What Next for the NPT?

Facing the Moment of Truth by Roland Timerbaev

or over 30 years, the Nuclear Non-Proliferation Treaty (NPT) has been the center and foundation of an interlocking network of agreements, organizations and international arrangements. They were designed to slow down, if not effectively bring to an end, the further spread of nuclear weapons. The regime was intended to include all the nations of the world — those that had nuclear weapons and those that might wish to acquire them in future.

Though this goal has never been fully achieved, the NPT, over the years, has been a reasonable success. If there had been no NPT, the total number of nuclear-weapon States (NWS) might have reached 30 or 40 by now. But today we have only eight, with one or two still trying to reach nuclearweapon status. Since the conclusion of the NPT many more countries have given up nuclear weapon programs than have started them. There are fewer nuclear weapons in the world and fewer States with nuclear weapons programs than there were twenty or thirty years ago.

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The single most significant factor in producing this result has been the global non-proliferation legal norm established by the NPT, as well as the incentives for remaining non-nuclear States that the NPT helped initiate and provide. So, NPT achievements are indisputable. The treaty has gained an almost universal adherence. Only three nations

have chosen not to join it — India, Pakistan and Israel and one State, North Korea, has decided to withdraw from the treaty.

This unquestionable success could never have been achieved without long-term cooperation among many States, and primarily between the United States and the Russian Federation. Both nations, as co-chairs of the Eighteen-Nation Disarmament Committee, initiated, back in the 1960s, the negotiation of the NPT, and, with the support of many other countries, the treaty was successfully concluded.

Since then, the international treaty regime has been consistently improved, updated and extended. To name only a few additional non-proliferation measures, one should mention the IAEA comprehensive system of safeguards (INFCIRC/153); the Zangger Committee; the Nuclear Suppliers Group (NSG); the Tlatelolco, Rarotonga, Bangkok and Pelindaba Treaties establishing nuclearweapon-free zones in their respective regions of the world; the Brazil-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC); and the IAEA additional protocol to comprehensive safeguards agreements of 1997 (INFCIRC/540).

Among the most recent additions to the regime are the global partnership against the spread of weapons and materials of mass destruction agreed among the G-8 nations in 2002; the US-led Proliferation Security Initiative (PSI) to interdict illegal transfers of weapons and materials; the Security Council Resolution 1540(2004) requiring States to increase security for weapons and materials and enact stricter export controls and laws to criminalize proliferation activities by individuals and corporations; the Global Threat Reduction Initiative (GTRI), jointly coordinated by the United States and Russia, which seeks to identify and secure dangerous materials at nuclear research reactors in many States.

IAEA BULLETIN 46/2 March 2005 Thus, we have been witnessing increased international cooperation in combating the proliferation of nuclear weapons and the spread of dangerous materials, and the responsible nations would certainly continue to seek new and more effective antidotes against this enduring evil. However, one has to admit that this continuous struggle is becoming more and more complex and demanding. Despite major non-proliferation successes, the spread and potential use of nuclear weapons, radiological dispersion devices (RDD), or so-called "dirty bombs," remain all too real.

The nations that created the world's nuclear regime could not force all countries to join the NPT. Nor have the treaty members consistently adhered to their own solemn commitments. Problems now exist that threaten the world community both by the use of nuclear weapons and by the collapse of international non-proliferation restraints.



Moscow, 1 July 1968. Signing of the NPT. On behalf of Austria, the Treaty is signed by the Austrian Ambassador to the USSR, Mr. Walter Wodak.

Still more concerns may undermine the NPT. More than thirteen years after the end of the Cold War, the great majority of non-nuclear-weapon States (NNWS) believe that the original nuclear-weapon States (China, France, Russia, United Kingdom, and the United States) have not lived up to their NPT undertakings and do not seem to be intending to fulfill their part of the NPT "grand bargain" — the commitment to reduce and eventually eliminate nuclear weapons. The two of them — the US and Russia — have negotiated a number of agreements to cut down the number of their strategic nuclear weapons, but the other three (China, UK and France) have not even joined the negotiating process. They argue that the US and Russia with larger nuclear arsenals should first downsize their stocks of nuclear weapons to some lower levels before they agree to sit down at the negotiating table. The NPT does not specify any such levels, and here we have a case of an obvious violation of Article VI of the treaty. But the larger NWS, in the view of many

NNWS, have also not done as much as they should have done to implement this Article. And the most eye-catching and striking issue, relating to Article VI, is the continuous unwillingness of the United States, as well as of China, to ratify the Comprehensive Test Ban Treaty (CTBT) — the most sought for measure, which was specifically singled out in the Preamble of the NPT.

The May 2005 NPT Review Conference is set within this quite mixed record. Even more so, the Preparatory Committee that met in 2002, 2003 and 2004, has not agreed on many procedural matters, including a draft agenda and a program of work, and did not commission background documentation, normally provided in advance by the UN Secretariat, the IAEA, organizations like the CTBTO and nuclear-weapon-free-zone agencies. Thus, delegates to the Review Conference may have to spend much of the allotted time wrangling about procedural matters and would be deprived of the opportunity to know the unprejudiced views of international organizations as to how the NPT States have been implementing the treaty provisions.

On top of it, the Preparatory Committee has failed to agree on any substantive recommendations to the Conference. Significant differences emerged between those delegations who saw the treaty obligations primarily in terms of Articles I and II and wanted to focus on the non-compliance by a few States, such as North Korea and Iran, and those countries for whom the NWS failure to make sufficient progress towards complying with Article VI was at least, if not more, important. While the United States wanted to point the finger at Iran or North Korea, by contrast the great majority of other States, including many US Western allies, sought to be more even-handed.

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When in 1995 the NPT Review and Extension Conference by consensus extended the treaty indefinitely, it did so on certain conditions, embodied in the Decision on the Principles and Objectives for Nuclear Non-Proliferation and Disarmament, the main one being that NWS should, on their part, give a pledge to speed up the implementation

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of their commitments under Article VI, including the conclusion of the CTBT. In addition, the conference adopted a decision, co-sponsored by the NPT depositories — Russia, United Kingdom, and the US — calling for the establishment in the region of the Middle East of a zone free of any weapons of mass destruction.

At the 2000 Review Conference, the countries of the so-called New Agenda Coalition (Brazil, Egypt, Ireland, New Zealand, Mexico, South Africa, and Sweden) succeeded in getting, also by consensus, the agreement of all the NWS to implement the so-called "thirteen steps", which were aimed at making systematic and progressive efforts to implement Article VI. Again, number one among these steps was to be "the early entry into force of the Comprehensive Nuclear-Test Ban Treaty".

As a result, the last two Review Conferences have been concluded on an optimistic note, with consensus decisions, well-intended promises and pledges and renewed hopes for more productive efforts in implementing the provisions of the NPT, thus contributing to the strengthening of the regime. Even testing by India and Pakistan of nuclear explosive devices in May 1998 has not shaken the universal belief in the regime's viability.

Against this background and with the recent record described above, what may we face in 2005? Would the next Review Conference continue to give the assurance of the continued robustness of the treaty regime or, on the contrary, may we have to witness the beginning of its disintegration?

It is a hard question to answer at this point in time. Usually, delegations arrive at Review Conferences with their extreme positions and start haggling until the time when such conferences reach "the moment of truth", which happens at the very end. This, however, belongs to the domain of diplomatic tactics. In reality, whether or not the 2005 conference is to adopt a formal final document, would not affect very much the present very distressing situation with regard to the actual status of the treaty's implementation and of the non-proliferation regime as such.

The NPT regime may survive as a livable international legal and practically applied norm only if it is consistently adhered to and supported by *all* its members — both the NWS and NNWS — and if the remaining non-member States are included in the regime in some way and in a capacity that would be generally acceptable. One of the most important goals in assuring the survivability of the regime is the intent of the NWS to lessen their reliance on nuclear weapons as a prime factor of their foreign policy objectives and practices. This is one of the most pressing requirements included among the "thirteen steps" adopted by the 2000 Review Conference and pursued by NNWS during the 2005 preparatory process.

In more concrete terms, what, in my opinion, could be done to assure the successive outcome of the 2005 Review Conference and the further strengthening of the international non-proliferation regime?

The *sine qua non* condition is an *even-handed* and *balanced* approach by the NPT States to reviewing the operation of the treaty in its totality in order to help achieve its *universal* compliance. Some of the needed steps to assure an orderly and generally accommodating conduct of the Conference are discussed here.



First NPT Review Conference, Geneva, 5 May 1975. Partial view of the presiding table. Left to right: Dr. Sigvard Eklund, DG of the IAEA; UN Secretary General Kurt Waldheim; and Mrs. Inga Thorsson (Sweden), President of the Conference.

- First and foremost, there must be a positive movement towards the earliest entry into force of the CTBT. Only 33 of the 44 states, whose ratification is needed for the CTBT to become effective, have ratified it. While it is hardly realistic to expect the US Senate, in its present composition, to give by two-thirds majority its advice and consent to the treaty ratification in the near future, the reaffirmation by the US Administration of its support for the treaty would be very helpful in reassuring the international community as to where the United States stands vis-à-vis the nuclear test ban. The leadership of the China has on many occasions announced its intention to obtain the ratification of the CTBT, and the approaching Review Conference is the appropriate time for fulfilling this pledge. Pending such time as the CTBT legally enters into force, a moratorium on nuclear-weapon-test explosions should be newly reaffirmed.
- 2 Next, it would be highly important for all the NWS to jointly or independently proclaim their serious intention to diminish the role of the nuclear factor in their security and foreign policies. This should be accompanied by

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more intensive efforts to implement their disarmament commitments under Article VI of the NPT, as well as the pledges made by them at the 1995 and 2000 Review Conferences.

- After reviewing the operation of Article III on safeguards, the Conference should strongly urge those countries, which have not yet acceded to the IAEA additional protocol to nuclear safeguards agreements, to do so at the earliest time. So far, more than seven years after the IAEA Board of Governors approved the protocol, it has been ratified by some 60 countries and Euratom, while two more (Iran and Libya) have agreed to provisionally abide by it. This situation is far from being satisfactory and should be urgently corrected.
- The Conference should strongly support recent initiatives aimed at expanding the extent of non-proliferation activities and preventing the possibility of nuclear materials being used by potential terrorists. Such initiatives include the Security Council Resolution 1540 (2004), the US Proliferation Security Initiative (PSI), Global Threat Reduction Initiative (GTRI) and any other useful measures that may be designed to reduce and discontinue the spread of nuclear weapons, materials and technologies.
- of all the NPT States to develop research, production and use of nuclear energy for peaceful purposes "in conformity with Articles I and II". During the negotiation of the NPT it was one of the most important elements of "grand bargain" between the NWS and NNWS. This treaty provision, however, may be used by some NNWS as a justification for developing uranium enrichment and reprocessing capabilities, which, under certain conditions, could be utilized for nuclear weapon proliferation. Attempts are being made by the IAEA and some governments to solve this issue in accordance with international law, and in the letter and spirit of the NPT, through diplomatic means.

This approach should be continued until such time as the situation does not go out of control. The Review Conference could make a decisive contribution to the settlement of this issue if all its participants, and especially the NNWS, take a strong position in favor of restraints on the use of modern technologies for purposes that may be in contravention of their non-proliferation commitments.

A suggestion has recently been made for a multilateral approach to sensitive phases of the nuclear fuel cycle. Personally, I do not believe in the feasibility of such a scheme. A comparable idea was considered a quarter century ago (under Article XII.A.5 of the IAEA Statute), which would have resulted in the creation of International Plutonium Storage. Participants of that study, however, were unable to agree on where to set such a facility, and how and under what conditions the stored fissile materials

would be returned to governments for use in their civilian nuclear projects.

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6 Finally, we can expect that the perennial problem of the NPT *universality* will occupy a significant place during the 2005 Conference. No solution to this recurrent issue is yet in sight, though some ideas on how to facilitate at least a provisional result of this so-called "three-State problem" have recently been circulating among interested experts.

One possibility, suggested by some experts, would be to stop requiring that India, Pakistan, and Israel immediately give up their nuclear weapons and join the NPT as NNWS. Instead, these countries are to be persuaded to commit themselves politically to accepting the non-proliferation obligations undertaken by the NPT States. For example, the three States would agree to prevent proliferation exports, to secure the safety of nuclear weapons and materials, to reduce the role of nuclear weapons in their national security policies, and eschew nuclear testing by joining the CTBT.

Although I do not believe that such an arrangement could be acceptable to most NPT States, this or some other possible ideas leading to non-proliferation objectives should be carefully explored. They should certainly take into account the views of interested parties and the requirements for strengthening the international nuclear non-proliferation regime.

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