

Rethinking the NPT's role in security: 2010 and beyond

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The Nuclear Non-Proliferation Treaty (NPT) is scheduled to hold its eighth review conference in New York from 3 to 28 May 2010. Yet again, the non-proliferation regime is said to be in crisis. Similar assessments were made in the run-up to the past four review conferences, which take place every five years. Two of those—in 1995 and 2000—were judged to have succeeded in their main objectives, though concerns continue to be raised about the failure to implement many of the commitments agreed at them. The 1990 and 2005 review conferences were characterized by acrimony between some of the nuclear weapon states (NWS) and non-nuclear weapon states (NNWS) and failed to adopt any meaningful agreements. As governments and non-governmental organizations prepare for the 2010 Review Conference, heightened concerns about the role of the treaty and the functioning of the institutions of the wider non-proliferation regime are causing many to search beyond 2010 for approaches that will address current and future non-proliferation, disarmament and nuclear security challenges more effectively.

Contradictory norms on possession and use of nuclear weapons

Most of the problems identified today are legacies, reiterations or reincarnations of problems that the regime has failed over many years to tackle effectively. They include the specific challenges of the North Korean and Iranian nuclear programmes, a lack of convincing progress towards devaluing, delegitimizing and disarming current nuclear arsenals, and the high salience of nuclear weapons programmes in three countries outside the NPT—India, Israel and Pakistan. These persistent challenges undermine the regime's effectiveness and pose specific regional and security concerns. They are also symptomatic of a deeper problem at the heart of the current regime: namely, that the norms, rules and institutions of non-proliferation do not function against the acquisition of nuclear weapons as intended, because the possession of nuclear arms still carries high value, both domestically and internationally. As a consequence of the distinction the treaty made between NWS and NNWS and, more importantly, of the lessons drawn from the different ways in which India, Israel and Pakistan have come to receive acceptance and even benefits as nuclear-armed states, a strange paradox has arisen. The norm, or taboo, against the use of nuclear weapons that emerged during the

1950s has been remarkably effective; but there appears to be no such normative barrier against possessing nuclear weapons. The pressure imposed on those who seek (or persistently try) to acquire nuclear weapons may be considerable, but the possession—that is to say, the *successful* acquisition—of such weapons has become associated with national pride, independence, technological prowess and the ‘masculine’ ability to punch above one’s weight. The implications of this disjunction between the perceived value of possessing nuclear weapons and the normative taboo against using them has profound implications for the future of the non-proliferation regime. Instead of these core non-proliferation norms working in harmony to reinforce each other, they are operating in contradiction.

Until now, the NPT has worked well in slowing down the process of proliferation, with countervailing forces ensuring that even as some leaders seek the benefits they see as accruing from nuclear weapons, others (such as South Africa, Belarus, Kazakhstan and Ukraine in 1990–92, for example) are persuaded to forgo them. But maintaining slow proliferation has ceased to be an option. Binary opposites lie in our future: fast, multiple proliferation or the establishment (or perhaps reconstitution) of norms and rules against the possession of nuclear armaments through the creation of a process for abolishing them. The first of these scenarios will come about if the nuclear possessors continue to rely on, renew and modernize their nuclear weapons; if the NPT is reduced to a toothless review process; and if Iran and North Korea get away with pursuing reprocessing and uranium enrichment programmes aimed at achieving nuclear weapons capabilities. It must be recognized that in that case, efforts by the United States and Russia to cut the size of their expensive and oversized Cold War arsenals, while undoubtedly welcome, will have little impact on proliferation because the salient driver is not the number of weapons but the value attached to them. If Israel or Pakistan gain benefits or legitimacy along the lines of the US–India nuclear deal, the proliferation die will be cast. In that scenario, other states—starting probably in the Middle East, but no one should rule out policy reassessment by significant political players like Brazil or Japan as well—may conclude that being sidelined as NNWS is no longer in their national interest. The NPT’s high level of participation would still act as a brake for some; but if a few states managed to withdraw without incurring crippling penalties for their nuclear or defence industries, then it would not take long for the treaty’s sustainability to be eroded beyond repair.

The alternative route will entail a transformation of the norms, expectations and rules of non-proliferation to build constituencies and institutions committed to devaluing and abolishing nuclear weapons rather than merely managing the threats they pose. Some leaders are beginning to grope their way towards this option, as evidenced by the growing respectability of nuclear disarmament as a rationalist endeavour for national security in the NWS as well as a collective objective for global security.¹ New approaches will be required to build up a

¹ See e.g. George P. Shultz, William J. Perry, Henry A. Kissinger, Sam Nunn et al., ‘A world free of nuclear weapons’, *Wall Street Journal*, 4 Jan. 2007; George P. Shultz, William J. Perry, Henry A. Kissinger, Sam Nunn

norm against nuclear possession and transform the current, divided non-proliferation regime into a global security architecture, codified through some form of universally applicable nuclear weapons convention. As that will take time and the norm against the use of nuclear weapons is already well established, there is growing interest in universalizing security assurances and emulating the biological and chemical weapons regimes by prohibiting the use of nuclear weapons as a first step. As nuclear arsenals are reduced, the tipping point for abolition will come when nuclear-armed governments and militaries recognize (and decide) that there is no useful role for nuclear weapons in their doctrines and security policies. Global security and deterrence would be greatly enhanced if it were understood by everyone, including proliferators, terrorists and suppliers of nuclear materials and weapons technologies, that facilitating or carrying out a nuclear weapon detonation would result in a trial in The Hague for crimes against humanity,² in which traffickers as well as state and non-state leaders would be held personally to account.³ Since all UN states would be responsible for trying to prevent any nuclear weapon attack and for bringing perpetrators to justice if one were carried out, such a step would greatly diminish any perceived political and military gains attached to acquiring, developing or threatening to use nuclear weapons.

Thus, as states prepare for the 2010 review conference, two very different proliferation futures beckon. Calls for compliance, universality and nuclear disarmament have the ring of wishful thinking, since few expect that the review conference will be able to agree on the necessary political and institutional measures and powers to act on them within the existing regime. Most governments will work for the NPT to function more effectively, but they are also beginning to look for alternative ways to accomplish the necessary non-proliferation and nuclear security tasks more coherently.

As the analysis below shows, the reasons for the NPT's normative contradictions and structural weaknesses lie in its biography. The cornerstone agreement on which the present non-proliferation regime has been built, the treaty was the product of tradeoffs in a distorted multilateral process ultimately shaped by the hegemonic power of the United States and the Soviet Union. Though the non-proliferation regime played an important role in embedding collective norms and rules to reduce nuclear proliferation, the political compromises deemed necessary for the treaty's adoption in the Cold War have left it with serious structural weaknesses. Over the years, some of the gaps and deficits have been mitigated by further arrangements, regulations and obligations, such as export controls administered by the Nuclear Suppliers Group and a number of different UN

et al., 'Towards a nuclear-free world', *Wall Street Journal*, 15 Jan. 2008. Among those who signed the second of these editorials were Gen. John Abizaid, Graham Allison, Sidney Drell, Gen. Vladimir Dvorkin, Bob Einhorn, Rose Gottemoeller and Siegfried Hecker.

² This argument is made by Max Kampelman, a former presidential adviser and principal architect of the Reykjavik Revisited abolitionism exemplified by Shultz et al. See Max M. Kampelman, 'Zero nuclear weapons: a goal', presentation at the Acronym Institute Roundtable on, 'Time to outlaw the use of nuclear weapons', United Nations, New York, 14 May 2009.

³ See Rebecca Johnson, 'Towards 2010 and beyond: security assurances for everyone', *Disarmament Diplomacy* 90, Spring 2009, pp. 3–8.

Security Council resolutions encompassing security assurances, nuclear security, and preventing terrorist acquisition of nuclear materials and weapons of mass destruction (WMD) technologies.⁴ However, the recurring proliferation crises and periodic predictions of erosion or collapse are indicative of a loss of confidence in the regime's capacity to prevent the spread of nuclear weapons in the multipolar complexities of the post-Cold War era.⁵

Though the NPT is usually represented as a bargain between the NWS and NNWS, it was actually the product of several interconnecting tradeoffs involving non-acquisition, non-transfer, arsenal reductions and disarmament, nuclear energy and mandatory safeguards to verify that nuclear materials were not being diverted from civil to military purposes in the NNWS. The absence of multi-lateral verification stemmed in part from a decade of arguments over verifying a nuclear test ban, but there was also an assumption that the United States and the Soviet Union would use their 'national technical means' to monitor the NNWS—and each other—and that their hegemonic dominance of their respective spheres of influence would be employed where necessary to enforce compliance.

The major influence of the NPT lay in embedding certain rules about non-proliferation and giving weight not only to the objective of preventing the spread of nuclear weapons but to the emerging taboo against their use. Though US and Soviet (and, by extension, NATO and Warsaw Pact) reliance on deterrence doctrines made it impossible for the NNWS to get binding security assurances that nuclear weapons would not be used against NNWS parties into the treaty text, it was clear from the opening paragraph of the NPT that the need for a non-proliferation regime was driven by a fear of the use of nuclear weapons: 'Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples ...'⁶

These two objectives were clearly linked, as alert configurations, nuclear postures and doctrines made it likely (indeed, it was assumed, inevitable) that any use of nuclear weapons would rapidly escalate into all-out nuclear war. That assumption does not necessarily hold in the post-Cold War era, where it is possible to envisage a regional or terrorist use of nuclear weapons that would cause localized devastation but not automatically escalate into global nuclear war. As noted above, however, preventing the explosive use of nuclear weapons is still a strongly held objective for political leaders. In his opening speech to the 2005 NPT review conference, UN Secretary General Kofi Annan invited NPT parties to imagine

⁴ See Harald Müller, 'The internationalisation of principles, norms, and rules by governments: the case of security regimes', in Volker Rittberger, ed., *Regime theory and international relations* (Oxford: Clarendon Press, 1993), pp. 361–88; 'Appendix: the international non-proliferation regime' in Joseph Cirincione, ed., *Repairing the regime* (New York: Routledge, 2000), pp. 283–91.

⁵ The UN Secretary General's High-level Panel, for example, warned: 'We are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation'. *A more secure world: our shared responsibility*, Report of the UN Secretary General's High-level Panel on 'Threats, challenges and change', 2 Dec. 2004.

⁶ Preambular para. 1, Treaty on the Non-Proliferation of Nuclear Weapons, 1968. A form of conditional security assurances has been provided by the NWS by means of UNSC Resolutions 255 (1968) and 984 (1995), but these are not universally applicable.

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a nuclear catastrophe in one of our great cities ... In the chaos and confusion of the immediate aftermath, there might be many questions. Was this an act of terrorism? Was it an act of aggression by a state? Was it an accident? These may not be equally probable, but all are possible. Imagine, just for a minute, what the consequences would be. Tens, if not hundreds, of thousands of people would perish in an instant, and many more would die from exposure to radiation.

The Secretary General went beyond depicting the obvious suffering of those directly affected to highlight some of the less frequently considered implications for hard-won freedoms and human rights, development and trade, before posing the question all would have to ask themselves: 'Could I have done more to reduce the risk by strengthening the regime designed to do so?'⁷

In April 2009 US President Barack Obama evoked similar images when he gave a major speech on nuclear policy in Prague, telling his audience: 'One nuclear weapon exploded in one city—be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague—could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences may be—for our global safety, security, society, economy, and ultimately our survival.' Explicitly acknowledging that 'if we believe that the spread of nuclear weapons is inevitable, then in some way we are admitting to ourselves that the use of nuclear weapons is inevitable', President Obama pledged that 'the United States will take concrete steps towards a world without nuclear weapons'.⁸

As governments and NGOs work out their positions for the 2010 review conference, there is more emphasis than in past years on looking beyond that event. Success in conference terms tends to mean avoiding deadlock and adopting some kind of consensus document. Desirable as that may be as a means of demonstrating the cohesion of the non-proliferation regime, it is unlikely that the review conference will be capable of adopting any agreement to put in place the necessary tools to carry out the practical non-proliferation tasks that are urgently required. Though its debates will no doubt be framed in accordance with the Cold War paradigm in which the treaty's 'grand bargain' between nuclear 'haves' and 'have-nots' was cemented, the 2010 review conference may more significantly serve as a bridge towards a new paradigm of universal non-proliferation and non-nuclear security, in which measures aimed at abolishing nuclear weapons come to supplant attempts merely to manage nuclear arsenals and proliferation.

In the light of these recent developments and the persistent and unresolved contradictions associated with nuclear proliferation, there are growing moves to build a new international constituency to address the security-impeding elements of the current non-proliferation regime and transform it into a comprehensive abolition regime, with mutually reinforcing norms against the use, possession and spread of nuclear weapons. Though it is too early to identify all the characteristics and elements of such a transformation, efforts to establish a different normative

⁷ Kofi Annan, UN Secretary General, opening statement to the 2005 NPT review conference, 2 May 2005, reproduced in *Disarmament Diplomacy* 80, Autumn 2005, pp. 27–9.

⁸ Barack Obama, President of the United States of America, speech at Hradcany Square, Prague, 5 April 2009.

basis for nuclear security are already evident in the priority now given to diminishing the role of nuclear arsenals and codifying the taboo on the use of nuclear weapons into binding international law, whether through the International Criminal Court (as a crime against humanity), the UN Security Council (building on the precedent set in 2004 by Resolution 1540 on WMD) or some other means. These mechanisms for moving from nuclear non-proliferation towards nuclear abolition, together with the burgeoning interest among governments and civil society for negotiations on 'a nuclear-weapons convention, backed by a strong verification system', as proposed by UN Secretary General Ban Ki-moon,⁹ will be discussed in the concluding section.

Despite its structural inadequacies, the NPT has played a core role in building the norms and rules that have put a brake on proliferation. Over time, however, it has appeared that the norms being embedded through the non-proliferation regime were not fundamentally about the 'wrongness' of acquiring and possessing nuclear weapons, as the originators of the concept of a non-proliferation treaty had envisaged. The non-proliferation regime has had to operate with contending and contradictory messages arising from the different value apparently accorded to the obligations on the NNWS (which were verified through IAEA safeguards) and the weakly worded nuclear disarmament obligations on the NWS (with no verification requirements or timetables). The ideas that the NPT was expected to help embed were that nuclear weapons are bad but nuclear energy for peaceful purposes is good; that nuclear arms are wrong and unnecessary for countries' security; and that collective security depends on preventing the spread of nuclear weapons. The policies and utterances of the nuclear-armed states conveyed very different ideas: that nuclear weapons are indispensable for security and essential for deterrence, provide insurance against unknown future threats, and make their possessors much more important than anyone else in their regions.¹⁰ The UK debate over the replacement of Trident brought all these ideas about nuclear weapons to the fore. Criticizing the IAEA Director-General Mohamed ElBaradei for raising concerns about Trident replacement, then Prime Minister Tony Blair exemplified a common misperception when he told the British parliament: 'The non-proliferation treaty ... makes it absolutely clear that Britain has the right to possess nuclear weapons.'¹¹ Assertions such as these, particularly in the context of modernizing nuclear arsenals and continuing to underscore their value and importance 40 years after the NPT entered into force, have done much to undermine the confidence of the NNWS that the NPT will ever become an effective means for achieving long-term, sustainable non-proliferation, let alone disarmament.

⁹ UN Secretary General Ban Ki-moon, Address to the East–West Institute, New York, 24 Oct. 2008.

¹⁰ There is a considerable literature on this topic. For recent examples, see: Nick Ritchie, 'Trident and British identity: letting go of nuclear weapons', briefing paper, Bradford Disarmament Research Centre, University of Bradford, Sept. 2008; and Carol Cohn, Felicity Hill and Sara Ruddick, 'The relevance of gender for eliminating weapons of mass destruction', *Disarmament Diplomacy* 80, Autumn 2005, pp. 39–48.

¹¹ Tony Blair, in response to a question from Chris Mullin MP at Prime Minister's Questions: Hansard Official Reports (Commons), 21 Feb. 2007, vol. 457, col. 260. For a fuller discussion see <http://www.thebulletin.org/web-edition/reports/the-trident-dispatches/the-trident-dispatches-no-3-tony-blairs-forgetfulness>, accessed 21 Feb. 2010.

By contrast, civil society and many governments, repelled by the horrific images from Hiroshima and Nagasaki, opposed the use of nuclear weapons from 1945 onwards. This global repugnance persuaded the United States and others not to fire nuclear weapons during conflicts with the Chinese and North Koreans or in military ventures ranging from Suez to Vietnam. The emerging norm against the use of nuclear weapons became more firmly embedded after the shock of the 1962 Cuban missile crisis. As children in the United States performed 'duck and cover' exercises and the UK issued pamphlets instructing people to white-wash their windows and huddle in bomb shelters made out of doors, the fear of nuclear attack became translated into a norm—or at least a taboo—against the use of such weapons. The 1980s era of protest against a new generation of intermediate-range nuclear forces demonstrated the degree to which the norm against use had become internalized.¹² Opposition to these deployments in Europe was higher than with previous nuclear systems because the cruise and Pershing missiles and SS-20s were characterized as 'first use', 'first strike' and generally more useable than the massive ICBMs associated with deterrence theories based on 'mutual assured destruction'. There is not room here to analyse further how the norms about nuclear possession and use developed in such different directions. That they did lies at the root of why the non-proliferation regime is so dysfunctional.

Challenges to the existing non-proliferation regime

Attempts to improve accountability and effectiveness by strengthening the NPT review process have not worked as hoped, and are increasingly viewed as more of a hindrance than a help. While the post-1995 review process provides almost annual opportunities to scrutinize the policies and programmes of those seeking to proliferate or continuing to possess nuclear weapons, it has not translated pressure into effective action, and too often degenerates into political posturing and finger-pointing. If anything, the review process has accentuated the degree to which the NPT, as currently interpreted and implemented, lacks the institutional rules, practices and powers to deal effectively with proliferation challenges. When the Democratic People's Republic of Korea (DPRK) announced its withdrawal in 2003, there was nothing NPT parties could do, and even the UN Security Council appeared paralysed. Unable even to decide whether Article X, which governs the withdrawal conditions for the treaty, could be legitimately invoked in the case of a state that was already being investigated for non-compliance, the NPT meetings were reduced to having the chair 'take custody' of DPRK's name plate to avoid debate and decision on whether to classify that country as a non-party or as a non-compliant party temporarily not being seated. That solution might have been expedient at the time, but its avoidance of the compliance questions surrounding DPRK's withdrawal exposed the NPT's impotence.

¹² On how norms develop and influence political behaviour, see Martha Finnemore and Kathryn Sikkink, 'International norm dynamics and political change', *International Organization* 52: 4, Autumn 1998, pp. 887–917.

Similarly, over two weeks and millions of dollars were wasted when the 2005 review conference could not agree a phrase on its agenda and, with echoes of the stalemate in the UN-based Conference on Disarmament, it was decided that substantive discussions should not go ahead without an agreed agenda. Of course, procedure is also politics, and the agenda was contested in 2005 because of deep political divisions.

The chaos and failure of the 2005 review conference has increased the pressure for success in 2010. Lessons from 2000 carry a different but equally sobering relevance for 2010. Though the 2000 review conference was widely hailed as a ground-breaking success, with a consensus final document addressing compliance, safeguards, nuclear safety and a substantive programme of nuclear disarmament principles, actions and commitments (the so-called ‘thirteen steps’),¹³ within months some key states had disowned or violated the elements they didn’t like. The incoming US administration of George W. Bush was a major culprit, but it was by no means the only government to repudiate publicly or downgrade commitments that had been negotiated and adopted in good faith. In the absence of effective mechanisms for compliance and accountability, some states are openly questioning why they should work for agreements in 2010 that others can treat as little more than non-binding exhortations, a wish list that can be ignored without penalty or cost. This toothless review process, though established with the best of intentions in 1995, has become another factor in the diminishing credibility of the NPT regime.

As governments of most if not all the 189 states parties to the NPT begin to develop the positions and policies that they hope will contribute to a successful review conference in 2010, they agree on at least one thing: the problems besetting the non-proliferation regime are multiple, deep and persistent. How those problems should be ordered, however, depends on standpoint. For most, they would include some if not all the following:

- lack of confidence in the IAEA’s inspections regime, including doubts about its problematic dual role as chief promoter and treaty-designated safeguarder of nuclear technologies amid concerns about the adequacy, slow accession rates and implementation of the Additional Protocol, developed in the 1990s to augment the inadequate ‘comprehensive safeguards agreements’ originally established by the IAEA under the NPT’s Article III, with the intention of ensuring the NNWS would not be able to divert nuclear materials for use in nuclear weapons programmes;
- lack of broader verification powers to prevent nuclear weaponization, and insufficient compliance and implementation mechanisms in the treaty, coupled with the political and structural inadequacies of the UN Security Council—what Canada and others have called the ‘institutional deficit’;

¹³ Article VI and preambular paras 8–12 and para. 15, sub-para. 6, final document of the 2000 review conference of the states parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/28 (vol. 1, parts I and II), 25 May 2000.

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- Iran's nuclear programme and non-compliance with its IAEA safeguards obligations;
- North Korea's nuclear programme and withdrawal from the NPT after a history of non-compliance;
- lack of universality of the treaty, which may be parsed as:
 - Israel's undeclared nuclear arsenal and status as the only non-member of the NPT in the Middle East (concern about this is generally coupled with demands for implementation of the 1995 resolution on the Middle East, which calls on all NPT parties 'to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems');
 - the perceived acceptance of India's declared nuclear status outside the NPT and its preferential treatment through the US–India nuclear trade deal;
 - Pakistan's nuclear arsenal (and fears that it could fall into the hands of terrorists) combined with Pakistan's role as a nuclear black-market broker under the auspices of A. Q. Khan;
- lack of adequate or 'good faith' progress on nuclear disarmament by the declared NWS and the perception that they do not regard the implementation of Article VI as seriously as the compliance they require of the NNWS with other NPT obligations;
- the continued high value attached to nuclear weapons as instruments of deterrence, international status, regional power projection or even alliance adhesion, as reflected in security and nuclear doctrines and in arguments in favour of modernizing arsenals or developing new nuclear weapons;
- fulfilment and restrictions concerning NNWS' 'inalienable right' under Article IV to 'develop research, production and use of nuclear energy for peaceful purposes without discrimination' (those who complain about restrictions tend to omit any reference to the condition attached to the right: 'in conformity with Articles I and II of this Treaty');
- cheating by NPT parties, including abuse of Article IV provisions, and the regime's failings in detecting and addressing past non-compliance, notably from Iraq (up to 1991), with fluctuating suspicions about Syria and Libya as well as Iran.

These concerns are indicative of fundamental structural inadequacies and institutional and systemic failings in the existing non-proliferation regime and traditional approaches to nuclear security. To use William Walker's distinction, these are not just crises *in* the regime: this list of challenges amounts to a crisis *of* the regime.¹⁴ The 2010 review conference will see discussion and working papers on many of these issues, but it is doubtful that any meaningful decisions will be taken that could instil confidence that the challenges can be tackled and resolved within the

¹⁴ William Walker, 'Nuclear enlightenment and counter-enlightenment', *International Affairs* 83: 3, May 2007, pp. 431–54.

existing structure and powers of the NPT. Nor is it likely that, under the existing regime, the states parties will be able to adopt workable mechanisms and tools to deal with present challenges, let alone foreseeable future crises that may arise.

Nuclear disarmament: from concession to necessity

In 2007, *International Affairs* published a number of articles sparked by William Walker's thought-provoking thesis on 'Nuclear enlightenment and counter-enlightenment'. Walker made the case that the non-proliferation regime developed as part of a 'grand enlightenment project' to manage the dangers posed by 'nuclear weapons' vast destructiveness' through cooperative politics and a 'unifying conception of political order'.¹⁵ His purpose was to demonstrate that the cavalier attitude towards arms control treaties and international law taken by US exceptionalists in the Bush administration had harmed international order and security, and he argued that 'the key to revival rests above all on recovering the cooperative sensibility and capacity for good judgement that gave life and shape to the international nuclear order'.¹⁶

Among those who disagreed with Walker's thesis, Michael Rühle noted that the NPT was the product of power, politics and pragmatic compromises, which left it with many 'structural flaws'.¹⁷ Ireland and Sweden may have been imbued with ideas of cooperative security when they first put forward the proposal for a non-proliferation treaty. However, it was taken up by the major nuclear powers (the United States, Soviet Union and United Kingdom) a few years later in response to the rapid development of nuclear weapon programmes in France and China, the Cuban missile crisis and concerns that more nuclear-armed states would increase the complexities of deterrence and so reduce the security and other benefits they enjoyed (or perceived they enjoyed) as members of a small and exclusive nuclear club. For the nuclear powers, the NPT was less an enlightenment project than a security instrument to resolve their 'dilemma of common aversions',¹⁸ represented by the likelihood that continuing nuclear proliferation would increase the risks of nuclear war.¹⁹ The United States and Soviet Union accepted disarmament obligations (as weakly worded as they could get away with) not because they agreed with disarmament as an objective or even a common good, but because they had to, in order to get some of the key governments on board. Countries such as Sweden, Italy and Germany made clear that they would not forgo nuclear weapons in the long term if the possession of such armaments by others would confer lasting high value in terms of status, security or power projection. This was the original reason for the Article VI disarmament obligations and for the NPT being given an initial duration of only 25 years. Article VI was included in the 1967 and 1968

¹⁵ Walker, 'Nuclear enlightenment and counter-enlightenment', pp. 431–3.

¹⁶ Walker, 'Nuclear enlightenment and counter-enlightenment', p. 453.

¹⁷ See Michael Rühle, 'Enlightenment in the second nuclear age', *International Affairs* 83: 3, May 2007, p. 512.

¹⁸ See Arthur Stein, 'Coordination and collaboration: regimes in an anarchic world', in Stephen D. Krasner, ed., *International regimes* (Ithaca, NY and London: Cornell University Press, 1983), esp. p. 132.

¹⁹ For a detailed history of the NPT negotiations, see Mohammed Shaker, *The Nuclear Non-Proliferation Treaty: origin and implementation, 1959–1979* (London and New York: Oceana, 1980).

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US and Soviet draft treaty texts only after negotiations in the Eighteen Nation Disarmament Committee (ENDC) and debates in the UN General Assembly.²⁰ Rühle may be right in saying that in the Cold War context the treaty was understood 'as a freeze on the number of existing NWS, not as a means of disarming them'.²¹ But he mistakenly extrapolates from that pragmatic recognition of the status quo when he goes on to say that 'the treaty was supposed to perpetuate nuclear inequality indefinitely (or at least until 1995)'.²² This may have been the assumption of the nuclear powers, but it was not a view of the treaty that the non-nuclear parties endorsed.²³ On the contrary, frustration about the slow pace of disarmament has been a recurring theme at every review conference from 1970 onwards.

As noted above, the NPT was initially established for 25 years, with five-yearly review conferences to assess the 'realization' of its 'purposes' and 'provisions'. In 1995, therefore, the question of the treaty's duration was determined at a specially commissioned review conference. In contrast to 1968, when the nuclear powers were able to dilute and marginalize the nuclear disarmament obligation in Article VI, in 1995 the review and extension conference put universal nuclear disarmament at the front and centre of the agreement to extend the NPT indefinitely.²⁴ It was possible to agree the decision on indefinite extension without a vote only because it was conditionally linked with the prior adoption of a decision on principles and objectives for nuclear disarmament and non-proliferation and a decision on strengthening the review process.²⁵ Following agreement on this package of three decisions, a resolution on the Middle East was also adopted, without which a number of states concerned about Israel's nuclear programme would have blocked agreement on the treaty's extension. The debates at the review conference made clear that consensus agreement to extend the NPT would not have been possible without these stronger and more explicit commitments to disarmament and the universalization of the treaty.²⁶

The 2000 NPT review conference, the first after the treaty was extended, built on the 1995 decisions. It took place at a time of considerable anxiety, following the nuclear tests by India and Pakistan in May 1998 and the failure of the US government to achieve the requisite two-thirds majority in the Senate to ratify the Comprehensive Test Ban Treaty (CTBT) in October 1999, and its outcome conclusively demonstrated the importance of concrete progress on nuclear disarmament. Of particular significance was the substantive 13-paragraph programme

²⁰ ENDC/192 (US draft) and ENDC/193 (Soviet draft).

²¹ Rühle, 'Enlightenment in the second nuclear age', p. 514.

²² Rühle, 'Enlightenment in the second nuclear age', p. 514.

²³ Shaker, *The Nuclear Non-Proliferation Treaty*; Alva Myrdal, *The game of disarmament* (Manchester: Manchester University Press, 1977).

²⁴ Jayantha Dhanapala with Randy Rydell, *Multilateral diplomacy and the NPT: an insider's account* (Geneva: UN Institute for Disarmament Research / Stockholm International Peace Research Institute, 2005).

²⁵ Final document of the 1995 review and extension conference of states parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.1995/32 (part I).

²⁶ Though the rules of procedure allowed for the extension decision to be taken by a vote, the major powers wanted to avoid a divisive vote. See Rebecca Johnson, *Indefinite extension of the Non-Proliferation Treaty: risks and reckonings*, Acronym 7 (London: The Acronym Consortium, Sept. 1995).

of action on disarmament that was finalized through negotiations between the NWS and the New Agenda Coalition of seven NNWS.²⁷ This went beyond traditional calls for entry into force of the CTBT and further reductions in nuclear arsenals. The changing nature of the disarmament–non-proliferation relationship was illustrated by the inclusion of paragraphs on principles such as irreversibility, transparency and verification, and on steps to diminish the role and reduce the operational status of nuclear arsenals. In particular, there was an effort to remove any conditionality that might impede separate progress on the three parts of the Article VI obligation—cessation of the arms race, nuclear disarmament, and a treaty on general and complete disarmament. Hence, paragraph 6 of the disarmament programme of action contained the following: ‘An unequivocal 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’.²⁸ The reference to general and complete disarmament is in a later paragraph, where it is described as an ‘ultimate objective’.²⁹ This delinking was political, and was not intended to ignore the relevance of levels of adversaries’ conventional armaments and space-based capabilities in the disarmament equation. The purpose of separating general disarmament from the nuclear disarmament obligation was to demonstrate that there were no preconditions for progress towards nuclear disarmament: related security issues need to be resolved through practical negotiations, confidence-building and other means of political reassurance, but should not be used as an excuse for blocking nuclear disarmament steps.

The point here is that, notwithstanding the fact that the obligation to disarm was weakened during the process of concession-trading when Cold War power politics held sway in 1968, Rühle is mistaken to dismiss the importance attached to progress on disarmament by the non-nuclear NPT states from 1995 to the present as ‘a massive attempt to reinterpret the NPT and transform it from a non-proliferation pact into a disarmament treaty’.³⁰ Article VI was not just a sweetener to make the NPT more palatable, but an essential component in the logic of non-proliferation. Irrespective of academic and diplomatic attempts to parse the clumsy wording of the Article VI compromise, the NPT had to enshrine an obligation on nuclear disarmament because states would not indefinitely renounce such weapons if regional or international rivals might be indefinitely advantaged through retaining or acquiring them. As noted earlier, however, other lessons from 2000 are less positive and may make it more difficult for the 2010 review conference to succeed.

²⁷ The New Agenda Coalition was launched by a joint declaration by the ministers for foreign affairs of Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden, entitled ‘A nuclear-weapons-free world: the need for a new agenda’, 9 June 1998. Slovenia withdrew, leaving the other seven to carry their strategy forward to the 2000 NPT review conference.

²⁸ Final document of the 2000 review conference of states parties to the Treaty on the Non-Proliferation of Nuclear Weapons, ‘Review of the operation of the treaty’, taking into account the decisions and the resolution adopted by the 1995 NPT review and extension conference, section on Article VI, para. 15.6.

²⁹ Final document of the 2000 NPT review conference, section on Article VI, para. 15.11.

³⁰ Rühle, ‘Enlightenment in the second nuclear age’, p. 514.

Expectations for 2010

Working papers that touch on some or all of the core challenges listed above have been submitted during the review process leading up to the 2010 review conference. Some contain little more than rhetoric and aspirations. Others make more or less practical suggestions and proposals. The 2009 Preparatory Committee meeting (PrepCom) for the review conference was successful in adopting an agenda and other procedural decisions, thereby smoothing the way for the 2010 conference to get down to business without delay; but the chair, Zimbabwean ambassador Boniface Chidyausiku, did not get consensus on recommendations for the review conference. I have argued elsewhere that for political and structural reasons this was not surprising.³¹ Indeed, this is another example of a task being assigned to the review process that looks good on paper but flies in the face of how treaty diplomacy actually works. Though mandated with the best of intentions in 2000, efforts to achieve this consensus generally prove to be either counterproductive or futile.

Nevertheless, the negotiations on the chair's three successive drafts were interesting because they offered a reality check on the commitments that different states will want to achieve—or prevent—in 2010. The chosen structure of the drafts was also illuminating, suggesting a way in which recommendations for future work could be negotiated separately from the main committees' review of past implementation. Though many governments will no doubt go into the conference hoping to achieve consensus on an all-in-one final document, that has become increasingly difficult, since certain parties (from Iran and Syria to the nuclear powers) are likely to block consensus if a final document contains any direct criticisms of them for failing to live up to their obligations. Though there is a habit of consensus in the review process, the NPT's rules of procedure allow for voting if consensus is unachievable. This provision could be a useful tool in the hands of an experienced president, as was seen in 1995, where consensus was obtained on the basis of agreement that there was a majority in favour of indefinite extension of the treaty. If the conference or its main committees become bogged down on how to characterize past performance, it may be possible to negotiate and adopt some forward-looking recommendations separately, thereby salvaging at least some form of constructive outcome.

Some states hope to get positive and practical commitments on issues ranging from nuclear disarmament to the Middle East. Others will be seeking to manage expectations, limit criticisms or avoid further commitments. On nuclear disarmament, states are expected to reaffirm some of the 'thirteen steps' and update or build upon others, with input from various NGOs, including the Acronym Institute for Disarmament Diplomacy, the International Commission on Nuclear Non-proliferation and Disarmament and the Middle Powers Initiative. There will inevitably be calls for entry into force of the CTBT, commencement

³¹ See Rebecca Johnson, 'Laying substantive groundwork for 2010: report of the 2009 NPT PrepCom', *Disarmament Diplomacy* 91, Summer 2009, pp. 3–10.

of negotiations on some kind of a fissile material ban, and further deep reductions in US and Russian arsenals, with engagement by the other nuclear-armed states through unilateral cuts or a mutually agreed process. Whereas the 2000 final document recognized the importance of reducing the role of nuclear weapons in security doctrines and policies, the 'to do' lists for 2010 tend to be more explicit, advocating such measures as de-alerting, 'no first use' commitments, and changes to deterrence doctrine to make clear that the 'sole purpose' of having nuclear weapons is to deter a nuclear weapon attack. The importance of transparency, irreversibility and verification will also be reflected. While many will argue for reaffirmation of the NWS' 'unequivocal undertaking' to eliminate their nuclear arsenals, a significant number of states are now preparing to call for negotiations—or at least a process leading to negotiations—on a nuclear weapons convention.

Towards a new compact for global nuclear security

The debate about strengthening and sustaining the non-proliferation regime is now being reframed in terms of building peace and security in a world free of nuclear weapons—as in the 2007 and 2008 editorials by George Shultz, William Perry, Henry Kissinger and Sam Nunn,³² as well as President Obama's speech in Prague.³³ This is not because disarmament is an ethical objective (though some may regard it as a moral endeavour), but because non-proliferation is unsustainable without significant progress towards reducing the value attached to nuclear weapons. In other words, preventing the further spread of nuclear weapons will require conscious steps to be taken to create and embed a new—or at least reinvigorated—norm against the possession of nuclear weapons. As part of this process, it would be useful to reinforce the generally effective norm against the use of nuclear weapons by codifying it in international law, either through a new approach to universalizing security assurances or by stigmatizing nuclear weapons use as a crime against humanity.

The countries that bound themselves into nuclear-weapon-free zones have already put into practice regional arrangements to prohibit and prevent the use, production and stationing of nuclear armaments on their territories. Such zones, which extend across and beyond the entire southern hemisphere, include former South American nuclear rivals Brazil and Argentina, along with Cuba; Egypt, Algeria, Syria and Libya, in one of the world's most unstable and insecure regions, together with South Africa, which renounced and dismantled its nuclear arms two decades ago; and five Central Asian states, including Kazakhstan (which could have become the third or fourth largest nuclear power if it had kept its share of the Soviet arsenal instead of transferring the weapons to Russia and joining the NPT as an NNWS in 1992). Cooperative threat reduction programmes, Security Council Resolution 1540 and the various resolutions and treaties dealing with nuclear safety and terrorism have played their part in reducing dangers from 'loose

³² Shultz et al., 'A world free of nuclear weapons', 'Towards a nuclear-free world'.

³³ Obama, speech at Hradcany Square, Prague, 5 April 2009.

nukes'. But even the most ardent advocates of such approaches, such as Senator Sam Nunn, have come to recognize that security depends as crucially on delegitimizing the weapons as on enhancing regulations and controls.

In September 2009 Security Council Resolution 1887 framed its commitments and recommendations on nuclear security and non-proliferation with an opening paragraph that underscored the importance of 'a safer world for all and [creating] ... the conditions for a world without nuclear weapons'.³⁴ But talk of a nuclear-free world is misleading or hypocritical unless leaders are willing to start considering the legal, technical and institutional framework that would be needed to mandate and oversee the process of abolition. If they want to take the idea of security in a world without nuclear weapons from rhetoric to reality, leaders need now to set the practical goal of negotiating a treaty or framework agreement for the comprehensive prohibition of the use, development, production, acquisition, stockpiling and transfer of nuclear weapons and military nuclear technologies and components.

As civil society campaigns and the UN Secretary General's five-point plan have helped to put the objective into the mainstream, the majority of NNWS now back negotiations on a nuclear weapons convention. The NWS are, unsurprisingly, reluctant. Though they are less likely these days to dismiss the idea as impossible, they portray it as premature or as conflicting with the NPT. Getting nuclear abolition onto the negotiating agenda and piloting a framework or comprehensive nuclear weapons treaty through negotiations to conclusion and entry into force will be difficult. There is no space here to discuss how such a process might be prepared and carried forward; but, in concluding, I wish to make three points for consideration.

First, far from undermining the NPT, the function of a nuclear weapons convention would be to fulfil the fundamental purpose and obligations enshrined in the NPT.³⁵ The CTBT overcame the inadequacies of the 1963 Partial Test Ban Treaty to reinforce and ensure more universal application of a comprehensive ban on all nuclear testing, thereby implementing the aspirations and objectives contained in the preamble of the earlier treaty. Similarly, it is anticipated that a nuclear weapons convention would provide comprehensive means to fulfil the security purpose outlined in the NPT's opening paragraph, by reconstituting the norms, reinforcing existing rules and institutions, and engaging nuclear-armed and non-NPT states with NPT parties in order to construct a universally applicable nuclear restraint and prohibition regime. The very process of working

³⁴ UN Security Council Resolution 1887, 24 Sept. 2009.

³⁵ In his October 2008 statement, UN Secretary General Ban Ki-moon referred to the text of an NGO-drafted model convention on the prohibition of the development, testing, production, stockpiling, transfer, use and threat of nuclear weapons and on their elimination, which was submitted by Costa Rica to the UN General Assembly and issued in the UN languages as A/C.1/52/7. This model draft convention was never intended to be held up as a draft treaty, but the research behind it and the options it discusses have been used as a resource and starting point for consideration of what should be included in multilateral negotiations. In that spirit, it was updated and reissued in 2007 as *Securing our survival (SOS): the case for a nuclear weapons convention*, edited by Merav Datan, Felicity Hill, Alyn Ware and Jürgen Scheffran, published by the International Physicians for the Prevention of Nuclear War, the International Association of Lawyers Against Nuclear Arms, and the International Network of Engineers and Scientists Against Proliferation.

towards the abolition of nuclear weapons would be likely to help the current non-proliferation and nuclear security rules and instruments to function more coherently and effectively than they do at present. With only 94 Additional Protocol agreements in force—applying to just over half of states parties to the NPT—and the CTBT still not in force 13 years after it was opened for signature, not to mention no fissile materials treaty in sight, the step-by-step process endorsed in 1995 is in trouble. The annual rituals of calling for India, Pakistan and Israel to accede to the NPT as NNWS are no substitute for practical policies. In view of these countries' positions, the only feasible mechanism to draw them into a universal non-proliferation regime is through the process of negotiations on regional or international disarmament. Rhetoric and wishful thinking aside, getting negotiations going on a treaty with the objective of international nuclear abolition is likely to bear fruit earlier than current efforts to achieve nuclear-weapon-free zones in either the Middle East or South Asia.

Second, a process of mainstreaming and embedding the abolition norms (outlawing possession and use) at domestic and international level will need to be under way well before the diplomats reach the negotiating table. Requiring a profound change in the security doctrines and foreign policies of some of the major powers, the process of norm-building, pre-negotiation talks and then negotiations will entail actions on three intersecting levels—domestic, international and transnational—and among three interacting sets of actors—governmental, civil society and epistemic.³⁶ Building an international constituency and movement committed to a nuclear abolition treaty will require transgovernmental collaboration between officials from different states; transnational interaction between domestic actors from different countries; and cross-level, transboundary engagement, in which partnerships are formed between governmental and non-governmental actors from different nations. These multiple levels of political engagement and policy influence played key roles in bringing to fruition the INF Treaty in 1987;³⁷ the CTBT in 1996;³⁸ the 1997 Mine Ban Treaty;³⁹ and the 2008 Cluster Munitions Convention.⁴⁰ While the specific strategies will be different, such multiple partnerships for sharing expertise, shaping new norms and objectives, building trust and exerting political pressure will likewise be needed to move government leaders from simply espousing visions of a world free of nuclear weapons to undertaking actions to lay

³⁶ Epistemic actors use knowledge and expertise to influence policy preferences and changes, operating at domestic government, civil society and transnational levels. See Ethan A. Nadelmann, 'Global prohibition regimes: the evolution of norms in international society', *International Organization* 44: 4, Autumn 1990, pp. 479–526; and Emanuel Adler, 'The emergence of cooperation: national epistemic communities and the international evolution of the idea of nuclear arms control', in Peter M. Haas, ed., *Knowledge, power, and international policy coordination* (Columbia, SC: University of South Carolina Press, 1992).

³⁷ Jeffrey W. Knopf, 'Beyond two-level games: domestic–international interaction in the intermediate-range nuclear forces negotiation', *International Organization* 47: 4, 1993, pp. 599–628.

³⁸ Rebecca Johnson, *Unfinished business: the negotiation of the CTBT and the end of nuclear testing* (New York and Geneva: United Nations, 2009).

³⁹ Richard Price, 'Reversing the gun sights: transnational civil society targets landmines', *International Organization* 53: 3, 1998, pp. 613–44; Maxwell A. Cameron, Robert J. Lawson and Brian W. Tomlin, eds, *To walk without fear: the global movement to ban landmines* (Toronto: Oxford University Press, 1998).

⁴⁰ John Borrie, *Unacceptable harm: a history of how the treaty to ban cluster munitions was won* (New York and Geneva: United Nations, 2009).

Rethinking the NPT's role in security

the political groundwork to negotiate the verification and institutional arrangements that will be necessary for nuclear abolition to become a reality.

Third, far from being premature, a universal, non-discriminatory treaty to ban the use and possession of nuclear weapons is long overdue. In 1961, almost 50 years ago, US President John F. Kennedy noted: 'The mere existence of modern weapons—ten million times more powerful than any that the world has ever seen, and only minutes away from any target on earth—is a source of horror, and discord and distrust'. Arguing that it was no longer credible to 'maintain that disarmament must await the settlement of all disputes' or that 'the quest for disarmament is a sign of weakness', Kennedy presciently noted that 'a nation's security may well be shrinking even as its arms increase'. Not only did this speech prefigure recent arguments about the relationship between nuclear and conventional disarmament, when Kennedy argued that 'general and complete disarmament must no longer be a slogan, used to resist the first steps', but he concluded with a phrase that would not have been out of place in President Obama's Prague address: 'The weapons of war must be abolished before they abolish us.'⁴¹

⁴¹ John F. Kennedy, President of the United States of America, address before the General Assembly of the United Nations, New York City, 25 Sept. 1961.