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# Special Section

## The Prague Agenda

Edited by **MICHAL SMETANA** and **BENJAMIN TALLIS**

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## THE PRAGUE AGENDA: AN OBITUARY?

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In October 2009, the Norwegian Nobel Committee awarded the annual Nobel Peace Prize to Barack Obama, highlighting, in particular, his “vision of and work for a world without nuclear weapons” (Nobel Media, 2009). This controversial decision surprised many at the time; after all, the prize was obviously awarded for a *promise* to make the world a better place rather than for an actual achievement in this area. Six years later, the ex-secretary of the Nobel Committee Geir Lundestad expressed his qualms over the award and noted with regret that it did not accomplish what the committee had hoped for (BBC News, 2015). Fittingly, when the television host Stephen Colbert asked Obama what the award was for, Obama jokingly replied: “To be honest, I still don’t know” (NBC News, 2016).

This special section of *New Perspectives* is primarily meant to be an academic reflection of the ‘Prague Agenda’, a term widely used for the Obama administration’s aims in the field of nuclear disarmament, arms control, and non-proliferation. From a Central European perspective, however, the term ‘Prague Agenda’ also represents a series of international conferences annually held in Prague between 2011 and 2016. For half a decade, the Prague Agenda conferences were a place for scholars, experts, and policy-makers to take stock of the relevant developments following Obama’s famous 2009 speech at Hradčany Square. The authors featured in this special section jointly participated in the last edition of this conference in December 2016 and agreed to further expand their presentations into short academic articles that would examine the Prague Agenda and issues related to weapons of mass destruction (WMD) from various angles and perspectives.

In this introductory piece, I proceed as follows. First, I provide a brief critical reflection of Obama’s achievements vis-à-vis the goals listed in his Prague speech. Second, I look back at the series of Prague Agenda conferences and discuss their relevance in the context of Czech public diplomacy. Third, I offer some thoughts on the future of nuclear arms control and disarmament under the new U.S. administration.

### OBAMA’S NUCLEAR FOOTPRINT

Obama’s 2009 Prague speech envisioning a world without nuclear weapons cannot be completely divorced from the broader context of the time. It came shortly after the ‘gang of four’ – George Shultz, William Perry, Henry Kissinger, and Sam Nunn – launched their famous series of *Wall Street Journal* op-eds suggesting that the idea of nuclear abolition in the 21<sup>st</sup> century could be embraced in all seriousness by pragmatic Cold War veterans that share a fairly ‘realist’ view of world affairs

(Shultz et al., 2007). However, Obama's appearance also followed the crisis of multilateral diplomacy that started under the George W. Bush administration and, among other things, led to the failed Nuclear Non-Proliferation Treaty (NPT) Review Conference in 2005 (cf. Müller, 2005; Simpson and Nielsen, 2005; Potter, 2005). Arguably, one of the key objectives of the newly formulated Prague Agenda was to reinvigorate the multilateral cooperation in the field of non-proliferation and nuclear security by demonstrating the renewed U.S. determination to take the NPT disarmament pledge seriously (cf. Müller, 2005; Simpson and Nielsen, 2005; Potter, 2005).

Obama's approach to nuclear issues indeed helped to build a provisional consensus at the 2010 NPT Review Conference and thereby provided a momentum for the renewed cooperation among state parties to the Treaty (Müller, 2010; Johnson 2010; Dhanapala 2010). However, the concrete steps in U.S. nuclear policy eventually turned out to be less than adequate for the new disarmament movement taking place among non-governmental organizations and a number of like-minded non-nuclear weapon states. The so-called Humanitarian Initiative provided a significantly more immediate vision of nuclear abolition, fiercely criticized the U.S. administration for its reluctance to "fill the legal gap" in NPT Article VI, and eventually adopted the Treaty on the Prohibition of Nuclear Weapons – obviously without the U.S.'s (or any other nuclear-armed state's, for that matter) participation.<sup>1</sup>

At best, Obama's nuclear legacy is today perceived with mixed feelings among both proponents and critics of nuclear arms control and disarmament (a sentiment that is shared also in several articles in this special issue). Whereas Obama did return to Prague a year later to sign a new strategic arms control treaty with the Russian president Dmitry Medvedev,<sup>2</sup> his promise from Berlin to seek another one-third reduction in the deployed nuclear arsenals of the two countries never materialized (see Pifer, 2015; Smetana and Ditych, 2015). In spite of plans "to put an end to Cold War thinking [and] reduce the role of nuclear weapons in [the U.S.] national security strategy" (Obama, 2009), the 2010 Nuclear Posture Review report exhibited more patterns of continuity than real changes in U.S. nuclear policy. The 2015 NPT Review Conference once again revealed the depth of discord between the nuclear 'haves' and 'have-nots', and eventually failed to adopt a final document (see Pifer, 2015; Smetana & Ditych, 2015). When it became obvious that Obama would not be able to secure the Comprehensive Test-Ban Treaty (CTBT) ratification in the U.S. Senate,<sup>3</sup> he reportedly considered adopting a no-first-use policy in the last year of his presidency; however, the backlash from overseas allies as well as his own aides prevented him from doing so. Despite several impressive achievements – such as the agreement with Iran on the Joint Comprehensive Plan of Action, for example – the supporters of lower salience of nu-

clear weapons in international politics will likely remember Obama's presidency as one of missed opportunity rather than a jump towards the noble goals outlined in Prague.

### **THE CZECH TAKE ON THE PRAGUE AGENDA**

Although the Czech Republic has hardly been a particularly visible actor in the field of arms control, disarmament, and non-proliferation, Obama's 2009 speech and the 2010 New START signature brought Prague into the limelight of debates over the future of nuclear policy. To take advantage of this – rather unexpected – opportunity for Czech diplomacy, the Czech Ministry of Foreign Affairs hosted a series of annual Prague Agenda conferences between 2011 and 2016, organized in conjunction with the Institute of International Relations, Charles University, and Metropolitan University Prague. Over the years, the Prague Agenda gradually expanded in both size and focus, eventually turning into a two- to three-day event full of panel discussions, expert workshops, roundtables, and side events dealing with various aspects of WMD-related issues.

For some diplomats at the Czech Ministry of Foreign Affairs, the Prague Agenda was primarily seen as a tool for maintaining the transatlantic link after Obama's administration cancelled Bush's plan for building a third U.S. ballistic missile defense site in the Czech Republic and Poland (a decision that infuriated many Czech diplomats and politicians at the time). For others, the Prague Agenda was simply a clever tool of public diplomacy that was worth keeping alive on an annual basis. The fact is that over the years, the conference managed to attract some of 'the best and the brightest' scholars, experts, and decision-makers in the field, making the Prague Agenda a unique event in the Czech context.

Occasionally, the Prague Agenda served not only as a venue for free (and often heated) discussions, but also as a place for new policy announcements. In 2014, for example, Rose Gottemoeller, the then-U.S. Under-Secretary for Arms Control and International Security, used her presence at the conference to announce a new multilateral initiative: the International Partnership for Nuclear Disarmament Verification (IPNDV), which would engage nuclear and non-nuclear countries as well as NGOs and the private sector in the process of looking for solutions to the problem of nuclear disarmament verification.<sup>4</sup> Furthermore, scholars participating in the Prague Agenda conferences also worked on a joint project dealing with the issues connected with a hypothetical post-nuclear world, whose findings were eventually published by Routledge in the form of an edited book (Hynek and Smetana, 2015a).

The 2016 edition of the Prague Agenda was the final one, symbolically ending with a letter from Obama himself (which was delivered to the conference by Jessica Cox, the Director for Arms Control on the U.S. National Security Council).

The official reasoning of the Czech Ministry of Foreign Affairs was simple: with Obama leaving office, it was time to say farewell to the U.S. fixation on nuclear disarmament and instead focus on the problem of international security more broadly (hence the Prague Insecurity Conference organized by the Ministry together with the Institute of International Relations in 2017). At the same time, it was evident among Czech diplomatic corps that there was a clear aversion towards giving any further support to the nuclear disarmament idea beyond the general proclamation of a long-term nuclear disarmament goal (that would be understood on a similar level as achieving world peace). If Obama's disarmament agenda was seen as a failed policy, the Humanitarian Initiative was perceived by many as outright dangerous and counter-productive, as it was seen as deepening the divisions in the NPT and calling for unrealistic policies that do not make any sense in the current international security environment. Towards the end of Obama's presidency, the notion of nuclear disarmament had thus become largely discredited in the Central European context.

### **AN OBITUARY?**

At the time of writing this article, the new U.S. administration of Donald J. Trump is still in the process of formulating its own Nuclear Posture Review, which should be published in early 2018.<sup>5</sup> However, the preliminary reports already suggest Trump's clear departure from some of Obama's pro-disarmament policies, possibly including the development of a new low-yield warhead for U.S. ballistic missiles, the return of the nuclear version of Tomahawk sea-launched cruise missiles, an increased readiness for the resumption of nuclear testing, and a partial reversal of the U.S. declaratory policy (The Guardian, 2017). Together with the possible collapse of the Iran deal, the new Nuclear Posture Review could mark the symbolic end of Obama's Prague Agenda.

However, there is a case to be made for why completely ending Obama's Prague Agenda would be a mistake. His Prague speech was far from being an idealist embracement of nuclear disarmament. Beyond the long-term goal of nuclear abolition ("not in my lifetime"), Obama's Prague Agenda was comprised of a number of short- to medium-term steps in the area of nuclear arms control, nuclear security, and nuclear non-proliferation that are worth following up on, even by those who do not share Obama's genuine conviction about the desirability of a nuclear weapon-free world. As I argued elsewhere (Hynek and Smetana, 2015b), the logic of nuclear arms control makes sense *particularly* at times of heightened crises and complicated security environments – these should not be seen as mere obstacles, but instead as unique political opportunities that may allow for some new bold proposals that would, in effect, enhance mutual security. In this sense, on the Czech side, we could perhaps also seriously reconsider whether the Prague

Agenda brand, to which we managed to modestly contribute in this decade, is not something worth following up on.

## ENDNOTES

<sup>1</sup> On the Humanitarian Initiative, see, for example, Borrie (2014), Sauer and Pretorius (2014), Ware (2015), Smetana (2016), or Bolton and Minor (2016). For some early reflections on the nuclear ban treaty, see Fihn (2017), Williams (2017), Sagan and Valentino (2017), Sauer (2017), or Onderco (2018).

<sup>2</sup> The New START established new limits for the strategic nuclear arsenals of the two countries as well as a number of verification mechanisms to monitor compliance with the treaty terms. It was meant as a follow up to the expired 1994 START I treaty and a significantly more comprehensive replacement for the 2002 SORT treaty.

<sup>3</sup> While the United States was among the first CTBT signatories in 1996, the U.S. Senate failed to ratify the treaty in 1999 due to the Republican opposition to it. Since then, the CTBT belongs among the key issues in U.S. nuclear policy on which the Democrats and the Republicans fiercely disagree. See for, example, Perry et al. (2010: 81-87).

<sup>4</sup> See NTI (n.d.).

<sup>5</sup> For two excellent academic appraisals of Trump's approach to nuclear issues, see Michaels and Williams (2017) and Knopf (2017).

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## **EVALUATING THE PRAGUE AGENDA: AN AMERICAN PERSPECTIVE<sup>1</sup>**

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In April 2009, U.S. President Barack Obama delivered a speech in Prague, the Czech Republic calling on the international community to take “concrete steps toward a world without nuclear weapons.” While the foremost goal of the so-called Prague Agenda is to eliminate nuclear weapons worldwide, President Obama cautioned that this objective would not be achieved quickly and perhaps not even in his lifetime. Therefore, he urged the more immediate objective of reducing reliance on nuclear weapons by taking a number of intermediate steps: securing loose nuclear material, safeguarding existing nuclear facilities, preventing countries that so far did not have nuclear weapons from developing or acquiring them, and reducing the sizes of nuclear arsenals in the existing nuclear powers.

In retrospect, we see that the record of accomplishment of Obama’s Prague Agenda is decidedly mixed. Important progress was made on nuclear materials security, although not as much as the Prague Agenda’s architects had initially hoped. But broader geopolitical efforts aimed at preventing a new nuclear proliferation and arms control cooperation among the great powers are already coming under strain because of the underlying political realities. Moving forward, therefore, the heirs of the Prague Agenda must continue to press ahead on the important work of nuclear materials security, but success on the larger issues of nonproliferation and arms control may require a new strategic approach.

**GOOD NEWS: POSITIVE OUTCOMES OF THE PRAGUE AGENDA**

This essay will begin with the good news. The most significant result of President Obama's speech in Prague was the emergence of the Nuclear Security Summit process. Following the terror attacks of 9/11, security experts became concerned with the prospect of nuclear terrorism. What if Bin Laden had had nuclear weapons? Deterring a nuclear-armed terrorist group from employing nuclear weapons, or even a 'dirty bomb', would be extremely difficult and, therefore, the best means of preventing a nuclear terror attack is almost certainly to stop terror groups from acquiring nuclear weapons or radioactive nuclear materials in the first place. Unfortunately, in the wake of 9/11, many countries possessed unsecured nuclear material in military or civilian nuclear programs and the security summit process was designed to build international support for putting this material on lockdown.

The first Nuclear Security Summit was held in Washington, DC in 2010 when President Obama called for heads of state to convene to discuss international nuclear security. At this and subsequent meetings, leaders from 47 countries and 3 international organizations convened to make commitments to improve security protocols, secure loose nuclear material, and enhance nuclear safeguards to better protect them from theft. At the first Nuclear Security Summit, Ukraine agreed to hand over 90 kg of highly enriched uranium (HEU) to Russia and to replace it with low-enriched uranium (LEU) to fuel its research reactors. Unlike HEU, LEU cannot be used to fuel nuclear weapons. Additionally, the 2010 Summit resulted in the creation of the Washington Work Plan, which calls on participating states to cooperate with international organizations, industries, and other governments in order to share information and coordinate the implementation of the Convention's security measures to reduce the threat of terrorism.

At the Second Summit, hosted by Seoul in 2012, leaders pledged to take action to better safeguard radioactive material and protect it from theft. For example, Russia agreed to move many of its nuclear warheads to more secure storage sites, and other states pledged to improve the protection of nuclear material while it is being transported, taking measures such as hardening road and rail vehicles used to transport the material. Additionally, twelve countries signed the HEU-Free Joint Statement, in which they committed to minimizing and working towards eventually eliminating HEU in their nuclear reactors, while switching to LEU instead to reduce the likelihood of nuclear proliferation. The 2012 Summit also established Centers of Excellence, which host nuclear professionals so that they can receive training in various aspects of nuclear security. Over 15 countries, including China and Japan, have since created their own Centers of Excellence, and multilateral cooperation and coordination amongst the different centers and nations is encouraged.

In 2014, the Nuclear Security Summit in The Hague witnessed 35 countries bringing a so-called 'gift basket' in the form of a multilateral commitment on "Strength-

ening Nuclear Security Implementation.” The gifts included promises to strengthen indigenous safeguards and improve nuclear security, and set minimum domestic standards, following IAEA guidelines, to be adopted by countries party to the agreement (Pomper, 2016). Japan agreed to give up 500 kg of weapons-grade material (both plutonium and HEU) to the United States, an impressive measure and the largest pledged removal in the history of the nuclear security summit process.

Finally, the 2016 summit concluded with the Convention on the Physical Protection of Nuclear Material entering into force, which requires countries to meet standards of protection when shipping nuclear material for peaceful purposes and creates a system for international cooperation on the recovery and protection of stolen nuclear material. Additionally, China, India, and Jordan committed to implementing the IAEA nuclear security guidance, which entails both performing self-assessments and seeking peer reviews to ensure that the given country’s nuclear security regime is up to par.

Some critics have questioned whether the pomp and circumstance of the head of state summits was truly necessary, but there is no doubt that the summit process has improved nuclear security. At a minimum, the summits forced governments around the world to seriously consider issues of nuclear security and develop national plans for addressing the problem. In addition, there is less unsecured nuclear material in the world today than in 2010, making it more difficult for terrorists to acquire nuclear weapons.

Broader geopolitical efforts aimed at arms control and nuclear nonproliferation, however, have been less successful. In April 2010, twelve months after delivering his speech in Prague, President Obama signed a comprehensive arms control agreement with Russia. The New START Treaty limits the number of deployed strategic nuclear warheads and bombs to 1,550, a nearly 30% reduction from the previous limit set by the Strategic Offensive Reductions Treaty (SORT). Additionally, New START limits the number of deployed Intercontinental Ballistic Missiles (ICBMs) and Submarine Launched Ballistic Missiles (SLBMs) to 700. The treaty was a significant achievement because it brought together the world’s two largest nuclear powers and extended the verification measures between the two states that allow for greater transparency.

### **BUT...**

On the other hand, New START has not prevented a resurgent Russia from relying more, not less, on nuclear weapons. Since 2014, Russia has invaded Ukraine and intervened in Syria, raising the specter of a new Cold War with the West. But what is more pertinent to the present discussion is that Russia has made nuclear weapons a centerpiece of this new, more aggressive national security policy. It has brandished nuclear weapons against NATO and it has tested a new intermediate-range ground-

launched cruise missile in violation of the Intermediate Range Nuclear Forces Treaty (Schneider, 2016).

Moreover, the logic of the theory animating the arms control portion of the Prague Agenda has been called into question by the empirical evidence (Kroenig, 2016). The hope articulated by supporters of the Prague Agenda was that arms reductions between the United States and Russia would facilitate multilateral arms control negotiations that would eventually bring in China and other nuclear powers to gradually ratchet down nuclear arsenals on a path to global zero. But instead, as Moscow and Washington negotiated reductions, other countries went in the opposite direction. China, India, Pakistan, and North Korea have all expanded and modernized their nuclear arsenals since 2010.

Efforts to prevent other countries from building nuclear weapons have also been only partially successful. In October 2015, President Obama and the P5+1 countries signed the Joint Comprehensive Plan of Action (JCPOA), better known as the Iran Deal, which lifted the sanctions against Iran in exchange for Tehran placing hard ceilings on all aspects of its nuclear program. Though the deal was widely heralded as a success, it includes a 'sunset clause' lifting the limits on Iran's program over time. Among the most important limits, the limit on the deployment of advanced centrifuges will be repealed after year eight, or less than six years from today. This means that the deal at best delays, but will not alone prevent, Iran's nuclear acquisition.

Moreover, the deal never received widespread political support in the United States, the most important state in the negotiations. Bipartisan majorities of the American public and in the U.S. Congress opposed the deal, making it vulnerable to changing political circumstances in the United States.

Finally, a laser focus on the Iran nuclear negotiations over the past five years did not leave sufficient bandwidth to address disturbing nuclear developments in North Korea. At the time the Prague Agenda called for the prevention of nuclear proliferation, Pyongyang produced enough fissile material for up to 20 nuclear weapons and greatly expanded its means of missile delivery.

In short, though progress on nuclear security was made under the Obama administration, there is much work to be done. Beginning with nuclear nonproliferation, it is imperative that the next administration continues to take steps that are necessary to prevent Iran from acquiring nuclear weapons. Current indications suggest that the Trump administration believes that this can be best done by 'renegotiating' the deal. Such an effort could once again make the Iran nuclear negotiations one of the most important international political issues of the coming years.

## **MUCH TO BE DONE AND CHALLENGES ABOUND**

Additionally, it is important that the United States continues to maintain a strong nuclear umbrella over its allies. With growing tensions in East Asia, which include North

Korea testing nuclear missiles and China's assertive posturing in the East and South China Seas, the credibility of U.S. nuclear security guarantees must be maintained in order to dissuade countries like Japan and South Korea from building independent nuclear arsenals.

Beyond maintaining the U.S. nuclear umbrella, the United States must find a way to address the North Korean nuclear challenge. The Trump administration strategy of "maximum pressure and engagement" aims to increase the economic, military, and political pressure on Kim Jong Un to force him to the table to discuss denuclearization in earnest. Such an approach would be an improvement over the 'strategic patience' of the Obama years, but it would be difficult for the U.S. government or the international community to simultaneously confront the nuclear programs in Iran and North Korea.

Future arms control negotiations will require improved relations with Russia, which seem beyond reach at the moment. The Prague Agenda always contained a tension between deterrence and nuclear reductions. As Obama himself stated in the famous Prague speech, "Make no mistake: As long as these weapons exist, the United States will maintain a safe, secure and effective arsenal to deter any adversary, and guarantee that defense to our allies – including the Czech Republic." Given the renewed Russian threat, the Trump administration will need to lean relatively more toward deterrence.

The Nuclear Security Summits will not survive the Obama administration, but international meetings devoted to nuclear security should continue at the working levels of government. One of the most important areas for future work is military nuclear material. While the Nuclear Security Summits made substantial progress in securing loose nuclear material that can potentially be prone to theft, all of the progress made was in the realm of civilian nuclear material, which only accounts for 17% of the total uranium and plutonium in use, leaving the remaining 83% not subject to safeguards or verifications (Browne et al., 2015).

The lack of international inspections and safeguards for military nuclear material is a cause for concern. Given that the overwhelming majority of nuclear material is military, there is great potential for non-state actors to attempt an infiltration of a military facility to gain access to nuclear material, and a reduced likelihood that any such attempts would be noticed. Because countries are not transparent about how their military material is safeguarded, much of it might very well be vulnerable to theft. It is important, therefore, to establish a framework that would allow for the accounting of military material while also maintaining secrecy for national security purposes.

In 2005, the United States and India signed a nuclear agreement in which Washington lifted its thirty-year moratorium on nuclear trade with India in exchange for India agreeing to separate its military and civilian nuclear material and submit its



civilian nuclear material to IAEA inspections (Bajoria and Pan, 2010). However, the deal only required India to place 14 of its 21 nuclear reactors under international safeguards. Pakistan, on the other hand, has not formally clarified how many of its reactors are used for civilian and military purposes. The United States should encourage India to place more of its reactors under international safeguards and work with China to persuade Pakistan to formally separate its civilian and nuclear reactors and place the civilian reactors under IAEA safeguards.

The above proposal would create momentum for enhancing the security of nuclear reactors, as countries with weaker safeguards remain more vulnerable to sabotage or theft. For example, consider how ISIS militants were found attempting to infiltrate a nuclear power plant in Brussels to acquire radioisotopes for use in a 'dirty bomb' (Malone and Smith, 2016). The international community must ensure that all nuclear facilities are closely supervised to detect possible breaches (Bunn, 2016).

Furthermore, though twenty-two nations agreed to reduce and ultimately eliminate their HEU stockpiles in the 2016 Nuclear Security Communiqué, there is no outlined timetable for this, and many countries still face technical barriers to making the transition. In many countries, research reactors currently operating on HEU fuel would need the high density LEU fuel that is currently available only in South Korea and Europe (National Academies of Sciences, Engineering and Medicine, 2016). Nations worry that using LEU fuel would degrade the performance of their reactors, but it would take approximately twenty years to create new fuels compatible with existing reactors or to convert reactors so that they would be compatible with existing fuels (*ibid.*). Reducing the use of proliferation-prone material cannot wait twenty years; therefore, South Korea and European nations should work with these countries to provide technical know-how so that they would make the transition more rapidly. In cases where technical barriers persist, countries can convert to less-enriched fuel sources containing 40% Uranium-235 until more sustainable measures are taken to shift to LEU (*ibid.*).

Both physical and online security of nuclear material are important and investments should be made in improving cybersecurity at sites containing nuclear material. If a nuclear facility's computer systems were to be compromised, the security of the nuclear materials could be undermined and nuclear command and control systems could be hijacked (Stoutland et al., n.d.). As increasing numbers of foreign governments are subjected to cyberattacks, it would be naive to believe future cyberattacks will not target nuclear facilities. While nuclear cybersecurity presents a serious challenge, a useful first step might be a multilateral agreement among states not to target each other's civilian or military nuclear facilities or nuclear command and control systems with cyberattacks.

In sum, this article examined the legacy of the Prague Agenda and its effectiveness in improving nuclear security. It found that the most important efforts under-

taken in the past eight years in this respect were the four Nuclear Security Summits that brought heads of state together to secure loose nuclear material and reduce the likelihood of nuclear proliferation. Though the summits were successful, broader geopolitical efforts aimed at preventing proliferation and reducing reliance on nuclear weapons among the major powers were at least arguably less so. Continued progress in all of these areas will be necessary to enhance nuclear security in the Trump era.

## ENDNOTES

<sup>1</sup> A discussion paper prepared for the Academic Workshop of the 6<sup>th</sup> Prague Agenda Conference.

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## **BETWEEN THE PRAGUE AGENDA AND THE BAN TREATY: DISARMAMENT A DISTANT DREAM IN NUCLEAR SOUTH ASIA**

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The nuclear-armed South Asian neighbors India and Pakistan continue to pay lip service in support of global nuclear disarmament. Ironically, however, both states are also increasing their fissile material stockpiles, nuclear-capable missiles and counter-force capabilities. These developments point to subtle shifts in their doctrines and postures. What do these trends indicate about the future of nuclear disarmament in South Asia? How have these two South Asian neighbors responded to global disarmament initiatives like the Prague Agenda and the Treaty on the Prohibition of Nuclear Weapons, henceforth called the Ban Treaty? Is there a future for nuclear disarmament in South Asia? If not, why? What are the options for overcoming the existing challenges?

This essay takes the Prague Agenda and the Ban Treaty as two alternative approaches that offer competing tools to achieve global disarmament. It argues that the Prague Agenda was not dismissed outright by India and Pakistan whereas the Ban Treaty has been dismissed by them, yet the chances for the Ban Treaty – with its paradigmatic shift in the nature of the conversations on nuclear weapons – to create a support constituency for disarmament in South Asia in the long-term are higher than the chances for a Prague Agenda type NPT-oriented status quo approach.

### **THE GLOBAL DISARMAMENT DEBATE**

The global disarmament debate – like the nuclear order itself – is at a crossroads. The contemporary global political realities offer reasons for both optimism and skepticism. The Nuclear Weapons Ban Treaty is gaining momentous support from the non-nuclear weapon states whereas the nuclear weapon states are not only opposing the Ban Treaty but also pursuing nuclear weapons capabilities and modernization programs that make disarmament appear to be a distant dream.

Furthermore, within the discourse supporting disarmament there are sharp divisions on the modus operandi to achieve this objective. The status quo-oriented NPT-centered approach – that recognizes deterrence as a legitimate concept and supports a step-by-step process toward global disarmament – is being challenged by the revisionist wave of the ban the bomb movement, which seeks to delegitimize not only the bomb but also the conceptual arguments that justify the possession of bombs for security reasons.

The Prague Agenda – which has by now receded in its significance – indubitably provided an impetus to the global disarmament debate. Applauded by its propo-

nents and criticized by cynics as a radical approach in favor of nuclear disarmament, the Agenda, which was actually rooted in incrementalism, was at best only an attempt to reinforce the NPT-oriented status quo that was trampled under the weight of the Bush administration's unilateralism. The Agenda prioritized nuclear safety and security, nonproliferation and disarmament – in that order.

Although, the 'Prague Agenda' has lost political capital, the status quo defined from the vantage point of the NPT remains an important pillar of the debates on disarmament. Its biggest 'strength' is its recognition of the consensus of nuclear weapons states as central to any meaningful progress on disarmament. Also its tacit acknowledgement of deterrence as a legitimate concept opens a space for delays and manipulation by nuclear-armed states. Consequently, nuclear-armed states have an interest in preserving this status quo.

Contrarily, the alternative, the rather revisionist Ban Treaty, challenges what some call "the tried-and-failed 'step-by-step' [approach]" (Jaramillo, 2015) that has dashed all hopes of bringing the international community closer to nuclear abolition. Rooted in normative preferences shaped by the humanitarian concerns regarding nuclear weapons it offers a paradigmatic shift by invoking the logic of "mutual assured abstinence" (Pretorius, 2016). The Ban Treaty does not ignore the significance of security; it only looks at security from a broader global perspective, arguing that global security is indivisible and that the possibility of nuclear accidents or nuclear use diminishes security not only for the citizens of states involved in a conflict but also for the world at large. As a result, it seeks to delegitimize the bomb. The Ban Treaty also indicates a deep structural change by shifting the moral leadership to normatively driven non-nuclear weapon states. More importantly the Ban Treaty is a manifestation of the "democratization of disarmament" (Tannenwald, 2017). Its straightforward approach leaves little room for endorsement without action. Consequently, the Ban Treaty has sharpened the binary between states that prioritize deterrence over disarmament and those that delegitimize deterrence and seek the prohibition and elimination of nuclear weapons.

The global disarmament debate today is caught up by the tension between the NPT-oriented status quo and the Ban Treaty's revisionism. As stated above, the NPT-recognized nuclear weapon states prefer the status quo; however, identifying and placing the discontented non-NPT nuclear holdouts in this equation presents an intriguing puzzle.

### **DISCUSSING DISARMAMENT IN NUCLEAR SOUTH ASIA: FROM THE PRAGUE AGENDA TO THE BAN TREATY**

Officials from India and Pakistan keep touting their support for global disarmament. Conversely, they also continue to express their long held grievances against

the structure of the NPT-centered nuclear order (Janjua, 2016; see also Varma, 2016). Likewise, when the Prague Agenda was announced, both Islamabad and New Delhi issued statements in support of its broader contours but both sides also added caveats. Pakistan reminded the US and the international community of its responsibility to create an order that would guarantee undiminished security for all by addressing the issue of conventional asymmetries (Akram, 2009). India, on the other hand, emphasized the need for great powers to play a more active and effective role by downsizing their nuclear arsenals and pursuing de-alerting and non-deployment backed by No First Use pledges as part of their nuclear policies (Rao, 2009).

Furthermore, a review of the nuclear policies of India and Pakistan reveals how both sides dismissed the spirit of the Prague Agenda in practice.

India and Pakistan have significantly increased their stockpiles and warheads over the last decade. Both countries have also diversified their launching platforms and the ranges of their nuclear-capable missiles.<sup>1</sup> Moreover, the development of a combination of counter-value and counter-force targeting capabilities by both states indicates that both sides are gradually moving toward war-fighting doctrines (for Pakistan, see Tasleem, 2016; for India, see Raj, 2017).

The stalemate over the Fissile Material Cut-off Treaty (FMCT) negotiations in the Conference on Disarmament (CD) has been a consequence of the same policy preferences. While Islamabad publicly stalled the process, there is little likelihood that India would have participated in the negotiations either. Likewise, India and Pakistan have both declared a unilateral moratorium on nuclear testing, but neither side has shown a willingness to sign and ratify the Comprehensive Test Ban Treaty (CTBT).

Nuclear weapons have remained central to Pakistan's national security policy throughout the last two decades. Similarly, the trends in India are also increasingly discouraging. While India has traditionally professed a limited role of nuclear weapons in its security policy, the last few years have revealed a gradual shift in its rhetoric about nuclear weapons (Miglani & Chalmers, 2014; see also *The Times of India*, 2016).

Policy aside, even the academic debate on disarmament is almost entirely missing in Pakistan and rapidly disappearing in India. If it appears at all, the conversation on disarmament begins and ends with a lamentation of the poor record of the major powers in fulfilling the disarmament commitment under article six of the NPT.

Unsurprisingly the alternative approach put forth by the non-nuclear weapon states in the form of the Ban Treaty has also failed to receive support from the nuclear-armed India and Pakistan. Both states have refused to take part in the negotiations over the Ban Treaty. A closer look at the official statements issued in Islamabad and New Delhi provide interesting insights about the existing disarma-

ment thinking in both capitals. Below are the salient features of the official positions on both sides.

<b>India's official position on the Ban Treaty (HT Correspondent, 2017)</b>	<b>Pakistan's official position on the Ban Treaty (Ministry of Foreign Affairs, 2017)</b>
<p>"India believes... this treaty in no way constitutes or contributes to the development of any customary international law".</p> <p>"India reiterated its commitment to the goal of a nuclear weapon free world. India believes that this goal can be achieved through a step-by-step process underwritten by a universal commitment and an agreed global and non-discriminatory multilateral framework. In this regard, India supports the commencement of negotiations on a comprehensive Nuclear Weapons Convention in the Conference on Disarmament, which is the world's single multilateral disarmament negotiation forum working on the basis of consensus..."</p> <p>"India, therefore, cannot be a party to the treaty and so shall not be bound by any of the obligations that may arise from it".</p>	<p>"Pakistan stresses that this Treaty neither forms a part of, nor contributes to the development of customary international law in any manner."</p> <p>"Pakistan is committed to the goal of a nuclear weapons free world through the conclusion of a universal, verifiable and non-discriminatory comprehensive convention on nuclear weapons. The Geneva-based Conference on Disarmament (CD), the world's single multilateral disarmament negotiating body, remains the most ideal forum for concluding such a convention."</p> <p>"Pakistan, therefore, like all the other nuclear armed states, did not take part in its negotiation and cannot become a party to this Treaty. Pakistan does not consider itself bound by any of the obligations enshrined in this Treaty."</p> <p>"It is indispensable for any initiative on nuclear disarmament to take into account the vital security considerations of each and every State."</p>

Such a convergence in armament policies as well as stated positions on disarmament indicates what one may call 'negative solidarity'. In this case, the 'negative solidarity' is meant to offset the diplomatic pressure coming out of disarmament initiatives like the Ban Treaty.

This is not meant to undermine the distinctive history of India's disarmament discourse, or to downplay the peculiar role-conceptions and worldviews that set India and Pakistan apart. India, for instance, has historically pursued revisionism in the global nuclear context. However, over the last two decades – with the conclusion of the Indo-US Nuclear Deal and the India-specific NSG exemption – India has gradually moved into the orbit of status quo powers (Mohan, 2009).

On the other hand, Pakistan's approach has traditionally been overshadowed by its regional security concerns, resulting in a deeper emphasis on the interlinkages between conventional balance and nuclear disarmament. But more recently, the discontented Pakistan with an obvious contempt for the existing nuclear order that appears discriminatory in the face of the Indo-US nuclear deal, increasingly perceives itself to be at a disadvantage. Consequently, Islamabad has also started seeking a normalization of its nuclear status (Iqbal, 2016; see also Ministry of Foreign Affairs, 2016).

It seems that both India and Pakistan will increasingly seek to exploit the space created by the tension between the NPT-oriented status quo and the revisionist Ban Treaty while expanding their stockpiles and modernizing their nuclear forces.

Such sidetracking can only be understood and explained by looking deeper at the imperatives that are shaping the nuclear discourse and thinking in South Asia.

### **WHITHER DISARMAMENT? THE NATIONAL SECURITY DISCOURSE IN INDIA AND PAKISTAN**

At the domestic level, the ruling right-wing political leadership and foreign policy experts in India and the military elite – that controls the national security policy – in Pakistan are firmly situated in the traditionalist realism-centric worldview that manifests a clear preference for military power. Both consider disarmament as unreal and impossible. Besides, the military in Pakistan and right-wing forces in India play a significant role in the construction of national narratives that provide them with an exceptional ability to glorify nuclear weapons and feed the ‘nuclear nationalism’ (Abraham, 2009; Nizamani, 2000). This dynamic generates vicious domestic political interests that incentivize the further build-up of nuclear arsenals.

Such narratives are strengthened by the inaction of the major powers toward disarmament. Suspicions about the practicality of disarmament exacerbate each time a major power announces its nuclear weapons modernization plans or tramples non-proliferation goals because of its geopolitical considerations. Under such circumstances, any attempts by the major powers to engage nuclear hold-out states to promote nonproliferation are seen with suspicion and generate perverse incentives to demonstrate nuclear weapon capabilities.

More importantly, however, the national security discourse in India and Pakistan overwhelmingly considers nuclear weapons as a factor of stability, albeit an ‘ugly’ one. The absence of a major war between India and Pakistan after the nuclearization of the region is unduly attributed to the presence of nuclear weapons (see Sumit Ganguly’s arguments in Ganguly and Kapur, 2010; see also MEA – Ministry of External Affairs, 2004).

Pakistan in particular considers nuclear weapons as an equalizer vis-à-vis India’s superior conventional forces. Such assumptions make nuclear deterrence central to Pakistan’s national security policy, thus making disarmament a distant dream. India, on the other hand, also appears to be considering a revision of its nuclear policy, as it is giving a bigger role to nuclear weapons in its defence posture (Fisher, 2017).

Additionally, the high premium on (some indigenous, but mostly Western-sponsored) conversations on deterrence stability has only reinforced the perception that nuclear weapons are inevitable for peace in South Asia. Such conversations have served many purposes, including increasing awareness of and education about the dangers of instability, but they have also inadvertently perpetuated incentives for a fur-

ther nuclear weapons build up. The framework of deterrence stability adds unwarranted pressures on nuclear armed states to keep competing with their key adversaries. The competition between the US and the erstwhile Soviet Union demonstrated the same thing. Now India and Pakistan also appear to be entrapped in the logic of strategic balance, thus dashing all hopes for nonproliferation and disarmament.

Does this mean that disarmament has no future in South Asia? Do NPT-oriented status quo arrangements like the Prague Agenda or the revisionist Ban Treaty provide any remedy to address the challenges? In the near to medium term the prospects for disarmament in South Asia appear bleak. The NPT-oriented status quo manifested in the Prague Agenda did not bring any substantive change. Nor does the Ban Treaty appear to have effectively mobilized any policy change in favor of disarmament in South Asia.

Firstly, the supporters of the status quo demand the mainstreaming of India and Pakistan in the existing global nuclear order (Yusuf and Pandya, 2010; Goldschmidt, 2011). They have been proposing a wide range of formulas for this. Nevertheless, these formulas at best only suggest a way forward toward non-proliferation and arms control. None of the approaches that promote mainstreaming address the issue of disarmament.

Secondly, it is often argued (mainly in the case of Pakistan) that a non-discriminatory approach toward the nuclear hold-out states is essential for any progress on disarmament (Yusuf and Pandya, 2010). It remains unclear how such an approach will create space for disarmament, though.

Thirdly, many analysts believe that the approach of the major powers toward disarmament will be instrumental in shaping the behavior of nuclear hold-out states (Nayyar, 2010; Khan, 2009; Yusuf and Pandya, 2010; see also Basrur, 2009: 18–22). There is no gainsaying the fact that the actions of the major powers will have a tremendous influence in terms of creating diplomatic pressure on the nuclear hold-out states, including India and Pakistan. Yet this does not guarantee the compliance of the weaker states, as their decisions are driven by complex political and security calculations.

In fact, none of these arguments explain how the proposed steps would lead India and Pakistan to pursue disarmament. Moreover, a status-quo-oriented approach would remain mired in all the road blocks that have so far prevented the world from pursuing disarmament. A status-quo-oriented approach is self-constrained in a way. Given its tacit acknowledgement of the deterrent role of nuclear weapons, it has no way forward in terms of persuading weaker states to disarm.

### **A GLIMMER OF HOPE?**

An alternative approach grounded in humanitarian concern may offer a glimmer of hope. Undeniably, the Ban Treaty has been rejected outright by the nuclear-armed



states, including India and Pakistan, and it does not address most of the challenges mentioned above. However, it is relatively better positioned than the NPT, primarily because of two reasons: Firstly, with its normative appeal, it shifts the conversation from the realist paradigm to the one focused on humanitarian concerns. This paradigmatic shift liberates the treaty from the obligation of finding answers to the difficult deterrence-related questions. The NPT recognized, legitimized and therefore normalized nuclear deterrence by granting a special status to the Nuclear Weapon States. Consequently, nuclear deterrence emerged as an essential condition for peace in the dominant discourses in nuclear armed states. But the Ban Treaty has shifted the focus of the conversation from deterrence to humanitarian consequences of nuclear weapons. This might help change the image and place of nuclear weapons in the popular imagination and public perception. Secondly, the Ban Treaty has another advantage. Unlike the NPT, which is frequently seen with suspicion and often discredited in the postcolonial discourses as an extension of the imperialist agenda aimed at preserving the monopoly of the powerful, the Ban Treaty does not fit in this frame. Given that it is advocated by non-nuclear weapon states along with pro-disarmament activists across the world, it enjoys a moral authority and credibility regarding the sincerity of its intentions. This in itself can become a major force in shaping people's perceptions of it.

If public opinion is effectively mobilized, India, being a state that has traditionally championed the idea of nuclear disarmament, might – under a liberal political regime – be more susceptible to the normative pressures of the globally and locally popular Ban Treaty. As India has a sizeable anti-status quo community and harbors ambitions of global leadership, the Ban Treaty provides India with an avenue to reclaim its lost glory in the disarmament debates.

As for Pakistan, although it projects a myth of consensus regarding nuclear weapons, some of its poets and public intellectuals have flagged their skepticism about the weapons, principally in connection with humanitarian concerns (Naheed, 2004: 110–111; Riaz, 2017: 33–34). Such sentiments can be channelized to sensitize people and create support constituencies. Pakistan, with its indigenously developed support for the Ban Treaty coupled with India joining the disarmament group, may find itself under enormous pressure to pursue disarmament.

Admittedly, there are many reasons for skepticism here that should not be overlooked; the Ban Treaty, however, has at least opened a window of opportunity. It should be noted that a concerted effort is required to make disarmament efforts work in states like India and Pakistan. Extensive outreach programs, social media campaigns and public education can help change people's perceptions of nuclear weapons and the inherent risks in possessing them. Also, campaigns supporting transparency, eradicating censorship, and cultivating a deeper sensitivity and concern for humanity would be vital in this case. The contemporary networked world

with its easy access beyond borders offers a fertile space for such an approach to succeed.

Yes, the current wave of nationalism, anger, and confusion in some parts of the world does paint a dismal picture but the resistance to it carries hope for alternative discourses. The chaos in the contemporary world has created a paradox that presents equal opportunities to both pro-status quo and revisionist forces. A lot will depend upon the effort, energy and resources each side spends in order to prevail.

The challenges are huge but not insurmountable. Even for a status-quo-oriented approach to successfully pursue disarmament, the Ban Treaty or a similar framework has to set the precedent by delegitimizing nuclear deterrence. As long as nuclear deterrence is revered, the likelihood of disarmament will remain very thin.

## ENDNOTES

<sup>1</sup> This includes India's testing of the ICBM Agni V, the short range missile Prahaar and interceptor missiles for a BMD system, and Pakistan's testing of the MRBM Shaheen III, the nuclear-capable short-range missile NASR, cruise missiles and, more recently, the MIRV Ababeel. Both states are also working toward a nuclear triad by building sea-based nuclear deterrents.

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## **WEAPONS OF MASS DESTRUCTION, NORMS, AND INTERNATIONAL ORDER: THE CHEMICAL WEAPONS TABOO IN SYRIA**

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### **PRE-EMPTIVELY REINFORCING THE THRESHOLD**

In this article I offer a brief assessment of the challenge to the chemical weapons (CW) taboo in Syria, using indicators from research on the status of international norms. I also reflect on the significance of reactions to the violations of the taboo for WMD and world order.

The first part of the CW story in Syria involved pro-active norm bolstering by US President Barack Obama, who, in August 2012, declared: "that's a red line for us and [...] there would be enormous consequences if we start[ed] seeing movement on the chemical weapons front or the use of chemical weapons" (The White House,

2012), a warning he repeated on December 3, 2012 in response to warnings from sensors of the movement of the Syrian CW capability.

### **Contesting the Line: Third Party Responses**

After a series of allegations in the spring of 2013, the US released statements that it had assessed that the Syrian regime had used sarin on a small scale, a conclusion also announced by France. It is not difficult to imagine that these public declarations of the Syrian regime's use of sarin without a forceful response could well have been interpreted by Assad as a signal that it was unlikely that the US or other actors would respond with force to further CW use. This may help explain what would otherwise seem impossible to understand: the large scale sarin attack of August 21, 2013, especially since it occurred just days after a UN investigative team arrived in Syria to investigate reports of previous attacks.

### **Crossing the Line & Norm Enforcement**

In a development that is notable for an assessment of norm contestation and robustness in this case, no party to the conflict claimed responsibility for the August attack of about a dozen sarin rockets in the Ghouta suburbs of Damascus, which may have killed as many as 1,400 people (the high-end US estimate). Regarding criteria for assessing norm robustness, this violation of course amounts to a flagrant behavioral act of non-compliance. In terms of indicators of rhetorical challenge, however, this episode lies at the opposite end of the spectrum of norm contestation, leading to weakening, insofar as there was an absence of justifications offered by the violator that would outright reject the norm, justify its violation as an exception, or attempt to redefine what counts as a violation of it. That is, no one challenged the validity of the norm or even how it might be applied, which is quite different from the nature of the challenges in contemporary times to the torture taboo or the ICC.

Assessing the status of the norm depends crucially upon third parties' reactions to the violation of it. Here it is difficult to imagine the taboo having a higher discursive salience than during 2013. In that year, far from downplaying it, Obama stated boldly that he had "decided that the United States should take military action against Syrian regime targets." (Obama, 2013) Interestingly, Obama appealed to the broader potential consequences of a situation in which even this most minimally contested of norms could not be enforced:

Make no mistake – this has implications beyond chemical warfare. If we won't enforce accountability in the face of this heinous act, what does it say about our resolve to stand up to others who flout fundamental international rules? To governments who would choose to build nuclear arms? To terrorist[s] who would spread biological weapons?

However, in the aftermath of Britain's Prime Minister David Cameron deciding not to join in any enforcement action against the Syrian regime, Obama reconsidered and just a day later he decided to seek the approval of Congress before launching the related strikes. US Secretary of State John Kerry indicated that to avoid an attack, Assad could give up Syria's chemical arsenal within a week, and this idea was seized upon by Russia as the basis for the way forward to avoid a military attack. Syria thus accepted the proposal to join the Chemical Weapons Convention (CWC), give up its CW, and submit its facilities to an inspection. In an astonishing chain of events, then, from the perspective of third party responses reinforcing an international norm immediately after its violation, Syria was on its way to becoming a party to the CWC and allowing the OPCW to verify the dismantling of its declared chemical weapons capability.

A more straightforward and indeed unusually powerful case of an attempt by third parties to buttress an international norm in the aftermath of its violation is difficult to imagine. Yet, another phase of behavioral contestation was to come.

### **IMPLEMENTATION**

States may indicate their (dis)approval of international norms, but their strength or weakness depends upon the implementation of their rhetorical and treaty commitments. In 2014, reports began to surface of the use of chlorine bombs in Syria. The CWC does not specifically prohibit Syria from possessing chlorine as such insofar as it is a dual-use material that has commercial applications, though the CWC prohibits the use of chlorine as a weapon.

Surely the threat of a US military strike was the necessary condition for Assad's dramatic decision to bow to the Russian influence, join the CWC and allow inspections to verify the disarmament of the vast majority of his chemical arsenal. Yet, a realist explanation would simply point out that in light of Obama's failure to follow up on his threat to attack, Assad could well have calculated that he could cheat and get away with subsequent attacks without being attacked in response. Indeed, the international responses to the chlorine attacks took a sharp step back from the previous highest levels of norm bolstering and seem likely to have emboldened Assad.

In August of 2015 the UN Security Council established a joint UN-OPCW investigative mechanism (JIM) to determine the culpability for such attacks. The JIM produced a number of reports; it was the third report, which was delivered to the UN Security Council in August of 2016, that for the first time named names, determining that on two occasions there was sufficient evidence to conclude that Syrian regime helicopters dropped devices that released toxic chemicals, and a third such occasion was added to these in its next report (United Nations, 2016).

The chlorine attacks have not garnered nearly as much media coverage and apparent public and political outrage as the sarin attack. In human terms, the Ghouta

violation was many magnitudes worse than the rest of the attacks combined, though in strictly legal terms, the violations since Syria joined the CWC could actually be regarded as an even greater slap in the face of the formal taboo, given that Syria now had a clear formal legal obligation not to engage in chemical warfare. This challenge was escalated significantly in 2017, culminating in a sarin attack by Syria in April of that year that finally provoked a forceful international response, this time from US President Donald Trump, whose ordering of a retaliatory attack of cruise missiles thrust him into the surprising role of the chief CW norm enforcer. There is little doubt that the forceful US response will make any would-be future user of CW much more unlikely to continue the erosion of the CW taboo, though even that did not further deter Assad since Syria eventually resumed chemical attacks, including an apparent chlorine attack a year later that galvanized an even broader commitment to a forceful response from the US, UK and France.

### **METASTASIZING?**

Ultimately, assessing the strength of a norm experiencing violation depends upon whether that violation and the responses to it encourage the spread of further violating behavior. In that regard, there have been numerous allegations and reports throughout the Syrian conflict of the use of CW by non-state armed groups. The JIM determined that there was sufficient evidence to conclude that ISIS had used mustard gas on at least one occasion, while a November 2016 independent report indicated that all told, ISIS may have used chlorine and mustard on as many as fifty-two occasions since 2014 (Schmitt, 2016).

More troubling from the perspective of norm erosion are the reports of use of CW by Sudan in Darfur that were made public by Amnesty International in September of 2016. Whether Sudan's use of CW in violation of its CWC commitments can be verified, and further instances of it unfold, remains to be seen. Still, the criteria of concordance for assessing norm robustness would underscore that with but four states outside the CWC<sup>1</sup> and one of the world's last significantly threatening CW arsenals severely diminished if not destroyed, the potential scope of future state violators of the CWC is severely circumscribed. Against the potential spread of CW to Sudan, the long-time hold out Angola quickly joined the CWC in the aftermath of this episode. The treaty's ratification, of course, does not make violations of it impossible, as we have seen with Syria's cheating on its CWC commitments. Still, the addition of two ratifications points to norm broadening, which is quite a contrast from the direction of other contemporary cases of norm contestation like that of the ICC in 2016.

### **General Belief and Contestation**

Throughout the conflict to date, all the sides in Syria have continued to deny that they have used CW, which reinforces the view that CW use is unacceptable for any-

one wanting to be accepted as a legitimate actor in the international community. Especially in light of the outrages committed, in which ISIS has notoriously gone out of its way to display its violations of humanitarian law norms, it is quite remarkable that even ISIS charged that “[Assad] used illegal chemical weapons against innocent civilians” (Syrian Coalition Political Committee, 2015), which is quite the claim for a group that otherwise explicitly rejects the concept of innocent civilians. Meanwhile, the Government of Sudan categorically repudiated Amnesty International’s accusation of their alleged use of CW.

All told, on the continuum of decreasing degrees of discursive contestation of the norm, where the main categories are a) explicit rejection of the norm, b) special justifications/interpretations, c) denial, and d) affirmation of the norm, the pattern from 2012-present lies at the very robust end of this continuum of the discursive status of the norm, with no public contestation of it in evidence.

### **WMD, CW and World Order**

Some have raised the question of why there is all this fuss about CW, even drawing of red lines for CW, when hundreds of thousands of dead in Syria did not provoke such action. However, I argue that there is a mistaken tendency in some such critiques to believe that norm promotion is somehow a zero sum game (for examples of such critiques, see Carpenter, 2013; Jose, 2013). The argument that promoting the CW taboo has been a bad idea would only carry weight to the extent that its proponents could plausibly establish that enforcing the CW taboo has detracted from the humanitarian achievement that would otherwise have occurred. I have seen no reason or evidence to suggest that this would be the case, however. Still, it is important to acknowledge that the discourse of ‘conventional weapons’ that the CW taboo and larger WMD discourses play off of does serve to somewhat insulate these other means of violence from special sensitivity. Still, while CW are not as destructive as either nuclear or biological weapons, by being the more frequently (even if still infrequently) used weapons of mass destruction, they serve as an important litmus test of humanity’s ability to maintain control in terms of keeping actors from going over the WMD line.

Upholding that line matters. A key reason for why ‘asphyxiating gases’ were banned at Geneva in 1925 was that they were seen then as the first WMD before their time – the threat of catastrophic attacks against cities from the air was a legitimate concern then. While CW have never quite lived up to that catastrophic billing, to some extent this is because of some of the effects of the taboo itself. We saw in Syria their potential for mass civilian death. CW thus serve as something of a canary in the WMD coal mine. If humanity can’t hold the line on this one WMD, then we ought to be very worried indeed in a world with weapons that have the capacity to destroy civilization many times over. So as CW are the ‘not-quite so necessarily cat-

astrophic weapons of mass destruction,' the world's response to them reinforcing the salience of the CW taboo matters in an additional way to that of the sheer awfulness of the register of victims of such weapons.

## CONCLUSION

Even though the CW taboo was egregiously violated from 2013–2018, there is not a stampede of other would-be violators just waiting in the wings to follow suit. This has to do with the effects of the institutionalization and politicization of the CW norm. Thanks to the taboo CW arms aren't lying around as part of standard munitions for militaries around the world, and decisions to use them aren't decisions of rank and file soldiers in the field but decisions at the very highest decision making level. While the capability to engage in torture, in comparison, can have far less in the way of start-up costs and can hinge upon the individual volition of many more actors who can undertake the act, most states and non-state armed groups simply do not have an effective lethal chemical weapons capability on hand, which creates a series of vastly higher hurdles to overcome for would-be violators than norms which could be violated more extemporaneously. Overall, the contrast of CW cases with cases of torture or targeted killings in recent years puts the continuing robust status of the chemical weapons taboo into a striking and positive relief. Beyond the use of targeted killings in warfare, however, the targeted killing of the half-brother of North Korea's leader with VX and numerous attempts on the lives of people opposed to Putin's regime in Russia open up another line of erosion of the poison and CW taboos that requires stern responses if the targeted attacks are to be stemmed.

## ENDNOTES

<sup>1</sup> Egypt, North Korea, Israel (which signed the CWC but did not ratify it), and the new state of South Sudan, which is expected to join the CWC.

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## **ON THE HEALTH OF THE NUCLEAR NONPROLIFERATION REGIME**

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Is the nuclear nonproliferation regime failing? Is it in a state of crisis? With each new instance of perceived noncompliance, the questions re-emerge. Over the past decade, a chorus of scholars have come to the conclusion that the answer is yes, that the regime is indeed in trouble.<sup>1</sup> In 2005–2006, several scholars pointed to the revelations of covert nuclear programs in Iran, North Korea and Libya, revelations about the AQ Khan proliferation network, and the perceived failures at the 2005 NPT Review Conference as evidence that the regime was in crisis if not failing (Hanson, 2005; Carranza, 2006; Goldschmidt, 2006; Perkovich, 2006; Krause, 2007; Meyer, 2009; Allison, 2010). Another round of concerns emerged following the 2005 framework outlining the India-United States Civilian Nuclear Deal (Mahbubani, 2005) and then yet another one emerged following the 2010 NPT Review Conference (Grand, 2010).

The assessments run the gamut of pessimism, and the underlying logic is equally diverse. On the less-alarmed side of the scale, several authors point to the North Korea and Iran challenges as eroding the regime's credibility, leading to "doubts about its effectiveness" (Kmentt, 2013). Others argue that the norm of nonproliferation is eroding in a way that places the regime "under severe strain" (Grand, 2010). Many focus on the notion that the regime tensions are the result of the perceived institutional double standard within the NPT (nuclear weapon states versus non-nu-



clear-weapon states) finally coming home to roost (Dhanapala, 1999; Perkovich, 2006; Meyer, 2009). Finally, on the more extreme side are arguments that the NPT in particular is in such a state of disrepair that it should be abandoned and replaced (Wesley, 2005).

We see two problems with these arguments. First, there is a tendency to use the terms 'regime' and 'NPT' interchangeably, and sometimes they are even used together in references to the 'NPT regime'. Often compliance issues associated with the NPT are discussed as 'regime failures'. But is the regime just the NPT or is it something more? After all there are three states that possess nuclear weapons which have never signed the NPT but still adhere to some nonproliferation norms. This is not merely a semantic issue. Definitions of the regime's boundaries have significant implications for attempts to think about its effectiveness. Second, most of the debates on whether the regime is in crisis seem to be based on fears about the impact of future proliferation rather than on an actual attempt to measure the regime's strength or health. We have encountered very few attempts to systematically conceptualize and empirically measure regime health. In 2009, we began a project aimed at correcting these deficiencies (Fields and Enia, 2009; Enia and Fields, 2014) and we are happy to share some of our findings in the context of the Prague Agenda.

### **WHAT MAKES A REGIME HEALTHY?**

We begin by conceptualizing the regime as more than the NPT. Here we follow the lead of scholars of international regimes who argue that multiple aspects of regimes are crucial to understanding the regime as a whole (Hasenclever, Mayer, and Rittberger, 1997; Young and Levy, 1999). In this synthetic perspective, any attempt to analyze the status of international regimes must be multidimensional, encompassing a number of underlying principles that have their roots in a convergence of expectations (Smith, 1987; Müller, 1993), foundational norms which serve to guide behavior toward the achievement of the goals outlined in the principles (Hasenclever, Mayer, and Rittberger, 1997; Rublee, 2009), and various sets of rules and behaviors that provide specific means for achieving the goals of the regime (Tate, 1990; Müller, 1993: 362).

As a starting point for the second issue, we ask, what does it mean for a regime to be healthy? In several decades of regime-related research, scholars have used a number of different concepts to assess aspects of regime quality: effectiveness (Levy, Osherenko, and Young, 1991), robustness (Schimmelfennig, 1994), and attractiveness (Müller, 1995), among others. Obviously, there are important, though sometimes subtle, differences across these terms. Beneath the surface, though, the underlying questions are very similar: Is this regime impacting the problem that led to its formation? What would the state of the problem look like in a coun-

terfactual world in which the regime did not exist? (Stokke, 2012) We approach this topic by casting our net widely, using many of these existing conceptualizations to influence and shape our own. Thus, in our understanding, a healthy regime should:

- show some signs of internal problem-solving effectiveness, specifically an ability to mitigate the challenges inherent to cooperation and coordination in an anarchic international system,
- display robustness or resilience in the face of the challenges to its core norms and values,
- be attracting more members than it is losing,
- be having some effect on the problem that led to its creation.

Putting these pieces together, we build on the existing work on international regimes (Haggard and Simmons, 1987; Hasenclever, Mayer, and Rittberger, 1997, 2000) and construct a framework that attempts to measure regime health along three dimensions: normative, institutional, and behavioral. Each dimension is structured around several components. For the normative dimension, we recognize different types of norms (Rublee, 2009). We also recognize different levels of strength, and we employ Legro's notions of "specificity," "durability," and "concordance" as measures (1997). For the institutional dimension, we measure issue scope, organizational form, and allocational mode (Haggard and Simmons, 1987). We also employ a more subjective measure of the extent to which the regime's institutions are formal or informal. Finally, on the behavioral dimension, we measure the participatory scope of the regime, the extent to which states constrain themselves domestically, verification, compliance, and enforcement (Puchala and Hopkins, 1983; Haggard and Simmons, 1987).

### **NONPROLIFERATION: A REGIME IN MIXED HEALTH**

When viewed through this lens, the health of the nuclear nonproliferation regime is more varied than is commonly recognized. For example, while the normative foundations of the regime are strong, they are also limited in ways that are challenging. The explicit norm of nonproliferation remains strong. States continue to emphasize the idea that the spread of nuclear weapons should be limited and new nuclear weapon states avoided (Fields and Enia, 2009: 190). These norms have remained relatively robust in the face of regime challenges in Iran and North Korea. However, unlike its sister chemical and biological weapon regimes, the nuclear nonproliferation regime was not explicitly founded on norms of non-use and universal non-possession. This creates tensions around the other norm embedded in the NPT and elsewhere, denuclearization. These tensions have important consequences for how the nuclear and non-nuclear weapon states perceive the regime and their respective roles within it (Brzoska, 1992; Fields and Enia, 2009).

Another example reveals similar complexities. The institutional features of the regime appear strong. In terms of scope and organizational form, the regime has near universal membership and covers a wide range of issues pertinent to non-proliferation. The scope has even widened as the regime has expanded to cover nuclear terrorism in conjunction with United Nations Security Council Resolution 1540. The regime's institutions are designed to mitigate transaction costs that are higher in the anarchic international system. For example, the Nuclear Suppliers Group (NSG) and the NPT Review Conferences (RevCon) are both pieces of the regime that, aside from their explicit functions, provide states information about the preferences and intentions of other actors, helping to mitigate this critical information challenge. However, there are limits to the institutional components of the regime that create challenges on the behavioral side. Instances of non-compliance remain difficult to punish, as the specific rules regarding enforcement are weak. With respect to organizational form, there is no official nonproliferation secretariat with the exclusive purview of maintaining the regime as a whole. The IAEA comes closest to this, but its role within the regime is comparatively limited. In addition, there is no formal dispute-resolution mechanism, and instead the regime relies on the IAEA and its Board of Governors or the UN Security Council for solving disputes (Fields and Enia, 2009: 184). Each of these regime aspects is a tension point that makes the behavioral aspects more challenging.

As is true with many security regimes, the nuclear nonproliferation regime has always been subject to a higher standard than other regimes. When a country violates the global trade regime, for example, the assumption is that complete and unwavering compliance with the regime is very difficult, if not impossible, in the face of competing interests, collective action challenges, and the anarchic nature of the international system. In other words, the violation is understood to be a somewhat standard reflection of the difficulties of international cooperation. However, when a country violates the norms of or fails to comply with the nuclear nonproliferation regime, analysts tend to ignore the fact that the same underlying challenges – competing interests, collective action – exist around nuclear issues. Instead, instances of noncompliance here are often taken as the basis for wondering whether the entire regime is weakening if not failing.

In one light, this analytical inconsistency is not surprising. Because the consequences of a complete failure of the nuclear nonproliferation would be very bad for global security, we desire the nonproliferation regime to operate differently than other regimes. But what we desire of the regime might or might not be true of the way it really operates. It might operate differently than other types of international regimes. It might not. In fact, our analysis suggests the regime is operating in ways that are typical of all international regimes. Regardless, answering questions about the regime's dynamics requires that we dig into the specific aspects so that we can gain a better understanding of how the regime deals with some of the fundamental challenges inherent in the anarchic international system.

**ENDNOTES**

<sup>1</sup> We recognize that some have been questioning the efficacy and sustainability of the regime from its inception, particularly in the years following the NPT's entry into force. See, for example, Falk (1977).

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## **PUTTING THE PRAGUE AGENDA IN CONTEXT: LOOKING BACKWARD, LOOKING FORWARD, LOOKING BEYOND<sup>1</sup>**

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Seven years have passed since the US President Barack Obama gave his historic 'Prague speech', in which he spoke about the future of nuclear weapons as the fun-

damental issue for the security of nations and raised the hopes of people around the world that nuclear weapons (NWs) could indeed become weapons of the past (Obama, 2009).

He called the existence of thousands of NWs the most dangerous legacy of the Cold War, he spoke about the moral responsibility of the United States to act in this matter, and he committed to “*seek the peace and security of a world without nuclear weapons*”. Among the goals he cited were the following:

- to reduce the role of NWs in the US’s national security strategy;
- to negotiate a new Strategic Arms Reduction Strategy with the Russians;
- to immediately and aggressively pursue the US ratification of the CTBT;
- to seek a new treaty that would verifiably end the production of fissile material;
- to strengthen the NPT as a basis for cooperation.

On the NPT, he stated: “The basic bargain is sound: countries with nuclear weapons will move toward disarmament, countries without nuclear weapons will not acquire them, and all countries can access peaceful nuclear energy” (ibid.).

Four years later, President Obama gave a speech in Berlin which was also devoted to nuclear weapons and disarmament and where he stated that “peace with justice means pursuing the security of a world without nuclear weapons – no matter how distant that dream may be.” He also noted that he “reduced the number and role of America’s nuclear weapons. Because of the New START Treaty, we are on track to cut US and Russian deployed nuclear warheads to their lowest levels since the 1950s” (Obama, 2013). In the same speech, he further outlined some specific NW-related goals:

- to reduce the US’s deployed strategic NWs by up to one-third;
- to seek negotiated cuts with Russia in order to move beyond Cold War nuclear postures;
- to work with NATO allies in order to seek bold reductions in US and Russian tactical weapons in Europe;
- to forge a new international framework for peaceful nuclear power;
- to call on all nations to begin negotiations on a treaty that would end the production of fissile materials.

Two more statements on this issue followed in 2016. On 30 March, President Obama published an opinion piece in the *Washington Post* titled “How We Can Make Our Vision of a World Without Nuclear Weapons a Reality” (Obama, 2016).

The positions Obama outlined were the following:

- Obama referred to the 2016 Nuclear Security Summit in Washington as advancing “*a central pillar of our Prague Agenda: preventing terrorists from obtaining and using a nuclear weapon*” (ibid.).

- The US will continue strengthening the international treaties and institutions that underpin nuclear security.
- The US is taking concrete steps toward a world without nuclear weapons. The US and Russia remain on track to meet their New START Treaty obligations.
- Obama reduced the number and role of NWs in the US national security strategy.
- Obama ruled out developing new nuclear warheads and narrowed down the category of contingencies under which the US could use or threaten to use a(n) NW.
- The US strengthened the global regime – including the NPT – that prevents the spread of NWs.
- The US is pursuing a new framework for civil nuclear cooperation.
- A world without NWs will not happen quickly, perhaps not even in Obama’s lifetime. But the US and its allies have begun the process of moving towards it. The US has the moral obligation to lead the way in eliminating them.
- People must never resign themselves to the fatalistic idea that the spread of NWs is inevitable.

Then in May 2016, during a historic visit to Hiroshima, as the first US President to visit it after World War II, Obama said: “among those nations that hold nuclear stockpiles, we must have the courage to escape the logic of fear and pursue a world without them. We may not realize this goal in my lifetime, but persistent effort can roll back the possibility of catastrophe. We can chart a course that leads to the destruction of these stockpiles. We can stop the spread to new nations and secure deadly materials from fanatics” (Obama and Abe, 2016).

### **WORDS AND ACTIONS**

Those were the speeches and that was the rhetoric. Now comes the hard part – what were the actions that were taken to follow up on the speeches?

- The New START Treaty, which entered into force in 2011, was indeed achieved, and it reduced the number of deployed nuclear warheads and their delivery units, but omitted other classes of nuclear weapons. Yet President Obama’s promise to seek to include all NW-States in this endeavor, which he had made in the Prague speech, did not materialize.
- The four Nuclear Security Summits did secure nuclear materials and thus helped prevent nuclear terrorism, yet it must be pointed out that only civilian materials were included in the measures – which made up some 15% of the total amount of nuclear materials.
- The new framework for civil nuclear cooperation (i.e. an international fuel bank) – which was NOT in the Prague Agenda – is now being built in Kazakhstan.



I tried hard to come up with more positives but can only state what yet remains to be implemented and highlight the disappointing gap between Obama's rhetoric and action:

- The CTBT remains unratified.
- The NPT was not strengthened – quite the contrary, as I will outline below.
- The arms race has not decreased – quite the contrary. The US and Russia are acting with increasing belligerence toward each other.
- The US plans to spend \$1 trillion over 30 years on an entire new generation of nuclear bombs, bombers, missiles and submarines. President Obama was modernizing existing bombs to be used by fighters and long-range bombers, as well as warheads for submarine-launched missiles. In addition, he has authorized the rebuilding of the nuclear infrastructure, such as the facilities that produce and maintain the materials and components used in NWs.
- President Obama has ordered 200 new nuclear bombs to be deployed in Europe.
- He has not kept his (qualitative) 2010 Nuclear Posture Review promise to reduce the role of NWs in the US security strategy.

To set out why the President's record on nuclear disarmament falls short, Barry M. Blechman of the Stimson Center in Washington wrote an article in April 2016 titled "Obama Should Return His Nobel Peace Prize" (Blechman, 2016). In it, he referred to five missed opportunities which could have advanced the Prague Agenda:

- 1 Without a strategic analysis (bilateral or multilateral negotiation with Russia), the bureaucracy took the default path: continued bilateral talks with Russia.
- 2 A September 2009 meeting of the UN Security Council – convened by President Obama and attended by the presidents of all the member states – adopted a resolution committing the states to working toward "the peace and security of a world without NWs" – but there was no tangible follow-up to it. Such a follow up could have been a request to, for example, convene a working group which could meet to elaborate plans, milestones, or deadlines.
- 3 Washington's Nuclear Posture Review (NPR) did not go as far as had been intended or hoped, as the policy still permits first use of NWs in certain circumstances.
- 4 The NPR follow-on implementation study did not call for changes in the so-called 'requirements' for a prompt response, which is a key factor for determining how many NWs must be kept on alert and how many must be in the arsenal. Nor did it reduce the number of warheads kept in reserve.
- 5 In 2010, many members of NATO called for the removal of the 180 US nuclear bombs still kept in Europe, yet the US sided with the so-called 'nuclear hawks' and reaffirmed the role played by NWs as part of NATO's overall strategy.



Blechman's article thus concludes with the following statement: "No, Mr. President, your nuclear record has not been impressive. Decency demands that you should return your Nobel Peace Prize" (ibid.)

Let me now turn to other developments that negatively influenced the debate and atmosphere around nuclear weapons and disarmament.

### **THE CONFERENCES ON HUMANITARIAN CONSEQUENCES AND THE 2015 NPT REVIEW CONFERENCE**

As High Representative for Disarmament Affairs, I witnessed the steadily deteriorating climate between the NW States and the non-NW States. An ambitious Action Plan was adopted at the NPT 2010 Review Conference in the optimistic phase after the Prague speech and the New START negotiations, yet by 2015 its nuclear disarmament part remained unimplemented.

The three conferences on the humanitarian consequences of a nuclear explosion – based on the 2010 Final Document – were not attended by the P-5, with the exception of the US and the UK participating in the last one, which was held in Vienna in December 2014.

The Open-Ended Working Group (OEWG) on nuclear disarmament convened in Geneva in 2013.<sup>2</sup> It was to develop proposals to take forward multilateral nuclear disarmament negotiations. But it was also not attended by the P-5 – and "boycott" was the term often used by civil society in connection with their absence.

The 2015 NPT Review Conference closed without adopting a Final Document. The failure resulted from the participants' inability to reach an agreement on holding a conference on a weapons of mass destruction-free zone in the Middle East; this happened despite the fact that the commitment to hold the conference dated back to 1995 and the plan was later re-committed to by the UK, the US and Russia with the firm expectation that the conference would take place in 2012.

This also meant that the results of the OEWG could not be carried forward in the NPT process, and the issue was thus moved ahead in the First Committee of the United Nations, which decided in the fall of 2015 to hold a second OEWG to address "concrete effective legal measures, legal provisions, and norms that will need to be concluded to attain and maintain a world without nuclear weapons" (United Nations, 2015; 2016). It was yet another instance of an event of this sort that took place without the participation of the P-5.

The work of the OEWG resulted in resolution A/C.1/71/L.41, *Taking Forward Multilateral Disarmament Negotiations*, which was first voted on in the First Committee on 27 October 2016, with 123 votes in favor of it, 38 against it, and 16 abstentions. The resolution – which had 57 co-sponsors, a remarkable number – calls for the related negotiations to be open to all Member States, and to start in 2017. On 23 December, the final vote in the General Assembly was 113 in favor, 35 against, and 13

abstentions, but the sponsorship of the resolution by a large majority of Member States remained. It is not surprising that the US, the UK, France, Russia and Israel voted against it, together with most of NATO, Australia and Japan. China, India and Pakistan abstained from the vote, and interestingly, the DPRK voted in favor of it.

In a leaked document distributed to all NATO members ahead of the First Committee decision, the United States urged its allies to vote against the resolution and to boycott the negotiations, which were due to start in 2017. Participation in the negotiations, it argued, would erode the perception that nuclear weapons are legitimate in the context of certain actions, and it would make it more difficult for NATO to engage in nuclear planning.

A final US intervention at the General Assembly revolved around the question of the budget, as the US objected to a request for funding for four weeks of treaty negotiations at the UN in New York, but under tremendous pressure from supporters of the resolution, the US objection was withdrawn.

So negotiations on the **nuclear ban treaty**, as it is now referred to, will start soon. It is clear that a legal ban treaty cannot deliver disarmament by itself, but it is an important milestone. It is a practical expression of Article VI of the NPT: to “*pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament*”. It has revived the flagging momentum in the disarmament community and re-energized efforts to move from a ban to a total elimination of nuclear stockpiles and a dismantling of the nuclear weapons infrastructure.

### **BACK TO THE PRAGUE AGENDA?**

Let me, however, come back to President Obama’s Prague speech.

US Ambassador Robert Wood, when speaking about the L.41 resolution in the First Committee, said: “How can a state that relies on nuclear weapons for its security possibly join a negotiation meant to stigmatize and eliminate them?” (Wood, 2016).

That, of course, begs the following question: what did President Obama claim to want when he advocated “the peace and security of a world without nuclear weapons”?

And Acting Under Secretary Tom Countryman, at the EU Non-Proliferation Conference in early November, asked: “What should we expect of a negotiation among 100 countries and 200 NGOs conducted in a public setting? They will agree on the first day on the number – zero – and, in 1,000 days, they will not be able to agree either on a meaningful verification mechanism or on a realistic path to get to the declared goal” (Countryman, 2016).

He also stated, “my job, and *President Obama’s agenda*, requires me to do all I can to sustain global security at an ever-lower level of nuclear armament. We do not believe that the proposed convention offers a practical path to that goal” (my emphasis) (ibid.).

It is clear that the Prague Agenda has lost urgency and power; the momentum behind it has been lost, and the expectations of progress have dwindled. A new US Administration will take over in two months and we are moving into uncharted and unpredictable territory.

Next year will see the first preparatory session of the 2020 NPT Review Conference around the same time that the Ban Treaty negotiations will begin. It is not difficult to imagine the scenario: a hardening of positions, acrimonious discussions, accusations and counter-accusations, and a further weakening of the NPT?

What we need is to engage with the US and other key governments to promote practical and creative disarmament solutions – solutions that will support and fulfil the promise of Article VI in the NPT.

It can no longer be overlooked by the nuclear powers that there is a growing frustration with their failure to implement their pledges to reduce the role, the numbers, and also the risks of nuclear weapons. It is also clear that the dialogue in the US has shifted from a promise to eliminate nuclear weapons altogether to a dialogue where the Obama Administration prioritized agenda items that would reduce nuclear danger through non-proliferation and arms control rather than the much harder ones which would effectively lead to nuclear disarmament. In fact, Ambassador Wood explained the situation as follows: “the challenges to disarmament are a result of the political and security realities we presently face. [...] A ban treaty will do nothing to address these underlying challenges. [...] The world’s nuclear weapons arsenals did not appear overnight and they will not be drawn down overnight. We cannot lose sight of the fact that while we may disagree on process, we all agree on the goal: the peace and security of a world without nuclear weapons” (Wood, 2016).

This statement communicates an image of progress: we affirm the goal of a world without nuclear weapons, while at the same time explaining that disarmament is not yet realistic. It in fact restores the power of nuclear weapons by placing them at the center of maintaining global diplomatic stability – yet thinking of nuclear disarmament as a goal alone will not make it happen. What is needed is a strategy, a practice in which the international community must be actively engaged.

The frustration of the non-nuclear states has found its expression in the conferences on the humanitarian consequences of nuclear war and in resolution L.41 – and regardless of whether the possible outcome is dismissed as an empty shell by those who oppose it, the power of the conviction that nuclear weapons must be outlawed has increased and will not be vanquished.

## ENDNOTES

<sup>1</sup> This text is an edited version of the remarks delivered by Angela Kane at the Prague Agenda Conference in December 2016.

<sup>2</sup> It was established by resolution A/RES/67/56 of 3 December 2012; the results were noted in resolution A/RES/68/46 of 5 December 2013.

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## NUCLEAR DISARMAMENT: THE INTERPLAY BETWEEN POLITICAL COMMITMENTS AND LEGAL OBLIGATIONS<sup>1</sup>

DIETER FLECK

ILA Committee

To meet the challenge of nuclear armament effectively, it is important to consider it in the context of a larger spectrum of problems. Indeed, President Obama, when

leaving an impressive footprint at Hradčanské náměstí eight years ago, referred to a global economy in crisis; a changing climate; persistent dangers of old conflicts; new threats; and the spread of catastrophic weapons (Obama, 2009). He also realistically added that none of these challenges can be solved quickly or easily.

While the world has moved very fast in these recent years, only a few modest steps towards nuclear disarmaments were made by states in this period.<sup>2</sup> Civil societies, supported by elder statesmen and a growing number of governments, have convincingly addressed the humanitarian impact of nuclear weapons (Kissinger et al., 2008; see also Policinski, 2016). The UN General Assembly has adopted a Resolution on 'Taking Forward Multilateral nuclear Disarmament Negotiations' (see United Nations, 2016a, b, c) and the new Draft Treaty on the Prohibition of Nuclear Weapons, adopted on 7 July 2017 with a vote of 122-1-1, in which no nuclear-weapon State participated (United Nations, 2017), has opened a new agenda of activities partly overlapping with those of other *fora*. This may affect the implementation of the Nuclear Non-Proliferation Treaty (NPT) (United Nations, 1968), the work of the Comprehensive Test-Ban Treaty Organization (United Nations, 1996, 2017; see also Bauer and O'Reilly, 2015), and nuclear disarmament verification.

Critical evaluations of this new situation notwithstanding, there is a stronger conviction today than ever before that reliance on nuclear weapons for deterrence is "increasingly hazardous and decreasingly effective" (Kissinger et al., 2008). At the same time it must be realized that, as emphasized by President Obama in his Prague speech, "the threat of global nuclear war has gone down, but the risk of a nuclear attack has gone up" (Obama, 2009): some States other than the nuclear-weapon States accepted under the NPT have acquired nuclear weapons and there is a continuing black market trade in nuclear secrets and materials. The legal dimension of the problem is thus embedded in global aspects of international security and the survival of mankind.

### **BEST PRACTICES?**

I am presenting my thoughts as part of a major research project conducted under the auspices of the International Law Association (ILA) to explore best practices of States and international organizations for complying with, and ensuring compliance with, nuclear non-proliferation obligations (ILA Committee, 2014). At the last ILA Conference (Johannesburg, 2016) the participants realized that there was still a long way to go before the envisioned outcome, an *ILA Declaration on Legal Issues on Nuclear Weapons, Non-Proliferation and Peaceful Uses of Nuclear Weapons*, could be reached. But there was a consensus that all three pillars of the Nuclear Non-Proliferation Treaty (NPT) (United Nations, 1968) – i.e. non-proliferation of nuclear weapons; the right to develop research, production and the use of nuclear energy

for peaceful purposes; and nuclear disarmament – need to be addressed in context. We have actively promoted this comprehensive approach in our book series (Black-Branch and Fleck, 2014, 2015, 2016), and the next ILA Conference (Sydney, 2018) will carry this work further based on a report addressing controversial issues of peaceful uses of nuclear energy, including nuclear security and safety, radioactive waste management, damage prevention and reparation.

There is an important interplay between political commitments and legal obligations in this respect. While political commitments are not legally binding, firm legal obligations are generally too *status quo*-oriented to convincingly embrace dynamic changes. Yet the two categories should not be seen as limiting, but as mutually reinforcing each other in the striving towards nuclear disarmament under a strict and effective international control. It is not only extensive networking, but also cooperation between States that remains necessary to fulfil the obligations under the NPT and fully address the relevant rights and obligations under the customary international law. Such cooperation is more important and may be more effective than simply relying on enforcement measures. Indeed, a new diplomatic approach will be required to improve international cooperation and seriously review defence doctrines and structures that may be no longer effective for securing international peace and security (Gates, 2010).<sup>3</sup>

The obligations related to legal aspects of nuclear disarmament set up in Article VI of the NPT are legal binding obligations (ILA Committee, 2014). As the ICJ had underlined in its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, these obligations include “an obligation to negotiate in good faith a nuclear disarmament” that would go beyond “a mere obligation of conduct” (*pactum de negotiando, pactum de contrahendo*) (ICJ, 1996: para. 105 F), and include “an obligation to achieve a precise result” (*ibid.*: para. 99; see also Owada, 2012). The objectives are clearly listed in Article VI of the Treaty as “cessation of the nuclear arms race at an early date”, “nuclear disarmament”, and “general and complete disarmament”. Each of these objectives requires negotiations that should be pursued in good faith and implementation measures under a strict and effective international control. Article VI is thus far from conditioning nuclear disarmament on the achievement of a general and complete disarmament. Rather, it requires States to take effective steps to end the nuclear arms race and to enhance international security at lower levels of armament. It would not be correct to argue that the obligations under Article VI are dependent on future events or that factual developments after the conclusion of the NPT had changed the situation envisioned by the parties and thus affected the obligations they had entered into in 1968. On the contrary, the events during and after the Cold War and the indefinite prolongation of the Treaty in 1995 have underlined the need for a cessation of the nuclear arms race. They have reinforced the need for nuclear disarmament and confirmed that a gen-



eral and complete disarmament is not just an aspiration, but an obligation of States to be pursued under the UN Charter.

Furthermore, nuclear-weapon States are under a legal obligation to revise and strictly limit their relevant strategies (see, e.g., Thakur, 2015; Evans, 2014) to ensure that nuclear weapons are only a means of last resort in an extreme circumstance of self-defence in which the very survival of the State is at stake. They are likewise under an obligation to act in accordance with existing obligations under international humanitarian law and human rights law. It should be noted that the grave humanitarian consequences of a nuclear weapon detonation are beyond dispute, but security and humanitarian principles co-exist, so realistic progress towards disarmament can only be achieved if both types of principles are given due consideration.

States modernizing their nuclear arsenals should exercise transparency as to the modernization's purpose and effects for nuclear safety and consequences for nuclear deterrence in accordance with existing obligations under international humanitarian law and human rights law. As these obligations are owed to the international community as a whole, all States have a *droit de regard* to follow the global state of compliance with these obligations and appropriately react in case of their breaches, irrespective of whether they are directly injured. Any such reaction requires a will to cooperate. Countermeasures in cases of such breaches must only be the last resort. They must be reviewed and stopped as soon as cooperative solutions become possible.

### **BEST PRACTICE, CONFIDENCE AND THE SECURITY COUNCIL**

The aforementioned legal obligations are valid *erga omnes*, as they affect the international community as a whole rather than a particular State or group of States. They are not limited to States party to the NPT, as they are part of customary international law or at least an evolving custom. States Parties to the NPT must cooperate with one another as well as with non-Parties to the NPT to implement these obligations. Responsible cooperation and a certain amount of transparency towards third States are, indeed, required to ensure compliance with nuclear non-proliferation obligations. This includes confidence-building measures on military, technological and other security-related issues and has consequences for military doctrines, force structures and alert levels; a comprehensive nuclear test ban; the termination of the production of fissile material for weapons; cooperative approaches to anti-ballistic missile defence; and further limitations to military uses of outer space.

For fully meeting the challenge of nuclear terrorism States must co-operate under the auspices of the Security Council (United Nations, 2004) and, in appropriate partnerships, implement their obligations to ensure nuclear non-proliferation, law enforcement and the punishment of crimes. This cooperation cannot be reduced to

criminal prosecution of terrorist attacks. It must include prevention and security, human welfare and the protection of the environment.

While the tasks addressed here are complex and difficult, I do not accept that it is impossible to fulfil them. Nuclear disarmament and nuclear non-proliferation are mutually reinforcing processes in that reliable non-proliferation measures may facilitate arms control and disarmament measures. The interrelationship between these two important tasks is not only valid for the NPT, in which they form two essential pillars; it also applies to States not party to the Treaty. It is in this sense that political commitments are as important as legal obligations, since they serve to achieve progress on nuclear disarmament in times of increasing security challenges.

## ENDNOTES

<sup>1</sup> Based on the author's remarks delivered in Prague on 1 December 2016, which were revised in July 2017.

<sup>2</sup> For example, there was the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (the New START Treaty) and Protocol (8 April 2010); see Phillips (2010). Approximately 15,395 tactical and strategic nuclear warheads still exist today, of which about 4,120 are deployed with operational forces and roughly 1,800 are kept in a state of high operational alert; see Kile and Kristensen (2017: 611).

<sup>3</sup> For more on the U.S. 2017 Nuclear Posture Review (NPR) currently underway, see Rühle and Rühle (2017).

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