

Conference on Disarmament

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Note Verbale dated 17 March 2023 from the Permanent Mission of Islamic Republic of Pakistan to the United Nations Office and other International Organizations in Geneva transmitting the Working Paper entitled “International Convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons”

The Permanent Mission of Islamic Republic of Pakistan presents its compliments to the Secretary-General of the Conference on Disarmament and has the honour to request that the attached Working Paper entitled "International Convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons" be published as an official document of the Conference on Disarmament and circulated to its membership

The Permanent Mission of Islamic Republic of Pakistan avails itself of this opportunity to renew to the Secretary-General of the Conference on Disarmament the assurances of its highest consideration.



Annex

Working Paper by Pakistan

International Convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons

I. Salience

1. The subject of “effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons” has been on the international agenda for over five decades.
2. The UN General Assembly in its resolution 21/53A of 1966 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.”
3. In 1978, the first special session of the UN General Assembly devoted to Disarmament (SSOD-I) unanimously adopted a Final Document which inter alia, called upon the 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.”
4. Pursuant to this call, the Conference on Disarmament (CD) began considering the issue of Negative Security Assurances (NSAs) as an integral part of its agenda at its very first session in 1979. For over four decades, the issue of NSAs has remained on the CD’s agenda as one of the three ‘original nuclear issues’, the other two being nuclear disarmament and nuclear test ban (on which a treaty was concluded in 1996).
5. Steps complementary to an international instrument on NSAs have a vital role in fostering a more peaceful and stable security environment globally and regionally, and in advancing the objectives of nuclear disarmament and nuclear non-proliferation.
6. Pending the fulfilment of nuclear disarmament obligations, a legal instrument codifying the existing commitments on NSAs will bridge the security gap between nuclear and non-nuclear weapon States. Legally binding NSAs will also help reduce tensions; avoid costly arms races; and obviate concerns of non-nuclear weapon States on account of new doctrines and technologies germane to the use of nuclear weapons.
7. Legally binding NSAs can also make a significant contribution to augmenting the global non-proliferation regime. Conversely, their absence would have an opposite effect.
8. An International Convention on NSAs would have a transformational impact on creating a conducive international and regional security environment; constitute a major Confidence Building Measure between the nuclear and non-nuclear weapon States, thereby facilitating negotiations on other matters related to nuclear disarmament and non-proliferation.
9. Negotiating and concluding an International Convention on NSAs does not impinge on the national security interests of any State possessing nuclear weapons since the Convention would not entail any elimination, reduction or freeze on nuclear weapons.
10. Such a Convention will also constitute the next essential and logical step on the pathway to achieving nuclear disarmament. Willingness to negotiate such a Convention will be a concrete marker for demonstrating responsible behaviour on the part of nuclear weapon States. The implementation of such a Convention will also not entail any financial burden on States Parties.
11. Commencing negotiations on an International Convention on NSAs would also end the decades long impasse in the CD. The Group of 21, comprising more than half the

membership of the CD has repeatedly called for the establishment of a subsidiary body to negotiate a legal instrument on NSAs.

II. Pakistan's commitment to NSAs

12. Pakistan has consistently expressed the view that, to be credible and effective, NSAs should be extended in a multilateral context and in legally binding form. Pakistan has also consistently demonstrated its support for legally binding NSAs.

13. From the late 1960s onwards, then as a non-nuclear weapon State, Pakistan had sought legally binding assurances to safeguard its security from the use or threat of use of nuclear weapons. These efforts assumed greater urgency after nuclear weapons were inducted in the South Asian region in 1974.

14. In 1979, Pakistan tabled a draft "International Convention to Assure Non-Nuclear-Weapon States against the Use or Threat of Use of Nuclear Weapons" at the CD, contained in Document CD/10.

15. Unfortunately, the failure of the international community to provide credible, effective and legal assurances against the threat or use of nuclear weapons obliged Pakistan to develop a nuclear deterrent of its own. Notwithstanding this defensive capability, Pakistan remains committed to pursuing a legal instrument on NSAs.

16. Pakistan is of the view that the option of using nuclear weapons against non-nuclear weapon States is not only strategically untenable but also ethically unacceptable. Pakistan has therefore held out a voluntary pledge not to use or threaten to use nuclear weapons against any State not possessing these weapons. Pakistan is ready and remains committed to transforming this pledge into a multilaterally negotiated legally binding international instrument on NSAs.

17. Pakistan's continued commitment to NSAs is demonstrated by its annual tabling of UN General Assembly resolution on NSAs since 1990. The most recent version of this resolution was adopted in 2022 without a single negative vote. This resolution inter alia, calls on the CD to, "actively continue intensive negotiations with a view to reaching early agreement and concluding effective international agreements to assure the non-nuclear-weapon States against the use or threat of use of nuclear weapons, taking into account the widespread support for the conclusion of an international convention".

18. Pakistan has also continued to actively contribute to the substantive discussions on NSAs held in the CD over the decades, including in the Way Ahead Working Group of 2017 as well as at Subsidiary Body 4 in 2018 and 2022.

III. Rationale for a legally binding instrument on NSAs

19. There is an international consensus that the only guarantee against the use or threat of use of nuclear weapons and the prevention of nuclear war is the complete elimination of such weapons. Pakistan remains committed to the goal of a nuclear weapon free world through the conclusion of a universal, verifiable and non-discriminatory Nuclear Weapons Convention.

20. However, it is evident that the goal of elimination of nuclear weapons has remained elusive for decades. If past track record is any guide, such elimination appears unlikely in the foreseeable future.

21. Both the hindsight and prognosis of nuclear disarmament makes the case for a legal instrument on NSAs all the more eminent and urgent. Pending a Nuclear Weapons Convention, the long-standing and legitimate aspiration of non-nuclear weapon States to receive legally codified negative security guarantees should be fulfilled.

A. Questions on sufficiency and efficacy of unilateral declarations made by some nuclear weapon States

22. Over the years, a number of questions have been raised regarding the sufficiency and efficacy, or the lack thereof, of unilateral declarations made by some of the nuclear weapon States. The assurances by nuclear weapon States contained in UNSC resolution 255 of 1968 and UNSC resolution 984 of 1995 are arguably insufficient and partial.

23. **First**, many of these unilateral declarations contain qualifiers and caveats. The interpretation of these caveats remains the prerogative of the States making such declarations. Clearly these declarations do not stand the evidentiary standard of verification and compliance either.

24. **Second**, these qualified declarations evince certain logical questions. For example, these declarations provide 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, in the event that [a non-nuclear weapon State is] the victim of an act of, or object of a threat of, aggression in which nuclear weapons are used”.

25. This proposition remains flawed under any objective examination. How can or will the Security Council “act immediately” if the perpetrator of such an act is also a veto-wielding member that will certainly block any joint action by the Council?

26. **Third**, what good would the Security Council’s post hoc action be when the country aggressed upon by the use of nuclear weapons has already been devastated?

27. A clear majority in the international community has long raised this legitimate question: if some permanent members of the Security Council do not have any intention of using nuclear weapons against non-nuclear weapon States, then what prevents them from formalizing the assurances into an international legally binding instrument?

28. For these reasons, the declarations of nuclear weapon states contained in Security Council resolutions do not and cannot substitute for a multilateral legally binding instrument on NSAs.

B. Credible and effective NSAs: an obligation under International Law

29. The principle of non-use of force or threat to use force, enshrined in the UN Charter, is an established norm of international law. This principle also extends to the use of nuclear weapons, without prejudice to Article-51. It is, therefore, incumbent on all States which have nuclear weapons to be bound by these provisions in a credible and effective manner.

30. Concluding a legally binding agreement on NSAs is therefore an obligation, not an option.

C. Upholding the principles of undiminished and equal security

31. Upholding the principles of undiminished and equal security for all States in pursuit of disarmament measures remains the cornerstone of the SSOD-I consensus.

32. As noted above, a legally binding instrument on NSAs will not undermine the security of any nuclear-weapon State, and therefore be fully in accord with the letter and spirit of universally agreed SSOD-I Final Document.

33. On the other hand, the absence of a multilateral legally binding instrument on NSAs undermines and diminishes the right to equal security for non-nuclear weapon States that have renounced the right to develop nuclear weapons under an international treaty, and are not parties to the collective security arrangements of, or alliances with some nuclear-weapon States.

IV. The case of opposition to legally binding instrument on NSAs

34. As noted above, the G-21 group of countries has repeatedly called for the establishment of a subsidiary body in the CD to negotiate a legal instrument on NSAs. The

2022 draft report of subsidiary body-4 also contained a recommendation to establish an Ad Hoc Committee on NSAs, to which no CD member had raised objections.

35. States that oppose the commencement of negotiations on NSAs should clearly outline the rationale and reasons for their opposition, including any security interests of theirs that might be at stake. The CD membership also deserves an explanation on why concerns of those opposing a legal instrument on NSAs cannot be addressed *during* negotiations in the CD. In any event, States opposing commencement of negotiations on a legal instrument on NSAs should at least acknowledge their responsibility for perpetuating the CD's ongoing stalemate.

36. The two most commonly used *arguments against* the commencement of negotiations on NSAs are: (a) that the assurances provided through *unilateral declarations and UNSC resolutions*, as well as legally binding *Protocols to the Nuclear-Weapon-Free-Zone* (NWFZ) treaties are sufficient, and States interested in receiving further assurances should establish new NWFZs; and (b) that a *treaty on NSAs would not be verifiable*.

A. The case of unilateral declarations and UNSC resolutions

37. The case of unilateral declarations and UNSC resolutions in the context of NSAs, provided by some nuclear weapon States, has been examined in detail in section C above. The well elaborated gaps as well as lack of effectiveness point to the necessity for an International Convention on NSAs to plug the gaps identified above, in addition to translating the existing assurances into a legal instrument, binding on all nuclear weapon states.

B. The case of Nuclear-Weapon-Free-Zones (NWFZs)

38. Nuclear Weapon Free Zones have served some useful purpose and even helped solidify certain international norms in their individual contexts. Yet, such zones in themselves do not substitute for an international legally binding instrument for the following reasons.

39. **First**, the current system of nuclear weapon free zones (NWFZs) remains non-universal, excluding some regions.

40. Those States which are outside existing nuclear weapon free zones, especially those non-nuclear weapon States that belong to regions where the establishment of such zones is extremely problematic due to the existence of nuclear weapons in these regions, should not be denied their legitimate right to receive legally binding NSAs.

41. Renouncing the right to acquire nuclear weapons should be an adequate baseline to obtain legally binding NSAs. Subjecting the grant of legally codified NSAs to another layer of non-proliferation commitment, such as a NWFZ, is neither a requirement nor in accordance with the principle of equal and undiminished security for such States, especially in areas where such zones are not possible.

42. **Second**, the insertion of qualifiers and caveats by some nuclear weapon States in the NWFZs treaties raises some key questions. One, in some instances such qualifiers undermine the spirit of the very treaties establishing such zones i.e. by limiting the obligations to self-interpretive declarations. Two, as pointed out earlier, if some permanent members of the Security Council do not have any intention of using nuclear weapons against non-nuclear weapon States, then what prevents them from codifying these assurances into an international legally binding instrument?

43. Significantly, the very States that are meant to be assured by such unilateral declarations and NWFZ Protocols have themselves repeatedly stressed that they do not find them adequate because of the attached conditionalities and interpretative statements.

44. **Third**, the questions around transit and movement of nuclear weapons are complicated further by the on-set and introduction of new developments and technologies. The issue of nuclear weapons also remains intrinsically tied to their means of delivery. States possessing means with global reach and without any constraints on such means, NWFZs in and of themselves do not offer a viable solution to the question of legally codified NSAs.

C. The case of lack of verifiability

45. The lack of verifiability of an NSA Convention has never been a concern for the non-nuclear weapon States. This question has only been raised by some nuclear weapon States. A legally binding NSAs Convention does not envisage a verification mechanism because of the inherent problem in effectively verifying intentions.

46. Nonetheless, an international legally binding Convention based on good faith, coupled with the deterrence provided by the prospect of international opprobrium for any violation or non-compliance would be sufficient for the purpose. Such a Convention would also codify the existing international norm against the use or threat of use of nuclear weapons against non-nuclear weapon States.

47. Some other arms control treaties like the BWC are also functioning without a verification mechanism. It is worth noting that some of the States citing lack of verification mechanism to prevent commencement of negotiations on NSAs are the same which have opposed a legally binding verification mechanism for the BWC.

48. It is clear that the arguments presented by some States to oppose commencement of negotiations on a legally binding instrument on NSAs do not stand on their own merit. This also merits an assessment of why these States oppose commencement of negotiations on NSAs Convention? This assessment raises questions as follows:

49. If such States do not want to unconditionally and legally relinquish their right to use nuclear weapons against non-nuclear weapon States, how will they possibly relinquish nuclear weapons at all? Without unequivocal and legally binding NSAs, how are these States contributing to the cause of non-proliferation, an admittedly high priority policy area?

50. Logically, thus, it is clear that these States only want selective, discriminatory and self-serving steps towards non-proliferation that apply only to others, without any quid-pro-quo on their part towards genuine nuclear disarmament. There can be no other explanation for continued blocking of negotiations in the CD on nuclear disarmament, PAROS and NSAs except that these States seek to perpetuate what they perceive as strategic advantages and maintenance of their "full spectrum dominance", without acknowledgement of their responsibility in perpetuating the CD's deadlock.

51. There are some other States that are in favour, in principle, on the conclusion of an International Convention on NSAs, but prefer that negotiations thereon should be held in the context of the NPT (not in the CD). Since there are nuclear weapon States not party to the NPT, any treaty on NSAs finalized under the NPT would be incomplete and non-universal. Non-nuclear weapon States should not be denied the security benefits arising from assurances of the non-use or threat of use of *any* nuclear weapons against them, and not just from the NPT nuclear weapon States. Since all nuclear weapon States are members of the CD, it is an ideal body for negotiations on NSAs.

V. The question of NSAs applicability to non-nuclear weapon States parties to the collective security arrangements of, or alliances with some nuclear-weapon

52. It is evident that there are two specific categories of non-nuclear weapon States i.e. those under nuclear umbrella and those without it. This distinction must be recognized for its factual accuracy.

53. As a matter of principle, renouncing the right to acquire nuclear weapons should be enough for receiving legally binding NSAs. However, there are certain non-nuclear weapon States which are parties to the collective security arrangements of, or have alliances with some nuclear-weapon State. The difficulty in extending assurances to such States arises from the strategic doctrines espoused by some nuclear weapon States or the military arrangements they are party to.

54. It is worth noting that those non-nuclear weapon States which are outside these military alliances and groupings have a right to be assured that they will not be subjected to the use or threat of nuclear weapons. This was also the objective of UN General Assembly

resolution 31/189C which invited the nuclear weapon States to extend assurances against the use or threat of use of nuclear weapons against those non-nuclear weapon States which are "not parties to the nuclear security arrangements of some nuclear powers". This formulation, with suitable modifications, could also serve as the basis for negative security assurances to non-nuclear weapon States which are not members of the global military alliances of the nuclear powers.

55. Alternatively, among other options, an additional protocol to the NSAs Convention could be incorporated to meet the requirements of non-nuclear weapon States in security arrangements or alliances with some nuclear-weapon States. This Protocol, to be signed by such non-nuclear weapon States, could contain provisions that these States will unconditionally and on a bilateral or collective basis oblige the nuclear weapon States, with whom they are party to collective security arrangements or alliances, not to threaten to use or use nuclear weapons on their behalf, under any circumstances, against any non-nuclear weapon State which is also party to this protocol or otherwise not party to other security arrangements or alliances with another nuclear weapon State.

56. Additional details or options related to such cases can be considered during negotiations.

VI. NSAs By Whom, to Who and How – Way Forward

57. The Conference on Disarmament was established as the single multilateral disarmament negotiating forum, with nuclear disarmament as its preeminent agenda item. Decades of deliberations on NSAs at the CD reaffirm the salience and urgency of concluding an international legally binding instrument on NSAs.

58. The CD deliberations on this subject have also made it clear that there are no insurmountable legal, technical or financial obstacles to negotiating and concluding such an instrument either.

59. The calls for commencing negotiations on a legal instrument on NSAs are consistent with the aspirations for adherence to UN Charter based international order. The nuclear domain, especially commencement of negotiations on International Convention on NSAs, eminently qualifies as a key constituent of such international order.

60. The CD deliberations on different aspects, arguments, positions and approaches to NSAs have crystallized the concepts of (i) by whom; (ii) to who; and (iii) how.

- **By whom** All nuclear weapon States, regardless of being party to any specific international treaty or otherwise.
- **To who** All non-nuclear weapon States that have renounced the right to develop nuclear weapons under an international treaty, and are not parties to the collective or bilateral security arrangements of or alliances with some nuclear-weapon State unless such State(s) sign an Additional Protocol to International Convention on NSAs.
- **How** An international legally binding instrument negotiated at the Conference on Disarmament. As is clear from the title of the agenda item as well as the discussions referred to above, the CD is to evolve *effective* international arrangements to assure the non-nuclear weapon States against the nuclear threat. This task would exclude unilateral declarations since these are merely statements of intention, not irrevocable commitments, and are therefore not 'effective'. Bilateral and regional arrangements, although they may be evolved in legal form, cannot be a substitute for assurances of a universal character since they would not assure a non-nuclear weapon State that it will not face a nuclear threat from any quarter.

General and specific obligations

61. While the exact nature of general and specific obligations would be the subject of treaty negotiations, some of the following general obligations need to be embedded into a future Convention on NSAs.

- **First**, the NSAs shall be of a legally binding, universal and unconditional character.

- To be credible, the NSAs shall be uniform in their scope, application and interpretation. If each nuclear weapon State were to undertake an obligation which is different in scope and application, it would erode the efficacy of the assurances in their totality; especially if each contained such conditions and qualifications as to have the effect of neutralizing the assurances provided by any other nuclear weapon State.
 - **Second**, two key provisions of the UN Charter, namely the principle of non-use or threat of use of force contained in Article 2(4), without prejudice to Article-51, and unqualified adherence to Article 25 of the Charter.
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