

Is the NPT up to the challenge of proliferation?

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There is much talk now of a post-Cold War nuclear paradigm and the challenges of the 'new proliferation game'.¹ The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has 188 or 189 states parties, depending on whether North Korea is counted in or out, but appears to be more at risk than at any time previously. Scholars debate how to bring India, Pakistan and Israel into the regime 'as if' they were nuclear-weapon states.² Others debate whether the new nuclear weapons that the Bush Administration covets would be good or bad.³ The United States and Britain initiated an unprovoked war ostensibly to remove the threat of Iraqi weapons of mass destruction (WMD), though they have since failed to find evidence of such weapons or programmes being retained or developed after UNSCOM was forced out of Iraq in 1998.

In different ways and with different outcomes, the long-suspected nuclear programmes of North Korea, Iran and Libya have been brought into the open, together with Abdul Qadeer Khan's well-connected nuclear procurement network, on which they all depended. The Bush Administration's Proliferation Security Initiative (PSI) was launched in September 2003 and quickly grew to fifteen members,⁴ with more expected; others, including India, have agreed to abide by the rules; and Panama and Liberia have made bilateral agreements with the United States to permit vessels carrying their flags to be boarded and searched in accordance with the principles of PSI. On 28 April 2004, the United Nations Security Council adopted resolution 1540 on WMD, which built on the PSI and established a Committee of the Security Council to report back on the resolution's implementation.⁵

As the Security Council debated this resolution in their heavily guarded chamber on the United Nations' second floor, down in the basement representatives of 123 states parties to the NPT were enmeshed in the worst Preparatory Committee (PrepCom) meeting of recent times. As the final PrepCom before the 2005 Review Conference, the meeting was supposed to produce recommendations and finalize arrangements for the 2005 Conference, such as the rules of procedure, documentation and agenda. It failed to adopt any substantive recommendations. Many had expected this: unlike the Review Conferences, the PrepComs lack the structure and authority to take substantive decisions, leaving the states parties ill-equipped to push for the kind of difficult compromises entailed in making recommendations on controversial issues. More significantly, however, the United States and France—with tacit support from the other weapon states—were prepared to sacrifice timely agreements on the agenda and preparatory documents as they played politics with the NPT in their efforts to diminish the significance of consensus agreements adopted as part of the Final Document at the 2000 Review Conference. The United States and France did not seek to minimize reference to the 2000 agreements because they objected to the emphasis placed on the additional protocol that strengthened IAEA

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safeguards or the sections on nuclear safety and security. Their sole reason for trying to sideline the Final Document of the 2000 Review Conference lay in paragraph 15, the so-called 'Thirteen Steps' on nuclear disarmament.⁶

Even if Article VI was originally included in the NPT to entice the non-nuclear-weapon states, the prevention of 'vertical proliferation' has over the years come to be widely accepted as a central requirement of the NPT-based non-proliferation regime. In the age of PSI and resolution 1540, can the dominant state(s) now achieve their non-proliferation goals without bothering about nuclear disarmament? Can proliferation be countered effectively by supply-side denial of access to nuclear technologies and materials, imposed by the dominant supplier states, backed up by coercive military force? Is disarmament now irrelevant, and if so, what does that mean for the NPT?

As the NPT states parties look towards 2005, what do they hope to achieve? Some are already looking back at 1995 and regretting the deals they made then. The point is not to question whether the non-proliferation regime would have been stronger if the treaty had been given a shorter rolling, rather than indefinite, extension, but to look at what changes—especially what tools and mechanisms—would be needed to address present-day compliance challenges and carry forward the underlying hopes of those who had pushed so hard for a strengthened treaty with more explicit principles and objectives, especially relating to nuclear disarmament. The dilemma for the major powers is that successful non-proliferation and arms control require that curbs be imposed on everyone. The credibility of the regimes is undermined if a dominant country seeks to control others while keeping all options open for its own military and commercial interest groups. In 1999, the Tokyo Forum summed up this non-proliferation dilemma rather succinctly. 'The world faces a choice between the assured dangers of proliferation or the challenges of disarmament.'⁷

The NPT in context: proliferation threats and actors

To assess the relevance of the current non-proliferation regime, it is important to understand the perceived nuclear-related threats to international security: from non-state actors; nuclear trade and black market procurement; clandestine weapons programmes in certain states; states seeking to hedge bets and develop nuclear-weapon options under the guise of NPT-permitted nuclear power programmes (but with no weaponization programmes as such); de facto weapons and programmes in three non-NPT states, whether openly declared, as in India and Pakistan, or opaque but assumed to be significant, as in the case of Israel; and the continued existence of large arsenals among the five declared nuclear-weapon states, together with continuing policies that appear to associate high levels of military, security or political power with nuclear weapons.

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Initiatives such as the PSI and resolution 1540 assume that the priority threat is the acquisition of nuclear devices, materials or weapons-usable technology by non-state actors or 'rogue states' with terrorist intentions. Acquisition of a nuclear explosive device would be the greatest calamity, but there is growing awareness of the massive contamination and economic damage that could be inflicted by a radiological dispersal weapon, the so-called 'dirty bomb', with potentially devastating long-term health and environmental risks. The revelations about Libya and North Korea's declared nuclear-weapons ambitions, as well as Iran's failure to be fully transparent about parts of its nuclear programme, including uranium enrichment, have prompted growing international concern about the acquisition of nuclear-weapons programmes by further states, whether or not one shares the Bush Administration's classification of who is 'rogue'. Depending on standpoint,

the world is more dangerous because such examples of non-compliance show what is possible and there might be more violators that have not yet been revealed; or, alternatively, these examples give confidence that the non-proliferation regime is working—whether directly deriving from the treaty or other security measures, there is the capability to detect and at least contain non-compliance. There is a third view: that the treaty-based regime is essentially sound but needs a great deal more strengthening, and the best way to protect the world from the threat or use of nuclear weapons is through eliminating and prohibiting the weapons, not discriminatory approaches that appear to differentiate between good and bad, responsible and irresponsible.

Some Western powers, notably the United States, appear increasingly comfortable with the acquisition of nuclear-weapon arsenals by Israel, India and Pakistan—at least provided they remain allies in the ‘war on terrorism’ and their nuclear ambitions stay within certain qualitative and quantitative limits. The rest of the world is less sanguine, concerned about regional instability and porous boundaries. Two countervailing tendencies are clearly visible among NPT parties: those who argue for according the three de facto nuclear-weapon states (D3) some form of recognition in return for their adopting and fulfilling the obligations that apply to the declared nuclear-weapon states under the NPT; and those who refuse to countenance any recognition that could be construed as acceptance of the D3s’ weapon status, and who demand instead that the international community must continue to push them to get rid of their nuclear weapons and join the NPT as non-nuclear-weapon states. The latter group inevitably contains neighbours or opponents, but is not confined to regional rivals.

The policy predicament pits two competing perspectives about the threats and choices against each other. Those preferring to treat the D3 ‘as if’ they were weapon states argue that this is best for international security and would reduce the risks of accidental or belligerent nuclear-weapon use. They see recognition as opening the door to better accountability and control, providing some measure of monitoring to ensure the D3 behave responsibly with regard to safety, security, command and control, and international efforts to prevent the transfer, trade or proliferation of nuclear materials and technologies.

Arguments about regional instability derive from the fact that these countries have nuclear-weapon capabilities and so would apply whether or not the D3 are formally recognized. The specific opposition to engaging with the D3 as weapon states rests on two related premises: that permitting more than the five declared nuclear-weapon states runs counter to the original NPT deal, thereby betraying those who joined the treaty and gave up their own options on the basis that there would never be more than five nuclear-weapon states; and that such recognition would be tantamount to rewarding proliferation behaviour once a certain line has been crossed. Thus recognition is variously portrayed as a slippery slope or the thin end of the wedge into greater proliferation, serving as an incentive to those who view nuclear weapons as either an instrument of geostrategic power or a regional or international deterrent and security guarantor. By contrast, among those who advocate recognition are many who deny that it would confer status, but insist rather that the recognition would bring the hold-out states into the regime and provide a basis for applying the NPT’s obligations. This argument is unfortunately undermined by the cavalier attitude of most of the P5 towards their NPT obligations, where they disregard some of the less convenient implications of Article I and treat Article VI as if it were a voluntary concession to the non-nuclear-weapon states rather than a binding obligation to work at eliminating their reliance on nuclear weapons.

Nuclear disarmament: mistaken interpretation or key to non-proliferation?

The concept of an international treaty to forbid the proliferation of nuclear weapons was first introduced in an Irish resolution to the United Nations General Assembly in 1958. In the early 1960s,

when the United States and the Soviet Union began negotiating what would become the NPT they were primarily interested in preventing the spread of the weapons that they themselves intended to keep. The Cuban missile crisis had been narrowly survived and President Kennedy had looked into the future and shivered at the prospect of twenty to twenty-five nuclear-weapon possessors by the 1970s. Britain, by that time little more than a client ally of the United States, was easily brought on board. France and China, suspecting curbs would be imposed on their fledgling weapons programmes, kept away. Significantly, neither became party to the NPT until they were put under pressure to join in 1992, in the run-up to the important decision on extending the treaty that would be taken in 1995. Nevertheless, in accordance with the treaty's definitions, they were able to join as nuclear-weapon states. Apart from the P5, there are no provisions for any state to accede to the treaty as anything other than a non-nuclear-weapon state, with its nuclear facilities fully under IAEA safeguards. The weapon states, by contrast, are subject only to voluntary arrangements with the IAEA that do not encompass their nuclear-weapon programmes.

When it came to negotiating the NPT with other nations that Washington and Moscow wanted to bring on board, especially those with nuclear programmes or of regional concern, the nuclear powers did not have it all their own way. States with nuclear programmes, including Brazil, India, Germany, Sweden, Canada and Italy, recognized the dangers of unbridled proliferation but were concerned that they would be disadvantaged in economic and security terms. They insisted on and won two important trade-offs: a commitment that those with weapons would end their arms race and pursue nuclear disarmament, which became Article VI; and a promise that nuclear technology would remain available for peaceful purposes, contained in Article IV.

Giving up the option of developing weapons that were widely touted as the ultimate security guarantor and deterrent was no light decision for any country's leaders, and many also pushed for security assurances from the nuclear-weapon states that they would not attack countries whose decision to abjure nuclear weapons might leave them vulnerable, and also that they would come to the aid of countries attacked with nuclear weapons. Security assurances did not get accepted into the treaty text, in part because the weapon states wanted to hedge them with a number of conditions determined by their Cold War strategic rivalry. Instead, the Security Council adopted a resolution on security assurances (resolution 255) in 1968. That this resolution was clearly viewed as part of the NPT package was underscored in 1995, when, in response to repeated calls from the non-nuclear-weapon states, the five nuclear-weapon states updated their security assurances, solemnly declaring them before the Conference on Disarmament (CD) and then adopting a further Security Council resolution (resolution 984) in the week before the 1995 Review and Extension Conference opened in New York.⁸

It is apparent from the negotiating history that nuclear disarmament was considered an integral part of the NPT by contracting non-nuclear-weapon states parties, but was only a peripheral issue for the nuclear-weapon states. Under pressure, the United States and Soviet Union weakened the Article VI obligation by rolling together in one sentence ending the arms race, nuclear disarmament and 'a treaty on general and complete disarmament'. Nevertheless, over the ensuing years, nuclear disarmament has come to be regarded—at least by the growing number of non-nuclear-weapon state parties—as a central obligation of the treaty. At each successive review conference the pressure was increased, with an end to nuclear testing as the pivotal demand. In 1995, the non-nuclear-weapon states insisted that the agreement on indefinitely extending the NPT had to be accompanied by decisions on principles and objectives for nuclear non-proliferation and disarmament and on strengthening the review process. The League of Arab States succeeded in getting a resolution on the Middle East sponsored by the depositary states and adopted at the same time. Among other things, this called for 'a Middle East zone free of nuclear weapons, as well as other weapons of mass destruction'.

The decisions in 1995 paved the way for the successful strategy of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden) at the 2000 Review Conference, at which a far-reaching plan of action for nuclear disarmament and non-proliferation was negotiated with the nuclear-weapon powers and eventually adopted as part of a consensus final document. The Thirteen Steps were meant to be a roadmap towards the full implementation of the Article VI disarmament obligations, and so covered a host of issues, including: the unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals; entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and a moratorium on nuclear testing; progress on a fissile materials ban and the disposition of fissile materials; putting the CD back to work on disarmament issues; commitments to irreversibility, transparency and accountability including reporting and verification; reducing the role of nuclear weapons in doctrine, policy and in operational status; and further unilateral steps, deeper bilateral cuts in the American-Russian arsenals and in non-strategic nuclear weapons, plurilateral P5 engagement and multilateral negotiations.

But almost before the ink was dry on the Final Document, some of the weapon states tried to reinterpret the commitments, seeking to back out of the agreements. At first, Britain and the United States claimed credit for the part they played in these agreements, while France and Russia grumbled loudest that they had been pulled into accepting more than they had meant to do. China sat on the sidelines, quietly ignoring the Thirteen Steps and modernizing its arsenal. Since 2001, however, the United States has reneged on many of its promises, withdrawn from the Anti-Ballistic Missile Treaty, publicly expressed opposition to the CTBT, and made clear that it wants the NPT to deal with 'non-compliance', by which it means the nuclear programmes of Iran, Libya, Syria and North Korea, not its own and not really those of India, Israel or Pakistan. John Bolton, United States Undersecretary of State for Arms Control and International Security, the architect of the American strategy at the 2004 PrepCom, was unequivocal about American priorities: 'We cannot divert attention from the violations we face by focusing on Article VI issues that do not exist'.⁹

This, therefore, was the context for the Franco-American alliance at the 2004 PrepCom to delete or, failing that, minimize references to the 2000 agreements. Observers who expressed amazement that two countries in such conflict over Iraq could be so cosy in the NPT have missed an important point: the NPT was itself constructed from an alliance between strategic 'enemies' the United States (with the United Kingdom) and the Soviet Union. Its primary objective was to keep others out of the nuclear club. The P5 may disagree on many things, but they frequently back each other up in order to protect their mutual interests as nuclear-weapon states. This has often been observed at the CD, during negotiations on the CTBT for example, and was apparent in the debates on PSI and Security Council resolution 1540. By contrast, when one of the nuclear club is regarded by others as going too far towards taking the disarmament obligations seriously, it is viewed as breaking ranks. Britain found this out in 2000 when it played a constructive role in negotiations with the New Agenda states and then directed its atomic weapons establishment at Aldermaston to study what would be entailed to verify nuclear disarmament and the elimination of nuclear weapons, a positive response to the Thirteen Steps.

Lost leverage

Ten years after the historic decisions of 1995, NPT parties must face the fact that the hard-won decisions that were taken together with indefinite extension have not delivered better progress on disarmament as hoped. Despite continued bilateral reductions and the dismantlement of those weapons systems that were withdrawn

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as a consequence of the end of the Cold War, the record on disarmament since 1995 has been abysmal. The CTBT, central to the deal on extension, was completed on schedule in 1996, but has still not entered into force. Though by no means dead, the CTBT was badly wounded by the nuclear tests conducted by India and Pakistan in May 1998 and even more seriously undermined by the United States' failure to ratify in 1999. Though the American signature still stands and the P5 moratoria have been honoured so far, the test ban's credibility suffers every time the Bush Administration repudiates the CTBT, which it does regularly in the UN First Committee, the CD and even at the NPT meetings. And despite achieving agreement in March 1995 on a mandate to negotiate a ban on fissile material production for nuclear-weapons purposes, the CD has signally failed to get started.

The New Agenda used the 1995 Principles and Objectives commitment to 'the determined pursuit by the nuclear-weapon states of systematic and progressive efforts to reduce nuclear weapons globally'¹⁰ as the basis for its strategy to get more concrete commitments to specific disarmament principles, measures and steps at the 2000 Review Conference. Whilst the New Agenda plan worked better than expected, its very success has highlighted the limitations of the review process as enhanced in 1995 and again in 2000. Since 2000, the almost annual PrepComs have degenerated into little more than two-week talk shops, lacking the decision-making powers or authority to deal with an array of proliferation challenges, ranging from North Korea's announced withdrawal from the NPT and the failure of Iran to comply fully with its safeguards obligations fuelling suspicions about its nuclear programme and intentions, to Bush Administration policies regarding accelerating test-site readiness and research into new types of nuclear weapons.

It is hardly surprising, therefore, that some states—and not only members of the Non-Aligned Movement (NAM)—should argue with hindsight that agreeing to indefinite extension in 1995 was a mistake. According to this view, a shorter rolling extension would have ensured greater leverage for full implementation. The truth is more complicated. There were only two actual alternatives to negotiating the package of decisions and resolution adopted in 1995: a divisive vote or a twenty-five-year rolling extension. Canada's zealous collecting of signatures made clear that a vote, as provided for in the rules of procedure, could have been won by advocates of indefinite extension. The majority wanted the decision to be by consensus, nonetheless, fearing that a vote would divide states parties and weaken the non-proliferation regime. For this reason, they leaned on the weapon states to negotiate on a set of Principles and Objectives originally proposed by South Africa. If the NAM had been much better organized and prepared, it is possible that they could have got the Western states to accept consensus agreement around a twenty-five-year rolling extension rather than forcing a division on indefinite extension. But by April 1995 it was clear that the NAM countries were so divided amongst themselves that they offered no credible option to those worried about indefinite extension. Moreover, if the weapon states had been forced to accept something less than indefinite extension, it is unlikely they would have agreed to strengthening the review process as well. Nor can it be assumed that a rolling extension would have provided more leverage for implementation of the treaty. Too short a period between extensions, and the norm embedded in the treaty might be endangered, since the temptation for states to hedge their bets would be high.

Had the NPT been extended for twenty-five year renewable periods on the same terms as before, with only the quinquennial review conferences, it is likely that states parties would have had even less leverage than under the present system, at least for the first twenty years. Judging from the period 1970 to 1995, the pattern might have been a brief period of attention and promises once every five years, followed by four more years of neglect and inaction. At least with the strengthened review process, there has been a public forum four years in every five, to which the major states, including the nuclear powers, have had to pay some policy attention, even if it has amounted to little more than writing speeches and issuing reports or working papers. In view of the political conditions in 1995, it is doubtful whether any of the realistic alternatives to indefinite extension would have delivered better leverage.

Meeting the challenges

Five key issues kept recurring at the 2004 PrepCom as states looked towards 2005: non-compliance; implementation; nuclear disarmament; security assurances; and safeguards and verification. In the Final Document from 2000 and the Chairs' summaries from the 2002, 2003 and 2004 PrepComs there are plenty of ideas, but little authority to make them stick. Unless the Review Conference grasps the necessity to address what Canadian Ambassador Paul Meyer called the 'institutional deficit and vulnerability of the Treaty'¹¹, the NPT will be in danger of becoming irrelevant except as an expression of a collective wish-list.

When the government of North Korea announced its intention to withdraw from the treaty in 2003, NPT states appeared powerless. Though some took the view that a state under investigation for non-compliance cannot legally utilize the withdrawal provision of Article X, others seemed to accept North Korea's decision as a *fait accompli*. Lacking decision-making powers, the PrepComs in both 2003 and 2004 dodged the dilemma, even as the 1994 Framework Agreement authored by the United States was tossed aside. By its statute, the IAEA is denied a role in verification of nuclear disarmament and its rights and authority are limited to the bilateral safeguards agreements made with individual states in conformity with Article III of the NPT. Since the NPT has no implementing organization, the matter went straight to the Security Council, which has failed to act with any meaningful effect.

Similarly, faced with IAEA evidence that it has failed to declare enrichment and other facilities, Iran has manipulated the fact that the IAEA has the powers only to enforce its safeguards agreements, not to enforce the NPT as a whole. Ignoring, for the purposes of this essay, that Iran's challenge to the regime rests largely on the contradiction inherent in both the NPT and the IAEA's statutes, by which they seek simultaneously to promote nuclear energy and prevent proliferation, leaving Iran's non-compliance to be dealt with solely by the IAEA Board of Governors is clearly untenable. The IAEA's role as international atoms-for-peace promoter is at least as important as its safeguards functions. By contrast, the primary purpose of the NPT is to prevent proliferation, and Article IV is subordinate to Articles I, II and III. In this connection, it must be recalled that the legal basis for the IAEA to investigate and eliminate Iraq's nuclear programme during the 1990s derived more from UN Security Council resolution 687, after Iraq's invasion of Kuwait led to Saddam Hussein being defeated by a UN-sanctioned war. Nevertheless, since Iraq remained an NPT party, the IAEA retained rights of inspections even after UNSCOM left in 1998. Revelations about Libya have shown that it violated Article II of the NPT by receiving nuclear-weapons technology, materiel and even a warhead blueprint via A.Q. Khan's procurement network. The case of Libya, where even inspections under the Additional Protocol would have turned up little, again points to the gaping hole in non-proliferation enforcement.

At the 2004 PrepCom, several states suggested ways to strengthen the non-proliferation regime. Germany argued that the Review Conference should determine the rules and procedures to be followed for withdrawal under Article X to be valid. Germany proposed, for example, that a state wishing to withdraw from the treaty would have to give prior notice to all NPT parties setting out its concerns, and engage in consultations to explore ways to address the concerns and avoid its withdrawal. Germany also advocated better communications among NPT parties including procedures for them to convene 'extraordinary conferences ... in cases of serious violations'.¹² Germany also advocated changes to the conditions governing the supply of nuclear technology and materiel, arguing that supplier states could require that in the event of a recipient withdrawing from the NPT, any delivery should either remain under IAEA safeguards or be returned to the supplier, with the possibility of relevant facilities

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being shut down. Most importantly, Germany argued that states parties should determine 'that the right of withdrawal cannot be exercised in cases where the state in question is or is alleged to be (with relevant investigations/procedures underway) in non-compliance with the NPT'. Failing that, 'in accordance with international law, a state withdrawing from the NPT is still accountable for breaches or acts of non-compliance committed while still ... a party to the NPT ... [and] will continue to be subject to decisions of the relevant international institutions such as the IAEA and the UNSC [United Nations Security Council].'¹³

France, which has major vested interests in maintaining nuclear energy trade, made a very similar argument that the Review Conference needed to reaffirm the legal principle that a state remains responsible for violations committed while still party to a treaty, and that it should no longer be permitted to make use of nuclear materials, facilities, equipment or technology acquired before its withdrawal. Calling for 'robust export controls', France listed a set of conditions by which a state's request for nuclear material, technologies or equipment should be assessed by suppliers, and proposed that the transfer of sensitive items should be linked with an intergovernmental agreement. Nuclear cooperation should be suspended if 'the IAEA cannot provide sufficient assurances that [the recipient's] nuclear programme is devoted exclusively to peaceful purposes ...'.¹⁴

Such proposals are gathering interest, but face a central problem that enforcing them would take the IAEA far beyond its established powers or require a level of management and decision-making that the Security Council is not equipped to perform. Going further than France and Germany, Canada built on Ireland's proposal from 2000¹⁵ and proposed that the preparatory process be reconfigured 'into a series of annual general conferences of States Parties to consider the state of implementation of the Treaty and take decisions as required'. The Bureau, which normally consists of the President of the Review Conference and a number of regionally representative vice-chairs, would be made into 'a standing bureau of the treaty to be elected at the Review Conference and to serve until the next quinquennial Review Conference'. While support from a secretariat based at the UN Department for Disarmament Affairs would need to be continued, the NPT Bureau would be empowered to convene 'extraordinary sessions of the General Conference of States Parties' when situations arose that threatened the integrity or viability of the treaty, for example, a notification of intent to withdraw or the violation by a state party of its obligations under the treaty.¹⁶

Even before the Canadian working paper was out of the slips, the British Ambassador, David Broucher, felt compelled in his opening statement to publicly dismiss 'calls from some quarters to introduce new NPT mechanisms, including annual conferences to replace the PrepComs and a standing bureau of the Treaty'. Disagreeing with the view that such measures could strengthen the NPT, Broucher continued, 'Mechanisms to tackle proliferation and non-compliance already exist within the IAEA and the UNSC [United Nations Security Council].'¹⁷

Yet only a few weeks later, at the Conference of the Carnegie Endowment for International Peace, a senior British Foreign Office official joined in his panel's general lament that neither the Security Council nor the IAEA had done a very good job with North Korea. Let's imagine how NPT parties might have been able to deal with North Korea's withdrawal announcement if the changes proposed by Canada had been in place in January 2003. The Bureau would have called an extraordinary session for mid-February. Prior to the session, the Bureau could have commissioned authoritative legal advice making clear that before North Korea could legally withdraw it would have to be certified as being in compliance with the treaty. Adopting this interpretation for Article X (and indeed for international treaties in general) would provide a sound legal basis and more time to deal with any questions of non-compliance.

At the emergency session, held in New York to maximize participation, states parties could discuss and, where appropriate, agree a number of measures that would have greatly enhanced the political pressure on North Korea, while lessening the scope for it to play off against the United States. First,

North Korea would be invited to state its reasons and the 'extraordinary events' perceived to have jeopardized its supreme interests and provoked the decision to withdraw. If discussions to address these concerns didn't work or if North Korea boycotted the conference, as could be likely, other steps would be taken. The six-party talks would no doubt be considered a useful initiative, but with a difference: launched under the auspices of the NPT, the talks would have greater authority and accountability and the NPT parties could appoint a 'special coordinator' to participate in and liaise with the talks and report back to NPT states parties as appropriate. To the extent that North Korea might be deemed to have legitimate security concerns, NPT parties could help to defuse tension ('axis of evil' rhetoric being unhelpful in such circumstances) and the session could reaffirm the right of NPT parties in compliance with the treaty to receive security assurances. The emergency session could discuss a range of incentives and sanctions that individual states parties, especially suppliers and trading partners, could employ, for example including some of what Germany, France and others have proposed. Such measures do not necessarily require consensus agreements: high-level multilateral discussions and declarations of intent among some, if not all, states parties would undoubtedly carry greater political weight than is presently available. To encourage action and accountability, the session could request all states parties to report back to subsequent NPT meetings on the steps they have taken to assist the positive resolution of the non-proliferation crisis.¹⁸

Conclusion

If the NPT appears more vulnerable now, four connected problems need to be addressed: confidence in the regime's ability to meet states' security interests is being eroded; the review process has not been able to deliver more credible pressure for full implementation and accountability under the treaty; the NPT parties continue to be denied effective mechanisms by which they could exert their collective will when faced with non-compliance or violations; and the weapon states continue to treat their disarmament obligations as second-class commitments, to be pursued at their own time and pace and only if completely convenient.

The hypothetical scenario above sketches what could be done with the right institutional tools and authority. Such mechanisms could be adopted by the Review Conference without amending the treaty, and should be viewed as building on the attempts to strengthen the review process made in both 1995 and 2000. Clinging to the letter of these earlier decisions as if they were sacrosanct can only be counter-productive, as their limitations may have already begun to outweigh their benefits. The Thirteen Steps built on the 1995 Principles and Objectives, as the Additional Protocol built on the earlier safeguards agreements, but in both cases the later obligations are both stronger and more specific. A similar process is required to give the international community the necessary powers to deal with non-compliance and encourage full implementation of the treaty. If this does not happen, non-proliferation risks being turned into a privatized, militarized set of policing tasks. While there is much that is useful in both the PSI and Security Council resolution 1540, it would be dangerous to rely solely on such approaches. The importance to non-proliferation goals of the collectively agreed norms and obligations enshrined in the NPT should not be underestimated.

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As for the non-NPT parties, proposals to hold them to the obligations and responsibilities of NPT parties need to be looked at closely. There may be security benefits to such an approach, but formal recognition such as a protocol to the NPT is not necessary and should be avoided.

Finally, it is important to emphasize that giving the NPT parties greater powers in no way undermines the authority of the Security Council, which must continue to be the ultimate authority for judgement

and action to preserve international security. The Security Council must not be drawn into micromanagement of proliferation questions, however, and contrary to British assertions, neither the Security Council nor the IAEA can do the job of overseeing compliance and implementation of the NPT as well as the NPT parties would do if they were given the right tools and mechanisms.

Undoubtedly, some of the weapon states will fear that strengthening the implementation powers beyond the current (toothless) review process could be uncomfortable if they themselves were to violate their obligations. I would indeed argue that an event such as the withdrawal by any of the weapon states of its signature from the CTBT or any resumption of nuclear testing would constitute as grave a threat to the credibility of the non-proliferation regime as North Korea's attempt to withdraw from the treaty. In either case, no state, however hegemonic or isolated, is immune to all pressures from domestic or international opinion and interests, so a high-level conference of NPT parties would inevitably feed into a potential violator's political calculations and could make all the difference.

Notes

1. To the author's knowledge, references to the new proliferation game were first made by Professor William Potter, director of the Center for Nonproliferation Studies at the Monterey Institute for International Studies.
2. A. Cohen and T. Graham Jr., 2004, 'An NPT for Non-Members', *The Bulletin of the Atomic Scientists*, vol. 60, no. 3 (May/June), pp. 40-44.
3. Those in favour argue that they would be more surgical, kill fewer people and cause less damage than the massive city-killers of Cold War doctrines, with less risk of nuclear winter. Reflecting a loss of faith in traditional notions of deterrence, advocates of mini-nukes and their ilk also claim that responsible countries are self-deterred by the appalling devastation that would result if they used their regular nuclear bombs, and that smaller, more flexible nuclear weapons would therefore make a more convincing deterrent. Those against fear that any doctrine of non-strategic usability would be destabilizing and would weaken the powerful taboo that has underpinned deterrence so far, thereby lowering the threshold and making actual use more likely. The trouble with arguments about deterrence is that they are only proved, one way or another, when it is too late.
4. Australia, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Singapore, Spain, the United Kingdom and the United States.
5. Security Council resolution S/RES/1540 of 28 April 2004, at < www.un.org/Docs/sc/unsc_resolutions04.html > .
6. Article VI and eighth to twelfth preambular paragraphs, *Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, para. 15, document NPT/CONE2000/28 (Vol. 1, Part I and II), 25 May 2000, at < disarmament2.un.org/wmd/npt/finaldoc.html > .
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17. David Broucher, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland, *General Statement to the Third Session of the Preparatory Committee for the 2005 NPT Review Conference*, New York, 26 April 2004, at < www.reachingcriticalwill.org/legal/npt/prepcom04/uk26.pdf> .
18. Germany's provision for an extraordinary conference in the event of non-compliance could work in similar ways, although it is not clear from Germany's proposal who would provide the leadership and management for such an extraordinary conference.

