

## Renewing Interest in Negative Security Assurances

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### Summary

The Nuclear Weapon States and their allies have criticised the Ban Treaty talks currently in progress in New York as disruptive to a more measured step-by-step negotiated process. For this criticism to hold any validity they need to show will and progress in their approach, something sadly lacking of late. Declaratory policy is a crucial part of that agenda.

NSAs could become a touchstone for nuclear armed states' political will to engage. Minimalist responses, such as simple restatements of existing NSAs, will be insufficient and interpreted as mean-spirited.

Demands for tighter and legal Negative Security Assurances - the promises made by nuclear armed states not to use nuclear weapons against certain states that do not possess them - may soon see a come-back. They are particularly attractive to those states who recognise the need for concrete disarmament gains but who feel uncomfortable with the Ban approach. Several European states submitted a paper to the UN Open Ended Working Group in April 2016 proposing a discussion to strengthen existing NSAs.<sup>1</sup>

This was in part to find realistic multilateral progress on reducing the salience of nuclear weapons. These governments are now considering options to promote this initiative.

Nuclear Weapon States would do well to consider cooperating with this effort. The costs to them are minimal (after all, their possession of nuclear weapons is in relation to other states with nuclear weapons), but the signals from inaction are deeply undesirable and could further undermine their legitimacy. Their resistance is bound up by their deep attachment to ambiguity, but they appear to undervalue its downsides. Not least, nuclear deterrence requires a level of clarity in signalling that is undermined by ambiguity.



*UN Security Council votes on collective nuclear negative security assurance towards Mongolia on 17th Sept 2012*

<sup>1</sup> Security assurances, A/AC.286/WP.26, submitted by Belgium, Canada, Germany, Netherlands and Sweden <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/WP26.pdf>

## Why NSAs?

The security justification for all existing nuclear arsenals is to protect against threats from other nuclear-armed states (with the exception of Israel, which does not acknowledge its nuclear arsenal). It is an established norm within the international community that nuclear threats against states without nuclear weapons are unacceptable. China and India have issued full no-first use declarations, and categorically state that they would under no circumstances threaten Non-Nuclear Weapon States (NNWS) with nuclear weapons. Yet, most Nuclear Weapon States, particularly those who see themselves as the most responsible (such as the United States, the UK and France), remain reluctant to give unconditional guarantees not to threaten nuclear attack to states without nuclear weapons, and have resisted calls to make them legally binding.

Ambiguity lies at the heart of nuclear postures. In the minds of decision-makers there are several principal reasons for it:

1. If states specify the circumstances that would trigger their use of nuclear weapons, adversaries could operate with relative safety right up to that line, and then call that bluff if they cross it. The state may feel compelled to use their nuclear weapons to retain credibility (save face) and 'restore deterrence'. Prior clarity removes freedom of action away from the leadership. Of course, this considers nuclear weapons in isolation, when there exist numerous other forms of military and non-military deterrence. It
2. Ambiguity might deliver deterrent results further down the line of escalation (within the band of ambiguity) even when the nuclear armed state itself has no intention to threaten use.
3. There may be unforeseen circumstances in which a future leadership could threaten a nuclear response to achieve deterrence.
4. Tightening NSAs could be irreversible over time. If a nuclear-armed state needs to 'reset' its NSAs (perhaps as security situations deteriorate) this could send undesirable signals and worsen international security at a sensitive moment. This resistance to irreversibility gives away a deep assumption of commitment to indefinite nuclear postures that contradicts diplomatic commitments to a world free of nuclear weapons. Irreversibility is an important notion within the diplomatic process; but it is this very irreversibility that creates resistance to agreement.
5. Ministries of Defence are institutionally resistant to limiting their options in advance of any conflict, particularly after they have allocated substantial resources to the acquisition and upkeep of the capabilities concerned. This freedom of action is often seen as a sign of

is widely recognised that for nuclear deterrence to be effective at all, other capabilities at lower levels of conflict are essential, otherwise this concern over red lines occurs in any case. After all, nuclear deterrence is simply not credible at these lower levels.

their sovereignty in an uncertain future strategic security environment.

6. Attention drawn to scenarios that might merit a threat to use nuclear weapons could focus public attention on these scenarios and generate unwelcome debate on whether this threat would be justified. On the other hand, it may also highlight the state's dependence upon nuclear deterrence and thus strengthen resistance to any evolution in policy or move away from nuclear deployments.

Equally, the downsides of 'too much' ambiguity include:

1. Deterrence credibility *requires* some level of specificity and clarity in communicating intent, otherwise adversaries can underestimate or otherwise misread the intent of the leadership in the Nuclear Weapon State. There needs to be some confidence on the part of the state being deterred that the nuclear threat is genuine, but will not be exercised unless it transgresses strong boundaries. A strengthening nuclear taboo could tempt future bluff calling.
2. Ambiguity is no friend to a Nuclear Weapon State offering extended deterrence assurances to its allies. Dennis Healey, when UK Defence Secretary in the 1960s, famously said that it takes 5% credibility to deter the Soviets but 95% credibility to assure allies.<sup>2</sup> Allies are more clearly reassured if their nuclear sponsor's arsenal and posture is clearly there to deter the nuclear state they also feel

threatened by. A more ambiguous posture is less assuring.

3. Ambiguity undermines nuclear legitimacy within the international community. NNWS are not only seeking to improve their own security by insulating themselves from nuclear threat; they also look to the nuclear armed states to act with responsibility and restraint more generally towards the international community. If nuclear armed states show little willingness to act with such restraint and be specific about when they would or would not consider nuclear use it harms the trust in their commitment to their NPT obligations.
4. Exceptions to NSAs draw attention to nuclear threats that are deeply unacceptable to a majority of the international community, or trigger undesirable responses from those states that lie outside the guarantees. Withdrawal of these exceptions would be a recognition from the Nuclear Weapon States of the boundaries to nuclear deterrence within the international community.

### Non-proliferation & disarmament

NSAs are critical signals of acknowledgement that NNWS have reduced their freedom (and sovereignty) by joining international non-proliferation arrangements from which all states benefit from. Weak NSAs are an affront to this commitment and to the very idea of a cosmopolitan international community.

NSAs have been a consistent and at times high-profile demand of the NNWS within the NPT process. They are an important tool in the international

<sup>2</sup> <http://www.nato.int/docu/Review/2015/Also-in-2015/deterrence-russia-military/EN/index.htm>

community's management of nuclear security and proliferation. They also reduce the freedom of action for nuclear armed states. The strength of particular NSAs on offer is therefore an indication of a nuclear armed state's willingness to accept such restrictions for the wider benefits they bring. These focus particularly on encouraging NNWS to stick to their obligations and thereby strengthen confidence in the non-proliferation regime.

The impact of NSAs goes further than the security calculations of the states directly involved. They are an expression of the bargain at the heart of the NPT, an invitation for Nuclear Weapon States to demonstrate political will in reducing the salience of nuclear weapons. In this respect they are also a modest disarmament measure.

### NSA exceptions

Strengthening NSAs essentially means reducing the number of exceptions and enshrining the guarantee in law. The exceptions to negative security assurances (NSAs) have at times involved:

- States that attack in alliance with a nuclear armed state
- States that are deemed to be in breach of their non-proliferation obligations
- States that use chemical or biological weapons

By and large, the NSA exceptions expressed by most nuclear armed states are determined by military scenario planning. These exceptions are included

to ensure that NSAs will not constrain any options that may be seriously contemplated by a future leader. If NSAs are only ever issued for situations in which the probability that nuclear weapons would be used is zero, this calls into question the whole point of NSAs beyond clarifying existing positions. A nuclear armed state can use its NSAs to diplomatically signal its intentions to resist or encourage trends towards reduced salience of nuclear weapons, and in moving towards a sole purpose for nuclear weapons (in deterring nuclear use or blackmail). The effort to tighten NSAs should therefore be seen as part of a broader framework to reduce the acceptability of nuclear use against certain states (without nuclear weapons) or in certain circumstances, particularly if this tightening is achieved in a multilateral context.

### Alliance (currently Russia)

When NSAs were proposed in the context of the Cold War there was a fear that they could be manipulated by adversaries hiding behind their NNWS allies. The NSAs were 'harmonised' in declarations at the UN Security Council by the 'P5', with the exception of China, on the eve of the 1995 NPT Review and Extension Conference, with the objective of creating a positive environment. China restated that it would never under any circumstances threaten nuclear weapons against any NNWS. The exclusion for states operating in alliance with a Nuclear Weapon State has since been dropped by the United States, UK and France but remains for Russia, whose military doctrine includes nuclear use against an overwhelming conventional attack in

which the very existence of the state was under threat.

Such an exclusion is only unnecessary if an aggressive NNWS could gain a significant conventional advantage whilst protected from nuclear use by its alliance with a Nuclear Weapon State. This may make theoretical sense is simply not a credible scenario.

### **Compliance (currently US, UK and France)**

The 1995 NSAs were explicitly seen by France, the UK and the United States as acknowledgement of the sacrifice made by NPT NNWS in their renunciation of nuclear weapons. This attitude has persisted. In contrast, those states outside the Treaty, or those NNWS which these Nuclear Weapon States deem to be in noncompliance with the Treaty, do not enjoy the benefits of their NSAs, even if they do not possess nuclear weapons and thus present no immediate nuclear threat. This is explicitly ‘intended to underscore the security benefits of adhering to and fully complying with the NPT’.<sup>3</sup> In other words, NSAs are a reward for good behaviour.

And yet, the implied nuclear threat that arises in the exception undermines the norm that nuclear armed states should not threaten nuclear use against other states without nuclear weapons. It also supports the interpretation that nuclear weapons bring diplomatic influence, increases their utility, and therefore attraction, and perversely could weaken

nuclear non-proliferation. If there are to be sanctions levelled against states for not joining or complying with the NPT, there are many other options that would not undermine the norm against threatening states without nuclear weapons.

If a nuclear armed state was concerned about the possibility of facing a NNWS that might have cheated on its commitments to the NPT and actually deployed a nuclear weapon arsenal, then it should make explicit reference to that belief that it faced a real and present danger of nuclear attack and that its nuclear threat was intended to deter that specific danger, rather than to the non-compliance with the Treaty.

### **Other WMD (currently UK and France)**

True to the concerns of our time, the latest French Presidential statement refers its guarantee to those states ‘that respect their international obligations for non-proliferation of weapons of mass destruction’.<sup>4</sup> The current British NSA explicitly talks of ‘reserv[ing] the right to review this assurance if the future threat, development or proliferation of these weapons [chemical and biological] make it necessary’. The Obama Administration dropped such references in its 2010 NSA, though for a decade the United States had implied it would consider the use of nuclear weapons to deter chemical or biological use. Operational chemical and biological weapons cannot be compared with nuclear weapons in terms of their

<sup>3</sup> Nuclear Posture Review Report, Department of Defense, April 2010, p.vii; [https://www.defense.gov/Portals/1/features/defenseReviews/NPR/2010\\_Nuclear\\_Posture\\_Review\\_Report.pdf](https://www.defense.gov/Portals/1/features/defenseReviews/NPR/2010_Nuclear_Posture_Review_Report.pdf)

<sup>4</sup> President Hollande, speech on 19 February 2015, [http://www.nuclearfiles.org/menu/key-issues/nuclear-weapons/issues/policies/President-Hollande-Speech-on\\_a921.pdf](http://www.nuclearfiles.org/menu/key-issues/nuclear-weapons/issues/policies/President-Hollande-Speech-on_a921.pdf)

level of impact and perceived military utility. Retaining reference to the possibility of nuclear deterrence against these weapons (something that was only first thought of in the late 1990s), only encourages states to keep hold of the option of developing these weapons as a balance against nuclear weapons. It also legitimises the practice in other nuclear armed states of retaining their own ambiguity in relation to chemical weapons, a position that Israel may adopt were it ever to leave the shadows and confirm its possession of nuclear weapons.

### Legally-binding

So far the only internationally legally-binding NSAs are those established within regional nuclear weapon free zones (NWFZs). Nuclear Weapon States have been invited to sign protocols to the zone treaties promising not to use or threaten nuclear attack on any of the member states. They have proven to be reluctant to restrict their freedom of action in the first instance, but many have signed the protocols to most of the treaties concerned, which therefore cover the majority of states in legal guarantees. But those protocols are conditional, and include the exceptions declared by Nuclear Weapon States on a case-by-case basis. And unfortunately, the only NWFZ protocol that has been ratified by the US Congress is that covering Latin America.<sup>5</sup> The South East Asia NWFZ still has no protocols from any

<sup>5</sup> I am indebted to Marc Finaud, who contributed a paper to the SWP workshop in Berlin, 6 February 2017: 'The debate on negative security assurances in the Conference on Disarmament'. This paper includes a definitive appendix showing the status of the protocols as signed and ratified by the Nuclear Weapon States.

Nuclear Weapon States. There also remain notable regions left outside, particularly in crucial regions such as Europe, the Middle East and East Asia.

Nuclear Weapon States also typically respond to demands for legally-binding NSAs by pointing out that their existing NSA declarations, in the form of governmental or Presidential announcement, are legally binding on those public servants responsible for planning and executing any nuclear attacks. This may not be reassuring to other states. Pronouncements from a particular President or government can presumably be reversed by similar pronouncements from the same or successor individuals at any point.

The consensus 1995 NPT Final Document recommended further steps be considered which 'could take the form of an internationally legally binding instrument', an aspiration that has been repeated several times since but which has not materialised. The existing legal guarantees connected to NWFZs could be seen as a model for any attempt to achieve global coverage not limited by region. Alternatively, if there is no NWFZ in place regional NSAs could be issued by states or groups of states within the region or from outside as an initial step towards establishing the NWFZ. A NNWS or state that is ambiguous is just as able to issue a nuclear NSA (politically or legally-binding), even if it does not acknowledge possession of nuclear weapons.

NNWS clearly value the idea and legitimacy of legally-binding NSAs, and that value alone should mean that it is an

avenue worth pursuing. However, with the state of international negotiations on nuclear weapons issues and in particular the stymied status of the CD, and the challenges in getting any treaty ratified by the US Congress, it may be that a strong political route is preferable for the time being.

### NSA credibility and verification

This may be a good point to ask the question: do NSAs, legally binding or otherwise, have sufficient credibility to merit all this attention? NWS officials often express scepticism of no first use (NFU) on the grounds that they could be ignored, so why not with security guarantees? Can those asked to believe the assurances take them at face value?

Agreements made in peacetime may have little force in conflict, and there are no realistic means to fully verify the efficacy of such declarations. After all, in a crisis, will a Nuclear Weapon State be contained if its leadership thought itself caught between observing international law and protecting its vital interests or resisting invasion? A case would undoubtedly be considered in such circumstances that under Article 51 of the UN Charter a state would be within its rights to use or threaten nuclear weapons even against those to which it had previously issued an NSA, when facing its own destruction or that of its allies. This 'inherent right to self-defence as recognised under Article 51 of the United Nations Charter' is explicitly referred to in NATO's Deterrence and Defence Posture Review (DDPR) as

an NSA exception for its three Nuclear Weapon States.<sup>6</sup>

The Russian annexation of Crimea and its support for irregular forces in eastern Ukraine appear to directly contradict its security commitments made to Ukraine alongside the United States and UK under the Budapest Memorandum of 1994. Whatever the legal interpretation, it is clear that this action has undermined confidence in the commitment Russia may have to its existing or future promises when it comes to security guarantees. It also weakens the salience of NSAs more generally. Similarly, the attitude apparently taken by the Clinton Administration in the 1990s, when it expanded NATO into central and eastern Europe in apparent contradiction to its promises to Soviet and early Russian leadership around the end of the Cold War, has harmed Russian confidence in guarantees that may be issued by NATO states.

So why are NNWS so keen on NSAs? The value of NSAs (and for that matter, NFU) comes in establishing norms governing nuclear weapons. The weapons themselves are after all deployed to send strong signals, rather than to actually fight nuclear war, so if the circumstances of those deployments also involve explicit public limitations on their threat or use then those signals, the very purposes of their deployment, are affected.

An NSA can never fully guarantee to a NNWS that it will never be threatened or attacked by nuclear weapons, but those NSAs acknowledge that it would be

<sup>6</sup> DDPR official text, paragraph 10:  
[http://www.nato.int/cps/en/natolive/official\\_texts\\_87597.htm](http://www.nato.int/cps/en/natolive/official_texts_87597.htm)

illegitimate to do so. A nuclear armed state that breaks its guarantees and threatens nuclear use pays a very high price for doing so in terms of its standing, and would likely affect its ability to operate with any support within the international community.

In that respect, NSAs reassure NNWS, by explicitly acknowledging their security needs in the wider nuclear weapons calculations. NWS that complain the Ban Treaty does not adequately account for their security needs could take note of the mirror need here! NSAs, like almost all other multilateral agreements, tend to benefit and protect the weak against the strong within international society.

It is possible to introduce verification procedures for NSAs and other declaratory policies. If military guidance and regulations, exercises and training were sufficiently transparent it could be confirmed that the scenarios involved all conformed to the declaratory policy.

## Venues for Talks

### Conference on Disarmament

NSAs are one of four core issues in front of the CD, the others being outer space, a fissile material cut-off treaty, and nuclear disarmament. Unfortunately, the CD has been in deadlock for almost twenty years, and the NSA issue has gone nowhere beyond official statements and informal meetings. Whilst the CD would certainly be the appropriate venue to negotiate harmonised legally-binding NSAs in a convention, this may not be the best route for the short- to medium-term. The CD could be used for informal discussions;

after all, the expertise and the capacity exists in Geneva for such conversations, but the *action* may better reside in New York.

### UN Security Council

The UN Security Council was an important venue in harmonising political NSAs in the 1995 declarations. This could be a model for a Nuclear Weapon State-led initiative in the future, but this would require extensive talks elsewhere to develop possibilities for strengthened and harmonised NSAs.

### P5 Process

The most obvious place to do this would be the 'P5 Process', an initiative that so far has been strong on potential but weak on delivery. It offers a relatively safe venue for talks amongst the Nuclear Weapon States, and has already started to talk about strategic stability and posture. NSA offers would be an obvious additional area of merit for discussion, and potentially for initial declarations, though such declarations would have greater legitimacy and force if they were later formalised at the UN Security Council.



*Representatives of the Nuclear Weapon States at the P5 Process in Washington DC, 2012*



## NPT

The NPT Preparatory Committees and particularly Review Conferences are important venues for assessing progress, for floating ideas, for laying down markers, and for establishing cooperative action by groups of states. But these venues have not proved to be effective in hosting on-going constructive talks.

## NATO

NATO member states, some of whom are members of other groups such as the Non-proliferation and Disarmament Initiative (NPTDI) or are behind this latest request for stronger NSAs, have some influence over NATO nuclear posture. Could NATO declare NSAs that go further than its Nuclear Weapon State members, or play a role in helping to strengthen their NSAs?

NATO has not discussed such an option, explicitly declaring that such policies are the unilateral preserve of its the Nuclear Weapon State members, as they ultimately decide on the use of their nuclear weapons. But NATO discusses nuclear posture in its nuclear planning and high level groups (NPG and HLG) and published its last deterrence and defence posture review (DDPR) in May 2012.<sup>7</sup> Clearly, NATO is in the business of harmonising declaratory policy in some areas, particularly in regards to nuclear posture as relevant to the European theatre. So logically, it should be possible for NATO to declare NSAs that were tighter than those of its individual

members without legally or politically limiting their actions independently of NATO. It simply chooses not to. Perhaps it is time for some of its members to propose just such an idea.

One reason for doing so is that NATO could consider NSAs a low-bar (not too sensitive) non-proliferation area for discussion with Russia in the NATO-Russia Council.

## Conclusion

States proposing a tightening of NSAs talk of a treaty or a protocol to the NPT enshrining such guarantees, and reducing exceptions. The approach to all this is critical. Nuclear Weapon States will be opposed to such an assertive approach for a number of reasons already identified. Any effort by NNWS to impose or pressure Nuclear Weapon States into agreeing a protocol will almost certainly fail. There is a belief in their defence and diplomatic establishments that harmonisation will be far more difficult than it was in 1995, reflecting differing security situations and approach to doctrine. And of course harmonisation might open up the temptation to race to the bottom.

Such resistance, alongside the obvious observation that the strategic environment and appetite for arms control appears to be deteriorating, has led some to propose that the NSA ambition should be limited to a restatement of existing guarantees as a way of holding the line against the temptation to weaken them. Such statements could again be coordinated in the UN Security Council, much as those

<sup>7</sup>[http://www.nato.int/cps/en/natolive/official\\_texts\\_87597.htm](http://www.nato.int/cps/en/natolive/official_texts_87597.htm)

in 1995 were. They would of course be stronger if they also included the other nuclear-armed states that are not permanent members of the Security Council.

The problem with this approach is that it will be seen as weak by the majority of states in the international community, with little to no value in terms of establishing trust in the political will of the states reissuing the NSAs. It will close down rather than open up, the issue for further strengthening of NSAs, and will thus be seen as a strongly conservative response.

So what is the alternative? It will take some time and sensitivity to overcome the obstacles to stronger NSAs, but ought to be possible if the initiative is handled in a non-confrontational manner.

The objective of strengthening and harmonising NSAs as a parallel or alternative track to the Ban Treaty should be seen by Nuclear Weapon States as an opportunity to demonstrate political will and responsible nuclear governance. They would do well to consider their own initiatives in this area, including attempts to harmonise and strengthen their NSAs.

This should be a priority discussion area within the so-called 'P5 process', discussions at the United Nations in New York or Geneva, or in working papers within the NPT review process. It could sit within a broader discussion of declaratory policy, particularly as in this area the Chinese appear to be more progressive than their fellow Nuclear Weapon States, and would therefore presumably be more open to such initiatives.

The attitude from the Nuclear Weapon States on NSAs will be seen by many as a touchstone for their commitment to any moves toward a world free of nuclear weapons. If they oppose stronger NSAs, being an archetypal, relatively achievable and conservative step-by-step proposal, this will only be interpreted by other states as confirmation that they will indefinitely cling onto their nuclear weapons, their ambiguous postures, and the perceived status they bring. This can only lead to increasing frustration by other states whose security is directly threatened.