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We have all taken risks in the making war. Isn't it time that we should take risks to secure peace?

– J. Ramsay MacDon

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A 'Legal' US Nuclear Attack Against Iran

The real reason for the IAEA Iran resolution

by Jorge Hirsch

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On September 24 of this year, the United States finally achieved a goal it had persistently pursued **over several years**. Iran was declared by the IAEA (International Atomic Energy Agency) to be in "non compliance" with its obligations under the Nuclear Non-Proliferation Treaty (NPT).

The resolution passed by the IAEA is remarkably weak. It does not set a date for Iran to be referred to the UN Security Council, and it does not even mention the possibility of sanctions. It even notes that Iran has made "good progress" in correcting its "breaches," all of which date back to before October 2003. The *LA Times* characterized it as a "gentle slap." It is instead an enormous thud.

We pointed out **before** that the probable reason for the U.S. to insist on the passage of such a weak resolution (on the face of opposition by Russia and China to stronger resolutions) was to reach a stalemate in the Security Council that would provide an excuse for U.S. military action, which would necessarily include the use of nuclear weapons against Iran [1], [2], [3]. There is, however, an even stronger reason for the U.S. to have pushed for this resolution so adamantly, a reason which is valid even if Iran is not referred to the Security Council at the forthcoming November 24 meeting or thereafter, and that supports the **predicted scenario**.

The IAEA resolution of September 24 2005 allows the United States to carry out a nuclear attack against Iran "legally."

Non-nuclear states have sought for many years that nuclear states issue clear "negative security assurances," meaning a commitment from nuclear states not to use nuclear weapons against non-nuclear states. No matter how logical such a desire appears to you and me, nuclear states have been notoriously reluctant to make such pledges, especially the United States.

The latest such assurances from the five nuclear states date back to 1995, and are the subject of **UN Security Council**

Resolution 984, which was passed with unanimity. The legal status of these assurances is not totally clear, and non-nuclear states have continued to request "legally binding" assurances, implying that the existing assurances are not. In fact, in 2002 John Bolton, then Undersecretary of State for Arms Control and International Security, in an interview with "Arms Control Today" **explicitly disavowed** any U.S. commitment to the 1995 resolution.

Nevertheless, **a case can be made** that these assurances are at the very least "politically binding" and may even be "legally binding." The reason is that they were made for the explicit purpose of having the non-nuclear states extend the NPT in 1995. The fact that the non-nuclear states indeed did extend the NPT based on these assurances confers them legally binding character even if it was not so intended originally, according to **G. Bunn (1997)**.

The text of the 1995 U.S. negative security assurance (**S/1995/263**) reads:

"The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons except in the case of an invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies, or on a State towards which it has a security commitment, carried out or sustained by such a non-nuclear-weapon State in association or alliance with a nuclear-weapon State."

Good news, the U.S. cannot nuke Iran, a party to the NPT? Think again. The paragraph immediately before in the U.S. declaration reads:

"It is important that all parties to the Treaty on the Non-Proliferation of Nuclear Weapons fulfil their obligations under the Treaty. In that regard, consistent with generally recognised principles of international law, parties to the Treaty on the Non-Proliferation of Nuclear Weapons must be in compliance with these undertakings in order to be eligible for any benefits of adherence to the Treaty."

Iran was "in compliance" until September 24th, 2005. Thereafter, the "benefit" of not being subject to nuking no longer applies. An analysis of this qualification of the U.S. negative security assurance declaration and its implications for non-nuclear states has been made by **Jean du Preez** in 2003 and is consistent with our conclusion.

Bolton's statements were made at a time when the US had already been **denouncing for several years** that Iran was pursuing a secret nuclear weapons program in violation of the NPT. The **detailed analysis of Gordon Prather**, however, shows that Iran's 'violations' did not then nor do now amount to "non-compliance." Nevertheless it will be politically very important for the US that the 1995 security assurance is no longer applicable to Iran, and Bolton (now US Ambassador to the UN) will surely emphasize it at the United Nations when

the time comes to justify the US action.

Iran's protective shield against US nukes, however feeble it was, is no longer. Any "**negotiating proposal**" of the EU and the US towards Iran will be carefully tailored so that Iran cannot possibly accept it. Irrespective of what happens at the November 24th IAEA meeting, the **US plan to nuke Iran** will continue moving forward, focused and unrelenting.

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