EXTENDED DETERRENCE AND THE FUTURE OF THE NUCLEAR NONPROLIFERATION TREATY

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President Barack Obama offered the following description of the foundations of the Nuclear Nonproliferation Treaty (NPT) in his landmark April 2009 speech in Prague: "The basic bargain is sound: Countries with nuclear weapons will move toward disarmament, countries without nuclear weapons will not acquire them, and all countries can access peaceful nuclear energy."[1]

Although most analysts of the NPT over the past two decades have agreed with that summary of the Treaty's foundational bargains,[2] it is inaccurate – or at least incomplete. It omits a bargain between nuclear- and non-nuclear weapons states that was critical to the NPT when the Treaty was negotiated and for a few decades thereafter. As George Bunn and Roland Timerbaev wrote in 1993, "Put simply, the non-nuclear weapon state proposal to nuclear-weapon states 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?'"[3]

Thus, fifty years ago extended deterrence was a major pillar of the NPT. The Federal Republic of Germany (FRG), Italy and Japan in particular made clear that the U.S. alliance commitments were essential for them to join the NPT as non-nuclear weapon states. Indeed, they reportedly refused at the time to accept unlimited duration for the Treaty because they feared that neither NATO nor the U.S.-Japan mutual defense pact would last indefinitely.[4] In a January 1969 memorandum on the NPT, Spurgeon Keeny of the White House National Security Council staff informed new National Security Advisor Henry Kissinger that the United States had assured the West German Government that "the FRG would have adequate reason to exercise its rights under the withdrawal clause (Article X) in the unlikely event that NATO should lapse."[5]

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[1] "Remarks by President Barack Obama in Prague as Delivered," April 5, 2009, available at https://Obama whitehouse.archives.gov.

[2] One important exception is Bruno Tertrais, who stressed in 2011 the importance of the presence of security guarantees in states' decisions not to pursue nuclear weapons, and of their absence in states' decisions to proliferate. See Bruno Tertrais, Security Guarantees and Nuclear Non-Proliferation, Fondation pour la Recherche Stratégique, Note No 14/11, August 16. 2011, available at https://www.frstrategie.org.

[3] George Bunn and Roland M. Timerbaev, "Security Assurances to Non-Nuclear-Weapon States,"The Nonproliferation Review, Fall 1993, p. 11.

[4] Ibid., p. 12.

In 1968, the United States, United Kingdom and the Soviet Union — the only three nuclear weapon states to be original NPT parties[6] -- refused to give any new legally-binding security assurances to non-nuclear weapon States Parties to the Treaty. The most they would do was to issue Positive Security Assurances (PSAs), which contained no new legal obligations. The PSAs, in the form of similar national statements and United Nations Security Council Resolution (UNSCR) 255, were very weak. The nuclear-weapon states simply stated their intention to offer immediate assistance if a non-nuclear weapon state was a victim of nuclear aggression or the threat of nuclear aggression. In UNSCR 255, the Security Council welcomed those assurances and noted that actual or threatened nuclear aggression against a non-nuclear-weapon state would "create a situation in which the members of 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." Interestingly and to underscore the weakness of the resolution it did not explicitly mention Chapter 7 of the Charter, which concerns "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."[7]

Ten years later, the three nuclear-weapon states parties to the NPT issued individual Negative Security Assurances (NSAs). So too did China, which by then was a permanent Security Council member, although it was not yet an NPT party.[8] The initial U.S. assurance promised that it would not attack a non-nuclear NPT party except in case of attack on the United States or its allies by a state allied or associated with a nuclear-weapon state. Although the United States retained the initial NSA until 2010, the Clinton and both Bush Administrations made clear — if obliquely -- that they might respond with nuclear weapons to any weapons of mass destruction (WMD) attack on the U.S. homeland or that of friends and allies.[9]

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[5] Spurgeon Keeny, "Memorandum for Dr. Kissinger, Subject : Provisions of the NPT and Associated Problems," January 24, 1969, declassified on November 29, 1999, available in Nuclear Nonproliferation Treaty, Implementation of Safeguards System," available at https://2001-2009.state.gov.

[6] France and China did not join the NPT until 1992. However, they did so as nuclear-weapon states because of the definition in Article IX of the Treaty: "For the purposes of this Treaty, a nuclear-weapon state is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967." No state other than the five meets that criterion.

[7] "United Nations Security Council, Question Relating to Measures to Safeguard Non-Nuclear Weapon State Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Resolution 255 (1968) of 19 June 1968," available at www.un.org. The resolution passed by a vote of 10-0, with five abstentions; France, along with India, Pakistan, Brazil and Algeria abstained. The People's Republic of China was not yet a UN member.

[8] France did not issue a Negative Security Assurance until 1987.

[9] See for example, George W. Bush, National Strategy to Combat Weapons of Mass Destruction, December 2002 : "The United States will continue to make clear that it reserves the right to respond with overwhelming force — including through resort to all of our options — to the use of WMD against the United States, our forces abroad, and our friends and allies. » (available at www.fas.org) See also the press briefing by Robert Bell of the Clinton National Security Council staff on the signing of the protocols to the Treaty of Pelindaba, establishing the African

The United States changed its NSA in the 2010 Nuclear Posture Review (NPR) to state that it would not use nuclear weapons against non-nuclear weapon states in good standing with the NPT. The 2018 NPR narrowed the scope of the NSA, by stating that the United States "will 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."[10] Thus, the current U.S. NSA might not extend to states in violation of non-NPT nuclear nonproliferation obligations, such as the UNSCRs on North Korea.

The 1968 PSAs were reaffirmed in 1978 and again in 1995 – the latter in the context of the NPT Review Conference which voted to extend the Treaty indefinitely. However, they were too weak to have any impact, and have been largely forgotten. The NPT PSAs were at best only indirectly and partially mentioned by any governments or major media after Russia attacked Ukraine in 2014. In the December 1994 Budapest Memorandum, the United States, Russian Federation and the United Kingdom committed to uphold and protect the sovereignty and territorial integrity of Ukraine. The Memorandum played an important role in Ukraine's decision to denuclearize, and was issued the same day as Ukraine joined the NPT as a non-nuclear weapon state. The Memorandum -- which received considerable attention in 2014, but not implementation — repeated the language of UNSCR 255 concerning Security Council action, without explicitly mentioning it. However, unlike UNSCR 255, the Budapest Memorandum was silent on any national intentions to offer assistance.[11]

The fate of the Budapest Memorandum and the virtual disappearance from view of the 1968 PSAs underscore the inability of non-nuclear-weapon states today to put confidence in non-alliance-based positive security assurances. Indeed, President Obama's Prague speech amply demonstrated that the most senior levels of government had little or no memory of the security assurance bargain that was a requirement for the original Treaty to come into existence. By the mid-1990s, the end of the Cold War, dissolution of the Soviet Union and Warsaw Pact, along with at the time a relatively weak China and non-nuclear Korea, meant that most governments

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Nuclear Weapons Free Zone (ANFZ), in which he implicitly invoked the doctrine of belligerent reprisal regarding potential use of nuclear weapons in response to a WMD attack: "Under Protocol I, which we signed, each party pledges not to use or threaten to use nuclear weapons against an ANFZ party. However, Protocol I will not limit options available to the United States in response to an attack by an ANFZ party using weapons of mass destruction." Press Briefing by Mike McCarty and Robert Bell, Special Assistant to the President and Senior Director for Defense Policy and Arms Control, National Security Council, April 11, 1996, available at http://www.presidency.ucsb.edu.

[10] U.S. Department of Defense, Nuclear Posture Review Report, April 2010 and Nuclear Posture Review 2018, available at www.defense.gov.

[11] Paragraph four of the Budapest Memorandum reads as follows: "The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used." Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Budapest, December 5. 1994, available at www.pircenter.org.

and observers no longer saw a serious nuclear threat to the United States and its NATO and Australasian allies. Attention shifted from extended deterrence and security assurances to NPT Article VI and its newly-defined disarmament obligations.[12]

As Spurgeon Keeny emphasized, NATO and the U.S. mutual defense pacts were essential for many U.S. allies to adhere to the NPT as nuclear-weapon states. Still, they were not enough for the French Government. President de Gaulle made clear after he came to power in 1958 that he had confidence in U.S. extended deterrence only as long as the United States had a monopoly or near-monopoly on nuclear weapons. Once the Soviet Union could threaten the United States with nuclear attack, de Gaulle no longer trusted the United States to come to Europe's aid.[13] No other European state followed de Gaulle's lead. None acquired nuclear weapons and all remained in the military arm of NATO after France withdrew. After the Cold War ended, the Baltic states and all non-Soviet Warsaw Pact members joined NATO, and France grew steadily more involved in the Alliance.

Now, however, the NPT faces a very different international security environment. The emergence of an economically and militarily powerful China, of a nuclear-armed North Korea and of a hostile Russia all mean that the United States' actual and potential extended deterrence commitments to its allies once again matter tremendously for the future of the NPT. Several other important factors heighten the strains on the NPT, and reinforce the renewed focus on extended deterrence for the future of the nuclear nonproliferation regime. Those include limited progress on actions agreed at NPT Review Conferences, the failure to reach a consensus Final Document at the 2015 Review Conference, the currently dim prospects for future bilateral or multilateral arms reductions, doubts about the extension of New START past its current February 2021 expiration date, and the U.S. withdrawal from the Joint Comprehensive Plan of Action (JCPOA).

Added to this now are U.S. policy and actions that cast unprecedented doubt on U.S. commitments to the security of its European and Australasian allies. Since the November 2016 U.S. elections, some Europeans have increasingly voiced, if quietly or indirectly, the same fears as de Gaulle did about sixty years ago. In some ways, those new fears are even more severe than those of the past. President Donald Trump's public statements and behavior in international meetings raise repeated questions about his commitment to NATO and even about his definition of alliance, and identification of U.S. allies, friends and adversaries. Thus, the President has publicly identified the European Union as a foe, and excoriated the other heads of government at G-7 and NATO meetings, while praising Russian President Vladimir Putin. Further, President Trump has described NATO as primarily a financial drain on the United States, rather than as an essential component of U.S. security. For many allies, the President's disavowal of the JCPOA casts further doubt on the reliability of U.S. commitments.

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[12] Article VI reads: " Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." While in the memorandum cited above, Spurgeon Keeny devoted considerable attention to the importance of extended deterrence and positive security assurances for non-proliferation, he summarily dismissed Article VI: "This is an essentially hortatory statement and presents no problems." Keeny, op.cit., p. 5.

[13] See, for example, "Press Conference by President de Gaulle, Paris, 14th January 1963," in Western European Union Assembly, General Affairs Committee, 10th Ordinary Session, Political Union of Europe. Paris, June 1964.

All of those changes in longstanding U.S. policy and rhetoric coincide with Russian designation of the United States and NATO as its prime enemies, and of Russian active measures to undermine NATO democracies that have not been seen at least since the depth of the Cold War, if then. In the Eastern Hemisphere, the United States and our allies face an increasingly powerful and assertive China, which touts its regional and global ambitions, and a North Korea with significant missile, nuclear, chemical and biological forces.

As recently as 2017, it would have been unthinkable to imagine that Germany would pursue nuclear weapons. The likelihood of that happening still appears very low, but it is no longer unimaginable. In June 2018, after the G-7 Summit, but before the NATO and Helsinki Summits, German Foreign Minister Heiko Mass was eloquent about the new European security environment. He did not come close to mentioning the possibility of nuclearization, but that would be a logical outcome if the trends he described continue:

> "The world order that we once knew, had become accustomed to and sometimes felt comfortable in — this world order no longer exists.
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> "Old pillars of reliability are crumbling under the weight of new crises and alliances dating back decades are being challenged in the time it takes to write a tweet. The US was long the leading power among the free nations. For 70 years, it was committed to freedom, prosperity and security here in Europe. …
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> "The Atlantic has become wider under President Trump and his policy of isolationism has left a giant vacuum around the world. …
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> "The urgency with which we must pool Europe's strength in the world is greater than ever before. …
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> "As well as the courage to unite, the EU needs the right instruments to actually be able to put these policies into practice. Part of the new transatlantic reality is that we need to take on more responsibility for our own security because we can no longer count on the other side of the Atlantic doing so for us. We need a real European security and defence union."[14]

The same theme was echoed recently by former Australian Prime Minister Tony Abbott. While his article mainly praised President Trump and his Administration, he also emphasized that Australia could no longer rely on U.S. extended deterrence for its security. In mentioning the need for an Australian focus on strategic deterrence, Abbott came fairly close to suggesting future Australian nuclear weapon acquisition:

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[14] Heiko Maas, "Germany's Foreign Minister Calls for 'A Real European Security and Defense Union,'" June 14, 2018, available at http://www.atlanticcouncil.org.

> "The rise of China means that Australia can no longer take for granted a benign strategic environment. For the first extended period in my country's settled existence, the strongest power in our part of the world is unlikely to share our values. We can no longer be sure that a friendly nation will be the first to respond to a new challenge to peace, stability and decency in our region.
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> "I fear there will have to be a much greater focus on strategic deterrence, especially if a rogue state like North Korea has long-range nuclear weapons — and especially if the American nuclear shield becomes less reliable. …
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> "What Mr, Trump is making clear — to us and to others — is what should always have been screamingly obvious: that each nation's safety now rests in its own hands far more than in anyone else's."[15]

While the chances of a European or Australian move toward nuclear weapons seem very low in the near term, that could change if President Trump continues to redefine who are U.S. allies and friends, and who are our enemies, and to question whether our alliances serve U.S. security.

The prospect of Japanese and South Korean acquisition of nuclear weapons is a greater, or at least nearer-term, concern. In opinion polls in 2017, about two-thirds of South Korean respondents said they supported their country acquiring nuclear weapons. Japanese public support for nuclear weapons remains very small, but about doubled last year, from 5 to 12 percent. [16]

During a trip to Japan in March 2017, then-Secretary of State Rex Tillerson stated publicly that the United States might support Japanese acquisition of nuclear weapons if the North Korean threat is not resolved: "'We say all options are on the table, but we cannot predict the future….So we do think it is important that everyone in the region has a clear understanding that circumstances could evolve to the point that, for mutual deterrence reasons, we might have to consider that [Japanese acquisition of nuclear weapons].'"[17] That stands in stark contrast to then-Secretary of State Condoleezza Rice's press briefing on her way to Northeast Asia in October 2006, just days after North Korea's first nuclear test:

> "I'm starting in Tokyo and then in Seoul and then with a trilateral with the Japanese and the South Koreans because when something like this happens in the international system, when there is a change in the threat environment, which I think you can certainly consider the North Korea test to be, it's first and foremost important to go and talk with

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[15] Tony Abbott, "An Ally Sizes Up Donald Trump," The Wall Street Journal, July 13, 2018, available at https://www.wsj.com.

[16] Shibley Telhami, "Americans and Japanese are pessimistic about ending North Korea's nuclear program and oppose military options. Where does that leave them?" January 22, 2018, available at www.brookings.edu.

[17] As quoted by Jesse Johnson, "Amid North Korean threat, Tillerson hints that 'circumstances could evolve' for a Japanese nuclear arsenal," The Japan Times, March 19, 2017, available at https://www.japantimes.co.jp.

> your allies, to reaffirm alliance commitments. The President has reaffirmed the full range of our commitments, including our deterrent commitment to Japan and South Korea."[18]

The NPT has been weakened by North Korea's withdrawal and Iran's noncompliance. However, South Korean, Japanese, Australian and/or any European withdrawal because of a lack of confidence in U.S. extended deterrence would be disastrous for the Treaty and perhaps for much more. Now is not the time for the United States to waver in expressing those commitments in both word and deed. On the contrary, as Secretary Rice said, the first requirement at a time of dangerous change in the security environment is to reassure our Allies as strongly as possible.

The United States should also look closely at extending its nuclear umbrella to Saudi Arabia and other Gulf States. The obstacles to doing so are immense, but the need may be great, especially after the United States disavowed the JCPOA. Current U.S. policy toward Iran and the JCPOA not only has not reduced the danger of a nuclear-armed Iran, but may well have heightened it. If Iran resumes its nuclear weapons efforts, the incentive for Saudi Arabia and perhaps other Gulf States to go nuclear could be very strong. If they do so, the consequences for the NPT and regional and global peace could be catastrophic.

About sixty years ago, President de Gaulle questioned whether the United States would sacrifice New York for Paris. Now increasing numbers in South Korea, Japan and Australia — and worse, perhaps Pyongyang and Beijing — are asking the same about Seoul, Tokyo and Sydney. If recent U.S, Presidential statements are repeated, more Europeans – and Moscow – might echo de Gaulle's doubts. Saudi Arabia and the Gulf States might not even ask the question.

Credible U.S. extended deterrence threats and commitments require strong policies and clear statements of intent. Not just about our commitments, but also about whom we call our friends and adversaries. That was something so obvious for so many decades that all concerned — protector, protected and potential adversary — could take it for granted. Unfortunately, that is no longer the case.

Credible U.S. extended deterrence also requires adequate nuclear capabilities to fulfill those commitments. Conventional military superiority is important, but does not have the same deterrent power. Viewed from this perspective, the proposals in the 2018 NPR for new low-yield submarine-launched ballistic missile (SLBM) warhead options and an eventual nuclear sea-launched cruise missile (SLCM) are important, and could be essential, to strengthen U.S. deterrence against Russian, Chinese and North Korean nuclear threats. The resultant reassurance to U.S. allies in Europe, Northeast Asia and Australia would help to strengthen the NPT, rather than to undermine it, as has been argued by some critics of the 2018 NPR.

None of this means that strengthening nuclear deterrence, extended deterrence and allied reassurance will greatly reduce the chances for future negotiated arms reductions. On the contrary, they could increase the incentives for adversaries to return to the table. While there appears little chance that North Korea will agree to denuclearize, the odds could only improve if Pyongyang became convinced that the United States' extended deterrence intent and capabilities were strong. Weakening U.S. commitments and capabilities could only encourage North Korea to continue on the nuclear path.

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[18] "On-the-Record Briefing Secretary of State Condoleezza Rice," October 17, 2006, available at www.2001-2009.state.gov.

Along the same lines, Russia showed little or no interest in further bilateral reductions after New START was signed in 2010 —except at a price that the United States could not accept. With its own vigorous strategic and theater nuclear modernization program and little U.S. counterpart, Russia had little incentive to negotiate or to come into compliance with the Intermediate-Range Nuclear Forces (INF) Treaty. That could change if the U.S. modernization program begins to bear fruit, as happened during the Reagan Administration. At that time, the U.S. strategic modernization and missile defense programs, along with NATO's steadfastness in implementing the INF dual-track decision[19] were crucial in leading to the landmark INF and START Treaties — the first nuclear agreements to include deep reductions, equal limits and intrusive verification.

Thus, reaffirming and enhancing U.S. extended deterrence "software and hardware"[20] would help to preserve the NPT both through maintaining a critical original NPT bargain between the United States and its Allies, and possibly through improving prospects for further implementation of Article VI. The results would by no means address all of the current threats to the future of the NPT, but they could obviate some potentially devastating new ones.

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[19] In 1979, NATO decided to pursue two tracks in response to Soviet deployment of the SS-20 ground-launched ballistic missile. One track was to prepare to deploy in NATO Europe ground-launched cruise missiles (GLCMs) and Pershing II ballistic missiles. The other was to seek to engage the Soviet Union in arms control negotiations that would eliminate or at least reduce the need for NATO INF deployments. The United States began INF deployments in November 1983. Ultimately, in December 1987, the United States and Soviet Union agreed in the INF Treaty to eliminate globally all of their ground-launched ballistic and cruise missiles between 500 and 5500 km. range.

[20] See Jacek Durkalec, Summary of Workshop Discussion: U.S. Extended Deterrence in Europe and in the Asia-Pacific: Similarities, Differences, and Interdependencies, Center for Global Security Research, Lawrence Livermore National Laboratories, November 13, 2017, pp. 7-10, available at www.cgsr.llnl.gov.