

The United Nations and the Three Pillars of Arms Control: Norms, Treaties and Coercion

Professor Ramesh Thakur

The subject of arms control, disarmament and proliferation is back on the international agenda with a vengeance. The list of concerns includes the issue of what happened to the weapons of mass destruction (WMD) in Iraq that was the primary stated justification for the war, the proclamation of a weaponised nuclear capability by North Korea that some outsiders are sceptical of but dare not discount totally, the concerns expressed by the International Atomic Energy Agency (IAEA) about Iran's nuclear programme, press reports that other countries may be contemplating developing nuclear weapons or buying them off-the-shelf, and fears that Washington is lowering the threshold of normative barriers and developing a new generation of 'useable' nuclear weapons.

The goal of containing the spread and enlargement of weapons and arms stockpiles has rested on three pillars since the end of the Second World War and the creation of the United Nations (UN) in 1945: norms, treaties, and coercion. Borrowing conceptual language from Dame (and former Under-Secretary-General of the UN) Margaret Joan Anstee, a fellow-advisory board member of the UN Intellectual History Project, the United Nations has played three linked but analytically distinct roles as under :-

- (a) A funnel for processing ideas into norms and policies and for transmitting information from national sources to the international community.
- (b) A forum for discussion and negotiation of common international positions, policies, conventions and regimes.

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(c) A font of international legitimacy for the authoritative promulgation of international norms, appeals for adherence to global norms and regimes, and coercive measures to enforce compliance with them.

Norms

The terrain on which the conceptual, and policy, contest over military intervention has been fought is essentially normative. It takes the form of norm displacement from the established norm of nonintervention to the claimed emerging new norms of 'humanitarian' and 'preemptive' interventions. The UN is at the centre of this contest both metaphorically and literally. Its Charter encapsulates and articulates the agreed consensus on the prevailing norms that give structure and meaning to the foundations of world order, and the international community comes together physically primarily within the hallowed halls of the UN. It is not surprising, therefore, that the organisation should be the epicentre of the interplay between changing norms and shifting state practice.

Much as smaller economies seek protection from the big economic powers in rules-based regimes that embed agreed codes of conduct and dispute settlement mechanisms, so the weak and vulnerable countries seek protection from the predatory instincts of the powerful – an abiding lesson of history, if ever there was one – in a rules-based world order that specifies both the proper conduct to be followed by all states and the mechanisms for reconciling differences between them. The UN indeed symbolises such an order.

A norm can mean a widely prevalent (that is, normal) pattern of behaviour: that which *is*. Or it can be defined ethically, to mean a generally prescribed standard of proper behaviour in accordance with the moral code of a society: that which *should be*.¹ Human beings are social actors and norms, because they help to shape and organise social behaviour on the basis of the difference between right and wrong, normal and deviant, are essential to the functioning and existence of society. Indeed they bring texture and substance to the concept of society. Collective norms constitute the social identity of actors while simultaneously constituting the rules of the

game for regulating their social behaviour. Norms and laws, being alternative mechanisms for regulating human and social behaviour, permit human beings to pursue goals, challenge assertions and justify actions.

In the age of colonialism, most Third World countries became the victims of Western superiority in the organisation and weaponry of warfare. The danger today is that they could continue to be the objects but not authors of norms and laws that are supposedly international. But a world order in which the developing countries are norm-takers and law-takers, while the Westerners are the norm and law setters and enforcers, will not be viable because the division of labour is based neither on comparative advantage – Africa, Asia and Latin America are home to some of the world's oldest civilisations with their own distinctive value-systems – nor on equity. The risk is under-appreciated because the international discourse in turn is dominated by Western, in particular Anglo-American, scholarship. Currently there is essentially only a one-way flow of conceptual traffic, from the West to the rest. This matters, because advances in international society, like progress in national societies, occurs through the contestation of ideas. If the impetus for action in international affairs usually appears to come from the North, this is partly due to a failure of leadership from the South. Instead of forever opposing, complaining and finding themselves on the losing side anyway, developing countries should learn how to master the so-called 'New Diplomacy' by becoming norm entrepreneurs.

One of the most powerful norms since 1945 has been the taboo on the use of nuclear weapons. Norms, not deterrence, have anathematised the use of nuclear weapons as unacceptable, immoral and possibly illegal under any circumstance – even for states that have assimilated them into military arsenals and integrated them into military commands and doctrines. There have been many occasions since 1945 when nuclear weapons could have been used without fear of retaliation but were not, even at the price of defeat on the battlefield.

In the UN system, if the Security Council is the geopolitical centre of gravity, the General Assembly (GA) is the normative centre of gravity. The GA is the arena where contested norms can

be debated and reconciled. Such a role was true historically for the GA in delegitimising colonialism, even though decolonisation resulted from policy decisions taken in the national capitals of the colonial powers. It was the UN more than any other institution or organisation which proclaimed racial equality as a global norm and delegitimised apartheid as an ideology and system of government. The UN has been at the forefront of the universalisation of the human rights norm and the internationalisation of the human conscience. And it is to the GA that civil society actors look and member states go when they wish to proclaim and reaffirm arms control and disarmament norms. This is the chief explanation for so many declarations and resolutions first being adopted in the UN before producing conventions and treaties – norms followed by laws – in UN as well as non-UN forums.

There is still no substitute for the UN as a font of international authority and legitimacy. Calling on the UN's moral authority to ensure compliance with global norms is especially relevant when behaviour considered to be unacceptable is not in fact proscribed by any treaty to which a state may be party. In 1998, when India and Pakistan conducted nuclear tests, they broke no treaty that either had signed. But they violated the global anti-nuclear norm, and were roundly criticised for doing so. But the Security Council was in a peculiarly difficult position, for the simple reason that the five permanent members to the security council – (P5) are caught in a particularly vicious conflict of interest with regard to nuclear non-proliferation, in that they are also the Nuclear Non Proliferation Treaty (NPT)-defined five nuclear powers (N5). The P5 nuclear powers, who preach non-proliferation but practice deterrence, have diminished moral authority to oppose proliferation.

Treaties

There exists a very large number of treaties and conventions regulating the use and spread of armaments. The weapons of mass destruction trinity is regulated by the biological and chemical weapons conventions, the NPT, the Comprehensive Test Ban Treaty (CTBT), several regional nuclear-weapons-free zones, and a whole series of bilateral and multilateral treaties and agreements. Article 6 of the NPT is the only explicit multilateral disarmament

commitment undertaken by the N5. There are even more agreements imposing curbs and controls on conventional weapons including, for example, the Ottawa Convention on antipersonnel landmines which has the dual distinction of banning a class of weapons already in widespread use and being a disarmament treaty that is rooted in humanitarian concerns.

The United States, along with other major countries like China and India, has not signed the Ottawa Treaty on landmines. Of late Washington has retreated also from a series of arms control and disarmament agreements, including the Anti Ballistic Missile (ABM) Treaty and the CTBT. In doing so, the US contributes to a worsening of the proliferation challenge. It is difficult to convince others of the futility of nuclear weapons when some demonstrate their utility by the very fact of hanging on to them and developing new doctrines for their use. That is, treaty setbacks contribute to a weakening of norms, which then set in train a vicious cycle, since the heightened risk of proliferation is used to justify a further scaling back of treaty or voluntary commitments such as no nuclear weapons testing.

There is a fairly widespread sense that the UN has become dysfunctional and moribund as a forum for negotiating arms control and disarmament treaties. Neither the special sessions on disarmament, the First Committee of the GA, the UN Disarmament Commission, nor the Conference on Disarmament – which while not a true UN body is nevertheless an integral element of the totality of the UN's Arms Control and Disarmament (ACD) 'regime' – has much of a track record.

From one point of view, therefore, it could be argued that the UN has not been the chief architect of arms control and disarmament. Most of the key treaties and regimes – not just bilateral treaties signed by Moscow and Washington during the Cold War on intermediate range and strategic forces, but even multilateral regimes like the NPT, Chemical Weapons Convention (CWC), Biological Weapons Convention (BWC) and the various regional Nuclear Weapons Free Zone (NWFZ) – were negotiated outside the UN framework. The organisation itself downgraded the disarmament clauses as a path to peace compared with its central importance in the schema of the League of Nations. This reflected

the apparent lesson of the interwar period that arms in themselves are not a problem; weapons in the wrong hands, and not enough in time in the right hands, are the problem.

At one level, this is of course true. At another level, the literal truth masks a deeper underlying reality. The ideas behind many of the existing regimes were often first funnelled through the UN system. Thus the idea for a total cessation of nuclear testing was proposed by India at the GA in December 1954. In January 1957, the US submitted a five-point plan to the GA proposing an end to the production of nuclear weapons and testing. Throughout the 1980s and the mid-1990s, pressure for a comprehensive test ban was funnelled through the GA. Similarly, the idea of negotiating a South Pacific NWFZ was submitted to the GA for endorsement in 1975 under the joint sponsorship of Fiji, New Zealand and Papua New Guinea, and the 1985 treaty links the regional verification system for the South Pacific to the global IAEA inspections regime within the UN system. The UN has thus historically been the funnel for processing arms control and disarmament proposals and this role continues today. The basic policy positions are agreed among members of 'coalitions of the willing' in the arms control community, and only then taken to the international community through UN structures. As with many other examples in the past, treaty negotiations may well be held in forums outside the UN. This should not take away due credit from the organisation for its invaluable funnel role.

Multilateral treaties do not have to be negotiated within standing international machinery. They can just as usefully be negotiated at conferences called specifically for the purpose. The UN has unmatched convening and mobilising power rooted in legitimacy of its identity as the only authenticated voice of the international community. Unfortunately in recent years major world summits too have become increasingly discredited, becoming battlegrounds for carrying on political trench warfare by other means, occasions for finger-pointing rather than problem-solving.

Even if negotiated outside UN forums, treaties are often submitted to the UN machinery for formal endorsement that has no bearing on the legal standing of the treaty but does substantially

enhance its moral weight. This has been true, for example, of the various regional NWFZ. India's protestations notwithstanding, another clear-cut example of the UN as a font of authority for global arms control treaties came with the CTBT. On 10 September 1996, the GA endorsed the CTBT by a vote of 158-3. Only Bhutan and Libya joined India in rejecting it.

Compliance

India's tests of May 1998 proved that a norm cannot control the behaviour of those who reject its legitimacy. India had argued for decades that the most serious breaches of the anti-nuclear norm were being committed by the five nuclear powers who simply disregarded their disarmament obligations under the NPT. It defies history, common sense and logic to believe that a group of five countries can keep a permanent monopoly on any class of weaponry, particularly when they have made promise after promise to nuclear disarmament. The non-fulfilment of the NPT's Article 6 obligations by the N5 weakens the efficacy of the anti-nuclear norm in controlling the threat of proliferation.

Norms and laws are alternative and complementary mechanisms for regulating social behaviour. If both should fail, then the question arises of how to enforce compliance on the actors deviating from the socially prescribed norms. Within countries, there are any number of social and legal mechanisms to ensure compliance and punish outlaws, from ostracism and corporal punishment to imprisonment and capital punishment. Among countries, the universe of compliance-enforcing tools is slighter, more contentious and divisive, and usually less efficacious. Compliance is especially problematical in relation to the production, exchange and use of arms, for this lies at the very heart of national security. The non-proliferation norm became potentially enforceable in January 1992 when, in the context of the discovery of an advanced clandestine nuclear weapons programme in Iraq and threats and defiance from North Korea, the Security Council declared proliferation to be a threat to international peace and security (which can trigger enforcement action under Chapter VII).

Who decides if non-compliance has occurred with respect to arms control, disarmament or non-proliferation norms and treaties and what can be done about it? The UN is the chief expositor of international norms. The international moral code is embodied in its Charter. GA resolutions are the most commonly cited and widely accepted code of conduct, litmus test of international progress and metric of state compliance with internationally prescribed behaviour. The reconciliation of divergent interests by the UN has procedural as well as representational legitimacy: it is authenticated by the procedures that have been accepted by the authorised representatives of states.

The core of the international law enforcement system is the Security Council. Faced with a challenge to the norms and laws governing the acquisition, production, transfer and use of arms, the P5 may have to resort to measures of coercion ranging from diplomatic and economic to military. With the GA having little substantial power, and the Security Council often deadlocked, the weight of UN decision-making frequently falls on the shoulders of the Secretary-General (SG). He may be ignored, but he is not easily delegitimised. However, on the issue of armaments and weapons platforms involving national security, the SG is not able to issue judgments and edicts against member states, unless perhaps they have violated specific and binding obligations.

There are several international bodies set within the UN framework as part of the implementation mechanism for disarmament: the IAEA (Vienna), the Organisation for the Prohibition of Chemical Weapons (OPCW) and the Provisional Technical Secretariat of the CTBT Organisation, (Vienna). There were also of course the UN Monitoring, Verification and Inspection Commission (UNMOVIC), and before, that the UN Special Commission on Iraq (UNSCOM), charged with the disarmament of WMD in Iraq after the Gulf War of 1991. Despite many serious hurdles, UNSCOM and the IAEA were successful in determining the extent of the Iraqi WMD programme and in disarming Iraq even without the full cooperation of the Iraqi government.

More importantly, nevertheless, the Iraq experience over the years shows the enormous difficulty of ensuring compliance with

international norms and commitments, even with respect to one of the world's most odious regimes pursuing some of the world's most destructive weapons. For the failure to find WMD since the war cannot eradicate the known historical record of Saddam Hussein's past pursuit of them and his will to use them against outsiders as well as Iraqis.

If an international pariah like Saddam Hussein cannot be confronted by a demonstration of collective will, then clearly it is simply not credible to threaten friends and allies who neither accept the validity of the norm nor can be accused of breaching treaties they have not signed. India today is increasingly being accepted back into the fold as a de facto nuclear power, which weakens the anti-nuclear norm still further. The US policy has shifted de facto from universal nonproliferation based on the NPT to differentiated proliferation based on relations of the regimes in question with Washington. US-friendly countries like Israel will be ignored, US-hostile 'rogue regimes' like Iraq will be threatened and punished.

However, such a dramatic deterioration of the security environment hardens the determination of the 'rogues' to acquire the most lethal weapons precisely in order to check armed attacks they fear (with or without good cause) will be launched by the US. Some countries, not the least North Korea, may have concluded that only nuclear weapons can deter Washington from unilateral wars of choice. Thus as the US throws off fetters on the unilateral use of force and the universal taboo on nuclear weapons, it could well strengthen the attraction of nuclear weapons for others while weakening the restraining force of global norms and treaties.

Reforms

The reality of contemporary threats – a virtual nuclear-weapons capability that can exist inside nonproliferation regimes and be crossed at too short a notice for international organisations to be able to react defensively in time, and non-state actors who are outside the jurisdiction and control of multilateral agreements whose signatories are limited to states – means that significant gaps exist in the legal and institutional framework to combat them.

Recognising this, a group of 11 like-minded countries has launched a Proliferation Security Initiative (PSI). The group has met several times, conducted some joint exercises and plans several more. The premise is that the proliferation of such weapons deserves to be criminalised by the civilised community of nations. The goal is to be able to interdict air, sea and land cargo linked to weapons of mass destruction on the basis of a set of agreed principles. It signifies a broad partnership of countries that, using their own national laws and resources, will coordinate actions to halt shipments of dangerous technologies and materiel. Questions remain about the legal basis for searching and interdicting ships in international waters. It runs the risk of being seen as a vigilante approach to nonproliferation by an 11-strong posse led by a self-appointed world sheriff. Yet the very fact that the PSI has been launched and combined exercises have been held signals a new determination to overcome an unsatisfactory state of affairs. Moreover, the involvement of Australia and Japan alongside the United States in the Pacific, plus another eight European countries (France, Germany, Italy, the Netherlands, Poland, Portugal, Spain, and the UK), signals a welcome return to multilateralism in trying to deal with the problem. But there is a long way to go before the PSI develops into a robust counter-proliferation strategy in which there is general confidence.

Many would like to reformulate the disarmament agenda in the light of political developments since the end of the Cold War; others fear that dearly-held and hard-won ambitions could fall prey to the revisionists and the goal of nuclear disarmament could be undermined. In the Conference on Disarmament (CD), every treaty is hostage to the veto of any one of its 66 members. All negotiators are national. Most are under instructions to close all the loopholes of the adversary but keep their own open. Most are reluctant to concede anything in negotiation from a position of weakness, fearing that they will be relegated to a permanent position of inferiority. But most are also reluctant to concede any advantage from a position of strength, seeing no virtue in giving up their relative superiority. Hence the alienation of public support from the intergovernmental forums of international arms control agreements. There is urgent need for a radical overhaul of the multilateral ACD machinery with

regard to norm promotion, treaty negotiation and compliance mechanisms.

Arms control and disarmament agreements are negotiated outcomes among governments, with many compromises and give-and-take over a protracted period of time. Negotiation entails difficult technical and political judgments on reciprocity, mutuality and relative balance. Negotiators tend to exaggerate their own calculus of the balance of risks, threats and vulnerabilities, while downplaying that of their opponents. Arms control negotiations can also become hostage to cross-issue linkages and domestic political battles between rival political parties, competing centres of power or bureaucratic turf battles. Often, the attainment of arms control treaties founders on the insistence of each country on its maximum preferred goal as its minimum, irreducible position. By definition, a negotiated international treaty entails compromises and accommodation of one another's interests. Convinced of the moral rectitude of its principled position, a self-righteous country can wreck the prospect of a multilateral treaty.

The preference for and success of the Ottawa process and treaty on landmines show why the standard static model of international agreements – years of negotiations leading to a final product – needs to be replaced by a fluid and dynamic model – a rolling process of intermediate or self-adjusting agreements that respond quickly to growing scientific understanding and public sentiment. A major factor behind international support for the Ottawa process was mounting frustration with the limitation of the Convention on Certain Conventional Weapons and the painfully slow rate of progress in the CD. International organisation has its roots in the desire of states to collaborate in the pursuit of common goals. The United Nations is the forum for the harmonisation of national actions and the reconciliation of national interests. Deadlock and stalemate on critically urgent issues of armaments delegitimise established international machinery; they do not detract from the credibility of creative ad hoc solutions that go outside the agreed framework of negotiations.

The crisis of legitimacy and credibility of the global arms control and disarmament regimes is not unrecognised within the UN. On

23 September 2003, in his address to the GA, Kofi Annan announced his intention to set up a high-level panel to study global security threats. In so doing, the Secretary-General said that the past year had shaken the foundations of collective security and undermined confidence in the possibility of collective responses to common problems and challenges. The 16-strong panel is being asked to make clear and practical recommendations for ensuring effective collective action to meet future threats to peace and security. The supplementary note on the panel's terms of reference notes that "there may be a need to review and strengthen the international regimes... such as the proliferation of nuclear, chemical and biological weapons". As you know, I presently live in Japan. There, they don't seem to believe in amending the constitution; instead, they simply reinterpret the relevant clauses to suit the changed circumstances. I trust my good friend General Nambiar will not meet with too much fierce resistance when he urges the Panel to reinterpret their brief to include disarmament. I am sure Gareth Evans, who as Australia's Foreign Minister set up the Canberra Commission, will support such a stance.

In the past several decades, at least since the signing of the NPT in 1968, there was great merit in relying on an integrated strategy of norms, treaties and coercion to keep the WMD threat in check. Relying solely on coercion with little basis any longer on norms (morality) and treaties (legality) simply creates fresh problems. In order to enhance their credentials as critics and enforcers of the norm, the Nuclear Weapons States (NWS) need to move more rapidly from deterrence to disarmament. The Canberra Commission had argued that the case for the elimination of nuclear weapons was based on three propositions: their destructive power robs them of military utility against other NWS and renders them politically and morally indefensible against non-NWS; it defies credulity that they can be retained in perpetuity and never used either by design or inadvertence; and their possession by some stimulates others to acquire them. Its conclusion was fully vindicated in 1998. The three pillars are mutually reinforcing in holding up the structure of global arms control. The surprise decision by Libya towards the end of 2003 to come clean and give up on its WMD programmes is surely vindication of this proposition – that

the combination of sanctions, UN inspections and negotiations do work – rather than vindication just of the demonstration effect of 'shock-and-awe' coercion in Iraq. The nuclear containment edifice began falling apart in 1998 because ultimately, the logic of nonproliferation is inseparable from the logic of disarmament. Hence the axiom of nonproliferation: as long as any one country has them, others, including terrorist groups, will try their best to get them.

Note

1. The definition of a *norm* isolates a single standard of behaviour, whereas *institutions* emphasise a collection of rules and practices and do not capture the 'oughtness' of the norm definition.

War Wounded Foundation (Converting Disability to Ability)

War Wounded Foundation is a registered charitable organisation set up for the long term rehabilitation of war disabled personnel of the Armed Forces. At present there are approximately 30,000 such personnel in need of help.

The concept for rehabilitation is to take the job to them, instead of finding jobs for them in cities, away from home. The corporate houses have been persuaded to give them retail agencies and outlets for their products. This is hoped to be a win-win situation for the disabled soldier and the corporate houses.

The War Wounded Foundation acts as a 'facilitator' and so far has succeeded in getting a dozen personnel as agents. Another 100 cases are under process. This, as is obvious, is a long term task.

The Foundation does not get funds from the government or the Armed Forces, but relies on donors (corporate or individual) to meet expenses for running the organisation. The inaugural function was held in northern zone in August 2003. Functions in other parts of the country are planned for the future.

Cheques or drafts payable to "War Wounded Foundation" by donors may be sent to either of the following addresses :-

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