

Reinforcing the NPT

The Prime Minister has reaffirmed Australia's commitment to realizing a world free from nuclear weapons. Arguments are presented here that this aim cannot be achieved until the framework of international law and international governance has been substantially strengthened. A more productive aim at the present time would be to fortify the Non-Proliferation Treaty with a 'no first use' declaration by the nuclear-weapon states, so that the non-nuclear-weapon states can rest secure in the knowledge that nuclear weapons will not actually be used again, pending the day when they can safely be discarded entirely.

Recent events have focused attention once again on the Non-Proliferation Treaty (NPT), the centrepiece of the nuclear arms control regime. First was the declaration in Kyoto by the Prime Minister, Kevin Rudd, that under its new government Australia "is fully committed to realizing a world free from nuclear weapons." He announced the formation of a new International Commission on Nuclear Non-Proliferation and Disarmament, to be co-chaired by the former Australian foreign minister Gareth Evans and the former Japanese foreign minister Hiroko Kawaguchi (Rudd 2008). The Commission would be a successor to the Canberra Commission on the Elimination of Nuclear Weapons, and the Tokyo Forum for Nuclear Non-Proliferation and Disarmament, which were set up in the 1990s. Its purpose would be to develop a possible plan of action for the future, and pave the way for the NPT Review Conference in 2010. Preparatory Commission meetings for the Review Conference have already been held. Secondly, an influential article in the Wall Street Journal by the prestigious group of George Shultz, William Perry, Henry Kissinger and Sam Nunn attracted a great deal of attention in 2007, reasserting the vision of a world free of nuclear weapons. They called for a major new effort in concrete stages, such as taking deployed nuclear weapons off high-alert, the elimination of all short-range nuclear weapons, ratification of the Comprehensive Test-Ban Treaty, and halting production of fissile material for weapons (Shultz 2007).

The NPT has been under a great deal of strain in recent years. Two new nuclear-armed states have emerged, Pakistan in 1998 and North Korea in 2006, and there is strong suspicion that Iran is also working towards the acquisition of nuclear weapons. The pre-emptive strike by Israel in September 2007 on a facility in northern Syria indicates that Syria may also have been harbouring nuclear ambitions. The examples of North Korea and Iran are particularly dangerous, in that both countries had previously ratified the NPT as non-nuclear-weapon states (NNWS). North Korea formally withdrew from the Treaty altogether in 2003, and Iran has refused the inspection regime of the IAEA regarding some of its facilities. If these countries were freely allowed to flout the treaty, it could lead to a breakdown of the entire arms control regime. For that reason, the US and others have been putting extraordinarily heavy diplomatic pressure on North Korea and Iran to give up their nuclear weapon programs. It appears that this pressure may have succeeded in the case of North Korea, which has agreed to disable its nuclear weapon facilities, in return for energy assistance and other substantial benefits – but it still remains to be seen whether they will live up to their agreements. At the time of writing, they have resumed

work at the Yongbyon nuclear facility, in protest at not being immediately removed from the US list of terrorism sponsors. In the case of Iran, the situation is still unclear. There have been rumours that either Israel or the US might consider a pre-emptive strike on the Iranian nuclear facilities at Natanz and elsewhere, which could have disastrous consequences, and ignite a third front in the so-called 'war on terror'. This would surely be to no-one's advantage. The Europeans have been busily trying to calm the situation, and settle the issue by negotiation.

Another major issue has been that the nuclear-weapon states (NWS) have made a bargain that they cannot fulfill in the NPT. In return for the pledge by the NNWS that they would not seek to acquire nuclear weapons, the nuclear weapon states pledged in Article VI of the Treaty that they would "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." Since that time, the Cold War has ended, and the US and Russia have been 'building down' their arsenals under the INF, START and SORT Treaties towards a 'minimal deterrent' level of some 1700-2200 warheads each. There is no prospect at the present time, however, that they will achieve complete nuclear disarmament as the treaty requires, let alone "general and complete disarmament". This last was in fact little more than a popular catchphrase used by Nikita Khrushchev in the 1960s.

The nuclear weapon states find themselves caught in a classic security dilemma, in fact. In each case, if the government were to give up its nuclear weapons entirely, it would be seen as gambling the security of the nation, which is its core responsibility, upon the good faith of its rivals and/or enemies among the other great powers. From a realistic standpoint, they simply cannot do it: they will feel obliged to maintain at least a minimal deterrent against the possibility of some sort of threat or nuclear blackmail from outside. Thus none of the established nuclear states have given any sign of foregoing their independent deterrents. At the beginning of 2008, there were still some 10,200 operational nuclear weapons in existence. All five NWS were deploying new nuclear weapons, or had announced their intentions to do so in 2007 (SIPRI 2008). Britain has been debating whether to spend £15 billion on updating their Trident missile forces, while France and China have actually been expanding their nuclear arsenals. The US and Russia have until recently been building down their enormous arsenals left over from the Cold War, but now Russia has begun rattling its nuclear sabre once more against US plans to establish National Missile Defense sites in Poland and the Czech Republic; while the US administration has been trying to get approval for a new generation of 'Reliable Replacement Warheads'. US military planners still emphasize the need to be able to 'fight' and 'win' a nuclear war, and pre-empt or respond to the use of chemical or biological weapons. According to the 2001 Nuclear Posture Review, the US must "aim to maintain a credible deterrent in a future of uncertain and evolving threats", and the National Nuclear Security Administration has drawn up plans for maintaining the deterrent through the year 2030 (NNSA 2008).

India has charged, with reason, that the NWS have given no timetable for nuclear disarmament, and have therefore not fulfilled their side of the bargain in the NPT. In foregoing the possibility of themselves acquiring nuclear weapons, the NNWS were entitled to expect that the threat to them represented by the nuclear weapons of the NWS should over time be removed entirely: but this has not happened. This dilemma was at the root of the failure of the 2005 NPT Review Conference, where the participants could not even agree on a final communiqué (Hanson 2005). Michael Wesley has even suggested that the NPT should be scrapped, and replaced with a more realistic regime (Wesley 2005).

Disarmament of any sort, whether nuclear or conventional, is not a process that can be undertaken in isolation. It can only take place as a consequence of, or in tandem with other processes, leading to an improvement in the security environment. The nuclear weapon states will only be able to give up their nuclear weapons, the ultimate deterrent, when they feel it is safe to do so – or in other words, when it can be guaranteed that international disputes can be settled without recourse to (nuclear) weapons. But this is, unfortunately, an enormous requirement. Ultimately, after all forms of conciliation and mediation have been tried, the peaceful settlement of international disputes can only be guaranteed under some form of arbitration, based upon an effective system of binding international law. The laws themselves would have to be laid down by some more effective system of international governance, or global parliament. This is an elementary principle, which was bluntly summarized in the early days of the nuclear age by Albert Einstein: *“In my opinion, the only salvation for civilization and the human race lies in the creation of a world government, with security of nations founded upon law”* (Nathan 1968). The general principle had been recognized much earlier, by all the major liberal philosophers from Jean-Jacques Rousseau through to Bertrand Russell, and was nicely stated in an essay by William Penn in 1692: *“Peace is maintained by Justice, which is a Fruit of Government, as Government is from Society, and Society from Consent”* (Penn 1692).

Thus complete nuclear disarmament is unlikely to be achieved until we have a more effective system of international law and international governance in place, a process which is likely to take many decades (although there are other urgent global problems, such as climate change, which also demand better global governance, and may accelerate the process). What we need, therefore, is to reinforce the non-proliferation regime in the meantime, by striking a new bargain between the NWS and the NNWS, which all parties can live with more or less comfortably until the conditions are eventually fulfilled whereby nuclear weapons can be eliminated entirely.

What should be the terms of such a bargain? The NNWS should pledge not to acquire or seek to acquire nuclear weapons, as at present; but in return, they are entitled to demand that the NWS should pledge not to use, or threaten to use, such weapons against them. Any remaining nuclear arms should be maintained purely as a deterrent.

Thus the terms of a supplementary ‘NPT II’ Treaty should include the following. In the preamble, it should be recognized that:

First, “A nuclear war cannot be won, and must never be fought.” Nuclear weapons pose an unacceptable threat to mankind and the environment, and must never again be used in warfare. Consequently, the only acceptable function of nuclear weapons is to act as a deterrent against their use by others;

Second, we look forward to a future time when it will be possible to eliminate nuclear weapons entirely, once the framework of international law and international governance has been strengthened sufficiently to guarantee each nation’s security without such weapons.

Then under the terms of the treaty itself,

- The NNWS should promise not to acquire, or seek to acquire nuclear weapons, as under Article II in the present NPT;
- Furthermore, the NNWS promise to abide by appropriate safeguards under the regulation of the IAEA so as to account for all materials capable of fuelling a nuclear explosion, as under Article III of the present NPT.

In return, the NWS should promise:

- First, to maintain only sufficient nuclear arms to provide a ‘minimal deterrent’ against attack by others;
- Second, never to use, or threaten to use, nuclear weapons against another state party to the Treaty, unless they themselves are threatened with nuclear attack (‘no first use’).
- Finally, all states pledge to work together to build a more effective system of international law and international governance, such that at some future time nuclear weapons can be eliminated entirely.

All parties should be able to live more or less comfortably with such a bargain, secure in the knowledge that any remaining nuclear weapons will never again be used in warfare (barring a total breakdown in the international system), and are only maintained as a deterrent, until the global security environment has improved sufficiently to allow them to be discarded for ever. A feasible route, albeit long term, towards the complete elimination of nuclear weapons would also be foreshadowed. The ‘new’ NWS such as Israel, India and Pakistan should also be willing to accept such a framework; and the motivation for other states such as Iran to pursue nuclear weapons would be greatly reduced, if they no longer perceive themselves as under a nuclear threat.

A ‘no first use’ agreement will be difficult enough to achieve. Such an agreement would place considerable new constraints upon the nuclear powers. It would mean that their remaining nuclear arsenals would be retained purely as a sort of insurance policy, that hopefully would never be called on. The Western powers, who have traditionally relied on nuclear weapons to deter a conventional attack from the mass armies of the Soviet Union or other potential enemies, will find it particularly hard to accept such an agreement. It would forbid the US from building nuclear ‘bunker-busters’ or any other nuclear weapon that might be used in a conventional conflict, and it would demolish the idea of engaging in a ‘limited nuclear war’ to repel a conventional attack. The Israelis will find it even more difficult, having an even more pressing need for their nuclear deterrent against possible annihilation by their Arab neighbours. These are formidable

obstacles to an agreement, but the NNWS are clearly entitled to demand these sacrifices of some hypothetical extra security from the NWS, in exchange for improved common security for everybody.

A very useful review of the 'no first use' debate has been given by Feiveson and Hogendoorn (2003). They note that at the NPT Review Conferences of 1995 and 2000, many of the NNWS did in fact argue strongly for legally binding security assurances from the NWS against the use of nuclear weapons (du Preez 2000, Hanson 2005). The Final Document of the 2000 Conference stated that

“The Conference agrees that legally binding security assurances by the five nuclear-weapon states to the non-nuclear-weapon states to the Treaty [would] strengthen the nuclear non-proliferation regime. The Conference calls upon the Preparatory Committee to make recommendations to the 2005 Review Conference on this issue” (NPT 2000).

The same point was again made at the 2003 PrepCom meeting (du Preez 2003a)

Feiveson and Hogendoorn (2003) argue the case for the US to issue a 'no first use' declaration. They point out that the actual use of nuclear weapons by the US would have calamitous consequences. It would destroy the taboo against the use of nuclear weapons which has existed since World War II, shatter the NPT, and dramatically increase the incentives for NNWS to develop their own nuclear deterrent capability. Conversely, a 'no first use' declaration would strengthen the nuclear taboo, reinforce the NPT, and remove the incentive for NNWS to build their own deterrents.

Of the current nuclear powers, only China, India and North Korea have pledged no first use. China has made an outright declaration:

“China undertakes not to be the first to use nuclear weapons at any time or under any circumstances. China undertakes not to use or threaten to use nuclear weapons against any non-nuclear-weapons states or nuclear-weapon-free zones at any time or under any circumstances.” (China 1995)

The US position was outlined by State Department spokesman Richard Boucher in 2002 (USDS 2002):

“The United States reaffirms that it will not use nuclear weapons against non-nuclear-weapons States parties to the Treaty on Non-Proliferation of Nuclear Weapons except in the case of an invasion or any other attack on the United States, its territories, its armed forces or any other troops, its allies or States towards which it has a security commitment, carried out or sustained by such a non-nuclear-weapon State, in association or alliance with a nuclear-weapon State.”

Britain, France and Russia have adopted an almost identical form of words. The US, France and the UK have also signed protocols not to use nuclear weapons against parties

to nuclear-weapon-free zones in Latin America, the South Pacific and Africa, although these have not been ratified by the US Senate.

Even these limited or hedged declarations can be called into question, however. The US Administration has been actively pursuing research and development of nuclear ‘bunker buster’ bombs for possible use against covert nuclear facilities such as those in Iran, although the US Congress has recently cut off funding for the program. In 1998, when German Foreign Minister Joschka Fisher proposed that NATO reconsider its Cold War policy of first use of nuclear weapons against a conventional attack on Europe, he was soundly defeated (Boese 1998). A draft US Doctrine for Joint Nuclear Operations prepared by the Department of Defense in 2005 stated that field commanders can ask permission to use nuclear weapons “to stop potentially overwhelming conventional enemy forces”; “to rapidly end a war on favourable US terms”; and even “to make sure US and international operations are successful”, which would amount to open slather (DJNO 2005). This document was not officially endorsed by the administration, but throws an interesting searchlight on US military thinking.

Critics of a no-first-use policy argue that a first-use threat is needed to deter the use of other weapons of mass destruction, such as chemical or biological weapons; that low-yield nuclear weapons such as ‘bunker busters’ might be needed to pre-empt nuclear weapon development by NNWS; or that nuclear weapons might be needed to defeat an overwhelming conventional attack. They also contend that a no-first-use declaration is unverifiable. Feiveson and Hogendoorn (2003) consider and refute each of these arguments in turn, and conclude that “Nuclear weapons may legally and morally be used under such a narrow range of circumstances that contemplating their use is not just pointless, but counterproductive.” Michael Wesley (2005) reaches a similar conclusion: “Most basically, nuclear weapon states must recognize that nuclear weapons have no offensive value, that their threat is too disproportionate to represent a credible aggressive threat, and that the cost of any use of nuclear weapons would far outweigh any benefits.”

Nevertheless, we should consider the question from the viewpoint of a state such as Israel, which must be brought inside the tent if the arms control regime is to be stabilized. Israel is known to have developed nuclear weapons, but has never publicly admitted it, and has consequently never declared a position on ‘no first use’. Israel has been under constant threat of annihilation from its Arab neighbours throughout its whole existence, a threat which could conceivably become realistic at some time in the future. The Israelis clearly built their nuclear arsenal as a weapon of last resort against this threat; and one can predict that they will never give up the right to use nuclear weapons if the very existence of their state is endangered, even if the threat of such use might be an empty one. That is the essential nature of their deterrent. To accommodate such a position, it might be necessary to agree on a slightly modified, or hedged, ‘no first use’ declaration, along the lines of “each NWS pledges not to be the first to use or threaten to use nuclear weapons against any State party to the Treaty, unless the core integrity of that NWS or its allies is endangered.” Of course, the phrase “core integrity”, or whatever equivalent is used, is somewhat vague in meaning, but such a form of words would more accurately reflect the real position of the NWS, while it should still be sufficient to satisfy the

NNWS. After all, there is no likely threat to the 'core integrity' of any of the NWS at present, apart from Israel, and if that pledge were adhered to, we should be able to avoid the actual use of nuclear weapons for the foreseeable future. If Israel should finally be able to reach an accommodation with its neighbours and with the Palestinians, we may hope that even the last threat will be removed.

In summary, then, we have argued that the complete elimination of nuclear weapons is most unlikely to be achieved until a more powerful and effective system of international law and international governance has been put in place. Rather than looking for outright abolition, it would be a more useful and productive enterprise for the Australian government and the new International Commission to work towards fortifying the NPT regime with a 'no first use' agreement, hedged if necessary. This would allow both nuclear weapon-states and non-nuclear-weapon states to live with the nuclear deterrent, secure in the knowledge that nuclear weapons will not actually be used again unless there is a catastrophic breakdown in the international system. We can then look forward with confidence to the future day when the international regime of common security is strong enough to finally allow the complete abolition of these weapons.

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