



The Non-Proliferation Treaty as a framework for dialogue

The urgent need for dialogue on nuclear doctrines, declaratory policies, and security assurances between nuclear-weapon states and non nuclear weapon states

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This paper reflects discussions among members of the ELN's project **Protecting the Non-Proliferation Treaty**. The project seeks to preserve the multilateral nuclear non-proliferation regime and prevent further erosion of the nuclear taboo and the Nuclear Non-proliferation Treaty (NPT). Bringing together an intergenerational, pan-regional Network of experts, it works to identify pathways to success in the eleventh review cycle, taking a holistic approach to the NPT and its three pillars. We are grateful for comments and feedback from several NPT member state officials on drafts of this paper.

For more information on the project please go to www.europeanleadershipnetwork.org/protecting-the-non-proliferation-treaty.

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Ambassador Biontino led negotiations for the German delegation at the 2015 NPT Review Conference and subsequent Preparatory Committees. In addition, serving as chair of the Convention on Certain Conventional Weapons (CCW) meeting of experts on Lethal Autonomous Weapons (LAWS) in 2015 and 2016 and as Chair of the Committee of the Whole of the Biological Weapons Convention Review Conference in 2016.

In 2017, Michael was President of the Convention on Cluster Munitions and coordinated meetings of the

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Beyond Geneva, Ambassador Biontino has extensive experience in security policy, arms control and disarmament affairs. He has served in the Department for Arms Control and Disarmament of the Federal Foreign Office and German missions in Iran (during the war between Iraq and Iran), Moscow (during Perestroika and German Unification), New York (during the German membership of the UN Security Council), Brussels NATO (during the NATO enlargement process) and Addis Ababa.

Executive summary

The international community faces a re-emergence of strategic great power competition, linked with disquieting and irresponsible nuclear rhetoric by some actors and thus a perceived lowered threshold for the use of nuclear weapons (e.g. non-strategic nuclear weapons). This is accentuated by persistent regional crises and the emergence of new regional crisis scenarios, with global political and economic implications involving both nuclear weapons states and non-nuclear weapons states and continued risks of nuclear proliferation crises and proliferation dynamics.

Both as a driver of and as a reaction to the present security environment, nuclear weapons states, for their part, have already maintained or increased the salience of nuclear weapons in their respective doctrines.

In addition, concerns related to new offensive and defensive weapon systems call for urgent attention, in particular in relation to new technologies and capabilities that could blur the line between conventional weapons and WMD, such as the proliferation of strategic-scale conventional weapons, new cyber threats, counter-space capabilities, and qualitatively new missile technology. All of this could create new instabilities and challenges to stability and/or increase the risk of miscalculation and, in the extreme scenario, nuclear escalation.

Recommendations

Against this backdrop, there is an urgent need for an inclusive dialogue on nuclear doctrines, declaratory policies, and security assurances between nuclear weapons states and non-nuclear weapons states. Given the real risks and threats to peace and security, this is a shared responsibility that requires serious commitments from nuclear weapons states and non-nuclear weapons states alike.

As the central pillar of the international nuclear arms control, disarmament and non-proliferation architecture, the NPT is the appropriate forum for a dialogue on nuclear doctrines, declaratory policies and security assurances.

Such a dialogue can fulfil several important functions by improving the international security environment, re-establishing strategic trust, and building confidence between nuclear weapons states and non-nuclear weapon states, as well as among nuclear weapons states and non-nuclear weapon states. In addition, a dialogue aimed at elevating the nuclear threshold could reduce the risk associated with any use of nuclear weapons.

Meaningful dialogue should cover a broad range of elements relevant to nuclear doctrines, declaratory policies, and security assurances. Furthermore, appropriate consideration should be given to new strategic offensive and defensive nuclear capabilities, new conventional weapons, emerging and disruptive technologies, the spectre of biological and chemical warfare, and regional crisis scenarios.

Given the real risks and threats to peace and security, this is a shared responsibility that requires serious commitments from nuclear weapons states and non-nuclear weapons states alike.

Introduction

Nuclear doctrines and declaratory policies of nuclear-weapon states (NWS) towards non-nuclear-weapons states (NNWS) have been a long-standing item on the agenda of nuclear arms control, disarmament and non-proliferation, mainly in the framework of legally binding security assurances of NWS to shield NNWS against the threat or use of nuclear weapons (Negative Security Assurances – NSA) and for assistance in the event of such a threat or attack (Positive Security Assurances – PSA). Historically, discussions about NSA and PSA have, at times, been intertwined. Such security assurances, mainly limited to NSA (see Annex), were considered, particularly, in the framework of the Conference on Disarmament, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the United Nations and Nuclear-Weapon Free Zones (NWFZ).

At the 2022 NPT Review Conference, the five nuclear-weapon State Parties (P5) “committed to continue structured efforts to exchange views on doctrines and risk reduction measures.., and to remain open to deepening the discussions among themselves and with others and will seek to continue to engage on this topic in the future”¹. Given the deteriorating international environment and re-emergence of systemic competition, the P5 has a special responsibility in this context. However, discussions at the P5 level notoriously lack inclusiveness and transparency and, therefore, risk failing to take into consideration the security interests of NNWS. Furthermore, the present dysfunctionality of a meaningful P5 dialogue stands in the way of further progress on the issue.

In addition, NSA as an unambiguous and universal norm for the benefit of NNWS – either politically or legally binding – proved to be elusive across all relevant fora. There is, in particular, a considerable diversity of NWS positions on NSA, including changes over time and the variety of conditions required by the NWS to implement their assurances².

Discussions at the P5 level notoriously lack inclusiveness and transparency and, therefore, risk failing to take into consideration the security interests of NNWS.

The urgency for a dialogue on nuclear doctrines, declaratory policies, and security assurances

The present stress on multilateralism and nuclear arms control, disarmament, and non-proliferation architecture, including the demise of arms control arrangements, looms over the current geo-strategic environment.

In today's climate, a meaningful dialogue of NWS with NNWS on nuclear doctrines, declaratory policies, and security assurances will have to take into account the present security environment both in terms of the deteriorating geo-strategic situation as well as the development and deployment of new offensive and defensive weapon systems. Both as a driver of and as a reaction to the present security environment, NWS, for their part, have already maintained or increased the salience of nuclear weapons in their respective doctrines³.

Several factors have to be taken into consideration regarding the deteriorating geo-strategic situation. There is the re-emergence of strategic great power competition, linked with disquieting and irresponsible nuclear rhetoric by some actors and thus a perceived lowered threshold for the use of nuclear weapons (e.g. non-strategic nuclear weapons). This is accentuated by persistent regional crises and the emergence of new regional crisis scenarios. These have global political and economic implications involving both NWS and NNWS and continued risks of nuclear proliferation crises and proliferation dynamics. Lastly, the present stress on multilateralism and nuclear arms control, disarmament, and non-proliferation architecture, including the demise of arms control arrangements, looms over the current geo-strategic environment.

As a consequence, there is an urgent need for security assurances, both positive and negative, that reflect today's security environment and address the concerns of NNWS and NWS, the risks of significant non-nuclear strategic attacks, increasing uncertainties about compliance with nuclear non-proliferation and other obligations concerning WMD and grey areas in nuclear weapons doctrines, and conditions under which NNWS can benefit from security assurances.

In addition, concerns related to new offensive and defensive weapon systems have to be addressed, in particular in relation to new technologies and capabilities that could blur the line between conventional weapons and WMD, such as the proliferation of strategic-scale conventional weapons, new cyber threats, counter-space capabilities, and qualitatively new missile technology. All of this could create new instabilities and challenges to stability and/or increase the risk of miscalculation and, in the extreme scenario, nuclear escalation.

Under this backdrop, an inclusive dialogue of NWS with NNWS on nuclear doctrines, declaratory policies, and security assurances is of renewed relevance since they contain factors that increase the risks and threats to peace and security, are a shared responsibility, and require serious commitments both from NWS and NNWS alike.

The NPT as the key forum for dialogue

Elements for a dialogue

Such a dialogue can improve the international security environment through re-establishing strategic trust and building confidence between NWS and NNWS and among NWS themselves.

The NPT continues to be the central pillar of the international nuclear arms control, disarmament, and non-proliferation architecture, and is, therefore, the appropriate forum for a dialogue on nuclear doctrines, declaratory policies, and security assurances.

Ideally, such a dialogue would be a central element of the review cycle. Given the urgency for such a dialogue and that, under the status quo, only Review Conferences are habilitated to make decisions, options should be explored and implemented in the current review cycle at the discretion of the chairs of the Preparatory Committees or the President of the Review Conference. These options should include informal and open-ended venues to guarantee transparency and inclusiveness.

Considering the breadth and depth of the task, civil society, research centres, and academia should⁴ be allowed to play an active role in engaging in this vein, possibly in a series of informal open-ended events that should feed into the review cycle. As a result, the wider NPT community would recognise the important functions of a dialogue of NWS with NNWS on nuclear doctrines, declaratory policies, and security assurances, potentially making this dialogue a standing item in the NPT review cycle.

Such a dialogue can fulfil several important functions by, among other things, improving the international security environment through re-establishing strategic trust and building confidence between NWS and NNWS and among NWS themselves. In addition, a dialogue aimed at elevating the nuclear threshold could reduce the risk associated with any use of nuclear weapons. As an intermediate step, it could also contribute to disarmament and arms control by reducing the role of nuclear weapons in security doctrines and serve as a basis for a re-evaluation of force postures, thus being an integral part of substantive discussions towards a world without nuclear weapons.

A broad range of elements is necessary for a meaningful dialogue on nuclear doctrines, declaratory policies, and security assurances. Nuclear doctrines and declaratory policies would be at the centre of such a dialogue, including – in light of new strategic offensive and defensive nuclear capabilities – new conventional weapons, emerging and disruptive technologies (including cyber capacities and counter-space capabilities), the spectre of biological and chemical warfare, and regional crises scenarios.

Furthermore, policies of doctrinal restraint should be part of the dialogue, such as “no first use of nuclear weapons”, “sole purpose of nuclear weapons”, “no launch of nuclear weapons on attack”, nuclear deterrence only for “extreme circumstances to defend vital interests” and “an extreme circumstance, in which the very survival of a State would be at stake”.⁵

In addition, the dialogue should comprise enhanced strategic and nuclear risk reduction measures such as improved and regular senior-level political dialogue, political statements promoting restraint, reducing ambiguity in nuclear doctrines, and a commitment to a cooperative approach to security.

Operation- alising the dialogue

As a first step, the dialogue could mainly give adequate consideration to the security interests of NNWS by taking stock of nuclear doctrines, declaratory policies, and security assurances in light of the present security environment. Thereupon, it could work towards strengthening and harmonising existing security assurances in general, including in the framework of NWFZ and contribute to further doctrinal restraint of NWS as a concrete risk reduction measure and as an interim step ahead of further concrete steps towards a world without nuclear weapons.

In due course, it seems appropriate to widen the dialogue regarding security assurances, as elaborated in the Annex below.

References

- 1 See NPT/CONF.2020/WP.33
- 2 See “Mapping Negative Security Assurances”, UNIDIR & GCSP, 12 June 2018 and CSSS JMCNS NPT Briefing Book 2019, chapter Q- Security Assurances. In addition, some NSA given on different occasions are at times not consistent, e.g. NWFZ, SR-RES. 955, NPT, national defence strategies.
- 3 FRA: 2015 President Hollande à Istres “Discours sur la dissuasion nucléaire” and 2017 “Revue Stratégique de Défense et de Sécurité nationale”.

RUS: 2020 “Basic Principles of State Policy of the Russian Federation on Nuclear Deterrence”

UK: 2021 “The Integrated Review of Security, Defence, Development and Foreign policy”

US: 2022 “National Defense Strategy”
- 4 E.g. European Leadership Network, SIPRI, Nuclear Threat Initiative, the Monterey Institute, UNIDIR and Wilton Parks.
- 5 See 1996 ICJ Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict.

Annex: Negative Security Assurances and further deliverables

Negative Security Assurances (NSA) to shield against the threat or use of nuclear weapons (NW) are generally considered a legitimate right of Non-Nuclear Weapon States (NNWS) in compensation for accepting a non-nuclear status under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Throughout the discussions on NSA, the point was made, in particular by non-aligned states, that a legally binding treaty on NSA should include unequivocal and unconditional assurances of Nuclear Weapon States (NWS) to NNWS that they would not be subject to the use or threat of use of NW, under any circumstances¹. However, unconditional NSA proved to be elusive as NWS generally made reservations, in their own regard or in the framework of Alliances, for a number of scenarios involving, in particular:

- a NNWS in alliance or association with another NWS,
- other weapons of mass destruction (chemical or biological) or disruptive technologies,
- a threat to vital interests,
- states outside the NPT and or not in compliance with NPT or other WMD obligations.

Conference on Disarmament (CD)

- In the 1960s, the first efforts to arrive at security assurances for NNWS were undertaken during negotiations on the NPT in the framework of the Eighteen-nation Committee on Disarmament (ENDC), a predecessor to the CD. By many NNWS, such assurances were regarded as a counterbalance to forgoing a nuclear option under the NPT.
- 1966 UNGA RES 21/53 A requested the UNDC “to consider urgently the proposal that nuclear weapons powers should give an assurance that they will not use, or threaten to use, nuclear weapons against NNWS without NW on their territories.”
- 1979, the CD included the issue of NSA² in its annual agenda and created a special subsidiary body on the issue.
- 1979-1994, a number of working groups dealt with NSA. Throughout these deliberations³, there was a continuing recognition of the urgent need to reach an agreement on effective arrangements to assure NWS against the use or threat of use of NW, however, without arriving at a legally binding instrument⁴.
- 1998, an Ad Hoc Committee on NSA was re-established for one year, with a mandate to negotiate “effective international arrangements to assure NNWS against the use or threat of use of NW”; however, no progress was made.
- 1999 and thereafter, the CD was unable to reach a consensus on its programme of Work. Since 2005, the debate on NSA has taken place only in plenary and informal sessions⁵, largely reiterating known positions.

- 2014 (CD/1995) and 2015 (CD/2043/Rev.1), structured and substantive discussions on NSA were conducted in informal meetings within the framework of a Schedule of Activities.
- 2017, a working Group on the “Way Ahead “(CD/2090) was established with NSA on its agenda. Its report on NSA (CD/2105 “in a personal capacity”) reflected the in-depth discussion; however, again, it was largely along known positions⁶.
- 2018, a subsidiary body on NSA (CD/2119). The discussion followed largely along the lines of 2017. However, the subsidiary body on NSA failed to reach a consensus⁷.

Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

- 1975 1st NPT Review Conference considered the issue of security assurances⁸.
- 1990 NPT Review Conference, while not reaching a consensus final document, had recognised “...the need for effective international arrangements, that could be included in an international legally binding instrument, to assure NNWS parties to the Treaty against the use or threat of use of NW. The conclusion of an international instrument providing for such arrangements would strengthen the security of NNWS...”⁹.
- 1995 NPT Review Conference in its “Principles and Objectives for Non-Proliferation and Disarmament¹⁰”, with reference to SR-Res. 984 noted “...the declarations of The NWS concerning both negative and positive security assurances, that further steps should be considered to assure Non-Nuclear-Weapons States party to the Treaty against the use or threat of use of NW. These steps could take the form of an internationally legally binding instrument”¹¹.
- 1995 Memoranda on Security Assurances (Budapest Memorandum), containing both negative and positive security assurances, by the US, Russian Federation and the UK in connection with Belarus’, Ukraine’s, and Kazakhstan’s accession to the NPT, followed by the statement by France on the accession of Ukraine to the NPT.
- The 2000 NPT Review Conference Final Document “agrees that legally binding security assurances by the five NWS to the NNWS to strengthen the non-proliferation regime...” and called for recommendations to be made to the 2005 NPT Review Conference¹².
- The 2010 NPT Review Conference reaffirms and recognises “...the legitimate interest of non-nuclear-weapon States in receiving unequivocal and legally binding security assurances from nuclear-weapon States which could strengthen the nuclear non-proliferation regime”¹³. As a follow-on, in particular in Action 7, the Conference agreed that “the Conference on Disarmament should, within the context of an agreed, comprehensive, and balanced programme of work, immediately

begin discussion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.”

United Nations (UN)

- 1968 Security Council Resolution 255, against the backdrop of identical declaration by the Soviet Union, the United Kingdom (UK), and the United States (US) given before the signing of the NPT, recognised that the use or threat of use NW against a NNWS would call for immediate action by the UNSC and welcomed the intention by certain states to provide or support immediate assistance to any NNWS party to the NPT in case in case of use or threat of use NW¹⁴.
- 1978 At the occasion of SSOD-I, the five declared NWS provided NSA in the form of unilateral declarations¹⁵. In its final document, SSOD-I called upon the NWS to “pursue efforts to conclude, as appropriate, effective arrangements to assure NNWS against the use or threat of use of NW¹⁶”.
- 1978-1989 NSA figured continuously on the agenda of the UNGA.¹⁷
- 1990 onwards, Pakistan’s annual UNGA Resolution¹⁸ on NSA was passed without a negative vote.
- 1990 UN Comprehensive Study on Nuclear Weapons¹⁹ containing the official doctrinal positions of the NWS at that time, and by that effect the conditions for NSA²⁰.
- 1995 Security Council Resolution 984 noted the declarations on security assurances of the NNWS parties of the NPT²¹ and welcomed the intention expressed by certain states to provide support to NNWS. As a legally binding Resolution, it combines, for the first time, elements of positive and NSA in an action by the UN Security Council.
- 1999 UNDC, in its “Principles and Guidelines”²² on NWFZ, recommended that “NWS should be consulted ... in order to facilitate.. signature to and ratification of the relevant protocol(s).., through which they undertake legally binding commitments ..not to use or threaten to use nuclear weapons against States parties to the treaty”.
- 2016 Security Council Resolution 2310 inter alia “recalls the statements by each of the five NNWS, noted by resolution 984 (1995), in which they give security assurances against the use of nuclear weapons to NNWS Parties to the NPT, and affirms that such security assurances strengthen the nuclear non-proliferation regime”.
- 2016 The OEWG, on taking forward multilateral nuclear disarmament negotiations, lists in its report (A/71/371) a number of non-agreed suggestions for NWS to reduce the risk associated with NW, inter alia “Respect fully their commitments with regard to security assurances, extend such assurances if they have not yet done so and withdraw reservations and interpretative statements on the protocols to the treaties establishing nuclear-weapon-free zones”.²³

Nuclear-Weapon Free Zones (NWFZ)

- The only legally binding NSA accepted by the NWS is contained in additional protocols to the NWFZ ratified by the NWS.
- As a first, the 1967 Treaty on a NWFZ in Latin America (Treaty of Tlatelolco) provided in its Additional Protocol II an explicit legal framework for security assurances by NWS by the undertaking "... not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean".
- Identical or similar are to be found the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), the Treaty on the South-East Asia Nuclear-Weapon-Free Zone (Treaty of Bangkok), the African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba), and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia (Treaty of Semipalatinsk).
- These commitments are legally binding guarantees. However, the respective protocols of the Treaties of Rarotonga, Pelindaba, Bangkok and Semipalatinsk have not been signed or ratified by all NWS, while the Additional Protocol II of the Treaty of Tlatelolco has been signed and ratified by all five official NWS, although with reservations and interpretative declarations.

Further deliverables

- In due course, it seems appropriate to widen the dialogue in terms of security assurances. To a certain extent, such security assurances have already been discussed at the CD, mainly in the context of NSA and could cover the following aspects:
- **Security assurances and nuclear doctrines and declaratory policies**
Security assurances should be clearly reflected and properly communicated in NWS's domestic and foreign policy and consistent with military doctrines and nuclear postures to avoid ambiguity. As a consequence, the starting point for discussions on security assurances could be among States that have nuclear deterrence doctrines.
- **Security assurances in the framework of NSA, nuclear disarmament, and non-proliferation**
In the context of global security, nuclear disarmament, and non-proliferation, security assurances are primarily pledges by NWS to assure NNWS against the use or threat of use of NW. There is widespread agreement that NNWS have the right to be assured that their survival and security will not be jeopardised by States that possess NW. Thus, the main purpose of security assurances is the assurance of security and safety of NNWS and their populations from nuclear attacks and threats thereof. However, such security assurances can also enhance confidence amongst NWS and thus give an incentive for NWS not to increase or modernise their nuclear capabilities

and to NNWS not to aspire, develop, or possess NW, thereby strengthening the principle of non-proliferation and thus supporting the objectives of the NPT.

- **Security assurances as an intermediate step towards a world free of NW**

There is general agreement that security assurances should only constitute an intermediate and pragmatic step towards nuclear disarmament and the total elimination of NW.

Therefore, security assurances cannot be an end itself and should not serve to legitimise the continued possession of NW or to avoid nuclear disarmament negotiations. The key feature of security assurances should be to facilitate the general nuclear disarmament process through the creation of trust and confidence.

- **Security assurances: contribution to global and regional security**

When provided in a multilateral context, security assurances constitute a positive contribution to global and regional security as they provide an incentive to NWS to reduce their reliance on NW and the salience of these weapons in respective security doctrines.

In addition, security assurances can reinforce the interconnectedness between peace, security, and the development agenda with benefits for each of these goals, as recognised inter alia in the final consensus document of SSOD-I.

Furthermore, by alleviating the insecurities regarding NW and diverting the scarce resources spent on military expenditure to development activities, security assurances can contribute to the implementation of the 2030 Development Agenda.

- **Security assurances in a changing international security environment**

The effectiveness and efficiency of specific security assurances will depend on the prevailing international security environment and thus need to be taken into account and adjusted over time in terms of:

- current perceived threats, including by non-state actors,
- developments in the entire spectrum of weapons of mass destruction and their means of delivery,
- developments of strategic-scale conventional weapons,
- disruptive technologies, including cyber and counter-space capabilities.

As a consequence, consideration might be given that security assurances could be time-limited and periodically updated to reflect these changes.

- **Security assurances in light of attacks against vital interests**

The principal legally binding security assurance can be seen in Art. 2(4) UN Charter, which prohibits the threat or use of armed force against the territorial integrity or political independence

of any State. However, the UN Charter is unspecific with regard to NW. The 1996 advisory opinion of the International Court of Justice (ICJ) did not “conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”.

Therefore, security assurances should be specific about under which conditions nuclear deterrence would fall under the right of self-defence in accordance with the UN Charter.

- **Security assurances in terms of universality**

Security assurances should be global and uniform in scope, application, and interpretation to provide the best possible protection. However, security assurances that vary in scope, application, and degree of ambiguity could erode the efficiency of the assurances in their totality, as each caveat, especially with regard to conditions and qualifications, could neutralise security assurances provided by the other NWS.

- **Security assurances in terms of conditionalities and reservations**

The issue of whether security assurances could be subject to certain conditionalities and reservations will have to be addressed. In the past, NWS have set a variety of conditions for the implementation of security assurances, such as:

- compliance with NPT obligations,
- compliance with other obligations concerning WMD,
- exclusion of NNWS in alliance or association with another NWS,
- stationing of NW on the territory of a NNWS.

As the international nuclear arms control, disarmament, and non-proliferation architecture might evolve in the future, additional conditions might have to be considered.

- **Security assurances and compliance mechanisms**

Given that security assurances should contain obligations both for NWS, as resulting from these assurances, and NNWS, in terms of their compliance with other obligations (e.g. non-proliferations commitments), consideration should be given to how and where compliance issues will be settled in order to exclude unilateral and possibly unjustified action. Such a compliance mechanism could involve:

- consultations with concerned parties and other procedures to resolve disputes to ensure that judgments on compliance are part of a political process, but based on facts identified through verification reports,
- a credible sanctions mechanism in order to ensure future compliance.

- **Security assurances: transparency and verification**

To enhance confidence in security assurances and to enable a fact-based compliance mechanism, it will be essential to consider appropriate measures for transparency and verification both for NWS and NNWS:

- NWS should increase transparency about their nuclear doctrines, nuclear weapon capabilities, the role of these weapons in their defence postures—including thresholds of use and operational status—and the implementation of arms control agreements to build confidence both amongst NWS and with NNWS. Such transparency measures could include detailed information on the number and types of NW, the location of storage sites, the operational status of weapons, and the means of delivery.

- NNWS should demonstrate continued compliance with their non-proliferation obligations through robust verification.

- **Security assurances in terms of their legal nature**

Existing security assurances are often of a non-legally binding nature under international law, contain inherent ambiguities that are open for interpretation, and are associated with varying qualifiers, conditions, and reservations.

Furthermore, unilateral security assurances are often perceived merely as statements of intention that are irreversible and do not contain enforceable commitments.

Before this backdrop, it can be argued that legally binding security assurances should be universal, irrevocable, non-discriminatory, credible, unambiguous, and respond to the concerns of all parties.

References

- 1 E.g. CD/2120 by the Group of 21
- 2 E.g. 1979 PAK draft “International Convention to Assure NNWS against the Use or the Threat of Use of NW” (CD/10) and “Draft international convention on the strengthening of guarantees to the security of NNWS” by a group of Eastern States (CD/23).
- 3 See CD/SA/WP 15 (1993); CD/SA/WP.15/Add.1 (1998) and CD/INF.51 (2006) for a considerable number of draft conventions and working papers submitted by delegations, inter alia CD/962 by Nigeria, CD/SA/WP.14 by France, CD/1277 by a number of non-aligned states.
- 4 See UNIDIR, “The Conference on Disarmament and Negative Security Assurances”, UNIDIR Resources, March 2011; and www.unog.ch/cd/nsas.
- 5 See CD/1827(2007), CD/1846(2008), CD/1877(2009), CD/1899(2010), CD/1918(2011).
- 6 E.g. CD/2120 by the Group of 21.
- 7 Symptomatically because agreement on a footnote was not possible.
- 8 E.g. NPT/Conf.I/22 proposed the conclusion of an additional protocol.
- 9 NWS provided unilateral declarations on NSA (NPT/CONF.IV/37-41); Nigeria’s proposal for a protocol on NSA (see CD/23) was not discussed due to lack of time.
- 10 NPT/CONF.1995/32/DEC.2
- 11 Hence these unilateral commitments were considered a part of efforts to obtain the indefinite extension of the NPT.
- 12 The 2005 Review Conference failed to produce any agreed final document for addressing nuclear disarmament or proliferation. However, for a draft protocol on NSA see the NAC working paper “Security Assurances”, NPT/CONF.2005/PC.II/WP.11
- 13 NPT/CONF.2010/50 (Vol I)
- 14 It was noted, however, that these so-called “positive security assurances” merely re-affirmed obligations already contained under Chapter VII of the UN Charter and were unspecific in terms of the nature of assistance and would it be rendered even if not requested by the concerned non-nuclear-weapon State. Furthermore, it was noted that, given the veto right of the permanent member of the UNSC, the UNSC might not be in a position to act accordingly.
- 15 See Official Records of the General Assembly, Tenth Special Session, Plenary Meetings: The declarations stated different conditions under which the security assurances would be applicable. It was noted that the terminology used, and the conditions set forth were subject to interpretation.
- 16 A/S/-10/4; paragraph 59
- 17 E.g. A/40/85 and 40/86; A/41/51 and A/41/52; A/42/31 and A/42/32; A/43/68 and A/43/69; A/44/110 and A/44/111
- 18 In 2020 UNGA Res. A/75/396 “recommends the Conference on Disarmament actively continue intensive negotiations with a view to reaching early agreement and concluding effective international agreements to assure the non-nuclear-weapon States against the use or threat of use of nuclear weapons, taking 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”.
- 19 A/45/373, Sept. 1990, pp 139-146
- 20 There is a considerable diversity of positions of NWS, including changes over time, and in particular the variety of conditions requires by the NWS to implement their assurances.
- 21 S/1995/261-265; These declarations had been delivered in advance in the CD (see CD/1305-1309 and CD/PV.795). However, they contain a number of qualifiers and caveats, the interpretation of which lies with the States making these declarations.
- 22 A/54/42
- 23 See as well working paper A/AC.286/WP.26 by Belgium, Canada, Germany, Netherlands and Sweden

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