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**NON PROLIFERATION INITIATIVES
AND THE NPT REVIEW**
An Introduction

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An Introduction

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1. At this preliminary stage of our meeting, it seems useful to present a general assessment of the situation in the field of nuclear proliferation / non proliferation as it stands after the failure of the latest NPT Review Conference.

2. One can look at the situation from the perspective of the difficulties which multilateral instruments have been encountering as a whole in recent years. It indeed appears to have become more and more difficult, not to keep alive, but to enlarge and to smoothly implement multilateral treaties – the Kyoto Protocol, the Roma Convention establishing an International Criminal Court being good examples. We are all aware of the complexities and uncertainties of the UN reform proposals. If we also consider the European building process, the difficulties of the so-called European Constitution are similarly obvious. What we are now facing may thus perhaps actually be a general crisis of multilateral institutions, of which the failure of the NPT Review Conference might not even be the worst instance.

3. Moreover, looking more specifically at the preventive multilateral regimes in the field of arms control, we face the same kind of problems : it was in particular impossible to agree on a verification protocol for the BW Convention, while the CTBT is not, and most probably will never be, in force. As for the NPT itself, we could after all draw consolation from the fact that it is not the first time that there is no final document to such a conference, without the Treaty finding itself to be endangered by this. This situation does however at the very least reveal the existence of doubts concerning the implementation and the efficiency of this Treaty. It shows a weakening of the consensus among States Parties, a certain amount of frustration as well as a lack of confidence in each other. But the main question seems to be : What does this mean ? What is the significance of these doubts, of this lack of consensus, of this lack of confidence ? Most probably, the answer lies beyond mere technical problems.

4. In this respect, we should consider two different hypothesis. None of them are optimistic, but the second one is the most pessimistic of the two. The first hypothesis supposes that the main objective of the NPT, i.e. the non proliferation of nuclear weapons, remains untouched, is still agreed upon by the Parties, and that the doubts about the Treaty relate to its efficiency. If such is the case, we need to evaluate these doubts, their origins, and their consequences. A first set of remarks will deal with this hypothesis. The second hypothesis supposes that these doubts are about the very objective of nuclear weapons non proliferation. The latter could be perceived as no longer being useful for the security of the Parties, or even dangerous, either because it would be too weak and too flawed, or because it stabilizes the inequality between the have and the have nots. As unpleasant as is such a hypothesis, we must also consider it, and we will devote a second set of remarks to it.

I - The weakening of confidence and consensus surrounding the NPT

5. In general terms, we can identify four reasons for this weakening : The NPT no longer protects against proliferation ; it allows the Parties to get ready for proliferation ; coercive measures against proliferation either do not exist or do not work ; the imbalance between NWS and NNWS remains at best untouched, and may be aggravated.

(a) The NPT no longer protects against proliferation

6. As we can see, there are several States, either Parties or non Parties to the NPT, which are currently asserting or developing their nuclear capabilities, even to the point of possessing nuclear weapons. For a long time, around three decades, the NPT, even if it was not a universal norm prohibiting the proliferation of nuclear weapons – and such a norm simply does not exist – was efficiently preventing the non parties to the NPT, from becoming nuclear, at least officially. Indeed, Israel, South Africa, India after 1974, were covertly or unofficially, NWS. But the very existence of the NPT prevented them from declaring themselves to be so. When South Africa destroyed its nuclear weapons and joined the NPT in 1991, this was seen as representing a great success for the international consensus on non proliferation, and for the return of this country to the virtuous circle of the civilized countries. Nowadays, only Israel among the non Parties keeps a low profile. But with the spectacular nuclear tests which were carried out by India and Parkistan in 1998, it is as if a kind of taboo has been broken.

7. At least, these countries were not Parties to the NPT, so they did not break any international rule. The picture is very different some years later, when we see North Korea first, then Iran, undertaking to proliferate. Iraq was the first to be uncovered, and its coercitive disarmament after 1991 was seen by the same token as reflecting a weakness of the NPT and, at the happy end, as representing a success for non proliferation. Improvement of the Vienna Agency safeguards, plus the indefinite extension of the NPT followed quickly. But, despite these positive developments for the NPT, the picture changed in the following years. Nowadays, it is some Parties to this treaty which are in the process of undertaking proliferation. So, why should the others remain committed to an obligation which does not appear to be fully respected by others ?

8. We must add to this a new risk, which has not been considered by the NPT, and which is the acquisition of nuclear weapons and/ or material by private groups, terrorists networks, or even by criminal circles. It would for certain be difficult for such groups to possess nuclear devices without some kind of complicity on the part of States – but to prevent such a complicity, even to identify the culprits, could prove to be difficult. The story of the Khan network is illuminating. One cannot find in the prohibitions of the NPT, or in the agreements surrounding it, a clear way of preventing this indirect proliferation, which is no less threatening to international security than the acquisition of nuclear weapons by States.

(b) The NPT leaves room for the preparation of proliferation

9. As far as the « *research, production and use of nuclear energy for peaceful purposes* », to quote the wording of article IV § 1 of the NPT, is allowed for States Parties, it is not necessarily wrong for a NNWS Party to enrich uranium, and then possess the fissile material necessary for building nuclear weapons. It is a matter of intentions, and no longer of capacity. We all know the Iran case, following the North Korean one. Obviously, one must have doubts as to the clarity of the intentions behind the production of enriched uranium, especially when the country is a huge producer of oil, and does not seem to have energy supply problems. But the burden of proof belongs to other States which raise these doubts, and such evidence is always difficult to establish. We can see here the degradation of the NPT regime : it was based not only on legal obligations and on their verification, but at its very roots on confidence, and confidence no longer exists – not from NWS, less and less from NNWS. In a context of mutual distrust, the room is open to exploit the weaknesses of the NPT in order to quietly get ready for proliferation.

(c) Coercive means to enforce the NPT are weak

10. We will probably have to discuss intensively this point in the following sessions, so we may be brief on that. Here is a point of fact, and a point of theoretical options. As far as the facts are concerned, coercion was efficient in the case of Iraq en 1991, but it was a kind of side effect, even an accidental effect, of the military intervention, which was not intended for this purpose. In 2003, the military intervention against Iraq was clearly missing the point, as the alleged nuclear capabilities or weapons simply did not exist. Maybe some collateral coercion was useful to get Libya to renounce its nuclear program, as a side effect of the war against Iraq. But any threat of such a military coercion would not be useful by now either against North Korea or Iran.

11. At the theoretical level, the coercion option is ambiguous. If it is undertaken by a State or a coalition of States against a proliferator, it could be efficient. But the risk is twofold : first, it would have to be a real war, not a threat, or even a strike against a limited target or softer, non military measures. Otherwise, it would leave room for the resumption of undercover proliferation activities, as in the case of Iraq after the bombing of Osirak ; second, it could lead other States to rush into the acquisition of nuclear weapons for themselves, in order to deter such coercive actions.

12. It would certainly be better if an armed action were authorized and legitimized by an international body such as the Security Council, and applied without any kind of discrimination. The UNSC has obviously the right to decide such interventions, if it considers proliferation to be a threat to international peace and security, either following a violation of the NPT by a State Party, or on an objective basis for a non Party. With the Declaration of 31 January 1992, and with Res. 1540 (April 28 04), the UNSC has taken some steps in this direction – but cautiously, and it seems difficult to come back to the Iraq enforced disarmament, given the events which followed.

(d) Persistent imbalance between NWS and NNWS

13. There was initially some balance in the asymmetrical obligations of the NPT Parties. In exchange for their renunciation of nuclear weapons, there was for the NNS the prospect of better security, as long as nobody was proliferating, as NWS were supposed not to rush into an arms race, and were giving to NNWS negative and positive security guarantees, which showed they were committed to nuclear disarmament. There was also, from the point of view of their development, the prospect of enjoying the benefits of the civil uses of nuclear energy. These hopes, thirty five years after the entry into force of the NPT, have been dashed. For a majority of countries, civil nuclear energy did not deliver on its promises from some decades ago ; NWS are not prepared to abandon their nuclear weapons, and the US seems to be on the verge of developing new ones ; nuclear weapons proliferation is taking place, nothing serious has been done about it, and it could be perceived as representing a security threat for non nuclear neighbouring States. So imbalances persist, and are even aggravated by the very existence of new NWS, which remain out of the NPT. One must admit that the frustrations of the NNWS are partly legitimate.

14. Indeed, some progress has been made. The security guarantees given by the NWS to the NNWS, individually, collectively and by the UNSC have been improved ; nuclear tests are no longer being carried out; the reduction of nuclear weapons has been a real one ; there is no longer a threat of nuclear war among the NWS, or at least among the Parties to the NPT. An initiative like the PSI could persuade the NNWS that the NWS are concerned and serious about the enforcement of non proliferation, and that they are willing to associate them to this endeavour – but at the same time the PSI is outside the NPT, and may cast new doubts as to its efficiency.

15. To conclude this first set of remarks on a provocative note, one could put into question the wisdom of the indefinite extension of the NPT ten years ago. It was at that time perceived to be a success for the Treaty. Now, one could ask whether it may not have transformed the NPT into some kind of icon, impossible to amend, impossible to adjust. It seems even more difficult to reform the NPT than the UN Charter. So the new developments are taking place outside of the Treaty : PSI, management of the North Korean and of the Iranian case, Res. 1540 of the UNSC ... And what could be the status of India, Israel, Pakistan within the Treaty ?

16. Would it not have been better, in order to keep the NPT at the core of the non proliferation efforts, to extend it for limited periods, allowing, for instance every ten or fifteen years, for renegotiation in order to improve it, or, if such improvements were not possible, to go beyond, instead of letting it become weaker and weaker ? And we know that it is always possible for a State Party to withdraw from the NPT, which means that the indefinite extension is in a way a precarious one.

II. - Doubts about the non proliferation objective

17. Despite all these shortcomings and weaknesses, the NPT has played a very positive role in preventing nuclear weapons proliferation for the past thirty years. It has helped

establish non proliferation as an international norm, as an objective which has to be maintained for the sake of international security, both of NNWS and of NWS, and for the stabilization of nuclear deterrence and arms control. This is the reason why, beyond any technical criticism of the NPT and beyond the lack of confidence in its efficiency, we may predict that the very objective of non proliferation itself will be thrown into doubt. To put it in other words, it seems that non proliferation is in itself no longer perceived to be the main purpose, the distinction between Good and Evil. Behind this endeavour, we can see another one, more limited and at the same time less neutral : a distinction between acceptable and unacceptable proliferation. Let us begin with the facts : proliferators and would be proliferators are acting more and more publicly, claiming legitimacy. Then proceed on motives : They are less and less security driven, and more and more legitimated by national interest, national pride and by the rejection of discrimination among States.

(a) A proliferation process more and more public

18. At first, proliferators were outside the NPT, and were hiding their possession of nuclear weapons : look at Israël, at South Africa. We still do not officially know whether Israël is a NWS, and we learnt publicly about South Africa when this country, for internal rather than international reasons, announced the destruction of its nuclear weapons. To keep the proliferation secret was a value for the countries involved, a way to protect their behaviour, to escape harsh criticism. Another step was taken by India and Pakistan. They also were outside the NPT, but they came publicly nuclear without serious reactions, and in way they have won the diplomatic battle of legitimacy. Nowadays, in a third step, we have followed and are still following the Soap Opera of North Korea, in its fourth or fifth season, and Iran is playing even more overtly the same game. If these two countries succeed in becoming NWS, no doubt they will be accepted as such and other States will follow. As usual in international relations, facts are overcoming law, whether we like it or not. And the fact that by now the would be proliferators are acting more and more publicly, playing cynical games with non proliferation, illustrates the fact that proliferation is seen by an increasing number of States as representing a legitimate process.

(b) An increased perception of a legitimate proliferation

19. One can identify three kinds of motives behind proliferation. The first one is related to national interests and pride. The perception is strong, even if it is a false one, that to have a say in international affairs, to be taken seriously, a State must possess nuclear weapons. This does not necessarily imply an aggressive behaviour, but it does limit the pressures that can be applied on such States. In this respect the American intervention against Iraq in 2003 contributes to this vision in two ways : the US was acting overtly on the basis not of international norms but of its national interests ; so will other States able to do the same. The US was acting to prevent a State from becoming a NWS : the picture would have been different if Iraq had already been nuclear. So some States were encouraged to consider the acquisition of nuclear weapons as a safeguard against such military invasions.

20. The second motive is related to the rejection of discrimination. At the regional level, the case of Israël is striking. Obviously, Israël has a specific status in this respect, and no one seems ready to exert efficient pressures for its nuclear disarmament, even if nuclear weapons do not seem really useful for its security. So it is difficult to persuade some countries of this region that they should permanently be denied the possibility to follow the same path. A solution is the proposal, endorsed by the UN and by the SC, of a Zone free of Weapons of Mass Destruction, but its prospects look remote for the moment. On a global level, why should some States be treated differently from India and Pakistan? And the fact that official NWS do not seem ready for nuclear disarmament reinforces the perception of an illegitimate discrimination among States.

21. A third motive is the relative ease with which it is now possible to build nuclear weapons. For a long time, it was a difficult process, full of financial, technical and industrial obstacles. So, beyond the legal obligations, States had other priorities. Proliferation is no longer the privilege of rich and developed countries, and it may be that the developing ones are finding in nuclear weapons greater interest and attractiveness, which reinforces the power of the two other motives. This should not be taken as a conclusion, at least because there is no conclusion to an introduction – only food for our discussion.