



The Non-Proliferation Treaty Review Conference: **Breakthrough or Bust in '05?**

A BASIC/ORG project - Final Document

Achieving a Breakthrough in '05: Balanced Progress Needed in All Three Pillars

Executive Summary

In *Breakthrough or Bust in '05?* (January 2005), we reviewed the events since the last nuclear Non-Proliferation Treaty (NPT) Review Conference in 2000 and the prospects for the Review Conference at the UN in New York from 2 to 27 May. During February - April 2005 we published a series of 16 short, issue-based briefings that provide concrete, achievable recommendations to strengthen the non-proliferation, compliance and disarmament functions of the NPT. These briefings are listed at the end of this document and, together with the overview document, are available on our web sites (www.basicint.org and www.oxfordresearchgroup.org). Throughout our message has been a simple one: the NPT will only remain relevant and effective if it is universally accepted that it stands for compliance **by** all, **for** all, without exception or excuse.

This Final Document in our series of publications for the conference presents a concise set of key issues and specific recommendations that we consider are absolutely crucial for achieving a successful outcome in New York in May. It draws on our earlier published briefing series and is also informed by an off-the-record consultation with State Parties delegations at the Palais de Nations in Geneva on 13 April, co-hosted by UNIDIR.

Over the last four months or so it has become increasingly clear that to achieve a successful outcome will require States Parties to:

- re-affirm existing legal obligations and political agreements from the 1995 and 2000 Review Conferences; and
- agree to a comprehensive and balanced new programme of action in all three pillars of the NPT.

These are our key recommendations for moving forward in each of the three pillars:

Strengthening Verification and Compliance with Non-Proliferation Obligations (Articles I, II & III)

- Support the Canadian and IAEA proposals to provide the NPT with a



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governance capacity, including negotiation of formal mechanisms for assessing compliance

- Act swiftly and decisively in the case of any notice of withdrawal from the Treaty and apply specific pre-agreed penalties upon withdrawal, including the surrendering of all nuclear technology
- Provide the IAEA with the tools and funding it needs to verify compliance with the Treaty, including universal adherence to the Additional Protocol
- Further develop and universalise those tools in the counter-proliferation toolbox, such as the Proliferation Security Initiative, that strengthen compliance
- Treat cases of non-compliance consistently and without discrimination and reinforce the goal of universal NPT adherence

Preventing Misuse of Nuclear Technology (Article IV)

- Negotiate further steps to strengthen controls on the nuclear fuel cycle and the transfer of technology
- Make adherence to the Additional Protocol the compliance norm for any country seeking nuclear technology for commercial purposes
- Endorse the proposed five-year moratorium on building new facilities for uranium enrichment and plutonium separation, and review in good faith proposals for regional centres under multilateral control
- Commit to the expeditious negotiation of a verifiable FMCT without linkages or pre-conditions
- Develop proposals for an Energy for Peace Programme and an International Sustainable Energy Fund

Fulfilling Disarmament Obligations (Article VI)

- Reaffirm the disarmament commitments agreed in 2000 and assess progress by the NWS in implementing them
- [The NWS to] declare a moratorium on the research and development of new nuclear weapons and reaffirm the testing moratorium as a precursor to entry-into-force of the CTBT
- [Russia and the United States to] build on the Moscow Treaty by taking additional reciprocal measures, including abandoning the nuclear hedge and removing 'tactical' weapons from their arsenals
- Establish criteria for monitoring compliance under Article VI and agree a disarmament timetable
- [The NWS to] provide full and transparent reporting on their nuclear stockpiles, implementation of Article VI obligations and future progress towards disarmament

Introduction

Negotiated in 1968 and entered into force in 1970, the NPT established one of the most important security bargains of all time: states without nuclear weapons pledged not to acquire them, while nuclear-armed states committed to eventually give them up. Non-nuclear-weapon states were also free to pursue the peaceful use of nuclear technology under strict and



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States Parties now number nearly 190 countries and meet every five years to assess the treaty's implementation. The seventh such Review Conference will take place May 2-27 in New York. 'Success' at such meetings is generally associated with 'strengthening' the NPT, primarily through stricter 'compliance' with commitments and obligations, but these are all relative terms that require some consensus on definition. If a relatively equal balance between the three pillars of the NPT is desirable, then what are the key issues where progress is both needed and possible?

It is our view, that to achieve a successful outcome will require States Parties to re-affirm existing legal obligations and political agreements from the 1995 and 2000 Review Conferences and agree to a comprehensive and balanced new programme of action in all three pillars of the NPT.

Pillar I: Strengthening Verification and Compliance with Non-Proliferation Obligations

(For further details see briefings 1, 3, 6, 9, 11-13 and 15)

Since the 2000 Review Conference, the increased threat of nuclear terrorism, illicit trafficking in nuclear materials, compliance evasion and the withdrawal of North Korea from the NPT have combined to pose a serious threat to the integrity of the Treaty. As a result of these substantial shocks to the Treaty there is now a clear need for new approaches. Several States Parties, including the United States and United Kingdom, have argued that the 2005 Review Conference needs to focus on remedying the problem of treaty non-compliance. This is true, but they have been less quick to acknowledge that compliance also applies to nuclear disarmament obligations. It is clear that potential agreement on stricter controls on non-proliferation compliance must be accompanied by progress on nuclear disarmament to achieve a balanced outcome.

The NPT has no secretariat, no annual decision-making body and no executive. This 'institutional deficit' constrains its effectiveness and requires remedial action. To achieve 'permanence with accountability' annual meetings should replace the PrepComs and be charged with decision-making, while extraordinary meetings should be called to address possible violations. Objective criteria are needed for assessing non-compliance and a set of intermediate mechanisms need to be developed to deal with violations before resort to the UN Security Council (UNSC). This would allow compliance issues to be addressed in a timely and more comprehensive manner than possible under current arrangements.

Recommendation 1: Bring the NPT into line with comparable international treaties by providing it with a governance capacity, as proposed by Canada, the IAEA and others, including a formal mechanism for assessing compliance

How to avoid and respond to declarations of NPT withdrawal is a key problem

A state may withdraw from the treaty if its supreme national interests are in jeopardy. Unless the UNSC takes action, a state may escape responsibility for any prior violations committed while party to the treaty and retain access to controlled nuclear materials and equipment. How to avoid and respond to declarations of NPT withdrawal is a key problem that needs to be addressed.

Recommendation 2: State Parties must act swiftly and decisively in the case of any notice of withdrawal from the NPT and, through the UNSC, agree specific penalties for any state that leaves the Treaty, including the surrendering of all nuclear technology

Effective verification measures: provide the tools through which NPT compliance is monitored; generate trust by providing technical information for states to judge whether non-proliferation and disarmament commitments are being met; provide high confidence that cheating will be detected; and act as a deterrent for would-be cheaters.

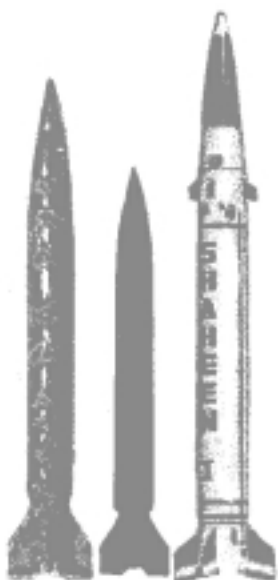
Recommendation 3: Provide the IAEA with the tools and funding it needs to verify compliance with the Treaty, including universal adherence to the Additional Protocol

Elements of the US-led counter-proliferation agenda have a key role in non-proliferation policy. Both UNSC Resolution 1540 and the Proliferation Security Initiative (PSI) are steps in the right direction. If the PSI is implemented correctly it could be a credible enforcement mechanism and a logical expansion of the current non-proliferation and disarmament regime. Accurate and timely intelligence to detect illicit activity and potential threats is critical.

Recommendation 4: Review in good faith the counter-proliferation toolbox and further develop and universalise those tools, such as the PSI, that strengthen compliance

States must be held accountable for violations. A corrosive message has been sent out to the international community by two years of inactivity by the UNSC in response to the violations by North Korea. Similarly, the US administration's recent decision to sell advanced fighter aircraft to India and Pakistan sends the wrong message, particularly so soon after uncovering the most extravagantly irresponsible nuclear arms bazaar the world has ever seen, supposedly under the radar of the military regime in Islamabad. The focus should be on rewarding those states that actively strengthen the non-proliferation regime and not those that undermine it. Such high tech arms transfers also undercut US objectives of seeing those two states (and Israel) joining the NPT as Non-Nuclear Weapon States (NNWS).

Recommendation 5: Treat cases of non-compliance consistently and without discrimination and reinforce the goal of universal NPT adherence



The potential for misuse of enrichment and reprocessing technology is a particular concern

Pillar II: Preventing Misuse of Nuclear Technology

(For further details see briefings, 7, 12 and 16)

The emphasis by the NNWS on their 'inalienable' right to develop nuclear technology needs to be balanced by recognition of the further restrictions and controls necessary to prevent proliferation. The potential for misuse of enrichment and reprocessing technology is a particular concern borne out by recent experience and has led to a range of proposals in the last two years.

The most recent proposals, by an IAEA Expert Group and the UN High Level Panel, will require further debate and discussion at the Review Conference. Thus, while resolution of questions concerning the relationship between proliferation and the complete nuclear fuel cycle are unlikely to be resolved in New York, States Parties can use the Review Conference to advance common understandings on the necessity of addressing the issue and to narrow down some of the proposed solutions.

Recommendation 6: Support further specific steps to strengthen controls on the nuclear fuel cycle and the transfer of technology

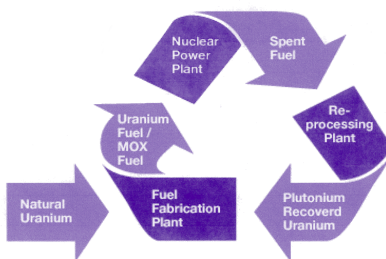
Recommendation 7: Make adherence to the Additional Protocol on Safeguards the compliance norm for any country seeking nuclear technology for commercial purposes

Recommendation 8: Endorse the proposed five-year moratorium on building new facilities for uranium enrichment and plutonium separation, and review in good faith proposals for better long-term options for managing these technologies, such as regional centres under multilateral control

Discussions about the fuel cycle must be within the context of the NPT, not with direct reference to specific countries, and based on general and accepted principles. And again, it is also clear that potential agreement on stricter controls over access to nuclear power generation must be accompanied by progress in the other two pillars to achieve a balanced outcome. A verifiable Fissile Missile Cut-Off Treaty (FMCT) would enhance the prospects of such an agreement, since it would eventually bring Nuclear Weapon States (NWS) and non-NPT States Parties to the same level as NNWS. The FMCT would also be a significant disarmament measure as well as a non-proliferation measure in its own right.

Recommendation 9: Commit to the expeditious negotiation of a verifiable FMCT without linkages or pre-conditions

Clearly, we are no longer in an idealised 'Atoms for Peace' era. It is unclear whether nuclear power generation is advisable, financially or environmentally sustainable or can be made proliferation resistant. Furthermore, any debate about extending access to nuclear power generation should include consideration of spent fuel and nuclear waste management, fissile material security and the controversial Mixed Oxide (MOX) proposal.



An “unequivocal undertaking” by the NWS to “accomplish the total elimination of their nuclear arsenals”



Recommendation 10: Develop proposals for an Energy for Peace Programme and an International Sustainable Energy Fund

Pillar III: Fulfilling Disarmament Obligations

(For further details, see briefings 1, 2, 4, 5, 8-11 and 14)

In the 2000 NPT Review Conference Final Document States Parties agreed on a series of 13 “practical steps for the systematic and progressive efforts to implement Article VI”, including an “unequivocal undertaking” by the NWS to “accomplish the total elimination of their nuclear arsenals”. It also included commitment to the ABM Treaty and the START process (both of which are now dead), the CTBT, and the principles of irreversibility, transparency, and verifiability in nuclear reductions. Since 2000, however, several NWS have rejected a number of those steps and are now arguing that Article VI is important but not crucial to the NPT. While they see the need for a change in focus for the NPT in line with new post-9/11 threat perceptions, the vast majority of States Parties continue to regard Article VI as the vital heart of the Treaty. Post-9/11 threat perceptions are not universal, with many simply not sharing the dominant Western view that terrorists armed with WMD, particularly nuclear weapons, represent the primary threat to security. Furthermore, in the context of the NPT, many states consider the concept of nuclear deterrence redundant in the post-9/11 era of asymmetric conflict.

The 2000 Review Conference Final Document was an important political declaration and remains the benchmark for progress in meeting disarmament and non-proliferation commitments and expectations.

Recommendation 11: Reaffirm the disarmament commitments agreed in 2000 and assess progress by the NWS in implementing those commitments in the past five years

Most States Parties are likely to conclude that the disarmament commitments by the NWS are not being realised. For example, rather than reducing the prominence of nuclear weapons in their security doctrines, several of the NWS have undertaken new weapons research programmes and targeting doctrines. All of the NWS are embarking on modernisation programmes and remain committed to retaining nuclear weapons.

Recommendation 12: [The NWS to] declare a moratorium on the research and development of new nuclear weapons and reaffirm the testing moratorium as a precursor to entry-into-force of the CTBT

The United States and Russia possess more than 90 percent of all the nuclear weapons in the world and their leadership in moving forward the disarmament agenda is vitally important. They are committed (through the Moscow Treaty) to deep reductions in their deployed nuclear forces, similar to those envisioned for START III. But lack of verification, detailed timelines and requirements that reductions be irreversible mean the treaty is essentially a



confidence-building measure to de-alert a significant proportion of their massive nuclear arsenals, rather than a robust nuclear disarmament treaty. It is to be regretted, for example, that the Moscow Treaty is silent concerning the dismantling and destruction of non-deployed nuclear bombs and warheads and large stockpiles of weapon-grade fissile materials. In short, it means retention of a vast ‘hedge’ arsenal of non-deployed nuclear weapons in the United States and Russia.

States Parties will want to see prescribed a future path for disarmament that builds on the Moscow Treaty. Most do not see this Treaty as the end of the road, and are likely to want explicit assurances that it is not.

Recommendation 13: [Russia and the United States to] build on the Moscow Treaty by taking additional reciprocal measures, including abandoning the nuclear hedge and removing ‘tactical’ weapons from their arsenals

Having taken some of the easier nuclear reduction decisions at the end of the Cold War, the three smaller NWS - France, China and the UK - seem either to be frozen into ‘minimum deterrent’ thinking or contemplating upgrades and modernisation of their nuclear arsenals. While these three NWS tend to take their lead from the US-Russian nuclear goliaths, it does not absolve them of responsibility for assuming independent progress in their own nuclear disarmament commitments.

Does any of this matter? Some of the NWS, especially the US Administration, will argue that nuclear disarmament is not the real priority. They will say that the problem does not lie with the nuclear weapons within the stockpiles of the NWS, but in preventing the emergence of new nuclear weapon states and in keeping nuclear weapons capability out of terrorist hands. Certainly these latter aims should be core priorities for all States Parties, but a comprehensive approach to dealing with horizontal proliferation concerns must include enhanced efforts to reduce the size and status of existing nuclear stockpiles. Effective cooperation to achieve non-proliferation and counter-proliferation objectives is unlikely to be forthcoming without renewed commitment by the NWS to disarmament objectives and the specific steps agreed in 2000. The link between these two aspects of the Treaty is inescapable, forming, as it does, the essential bargain at the heart of the regime.

If the NWS were to set out a clear path towards elimination of their nuclear weapons it would reinforce the decisions of NNWS to remain so. However, problems have arisen over what constitutes Article VI compliance. Is a willingness to engage in ‘good faith’ negotiations sufficient? Can the NWS’ claims that their nuclear arsenals are maintained at self-defined ‘lowest levels for national security’ or ‘strict sufficiency’ or as a ‘minimum deterrent’ be sustained? Without a clear commitment to nuclear disarmament, even more states could seek to acquire nuclear weapons, making terrorist access to nuclear technology easier as secondary centres of proliferation expand.

Recommendation 14: Establish criteria for monitoring compliance under Article VI and agree a timetable for the next multilateral and bilateral steps on nuclear disarmament

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PUBLICATIONS

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The Non-Proliferation Treaty Review Conference: Breakthrough or Bust in '05?

Briefing 1. Strengthening the NPT Regime

Briefing 2. Nuclear Weapons Free Zones: The
Untold Success Story of Nuclear
Disarmament and Non-Proliferation

Briefing 3. Turning Security Assurances into a
Legally Binding Instrument

Briefing 4. Test Moratorium and the Comprehensive
Test Ban Treaty

Briefing 5. The US-UK Mutual Defence Agreement:
Contributing to Vertical
Proliferation?

Briefing 6. Challenging the NPT: North Korea's
Nuclear Weapons Programme

Briefing 7. The Importance of a Fissile Material
Treaty

Briefing 8. NATO: Nuclear Sharing or Proliferation?

Briefing 9. The Illegality of Nuclear Weapons

Briefing 10. A Promise Not Realised: Nuclear
Disarmament by the Nuclear
Weapon States

Briefing 11. Towards a Universal Nuclear Non-
Proliferation Regime

Briefing 12. The Need for a Strengthened IAEA
Safeguards System

Briefing 13. Counterproliferation: Compatible with
Non-Proliferation?

Briefing 14. Leading by the Wrong Example: New
Nuclear Weapons Developments
in the United States

Briefing 15. Addressing the Challenge of Iran

Briefing 16. The Nuclear Fuel Cycle:
the 'Achilles Heel' of the
Non-Proliferation Regime?

Greater transparency on NWS warhead numbers, delivery vehicles and fissile material stocks would also help build confidence. In discussing the reporting requirement under UNSC Resolution 1540, a senior US official recently said:

“country reports will be an important tool in understanding the scope of the challenge before us and how best it can be addressed”

We agree, and would strongly argue that mandatory standardised reporting on the implementation of Article VI would be a key confidence-building measure that would increase transparency and accountability within the NPT. Such reporting would also be a relatively simple quid pro quo for NWS to implement in exchange for movement in strengthening non-proliferation mechanisms.

Recommendation 15: [The NWS to] provide full and transparent reporting on their nuclear stockpiles, implementation of Article VI obligations and future progress towards disarmament

Conclusions

NGOs and civil society will be with government delegations in New York in unprecedented numbers and with unprecedented levels of organisation. BASIC and ORG will be part of this ensemble. We and the other civil society representatives will be watching the government delegations, debating with them, and projecting their words and actions to a worldwide constituency. We do this, not because we mistrust the delegations, or want to thwart them, but because we recognise the profound importance of their work, and the momentous consequences of the decision they take, and the agreements they reach, or fail to reach. Like the vast majority of the delegations, BASIC, ORG and our partner NGOs want the conference to succeed.

What is success? Success at the 2005 NPT Review Conference will require a reasonable, consensual evaluation of what has happened in the last five years and where to get to in the next five years. The fifteen recommendations set out above represent our view as to how to achieve a realistic, comprehensive and balanced new programme of action in all three pillars of the NPT over that time frame.

An outcome along the lines set out in this document would enhance the authority and effectiveness of the NPT and reaffirm its primacy within the international non-proliferation framework. The NPT is a process of dynamic equilibrium and the negotiations need to find the balance points within it. To achieve equilibrium at the Review Conference, delegations must accept the principle of compliance *by* all States Parties, *for* all States Parties.

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