



Evaluation of NPT Compliance and the Review Process To Date

Transcript of a talk given by Arjun Makhijani as part of non-governmental organization presentations at the 1999 Nuclear Non-Proliferation Treaty Preparatory Committee meeting in New York

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At this last PrepCom before the Year 2000 review of the Nuclear Non-Proliferation Treaty, we believe that it is important to take stock of the compliance record of the parties to it. We must do so in a manner that is honest and forthright, for the NPT is not in good health. A clear diagnosis of the problem is needed if it is to be saved.

Let us first look at the record of the States Parties that are nuclear weapons states. Whatever their rhetoric, all five of them are modernizing their nuclear arsenals. This is a violation of the clause of Article VI of the NPT that calls for an early end to the arms race. The NPT has been in force for almost three decades now. The Berlin Wall fell a decade ago. Yet, nuclear arsenal modernization continues. This is beyond any reasonable definition of the term “early.”

The two countries with the largest arsenals, the United States and Russia, each have about 2,500 nuclear warheads on hair-trigger alert. Despite the rising dangers of massive nuclear war by accident or miscalculation and despite the urging of many recognized authorities, including prominent public figures with military experience, they have refused to de-alert their weapons. On the contrary, both governments have repeatedly and insistently reaffirmed their policy of first use. Hundreds of millions of people, including vast numbers of people in non-nuclear weapons states, would die in case of a massive nuclear launch of the type that may occur as the result of a US or Russian miscalculation. Maintaining any nuclear weapons on high alert, let alone thousands of them, is a violation of the spirit, if not the letter, of Article VI of the NPT and of humanitarian law.

We also see too little respect for international legal institutions. With the notable exception of China, the nuclear weapons States Parties to the Nuclear Non-Proliferation Treaty (NPT) have failed to recognize the legitimacy of the unanimous opinion of the World Court that Article VI requires the actual achievement of nuclear disarmament in all its aspects. Moreover, the United States, Russia, Britain, and France (referred to as the “Four Nuclear Weapon States” below) refuse even enter into negotiations to achieve nuclear disarmament in all its aspects. Article VI requires “good faith” efforts towards nuclear disarmament. Three decades after the entry into force of the NPT and four years after its permanent extension, when the nuclear weapon States Parties made an explicit renewal of their nuclear disarmament obligation, this refusal is unacceptable.

While the World Court has not set forth the criteria for establishing “good faith” we believe that refusing to enter into negotiations for complete nuclear disarmament, when seen in the context of the failure to accept the World Court’s unanimous interpretation of Article VI, is the opposite of good faith. The Four Nuclear Weapon States have repeatedly renewed their verbal commitments to nuclear disarmament in NPT forums. But all too often, even this rhetoric is not repeated in domestic forums where military policy is made. On the contrary, the determination to maintain nuclear arsenals for the indefinite future is emphasized in these arenas, where the money is allocated and the real policy is decided. This is also not

in consonance with any reasonable idea of good faith.

As regards China, despite accepting the World Court interpretation regarding disarmament, it continues to modernize its nuclear arsenal. It has also begun to waver in its constantly reaffirmed its no-first-use policy. In the context of the pronouncements of US officials regarding possible installation of missile defenses in Taiwan, it has hinted that it may revoke its no-first-use policy and accelerate its development of nuclear weapons. This again reminds us how frail verbal commitments can be, if they are not backed up by verified actions on the ground.

In this context, it is worthwhile to examine the question of the 1972 Anti-Ballistic Missile Treaty. In one of the most troubling developments since the 1998 PrepCom in Geneva, the United States appears determined to deploy ballistic missile defenses either by forcing an amendment upon an economically weak Russia or, failing that, by abrogating it. The ABM treaty only requires six months notice of withdrawal (the NPT requires three months notice). Like the NPT, there are no sanctions for withdrawal within the framework of the ABM treaty. But Russia and China have jointly announced that “damage” to or violation of the ABM treaty “could generate new factors that may result in regional, even global instability, or provide an excuse to restore the arms race, thus far setting new barriers for the disarmament process.” (Beijing Xinhua, English language edition, 16 April 1999).

Ballistic missile defenses in the context of a world bristling with nuclear weapons are provocative, since they could be part of a first nuclear strike strategy. The intentions of the party building and deploying them are beside the point. In times of tensions or war, previously announced intentions can change rapidly. Moreover, one might put more stock in announced intentions, if the treaty compliance records of the parties who ask for our good faith merited it. They do not. We believe that this body should examine whether the deployment of ballistic missile defenses in contravention of the ABM treaty would be tantamount to a violation of Article VI, since it would provoke a renewed and re-intensified nuclear arms race.

The United States and Russia keep pointing to START I, START II as well as the reductions in tactical nuclear warheads carried out on a unilateral-reciprocal basis by them in 1991 as evidence of their progress towards disarmament. This was a credible claim in the early to mid-1990s, though restricted to launchers and not to warheads. But the arms reduction process is now stalled. START II has not yet been ratified by the Russian Duma, despite repeated urging by President Yeltsin and his administration that it do so. While it may not have intended it, the United States gravely damaged the process of START II ratification by when it chose to begin its bombings of Iraq in December 1998 and Yugoslavia in March 1999. Both were begun at times just prior to consideration of the treaty by the Russian Duma. On both occasions, the climate before the bombings appeared to favor ratification. On both occasions, it was known beforehand that US bombing would mean that START II would be put on hold again. NATO expansion was also carried out at a time of possible Russian ratification of START II.

The Comprehensive Test Ban Treaty CTBT, the achievement of which was a commitment made by the nuclear weapon states at the time of the indefinite extension of the NPT, has been ratified by only two of them, France and Britain. Further, the United States has already begun a \$4.5 billion per “Stockpile Stewardship Program” that involves maintenance of design capability for new weapons and of nuclear arsenals for an indefinite period of time. Other nuclear weapon States Parties have begun similar programs, if on a smaller scale.



One analysis indicates that two large laser fusion facilities, the US National Ignition Facility being built at Livermore California and a similar French facility being built near Bordeaux, may violate Article I of the CTBT. These facilities are designed to create thermonuclear explosions that do not fall into the zero-yield-exception claim made for sub-critical testing. In fact, the planned pure fusion explosions would be larger than the four pounds of TNT equivalent fission hydronuclear tests that were clearly banned during the negotiations. Claims that these machines could provide energy sources or that such explosions are allowed under the NPT are irrelevant. The NPT allows nuclear explosions. The CTBT bans them all, including explosions for peaceful purposes.

No real progress has been made on adopting an international, legally binding instrument codifying pledges of non-use of nuclear weapons against non-nuclear weapons States Parties. The nuclear weapons states have also not acknowledged that the assurances made by declaration in 1995 are legally binding. The United States has sought to construe broadly asserted exceptions to this declaration, for example with respect to reprisals against chemical or biological attack. And as have we noted, China's commitment to no-first-use is not as unequivocal as it once was.

There has been no progress towards the goal of a nuclear free zone in the Middle East, a commitment undertaken at the time of the 1995 extension. Finally, we note that the two PrepComs since 1995 have failed to make any headway in persuading the nuclear weapons States Parties to take their commitments more seriously or urgently. The nuclear weapons States Parties are simply not taking the disarmament aspects of the Principles and Objectives for Nuclear Non-Proliferation and Disarmament agreed to in 1995 seriously enough.

Let us now turn to the non-nuclear weapons States Parties. The record of the vast majority of them stands in stark and refreshing contrast. While the nuclear weapons states are violating their commitments in letter and spirit, the record of the vast majority of non-nuclear weapons States Parties is exemplary because they have not made any moves to acquire nuclear weapons. Some of them, notably the members of the New Agenda Coalition, have been in the leadership of trying to persuade the nuclear weapons States Parties to fulfill their Article VI obligations. Several countries that have nuclear weapons capabilities, have renounced them unilaterally and joined the NPT as non-nuclear weapons states.

But the situation is not all rosy on this front. The serious violations of their NPT commitments by Iraq and North Korea are well-documented and well-recognized. Yet the States Parties to the NPT have not been able to see to it that the response to these violations was equitable and just. They have not even raised the issue of differential treatment seriously. While the situation in Iraq is admittedly complex, it is clear that it has been the subject of severe sanctions and worse partly because of its attempts to acquire nuclear weapons. North Korea, which reportedly may have as many as five warheads as well as advanced delivery systems, has been given aid and even the promise of commercial nuclear reactors in return for inspections. Whatever the actual considerations – and neither the people of the world nor the governments of most States Parties to the NPT are privy to them – this difference of treatment creates the impression of legitimizing nuclear deterrence and violations of the NPT when they have progressed to the weapons stage. The harshest treatment appears to be reserved for countries that do not have them yet. This is an unacceptable way to enforce the NPT. It is crucial that the NPT take up the question of enforcement and devise just, equitable, and effective ways to enforce it for all parties.

There is trouble elsewhere as well. NATO reliance on nuclear weapons is problematic in the context of

the NPT, to say the least. The Warsaw Pact is no more and Russian conventional capacity is far lower by all accounts than that of NATO. Yet, the NATO strategic doctrine issued on the occasion of its fiftieth anniversary last month re-emphasizes the role of nuclear weapons in any conflict. Its paragraph 46 states:

“To protect peace and to prevent war *or any kind of coercion*, the Alliance will maintain for the foreseeable future an appropriate mix of nuclear and conventional forces based in Europe and kept up to date where necessary, although at a minimum sufficient level. Taking into account the diversity of risks with which the Alliance could be faced, it must maintain the forces necessary to ensure credible deterrence and to provide a wide range of conventional response options. But the Alliance’s conventional forces alone cannot ensure credible deterrence. Nuclear weapons make a unique contribution in rendering the risks of aggression against the Alliance incalculable and unacceptable. Thus, they remain essential to preserve peace.” [emphasis added]

If nuclear deterrence is needed for NATO members, including the non-nuclear NATO States Parties to the NPT, even though they collectively have the strongest non-nuclear forces, why should other non-nuclear States Parties not want it also? Clearly, NATO members can have nothing to say about proliferation attempts that could be considered non-hypocritical until this nuclear deterrence policy is scrapped. And what can NATO members have to say to India, Pakistan and Israel who have not signed the NPT if they persist in such a doctrine? Continuing to rely on nuclear weapons as an essential part of NATO doctrine means that both the nuclear and non-nuclear weapons States Parties to the NPT that are members of NATO are in violation of the spirit of their NPT obligations.

It should not go unnoticed that the vast majority of violators of the NPT are western governments that often proclaim themselves on the world stage to be the guarantors of international law. Their claims to that role would be more credible if they asked others to do as they do rather than as they say in the arena most urgently crucial to human survival – nuclear disarmament.

The catalog of violations of the letter and spirit of the NPT and related treaties is long and serious. It demands a response. Unless the NPT states parties monitor compliance with respect to their various commitments, the NPT is likely to unravel, possibly at a rapid rate. Treaty agreements in many arenas, including other nuclear weapons related treaties, are under serious strain. So it is especially important that the states parties to the NPT, which has more signatories than any other security treaty, should launch an historic compliance assessment review. They could do so by forming an intersessional working group or they could ask the NPT secretariat to produce a review. This review should be completed by the end of 1999, so that there is ample time before the Review Conference for the states parties to take serious steps to remedy problems that the compliance assessment might identify.

We recognize that one or more influential States Parties may block either of these approaches to compliance assessment. A part of the reason that the NPT is in poor health is the failure of the review process so far to produce results. On the contrary, there has been a good deal of backsliding. We therefore urge one or more States Parties to take the initiative to form an ad hoc group of states parties to undertake a compliance assessment. As NGOs who strive for a safe and peaceful world, we stand ready to assist you in the historic and difficult task of compliance assessment before you.

Thank you for your time and your kind consideration of our views.



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