

**SAVING THE NPT:  
PAST AND FUTURE NON-PROLIFERATION BARGAINS  
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The nuclear Non-Proliferation Treaty (NPT) is one of the most universally-agreed international legal instruments and also one of the most hotly debated. Signed in 1968 by 43 States, the treaty entered into force in 1970 with three depositary States (the United States, the Soviet Union, and the United Kingdom.) Membership grew to 96 in 1975 and 132 in 1985. After the end of the Cold war and amidst renewed fear about the proliferation of weapons of mass destruction, most countries that had not signed decided it was time for them to join the regime. In early 2005, 189 States were parties to the NPT, making it nearly universal. Only three countries remained outside the treaty – India, Israel, Pakistan – all of them nuclear-capable States, though not recognized either as “Nuclear-Weapons States” (NWS) or “Non-Nuclear Weapons States” (NNWS) since they are out of the regime.<sup>1</sup>

At the same time, the treaty’s efficiency and compliance are the topics of heated international debates. The US Administration questions the effectiveness of the Treaty to prevent proliferation. Many Western countries look for ways to enhance its efficiency or complement it, in light of verified or alleged violations of the NPT provisions by a small number of members States. The Non-Aligned Movement (NAM) and the New Agenda Coalition (NAC), for their part, supported by many NGOs, point a finger at NWS for what they call the non-respect of disarmament promises and alleged double standards in the treatment of proliferation problems.

### **The NPT bargains**

The NPT was conceived in a particular context, one which is only partly relevant today.

Calls for measures to limit the spread of nuclear weapons had begun as early as the birth of the United Nations (which were created only a few days before the Hiroshima bombings). But the NPT itself was originally conceived mostly to prevent proliferation in the developed world, among US allies in particular in Europe (Germany, Italy...) and in Asia (Japan...). The United States feared that countries that felt threatened by the Communist bloc would go nuclear. This was a time of strong European demands not only for nuclear protection, but also for a greater say in nuclear affairs. The topics *du jour* were the risk of proliferation *inside* the Atlantic alliance after France had become an operational nuclear power (1964), and the possibility of creating a Multilateral Nuclear Force (MLF) within the North Atlantic Treaty Organization (NATO). The Soviet Union, for its part, was not interested in proliferation either. Moscow feared proliferation within the communist bloc (China conducted its first test in 1964), but also wanted at all costs to conjure the prospect of German nuclear weapons. Both The United States and the Soviet Union feared the risk of a catalytic war that they would not be able to control. There was here a clear common interest between the two adversaries.<sup>2</sup>

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<sup>1</sup> This includes 188 members of the United Nations (UN) and the Holy See. The NPT includes 188 Parties only if one considers that North Korea is not a Party to the Treaty anymore. In addition, Taiwan though not formally a Party to the Treaty still considers itself bound by it as Taipei had ratified the Treaty at a time when it was still recognized as the legitimate government of China.

<sup>2</sup> See for instance Michael O. Wheeler, « American Foreign Relations and the Development of Nuclear Non-Proliferation Policy, 1939-1968 », paper delivered at the 25th Annual Conference of the Society for Historians of American Foreign Relations, Princeton, NJ, 24-26 June 1999.

The NPT is thus a product of the Cold war, or rather of a time of peaceful coexistence and cooperation between the two Superpowers – what China and France, who initially stayed outside the NPT for this reason, sometimes called a “condominium”. Most of the preliminary negotiations on what would become the NPT (in particular on what would become Articles I, II and III) took place between Moscow and Washington.

The NPT contains a built-in difference in status, which has routinely been called over the years a form of “apartheid”. This kind of abusive epithet is excessive. The NPT froze the nuclear situation in 1968 as a way to compromise between realities (taking into account the existence of nuclear-capable States) and ambitions (reducing the dangers of proliferation). Other international legal arrangements make distinctions between categories of States. Furthermore, the distinction was not meant to be eternal, since the NPT mentions the common objective of nuclear disarmament.

Also a subject of criticism is the fact that after the NPT signature, the West tacitly decided to close its eyes on some nuclear programs in order to preserve its strategic relationship with countries judged important in the fight against communism, such as Pakistan and to some extent Israel. Here, the criticism is that of alleged double standards. However, here also critics are often excessive. For sure, Western (and other) foreign policies are not always consistent. But the notion of double standards is inappropriate, because Western tolerance has essentially applied to countries that decided to stay *outside* the Treaty.

The NPT rests on a deal, or rather on a series of bargains. Basically, those who committed themselves to become NNWS got three compensations.

- The guarantee that the other non-nuclear signatories would not become nuclear, and thus that no country would lose a comparative advantage by adhering to the Treaty. This amounted for the NNWS to make a wager on what other countries could choose: in game theory terms, *they betted on cooperation rather than on defection*. This guarantee is obtained through Articles I and II: NNWS commit themselves to not acquire nuclear weapons, and NWS commit themselves to not transfer nuclear weapons to NNWS and not assist them in getting such weapons. This was the spirit of the original UN General Assembly resolutions adopted at the initiative of Ireland in the late 1950s, and the focus of the original US-Soviet negotiations.
- The guarantee that the non-nuclear status would not be an obstacle to economic and scientific development in the nuclear field, and moreover that access by NNWS to nuclear energy would actually be helped. In essence, the NPT *traded military proliferation for civilian proliferation*. This idea is embodied in Articles III, IV and V.
- The guarantee that the Treaty did not lock the strategic situation for the foreseeable future, but was a temporary arrangement. This helped countries choosing cooperation over defection, but also made the NPT a rather fragile instrument. This guarantee is the combination of three different dispositions: the choice of a limited duration (Article X.2); the possibility to withdraw rather easily from the Treaty including, implicitly, to develop nuclear weapons (Article X.1) if their supreme interests were at stake; and the commitment by all Parties to work towards the cessation of the arms race, nuclear disarmament, as well as general and complete disarmament (Article VI).

The latter provisions (Articles IV and VI in particular) were inserted at the request of medium-sized powers with nuclear programs, such as Brazil, India, Germany, Sweden, Canada and Italy. Article X.2 was a concession to, in particular, Germany and Italy, because these two States were not confident enough that they would continue to be satisfied with the nature of the US nuclear guarantee as it was perceived in the 1960s.<sup>3</sup>

NNWS got other compensations in addition. All of them were granted so-called positive security assurances (PSAs) and negative security assurances (NSAs).<sup>4</sup> PSAs were proclaimed in UN Security Council Resolution (UNSCR) 255 (1968): the Security Council would assist any NNWS victim of a nuclear attack. NSAs were granted by the five individual NWS: in a nutshell, countries renouncing nuclear weapons would not be threatened by nuclear weapons unless they were allied with a NWS.

In addition, European NNWS were granted specific compensations. The NATO mechanisms of nuclear planning were revamped through the creation of the Nuclear Planning Group (NPG) and the adoption in common of new guidelines for nuclear use (the “Provisional Political Guidelines” adopted by the NPG in 1969). The goal was for Europe to have a greater say in the Atlantic Alliance’s nuclear strategy.<sup>5</sup> For countries such as Germany, the *NPT and the NPG were part of the same bargain*. Furthermore, NWS tacitly accepted what is commonly called the “European option”: reservations attached by Germany and Italy to their NPT ratification acts made it clear that the NPT could not be seen as an obstacle to the possible future creation of a European nuclear force.

*Thus countries agreeing to become NNWS got much more than just the promises of nuclear energy and nuclear disarmament.*

### **The NPT crisis**

Complaints related to the discriminatory regime instituted by the NPT, the unwillingness of NWS to share nuclear technologies or to engage in nuclear disarmament negotiations began barely after its entry into force. But never has the treaty been faced with so many challenges from inside. The current crisis can be summarized as a global crisis of compliance. The cases of Iraq, North Korea or Libya have revealed the limitations of the regime. For their part, developing countries emphasize the lack of enthusiasm for transfers of technologies in compliance with Article IV. And NNWS are increasingly vocal about the alleged lack of implementation by NWS of their disarmament commitment Article VI.

The NPT is a very brief and ambiguous text. Due to the fuzziness of many key words and concepts included in the Treaty, it is very difficult to say with confidence when “compliance” or, conversely, “violations” are real.<sup>6</sup> The absence of a definition of key notions such as “*manufacture*”, “*peaceful nuclear technology*”, “*cessation of the arms race*” and “*nuclear disarmament*” often precludes clear and easy judgements of the respect of the Treaty’s provisions.

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<sup>3</sup> George Bunn & Charles N. Van Doren, « Options for Extension of the NPT », *PPNN Study n°2*, University of Southampton, 1991.

<sup>4</sup> PSAs and NSAs can be considered a part of the NPT global bargain even though they were not inserted in the Treaty’s text due to the willingness of nuclear powers to attach reservations to the NSAs.

<sup>5</sup> This was in part to compensate for the abandonment of the MLF project. Wheeler, *op. cit.*, p. 31.

<sup>6</sup> There have been cases where non-compliance has been unambiguous and recognized by the international community, such as Iraq in 1991.

In fact, a prosecutor could make a devastating critique of the Treaty. He or she could argue that the NPT is *outdated, flawed, and permissive*.

- *Outdated*, because the conditions under which it was signed have changed. The dynamics of proliferation are now different. The links between proliferation, arms races, and the risk of catalytic war are not as tight as they used to be. The promises of “peaceful nuclear explosions” have long been relegated to the dustbin of History. And the main proliferation risks today seem to come from isolated States which have a propensity to cheat or bend the established rules of the international game, not from Western countries.
- *Flawed* for two reasons. First, because it establishes a legal distinction between civilian and military applications of nuclear technology which is dubious from the technical point of view. Second, because it contains a contradiction: the NPT recognizes that some States have the right to have nuclear weapons, or, implicitly, to develop them after withdrawing from the Treaty (Article X), but at the same time it suggests that nuclear weapons are in fact very dangerous and should be abolished as soon as feasible (Preamble and Article VI).
- *Permissive*, because the NPT authorizes any Party to the Treaty to develop what can only be called a nuclear breakout capability. Parties have the right to demand the “*fullest possible exchange*” of nuclear technology without having to bear truly intrusive inspections. They therefore can technically and legally acquire the wherewithal making them able to develop quickly an operational nuclear device, and then withdraw under the terms of Article X which gives them such a right in case of extraordinary circumstances. (Iraq, North Korea, Libya, Iran, and perhaps others, were able to develop significant military-related activities without the knowledge of the other Parties. And North Korea fully used the Treaty’s weaknesses by announcing its withdrawal in 2003.<sup>7</sup>) It can be said indeed that “(.) *the fundamental tension in the NPT between sharing nuclear technology and controlling its diversion to military purposes has been resolved by favoring technology transfers over technology controls*”.<sup>8</sup>

Does it mean that we should throw the baby out with the bathwater, and the NPT is not worth saving? Certainly not. The NPT is indeed far from being an optimal instrument, and has shown its limitations. But it is also the only global norm against the further horizontal spread of nuclear weapons. If it did not exist, the international community would probably be unable today to agree upon another legally-binding instrument of the kind. Efforts to preserve the Treaty are worthwhile, because we live in a world where the dangers of proliferation are again growing: energy requirements drive the diffusion of nuclear technologies, States look for ways to compensate for the primacy of Western military power, and the North Korean withdrawal has created a dangerous precedent. A *second* withdrawal might very well lead to an unravelling of the whole regime: there could be a “domino effect” of countries banking this time on defection rather than cooperation. There are excellent reasons to criticize the Treaty,

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<sup>7</sup> The exact status of North Korea vis-à-vis the Treaty is however unclear.

<sup>8</sup> Henry Sokolski, *Getting Serious About Nuclear Non-Proliferation*, Discussion Point Paper for « Revamping Nuclear Non-Proliferation Efforts », IISS-NPEC Conference, London, 21-22 November 2003.

but it remains that the international community would be certainly worse off if it was to disappear.

### **The outlook for the 2005 Review Conference**

The seventh NPT Review Conference will take place at the United Nations in New-York on May 2-20, 2005.

The context in which it will unfold is very different from that of the previous Review Conference in 2000. At that time, the international community was primarily preoccupied with the consequences of the 1998 South Asia nuclear tests and the announced deployment by the United States of a National Missile Defense system.

These two issues have been relegated to the background. The most important evolution related to the purpose of the Treaty is the *dramatically increased concern about State proliferation* following a number of worrying events: revelations about a hidden nuclear program in the Democratic People's Republic of Korea (DPRK), and the subsequent withdrawal of the DPRK from the NPT; the revelation of the existence of a massive network of nuclear transfers led by prominent Pakistani officials, including in particular of centrifuges for the enrichment of uranium; evidence gathered by the IAEA of significant hidden Iranian nuclear activities; questions about past nuclear activities in other countries such as South Korea and Taiwan; and, finally, difficulties for IAEA inspectors to access Brazilian nuclear sites. At the same time, following the September 2001 attacks, fears of nuclear terrorism have been heightened. US policy continues to affect the perception of NPT members of the implementation of the Treaty: the US withdrawal from the ABM treaty, the Nuclear Posture Review (NPR) unveiled in 2002, and the deployment of the first ballistic missile interceptors in late 2004 have raised concerns (be they legitimate or not) among some NNWS and other NWS. Indeed, many NNWS and observers argue that the NWS have failed to fulfil their own Treaty obligations, in particular the "Thirteen Steps" contained in the 2000 Review Conference's final document.

Amidst these worrying developments, there are some more positive ones, but they amount to no more than the silver lining of an otherwise bleak picture. Washington and Moscow have concluded a new arms control treaty reducing the number of their operationally deployed strategic nuclear warheads. Libya has renounced all weapons of mass destruction. IAEA inspections are getting more efficient as the Additional Protocol (AP) gets more signatures and as inspectors learn more and more about the way countries have cheated in the past. The North Korean and Iranian problems are tackled by multilateral negotiations. Finally, due to September 11 and of negative proliferation developments, the international community is devising new schemes to enhance proliferation controls.<sup>9</sup>

Specific issues on the table in New-York will include compliance with Article II, compliance with Article VI, universality and the concept of a WMD-free zone in the Middle East. Compliance with Article II will be put forward by the United States among others, raising "cases of concern" such as North Korea and Iran. Several participants will discuss the possibility to close the loophole that allows a Party to enjoy the benefits of Article IV, develop the tools needed for a military option and then withdraw under the conditions of

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<sup>9</sup> Inter alia the Proliferation Security Initiative (PSI), the adoption of UNSCR 1540, as well as the El-Baradei and Bush ideas to reinforce the regime.

Article X. At the same time, the NAM and the NAC will insist that NWS are not implementing Article VI and the “Thirteen Steps” agreed upon in the concluding document of the 2000 Review Conference.<sup>10</sup> They will ask for more arms reductions and the reduction of the role of nuclear weapons in defense policies (including through stronger NSAs). They will argue also, along with most NWS, in favour of the entry into force of the Comprehensive Test Ban Treaty (CTBT) and the opening of negotiations on a Fissile Material Cut-off Treaty (FMCT). Finally, universality and the Middle East will also figure prominently on the agenda.

In other words, Western countries will ask for more nuclear non-proliferation, developing countries will ask for more nuclear cooperation, and the Coalition for a New Agenda will ask for more nuclear disarmament.<sup>11</sup>

### **A realistic approach**

In light of these negative developments and of the disagreements among the Parties, what should be the primary goals pursued by participants to the Review Conference? These should be first to preserve the *integrity* of the Treaty, and second to preserve the *credibility* of the Treaty. This means having an outcome of the NPT Review Conference that all parties are comfortable with. Some will argue that it does not matter is the Review Conference ends up without a concluding document – and that it would be better to have no concluding document than a document which does not really satisfy the Parties. They point out that some Review Conferences (in 1990 for instance) ended up without the adoption of a concluding document and that the Treaty not only survived, but was renewed indefinitely in 1995. Such an approach is risky. The dangers of proliferation, and the state of the non-proliferation regime, are probably worse in 2005 than they were 15 years ago. Most importantly, it can be argued that the extension of the NPT for an infinite duration precisely gives the Parties a responsibility to promote a new consensus around its interpretation and implementation.

In order to create such a new consensus, two approaches should be discarded: the Bush administration’s stance on the one hand, which is unduly negative vis-à-vis the merits of the Treaty and focuses only on clandestine nuclear programs, and the equally radical stance taken by the NAC and many NGOs, on the other hand, who unduly focus on the question of disarmament and in particular on the “Thirteen Steps”.

Realism should be our guideline. The universality of the NPT is today a pipe dream. The three countries that have chosen to stay out of the Treaty (India, Israel, Pakistan) now have operational nuclear forces in which they have invested a lot, politically and financially. And the conditions under which they have embarked in a nuclear program have not disappeared. India still wants to be able to “balance” the Chinese nuclear force, and sees nuclear weapons as a symbol of technological prowess as well as great power status. For Pakistan, nuclear weapons are still considered as a life insurance in light of the massive Indian conventional capabilities – and the importance of the country in the “war on terror” limits the ability of the West to press for denuclearization. Israel faces a much improved geo-strategic situation than four decades ago, but still lives in a neighbourhood where most countries have not recognized its existence, including some which have or are developing weapons of mass destruction and ballistic missiles. Universality is thus today only a distant goal which would require

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<sup>10</sup> See 2000 Review Conference of the Parties to the NPT, Final Document, NPT/CONF.2000/28 (Parts I and II), para. 15.

<sup>11</sup> The NAC includes Brazil, Egypt, Ireland, New-Zealand, South Africa, Sweden and Mexico.

drastically altered geopolitical conditions. (This does not mean that States which are not parties to the Treaty should not, for instance, be called upon to comply with relevant provisions of the NPT.)

Likewise, the Israeli and Iranian nuclear programs, the widely suspected chemical (as well as biological, to a lesser extent) weapons arsenals in several countries of the region, and the continued instabilities in the area, make the prospect of a WMD-free zone in the Middle East extremely unrealistic.

### **Promoting a new set of bargains**

A realistic set of bargains giving a new life to the NPT could be constructed around two axes. It would simultaneously: increase rewards for members in good standing of their obligations, but promote sanctions for those cheating; and recognize that nuclear disarmament is a distant goal, but satisfy the legitimate worries of NNWS.

*Increase rewards for members in good standing of their obligations, but promote sanctions for those cheating.*

As stated above, one of the Treaty's flaws is that the diffusion of nuclear technology enshrined in Article IV creates the conditions for States to come very close to violating Article II. An essential way out of this conundrum is to limit the transfer of enrichment and reprocessing capabilities, which are needed to get weapon-grade material.<sup>12</sup> The economic or scientific logic or a nuclear program, as well as its internal coherence, could be among the list of useful criteria to decide whether or not to transfer enrichment and reprocessing capabilities.<sup>13</sup> At the minimum, such transfers should be reserved to countries in full and demonstrated compliance with the IAEA Additional Protocol, which significantly strengthens the Agency's verification possibilities. The Additional Protocol should become the new nuclear non-proliferation norm or "gold standard". (At the time of this writing, the Additional Protocol was into force only in 62 countries. Some significant countries have not even signed any agreement with the IAEA.<sup>14</sup>) A restrictive interpretation of Article IV would not need to stretch the imagination of lawyers: nothing in the NPT requires Parties to transfer the whole gamut of nuclear technologies covering the whole fuel cycle.<sup>15</sup> As a complement for such restrictions, international mechanisms which would provide safeguarded but guaranteed access to reactor-grade fuel for members in good standing of their IAEA obligations should be instituted.

In parallel, the withdrawal conditions set under Article X should be complemented by an agreement that States that have violated their NPT commitments should be held accountable even after their withdrawal. Such an agreement could for instance set the conditions for an automatic and instant transmission to the UNSC.

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<sup>12</sup> A direct transfer of weapon-grade material to a NNWS would clearly fall under the prohibitions of Articles I and II.

<sup>13</sup> A case could be made against *any* transfer of reprocessing technology. The economic rationales for reprocessing are dubious, and it is generally acknowledged that the timely detection of plutonium diversion is technically impossible.

<sup>14</sup> This was still the case in early 2005 for Saudi Arabia, for instance.

<sup>15</sup> During the negotiations leading to the conclusion of the NPT, Spanish and Mexican attempts to strengthen Article IV by referring to a « duty » or to an explicit right to the full fuel cycle were rejected. See Eldon V. C. Greenberg, *The NPT and Plutonium*, Nuclear Control Institute, 1993, p. 16.

*Recognize that nuclear disarmament is a distant goal, but satisfy the legitimate worries of NNWS.*

The construction of a consensual interpretation of Article VI should avoid two temptations.

One consists in claiming that the NPT ultimately rests on a tight link between non-proliferation and disarmament. During the 1990s, it was frequent to hear or read that the latter was a condition of the former.<sup>16</sup> The NAC has since then taken a more moderate position, but still argues that nuclear non-proliferation and nuclear disarmament are “*mutually reinforcing processes*” or “*two sides of the same coin*”.<sup>17</sup> However, this view should be discarded.

- The NPT, as shown above, rests on a bargain that includes a series of compensations given to those who agree to give up the possibility of developing nuclear weapons, the promise of disarmament being only one of them. States renouncing nuclear weapons got much more than just the vague prospect of a global abolition of such weapons. Besides, the disarmament clause was added late in the negotiating process, through the Indian and Swedish proposals of 1965.<sup>18</sup>
- The Article VI commitment remains ambiguous and subject to interpretation. For all practical purposes, it puts nuclear disarmament and general and complete disarmament on an equal footing: Article VI concerns “*each of the Parties*”, not just the NWS; the negotiations that are called for refer equally to nuclear disarmament and to a treaty on general and complete disarmament; and the Preamble of the Treaty makes it clear that nuclear abolition would be “*pursuant to a treaty on general and complete disarmament*”. Furthermore, Article VI concerned as much the “*cessation of the arms race*” – viewed by the drafters as a critical step to avoid the risk of nuclear war – as nuclear disarmament *per se*.
- The NAC’s interpretation of the implementation of Article VI is exceedingly negative. The nuclear arms race has ended. The CTBT, a key concern of NPT negotiators (mentioned in the Preamble) has been concluded. A dispassionate reading of the US record on its implementation of Article VI shows that Washington’s actions in favour of nuclear disarmament are impressive; the same can be said for the British and French records over the 1990s. Only a narrow focus on the quantitative and irreversible stockpile reductions can lead to the conclusion that the NWS have failed to implement Article VI since 1995 or worse, have violated it. The idea that non-compliance with Article VI by the NWS should be put on a par with non-compliance with Article II by some NNWS stretches the imagination.

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<sup>16</sup> For instance, the report of Tokyo Forum (1999) stated that « The world faces a choice between the assured dangers of proliferation or the challenges of disarmament » (*Facing Nuclear Dangers : An Action Plan for the Twenty-First Century, the Report of the Tokyo Forum for Nuclear Non-Proliferation and Disarmament*, Tokyo, Japan Institute of International Affairs and the Hiroshima Institute, p. 57).

<sup>17</sup> Mision Permanente de Mexico, *Special Time Statement on Nuclear Disarmament by Ambassador Luis Alfonso de Alba on Behalf of the New Agenda Coalition at the Third Session of the Preparatory Committee of the 2005 NPT Review Conference*, New-York, 30 April 2004; and “Non-proliferation and disarmament go hand in hand”, *The International Herald Tribune*, 22 September 2004..

<sup>18</sup> See Glenn T. Seaborg with Benjamin S. Loeb, *Stemming the Tide* (Lexington, MA : Lexington Books, 1987).

- The NAC's approach, though shared by many NNWS and NGOs, is questionable, for there is little evidence of a direct link between disarmament and non-proliferation. Starting in 1987 and until the mid-1990s, there were significant bilateral or unilateral nuclear disarmament moves by four NWS (France, Russia, the United States, and the United Kingdom). There is no evidence that these moves had the slightest impact on the nuclear programmes of India, Iraq, Iran, Israel, Libya, North Korea or Pakistan.

Another temptation would thus be to claim that we should just go “back to basics” and completely de-emphasize the disarmament commitment. The idea would be return to the spirit of the original draft Irish resolutions to the UN General Assembly in 1958 and 1959, which launched the NPT debate, and where disarmament was not part of the envisioned bargain.<sup>19</sup> In this view, which is promoted by some US experts, nuclear abolition would just be a paradigm, in the original sense of the term – an ideal outcome but a very distant goal that States must strive for, nothing more, and Article VI issues should not be at the forefront of the NPT debate. In line with this interpretation, the Bush administration has argued that “*We cannot divert attention from the violations we face by focusing on Article VI issues that do not exist.*”<sup>20</sup> The logic underlying the original Irish resolutions of 1958 and 1959 is still valid to some extent. The idea that further proliferation might make nuclear disarmament more difficult is coherent with the current policy of most NWS, which argue that proliferation is a reason for them to keep their nuclear weapons. The idea that the dissemination of nuclear weapons, if unchecked, might get out of control, thus increasing the risk of accidental or catalytic nuclear wars is not completely outdated.

However, this view should equally be discarded, for it fails to take into account three important elements. First, Article VI was essential in ensuring the support of the NPT by the NAM. Second, the practice that most State Parties have adopted since the Treaty's signature, in particular at the occasion of the Review Conferences, has been to emphasize the importance of Article VI. Finally, it can be argued that the extension of the NPT in 1995 for an unlimited duration has affected the internal dynamics of the Treaty: the “Principles and Objectives” adopted at this occasion, which heavily emphasize nuclear disarmament, were part of the 1995 deal.<sup>21</sup>

We should therefore look for the middle ground. So how could we construct a consensual interpretation of Article VI and its implementation?

The NAM and the NAC should drop their insistence on the strict adherence to the “Thirteen Steps” included in the 2000 Final document. A product of intense arms-twisting accepted only grudgingly by several NWS, the 2000 text is a real “Christmas tree” which in retrospect appears exceedingly idealistic (in addition to being almost unacceptable to the Bush administration). Furthermore, it can be argued that what is often presented as being, for the first time, a clear-cut commitment by NWS to nuclear disarmament was in fact only a

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<sup>19</sup> See Henry Sokoloski, « What Does the History of the Nuclear Nonproliferation Treaty Tell US about Its Future ? » in Henry Sokoloski (ed.), *Fighting Proliferation : New Concerns for the Nineties* (Maxwell, AB : Air University Press, 1996), Chapter 1.

<sup>20</sup> John R. Bolton, US Undersecretary of State for Arms Control and International Security, *Statement to the Third Session of the Preparatory Committee for the 2005 NPT Review Conference*, New-York, 27 April 2004.

<sup>21</sup> See 1995 Review and Extension Conference of the Parties to the NPT, Final Document, Annex, Decision 2, *Principles and objectives for nuclear non-proliferation and disarmament*, NPT/CONF.1995/32.

recommendation that Parties should adopt such an approach: the “Thirteen Steps” were more prescriptive than descriptive.<sup>22</sup>

In fact, Parties to the Review Conference should instead return to the “Principles and Objectives” document of 1995. It can be argued that the 1995 document is more important than the 2000 one, for two reasons: first, because it was a *quid pro quo* for the indefinite extension of the Treaty; second, because it contained a firm commitment to implement disarmament measures, which the 2000 document does not, as seen above.<sup>23</sup> In addition, the NAM and the NAC should concede that under a broad interpretation of Article VI, NWS have made significant efforts to reduce nuclear armaments. (Threat reduction efforts, for instance, are often significantly underappreciated.)

For their part, NWS have to take into account the often sincere and therefore legitimate worries of NNWS, and promote progress in the main fields of the disarmament agenda. This includes the global reduction of nuclear weapons, the CTBT and a future FMCT, as well as the role of nuclear weapons in defense policies.

### **Advancing the disarmament agenda**

#### *The global reduction of nuclear weapons*

The outlook is rather bleak for traditional nuclear disarmament. The Strategic Offensive Reductions Treaty signed by Moscow and Washington in 2002 is arguably a step back: it amounts to a return to arms control rather than to progress on disarmament. (In fact, it is mostly a “de-alerting” treaty.) The current US administration has no political or strategic incentive for further reducing its arsenal. In addition, limited dismantlement capabilities on both sides create bottlenecks that preclude rapid destruction of nuclear warheads: more disarmament would create just more stockpiling. France and the United Kingdom consider that they have reached “minimum deterrence” postures (the former has also dismantled its testing and fissile material production facilities), and China considers probably that it has yet to reach a level of strategic weaponry that it is comfortable with.

Nonetheless, a number of steps can be imagined which would reassure NNWS without an excessive cost to NWS. Several of the following suggestions could not, if implemented, be seriously verified. However, they would serve as confidence-building measures and reinforce the set of norms that have been developing in the arms control arena over the last five decades.

- A commitment by the five NWS to cap the size of their nuclear arsenals at current levels, with an exit clause in case that they saw a “radical change” in their security environment. (This would allow China or Russia, for instance, to take into account

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<sup>22</sup> The Parties agreed to a list of items (« *The Conference agrees on the following practical steps* ») which included more measures that would need to be taken (such as « *the early entry into force and full implementation of START II* », for instance) than it included explicit commitments. The famous Step 6 (« *An equivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI.* ») can be read either as a commitment or as the expression of the wish for a commitment. See NPT/CONF.2000/28. By comparison, the 2000 document was much clearer. It read : « *The Conference (..) adopts the following principles and objectives : (..)* ». See NPT/CONF.1995/32.

<sup>23</sup> One can also note that in many respects, the 2000 document appears more outdated than the 1995 one : the Thirteen Steps, for instance, contains references to START-II, START-III and the ABM Treaty

what they claim to fear, that is, the future deployment of missile defenses by the United States to a point where the credibility of their deterrent would be threatened.)

- A commitment by the five NWS to explore the possibility of a global ban on certain kinds of nuclear weapons such as atomic demolition munitions or nuclear artillery, which to the knowledge of this author no nuclear-capable country is known to possess or develop currently. This appears to be a realistic way to take into account the desire by many Parties to see the arms control process applying to the category of “tactical” nuclear weapons, which raises intractable questions. One is that of the definition.<sup>24</sup> Another is the fact that many nuclear systems have multiple functions (in particular some air-launched or sea-launched weapons). An initiative that refers to specific categories of weapons would be more helpful – bearing in mind that verification would remain a thorny issue in any case.
- The discussion by all NPT Parties of a ban on stationing nuclear weapons on foreign soil. NATO nuclear sharing procedures would however be maintained as long as they would be considered important by Atlantic Alliance members. (Article I was meant to exclude a Multi-Lateral Force, but not arrangements that already existed between the US and other NATO countries.<sup>25</sup>) This means, for instance, that in peacetime, Washington would be allowed to deploy US nuclear weapons only in the United Kingdom. This would be a sea change in NATO strategy. But the context in which these weapons were deployed has dramatically changed, and the costs and benefits calculus of maintaining them or withdrawing them has changed. Such a decision would create a norm against the future possibility that a nuclear-capable State transfers weapons to a NNWS under the guise of applying the same mechanism as NATO (the case of Pakistan and Saudi Arabia, for instance, comes to mind). It could also be part of a deal with Moscow – which has long complained about the US deployments – that would include a tangible reduction and consolidation of nuclear weapons storage sites located in the western part of the country.

### *The CTBT and a future FMCT*

The United States holds the key to the entry into force of the CTBT. It can be argued that a virtuous circle and a cascade of ratifications might follow from ratification by the US Senate: China, then India, then Pakistan, Israel, etc. Still, the Treaty as it stands helps transforming the current moratorium into a real norm of behaviour. Out of 174 States that have signed the CTBT, 120 of them have ratified it, including 33 Annex Two countries (out of 44 whose signatures are needed for entry into force). Thus the norm is emerging. But there have been only four ratifications since the 2000 Conference. 54 countries have not yet ratified, including 11 Annex Two countries. Those who have not ratified include three countries that could be called the “easy cases” (Colombia, Indonesia, Viet-Nam) and eight other which constitute a category of “hard cases” (China, DPRK, Egypt, India, Iran, Israel, Pakistan, USA). The question of a “provisional application” of the treaty should be considered. This legal mechanism included in the 1969 Vienna convention is rarely used, but there have been precedents in this regard as far as arms control is concerned. It therefore deserves

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<sup>24</sup> The exception is the US-Russian context, where tactical or non-strategic weapons systems could be defined as those systems not covered by the strategic arms reductions process, or, alternatively, those covered by the 1991-1992 initiatives.

<sup>25</sup> According to the opinion voiced by an NPT negotiator quoted in Nigel Chamberlain, *The MDA and the NPT: A Questionable Relationship*, unpublished paper prepared for the Oxford Research Group, December 2004.

consideration, especially since a long delay in the entry into force of the CTBT could free the signatories from their obligations.<sup>26</sup>

Concerning a future FMCT, there are good news and bad news. China does not insist as much as it did in the past on the linkage between an FMCT and negotiations on the Prevention of an Arms Race in Outer Space (PAROS). The United States has shown a willingness to discuss the issue. However, the Administration – along, it should be said, with some in the US arms control community – believes that a FMCT cannot be verified effectively.<sup>27</sup> Costs and intrusiveness of inspections are said to be the main reasons, as well as the potentially dual nature of nuclear material production facilities.<sup>28</sup> A first step would be to agree on a general moratorium, as in the case of nuclear testing where a moratorium preceded the conclusion of the CTBT. As a second step, negotiations on an FMCT could begin even without a preliminary agreement on the question of verification.

### *The role of nuclear weapons in defense policies*

Another key issue is the role of nuclear weapons in defense policies and, more specifically, the question of security assurances. NNWS would like to see the role of nuclear weapons diminished, and the negative security assurances (NSAs) given by the NWS in 1968 and 1995 (commitments to refrain from using nuclear weapons against NNWS) reinforced, ideally in the form of a treaty. While not part of the NPT, security assurances were part of the bargain made with the NAM to ensure their acceptance of the Treaty.<sup>29</sup>

However, the reinforcement of NSAs appears unrealistic. Such a reinforcement would run counter to the post-Cold war trend observed among nuclear-capable States. Some countries such as Russia tend to see nuclear weapons as an instrument to compensate for perceived or real conventional deficiencies. Most importantly, a majority of nuclear-capable States consider that nuclear weapons help deter the use of biological and chemical weapons as well as, perhaps, attacks committed by other non-conventional means. (Alleged “new roles” for nuclear weapons such as an emphasis on deterrence of grave chemical or biological threats among NWS are not new, and do not necessarily signify a lowering of the nuclear threshold.)

Furthermore, it is not certain at all that the reinforcement of NSAs would have a significant role in the prevention of nuclear proliferation. NSAs are essentially confidence-building measures.<sup>30</sup> It remains to be seen that their reinforcement would diminish the temptation by some countries to embark on a nuclear program. It is dubious that turning a political commitment of non-use into a legally-binding one would make a difference for any nuclear aspirant. In addition, NSAs do not address some of the root causes of proliferation such as regional standing, the quest for independence, or the perception (right or wrong) that nuclear weapons can give great power status.

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<sup>26</sup> Under the 1969 Vienna convention, signatories of a treaty should « *refrain from acts that would defeat the object and purpose* » of the treaty. However, this obligation falls in case the entry into force is unduly delayed. A cogent and detailed case for the provisional application of the CTBT has been made by Rebecca Johnson in « Beyond Article XIV : Strategies To Save the CTBT », *Disarmament Diplomacy* 73, November 2003.

<sup>27</sup> Wade Boese, “Bush Shifts Fissile Material Ban Policy”, *Arms Control Today*, September 2004.

<sup>28</sup> « Don’t trust, don’t verify », *The Economist*, 4 September 2004 ; and Ambassador Jackie Sanders, *Remarks during a United Nations First Committee Plenary Session of Debate*, New-York, 16 October 2004.

<sup>29</sup> See Sokolski, op. cit.

<sup>30</sup> NSAs in a broader sense can have a political value to manage proliferation crises. For instance, US officials sought to take into account North Korean stated worries by stating at several occasions in 2002 that the United States had “no intention to invade” or “no intention to attack” the DPRK.

More generally, the call for a reduction of the role of nuclear weapons in defense policies misses an important point. The role of nuclear guarantees (which are positive security assurances in a broad sense) in preventing proliferation should be acknowledged. The generic assurances of assistance in case of a nuclear attack given in 1968 and 1995 are political commitments which are probably not enough to reassure a State that feels insecure.<sup>31</sup> On the other hand, the role of the US security guarantee in preventing further nuclear proliferation in Europe and Asia during the Cold war has probably been essential.

In fact, a reinforcement of NSAs might even be counterproductive. Giving up the role of nuclear weapons to deter non-nuclear threats might lead to less security for NWS and the countries they protect. A general “no-first-use” posture, for instance, could increase the risk of use of chemical and biological weapons, since countries using such weapons would not fear nuclear retaliation anymore (assuming, of course, that they believed the assurances given).<sup>32</sup> And countries currently protected by a nuclear umbrella could perceive such a commitment by their protector as an erosion of the security guarantee that they enjoy, with the risk of a renewed interest in a national nuclear weapons program.

Thus *reducing the role of nuclear weapons in defense doctrines could lead to less overall security, not more*. It would run counter to the spirit of the 2000 Document which stated that steps leading to nuclear disarmament should be “*based on the principle of undiminished security for all*”.<sup>33</sup> To take this preoccupation into account, and ensure the acceptance of a legally-binding instrument by all NWS, a hypothetical treaty on NSAs would only be feasible if it was complemented by reservations or interpretative declarations (such as those made by France, the United Kingdom or the United States when endorsing Nuclear-Weapon-Free Zones): the right to “belligerent reprisals” in case of a chemical or biological attack, or the explicit mention of Article 51 of the UN Charter. It remains to be seen that NNWS would see any merit in a legally-binding arrangement that would include such caveats.

## Conclusions

The dynamics of proliferation are, once again, at an important juncture. We are back to the future: the year 2005 resembles in some ways the year 1965. As in 1965 after the Chinese test and the birth of the French nuclear force, there is a growing fear of a new wave of nuclear proliferation, but also an important demand for nuclear energy. At that time, the international community tackled the problem through a combination of international legal agreements (the NPT, the IAEA), as well as multilateral arrangements (positive security guarantees in the UNSC, nuclear sharing in NATO). The same kind of combination might be needed today to avoid a world of many nuclear-capable countries in the next decade. To go down this road implies to forge a new consensus on the interpretation of NPT – one that takes simultaneously into account the lessons of the past, the issues of the present, and the challenges of the future.

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<sup>31</sup> The 1968 commitment was judged insufficient by India, for instance, which said it felt threatened by the emerging Chinese nuclear arsenal. But it was valued by other States. See George Bunn and Roland Timerbaev, « Security Assurances for Non-Nuclear-Weapon States », *The Nonproliferation Review*, Fall 1993.

<sup>32</sup> One should mention that it is difficult to ask for a diminution of the role of nuclear weapons and expressing horror at the prospect of an increase of missile defenses in the world. Missile defenses could indeed lead to some forms of local or regional “arms racing”. But they also remain one of the surest ways for States to rely less on the threat of nuclear retaliation.

<sup>33</sup> NPT/CONF.2000/28 (Parts I and II), p. 15, para 9.