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17 October 2016

NOTICE
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COMMITTEE ON PROLIFERATION (CP)

**UNITED STATES NON-PAPER:
"DEFENSE IMPACTS OF POTENTIAL UNITED NATIONS
GENERAL ASSEMBLY NUCLEAR WEAPONS BAN TREATY"**

Note by the Secretary

Members of the Committee on Proliferation will find enclosed a cover note and an attached non-paper entitled: "Defense Impacts of Potential United Nations General Assembly Nuclear Weapons Ban Treaty" which the International Staff has been requested by the United States Mission to forward to Allied Delegations for their information. In view of the implications for NATO described in paragraphs 5 and 6, these documents are also being circulated to members of the Nuclear Planning Group (NPG) Staff Group.

(Signed) R.W.F. WYATT

Action Officer: R.W.F. Wyatt, extension 4410
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ANNEX 1
AC/333-N(2016)0029 (INV)



UNITED STATES MISSION
TO THE
NORTH ATLANTIC TREATY ORGANIZATION

October 17, 2016

Dear Allies,

We wanted to draw your attention to the OEWG final report which we believe proved to be unbalanced and unrealistic, especially in its recommendation to launch negotiations on a treaty banning nuclear weapons. For those Allies participating in the OEWG, we strongly encourage you to vote “no” on any vote at the UN First Committee on starting negotiations for a nuclear ban treaty.

At the Warsaw Summit, NATO Allies reaffirmed that deterrence, based on an appropriate mix of nuclear, conventional, and missile defense capabilities, remains a core element of NATO's overall strategy and that as long as nuclear weapons exist, NATO will remain a nuclear alliance. For this reason, we feel efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO's basic policies on deterrence and our shared security interests.

In light of the current security environment, it is important for us to avoid introducing any doubt regarding Alliance unity or the Alliance's commitment to deter and defend against any threat to the safety and security of NATO populations. As we go forward, we should instead keep our focus on actions that build upon past progress, that are achievable, and that appropriately balance disarmament goals with the security environment. We hope that you find the non-paper useful, and look forward to consulting closely with you on this matter.

Sincerely,

Christina Cheshier
CP(PM) Representative
U.S. Delegation

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**UNITED STATES NON-PAPER: "DEFENSE IMPACTS OF POTENTIAL
UNITED NATIONS GENERAL ASSEMBLY NUCLEAR WEAPONS BAN TREATY"**

Overview

(1) Based on the work of the recently concluded UN General Assembly (UNGA) Open-Ended Working Group (OEWG) pursuant to UNGA Res 70/33, Austria, Brazil, Ireland, Mexico, Nigeria and South Africa have circulated a draft resolution for consideration in the UNGA First Committee (UNFC) designed to initiate negotiations in the UNGA on a legally-binding nuclear weapons ban treaty. Ban advocates seek to shift the focus from the proven step-by-step approach to nuclear disarmament, in keeping with our NPT commitments, to one that aims primarily to stigmatize nuclear weapons and nuclear deterrence without regard to whether the approach of ban advocates would make the international security situation better or worse. If the UNGA adopts such a resolution this fall, it will lead to the start of negotiations on a nuclear weapons ban treaty in 2017 under UNGA rules of procedure.

(2) The effects of a nuclear weapons ban treaty could be wide-ranging and degrade enduring security relationships. Allies and partners should not underestimate the breadth of potential impacts across security relationships or their potential to grow more severe over time. Because it does not account for the evolving security environment and aims to delegitimize the concept of nuclear deterrence upon which many U.S. allies and partners depend, such a treaty would undermine the long-standing strategic stability that has underpinned the international security structure since the end of World War II. Strategic stability and negotiated, verified reductions of nuclear forces, which the United States supports, are compatible objectives and the only pathway to eventual nuclear disarmament. The United States calls on all allies and partners to vote against negotiations on a nuclear weapons treaty ban, not to merely abstain. In addition, if negotiations do commence, we ask allies and partners to refrain from joining them.

Military Implications of a Nuclear Weapons Ban

(3) Annex II of the OEWG Synthesis Report adopted 19 August 2016 contains the suggested "elements" of a legally binding nuclear weapons ban. While we cannot identify definitive interpretations of a hypothetical text, at least nine of these suggested elements could have a direct impact on the U.S. ability to meet its NATO and Asia/Pacific extended deterrence commitments and the ability of our allies and partners to engage in joint defense operations with the United States and other nuclear weapon States. It should be emphasized that a treaty containing such elements could impact non-parties as well as parties, and could even have an impact prior to its entry into force as signatories take steps to implement their obligation not to defeat its object and purpose. Elements 1, 3, 5-6, 9, 14, 16-17, and 21, as quoted directly from Annex II would:

- 1) Prohibit "the development, testing including subcritical experiments and supercomputer simulations, production, acquisition, possession, stockpiling,

- transfer, use and threat of use of nuclear weapons, as well as on the production of weapons usable fissile material”;
- 3) Prohibit “participating in any use or threat of use [of] nuclear weapons”;
 - 3) Prohibit “participating in nuclear war planning”;
 - 3) Prohibit “participating in the targeting of nuclear weapons”;
 - 3) Prohibit “training personnel to take control of and use another State’s nuclear weapons”;
 - 5) Prohibit “accepting any stationing, installation or deployment of nuclear weapons”;
 - 6) Prohibit “permitting nuclear weapons in national territory, including on permitting vessels with nuclear weapons in ports and territorial seas, permitting aircraft with nuclear weapons from entering national airspace, permitting weapons from being transited through national territory, permitting nuclear weapons from being stationed or deployed on national territory”;
 - 9) Prohibit “assisting, encouraging or inducing, directly or indirectly, any activity prohibited by the treaty”;
 - 14) “Rights and obligations for individuals, including national legislation to criminalize support for activities proscribed under the convention and protections for individuals reporting such activities”
 - 16) “Dispute settlement [provisions], including ... the possibility of referring a dispute to the International Court of Justice and, if required, referring a situation to the United Nations Security Council”;
 - 17) “Requirement for States parties to adopt necessary legislative measures to implement their obligations under the convention, and to establish a national authority responsible for national implementation”; and
 - 21) Require States “not to participate in any act prohibited, doctrines based on nuclear deterrence, and ensuring that participation in an alliance with a nuclear-armed state is compatible with their commitments and policies under the instruments”.

(4) These elements could make it impossible to undertake nuclear planning or training (element 3) or nuclear-related transit through territorial airspace or seas (element 6). Beyond this, elements 9 and 21 could make it a treaty violation for a signatory if it were found “assisting, encouraging, or inducing, directly or indirectly” the United States (or other nuclear-weapon allies such as the United Kingdom or France) to say it would use—let alone to plan or train for using—nuclear weapons to defend the signatory. Signing the treaty could thus force a country to repudiate U.S. statements that it would defend the signatory with nuclear means. Such treaty elements could—and are designed by ban advocates to—destroy the basis for U.S. nuclear extended deterrence. Also, consistent with U.S. policy, since the United States neither confirms nor denies the presence or absence of nuclear weapons on U.S. naval ships, elements 5, 6 and 9 could make it impossible for these ships to conduct port calls in signatory countries. The proposed ban treaty and its constituent elements would preclude the United States from using nuclear-capable delivery systems to conduct assurance missions for U.S. allies. This would reduce the U.S. ability to reassure

allies of our commitment to their defense and thus affect our mutual security commitments and cooperation.

Implications for NATO

(5) Allies have agreed repeatedly that nuclear weapons are a core component of NATO's deterrence and defense posture. This fact was reiterated in the 2010 Strategic Concept, the 2012 Deterrence and Defence Posture Review, and the 2014 and 2016 Summit Declarations in Wales and Warsaw respectively. In Warsaw, NATO Allies reiterated that the appropriate mix of capabilities, including nuclear, strengthens alliance cohesion, including the transatlantic link, through an equitable and sustainable distribution of roles, responsibilities, and burdens. A stance that delegitimizes nuclear deterrence would be inconsistent with these core concepts. Any signatory Ally could believe it was legally required, and could take actions, to block all NATO nuclear cooperation, whether or not the signatory actively participated in NATO nuclear burden-sharing arrangements.

(6) More specifically, the concept of nuclear burden-sharing—as embodied by forward-based U.S. nuclear weapons in Europe, and the dual capable aircraft mission with attendant security and surety responsibilities entrusted to certain Allies—could become untenable under elements 3, 5, 6, and 9. Element 6 could make transit of U.S. aircraft through Alliance airspace to transport, maintain, and upgrade U.S. nuclear weapons and components a treaty violation. The general prohibitions could also prevent Allies from providing conventional support to nuclear operations. Elements 1 and 3 could raise compliance questions in the staffing of nuclear-related positions at Allied Command Operations, Allied Command Transformation, and NATO Headquarters, particularly at senior levels. Elements 14 and 17 could put individual service-members at risk of violating host nation domestic law. The Nuclear Planning Group (NPG) construct, created in 1966, could be seen as running afoul of the treaty, as would participation in meetings of the NPG, the High Level Group (HLG), and other similar consultations. NATO exercises and training, both to ensure the safety and surety of nuclear weapons, and also the ability to deploy them effectively in the event of crisis or conflict, could fall under the treaty's prohibitions. More concrete aspects of military readiness, such as planning and coordination for potential conflict, could be prohibited. Although most Allies would choose to remain steadfast in their commitment to the core concepts set out in NATO's formative documents, others may feel pressured to pull back from their participation or block decisions of the NPG or HLG in support of NATO's nuclear deterrence capabilities—an outcome that could splinter Alliance consensus on its deterrence and defense posture.