

The Conference on Disarmament and NSAs

March 2011

The CD Discussion Series

Between December 2010 and July 2011, the UNIDIR project “The Conference on Disarmament: Breaking the Ice” and the Geneva Forum are organizing a series of thematic discussions to examine the myths and realities of the CD—as well as the critical challenges facing it—with the aim to increase understanding of the history, processes and issue areas of this unique negotiating forum.

The Conference on Disarmament and Negative Security Assurances

Beatrice Fihn, project associate of Reaching Critical Will

In 1978, the final document of the First Special Session of the General Assembly devoted to Disarmament asked nuclear-weapon states to “pursue efforts to conclude, as appropriate, effective arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons”.¹

This final document also created the Conference on Disarmament (CD) as the permanent body for negotiating disarmament issues. It has a permanent agenda called the “Decalogue”, which includes (1) nuclear weapons in all its aspects, (2) chemical weapons, (3) other weapons of mass destruction, (4) conventional weapons, (5) reduction of military budgets, (6) reduction of armed forces, (7) disarmament and development, (8) disarmament and international security, (9) collateral measures, confidence-building measures, and effective verification methods in relation to appropriate disarmament measures, acceptable to all parties concerned, and (10) comprehensive programme of disarmament leading to general and complete disarmament under effective international control. Out of this broad framework, the CD adopts its annual agenda.

Already at its creation in 1979, the CD included the topic of negative security assurances (NSAs) in its annual agenda, among five other items.² An ad hoc working group was established and documents and working papers regarding the conclusion of an international convention to assure non-nuclear-weapon states against the use or threat of use of nuclear weapons were submitted by delegations. This first working group on NSAs in the CD was chaired by the representative of Egypt and held both plenary meetings and informal consultations. As a result of

its deliberations, the ad hoc working group submitted a report to the Conference. Already in this report, the CD noted that there was wide recognition of the urgent need to reach agreement on effective international arrangements for NSAs, such as an international convention. The annual report stated that “there was no objection, in principle, to the idea of an international convention; however the difficulties involved were also pointed out”.³

The ad hoc working group was re-appointed in 1980. That working group, under the Chairmanship of Mohamed ElBaradei of Egypt, agreed that the object of the arrangements should be to effectively assure non-nuclear-weapon states against the use or threat of use of nuclear weapons. However, there were divergent views as to the scope of application. In that regard two main questions were identified—the criteria for the extension of the arrangements, and the exceptions associated with the right of self-defence.

The working group specifically examined the different positions for the first question, such as—pending nuclear disarmament—a complete prohibition on the use of nuclear weapons; the extension of arrangements to all non-nuclear-weapon states without any condition or limitations; the extension of arrangements to all non-nuclear-weapon states that are not parties to the nuclear security arrangements of some nuclear powers; the extension of arrangements to states that renounce the production and acquisition of nuclear weapons and that have no nuclear weapons on their territory or under their jurisdiction or control; the extension of arrangements to non-nuclear-weapon states parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) or any other comparable internationally binding commitment not to acquire nuclear explosive devices; and the extension of arrangements to non-nuclear-weapon states parties to a nuclear-weapon-free zone.⁴

The working group reported that there was continuing recognition of the urgent need to reach agreement on effective international arrangements to assure non-nuclear-weapon states against the use or threat of use of nuclear weapons. Negotiations on the substance of the arrangements revealed the complex nature of the issues involved and disappointment was expressed at the failure to make progress towards a common approach. The working group therefore also considered the question of interim arrangements. The working group noted the suggestion that the Security Council, upon the recommendation of the General Assembly, might consider the question of concrete measures to assure non-nuclear-weapon states against the use or threat of use of nuclear weapons. It was suggested, however, that any interim arrangement should not be a substitute for the indispensable renewed efforts to reach agreement on a common approach acceptable to all that could be included in an international instrument of legally binding character.⁵

These ad hoc groups reconvened every year until 1994, with varied progress. During these sessions, draft conventions and working papers were submitted by delegations and in-depth discussions were held on such topics as scope, nature and form of a future arrangement, as well as its binding character. Some years saw more substantive negotiations on scope and application of a future legally binding treaty; other years were less productive.

In 1994, the Ad Hoc Committee reported that it had been informed that the five nuclear-weapon states had held consultations on security assurances.⁶ Although such consultations were not held in 1995, the nuclear-weapon states circulated renewed pledges on NSAs to

the UN General Assembly and Security Council that year. These unilateral declarations from 1995 led to the adoption of UN Security Council resolution 984, which was a welcomed move towards protecting non-nuclear weapon states. The resolution says that non-nuclear weapon states parties of the NPT would receive assurances that “the Security Council, and above all its nuclear-weapon State permanent members, will act immediately in accordance with the relevant provisions of the Charter of the United Nations” to protect non-nuclear-weapon states against attacks or threats of aggression in which nuclear weapons are used.

These unilateral commitments were a part of efforts to obtain the indefinite extension of the NPT. However, the nuclear-weapon states failed to find common language for a similar clause in the final outcome document of the 1995 NPT Review Conference. Instead, the 1995 Conference 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”.⁷ This recommendation implies that the five nuclear-weapon states do not necessarily regard their declarations as legally binding. Several non-nuclear-weapon states were disappointed that the Security Council did not take stronger action on this topic.

The unilateral declarations made in 1995 were as follows:

China “undertakes not to use or threaten to use nuclear weapons against non-nuclear-weapon States or nuclear-weapon-free zones at any time or under any circumstances. This commitment naturally applies to non-nuclear-weapon States parties to the Treaty on the Non-Proliferation of Nuclear Weapons or non-nuclear-weapon States that have entered into any comparable internationally-binding commitment not to manufacture or acquire nuclear explosive devices”.⁸

France “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 France, its territory, its armed forces or other troops, or against its allies or a State towards which it has a security commitment, carried out or sustained by such a State in alliance or association with a nuclear-weapon State. ... Furthermore, in order to respond to the request of a great many countries, France has sought as much as possible to harmonize the content of its negative assurances with those of the other nuclear Powers. ... The content of the declarations concerning the negative security assurances of France, the United States of America, the Russian Federation and the United Kingdom of Great Britain and Northern Ireland are henceforth practically identical”.⁹

The Russian Federation stated 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 Russian Federation, its territory, 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”.¹⁰

The United Kingdom “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 Kingdom, its dependent 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”.¹¹

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”.¹²

NSAs continue to be addressed regularly in the Preparatory Committees and Review Conferences of the NPT, although these meetings have not made progress on making them legally binding. The final document of the 2000 Review Conference made no mention of a possible international treaty on NSAs, but reaffirmed the role of the NPT as a forum for dealing with them and called upon the Preparatory Committee to make recommendations to the 2005 Review Conference.¹³ The 2005 NPT Review Conference failed to adopt a final document, thus no progress was made. At the 2010 NPT Review Conference, Actions 7, 8 and 9 of the Action Plan mentioned security assurances. 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 recommendations dealing with all aspects of this issue, not excluding an internationally legally binding instrument”.¹⁴

After a few years of inability to continue work on NSAs, the CD reconvened the Ad Hoc Committee on this topic in 1998. The Committee was tasked to discuss the following issues: the nature and scope of existing NSAs, Security Council resolution 984, and declarations of nuclear-weapon states concerning protocols to the nuclear-weapon-free zone treaties and their interpretative statements. The Ad Hoc Committee also worked on a list of more specific tasks regarding NSAs, such as common and distinctive elements and clarifications of concepts such as “invasion”, “aggression”, “attack”, “dependent territories”, “security commitment” and “association or alliances”.¹⁵

Despite this brief reconvening of the Ad Hoc Committee, the CD did not make any progress on the topic and current discussions are extremely similar to those in 1979. The CD has not convened any Ad Hoc Committees since 1998, although many states continue to press for action on NSAs in the CD. Since 2005, the CD has engaged in thematic debates on this topic. While being a useful exercise in times of deadlock, it has not moved discussions very far past national positions and reiteration of old statements.

Aside from Security Council resolutions, NSAs are also included in additional protocols of the treaties establishing nuclear-weapon-free zones (NWFZs). Five such zones exist today—the Latin American zone (1967 Treaty of Tlatelolco), the South Pacific zone (1985 Treaty of Rarotonga), the South-East Asian zone (1995 Treaty of Bangkok), the African zone (1996 Treaty of Pelindaba) and the Central Asian zone (2006 Treaty of Semipalatinsk).

Each treaty includes additional protocols for the five nuclear-weapon states to sign and ratify. These protocols, which are legally binding, call upon the nuclear-weapon states to respect the status of the given zone and not to use or threaten to use nuclear weapons

against states parties of the given treaty. Such declarations of non-use of nuclear weapons are referred to as NSAs.

Each treaty has varying requirements in its protocols, which ultimately affects ratification by the nuclear-weapon states, but they all encompass three main components:

- the nuclear-weapon states must provide NSAs, including a commitment to refrain from the use of or the threat of use of nuclear weapons, to the states parties;
- non-regional states that may have jurisdiction over territories within the designated zone must accept the same obligations concerning nuclear weapons as the regional states; and
- nuclear-weapon states are prohibited from nuclear testing within the designated zone of the treaty.

Although the nuclear-weapon states express their support of these the treaties, of the existing NWFZ treaties the Treaty of Tlatelolco is the only one which has had its protocols and ratified by all five states.

However, with the exception of China, all nuclear-weapon states have deposited reservations or understandings with their ratification of most of the protocols, stating that they would not be bound by the protocols if a party to the treaty concerned attacked them or one of their allies in alliance with a nuclear-weapon state, or if there was a breach of the treaty concerned.

Aside from these developments, the new security doctrines of the United States and the United Kingdom during the last year have presented slightly moderated language on security assurances.

On 19 October 2010 the United Kingdom stated that:

We are now able to give an assurance that the UK will not use or threaten to use nuclear weapons against non-nuclear weapon states parties to the NPT. In giving this assurance, we emphasise the need for universal adherence to and compliance with the NPT, and note that this assurance would not apply to any state in material breach of those non-proliferation obligations. We also note that while there is currently no direct threat to the UK or its vital interests from states developing capabilities in other weapons of mass destruction, for example chemical and biological, we reserve the right to review this assurance if the future threat, development and proliferation of these weapons make it necessary.¹⁶

The US Nuclear Posture Review, released in April 2010, states:

the United States is now prepared to strengthen its long-standing “negative security assurance” by declaring that the United States will not use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the Nuclear Non-Proliferation Treaty (NPT) and in compliance with their nuclear non-proliferation obligations.

This revised assurance is intended to underscore the security benefits of adhering to and fully complying with the NPT and persuade non-nuclear weapon states party to the Treaty to work with the United States and other interested parties to adopt effective measures to strengthen the non-proliferation regime. ...

In the case of countries not covered by this assurance—states that possess nuclear weapons and states not in compliance with their nuclear non-proliferation obligations—there remains a narrow range of contingencies in which U.S. nuclear weapons may still play a role in deterring a conventional or [chemical or biological weapon] attack against the United States or its allies and partners. The United States is therefore not prepared at the present time to adopt a universal policy that the “sole purpose” of U.S. nuclear weapons is to deter attack on the United States and our allies and partners, but will work to establish conditions under which such a policy could be safely adopted.¹⁷

However, despite these modifications, recent thematic debates in the CD show that non-nuclear-weapon states still do not believe that existing assurances are adequate and continue to call for an internationally legally binding agreement.¹⁸

Since 1999, efforts of the CD to work out a comprehensive agreement on a programme of work have not succeeded. With the exception of a brief agreement in 2009, none of the proposals have enjoyed consensus. Despite this deadlock, no state officially opposes the establishment of a working group on 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 recommendations dealing with all aspects of this agenda item, not excluding those related to an internationally legally binding instrument”. However, as the history of the Ad Hoc Committees on NSAs in the CD has shown, the establishment of a working group will not automatically guarantee tangible progress, despite detailed discussions, working papers and draft treaties. Just as was the case in 1979, non-nuclear weapon states still have a clear expectation that an international and legally binding agreement on NSAs must be concluded.

The way of approaching the issue of NSAs in the CD has not seemed to change much over the years. While an ad hoc group on the topic seems to be the priority for many, the complex relationship between the CD, the NPT and the NWFZs makes the topic difficult to deal with efficiently in one single body. However, it is worth considering that a treaty on NSAs would not be technically difficult to negotiate. The CD’s problem with establishing a programme of work could for example need a new approach to the four core issues.

For example, an arrangement that provides for simultaneous negotiations on a fissile material cut-off treaty and NSAs, together with a discussion mandate on nuclear disarmament and prevention of an arms race in outer space, would ensure that the interests of both nuclear and non-nuclear weapon states would be addressed and would also aid the delegitimization of the use and hence possession of nuclear weapons. However, any reformulation of a programme of work that can lead to a resumption of Ad Hoc Committees and negotiating bodies will still have to face the continued reluctance of some nuclear weapon states to work on an international convention on NSAs.

Notes

- 1 General Assembly, Final Document of the Tenth Special Session of the General Assembly, UN document A/S-10/2, 30 June 1978, para. 59.
- 2 General Assembly, *Report of the Committee on Disarmament*, UN document A/34/27, 9 October 1979, para. 20.
- 3 *Ibid.*, para. 49.
- 4 See General Assembly, *Report of the Committee on Disarmament*, UN document A/35/27, 26 September 1980.
- 5 *Ibid.*
- 6 Conference on Disarmament, *Report of the Conference on Disarmament to the General Assembly of the United Nations*, CD/1281, 13 September 1994, p. 132
- 7 Final Document of the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, document NPT/CONF.1995/32 (Part I), annex, decision 2, para. 8.
- 8 General Assembly, *Letter dated 6 April 1995 from the Permanent Representative of China to the United Nations addressed to the Secretary-General*, UN document A/50/155, 6 April 1995.
- 9 General Assembly, *Letter dated 6 April 1995 from the Permanent Representative of France to the United Nations addressed to the Secretary-General*, UN document A/50/154, 6 April 1995.
- 10 General Assembly, *Letter dated 6 April 1995 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General*, UN document A/50/261, 6 April 1995, annex II.
- 11 General Assembly, *Letter dated 6 April 1995 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General*, UN document A/50/152, 6 April 1995.
- 12 General Assembly, *Letter dated 6 April 1995 from the Chargé d'affaires a.i. of the Permanent Mission of the United States of America to the United Nations addressed to the Secretary-General*, UN document A/50/153, 6 April 1995.
- 13 Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, document NPT/CONF.2000/28 (vol. I), p. 15.
- 14 Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, document NPT/CONF.2010/50 (vol. I), p. 22.
- 15 Conference on Disarmament, *Report of the Conference on Disarmament to the General Assembly of the United Nations*, document CD/1557, p. 22
- 16 Statement by John Duncan, Head of the United Kingdom Delegation, to the First Committee of the General Assembly, New York, 19 October 2010; see <www.reachingcriticalwill.org/political/1com/1com10/statements/19Oct_UK-nuclear.pdf>
- 17 US Department of Defense, *Nuclear Posture Review Report*, 2010, pp. 15–16, <www.defense.gov/npr>.
- 18 See <www.reachingcriticalwill.org/political/cd/2011/reports.html#feb10>.

UNIDIR RESOURCES

About UNIDIR

The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.