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Making the Non-Proliferation Regime Universal

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Making the non-proliferation regime universal **Asking non-parties to behave “as if” they were members**

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Today, the non-proliferation regime functions in a political setting which is fundamentally different from that of the 1970s, when it was built. The changes run so deep that in response, we have to question traditional wisdoms, discuss new responses to new problems, and move in and out of established paradigms in search of better policies.

This paper suggests a new way of dealing with three of the four states that remain outside the nuclear Non-Proliferation Treaty (NPT). It argues that India, Israel and Pakistan should be asked to sign an additional protocol obliging them to behave “as if” they were members of the Treaty. At the same time, they should be asked to join the Nuclear Suppliers Group (NSG) in an effort to tighten the guidelines for nuclear transfers and make them legally binding. Restraints should also be imposed on transfers between the NWSs. As for North Korea, the objective must remain to pull it back into the fold of non-nuclear-weapon states (NNWSs).

While many NPT parties joined the treaty on the understanding that no other state would openly declare a nuclear weapon capability,¹ the proposal implies that India and Pakistan would be recognized as NWSs.

1. Status of the NPT

Universality

The NPT has more members than any other arms control treaty. Of the 191 member states of the United Nations, 187 have joined the Treaty. In terms of universality, it may therefore be considered a success. However, India, Israel, Pakistan and North Korea remain outside.²

The NPT defines a nuclear weapon state (NWS) as “one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1. January 1967” (art. VIII.3). By this criterion, there are five NWSs - the same five that have permanent seats on the UN Security Council. It is well known that in fact, the number is higher. Certainly, three of the four non-parties are also NWSs. Quite

¹ Among them Algeria, Argentina, Brazil, Japan, South Africa and South Korea.

² Whether North Korea’s withdrawal from the NPT should be accepted or not is a matter of some legal dispute. However, the IAEA inspectors were expelled; the monitoring equipment was removed; and the Government in Pyongyang no longer considers itself bound by the NPT. There is no doubt, therefore, that de facto, the DPRK is not a member of the Treaty any longer.

Taiwan is neither a member of the United Nations nor a party to the NPT. However, the IAEA applies full scope safeguards there. Two pacific islands – Niue and Cook Island; independent states in free association with New Zealand – may be considered bound by New Zealand’s obligations under the Treaty.

possibly, North Korea has manufactured some nuclear weapons as well. While India and Pakistan have tested their weapons, there is no hard evidence that Israel and North Korea have done so.³

Israel, India and Pakistan

Israel seems to have manufactured its first nuclear bombs in a crash programme prior to the war in 1967.⁴ Today, it is assumed to possess nuclear weapons in the hundreds along with missiles and aircraft that can deliver them.⁵ India tested a nuclear explosive device in 1974 and undertook a series of nuclear weapon tests in 1998, followed by a similar number of Pakistani tests. In South Asia, fissile material production seems to be going full speed along with the acquisition of delivery vehicles of higher precision and longer range.

North Korea

In 1992, the IAEA documented that North Korea had reprocessed plutonium not only in 1990 – the North Korean claim – but also in 1989 and 1991. The amount may have sufficed for a couple of bombs. Recently, another batch of fuel rods have been reprocessed, yielding enough plutonium for another half a dozen explosives.

No doubt, North Korea possesses significant amounts of fissile material. Whether it masters the necessary implosion technologies is another matter. More uncertain, still, is whether it is able to harness nuclear explosives to fit its missiles. In view of the fact that it acquired a significant amount of fissile materials more than 12 years ago, and that the nuclear programme plays a crucial role in its foreign and security policy, it is only prudent to assume that weaponization has taken place.⁶ The logic of the drawn-out 6-nation talks in Beijing is such that for the time being, North Korea is probably doing its utmost to enhance its capabilities.

Still, there is hope that a political solution will be found which would bring North Korea back into the fold of NNWSs. As long as talks to that effect are going on, they should be given the benefit of doubt. For the time being, there is no better non-proliferation strategy than urging the parties to abandon the waiting game and

³ In September 1979, a US Vela satellite recorded a double flash of light characteristic of that resulting from an atmospheric nuclear explosion east of South Africa. The initial presumption that there had been a nuclear explosion, possibly by Israel in cooperation with South Africa, was not substantiated; neither has it been fully disproved.

It has been rumoured that one of the Pakistani tests in 1998 was a plutonium device. While Pakistan has based its programme on enriched uranium, North Korea has pursued the plutonium route. Hence the speculation that one of the tests may have been a North Korean one.

⁴ The best account of the first decades of the Israeli nuclear programme is Avner Cohen, *Israel and the Bomb*, Columbia University Press, New York, 1998.

⁵ In 1986, Mordechai Vanunu brought pictures from the nuclear installations in Dimona, published by Sunday Times (the UK). The pictures “describe” the programme in considerable detail from inside. Intriguingly, they suggest that Israel may have gone beyond fission weapons into fusion explosives – boosted weapons or hydrogen bombs. Their authenticity has not been questioned.

⁶ The revelation of a nuclear black market in centrifuge technologies, and Abdul Qadeer Khan’s many visits to North Korea, strengthens the assumption that North Korea has a uranium enrichment programme as well.

move into a compromise mode, the sooner the better.⁷ China can be trusted to vigorously explore new possibilities for progress.

2. Prospects

Ten years ago, in the Madrid process, Israel rejected all invitations to discuss nuclear weapons in the Middle East. The rejection was categorical. Even if a distinction would be drawn between *discussions* and *negotiations*, and assurances given that there would be no automaticity in moving from the one to the other, such discussions were taboo. As long as Israel does not admit to having nuclear weapons, it is hard to engage it in meaningful nuclear arms control talks.

Since the Madrid process broke down in 1995, the regional security situation has gone from bad to worse. At the United Nations, Israel still votes for a zone free of weapons of mass destruction in the Middle East, but on the condition that the security problems are solved; Israel is recognized by all the other states in the region; inter-state relations are normalized; and peace has become a stable prospect. In the meantime, nuclear weapons will continue to play an important role in Israeli security policy and be the ultimate national insurance premium. Given the deep-seated security problems in the region, there is no particular reason to expect that the Israeli nuclear arsenal will be more short-lived than those of the five recognized NWSs.

Recent developments strengthen that view. In 1991, former President Bush proposed a freeze on reprocessing activities in Israel. If George W. Bush would follow up on his father's proposal, he would have a powerful message to the Israelis. In essence, it would be Yitzhak Rabin's strategic rationale for the Oslo agreements in reverse. Rabin said Israel should hurry up and settle the scores with the Palestinians because in ten years' time, a graver security threat was likely to emerge from Iraq and Iran. Today, the WMD threat from Iraq and Libya has been eliminated and so may the nuclear threat from Iran be, especially if Israel accepts a fissile material cut-off: this could help convince the Iranians that they should make the suspension of their enrichment activities permanent. Yet nothing of this sort happens. On the contrary: in the United States, where the Jewish vote used to be Democratic, both political parties are now competing for Jewish money and Jewish votes. Israel has never had such a strong position in US foreign affairs. There is no question touching the Israeli nuclear arsenal.

In South Asia, too, the nuclear weapon states of Pakistan and India have come to stay. For 50 years, India has developed a comprehensive nuclear programme, largely on its own. It is building a triad of air-based, mobile land-based and sea-based nuclear forces.⁸ It has a rapidly growing population of more than one billion, and a

⁷ Currently, the United States is playing the waiting game, maintaining that relations with North Korea will only be improved once Pyongyang agrees to complete, verified and irreversible dismantlement of its nuclear programme. Maybe, North Korea is playing the same game, hoping for better treatment by another US administration while enhancing its nuclear capabilities as best it can.

As time goes on, however, it may also be that North Korea will stage another crisis at a time of its choosing to put pressure on the United States to negotiate under duress. "Previously, such gambits were unsettling. Now that North Korea's nuclear capabilities are coming of age, they are more dangerous than ever". John Wolfsthal, "The North Korean Waiting Game", Carnegie Analysis, 5 May, 2004.

⁸ For the time being, the nuclear capable aircraft are first of all the MiG-27 Flogger (Bahadur) and the Jaguar IS/IB (Shamsher); the missiles are primarily of the Agni I and Agni II type (range: 700/800 and

rapidly growing economy. It is better able to sustain and enhance its nuclear posture than ever before.

States customarily justify their defence preparations in reference to contenders that are stronger than they are themselves. India justified its nuclear tests in reference to China, and China says it will upgrade its nuclear forces in response to US ABM deployments. On the international horizon there are, in short, no incentives in sight that could prompt India to dismantle its nuclear weapons. Besides, nuclear weapons confer status and prestige on their owners. Disputed by some, the political bonus is in the eyes of the beholder, and in South Asia, nuclear weapons are widely perceived to yield such benefits.

Six years after the tests in Rajasthan, the world is getting used to the fact that India is a NWS and that it will remain a nuclear power for the foreseeable future. Per implication, Pakistan will maintain a nuclear posture as well. The current US administration appears to regard the nuclear weapons capabilities of India and Pakistan as a *fait accompli*, to be managed rather than opposed.⁹ Like Israel, there is no particular reason to assume that India and Pakistan will dismantle their nuclear arsenals any sooner than any of the five recognized NWSs.

3. “As if” they were members of the NPT

If it is unrealistic to believe that these states will eliminate their nuclear arsenals in the near future, what is the best containment strategy to prevent further proliferation? The question is pertinent. The revelation of a nuclear black market in enrichment technologies, in large measure driven and supplied out of Pakistan, has added urgency to it.

To lean on India, Israel and Pakistan to join the NPT as NNWSs is futile. Calls to that effect have no impact on the national constituencies concerned. Israel's military posture is inextricably tied to regional politics in the Middle East. In South Asia, Indians and Pakistanis have always been world champions in criticizing the NPT for being discriminatory and ridiculing the leading NWSs for being hypocritical. The call for NPT membership leads nowhere.

Therefore, a non-proliferation strategy based on realistic readings of what these states are, and where they are heading, should substitute for diplomatic posturing. The paternalistic language of Security Council Resolution 1172 of 6 June, 1998 is no longer instrumental - if it ever was. Policies usually work best when based on fact and not on fiction, and the fact is that Israel, India and Pakistan are NWSs and will so remain.

2200 km. respectively). India is building its own SSBNs based on Russian Charlie I class technology. Fifteen years ago, it leased a Charlie class submarine (1988-1990). It plans to deploy 3-5 submarines of this class. *Jane's Underwater Warfare Systems*, 5 September 2003

⁹ Secretary of State Colin Powell has stated that he does not expect either India or Pakistan to give up their nuclear capabilities, acknowledging that the world sees little point in trying to reverse “that bit of proliferation”. See Marvin Miller and Lawrence Scheinman, “Israel, India and Pakistan: Engaging the Non-NPT States in the Nonproliferation Regime”, *Arms Control Today*, December 2003.

The best option may be to invite India, Israel and Pakistan to accede to an additional protocol to the NPT, obliging them to behave “as if” they were members of the Treaty.¹⁰ This was French policy for quite a while, until it became a regular member in 1992. Concretely, the signatories would be obliged not to assist others in acquiring nuclear weapons (art. I of the NPT), to abide by the rules of international nuclear transactions (the safeguards requirement of art. III.2), and to dedicate themselves to nuclear disarmament (art. VI). Today, they are under no such legal obligation.¹¹

4. Gains for the regime; costs for the signatories

Gains for the non-proliferation regime do not necessarily come at the cost of the parties to the protocol. This is no zero-sum situation. However, accession to the protocol inevitably involves a cost-benefit analysis.

The commitment under art. I of the NPT is not limited to the government sphere. The governments must see to it that the private sector, too, complies with it. The same goes for the safeguards obligation under art. III.2. To live up to these commitments, effective export control systems and proper reporting routines to the IAEA are needed. The additional protocol would provide an international legal basis for holding the parties responsible in this respect. Other states could legitimately raise questions about their export regulations and, also, offer their cooperation in establishing more effective domestic control systems.

While the 187 members of the NPT are all under an international legal obligation to work for nuclear disarmament (art. VI), the non-members are under no such obligation. In view of the dismal disarmament record of the NWSs parties to the Treaty, the same undertaking by India, Israel and Pakistan will not necessarily make much of a difference. However, once they are drawn into the regime they can be held accountable in the review process of the NPT and be asked to respond to questions in other settings where nuclear disarmament is discussed, on a par with the other NWSs. Today, there is no legal basis for such requests.

According to the Guidelines for Nuclear Transfers agreed by the Nuclear Suppliers Group (NSG), trigger list items or related technologies can only be transferred to a NNWS when the receiving state has brought into force an agreement with the IAEA for safeguards on all source and special fissionable material in its current and future peaceful activities. Nuclear exports to Israel are therefore ruled out. On the assumption that Israel joins the additional protocol without changing its declaratory policy, i.e. without admitting to being a NWS and without accepting full scope safeguards, it would still not be eligible for nuclear supplies from the members of the NSG. If India and Pakistan, in joining the protocol, also were to abide by the NSG Guidelines (cf. section 6 below), there could be no supplies from them either.

¹⁰ Another version of the same idea is suggested in Avner Cohen and Tom Graham, “An NPT for non-members”, *The Bulletin of the Atomic Scientists*, May/June 2004.

¹¹ In a statement of October 1998, the Pugwash Conferences on Science and World Affairs proposed that India and Pakistan should undertake to behave “as if” they were members of the NPT. Joseph Rotblat, ed., *The Long Roads to Peace*, Proceedings of the Forty-Eighth Pugwash Conference on Science and World Affairs, Jurica, Mexico, 29-September-4 October 1998.

For the time being the consequences are probably nil, as no such transfers are known to take place.¹² However, the more states that abide by the current Guidelines, and by tighter versions of them in the future, the more effective they become also in relation to Israel. Therefore, an additional protocol and a concomitant tightening of the transfer rules may entail some cost even to Israel.

How would the protocol affect nuclear transfers to India and Pakistan? Being recognized as NWSs, they are arguably entitled to the same treatment as the other five nuclear powers. However, in some important respects the other five differ. France and the United Kingdom have separated the civilian and military programmes from each other, applying Euratom/IAEA safeguards to all civilian programmes. The USA and Russia have made voluntary safeguards offers. China has not. On which precedent should India and Pakistan be tailored?

The France/UK example is attractive. In Pakistan, it is not very difficult to draw a line between civilian and military programmes. For the IAEA to safeguard all civilian activities there is no big deal either.¹³ Virtually all non-military programmes there are already under safeguards. India has a much more comprehensive programme, including 10 unsafeguarded power reactors run on natural uranium and heavy water. They have apparently not been used for weapons purposes so far, and can probably be placed on the civilian side of the demarcation line. However, safeguarding the civilian sector is not a very demanding proposition in India either.¹⁴

If nuclear transfers were to be resumed on the basis of a France/UK type solution placing all civilian activities under NPT-type safeguards, this would be a significant gain for both of them. It has the additional advantage of facilitating Indian and Pakistani participation in an international cut-off agreement.¹⁵

5. What's in it for the signatories?

For India and Pakistan, there are two main answers to this question. First, by acceding to the protocol they become recognized as NWSs. Having been condemned

¹² Cooperation between India and Israel on nuclear-related matters can not be excluded, however.

¹³ Pakistan has five nuclear reactors. Four of them are safeguarded; the fifth, Khushab, is a plutonium production reactor dedicated to military uses. The reprocessing plants at Chasma and at PINSTECH, Rawalpindi, and the enrichment capabilities at Kahuta and Golra are all dedicated to weapons production.

¹⁴ There are 10 unsafeguarded power reactors and 4 safeguarded ones. The Cirus and Dhruva reactors at BARC, Trombay, are dedicated to military uses, and the unsafeguarded Fast Breeder Test Reactor in Kalpakkam also lends itself to weapons production. India has 3 reprocessing facilities. The ones at BARC and Kalpakkam are unsafeguarded; the one at Tarapur is under safeguards when safeguarded material is reprocessed, otherwise not. There are two enrichment plants: a pilot facility at BARC and a bigger one at Rattehalli near Mysore. They are unsafeguarded. The Rattehalli plant is reportedly meant to produce uranium enriched to 30-45 per cent for use in ATV submarines.

¹⁵ A cut-off agreement requiring that in the NWSs, safeguards would apply only to reprocessing and enrichment plants, would introduce another element of discrimination into the non-proliferation regime. On the one hand, there would be the NNWSs, required to put all their activities under safeguards, and on the other, the NWSs who should be trusted not to divert nuclear material from their unsafeguarded civilian reactors, fuel fabrication plants etc. To avoid yet another differential treatment in favour of the NWSs, all civilian activities should be placed under safeguards also in these countries. See David Fischer, "Some aspects of a cut-off convention", Halting the Production of Fissile Materials for Nuclear Weapons, Research Papers No. 31, UNIDIR 1994.

for their tests in 1998 and treated as nuclear outcast states thereafter, international recognition of their nuclear weapon capabilities would be a victory.¹⁶ In the NPT context, this is the only way in which it could happen. For in practice, to rewrite the NPT - in this case to accommodate more NWSs – is next to impossible.¹⁷ In view of their anti-NPT rhetoric the South Asians would find it hard to join the Treaty anyhow. Second, there is the advantage of increased access to nuclear materials, equipment and technology for peaceful purposes.

For Israel, the situation is different. The Israelis have never admitted to having nuclear weapons. Their declaratory policy was phrased by Shimon Peres in the 1960s and has remained the same ever since: Israel would not be the first to introduce nuclear weapons into the Middle East.¹⁸ In the 1960s, this statement was part of a broader policy of ambiguity. By 1970, it was widely assumed that Israel had a nuclear weapon capability of some sort. Then, the policy of ambiguity was replaced by a policy of opacity, which has been public policy ever since.¹⁹ It has served the Israelis well, for this way they got the best of two worlds: on the one hand, other states had to stake their security policies on the assumption that Israel is a NWS; on the other, there is no formal basis on which to criticize Israel for its weapon acquisitions. In the view of Israeli decision-makers, the policy has stood the test of time. It is not broke, so there is no reason to fix it. To be realistic, therefore, accession to the additional protocol should not be predicated on a change in Israel's declaratory policy.

What's in it for Israel, then? There would be no tangible, material gains. Israel would not become eligible for nuclear transfers. Rather, the residual options that exist today, from outside the ranks of the NSG, would be closing. In essence, accession to the protocol would be an act of good will. Often criticized for being recalcitrant and arrogant and for blocking arms control in a region that desperately needs it, accession could be used to soften that perception. As long as Israel is not ready to deal with the concerns of others in more substantive ways, it may find it convenient to make this gesture.

In other words: for Israel the gains are modest, but so are the costs. If at some stage, it would like to build nuclear power reactors, there would be an in-built incentive to declare itself as a NWS; draw a line between civilian and military activities; accept safeguards on all peaceful applications, present and future; and then be eligible for supplies, like India and Pakistan. From an arms control and disarmament point of view, this would be a step forward. For meaningful discussions

¹⁶ Shireen Mazari, head of the Pakistani Institute of Strategic Studies (IDSA) has argued that such an additional protocol would be in Pakistan's interest precisely because it would confer international recognition of it as a NWS.

¹⁷ Any amendment must be approved by a majority of the parties to the Treaty, including all NWSs and all members of the IAEA Governing Board. If - against all odds - the Treaty was opened for revision, many other amendments may be proposed as well. The consequences could be destructive.

¹⁸ The statement has become like a mantra, but is utterly hollow. For if it is taken to refer to possession, Israel was obviously the first – and so far the only – state of the region to acquire nuclear arms. And if it is read as a reference to eventual use, the main idea has been to use or threaten to use them in situations where Israel's existence would be at stake, i.e. to use them first.

¹⁹ By this time, the United States knew that Israel had the bomb. In 1969, an understanding was reached between Richard Nixon and Golda Meir to keep it out of the public eye. (Opacity: that which is difficult to see through; that which is non-transparent, non-permeable). In 1986, thanks to Mordechai Vanunu, we were able to see through the walls of secrecy and get a glimpse inside the Israeli nuclear establishment.

of WMD problems presuppose a degree of transparency on the part of all actors involved.

How could India and Pakistan be recognized as NWSs while Israel is not? This follows automatically from the fact that the former are declared NWSs while the latter is not. When other states acknowledge the protocol, they recognize the signatories for what they claim to be.

6. Differential status: can Israel maintain its declaratory policy?

At this point, let's take one step back to check the logic of the proposition in view of the commitments to be undertaken. Does't differential status translate into differential obligations? Would't Israel have to clarify its nuclear status?

The disarmament obligation in art. VI of the NPT applies to NNWSs as well as NWSs. For Israel to undertake that commitment therefore does not necessitate any clarification of its capabilities. The same goes for the obligation in art I not to assist others. As early as 1968, the Soviet Union and the United States, the powers responsible for the formulation of the relevant clauses of the NPT, expressed the opinion that if NNWSs were to provide such assistance – many of them would have been able to do so already at that time – this would constitute a violation of the Treaty.²⁰ Also in this case, Israel would be covered irrespective of its actual status.

The safeguards obligation of art. III.2 may seem to be a more complicated matter. The simple part of it concerns exports to the 182 non-nuclear members of the Treaty. Nuclear transfers to them are automatically subject to NPT safeguards (INFCIRC 153 if not also INFCIRC 540). The only new obligation for the parties to the protocol would be the associated reporting requirements to the IAEA. They would apply to all three in like fashion. Today, India, Israel and Pakistan are under no such obligation.

The NPT does not impose any safeguards obligations on the five recognized NWSs. However, as mentioned above, in France and the United Kingdom a line has been drawn between military and civilian activities, allowing joint Euratom/IAEA safeguards of the civilian part. From the US and Russian voluntary offers, the IAEA has picked facilities that pose particular safeguards challenges, i.e. from which there may be something to learn in terms of improved safeguards techniques. It is likely that future NPT Review Conferences will pay closer attention to application of safeguards in the NWSs, as a part of NNWS pressures on the NWSs to restrict their weapon programmes. But the fact that India and Pakistan are declared NWSs while Israel is not has no differential bearing on their eventual exports to these powers. Both nuclear and non-nuclear weapon states are free to export nuclear items to the five leading NWSs.

Thus, the parties to the protocol would be in the same basket as far as exports to the nuclear as well as the non-nuclear members of the NPT are concerned. Differential status does not cause any problems the other way either, from the 187 to

²⁰ Jozef Goldblat, Arms Control. The New Guide to Negotiations and Agreements, Sage Publications, London 2002.

the 3. The ground rules for exports to India and Pakistan are matters for discussion, but Israel's policy of opacity does not complicate those considerations. In between the 3 parties to the protocol, Israel should abide by the international ground rules in its eventual exports to India and Pakistan, while the South Asians would deal with Israel as a NNWS.

In other words: an additional protocol does not presuppose any clarification of Israel's declaratory policy. Differential status does not create any particular problem.

7. An international convention on nuclear transfers

Since 1971, the Nuclear Exporters Committee, also known as the Zangger Committee, has been active in establishing the conditions and procedures to govern exports of nuclear material, technology and equipment in accordance with the obligations set out in the NPT. The Committee is an informal body whose understandings have no status in international law but are arrangements unilaterally entered into by member states.

Since 1977, the London Club/NSG has taken the lead on these matters.²¹ Suppliers must exercise restraint in the transfer of sensitive facilities, technology and weapons-usable materials. If enrichment or reprocessing facilities, equipment or technology are to be transferred, suppliers should encourage recipients to accept, as an alternative to national plants, supplier involvement and/or other appropriate multinational participation in resulting facilities. For some time, these restraints have been generally understood to prohibit the transfer of fuel cycle facilities, technology and equipment.²²

The Guidelines can only be changed by unanimous consent of the NSG members. Like the Zangger Committee, the NSG documents are not legally binding on its members.²³ They are often described as a set of gentlemen's agreements.

Especially since the nuclear black market in centrifuge equipment and technology became known, there has been renewed interest in creating a "fire gate" between civilian and military uses of nuclear energy.²⁴ This could best be done by stopping and, to the extent possible, reversing the proliferation of fuel cycle facilities. One step in that direction could be to invite all other actual and potential suppliers to join the NSG and subscribe to its Guidelines. As long as some suppliers are free to operate outside current arrangements, the system is clearly inadequate. Another step would be to tighten existing restraints and turn them into an international convention, making them legally binding on the members. At its meeting in June 2004, the G-8 committed themselves to work in this direction.²⁵

²¹ The Zangger Committee nevertheless continues as a technical body complementary to the NSG, to develop and clarify the trigger list.

²² Jozef Goldblat, *op.cit.*

²³ In 1992, the NSG meeting in Warsaw adopted Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material and Related Technology (the so-called Warsaw Guidelines). See Jozef Goldblat, *op.cit.*

²⁴ See President Bush's speech on non-proliferation policy, February 11, 2004.

²⁵ "We shall work to amend appropriately the NSG guidelines, and to gain the widest possible support for such measures in the future. We aim to have appropriate measures in place by the next G-8 Summit. In aid of this process, for the intervening year, we agree that it would be prudent not to inaugurate new

The convention would have to provide assurances of supply.²⁶ Even so, it will be hard to clinch such a deal. For assurances can never be foolproof: international affairs remain too anarchic and too vulnerable to changing big power policies for that to be possible. They can only be more or less convincing. Some NNWSs have, moreover, long criticized the existing restraints as infringing on their right to nuclear supplies in accordance with art IV. They hold that as long as governments accept the safeguards required by the Treaty, no further limitation should be placed on their peaceful nuclear programmes. It should be recalled, however, that under the NPT, the right of parties to obtain materials, equipment and technology is not unlimited. Any such supplies are subordinated to non-proliferation goals. They must not facilitate the acquisition of nuclear weapons.

Another proposition – more modest, but no less complex – is that of multinational fuel cycle centres. If a ban on fuel cycle facilities can not be implemented, the second best may be to place them under multinational control.²⁷ In Europe, some ventures of this kind have been in operation for long (Eurochemic, Eurodif, Urenco). Toward the end of the 1970s, this idea was discussed with a view to application in regions where the proliferation pressures were strongest. However, at that time it got nowhere.²⁸

France was a member of the London Club/NSG from the beginning in 1977, when it conducted its nuclear affairs “as if” it was a member of the NPT. Similarly, the three signatories to the additional protocol should be asked to abide by the Guidelines and participate in an effort to strengthen and transform them into an international convention.²⁹ Mindful of the criticism that the cartel-like NSG has drawn, a formula may be sought, by which the signatories would get involved and obligated without necessarily endorsing the NSG.

8. Restraining cooperation between the NWSs

The NPT says nothing about nuclear transfers between the NWSs. This is a missing element, the seriousness of which grows with the number of recognized nuclear powers. An additional protocol would raise the number from five to seven.

The United States and the United Kingdom have cooperated closely on nuclear weapon systems for half a century. Warheads have not been transferred from

initiatives involving transfer of enrichment and reprocessing equipment and technologies to additional states. We call on all states to adopt this strategy of prudence”. G-8 Action Plan on Nonproliferation, Sea Island (Georgia, USA), June 9, 2004. The call for “prudence” in the “intervening year” just accentuates the understanding of existing NSG guidelines concerning export of fuel cycle equipment and technologies.

²⁶ If not integral to the convention, such assurances have to be provided in some other form or context as part of the package.

²⁷ Lawrence Scheinman, “Multinational alternative and nuclear non-proliferation”, International Organization, Winter 1981.

²⁸ See e.g. Internationalization to Prevent the Spread of Nuclear Weapons from the Stockholm International Peace Research Institute (SIPRI), Taylor@Francis Ltd, London 1980.

²⁹ “Building Global Alliances for the 21st Century”, a project chaired by Madeleine Albright and Robin Cook, casts the same idea in a somewhat broader non-proliferation strategy comprising (1) a fissile material protocol to the NPT that eliminates the closed fuel cycle loophole, and (2) stronger “Global Partnership” efforts to curb the black market for nuclear materials.

the one to the other, but short of that it is difficult to identify distinct limitations on their cooperation. There are strong indications, moreover, of Chinese assistance to the Pakistani weapons programme. As long as Pakistan has not been recognized as a NWS, such assistance is clearly in contravention to art. I of the NPT.³⁰ If and when Pakistan obtains that status, it is arguably not illegal any longer.

Restrictions on inter-NWS transfers would address two other concerns as well. First, it would alleviate the sense that the NPT is unjustifiably imbalanced in its rights and obligations. In the history of the Treaty there have always been charges of discrimination, emanating from the division of the world into haves and have-nots. Far from abating, many NNWSs have sharpened that criticism recently. In part, this explains why more than 100 states have failed to ratify INFCIRC 540. Proposals to tighten the conditions for nuclear transfers meet the same objection. Therefore, any step that works in the other direction, however small, is welcome. Second, such restrictions would be in line with the commitment of art. VI to take “effective measures relating to the cessation of the nuclear arms race at an early date.” Restraining inter-NWS transfers would be a modest step in the right direction.

9. Shoring the regime up

The wider objective of an “as if” protocol is to get everybody into the non-proliferation regime and help establish a fire gate between civilian and military uses of nuclear energy. Today, the nuclear export control system is patently inadequate.

In addition, new procedures should be devised to make it harder to leave the NPT. The costs of withdrawal should be raised and communicated in advance through a set of agreed reactions to be set in motion once a member state notifies the other parties and the UN Security Council that it has in mind to withdraw. When North Korea left, the Security Council did not even say “we are concerned”.

These are measures that would shore the regime up. If, in addition, the North Korea problem is successfully managed, the regime would for all intents and purposes be universal. The importance of universality is that it consolidates the normative strength of the treaty and the regime that it anchors. Proliferation threats would, per definition, come from inside the regime. Challenges would become matters of compliance. Universality raises the costs of non-compliance by increasing the prospect of collective response and of enforcement of treaty obligations. It is commonly recognized that today, these mechanisms are too weak.

10. Implementation

Protocol or unilateral declarations?

By what procedure could an additional protocol come into being? How can it be adopted? The NPT provides no explicit guidance in this respect.

³⁰ The unchallenged US interpretation of the commitment not to “assist, encourage or induce “ another state to “manufacture” a nuclear explosive device, given in the course of the negotiation of the treaty, was that facts indicating that the purpose of a particular activity is to acquire a bomb would tend to indicate non-compliance. Thus, assistance in the production of components relevant only to a nuclear explosive device would be a breach of Treaty obligations.

One way of doing it would be by a consensus decision of an NPT Review Conference - the next Review being scheduled for early summer 2005. Another to ask India, Pakistan and Israel to sign the protocol together with the Depository States – the United Kingdom, Russia and the United States - which since the 1960s have been considered the general managers of the NPT.³¹ There are probably other possibilities as well. Before it comes to that, however, somebody has to make a draft protocol in consultation with the prospective signatories and NPT members.

Alternatively, the same states could make the “as if”-commitment in the form of unilateral declarations, on the understanding that the United States and other leading powers would be prepared to acknowledge them and confer recognition on India and Pakistan as NWSs. This may be an easier way to strike a similar deal, perhaps in a “lighter” version than could be achieved through a negotiated package.

Contextual considerations

The NPT is built on two basic trade-offs. One of them concerns the rights and obligations of the NNWSs: in art. II they undertake not to acquire nuclear weapons, in return for which art. IV affirms their right to develop and use nuclear energy for peaceful purposes. Art IV furthermore obligates the parties in a position to do so to help promote peaceful applications in NNWSs with due consideration for the needs of developing countries.

Measures to stop the proliferation of fuel cycle elements would limit the rights embedded in art. IV. From the point of view of many NNWSs, assurances of supply will not make up for the new restrictions. Not quite.

The prospects for implementation depend all the more on the other trade-off: that between art. II and art. VI, obliging the NWSs to disarm. If the NWSs do not do better in this respect, and if more is not done to alleviate the national security concerns of countries that feel threatened, the overall balance of rights and obligations may impede implementation of measures of the kind outlined above.

³¹ Avner Cohen and Tom Graham, op.cit.

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