

Preparing for 2010: Getting the Process Right

Workshop on the Nuclear Non-Proliferation Treaty

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**Taking stock after 2005:
A disarmament and nonproliferation action plan**

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The past five years have arguably been the most challenging period in the 40 year history of the Nuclear Non-proliferation Treaty (NPT). The euphoria that existed after the Treaty's indefinite extension in 1995 and after the successful outcome of the 2000 Review Conference have been shattered by a series of threats that will continue to haunt the Treaty for years to come.

North Korea's blatant disregard for the treaty's objectives, further exacerbated by its October 2006 nuclear test, continues to present an unprecedented challenge to the Treaty in general, and specifically to the states most involved. Many now believe that Iran opaque nuclear intentions are tell tales for others, with the result that access to the peaceful uses of the atom may soon be restricted further, even at the expense of States who remain in good standing with their NPT obligations. 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. It is argued, that some parties may jump to the conclusion that they would be better served outside the regime than being limited by its provisions. Still another group believes that the nuclear weapons states (NWS) have not met their legal Article VI obligations to disarm as further strengthened by the decisions and agreements reached in 1995 and 2000.

The 2005 Review Conference represented a missed opportunity for State parties. Instead of building bridges between each other – as was the case in 1995 and 2000 – key State parties found strength in the lack of agreement on how to collectively respond to these and other proliferation challenges, and to consolidate efforts to address long-standing disarmament issues. As opposed to the high level of cooperation and trust at the 1995 and 2000 conferences, the legacy of 2005 is one of negative tactics, lack of political commitment and bad faith negotiations.

Judged by events in recent months, there is already a deep sense of pessimism about the prospects for the next review cycle, if not the Treaty itself. 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. This reminds of the three monkey approach: Despite the severity of the threats to the regime, some seem not to recognize these threats for what they are. While the dangers of these threats – real and potential - have been emphasized on numerous occasions, others seem not willing to listen to these warnings. And then

there are those who are restrained in their political and strategic relationships from speaking up, or taking effective action.

While true that the NPT regime is in deep trouble and faced with unprecedented challenges, it is fair to say that the vast majority of its members continue to believe in, and fully support, its objectives and principles. The treaty has a good track record, and can rightfully be described as one of history's greatest success stories. It has been "defeated" by only one country that acquired nuclear weapons illegally: North Korea. Although the three other States outside the Treaty – India, Israel and Pakistan - are also armed with nuclear weapons, this problem relates to longstanding regional and bilateral political issues that the NPT was not designed to address. Contrary to some perceptions, the overwhelming majority of non-nuclear weapons states (NNWS) have laudable compliance records and have no intention to develop or acquire nuclear weapons. Yet, instead of finding ways to reward good behaviour, 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.

While the Treaty is not yet on the brink of failure, it has reached its Rubicon. The continued inability to adapt the Treaty from its Cold War framework to one more responsive to today's security environment will, over time, erode its relevance as a cornerstone of international security. As they now begin formal preparations for the 2010 Review Conference, States parties must move quickly to lay the groundwork for success by establishing an effective preparatory process, defining balanced and achievable goals, and building political will and momentum to implement them.

For if the NPT parties approach the next review cycle with the same "business as usual" approach as they did the past one, the outcome of the 2010 Review Conference could be in jeopardy long before it starts. 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, some states may not only question the security framework that the treaty once promised, but they may start seeking their security through other means, including nuclear weapons.

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.

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 all the Treaty's provisions, 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 part of a grand bargain 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 further expanded this action plan, it essentially solidified the indefinite extension decision. Any effort to diminish or ignore the outcome of that Conference therefore impacts directly on the validity of the historic decisions of 1995.

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. 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. This would require a strategy based on 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 should be developed around a balanced plan of action during the upcoming review cycle and adopted at the 2010 Conference. Such principles and action plan 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 and 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 balanced package deal on ways to deal with the most pressing challenges facing the Treaty today. Such a package deal could include the following elements:

1. **Universal application of the nonproliferation norm:** The manner in which the States outside of the Treaty has been approach so far is clearly not working.

Assuming that North Korea could be lured back into the regime, new ways should be explored to capture the three outlier states without rewarding them for staying outside the norm. Bearing in mind the limitations of the Treaty, the NSG - if it survives the controversy over the U.S./India nuclear cooperation deal - is probably the only forum in which to effectively engage these three States. However, the NPT State parties – and not the exclusive former London Club - should endorse this approach without giving recognition to any of these states as *de facto* or *de jure* nuclear weapon states.

2. **Preventing NPT break-outs:** When considering ways to prevent break-outs, it should be recognised that balanced nonproliferation norms and support for nuclear disarmament remain the main motivation for State parties to remain in the Treaty regime. Preventing break-outs would require a two track approach: an institutional and a case-by-case one. The UN Security Council should declare that any withdrawal from the Treaty would be a matter of concern to it, and that the Council would be ready to act in cases of break-outs accompanied by NPT violations. Potential walkouts should be dealt with individually on a case-by-case basis with tailor-made responses taking into account their particular needs and reasons to withdraw. Offering nuclear security guarantees to States that contemplate withdrawal would be dangerous and would further erode the regime, harden the stance of proliferators and prompt other States to perhaps threaten withdrawal in an effort to extract similar guarantees or other benefits.
3. **Strengthening existing nonproliferation obligations:** Despite the perceptions by some State parties, comprehensive safeguards with the Additional Protocol, and the application of such strengthened safeguards as a condition of supply, would not limit their right to use the atom for peaceful purposes. Instead it would enhance international confidence in every State's ability to be a responsible possessor and user of advanced peaceful use nuclear material and technologies. However, nuclear cooperation with a State found by the IAEA Board of Governors to be in non-compliance with its safeguard agreements should be suspended until such violations have been redressed. 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 adopt a generic resolution stating that withdrawal from the NPT by such a non-compliant state would constitute a threat against international peace and security.
4. **Peaceful use of nuclear energy:** Article IV rights for States in full compliance with their nonproliferation and safeguards obligations should be reaffirmed. Compliance with the nonproliferation commitments could be encouraged through mechanisms on assurances of nuclear fuel supply, which would reduce the motivation to pursue enrichment by incentive rather than limitation of rights. However, suspicions on the part of many NNWS that such mechanisms would restrict individual states' access to technologies and material would need to be overcome. The concept of multilateral fuel cycle controls should be advanced

- provided agreement can be reached on objective criteria on nuclear fuel supply mechanisms. It should be recognised that multilateral fuel cycle facilities may not capture the hard proliferation cases. States determined to develop a nuclear weapons option are also not likely to support the concept unless facilities are built on their territories. The expected recommendations by the IAEA in June this year could also make headway towards this end. The Agency could also promote the concept of multinational fuel cycle facilities through regional initiatives, as it is doing in the case of the Additional Protocol.
5. **Countering nuclear terrorism:** The fear of an act of nuclear terrorism, while not equally shared by all States parties, is real, and such an act 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, universal adherence to the Convention on the Physical Protection of Nuclear Material and the phase out of highly enriched uranium in the civilian sector should be emphasized. While the first three options are already widely recognised and implemented, the phase out of civilian HEU faces some political obstacles given the linkage made by some between civilian and military stocks have already been made.
 6. **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 Comprehensive Nuclear Test Ban Treaty (CTBT) while supporting the full implementation of the International Monitoring System (IMS). Given its relevance to other parts of the grand bargain, negotiations on a verifiable fissban treaty before the 2010 Conference would provide much needed momentum. While most urgent with respect to Russia and the United States, all NWS should agree to reduce the operational status of their nuclear forces as entrenched policies and practice. NWS 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.
 7. **Regional approaches and 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 African and the Central Asian treaties should be a high priority for all states. Equally so would be the ratification by the NWS of relevant protocols to all existing NWFZ treaties. The full implementation of the 1995 resolution on the Middle East should be pursued urgently. Regional approaches to verification, as a means of confidence building and enhanced compliance in the regions of most proliferation concern should be considered, taking into account

the experience of EURATOM and OPANAL while maintaining the IAEA safeguards as basis for any regional safeguards system.

8. **Security Assurances:** To defuse a potential deal-breaker in 2010, NWS should prior to the Review Conference reaffirm - in the context of the Security Council - their political pledges not to use or threaten to use nuclear weapons against NNWS. 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.
9. **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 Treaty obligations. 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 2000 thirteen steps should continue, but be expanded to require all reporting on the implementation of the NPT as a whole. Clear measurements and indicators should be identified to verify compliance and evaluate progress.
10. **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 also 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

While recognizing that political will derives from each State's own perception of the importance of the Treaty, a number of initiatives could be taken to create political momentum in support of the 2010 Review Conference and overall implementation of the Treaty.

- i. The P-5 should build on the momentum gained as a result of the agreement with North Korea and urgently move to negotiations leading to full disarmament under IAEA supervision. This would send a positive political message to the broader NPT membership. Likewise, the P-5, other Security Council members, Iran and the IAEA should work towards settling their differences. The current stalemate signals a lack of confidence in the treaty regime, if not in the IAEA and the Security Council. Another important and positive political message would be to signal support for the CTBT, not only in Washington and Beijing, but also in the capitals of other NPT Annex II states.

- ii. Likeminded coalitions and political groupings could promote achievable options to develop and strengthen confidence in the Treaty. In the past, groups such as the New Agenda Coalition and regular collaboration between State party representatives and nongovernmental experts have shown remarkable results.
- iii. A NPT heads of state summit to be convened on the margins of the 2009 General Assembly session could generate high level political will in support concrete action at the 2010 Review Conference. While this summit should send a strong political message in support of a successful Review Conference, care should be taken not to deepen existing divisions among State parties.
- iv. A joint P-5 statement prior to the 2010 Review Conference, in which the nuclear weapon states should recommit themselves to work towards a positive outcome, could add political muscle. It is significant that the political leadership in four of the five NWS 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.

It would be fair to conclude that there is a real possibility that a failure in 2010 could lead to the eventual irrelevance of the NPT. The challenge facing 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 can, however, not 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 NNWS or the NWS to address only one aspect of the NPT bargain is a recipe for failure and should be guarded against.