

# Security Assurances to Non-Nuclear-Weapon States

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## Introduction

Since the first attempts to negotiate the Treaty on the Nonproliferation of Nuclear Weapons (NPT), security assurances to non-nuclear-weapon states (NNWSs) have been considered an important component of a credible world-wide nuclear nonproliferation regime. They have been viewed by NNWSs as one of their major requirements for achieving an adequate balance between their obligations and those of nuclear weapon states (NWSs). Put simply, the NNWS proposal to NWSs has always been: "If we agree not to get nuclear weapons, will you agree not to attack or threaten us with them and to come to our aid if someone else does so?"

When put this way, the reasonableness of the NNWSs' proposal seems evident. For various reasons, however, their proposal has never been fully accepted by the NWSs. UN Security Council Resolution 255 (1968) on "positive" security assurances,<sup>1</sup> adopted at the time the General Assembly gave its endorsement to the NPT, dealt only with their desire for assistance from NWSs in the event they were threatened with nuclear attack. Ever since, they have asked NWSs to strengthen this positive assurance and to promise, in addition, not to threaten or attack them with nuclear weapons (negative assurances).<sup>2</sup>

Under the provisions of the NPT, a conference of the parties shall be convened in 1995 to decide whether the treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. Preparation for the conference has already begun, with the first Preparatory Committee of the conference held in May, 1993. Governments of the NPT parties are starting to prepare position papers on the major issues facing the 1995

conference, which will in fact determine the future fate of the NPT. Since the problem of security assurances to non-nuclear-weapon states is likely to be one of the most contentious issues, and since the solution of this issue may determine the duration of the treaty extension, we have decided to take a close look at this issue and offer some suggestions as to how it might be resolved.

This paper looks back to the origins of the problem, and looks ahead to potential solutions in light of the changing global political environment. The paper also addresses the question of international machinery for backing up security assurances and how to enhance the authority, credibility and reliability of that machinery.

## Historical Background

From the early stages of the negotiation of the NPT, non-aligned members of the multilateral Geneva disarmament conference (then eight countries: Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden, and the United Arab Republic) sought security assurances from NWSs in return for their acceptance of non-nuclear status. They sponsored UN General Assembly resolution 2028 (XX) adopted without dissent on November 23, 1965. The resolution established the "main principles" for the NPT including a requirement that "the treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear powers."<sup>3</sup> To help satisfy this principle, the eight non-aligned participants in the Geneva conference jointly proposed that security assurances be incorporated into the NPT as a NWS obligation or adopted by NWSs as a separate declaration.<sup>4</sup>

A major proponent of security assurances among the eight non-aligned countries was India. Its concerns focused on China which had invaded India in 1962 and had become the fifth NWS two years later. In early 1968 the Indian government sent a high-level delegation to the capitals of NWSs to seek explicit positive security guarantees from them in case of a Chinese nuclear threat. The negative response by the NWSs was one of the reasons India chose not to sign the NPT.

Germany and Italy were also interested in security assurances. US alliance commitments to them and to Japan were essential to gain their acceptance of non-nuclear-weapon status in the NPT. In return for refraining from acquiring nuclear weapons, these three countries--each advanced in nuclear technology--relied upon a promise of assistance from a nuclear-weapon power, the United States, in the event of nuclear blackmail or attack by another nuclear-weapon power, the Soviet Union. Similar arrangements existed between the Soviet Union and its allies.

Arguing that they had no guarantee that NATO with its nuclear umbrella would exist indefinitely, Germany and Italy worked to change the NPT duration proposed by the US and the Soviet Union from unlimited to a shorter period that they thought would be more commensurate with the likely duration of NATO.<sup>5</sup> They wanted the protection of NATO as long as they were obligated not to acquire nuclear weapons.

In UN Security Council Resolution 255 (1968), the three NWSs planning to join the NPT gave as much as they were then prepared to give in positive security assurances to the NNWSs. The resolution stated that "aggression" with nuclear weapons against a NNWS, or the threat of it, would create a situation in which the Security Council and "above all its nuclear-weapon state permanent members, would have to act immediately in accordance with their obligations under the United Nations Charter." (The permanent members then having nuclear weapons included Britain, France, the Soviet Union, and the United States. Taiwan held the Chinese seat. France did not then plan to join the NPT and it abstained on the resolution.) The resolution welcomed the declarations by Britain, the Soviet Union and the United States "that they will provide or support immediate assistance, in accordance with the Charter" to any NNWS that became an NPT party and that was "a victim of an act or an object of a threat of aggression in which nuclear weapons are used." The declarations by Britain, the Soviet Union and the United States were read to

the Security Council before the resolution was adopted. Each said that the declarant would "seek immediate Security Council action to provide assistance, in accordance with the Charter" to any NPT party that was a victim of such an attack or threat. They also reaffirmed the right of collective self-defense in the event of a nuclear attack against a UN member until the Security Council had taken the necessary measures to maintain international peace and security.<sup>6</sup> The declarations contained no negative assurances.

The promise by these three NWS permanent members (without opposition from the fourth) to convene the Security Council immediately in the event of a nuclear threat implied a concern about the only other then known NWS, China. The hostility of China to the NPT at that time raised questions about the effectiveness of the whole effort to prevent proliferation. Moreover, given the many vetoes during the Cold War, a veto could be expected if a proposal for Security Council action against a nuclear threat by any of the four existing NWS permanent members of the Council was ever brought to a vote. (None ever was.) Security Council action was thus unlikely against any nuclear-weapon power but China before it took its seat on the Council--and, eventually, against some new nuclear-weapon power. The Security Council resolution never fully satisfied the NNWSs--though most of them joined the NPT anyway.

There was even less agreement on negative security guarantees. During the NPT's negotiation, non-aligned countries sought from NWSs a pledge not to use or threaten to use nuclear weapons against a non-nuclear-weapon signer of the NPT. The United States and the Soviet Union were unable, however, at the time of the Cold War to agree on language for negative security assurances because of different nuclear doctrines and security interests involved.

Soviet Prime-Minister Alexei Kosygin proposed in 1966 to include in the NPT a "clause on the prohibition of the use of nuclear weapons against non-nuclear states parties to the treaty, which have no nuclear weapons in their territory."<sup>7</sup> This proposal was aimed in particular at the Federal Republic of Germany; it left the Soviet Union free to threaten nuclear weapons against it even if Germany joined the NPT unless US nuclear weapons were removed from its territory. The Soviet proposal was opposed by the United States.<sup>8</sup>

The United States did agree with Latin American countries "not to use or threaten to use nuclear weapons" against parties to a Latin American nuclear-free-zone treaty. But

the United States was reluctant to make such a treaty promise to Warsaw Pact allies of the Soviet Union who signed the NPT because of NATO's "flexible response" strategy permitting the first use of nuclear weapons against an overwhelming conventional attack by Warsaw Pact countries. The US worry about the need for first use of nuclear weapons was even applied to a limited extent to Latin America through a US understanding that it could be relieved of its obligation there "not to use or threaten to use" nuclear weapons if a Latin American party engaged in "an armed attack...in which it was assisted by a nuclear-weapon state [read the Soviet Union]..."<sup>9</sup> Even when the US Geneva delegation was able to overcome the governmental worry about Europe momentarily, for the purpose of proposing "not to use or threaten to use" with this added understanding, they found that their idea did not go far enough toward the Kosygin proposal to satisfy the Soviet Union.<sup>10</sup> Thus, despite proposals on both sides, there was no agreement on negative assurances either in the context of the NPT negotiation or for what became UN Security Council Resolution 255.

Since then, all the NWSs have made unilateral statements that they would not use nuclear weapons first, though several of these had major exceptions and none constituted a legal obligation. In 1978, and repeatedly since then, the United States has said it "will not use nuclear weapons against any non-nuclear-weapon state party to the NPT or any comparable internationally binding commitment not to acquire nuclear explosive devices, except in the case of an attack on the United States, its territories or armed forces, or its allies, by any state allied to a nuclear-weapon state or associated with a nuclear-weapon state in carrying out or sustaining the attack."<sup>11</sup>

In 1978, the Soviet Union repeated its Kosygin formula saying that it "will never use nuclear weapons against those States which renounce the production and acquisition of such weapons and do not have them on their territories." The other NWSs have all made non-use statements also, though their terms and qualifications vary considerably.<sup>12</sup>

Since 1968, both the negative- and positive-assurance issues have been raised repeatedly by Nigeria, Egypt and other NNWSs who support the NPT but want to receive stronger security assurances in return for continuing to adhere to the NPT and for subscribing to its long-term extension. They point to the unreasonableness of the NWS demand that they and others forswear nuclear weapons indefinitely while the nuclear-weapon states are unwilling even to promise not to use nuclear weapons against them.

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At the 1990 NPT Review Conference, Nigeria proposed to conclude an agreement on the prohibition of the use or threat of use of nuclear weapons against NNWS's parties to the NPT which leaned towards the Soviet formula of "negative" assurances.<sup>13</sup> To the same conference Egypt submitted a working paper which asked the conference to call on the UN Security Council to adopt a new resolution which "should include credible assurances beyond what Security Council resolution 255 of 1968 provided for," and in particular, "a clear indication of the mandatory action to be adopted by the nuclear-weapon states and the Security Council to redress a situation where a non-nuclear-weapon state party to the treaty is the object of a nuclear attack or threat of attack"; "the obligation to pay reparation or compensation to the victim;" and "the obligation by states to provide immediate assistance to the victim." The Egyptian proposal also sought a commitment by NWSs on negative security assurances to all parties to the NPT.<sup>14</sup>

For over a decade, the multilateral Geneva disarmament conference has attempted to find a common formula on negative security assurances. Those supporting the NPT wanted assurances to be given primarily to countries observing that treaty or a similar obligation such as a nuclear-weapon-free-zone treaty. Some of those who are not NPT parties and have not otherwise forsworn nuclear weapons (Pakistan, for instance) objected to such a limitation. A variety of other differences of view have been raised. The United States and Britain have been reluctant negotiators in these talks though not entirely opposed to any form of negative assurances. The Soviet Union--succeeded by Russia--has been more supportive of negative security assurances but until very recently it continued to stick to its 1966 Kosygin formula.

The UN General Assembly has considered the issue repeatedly at its regular sessions, based on annual reports from the Geneva conference. The Assembly has typically recommended that the conference intensify its efforts to achieve an agreement.

### **Present Status of Security Assurances**

The situation at present with regard to NWS security assurances to NNWSs is mixed. UN Security Council resolution 255 (1968) on positive assurances is still supported explicitly by only three of the five permanent members, Britain, Russia and the United States --the ones who joined the NPT in 1968. Since then,

however, China has taken its place on the Council and both China and France have become parties to the NPT.

As for negative assurances, all five avowed NWSs have made at least qualified unilateral declarations applicable globally, but these declarations contain different commitments and do not constitute the collective, uniform, binding obligation sought by NNWSs. The only common obligation all five have agreed on is in a 1967 Additional Protocol II to the Latin American nuclear-free-zone treaty: "not to use or threaten to use" nuclear weapons against parties to that treaty. This pledge (which is geographically limited) was made to countries that, by joining the Latin American treaty, had agreed both to forswear nuclear weapons themselves and to prevent the deployment of nuclear weapons belonging to others on their territories. The NPT does not contain the second of these obligations. Indeed, as was mentioned above, the Soviet Union refused to agree to an assurance of the Latin American sort for the Germans, among others, because Germany had American nuclear weapons on its soil. However, in accepting the Latin American treaty, each of the five formulated its own understanding of the assurance commitment.<sup>15</sup>

Security assurances may be expected to be one of the most important issues at the 1995 NPT review and extension conference. This is evident from the preceding history. Moreover, at the last Summit Conference of the Non-Alignment Movement, held in Jakarta from 1 to 6 September, 1992, non-aligned leaders expressed concern over the failure of NWSs to provide "credible security assurances...to all non-nuclear-weapon states," and called on the multilateral Geneva disarmament conference to reach an agreement on an international convention to assure NNWSs against the use or threat of use of nuclear weapons.<sup>16</sup> (Note that, like the Nigerian and Egyptian proposals to the Geneva conference, the non-aligned here call for a legally-binding treaty, not just unilateral declarations or a Security Council resolution like those of 1968.)

At the initiative of NNWSs, the UN General Assembly urged agreement on negative assurances at its 1992 regular session. It reaffirmed "the urgent need to reach an early agreement on effective international arrangements to assure non-nuclear-weapon states against the use or threat of use of nuclear weapons" and recommended that the Geneva conference "actively continue intensive negotiations."<sup>17</sup>

As the 1995 NPT conference approaches, NNWSs will have more powerful leverage on the NWSs because they

can refuse to vote for a lengthy extension of the NPT without more effective security assurances.

### **Post-Cold War Situation**

With the end of the Cold War and the dissolution of the Soviet Union and the Warsaw Pact, the qualifications of both the NATO countries and of the Soviet Union (now Russia) contained in their respective security assurances formulae seem equally outdated. NATO's post-Cold War strategy reflects "a reduced reliance on nuclear weapons," and the bulk of the US nuclear weapons deployed on the territories of non-nuclear-weapon NATO allies such as Germany have been removed.<sup>18</sup> This seems also to be true for successor states of the former Soviet Union except for the strategic weapons that had belonged to the Soviet Union but were in Belarus, Kazakhstan and Ukraine when the Union dissolved. Russia no longer has reason to be concerned about American nuclear weapons in Germany. It is quickly withdrawing all its conventional forces from Germany and East European countries, and Ukraine, Belarus, Lithuania, Latvia and Estonia have all become independent states with their own armies. In the context of gaining a lengthy extension of the NPT in 1995, a further step toward a no-first-use strategy and adoption of collective security assurance formula by US, Russia and other NWSs states may now be possible.

With the dramatic change in the global strategic situation and the imminent withdrawal of the Russian conventional forces from Germany and Eastern Europe, an increasing number of analysts are prepared to agree that the only purpose of nuclear weapons is to deter and respond to the first use of nuclear weapons by others. The US National Academy of Sciences' Committee on International Security and Arms Control, for example, has recommended that the United States and other nuclear-weapon states issue parallel declarations to this effect and, in addition, promise not to use or threaten to use nuclear weapons against non-nuclear-weapon states.<sup>19</sup>

While some still argue that the United States must retain the ability to use nuclear weapons first against non-nuclear-weapon countries in regional conflicts,<sup>20</sup> the United States did not do so in Korea or Viet Nam when its forces were being beaten back. The chances that it would do so in the future are slim given the successes of its high-tech conventional forces in the Gulf War and the stimulation to nuclear ambitions around the world that a US first use of nuclear weapons--even just a strategy of first-use--could

produce. Moreover, the devastating loss of life that could follow implementation of such a strategy makes it morally and politically unacceptable.<sup>21</sup> It would work at cross purposes to the need to gain a broad-based political consensus to extend the NPT indefinitely. In our view, to convince other countries that they do not need nuclear weapons, the United States, Russia and other NWSs must demonstrate by their conduct that such weapons are not the most important protectors of their own security.

There have been other new developments that relate to security assurances. China and France have become NPT members. Now all of the permanent members of the UN Security Council are also nuclear-weapon parties to the NPT. Though the new NPT parties have given unilateral negative security assurances to NNWSs, neither of them have made any commitments on positive assurances. Now France and China will have to formulate their position since they will face this issue at the 1995 NPT Conference.

Former Soviet republics Kazakhstan and Ukraine at first demanded alliance-type arrangements with the United States as part of the price of giving up nuclear weapons which had belonged to the Soviet Union but were deployed on their territories when the Union dissolved. Secretary Baker's reply to them in April 1992 was to refer to the 1968 Security Council resolution adopted when the NPT negotiation was completed: "The United States made a commitment [in 1968] to the effect generally that countries that subscribe to the NPT that were subjected to nuclear threats would have a friend in court, if you will, in the United States in the sense that we would bring the issue to the United Nations Security Council."<sup>22</sup>

The heads of government for Kazakhstan and Ukraine (as well as Belarus) agreed in May 1992 to join the NPT as non-nuclear-weapon states and to do their part in implementing the Soviet obligations in the START treaty.<sup>23</sup>

Belarus acceded to the NPT in July 1993, and the Belarus parliament agreed to implement START in February 1993. The Kazakh parliament did approve START but its implementation is not required of Kazakhstan (or Russia or the United States, for that matter) until Ukraine ratifies it. That may require, among other things, a positive move by US and Russia on security assurances.

It appears that both Ukraine and Kazakhstan might now be willing to accept less than alliance-type arrangements. Ukraine's demands, however, would be difficult to meet. For example, Ukrainian Ambassador to the United States Oleh Bilorus formulated them in this way: Kiev seeks

"security assurances from the nuclear powers, primarily Russia and the US. We want a guarantee that the powers will never use nuclear weapons against Ukraine, never resort to conventional force or the threat of force, will abstain from economic pressure in a controversy and respect our territorial integrity and the inviolability of borders."<sup>24</sup>

In January 1993 Ukraine sent to Washington a high-level delegation headed by Deputy Foreign Minister Boris Tarasyuk who, according to media reports, sought a declaration by heads of state, "if not of all nuclear states, than the most important ones," on security assurances. "If this is subsequently confirmed by the UN Security Council, he said, we have no objections." Talks on security assurances have been also held between Ukrainian and Russian representatives. Clearly, extending security assurances to Ukraine and Kazakhstan by US, Russia and by other NWSs is essential if they are to accede to the NPT.

The Russian Federation recently offered to Ukraine the following formula:

The Russian Federation will not use nuclear weapons against any non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons, except in the case of an attack on it, its territory or armed forces, or its allies, by such a state allied to a nuclear-weapon state by an alliance agreement or acting jointly with a nuclear-weapon state in carrying out or sustaining the attack.

The statement follows almost literally the US formula of 1978, with one exception: security assurances are offered only to NPT parties while the US has been willing to give assurances also to NNWSs party to "any comparable internationally binding commitment not to acquire nuclear explosive devices." The reason for this "omission" is obvious: Russia wants Ukraine's accession to NPT, and nothing short of it. The most important change in the Russian position is striking indeed: Russia no longer insists on the previous requirement that a NNWS willing to receive security assurances should not accept US nuclear weapons on its territory, a requirement that the Soviet Union consistently upheld during the Cold War. The adoption by Russia of the US formula may have been prompted by perceived Russian concerns that Ukraine was willing to get a US nuclear umbrella or even join NATO.

It is significant, however, that in presenting the above formula to the Conference on Disarmament the Russian delegation assured the CD of its desire to contribute to "the search for a mutually acceptable formula of assurances."

## **International Machinery to Back Up Assurances**

It appears from deliberations held in the UN and at the multilateral Geneva disarmament conference that non-nuclear-weapon states would prefer a treaty-type international instrument on negative security assurances. They seem to be ready, however, to accept positive assurances issued by NWSs in a declaratory form and supported by an appropriate international mechanism--the UN Security Council--as in 1968.

But the protection afforded then by the Security Council action did not satisfy NNWSs. There were recurrent demands by them for Security Council action of a more "mandatory" nature. However, the credibility of Security Council action against a serious threat to international peace and security has increased in the post-Cold War era, especially after the Gulf crisis, but still not sufficiently, as evidenced by its inability to deal effectively with the armed conflict in the former Yugoslavia. But overall, today there is a better opportunity for the involvement of the Security Council in providing credible security assurances to non-nuclear-weapon states.

The United Nations has now been liberated from the chains of ideological confrontation, and its security arm, once disabled by circumstances it was not created or equipped to control, is emerging as an effective central instrument for the prevention and resolution of conflicts and for the preservation of peace. It may be necessary to reform its composition, to make it more representative of the realities of today's world, by including new permanent members--Germany, India, Japan and, perhaps, one representative each from Africa and South America, without the right of veto. The number of those that presently hold veto power--the five victors of World War II and founders of the UN, who also happen to be the five that manufactured and exploded nuclear weapons and are now accepted by the world as nuclear-weapon states--should not, however, be increased. Any action taken by the Security Council against them could lead to consequences hazardous to the survival of mankind. But in order to improve the Council's chances of avoiding veto, the five should pledge to refrain from exercising their power except as a last resort, the practice they have been following since May 1990.<sup>25</sup>

Ukraine and Kazakhstan may fear a nuclear-armed Russia or China, each of which could veto a UN Security Council action. Though the Council has been operating effectively for several years without veto on a wide variety of projects

to keep the peace, to oversee settlement of regional disputes and to counter aggression, a veto cannot be excluded. Thus, a strong joint declaration of the five permanent members, a stronger resolution by the Council, and the suggestion of individual or joint nuclear-weapon-state action if there is a veto, would be useful to increase the credibility of positive assurances for NNWSs.

In a September 1992 address to the UN General Assembly, President Bush suggested that the Security Council, including of course China and France, simply reaffirm the "assurances made at the time that the Nuclear Nonproliferation Treaty was negotiated."<sup>26</sup> But the time is ripe for more than that. Given China's hostility toward the NPT at the time the 1968 UN Security Council resolution was adopted, its desire to be in on the beginning of new arms control enterprises undertaken with the West, yet its anger at the proposed sale of US F-16 fighter aircraft to Taiwan, an exploration should be made of China's interest in a resolution and declaration dealing with positive assurances.

China has long advocated a no-first-use strategy with fewer qualifications than any other avowed nuclear-weapon state. The Soviet Union was also favoring a no-first-use option and Russia reaffirmed it in December 1991 at the time of the dissolution of the Soviet Union.<sup>27</sup>

Including a prohibition on use against all countries that have forsworn nuclear weapons could make a new resolution attractive to China. China must be an essential part of the negotiation if the Security Council is to be the international machinery to deal with nuclear blackmail against NPT parties not aligned with a nuclear-weapon country--as planned since 1968. China will inevitably be part of the negotiation with the non-nuclear-weapon NPT parties to extend the treaty in 1995. What makes sense is to have a meeting of all avowed nuclear-weapon countries including China in order to plan for a new resolution, a five-power declaration and for other steps needed to plan for the 1995 NPT extension conference.

In our view, positive assurances can only be dealt with by a Security Council resolution. The alternative is to seek treaty obligations for NWSs to come to the aid of any of the 155 or more NNWS NPT parties if attacked by nuclear weapons. In effect this would be a global military alliance against all possible nuclear-weapon attacks. We know of no NWS eager to take on such an obligation. Neither the US Congress nor the Russian legislature is likely to approve one.

As to negative assurances, there is a better chance of having them in a treaty form and thus constituting the binding legal obligation that many NNWSs want as a *quid pro quo* for their continuing promise to adhere to the NPT. All five NWSs agreed to negative assurances in treaty form for the Latin American nuclear-free zone. The US Congress approved the qualified US promise not to use or threaten nuclear weapons against Latin American countries. Given the end of the Cold War with the Soviet Union, there is a good possibility that the US would agree to a global commitment to NNWSs. However, it would make a lot of sense to have both negative and positive security assurances part of a single international instrument subscribed to by all NWSs--a decision by the UN Security Council. Perhaps this could be a first step to be accomplished before 1995--with the hope that a treaty on negative assurances could be added later.

## **Recommendation**

Attached are a draft UN Security Council resolution and a draft five-power declaration of the kind here recommended.

The language on positive assurances strengthens the 1968 text in that it contains a clearer statement that Security Council action would be taken and that collective self-defense against a nuclear threat or attack would be possible in the event of a veto of that action. However, the text would not constitute a legal promise of assistance or an alliance, and would not therefore have to be in the form of a treaty.

The resolution and declaration could also be stronger if they contained negative security assurances. The negative-assurances language attached was drawn in part from the Latin American nuclear-free-zone treaty. Finally, the resolution and declaration would be stronger because all five permanent members joined in them and because their record of cooperation in the Security Council over the last few years has been reasonably good and, hopefully, will continue to be so.

These proposed solutions, by eliminating one of the major causes for considering the NPT a discriminatory treaty, should significantly strengthen the legal structure of the nuclear nonproliferation regime and its claim to universality. Thus, a strong message will be sent to those who up till now chose to stay outside this regime.

## Draft UN Security Council Resolution on Security Assurances for States That Forswear Nuclear Weapons

The Security Council,

recalling its Declaration of January 31, 1992 that the proliferation of nuclear and other weapons of mass destruction "constitutes a threat to international peace and security;"

recognizing that nuclear weapons are the most devastating weapons of mass destruction;

welcoming the observance of international obligations not to acquire nuclear weapons by over one hundred fifty five (155) states and the commitments by some of the states that have nuclear weapons to cut their arsenals sharply;

recognizing the desires of many non-nuclear-weapon states for security arrangements to assure that there shall be no threat or use of nuclear weapons against them:

1. Condemns the threat or use of nuclear weapons against any state observing an international obligation not to acquire nuclear weapons or other nuclear explosive devices,

2. Recognizes that such a threat or use of nuclear

### Draft Declaration by Permanent Members of the Security Council on Nuclear Security Assurances for States that Forswear Nuclear Weapons

The Permanent Members of the Council appreciate the concern of some states that renunciation of nuclear weapons could place them at a permanent military disadvantage or make them vulnerable to nuclear blackmail.

The Permanent Members declare that they will not use or threaten to use nuclear weapons against any state that has accepted and is observing an international obligation not to acquire nuclear weapons or other nuclear explosive devices, hereafter called a "protected state."

The use of nuclear weapons, or the threat of such use, against such a protected state would require immediate action by the Council in exercise of its primary responsibility for the maintenance of international peace and security under Article 24 of the UN Charter.

As permanent members of the Security Council, the

weapons would constitute a grave threat to international peace and security,

3. Resolves that such a threat or use of nuclear weapons would require the Council to act immediately in accordance with the Council's primary responsibility under the Charter for the maintenance of international peace and security,

4. Welcomes the Declaration by the permanent members that they will not threaten to use or use nuclear weapons against any state observing an international obligation not to acquire nuclear weapons or other nuclear explosive devices, and that, in accordance with the Charter, they will provide assistance to any such state that is the object of a threat or use of nuclear weapons;

5. Reaffirms the inherent right, recognized by Article 51 of the Charter, of individual and collective self-defense if an armed attack (including one using nuclear weapons) occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

declarants promise to seek immediate Council action to provide assistance, in accordance with the Charter, to any protected state that is the object of a threat of use of nuclear weapons or the victim of such a use.

The declarants reaffirm the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. The declarants recognize that if the Council is convened to deal with a use of nuclear weapons against a protected state and the Council fails to take action, a right of individual and collective self-defense will exist.

Any state or subnational group considering a use of nuclear weapons against a protected state is hereby warned that its actions will be countered by collective or individual



responses taken in accordance with the UN Charter.

### Notes

1. A security assurance whereby a nuclear-weapon state guarantees to take action in support of a non-nuclear-weapon state in the event of a threat of attack or an actual attack with nuclear weapons.
2. Under this security assurance, a nuclear-weapon state guarantees that it will not use or threaten to use nuclear weapons against a non-nuclear-weapon state under all or certain circumstances.
3. The United Nations and Disarmament, 1945-1970, United Nations, New York, 1971, p. 279.
4. ENDC/178.
5. George Bunn and Charles N. Van Doren, "Two Options for the 1995 NPT Extension Conference," p. 7 (LAWS: Washington, DC, 1992); Bunn and Van Doren, "Options for Extension of the NPT: The Intention of the Drafters of Article X.2," in Bunn, David A. Fischer and Van Doren, Options and Opportunities: The NPT Extension Conference of 1995, pp. 3-6 (PPNN Study Two: University of Southampton, England, 1991).
6. For the text of UNSC Res. 255 and the US declaration, see US ACDA, Documents on Disarmament, 1968 (GPO 1969), pp. 444, 439-440. The declarations had been negotiated beforehand and the British and Soviet texts were identical to the US text or almost so. S/PV.1430, pp. 22-26. See G. Bunn, "The Nuclear Non-Proliferation Treaty," Wisconsin Law Review (1968), pp. 776-778.
7. ENDC/167, February 3, 1966.
8. After the first Chinese test of 1964, the US government considered NPT and UN resolution language that in addition to providing some positive assurances to countries like India, would have promised not to use nuclear weapons against NNWSs "except in defense against an act of aggression in which a state owning nuclear weapons is engaged." This was, however, opposed by the Joint Chiefs of Staff. Later, in 1968, the US delegation to the ENDC privately asked the Soviet delegation whether they could agree to language for what became Security Council resolution 255 based upon the formula of the 1967 Latin American nuclear-weapon-free-zone treaty, a promise "not to use or threaten to use" nuclear weapons against parties observing a treaty commitment not to acquire nuclear weapons whether or not those parties had nuclear weapons of a NWS deployed on their territory. In early 1968, the Soviet delegation replied that they could not accept that formula for the NPT because of the existence of American nuclear weapons in Germany. (Memorandum of conversation, George Bunn with Yuli Vorontsov, February 15, 1968, declassified under Freedom of Information Act).
9. The pertinent provision of the Latin American nuclear-free-zone treaty is Art.3 to Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, signed on April 1, 1968 by the United States. See US ACDA, Arms Control and Disarmament Agreements (GPO 1990), p. 82. The US understanding appears in Part I to the Proclamation of President Nixon on Ratification of Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, June 11, 1971. Id. at p. 84.
10. See note 8 above.
11. ACDA, Arms Control and Disarmament Agreements, p. 94 (emphasis added).
12. The texts appear in Thomas Bernauer, Nuclear Issues on the Agenda of the Conference on Disarmament (New York: UNIDIR, 1991), chap. 1.
13. Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part II, Geneva, 1991, pp. 167-168. With some revisions, the Nigerian formula received wide support at the Conference which would have called for another conference to consider it further had there been a consensus on another subject for language for the final declaration. Under a revision of the Nigerian formula, negative assurances might have been available even for alliance members like Germany with some nuclear weapons belonging to another country on their territory provided they promised not to "partake in or contribute to any military attack on a nuclear weapon state or its ally party to the agreement." See Olu Adeniji, "The Review of the Treaty - Security Questions: Security Assurances" (Programme for Promoting Nuclear Non-Proliferation International Seminar, Southampton, England, July 9-12, 1993).
14. Review Conference, note 13 above at pp. 85-86.

15. Thus, the US explained its adherence to this obligation with an understanding to the effect that it would "have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article I of the Treaty [not to acquire nuclear weapons 'by any means whatsoever' and not to deploy them 'directly or indirectly by the Parties themselves or by anyone on their behalf.]" US ACDA, Arms Control and Disarmament Agreements (ACDA, 1990), pp. 64-83.

The Soviet Union in an understanding which looked somewhat like the US 1978 statement said: "Any action taken by one or more States parties to the Treaty of Tlatelolco [Latin American nuclear-free-zone treaty] that is incompatible with its non-nuclear status, and the commission by one or more States parties to the Treaty of an act of aggression in support of a nuclear-weapon State or jointly with that State, will be considered by the Soviet Union as incompatible with the relevant obligations of those countries to the Treaty."

For both American and Soviet understandings, conduct by a NNWS of the kind described in the understanding would justify withdrawal from the protocol by the NNWS.

16. A/47/675-S/24816, Annex.

17. Resolution 47/50 of December 9, 1992, adopted by 162 votes in favor, none against, with 2 abstentions (US and UK).

18. "Declaration on a Transformed North Atlantic Alliance," issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London, July 5-6, 1990, para. 20, Conference on Disarmament (CD) Doc. 1013; "The Alliance's New Strategic Concept," agreed by the Heads of State and Government participating in the meeting of the North Atlantic Council in Rome, Nov. 7-8, 1991, NATO Review, Vol. 6, pp. 25-32 (December 1991). At this meeting, the alliance reaffirmed its decision to reduce its nuclear forces by 80 percent. US Dept. of State, Dispatch, p. 826 (Nov. 11, 1991). NATO's Nuclear Planning Group agreed that "there was no longer any requirement for nuclear ground-launched short-range ballistic missiles and artillery." Communique for meeting in Taormina, Italy, Oct. 17-18, 1991, NATO Review, Vol. 6, p. 33.

Presidents Bush and Gorbachev agreed to withdraw to their own territories all nuclear weapons of these kinds and to dismantle the warheads and this arrangement was implemented. "A New Era of Reciprocal Arms Reductions," texts of Bush and Gorbachev statements of Sept. 27, 1991 and Oct. 5, 1991, Arms Control Today pp. 3-6 (Oct. 1991). US and Soviet intermediate-range nuclear missiles capable of reaching Russia from US allies' territory in Western Europe or reaching these allies from Warsaw Pact countries' territory had already been destroyed pursuant to the Intermediate Nuclear Forces (INF) Treaty. See also "Comparison of US and Russian Nuclear Cuts," Fact Sheet of the Arms Control Association, March 6, 1992.

19. The Future of the US-Soviet Nuclear Relationship (National Academy Press, 1991), pp. 23-24.

20. See, e.g., Thomas C. Reed, "The Role of Nuclear Weapons in the New World Order," briefing by the Chairman of the JSTPS/SAG Deterrence Study Group, Oct. 10, 1991.

21. See, e.g., Michael M. May and Roger D. Speed, "Should Nuclear Weapons Be Used?" in Thomas W. Wander and Eric H. Arnett (eds.), The Proliferation of Advanced Weaponry (AAAS, 1992), pp. 235, 240-243.

22. Remarks by Secretary Baker, April 28, 1992. US Department of State Press-Release #68.

23. See Lisbon Protocol to the Strategic Arms Reduction Treaty (START), Arms Control Today, pp. 34-36 (June 1992). This commitment was also entered into by Ukraine and Belarus (but not by Kazakhstan) under the Agreement on joint measures with respect to nuclear weapons signed in Alma Ata on December 21, 1992.

24. Oleh Bilorus, "Ukraine Needs Protection," New York Times, February 11, 1993. See, generally, William H. Kincade, "Nuclear Weapons in Ukraine: Hollow Threat, Wasting Asset," Arms Control Today (July/August 1993), pp. 13-18.

25. There was, however, one recent case of a veto cast by Russia on May 11, 1993 to overrule the change in the method of financing UN peace-keeping operations in Cyprus from voluntary to mandatory, which was proposed by the UK. In casting its veto, the Russian representative emphasized, however, that his position had no political basis and was dictated solely by practical considerations concerning financing. Soon afterwards, on May 27, a compromise resolution was adopted by the Security Council, which provided for a "combined method" for financing the UN peace-keeping force in Cyprus under which expenses would be covered both on a voluntary basis by the parties involved and also by states-members of the United Nations [S/RES/831(1993)].

26. "Remarks by the President in Address to the United Nations General Assembly," New York City, September 21, 1992, White House press release.

27. In the Alma Ata Agreement on joint measures with respect to nuclear weapons of December 21, 1992.