

# The Demise of Nuclear Negative Security Assurances

Paper by Jean du Preez<sup>1</sup> at the Article VI Forum  
September 28, 2006  
Ottawa, Canada

2005 marked a troika of critical nuclear anniversaries. Not only does 2005 mark 100 years since the publication of Albert Einstein's theory of relativity regarding convertibility of matter and energy, but commemorated as well was the grim 60-year anniversary of the conversion of fissionable matter into nuclear energy upon the unfortunate inhabitants of Hiroshima and Nagasaki. Rounding out this trinity is perhaps 2005's most significant nuclear anniversary: 60 years of nuclear non-use, a tradition McGeorge Bundy termed, fission's "most important single legacy."

Unfortunately, this non-use legacy is in jeopardy of soon becoming an ephemeral episode to the nuclear age. Indeed, a growing number of analysts now foresee an ominous not-too-distant future filled with dozens of newly nuclearized states, while others dramatically assert that the nuclear destruction of a major U.S. city by terrorists in the coming decade is "inevitable." What is not generally understood, however, is that threatening this legacy as well are the nuclear weapon doctrines of the United States itself.

Prior to the end of the Cold War, targets of U.S. nuclear weapons did not usually include non-NNWS not aligned with the Soviet Union or China. Yet since at least the early 1990s, the United States has developed nuclear policies that highlight the threat or use of nuclear weapons to deter the acquisition or use of chemical, biological, radiological, or nuclear weapons by NNWS and non-state actors. With regards to the latter, terrorist networks like al Qaeda are believed active in more than 60 different countries. Each one of those states, therefore, could theoretically fall within the crosshairs of U.S. nuclear targeting. In brief, the role of U.S. nuclear weapons has evolved from its broad Cold War mission of deterring "communist aggression" to a present-day policy of deterring, preempting, and punishing CBRN proliferators (not limited to users) and terrorists.

While such a posture will likely bestow nuclear weapons with a permanent status in the post-Cold War era, and while it likely hastens the day that nuclear weapons are once again used, it also exposes a "fundamental disharmony" in U.S. nuclear policy. For example, in 1995, hoping to bolster the nonproliferation regime by convincing NPT parties to extend the treaty indefinitely, the United States provided so-called "negative security assurances." In effect, these promises said that the United States would not use nuclear weapons against NNWS party to the NPT unless such a state attacked the U.S. with the support of a nuclear ally. Based largely on those ostensible assurances, and other promises made in the 1995 Principles and Objective for Nuclear Nonproliferation and Disarmament, the NNWS agreed to an indefinite extension of the NPT. Yet within months the Department of Defense updated sub-rosa plans that called for nuclear strikes

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on certain non-nuclear states *not* aligned with any nuclear power in response to assaults on U.S. interests employing chemical or biological weapons (CBW), and even in cases of overwhelming conventional assault.

In sum, the struggle for NSAs—especially with current developments—is a Sisyphean one. Twenty years followed the atomic bombings of Japan before Cold War rivals found mutual benefit in seriously negotiating a nuclear nonproliferation treaty. Even then, the relative interests of the super powers allowed for only UNSCR 255 (1968), which contained only positive security assurances and a treaty wholly devoid of negative security assurances. Still, qualified NSAs were first afforded to a NWFZ in the Treaty of Tlatelolco, and 10 years later, in 1978, the United States made qualified NSAs to the NNWS party to the NPT. In 1995, following unique assurances made to three former Soviet republics to convince them to return their large nuclear arsenal to Russian soil, all NPT NNWS were offered these more ecumenical NSAs. The United States added that states must be in compliance with their obligations to be eligible. UNSCR 984 acknowledged these pledges, and they were offered to the NNWS on the condition that they extend the duration of the NPT indefinitely.

However, in its classified and seminal 1995 study entitled, “Essentials of Post-Cold War Deterrence,” the U.S. STRATCOM took issue with the NSAs given at the NPT Review and Extension Conference. Conducted by STRATCOM’s Strategic Advisory Group, the study’s final report noted that:

It is easy to see the difficulty we have caused ourselves in putting forward declaratory policies such as the “Negative Security Assurances,” which were put forward to encourage nations to sign up for the Nonproliferation Treaty. It is a mistake to single out nuclear weapons from the remainder of other WMD without making the tie between damages (or potential damages) that the U.S. would find unacceptable from the threat or use of any of these weapons.

Expanding on the “mistake” of NSAs, the report foreshadowed what would become the current Bush administration’s policy of “preemption.” By 1996 it was clear that U.S. nuclear policy was poised to abandon completely its recent NSA pledges as it sought to embrace STRATCOM’s finding and recommendations. What finally made this development public was a US statement that the suspected CW production site in Libya (Tarhunah) could not be destroyed with conventional weapons but that, “by the end of the year, the United States would have a nuclear warhead based on the B61 that would be able to do the job.”

### **NSAs and the U.S. Nuclear Posture Following the Cold War**

Just as Cold War rivalries prevented the NPT from being seriously negotiated until the 1960s, so too has the nature of U.S. nuclear policy left treaty members without legally binding NSAs from the United States ever since. Because “nuclear policy is grounded in plans for the execution of war,” NSAs have had little effect on those tasked with the design and operational plans for the use of nuclear weapons. Indeed, regardless of declared U.S. policy, be it “massive retaliation,” “flexible response,” “nuclear war-fighting,” or “non-use against NNWS,” every administration since World War II “has sought to develop technologies and plans to make nuclear weapons usable for military objectives.”

The post-Cold War American pursuit of these “technologies and plans” can be explored as an interrelated triad. First is the function of the national weapons laboratories, specifically their

proposals to create new nuclear weapons with expanded missions. Second, is the critical role of the military, and its belief that the diminishing threat of Russia is being transposed by “a new series of threats on the horizon,” creating a nuclear targeting map consisting of “fewer but more widespread targets.” Third, are the pro-nuclear policymakers who have overseen and encouraged these developments in the hopes of strengthening deterrence by “holding at risk” those things most valued by America’s new enemies. Present at every level of the U.S. nuclear weapons establishment, led in part by STARTCOM, lays a pervasive belief that NSAs are a “mistake.”

In sum, the nuclear weapons establishment, led in part by STARTCOM, had now successfully attached the fear of CBW—and the concomitant nuclear targeting of NNWS—to all major unilateral nuclear policy doctrines of the Clinton years. As the 2000 election approached, it was clear that any hopes for a truly progressive reassessment of the U.S. nuclear posture following the Cold War had been lost. While the recommendations for new nuclear weapons were still being kept at bay by the Spratt-Furse Amendment, Clinton had approved the development of the B61-11 and its “bunker-busting” assignment.

It can be argued that, in many ways, the Bush White House simply took the nuclear postures of the Clinton era to their next “logical” level. However, what would make the Bush administration able to effect the most dramatic changes in U.S. nuclear policy since the 1940s is the *degree* and *atmosphere* in which it would carry on its predecessor’s policies. It would do this in two broad ways. First, not content with the “bunker-busting” capabilities of the B61-11, the Bush administration would pursue an ambitious program of new and modified nuclear weapons. This would include low-yield types, necessitating lawmakers to revoke the Spratt-Furse Amendment. Second, fully abandoning any Cold War concept of deterrence after the events of 9/11, the administration would make preventative war and regime change official U.S. doctrine; policies that would include an explicit threat of nuclear force on NNWS. In doing so, it would publicly repudiate the NSAs made in 1978 and 1995.

Two critical Bush-era documents, when taken together as a whole, reveal the latest and most extreme abrogation of NSAs to date. The pivotal 2001 DoD/DOE study, the “Defeat of Hard and Deeply Buried Targets,” and the 2001 Nuclear Posture Review rationalized and prioritized an entirely new nuclear weapons use plans for the United States. Former National Security Advisor Brzezinski has written that at only two other times in U.S. history have such historically significant military policy changes occurred. The first, he contends, was the debate that raged shortly after the Revolutionary War over congressional approval of a regular peacetime army. Second, was the three-decade debate over the U.S. military role in Europe, a debate that initially saw rejection of entry into the League of Nations but eventual congressional approval of the North Atlantic Treaty. Today’s debate is in essence one over how the United States will respond to the “inevitable diffusion and diversification of weapons of mass destruction, percolating global turbulence, and increased fear of terrorism.”

To date, it would appear that part of the United States’ response to such bleak developments lies with a renewed embrace of nuclear weapons. In a general sense, this is not a new development—throughout the Cold War the United States closely identified its existential security through its nuclear prowess. What has changed, dramatically so, is just what the United States expects from its nuclear arms. Building on momentum that began at least as far back as 1988, former presidential administrations championed the notion that the post-Cold War mission for nuclear weapons should be to combat the proliferation of CBRN. The Bush administration gladly embraced this makeover. However, galvanized by the events of 9/11, it crafted policies that not only viewed the threat of nuclear weapons as effective deterrents to the use of CBRN, but now foresees actual battlefield uses for nuclear weapons against NNWS as a component to the War on

Terror and policies emphasizing counterproliferation and “regime change.” This has triggered renewed urgency in the debate for legally binding NSAs.

### **Increase concern among NNWS**

The absence of legally binding NSAs has generated increased concern among many NNWS given new U.S. nuclear policies that include the potential use of nuclear weapons against NNWS. In recognition of this concern, the 2000 NPT Review Conference acknowledged that legally binding NSAs would strengthen the nonproliferation regime and called upon the PrepCom for the 2005 RevCon to make recommendations on this issue. Despite several proposals towards this end, no such recommendations were made. While there were several reasons why the 2005 RevCon failed to produce a final document, one of the leading reasons was a deep sense of disagreement over NSAs.

Despite expectations that the treaty’s extension would lead to legally binding NSAs, several draft protocols, and other efforts by non-aligned states, none have been forthcoming. Indeed, the 2005 Review Conference revealed that U.S. perceptions of the U.S. security environment post-September 11, 2001, obviated “any justification for expanding NSAs to encompass global-legally binding assurances.” (Quote taken from US working paper at the 2004 PrepCom) Thus, it would appear that the zenith of NSAs—vis-à-vis their ability to ensure genuinely nuclear non-use against NNWS—passed years ago. That is *if* NSAs can be said ever to have had the potential to restrain the United States from actually employing nuclear weapons on non-nuclear states. Such an assumption, explored next, is questionable at best.

The U.S. response to these efforts foreshadowed its position on NSAs at the 2005 RevCon. By asserting that “the very real nuclear threats from NPT violators and non-state actors” eclipses the “relevance of non-use assurances,” the United States tried to steer attention away from NSAs, placing the spotlight instead on the activities of Iran and North Korea. In doing so, the United States again tried to distance itself further from commitments undertaken in the Final Declaration of the 2000 RevCon, if not the package of decision taken at the 1995 Review and Extension Conference. The reaction by the U.S. delegation to the 2004 PrepCom Chairman’s Summary captures the U.S. position accurately: “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.’”

### **History of Negative Security Assurances**

States seek NSAs because earlier attempts to “ban the bomb” failed. As early as 1946, senior U.S. officials advanced an international agreement in which “no nation would be the legal owner of atomic weapons.” Largely because of growing Cold War tensions, these efforts failed, and by the fall of 1949 President Truman abandoned any hope for international control of atomic arms, embracing instead the belief that nuclear weapons “should form the backbone” of U.S. strategic planning. With the emergence of the North Atlantic Treaty Organisation (NATO) and the Warsaw Pact, an early form of security assurances did arise as these newly aligned countries availed themselves of the benefits of a nuclear “umbrella”—the extension of the super-power nuclear arsenal as a deterrent to others. But this arrangement left many so-called “non-aligned states” out in the cold, and they continually sought “a binding commitment from the weapons states that they would never use nuclear weapons against a country that did not have them.”

### ***The Nuclear Non-Proliferation Treaty and NSAs***

It was not until the mid-1960s that the non-aligned states would find a realistic venue from which to pursue such goals. Sobered by the French nuclear test of 1960, the Cuban Missile Crisis, alleged clandestine nuclear technology transfers to the Israelis, and the 1964 Chinese nuclear test, Soviets and American negotiators began to make headway on a treaty addressing the proliferation of nuclear weapons—the NPT. The non-aligned states, sensing that their security interests could be addressed in such a treaty, successfully backed UN General Assembly Resolution 2153, which called on the Eighteen-Nation Committee on Disarmament, the forum from which the NPT was being negotiated, “to consider urgently the proposal that the nuclear weapons powers should give an assurance that they will not use, or threaten to use, nuclear weapons against non-nuclear-weapon States without nuclear weapons on their territories.”

With West Germany’s nuclear status fully in mind, the Soviets were the first to act on this proposal. In 1966, Prime Minister Alexei Kosygin put forth a treaty clause “on the prohibition of the use of nuclear weapons against non-nuclear state parties to the treaty, which have no nuclear weapons in their territory.” Such a proposition—one that would have allowed Soviet nuclear targeting of West Germany unless the Americans withdrew their nuclear forces—was rejected by the United States. The following year, in a similar vein, the U.S. NPT negotiators privately asked their Soviet counterparts if they would be willing to accept NPT language (based on the Treaty of Tlatelolco, discussed below) pledging “not to use or threaten to use nuclear weapons against parties observing a treaty commitment not to acquire nuclear weapons.” Citing the presence of nuclear weapons in West Germany, the Soviets declined. Unable to reach a consensus that would have allowed for NSA language in the NPT, the NWS adopted the position that the pursuit of security assurances be addressed, “in the context of action relating to the United Nations, *outside* the non-proliferation Treaty itself but in close conjunction with it.” Consequently, the NPT opened for signature with a text devoid of nuclear non-use commitments. However, the NNWS were able to address their security considerations, in part by returning to the more idealistic “ban the bomb” language found in early Cold War proposals; Article VI of the NPT pledges the NWS to end the nuclear arms race and negotiate eventual total nuclear disarmament.

### ***United Nations Security Council Resolution 255***

Action taken “outside the non-proliferation Treaty” has come to mean, *inter alia*, resolutions by the UN Security Council. To date, two United Nations Security Council Resolutions have been issued vis-à-vis security assurances. The first came on June 19, 1968, when the Soviets, Americans, and British adopted UNSCR 255, which pledged that nuclear aggression against any NNWS party to the Treaty would require immediate action by the UN Security Council. This assurance—a so-called “positive security assurance” because it is a commitment to come to the assistance of an attacked victim—fell short of the expectations of the non-aligned states and their pursuit of NSAs. However, other promises of nuclear non-use, unrelated to the NPT or the Security Council, would lead the way for further action.

### ***Security Assurances and Nuclear-Weapons-Free Zone Treaties***

Nuclear-weapons-free zones (NWFZs) have made and continue to make important contributions to strengthen the international nuclear nonproliferation regime, and to support global efforts aimed at achieving the total elimination of nuclear weapons. The role of NWFZs to strengthen the security of the states that belong to such zones was recognized when the Treaty was drafted and was embedded in Article VII of the Treaty.

In addition to nuclear nonproliferation, disarmament, and the peaceful use of nuclear energy, negative security assurances constitute one of the main pillars of NWFZ treaties. NWFZs considerably strengthen and increase the obligations of NNWS to the NPT to refrain from acquiring nuclear weapons and to develop and use nuclear energy solely for peaceful purposes. By signing and ratifying the relevant protocols to these treaties, NWS in turn undertake legally binding commitments to respect the status of these zones and not to use or threaten to use nuclear weapons against states parties to such treaties.

Negative security assurances have been granted by the NWS to all the states in the NWFZ of Latin America and the Caribbean (Treaty of Tlatelolco) and the South Pacific (Treaty of Rarotonga) in terms of the respective protocols to those treaties. Additional Protocol II to the Tlatelolco Treaty (signed and ratified by all five NWS) calls on the NWS (1) to respect the denuclearized status of the zone; (2) not to contribute to acts involving violations of obligations of the parties; and (3) not to use or threaten to use nuclear weapons against the contracting parties. Protocol II of the Treaty of Rarotonga calls on the NWS not to use or threaten to use nuclear explosive devices against any party to the Treaty or against each others' territories located within the zone. China signed this protocol in 1967, the Soviet Union in 1986, while the other three NWS signed it in 1996 (after France has ceased nuclear weapon testing in the zone). All five NWS have since ratified the Protocol. Protocols containing security assurances by the NWS are also part of the NWFZ in South East Asia (Treaty of Bangkok) and in Africa (Pelindaba Treaty). The protocol to the Bangkok Treaty, also calls on the NWS not to use or threaten to use nuclear weapons against any party to the treaty or to use nuclear weapons within the zone (which appears to include large areas of international waters), but none of the NWS has yet signed the Protocol. The NWS are mainly concerned over the possible passage of nuclear-armed naval vessels through international waters covered by the zone. Consultations between ASEAN and the NWS are on going to resolve these concerns. Although all five NWS signed the security assurance protocol (Protocol I) to the Pelindaba Treaty, only China, France, and the United Kingdom have ratified it thereby committing themselves not to use or threaten to use a nuclear device against any party to the treaty or any territory within the zone for which a state party is internationally responsible. Russia has not ratified Protocol I in light of its apparent concerns over the status of the Indian Ocean island archipelago of Diego Garcia (controlled by the United Kingdom and believed to be used as a base for US nuclear weapons), while the United States argued that it maintains the right to use nuclear weapons in the case of the use of chemical weapons by an African state (supposedly referring to its concerns over states such as Libya). The recently signed Central Asian Nuclear-Weapon-Free Zone also requires the NWS to commit themselves not to use or threaten to use nuclear weapons against the five Central Asian parties to the treaty.

### ***Nuclear Weapon State Pledges and Security Council Resolutions***

Just prior to the 1995 NPT Review and Extension Conference, the five NWS made, and in some instances updated, unilateral pledges, thereby establishing criteria for the granting of negative and positive security assurances to NNWS. However, four out of the five NWS qualified their pledges not to use or threaten to use nuclear weapons against NNWS. Only China gave an unconditional assurance not to be "the first to use nuclear weapons against non-nuclear weapon States or nuclear-weapons-free zones at any time or under any circumstances" against NNWS of the NPT or NNWS that have entered into any comparable internationally recognized commitment not to manufacture or acquire nuclear explosive devices. France, the Russian Federation, the United Kingdom, and the United States issued similar statements, also reaffirming that they would not use nuclear weapons against NNWS parties to the NPT. But they qualified their assurances by

excluding cases of invasion or any other attack on their respective countries, territories, armed forces or other troops, or against their allies or a state toward which they have security commitments, carried out or sustained by such state in alliance or association with a NWS. Shortly before the 1995 Conference, these four NWS issued a similar joint declaration in the CD underlining the importance of their harmonized security assurances -- both positive and negative -- given to NNWS parties to the NPT. A further qualification in some of the unilateral declarations by the NWS, most notably those of the United States and the United Kingdom, was that those assurances were not regarded as applicable if any beneficiary is in material breach of its NPT nonproliferation obligations.

These pledges by the five NWS were formally acknowledged by the Security Council in Resolution 984 (1995) adopted just prior to the 1995 NPT Review and Extension Conference, marking the first real politically binding commitment on both "positive" and "negative" security assurances. This resolution, considered by many States as an effort by the NWS to secure support for the indefinite extension of the Treaty, went further in some aspects than Security Council Resolution 255 (1968). For the first time, the Council recognized the legitimate interest of NNWS parties to the NPT in receiving assurances that the Council, and in particular its permanent members, would act immediately in the event that NNWS became victims of an act of nuclear weapons aggression. In doing so, the Council called on United Nations members to respond to a request by a victim of a nuclear weapons attack and to provide technical, medical, scientific, or humanitarian assistance. In furtherance of the bargain embedded in the NPT, the Council also urged all states to pursue negotiations in good faith on effective measures relating to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control, thereby linking the need for security assurances with the provisions of Article VI of the Treaty.

Although these declarations were welcomed by a number of states, the majority of NNWS considered that in substance the updated security assurances had failed to address their main concerns. These concerns related to the fact that the NATO states and the Russian Federation kept the option of first use of nuclear weapons open as part of their doctrine of deterrence. Furthermore, some NNWS objected to the conditions attached, which exempted countries in nuclear alliances at the time of an attack, and which required agreement of the Security Council before action against a nuclear aggressor could be taken.

Shortly after the adoption of Security Council 984, the Group of 21 (NAM and associated members of the CD) issued a joint statement stating that the text of the NWS joint declaration did not take into account any of the formal objections by NNWS on the "restrictive, restrained, uncertain, conditional and discriminatory character of the guarantees already provided." China also responded by restating its assurance not to be the first to use nuclear weapons, and called for the early conclusion of an international convention on no-first use as well as for security assurances.

### ***Advisory Opinion of the International Court of Justice***

The International Court of Justice in 1996 rendered a historical Advisory Opinion on the "Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict" in response to General Assembly Resolution 49/75K. It concluded unanimously that the threat or use of force by means of nuclear weapons, that was contrary to Article 2, paragraph 4 of the United Nations Charter and did not meet the requirements of Article 51, was unlawful and that such threat or use of nuclear weapons should be compatible with international law applicable in armed conflict.

According to the Court's Opinion, the threat or use of nuclear weapons would generally be contrary to the principles and rules of humanitarian law. The Court could, however, not conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in extreme circumstance of self-defense, in which case the existence of a sovereign state would be at stake. Following the Court's opinion, the General Assembly adopted several resolutions with strong support by the majority of states. In doing so, the General Assembly recognized the need for a multilaterally negotiated and legally binding instrument to assure NNWS against the threat or use of nuclear weapons. The General Assembly also called upon all states to commence multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat, or use of nuclear weapons and providing for their elimination.

### ***The End of the Soviet Union and New NSAs***

As Belarus, Kazakhstan, and the Ukraine became independent states in 1991, there was considerable concern over the fate of Soviet nuclear weapons within their territories. In order to convince these “born nuclear” states to renounce their nuclear arsenals, transfer these weapons to the Russian Federation, and join the NPT as non-nuclear weapon states, new and more robust NSAs were negotiated in the multilateral form of so-called “Memorandums of Understanding.” The wording of these understandings closely paralleled the assurances given by the United States in 1978 by Secretary of State Vance. However, these assurances were unique in that they further narrowed the conditions under which NSAs could be nullified. Specifically, the understandings prohibited the use of nuclear weapons against these states if they attacked an NWS while allied with an NWS that was ignorant of, or did not support, the attack. In other words, if “Ukraine ultimately joined NATO and later attacked Russia without NATO involvement, Russia could not use nuclear weapons on Ukraine without violating the agreement.” Naturally these pledges led to further calls by other NNWS for more ecumenical and extensive NSAs.

### ***UNSCR 984 and the 1995 NPT Review and Extension Conference***

Indeed, the non-nuclear weapons states were in a strong position to bargain for stronger assurances at the 1995 Review and Extension Conference, where state parties met to determine whether or not to extend the treaty's duration. Acting just prior to the upcoming review conference, and hoping to ensure the NPT's indefinite extension, the NWS issued unilateral pledges that, in some cases, were updated. The United States, for its part, narrowed its 1978 qualifications by issuing a declaration that resembled those made to the “born nuclear” former Soviet Republics. However, the United States included a crucial qualifier to such assurances by adding that parties to the NPT *must be in compliance with their obligations under the treaty*, “in order to be eligible for any benefits of adherence to the Treaty.” Such a declaration was a significant expansion of U.S. exceptions to its 1978 NSAs (see Appendix 1).

Following these unilateral declarations, the UN Security Council issued its second resolution on security assurances. UNSCR 984 “took note with appreciation” the negative security assurances made by the NWS in their respective statements (thus, going beyond UNSCR 255, which had only acknowledged NWS *positive* security assurances).

### ***The 1995 Review and Extension Conference***

Subsequent to the unilateral NWS statements and UNSCR 984, the 1995 Review and Extension Conference convened. While recently made NSAs were repeated, the United States offered them in a zero-sum stratagem: They would be “available to non-nuclear NPT parties *only if they*

*extended the NPT* (author emphasis).” In other words, if the NPT were allowed to expire, any security assurances would also expire. Faced with such a prospect, the NNWS supported the treaty’s indefinite extension. The Principles and Objectives for Nuclear Non-Proliferation and Disarmament” addressed the issue of NSAs by stating “that further steps should be considered to assure non-nuclear-weapon States party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.”

### ***The 2000 Review Conference***

Acting on the 1995 conference’s suggestions regarding legally binding NSAs, South Africa, at the 1999 PrepCom to the 2000 RevCon, offered a proposal for a draft protocol to the NPT on the prohibition of the use or threat of use of nuclear weapons against NNWS parties to the treaty. The protocol—which was to be solely in the context of the NPT— was unique in several regards. First, it incorporated both the negative and positive security assurances that the NWS had given in UNSCR 984. Second, it identified who would be offering the assurances—the NWS—and who would be receiving the assurances—the NNWS. Third, it qualified the assurances with the same language the United States had with its unilateral 1995 Review and Extension Conference declaration by stating that, “The States receiving the security assurance provided for [shall be] in compliance with their obligations under Article II of the Treaty.” All together, the South African “Draft Protocol” was a paragon for a protocol to the NPT establishing legally binding NSAs.

Placing its hopes in the 2005 RevCon, the Final Document of the 2000 conference put forth that, “The conference agrees that legally binding security assurances by the five [NWS] strengthen the nuclear non-proliferation regime. The conference calls upon the [PrepCom] to make recommendations to the 2005 Review Conference on this issue.”

### ***2005 Review Conference***

Despite the 2000 RevCon’s request, no formal NSA recommendations were recognized by the PrepCom. At the 2002 PrepCom, the Chairman’s Summary noted that NSAs were a “key basis for the 1995 extension decision” and “should be pursued as a matter of priority,” and that, “a view was held that the issue of security assurances [was] linked with the fulfillment of the Treaty obligations.” The 2003 PrepCom saw the New Agenda Coalition (NAC) submit a working paper that included a draft protocol on security assurances to be added to the NPT that mirrored the 1999 South African Draft Protocol.

The Chairman’s Summary of the 2003 PrepCom reflected in part the belief that “security doctrines have included the potential use of nuclear weapons.” In this light, Iran submitted a working paper on NSAs as well. Focusing on the “new doctrine of a certain nuclear state,” the Iranian paper called for new NWS statements reaffirming their 1995 commitments, a new UN Security Council resolution “underlying unqualified security assurances,” and the establishment of an ad hoc committee in the CD to negotiate “unconditional” and “legally binding” security assurances.

Concerns over NSAs by the NAC, the NAM, the United States and others reached an ominous crescendo at the 2004 PrepCom and the 2005 RevCon. The NAC called upon the NWS “to respect fully their existing commitments with regard to security assurances pending the conclusion of multilaterally negotiated legally binding security assurances for all non-nuclear-weapon States Parties.” Such assurances could either be in the format of a separate agreement reached in the context of the NPT, or as a protocol to the treaty. So, too, South Africa once again called for legally binding NSAs. The NAM proposed a negotiating mechanism for NSAs within

the NPT context by calling for the establishment of a subsidiary body to Main Committee I of the 2005 RevCon on the issue of security assurances. Iran again reminded the PrepCom that the development of “mini-nukes” and the nuclear targeting of NNWS (discussed below) “would be in contradiction” to the 1995 U.S. unilateral statements and UNSCR 984. While a subsidiary body to Main Committee I was established at the 2005 RevCon, it did not focus exclusively on NSA, since it also dealt with nuclear disarmament. Despite valiant efforts by the chair of the subsidiary body and the Chair of the Main Committee no consensus could be reached on the contents of the report. The chairman’s reports, attached to the report of the Main Committee, does offer some guidance on how the NSA issue might be dealt with in the run-up to the 2010 RevCon.

The developments at the final PrepCom for the 2005 Review Conference foreshadowed what would become a lost opportunity to address the issue of NSA once and for all. Since the last Review Conference did not produce a final document, or any agreed indication of how important issues will be dealt with in preparation for the 2010 conference, one can only but speculate whether any progress on NSA would be possible by the time the parties meeting again to review the treaty.

### **Conclusion: The Future of NSAs**

Currently, there is little left of NSAs to dismantle. In February 2002 the current administration made it clear that it no longer felt bound by *any* pledges and, subsequently, noted it that there is no “justification” for legally binding assurances. Thus, the United States “has clearly decided to walk away from the concept of NSAs that have for more than 30 years been central to the deal embodied in the NPT.”

These grim NSA policy reversals, however, pose a quandary for U.S. policymakers. For if the United States has any hope of irreversibly dismantling North Korea’s nuclear program, if it desires to truly forestall Iranian nuclear aspirations, and if it expects to avoid a nuclear “tipping point” that ushers in dozens of new nuclear states, it will need to shed much of its unilateralism and work to improve the health of the international nonproliferation regime. Because of its unique global security role after the end of the Cold War, it is reasonable that the United States seeks, “more security for itself than most other nations require.” Unfortunately, the United States has concluded that this security is best attained through a capability and commitment to employ nuclear weapons on NNWS. What this unilateral approach guarantees is not more security but less. As states deal with their own security considerations they will determine, as North Korea seemed to have done, that those needs are best actualized by having nuclear weapons of their own.

The acrimonious debate over NSAs was among the leading reasons for the failed 2005 Review Conference, in large part due to strong U.S. opposition to even discuss the issue of NSAs. Ironically, at a time when many NPT state parties and allies of the United States are increasingly concerned about attempts by the Bush administration to continue its research and possible development of new types of nuclear, the U.S. position as stated at the 2004 PrepCom and reiterated in 2005, emphasized, that “the end of the Cold War has further lessened the relevance of non-use assurances from the P-5 to the security of NPT NNWS, particularly when measured against the very real nuclear threats from NPT violators and non-state actors” and that “legally binding assurance sought by the majority of states “has no relation to contemporary threats to the NPT.” What the United States does not recognize by this statement is that the “very real threats” to its security are in part generated by its own nuclear weapon policies.

Despite the fact that the 2005 RevCon could not adopt a final document containing some form of agreement on the future of NSAs, the need for legally binding security assurances will continue to be—as it had been in 1970—central to the security of NNWS. The challenge to these states, in particular to the strongest proponents—the NAM—would be how to initiate tactics in preparation for the 2010 conference to ensure that past agreements recognizing the relevance of legally binding negative security assurances are not undermined.

It is against this backdrop that the NPT state parties need to consider how to address the legitimate security requirement of NNWS that have forgone the nuclear weapons option in good faith and that have remained in full compliance with their treaty obligations. To this end, the pursuit of legally binding NSAs could take one of five forms:

- A draft protocol to the NPT could be proposed, as was done by the NAC. It is, however, highly doubtful that such a protocol, at least in the near future, would be enacted.
- Another resolution, similar to Resolution 984 (1995) could be a way for the NWS to address the concerns of the NNWS. It is doubtful, however, that the UNSC could agree on any NSA that went beyond the Resolution 984. It is furthermore likely that the NAM and other NNWS will reject another UNSC resolution as yet another ploy by the NWS to preempt any progress on NSAs within the NPT context.
- A treaty emanating from the CD could be an option. Several proponents of NSAs have already opposed this idea given the implications of India's, Pakistan's, and Israel's involvement—both in receiving and potentially offering NSAs. Noteworthy is also an apparent shift in the NAM's position as a result of the recent Havana Summit where the Heads of States “noted the establishment in 1998 of an Ad Hoc Committee on effective international arrangements to assure Non-nuclear-weapons States against the use or threat of use of nuclear weapons in the Conference on Disarmament to negotiate universal, unconditional and legally binding security assurances to all non-NWS.” As opposed to previous NAM documents, no clear reference was made to the need to negotiate this treaty in the context of the NPT
- NSAs could be considered in the context of NWFZs. The United States, in particular, has stressed that NSAs issued in accordance with NWFZs would be the only acceptable approach. However, in addition to their nonuniversal essence, NWFZs are a poor instrument for insuring NSAs. The primary undertakings by NNWS not to aspire to nuclear weapons have been made under the NPT. The NPT is the only treaty adhered to by almost all states thereby establishing a global norm. Although NWFZ play an important role in strengthening the security of states that belong to such zones, these zones remain complementary instruments to the NPT. Pending the total elimination of nuclear weapons, only the NPT can provide security against the threat or use of nuclear weapons against NNWS parties to the Treaty.
- Unilateral security assurances are the most likely way states will give and receive assurances in the near future but also represent the worst possible manner in which to handle the issue of security assurances.

Regardless of how legally NSAs are to be formulated, it is important to recognize that such assurances offered within the context of the NPT, as opposed to another forum, would provide a significant benefit to NPT parties and would serve as an incentive to those who remained outside the treaty, or those who may consider leaving the regime. As such, security assurances should be granted only to states that have forgone the nuclear weapons option and not to those who are still keeping their options open. They should therefore not be applicable to non-NPT parties who are aspiring to acquire or develop nuclear weapons in contravention of the treaty. Security assurances granted to NNWS inside the treaty will emphasize the basic principle that security is guaranteed

by the nuclear nonproliferation 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 build confidence among NPT state parties, addressing concerns over possible scenarios in which some NWS may consider using nuclear weapons. It would also provide incentives to states outside the NPT. The types and application of such assurances will also need to be taken into account. While all NNWS to the NPT should be potential beneficiaries of negative security assurances, such assurances would only be applied to NPT states that are in full compliance with their treaty obligations and could in certain circumstances be qualified. Moreover, consideration could be given to extending negative security assurances only to those states that are in good standing with all their nonproliferation and disarmament obligations—that is, with no intentions to pursue any type of WMD or related delivery system.

Ironically, the North Korean crisis has provided new fodder for the debate over negative security assurances. All signs indicate that the Bush administration, as it seeks a solution of the Korean crisis, has offered the North Korea NSAs in exchange for that state's de-nuclearization. A similar offering may in fact also be considered with regards to Iran.

Offering a nuclear nonaggression pact as a reward to a state that has been in noncompliance all along could cause serious political problems and further jeopardize the long-aspired goal of non-nuclear weapon states that are in good standing. Many NNWS will almost certainly object that security assurances rightfully belong to those who have given up the nuclear weapon option—as opposed to those who are still keeping their options open. Many states have already pointed out that by giving NSAs to a state that currently possesses nuclear weapons, the United States would signal to would-be proliferators that the way to extract assurances against the threat or use of nuclear weapons is to threaten to use or develop nuclear weapons of their own.

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