

## Strengthening the NPT: Addressing the treaty's institutional deficits, including withdrawal

When the NPT was negotiated, it was the height of the Cold War. With the exception of the safeguards obligations on non-nuclear-weapon states and a five-yearly review conference, the Treaty was given no institutional powers or provisions for ensuring compliance and implementation. If the treaty needed to be monitored or enforced, it was assumed that the United States and Soviet Union would take responsibility, particularly in their spheres of influence. The treaty was given an initial duration of just 25 years, as governments were unsure how well the nonproliferation trade-offs in the treaty would hold, with five countries defined as nuclear-weapon states and the rest invited to renounce any nuclear weapons options and join the treaty as non-nuclear-weapon states. Under such circumstances it is perhaps not surprising that the withdrawal provision for the NPT (Article X) to allow a state to leave the treaty only three months after providing the States Parties and UN Security Council with a notice of its intention to withdraw and a statement of its reasons, notably the “extraordinary events it regards as having jeopardized its supreme interests”.

After 25 years, the 1995 Review and Extension Conference decided to extend the NPT indefinitely, after adopting decisions on Strengthening the Review Process and on Principles and Objectives for Nuclear Non-Proliferation and Disarmament. It was decided at that time to hold three ‘preparatory committee’ (PrepCom) meetings of two-weeks’ duration in each of the years prior to a Review Conference, in the hope that this would provide greater ‘accountability’ to underpin the post-1995 ‘permanence’ given to the treaty. At the 2000 Review Conference, the review process was recognised not to be working as well as hoped and adjusted slightly (not necessarily in the direction of improving effectiveness, according to some). Ireland put forward a working paper that proposed replacing the PrepComs with annual decision-making meetings, but did not push these ideas as Ireland was a founder-member of the New Agenda Coalition and therefore focussed its efforts on getting a disarmament plan of action adopted as part of the final document.

By the 2005 Review Conference, many more states had become concerned about what Canada called the NPT’s “institutional deficit”. These concerns were fuelled by: the weak response to the Democratic People’s Republic of Korea (DPRK/North Korea) when it gave its three months notice of withdrawal from the treaty to pursue nuclear weapons and evicted the International Atomic Energy Agency (IAEA) inspectors and their safeguards machinery in 2003; the history of North Korea’s noncompliant programme and evidence of other national nuclear programmes that did not comply fully with the treaty or its safeguards obligations; and lack of mechanisms for overseeing implementation of treaty requirements, including disarmament.

Proposals to address the NPT’s perceived institutional deficit – including a new Canadian-led initiative to be tabled on behalf of 16 significant middle powers at the 2010 Review Conference – address one or more of three main categories:

- arguments for convening regular or extraordinary meetings of States Parties with decision-making powers to deal with challenges to the NPT regime as they arise;
- Mechanisms to address the structural lack of administrative or executive authority to provide continuity and leadership in overseeing compliance and administering the NPT (via a standing bureau, treaty support unit or secretariat, for example); and
- approaches for deterring and dealing with withdrawal from the NPT, including establishing consequences that would need to be taken into account by any Party that sought to pull out of the Treaty and develop nuclear weapons.

The different proposals reflect growing concerns about the effectiveness of the five-yearly treaty review process, the structural marginalisation of States Parties with regard to monitoring and ensuring implementation of NPT obligations, undertakings and decisions, and the lack of authority vested in the IAEA to refer to States Parties such important matters as compliance assessments.

The standard for judging the success of an NPT conference should be based on the substance and subsequent implementation of any decisions or agreements rather than just the procedural fact of whether a ‘final document’ is adopted at the end of the meeting. In conjunction with this and in line with other UN fora and more recent disarmament treaties, the NPT should consider further ways to enhance the substantive participation of civil society, including non-governmental organisations (NGOs).



NPT Meeting, New York

## Meetings of States Parties

Though the post-1995 review process is viewed as a valiant attempt to provide a more frequent mechanism for strengthening the non-proliferation regime and promoting its full implementation, the lack of decision-making capacity has generated frustration. Two kinds of proposals are on the table – instituting regular, annual Meetings of States Parties and providing a mechanism for convening extraordinary meetings of States Parties to consider emergency situations or challenges to the NPT such as a notice to withdraw. Though proposed as separate solutions, these are not mutually exclusive, as there may be situations in which an emergency Meeting of States Parties would be needed in between two of the annual meetings. For example, an extraordinary Meeting of States Parties convened within the three months after receiving a notice to withdraw could offer an institutional “check” on a Party contemplating withdrawal.

The case for decision-making meetings rests on the hamstrung nature of the current review cycle, in which PrepComs can only take procedural decisions and make recommendations for the next Review Conference, and the fact that, unlike treaties such as the Biological Weapons Convention (BWC) and the Chemical Weapons Convention (CWC), there is at least one year in the NPT Review cycle when there are no meetings at all. To avoid increasing costs and overloading the calendar, proposals envisage that the Meetings of States Parties should be of shorter duration, between two and five days.

## Structural and Institutional Deficit

As three of the nuclear-weapon states, there are practical limitations to the role the three depositaries for the NPT, Britain, Russia, and the United States, can play in its administration. Various proposals have been put forward for providing executive and administrative leadership and coherence. Described below, these are not necessarily mutually exclusive – a secretariat established in the United Nations, for example, could provide international administrative support for a standing bureau of recent Chairs.

The simplest option for the Conference to put into place would be to agree on giving authority in between the five-yearly review conferences to a three-person **standing bureau** comprised of the current Chair and the two most recent past Chairs. Alternatively the bureau could comprise Chairs of past PrepComs rather than reaching as far back as past review conferences. It is not envisaged that such a troika would carry decision-making authority, but it might provide a degree of continuity of stewardship of the Treaty and could be empowered to convene an extraordinary Meeting of States Powers if needed. The idea of a Council of perhaps 12 or 15 members to fulfil this role from one Review Conference to the next has also been mooted, although the mechanics of how the members would be selected or elected would have to be carefully thought through to ensure geographic balance. Consistent with UN Security Council Resolution 1325, more consideration would also need to be given to how to provide better gender balance than is current practice in disarmament fora.

Another proposal for filling the institutional deficit is to establish a small **‘implementation support unit’** or **‘secretariat’**. The BWC, which was concluded in 1972 and like the NPT was not invested with any implementing organisation or secretariat, in December 2006 set up a three-person implementation support unit to assist with the information and practical needs of States Parties, provide back-up and support for the Chairs of the BWC review process, and administer the system of confidence-building measures developed in lieu of a verification regime. This has already demonstrated significant benefits for BWC Parties, and has prompted proposals for a similar (or even smaller) support unit to be attached to the NPT. Though the United States has raised financial concerns about such proposals, these would actually be minor. The main resistance to these ideas and other proposals for institutional reform and regular reporting comes from governments – particularly in the nuclear-weapon states – that fear the development of mechanisms for greater accountability.

Another example of a perceived short-coming of the NPT is that it contains no authorisation for the IAEA to refer to States Parties any compliance concerns that might arise in carrying out its verification mandate under article III. The IAEA currently reports to the UN Security Council, on which the five NPT nuclear-weapon states have permanent seats and vetoes. Since the Security Council has not proved itself to be as prompt, impartial or effective as hoped in dealing with compliance or withdrawal challenges to the NPT, the powerlessness of the NPT regime and its States Parties must be of special concern at a time at which non-proliferation risks are of a heightened nature.

*The case for decision-making meetings rests on the hamstrung nature of the current review cycle*

*The challenge for the Review Conference will be to find middle ground that is effective without provoking political sensitivities about sovereign rights, the legal status of Article X, or the role of the Security Council*

## **Detering withdrawal from the NPT**

Article X of the NPT allows a State Party to withdraw from the Treaty “if it decides that extraordinary events, related to the subject matter of the Treaty, have jeopardised the supreme interests of its country”. In giving the required three months advance notice of its withdrawal to other Parties and to the Security Council, the Party is required to provide a statement of the extraordinary events on which it is basing its action.

Announcing its withdrawal from the NPT in January 2003, the DPRK issued a statement (as opposed to circulating a formal notice) outlining the “grave” situation it was facing (purported US hostile policy) and “declaring” that in withdrawing from the Treaty the DPRK was “totally free from the binding force of the safeguards accord with the IAEA”. Leaving aside – as beyond the scope of this briefing – the Security Council’s inability to agree on a firm response to the DPRK’s withdrawal, North Korea’s declaration on safeguards raised particular alarms amongst States Parties.

Shortly after its withdrawal, North Korea made clear its intention to develop nuclear weapons. In so doing, it needed to use technology, materials and equipment imported from other NPT Parties “for peaceful purposes” only, in conformity with Article IV. During the 2005 Review Conference, a subsidiary body of Main Committee III, chaired by Chile’s Ambassador Alfredo Labbé, considered all aspects of this issue and agreed a useful summary. Though its recommendations were not formally adopted, since the 2005 Review Conference was unable to adopt any substantive final document, the ideas continued to circulate and were recently refreshed by the Security Council itself.

Agreeing that it remains the sovereign right of a state to withdraw from such a treaty, and that opening the NPT to amend article X is politically impractical, the discussion has focussed on general principles on its interpretation with a view to instituting disincentives for withdrawal. Ideas put forward by States Parties include the requirement that before a Party can withdraw it must establish, with IAEA involvement, that it has been in full compliance with the Treaty. In other words, a State exercising its right to withdraw under article X would not be able to escape its liability under international law for any violations committed prior to its withdrawal. Withdrawal from a treaty does not absolve a State of any breach of the terms of the treaty that was committed while it was still a Party.

Resolution 1887, adopted by the Security Council on 24 September 2009, emphasizes the Security Council’s primary responsibility and spells out “that a situation of non-compliance with non-proliferation obligations shall be brought to the attention of the Security Council, which will determine if that situation constitutes a threat to international peace and security”. The Council undertook “to address without delay any State’s notice of withdrawal from the NPT, including the events described in the statement provided by the State pursuant to Article X of the Treaty”. The Council went on to note ongoing discussions in the course of the NPT review on identifying modalities under which NPT States Parties could collectively respond to notification of withdrawal, and affirmed that a “State remains responsible under international law for violations of the NPT committed prior to its withdrawal”.

The Security Council did not stop there. To make it harder for states to develop weapons programmes using materials and technologies that they had received for peaceful nuclear energy programmes under the NPT’s Article IV, Resolution 1887 encouraged states “to require as a condition of nuclear exports that the recipient State agree that, in the event that it should terminate, withdraw from, or be found by the IAEA Board of Governors to be in non-compliance with its IAEA safeguards agreement, the supplier state would have a right to require the return of nuclear material and equipment provided prior to such termination, non-compliance or withdrawal, as well as any special nuclear material produced through the use of such material or equipment”.

Other substantive approaches or proposals on the NPT table include:

- calling on States Parties to require as a condition of any export of nuclear technologies some form of “back-up” safeguards agreement that would come into play upon withdrawal;
- calling on the Zangger Committee to seek agreement on procedures to govern how previously transferred materials and equipment would be treated in the aftermath of withdrawal;
- the adoption by the Nuclear Suppliers Group of an obligation on the withdrawing State to return third Party technologies received through NPT-based arrangements, and
- preventing the withdrawing State from continuing to use those imported technologies and obligating the return of relevant materials.

Proposals of a more procedural kind to address concerns about withdrawal (or the threat of withdrawal) include:

- setting out criteria that would identify the parameters of “extraordinary events” that would be considered legitimate;
- drawing up rules of procedure to govern the exercise of the right to withdraw; and
- ordaining that a notice of withdrawal would automatically result in an extraordinary Meeting of States Parties, or a consultation process convened by the Depositary States to address the question.

The challenge for the Review Conference will be to find middle ground that is effective without provoking political sensitivities about sovereign rights, the legal status of article X, or the role of the Security Council.



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## What needs to be done?

**The Review Conference should debate and pursue practical initiatives to improve NPT governance and accountability, including strengthening mechanisms to ensure compliance and deter withdrawal.**

**Procedural steps should be adopted to create disincentives and raise the threshold for the exercise of the right under article X to withdraw from the NPT, including the holding of a Meeting of States Parties as soon as possible after a notice for withdrawal is received (within the three month period) to consider the implications and address the Party's reasons for wanting to withdraw, with a view to enabling it to remain in the Treaty.**

**To provide administrative continuity and coherence, the Review Conference should decide to establish a Treaty support unit comprising at least one full-time staff member, funded by NPT States Parties, to support chairs of the review process and to assist with the informational and administrative needs of States Parties and the implementation of decisions adopted by States Parties. The logical place for this unit would be within the UN Office for Disarmament Affairs.**

**As a transitional step to strengthen the non-proliferation regime, a three-member standing bureau of past and present Chairs should be empowered to convene extraordinary meetings of States Parties, including during the first year of a review cycle.**

## Further reading

George Bunn and John Rhinelander, "The right to withdraw from the NPT: Article X is not unconditional", Disarmament Diplomacy 79 (April/May 2005)

<http://www.acronym.org.uk/textonly/dd/dd79/79gbjr.htm>

Jayantha Dhanapala, "What further steps could Non-Nuclear Weapon States take to strengthen the Non-Proliferation regime?" paper presented to the International Conference on Nuclear Disarmament, Oslo, February 26-27 2008

[http://www.jayanthadhanapala.com/content/Nuclear\\_Disarmament.pdf](http://www.jayanthadhanapala.com/content/Nuclear_Disarmament.pdf)

"Strengthening the Review Process of the Treaty on the Non-Proliferation of Nuclear Weapons", Working paper submitted by Canada, 15 April 2009 NPT/CONF.2010/PC.III/WP.8

<http://www.reachingcriticalwill.org/legal/npt/prepcom09/papers/WP8.pdf>

Paul Meyer, "Preventing further Defections: Early Warning Indicators and Disincentives", 2008 Monterey Institute of International Studies.

[http://cns.miis.edu/opapers/pdfs/op14\\_dupreez.pdf](http://cns.miis.edu/opapers/pdfs/op14_dupreez.pdf)

Michael Spies, 'Proposals, Positions and Prospects: Issues facing the 2010 NPT Review Conference', Disarmament Diplomacy 90 (Spring 2009)

<http://www.acronym.org.uk/dd/dd90/90nptms.htm>

This briefing is the copyright of the Acronym Institute for Disarmament Diplomacy. It is part of an Acronym Institute series originally produced for the 2010 NPT Review Conference. Drawing on the knowledge and experience of key thinkers, analysts and experts in the field of multilateral arms control and international security, we address some of the core issues relating to the NPT, non-proliferation and disarmament with the aim of enhancing the conference outcome and developing collective strategies to move towards security in a world free of nuclear weapons.

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