

## **THINKING THE UNTHINKABLE?**

What if the NPT collapses, or is eroded away to irrelevance?

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The question “Thinking the unthinkable? What if the NPT collapses, or is eroded away to irrelevance?” is clearly intended to steer discussions towards the dark side. Deliberating the unthinkable question about what would happen if the NPT collapses reminds of what Winston Churchill once said of the British nation “They are the only people who like to be told how bad things are, who like to be told the worst.”

The question is obviously provocative. Especially since some “glass-half-empty” protagonists are already writing the NPT’s epitaph and are looking into ways to establish a new regime arguing that the NPT has failed to meet today’s proliferation challenges.

But has the NPT failed? Those who believe so, are dusting off Cold War prognosis about nuclear chain reactions arguing that recent setbacks have exposed the cracks in the once solid corner stone of the nonproliferation regime and that more and more states will break or creep out to a point where the number of nuclear armed states may meet, or even exceed President Kennedy’s 1963 predictions.

It is true that the nuclear nonproliferation regime is in deep trouble and facing unprecedented challenges. It is also true that the outcome of the 2005 Review Conference was disappointing to say the least. Equally disappointing was the inability of the 2005 UN summit to express itself on the threats associated with nuclear weapons, mainly as result of negative tactics by a few. North Korea continues to present an unprecedented challenge to the treaty in general, and specifically to the states most involved. Then of course there is now wide belief that Iran is slowly creeping out of the regime, and that it is only a matter of time for Teheran to announce, or maybe even prove that it too is a nuclear weapon state. And finally, there are those who believe that the U.S-Indian nuclear deal will erode the treaty’s relevance.

The dooms-day scenario forecasters seem to ignore that despite some noncompliance concerns, it is fair to say that the vast majority of the treaty members continue to believe in, and fully support, the treaty’s objectives and principles. Contrary to some perceptions the treaty and its associated regime have a good track record. George Perkovich recently described it as one of history’s greatest success stories arguing that the nonproliferation system has been “defeated” by only one country that acquired nuclear weapons illegally: North Korea.

While true that the four states outside the treaty are now armed with nuclear weapons, this problem relates to longstanding regional and bilateral political issues that the NPT was not designed to address. Convincing these countries to renounce nuclear weapons, or control their nuclear related technologies and material, will require tailor-made

diplomatic approaches in which the United States and other NPT nuclear-weapon states – given their Security Council privileges and responsibilities - have a leading role.

The “glass-half-empty” protagonists also want us to believe that since only four NPT members have cheated – Iraq, Libya, North Korea and Iran– that the NPT and its safeguards system have failed to prevent proliferation. In their analysis of the treaty’s well being, they seem to forget that several states such as South Africa, Kazakhstan, Belarus, Ukraine, Brazil and Argentina, gave up their nuclear weapons or related programs and are now NPT non-nuclear-weapon states in good standing. Today, the overwhelming majority of non-nuclear weapons states have laudable compliance records. Yet, instead of finding ways to reward good behavior, more and more initiatives are surfacing on ways to further curtail the right of states in good standing to use the atom for peaceful purposes.

Others argue that the nuclear cooperation deal between India and the United States will tear the treaty apart since it would essentially reward India for staying outside the regime. Some state parties, it is argued, may jump to the conclusion that they would be better served outside the regime than being limited by its provisions. While the deal will clearly impact on the validity of the treaty as it essentially offers lucrative nuclear opportunities between a NPT weapon state and a country with nuclear weapons outside the almost universal norm, it will not destroy the treaty. It may, however, signal the end of the Nuclear Suppliers Group, ironically a longstanding Indian objective. But critics of the deal have yet to offer new ideas on how to face reality, and how to incorporate the world’s most populist democracy into the nonproliferation fold while providing its citizens with a sustainable energy source.

Although the NPT is flawed, since it allows the nuclear-weapon states to get away with not meeting their legal disarmament obligations, no-one is forecasting a regime collapse as a result. It is ironic that those who are typically critical over the lack progress in nuclear disarmament are for most part the treaty’s strongest supporters. Take for instance the New Agenda Coalition and the Middle Powers Initiative. While longstanding quests for legally binding assurances against the use or threat of use of nuclear weapons remain, further fueled by new first use nuclear doctrines, including against non-nuclear weapon states, there are no signs that those in search of these assurances will leave the treaty if such assurances are not offered.

So the answer to the question on whether the NPT is on the verge of collapse is no – at least not yet. Talk of such failure plays in the hands of those who wish to pursue nuclear weapons, or use unilateral action in pursuit of national counter-proliferation objectives. Despite difficult challenges and inherent flaws, the nonproliferation regime’s record over the past 35 plus years makes it worth preserving and strengthening. If considered that out of the 192 UN members, only 3 states never joined, while 4 others cheated, and even if one argues that the 5 NPT nuclear weapons states are themselves in noncompliance – which is obviously disputed – then the NPT deserves a 94% rating. To paraphrase a song from the British punk band The Clash, “should it stay or should it go”, the NPT deserves to stay.

Answering the second part of the question on whether the treaty will erode away to irrelevance is more complex. If, the states parties continue to fumble the ball – as they have been doing too often lately - the inability to adapt the treaty from its Cold War framework to one more responsive to today’s security environment will over time, erode the treaty’s relevance.

The outcome of the 2005 review conference, while deeply disappointing, is a reflection of how state parties today perceive the treaty and decisions taken in the context of the review process. As opposed to the high level of cooperation and trust between key state parties at the 1995 and 2000 conferences, the legacy of 2005 is one of negative tactics, lack of political commitment and bad faith negotiations. Two opposing perceptions emerged from the ashes of that conference: First, that the 1995 and 2000 agreements remain supreme, and second, that the 2000 bargains were a mistake, and that the value of consensus final documents to reflect common approaches is of less importance.

Of further concern is the dichotomy in approach that emerged among non-nuclear weapon states. On the one hand key Western states now promote minimalist approaches at the expense of their own traditional positions and important measures agreed to in 1995 and 2000. On the other, NAM states are stonewalling attempts aimed at restricting their treaty rights arguing that these would be additional obligations on their part while the nuclear-weapon states are allowed to ignore their disarmament commitments and agreements reached in 1995 and 2000. Another powerful lesson is that unrealistic expectations to strengthen the treaty’s nonproliferation obligations without concurrent progress towards nuclear disarmament would simply be a “bridge too far.”

Of further significance is that the divisive relationships among states-parties seem to have crept into the NAC and other likeminded groups. Likewise political groupings have become so entrenched in their own procedures or ideologies that their ability to promote common approaches has become questionable.

If in 2010, the state-parties fail to learn from these mistakes, then the treaty’s relevance as the corner stone of the nuclear nonproliferation regime would be in serious jeopardy.

The treaty is therefore at its Rubicon. While opportunities to advance its goals in the run-up to the 2010 conference remain, taking advantage of them would require visionary leadership, strong political will at the highest levels, and above all innovative and constructive cooperation among all key players – both in and outside governments - to strengthen the core bargains that the treaty was founded on. In so doing, the treaty’s inherent weaknesses should be recognized with a view to finding ways to address these limitations in a holistic manner.

However, if judged by events in recent months, there is already a deep sense of pessimism about the prospects for the next review cycle. As if challenges from North Korea to Iran to India were not enough reason to doubt any positive outcome, the events

and voting patterns at the most recent First Committee session showed that the 2005 divisions now run even deeper.

Another failed conference could pave the way for greater involvement and intervention by the most powerful states - acting either as coalitions of the willing or through the Security Council - on the grounds that the multilateral machinery has ground to a halt, and that the NPT is no longer functional. Then, any half full glass perspective will start emptying quickly, potentially leading many states not only to question the security framework that the treaty once promised, but they may start seeking their security through other means, including nuclear weapons.

But while another failed Review Conference will be a heavy blow to the treaty's relevance, it is hard to imagine the circumstances that would lead to the treaty's collapse, if by collapse it is understood that more states will leave the treaty and develop nuclear weapons. Even if one or two more states break out of the treaty regime, this would not necessarily lead to a general walk-out. The reasoning behind those who argue that Japan or South Korea would creep out and develop nuclear weapons of their own is therefore questionable. And even if Iran announces a nuclear weapons capability, it is doubtful whether other Arab states would follow. To argue that somehow Brazil, Argentina or South Africa would do the same is nonsensical. Unless these countries' national security is directly threatened, or not guaranteed, to a point where they conclude that nuclear weapons are more important than the confidence that the treaty provides, then it is highly doubtful that they will leave.

A more plausible scenario is that countries will start questioning the efficacy of the NPT. This would fuel arguments of those already considering ways to replace the treaty, while many developing world countries may simply become disinterested in the treaty and its review process.

What is needed urgently is not a new treaty, or lopsided ways to deal with current threats, but a new and balanced grand bargain to fully implement the treaty, taking into account developments since its adoption, including the way in which it was extended in perpetuity. In this regard it is important to emphasize that the 1995 agreement to extend the treaty indefinitely was also part of a grand bargain. Ambassador Tom Graham, who led the U.S. delegation to the 1995 conference, himself admits that the treaty was extended indefinitely based on a set of "political conditions," a major component of which was a set of principles and objectives for nuclear nonproliferation and disarmament anchored to three clearly defined disarmament actions. While the 2000 review conference expanded on this action plan, it essentially solidified the indefinite extension decision. Unfortunately, it also scrambled, if not diluted, the disarmament action plan.

In view of the deep differences and lack of political will on how to resolve the challenges facing the treaty today, it would be crucial for states-parties during the next review cycle to consider new ways to regain confidence in the treaty's core bargains. Attempts to address these challenges must, however, focus on the achievable, be balanced and should

not appear to reinterpret, negate or diminish existing obligations, commitments, and undertakings. This would require a combination of process, action and political will.

*Getting the process right*

The first order of business in 2007 should be to get the process right. The experience since the adoption of the 1995 strengthened review process has demonstrated that for the process to be effective and to yield the expected results, it is vital that state parties show the required political will, and be prepared to carry out frank discussions and result orientated negotiations. The process should be dynamic and responsive with a view to making recommendations to the review conference by using the full length of the review cycle. However, great care should be taken not to create an even deeper divide among state parties that may not be bridgeable before the 2010 conference.

*An achievable and balanced plan of action*

Building on, and in no way diminishing the significance of, the 1995 Principles and Objectives, a new set of principles, or a plan of action, adopted at the 2010 Conference would do more to advance the full implementation of the treaty's objectives than a divisive debate on how to reflect the treaty's implementation during the preceding review cycle. Rather, these principles or action plan should take into account the changes in the geopolitical and international security environment, and serve as a "lodestar" to regain confidence in the treaty's core bargains, as the 1995 "Principles and Objectives" document was designed to do. As such, it should build on the treaty's own obligations and represent a package deal of which some elements could be pursued and implemented before 2010 provided this is done in a balanced manner. This package could include the following elements:

- i. **Universal application of the nonproliferation norm:** This would require exploring ways to capture the three outlier states without rewarding them for staying outside the norm. Given the limitations of the treaty, the NSG, if it survives, is probably the only forum to explore this.
- ii. **Strengthening existing nonproliferation obligations:** While difficult to accomplish, it should be emphasized that comprehensive safeguards with the additional protocol, and the application of such strengthened safeguards by the NSG as a condition of supply would limit the right of states to peaceful nuclear energy, but instead enhance international confidence in every state's ability to be a responsible possessor and user of advanced nuclear material and technologies for peaceful purposes. While nuclear cooperation with a state found by the IAEA Board of Governors to be in noncompliance with its safeguard agreements should be suspended, criteria should be developed to distinguish between the degree of seriousness of violations as well as the violator's willingness to take steps to correct the matter. As it has done with resolution 1540, the Security Council could also adopt a generic resolution stating that withdrawal from the NPT by such a noncompliant state would constitute a threat against international peace and security.
- iii. **Peaceful use of nuclear energy:** Of equal importance would be to reaffirm Article IV rights for states in full compliance with their nonproliferation and

safeguards obligations. However, the right of states found to be in violation of these obligations should be suspended until such violations have been redressed. The concept of multilateral fuel cycle controls and fuel banks would hopefully be further advanced by the expected recommendations on objective criteria on nuclear fuel supply mechanisms to the IAEA Board of Governors.

- iv. **Countering nuclear terrorism:** The fear of an act of nuclear terrorism, while not equally shared by all states parties, is real, and an act of nuclear terrorism anywhere in the world could have severe consequences for all. Among others, the role of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources, the need to fully implement and strengthen Security Council resolution 1540 and universal adherence to the Convention on the Physical Protection of Nuclear Material should be emphasized.
- v. **Achievable nuclear disarmament:** Maintaining moratoria on nuclear testing and expanding existing moratoria on military fissile material production should be a high priority. At the same time, there should be a renewed commitment to the early entry-into-force of the CTBT while fully supporting the International Monitoring System. Given its relevance to other parts of the grand bargain, a verifiable fissban treaty would need to be negotiated. While most urgent with respect to Russia and the United States, all nuclear weapon states should agree to reduce the operational status of their nuclear forces as entrenched policies and practice. Nuclear weapons states should undertake not to adopt nuclear doctrines or develop new weapons systems that blur the distinction between nuclear and conventional weapons or lower the nuclear threshold. At the same time, Russia and the United States should implement their undertakings to eliminate specific types of non-strategic or tactical nuclear weapons, and agree to withdraw all these type of nuclear weapons to central storage on national territory for eventual elimination.
- vi. **Nuclear –weapon-free zones:** Signatories of existing zone treaties who have not done so should urgently ratify these treaties. The entry-into-force of the Pelindaba treaty should be a high priority for all states. Equally so would be the ratification by the nuclear weapon states of the relevant protocols to all existing NWFZ treaties. The full implementation of the 1995 resolution on the Middle East should be pursued urgently.
- vii. **Security Assurances:** In an effort to defuse a potential deal-breaker, the nuclear weapon states should prior to the 2010 conference reaffirm - in the context of the Security Council - their political pledges not to use or threaten to use nuclear weapons against non-nuclear-weapon states. The conference should establish a mechanism to consider ways to provide legally binding negative security assurances to NPT states-parties in full compliance with their nonproliferation obligations.
- viii. **Accountability:** To address the imbalance inherent in the design of the NPT, ways should be considered to increase the accountability of all states parties to their obligations under the treaty. Holding annual meetings of state parties and extraordinary state party conferences to respond to serious challenges such as a withdrawal or a nuclear test could be one possible way. Admittedly, this is a

controversial idea but nothing in the treaty precludes the PrepCom from adopting consensus decisions and resolutions on matters of urgent concern relating to the authority, integrity and implementation of the treaty. The reporting mechanism built into the 13 steps towards nuclear disarmament could also be used as template for all states to report on the implementation of their NPT obligations.

- ix. **Role of civil society, education, training and outreach:** Increased participation of civil society, including academic institutions and the corporate sector, in efforts to inform wider audiences about the danger of nuclear proliferation should be encouraged. State parties should be encouraged to promote nonproliferation and disarmament training and education both in academic institutions as well as in their diplomatic training courses.

#### *Political momentum and will*

The third, but very important element of this strategy would be to generate political will and momentum. While recognizing that political will derives from each State's own perception of the treaty, a number of initiatives could be taken to create political momentum in support of the successful conclusion of the 2010 review conference.

1. First, the P-5 should urgently reach agreement on how to deal with North Korea and resolve their differences over Iran. Another positive political message to the broader NPT membership would be to re-energize the debate in support of the CTBT, not only in Washington and Beijing, but also in the capitals of other NPT Annex II states.
2. Likeminded coalitions and political groupings could promote achievable options to develop and strengthen confidence in the treaty. In the past, groups such as the NAC and regular collaboration between State party representatives and nongovernmental experts have shown remarkable results.
3. High level political will in support of concrete action at the 2010 conference could be generated through a NPT heads of state summit to be convened either on the margins of the 2009 General Assembly session, or at the invitation of an influential government. A strong, but balanced political declaration issued by such a summit just prior to the 2010 review conference could provide much needed political momentum.
4. Adding political muscle would be a joint P-5 statement at this summit, or just prior to the 2010 review conference, in which the nuclear weapon states should recommit themselves to work towards a positive outcome. It is significant that the political leadership in 4 of the 5 nuclear weapon states will change before the 2010 conference. Changed attitudes towards the NPT as result of these changes could send powerful and positive messages to the wider NPT membership.

In conclusion, the NPT has not been mortally wounded yet. But there is a real possibility that a failure in 2010 could lead to the eventual irrelevance of the treaty. The challenge facing the state parties during the next review cycle is to ensure that the treaty's continued validity, including the decision to extend it in perpetuity, remains intact. That

cannot be ensured if individual elements of the NPT bargains are approached singularly; neither can one or another of these elements be ignored or minimized. Any desire, be it by the non-nuclear-weapon states or the nuclear-weapon states to address only one aspect of the NPT bargains is a recipe for failure and should be guarded against.

Instead of taking singular approaches by focusing only on the nonproliferation side of the NPT coin, or making linkages aimed at stalling progress on nonproliferation, or to force equal treatment on issues such as nuclear disarmament or the situation in the Middle East, states-parties - and those of us outside government - should be seeking to build bridges between opposing views on ways to strengthen the treaty's core bargains.

UN Secretary-General Kofi Annan emphasized this need for balance well when he recently compared it to an aircraft which can remain airborne only if both wings are in working order. But he warned that the international community is "asleep at the controls of a fast-moving aircraft. Unless, he said, we wake up and take control, the outcome is all too predictable. To avoid an NPT crash and burn, a new grand bargain, integral to the existing obligations of the NPT, and supported at the highest political levels would be necessary to protect the relevancy of the treaty's core bargains for all its state-parties.

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