

Israel and the Cut-Off Treaty

Shai Feldman

On August 11, 1998, Prime Minister Benjamin Netanyahu announced the Israeli government's decision not to oppose the negotiation of a treaty to ban the production of fissile material (The Fissile Material Cut-Off Treaty -- FMCT) at the United Nations Conference on Disarmament (CD) in Geneva. The decision was prompted by a request made by the Clinton Administration that Israel permit such negotiations to commence. Since the CD operates on the basis of complete consensus, Israel's consent was necessary.

Israel's decision was preceded by considerable internal debate within the Israeli defense community, although in December 1993, Israel had supported the United Nations General Assembly resolution (UNGA Res. 48/75) instructing the CD to negotiate such a treaty. In announcing Israel's decision in August, Prime Minister Netanyahu made it clear that Israel was not committing itself to signing the proposed treaty. He believed that negotiations of the treaty text would take three to five years, and that during this period Israel would not be required to change its nuclear policy. He noted that Israel had its own considerations, as well as some specific concerns about the suggested treaty - related to the unique strategic conditions prevailing in the Middle East - and that Israel would enter into a dialogue with the U.S. regarding these considerations and concerns.

Background

U.S. President George Bush was the first to propose a freeze on the production of fissile material in the Middle East, in the framework of his May 29, 1991 comprehensive initiative on arms control in the region. The initiative called upon the "regional states to implement a verifiable freeze on the production and acquisition of weapons-usable nuclear material (enriched uranium or separated plutonium)." In July 1992, the Bush administration announced a global arms control initiative that also stipulated a ban on the production of fissile material. The initiative specified the Middle East as one of the five areas where special efforts should be made to apply the ban.

On September 27, 1993 - more than nine months after taking office - President Bill Clinton announced his approach to global arms control. His statement committed the United States to "propose a multilateral convention prohibiting the production of highly enriched uranium or plutonium for nuclear explosive purposes or outside international safeguards." The Clinton statement further suggested that the U.S. would "seek to eliminate where possible the accumulation of stockpiles of highly enriched uranium or plutonium, and to ensure that where these materials exist they are subject to the highest standards of safety, security, and international accountability."

Within two months after Clinton's statement, the UNGA authorized the CD

to begin negotiating the proposed convention, but it took the CD almost a year and a half to agree on a one-page "mandate" necessary for launching these negotiations. The mandate approved on March 23, 1995 stipulated the creation of an Ad-Hoc Committee for the purpose of negotiating the treaty. But the CD could not decide who would serve on this committee, and it was only in August of this year that it decided that negotiations of the treaty would begin by January 1999.

Rationale

The proposals to ban the production of fissile material are intended to fortify the global nuclear non-proliferation regime. They represent a realistic approach, which recognizes that under prevailing political and strategic conditions some states - notably India, Pakistan, and Israel - would continue to avoid signing the 1968 Nuclear Nonproliferation Treaty (NPT). The suggested FMCT is designed to bring these states into the global nuclear non-proliferation regime in some form, by freezing their nuclear capabilities at present levels.

In this context it should be noted that the NPT already prohibits its non-nuclear signatories from manufacturing fissile materials for weapons purposes. Moreover, of the five nuclear powers recognized as such by the NPT, four have declared a moratorium on the production of weapons-usable nuclear material. Thus, the FMCT seems largely aimed at four

countries: China, India, Pakistan, and Israel.

The repeated delays in beginning negotiations of the FMCT were caused by the fact that it was not placed at the top of the global arms control agenda, as well as by a basic disagreement among members of the CD regarding the scope of the proposed treaty. In the mid-1990s, the CD was preoccupied by the complexities of negotiating the Comprehensive Test Ban Treaty (CTBT). Specifically, it spent considerable time and energy in attempting to overcome India's objections to the CTBT. While it was ultimately successful in overcoming the reservations of all states but India, the latter's objections were sufficient to block the CD from adopting the treaty. The UNGA subsequently adopted the CTBT by majority vote, but the experience exhausted the CD for a considerable period of time.

However, the stalled CTBT negotiations were not the only reason for the five-year delay in opening negotiations of the proposed FMCT. The time lapse also reflects a basic disagreement about the scope of the proposed treaty. While most members of the CD regard its scope as limited to the further production of fissile material - in effect freezing the status quo in fissile material production - a number of states insist that the treaty should address existing stockpiles of weapons-usable materials as well.

For countries that continue to adhere

to a policy of nuclear ambiguity, the suggestion that existing stockpiles of nuclear material be subjected to international safeguards would mean a serious erosion of this ambiguity. And, for declared nuclear powers, international safeguards could lead to new constraints on the use of their fissile material stockpiles. Some countries - notably China and India - have already indicated that they would oppose the treaty's application to the products of past activities.

The Arab Approach

When President Bush proposed banning the production of fissile material in the Middle East in 1991, Egypt's Foreign Minister, Amr Mussa, noted that "the Bush initiative is unrealistic because it ignores Israel's possession of nuclear weapons." Informally, Egyptian officials expressed concern that such a ban would make Israel's nuclear superiority in the Middle East permanent; and, that while it would not affect the products of Israel's alleged past nuclear activities, it would prevent the Arab states from developing a countervailing nuclear capability. Syria's foreign minister, Faruq al-Shara'a, expressed similar sentiments, noting that "the proposals favor Israel and damage vital Arab security interests."

In 1994-95, Egypt joined the small number of states insisting that the FMCT must also address past nuclear activities by requiring signatories to place all their stockpiles of fissile material under

international safeguards. Speaking at a CD meeting in September 1995, Egyptian Ambassador Munir Zaharan emphasized that the proposed ban should include "existing stockpiles of weapons-usable material, both military and civilian." Thus Zaharan made clear that from Egypt's standpoint, a FMCT that would merely freeze the status quo was unacceptable.

Israeli Considerations

The announcement made by Prime Minister Netanyahu on August 11 makes clear that Israel has not made a final determination regarding its approach to the proposed treaty. Indeed, its decision on whether to join the proposed treaty is likely to be affected by the manner in which the treaty text evolves, and by the extent to which its stipulations would not materially damage Israel's national security interests. Clearly, as long as Israel continues to perceive the imperative to maintain its nuclear potential and adhere to its ambiguous nuclear posture, the requirements of these policies will largely determine its approach to the proposed treaty.

As a general proposition, a treaty that would effectively ban any future production of nuclear weapons-usable material would serve Israel's interests. As some Arab leaders, diplomats and experts have recognized, such a ban would freeze the present distribution of nuclear capabilities in the Middle East - a realm in which Israel enjoys a clear advantage.

Moreover, if foreign sources are correct in attributing to Israel a nuclear arsenal of 100-200 warheads, such an arsenal far exceeds the number of strategic targets in the Middle East. Hence, Israel can easily sustain a freeze on existing nuclear capabilities in the region. Indeed, as long as Israeli deterrence is based on an ambiguous posture - preventing its neighbors from ascertaining whether Israel possesses any nuclear weapons - the strength of its deterrent will continue to be unrelated to the size of the arsenal it may or may not have. Under such circumstances, Israel would enjoy effective strategic deterrence even if its arsenal were only a tenth of the size attributed to it by these foreign sources.

Yet, to achieve this gain, it would be necessary to ensure that the suggested ban and its accompanying verification procedures would be effective, without leading to a deterioration of Israel's nuclear potential and without undermining its ambiguous posture. In turn, meeting this requirement would impose four imperatives: First, that all of Israel's neighbors - including Iran and Iraq - join the convention. Second, that the treaty would be accompanied by highly intrusive verification measures to insure compliance with a total ban on the production of fissile material. Third, that verification procedures are devised and implemented to assure compliance with a ban on any present and future production of fissile material, without jeopardizing the

ambiguity surrounding Israel's past activities in the nuclear realm. And finally, that if in response to these constraints, Israel decides to close down its reactor in Dimona, Israel would retain, or be assured of obtaining, an adequate supply of *non-fissile* material necessary to ensure that its nuclear potential does not decay for decades to come.

The first condition implies that Israel might sign, but would not ratify, the proposed treaty until all the region's states have signed and ratified it. It also means that Israel would not sign and implement any special protocols on associated verification procedures until all of the region's states have signed and implemented similar protocols.

The second condition requires that the proposed FMCT be accompanied by more intrusive verification measures than those associated with the NPT. The limitations of the latter have been demonstrated conclusively in Iraq and North Korea - where activities in a suspected nuclear site remain unverified - and it is not clear that they are sufficient to verify all nuclear activities presently conducted in Iran.

While the additional verification measures adopted by the International Atomic Energy Agency (IAEA) in the aftermath of the Gulf War (the so-called "93+2") comprise a significant step forward, it is not clear that they are sufficient to overcome all the structural weaknesses of the IAEA verification system. It should also be remembered that

in the Middle East, the new system would not provide more effective verification until each of the region's states had signed special protocols with IAEA, applying the associated measures.

In order to be more confident about strict adherence to the FMCT in the Middle East, it may be necessary to supplement the enhanced IAEA measures with additional verification measures specific to the region. This may entail supplementing the IAEA's global mechanism with bilateral and multilateral regional verification procedures and mechanisms, similar to those applied between Brazil and Argentina in the framework of the Latin American Nuclear Weapons Free Zone.

Meeting the third condition would be much more difficult and demanding. It would require that the verification procedures adopted be so intrusive as to assure - with a very high degree of confidence - compliance with the commitment to refrain from producing fissile material, without at the same time revealing a country's past activities. Such discriminating verification procedures are essential if Israel is to be assured that its neighbors' compliance with a ban on present and future production of fissile material can be verified; and that the same procedures do not erode the ambiguity surrounding Israel's past activities in the nuclear realm. Whether such discrimination is technically possible remains an open question.

Finally, meeting the fourth condition would require that Israel reach some understanding with the United States regarding measures to insure that Israel's nuclear option does not decay. In effect, the U.S. would need to promise Israel that if the constraints entailed in complying with the FMCT, while retaining nuclear ambiguity, require the closure of the Dimona reactor, Israel would be assured of an adequate supply of non-fissile materials necessary for maintaining its nuclear option. This would be consistent with the U.S. commitment - stipulated in the Israel-U.S. memorandum of agreement signed by President Clinton and Prime Minister Netanyahu on October 31, 1998 - to enhance "Israel's defensive and deterrent capabilities." (See separate item)

To sum up, the objectives of the proposed treaty to ban the production of fissile material - plutonium and enriched uranium - would serve Israel's national security interests by freezing the present distribution of nuclear capabilities in the Middle East. Yet to secure these interests, certain conditions related to the treaty text, the associated verification procedures, and U.S.-Israeli defense relations would have to be met. Meeting these imperatives would be necessary to ensure that Israeli deterrence remain intact until political and strategic conditions in the region allow progress in arms control in Middle East, beyond the capping of nuclear programs.

MEMORANDUM OF AGREEMENT

In view of the long-standing relationship between the United States and Israel and the long-term commitment by the United States to the maintenance of Israel's qualitative edge, and considering the developing regional threats emanating from the acquisition of the ballistic missile capabilities and the proliferation of weapons of mass destruction, the governments of the United States and Israel have decided to work jointly consistent with their long-standing policies toward the attainment of the following objectives:

- Enhancing Israel's defensive and deterrent capabilities.
- Upgrading the framework of the U.S.-Israeli strategic and military relationships, as well as the technological cooperation between them.

The two governments will forthwith designate representatives to a joint strategic planning committee which will formulate specific recommendations on steps that can be implemented as quickly as possible to advance the foregoing objectives.

The United States government would view with particular gravity direct threats to Israel's security arising from the regional deployment of ballistic missiles of intermediate range or greater. In the event of such a threat, the United States Government would consult promptly with the Government of Israel with respect to what support, diplomatic or otherwise, or assistance, it can lend to Israel.

The memorandum of Agreement has been done in duplicate in the English language at Washington, D.C. and Jerusalem and will enter into effect when each side has informed the other that it has signed an original. The two sides will exchange the signed original for completion of the signature process.

For the Government of
The United States

Date

For the Government
of Israel

Date