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UNITED STATES POLICY ON
NEGATIVE SECURITY ASSURANCES:
A REASSESSMENT



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**UNITED STATES POLICY ON NEGATIVE SECURITY ASSURANCES:
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Executive Summary

During the negotiation of the Nuclear Non-Proliferation Treaty (NPT), the United States, Great Britain and the USSR indicated that if the negotiations were successful they would offer assurances against nuclear attack to the non-nuclear weapon states party to the treaty. On the basis of these statements, the demand for including such assurances in the text of the Treaty itself was dropped by those non-nuclear weapon states that had been insisting on it.

Thereafter, each nuclear weapon state issued its own negative security assurance (NSA) in the form of a statement of policy. The United States issued its NSA statement in 1978. Some of these statements are mutually inconsistent, and it has proven impossible for all the nuclear weapon states to agree on a common formula that could be reduced to a legally binding treaty. The non-nuclear weapon states have regularly complained about this situation at NPT Review Conferences and in other forums, and have called for the conclusion of a legally binding NSA commitment by the nuclear weapon states.

Some of the non-nuclear weapon states may intend to make this matter a major issue at the Fourth NPT Review Conference in 1990. Indications of this intent have been seen in both the Review Conference Preparatory Committee and at the 1989 Nonaligned Summit meeting.

While it is too late to negotiate a common NSA agreement before the 1990 NPT Review Conference, there are several alternative actions the United States could undertake to upgrade the status and importance of its own NSA statement. These actions are:

- Unilaterally declare the our NSA to be legally binding;
- Offer to enter into bilateral NSA agreements with non-nuclear weapon state NPT parties;
- Enter into a binding agreement with the UK on NSA;
- Issue a Presidential Executive Order on our NSA policy;
- Reissue the NSA in a Presidential message.

Taking one or more of these actions could, at no significant cost to American security, signal to the non-nuclear weapon states that the United States regards their security concerns as politically important. Finally, the United States should make it clear at the Conference that our NSA policy only applies to states in compliance with their NPT obligations.

UNITED STATES POLICY ON NEGATIVE SECURITY ASSURANCES:

A REASSESSMENT

Introduction

During the negotiation of the Nuclear Non-Proliferation Treaty (NPT), the non-nuclear weapon states maintained that the Treaty should include "negative security assurances," (NSA) to flow to them from the nuclear weapons states, promising that they would not be subject to nuclear attack. Such assurances were not included in the NPT, in part because the United States, United Kingdom and the Soviet Union undertook to deal with this issue in some other form. The issue remains linked to the NPT regime, however, and has been considered at the NPT Review Conferences.

1. Present Status of the NSA Issue

1.1 Current NSA Statements

After "consulting with principal United States allies," the United States issued its current NSA statement on June 12, 1978, as part of its participation in the UN General Assembly Special Session on Disarmament (SSOD). The statement reads:

The United States will not use nuclear weapons against any non-nuclear weapons 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 such a state allied to a nuclear-weapons state or associated with a nuclear-weapons state in carrying out or sustaining the attack.

The declared purposes of the statement were:

- To encourage support for halting the spread of nuclear weapons.
- To increase international security and stability.
- To create a more positive atmosphere for the success of the SSOD.
- To enhance prospects for more effective arms control and disarmament.

Other nuclear powers have issued the following assurances:

China: [A]t no time and under no circumstances will China be the first to use nuclear weapons, and that it undertakes unconditionally not to use or threaten to use nuclear weapons against non-nuclear countries and nuclear-free zones.

France: [I]t will not use nuclear arms against a State that does not have these weapons and has pledged not to seek them, except in the case of an act of aggression carried out in association or alliance with a nuclear-weapon state against France or against a State with which France has a security commitment.

USSR: [T]he Soviet Union 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.

Great Britain: [As] to non-nuclear-weapon States which are parties to the [NPT] or to other internationally binding

commitments not to manufacture or acquire nuclear explosive devices: Britain undertakes not to use nuclear weapons against such States except in the case of an attack on the United Kingdom, its dependent territories, its armed forces, or its allies by such a State in association or alliance with a nuclear-weapon State.

In addition, the United States is bound by one treaty not to use or threaten to use nuclear weapons against certain non-nuclear weapon states. This commitment appears in Protocol II to the Treaty of Tlatelolco, creating a Latin American nuclear weapons free zone. The United Kingdom, France, China and the USSR are also parties to this Protocol.

When it ratified Protocol II, the United States also filed an "understanding" to the effect that "an armed attack by a [non-nuclear weapon party to the Treaty] in which it was assisted by a nuclear-weapon state would be incompatible" with the Treaty. Under this understanding, such an attack would allow the United States to suspend its obligations under the Protocol on grounds of material breach.

1.2 Criticism of Current NSA Statements

The NSA statements have been subject to criticism, due both to the limitations they contain and because it is unclear whether they are legally binding. The General Assembly, both at the SSOD and later, has passed resolutions taking note of these declarations but also urging the nuclear weapons states to take further action to "conclude effective arrangements, as

appropriate" assuring non-nuclear weapon states against the "use or threat of use of nuclear weapons." The issue has been discussed intermittently in the Conference on Disarmament (CD) since 1980, with little progress towards negotiation of a formally binding treaty.

There is evidence that some states intend to press the NSA issue at the Fourth NPT Review Conference in 1990. The September, 1989, Summit of the Nonaligned Movement has thus linked the Review Conference to the nuclear weapon states' "responsibility to assure all non-nuclear weapon states ... against the use or threat of use of nuclear weapons by concluding an agreement to this effect."

Again, at the first meeting of the Preparatory Committee, Egypt, Togo and Nigeria all expressed disappointment that a common, legally binding NSA had not been concluded. Nigeria proposed the negotiation of a Protocol to the NPT for this purpose. For obvious reasons the United States delegation expressly rejected that approach but nevertheless expressed willingness "to continue to seek a common negative security assurance formulation and to consider carefully any feasible approaches -- other than a Protocol to the NPT -- that may be suggested."

Egypt discussed the existing declarations in some detail at the Preparatory Committee. It criticized them as:

[T]ailored with the situation of the allies of the respective nuclear powers at the forefront of the

[nuclear powers'] concerns. How to accord such [nuclear] guarantees to one's allies is clearly the predominant concern, a concern which has made all efforts to achieve a common formula for such guarantees and establish them in legally binding form to no avail. ... Non-nuclear weapon states not party to any major military alliances, and consequently not covered by the nuclear umbrella provided by those alliances, should no longer be denied concrete security guarantees against nuclear weapons.

By equating the "nuclear umbrella" over members of the Cold War alliances with negative security assurances for the non-aligned, Egypt displayed a surprisingly (and perhaps unintentionally) sympathetic view of nuclear deterrence. (Togo used the more conventional Third World approach of denouncing nuclear deterrence while also calling for binding NSA's.) Other aspects of the Egyptian analysis seem to be based on misreadings of the current NSA declarations, however.

From the point of view of the nuclear weapons states, these declarations are aimed more at the opposing alliance than at strengthening their own. The United States, United Kingdom and France have thus excluded attacks by non-nuclear weapons states the coverage of their NSA statements. Similarly, the Soviet Union's exclusion of states that have nuclear weapons on their territories seems more aimed at disrupting NATO than at reassuring the Warsaw Pact.

While the United States, Britain and France all exclude attacks on allies from their NSA statements, that exclusion only applies if the attacking state is itself allied or associated with another nuclear weapon state. This proviso should dispose of Egypt's expressed concern for states not party to any alliance, "that have completely and in all forms disassociated their security from any nuclear dimension."

Egypt may have been influenced by its pre-Camp David experiences in the 1973 Middle East War. At that time the USSR was Egypt's principal military supplier. Had the American NSA declaration been in effect at that time, a literal reading would have placed Egypt outside it as a state participating in an attack on a United States ally [Israel] while "associated with a nuclear weapons state in sustaining the attack."

In almost any conceivable situation, however, it would lack credibility to suggest that the United States would actually use nuclear weapons against a non-nuclear weapon state solely because the latter relied on the USSR as a source of military supplies. Even in the 1973 Middle East war, the United States did not place its nuclear forces on alert until direct Soviet military intervention had been threatened.

It thus appears that Egypt, too, is at this point more concerned with the formally binding character of Negative Security Assurances than with their exact content. This is not due to a naive faith in international law on the part of the states concerned. Rather, it probably reflects irritation that

the nuclear powers do not regard Negative Security Assurances as politically important enough to be raised to the status of legally binding obligations.

The failure to conclude a legally binding NSA arrangement is also undoubtedly regarded by the Third World as an example of the allegedly discriminatory character of the NPT regime. While non-nuclear weapon states are legally obligated by the NPT not to acquire nuclear weapons, the nuclear weapon states are unwilling to enter into a clearly binding agreement not to use such weapons against them. This "discrimination" is arguably apparent on the very face of the American and British NSA statements. These powers want non-nuclear weapon states to enter into an "internationally binding commitment" not to obtain nuclear weapons, but the binding character of their own assurances is ambiguous at best.

The 1990 NPT Review Conference may provide an opportune occasion to upgrade the visibility and status of the United States Negative Security Assurance. The United States would be responding to the expressed concerns of non-nuclear weapon states and lessening a perceived inequality in the Treaty. At the same time it would also have the opportunity to emphasize the linkage Negative Security Assurance more importance we could put down a marker for the 1995 conference by stressing that our NSA continues to apply only so long as the NPT continues in force for the beneficiaries of the assurance.

2. Strategies to Upgrade the Status of NSA.

Discussions of NSA in the CD have been sterile and desultory, and in any event little movement is likely there before the 1990 NPT Review Conference. Outside the CD context, however, there are several actions the United States might take, either unilaterally or with its allies, to raise the dignity of the American NSA statement at or in conjunction with the Review Conference.

2.1 Declare the US NSA to be Legally Binding.

While the United States has stressed the importance attached to its NSA statement, it has never declared that it regards itself as being legally bound by that statement.

There are circumstances in which a unilateral declaration by a state can create international legal obligations for it. The most liberal position on this issue was expressed by the International Court of Justice (the "World Court") in the majority opinion in the French Nuclear Test Cases (1974):

It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. ... When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration.

An undertaking of this kind, if given publicly, and with an intent to be bound, ... is binding.

Not all experts agree with the Court that any public declaration, by which a state intends to be bound, creates a legal obligation. More conservative legal authorities would limit this doctrine to cases where the unilateral promise has been made in the course of negotiations, or where, following the declaration, other nations have acted in good faith reliance on it.

However, the United States need not adopt the more extreme view of the World Court in order to recognize its NSA statement as legally binding. As noted, unilateral assurances given in a negotiating context have been found to be binding. During the negotiation of the NPT, the non-nuclear weapon states dropped their insistence that security assurances be included in the treaty itself, in part due to the assurances of the nuclear weapons states that matter would be taken care of in another context. The issuing of Negative Security Assurances is thus in effect an extension of the negotiations that led to the NPT.

Again, unilateral declarations have been considered binding when other states have acted in reliance on them. In a sense, all or many of the non-nuclear weapon state parties to the NPT have relied on the NSA's in remaining bound by the treaty.

Indeed, the legal character of the present NSA statement is already ambiguous. It has been suggested that, as a result of the 1974 World Court decision discussed above, security assurances issued in conjunction with the NPT may already be

legally binding [See E. McWhinney, The International Law of Detente 57 (1978)].

If the United States attempts at some future time to unilaterally narrow the coverage of its current statement, it might be met with opposition on the ground that its NSA is legally binding and cannot be changed without the consent of states benefiting from it. Expressly recognizing that United States now regards the NSA statement as binding could also give the US an opportunity to condition that recognition by reserving a right to unilaterally change the terms of the NSA statement.

This might be done by making a statement along the following lines when presenting the NSA to the Revcon:

The United States recognizes that a public, unilateral declaration can legally bind the state making it if it is intended by that state to be binding and if other states act in reliance on the declaration. In this regard we note that negative security assurances have been relied upon by the non-nuclear weapon states party to the NPT in maintaining and strengthening the regime established by the treaty. The United States therefore now regards itself as legally bound to follow its negative security assurance in relation to those NPT parties who comply with its terms, until those terms are replaced by some other arrangement or altered on reasonable notice.

The final clause would allow the United States to alter the statement if a common NSA is later negotiated, or if alteration becomes necessary for some other reason. Since Negative Security Assurances are closely related to the NPT, three months would appear to be a "reasonable time," in light of Article X of the Treaty.

Prior to declaring that the United States regards its NSA statement to be binding, consultations with key non-nuclear move would meet with a favorable response. In this regard it might be noted that Egypt itself declared a unilateral statement to be binding in an effort to calm some of the furor surrounding its nationalization of the Suez Canal in 1956. When it reopened the Canal in 1957, Egypt issued a unilateral declaration of the conditions under which it would operate the Canal, and declared that it regarded itself as bound in international law to follow the terms of the declaration. Egypt subsequently registered the declaration with the United Nations as an international agreement under Article 102 of the UN Charter.

Consultations with allies would also be required, in particular with the United Kingdom. If the British were not willing to recognize the legally binding character of their NSA, we might offer an additional statement to the effect that our own recognition of a legal obligation is not intended to affect the statements of any other power.

Should this course be adopted, a number of internal procedural issues will have to be answered within the US government. These include whether a Circular 175 procedure should be followed before the statement is issued, whether it should be reported to Congress under the Case Act, and whether Congressional approval should be sought in advance, either as a matter of law or of sound policy.

2.2 Offer Bilateral Agreements Incorporating the NSA to NPT Parties.

Declaring a unilateral statement to be legally binding on itself would, admittedly, be a radical step for the US government to take from a procedural standpoint. If the United States is not willing to go this far, an alternative would be to publicly offer to incorporate the NSA statement in an exchange of diplomatic notes with any non-nuclear weapon state party to the NPT. Any state availing itself of that offer would have a direct, individual assurance, in a legally binding form, from the United States against the use of nuclear weapons. This option, too, would allow the United States government to link continuation of its Negative Security Assurances to the NPT regime.

The offer might be made by means of language along the following lines:

Since the NPT was signed in 1968, several non-nuclear weapon states have expressed frustration at the inability of the nuclear weapon states to agree to a

common, legally binding formula for their negative security assurances. In order to meet at least some of the concerns of these states, the United States hereby expresses its willingness to incorporate its negative security assurance into a bilateral agreement, in the form of an exchange of notes, with any non-nuclear weapon state that is in compliance with its obligations under the Treaty. We would propose that such agreements remain in force so long as the NPT is in force for both states, or until the agreements are replaced by some other security arrangement. This offer is open to any state party with which the United States maintains diplomatic relations.

This option might be combined with options 2.4 and 2.5, below.

2.3 Formal Agreement with the UK on NSA.

Another option to make the United States Negative Security Assurance binding in international law would be to conclude a bilateral agreement on NSA with the United Kingdom, the other Western nuclear weapon state NPT party. This could be done in an informal manner, perhaps by exchange of diplomatic notes, in which the two nuclear powers would agree not to use their nuclear weapons against NPT party non-nuclear weapon states except under specified conditions.

It was long held that two states could not, by agreement between themselves, accord legal rights to third states. This situation was changed by the conclusion of the 1969 Vienna

Convention on the Law of Treaties, and it is now generally recognized that a bilateral agreement can formally create rights for third states, or for a group of third states. Technically, the third parties involved should assent to the creation of such rights, but assent is assumed unless the agreement provides otherwise.

A major disadvantage of this approach is that the United States would lose any right it might otherwise have to unilaterally revoke or alter the terms of its NSA statement. Indeed, the agreement should specify that the United States and Great Britain can change its terms by bilateral action, to preclude the argument that the commitment cannot be altered without the consent of all the non-nuclear weapon states benefiting from it.

While the American and British NSA statements are similar, they are not identical, and the exceptions in the American statement are more precisely spelled out. Seeking a common statement with the United Kingdom may raise the question whether the United States really needs all of the exceptions to its NSA assurance to be expressly stated, or whether it can rely on the more general British language.

That language excludes from the British NSA attacks by a non-nuclear weapon state "in association or alliance with a nuclear-weapon State." The comparable United States language refers to a non-nuclear weapon state "allied to a nuclear weapon state or associated with a nuclear weapons state in carrying out or sustaining the attack."

Both statements exclude attacks by non-nuclear weapons states formally "allied" or "in alliance" with a nuclear weapon state. By excluding attacks "in association with" or "associated with" a nuclear weapon state, both also warn non-nuclear weapon states against attacks carried out in cooperation with a nuclear power on some basis less formal than a treaty of alliance.

The principal difference between the two statements is the American gloss on the phrase "associated with." By referring to the "carrying out or sustaining" of such an attack, the American statement expressly warns non-nuclear weapon states that they place their protected status at risk if they accept the military assistance of a nuclear weapon state either in initiating an attack on the United States or its allies, or in continuing hostilities after initiating an attack on their own.

Arguably, this type of conduct is already covered by the British phrase "in association with." This conclusion is supported by the UK statement of understanding on ratification of Protocol II to the Treaty of Tlatelolco. There the British government declared it would reconsider its obligations under the Protocol as a result of an act of aggression by a Latin American non-nuclear weapon state in which it was "supported by a nuclear-weapon State."

Presumably this is intended to be compatible with the United Kingdom NSA statement, in which case "supported by" is included in the British understanding of the phrase "in association with." Since there is no substantive difference between "supporting" an

attack and "sustaining" it, the British NSA is probably intended to exclude as broad a range of situations as the United States NSA. On that basis, the United States could probably agree to accept the UK language.

2.4 Presidential Message.

If it is decided that the American NSA should remain a political, rather than a legal, commitment, its importance might still be enhanced by having the President of the United States formally reaffirm US commitment to its NSA statement. This might be done either in the message the President will send to the Review Conference at its opening, or in a special message to the Conference dealing only with NSA.

There are precedents for Presidential involvement in issuing such a statement. The current NSA statement was issued in President Carter's name on June 12, 1978. President Nixon had earlier lent his name to the 1969 unilateral renunciation by the US of biological warfare, during UN debate on that subject.

This measure might easily be combined with option 2.5.

2.5 Presidential Executive Order.

The President might publish the NSA statement in the form of an Executive Order. Executive Orders have previously been used to stress the permanence and importance of key policies involving the use of force, including the prohibition on assassination (E.O. 12333) and renouncing first use of herbicides and riot control agents in war (E.O. 11850).

While an Executive Order would not change the international legal status of the American NSA, it would make the NSA binding throughout the executive branch of the United States government. The Executive Order would probably task the Secretary of Defense to ensure that it was implemented, with the result that it would be brought to the attention of military staffs and taken into account in the writing of American military plans.

Executive Orders continue in force despite changes in administration. Rescinding or changing them requires another affirmative act by the President, along with certain procedural formalities (e.g., publication in the Federal Register). In general, issuance of an NSA Executive Order would reinforce the US position that our NSA statement is not a transitory policy statement revived every few years for General Assembly debates and NPT Revcons, but rather an important, serious and firm United States government commitment on the use of nuclear weapons.

3. Possible Substantive Changes in the US NSA.

Over ten years have elapsed since the initial issuance of the American NSA, and changing conditions may have made substantive changes in the text desirable. Such changes should not be lightly undertaken, however, if the goal is to impress on the non-nuclear weapon states that our NSA statement represents a firm, serious statement of policy. Changes that would restrict the scope of the present NSA would underline the fact that the United States can unilaterally change the terms of our NSA without the consent of the non-nuclear weapon states.

3.1 Broadening Coverage of the NSA.

3.1.1 Covering Threats to Use.

One relatively innocuous change would extend the NSA statement to the threatened use of nuclear weapons against a non-nuclear weapons state. This would bring the statement more closely into line with Article 2(4) of the UN Charter and with the SSOD and other UNGA resolutions on negative security assurances, which refer to the "use or threat to use" nuclear weapons. Protocol II to the Treaty of Tlatelolco also obligates the US not to threaten use of nuclear weapons against Latin American parties for whom it is in force.

3.1.2 Narrowing the Exclusion for Military Relationships with Nuclear Weapon States.

From the statement of Egypt at the first Preparatory Committee meeting, it appears that one perceived defect of the present NSA is that it excludes many non-nuclear weapon states having even a tenuous military relationship with a nuclear weapon state. A state could be considered to be "associated with a nuclear weapons state in ... sustaining the attack" if it merely uses military equipment purchased from such a state in a conventional attack on a US ally.

This seems far broader than is required to maintain American deterrent strategy in Europe. (See below for the special problem of Korea.) If, after appropriate consultations with other Review Conference participants, it appears that there is wide dissatisfaction with our current Negative Security Assurance on this basis, the United States should consider amending it.

Limiting the exception to states "allied" to nuclear weapons states may not be sufficient, if for no other reason than that the members of the Warsaw Pact Organization (unlike NATO) usually do not refer to their relationship as an "alliance;" that term apparently has bourgeois connotations. It may be sufficient to refer to "a state allied to a nuclear weapon state or associated in the functional equivalent of an alliance with a nuclear weapon state in carrying out," etc. Alternatively, the statement might refer to "jointly carrying out or sustaining" an attack. Either change would make it clear that it will take a relatively high level of military cooperation with a nuclear weapon state in order for the US NSA not to apply.

3.2 The Problem of Noncompliant States.

A textual analysis of the current NSA statement shows it was not drafted to deal with the situation of states like North Korea or Iraq, parties to the NPT whose compliance with it is questionable at best. It will probably not be necessary to alter the actual text of the NSA to deal with this ambiguity.

Even though the United States NSA only refers to states that undertake a "binding commitment" not to acquire nuclear explosive devices, compliance with that commitment can fairly be read into the statement as an additional condition. The causes of nuclear non-proliferation and nuclear deterrence would both be served, however, if that implied condition were made express. At a crucial point (or points) in the Revcon debate on NSA, the US delegation should emphasize that our assurances extend to parties

to the NPT "who are in substantial compliance with their obligations under the Treaty," or words to that effect.

3.3 Future of Nuclear Deterrence in Korea.

The United States has a declared policy of nuclear deterrence in two geographical areas--Europe and the Korean peninsula. At the time the US NSA was drafted, North Korea was not an NPT party.

Since the 1985 Review Conference, North Korea has ratified the NPT, though it has yet to conclude an IAEA safeguards agreement, and its intent to comply with the NPT remains problematic. Should North Korea bring itself into apparent compliance with its NPT obligations, the United States will be squarely faced with the question of whether its negative security assurance should be extended to North Korea. And if North Korea is able to convincingly bring itself within the US NSA, pressure for the removal of US nuclear weapons will undoubtedly increase in South Korea.

With North Korea a complying party to the NPT, the United States will be forced to base its Korean nuclear deterrent policy on its NSA exception for attacks by countries allied or "associated with a nuclear weapons state in carrying out or sustaining the attack." The 1961 Friendship, Co-operation and Mutual Assistance treaties between North Korea and China and between North Korea and the Soviet Union can probably be considered the functional equivalent of alliances. Article 1 of both treaties requires one party to extend "military and other

assistance" in the event of an "attack" on the other party. In the immediate future, however, both China and the USSR appear less inclined towards adventurism in Korea than the Pyongyang regime itself. It is now quite possible that North Korea would initiate an aggression against the South in which it was not, in any credible way, allied or associated with a nuclear weapons state in carrying out or sustaining the attack.

Altering the text of the American NSA statement to expressly exclude North Korea would almost certainly have an adverse impact on the NPT. Such an act would lend support to critics of the NPT, who would then be able to argue that unilateral negative security assurances were worthless as a restraint on the nuclear powers, and that those powers would continue to threaten certain non-nuclear weapon states with nuclear weapons, even after those states complied with all the prior conditions in an NSA statement. Such an argument could have a devastating impact on the 1995 decision on extending the NPT.

Finally, altering the present Negative Security Assurance to effectively exclude North Korea would give that government a propaganda basis for further slowing its implementation of the NPT, or even for denouncing the NPT entirely. Should either of those contingencies occur, pressure would mount for the South Korean government to similarly evade or denounce the NPT.

On balance, then, it would appear that the United States should not alter its NSA statement solely to exclude North Korea. Should the latter comply with its NPT obligations, the result

will be to change declared US policy in Korea from simple nuclear deterrence to nuclear deterrence against an attack in alliance or association with China or the USSR.

Arguments could be made that the present American NSA does not apply to a future attack on South Korea from the North. Such an argument might be based on the fact that the 1953 Armistice Agreement did not end the Korean War. Rather, hostilities were merely suspended for an indefinite period. Any future hostilities would, in this view, merely be a continuation of the North Korean aggression that began in June, 1950, and which the Soviet Union had helped sustain. Another approach would point out that the NSA statement refers to "states," and that the US government does not recognize North Korea as a "state."

The public adoption of either of these views by the United States would undoubtedly be widely denounced as excessively legalistic and an act of bad faith. Again, the North Koreans would given a new propaganda basis for delaying implementation of the NPT or even denouncing it. The ultimate impact on the NPT regime might be even more unfortunate than that produced by actually changing the terms of the current United States NSA statement.

The best the United States government can hope for is that the issue of nuclear deterrence in Korea will simply not be raised at the Review Conference. If it is raised and the American government is directly asked, either diplomatically or by the news media, whether the NSA covers North Korea, we should

simply make the best of a bad situation and affirm that our NSA statement applies to any state or government (de jure or de facto) complying with the conditions stated in it.

Conclusion

By upgrading the status of its Negative Security Assurance statement in conjunction with the 1990 NPT Review Conference, the United States may be able to lessen one perceived inequity in the NPT regime, thereby improving the prospects for that regime beyond 1990. At a minimum, such an upgrade could take the form of a Presidential Executive Order and message to the Conference reaffirming the American NSA policy. Beyond that, it might include express recognition that the United States regards its NSA declaration as legally binding.

Changes to the substance of the current Negative Security Assurance should be approached with extreme caution, and should be undertaken only if it is clear that the United States and the NPT regime will gain thereby. Beyond this, the American delegation to the Review Conference should make it clear that the NSA extends only to countries that are actually in compliance with their obligations under the NPT.