

CONFERENCE ON DISARMAMENT

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NOTE VERBALE DATED 14 SEPTEMBER 2006 FROM THE PERMANENT MISSION OF SENEGAL ADDRESSED TO THE SECRETARIAT OF THE CONFERENCE ON DISARMAMENT TRANSMITTING THE SUMMARY REPORT OF A SEMINAR ON NEGATIVE SECURITY ASSURANCES ORGANIZED BY UNIDIR AND HELD IN GENEVA ON 8 AUGUST 2006

The Permanent Mission of Senegal to the United Nations Office at Geneva presents its compliments to the secretariat of the Conference on Disarmament and has the honour to request that the attached summary report prepared by UNIDIR following the seminar on negative security assurances held in Geneva on 8 August 2006 should be introduced as a document of the Conference.

The Permanent Mission of Senegal avails itself of this opportunity to convey to the secretariat of the Conference on Disarmament the renewed assurances of its highest consideration.

Negative Security Assurances

Seminar held at the Palais des Nations, Geneva, on 8 August 2006

At the initiative of the President of the Conference on Disarmament, Ambassador Ousmane Camara, Permanent Representative of Senegal, the United Nations Institute for Disarmament Research (UNIDIR) held a seminar on Negative Security Assurances, on 8 August 2006, at the Palais des Nations.

This seminar took place as the Conference on Disarmament (CD) was discussing agenda item four: “*Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons*”, with the aim of assisting the work of the Conference and providing expert knowledge to the discussion.

The seminar was chaired by Dr. Patrick McCarthy, Network Coordinator of the Geneva Forum. Ambassador Ousmane Camara, Permanent Representative of Senegal and President of the Conference on Disarmament, delivered the opening remarks. Prof. Jozef Goldblat, Resident Senior Fellow at UNIDIR, spoke on “*Negative security assurances or a global ban on use?*”. Mr. John King, Director of the Business Humanitarian Forum, presented his views on “*Should negative security assurances be negotiated in the Conference on Disarmament?*”. Dr. Sola Ogunbanwo, Chief Expert Adviser on the African Nuclear Free Zone, concluded the seminar with remarks on “*Negative security assurances from an African expert’s perspective*”.

The discussion following the presentations focused on several issues: NSAs as a step towards nuclear disarmament; the forum in which to pursue NSAs; ways to pursue NSAs within the Conference on Disarmament; and the possible contribution of relevant Security Council resolutions and relevant articles in nuclear-weapons-free zone (NWFZ) treaties towards granting NSAs.

A number of participants saw NSAs as a first step and necessary provisional measure towards nuclear disarmament and the total elimination of nuclear weapons. However, views diverged both on whether to pursue an international legal instrument on NSAs and how this instrument should be pursued. The discussion also revolved around the type of forum in which NSAs should be discussed. Several forums were proposed: the CD, the NPT or within a specific nuclear disarmament conference. The choice between the CD and the NPT as a negotiating forum for NSAs depended on diverging views over the status of States not party to the NPT within future NSA arrangements.

There was further discussion on the possible approaches to pursue NSAs discussions at the CD, in particular the question was raised of the establishment of an ad hoc committee on NSA with a negotiating mandate.

Participants pointed out that while NSAs had been part of the non-proliferation and disarmament regime created by the NPT, these types of NSAs have been accompanied by conditions, have been of different nature and have not been necessarily legally binding. Security Council Resolutions 255 (1968) and 984 (1995) both contain security assurances. However, it was felt by some that these resolutions did not represent a legal instrument and that their content was limited. Finally, some interventions pointed out that while NWFZs were a way of enhancing NSAs on a regional basis, the NWFZs involved, by nature, only a limited number of countries and that not all nuclear-weapons States had ratified the different NWFZ treaties.

Attached: 2 presentations

Attachment I

NEGATIVE SECURITY ASSURANCES OR A GLOBAL BAN ON USE?

MR. JOZEF GOLDBLAT

(Talking points)

Thank you for inviting me to speak on negative security assurances, a subject I have been dealing with for many years.

By negative security assurances (NSA) we mean, in the disarmament parlance, the obligations of nuclear-weapon States not to use or threaten to use nuclear weapons against non-nuclear-weapon States.

NSA constitutes a link in the chain of measures forming the non-proliferation regime. But it is the weakest link of the regime. It is not even referred to in the Non-Proliferation Treaty. The conference of non-nuclear-weapon States, convened at the initiative of Pakistan in August 1968 (just after the signing of the NPT), discussed the issue of NSA but failed to reach agreement. Only 25 years later just before the 1995 NPT Review and Extension Conference, the United Nations Security Council adopted a resolution concerning the NSA. This resolution (984), took note of the relevant statements made by the nuclear-weapon States at the Conference on Disarmament. But a resolution is not considered to be legally binding.

Moreover - and this is even more important - the assurances given by the nuclear powers are conditional. The United States, the United Kingdom, France and Russia made it clear that their assurances would cease to be valid in case of an attack on them or their allies, carried out or sustained in association or alliance with a nuclear-weapon State. In other words, the four powers feel free to resort to nuclear weapons, whenever they decide that the conditions for use, which they had formulated, have been met.

Paradoxically, in stipulating nuclear disarmament, generally understood as the elimination of nuclear arms, the NPT passes over in silence the renunciation of use, which, logically, must precede elimination.

Assurances of no use of nuclear weapons are also contained in the protocols to nuclear-weapon-free-zone treaties. But they are subject to the same conditions as the assurances given to the NPT Parties under the mentioned 984 resolution. Some nuclear NPT Parties have not signed these protocols. Others have signed but not ratified them. Still others have made statements of understanding to record the conditions for complying with the non-use commitment.

Negative security assurances were conceived as an incentive for non-nuclear-weapon States to give up nuclear weapon aspirations and join the NPT. At present, there are no hold-outs from the NPT left. With the exception of India, Pakistan and Israel, which are unlikely to be attracted by the NPT. And North Korea, which may need other incentives than the NSA to rejoin the NPT. A broader approach to nuclear security is therefore needed.

I propose that, considering the overwhelming destructive potential of nuclear arms and the uncontrollable consequences of their employment, the prohibition of their use become a norm of international law. Negotiations at the Conference on Disarmament should lead to a multilateral treaty containing an undertaking by the Parties never to use or threaten to use a nuclear weapon against any other State.

According to the doctrine of belligerent reprisals, the use of a nuclear weapon in retaliation for a prior use of such a weapon would not be considered a breach of the ban. But the effects of the second use would have to be proportional to those of the first use.

The proposed no-first-use treaty could be open for signature to all States, whether or not they are Parties to the NPT, neutral or militarily aligned. It should, however, enter into force only upon the deposit of the instruments of ratification by all those States, which conduct significant nuclear activities and are not subject to comprehensive nuclear safeguards applied by the International Atomic Energy Agency. This category of States would include China, France, Russia, the United Kingdom, the United States, India, Pakistan and Israel. Because these countries do conduct significant nuclear activities and are not subject to comprehensive nuclear safeguards.

The right to withdraw from the treaty would have to be strictly circumscribed, if not forbidden altogether. Reservations should not be allowed.

A global ban on the use of nuclear weapons would certainly diminish the risk of nuclear war. It would also weaken the political force of explicit or implicit threats to initiate such a war. The doctrine of nuclear deterrence, insofar as it consists in threatening a nuclear attack in response to a non-nuclear attack, would have to be declared invalid.

A global ban on the use of nuclear weapons would thus constitute a major step towards solving the nuclear dilemma. Mere cuts in the numbers of nuclear warheads will not dispel the feelings of anxiety generated by the threat of their use.

Attachment II

SHOULD THE CD NEGOTIATE A NSA TREATY?

MR. JOHN H. KING

(Talking points)

1. Views expressed are my own, based on many years of experience in following and studying these issues.
2. Question I propose to discuss: Should the CD negotiate a global and legally-binding NSA Treaty?
3. Short answer: NO, but not for the reasons you usually hear. I think there are other considerations to bear in mind.
4. Reasons:
 - (a) The CD has been trying to negotiate an NSA treaty for more than two decades, with no results. Except for 1998, there has been no AHC to do so after 1994. This indicates there's a problem that needs to be addressed, both procedurally (the CD linkage problem) and substantively (the situation with NSAs themselves);
 - (b) There are strong arguments for negotiating such an NSA treaty in the NPT context, or as a part of NFWZ treaties. The latter has already seen some success, indicating there are fewer problems in such forums. The United States has even ratified the NSA protocols for the Tlatelolco treaty, and has signed but not ratified such protocols for SPNWFZ and Pelindaba;
 - (c) The concept of NSAs is changing in a post-cold war and new international security environment. While still valid in the NPT context, the importance of NSAs is dropping in priority as other security concepts and needs rise in importance. The CD should be focusing on those higher priority issues since they will improve security for more countries more effectively;
 - (d) The nature of NSAs makes it more difficult to manage them in a treaty context. NSAs are declaratory arms control rather than substantive arms control, and they are difficult if not impossible to monitor, much less verify. They depend on the credibility of that most elusive of concepts - intentions;
 - (e) One has to realistically ask if a NWS facing massive and devastating attack by any means on its homeland would continue to honour a legally-binding NSA pledge if it felt its existence was at stake. [Acheson quote] Personally, I doubt it;
 - (f) The changing role of NSAs in the new international security situation - to include the need for them and the form they should take - has frankly not been deeply examined, even by academics. This lack of new analysis deters many from wanting to negotiate a treaty concerning an issue that may have changed beyond all recognition in today's security environment;

(g) The ephemeral nature of NSAs, even if legally binding, leaves everyone with a vague sense of unease and uncertainty. While no arms control or disarmament measure is 100 per cent effective or verifiable, NSAs provide minimal if any real sense of security to those to whom they have been given, especially since they come with conditions. That's why the NNWS will always ask for "more", no matter what form an NSA may take. I suspect that even a global and legally binding treaty may not be sufficient to assuage security concerns. And that's why the value of NSAs is minimal compared to other, more substantive forms of arms control;

(h) NSAs cannot therefore be negotiated in isolation. They only make sense in the context of a relationship to other, more concrete arms control measures. And the latter, if truly effective, can make NSAs superfluous and redundant.

5. To suggest an alternative on assurances, let me try my hand at some new thinking:

(a) In the modern international security situation, why is the CD still focusing on NSAs? In the NSA context, today's problem really is WMD proliferation to States or non-State actors who definitely are NOT going to give NSAs. Proliferation makes State-to-State NSAs virtually meaningless, even if legally binding;

(b) A better idea: Rather than NSAs, why not consider a global and legally binding treaty on NPAs? NPAs stands for Non-Proliferation Assurances;

(c) Sure, this duplicates the NPT, but not everyone in the CD is a NPT member. In fact, NPAs could most usefully be applied to some of the non-NPT members. As for the NPT, NPAs would reacknowledge, reinforce and strengthen the obligations of all NPT members, NWS and Non-NWS alike;

(d) Unlike NSAs, which are given by some States to other States, NPAs would truly be non-discriminatory. NPAs would be given equally by all States to the international community. This is politically important;

(e) NPAs can be more easily monitored and verified than NSAs. We already know and have recorded in the CTBT the States that have nuclear technology capabilities, about a quarter of the world's States. NPAs can also cover chemical and biological weapons technology, thereby strengthening those treaties as well;

(f) The negotiation of an NPA treaty might also involve a "grand bargain" regarding NSAs, with the latter possibly being included in an appropriate way. When taken together with NPAs, NSAs could assume a new and more meaningful context, and they would then be more relevant to today's security requirements.

6. Conclusion: I'm just throwing one new idea out into the ether. Someone will always find a problem with it or any other new idea. Such ideas take time to filter through the system and to find their niche. But one needs to start somewhere and not just casually toss such ideas aside. The CD could usefully examine this and other new concepts, modifying them as necessary to increase their mutual security advantages.
