

The Nuclear Non-Proliferation Treaty and the Comprehensive Nuclear-Test-Ban Treaty, the Relationship

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Abstract. The Nuclear Non-Proliferation Treaty (NPT) is the most important international security arrangement that we have that is protecting the world community and this has been true for many years. But it did not happen by accident, it is a strategic bargain in which 184 states gave up the right forever to acquire the most powerful weapon ever created in exchange for a commitment from the five states allowed to keep nuclear weapons under the NPT (U.S., U.K., Russia, France and China), to share peaceful nuclear technology and to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear stockpiles. The most important part of this is the comprehensive nuclear test ban (CTBT); the thinking by the 184 NPT non-nuclear weapon states was and is that they understand that the elimination of nuclear weapon stockpiles is a long way off, but at least the NPT nuclear weapon states could stop testing the weapons. The CTBT has been ratified by 161 states but by its terms it can only come into force if 44 nuclear potential states ratify; 36 have of the 44 have ratified it, the remaining eight include the United States and seven others, most of whom are in effect waiting for the United States. No state has tested a nuclear weapon-except for complete outlier North Korea-in 15 years. There appears to be no chance that the U.S. Senate will approve the CTBT for ratification in the foreseeable future, but the NPT may not survive without it. Perhaps it is time to consider an interim measure, for the UN Security Council to declare that any future nuclear weapon test any time, anywhere is a "threat to peace and security", in effect a violation of international law, which in today's world it clearly would be.

INTRODUCTION

In response to a reporter's question in March of 1963 President John F. Kennedy said that his greatest concern was that there could be ten nuclear weapon states by 1970 with nuclear weapons integrated into their national arsenals as opposed to the four in existence in 1963 and by 1975 fifteen or twenty. President Kennedy declared that he would regard this as "the greatest possible danger and hazard." But if the proliferation of nuclear weapons anticipated by President Kennedy had in fact occurred the number of states would be far larger today and the world an even more dangerous place. In 2004 the Director General of the International Atomic Energy Agency opined in his annual report that more than 40 nations were then capable of building nuclear weapons. Thus today's nuclear weapon proliferation could have reached a number of states in that range or perhaps beyond with nuclear weapons integrated into national arsenals. Such a development would make today's security situation seem like paradise by comparison, nuclear weapons would be so widespread that every conflict would carry the risk of going nuclear and it would be extremely difficult to keep nuclear weapons out of the hands of terrorist organizations. Imagine a world where among others Venezuela, Cuba and Al Qaeda are nuclear armed.

But such proliferation did not happen or at least it has not happened yet. The principal reason for this was the entry into force of the Nuclear Non-Proliferation Treaty, the NPT, in 1970 and the associated extended deterrence policies – the nuclear umbrella – of the United States and the Soviet Union for their allies during the Cold War. The

NPT is the most important international security arrangement we have that is protecting the world community and this has been true for many years. Its loss would be catastrophic and irreparable.

But the NPT did not happen by accident, it was not a gift from the now 184 non-nuclear weapon states parties to the five NPT recognized nuclear weapon states parties: the United States, the United Kingdom, France, Russia and China. Rather it was a strategic bargain in which the 184 states gave up forever the right to acquire the most powerful and destructive weapon ever created in exchange for the commitment from the five states allowed to have and to keep nuclear weapons to share peaceful nuclear technology and to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear stockpiles. In addition since the 1965 Swedish – Indian United Nations General Assembly resolution calling for such an outcome the vast majority of NPT states parties have believed that a non-proliferation treaty should be based on balanced obligations between nuclear and non-nuclear states.

The NPT non-nuclear weapon states parties recognized that in 1970 the Cold War was still very much present and eliminating the nuclear weapon stockpiles of the five nuclear weapon states would take a very long time. So during the negotiations the non-nuclear weapon states urged commitment to the pursuit of a number of interim steps including a permanent ban on all nuclear explosive tests, deep reductions in existing nuclear weapon stockpiles, a treaty halting the further production of nuclear weapon explosive material and legally binding undertakings from the nuclear weapon states never to use such weapons against NPT non-nuclear weapon states. By far the most important of these was the comprehensive test ban. It was thought in 1970 that if the nuclear weapon states cannot eliminate their nuclear weapon stockpiles in the foreseeable future at least they could stop testing their weapons. The comprehensive test ban was and is seen as the litmus test of whether the NPT nuclear weapon states will live up to their NPT obligations. It also serves as the essential political cover for the non-nuclear weapon states to give up the bomb. The non-nuclear weapon states urged that the interim steps be included in the Treaty; however the managers of the NPT negotiation, the U.S. and the Soviet Union resisted, saying these issues could be addressed in the periodic NPT Review Conferences set for every five years in the future. Eventually the U.S. and the Soviet Union relented, a little, and agreed to include a reference to the importance of achieving a comprehensive test ban in a preambular clause. It was this Basic Bargain, non-proliferation in exchange for peaceful cooperation and nuclear disarmament upon which the NPT was built and upon which it rests today.

In spite of the assurances of the United States and the Soviet Union during the negotiations, nothing happened by the way of progress in the Review Conferences for many years – most significantly with respect to the Test Ban to the deep chagrin of most of the NPT non-nuclear weapon states. However, in 1995, by the terms of the Treaty the NPT came up for extension by the parties on a one-time basis. It could be extended by the parties – I emphasize, again on a one time basis – for a term of years or permanently without requiring action by national legislatures – which would have been impossible. In order to secure the consent of the world community to make the NPT permanent in 1995 much the same commitments were made by the NPT nuclear weapon states as were made in 1968 when the NPT was signed. Only this time with respect to the Comprehensive Test Ban Treaty, the CTBT, commitment was stronger; the CTBT was to be achieved in one year.

And it was, to a large degree as a result of leadership by the United States, driven by the idea that in addition to the security benefits of such a treaty the honor of the United States was engaged as well, since this result was pledged to secure indefinite NPT extension, an important U.S. national goal. The CTBT was signed on September 24, 1996 at the United Nations in New York where it had just been endorsed by the United Nations General Assembly by a vote of 158-3. President Bill Clinton was the first national representative to sign and today there are over 161 parties including Russia, Britain and France, three of the five NPT recognized nuclear weapon states. Interestingly, the 161st party to join was Iraq recently. However, in order to give assurance to all that the Treaty would not come into force without including all states with potential or actual nuclear weapon programs the Treaty requires the ratification of some 44 states, all the states that had nuclear facilities on their territory in 1996 and were members of the Treaty negotiating body, the Conference on Disarmament. Thirty-six of these states have ratified the CTBT. The most prominent hold-out is the United States but the list includes China and Israel which are waiting for the United States, Egypt which is waiting for Israel and India, Pakistan, Iran and North Korea.

NPT Article VI (along with Article IV on peaceful nuclear cooperation) comprised the obligations of the NPT nuclear weapon states in the Basic Bargain. It can be said, based on the negotiating history of the NPT and the immediate aftermath of its signing, that Article VI meant.

To the non-nuclear weapon states participating, first and foremost a comprehensive nuclear test ban, along with the other interim measures mentioned. Toward the end of the negotiations the United States and others attempted to secure indefinite duration for the NPT, but within the NPT negotiating body, the Eighteen Nation Disarmament Commission, the ENDC, this was resisted by several important delegations, Germany, Italy and Sweden, for several reasons but among them uncertainty about the effectiveness of the NPT and its Basic Bargain. Thus this decision was put-off for over 25 years, to 1995, when permanence for the NPT was achieved as I said, accompanied by

essentially the same set of promises as were made in 1968, and likewise largely unrealized. A Swiss government aide memoire sent to the ENDC in 1967 captured the mood of some in addressing the issue of NPT duration in the context of adoption of the promised specific measures limiting armaments, "The non-nuclear weapon states certainly cannot take the responsibility of tying their hands indefinitely if the nuclear weapon states fail to arrive at positive results in that direction". Switzerland twice by national referenda left open the option of acquiring nuclear weapons.

NPT REVIEW CONFERENCES

A brief review of the NPT Review Conference process and progress – or the lack thereof – on a comprehensive test ban and the other interim measures is instructive on the importance to the NPT regime of the test ban.

The first NPT Review Conference in 1975 produced a strong reaffirmation of support for the Treaty by the parties. But a complete impasse was reached on the test ban. Some 20 non-nuclear weapons states proposed adding a protocol to the NPT mandating a test moratorium until France and China joined the NPT and after that a comprehensive test ban. This was rejected by the United States, the Soviet Union and the United Kingdom. In order to prevent failure of the Conference, the Conference Chair, Inga Thorsson of Sweden, gavelled through a presidential statement urging the early conclusion of a test ban.

The second Review Conference in 1980 was similar to 1975 only worse. The Conference failed because a large number of non-nuclear weapon states insisted on a commitment from the nuclear weapon states to a comprehensive test ban treaty, which was rejected.

The 1985 Review Conference adopted an on the one hand/on the other hand approach in its Final Document, however, virtually all non-nuclear weapon states present supported immediate negotiations on, and the urgent conclusion of, a comprehensive test ban treaty.

The fourth NPT Review Conference in 1990 ended in failure as many non-nuclear weapon states insisted on a commitment from the nuclear weapon states to a comprehensive test ban treaty which was rejected by the nuclear weapon states.

At the NPT Review and Extension Conference in 1995 – 25 years after entry into force – the NPT was made permanent with the principal price for this being the commitment by all parties – including all five NPT nuclear weapon states for the first time – to a comprehensive test ban treaty in one year. A number of other undertakings were made as well. The NPT was then at the zenith of its strength. In the years afterward, among other developments, the 1998 nuclear weapon tests by India and Pakistan accompanied by their announcements that they were nuclear weapon states and the rejection of the CTBT by the U.S. Senate in 1999 severely damaged the NPT.

Against this backdrop the NPT parties in 2000 came together again in an attempt to rescue the NPT regime. A final Document was agreed by all which set forth 13 "practical steps" to strengthen NPT Article VI. First and foremost among them was: "The early entry into force of the Comprehensive Nuclear Test Ban Treaty." But in the years following the 2000 Review conference there was little progress in implementing the 1995 undertakings or those in 2000. Indeed for almost the first decade of the 21st century there was little in terms of positive developments for the NPT regime at all.

The 2005 NPT Review Conference was by far the worst ever. The United States refused to support any of the commitments it had made in 1995 and 2000. At this Review Conference, for the first time ever, there was agreement on nothing. The NPT was in dramatic decline and was threatened by the nuclear programs in North Korea and Iran. The situation took a turn for the better in 2009 with President Obama's speech in Prague and in 2010 there was a successful Review Conference but there has been only limited progress on the 1995 and 2000 undertakings, and most importantly on the CTBT. The NPT remains in peril.

SENATE REJECTS CTBT

The United States submitted the CTBT to the U.S. Senate promptly after signature but then three years went by without action or much attention. Suddenly in the early fall of 1999 several Senators brought the Treaty up for consideration. Senator Jesse Helms, then the Chairman of the Senate Foreign Relations Committee – no friend of the CTBT – held two weeks of negative hearings in which the reliability of the verification system, the International Monitoring System - or IMS, and the effectiveness of the Stockpile Stewardship program, the program to ensure the safety and reliability of the U.S., weapon nuclear stockpile without testing, were questioned. A critical letter from five former Defense Secretaries was produced. There had been no preparation by the Clinton Administration.

The CTBT was then brought to the floor of the Senate where in a few days it was rejected by the full Senate by a vote of 48 for and 51 against, far short of the two-thirds required for advice and consent to ratification. It was

voted down ostensibly for the two issues raised and questioned in the Foreign Relations Committee hearings, and also for some it was a free swing at President Clinton. But this vote was most unfortunate as 62 Senators (24 Republicans and 38 Democrats) seeing that a two-thirds vote in favor was not then possible had signed a letter circulated by Senators John Warner and Pat Moynihan to the Majority Leader, Senator Trent Lott, and the Minority Leader, Senator Tom Daschl, asking that the vote be halted and the CTBT returned to the Foreign Relations Committee. But the vote was forced on procedural grounds by Senator Helms and Senator Jon Kyle. This was, to the best of my knowledge, the first time that a major treaty supported by the President was voted down by the Senate – the Versailles Treaty is not an appropriate example – since the Texas treaty of 1844.

CTBT STATUS IN 2013

Nearly fifteen years have lapsed since the defeat of the CTBT but now we see a treaty all the more important because of its significance for nuclear safety and stability. During this time the NPT – the cornerstone of international security – has grown weak without the CTBT in place. There has been a nuclear weapon test Moratorium in place for 20 years – initially formally established in 1993 by the United States, and earlier by Russia, and not too many years afterward adopted by all the world's relevant nuclear states except North Korea – but it is not a legally binding arrangement. The Moratorium is still holding, but will it do so permanently? There have been three nuclear weapon tests by North Korea in recent years. However, the 337 monitoring stations of the IMS (including seismological, hydro-acoustic, infrasound and radionuclide) are more than 80% complete. In United Nations voting the United States in past years has been virtually the only major state voting against the CTBT. The U.S. in the past has conducted well over a thousand nuclear weapon tests, more than the rest of the world combined. A Test Ban in force would lock in the superior technology of the United States; also it would prevent the acquisition of a modern nuclear weapon stockpile and block the upgrading of a sophisticated existing arsenal elsewhere. The four statesmen, former Secretaries of State George Shultz and Henry Kissinger, former Secretary of Defense Bill Perry and former Senate Armed Services Committee Chairman Sam Nunn have called for action on the CTBT; Secretary Shultz has testified before Congress that times – in regard to the CTBT – have changed. And the NPT, threatened by the nuclear programs in Iran and North Korea, battered by conditions in the Middle East, and with further proliferation potentially looming, needs the CTBT. The Obama Administration is rhetorically supportive but not inclined to act. But time is not on our side.

But if the U.S. did ratify the CTBT would the Treaty have a chance of coming into force? Of the seven other states whose ratification is required, China and Israel are waiting for the U.S. and Egypt for Israel, as I said. In 1998 India privately told the U.S. it would ratify. India was let off the hook by the Senate vote in 1999 but has observed a test moratorium ever since. If India ratifies, Pakistan will follow, it also has not conducted further tests since 1998. It would be difficult for Iran to be one of two CTBT holdouts and still claim its program is peaceful. That brings us down to North Korea. To bring them on board would probably require some kind of joint effort by China and the U.S., difficult but not impossible.

THE INTERSECTION OF THE NPT WITH CTBT

Giving up forever the most powerful weaponry ever created and joining a treaty that enshrines this principle is not a natural act for a sovereign state, and as the NPT permits a small number of states to have these weapons for many years into the future, it is a political necessity for many states, in order to create a semblance of equality among the treaty parties, not only to have a general article committing the treaty's nuclear weapon states to eventual nuclear disarmament but also to achieve specific steps in that direction in the shorter term.

Since the early days, the NPT non-nuclear weapon states parties have overwhelmingly indicated that it would be the CTBT that delivers that semblance of equality. But no major state wants to be perceived as second class forever. Political balance is essential to the survival of the NPT for the indefinite future.

But if time is of the essence here and it is, with the treaty blocked in the U.S. Senate and the Obama Administration either unwilling or incapable of acting, what can be done? To risk losing the NPT is simply too great a risk and the pressure is growing as we move toward a potentially calamitous 2015 NPT Review conference – particular dangerous because of the failure of the Middle East Conference on a nuclear weapon free-zone, an essential promise made at the 2010 NPT Review Conference. One possible interim step could be for the United Nations Security Council to declare by resolution that any nuclear weapon test anywhere, anytime is a threat to international peace and security thereby in a sense making a nuclear weapon test an international crime, which is more or less what a CTBT in force would do. The prohibition would then be in place. The long term survival of the

Moratorium would be assured. And the IMS is nearly complete. This would do much to strengthen the NPT. I urge that this be considered. We must hold the line, we must preserve the NPT in the interest of international peace and security and to preserve whatever chance there is of eventually eliminating nuclear weapons. A permanent ban in place on nuclear weapon testing is in the U.S. national security interest and the interest of the world community.