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**THE PROBLEM OF THE UNIVERSALITY OF THE WMD
TREATIES**

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On Tuesday 17 April 2007, my colleagues and I at the Egyptian Council for Foreign Affairs (ECFA), a think-tank, had the privilege of receiving Ambassador Rogelio Pfirter, Director-General of the Organization for the Prohibition of Chemical Weapons (OPCW). It was a pleasure to see him then and to see him again here in Rome. We were both representing our countries to the UK in the 1990s and we were both on the Advisory Board of the UN Secretary-General on Disarmament Matters, also in the 1990s. In Cairo we had a good and frank exchange of views and we greatly appreciated his coming in the context of his attempts to persuade the countries outside the convention to join in. We understand that Ambassador Pfirter's task is to achieve the universality or at least near universality of the convention. As a non-governmental think-tank, ECFA believes very much in universality but universality has to be seen in a wider context linking treaties concerned with WMDs. That is why my paper is on the problem of achieving universality by the major treaties dealing with weapons of mass destruction and related instruments, UN resolutions and export control regimes.

Since the 1950s, a number of treaties and multilateral regimes have been established with the objective of preventing the proliferation and elimination of weapons of mass destruction. In this paper, we shall concentrate on the universality of three major treaties: the Nuclear non-Proliferation Treaty (NPT) signed in 1968 and entered into force in 1970, The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction (BTWC) signed in 1972 and entered into force in 1975,¹ and the Chemical Weapons Convention (CWC), the tenth anniversary of which will be celebrated this month (April 2007). In the course of our analysis of we shall discuss also the entry into force of the Comprehensive Test Ban Treaty (CTBT), Security Council Resolution 1540 of 2004 on WMD terrorism and the export control regimes, and more particularly the Nuclear Suppliers Group (NSG) with regard to the NPT and the Australian Group (AG) with regard to the BTWC and CWC. It is obvious that the Security Council resolution and these regimes are closely linked with the implementation of the three major treaties. In this paper we are not only concerned with the state of adherence to the treaties, but also with the state of implementation of these treaties which aims at making them real universal instruments.

The NPT

The NPT today is adhered to by all nations of the world with the exception of India, Israel, Pakistan as well as the Democratic People's Republic of Korea (DPRK). The

¹Closely linked with the BTWC is the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and Bacteriological Methods of Warfare (The Geneva Protocol signed in 1925 and entered into force in 1928). The Protocol banned the use but not the production, stockpiling or deployment of such weapons.

latter withdrew finally from the Treaty in 2003, although there are signs that it may re-adhere to the NPT in the light of the latest developments concerning its nuclear weapons programme and its readiness to dismantle it and to bring its nuclear activities under IAEA safeguards. It is a matter which needs to be watched carefully in the coming months.

As a result of the non-adherence of these four States to the NPT, its universality has been seriously affected. Their absence has also affected the security of their respective regions, and has been a great source of instability. These States are not expected to give up their nuclear capabilities except may be

in the case of the DPRK. Therefore, their adherence to the NPT in the future is a far-fetched possibility.

In order to turn around this dilemma, two trends emerged supported by Israeli scholars and others. One suggests inviting Israel, India and Pakistan to accede to an Additional Protocol to the NPT, obliging them to behave “as if” they were members to the treaty.² Such a protocol would permit the three States to retain their programmes, but inhibit further development.³ The second trend advocates a new regime that would replace the NPT and would include also the NPT States. The latter would only subject fissile material produced for peaceful purposes to international safeguards.⁴

Without going into details of these proposals it is clear that the three States would continue with their nuclear-weapons capabilities unabated. They would merely undertake to abide by certain provisions of the NPT that would not affect their nuclear-weapon status, or they will abide by a new regime that would bring them closer to or on par with the acknowledged five NPT nuclear-weapon States. In other words nuclear-weapon status would be conferred upon them or endorsed by either the present or the new “non-proliferation regime”. In the case of Israel, a country that has stated that it would not be the first to introduce nuclear weapons into the region, would find itself being forced to accept a status implicitly or explicitly, that it has so far hesitated to recognize. It must be said, however, that recent statements by Israeli officials may give the impression that Israel is about to do away with the uncertainty and secrecy of its nuclear programme.

Accommodating the three countries, whether within the NPT regime or a “new regime” may also encourage further proliferation from within the NPT regime itself. Non-compliance and violations have already beleaguered the regime. The suggested accommodation may exacerbate the worries. In such an atmosphere the disarmament process, in compliance with Article VI of the NPT may be further weakened or disregarded.

²Sverre Lodgaard, “Making the Non-Proliferation Universal”, *WMD Papers*, No. 7, 2004. A shortened version of the paper was presented at the 54th Pugwash Annual Conference, Seoul, South Korea, 4-9 October 2004.

³Avner Cohen and Thomas Graham, Jr., “WMD in the Middle East: A Diminishing Currency”, *Disarmament Diplomacy*, No. 76, March/April 2004, pp. 22-25.

⁴Ephraim Asculai, *Rethinking the Nuclear Non-Proliferation Regime* (Tel Aviv: The Jaffee Center for Strategic Studies, Memorandum No. 70, 2004).

Moreover, a protocol attached to the NPT would be tantamount to the amendment of the treaty, whose parties have agreed to follow certain procedures and conditions prescribed by the Treaty that seem to be rather difficult, if not impossible, to fulfill. In the past, additional protocols to the NPT were suggested with regard to other issues but were quickly discarded or withdrawn because of the aforementioned considerations.

In the particular case of Israel, the way is quite open for it to adhere to the NPT and abide by its provisions as a non-nuclear-weapon State. A unilateral declaration of behaviour as if it were a party to the NPT, an alternate proposal as suggested by some is meaningless if Israel's status remains ambivalent and if its nuclear activities have not been subjected to the verification system of the IAEA. There is a clear route to impress on non-parties to abide by the NPT regime, simply adhering to the Treaty. Why invent other routes that would in fact legitimize the present status quo and appear to Israel's neighbours as sheer appeasement? Israel's nuclear programme is a source of great anxiety in the Middle East. Security cannot prevail in the region in the shadow of Israel's growing nuclear-weapon capabilities.

As to South Asia, the agreement reached by India and the United States in the field of nuclear cooperation has weakened, in our view, the NPT, and the nuclear non-proliferation regime in general. The argument that this agreement may bring India closer to the regime may seem plausible. But an in-

depth analysis of this agreement and its repercussions worldwide would indicate a double standard that would favour those outside the Treaty and those who have managed to reach a nuclear-weapon capability.⁵

Closely linked with the universality of the NPT, is the establishment of nuclear-weapon-free zones or zones free of weapons of mass destruction around the world. With regard to nuclear weapons, such zones would further enhance the universality of the NPT. They have the additional advantage of preventing the deployment of nuclear weapons on the territories of the zones and provide negative nuclear guarantees to the benefit of the parties to such zones. The zones free of weapons of mass destruction have for the first time been suggested by Egypt in 1990, a proposal that coincided that year with worrying reports and actions indicating that Iraq was attempting to acquire equipment and materials relating to weapons of mass destruction. President Mubarak of Egypt emphasized that all weapons of mass destruction, without exception, should be prohibited in the Middle East and that all States of the region without exception should make equal commitments in this regard and that verification matters and modalities should be established to ascertain full compliance by all States of the region to the full scope of the prohibitions without exceptions.⁶

⁵For the US-India Agreement see remarks made by US Secretary of State Condoleezza Rice at the Senate Foreign Relations Committee as well as at the House International Relations Committee. Both were made on 5 April 2006. The house approved it overwhelmingly in July 2006 with minimal restrictions, whereas the Senate approved it in September. . See also *International Herald Tribune* editorial "Still a Bad Deal", July 29-30, 2006.

⁶See UN Docs. A/45/219 and S/21252, 18 April 1990.

The 1990 Egyptian initiative went beyond the 1974 initiative on establishing a zone free of nuclear weapons. In fact, it was the first time that all weapons of mass destruction were linked with each other in one basket. Without exaggeration, this paved the way later to the adoption of Resolution 1540 on WMD terrorism and the valuable study undertaken by a commission established by the Swedish government on WMD which was dubbed as “weapons of terror”.⁷

Closely linked with the NPT is the CTBT, which is also open to all States to join. But its entry into force has been delayed as a result of the required ratification for the entry into force, as well as the refusal of the US Senate to ratify the Treaty.

The Treaty will not enter into force until it has been signed and ratified by the 44 States listed in Annex 2 to the Treaty. This list comprises the States that formally participated in the 1996 session of the Conference on Disarmament, and that appear in table 1 of the December 1995 edition of “Nuclear Research Reactors in the World” and table 1 of the April 1996 edition of “Nuclear Power Reactors in the World”, both compiled by the International Atomic Energy Agency.

However, the significant aspect of the CTBT is that an implementing organization is already in place in Vienna and the International Monitoring System (IMS) is already operating to the extent that this system has registered the nuclear-weapon test that the DPRK carried out this year. These are unique features of a treaty that has not yet entered into force. It's a good omen for the future of this Treaty.

The success of the CTBT should be an incentive for the nuclear-weapon States to implement more fully Article VI of the NPT, especially in the field of nuclear disarmament. As I said earlier, the problem of universality is not in adherence but in implementing fully the provisions of the relevant treaties of weapons of mass destruction and this would take me now to the CWC.

The CWC

There are 178 parties to the CWC as of April 2006. Unlike the NPT, all provisions in the CWC are non-discriminatory. Also, CWC established well-defined mechanisms that do not exist with regard to the NPT. A number of States have not yet adhered to the Treaty. The States that has signed but not yet ratified are the Bahamas, Central African Republic, Comoros, Congo, Dominican Republic, Guinea-Bissau, Israel and Myanmar. The non-signatory States are Angola, Barbados, Egypt, Iraq, Lebanon, DPRK, Somalia and Syria. Here if I may speak on behalf of one country among the non-signatures, and that is Egypt, and may be also on behalf of Syria and Lebanon not represented here, their reluctance to sign is very much linked to the non-adherence of Israel to the NPT.

I believe it is difficult, if not impossible for Egypt to adhere to the CWC in these circumstances. But Egypt is not passive on this issue because it has been and still is

⁷WMD Commission, *Weapons of Terror. Freeing the World of Nuclear, Biological and Chemical Arms*, Stockholm: Fritzes, 2006. For the state of adherence to the CWC, BTWC see pp. 131 and 117 respectively.

very much involved in aiming at establishing a zone free of weapons of mass destruction in the region. The idea of the zone received a new boost in the latest Arab Summit in Riyadh last March when the leaders have agreed that a mechanism should be created to activate this initiative instead of just adopting resolutions by the UN or by reiterating former known positions and attitudes. In this respect, the implementation of the resolution on the Middle East at the NPT Review and Extension Conference of 1995 supporting the establishment of a zone free of weapons of mass destruction has been highlighted. Without this resolution there would have been no consensus at the 1995 NPT Review Conference on the extension of the Treaty. The three Depository Governments of the NPT co-sponsored that resolution and therefore confer on them major responsibilities for bringing this resolution into fruition.

I am sorry to have reverted to the NPT, but it is just to make the point that we need to move on with the elimination of WMDs. The Chemical Weapons Convention has certainly made great progress through its organization (OPCW) to convince more countries to adhere to the convention. This is an achievement in itself, and a recognition of the present efforts of its Director-General.⁸ The Treaty, like its sister-treaty, the NPT, is also experiencing some problems and challenges such as the delay in observing the timetable for the destruction of declared CW stockpiles. It seems that the United States and Russia will be granted a five-year extension of the destruction deadline, which means April 2007-2012, despite the fact that even this extended deadline may not be met.⁹ Sergey Batsanov rightly observes that the OPCW should seriously explore the possibility of closer interaction with other international organizations and arrangements to prevent WMD proliferation. For example, joint actions could be considered with the IAEA on the issue of creating a WMD free zone in the Middle East.¹⁰

This view demonstrates the close interrelationship between the treaties on weapons of mass destruction.

The BTWC

The state of adherence to the Treaty is a less impressive than that of the CWC, which may be because the Treaty does not have an executive organ similar to that of the OPCW. As of April 2006, it has had 155 Parties. Sixteen States have signed the Convention but not ratified it, while more than 20 States have not signed it at all. In the first category, the States are: Burundi, Central African Republic, Cote-d'Ivoire, Egypt, Gabon, Guyana, Haiti, Liberia, Madagascar, Malawi, Myanmar, Nepal, Somalia, Syria, United Arab Emirates, Tanzania. Non signatory States are: Andorra, Angola, Cameroon, Chad,

⁸For the role played by the OPCW, see Sergey Batsanov, *Approaching The Tenth Anniversary of the Chemical Weapons Convention. A Plan for Future Progress*, *Nonproliferation Review*, Vol. 13, No. 2, July 2006, pp. 341-342.

⁹*Ibid.*, p. 347.

¹⁰*Ibid.*, p. 349.

Comoros, Cook Island, Djibouti, Eritrea, Guinea, Israel, Kazakhstan, Kiribati, Marshall Islands, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niue, Samoa, Trinidad and Tobago, Tuvalu and Zambia.

Also, as the NPT and the CWC, the BTWC is experiencing some difficulties. It's known that the Treaty lacks a capacity for monitoring and verification, implementation and enforcement. An additional problem is that many governments have not adopted or fully implemented national legislation to ensure fulfillment of their obligations.

The last Review Conference of the Convention, which was held in December 2006, called for universal adherence to the Convention. It was more or less a successful conference, although the question of verification was perhaps the most obvious failure of the conference. Attempts in the past to study the verification problem came to a stand still as a result of United States lack of interest, which remained unchanged at the conference.¹¹ A success in solving the verification issue might help with regard to further adherence to the Treaty.

Closely related to the universality issue are the export control regimes and more particularly the Nuclear Suppliers Group (NSG)¹² with regard to the NPT and the Australia Group (AG)¹³ with regard to both the CWC and the BTWC. What is needed are reliable assurances of supply to all parties of material and substances that are needed for their legitimate activities. Guidelines and policies should be adopted by the suppliers after close consultations with the potential recipient countries who are now usually confronted with guidelines and policies worked out in their absence.

Lastly, Security Council Resolution 1540 of 28 April 2004 prescribed for the first time under Chapter VII of the UN Charter the way to contain, to respond and to act to face up to potential WMD terrorism. In order to assess adherence to the domestic legal requirements of the resolution, a committee of the Security Council has been created to review national reports submitted by States on their efforts to implement the resolution. After submitting its first report in 2006, the Committee's mandate was renewed for two years by Security Council Resolution 1673 of April 27, 2006. It is too soon to assess the Committee's work in its first phase. The aforementioned report was encouraging.

Finally, Resolution 1540 contains provisions to indicate that the intention is to complement and reinforce, rather than replace and subvert, the negotiated Treaties. It is also indicated that the obligations of the resolution should not be interpreted as conflicting or altering the rights and obligations under the treaty regimes. The resolution calls for the promotion of these Treaties, the adoption of their national implementation requirements and cooperation with the non-proliferation treaty organizations.¹⁴

¹¹See Jez Littlewood, "Out of the Valley: Advancing the Biological Weapons Convention after the 2006 Review Conference", *Arms Control Today*, Vol. 37, No. 2, March 2007, pp. 12-16.

¹² IAEA Doc. INFCIRC/254, Feb. 1978. For part 1 as it stands today see INFCIRC/254/Rev. 6/Part 1, 16 May 2003.

¹³ See James I. Seevaratnan, "The Australia Group. Origins, accomplishments and challenges, *The Non-Proliferation Review*, Vol. 13, No. 2, July 2006, pp. 401-415.

¹⁴ Peter Crail, "Implementing UN Security Council Resolution 1540. A Risk-based Approach", *The Non-Proliferation Review*, Vol. 13, No. 2, July 2006, p. 360.

In conclusion it must be said that universality of WMD treaties and related instruments and regimes is a crucial element that ought to lead to equal treatment, fairness and an open opportunity to join and contribute to a world free of WMDs. Treaty-making has been, and should remain, the basic approach to universality. The outcome of Security Council Resolution 1540 on WMD Terrorism may one day find its way to a single convention on combating terrorism in all its facets. It would not be an easy task, but a precedent exists in the single convention on drugs.