



The Non-Proliferation Treaty Review Conference: Breakthrough or Bust in '05?

A BASIC/ORG project - Briefing 3

Turning Security Assurances into a Legally Binding Instrument

Background

The question of Security Assurances has been linked with the Non-Proliferation Treaty (NPT) since it was negotiated in the 1960s. Non-Nuclear Weapon States (NNWS) needed to be assured by the Nuclear Weapon States (NWS) of their security against nuclear attack. These Negative Security Assurances (NSAs) would be supported by Positive Security Assurance (PSAs), whereby the NWS agreed to come to the aid of NNWS facing nuclear aggression or in the aftermath of such aggression.

On the eve of the 1995 NPT Review Conference, France, Russia, the United Kingdom and the United States issued 'harmonised' Security Assurances, with the objective of creating a positive environment for the Review Conference. The declarations re-affirmed that the NWS would not use nuclear weapons against NNWS but qualified them with exemptions that if NNWS, in alliance with another NWS, attacked the territories, the armed forces or NWS allies, then the NSAs were declared void.

These Security Assurances were reaffirmed by the unanimous adoption of United Nations Security Council (UNSC) Resolution 984 on 11 April 1995, giving NNWS recourse to the UN Security Council in the event of nuclear aggression or the threat of such aggression.

<http://daccessdds.un.org/doc/UNDOC/GEN/N95/106/06/PDF/N9510606.pdf?OpenElement>

The 1995 NPT Review Conference noted the unanimous adoption of UNSC 984 in the Final Document, 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament', and suggested that further steps be considered which "could take the form of an internationally legally binding instrument".

The Final Document of the 2000 NPT Review Conference "calls upon the Preparatory Committee to make recommendations to the 2005 Review



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'13 practical steps towards global nuclear disarmament'

Conference on this issue". Under the 'Plan of Action' or '13 Practical steps towards global nuclear disarmament', the NWS committed themselves to establish a diminished role for nuclear weapons in their security policies.

Post 2000 Review Conference developments

2002 PrepCom

During the 2002 Preparatory Committee (PrepCom), concern was widely expressed about the NWS' continued reliance on nuclear weapons and the prospect of the development of a new generation of nuclear warheads and delivery systems. Additionally, there were calls for the Security Assurances to be made unconditional and legally binding.

Never viewed as very reassuring, the NSAs have been eroded by the threat from some NWS to use 'sub-strategic' nuclear weapons to deter potential aggression against deployed forces overseas or worldwide 'interests', the refusal of all NWS to declare a 'no first use' policy and the growing tendency to conflate nuclear, biological and chemical weapons under the generic and misleading term 'weapons of mass destruction' (WMD).

More recently, a public and explicit emphasis by the United States (and implied by other NWS) on using nuclear weapons pre-emptively in response to the use of biological or chemical weapons by NNWS has further eroded the NSAs. These strategies of the NWS not only lower the threshold for the use of nuclear weapons to new and dangerous levels, but are also a clear breach of the NSAs to NNWS.

2003 PrepCom

On behalf of the New Agenda Coalition (NAC), New Zealand submitted a working paper on Security Assurances to the 2003 PrepCom. The paper reviewed the history and significance of NSAs and attached a draft Protocol or Agreement for debate and consideration. The paper also quoted the unanimous decision from the Advisory Opinion of the International Court of Justice, that:

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter, and that fails to meet all the requirements of Article 51, is unlawful.

The paper acknowledged that the negotiation of any internationally legally binding instrument on Negative and Positive Security Assurances would need to take a range of factors into account. It also states that:

The arguments that declarations made by the nuclear-weapon States are sufficient or that these assurances should only be granted in the context of nuclear-weapon-free zones are not valid. The primary



undertaking not to aspire to nuclear weapons has been made under the NPT; it is therefore in the context of or as a part of this Treaty that security assurances should be given.

<http://www.reachingcriticalwill.org/legal/npt/2003statements/Working%20Papers/NACMay1.pdf>

2004 PrepCom

During the 2004 PrepCom, Malaysia, on behalf of the Non-Aligned Movement (NAM) stated that: "The Non-Aligned States Parties to the NPT also believes that the Third Session of the Preparatory Committee should also substantially focus on Security Assurances" and referred back to the decisions of the Final Document of the 2000 Review Conference. The Malaysian delegation specifically called for "the establishment of a subsidiary body on NSAs at the 2005 Review Conference for further work to be undertaken", as did other NNWS in their statements.

China submitted a short working paper on security assurances to the 2004 PrepCom. It called for an international convention on the no-first-use of nuclear weapons and an international legal instrument on the threat or use of nuclear weapons against NNWS to be concluded as soon as possible. It also suggested that:

The Conference on Disarmament in Geneva should re-establish an ad hoc committee on Negative Security Assurances and start substantive work and negotiations without delay.

<http://www.reachingcriticalwill.org/legal/npt/prepcom04/papers/china9.pdf>

Future Prospects

Given the substantial and wide ranging support for making progress on the issue of legally binding assurances to the NNWS, it is a concern that is likely to gather significant support prior to and during the 2005 Review Conference.

However, there is continuing resistance by some NWS that is unlikely to be removed in the foreseeable future. This resistance is based on the possibility of some NNWS being in non-compliance with their NPT commitments. Additional reasons put forward by NWS for not making the NSAs legally binding include potential scenarios involving:

- the invasion of, or attack against, a NNWS that is allied to a NWS;
- or
- if the territory or troops of a NWS were invaded or attacked by a NNWS in alliance with a NWS.

The drafters of the Protocol or Agreement have taken these reservations into consideration and accept that, in certain circumstances, the NSAs would be qualified.

The 2005 Review Conference is again likely to be told by the NWS that NSAs already exist and are given formal status under the NPT through



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Demonstrate a
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the establishment of Nuclear Weapons Free Zones (NWFZ). The NWS are likely to further argue that if the NSAs became universal and legally binding there would be no incentive for nations to join the NWFZs. The UK government, for example, has stated that it believes "that these commitments already give the NNWS the assurances they seek". The NAC paper from 2003 clearly contests this assertion.

Recommendations

We urge that:

1. All States Parties delegations review the statements and working papers on NSAs since, and including, the 2000 Review Conference.
2. All States Parties delegations consider the modifications in nuclear strategy being adopted by some NWS and question their standing vis-à-vis existing security assurances.
3. All NWS demonstrate in a clear and unequivocal way how they have established a diminished role for nuclear weapons in their security policies since 2000. This could be achieved by a formal statement at the 2005 Review Conference in the first instance, and thereafter via annual progress reports submitted to the United Nations and made publicly available.
4. The Conference on Disarmament in Geneva re-establish an ad-hoc committee on NSAs in advance of the Review Conference.
5. A subsidiary body on NSAs be established at the 2005 Review Conference with the aim of developing new assurances that include provisions that offer more concrete guarantees to NNWS concerning their sovereignty and territorial integrity.

British American Security Information Council (BASIC)

The Grayston Centre, 28 Charles Square, London N1 6HT
tel: +44 (0)20 7324 4680
110 Maryland Ave., N.E., Suite 205, Washington DC 20002
tel: +1 202 546 8055
web: www.basicint.org

Oxford Research Group (ORG)

51 Plantation Road, Oxford, OX2 6JE, UK
tel: +44 (0)1865 242819
web: www.oxfordresearchgroup.org.uk