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Three priorities for combating nuclear proliferation

By Pierre Goldschmidt

INTRODUCTION

In this short presentation I will limit myself to what I consider to be three priorities for strengthening the nonproliferation regime: ratifying the CTBT, addressing cases of non-compliance, and dissuading withdrawal from the NPT.

Progress on these issues will depend to a large extent on the political will of the five permanent members of the UNSC which are also the only nuclear weapons states (NWS) recognized by the NPT. More than other countries they need to take the responsibility to lead the world by example.

RATIFYING THE CTBT

To date 138 states have ratified the CTBT. For this most important Treaty to come into force it still needs to be ratified by the following 10 States: China, Colombia, Egypt, India, Indonesia, Iran, Israel, North Korea, Pakistan, and the United States¹. This should be a priority in the field of nuclear non-proliferation.

It is the primary responsibility of NWS to convince the world that nuclear weapons will progressively become obsolete and irrelevant to their future security strategy, and that therefore NWS neither need nor intend to disregard their NPT commitments by developing and testing new types of nuclear weapons.

Until more convincing progress is made in the area of irreversible nuclear disarmament, many non nuclear weapons states (NNWS) will no doubt continue to oppose highly desirable tightening measures of the non-proliferation regime.

The very first concrete step should be for the United States and China to ratify the CTBT as has already been done by the other NWS: France, the Russian Federation and the UK.

Ratifying the CTBT (the very first of the 13 practical steps agreed by consensus by the 2000 NPT Review Conference) is the most convincing indicator of the NWS's willingness to comply with their NPT (Article VI) disarmament undertakings.

Once the CTBT has been ratified by all NWS it will be even more logical to request that India ratify the Treaty as a condition for any nuclear cooperation with supplier countries. In those circumstances the chances that India would agree would be much higher, provided of course that Pakistan does so too.

Many NNWS, particularly from the Non Aligned Movement (NAM), have been quite vocal in expressing their frustration not only about the lack of progress by the five NWS with regard to the implementation of the "13 practical steps" referred to above, but also about the "legal

¹ Among those, only 3 States have not signed the CTBT: India, North Korea and Pakistan

double standard” between NNWS that are party to the NPT and the three States that are not (India, Israel and Pakistan) with regard to international verification of their nuclear activities.

It is therefore quite astonishing that these NAM States have not been more vocal in objecting to the July 2005 US Nuclear Cooperation Agreement with India. This agreement grants India all the benefits that are specifically reserved for NNWS under the NPT, without requesting from India any real counterbalancing non-proliferation and disarmament commitment, not even those undertaken by NWS under the NPT. The minimum that should be requested from India is to sign and ratify the CTBT without delay. If it is too late for the US to impose such a condition there is still time for the NSG to make it an inescapable export condition.

If the US/India cooperation agreement is unconditionally blessed by the NSG, and the deal goes through it will make it politically impossible to strengthen the non-proliferation regime, and any hope to create a WMD free zone in the Middle-East will become even more unlikely.

Establishing a WMD free zone in the Middle East is obviously a desirable long term objective. However everyone knows that in order to reach that stage a series of difficult political steps need to be taken and that this will likely take decades to be achieved.

A first important milestone on this long road would be for all states in the region that have not yet done so, to sign and ratify the CTBT, in particular Israel, Iran and Egypt. I would suggest that this would particularly be in the latter’s interest and that Egypt should use its diplomatic leverage to reach that goal, instead of appearing as a leader among those opposing badly needed measures to strengthen the non-proliferation regime.²

Another important case relates to North Korea. The so-called “Six-Party talks” that resulted in the Joint Statements of September 2005 and February 2007 have as their goal “*the verifiable denuclearization of the Korean Peninsula in a peaceful manner*” including North Korea’s commitment to abandon all nuclear weapons. The ratification of the CTBT by North Korea would be a logical and important step, and should therefore be mentioned explicitly in future discussions.

Here again, the ratification of the CTBT by the USA and China would make progress in this direction much more likely.

For any Party to the NPT to delay or obstruct the entry into force of the CTBT is incompatible with the spirit of the Non-Proliferation Treaty and with the basic undertakings of its signatories. There is no reason to believe that Colombia and Indonesia would be the last of the 44 states that have to ratify the CTBT before it enters into force.

Nuclear supplier states (within or outside the NSG) should undertake not to provide any nuclear energy cooperation (except possibly for major safety reasons) to any state that has not ratified the CTBT. They would thereby demonstrate that they are ready to give priority to their non-proliferation undertakings for the sake of international peace and security in the long term rather than to their short term economic interests.

² such as the conclusion of the Additional Protocol (AP) to Comprehensive Safeguards Agreement (CSA), a request repeatedly made by the IAEA’s Board of Governors and General Conference.

NON-COMPLIANCE

Experience with both North Korea and Iran has shown that, in order to conclude in a *timely* manner that there are no undeclared nuclear materials or activities in a state as a whole, after a state has been found by the IAEA to be **deliberately in non-compliance** with its safeguards undertakings, the Agency needs verification rights extending beyond those of the Comprehensive Safeguards Agreement and Additional Protocol. Acknowledging this, in September 2005, the IAEA Board of Governors adopted a resolution urging Iran “*to implement transparency measures which extend beyond the formal requirements of the Safeguards Agreements and Additional Protocol*” as a means to more efficiently determine the peaceful nature of its program³. The problem is that such IAEA Board resolutions do not provide the Agency with any additional legally binding verification authority—they are merely requests for voluntary action on the part of non-compliant states.

As suggested previously⁴, the most effective, unbiased, and feasible way to establish a legal basis for the necessary verification measures in circumstances of non-compliance is for the United Nations Security Council (UNSC) to adopt (under Chapter VII of the UN Charter) a **generic** (i.e. not state specific) and legally binding resolution stating that if a state is reported by the IAEA to be in non-compliance, the following three actions would result.

First, the non-compliant state would have to suspend all sensitive nuclear fuel cycle activities for a specified period of time⁵, but it could continue to produce electricity from nuclear power plants.

Second, if requested by the IAEA, the UNSC would automatically adopt a *specific* resolution (under Article 41 of the UN Charter) making it mandatory for the non-compliant state to provide the Agency with the necessary additional verification authority. Areas in which the verification authority should increase would include assurance of prompt access to persons, broader and prompt access to locations, access to original documents and copies thereof, broader and faster access to information, and the lifting of other types of restrictions (for example, on the use of Agency equipment including wide area environmental sampling, recording meetings, limitations on the number of designated inspectors, visas, etc.). Such authority would last until the Agency could conclude that there is no undeclared nuclear material and activities in the state and that its declarations to the Agency are correct and complete.

Finally, no nuclear material would henceforth be delivered to that state without the guarantee that all nuclear material, equipment and facilities declared to the IAEA would remain under Agency’s safeguards, even if, as indicated below, the state withdraws from the NPT⁶.

³ The Director General’s report of April 28, 2006 to the IAEA Board of Governors stated that, inter alia, because of the gaps in the Agency’s knowledge about “*the role of the military in Iran’s nuclear programme, the Agency is unable to make progress in its efforts to provide assurance about the absence of undeclared nuclear material and activities in Iran*”.

⁴ « Priority Steps to Strengthen the Nonproliferation Regime »- Carnegie Endowment for International Peace, Policy Outlook, February 2007 : http://www.carnegieendowment.org/files/goldschmidt_priority_steps_final.pdf

⁵ At least as long as the IAEA has not drawn the conclusion that the State declaration is correct and complete, or possibly longer, in line with what Dr. ElBaradei has called a “*rehabilitation period*” or a “*probation period, to build confidence again, before you can exercise your full rights.*” (cf. interview with *Newsweek*, January 23, 2006)

⁶ A Comprehensive Safeguards Agreement remains in force only for so long as the state remains party to the NPT, whereas under an INFCIRC/66-type agreement, all nuclear material supplied or produced under that agreement would remain under

WITHDRAWAL FROM THE NPT

Parties to the NPT have the right, pursuant to Article X, to withdraw within three months from the Treaty. However it would be logical to forbid withdrawing countries the free use - possibly for military purposes- of material and equipment delivered to them while and because they were a Party to the Treaty.

It is therefore important to guarantee that such material and equipment remain under IAEA safeguards even if a state withdraws from the NPT.

To address this issue, supplier states should from now on include in their national law the requirement that nuclear material and specified equipments can only be delivered to a NNWS if they are used in facilities that are subject to INFCIRC 66-type safeguards agreements concluded with the IAEA. These safeguards agreements, which do not lapse if a state withdraws from the NPT, would normally be subsumed to the recipient state's Comprehensive Safeguards Agreement and would be activated only if the recipient state withdraws from the NPT⁷.

The NSG should progressively make this a mandatory export condition, starting with all deliveries related to sensitive fuel cycle facilities such as uranium conversion, enrichment and reprocessing plants.

The EU should lead by example not only by making it an export requirement but also by requesting any of its NNWS constructing or operating such facilities on their territory to conclude without delay the relevant INFCIRC 66-type safeguards agreements with the IAEA. Another possible measure to cope with the risk that a withdrawing State could use previously supplied nuclear material and equipment for military purposes, would be for all nuclear supplier states to include in their bilateral nuclear supply arrangements (and corresponding contracts) an obligation for the recipient state to return such material and equipment to the original supplier in case of withdrawal from the NPT.

This is not a new concept. Under Article XII.A.7 of the IAEA Statute, the Agency has the right to "*withdraw any material or equipment made available by the Agency or a member*" in furtherance of an Agency project in the event of non-compliance and failure by the recipient state to take fully corrective action within a reasonable time.⁸

A particularly threatening case for international peace and security is the withdrawal of a NNWS party to the NPT **after** having been found, by the IAEA, in breach of its obligation to comply with its safeguards agreements.

safeguards, even if the state withdraws from the NPT, until such time the IAEA has determined that such material is no longer subject to safeguards.

⁷ Article 24 of the Comprehensive Safeguards Agreement (INFCIRC/153-corr) provides that "*other safeguards agreements with the Agency shall be suspended while the Agreement is in force*", which (under Article 26) remains the case "*as long as the State is party to the [NPT]*".

⁸ Article XII.C. of the Statute has a similar provision.

In such a case it is of paramount importance for the UNSC to convene immediately in order to consider what appropriate measures should be taken, and not as was the case with North Korea, three years after its withdrawal when it tested a nuclear device. We must by all means avoid a repetition of this unfortunate chain of events.

It is therefore essential for the international community not to wait for Iran's withdrawal from the NPT⁹, (a threat officially uttered on many occasions), without taking any preventive action. Therefore the UNSC should adopt (under Chapter VII of the UN Charter) a **generic** and legally binding resolution stating that if a state withdraws from the NPT (an undisputed right under its Article X) **after** being found by the IAEA to be in non-compliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security as defined under Article 39 of the UN Charter. This generic resolution should also provide that under these circumstances, all materials and equipment made available to such a state or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement would have to be forthwith removed from that state under IAEA supervision and remain under Agency's Safeguards. And finally, the resolution should request that all military cooperation with the withdrawing state be automatically suspended.

CONCLUSION

No one disputes that the non-proliferation regime, to maintain its credibility, needs to be strengthened in order to cope with new technical challenges and proliferation risks including those potentially raised by non-state actors.

The three proposals made here are addressing real practical issues and are based on lessons learned from past experience. They are fully in line with the letter and the spirit of the NPT and should be in the interest of all states that have no intention of developing nuclear weapons.

It is more than time to move from easy incantatory declarations to concrete action. This is our collective responsibility. The US and the other four veto-wielding permanent members of the UN Security Council have a prominent role to play.

"Where there is a will there is a way".

⁹ ... or similar actions such as denying or limiting IAEA inspectors access to its territory, facilities, or locations that would impede the effective implementation of IAEA's inspections and verifications.