting, especially in the case of Iran, no specific reference was made to these security assurances. It seems that the U.S. delegation either decided that there were bigger fish to fry (e.g., Iran’s nuclear program) or chose simply to ignore the issue.

If the United States and other nuclear-weapon states, perhaps with the exception of China, continue to ignore the long quest by responsible states not to be threatened by P-5 nuclear arsenals, then the outcome of the 2010 conference may be in jeopardy. Another failed conference would hold very negative consequences for the future of the NPT regime, especially if such failure is once again the result in part of the insistence by the United States to retain the right to use or threaten to use nuclear weapons against states not having them.

We urge the next U.S. administration to modify the adamant rejection of effective NSAs by the current administration. We believe that negotiating legally binding NSAs in the context of the NPT is the way to go.

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## ENDNOTES

1. See "Conclusion of Effective International Arrangements to Assure Non-nuclear-weapon States Against the Use or Threat of Use of Nuclear Weapons," UN General Assembly Resolution 61/57, October 23, 2006.
2. For a more detailed history of the 1960s-1990s negotiations concerning NSAs, see George Bunn, "Security Assurances to Non-Nuclear-Weapon States," *The Nonproliferation Review* (Fall 1994), pp. 11-18.
3. Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, which was signed by Vice President Hubert Humphrey in 1968 and ratified by President Richard Nixon in 1971.
4. See Leonard Spector and Aubrie Ohide, "Negative Security Assurances: Revisiting the Nuclear-Weapon-Free Zone Option," *Arms Control Today*, April 2005, pp. 13-19.
5. See Thomas Graham and Leonor Tomero, "Obligations for Us All: NATO and Negative Security Assurances," *Disarmament Diplomacy* (August 2000).
6. See Arms Control Association (ACA), "New Nuclear Policies, New Weapons, New Dangers," Issue Brief, April 2003.
7. Graham and Tomero, "Obligations for Us All."
8. The White House, National Security Strategy of the United States of America, September 2002, p.14.
9. The White House, National Strategy to Combat Weapons of Mass Destruction, December 2002. This is an unclassified version of a classified National Security Policy Document (NSPD), no. 17, issued earlier.
10. See ACA, "U.S. Nuclear Policy: 'Negative Security Assurances,'" Fact Sheet, March 2002.
11. See statement by Stephen G. Rademaker to the 2005 NPT review conference, available at <http://www.un.org/events/npt2005/statements/npt02usa.pdf>.
12. Working paper submitted by Cuba on behalf of the NAM at the 2007 PrepCom meeting for the 2010 NPT review conference, NPT/CONF/.2010/PCI/WP.10.
13. See summary statement by Yukiya Amano to the 2007 PrepCom meeting for the 2010 NPT review conference, available at <http://www.un.org/NPT2010>.

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