
**PROPOSED INTERNATIONAL LEGALLY BINDING
NEGATIVE SECURITY ASSURANCES**

Status: Negative Security Assurances (NSAs) are part of the permanent agenda of the Conference on Disarmament (CD), and the possibility of recommending an internationally legally binding instrument has explicitly not been excluded from current proposals for a program of work in the CD. A number of States would prefer that negotiations take place in the context of the Nuclear Nonproliferation Treaty (NPT).

Background: NSAs are the promise of nuclear-weapon States (NWS) not to use or threaten to use nuclear weapons against non-nuclear-weapon States (NNWS). In contrast, a positive security assurance is a pledge by NWS to provide immediate assistance, in accordance with the UN Charter, to a NNWS that is the victim of an act or threat of aggression in which nuclear weapons are used.

Although the five NPT NWS have made various pledges regarding NSAs, each has been either non-binding, limited in scope, or qualified in some way. The NPT NNWS have consistently pushed for NSAs in the form of a free-standing treaty or a protocol to the NPT. The demand for such a commitment has increased in recent years, particularly from the [Non-Aligned Movement](#). These States seek assurances that are legally binding, unconditional, and apply to all NPT NNWS. The hesitation from the NWS stems from their concern that a binding, universal NSA treaty would constrain their military options for dealing with unforeseen events and weaken the security umbrellas they provide around the world.

The non-aligned States first sought NSAs during the NPT negotiations. UN General Assembly Resolution 21/53A called upon the Eighteen-Nation Committee on Disarmament “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 non-nuclear weapons states without nuclear weapons on their territories.” The United States rejected this proposal, fearing it would allow the Soviet Union to threaten West Germany unless the United States withdrew its nuclear weapons from German bases.

The first legally-binding NSAs were provided in Additional Protocol II of the Treaty of Tlatelolco (1967),

which established the nuclear-weapon-free zone (NWFZ) in Latin America and the Caribbean. Though the assurances were not universal, this set an important precedent that NSA protocols constitute a key element of NWFZ treaties. A 1999 UN Disarmament Commission report on establishing NWFZs noted that nuclear-weapon States should “...through the signing of relevant protocols, enter into binding legal commitments not to use or threaten to use nuclear weapons against the States that belong to the nuclear-weapon-free zone.” Although NWFZs now cover more than half of the world’s land mass and 116 countries, most of the NSA protocols have not been ratified by all the NWS. The United States has not ratified the NSA protocol to any NWFZ treaty except Tlatelolco, and Russia has only ratified the NSA protocols to the treaties of Tlatelolco and Rarotonga.

In 1978 the General Assembly’s First Special Session on Disarmament adopted a final document which noted that “effective arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons could strengthen the security of those States and international peace and security.” Each NWS then issued unilateral, non-binding assurances, which in some cases were qualified.

The Conference on Disarmament (CD) began addressing the issue of NSAs in 1980. From 1983 to 1994, the CD established an ad hoc committee to discuss NSAs. After a hiatus of four years, the CD reconvened the committee in 1998, but made no progress regarding negotiations towards a legally binding instrument. Since 1999, no ad hoc committee has been convened in the CD to work on the issue of NSAs, despite calls for it from numerous CD members and no objection in principle from any delegation. The program of work adopted in 2009 after years of consultations established a working group to discuss NSAs “with a view to elaborating recommendations dealing with all aspects of this agenda item, not excluding those related to an internationally legally binding instrument.”

The issue of negative security assurances also continues to be raised in the NPT context. In the run-up to the 1995 Review and Extension Conference, the NWS issued harmonized non-use declarations to the

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NNWS through unilateral statements which were subsequently noted in UN Security Council Resolution 984 (1995). However, with the exception of China, these assurances were conditional. For example, the United States declared that if a NNWS attacks the United States and is allied or associated with a NWS then nuclear weapons could be used against the NNWS. In 2003, the New Agenda Coalition tabled draft text as a possible basis for negotiating a legally binding instrument on NSAs. The working paper noted that while all NPT NNWS should be beneficiaries of a binding instrument, the assurances would “in certain circumstances be qualified.”

Every year since 1990, Pakistan has introduced a resolution on NSAs in the UN General Assembly.

Obligations: Under an international legally binding instrument of negative security assurances, the five nuclear weapon states (China, France, Russia, United Kingdom, and United States) would pursue efforts to conclude appropriate, effective arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons. Presumably, these assurances would be reflected in domestic policy and military doctrine.

Developments:

2011: The CD addressed NSAs in a thematic discussion on 10 February. Delegates expressed an overwhelming support for legally binding NSAs, but disagreement emerged over the context in which NSAs should be pursued. The United States in particular encouraged the use of legally binding NSAs within the protocols to the [nuclear-weapon-free zone treaties](#), while other states argued for the [creation of a special treaty on negative security assurances](#). There was also significant debate on the appropriate venue for such negotiations and if it should remain within the CD or be added to the NPT Review Conference agenda.

2010: During the meetings of the CD, discussion of NSAs was limited as the body was unable to reach agreement on a program of work. Though several states expressed support for the negotiation of legally binding NSAs, no progress was made on the issue.

In April, the United States pledged in its [Nuclear Posture Review](#) not to “use or threaten to use nuclear weapons against non-nuclear weapons states that are party to the NPT and in compliance with their nuclear non-proliferation obligations,,” marking a shift from previous U.S. reservations on use of nuclear weapons in response to a biological or chemical weapons attack.

During the 2010 [NPT](#) Review Conference in May, NSAs were the focus of significant debate, often conducted in tandem with conversations around nuclear-weapon-free zones. In their working papers, several delegation and groups of states called for the negotiation of legally binding NSAs or strengthening the existing ones, particularly the Non-Aligned Movement, the New Agenda Coalition, Iran, and Australia and Japan. The NWS emphasized their existing security assurances and the importance of NSAs in the context of NWFZs.

The [Final Document of the NPT Review Conference](#) in May established an action plan on nuclear disarmament that specifically addressed NSAs. Action 7 calls upon the CD to begin discussions of an internationally binding legal framework for NSAs, and Action 9 encourages the use of NSAs associated with NWFZs.

On 8 December 2010, the UN General Assembly adopted resolution [65/43](#) on the conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons. The resolution encouraged all states, particularly NWS, to work actively to create a common approach to NSAs, particularly towards an international legally binding instrument. UN General Assembly also passed resolution [65/72](#) that day, encouraging NWSs to respect their existing security assurance commitments.

2009: Iran submitted a [working paper](#) on NSAs to the NPT PrepCom proposing that the 2010 Review Conference “establish an ad hoc committee to work on a draft of a legally binding instrument on the illegality of nuclear weapons and the provision of security assurances by the five nuclear-weapon States to non-nuclear weapon States parties to the Treaty, and to submit the draft of the legal instrument to the [2015] Review Conference for consideration and adoption.”

On 26 May, the CD adopted a [program of work](#) for the first time in a decade. The work plan established several working groups, including one entitled “Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.” This working group was charged with discussing and forming recommendations regarding NSAs “not excluding those related to an internationally legally binding instrument.”

On 24 September, the UN Security Council passed [Resolution 1887](#). This resolution recalls the statements made by the five NWS noted in Resolution 984 (1995). In these statements, the NWS gave har-

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monized, but in some cases, qualified security assurances to all NNWS party to the NPT.

The UN General Assembly adopted resolution [64/27](#) which noted that no members of the Conference in Disarmament objected in principle to a legally binding instrument on NSAs and appealed to all States to work towards a “common formula.” For the first time since 2005, the United States abstained from voting rather than be the only country to oppose the resolution outright.

2008: During the NPT PrepCom, security assurances were addressed, although typically in an indirect manner. Most countries referred to NSAs in the context of nuclear-weapon-free-zones (NWFZs) or in relation to nuclear postures. This included addressing the military doctrine of preemptive action by a NWS if vital interests were threatened by biological, chemical and perhaps even overwhelming conventional forces.

Maintaining their past positions, the NWS continued to affirm UNSC Resolution 984 (1995) and recognized the protocols of the NWFZs. On the other side, the NAM continued its call for multilateral negotiations on a legally binding treaty that would provide security guarantees to all NNWS. The NAM also called for a subsidiary body on security assurances to be created at the 2010 NPT Review Conference.

Several statements explicitly referred to security assurances outside of the context of NWFZs. Indonesia, on behalf of the NAM called for the 2010 RevCon to “focus substantially on this crucial issue.” Ukraine, a non-NAM State, was unusually attentive to this issue. It offered to convene and “International Conference” on security assurances if it had support from various NPT delegations.

The NWS differed somewhat on their opinions. China stated it would consider a possible agreement or protocol in the context of the CD. China is the only NWS that maintains a “no use of nuclear weapons against NNWS” security assurance in addition to its no first use nuclear weapons policy. Russia, however, gave its support for the establishment of an ad hoc committee on NSAs in the CD “with a negotiating mandate.”

2007: At the Preparatory Committee meeting for the 2010 NPT Review Conference, four working papers were presented regarding legally binding security assurances. These working papers were presented by [Canada](#), [China](#), [Italy](#) and the [Non-Aligned Movement](#) (NAM).

The UN General Assembly adopted resolution [62/19](#) on the “conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.”

2006: The joint resolution for NSAs was again circulated at the UN General Assembly. NATO and the European Union continued to abstain from the resolution. In contrast to previous years, the United States changed its position to become the only State voting in opposition. In May Acting Assistant Secretary of State Stephen Rademaker told the UN Conference on Disarmament that the United States “sees no need at this time, however, for the negotiation of new multilateral agreements on...negative security assurances.”

2005: Iran submitted a working paper ([WP.49](#)) to the NPT Review Conference proposing that the conference establish an ad hoc committee to draft a legally binding instrument and affirm that pending its completion, a new UN Security Council resolution underlining unqualified NSAs would “enhance regional and international peace and security.” As the RevCon failed to adopt a final document, no progress was made regarding consensus language on NSAs.

Brazil, Canada, Kenya, Mexico, New Zealand and Sweden presented a joint resolution to the UN General Assembly that promoted the creation of four CD Ad Hoc Committees to discuss four priority issues. Among these issues was the establishment of internationally binding security assurances.

Under the Six-Party talks in 2005, the Bush administration offered negative security assurances to North Korea (DPRK). In the fourth round of the Six-Party talks the United States put in writing that it has “no intention to attack or invade the DPRK with nuclear or conventional weapons.” However, at this point in time North Korea was uninterested in the security assurances offered by the United States due to Kim Jong Il’s desire for a more fundamental guarantee of his regime’s survival.

2004: During the NPT PrepCom, the call for negative security assurances was reiterated by many of the NNWS, particularly from the NAM countries. These countries called for specific recommendations regarding “legally binding security assurances by the five nuclear-weapon-states” for the 2005 RevCon. All of the NWS except China strongly opposed the idea of extending NSAs to a global, legally binding treaty.

2003: During the meeting of the heads of state of the Non-aligned Movement (NAM) in Kuala Lumpur, concern was raised over the possibility of the creation of new types of nuclear weapons, stemming from the U.S. Nuclear Posture Review released in 2001. The

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NAM heads of State declared that “pending the total elimination of nuclear weapons, efforts to conclude a universal, unconditional, and legally binding instrument on security assurances should be pursued as a matter of urgency, and that legally binding security assurances to NNWS parties to the NPT would strengthen the regime.” The NAM emphasized the necessity for the NPT to address the issue of NSAs during its PrepCom.

The New Agenda Coalition submitted a working paper (WP.11) to the second session of the NPT Prep-Com which included a “Draft [Protocol][Agreement] on the Prohibition of the Use or Threat of Use of Nuclear Weapons against Non-Nuclear-Weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.” The paper noted that an internationally legally binding instrument would need to contain “provisions on the mandatory actions to be undertaken by the Security Council where a beneficiary of the security assurances are the subject of a threat of use or use of nuclear weapons,” but Article III of the draft instrument offered only vague language taken from UNSCR 984 (1995).

2002: In February, U.S. Department of State spokesperson Richard Boucher declared that “we will do whatever is necessary to deter the use of weapons of mass destruction against the United States, its allies, and its interests. If a weapon of mass destruction is used against the United States or its allies, we will not rule out any specific type of military response.” That following September, National Security Presidential Directive 17 took a more substantial stance regarding nuclear retaliation to the use of WMD an official U.S. policy. Leaked portions of the directive stated “the United States will continue to make clear that it reserves the right to respond with overwhelming force—including potentially nuclear weapons—to the use of WMD against the United States, our forces abroad, and friends and allies.”

2001: With the events that occurred in New York on 11 September, the United States began to back away from its previous position on negative security assurances.

After the release of the new [U.S. Nuclear Posture Review \(NPR\)](#), many of the non-nuclear weapon States voiced concerns. The new NPR included contingencies for the possible use of nuclear weapons against certain non-nuclear weapon States under particular circumstances. In addition, the U.S. Congress approved funding for studies on the development of “robust nuclear earth penetrators” and for the possible development of mini-nukes. This funding approval signaled U.S. withdrawal from the “Spratt-Furse”

ban on low-yield nuclear weapons. These actions raised strong concerns regarding the future of binding NSAs, particularly among the NAM states.

The statements made in the Nuclear Posture Review and National Defense Strategy regarding the possible (preemptive) use of nuclear weapons against NNWS reneges on the previous unilateral extension of negative security assurances from the United States. By backtracking on the pledges made in 1995 and 2000, the United States pushed the NNWS to pursue an internationally legally binding treaty to make the security assurances more concrete.

2000: Negative security assurances were a primary point of discussion throughout the 2000 NPT Review Conference. In the preparatory phases several proposals were made by Myanmar and South Africa regarding the need to provide comprehensive and unconditional NSAs to the NNWS. The proposal made by South Africa stressed that the negotiations on legally binding security assurances should take place within the context of the Treaty.

The final document of the 2000 NPT RevCon made no reference to the possibility of an international treaty on negative security assurances. It did, however, reaffirm the role of the NPT as a forum for dealing with issues regarding NSAs and called on the Prep-Com for the 2005 RevCon to make recommendations on the issue.

1995: During the NPT Review and Extension Conference, the five NPT nuclear weapon states (NWS) reiterated unilateral negative security assurances to the non-nuclear weapon states (NNWS). These unilateral declarations of security assurances are contained in Security Council documents [S/1995/261](#), [S/1995/262](#), [S/1995/263](#), [S/1995/264](#), [S/1995/265](#).

These assurances are not legally binding, and with the exception of China, which maintains a strict no-first-use policy, the assurances do not apply “in the case of an invasion or any other attack on the (NWS), 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.”

The UN Security Council unanimously adopted Resolution 984 (1995), which recognized “the legitimate interest of [NPT NNWS] to receive security assurances” and noted “with appreciation” the non-binding unilateral pledges.