

Disarmament and the UN: Australia's Agenda

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I would like to use this opportunity today to bring people up to date with the debate that is going on in the international arena about multilateral approaches to disarmament and arms control. Of course some of this you can read in the press, but some of it you will not pick up there either because it seems a bit esoteric or because it is so slow-moving that it is not particularly newsworthy. So, for example, the fact that the Conference on Disarmament, the sole disarmament negotiating body in the UN, has been unable to agree a work program for 8 years, and therefore has effectively been doing no negotiating over that time, does not hit the front pages of the world's newspapers.

Let me back up and recount a bit of history on our, i.e. the international community's collective approach to the threat of WMD. More or less from the sixties we were all aware of the threat that the potential proliferation of nuclear, biological and chemical weapon technology posed to the world. We opted to address this primarily by negotiating international conventions, multilateral treaties that outlawed the use, development or trade in such weapons. The Nuclear Non-Proliferation Treaty (NPT), adopted in 1968 was the first example of this approach and it has probably been the most successful. This notwithstanding its somewhat idiosyncratic and asymmetric nature. Let me explain.

- Unlike most multilateral treaties where there are reciprocal obligations on all parties, for pragmatic reasons, the NPT froze in time 2 categories of parties – Nuclear Weapons States (NWS), the 5 countries who at that time had nuclear weapons – and the rest, the Non Nuclear Weapons States (NNWS). The former were effectively allowed under the treaty to keep their weapons for the moment, - but were obliged to work towards nuclear disarmament in the long-term. The NNWS on the other hand, were forbidden from acquiring nuclear weapons, though in return could get access via the treaty's mechanisms, to nuclear technology for peaceful purposes.

The NPT was followed by the Biological Weapons Convention (BWC) a couple of years later and then, in the nineties, by the Chemical Weapons Convention (CWC). The theory underpinning this multilateral treaty-based approach was that, once a critical mass of states were party to the treaty concerned, the prohibition on the acquisition or use of such weapons would not only mean that those countries would be constrained from breaching their obligations for fear of being treated as a pariah by other nations, but that this prohibition would become part of customary international law. To strengthen the disincentive to developing weapons, and to provide mutual reassurance for all the parties that others were not cheating, the NPT (and later the CWC), made provision for verification measures, i.e. inspections of relevant facilities, sites and materials.

In the mid-eighties a different strategy to deal with the WMD proliferation concern grew out of the use by Saddam Hussein of chemical weapons against the Iraqi Kurds at Halabsha and elsewhere. At the time there was no CWC so a number of industrialized countries, led by Australia, came together to agree on cooperative measures to prevent dangerous chemicals and later biological agents from getting to countries suspected of having WMD ambitions. This involved agreeing lists of chemicals, biological agents and manufacturing equipment whose export to those countries should be controlled. The Australia Group as it was called, was denounced by some in the Third World as discriminatory and a departure from the universalist approach of the UN treaties. However the Group was in a sense a coalition of the willing seeking initially to harmonise their national activities to achieve a collective security goal and later, after the CWC came into force, was a way of harmonizing the implementation

of their international obligations. The Nuclear Suppliers Group and the Missile Technology Control Regime are examples of similar export control regimes.

Then we had the 1991 Gulf War and the discovery of the extent of the WMD programs, particularly in the nuclear field, that Saddam Hussein had run clandestinely, notwithstanding IAEA inspections. This led to a review of the nuclear inspection regime to tighten it so that such a program would not escape unnoticed in the future. In 1996 the IAEA, (the agency responsible for NPT-related verification inspections), adopted that revised regime and urged all states parties to the NPT to conclude an Additional Protocol to bring it into force for them.

Unfortunately to date less than half the parties to the NPT have concluded such a Protocol. On the other hand of those parties with significant nuclear activities, over three quarters have ratified or signed the Protocol – representing some 90% of nuclear facilities worldwide that are covered by comprehensive or full-scope safeguards pursuant to the NPT. This is a clear indication that the Protocol is now effectively established as the NPT safeguards standard.

In the mid-nineties the next step in buttressing the NPT – and addressing the problem of non-parties to the NPT developing a nuclear capability -via further multilateral treaty-making came with the conclusion of negotiations in the Conference on Disarmament of the CTBT. This was transferred at Australia's initiative from the CD to the General Assembly for adoption because the rule of consensus in the CD would have prevented its adoption in that body over the objection of one delegation. The CTBT has yet to come into force because a number of key countries including the US have not ratified, but in the meantime the US and China, the only other NWS not to have ratified, have maintained a moratorium on testing

A mandate was also agreed at the UN for the CD to begin the next negotiation to try to corral the development of nuclear weapons, notably a Fissile Material Cut-Off treaty (FMCT). This would prohibit the production of fissile material – essentially highly enriched uranium and plutonium - effectively setting a cap on the nuclear production of both the 5 NWS, and potentially the 3-4 nuclear non-parties to the NPT. Unfortunately this negotiation has not even started because, as I said earlier, the CD is blocked by its failure to agree a program of work, of which the FMCT would be a central element.

More recently we have had the challenges of the DPRK, expelling IAEA inspectors and announcing its withdrawal from the NPT; of Iran, discovered in the advanced stages of building an enrichment plant and other undeclared facilities that represent significant steps towards developing a nuclear weapons breakout capability; and of Libya admitting (but also renouncing), a nascent chemical and nuclear weapons program. The latter discovery has led to the unraveling of the A Q Khan commercial network that apparently spread nuclear technology materials critical to the development of nuclear weapons to a number of clients.

Moreover all of this has happened in the aftermath of 9/11 where we had brought home to us dramatically, that there are groups and individuals out there, implacably hostile to the current world order, with the organization, motive and ideology to use WMD in a terrorist attack should they ever come into possession of such weapons.

In the face of all this, you might think that we diplomats at the UN would be up to our elbows negotiating new instruments or amendments to old instruments, to plug the gaps in the regimes that are apparently opening up. Well some of us are – in New York the UN Security Council recently adopted resolution 1540 addressing the issue of the potential spread of WMD and materials to non-state actors. The resolution directs UN member states not only to refrain from assisting non-state actors from acquiring such material but to take appropriate legislative, customs control etc measures actively to prevent WMD material from falling into the hands of such people. The Permanent Representatives to the IAEA in Vienna are also working hard to ensure Iran complies with its safeguards obligations and addresses international concerns about its nuclear program.

But in Geneva, the centre of disarmament negotiations for the last quarter century or so, I am afraid the Conference on Disarmament remains stymied and the recent preparatory

conference for the 5-yearly NPT Review Conference to be held next May, was not able even to agree on an agenda for that conference.

For the sake of completeness I should mention the BWC, which has also passed through a difficult phase. For some years in the latter half of the nineties, states parties laboured to negotiate a verification protocol along the lines of that found in the CWC. However in 2001 these negotiations collapsed due to serious differences between states parties on whether traditional verification approaches, would be effective in detecting BW programs. In its place, however, we have been able to agree a 3 year program of experts meetings aimed at sharing best practice and experience in domestic implementation of the BWC, including legislating to criminalize behaviour contrary to the treaty, contingency measures to deal with a BW attack and codes of conduct for scientists working in the field. This work is useful but again does not address the problem of the rogue state intent of developing a BW capacity clandestinely.

So what is the problem? Have most governments become inured to the dangers that WMD proliferation represents and are therefore not giving priority to strengthening collective defences against it? Or is it that for some countries, the UN-based global norm approach reflected in these treaties, has run its course and is no longer up to dealing with the challenge?

In my view there is a little of both aspects to the problem. But there is also a deeper cause, notably conflicting ideological constructs of what the issue is and how to tackle it.

Essentially, the impasse in the CD, and for that matter the failure of the latest preparatory conference for the NPT Revcon, can be put down to the unresolved dilemma on nuclear disarmament – the asymmetric oddity at the centre of the NPT. Simply put, many NNWS see non-proliferation as a counter-balance to nuclear disarmament. They consider that it is time for the NWS to move resolutely to abandon their nuclear weapons in accordance with their obligations under Article VI of the NPT. In the absence of this, quite a few, particularly in the Non-Aligned Movement, will not agree to other measures to tighten the NPT regime. They will not countenance any restrictions on the right of access to nuclear technology for peaceful purposes spelled out in Article IV. Nor will they accept the stricter IAEA inspections regime envisaged in the Additional Protocol, (the illustrative example of Iraq in the eighties, notwithstanding).

For their part, the NWS say nuclear disarmament is still a long-term goal and they are working towards it bilaterally, (e.g. through implementation of the Moscow Treaty where Russia and the US have agreed to reduce their deployed nuclear warheads to between 1700 and 2200 by 2012). But in the meantime, they argue, it is essential to address non-proliferation compliance problems and the risk of clandestine nuclear weapons programs being pursued under cover of civil nuclear programs.

For a country like Australia, nuclear disarmament is a continuing priority and a genuine long-term objective. But to hold other measures aimed at dealing with a different and rather more imminent threat, notably the proliferation of dangerous technologies, hostage to movement by the NWS to disarm, just does not make security sense.

In the absence of a clear multilateral consensus on, or resolve to, tackling the proliferation problem through strengthening existing norms and verification procedures, some countries have decided to deal with the issue from another direction. Recognising that there is ample legal authority – domestic and international – for at least someone to intercept shipments of WMD transiting ports or airports, crossing international borders, passing through territorial seas and, in some instances on the high seas, this group of countries has agreed to cooperate to prevent the movement of such goods to the maximum extent possible. This is the so-called Proliferation Security Initiative, initially a group of 11 countries but now expanded to 60 odd that support the goals of the Initiative and will to some degree cooperate with others to advance them.

In covering other, non-UN treaty-based approaches to the problem, I should also should also mention the Global Partnership, an initiative of the G8 which the Australian Government

recently joined, to allocate some \$20 billion to assist in the dismantlement of former Soviet WMD stockpiles, (and related problems such as decaying nuclear submarines), along with the safe disposal of the material involved. This is a very positive development as it should reduce the chance of a stray nuclear warhead or nuclear or other hazardous substances, entering the black market and finding their way to a rogue state or a terrorist group.

One of the real weaknesses of the WMD conventions, (something often pointed out by those who distrust the multilateral treaty route to dealing with national security challenges), is that they leave open the issue of how states parties should react when one of their number is caught red-handed cheating on their core commitments. Under all 3 regimes, such a case can be reported to the UN Security Council but there is no direction to that body on what it should do in response to such a report. This is why we as an international community have such difficulty dealing with cases like the DPRK. Even with Iraq where arguably we had the best opportunity to put into place multilateral measures to deal with the issue following the 1991 Gulf War – notably UNSCOM and the IAEA – we ultimately failed to resolve the WMD challenge through the draconian measures included in Resolution 687.

So how can we proceed? Should we abandon the UN route and the treaties and try to deal with the challenge through the PSI, the export control regimes, the Global Partnership and perhaps enforcement action by ad hoc coalitions?

This is a view taken by some, but it is a radical one that not many would agree with. First of all it ignores the positives of the treaty system and secondly it does not take account of the mutually reinforcing aspect of the different approaches that provides an over-lapping armor - a sort of perimeter defence in depth.

I would argue that without question the NPT and the other treaties have delivered real security benefits to Australia and to many other countries. Outside of the Cold War context we have not been threatened by nuclear weapons and we have not had to invest in developing them ourselves. (You only need to look at the South Asian sub-continent, with India and Pakistan locked in a nuclear standoff, to appreciate that when neighboring countries develop nuclear weapons it diminishes not enhances the national security of both.) Equally we as a nation have not had to face the threat of biological weapons, though in the Gulf War and the recent Iraq war, our soldiers did have to take precautionary measures against the possibility of chemical weapons use, given the history of their development and use by Saddam Hussein.

The global norms established in the NPT, BWC and CWC provide the first line of defence against WMD by discouraging their development.

And we could strengthen this line of defence, particularly in the nuclear context by tightening the access to nuclear technology under Article IV of the NPT. We need to move to prevent countries from using Article IV to gain that technology, then withdrawing from the treaty when they are discovered or decide to make public their possession of nuclear weapons. And in the lead up to the NPT Review Conference in 6 months time, we need to convince a whole lot of countries that it is in their national security interest to agree to tightened control measures on nuclear technology, whatever may or may not happen on nuclear disarmament.

But as the clandestine programs in, e.g. Iraq and DPRK have proven, this first line of defence is far from impermeable. The simple truth is, rogue states and terrorists do not respect global norms.

Our second layer of defence is the group of export control regimes - more intrusive and more operationally-focused than the treaties, but necessarily less universal and therefore lacking the same level of international support. As with the treaties, we need to develop them further to improve their effectiveness and, at the same time, we should pursue strategies to build global support for them. This is tricky – if we do so by expanding the membership too much we can dilute rather than enhance their effectiveness. E.g. the NSG has now been allowed to grow so much it is not so easy to find a consensus on appropriate collective action. Probably a better approach is that pursued in the MTCR where its membership has been kept limited

but its objectives have been codified separately in the much more broadly accepted Hague Code of Conduct on Ballistic Missiles (HCOC). The PSI is heading in a similar direction with an initial core group of fewer than 20 states but indications of support for the objectives and of willingness to cooperate on a case-by-case basis, from over 60 countries.

Although by definition the export-control groups are not universal, therefore not UN-based regimes, in my view the UN could still play a role by encouraging passive support similar to the support for HCOC and PSI, through positive references in resolutions and the like.

The third layer of defence is collective punitive action. This is immensely difficult but it seems to me that if the treaties are to be effective, they need to have the threat of a real response, economic or military sanctions, if they are breached. The UN, even at the Security Council level, has not been good at agreeing on such action as we know. Arguably one of the strongest justifications for the UN Security Council to have passed the resolution authorizing the Iraq War was the fact that Saddam had repeatedly thumbed his nose at the global norms against WMD and needed to be brought to book, as much for the deterrent effect as to remove a persistent threat to international peace and security. It seems to me that the UNSC needs to reflect on the importance of signaling in advance its abhorrence of the development of WMD and its likely reaction to this. UNSC resolution 1540 was a good start, but we need much more if we are to construct a real deterrent through such resolutions.

In summary, the UN mechanisms are struggling to cope with the challenge of WMD proliferation but they could take valuable steps to strengthen the existing regimes, if doctrinal difficulties could be overcome. It is Australia's current agenda to work to see those steps to strengthen the regimes taken. At the same time, as our involvement in the PSI and our continued leadership of the Australia Group illustrates, we are also prepared to work with like-minded outside the UN to develop innovative ways of addressing the challenges, including those posed by terrorism.