

■ MAY 2018

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Negative Security Assurances

The Test of Commitment to Multilateral Nuclear
Disarmament?

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2017

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This report was written with the assistance on the US Nuclear Posture Review Section from Maxwell Downman, BASIC Analyst.

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Acknowledgments

The German Foreign Ministry sponsored a number of events on Negative Security Assurances in 2017 some of which involved presentations by the author: a conference hosted by Stiftung Wissenschaft und Politik (SWP) in Berlin (February), and panel events hosted by the Geneva Centre for Security Policy (GCSP) in Geneva (September) and New York (October). A follow-on Geneva meeting was again hosted by GCSP in March 2018, with Bob Einhorn and Angela Kane also on the panel. The author has also published earlier briefings in 2017 on the issue.¹

This briefing is based upon these presentations and consultations with officials from a number of countries, remotely through February through April 2018, in person in Geneva in mid-March and mid-April, and at a joint BASIC-FCO roundtable in London on 23 March. The project in early 2018 was funded by the UK Foreign and Commonwealth Office, but its conclusions are independent of the UK government and do not reflect its opinions.

Some of those who participated in consultations were already convinced that NSAs hold promise for diplomatic progress, but many had some level of initial scepticism that this focus could be fruitful. This was the case in particular for representatives of nuclear armed states (some officials considered NSAs to be largely irrelevant to the bigger issues in nuclear diplomacy) and those representing states deeply supportive of the Treaty to Prohibit Nuclear Weapons (concerned that discussions on NSAs would imply legitimacy for nuclear weapons). This briefing explores the reasons for this scepticism, but also observes that once given the opportunity to explore the issues further, officials were left with the thought that there could be room for progress.

¹ Paul Ingram, "Renewing Interest in Negative Security Assurances," *BASIC*, June 2017, <http://www.basicint.org/publications/paul-ingram-executive-director/2017/negative-security-assurances-june-2017-briefing>.

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Summary

Negative Security Assurances (NSAs) have been described on several recent occasions as the ‘low hanging fruit’ of disarmament in an otherwise barren landscape. After all, if states cannot guarantee they will not threaten non-nuclear weapon states (NNWS) with nuclear attack what hope is there for further restrictions on nuclear threats or for the more ambitious nuclear disarmament project that nuclear armed states are committed to and upon which the non-proliferation regime depends? Of course, it is not that simple, and the fear of giving comfort to aggressive delinquent regimes or losing the benefits of nuclear deterrence against massive strategic attacks means nuclear armed states remain reluctant. Any discussion on NSAs can become frustrating and divisive. Why start in the first place?

This briefing charts some of the reasoning on both sides of this argument and draws some conclusions on a constructive approach that avoids the traps and realises the opportunities. It recommends considering NSAs in a broader declaratory policy context, and for nuclear armed states to be more systematic and transparent in comprehensively explaining their nuclear postures and see their subsequent statements and actions as accountable to that policy. This is necessary to build trust within the wider international community, currently deeply lacking. This would involve positive explanations for: the purpose of their nuclear arsenal; how these are weapons of last resort and what that means; the legal limits to the threat of nuclear use; and their exceptions to NSAs, expressed in a tight and sparing manner with an expectation that these are reviewed and further tightened over time.

The international community would benefit from a respectful conversation on what scope there may be in improving NSAs as a helpful step on the road towards disarmament. Of course, NSAs themselves are only one step in tightening up declaratory policy. Further steps might include a global no first use agreement (perhaps arising out of sole purpose declarations beforehand), as well as the others recently outlined in the interim Japanese Group of Eminent Persons report.²

² “Building Bridges to Effective Nuclear Disarmament: Recommendations for the 2020 Review Process for the Treaty on the Non-Proliferation of Nuclear (NPT),” *Group of Eminent Persons for Substantive Advancement of Nuclear Disarma-*

Introduction

It is somewhat provocative to call NSAs low hanging fruit. Many people disagree, believing this to be a dangerous expectation. On the surface it should be reasonable for non-nuclear weapon states (NNWS) to receive nuclear guarantees against nuclear attack, but what of the delinquents in certain circumstances? Can nuclear armed states really be expected to throw away beneficial nuclear deterrent effects that could prevent aggression? And in any case, this could be a distraction to the most urgent item on the international diplomatic agenda today. The principal dangers of nuclear use arise from the stand-offs between nuclear armed states. Leading nuclear armed states engage in heated rhetoric, announcements of potentially destabilising nuclear deployments and indefinite commitments to nuclear deployment as they recapitalise their systems. All this is in response to other nuclear armed states.

- But the costs arising from the failure of nuclear armed states to assure NNWS that they will not be subject to nuclear threat are significant, and include:
- a general unease amongst NNWS that they are seen as potential future targets for compellence, or nuclear blackmail, at the whim of the nuclear weapon states' judgements;
- apparent legitimising of the use of nuclear weapons for underwriting global governance, meaning nuclear threats come to be seen as useful tools of statecraft, and are therefore highly attractive;
- a sense amongst NATO allies that their nuclear armed allies are in danger of ignoring the bargain at the heart of the NPT, which brings discomfort within the Alliance; and
- general harm to cohesion within the NPT community on the basis that there is little confidence that the Nuclear Weapon States intend to fulfil their Article VI commitments.

These costs exacerbate frustration with the pace of disarmament and undermine cooperation on non-proliferation and moves towards a nuclear weapon free world.

Nuclear Weapon States readily acknowledge the principle that NNWS have a right to NSAs in recognition of their status and commitments under the NPT, and that NSAs can demonstrate good-will towards the international community. In 1995 this was formalised by members of the permanent members of the UN Security Council in their conditional NSA declarations of that year.³ These formed part of the diplomatic offensive at the NPT Review and Extension Conference just a few weeks later to indefinitely extend the Treaty. These conditional NSAs have been adapted since, and are based upon what the Nuclear Weapon States deem possible and realistic in terms of their strategic posture and potential security challenges.

Demands have long been made within diplomatic circles for nuclear armed states to make their NSAs unconditional and to write these promises into international law, both for the sake of strengthening assurance and international security directly, and also as a step in the right direction towards reducing the salience of nuclear weapons. This has been on the agenda at the CD in Geneva for almost 40 years. Indeed, the recent breakthrough in the CD to appoint five working group coordinators and adopt a timetable for work included one to address NSAs.⁴

ment, April 2018, http://www.mofa.go.jp/dns/ac_d/page25e_000178.html.

³ These NSAs can be accessed via the United Nations Security Council: Russia S/1995/261; UK S/1995/262; US S/1995/263; France S/1995/264; China S/1995/265.

⁴ "The Conference on Disarmament agrees to start working: a wake-up call for 'sleeping beauty'?", *GCSP*, February 2018, <https://www.gcsp.ch/News-Knowledge/Global-insight/The-Conference-on-Disarmament-Agrees-to-Start-Working-A-Wake-up-Call-for-Sleeping-Beauty>.

NSAs are seen by NNWS as a simple demand, one the public would understand, but goes beyond what Nuclear Weapon States have so far been prepared to offer. There is therefore some nervousness around opening a conversation on NSAs. Yet discussing the possibilities for moving in the direction of tighter NSAs could breathe life into the step-by-step approach, as other attempts to kick-start multilateral nuclear disarmament flounder. This briefing explores NSAs complexity and suggests some possible step-by-step approaches to tighten the expression of exceptions that weaken the positive benefits that NSAs can bring, and that can demonstrate progress within a context where progress is desperately needed.

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The 2018 US Nuclear Posture Review

One key context today, and the elephant in the room when discussing declaratory policy in 2018, is the evolution of US nuclear posture. The Nuclear Posture Review (NPR), the public statement of intent from the Trump Administration, was published on 2nd February. The Trump Administration and supporters of the posture have sought to present it as more continuity than change, whilst critics and those involved in the previous NPR have argued it is a bold departure, with excessive ambiguity in nuclear signalling.⁵

The review describes a deteriorating international strategic context in which US nuclear weapons are given increased saliency.⁶ Its principal target is Russian aggression, with a special focus on the US claim that Russia is willing to engage in a 'limited nuclear first use.'⁷ US analysts frequently cite a Russian doctrine of 'escalate to de-escalate'... in other words to be prepared to use limited nuclear options first in order to force the United States to choose between strategic exchange or to back down. Yet, this doctrine has never been formally adopted by Russia, and its officials continually deny

⁵ See, for example, John R. Harvey, Franklin C. Miller, Keith B. Payne and Bradley H. Roberts, "Continuity and Change in U.S. Nuclear Policy," *Real Clear Defense*, 7 February 2018, https://www.realcleardefense.com/articles/2018/02/07/continuity_and_change_in_us_nuclear_policy_113025.html and "The New U.S. Nuclear Strategy is Flawed and Dangerous. Here's Why," *Arms Control Association*, Issue Brief 10 no. 2, 2018, <https://www.armscontrol.org/issue-briefs/2018-02/new-us-nuclear-strategy-flawed-dangerous-heres-why>.

⁶ US Department of Defence, "Nuclear Posture Review 2018," February 2018, p. 6.

⁷ *ibid*, p. 30.

this to be their posture.⁸ It is a good example of the need for greater clarity in public posture to avoid misunderstanding and over-reaction. The NPR may be just such a reaction, claiming to plug the perceived ‘credibility gap’ and ‘correct [...] mistaken confidence that limited nuclear employment can provide a useful advantage’ by signalling US capability and willingness to use limited US nuclear options.⁹

The NPR proposes nuclear options to deter broader conventional, chemical, biological and emerging threats with a strategic effect.¹⁰ Accordingly, the review attempts to signal US resolve to deter these threats by both clarifying the circumstances in which the United States could consider using nuclear weapons, and obscuring whether and how the United States might use nuclear weapons in specific circumstances to avoid the commitment trap. Its ambiguous, and at times contradictory, caveats may have unintended consequences for US messaging, similar to those arising from the ‘all options are on the table’ formulation that have often been interpreted in the past as including implied nuclear threats against ‘rogue’ states.

Circumstances of Nuclear Use

Both the 2010 and 2018 NPR reject a sole-purpose nuclear doctrine (that nuclear weapons are only intended to deter nuclear threat).¹¹ However, the 2010 document explicitly identified sole purpose as a near-term objective for a future policy, and there were indications that by the end of his term in office President Obama considered the conditions to be such that the US could reconsider its position.

Both NPRs asserted that the United States would only consider using nuclear weapons ‘in extreme circumstances to defend the vital interests of the United States, its allies, and partners.’¹² The Obama Administration described these as nuclear threats and ‘a narrow range of contingencies’ against conventional and chemical or biological weapon (CBW) attack from nuclear armed states, or those in non-compliance with their NPT obligations.¹³ This enabled the Administration to issue explicit and unconditional NSA guarantees to NNWS in compliance, even if they attacked the United States with CBW.

It is currently uncertain whether this particular assurance to NPT states with CBW stockpiles still holds in 2018. The NSA promise was reiterated verbatim in the 2018 NPR. It states the United States would:

*not use or threaten to use nuclear weapons against non-Nuclear Weapon States that are party to the NPT and in compliance with their nuclear non-proliferation obligations.*¹⁴

However, in considering exceptions to this guarantee the Trump Administration shifts focus away from the nature of the weapons to the potential impacts, declaring them to include:

*significant non-nuclear strategic attacks... [against] the U.S., allied, or partner civilian population or infrastructure, and attacks on U.S. or allied nuclear forces, their command and control, or warning and attack assessment capabilities.*¹⁵

8 “Voennaya Doktrina Rossiiskoi Federatsii 2014” [The 2014 Military Doctrine of the Russian Federation], Security Council of the Russian Federation, paragraph 27, <http://scrf.gov.ru/security/military/document129/>.

9 *ibid.*, p. 53.

10 *ibid.*, p. 2, 21, 32, 34, 38, 40, 54.

11 NPR 2018, p. 21 and US Department of Defence, “Nuclear Posture Review 2010,” April 2010, p.16.

12 NPR 2018, p.21 and NPR 2010, p.16.

13 *ibid.*

14 NPR 2018, p. 21.

15 *ibid.*

This has led some to question how the NSA formulation can coexist with this statement.¹⁶ This ambiguity could be interpreted by adversaries to expand the set of circumstances in which nuclear use could be considered in future. Administration officials deny this, saying that this formula clarifies previously ambiguous elements, and does not increase the salience of US nuclear weapons. On the contrary, they claim, the 2018 NPR raises the threshold for nuclear use by reducing the potential for adversary miscalculation.¹⁷

There has been much discussion on whether the United States would consider nuclear use against a cyber-attack with strategic effect. A draft of the NPR, leaked in January, explicitly envisaged a role for nuclear weapons for deterring ‘nuclear and non-nuclear strategic attacks against US nuclear command, control and coordination in space and cyber space.’¹⁸ This explicit reference was later removed.

The Trump Administration believes that this ambiguity strengthens the US nuclear deterrent and plugs holes that would otherwise encourage potential aggressors to believe they might not otherwise suffer catastrophic consequences. But it could equally have perverse effects by confusing signalling. Certainly it communicates the value the Administration attaches to its nuclear arsenal and calls into question any intention to engage in efforts to reduce nuclear salience. The NPR also clearly warns that

*the United States reserves the right to make any adjustment in the [NSA] assurance that may be warranted by the evolution and proliferation of non-nuclear strategic attack technologies and U.S. capabilities to counter that threat.*¹⁹

In other words, the United States promises it will not threaten nuclear attack against states without nuclear weapons, unless they develop the capacity to threaten mass civilian casualties or widespread damage to critical infrastructure with other means. On the surface this may seem reasonable enough. It implies relevance only to threats that are of a proportional magnitude in their impact to nuclear weapons. But this explicit catch-all retention of ‘the right’ begs the question why the United States should have this ‘right’ and NNWS should not. The possibility of future caveats to US assurances damages NNWS’ confidence in the positive benefits of current guarantees, which need to be seen as sustainable if they are effective in bringing confidence. It also legitimises other states in further conditioning their declaratory commitments. This is particularly true for China, which could in future reconsider its own NSAs and no first use pledge.

There appears to be an inevitable development and proliferation of highly-disruptive emerging technologies, so that a number of states are likely to possess highly devastating capabilities, whether they choose to threaten the United States with them or not.²⁰ The conditions for disarmament were already complex, moves towards a world free of nuclear weapons being highly contingent on achieving progress in arms control and improved strategic relations. If indefinite successful control over the proliferation of other highly destructive technologies is added to the conditions for disarmament the prospects of success become even more slim. Where will this leave the NPT in the longer term?

16 The New U.S. Nuclear Strategy is Flawed and Dangerous. Here’s Why, *Arms Control Association*.

17 NPR 2018, p. 54.

18 The pre-decisional draft is available to download at Aley Feinberg, “Exclusive: Here Is A Draft Of Trump’s Nuclear Review. He Wants A Lot More Nukes,” *Huffington Post*, January 2018, http://www.huffingtonpost.co.uk/entry/trump-nuclear-posture-review-2018_us_5a4d4773e4b06d1621bce4c5.

19 NPR 2018, p. 21.

20 Jean-Marc Rickli, “Defence Future Technologies: What we see on the horizon,” *GCSP*, December 2017, <https://www.gcsp.ch/News-Knowledge/Publications/The-Impact-of-Autonomous-Weapons-Systems-on-International-Security-and-Strategic-Stability>.

Political Implications for US Allies

Its allies will continue to clarify with the United States the nature of the signalling within the NPR and its impacts in the coming months. A key question for the UK and France is whether Washington's choices limit their own freedoms when considering declaratory policy. Significant departures or differences with the United States could be seen as a criticism of the United States or an opportunity for Russia to divide the Alliance. For example, European diplomatic on the Joint Comprehensive Programme of Action (JCPOA) with Iran has revealed the way in which rifts can emerge between allies on nuclear weapons issues .

On the other hand, the two European Nuclear Weapon States have also to take account of the need to reassure other NATO allies concerned with moderating declaratory policy in the interests of wider non-proliferation postures. A majority of NATO member states strongly want to keep alive hope in nuclear disarmament diplomacy and believe in traditional values associated with arms control. Indeed, this remains the official policy of the Alliance itself.²¹ Balancing these concerns will occupy transatlantic dialogue in the coming months. This briefing returns to this theme in the conclusion.

The NPR's ambiguous, and at times contradictory, caveats may have unintended consequences for US messaging

²¹ Jens Stoltenberg, "Press Conference by NATO Secretary General Jens Stoltenberg following the morning meeting of the North Atlantic Council (NAC) in Foreign Ministers' session," NATO, April 2018, https://www.nato.int/cps/en/natohq/opinions_154092.htm?selectedLocale=en.



Reactions to a Dialogue on NSAs

Scepticism from Nuclear Weapon States

When approached, representatives of nuclear armed states are keen to outline their existing declaratory policy and NSAs. This suggests an opportunity for a minimalist approach that codifies existing positions, upon which there can currently be confusion and misinterpretation. Existing NSAs are seen as expressing the limits of what is reasonable to ask, given the security situation that inevitably holds uncertainty, emerging threats and changing technologies.

In giving their NSAs, nuclear armed states are already acknowledging the security benefits of NSAs to NNWS, to global security, and by extension to themselves. They will recognise that NSAs expressed by other nuclear armed states can act as a break on any potential excesses in attempts to pressurise or blackmail NNWS, and they contribute to an atmosphere within international society more conducive to containing proliferation. It is also worth noting that those nuclear armed states most sceptical about an FMCT are generally more positive about NSAs, which hints at a potentially positive negotiation linkage.

However, officials from nuclear armed states are usually nervous about an agenda of tightening NSAs declarations for a number of reasons, including:

- concern around a loss of control over declaratory policy in a direction that undermines stability and other perceived benefits offered by nuclear deterrence, and the possibility of being too prescriptive and thus limiting freedom of action in the face of future uncertainty;
- the emergence of new threats or technologies for which nuclear deterrence may become relevant;

- giving comfort to those NNWS who may break their commitments to non-proliferation and threaten the international order; and in any case
- NSAs are not seen as the principal concern (in contrast to direct confrontation with other nuclear armed states) and could therefore be a distraction to more important diplomatic effort.

However, there is also a perception that there could be room for improvement and constructive engagement, if only in terms of opportunities to clarify existing thinking and to convey to other states the complexities of deterrence postures. There was also a recognition that NSAs as a security feature could play a role in balancing the focus in some hostile diplomatic quarters on the humanitarian dimension.

In terms of impacts upon diplomatic incentives and approach, there is a belief that any improvement in NSAs in the current polarised environment would simply be ‘pocketed’ by the NNWS, like payment on a bad debt. Tightening NSAs will not therefore be a strong negotiating card in requiring reciprocal offers from NNWS in an NPT bargaining environment. But this misses the point. NSAs offer advantages to nuclear armed states in going some way to stabilising the diplomatic environment, as well as having some direct benefits to themselves. They would go some way to restoring confidence in the NPT regime by clearing some of this ‘bad debt’.

Enthusiasm from Europeans and many other NNWS

Officials from European states and other US allies are usually unequivocal in their support for exploring clearer and tighter NSAs. There was a widespread recognition:

- of the need to contain expectations;
- that it would not be possible in the short run to discuss unconditional NSAs; and
- that harmonising NSA exceptions would be challenging because of the diversity of security environment for the different nuclear armed states.

However, there remains some enthusiasm to explore how nuclear armed states could clarify and tighten up their exceptions, and agreement that this would benefit global security. The doubts come in how best to persuade their nuclear armed allies to take this agenda seriously without appearing to be critical or to cause diplomatic strain.

Objections from Ban Treaty States and Disarmament Campaigners

One might imagine that concrete steps to clarify limits to the application of nuclear deterrence would generally be welcomed by those looking to limit the salience of nuclear weapons as a step in the direction of disarmament. There are nevertheless active suspicions towards an international discussion of NSAs for two main reasons.

Firstly, it could reduce the incentive for NNWS to engage robustly in pressing for disarmament as their national security concerns would be alleviated. However, this concern is not shared widely. There is little evidence to suggest that the dominant motivation for NNWS action on the disarmament agenda is the fear of being a direct target, but rather a more general concern around the threat to international security, consistent with the observation that nuclear exchange is far more likely between nuclear armed states. In any case, when issues of national security strategy are concerned, diplomatic pressure has only so much effectiveness. Indeed, it can be counter-productive. So objections to a focus on NSAs on the basis that it reduces pressure is a poor argument.

On the other hand, a case made by NNWS that NSAs themselves directly benefit national and global security should be received positively by nuclear armed states. After all, they frequently point to the need for security concerns to be taken more seriously by other members of the international community when discussing steps towards nuclear disarmament.

NSAs can act as one of the bridges between security and deterrence on the one hand and disarmament on the other, that will be essential to understanding and progress.

The second more robust concern is that a focus on NSAs could end up strengthening a sense of legitimacy for nuclear weapons in the minds of some by implicitly mapping the set of legitimate nuclear threats (namely against other states with nuclear weapons or those covered in the exceptions), and a weakening of the attempt to build a global norm hostile to nuclear deterrence more generally. This perception needs to be treated seriously if the effort to clarify (and tighten) NSA declarations is to be seen within the broad international community in a positive light and deliver the diplomatic benefits that ought to come from reducing salience of nuclear weapons. We would suggest that advocates of clearer and tighter NSAs talk in terms of expanding the universally recognised set of illegitimate uses of nuclear weapons with the explicit proviso that this does not imply legitimacy (or illegitimacy) in other circumstances.

If nuclear armed states perceive nuclear deterrence to be legitimate in certain areas there is little the rest of the international community can do to force a change in their perspective. Conversely, tighter NSAs could be issued by nuclear armed states themselves, and thus would not require formal recognition by those states enjoying the assurance, nor would they imply a broader acceptance of legitimacy in the wider international community. On the other contrary, it could be argued that an inclusive process to discuss and specify NSAs would be seen as a cooperative step in the broader project of reducing the salience of nuclear weapons over time, and contributing to the positive conditions for nuclear disarmament that the Trump Administration highlights.²²

There remains some enthusiasm to explore how nuclear armed states could clarify and tighten up their exceptions, and agreement that this would benefit global security

²² NPR 2018, p. 71.

Step-by-step on NSA Exceptions

Nuclear armed states have in place NSAs with identified exceptions as a feature within their broader declaratory policies. These exceptions arise because nuclear armed states want to ensure that a nuclear deterrent effect is achieved against NNWS that may develop a capability of threatening them at a strategic level. A dialogue on NSAs could focus on encouraging a progressive step-by-step approach to reducing the extent and number of exceptions towards the objective of eliminating them entirely. The exceptions currently fall into three types:

- States in alliance with a nuclear armed state
- States deemed in breach of their non-proliferation obligations
- States that attack with chemical or biological weapons (or other technologies with strategic effective)

Alliance

When NSAs were first proposed in the context of the Cold War there was a fear that they could be manipulated by adversaries hiding behind their NNWS allies, and that these allies might be emboldened to attack without the fear of nuclear retaliation. NNWS engaging in an overwhelming alliance attack could otherwise benefit from the NSA and avoid being deterred. The exclusion for states in alliance with a nuclear armed state has since been dropped by the United States, UK and France but remains for Russia, whose military doctrine includes nuclear use against any overwhelming conventional attack in which the very existence of the state was under threat.²³ This may seem to some odd, as there are really no credible possibilities for the Russians to experience a significant military threat that does not involve nuclear armed adversaries, and that therefore their broader deterrence capabilities would be sufficient. But it is clear from this exception that Russia feels the need to retain the possibility of holding at risk with nuclear weapons non-nuclear NATO states as well as nuclear armed states to achieve sufficient deterrence.

Any dialogue on tightening NSAs as they relate to NNWS in alliance would need to engage states like Russia and North Korea in a manner sensitive to their strategic perceptions. One possibility may be to encourage them to consider tightening up this exception by applying it only in such circumstances when a NNWS is actively engaged in a strategic attack alongside a nuclear armed state, and not simply to all states who exist in an alliance. Any such attack could be treated as a joint attack and therefore the NNWS be treated as a full nuclear belligerent and covered by the exception. This may provide incentives to allies that are NNWS to actively contain threats being made by their nuclear armed allies in a crisis, and thus benefit the security of the state issuing the NSA.

Non-compliance with the NPT

Clearly nuclear armed states will want to retain the freedom to apply nuclear deterrence when facing down states with well-developed illicit nuclear weapons programmes and a suspected deployed nuclear arsenal. Such states would not benefit from an NSA in any case because they would be de facto nuclear armed states. But the additional motivation for the non-compliance exception, and the reason for its particular formulation, is based upon the sense of responsibility

²³ Voennaya Doktrina Rossiiskoi Federatsii 2014.

towards upholding global governance and the health of the NPT, particularly for permanent members of the UN Security Council. It seems to them self-evident that states in non-compliance should not receive the benefits that other states within the Treaty enjoy.

But to NNWS this contains a number of problems:

- It implies to them that states not covered by NSAs are implicitly open to nuclear threat, even if that is not the intention of the policy.
- They believe it signals a general attitude of nuclear compellence and implied nuclear threat to incentivise compliance, which is not only an unacceptable use of nuclear weapons (with their attendant humanitarian impacts), but also appears to give them added perceived utility. This utility, however, is largely an illusion – studies suggest that nuclear threats are very poor in achieving successful compellence.²⁴
- All these judgements end up being taken by the leadership of the nuclear armed state, and previous experience (most notably the invasion of Iraq in 2003 without U.N. Security Council backing) undermines trust in those states ability to exercise restraint when they feel they are in the right and the stakes were high. This leaves other states vulnerable to these judgements.

If there are to be sanctions levelled against states for not joining or complying with the NPT, there are a suite of other more credible and effective options that would not undermine the norm against threatening states without nuclear weapons. This exception could be a good place to start negotiations to explore whether states could drop it entirely, without any obvious sacrifice to national security, or indeed the efficacy of a state's nuclear deterrent.

Other WMD

True to the concerns of our time, the latest French Presidential statement refers its NSAs to those states 'that respect their international obligations for non-proliferation of weapons of mass destruction', thus applying the compliance exception also to the Chemical Weapons Convention and the Biological and Toxin Weapons Convention.²⁵ This implies that Syria today has forfeit its French NSA (given French belief there is proof of multiple uses of chemical weapons by the Assad regime), even though it presents no direct strategic threat to France or the wider international community.²⁶ The implied threat of nuclear attack to back up a Responsibility to Protect doctrine, or to punish another government's actions, must surely lie outside any state's concept of legitimacy.

The current British NSAs explicitly talk of 'reserv[ing] the right to review this [NSA] assurance if the future threat, development or proliferation of these weapons [chemical and biological] make it necessary.'²⁷ The Obama Administration dropped such references in its 2010 NSA, though as previously outlined, the Trump Administration's 2018 NPR talks of the future possibility of US nuclear deterrence being applicable to any threats that may have strategic effect.

There is widespread discomfort throughout the rest of the international community around associating nuclear deterrence with CBW. It may legitimise possession of CBW as a balance or deterrent against nuclear weapons. Operational CBW cannot yet be compared with nuclear weapons in terms of their level of impact and perceived military utility. As we have seen recently, attribution can also be a problem, one that has presented legitimacy challenges to even

24 Todd S. Sechser and Matthew, *Nuclear Weapons and Coercive Diplomacy* (Cambridge, UK: Cambridge University Press, 2017).

25 François Hollande, "France will not lower its nuclear guard, vows President," *Embassy of France in London*, February 2015, <https://uk.ambafrance.org/France-will-not-lower-its-nuclear>.

26 John Irish and Sophie Louet, "France has proof Syrian government conducted chemical weapons attack: Macron," *Reuters*, April 2018, <https://www.reuters.com/article/us-mideast-crisis-syria-france/france-has-proof-syrian-government-conducted-chemical-weapons-attack-macron-idUSKBN1HJ1M5>.

27 HM Government, 'National Security Strategy,' November 2015, p. 35.



very limited military responses. The threat of nuclear retaliation would require a far, far higher degree of confidence in the attribution.

Ultimately, retaining the exception on the basis of possible future emergence of threat draws attention to the problem that states have not yet developed viable responses to future disruptive emerging technologies that present a strategic threat to increasingly vulnerable modern societies, such as weaponised, highly-targeted synthetic biological materials. Retaining the option to respond with nuclear weapons in the belief that this will provide a credible deterrent is problematic in terms of effectiveness, as well as undermining the efforts to build the norm against nuclear threats. It could encourage complacency, and send the message that nuclear armed states will always prioritise their own deterrence capabilities over international efforts to build cooperative non-proliferation instruments.

Instead of making reference to CBW or emerging technologies, it may be better simply to draw the more general point that declaratory policy evolves over time in response to the changing security environment and a number of other factors, to restate the intention (and commitment) to reduce the salience of nuclear weapons, and leave it at that.

There is widespread discomfort throughout the rest of the international community around associating nuclear deterrence with CBW.

Escaping the Traps in Declaratory Policy

Balancing Ambiguity and its Unintended Consequences

The discussion of CBW threats points to a more general challenge around ambiguity and NSAs. NSAs are generally determined within the context of assessments made by military planners of the degree of freedom nuclear armed states have to give such guarantees without compromising their security. As such, a degree of ambiguity is deemed essential, but also some effort is made to reflect honestly on those potential though often highly unlikely scenarios in which they would want to benefit from nuclear deterrent effects against NNWS. Attention is thereby drawn to these extraordinary scenarios at the very tails of the probability that limits the willingness to tighten NSAs and harms good will that would otherwise pertain from the NSAs. On the other hand, the state offering the NSA does not want to mislead or to give comfort to any state that might in future be tempted to indulge in such threats in these exceptional circumstances.

The exceptions expressed are not seen by nuclear armed states as active nuclear threats to those states per se, but rather an insurance against potential scenarios in which nuclear deterrence would apply. These ambiguities correlate to the inevitable uncertainty associated with deterrence. Uncertainty that inevitably expands into the distant future. This combines with a fear that reversals in guarantees send undesirable signals, particularly in a crisis, and offends the principle of irreversibility that sits at the heart of disarmament diplomacy.

This relates to the practice of US Presidents and their representatives to declare that 'all options are on the table.' This is frequently read to include a veiled nuclear threat, even when that may not be clearly intended, when it would be illegal under the UN Charter, or when it would break a number of other declarations made by US administrations. Some within the international community conclude from such formulations that the United States is prepared to operate outside of the law or against previous assurances when it chooses to do so. This undermines US credibility as an upholder of the rule of international law. It can draw reactions and criticism even from close allies, and undermine the unity essential to effective counter-proliferation.

This points to a fundamental challenge in the discussion around NSAs, and why there is nervousness about opening up a Pandora's box. Nuclear armed states are attached to ambiguity and flexible interpretations on the basis that they may in future face an unspecified overwhelming threat for which nuclear deterrence may be the only credible option. NNWS view such an insurance as an indefinite attachment to nuclear deterrence, and therefore an immovable block to nuclear disarmament and an arrogant disregard for the security of other states, that can drive further nuclear proliferation. It strengthens suspicions that claims from nuclear armed states of their intention to abide by their disarmament commitments are just hot air. Therefore, efforts to articulate a generally-acceptable NSA could be condemned to failure and simply result in further frustration and hostility in an already strained diplomatic community.

This trap looks inevitable if the NSA discussion is approached as a set of negotiation demands and positions. This will simply encourage nuclear armed states to see this as a trade-off between diplomatic relations and their own security. And this is a false choice.

However, NSAs could be seen as an exploration of the mutual benefits available when greater clarity can be achieved in nuclear postures and where the communication of these postures is better understood. NNWS can be assured that the conversation has in mind the objective of reducing the salience of nuclear weapons and a step in the direction of the elimination of nuclear weapons, whilst nuclear armed states the objective of better communicating the limits of their deterrence postures, and thereby strengthening their signalling. This is in the context of existing legal and moral

commitments to multilateral disarmament and to the mutual security of other states (global security) as well as one's own national security. When considering nuclear signalling, attention is all too often focused on only one side of the coin (the credible threat), yet it also relies upon assurance and clarity.

An Alternative Formulation of NSAs within Declaratory Policy

Discussions on NSAs could be more productive if they were held within a broader consideration of declaratory policy. Whilst nuclear armed states do put some effort into comprehensive articulation of their policies (in strategic reviews or military doctrines), their efforts often fail to bring clarity. This is particularly true when such policies contain contradictions, or if there remain differences between official policies that jointly apply, or where they contradict leadership statements. For example, current declaratory policy is often inconsistent with extant legal declarations associated with Nuclear Weapon Free Zones.²⁸ This is of course particularly problematic in a time when leaders attempt to make a virtue of sending contradictory and confusing signals to confuse adversaries and even allies. Such strategies are particularly problematic when nuclear signalling is involved.

It would benefit clarity and trust-building for nuclear armed states to pull together the various strands of their declaratory policy and interpretations of legal obligations together in one place because these are often scattered and contradictory. Explicit NSAs could be more clearly contextualised within definitive declarations of purpose, exclusions of use, and the official understanding of the legal constraints they and other nuclear armed states operate under.

It would also be helpful if leaderships made more regular reference to these statements and gave explanations of how their subsequent specific statements applied to regional confrontations, deployments and actions. This would build a culture of ongoing accountability for those policy statements and actions to the international community, in order over time to build trust in their voracity. Effective deterrence requires clarity and confidence in the minds of potential adversaries in a state's signalling, and effective disarmament diplomacy also requires such confidence within the wider international community.

Declaration of Purpose

Declaratory policy, the framing for signalling that is at the heart of both nuclear deterrence and nuclear diplomacy, might best start with a clear expression of purpose for the possession of nuclear weapons. It would explain why a state deploys its nuclear arsenal, alongside an acknowledgement of the grave consequences of nuclear use, the clear limits to the use or threat of nuclear weapons and the risks this deployment entails. This should be based upon an expression both of national security and state responsibilities towards the international community, including that of engaging with clear intent to achieve mutual nuclear disarmament.

Principles of Last Resort (description in principle without scenarios)

Statements of principle can help give assurance and clarify thinking, even when they seem vague or obvious. In his State of the Union address in 1984 President Reagan stated that a nuclear war can never be won and should never be fought, and this phrase was repeated in the mutual statement when he met with President Gorbachev the following year in Geneva. This was seen as an important explicit recognition that any planning for pre-emptive nuclear attack to neutralise the other side could not succeed, and that the two leaders acknowledged mutual assured destruction. This was no small feat as the nuclear forces of both states had developed into complex and multidimensional capabilities with doctrines

²⁸ See, for example, Kelsey Devenport, "Nuclear-Weapon-Free-Zones (NWFZ) At a Glance," *Arms Control Association*, July 2017, <https://www.armscontrol.org/factsheets/nwfz>, and "Protocol to the Treaty on a Nuclear-Weapon-Free Zone in Central Asia," May 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431580/TS_10.2015_Cm_9064_WEB_ACC_.pdf.

that involved flexible response in the expectation that full nuclear exchange might be avoided in earlier stages of nuclear exchange. It also signalled intent to deal with a situation that both leaders acknowledged had got out of control.

A decade later and well after the end of the Cold War, the International Court of Justice gave its advisory opinion that the only conceivable legal threat or use of nuclear weapons would be in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.²⁹ This has been acknowledged by nuclear armed states. However, including this formulation within formal declaratory policy would explicitly recognise existing the legal constraints implied and reassure the international community that military planners and commanders-in-chief fully accepted them.

The interim recommendations of the Japanese Group of Eminent Persons refer to the need for states to:

- reaffirm that a nuclear war can never be won and should never be fought;
- eschew any nuclear war-fighting doctrine; and
- refrain from coercive action based on the threat of use of nuclear weapons.³⁰

The third recommendation is of course directly relevant to the proposal to drop the NSA exception referring to NPT non-compliance. At present, declaratory policies do not always appear to sit comfortably with definitions of last resort. A common understanding of last resort amongst nuclear armed states could go some way to deepening broader respect within the diplomatic community.

Declaration of Limits to Use in Existing International Law

All states are bound by the Charter of the United Nations, that prohibits the use of force in all circumstances except when exercised proportionately under self-defence (or protecting allies), when acting to pre-empt an immediate threat of attack or under a U.N. Security Council Chapter VII mandate. Any re-statement of nuclear declaratory policy would benefit from explicit reference to these limitations with an acknowledgement that any action using or threatening the use of nuclear weapons outside of these constraints would be illegal and would never be contemplated. States could transparently train their personnel in the firing line on these legal dimensions, as well as other aspects of their declaratory policy, and find ways to demonstrate that their military exercises and posture were compliant with these constraints. When using formulations such as 'all options are on the table,' governments should clarify that these only include legal options and their understanding of what these limitations might entail.

Greater Clarity in NSA Exceptions and Step-by-Step Tightening

We have already seen how an approach that seeks greater clarity on the reason for NSA reservations can lead to a natural and helpful tightening. In some circumstances it can also clarify the circumstances that might enable a state to drop the exception entirely, as has happened already for NATO members with respect to the (Warsaw Pact) alliance criterion, and could happen with the non-compliance with the NPT exception. If remaining NSA exceptions were to be expressed within the broader context above they may attract less criticism.

²⁹ International Court of Justice, "Legality of the Threat or Use of Nuclear Weapons," July 1996, paragraph 95 and 97.

³⁰ "Building Bridges to Effective Nuclear Disarmament," paragraph 26 and 27.



Conclusion: Opportunities for Leadership?

Declaratory policies are essentially determined in the context of security assessments by military planners within the nuclear armed states first and foremost. NSAs are offered where they can be without neutralising potential deterrence effects that might otherwise benefit national security. This requires a high degree of subjective judgement based upon a particular narrow interpretation of national interests. Deterrence is necessarily a risky art, involving psychological-political assessments that deal in opaque probabilities and situations that are impossible to game accurately. There is huge potential for disruptive shocks to the system that are political or technical in nature. Defence strategists inevitably err on the side of caution when there is such a high degree of uncertainty, and the global interests and those of other states tend to be undervalued.

This has dangerous implications for disarmament and non-proliferation diplomacy, and comes at a significant cost to trust-building and therefore to longer-term global security. While states still insist on attaching their security policies to nuclear deterrence, the only responsible approach must focus on all the relevant dimensions of security, best seen in terms of a complex matrix of variables in which outcomes are improved by clarity and moves in the direction of disarmament just as much as the need to retain freedom of action (ambiguity) and system capabilities.

Focusing particularly on Europe, the delicate political balance within NATO in particular demands a good eye on the balance between deterrence and disarmament. Allies could usefully begin patient and sensitive discussions about their views on what practically would be seen as progress. Europeans share the view that it is important to stay on the right side of the United States as its posture evolves, without necessarily staying in lock-step.

The nuclear armed states need to develop a shared narrative that status within the international community (with or without nuclear weapons) requires responsible behaviour. This involves a commitment in principle not to threaten NNWS with nuclear attack, an early step in the broader disarmament agenda they are committed to.

The consequence of basing declaratory policy upon highly unlikely hypotheticals is to miss a serious opportunity for progress on the road to building trust and confidence within the international community. Great care needs to be taken with the exceptions, and they need to be used sparingly, with a view to moving in the direction of abandoning them altogether on the path towards full nuclear disarmament.

Declaratory policy should be based upon an expression both of national security and state responsibilities towards the international community including that of engaging with clear intent to achieve mutual nuclear disarmament.

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