

A BRIEF HISTORY OF MULTILATERAL PROPOSALS ON NEGATIVE SECURITY ASSURANCES

Presentation to inform CD subsidiary body 4 discussion¹

22 May 2018, 15h00, Council Chamber, Palais des Nations

1. Introduction

A **negative security assurance** (or NSA) is a guarantee by a nuclear-armed State that it will not use or threaten to use nuclear weapons against another State, usually a non-nuclear-weapon State. This differs from a **positive security assurance**, which is a guarantee by a nuclear-armed State that it will come to the aid of a non-nuclear-weapon State if the latter is attacked by another State with nuclear weapons. Historically, discussions about NSAs and PSAs have at certain times been intertwined.

Today, however, we are solely concerned with NSAs. At the request of Germany, the Special Coordinator for subsidiary body 4 pursuant to the Conference on Disarmament (CD)'s decision of 16 February², UNIDIR was asked to sketch a rough historical outline of these proposals. This is with a view to informing your discussion in this preparatory phase of the consultations of the Special Coordinator. It is something that the Institute is pleased to do.

Historically, NSA proposals have been made in a variety of multilateral contexts and are reflected in a number of agreements. Besides the obvious contexts—the CD, the Nuclear Non-Proliferation Treaty (NPT), and various nuclear-weapon-free zones—ideas, proposals and commitments about NSA have featured in other forums such as the Security Council, the General Assembly's 2016 Open-ended Working Group on taking forward nuclear disarmament negotiations, and elsewhere.

However, before plunging into all of that, I'd like to make three points.

The first point is that this presentation is not exhaustive in scope. Such an account would be very lengthy indeed.

¹ This paper was prepared by John Borrie, with assistance from Tilly Hampton. Thanks to Marc Finaud and John King for their critical comments on drafts of this paper.

² CD/2119, 19 February 2018.

The second point is that there are several helpful written sources on NSAs I would like to draw to the attention of CD delegations. In particular, Mr. Marc Finaud of the Geneva Centre for Security Policy (and a UNIDIR alumnus) has produced a useful recent background paper on NSAs.³ There are also UNIDIR's own publications, particularly papers the Institute produced relating to NSAs in 2011 and 2012.⁴ Both publications contain a wealth of information and are available online at <www.unidir.org>. Another published resource is the late Jozef Goldblat's 2002 seminal work, *Arms Control: The New Guide to Negotiations and Agreements*.⁵ (This is not so new now, but is still insightful.)

The third point is that I will focus on NSA proposals in multilateral forums and nuclear-weapon-free zones. The evolution of positions and strategic doctrines of individual nuclear-armed States as they relate to NSAs lie outside the scope of this presentation.⁶

2. In the beginning

In 1945, at the dawn of the nuclear age, States signed the **United Nations Charter**.⁷ Article 2 paragraph 4 of the Charter notes that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." But the Charter says nothing about NSAs.

The demand by many non-nuclear weapon States for legally-binding NSAs from the-then five nuclear-armed States is a corollary of the former having accepted the obligations of the 1968 NPT to eschew the possession of nuclear weapons. Consequently, in outlining proposals made in the CD, it's necessary also to take this broader context into account.

In 1966, as negotiations on what would become the NPT were commencing, the UN General Assembly adopted **resolution 21/53A**⁸, which stated: "Nuclear weapons powers should give an assurance that they will not use, or threaten to use, nuclear weapons against non-nuclear weapons states without nuclear weapons on their territories." The resolution called on the precursor of the CD to "consider urgently the proposal that the nuclear weapons

³ M. Finaud, "Negative Security Assurances to Strengthen Global Non-Proliferation and as Practical Steps Towards the Final Goal of a World Without Nuclear Weapons" (GCSP Background Paper), Geneva Centre for Security Policy, 14 March 2018. See also M. Finaud, "Why New Thinking is Needed on Negative Security Assurances", *Arms Control Today*, October 2017, pp. 12-16.

⁴ T. Caghley, *The Conference on Disarmament: Issues and Insights*, Geneva, United Nations Institute for Disarmament Research, 2012. See also B. Fihn, *The Conference on Disarmament and NSAs*, Geneva, UNIDIR, March 2011.

⁵ J. Goldblat, *Arms Control: The New Guide to Negotiations and Agreements* (2nd edn.), London, Sage, 2002.

⁶ Not only do NWS's doctrines differ among them, but changes in the NSA postures of nuclear-weapon States also contribute to a complex situation: for instance, an 'alliance exception' was eventually removed from unilateral French, UK and US declarations on NSAs, but are still reflected in protocols to nuclear-weapon-free zones they signed prior to those changes. Thanks to Marc Finaud for this point.

⁷ United Nations Charter, art.2 para 4: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

⁸ A/RES/21/53 (XXI) A, 17 November 1966: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2153\(XXI\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2153(XXI)).

powers should give an assurance that they will not use, or threaten to use, nuclear weapons against non-nuclear-weapon States without nuclear weapons on their territories.”

After the passage of resolution 21/53A, the **Soviet Union proposed a treaty** to prohibit “the use of nuclear weapons against non-nuclear States parties to the treaty which have no nuclear weapons on their territory.”⁹ However, at that time the United States would not agree—perhaps because in its view this would have enabled the Soviet Union to threaten NATO allies in Western Europe with American nuclear weapons on their territory.

The **NPT**,¹⁰ adopted two years later in 1968, says nothing about security assurances. A conference of non-nuclear-weapon States, convened at **Pakistan’s initiative** in August of that year (just after the NPT’s signing) discussed the issue of NSAs but failed to reach agreement¹¹. Discussions around that time illustrated a perennial concern of nuclear-armed States—that NSAs could weaken the theory and practice of nuclear deterrence.

Interestingly, in 1968 the Security Council adopted **resolution 255**.¹² This resolution offered positive security assurances to non-nuclear-weapon States concerned that by joining the NPT, which prohibits them from acquiring nuclear weapons, they would be more at risk from a nuclear attack.

Despite resolution 255, the non-nuclear-weapon States party to the NPT began pushing for legally-binding NSAs, which they apparently felt offered better protection.

3. Nuclear weapon free zones

The first legally binding NSA was contained in the **Treaty of Tlatelolco**¹³ in 1969, which made Latin America and the Caribbean a nuclear weapon free zone. Each of the nuclear-armed States of the time—China, France, the USSR, UK and US—would go on to sign agreements promising not to use, or threaten to use, nuclear weapons against the Treaty signatories, although these protocols differed in certain respects. For instance, the US, which was supportive of this treaty, stated that it was nevertheless exempt from these conditions if it was attacked by a Contracting Party of the Tlatelolco Treaty working in conjunction with a nuclear-weapon State¹⁴.

⁹ ENDC.325, p.16: <https://quod.lib.umich.edu/e/encd/4918260.0325.001?rgn=main;view=fulltext>.

¹⁰ Treaty on the Non-Proliferation of Nuclear Weapons:
<https://www.un.org/disarmament/wmd/nuclear/npt/text>.

¹¹ *SIPRI Yearbook of World Armaments and Disarmament 1968/69*, Stockholm, Oxford University Press, 1969, pp.1714. In addition, for the Final Document of the Conference of Non-Nuclear -Weapon States, see:
<https://s3.amazonaws.com/unoda-web/documents/library/conf/Final%20Document.pdf>.

¹² S/RES/255, 19 June 1968. Available at: <http://unscr.com/en/resolutions/doc/255>

¹³ Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean:
http://www.opanal.org/wp-content/uploads/2015/08/Treaty_Tlatelolco.pdf.

¹⁴ U.S. Department of State (14 February, 1967). *Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)*: <https://www.state.gov/p/wha/rls/70658.htm>.

Since Tlatelolco, NSAs have taken hold—or partially taken hold—in other regions through the so-called non-use protocols to nuclear weapon free zones in the South Pacific (The **Treaty of Rarotonga**)¹⁵, Africa (the **Pelindaba Treaty**)¹⁶, and most recently Central Asia (**Treaty of Semipalatinsk**)¹⁷. In these legally binding protocols, the NPT nuclear-weapon States have formally undertaken, among other restrictions, not to use or threaten to use nuclear weapons against parties to the nuclear weapon free zone treaties.

One point to note in this respect is that, although legally binding, some of the NSAs offered are rather qualified. A second point is that not all of the NSA protocols are in force because not all of the nuclear-weapon States have agreed to them. For instance, the US has not signed or ratified a protocol to the Treaty of Rarotonga. In the case of the South East Asian Nuclear Free Zone (the **Treaty of Bangkok**)¹⁸ none of the nuclear-weapon States have signed protocols.

A third point is that, in certain cases, even when assurances from nuclear-armed States have been given, they are not necessarily legally binding in nature. **Mongolia's status** as a one-country nuclear-weapon-free zone is a case in point.¹⁹ In September 2012, the five nuclear-weapon States signed a joint declaration recognizing this status, but they noted that it “constitutes a political commitment only and does create by itself any legal obligations.”²⁰

The NSAs offered via the mechanism of zones have thus far fallen short of offering the non-nuclear-weapon States the protection some of them have sought. And, of course, there are many NPT non-nuclear-weapon States not in nuclear-weapon-free zones. This reality engendered a desire among some countries, particularly non-aligned ones, for separate arrangements that are both universal and binding—something that has still not been achieved. This is not to say that there have not been further efforts, or unilateral national declarations, offering NSAs. I'll now outline these because they are germane to your discussions.

4. From UN SSOD to indefinite extension of the NPT

In 1978, the final document of the **First Special Session on Disarmament** of the General Assembly asked nuclear-weapon States to “pursue efforts to conclude appropriate, effective arrangements to assure non-nuclear-weapon States against the use or threat of nuclear

¹⁵ 1987 South Pacific Nuclear Free Zone Treaty: <https://www.iaea.org/sites/default/files/infcirc331.pdf>.

¹⁶ 1996 African Nuclear-Weapon-Free Zone Treaty: http://www.nti.org/media/pdfs/aptanwzf.pdf?_id=1316624116.

¹⁷ 2006 Central Asian Nuclear Weapon Free Zone Treaty: <http://nwp.ilpi.org/wp-content/uploads/2011/10/Treaty-of-Semipalatinsk1.pdf>.

¹⁸ 1995 Southeast Asian Nuclear Weapon Free Zone Treaty: https://www.nonproliferation.org/wp-content/uploads/2013/12/nwzf_treaty_bangkok_southeast_asia.pdf.

¹⁹ For a history, see N. Tuya, *Mongolia's Nuclear-Weapon-Free Status: Recognition vs. Institutionalization*, The Brookings Institution, August 2012: <<https://www.brookings.edu/wp-content/uploads/2016/06/08-nuclear-weapon-free-mongolia-tuya.pdf>>.

²⁰ A/67.393-S/2012/721, 26 September 2012.

weapons” in its paragraph 59²¹. Jozef Goldblat observed that the NSAs were also contained in national statements by the nuclear-weapon powers in connection with the 1978 and 1982 Special Sessions on Disarmament, as well as on other occasions. In his words, these statements were “conditional, phrased in a different way by different countries, and merely declaratory”.²²

Efforts have subsequently been made in forums such as the CD to develop NSAs that would be uniform, unconditional and legally binding. In 1979, a group of Eastern States proposed a “draft international convention on the strengthening of guarantees of the security of non-nuclear States”.²³ Commencing in 1980, the CD began discussing NSAs annually, and between 1983 and 1994 these occurred in an ad hoc committee established for the purpose.

In 1990, Nigeria proposed a new international agreement on NSAs in both the CD²⁴ and the 1990 five-yearly NPT Review Conference. In this agreement the nuclear-weapon States would not use or threaten to use nuclear weapons against any non-nuclear-weapon State party to the NPT, not belonging to a military alliance, and without other security arrangements with a nuclear-weapon-State, or nuclear weapons stationed on its territory. For their part, non-nuclear-weapon States party to the arrangement would undertake not to participate in or contribute to military attack against any nuclear-weapon State or its allies party to the NPT, except in self-defence. The NPT’s Main Committee ran out of time to discuss this proposal, and so Nigeria proposed a special conference the following year to conclude such an agreement in the form of a protocol to the NPT.²⁵

France and China were not at that time party to the NPT, so some other States were less than keen for such an agreement under NPT auspices as it would not apply to them. For this and other reasons the Nigerian proposal, although widely supported among non-aligned countries, failed to achieve general agreement (although Nigeria did apparently re-submit it in 1995).

In 1992, at the CD, France formulated what it considered to be the basic elements of a possible agreement on NSAs (CD/SA/WP.14).²⁶

²¹ Final Document of the First Session on Disarmament 1978: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/05/A-S10-4.pdf>.

²² Goldblat, *op cit*, p. 110.

²³ CD/23, 21 June 1979.

²⁴ Nigeria, “Agreement on the prohibition of use or threat of use of nuclear weapons against non-nuclear States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons” (CD/962), 14 February 1990.

²⁵ *SIPRI Yearbook 1991: World Armaments and Disarmament*, Stockholm, Oxford University Press, 1991, pp. 570-1.

²⁶ France, “Working Paper—Basic elements for a legally binding agreement on Negative Security Assurances” (CD/SA/WP.14), 3 August 1992.

In 1994, a dozen non-aligned members of the CD submitted a draft protocol (**CD/1277**) on security assurances, both positive and negative, with the intention that it become a protocol to the NPT.²⁷

The proposals I've just mentioned did not prove to be acceptable in the CD as a basis for negotiations. However, in 1995 the members of the NPT regime, which China and France had by now joined, faced a momentous decision on whether the 25-year lifespan of the treaty was to be extended. The NPT nuclear-weapon States were all of the view that it would be in the interests of all States for the Treaty to be extended indefinitely. Perhaps in recognition of the "legitimate interest" of NPT non-nuclear weapon States to receive security assurances, a few days before the Review Conference the five NPT nuclear-weapon States jointly sponsored **resolution 984** in the UN Security Council, which was adopted unanimously.²⁸

Resolution 984 contained both reference to both NSAs and PSAs. On positive assurances, the resolution added specificity to what was originally contained in resolution 255 of 1968. On NSAs, resolution 984 "simply took note of the statements made by the nuclear-weapon states, in which the conditions for non-use of such weapons were reiterated." Goldblat further noted that of the five nuclear-weapon States, "Only China undertook not to use or threaten to use nuclear weapons against non-nuclear weapon states or nuclear-weapon-free zones at any time and under any circumstance. This commitment applies to non-nuclear-weapon parties to the NPT or non-nuclear-weapon states that have undertaken comparable internationally binding commitments not to manufacture or acquire nuclear explosive devices."²⁹

Despite resolution 984's agreement in the Security Council, its language was not mirrored in the **1995 NPT review conference's final document**.³⁰ Instead, that review meeting adopted a recommendation that "further steps should be considered to assure non-nuclear-weapon States party to the [NPT] against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument."³¹

Marc Finaud has noted that apart from the five NPT nuclear-weapon States, some other nuclear-armed States—namely India, Pakistan, and the DPRK—have expressed positions on

²⁷ Egypt, Ethiopia, Indonesia, Iran, Kenya, Mexico, Mongolia, Morocco, Myanmar, Peru, Sri Lanka, and Venezuela, "Draft protocol [to the NPT] on Negative Security Assurances" (CD/1277), 12 September 1994.

²⁸ S/RES/984, 11 April 1995: <http://unscr.com/en/resolutions/doc/984>.

²⁹ Goldblat, *op cit*, p. 112.

³⁰ Final Document of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons 1995: <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/pdf/finaldocs/1995%20-%20NY%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Part%20I.pdf>.

³¹ Cited in Caughley (2012), *op cit*, p. 12.

NSAs.³² Since these other nuclear-armed States do not belong to the NPT, their formulations have varied.³³

In addition, Pakistan has regularly introduced a **resolution on NSAs at the UN General Assembly since 1990** calling for negotiations in the CD on “effective international agreements” that take into account “the widespread support for the conclusion of an international convention and giving consideration to any other proposals designed to secure the same objective.”³⁴

5. NSAs since 1995

The CD’s ad hoc committee on NSAs ceased meeting during the Comprehensive nuclear Test Ban negotiations in the mid-1990s. In 1998, the CD briefly reconvened its NSAs committee when the Conference fleetingly achieved a work programme. But the Conference did not have time to make any progress, and subsequently the CD did not convene any ad hoc subsidiary bodies on agenda items 1 through 4 of any kind again until recently. Even so, NSAs continued to be a core element of packages proposed by a succession of CD Presidents and their helpers since the 1990s in order to try to get the CD negotiating again.³⁵

NSAs continued to be raised elsewhere too. Pakistan’s UNGA resolution exercise has already been mentioned. NSAs also came up at the NPT five-yearly review conferences:

- The 2000 NPT review conference final document did not mention a possible international legally-binding arrangement on NSAs, but reaffirmed the NPT’s role as forum for dealing with them. It called upon the next NPT review process to make recommendations on NSAs at the 2005 NPT review conference.
- No final document was adopted in 2005, however, and so no progress was made.
- In 2010, the next NPT review conference adopted a 64-point Action Plan, of which Actions 7, 8 and 9 mentioned NSAs. In particular, Action 7 called upon the CD to “immediately begin discussion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, to discuss substantively, without limitation, with a view to elaborating

³² Finaud (2018), *op cit*, p. 2. He noted that “Israel, due its policy of ambiguity regarding possession of nuclear weapons, does not express public positions on this issue and abstains on the UNGA resolution calling for an international arrangement on NSAs.”

³³ For a brief and relatively recent summary of all of the nuclear-armed States’ respective positions on NSAs see R. Thakur and G. Evans (eds), *Nuclear Weapons: The State of Play*, Centre for Nuclear Non-Proliferation and Disarmament (CNND), 2013, pp.49-50.

³⁴ Most recently A/RES 72/25, 11 December 2017, which passed by 125 votes in favour, none against, 62 abstentions. See Finaud, *op cit*, 2018, p. 6 for a discussion.

³⁵ These ranged from CD/1624 in 2000 (Brazil) to CD/WP.594 in 2016 (Nigeria).

recommendations dealing with all aspects of this issue, not excluding an internationally legally binding instrument.”³⁶

- In 2015, the NPT review conference ended again without agreeing on a final document.

In 2013³⁷ and 2016³⁸, there were **Open-ended Working Group (OEWG)** discussions convened in Geneva as the result of resolutions tabled in the UNGA First Committee. These were tasked with developing proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons. It is noteworthy that NSAs were raised in the OEWGs. For instance, in a 2016 working paper submitted by Belgium, Canada, Germany, Netherlands, Spain, and Sweden, it was argued that “it should be possible to negotiate such a protocol or instrument in good faith in a relatively short period of time” and even be a deliverable by the 2020 NPT Review Conference.³⁹ **WP.26** argued that as a “bare minimum” NSAs could be offered by the nuclear-weapon-states on condition that the recipients are not in material breach of the NPT and do not attack a nuclear-weapon state in consort with another nuclear-weapon state—but could contain other obligations. In view of this, it was noteworthy that the authors of this proposal included non-nuclear states in the NATO alliance.

The 2016 OEWG, chaired by Thailand, is most known for the recommendation in its report (after a vote) that a legal prohibition instrument on nuclear weapons be pursued.⁴⁰ However, NSA proposals were mentioned in the Chair’s April “synthesis paper” of ideas raised at the OEWG.⁴¹ The later final OEWG report adopted in August 2016 merely “noted the steps taken by nuclear-weapon States to reduce the overall number of nuclear weapons, to reduce the role of nuclear weapons in security doctrines and to extend the scope of their negative security assurances.”⁴²

In July 2017, 121 states adopted a **Treaty on the Prohibition of Nuclear Weapons (TPNW)** in a process the 2016 OEWG had catalysed. Although the preamble of this Treaty reaffirms the

³⁶ Final Document of the 2010 Review Conference of the Parties to the NPT, document NPT/CONF.2010/50/ (vol I), p. 22. See also Fihn (2011), *op cit*, p. 6.

³⁷ A/RES/67/56, 4 January 2013.

³⁸ A/C.1/70/L.13/Rev.1, 29 October 2015.

³⁹ Belgium, Canada, Germany, Netherlands and Sweden, *Security assurances*, document A/AC.286/WP.26, 21 April 2016.

⁴⁰ See UNIDIR, *Taking Forward Multilateral Nuclear Disarmament Negotiations: The 2016 Open-ended Working Group*, Geneva, October 2016: < <http://www.unidir.org/files/publications/pdfs/the-2016-open-ended-working-group-en-660.pdf>>.

⁴¹ Chair’s Synthesis Paper: Open-ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations, 2016. Online: <[https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/E1CAA3410C2971ADC1257F9D00417BD0/\\$file/Draft+synthesis+paper+final+reformatted.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/E1CAA3410C2971ADC1257F9D00417BD0/$file/Draft+synthesis+paper+final+reformatted.pdf)>.

⁴² Report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations, A/71/371, 1 September 2016, Paragraph 30.

importance of “internationally recognized” nuclear-weapon-free zones and the full and effective implementation of the NPT, it does not refer to NSAs as such.⁴³

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⁴³ Treaty on the Prohibition of Nuclear Weapons, document A/CONF.229/2017/8, 7 July 2017.