IAEA Regional Seminar on the Protocol Additional to Nuclear Safeguards Agreements

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SESSION 2: SOVEREIGNTY AND SECURITY: ACHIEVING AND ACCEPTABLE BALANCE (Bilateral and Multilateral Arms Control and Non-Proliferation Agreements)

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Introduction

Your Excellencies, distinguished guests and colleagues, ladies and gentlement. I would like to take this opportunity to thank the IAEA and the Government of Peru for the opportunity to participate in this important regional seminar on the Additional Protocol. I am pleased to be able to contribute on behalf of Canada, "la otra America del Norte".

The topic that I have been asked to address is a challenging one: how to achieve an acceptable balance between sovereignty and security in non-proliferation, arms control and disarmament (NACD) agreements. Where possible, I will draw upon Canadian policy and practice and examples relevant to the IAEA and safeguards.

Sovereignty and Security

Sovereignty and security are intrinsically interrelated. They remain fundamental and over-riding preoccupations of all states. Although the nature of the international system has changed substantially and continues to evolve, the formal definitions of sovereignty and security have changed little over the past generations. Internationally, sovereignty can still be defined, as Hans Morgenthau did many years ago, as "the supreme legal authority of the nation to give and enforce the law within a certain territory and, in consequence, independence from the authority of any other nation and equality with it under international law". Security has traditionally been defined as the protection of that authority from internal and external threats, although this notion is changing.

Over the past decade, various metaphors have been used to try to describe the evolution of the global system. I will not attempt to list them here. The reality is that we are undergoing a period of tremendous change that is altering almost every aspect of international affairs as we knew them. The new challenges of international security, including the proliferation of weapons of mass destruction, have proven

particularly difficult to manage with the architecture of co-operation inherited from the postwar period. Most recently, the terrorist attacks of September 11 have added significant new areas of concern.

Sovereignty and security are not static concepts and have evolved as the international system has changed. Security is now defined more broadly and means much more than protecting national sovereignty by military means. Indeed, Canada and several Latin American countries have successfully championed the notion of “human security”, which means freedom from pervasive threats to people’s rights, safety or lives. These broader notions of security include a number of interrelated aspects, notably the economy, environment, human rights, political stability, and protection for civilians in armed conflicts, including from indiscriminate weapons such as land mines. It also includes measures for disaster preparedness and relief, combating terrorism, and efforts to eliminate impunity for extremely serious crimes through the creation of an International Criminal Court and other international tribunals. As a result of the attention which these concerns have received in the OAS and the Summit of the Americas process, there is now a recognition in this hemisphere that “security” involves more than simple protection of the state from internal or external threats.

The emergence of the modern, highly interdependent global village in which we are now living has also had a significant impact on sovereignty. Some of the main engines of globalization – instantaneous and continuous communication and exchanges of information, technology, and capital, together with rapid transportation have empowered non-governmental players, such as corporations, NGOs and terrorist networks like Al Queda in ways previously unimagined. Nation states can no longer act truly independently or with absolute authority. Decisions made by other states and entities, often on a global basis, can have major impacts within one’s own boundaries. Consequently, the nation-state is fast losing some of its ability to exercise total “sovereignty”, as other entities, at the global, regional, sub-regional and even sub-national levels become more relevant in many ways in responding to the varied demands of people and organizations. The result is not always positive, as demonstrated by Afghanistan and other recent examples of failed states. As a result, our traditional notions of sovereignty and security have become blurred into shades of grey.

Where do these shifting sands leave us? According to Robert Keohane, “what sovereignty does confer on states under conditions of complex interdependence is legal authority that can either be exercised to the detriment of other states interests or be bargained away in return for influence over others’ policies and therefore greater gains from exchange.” Keohane goes on to emphasize that, in our contemporary world, “Sovereignty is less a territorially defined barrier than a bargaining resource for a politics characterized by complex transnational networks.”

Of course, it is true that, fundamentally, when entering into an international agreement, sovereignty is not being bargained away, but rather exercised or affirmed through decisions by sovereign states to enter into such agreements. Multilateral treaties generally recognize this in provisions which allow states to renounce, in an agreed manner, their treaty commitments. So sovereignty remains. Nonetheless, Keohane’s analysis is cogent and useful.

Sovereignty, Security and NACD Agreements

I am attracted to Keohane’s conceptualization of sovereignty because, whatever it has now become, he sees it as something that can be traded away in return for a benefit. This notion is helpful in understanding the relationship between sovereignty, security and NACD agreements in our contemporary highly dependent world. What is this relationship, and what is the appropriate balance?

Non-proliferation, arms control and disarmament arrangements can take many different forms based on the nature and extent of the commitments they involve and the degree to which they are co-operative,

consensual undertakings. They can range from political understandings and formal treaties, on the one hand, to wholly coercive initiatives including military intervention that intrude directly on a state's sovereignty without its consent, on the other hand. My presentation will focus on the former kind.

Most contemporary NACD arrangements are based on the understanding that states willingly enter into and undertake mutually binding NACD obligations as a way of enhancing both national and international security. Each state party voluntarily accepts limits on, or bargains away some of their sovereignty, in the case of NACD agreements constraints on their military or defense capability, in return for reciprocal action by the other parties. This collective, co-operative and reciprocal action by the parties to the agreement is intended to produce a net benefit, which is improved security for all parties involved. Usually no more sovereignty is ceded or limits or obligations accepted on national authority than what is perceived as being the minimum necessary to achieve the desired outcome. The calculation that each party has to make about the amount of authority or sovereignty that it is prepared to give up in order to achieve the goal or benefit it is seeking, and the give and take of the negotiations with the other parties in which the final agreement is brokered, provides a certain measure of balance. Reciprocal checks and balances are usually part of any arrangement.

All post-WWII arms control agreements have involved some voluntary loss of sovereignty by the states involved. Many concluded from the 1970s onwards have been increasingly more complex and intrusive on sovereignty. Others, like the Ottawa land mines convention, have not. However, all have involved a careful balance between the amount of sovereignty relinquished and the benefit to national and international security to be achieved.

Acceptance of international controls on their military forces is a particularly serious decision for sovereign governments, given that military capabilities are the ultimate symbol of state power, prestige and sovereign status. Agreeing to limits, especially when it involves the intrusion of international authorities to enforce compliance, can represent a major commitment by the states involved in view of the potential implications for national security.

To be effective, in other words to be make a real contribution towards improved national and international security, arms control and disarmament agreements, whether they are bilateral, plurilateral or multilateral, should include the following four characteristics:

- First, they should be legally-binding.

- Second, they should be verifiable and enforceable.

- Third, they should be as transparent as possible; and,

- Fourth, they should be irreversible, both in terms of the material and weapons that they cover and a country's continuing commitment to the agreement.

All of these essential considerations involve acceptance of limits on national authority and sovereignty for the benefit of national and international security.

The willingness of a state to enter into a legally-binding agreement is one of the most important ways that it can demonstrate its commitment to the terms and conditions of the agreement. Such instruments have more stature and prestige, and therefore more clout, than other less formal arrangements. Legal documents endure beyond the governments that negotiated them and therefore are more sustainable. On the other hand, a state is usually restricted by domestic political and legal considerations as to the scope and

nature of the binding international obligations that it can enter into. Virtually all of the important post-WWII arms control agreements negotiated between the Cold War adversaries have been legally binding and have spelled-out in detail the reciprocal obligations and limits that each party is prepared to accept to their authority and sovereignty. The fact that the Cold War has ended should not negate the need for legally binding instruments. NACD commitments are too important to be left to relationships of personal trust between leaders, although such trust is certainly helpful, particularly when nuclear weapns are on the table.

The ability of the states parties to an arms control agreement to measure compliance with the terms and provisions of an NACD agreement through verification is extremely important and is one of the most intrusive factors on sovereignty, particularly if the inspections can be undertaken with little or no notice and involve full access to any facility at any time. Verification provides a measure of certainty that the parties are living-up to their commitments. President Reagan's dictum "trust but verify" remains as relevant today as it was in the 1980s. Reluctance by a state to agree to or co-operate with a verification process can provide timely warning of possible non-compliance and enable response and reinforcement mechanisms to be activated. As a practical matter, refusal to accept a verification measure such as an inspection carries with it a *primae facie* presumption of guilt. Because of their intrusive nature and potential implications, verification provisions are usually spelled-out in considerable detail and restricted to the minimum access necessary to verify compliance. Experience with both the NPT and the Chemical Weapons Convention has shown that this can be done.

Transparency, like verification, is also essential to demonstrate compliance and to build confidence in an NACD agreement. However, like verification, because of the implications for sovereignty and security and the need to protect sensitive information, transparency measures are usually limited to only those steps that are necessary to demonstrate compliance.

Irreversibility means that the material or weapons made subject to an arms control agreement by a state party can never be recovered by them, either through the destruction or conversion of facilities, or the destruction or permanent immobilization of the material or weapons. It also means that, although a country's leader or government may change, the country remains committed to the agreements that it previously entered into, at least until there is a consensus among all state parties for a change or the agreement's objectives have been fully realized. Withdrawal of either the weapons or material subject to the agreement, or by the country itself from the agreement in the absence of a consensus, can be an extremely serious and destabilizing step that carries a high political price.

I acknowledge that the foregoing represents an ideal model and that other NACD mechanisms which do not incorporate some of these features can be effective. Export control arrangements such as the Nuclear Suppliers Group, for example, do not involve legally-binding instruments and have no formal verification or compliance mechanisms. Nevertheless, they still involve voluntary constraints on their member states' sovereignty and make important contributions to non-proliferation and international security as a result. Politically-binding agreements, reciprocal actions, unilateral declarations and other non-traditional arms control initiatives can also make a contribution to national and international security, but do not involve the same kinds of formal constraints on sovereignty as the model described above and therefore may provide only limited benefits.

Ultimately, the success of any NACD undertaking depends on the political will and commitment of the states involved. The limits on sovereignty provided by legally binding, transparent, verifiable and irreversible arms control agreements and non-proliferation arrangements should be essential components demonstrating this political will and commitment.

Another important element of this political will must be national means to implement obligations

accepted in NACD undertakings, such as legislation, national export control regulations, and appropriate organizational structures. If a NACD undertaking is not fully implemented at the national level, its overall effectiveness will be limited.

Multilateralism, Sovereignty and Security

One of the most important challenges before the world community today is to adapt the global NACD regime, which was largely a product of the Cold War for the needs of the time, to the new international environment, to new threats to security and sovereignty, and the requirements of a highly interdependent world.

Canada remains a strong proponent of multilateralism and a rule-based international system, which we continue to believe are the most appropriate approaches to many of the global challenges we face. By agreeing to abide by a rules-based system, nations again voluntary cede a measure of sovereignty and national authority. The benefit is a more predictable and better ordered international system and enhanced security for one and all. To ensure that the interests of all are taken into account, the rules-based system should be as inclusive as possible and ideally universal.

By virtue of our history, identity and our commitment to a rules- and order-based international system, Canada sees itself as a middle power with global interests. Particularly for small and medium sized countries like my own, multilateralism and a rule-based international system offers the best guarantees for national and international security and the best way to protect our sovereignty, to magnify our limited power and to influence the actions and decisions of bigger powers. To protect ourselves – all of us – we need rules, and they need keeping. Multilateral security institutions continue to matter, now more than ever. The existing rules-based NACD regime has fostered the successful pursuit of global restraint and strategic stability for more than four decades. The principles at the base of that regime, which I have already noted – respect for treaty commitments, transparency, verification and irreversibility – are as valid today as ever before.

A strong multilateral rules-based system should be equally important for great powers, including those that posesses real global influence. However, some proponents of a new strategic framework seek fewer constraints on their country's sovereign power and more flexibility for action. They would replace tedious arms control negotiations with informal or political understandings sealed with a handshake and based solely on trust. Levels of arms would be adjusted downwards – or, indeed, upwards if they thought it necessary – based solely on their country's individual perceived needs. In the best case, such a framework would allow greater flexibility and scope for immediate action. In the worst case, it could lead to the complete unraveling of the entire NACD architecture so painstakingly constructed over the last several decades and few if any real constraints on weapons of mass destruction. This is in no state's interest.

One of the lessons that we should take from the events of September 11 and their aftermath, and from our growing global interdependence, is that no one nation, however powerful, can hope to ensure its security unilaterally. Few of the problems afflicting the world today can be solved by any one nation acting alone. In a globalized world, global problems and threats can only be solved by global efforts. Nuclear disarmament and preventing the spread of weapons of mass destruction must be a central preoccupation of the entire global community, not just a few of its most powerful members.

Successive Canadian Governments have recognized and accepted the potential, as well as the limits, of multilateral efforts to reduce and eliminate nuclear weapons over the short and medium term. For the foreseeable future, it will be up to the nuclear weapon states to meet their responsibilities and deliver on their disarmament commitments. At the same time, all members of the international community must continue to have a deep and abiding stake in the process and must fulfill in an open and transparent fashion their own

obligations vis-a-vis non-proliferation, arms control and disarmament.

We must also realize, however, that in the multilateral agreements and institutions we've built to protect our security, we can no longer pretend, make promises we don't keep, or spout empty words. We need to hold these institutions to strict standards of legitimacy and effectiveness. Canada is strongly committed to the IAEA as one of the institutions that can and must play a pivotal role.

As the search is undertaken for a new strategic framework, we should ensure that the changes that are made, in the words of the 2000 NPT Review Conference Final Document, "preserve international stability and are consistent with the principle of undiminished security for all". The outcome, as Canada has underlined, must be a positive sum.

The NPT, Sovereignty and Security

The NPT remains the central instrument in which Canada's nuclear non-proliferation and disarmament policy is rooted. This reflects its importance as the cornerstone of the global NACD regime.

The NPT represents a fundamental balance between sovereignty and security that virtually all countries have agreed to accept. By voluntarily acceding to the NPT, non-nuclear weapons states relinquished their sovereign right to develop and posses nuclear weapons (Article II) in return for a commitment from the nuclear weapon states to disarm (Article VI) and to share their nuclear material, knowledge and technology for peaceful purposes (Article IV), subject to verifiable safeguards (Article III). Through these trade-offs, non-nuclear weapon states and nuclear weapon states alike, individually and collectively, have sought enhanced security.

The NPT is often criticized, particularly by non-signatories, as an imperfect bargain for several reasons. Notably, it froze the nuclear weapons status quo as it existed 30 years ago and contained no definite timetable for nuclear disarmament. Nevertheless, the NPT in many respects has been very successful. In the 1960s many experts predicted that there would be dozens of nuclear weapons states by now. That has not happened, thanks largely to the NPT, and the treaty has been universally accepted by all but four states. Although concerns continue to persist about certain States Parties that may have covert nuclear weapons ambitions, only two have seriously challenged the NPT. We must not cease to be vigilant and we must not reward countries not in compliance with the NPT with nuclear weapon status. Overall, however, compliance with the treaty has generally been good. Finally, while the prospect of complete nuclear disarmament is a distant one, the review mechanisms in the treaty provide an influential way to hold all states parties accountable to their treaty obligations.

The qualified success of the NPT, which was further demonstrated by the consensus reached in 1995 for its indefinite extension, indicates that most States Parties believe that the trade-offs on which it is based represent an acceptable balance between sovereignty and security and serve their individual and collective security interests.

Balancing Safeguards and Sovereignty

Effective and verifiable safeguards help prevent the proliferation of nuclear weapons. If the NPT is the cornerstone of the global NACD regime, IAEA safeguards are one of the key tools for achieving its objectives. Through the assurances that they provide, safeguards promote confidence and trust among states and help to strengthen our collective security.

Canada is a strong supporter of the IAEA safeguards system, including the Additional Protocol,

which was approved by the Agency's Board of Governors in 1997 under the Chairmanship of Canada's Governor to the IAEA and with our active support. Canada concluded an Additional Protocol with the Agency in September, 1998, which entered into force in September, 2000. Our Initial Declaration under the Protocol was submitted on March 6, 2001.

Canada fully supports the model Additional Protocol. Building on lessons learned in Iraq, South Africa and the DPRK, the Protocol represents a significant strengthening of the safeguards system. The Additional Protocol requires a state to provide more and different kinds of information and allows Agency inspectors better access to a wider range of nuclear fuel cycle activities and sites and to use improved sampling techniques and other innovations such as commercial satellite imaging. This results in overall greater transparency and confidence. The IAEA is now much better able to determine the correctness and completeness of member states' declarations, the non-diversion of nuclear material and, notably, the absence of undeclared nuclear activities.

The acceptance of safeguards involves, in principle, significant concessions of national sovereignty and authority. These concessions are essential to the effectiveness of the safeguards system and the critical support it provides to national and international security and the global nuclear non-proliferation regime. IAEA safeguards agreements incorporate all of the key features that I discussed above for model NACD agreements — they are legally binding, verifiable, transparent and politically irreversible — and involve the corresponding limits on sovereignty.

The model Additional Protocol, like comprehensive safeguards agreements, involves an agreed balance between rights and obligations. While a state concluding an Additional Protocol does incur certain additional legal obligations, on the other hand its rights are protected through various obligations on the part of the Agency. This balance of rights and obligations serves to moderate and render more acceptable the intrusion made by safeguards on a state's sovereignty. It reflects that safeguards have developed with due regard to state sovereignty and provides assurance against the risk of arbitrary or capricious conduct by the Agency.

These moderating factors include an obligation by the Agency not to apply the broader access rights permitted under the Additional Protocol in a mechanistic or systematic fashion. The Agency must provide advance notice in writing to the state for complementary access noting the reasons for the request and the activities to be carried out. It must accept "managed access" at the request of a state as a result of health and safety reasons or to protect proliferation sensitive, proprietary or commercial information. The Agency is required to hold prior consultations with the state in order to allow the state to clarify or respond to questions or concerns raised by the Agency before a request for complementary access is made. It must inform the state in writing of its activities under the Protocol and the conclusions it has drawn therefrom. It must also agree upon Subsidiary Arrangements with the state if either party considers such arrangements are necessary in order to clarify how the measures in the Additional Protocol are to be applied.

There are other factors which limit the intrusion of the IAEA and safeguards on a state's sovereignty. The IAEA has no power to compel any country to sign a safeguards agreement or any other instrument. All agreements are entered into by a state at its own request. Nor does the Agency have any independent enforcement authority or capability. It is limited to performing the activities authorized under its safeguards agreements. However, the ability of the Board of Governors to report non-compliance to all members of the Agency and to the UN Security Council and/or General Assembly is a powerful political tool. Another limitation is that each of the various types of safeguards agreements are essentially identical in form. While the type, intensity and frequency of inspections and other verification activities may vary between states according to the kind of nuclear material and facility, the Agency must be careful to undertake these activities in a non-discriminatory manner. This is an important principle that has been incorporated into the Additional

Protocol.

Another significant moderating factor is the potential of integrated safeguards. Canada has been working closely with the IAEA and interested member states on the redefinition of safeguards parameters for those states that have concluded both a comprehensive safeguards agreement and an Additional Protocol. We believe it is important to move from an essentially quantitative, facility-level approach to a more qualitative, integrated state-level approach. This would avoid simply adding the new measures in the Additional Protocol on to the existing measures. It would, in particular, involve a reduction in the current intensity of safeguards effort on less-sensitive nuclear material that cannot be used directly in nuclear explosive devices, once the IAEA has credible assurance of the non-diversion of declared nuclear material and determined the absence of undeclared nuclear material and activities in a state. A state-level approach would be less intrusive and represent the most efficient and effective use of the Agency's scarce safeguards resources.

Future Prospects

In concluding, I would like to reiterate the importance that Canada places on IAEA safeguards and the key contribution they make to global security. Universal adherence to comprehensive safeguards and the Additional Protocol is a key element in our common efforts to achieve a nuclear weapons free world. The modest and balanced limits on sovereignty involved in the acceptance of safeguards is a small price to pay for the important dividends in improved security we all receive as a result.

The countries of Latin America and the Caribbean have played a leading role in promoting non-proliferation and arms control. The Treaty of Tlatelolco, the Cartegena Declaration on Renunciation of Weapons of Mass Destruction, the Mendoza Agreement on the Prohibition of Chemical and Biological Weapons, and the creation of ABACC are outstanding examples that other regions have sought to follow.

With such a distinguished record, it is disappointing that only four countries of the region have so far signed an Additional Protocol and that only two of these are in force. The approval of three more at last week's Board of Governors meeting was a welcome development. We are also disappointed that more than 50 countries, including two from this region, still have not concluded a comprehensive safeguards agreement

Canada urges all states that have not yet done so to conclude and implement a comprehensive safeguards agreement and an Additional Protocol without delay. We fully support the IAEA's Action Plan to promote the Additional Protocol, of which this seminar is one component, and we are ready to share our experience and expertise in this area with the countries of the region.

Thank you.