

Second look at non-proliferation discovers divergent views

A cynic might have summed up the Second NPT* Review Conference as an episode in the long history of the Conference on Disarmament and a curtain raiser for the IAEA's newly established Committee on Assurances of Supply (CAS).

This requires fuller explanation.

The task of the Conference was "to review the operation of the Treaty [on the Non-Proliferation of Nuclear Weapons] with a view to assuring that the purposes of the Preamble and the Provisions of the Treaty are being realized". To discharge this task, 75 nations party to the NPT met in Geneva from 11 August to 7 September 1980. The Second Review Conference was to have ended on Friday 5 September, but it was prolonged until the Sunday to enable Governments to continue negotiations on including substantive matters in the final document. In the end however, the Conference's final report was purely procedural.

Before the first NPT Review Conference met in May 1975 the chief question looming over the future of the Treaty was whether it would be ratified by the main industrial *non*-nuclear-weapon States and, in particular, by the Euratom countries and Japan. That first conference opened on Monday, 5 May 1975. On the preceding Friday, the question was largely answered when Belgium, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands deposited their instruments of ratification of the Treaty. Japan followed suit a little more than a year later on 8 June 1976.

Between the first and second conferences, 18 nations acceded to the NPT bringing the total number of Parties up to 113. As a result almost all the industrial "North" (with the notable exceptions of France and Spain) have become parties as well as more than seventy developing countries. All of North America, almost all of Europe, most of the Middle East and most of the Far East and South-East Asia, much of Africa and Latin America now have nuclear programmes covered by the Treaty; although a number of countries in South Asia, the Middle East, South America and Southern Africa have chosen so far to remain outside it.

This encouraging progress therefore had its geographical limits.

London Guidelines and US laws

Other developments (or lack of them) between 1975–1980 affected the substance of the Treaty itself. In January 1978, most of the main countries which

manufacture or supply nuclear plant and equipment, issued what were known as the London Guidelines calling for restraint in the export of "sensitive" nuclear technologies. The guidelines did not distinguish between importers that were Parties to the Treaty and those that were not. Later in 1978, the United States brought into force the Nuclear Non-Proliferation Act which required a non-nuclear-weapon State importing fuel from the USA to have all its nuclear activities under IAEA safeguards but which also imposed far-reaching restrictions on the enrichment and reprocessing of fuel of US origin, also irrespective of whether the State concerned was or was not a Party to the Treaty.

Many States held the London Guidelines and the United States Non-Proliferation Act to be inconsistent with the obligations that all Parties to the Treaty had assumed under Article 4:

"1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world."

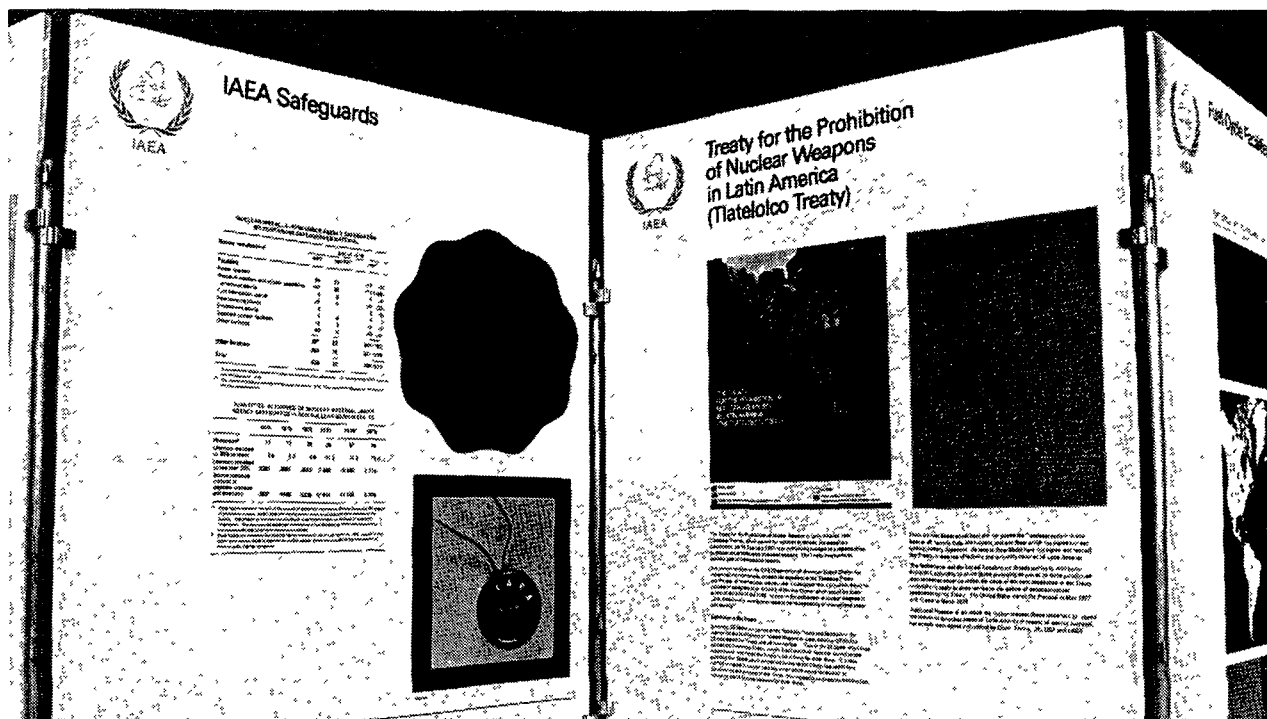
The progress that had been made in slowing down the nuclear arms race, in achieving nuclear disarmament and towards a comprehensive ban on the testing of nuclear weapons in all environments, was also not remarkable. Many States considered that the Parties concerned — in particular, the nuclear weapon States — were not doing enough to fulfil their obligations under Article 6 and the relevant paragraphs of the Preamble of the Treaty which read as follows:

"The Parties to the Treaty ...

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the co-operation of all States in the attainment of this objective,

* Treaty on the non-proliferation of nuclear weapons (NPT).



During the Second NPT Review Conference the IAEA mounted an exhibition in the Palais des Nations, Geneva, featuring the Agency's safeguards work.

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control,

have agreed: [Article 6]

Each of the Parties to the Treaty undertakes 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, and on a treaty on general and complete disarmament under strict and effective international control."

It was to be foreseen therefore that these matters would be vigorously discussed at the Conference. They were.

The Conference opened with a week-long general debate which was moderate in tone. There were several areas of consensus. No delegates questioned the need for the Treaty or the desirability of strengthening it. The Parties continued to consider it a cornerstone of all non-proliferation efforts. There was general agreement that the non-nuclear-weapon Parties had abided by their commitments not to produce or receive nuclear weapons

or nuclear explosives. There was also general recognition that the IAEA safeguards were effective and not unduly intrusive and there were many proposals for supporting and strengthening them and for other non-proliferation projects. The concept that exports should only be made to countries that had accepted NPT or comparable safeguards (Full Scope Safeguards) was widely supported.

Work of the Main Committees

It was, however, recognized by some of the nuclear weapon States as well as by the non-nuclear-weapon States that little progress had been made towards the disarmament objectives of Article 6. The extent of dissatisfaction only became fully evident when the two Main Committees of the Conference began their work.

Main Committee 1 dealt chiefly with those aspects of the Treaty that relate to "non-proliferation, disarmament and international peace and security". Its leading figures were the Ambassadors who normally conduct disarmament negotiations in Geneva. Delegates reaffirmed that the non-nuclear-weapon States had abided by their obligations not to "proliferate" and to accept the Agency's safeguards. However, certain nuclear weapon and non-nuclear-weapon States were accused of helping Israel and South Africa to acquire nuclear weapons technology, and thus of having breached their obligations under Article 1.

The "Group of 77", Sweden and other countries also tabled a number of proposals for tangible steps towards nuclear arms control. Amongst them were the urgent ratification of SALT 2 and its immediate implementation pending such ratification, immediate negotiations on SALT 3, a moratorium on nuclear

tests pending the conclusion of a comprehensive test ban treaty and the early establishment of a working group on the Conference on Disarmament to deal with this question (instead of leaving it entirely for negotiation between three nuclear-weapon States).

Those proposals were generally unacceptable to the nuclear-weapon States although there was a last minute offer to accept the proposal about a working group of the Conference on Disarmament. This apparently came too late and the Main Committee 1 was unable to produce any substantive report. In the end this failure also prevented a substantive report from emerging from the Main Committee 2.

Main Committee 2 dealt chiefly with the peaceful uses of nuclear energy, the right of access to nuclear supplies and technology and the way in which safeguards have been applied by the Agency. Many of its leading personalities came from Vienna where they are members of the Agency's Board of Governors.

The London Guidelines and the US Non-Proliferation Act were subjected to a detailed and critical review. Consumer countries from Western Europe as well as from the Group of 77 joined in. The supplier States countered by pointing out that the London Guidelines were drawn up in good faith in order to put a curb on proliferation of "sensitive" facilities and that they applied to imports by industrial as well as by developing countries.

"Near consensus"

The surprising and encouraging outcome of these lengthy and sometimes vehement discussions was a last-minute agreement on all but three paragraphs of the draft of a long working paper intended to serve as the basis for Main Committee 2 report. This "near consensus" was reached at 4 a.m. on the final Saturday morning of the Conference. The three points of disagreement related to nuclear supplies to Israel and South Africa and other political questions. The fact that the Committee could come so close to consensus was a tribute not only to the skill of its Chairman and his colleagues and the Secretariat but also to the spirit of compromise and desire to achieve constructive results shown by all the delegations that took an active part.

It may be interesting to touch on some of the main points of the "near consensus" since some of them are likely to resurface in CAS. Amongst these of particular interest to the Agency were that the "Blue Book" Agreement* meets all the obligations of non-nuclear-weapon States under the Treaty – in other words, additional commitments are not required by the Treaty.

* *The structure and content of agreements between the Agency and States required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons* INFCIRC/153. Reprinted by the IAEA, 1972. The Agency's Board of Governors has requested the Director General to use the contents of this booklet as the basis for negotiating safeguards agreements.

There was also explicit support for full-scope safeguards and a recognition that IAEA safeguards respect sovereign rights of the safeguarded countries and have not hampered their development; on the contrary they contribute to the maintenance of confidence.

It was also recognized that existing safeguards are adequate for the job they are called on to do today but that it will be necessary to improve them when more complex facilities come under safeguards. In this connection it was recommended that States should take safeguards into account in the design of nuclear plant and they should exercise their right of accepting or rejecting inspectors in such a way as to help (and not to hinder) the application of safeguards.

There was also support for a "well designed" International Plutonium Storage Scheme and for the Convention on the Physical Protection of Nuclear Materials.

These points relate chiefly to Article 3 of the Treaty. But there was also consensus on the main points discussed under Article 4. It was agreed that Parties should respect the national decisions of other Parties regarding the fuel cycle which they wish to develop (provided that agreed safeguards measures were applied). It was also agreed that national legislation should take into account the existing legal obligations of the Parties under the NPT and under agreements with other Parties. If renegotiation of agreements were necessary it should be "achieved equitably and without unilateral interruption of supply or import". This was seen to be particularly important for developing countries in view of their vulnerability to changes in conditions of supply.

There was also wide support for CAS and proposals that should be used for developing "institutional arrangements" such as regional fuel cycle centres, emergency back-up systems (an uranium emergency safety network), stockpiles and an international nuclear fuel bank.

There was also consensus that Parties should consider establishing a special fund, to be administered by IAEA, for giving technical assistance to developing States that are Party to the Treaty and that the latter should receive preferential treatment in access to and transfer of nuclear technology.

These are only some of the main points from the working document. It looked for a moment as if this would become the report of the Main Committee 2 and thus part of the final report of the conference itself. However, many delegations felt that there should be a substantive report from Main Committee 2 only if Main Committee 1 could reach a comparable consensus. Since this did not happen the working paper failed to achieve any official status and the final report of the conference was purely procedural.

At the closing session of the Conference its President, Ismat T. Kittani of Iraq, nevertheless urged all Parties to implement in good faith those proposals on which there had been agreement.

A balance of obligations?

As is usual on these occasions, what was said in private discussions was sometimes more interesting than the public statements. One heard the view expressed by delegates of some industrial countries that, although the criticism of lack of action on Article 6 — and negative action on Article 4 — was often fair enough, the NPT was neither a Treaty on disarmament nor on co-operation in the peaceful uses of atomic energy but was, as its name implies and as the first three Articles make explicit, a Treaty to stop the “horizontal” spread of nuclear weapons, and that its effectiveness should be measured accordingly. This argument was strongly contested by other delegates who maintained that each obligation imposed by the Treaty was equally binding and that the Treaty represents a balance of obligations — a bargain struck in 1970 — and that, unless this bargain were kept, the Treaty would lose its viability in the long term.

Hopeful augury

There seems little doubt that the decision of the Agency’s Board of Governors in June 1980 to establish the Committee on Assurances of Supply had a constructive influence on the conference. The delegates met in the knowledge that there would be a forum in Vienna at which they would be able to discuss, in detail, the problems which have arisen in relation to the supply of nuclear plant, equipment and technology and the related question of effective non-proliferation safeguards. This helped to give direction to the discussions of Main Committee 2. There is little doubt that in reaching agreement on most points of the working paper, many delegates had the forthcoming meetings of CAS in mind. The fact that it was possible to achieve so much agreement in three weeks is a hopeful augury for the difficult discussions that lie ahead in CAS itself.

CAS will certainly need all the help and guidance it can get in fulfilling its mandate “to consider and advise the Board about ways and means in which supplies of nuclear material, equipment and technology and fuel cycle services can be assured on a more predictable and long-term basis in accordance with mutually acceptable considerations of non-proliferation” as well as “on the Agency’s role and responsibilities in relation to these matters”.

Participation in the Conference

The following 75 Parties to the NPT participated in the Conference

Australia, Austria, Bangladesh, Belgium, Bulgaria, Burundi, Canada, Congo, Costa Rica, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Ecuador, Ethiopia, Finland, Gabon, Ghana, German Democratic Republic, Federal Republic of Germany, Greece, Honduras, Holy See, Hungary, Iceland, Indonesia, Iran, Iraq, Ireland, Italy, Ivory Coast, Japan, Jordan, Kenya, Lebanon, Libya, Liechtenstein, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, San Marino, Senegal, Sierra Leone, Somalia, Soviet Union, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, United Republic of Cameroon, United States, Uruguay, Venezuela, Yugoslavia and Zaire

In addition, Egypt, a signatory State which had not ratified the Treaty participated in the Conference without taking part in its decisions.

Eleven States, which are neither parties nor signatories to the Treaty and two regional organizations participated in the Conference as Observers: Algeria, Argentina, Brazil, Chile, Cuba, Israel, Mozambique, Spain, United Arab Emirates, United Republic of Tanzania, Zambia, the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) and the League of Arab States. They were entitled to attend open meetings of the Conference and to receive and submit documents.

Another part of the IAEA’s display at the Conference informing delegates about international safeguards.

