CHAPTER 8

A Brief Excursus to Unilateral Security Assurances

1 Introduction

Having explored the question of the legal nature of unilateral declarations of independence, this chapter turns to unilateral security assurances. The legal nature of unilateral security assurances, namely unilateral guarantees in the form of oral or written declarations given by nuclear weapon States (NWS)\(^1\) to non-nuclear-weapon ones (NNWS), under which the former undertake to assist them in case of a nuclear attack (positive security assurances) or not to use or threaten to use such weapons against them (negative security assurances), has been the subject of fierce debate since the 1970s. While some international lawyers consider them legally binding and on a par with the French guarantees given in the context of the Nuclear Tests Cases,\(^2\) others perceive them as mere political statements and thus, incapable of producing any legal effects.\(^3\) In the same vein, international jurisprudence is of little avail in clarifying the legal status of these assurances. The ICJ, in its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, took note of such assurances, but refrained from drawing specific legal consequences from them.\(^4\) At the same time,

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1 According to the definition of ‘nuclear-weapon States’ under Art. 9.3 of the *Treaty on the Non-Proliferation of Nuclear Weapons*, 1 July 1968, 729 UNTS 161 (NPT), the NPT NWS are: Russia, France, the UK, the US and China. India and Pakistan are not parties to the NPT but have openly declared that they possess nuclear weapons. See S. Khan, *Nuclear Weapons and Conflict Transformation: the case of India-Pakistan*, (New York: Routledge, 2008), p. 84. Israel is widely believed to have nuclear weapons, although it maintains a policy of ‘nuclear opacity.’ See A. Cohen, *Israel and the Bomb*, (New York: Columbia University Press, 1998). North Korea, which withdrew from the NPT in 2003, has also openly declared that it has manufactured nuclear weapons. See http://www.washingtonpost.com/wp-dyn/articles/A12836-2005Feb10.html. My analysis will focus on the security assurances given by the NPT NWS since these have triggered – and remain at the center of – the relevant debate.


the need to shed light on the juridical nature of these assurances is as great as ever. Although NNWS have long insisted on the incorporation of such assurances in international agreements, NWS have not yielded much ground over the years. The relevant discussions both within the context of the Conference of Disarmament (CD) and of the Non Proliferation Treaty (NPT) Review Conferences have reached a deadlock and efforts to persuade NWS to provide assurances by means of regional agreements have had limited success.

In this light, this chapter purports to revisit the question of the legal nature of unilateral security assurances and more particularly the question as to whether and under which circumstances these assurances may be considered as binding upon their author States. The long and complex history of unilateral security assurances has been set out in detail elsewhere. It suffices to mention here that the relevant debate largely revolves around three sets of assurances, namely the ones given by the US, the UK and the USSR in 1968, the ones given by all five NPT NWS in the period between 1978 and 1982 and the ones given in 1995. Thus, the chapter will mainly focus on these three sets of assurances – with occasional references to subsequent declarations strengthening the already existing ones, such as the ones made by the US and the UK in 2010. For reasons of methodological clarity, the chapter is divided in two sections: the first section will analyse the juridical character of positive security assurances, whereas the second will deal with the same question in the context of negative


6 A number of regional agreements have been concluded establishing Nuclear Weapon Free Zones (NWFRZs). These agreements include protocols on security assurances for the NWS to sign and ratify. For an overview, see G. Venturini, Control and Verification of Multilateral Treaties on Disarmament and Non-Proliferation of Weapons of Mass Destruction, 17 U.C. Davis J. Int’l L. & Pol’y 345 (2011), pp. 359–62. However, only Additional Protocol II to the Treaty for the Prohibition of Nuclear weapons in Latin America and the Caribbean (Treaty of Tlatelolco) has been signed and ratified by all five NPT NWS. For the text of the Additional Protocol II, see Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, 14 February 1967, available at http://disarmament.un.org/treaties/t/tlateloco_p2. For the text of the Treaty of Tlatelolco, see Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, 14 February 1967, available at http://www.nti.org/media/pdfs/Treaty_of_Tlatelolco.pdf?_=1316643635.