

The Core NPT Challenges Flowing From 1995 and 2000

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The Nuclear Non-Proliferation Treaty (NPT) is not an instrument standing on its own. The NPT forms the centrepiece of a Treaty Regime that encompasses an inter-linking network of obligations, commitments and undertakings that are focused on preventing the proliferation of nuclear weapons, providing for nuclear disarmament and the elimination of nuclear weapons, and allowing for the use of nuclear science for peaceful purposes. Included as some of the other key elements of the Treaty Regime are the IAEA safeguards system; national and international non-proliferation control regimes; other nuclear arms control, non-proliferation and disarmament agreements; nuclear-weapon-free zone treaty agreements; as well as the commitments and undertakings negotiated and agreed upon by consensus at Review Conferences.

The "core" challenges that flow from the 1995 NPT Review and Extension Conference and the 2000 Review Conference are therefore the same "core" challenges that flow from the Treaty itself and from the Treaty Regime as a whole. At their "core," the Treaty Regime and the NPT, its extension and its Reviews are bargains -- bargains that contained a balance of obligations, commitments or undertakings that need to be implemented in all their aspects.

¹ The views expressed in this paper are those of its author and do not necessarily reflect the views, policies or positions of the South African Government.

The challenge in 2005 will be to ensure that the Treaty Regime emerges from the Review Conference as a strengthened instrument essential in circumscribing the threat posed by nuclear weapons and by the proliferation of the capabilities to produce them. A divisive debate at the Review Conference, where some States parties attempt to reinforce the bargains and where other States parties attempt to reinterpret or negate them, will undermine the Treaty Regime. In this context, it should also be underlined that the individual elements of the NPT's bargains cannot be approached singularly, or in a process where one or another of the individual elements are ignored or minimised. Any desire, be it by the non-nuclear-weapon States or the nuclear-weapon States, to address only one aspect of the NPT bargains -- be it nuclear disarmament, nuclear non-proliferation, safeguards, the peaceful uses of nuclear energy or universality -- should be guarded against. The continued vitality and effectiveness of the NPT, as an instrument to achieve the international community's common goals and as a building block for maintaining international peace and security, is dependent on the implementation of the Treaty Regime as a whole.

In meeting the 2005 challenge, the NPT States parties should also avoid sterile debates about the scope or nature of their obligations, commitments and undertakings. Over the last 35 years, by becoming States parties to the NPT, by entering into the relevant IAEA safeguards agreements and by giving consensus agreement to commitments and undertakings in the final documents of Review Conferences, the States parties have created the Treaty Regime. The potential consequences of continually reopening the debate on these obligations, commitments and undertakings are negative. While it may meet an immediate national objective to reinterpret, negate or withdraw from some element of these undertakings, it should be understood that the reciprocal consequence of any such successful attempt lays the logical foundation for other States parties also to reinterpret, negate or withdraw from other parts of the bargains struck.

From the very inception of the negotiations for the NPT, the inextricable link between the "core" responsibilities and obligations that are contained in the Treaty have been underlined. The 1965 Resolution² of the UN General Assembly, which initiated the negotiations for the NPT, identified five main "principles" that were to underpin the future treaty. Central among these "principles" was a call on the then Conference of the Eighteen-Nation Committee on Disarmament (a predecessor to the Conference on Disarmament) to base the negotiations for the NPT on the principle that "(t)he treaty should embody an acceptable balance of mutual obligations of the nuclear and non-nuclear Powers. "

The "principles" that were identified also incorporated two central areas of responsibility and obligation³ that were to be imposed by the treaty's provisions. These were that:

- "The treaty should be void of any loop-holes which permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form; " and that,
- "The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament. "

In 1995 and 2000, the States parties together made significant progress in reaching consensus agreements on obligations, commitments and undertakings that not only improved the effectiveness of the Treaty Regime, but also served further to entrench the central NPT bargains. The challenges therefore flowing from 1995 and 2000 will be to reinforce the NPT bargains and to build on the commitments and undertakings that have already been

² Resolution 2028 (XX), "Non-proliferation of nuclear weapons" (19 November 1965).

³ The other "principles" identified by the General Assembly were that "(t)here should be acceptable and workable provisions to ensure the effectiveness of the treaty" and that "(n)othing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories".

agreed to so as to continue on an irreversible path towards the achievement of the purposes and objectives of the Treaty.

The 1995 decision on the indefinite extension of the NPT was made possible by agreements on the *Strengthening of the Review Process for the Treaty* and a set of *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*. The effect of these inter-linking agreements was to make the decision on the Treaty's extension conditional on undertakings and commitments that addressed the full range of NPT obligations. Despite a vigorous debate in the run-up to 2000 focusing particularly on the balance between the Treaty Regime's nuclear disarmament and nuclear non-proliferation obligations, and on the extent to which these had been met, the 2000 Review Conference was able to reach significant agreements on these two issues. In the run-up to 2005, there has, however, been considerable concern about the effect of changed political dynamics on the Treaty Regime and on the potential consequences for a successful outcome to the forthcoming Review Conference.

While it may be true to say that there have been concerns about the implementation of nuclear non-proliferation Treaty Regime obligations, commitments and undertakings by non-nuclear-weapon States parties, it is also true to say that the Regime's non-proliferation obligations are largely being successfully expanded and implemented. The changed political dynamics since 2000, may require that the Review Conference will need to examine measures that can further entrench the non-proliferation norm. A challenge in 2005 will, however, be to guard against unacceptable inroads into the inalienable right of States parties to verifiably utilise nuclear science for peaceful purposes. There is a growing concern that demands for non-nuclear-weapon States to agree to increasing restrictions on their ability to utilise nuclear science in the name of non-proliferation is not being balanced by a reciprocal approach towards nuclear disarmament. These concerns are exacerbated by the actions and signals from nuclear-weapon States parties

that reinterpret, negate or withdraw from elements of their Treaty Regime obligations, commitments and undertakings. Such actions disturb the balance of the NPT bargains. They disturb the "...balance of mutual obligations of the nuclear and non-nuclear Powers," which was the core principle envisaged for the NPT in 1965.

In 1995, the NPT States parties agreed on four nuclear disarmament measures as an integral part of the *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*. These entailed agreements (a) to fulfil the NPT's nuclear disarmament undertakings "with determination; " (b) to complete the negotiations for the Comprehensive Nuclear Test-Ban Treaty (CTBT) and achieve its entry into force; (c) to negotiate a non-discriminatory, universally applicable and verifiable fissile material treaty; and, (d) for the determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.

In 2000, the NPT States parties agreed to thirteen practical steps for nuclear disarmament that included an unequivocal undertaking by the nuclear-weapon States. These steps included undertakings and commitments related to:

- nuclear-weapon-testing and the early entry into force of the CTBT;
- irreversible measures related to surplus fissile material no longer required for military purposes as well as the negotiation of a non-discriminatory, multilateral and internationally verifiable fissile material treaty;
- the establishment of a subsidiary body to deal with nuclear disarmament in the Conference on Disarmament (CD);
- the principle of irreversibility for nuclear disarmament, arms control and reduction agreements or measures;
- the early entry into force and full implementation of START II, the conclusion of START III and the preservation of the ABM Treaty;

- the completion and implementation of the Trilateral (IAEA, Russian Federation and United States) Initiative;
- nuclear disarmament steps by all five of the nuclear-weapon States, which included further unilateral nuclear disarmament, increased transparency, further reduction of non-strategic nuclear weapons, concrete agreed measures reducing operational status, a diminished role for nuclear weapons in security policies, and the engagement of all five States in a process leading to the total elimination of nuclear weapons; and,
- further development of verification capabilities required for a nuclear-weapon-free world.

An assessment of the progress or the lack of progress by the NPT States parties in meeting the 1995 and 2000 obligations, commitments and undertakings will be a significant challenge confronting the 2005 Review Conference. Objectively it can be judged that there has been limited, if not minimal, progress and that in some areas there is in fact a reversal in the Treaty Regime bargains.

In 2005, contradictory forces will confront the Review Conference. While attempting to deal with the current political realities, it will need to work to restore the 1965 principle of a "...balance of mutual obligations of the nuclear and non-nuclear Powers. " It will be challenged to balance the dissatisfaction at the lack of progress and reversals on the agreed nuclear disarmament measures with non-proliferation concerns that have been exacerbated by the role of non-State actors. It will need to balance calls for the implementation of the nuclear disarmament obligations, commitments and undertakings with calls for additional non-proliferation measures as well as further restrictions on the right to utilise nuclear science for peaceful purposes.

In doing this "balancing act, " the Review Conference will furthermore be required to ensure that any attempts to reinterpret, negate or withdraw from

Treaty Regime obligations, commitments and undertakings, including those made in 1995 and 2000, are not successful. The Conference will need to make the proponents of such positions understand that they may not only be satisfying an immediate national objective, but that they may in the process be laying the foundation for undermining the entire package of bargains that make up the NPT Treaty Regime. Such approaches may also set challenges for 2005 that the Review Conference will not be able to meet.

An approach that may provide the Review Conference with an opportunity to meet the challenges that arise out of 1995 and 2000 would be for the States parties to focus their attention on reaching agreements in the Final Document on the obligations, commitments and undertakings that are believed to be implementable and achievable in the foreseeable future and in the period before 2010. Such measures could, *inter alia*, include agreements on:

- the necessity for all States to spare no efforts to achieve universal adherence to the NPT, and the early entry into force of the CTBT;
- measures to address the proliferation threat posed by non-State actors;
- further reinforcing the IAEA safeguards norm as a means to prevent proliferation;
- the special responsibility of States owning the capability that could be used to develop nuclear weapons to build confidence with the international community that would remove any concerns about nuclear weapons proliferation;
- the requirement that all States must fully comply with commitments made to nuclear disarmament and nuclear non-proliferation and not to act in any way that may be detrimental to nuclear disarmament and non-proliferation or that may lead to a new nuclear arms race;
- the necessity to accelerate the implementation of the practical steps for the systematic and progressive efforts to achieve nuclear disarmament agreed at the 2000 Review Conference;

- the need for the nuclear-weapon States to take further steps to reduce their non-strategic nuclear arsenals, and not to develop new types of nuclear weapons in accordance with their commitment to diminish the role of nuclear weapons in their security policies;
- the completion and implementation of arrangements by all nuclear-weapon States to place fissile material no longer required for military purposes under international verification;
- the need to resume in the Conference on Disarmament negotiations on a non-discriminatory, multilateral and internationally and effectively verifiable fissile material treaty taking into account both nuclear disarmament and nuclear non-proliferation objectives;
- the establishment of an appropriate subsidiary body in the Conference on Disarmament to deal with nuclear disarmament;
- the imperative of the principles of irreversibility and transparency for all nuclear disarmament measures, and the need to develop further adequate and efficient verification capabilities; and,
- the negotiation of legally binding security assurances by the five nuclear-weapon States to the non-nuclear-weapon States parties.

An approach at the 2005 Review Conference which focuses on the implementable and the achievable, which does not attempt to reinterpret, negate or withdraw from existing obligations, commitments and undertakings, and which maintains the balance of the NPT Treaty Regime bargains will allow the 2005 Review Conference to meet the core NPT challenges flowing from 1995 and 2000.