

The Non-Proliferation Treaty Review Conference

A BASIC/ORG project

**Breakthrough
or Bust in '05?**

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Review
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Executive Summary

In May 2005, State Parties will gather in New York to review implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) for the seventh time since its entry into force in 1970, and to identify further areas for progress. The combined effect of a paradigm shift in US non-proliferation policy away from reliance on multilateral instruments, a weakening of the political will among the Nuclear Weapon States (NWS) to pursue non-proliferation and disarmament goals, and serious doubts about the NPT's efficacy to enforce compliance among States Parties, has threatened the very viability of the regime.

Is it time to give up on the NPT? Should it be amended or even superseded by a new convention or treaty on nuclear disarmament? Our analysis leads us to conclude that we should give it one more try. There is a stark choice to lay before the international community: Either a breakthrough is made at the 2005 Review Conference or the NPT may be declared bust at the end of it.

This overview document sets the scene for a series of concise, issue-based briefings to be published between January and March 2005 that will propose concrete, achievable recommendations to help strengthen the non-proliferation, compliance, and disarmament functions of the NPT. Our baseline objective for a successful outcome at the 2005 Review Conference is a strengthened international non-proliferation consensus, which includes clear and unambiguous progress on:

- implementing the '13 disarmament steps' agreed at the 2000 Review Conference;
- measures to 'roll back' nascent nuclear weapons capabilities (as in North Korea and Iran), and to freeze those of the three non-NPT NWS, India, Pakistan and Israel, and engage them more fully in the process of non-proliferation;
- measures to prevent horizontal nuclear proliferation;
- and
- strengthening the NPT State Parties' commitments to nuclear disarmament.

Crisis? What Crisis?

It would appear that there is a remarkable degree of consensus on the need for the 188 States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) to comply with their agreed obligations.

The problem, of course, is that there is no consensus on what more is required of States Parties for compliance to be met. This is because the provisions of the NPT are widely recognised as discriminatory, open to differing interpretation and unenforceable. Recent moves to separate non-proliferation obligations from nuclear disarmament obligations have compounded this problem.

Additionally, three nuclear weapon capable states - Israel, India and Pakistan stand defiantly outside the provisions of the NPT and show disdain for the oft repeated, and near futile pleas for them to join the NPT as Non-Nuclear Weapons States (NNWS). This small, but highly significant group, has been joined by the Democratic Peoples' Republic of Korea, a signatory to the NPT and formerly a NNWS with currently ambiguous status.

The Conference on Disarmament (CD), the body charged with implementing non-proliferation and nuclear disarmament measures on behalf of the United Nations, hasn't even managed to arrange the chairs around the conference table for the last eight years, never mind make any substantive progress on the issues before it.

The International Atomic Energy Agency (IAEA) is severely compromised by a contradictory mandate to both promote the spread of the peaceful use of nuclear technology for power generation and to curb the diversion of materials developed by such technology into weapons programmes. In reality, however, the Agency does a remarkable job in monitoring the latter and holding the line against horizontal proliferation. But it has no mandate to intervene in preventing vertical proliferation.

Universality, so often called for during the 1995 Review Conference, when the indefinite extension of the NPT was achieved on the understanding that permanence would provide a platform for substantive progress, remains a distant dream.



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The concept of shared security, transcending narrow definitions of national security based on the possession and threat of nuclear retaliation, has been all but buried by the 'declared' Nuclear Weapons States (NWS). Moreover, this handful of powerful states continue to try and justify the status quo on the questionable grounds that their status is 'recognised'. They know this position has no basis in international law yet they act as though it does.

The discriminatory nature of the NPT is further reinforced by declaratory statements of 'other' agreements taking precedence over the NPT, such as the US-UK Mutual Defence Agreement and NATO's Strategic Concept. Unless, and until, it is generally accepted that there are no opt-out clauses from the obligations of the NPT to actively pursue nuclear disarmament in 'good faith', as agreed in the final document of the 2000 Review Conference, there will remain no prospect of progress in 2005, and beyond. NNWS within alliances like NATO can no longer shelter under the nuclear umbrella provided by NWS and maintain the pretence that they are in good standing under the NPT - they aren't and they must be challenged.

On the other hand 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 latent proliferation.

Attempts to paper over the cracks by restating that the NPT is the cornerstone of international arms control, that the NWS are moving forward on dismantlement of their nuclear arsenals, and that the NPT has served the international community well for 35 years will not suffice. The status quo will only serve to further build resentment and retrenchment. All must move beyond their usual rhetoric if practical, concrete progress is to be made.

So, is it time to give up on the NPT as some experts have advocated and some academics and officials have implied? Should it be amended or even superseded by a new convention or treaty on nuclear disarmament?

Our analysis leads us to conclude that we should give it one more try. We should continue to believe that reasonable people behave rationally with the best interests of human security in mind and to reinforce agreed behaviour, whether arrived at by common custom or by tabulated statute passing into international law.

As Dr ElBaradei, Director General IAEA, stated in a recent article:

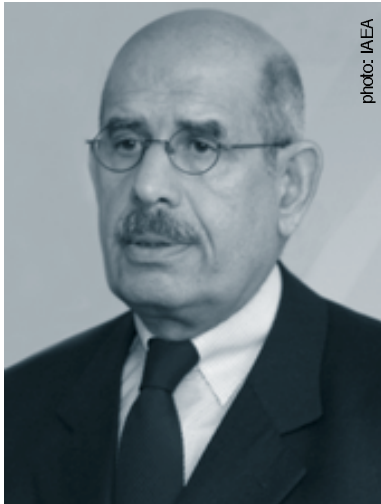


photo: IAEA

Denials of impending crisis must be seen as part of the problem and as an indication of planned inactivity

“The twin crises of compliance with NPT obligations - namely, the engagement of some NNWS in undeclared nuclear activities, coupled with the failure of the NWS to take concrete, verifiable and irreversible steps to eliminate their nuclear arsenals - have led to a crisis of confidence in the NPT regime.

The solution is... to work towards an equitable system that will provide the security of all. Despite any appearances to the contrary this is an achievable goal - but only if it is rooted in rule-based multilateralism.”¹

Moreover, the spectre of nuclear terrorism, a growing threat since 9/11 and an issue of relatively little import at recent previous Review Conferences, will undoubtedly cast its shadow over the Conference and needs to be factored into the equation. There is a stark choice to lay before the international community: Either a breakthrough is made at the next NPT Review Conference or it may be declared bust at the end of May 2005.

Dr ElBaradei has signposted the way forward:

“The earlier we focus on collective security reform, the earlier we can move forward towards agreement on strengthening the Non-Proliferation Treaty and towards a concrete programme for verified, irreversible nuclear disarmament, complete with a timetable. Such a course of action could be achieved in the context of a protocol to the present NPT. Once in force, this new framework should be regarded as a ‘peremptory norm’ of international law - in short, it should be enduring and permanent.”²

Evidently, much work lies before us. Denials of impending crisis must be seen as part of the problem and as an indication of planned inactivity.

Need for Progress in 2005 and How To Achieve It

In May 2005, State Parties will gather in New York to review implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) for the seventh time since its entry into force in 1970, and to identify further areas

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for progress. Preventing both horizontal proliferation (the spread of nuclear weapons technology to Non-Nuclear Weapons States, and potentially to non-state actors) and vertical proliferation (the development of new nuclear weapons or enhancements to existing nuclear arsenals by the Nuclear Weapon States) is vital to the security of all states.

The 2000 NPT Review Conference broke new ground for global non-proliferation efforts. In the Final Document, all states agreed to an historic ‘Programme of Action’ or ‘13 practical steps’ towards the goal of accomplishing the elimination of the world’s nuclear arsenals.

Unfortunately, the combined effect of a paradigm shift in US non-proliferation policy away from reliance on multilateral instruments, a weakening of the political will among the NWS to pursue non-proliferation and disarmament goals, and serious doubts about the NPT’s efficacy to enforce compliance among States Parties, has threatened the very viability of the regime.

Hence, the prospects at present are not good for a successful seventh NPT Review Conference. The constructive and progressive programme of the 2000 NPT Review Conference has met resistance and redefinition. Stagnation and even failure look likely at this stage.

This document argues that the Review Conference must achieve a substantive breakthrough in 2005 based on the 2000 Final Document. It, therefore, considers the crucial achievements of the 2000 Review Conference and the inconsequential 2002, 2003 and 2004 PrepComs. It also introduces a series of concise, issue-based briefings to be published between January and March that will propose concrete, achievable recommendations.

The 2000 Review Conference Final Document

The content of the Final Document from the 2000 Review Conference was agreed by consensus and was considered to have far-reaching consequences. Not a timetable of actions needed for complete

2000 Review Conference of the Parties to
the Treaty on the Non-Proliferation of
Nuclear Weapons

Final Document

Volume I

Part I
Review of the operation of the treaty, taking
into account the decisions and the resolution
adopted by the 1995 review and Extension
Conference

Improving the effectiveness of the
strengthened review process for the Treaty

Part II
Organization and work of the Conference

New York, 2000

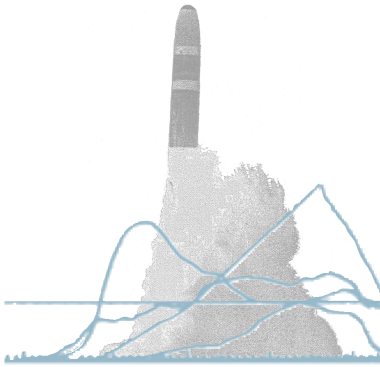
'13 practical steps towards global nuclear disarmament'

implementation of States Parties obligations, but clearly achievable confidence-building measures and practical suggestions for moving forward. It was viewed at the time as an extension of the 'step-by-step' approach favoured by the Nuclear Weapon States (NWS), and supported by allied Non-Nuclear Weapon States (NNWS), and a means of strengthening the historic agreement to indefinitely extend the NPT in 1995.

A 'Programme of Action' (often referred to as the '13 practical steps towards global nuclear disarmament') became part of the Final Document. They are summarised as:

- 1 Progress needs to be made on entry-into-force of the Comprehensive Test Ban Treaty (CTBT).
- 2 The moratorium on nuclear weapon test explosions must be maintained.
- 3 The Conference on Disarmament (CD) must move forward in establishing a Fissile Material Cut-Off Treaty (FMCT).
- 4 A subsidiary body with a mandate to deal with nuclear disarmament is needed.
- 5 The principle of irreversibility on arms control and reduction agreements must be applied to nuclear disarmament measures.
- 6 Progress on nuclear disarmament (implementation of Article VI) is required.
- 7 Implementation of arms reduction agreements and pursuit of binding agreements on further irreversible reductions must be instituted.
- 8 Greater emphasis must be attached to the implementation of the Trilateral Initiative and greater support must be forthcoming for the International Atomic Energy Agency (IAEA).
- 9 Confidence building measures and progressive steps to lower the nuclear threshold must be offered.
- 10 Further fissile material stocks must be put under IAEA Safeguards.
- 11 The ultimate objective of complete nuclear disarmament must be reaffirmed.
- 12 The formal reporting back by States Parties between Review Conferences - the accountability principle - must be instituted.
- 13 Enhanced verification measures must be agreed and implemented.

Attached to Step 9 of the '13 Steps' were six suggested means of moving towards nuclear disarmament. They can be summarised as:



The 2000 Review Conference was widely considered to have been a success - on paper, at least

- increased effort by the NWS to reduce their nuclear arsenals unilaterally;
- increased transparency by the NWS about their nuclear weapons capability;
- further reductions of non-strategic nuclear weapons;
- a reduction in the operational status of nuclear weapons (de-alerting);
- a diminished role for nuclear weapons in security policies (doctrines); and
- the engagement of all NWS in facilitating the elimination of nuclear weapons.

Despite prevarication and an unwillingness by some States Parties to engage in substantive discussions until the very last minute (by which time the prospect of failure forced a compromise), the 2000 Review Conference was widely considered to have been a success - on paper at least.

The Three Preparatory Committees (2002-04)

The 2002 Preparatory Committee was a difficult and sometimes contentious gathering with the NWS unwilling to move forward on the 2000 Review Conference agreements and the NNWS coalescing around the principle of standardising reporting by States Parties on their progress on measures to achieve nuclear disarmament - the so-called 'accountability principle'. This one issue, and the lack of preparedness by NWS to compromise on it, almost resulted in the Conference Chairman suspending the meeting.

In the event, a Chairman's factual summary was presented and the meeting was closed without further debate. It was generally regarded as a comprehensive summary and welcomed by most delegations and NGO observers. However, the lack of any political will to move towards universal compliance was considered a major, even debilitating problem. Specifically, progress on ratification of the CTBT, movement on Article VI, codification of negative security assurances, weakness and overstretch at the IAEA and the role of standardised reporting were highlighted for substantive attention in advance of the Review Conference.



It was further maintained that Article IV benefits were not “a guaranteed entitlement”

The 2003 Preparatory Committee saw an increase in the level of interaction, which was a noteworthy improvement, but there was no mistaking the general concern that the withdrawal of North Korea, the invasion of Iraq and the increasing attention paid to Iran presented profound challenges to the NPT. In the absence of substantial progress, agreement or flexibility, an increase in the level of engagement was welcomed but it was also indicative of low expectations going into the PrepCom.

The Chairman’s factual summary consisted of the amalgamation of the submissions of various delegations, an approach that was generally welcomed. However, it did run the risk that disagreements arising from the language of the text would result in its rejection by some States Parties. In the event, significant - and predictable - problems arose regarding the language on Iran and on the Middle East generally.

The United States, while agreeing with the emphasis given to the issue of compliance, felt that the summary should have devoted greater attention to Iran’s nuclear programme, although they welcomed the naming of Iran. The summary stated that Iran’s nuclear facilities raised “the most serious questions” about that State’s nuclear intentions and ambitions. With respect to this, it was further maintained that Article IV benefits (of assistance with peaceful nuclear technology) were not “a guaranteed entitlement”.³

The 2004 Preparatory Committee was charged with producing recommendations and finalising arrangements for the Review Conference, including an agenda. However, no substantive recommendations were adopted and no agreements on how to move forward on the 2000 Final Document were agreed. Independent analyst, Rebecca Johnson, concluded that the NPT was becoming more vulnerable and that four connected problems needed to be addressed in 2005:

- the erosion of confidence in the regime’s ability to meet states’ security interests;
 - the failure of the review process to deliver more credible pressure for full implementation and accountability under the treaty;
 - the absence of effective mechanisms by which States Parties can exert their collective will when faced with non-compliance or violations;
- and



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■ the continued treatment of NWS’ disarmament obligations as second-class commitments, to be pursued at their own time and pace and only if completely convenient. ⁴

Time to give up on the NPT or Compliance By All, For All?

In his statement to the 2004 PrepCom, US Under Secretary of State for Arms Control and International Security, John Bolton stated:

“There is a crisis of NPT noncompliance, and the challenge before us is to devise ways to ensure full compliance with the Treaty’s non-proliferation objectives. Without such compliance by all members, confidence in the security benefits derived from the NPT will erode.” ⁵

In a little reported comment during a BBC interview, the retiring European Commissioner for Foreign Affairs, Chris Patten stated:

“I am afraid that one of the things which is going to inhibit our attempts in the next decades to deal with the problem of potential manufacture, use and proliferation of weapons of mass destruction, is the fact that we have been applying double standards and that it’s very difficult for us to argue that there is something morally wrong about other countries developing their nuclear capacities when we don’t in the countries which actually have nuclear weapons, for example, live up to all our commitments under the NPT. So we have, I think, if we’re going to make progress in this area, to look at our own responsibilities as well as what we expect of others.” ⁶

Former US Ambassador to the Conference on Disarmament, Robert Grey, said in November 2004:

“It would be a fatal mistake to load [the Review Conference] up with new rhetoric and push for unacceptable goals because that just makes it easier for your opposition to reject. The arms control community should take a reasonable, steady moderate agenda and continue to push it at the NPT Review Conference.” ⁷

Through our forthcoming briefing series we will map out a path to compliance by all States Parties, for all States Parties

The UN High-level Panel on Threats, Challenges and Change reported in early December 2004 that:

“The nuclear non proliferation regime is now at risk because of lack of compliance with existing commitments, withdrawal or threat of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons to escape those commitments, a changing international security environment and the diffusion of technology. We are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation.”⁸

The British American Security Information Council and Oxford Research Group concur with these statements. Hard choices need to be made. Through our forthcoming briefing series we will map out a path to compliance *by* all States Parties, *for* all States Parties.

Notes:

- 1 *Preserving the Non-Proliferation Treaty*, Mohamed ElBaradei, Disarmament Forum, UNIDIR four 2004.
- 2 *ibid*
- 3 *NPT 2003 PrepCom Report*, Dr Fiona Simpson, 21 May 2003 (http://www.basicint.org/nuclear/NPT/2003prepcom/NPT_Report.htm).
- 4 *Is the NPT up to the challenge of proliferation?* Rebecca Johnson. Disarmament Forum, UNIDIR four 2004.
- 5 “The NPT: A Crisis of Non-Compliance”, John Bolton, New York, April 27 2004.
- 6 Chris Patten interview with James Cox, BBC World This Weekend, 10 October 2004.
- 7 *Reasonable Goals Needed for 2005 NPT Conference, Former U.S. Officials Say Following Bush Re-Election*, by Jim Wurst, Global Security Newswire, November 8 2004.
- 8 *A more secure world: Our shared responsibility* Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change (<http://www.un.org/secureworld>).

Briefing Series and Recommendations

BASIC and ORG will develop a set of recommendations to help strengthen the non-proliferation, compliance, and disarmament functions of the NPT in a series of issue-based briefings. The baseline objective for a successful outcome at the 2005 Review Conference is a strengthened international non-proliferation consensus, which includes clear and unambiguous progress on:

- implementing the '13 disarmament steps' agreed at the 2000 Review Conference;
- measures to 'roll back' nascent nuclear weapons capabilities (as in North Korea and Iran) and to freeze those of the three non-NPT NWS: India, Pakistan and Israel, and engage them more fully in the process of non-proliferation;
- measures to prevent horizontal nuclear proliferation;
- and
- strengthening the NPT State Parties commitments to nuclear disarmament.

Further information on the briefing series and other project updates will be available on our websites:

www.basicint.org

www.oxfordresearchgroup.org

The briefing series will start from the premise that the NPT is flawed but redeemable, given the political will of States Parties to engage productively and move forward on existing obligations. The briefings will address:

An assessment of Article VI progress made by each NWS

US-led counter proliferation initiatives

New nuclear weapons developments

The US-UK Mutual Defence Agreement and the NPT

NATO strategic doctrine and the NPT

The moratorium on testing and Entry into Force of the CTBT

The Fissile Material Cut-Off Treaty (FMCT)



The briefing series will start from the premise that the NPT is flawed but redeemable...

A final
Pre-Conference
Report will be
issued

Iran and the NPT

North Korea and the NPT

Codification of Negative Security Assurances

Strengthening safeguards and enhancing the role of the IAEA

Strengthening the NPT via increased transparency and accountability

The extension of regional Nuclear Weapons Free Zones

Achieving rollback - the instruments of diplomacy

Ensuring and/or enforcing compliance

The format of the briefings will be two-to-four pages in length, and written in a clear and easily digestible style, using non-technical language throughout. Each briefing will review the background to an issue, a description of recent (post 2000 Review Conference) events, its current status and future prospects, and provide clear recommendations for ways forward, including the means of implementation.

A final Pre-Conference Report will be issued in the immediate run up to the Review Conference, summarizing again the main issues and our final recommendations.

The principal audience for these briefings will be NPT State Parties delegations. We are targeting all the delegations in order to help broaden awareness, interest and participation at this important time, since experience tells us that previous Review Conferences have been dominated by a few powerful states. With the world on the edge of nuclear anarchy, it is vital that as many State Parties as possible become actively engaged in this process.

