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*IEER Conference: Nuclear Disarmament, the NPT, and the Rule of Law
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Questions and Answers: Opening Plenary

April 24, 2000

Makhijani: We'd like to take questions for Mr. Dhanapala first, since he has to leave and then have the other two speakers.

Question: In the NPT treaty, are there assurances by nuclear states that they will not use nuclear weapons against non-nuclear states? If there is no such guarantee, how are you going to give assurance to the non-nuclear states?

Dhanapala: In the process of negotiating the NPT, the non-nuclear weapon states demanded precisely the kind of assurances that you referred to, that they would not be attacked by nuclear weapons states. But this was not incorporated in the body of the treaty. Instead, statements were made by the nuclear weapons states and Resolution 255 was adopted in the Security Council, which provided them with positive assurances. That was supplemented by unilateral statements by nuclear weapons states, regarding negative security assurances, the kind of assurances that you mention. This was recently, in 1995, through Security Council Resolution 984, once again repeated and enhanced.

But the non-nuclear weapons states have consistently stated that this is inadequate. That they would like to have these assurances in a legally binding form. Of course, under the nuclear weapon free zones, where the protocols have been signed by the nuclear weapon states, there is an explicit guarantee that there will not be an attack of a country in a nuclear-weapon-free zone by a nuclear weapon states. But there is also the calculated ambiguity policy of the United States, in particular with regard to the possible use of nuclear weapons against a state if other weapons of mass destruction are used. In that context, there is some doubt as to whether even countries in nuclear-weapon-free zones are completely immune from any kind of attack. But as you well know, nuclear-weapon-free zones do not cover the entire expanse of the globe. Therefore, there are a number of countries that are outside nuclear-weapon-free zones that still want a treaty negotiated. For example, Sri Lanka is not in a nuclear-weapon free zone. There has been a process in the CD where there was an ad-hoc committee attempting to discuss the issue of security assurances. South Africa, for example, proposes a protocol be written into the NPT providing security assurances for non-nuclear weapons states.

Question: The proposal by the Secretary General calls for the elimination of nuclear weapons. Tell us a little bit more. How would it be set up? By someone from the UN? Would it be an established conference? Would it be a one-time conference or ongoing? How would you focus it so it doesn't get tied up like the Conference on Disarmament gets tied up?

Dhanapala: I think the Secretary General's proposal arose out of concern on his part that the process of nuclear disarmament has obviously been stuck. What has happened the last five years is clear evidence of this. He wanted to restart the process and has placed this proposal on the table. It is really for Millennium Summit to decide on it. Even the elaboration of the idea is a matter for the member states, but it is not intended to be a rival to the Conference on Disarmament. It is intended to be an international conference, in which this issue of nuclear disarmament can be addressed so that the leaders of the world can take politically binding decisions and have a clear program of action, leading towards the elimination of nuclear weapons, and the elimination of other nuclear dangers on our way to eliminating nuclear weapons.

Question: Mr. Ambassador, when you were discussing missile defense, you compared the US concern with rogue states with McCarthyism. Are you saying that we should not be concerned with rogue states, while at the same time being extremely concerned with nuclear weapons?

Dhanapala: No, my concern is that the threat be seen in proportion to what it really is in terms of the national security of countries. I happen to know Richard Garwin personally. He was a member of the Rumsfeld Commission, and he told me that all the intelligence that he saw along with all the other members of the Commission convinced him that there was no danger whatsoever of these so-called rogue nations having a ballistic missile capability that would threaten the United States. Even with a long term threat that these countries might have had to develop ballistic missiles of that considerable range, the more sensible way of tackling that, in his opinion, was to attack them at boost phase rather than to have this elaborate system, which is by no means an impregnable system. So he felt that, if there was an attempt to have a cooperative security arrangement with the Russian Federation and with China, those threats could be tackled in a more meaningful and practical way rather than through this program. So my point is, we may have military industrial complexes developing new bogeys in order to drive the invention of new weapons systems that may not have a real political basis. This is why we are possibly leading the world into a new arms race as a consequence of going ahead with a weapons system that will not only threaten the Anti-Ballistic Missile Treaty, but will also act as a major obstacle to any agreements to reduce nuclear weapons.

Question: I'd like to ask the Ambassador's opinion of what appears at first sight to be a very disturbing development: the post-facto unilateral renegotiation of arms control agreements. I am referring to the US and the ABM treaty and also the kinds of reservations that are being introduced to ratification of treaties. It's not just the US. We've seen Russia do the same thing with the ratification of START II. I wonder what kind of interpretation you would put on that with regard to the stability of the negotiating process for any future agreements, if when these things do pass and are signed, there are states that feel they can somehow unilaterally attach new conditions.

Dhanapala: I think we have to have a distinction between bilateral treaties and multilateral treaties. With regard to bilateral treaties, clearly when conditions are imposed, they have to be mutually agreed upon. The 1997 protocols, for example, of the ABM are a case in point. There was mutual agreement between the two administrations to amend the ABM and even the dates of START were changed from 2003 to 2007. Now that has to be ratified by the US Senate. But under the advise and consent laws of the US Constitution, Senators as in the past, going back to the Treaty of Versailles, have had their own way of handling matters. And of course that is a very special situation.

With regard to multilateral treaties, the situation is much more complicated because once a group of countries have negotiated and signed a treaty like the CTBT, if a condition is written in through a ratification process, then that will impose upon the treaty itself a great weight that will not be able to be sustained. This arises with the Chemical Weapons Convention, as you know. The Senate imposed a lot of conditions and this places a lot of the other parties for the treaty and the Organization for the Prohibition for Chemical Weapons, the organization in the Hague that implements the treaty, with a number of problems. It also inhibits the future negotiation of treaties, because for example in a fissile material cutoff negotiation, countries can very well ask what is going to be the reaction of the US Senate? After going through this process and signing a treaty at the end of it, they might find that the US, although it is at the negotiating table, might have the US Senate reject the ratification on the treaty. So there are certainly serious problems with regard to the negotiating process as a result out of this practice of placing conditions on ratification and the rejection of ratifications.

Question: My comment and question has to do with what we may have learned from Seattle and Washington. Does it help or hinder those within the beltway, so to speak, whether it is international or DC, to have many people asking for transparency, that is, to be accountable? I don't know when the World Bank felt it ever had to answer to anybody or the IMF or the WTO, until recently. Then all of a sudden, within the belly of the beast, questions are being raised that even the media can't ignore...the American media specializes in that. So I would say the message of hope that I come from, the 80s or the 60s, is that the church groups, the unions, the students, the young people by the thousands are asking why can't the disarmament process, the nuclear weapons makers, the people who are making a profit off of war, and the politicians incidentally, be accountable to us the people, the nations in the United Nations? So I say, let's get on with the conference. This is great, and it is an issue of law and justice. Greetings. Clarity and truth says there are millions of people in this country, as there were in 1981, who are ready to help the people within the beltway to do the job the way it should be done. And ignore the President, ignore the Congress.

Dhanapala: I can only agree with you. The Secretary General in his remarks this morning also talked about the need for transparency, because we really don't have actual information, for example, even about nuclear weapon numbers. Rebecca [Johnson] will tell you about an expose in a British newspaper, which has to be really brought into the limelight for the NGO community and for the general citizenry to ask to the right questions. But you have a Freedom of Information Act. We need to have more investigative journalists who really uncover important information with regard to weapons issues, so that the cause of disarmament is better served.

Question: This is a somewhat arcane but important issue. In the ICJ opinion, there is a dictum that states that the undertakings are legally binding. It doesn't specify what the undertakings are that they were referring to. I interpret it to include the negative security assurances. The negative security assurances were not explicitly stated in the way the Principles and Objectives were principally and explicitly stated. It would seem to me, by argument, that the Principles and Objectives would also be legally binding. If so, if that's the court's decision, how does that play into the constitutional issue under American law, in which the US Senate alone can legally bind in this system? There is an anomaly between international law and national law on this. I wondered if you could comment on the legal status of the Principles and Objectives in light of the ICJ opinion.

Dhanapala: I know that George Bunn, for example, has also argued in an article in The Non-Proliferation Review of the Monterey Institute for International Security about the legal validity of the security assurances given by the nuclear weapons states. But notwithstanding that, the non-nuclear weapons states, particularly in the non-aligned movement would still want to have a separate treaty clearly embodying security assurances. With regard to the implications as far as the US Senate is concerned, not being a lawyer I wouldn't want to tread into that minefield, quite frankly.

Question: There are four or five different kinds of enforcement issues and we need to put out ideas as to how one arrives at a judgement that some country is in violation of the NPT and what ought to be done. There are some examples. There is North Korea (DPRK), which is in clear violation of the NPT, and the US has arrived at a bilateral agreement with it and it is going to get nuclear reactors, and so on. There is Iraq, which is in violation of the NPT and under very severe sanctions. There is Iran, which is in compliance with IAEA safeguards, but the US says it has information that Iran may be in violation, so it is under unilateral sanctions. The question of US assistance to the Israeli nuclear and military programs have not been investigated in any way to see whether it is in violation of Article I of the NPT. There is no mechanism to investigate and decide whether Europe and nuclear sharing, if Europe becomes one country and Britain or France decide to share their nuclear weapons with other members of the European Union, violates Articles I and II. What kind of process should be set up within the NPT framework? Isn't it time that the NPT framework should decide on a process by which they could arrive at a judgement about whether a violation has taken place and what ought to be done about it?

Dhanapala: Well, in my personal capacity, I published an article in the UNIDIR journal, in which I recommended something that had been proposed at the 1995 conference by the Sri Lanka delegation. There should be a permanent Executive Council, which could hear these kind of grievances as well as complaints and could adjudicate it as a peer group, so that this kind of rumor-mongering can be smoked out of the newspapers where it is published and be ascertained and examined very carefully by the treaty parties themselves rather than having this kind of arbitrary judgements being made.

The non-aligned working paper, which is being presented to this conference, talks about the IAEA being the sole agency to judge whether the obligations under Article II are being observed. I think this is a very important issue because the IAEA, particularly after it enhanced its safeguards through the additional protocol, is best able to make a judgement as to whether

countries are in fact diverting nuclear material and nuclear technology from peaceful purposes to non-peaceful purposes. The Tokyo Forum report also recommended a Secretariat and a permanent machinery for the NPT, which again would I assume be vested with the task of making the kind of judgement that you're talking about. But, of course, beyond that there is no other way. Violations of treaties like the NPT can be brought to the Security Council, which is the supreme authority under the UN Charter for the maintenance of international peace and security. Proliferation of weapons of mass destruction is a matter for international peace and security, as we all know.