

The State of the Global Nuclear Non-Proliferation Regime: 2001

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Many years ago, a renowned scholar of international law, Louis Henkin, wrote that ". . . almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." This observation is also valid with respect to the recent behaviour of states in implementing their international legal obligations concerning the non-proliferation of nuclear weapons. We need to probe a bit deeper, however, to understand better the implications of this claim for our broader topic today -- "the global nuclear non-proliferation regime" -- and to identify some of the key factors that will shape it in the years ahead.

Let us first consider what this term really means, since it clearly means different things to different people, even among the experts. Some observers adopt a more unilateralist point of view when examining how international regimes get established, how they are maintained, and how they change over time. Others favour a multilateralist approach. Most assessments, however, are hybrids borrowing from both points of view. The perspectives differ largely because

of their contrasting intellectual heritage - the unilateralists draw their insights from the principles and practices characteristic of the system of sovereign states associated with the Treaty of Westphalia, while multilateralists prefer working with more communitarian views, whose roots can be traced back to the work of Hugo Grotius, the 17th century father of modern international law. Old though it may be, this fundamental debate rages on and is heating up once again among the disarmament and non-proliferation community.

Judging from various official statements and articles in the literature, the unilateralist looks upon non-proliferation as fundamentally a national policy, one that stands on its own, independent of all other policy goals -- including disarmament. From this perspective, the nuclear non-proliferation regime is nothing more than the sum of the specific policies and commitments made by individual national governments to halt, slow, or otherwise impede the ability of other governments to develop or manufacture nuclear weapons. When practised by the nuclear-weapon states, the unilateralist approach to non-proliferation has often assumed the indefinite retention of their own nuclear stockpiles.

Recognizing, however, that the proliferation of nuclear weapons is a global threat, the unilateralist is prepared to accept the need for some limited international cooperation to address that threat, especially by means of voluntary arrangements that maintain national freedom of action. Arrangements, where like-minded states have agreed to conduct their independent national policies within certain agreed constraints to achieve their shared non-proliferation aims are examples of such an approach. That such arrangements are non-binding, restrictive in application, opaque to the public, and lacking a collective means of enforcement - is merely, by this perspective, the price that must be paid to maintain national freedom of action. This is a perspective deeply rooted in the classic conception of a world of sovereign states cooperating only when necessary to achieve their expedient self-interests in conditions of international anarchy.

For some who work from such premises, the fact that states almost always comply with their commitments is simply not good enough, surely not given the extreme security threats posed by the use - or even the credible threat of use - of even a single nuclear weapon. For these observers, international obligations must be supplemented by measures that are more under the direct control of individual states. The two most popular measures these days appear to be nuclear deterrence and missile defence.

The multilateralists, however, have a different view about this regime, one that stresses the substitution of diplomacy for both unilateral action and military compulsion. For the multilateralist, the society of nations has its own independent effects upon state policy.

More specifically, the multilateralists hold that principles, customary practices, norms, taboos, and binding legal obligations constrain state behaviour in profoundly significant and constructive ways -- all the more so at a time when the territorial integrity of nation-states is under daily assault by the inexorable political, economic, cultural, and technological forces of globalisation.

They say that interests are defined by human beings, who are motivated by both principle and self-interest. While the unilateralist is eternally preoccupied with crafting state policies to advance expedient national interests, the multilateralist sees the national interest best served by close international cooperation and the progressive integration of global values and norms into the domestic legal and political structures. Of the two, the multilateralist is more likely to stress the importance of treaties, while the unilateralist is more prone to view binding international legal obligations more as a limitation on national freedom.

In the nuclear realm, the unilateralist sees non-proliferation as either an end in itself, or more precisely, a means to pursue the end of maximizing the national interest. The multilateralist, meanwhile, is more likely to view non-proliferation as a means to pursue common security benefits -- benefits that would be most reliably achieved through the physical elimination of the deadliest of the world's weapons. This latter perspective is apparent in the Final Document of the 2000 NPT Review Conference, especially its language reaffirming that "the total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons." To the multilateralist, nuclear weapons pose by the very existence unacceptable threats to the world community. This perspective is also reflected in the Preamble of the 1968 Tlatelolco Treaty, which provides that

... nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian populations alike, constitute, through the persistence of the radioactivity they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable.

A challenge of this global scope, say the multilateralists, requires a collaborative global solution. When Article VI of the NPT, for example, says that "Each of the Parties to the Treaty" - not just the nuclear-weapon States -- shall undertake to pursue negotiations on nuclear disarmament, this is yet another reflection of the multilateral approach to the overall nuclear regime - but ironically one that nuclear-weapon States chose to use as an escape hatch.

Because of the profound differences between these two approaches, assessments of the global nuclear non-proliferation regime tend to vary with the approach taken. The multilateralist, for example, should be concerned because the level of international cooperation in both non-proliferation and disarmament is far lower than it could and should be. Some key treaties addressing nuclear weapons issues are not yet universal in membership -- including the NPT. Others have not yet entered into force, including the Pelindaba Treaty, the Comprehensive Nuclear-Test-Ban Treaty and START II, while negotiations on a fissile material treaty remain deadlocked in the Conference on Disarmament.

Furthermore, the gains made in 1995 by the permanent extension of the NPT were shaken by several nuclear tests in South Asia in 1998, followed by the adoption of minimum nuclear deterrence policies by both India and Pakistan. These tests - as well as recent official words from these countries, NATO, and all the NPT's nuclear-weapon states implicitly or explicitly

reaffirming the value of nuclear weapons - have together dealt a significant blow to the multilateralist goal of de-legitimising all such weapons.

Multilateralists also have some legitimate concerns that the full potential of the decisions agreed at that 1995 Review Conference has yet to be realized. The process, for example, has elicited very few hard facts about the size, disposition, and location of existing nuclear arsenals and their fissile materials. And very few details are available to the public about the operation of national export controls, in terms of what goes where. While the nuclear-weapon states agreed at the 2000 NPT Review Conference to an "unequivocal undertaking" to eliminate their nuclear arsenals, their individual policies and some public statements continue to suggest an intention to retain such weapons indefinitely.

Meanwhile, serious differences remain among some of the nuclear-weapons states on global strategic nuclear issues, including the relationship between the "three D's" -- deterrence, defence, and disarmament. The conduct of sub-critical tests of nuclear weapons, persisting rumours of efforts to develop new types of nuclear weapons, continuing concerns over the compliance of states with their non-proliferation and disarmament obligations, the slow pace of international acceptance of enhanced IAEA safeguards, the increasing separation in policy between non-proliferation and disarmament, and hints of the emergence of new missions for nuclear weapons even against the use of other weapons - all of these are of particular concern to the multilateralists.

They are also critical of the unilateralist's heavy emphasis, especially in recent years, on a military approach to non-proliferation and view such an approach as likely to perpetuate the very global anarchy that a legal regime was intended to end. In addition, the multilateralists are troubled by efforts of some states to maintain perpetually their technological edge in weaponry, as well as their hedge of surplus armaments to meet uncertain or even hypothetical threats. Yet despite the vast sums of money that have been spent to sustain this strategy - a major study by the Brookings Institution found that the USA alone has invested over \$5.6 trillion in its nuclear weapons programme - the unilateralists still say the threats are always getting worse due, they say, largely to activities of so-called rogue nations.

More recent unilateralist prescriptions urge the mating of deterrence with missile defence, despite persisting concerns that an offence/defence strategy cannot work given the awesome destructive power of nuclear weapons, and despite admissions that defences may not in fact be impregnable. They counsel the avoidance of binding new agreements, and question the utility of key nuclear treaties, including the CTBT and the START process. The unilateralists also decry the lack of strong mechanisms to enforce global non-proliferation norms, such as effective international export controls and sanctions, and question the ability of existing measures to detect violations of international agreements.

I have dwelt upon these various contrasting perspectives on the global non-proliferation regime not to decry the regime, but to suggest that progress in reconciling some of the fundamental

differences between the unilateralists and multilateralists is essential if there is to be any basis for a renaissance of creative international efforts to sustain the regime and to eliminate the global nuclear threat.

Multilateralists can and do acknowledge that there is a place for unilateral action when it comes to progress on both disarmament and non-proliferation, a point made quite explicitly in the Final Document of the 2000 NPT Review Conference. Indeed, multilateralism has to begin somewhere -- and it often has emerged from unilateral actions, what some call leadership. The search for solutions to the global nuclear threat must not therefore be premised on the need for one school of thought to vanquish the other. No regime can be sustained based on the triumph of realism over idealism, interest over principle, or necessity over hope - all of these qualities must be embodied in the global nuclear regime.

The international agenda for nuclear non-proliferation and disarmament remains both long and challenging. It is clear that the effort to achieve the numerous goals on that agenda - particularly those relating to strengthening the rule of law in all these areas - will require persistence and strong political will. To a considerable extent, the sources of this political will may emerge from the "bottom-up" in domestic societies and from the "middle-out" in the community of states. We need, therefore, to pay close attention to the constituencies that support the global nuclear non-proliferation regime. We need to seek to broaden this foundation as much as possible, to eliminate all uncertainty that this regime is in fact serving both national interests and the interests of international peace and security as a whole.

The bottom-up approach stresses the important role of civil society in providing both the inspiration and the political support for national leadership to achieve responsible disarmament policies. A greater role is required from civil society because the people themselves are the ultimate beneficiaries of non-proliferation and disarmament policies. Such an approach is also needed because in most countries - particularly in the nuclear-weapon states - many domestic national leaders (in both the political systems and the bureaucracies) remain sceptical of the national security merits of multilateral cooperation on behalf of such policies. If positive change does not occur from the top-down - as it may yet - then it must come from elsewhere.

On the international level, a middle-out approach involving collaborative efforts among key states in diverse regions would also serve non-proliferation and disarmament goals. The "New Agenda" grouping has already demonstrated that it can work together to produce concrete progress, as was amply illustrated in the negotiations that led to the "thirteen steps" for global nuclear disarmament agreed at the 2000 NPT Review Conference. Additional support can - and indeed must - come from other states in all these regions. Again, if countries at the top of the pyramid of military power are either unwilling or unable to move forward with a global non-proliferation and disarmament agenda - and the jury is still out on this question -- leadership must come from elsewhere to pursue such goals. It is important to recognize that the poorest of countries also have enormous stakes in the success of this agenda, not just in terms of their potential access to some of the savings to be achieved through disarmament, but also from the

security, economic, and environmental benefits that disarmament offers them.

Whether pursued as a bottom-up, top-down, or middle-out strategy, all efforts on behalf of global nuclear disarmament and non-proliferation would benefit from the emergence of a new awareness among both unilateralists and multilateralists alike of the common ground on which they stand. Global nuclear non-proliferation and disarmament are collective public goods. People in all countries will share the benefits of achieving these goals.

To help in forging such a consensus, unilateralists must be convinced that the progressive international elimination of nuclear arsenals will in fact reduce external nuclear threats on a scale not possible by other means. They must be shown how the material savings from not having to spend trillions of additional dollars on nuclear weapons capabilities can flow into legitimate national security activities and for alternative non-military uses - an important consideration especially during an economic downturn. They must even be given credit for their recognition of the need for strong enforcement and verification measures, controls that are all the more likely to succeed when they are applied fairly and without discrimination internationally. It is far easier to verify a global ban on any production or possession of a given weapon system than to verify compliance with half-way measures.

For their part, multilateralists must pay closer attention to issues of national perception. In particular, they must work harder to ensure that the global rule of law does in fact translate into concrete national payoffs, in the form of enhanced security and material prosperity. They must recognize that global norms do not enforce themselves and that many improvements in enforcement measures are needed internationally, including in the areas of export controls, sanctions, and other compliance mechanisms.

A broadened alliance of shared interests and ideals would help substantially in advancing the full gamut of international efforts, quite beyond non-proliferation and disarmament. It would help in building and sustaining coalitions needed to shape national policies and legislation. It would help in educating the public, by clarifying how each person has an important stake in the success of efforts to improve the conditions of peace and prosperity at the global level.

The ultimate challenge to the global nuclear non-proliferation regime comes not from so-called rogue nations - despite the attention they typically get in various circles of government, the news media, and in academia. Instead, the ultimate challenge is to sustain and expand the foundation of political support for the goals for which it stands - namely, the elimination of nuclear weapons in the interest of international peace and security, and non-proliferation as a stepping-stone to that goal.

The more one considers the potential gains from meeting this challenge - and the tragic consequences of failing to meet it -- the more apparent it becomes how much international peace and security depends upon the future of the NPT -- the linchpin of the global nuclear non-proliferation regime, if not international peace and security itself. Full compliance with all the

provisions of the treaty is - as the late William Epstein would say -- our "Last Chance" for a safer world for everybody