

Pugwash Meeting no. 279

"No First Use of Nuclear Weapons"

London, UK, 15-17 November 2002

PAPERS

NPT and the Security of NNWS

Jozef Goldblat

The 1968 Non-Proliferation Treaty (NPT), which established a norm of international behaviour in the nuclear field, is of paramount importance for arms control. Despite the asymmetry of the rights and obligations of the nuclear-weapon and non-nuclear-weapon parties, the NPT has attracted a record number of adherents. Following the imminent deposit of the ratification instrument by Cuba, only India, Israel and Pakistan will remain outside the NPT.

However, except for a reference to the obligation of all states under the UN Charter to refrain in their international relations from the threat or use of force, no specific obligation has been laid down in the NPT to ensure the security of non-nuclear-weapon nations. This is why states which have renounced their claims to nuclear weapons, including those enjoying the protection of nuclear-weapon powers, have all along insisted on obtaining security assurances, considered by many to be an essential component of an effective nuclear non-proliferation regime.

Positive Assurances

As early as 1968, under the pressure of non-nuclear-weapon states, the UN Security Council adopted Resolution 255, by which the Soviet Union, the United Kingdom and the United States pledged immediate assistance, in accordance with the UN Charter, to any non-nuclear-weapon state party to the NPT which was a 'victim of an act or an object of a threat of aggression' in which nuclear weapons are used. These pledges, usually referred to as 'positive assurances', were clearly insufficient, as they merely reaffirmed the duty of UN members to provide assistance to a country which has been aggressed, irrespective of the type of weapon used in aggression. Moreover, China and France, the remaining nuclear-weapon powers, which at that time were not parties to the NPT, were not bound by this resolution, adopted by a majority vote.

At the 1990 NPT Review Conference, Egypt submitted a proposal for a new Security Council resolution. It envisaged a collective commitment, instead of a mere tripartite commitment of the depositaries of the NPT, to provide assistance to the affected states, as well as an obligation of the Security Council to decide immediately upon measures to be taken in response to a threat of use or actual use of nuclear weapons against a non-nuclear-weapon state party to the NPT. The measures in question would be adopted in conformity with Chapter VII of the UN Charter, which deals with ‘action with respect to threats to the peace, breaches of the peace, and acts of aggression’. They could include technical, financial and humanitarian assistance to the victims as well as sanctions against any state, party or non-party to the NPT, which had used nuclear weapons against a non-nuclear-weapon party to the NPT. The proposal was not taken up for discussion.

Negative Assurances

Both Resolution 255 and that proposed by Egypt provided for action only when a threat of nuclear attack had been made or an attack had occurred. Therefore, states which have forsworn nuclear weapons under the NPT have also demanded formal assurances that nuclear weapons would not be used against them. Such assurances – usually called ‘negative’ because they amount to a non-use obligation, as distinct from assurances containing an obligation to assist, as described above – were given to states establishing nuclear-weapon-free zones. Negative security assurances were also contained in statements made by the nuclear-weapon powers in connection with the 1978 and 1982 Special Sessions of the UN General Assembly devoted to disarmament, as well as on other occasions. However, they were conditional, phrased in a different way by different countries, and merely declaratory.

For years, efforts have been made in various forums, including the Conference on Disarmament (CD), to develop negative security assurances that would be uniform, unconditional and legally binding. The UN General Assembly adopted several resolutions recommending the conclusion of an international convention on the non-use of nuclear weapons against non-nuclear-weapon states. In 1990 the following proposal was put forward by Nigeria. The nuclear-weapon states would undertake, under an international agreement, not to use or threaten to use nuclear weapons against any non-nuclear-weapon state party to the NPT which does not belong to a military alliance and does not have other security arrangements with a nuclear-

weapon state, as well as against any non-nuclear-weapon state party to the NPT which belongs to a military alliance or has other security arrangements with a nuclear-weapon state but has no nuclear weapons stationed on its territory. Non-nuclear-weapon states in the latter category would, for their part, undertake not to participate in, or contribute to, a military attack against any nuclear-weapon state or its allies parties to the NPT, except in self-defence. A special conference would be convened to conclude such an agreement in the form of a protocol to the NPT. The Nigerian proposal was re-submitted in 1995, but was not subject to international consideration.

In 1992, at the CD, France formulated what it considered to be the basic elements of a possible agreement on negative security assurances. These elements included a pledge by the nuclear-weapon powers to refrain from the threat or use of nuclear weapons against non-nuclear-weapon states party to the NPT or regional denuclearization treaties or against states not party to these treaties which have concluded with the IAEA an agreement for the application of full-scope safeguards. Neither states belonging to military alliances, nor states having nuclear weapons stationed on their territory, but considered as non-nuclear-weapon states under the NPT, would be *a priori* excluded from such assurances. Under certain circumstances, namely to repel aggression, nuclear weapons could be used against any non-nuclear weapon state.

In 1994 eleven non-aligned members of the Conference on Disarmament submitted a draft protocol on security assurances. The nuclear-weapon states would pledge not to use or threaten to use nuclear weapons against non-nuclear weapon states, the latter being defined as all states other than those falling under the NPT definition of a nuclear-weapon state. In the case of nuclear aggression or threat of such aggression against a non-nuclear-weapon state, the necessary help and assistance would be provided by a conference of the parties to the NPT and the UN Security Council. The proposed protocol was to become an integral part of the NPT. In fact, it would have been only indirectly related to this Treaty, as it would provide negative security assurances to non-parties to the NPT as well. The protocol was to enter into force under the same conditions as the NPT, that is, even before China and France had ratified it.

Combined Assurances

The proposals described above did not prove generally acceptable, and the nuclear-weapon states refused to enter into negotiations on any one of them. Only in 1995, a

few days before the NPT Review and Extension Conference, did the great powers decide to jointly sponsor UN Security Council Resolution 984, which combined positive and negative security assurances. This resolution was adopted unanimously.

The new positive assurances, now given by all five declared nuclear-weapon states, are more specific than those included in Resolution 255. They provide that, in response to a request from a state victim of an act of nuclear aggression, or object of a threat of such aggression, the Security Council members would help to settle the dispute and restore international peace and security, as well as take 'appropriate' measures, individually or collectively, for technical, medical, scientific or humanitarian assistance. In addition, 'appropriate' procedures might be recommended by the Security Council regarding compensation under international law from the aggressor for loss, damage or injury sustained as a result of the aggression. Thus, at least certain postulates put forward by Egypt in 1990 (see above) were met.

With regard to negative assurances, no progress whatsoever was achieved. Upon declaring the obvious, namely, that an aggression with the use of nuclear weapons would endanger international peace and security, Resolution 984 simply took note of the statements made by the nuclear-weapon states, in which the conditions for non-use of such weapons were reiterated. France, Russia, The United States and the United Kingdom, reaffirmed that they would not use nuclear weapons against non-nuclear-weapon states parties to the NPT, except in the case of an invasion or any other attack on them, their territories, their armed forces or other troops, their allies, or on a state to which they have a security commitment, carried out or sustained by such a non-nuclear-weapon state in 'association or alliance' with a nuclear-weapon state. For Russia, the above statement confirmed the reversal of the policy of no first use of nuclear weapons, advocated until 1993, and the official adoption of the doctrine of nuclear deterrence.

Only China undertook not to use or threaten to use nuclear weapons against non-nuclear-weapon states or nuclear-weapon-free zones at any time and under any circumstance. This commitment applies to non-nuclear-weapon parties to the NPT or non-nuclear-weapon states that have undertaken comparable internationally binding commitments not to manufacture or acquire nuclear explosive devices.

Resolution 984 refers (as Resolution 255 did) to Article 51 of the UN Charter dealing

with the right of self-defence. This Charter provision does not have direct relevance to the issue of providing security assurances to non-nuclear-weapon states, but a reference to it may serve to legitimize the use of nuclear weapons in countering *any* armed attack, including one carried out solely with conventional means of warfare, as if the right of self-defence were unlimited. Thus, by Resolution 984 the nuclear-weapon powers did not enter into any new international commitments regarding the non-use of nuclear weapons.

Assessment

It is doubtful whether at any time during the Cold War the nuclear-weapon powers had seriously contemplated the possibility of renouncing all use of nuclear weapons. It is surprising, however, that after the termination of the Cold War confrontation, the elimination of the US and Soviet intermediate-range nuclear forces, the withdrawal of most tactical nuclear weapons to central locations and the beginning of the process of strategic weapons dismantlement, the nuclear postures have remained unchanged. Each nuclear-weapon state possesses conventional armed forces quantitatively and/or qualitatively superior to those of its potential non-nuclear-weapon adversaries and would not need to resort to nuclear weapons to stop an aggression launched by the latter. The argument that the option of using nuclear weapons against non-nuclear-weapon states must be retained to react to a possible use of chemical or biological weapons is not convincing. Should a chemical or biological threat emerge, a massive response with sophisticated conventional weapons would suffice, as was convincingly demonstrated by the UN coalition forces during the 1991 Gulf War. The residual role of nuclear weapons amounts now to nothing more than deterring – through a threat of reprisal in kind – the first use of these weapons. All nuclear-weapon states have declared that their nuclear weapons are not targeted at any state, and yet, the nuclear security assurances they have given to non-nuclear-weapon states are still neither unconditional, nor uniform, nor legally binding.

Resolution 984 pointed out that the issues raised in its provisions remained of continuing concern to the Security Council. This statement could serve as a point of departure for negotiating a more meaningful international instrument, preferably a protocol to the NPT or a separate treaty. Another easily reversible declaration (or declarations) would not suffice.

A formal commitment by the nuclear powers not to use nuclear weapons against non-

nuclear-weapon states, under any circumstances, could pave the way towards a formal commitment by these powers not to use nuclear weapons first against *any* state, whatever its nuclear status.