Policy Forum 11-22: The DPRK and the Warsaw Clause: An Unnoticed Change in US Nuclear Policy

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The DPRK and the Warsaw Clause: An Unnoticed Change in US Nuclear Policy

By Jeffrey Lewis and Peter Hayes

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Nautilus invites your contributions to this forum, including any responses to this report.

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I. Introduction



Pentagon press conference to discuss the 2010 Nuclear Posture Review. Apr. 6, 2010. Department of Defense photo.

Jeffrey Lewis, Director of the Nuclear Strategy and Nonproliferation Initiative, New America Foundation, and Peter Hayes, Professor of International Relations, RMIT University, and Director of the Nautilus Institute state that until the Obama administration's issuance of its Nuclear Posture Review in April 2010, any attempts North Korea would have made to achieve non-nuclear state compliance would have been hamstrung by what is known as the "Warsaw Pact Exclusion". In effect, prior to this latest NPR, not only did North Korea have to abandon its nuclear weapons and open itself to inspection, it also had to rupture its primary security alliance with China in order to receive any assurances that the United States would not use nuclear weapons against it. The new NPR removes this loophole and guarantees that negative security assurances would apply to the DPRK in the event that it returned to the Non-Proliferation Treaty as a non-nuclear weapon state.

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II. Article by Jeffrey Lewis and Peter Hayes

- The DPRK and the Warsaw Clause: An Unnoticed Change in US Nuclear Policy
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The Democratic Peoples Republic of Korea (DPRK) has demanded for decades that the United States withdraw nuclear weapons from Korea and stop threatening it with nuclear weapons. The former was implemented by President Bush Senior between September 1991 and February 1992. The latter was included in a joint statement issued after US-DPRK talks ending on June 11, 1993 which stated that the two states agreed to adhere to the principle of "assurances against the threat and use of force including nuclear weapons." The US-DPRK Agreed Framework included a similarly vague reference to such an assurance.

On many occasions, US diplomats have explained to the DPRK that if it became non-nuclear state compliant with its Non-Proliferation Treaty (NPT) and International Atomic Energy Agency (IAEA) safeguards obligations, then and only then would it receive a negative security assurance from the United States that it would not be attacked with nuclear weapons under any circumstances. Except for the fine print that spelled out that even if it became NPT-squeaky clean, in fact for exactly the circumstances of the DPRK, that is, for states allied with nuclear weapon states, there was no negative security assurance after all. No doubt this was difficult for underlings to explain to Kim Jong Il.

The DPRK were dumped by the Russians shortly after the demise of the former Soviet Union and the bilateral security treaty went into limbo. But not so with China. However strained relations had become with China (due to Beijing's "betrayal" of the DPRK by its recognition in 1991 of Seoul without requiring Washington to cross-recognize Pyongyang), the DPRK remained a formal ally of China and thus is allied with a nuclear weapon state. In effect, the United States was saying not only did the DPRK have to abandon its nuclear weapons and open itself to inspection to get a negative security assurance; it also had to rupture its primary security alliance—hardly a conversation starter in Pyongyang.

At various junctures in the subsequent bilateral negotiations and six party talks, the DPRK would raise the notion of a post-Armistice security treaty or legally binding agreement and demand a legally binding assurance that it would not be attacked by US nuclear weapons. The United States would respond in the same manner, and the talks would end with a bang or a whimper, and go nowhere. In effect, the negative security assurance was a cul de sac waiting at the end of any successful negotiations between the United States and the DPRK.

What was this exclusion that inflected US-DPRK negotiations and where did it come from?

The Warsaw Pact Exclusion Clause and Calculated Ambiguity

The United States first issued a so-called "negative security assurance" in 1978—negative in the sense that it explains when Washington would not use nuclear weapons against states party to the NPT. The occasion was the 10th anniversary of UN Security Council Resolution 255, which linked nonproliferation to security assurances by the nuclear weapons states.

The most striking feature of the assurance was a loophole big enough to drive the Red Army through—an exception for non-nuclear weapon states "allied ... or associated" with a nuclear weapon state, like the Soviet Union. This was widely referred to as the "Warsaw Pact exclusion," although it held at risk all of Moscow's allies, from East Germany to the DPRK.

The clause actually survived the demise of the Warsaw Pact. In 1995, the Clinton Administration reaffirmed it while tightening it ever so slightly: now, a non-nuclear weapon state could only be subject to nuclear use if it participated in the attack.

At the same time, the Clinton Administration arguably broadened the scenarios under which it might use nuclear weapons, stating that whatever other assurances had been offered, on the subject of attacks against it or its allies with chemical or biological weapons, all options remained on the table.

The two statements -- that the United States would not use nuclear weapons against non-nuclear weapons states and the refusal to rule out any option in response to a chemical or biological attack—became known as the policy of "calculated ambiguity." This is despite the obvious fact that uttering two inconsistent statements at the same time does not, strictly speaking, constitute an instance of ambiguity but is actually an instance of speaking out of both sides of one's mouth at the same time. In practice, "calculated ambiguity" turned out to be difficult to maintain, putting senior Clinton and Bush Administration officials in the position of appearing to make clumsy nuclear threats.

The Obama Administration entered office committed to reducing the role of nuclear weapons and putting "an end to Cold War thinking" about them. Declaratory policy, with the archaic Warsaw Pact clause and clumsy efforts at calculated ambiguity, was an obvious candidate. Moreover, the Obama team recognized the "happy accident" that those states accused by the State Department of having illicit chemical or biological weapons programs either had nuclear weapons or compliance problems with the NPT.

As a result, the Obama Administration decided to issue a "clean" negative security assurance in its Nuclear Posture Review (NPR) released publicly on April 2, 2010. Although much of the internal debate on the NPR centered on the condition that a state must be "in compliance" with its nuclear nonproliferation obligations to receive the benefit of the pledge, negative security assurances are, in fact, a long-standing US position that dates to the Clinton Administration. [1] By making this change unilaterally and without fanfare, the Obama Administration clearly intended to strengthen the incentive for North Korea and Iran to come into compliance with their nonproliferation obligations, without appearing to make "promises" to either state with nothing in return.

The new "clean" Negative Security Assurance is global in scope and criteria-based. It declares:

> "[T]he United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are a party to the 1968 Non-proliferation Treaty and in compliance with their nuclear non-proliferation obligations."
>
> This assurance would unambiguously apply to the DPRK in the event that it returned to the NPT as a non-nuclear weapon state. Given these factors, the United States would not easily be able to undermine such an assurance to the DPRK without undermining its wider nonproliferation efforts. The clean negative security assurances structures incentives for both Washington and Pyongyang to work toward a nuclear-weapon free Korean peninsula.
>
> Of course, the DPRK might use chemical or biological weapons in an attack against the United States or its allies. Instead of a nuclear response, however, the new policy declares that they would face a "devastating conventional military response," including "holding accountable" their leaders and national military commanders including one assumes, war crimes trial. (There is one caveat

in place, which is that if bio-weapons develop into new forms of mass destruction, the United States reserves the right to update the negative security assurance to reintroduce a nuclear response to such a threat—but that does not change the significance of the revisions for the DPRK).

In short, the Obama Administration has created path for the DPRK to denuclearize in exchange for legally-binding commitments from the United States, irrespective of the DPRK's putative alliance with China. That is, the NPR offers the DPRK safe harbor in the event that Pyongyang's leaders denuclearize—something that was not possible in previous negotiations.

Moreover, should the DPRK insist that the negative security assurance be legally binding, then an additional possibility arises. Although a negative security assurance is only politically, not legally binding, the Obama Administration has signaled its willingness to codify such assurances in with regard to nuclear weapon free zones. Secretary Clinton announced at the NPT Review Conference that the Obama Administration is submitting to the Senate for ratification the protocols to African and South Pacific Nuclear Weapons Free Zones, which legally bind the United States to provide such assurance to signatories. A Northeast Asian Nuclear Weapons Free Zone, therefore, would offer the DPRK the ultimate prospect of a legally-binding negative security assurance from the United States in the event that it denuclearized.

Ironically, the DPRK Ministry of Foreign Affairs issued an authoritative statement on April 26, 2010 that contains its own cheerful version of the Warsaw Pact exclusion. It stated: “The DPRK is invariably maintaining the policy not to use nuclear weapons against non-nuclear states or threaten them with nuclear weapons as long as they do not join the act of invading or attacking us in conspiracy with nuclear weapons states.” [2]

This statement apparently supersedes its earlier no-first use declaration made on October 17, 2006:

> “It [the DPRK] conducted the nuclear test under the conditions where its security is fully guaranteed and clearly declared that the DPRK, a responsible nuclear weapons state, would never use nukes first and will not allow nuclear transfer.” [3]

This statement is obviously aimed at the ROK and Japan, one of which is accused constantly by the DPRK as preparing to conduct “northward aggression,” and the other which has an unfortunate history of in fact invading Korea, and both of which are allied with the United States, a nuclear weapons ally.

Having now obtained its own "nuclear deterrent" force, the DPRK may be much less interested in obtaining negative security assurances that entail complete denuclearization. Indeed, they have announced explicitly that they were no longer especially concerned about normalizing relations with the United States—arguably the goal of their slow motion proliferation behavior from 1991-2008, but instead were committed to retaining an independent nuclear force. On January 17, 2009, the DPRK Ministry of Foreign Affairs declared flatly: "It is the reality on the Korean Peninsula that we can live without normalizing the relations with the U.S. but not without nuclear deterrent." [4]

So as things sit right now, if the DPRK attacks the ROK or Japan or someone else with conventional or nuclear weapons, the United States may attack it first (or retaliate) with nuclear weapons. If the DPRK denuclearizes, it could attack the ROK with conventional weapons (or even bio and chemical weapons) while allied with China, and not have to worry about being nuked; whereas the ROK apparently cannot do the same to the DPRK and rest assured it won't be on the receiving end of North Korean nukes.

Many South Korean security analysts are unimpressed by this a-symmetry that now exists. And who can say with confidence what is meant by "the act of invading or attacking us in conspiracy with nuclear weapons states?" After all, Korea is already at war in a legal sense—so who is invading who? And what exactly do the North Koreans mean by a "conspiracy" and how would one know if one was conspiring or not? Someone needs to send a good lawyer to the North to explain how this stuff works.

In the current context of high tension and inflammatory rhetoric after the sinking of the Cheonan, the negative security assurance is likely not be an important factor in bringing about the resumption of talks, either hosted by Beijing involving the Six Parties, or bilaterally with the United States. Nonetheless, the reformed negative security assurance is an important shift in American declaratory doctrine, and one that offers future North Korean negotiators a realistic political and potentially a legally binding guarantee of the kind that they sought many times in the past.

Assuming that the currently turbulent waters calm down and talks recommence, it would be prudent for the North Koreans to study the US revision carefully, and to think about how their own declaration might be revised to reduce the probability that nuclear war might ever break out on the Korean Peninsula.

III. Notes

[1] The Clinton Administration conditioned its 1995 negative security assurance on a state being in compliance with its nuclear nonproliferation obligations. See Secretary of State Warren Christopher, "Declaration by President Clinton regarding America's commitment not to use nuclear weapons against non-nuclear members of the nuclear Non-Proliferation Treaty (NPT)" (6 March 1995) at <http://www.fas.org/nuke/control/npt/docs/940405-nsa.htm> (searched date: 30 September 2010).

[2] “Foreign Ministry Issues Memorandum on N-Issue”, Korean Central News Agency, (21 April 2010)
at <http://www.armscontrolwonk.com/2708/seoul-purposeoriginal> (searched date: 30 September 2010). Korean language version at
<http://www.kcna.co.jp/calendar/2010/04/04-21/2010-0421-024.html> (searched date: 30 September 2010).

[3] “DPRK Foreign Ministry Spokesman Totally Refutes UNSC Resolution” Korean Central News Agency, (17 October 2006) at
<http://www.kcna.co.jp/item/2006/200610/news10/18.htm#1> (searched date: 30 September 2010).

[4] “DPRK Foreign Ministry's Spokesman Dismisses U.S. Wrong Assertion,” Korean Central News Agency, (17 January 2009)
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V. Nautilus invites your responses

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