

The Once and Future NPT: In Search of Political Will

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I. Introduction

It is a pleasure and honor to speak before this esteemed body on a topic of great international importance and urgency. Last year, shortly after the conclusion of the 2005 NPT Review Conference, I wrote an article in which I indicated that had I been a theater critic in attendance at the month-long spectacle in New York, I would have described it as "an ill-conceived amalgam of farce and tragedy performed with little direction by an uninspired cast and with an all too predictable ending."

The story of what went wrong in 2005 has been told by many parties, myself included, and I will not repeat the details.² Rather, in the very limited time I have available this afternoon, I would like to call attention to some of the problems that were encountered at the 2005 NPT Review Conference, as well as some of the most pressing proliferation challenges that received inadequate attention. Unless they are addressed immediately and creatively, almost certainly they will intensify during the next NPT review cycle with potentially disastrous effects.

II. The Nature of the Challenge

An increasing number of observers recognize that the international nonproliferation regime is under siege on many fronts and from a variety of new and continuing threats. According to some analysts, the regime today is like a safety-glass window, battered but still clinging to its frame and needing but one final blow to fall into a thousand tiny shards.³ Others prefer to characterize the predicament in terms of potential nuclear proliferation chains in which different trigger events such as a North Korean nuclear test, Iranian defection from the NPT, or a demonstrated nuclear capability by a non-state actor such as al Qaeda could set in motion chain reactions or cascades of proliferation that would gravely weaken if not undermine altogether the NPT and its associated institutions. Regardless of one's preferred metaphor, it is apparent that there are literally dozens of serious near-term challenges to the NPT, some of which emanate from within the regime and others that represent external threats. Many, but not all of them, can be subsumed under the following headings:

A. Internal Challenges:

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² See, for example, William C. Potter, "The NPT Review Conference: 188 States in Search of Consensus," *The International Spectator* (2/2005), pp. 19-31 and John Simpson and Jenny Nielsen, "The 2005 NPT Review Conference: Mission Impossible?" *The Nonproliferation Review*, (July 2005), pp. 271-302.

³ See Michael Friend, "After Non-Detection, What? What Iraq's Unfound WMD Mean for the Future of Non-Proliferation," in Graham F. Walker, ed., *The Search for WMD: Non-Proliferation, Intelligence and Pre-Emption in the New Security Environment* (Halifax, Canada: The Centre for Foreign Policy Studies, Dalhousie University, 2006), p. 12.

- Complacency on the part of the public-at-large, their elected officials, and many states parties to the NPT, as well as a lack of political will on the part of national leaders
- Inadequate adherence to and implementation of NPT provisions (especially Articles IV and VI), compounded by the absence of an effective enforcement mechanism
- Treaty inattentiveness to non-state actors
- Exploitation of Article IV (peaceful uses of nuclear energy) by some states to advance a weapons program
- Failure to address the demand of many states for negative security assurances
- Near impossibility of amending the treaty to correct flaws
- The weakness of the strengthened review process, including the difficulty generated by consensus decision-making
- Lack of universality
- Erosion of norms regarding the acquisition and use of nuclear weapons
- Subordination by states parties of global nonproliferation objectives to other domestic and regional economic and political considerations
- The disavowal of and/or disregard for key elements of the historic 1995 NPT Review and Extension Conference package of decisions and the Final Document of the 2000 NPT Review Conference by both nuclear weapon states (NWS) and non-nuclear weapon states (NNWS).
- Re-evaluation by a number of NPT states parties of the value of the NPT for their security, and the consequent potential for NPT defections
- Acquiescence by most members of the international community to clear-cut violations of their NPT commitments by states parties
- Continued reliance on nuclear weapons in the national security policies of all NWS

B. External Challenges:

- Dangers posed by non-state actors as nuclear suppliers, middlemen, and end-users
- Inadequacy of fissile material protection, control, and accounting in many states, and corresponding deficiencies in nonproliferation export controls

- A nuclear/missile arms race in South Asia and the general disinclination by the international community to do anything to redress the situation
- North Korean and Iranian nuclear brinkmanship
- Dim prospects for future legally-binding and verifiable arms control accords and challenges to the integrity of existing arms control regimes
- Perceived rewards to non-NPT states parties (e.g, the U.S.-India nuclear deal)

Many of the aforementioned "Internal Challenges" contributed to the barren outcome of the 2005 NPT Review Conference. Deserving of special mention was complacency and ignorance on the part of many delegations, which possessed little institutional memory or first-hand recollection of the significance of crucial bargains that had been struck at prior conferences, crises that had been narrowly averted, and lessons--both positive and negative--that should have been learned. Indeed, by far the most experienced delegates at the 2005 Review Conference were those from the NGO community. In contrast, there was not a single member of the huge U.S. delegation who had been to a prior Review Conference, and the situation was not much better on many other delegations. As a consequence, few national representatives took seriously the warning of some NGO experts that procedural issues, such as the adoption of an agenda or the designation of subsidiary bodies, could delay the work of the Conference beyond the first week.

Although the disappointing outcome of the Review Conference was predictable, the process by which the Conference sputtered and then collapsed generally was not anticipated. Among the principal surprises were the extent of divisions within a number of the major political groupings and the vigor with which one state party--Egypt--sought to block almost every attempt at forging consensus on both procedural and substantive issues. Thus, although the classic divide between the NWS (and especially the United States) and the NNWS was in evidence in 2005, more striking were the fissures within the Non-Aligned Movement (NAM), the New Agenda Coalition (NAC), and the P-5.

In contrast to NAM, NAC, and the P-5, the EU generally presented a solid front at the Review Conference with a well-defined set of positions, especially on the subject of Article X (withdrawal). The positive impact of the common EU position on Conference developments was diminished, however, by the reluctance of most EU states to reiterate that position in separate national interventions. The influence of the EU--and all other political groupings--was also reduced by the absence of a clear conception of what the Conference could and should achieve and a coherent strategy for realizing that objective. Unfortunately, it was not obvious that any key player--including the President--had such a vision and strategy, with the exception of several states for which an immobilized and failed Review Conference appears to have been the desired outcome.

Given the pronounced divisions within and among political groupings at the 2005 NPT Review Conference, it is doubtful that even a full four weeks of time for substantive debate would have yielded consensus on practical means to address any of the previously noted challenges. Nevertheless, the procedural brinkmanship pursued by a few states deprived all states of time for sustained debate on even those important issues for which

considerable common ground may have existed. I will use my remaining time to discuss one such issue-- preventing non-state actors from gaining access to nuclear weapons.

III. Non-State Actors and Nuclear Weapons

When the NPT was concluded in 1968, the drafters did not contemplate the danger of nuclear terrorism, and the treaty provides no guidance on this subject. As a consequence, NPT states parties have been slow to rely upon the treaty to address the growing risks posed by non-state actors both as nuclear suppliers and middlemen (exemplified by the A Q Khan network) and by terrorists who seek to obtain and use nuclear weapons. Although a very positive step was taken in April 2004 when the UN Security Council adopted Resolution 1540 requiring all member states to establish effective domestic controls to prevent non-state actors from acquiring weapons of mass destruction and means for their delivery, states vary greatly in the importance they attach to the mandate and the resources available to ensure its implementation.

Two forms of high consequence nuclear terrorism merit particular attention: the theft or purchase of fissile material (especially highly-enriched uranium) leading to the fabrication and detonation of a crude nuclear weapon; and the theft or seizure and detonation of an operational nuclear weapon, most likely of a tactical, non-strategic variety. The over-arching principle that should guide international efforts in combating both of these nuclear terrorist threats is the following: secure, consolidate, reduce, and move toward elimination.

In the case of fissile material, a very useful approach was introduced in the form of a working paper by Norway on behalf of itself and three other European states at the 2005 NPT Review Conference.⁴ The main elements of the initiative were to:

1. Support minimizing the use of and commerce in HEU for civilian purposes and the goal of eliminating HEU in the civilian nuclear sector as soon as technically feasible; and
2. Encourage all countries to eliminate or commit to converting those civilian HEU-fueled installations under their control, for which there is a need, to low-enriched uranium (LEU) fuels.

Although there was significant support for the Norwegian initiative at the 2005 Review Conference, no action was taken on the proposal due to the failure of the Review Conference to reach agreement on any substantive matters. It therefore is important for the initiative to be reintroduced during the new cycle of the NPT review process, but with a broader and more diverse set of sponsors, hopefully including the EU.

The issue of tactical nuclear weapons (TNW)--the likely nuclear weapon of choice for terrorists--was the subject of considerable discussion at the 2000 NPT Review

⁴ Footnote: See "Combating the Risk of Terrorism by Reducing the Civilian Use of Highly Enriched Uranium," Working Paper submitted by Iceland, Lithuania, Norway, and Sweden, 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, May 20, 2005 (NPT/CONF.2005/MC III/WP.5).

Conference, and consensus was even reached on weak language regarding further voluntary reductions. Broad support for stronger measures to control TNW was apparent at the 2002 NPT Prep Com with Germany and the New Agenda Coalition taking leadership roles. Since then, however, very little has been done due to the diminished influence of NAC and the chilling effect of Russian and U.S. opposition to any further action regarding limitations on TNW. It is high time for the EU to assert itself on the matter as the small number of TNW in Europe perform no meaningful military purpose, but the large number of TNW in Russia pose a significant risk from the standpoint of nuclear terrorism.

IV. CONCLUSION

The ultimate, potential negative consequence of a weakened or defunct NPT is that it makes a nuclear catastrophe more likely, be it by accident, terrorist design, or state aggression. In his opening to the Review Conference on May 2, 2005, UN Secretary General Kofi Annan sought to jolt delegates to action by raising precisely this specter. How he asked, would the leaders of every nation represented at the Conference respond to the question: "How did it come to this? Is my conscience clear? Could I have done more to reduce the risk by strengthening the regime designed to do so?" These were unusually forceful words from the most senior UN official, but they fell on deaf ears.

I worry that notwithstanding compelling evidence to the contrary, many states parties, including those represented in the EU, continue to pretend that there is no crisis confronting the NPT. Of equal concern is the premature conclusion that the NPT is no longer relevant and can be disregarded without negative effects. To some extent, that attitude appears to inform those who embrace the U.S.-India nuclear deal, an initiative potentially as harmful to the well-being of the NPT regime as the nuclear brinkmanship of North Korea and Iran.

Although the curtain has not yet fallen on the NPT despite the dismal performance of its cast at the last Review Conference, its future viability is by no means assured. If states parties continue to pursue the course of least resistance and conduct business as usual they will do so at the cost of making the NPT review process and the treaty itself irrelevant. Finding common ground to meet today's proliferation perils will require nonproliferation leadership, political will, and creativity--commodities currently in short supply in most capitals. There is an opportunity for the EU to take the initiative in providing this vital leadership, and it is my hope that this public hearing will encourage it to do so.