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THE ROLE OF THE DEVELOPING NATIONS IN THE ARMS CONTROL DECISION PROCESS

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One of the major international developments since the founding of the United Nations in 1945 has been the phenomenal increase in the number of nation-states. Most of these new members belong to the Third World, and most have subscribed to the global normative system which is centered in the Charter of the United Nations. It is generally recognized, however, that the entry of developing nations into the mainstream of the legal process of the international community has been followed by the feeling on their part that they have not enjoyed a proportionate share in the shaping of this process, which is so vital to their interests, and instead their role has been one of accession to norms written by the developed countries.

It is encouraging to note, therefore, the indications of a growing input by the developing countries into the evolving normative structure of the community. One such indication is evident in the decision process relating to arms control which has been going on under the aegis of the United Nations, and, in particular, in the evolvement of the Treaty on the Nonproliferation of Nuclear Weapons which was opened for signature under the auspices of the United States, the Soviet Union and the United Kingdom on July 1, 1968.¹

In his statement on the Revised Draft of the Treaty on the Nonproliferation of Nuclear Weapons which was presented jointly by the United States and the Soviet Union to the

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¹ T.I.A.S. No. 6839, 21 U.S.T. 483; done at Washington, London and Moscow, July 1, 1968; entered into force March 5, 1970. Articles I and II contain the following operative clauses:

Article I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Eighteen Nation Disarmament Committee² in Geneva on January 18, 1968, President Lyndon Johnson alluded to this influence with the acknowledgement that:

We have worked long and hard in an effort to draft a text that reflects the views of other nations. I believe the draft presented today represents a major accomplishment in meeting these legitimate needs.³

The views of other nations which the American President referred to would seem to include those expressed in the Joint Memorandum on Nonproliferation of Nuclear Weapons.⁴ This document made reference to Resolution 2028(XX) which was adopted by the General Assembly of the United Nations on November 19, 1965, in which Resolution the Assembly "noted with satisfaction the efforts of the eight delegations to achieve the solution of the problem as contained in their Joint Memorandum" which had previously been submitted by them on September 15, 1965⁵ to the ENDC. The later Joint Memorandum (August 19, 1966) referred to the fact that the General Assembly in its resolution calling upon the ENDC to negotiate a nonproliferation treaty, laid down the principles *inter alia* that such a treaty "should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers . . ." and "should be a step towards the achievement of general and complete disarmament and, more particu-

² The development of the Eighteen Nation Committee on Disarmament (hereinafter referred to as ENDC) was as follows: As early as September 7, 1959, the foreign ministers of the United States, France, the United Kingdom and the Soviet Union announced in a joint communique (U.N. Doc. D.C./144, Sept. 8, 1959) their agreement to seek establishment of a ten nation committee for the general consideration of disarmament with the intention of making reports to the General Assembly and the Security Council. Proposal for an enlarged forum was made on December 31, 1961 by the Soviet Union and the United States jointly in a draft resolution (A/C. 1/PV. 1218 at 4-12) presented in the First Committee of the General Assembly—to include eight new members. This resolution was approved by the General Assembly on December 20, 1961 (G.A. Res. 1722 (XVI)) with the recommendation that the Committee seek agreement on general disarmament under international control. On March 14, 1962, the Eighteen Nation Disarmament Committee opened discussions in Geneva with a membership comprising France, the United Kingdom, the Soviet Union, Bulgaria, Canada, Czechoslovakia, Italy, Poland, Roumania, Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic (ENDC/PV. 1, March 14, 1962). France has since been generally inactive. Now with an enlarged membership, the Geneva body is currently referred to as the Conference of the Committee on Disarmament.

³ U.N. Doc. ENDC/212, Jan. 19, 1968.

⁴ Joint Memorandum on Non-Proliferation of Nuclear Weapons, presented to the ENDC on August 19, 1966, by the eight national delegations of Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden, and the United Arab Republic. U.N. Doc. ENDC/178.

⁵ U.N. ENDC/158.

larly, nuclear disarmament . . ." Whereupon the Joint Memorandum stated:

The eight delegations note with satisfaction that during the discussions which have since taken place in the Eighteen Nation Committee on Disarmament, mainly on the draft treaties presented by the United States (ENDC/152 and ENDC/152, add. 1) and the Soviet Union (ENDC/164) the above mentioned principles have received further substantial support. . . .

Referring to the above quoted principles in the General Assembly's resolution, the same Joint Memorandum added that:

The eight delegations consider the applications of the principles . . . to be of importance to all countries but particularly to non-nuclear weapon countries which, through a treaty on nonproliferation will have to refrain from the acquisition of such weapons.

And that:

The eight delegations further trust that in connection with an agreement on nonproliferation of nuclear weapons, intentions be explicitly stated that assistance to developing countries should be increased in order to help accelerate their programmes of development of atomic energy for peaceful purposes . . . also express the hope that adequate steps will be taken to envisage channelling important resources, freed by measures of disarmament, to the social and economic development of countries hitherto less developed.

The influence of the non-nuclear states, and in particular of those of the Third World, on the production of the Nonproliferation Treaty continued to be felt in the decision making that transpired between the submission of the Joint American-Soviet Revised Draft Treaty in January 18, 1968 and the ceremonies for the signature of the finalized Treaty on July 1, 1968. This influence is observable in a partial comparison of the January and July texts.⁶ Similarly, incremental concern for imple-

⁶ Thus Article IV, paragraph 2 reflects, in its revision, a progressive recognition of the rights of the developing nations. The earlier text had read:

2. All Parties to the Treaty have the right to participate in the fullest possible exchange of 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.

The final revision reads:

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 cooperate 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.

mentation of the rights of non-nuclear states is visible within the development of Article V.⁷

Comparison of the two sets of versions discloses that the later text of Article IV includes provision not only for the exchange of information but for the exchange of equipment and materials, and makes explicit reference to "consideration for the needs of the developing areas of the world." The later text of Article V adds implementive content to the earlier one by providing that negotiations to actualize the right of non-nuclear states to obtain benefits from the peaceful applications of nuclear explosions, pursuant to a special international agreement through an international body, should commence as soon as possible after the treaty's entry into force.

In his comment on these textual changes as previewed in the First Committee of the General Assembly on May 31, 1968, Soviet First Deputy Foreign Minister Kuznetsov, noted that

many representatives have quite rightly pointed to the particular interest of developing countries in the peaceful uses of nuclear energy for accelerating their economic development and improving the standard of living of their peoples. From this point of view a considerable amount of work has been done to supplement the treaty on non-proliferation . . . by including

⁷ The earlier revision had read:

Article V

Each Party to this Treaty undertakes to co-operate to insure that potential benefits from any peaceful applications of nuclear explosions will be made available through appropriate international procedures to non-nuclear-weapon States Party to this Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. It is understood that non-nuclear-weapon States Party to this Treaty so desiring may, pursuant to a special agreement or agreements, obtain any such benefits on a bilateral basis or through an appropriate international body with adequate representation of non-nuclear-weapon States.

The final revision reads:

Article V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development, non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

corresponding provisions that would accommodate the desires of the non-nuclear states.⁸

A specific instance of the input of a developing state in the decision process culminating in the Nonproliferation Treaty is that of Nigeria. In its "Working Paper Submitted to the Eighteen Nation Disarmament Committee: Additions and Amendments for Inclusion in the Draft Nonproliferation Treaty," dated February 28, 1968 as revised March 14, 1968,⁹ Nigeria asked for a change in the wording of Article IV. Referring to the January wording, Nigeria argued that the "words 'undertake to facilitate' should be substituted for the words 'have the right to participate in.'" The final text was changed to reflect this demand. It reads: "Undertake to facilitate, and have the right to participate in. . . ."

In seeking the motives leading the nuclear nations to accommodate the developing nations in their bid to participate in the international decision process in its arms control phase, one might tend to look first to considerations of physical power. Though the discrepancy between the power positions of the two groups of states would seem vast enough to argue against the need for such accommodation in material considerations, one possible explanation of the motivation is the remote prospect of a developing nation's acquiring possession of nuclear weaponry with its threat to the security of the nuclear states themselves.

It is submitted, however, that an important part of the explanation is the ethical thrust of the demand of the developing nations to participate in public decision making which is going to affect their interests and which is going to entail sacrifices on their part which will not be required of the nuclear states. Under the Nonproliferation Treaty, for example, it is the non-nuclear signatory states which will be obliged to forego the nuclear testing which would enable them to develop their

⁸ A/C.1/PV. 1577, at 62-73. See also Brewer, *U.N. Atomic Draft Revised to Aid Smaller Countries*, N.Y. Times, June 1, 1968 at 1, col. 2:

UNITED NATIONS, N.Y. May 31 — The United States and the Soviet Union bowed today to pressure from smaller countries and announced a series of changes in their proposed nuclear treaty, which would halt the spread of nuclear weapons to countries that do not now have them.

In essence the changes do the following:

Give stronger guarantees to the small countries that will benefit through the peaceful uses of nuclear power.

Give the smaller countries a promise of more urgent efforts by the big powers to end the world arms race.

Provide an agreement to reinforce the authority of the United Nations charter against the use of force in general.

⁹ U.N. Doc. ENDC/220/Rev.

own nuclear independence, while the nuclear states will continue to have the right to conduct detonations. The ban on acquisition does not apply to the latter under this treaty, nor are they prohibited from conducting underground testing by the Partial Test Ban Treaty.¹⁰ The moral posture of the non-nuclear group vis-a-vis the nuclear group was well summed up in the ENDC by delegates of three different countries. Representative Obi of Nigeria saw the issue:

A universal approach to the problem is not only essential but desirable and inescapable. After all, the treaty on non-proliferation, should we achieve one, would impose heavier obligations on the non-nuclear Powers than on the nuclear Powers.¹¹

Representative Burns of Canada pointed out that:

. . . we have all made it clear that there should be reciprocal obligations of the nuclear powers and the States not possessing nuclear weapons.¹²

And finally Representative Azeredo da Silveira of Brazil stressed the right of all members of the community to share in the power of decision:

For such is the kind of treaty to which we are looking forward: not a text agreed privately between the super-Powers and destined to massive accession by the rest of the nations. . . .¹³

As the community of nations continue to weigh the great decisions about arms control: decisions about underground nuclear testing, about chemical and bacteriological warfare, about the peaceful use of the sea bed and ocean floor, about the arms race and safeguards to guarantee the effectiveness of control agreements, and about the diversion of resources to develop-

¹⁰ T.I.A.S. 5433, 14 U.S.T. 1313; done at Moscow, Aug. 5, 1963; entered into force Oct. 10, 1963.

¹¹ U.N. Doc. ENDC PV. 235, Jan. 27, 1966 at 30.

¹² U.N. Doc. ENDC PV. 306, June 20, 1967 at 4.

¹³ U.N. Doc. ENDC PV. 310, July 4, 1967 at 5.

ment, the moral issue will be ever present.¹⁴ And the voice of the emerging consciousness of the developing countries will continue to be heard. Their claims are not about to cease.

For the poor nations have a moral hold on powerful nations that profess ethical ideals. Their voices can be ignored only at a heavy cost in credibility. Such is the political weight of the moral factor.

¹⁴ Cf. the Joint Memorandum of Sept. 15, 1965 (ENDC/158):

The eight delegations are convinced that measures to prohibit the spread of nuclear weapons should, therefore, be coupled with or followed by tangible steps to halt the nuclear arms race

See also the statement of Lord Chalfont of the U.K., U.N. Doc. ENDC/PV. 299, May 25, 1967, in part as follows:

. . . I see the non-proliferation treaty as simply the first but vital element in a broad and comprehensive strategy—a strategy for arms control, for disarmament and for international security, and for the international control of nuclear energy for the uses of peace. Certainly the treaty will not last, nor will it deserve to last, if it is used simply as a device to preserve the existing order of things, to perpetuate the oligopoly of the nuclear club. If we are to progress, as we should, from a non-proliferation treaty gradually to a more intelligent system of international security than the one we have at present it will be necessary for the nuclear Powers to accept two simple and incontrovertible facts.

The first of those facts is that they cannot expect the non-nuclear Powers of the world to deny themselves the option of possessing the most powerful military weapon the world has ever seen unless they, the nuclear Powers, are prepared themselves to engage in serious and specific measures of nuclear disarmament. . . .

. . . if a non-proliferation treaty is not followed by serious attempts amongst the nuclear Powers to dismantle some of their own vast nuclear armoury, then the treaty will not last, however precise its language may be. There is in my mind no doubt that, if the non-nuclear Powers are to be asked to sign a binding non-proliferation treaty, it must contain the necessary provisions and machinery to ensure that the nuclear Powers too take their proper share of the balance of obligation.