

BRITISH AMERICAN SECURITY INFORMATION COUNCIL (BASIC)
OXFORD RESEARCH GROUP (ORG)
“Towards A Breakthrough at the 2005 NPT Review Conference”

Report from an off-the-record consultation hosted jointly with UNIDIR
Palais des Nations, Geneva, 13 April 2005

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Introduction

This report is a brief summary of the main points and conclusions of an off-the-record consultation for delegates to the NPT Review Conference held in Geneva on 13 April 2005. It reflects the rapporteurs' personal interpretations of the proceedings – as such they do not constitute any institutional policy of BASIC, ORG or UNIDIR nor do they necessarily represent the views of the rapporteurs.

The consultation was well supported by States Parties delegations, both in terms of numbers and in willingness to engage in debate. The following four themes were the focus of the debate:

- The Nuclear Fuel Cycle
- Strengthening Verification and Compliance
- Fulfilling the Disarmament Obligations
- Achieving a Successful Outcome in 2005

UNIDIR co-hosted the consultation at the Palais de Nations and we are indebted for their invaluable assistance and support.

This consultation was organised as part of a BASIC-ORG project to promote concrete, achievable recommendations to strengthen the non-proliferation, compliance and disarmament functions of the NPT (see <http://www.basicint.org/npt/>). An overview document, *Breakthrough or Bust in '05*, published in January 2005 set out the main thrust of the project and 16 topic-specific briefings were published during the following three months and are being circulated to government delegations. A final document from the project, promoting our own final recommendations (which are informed by the discussions in Geneva), will also be circulated to government delegations in New York.

The Nuclear Fuel Cycle

See *BASIC-ORG Briefings: 7 (FMCT); 12 (IAEA Safeguards); and 16 (Nuclear Fuel Cycle)*

In *Breakthrough or Bust in '05?* we alluded to the sensitive balance between Article VI **obligations** and Article IV **rights** and said, with regard to the Nuclear Fuel Cycle:

¹ The rapporteur wishes to acknowledge the contributions of Nick Ritchie, Carol Naughton, Ian Davis and John Sloboda on whose notes and concluding comments respectively this report draws.

...the emphasis by the Non-Nuclear Weapon States on their 'inalienable' right to develop nuclear technology needs to be balanced by recognition of the further restrictions and controls necessary to prevent latent proliferation.

Noting that this issue had been the subject of much comment in the last two years and that diversion from civil programmes to military programmes had occurred in the past, and could be repeated relatively easy elsewhere, we restated our belief that enhanced multilateral efforts are needed to curb nuclear proliferation.

However, we added that it is not clear that nuclear power generation is advisable, sustainable or can be made proliferation resistant. Furthermore, any debate about extending access to nuclear power generation should include consideration of spent fuel and nuclear waste management, fissile material security and the controversial Mixed Oxide (MOX) proposal. Greater support for alternative energy sources should also be a consideration.

During the ensuing debate a number of key ideas were raised:

1. The concept of balance:

- Potential agreement on stricter controls over access to nuclear power generation must be accompanied by progress on nuclear disarmament to achieve a balanced outcome
- Discussions about the fuel cycle must be within the context of the NPT, not with direct reference to specific countries, and based on general and accepted principles
- Care should be taken with any suggestion of 're-interpreting' Article VI and its possible implications for upsetting the balance of the Treaty, which must continue to reflect the global perspective of all three pillars

2. The scope for voluntary arrangements:

- Real incentives should be provided to increase voluntary involvement in further restrictive conditions
- Exporting countries also have a sovereign right to decide who to supply and this may restrict the inalienable right of receiving countries

3. The problem of 'guaranteed access':

- Access to the fuel supply market is different from guaranteed supply as export controls and changing national criteria can result in denied access to supply
- There may be several ways of dealing with this issue such as case-by-case criteria, regional approaches and demonstration of peaceful intent for guaranteed access to fuel supply

4. A need for greater fissile material control:

- The FMCT would be a significant disarmament measure as well as a non-proliferation measure to control and reduce fissile material, but verification is clearly desirable
- Increased transparency and extra measures, such as the ratification of the IAEA Additional Protocol as a condition of supply, are increasingly necessary

Clearly, the world is no longer in an idealised 'Atoms for Peace' era and the agreements entered into in the 1970s should be updated (but not re-interpreted), to

reflect this reality in a non-discriminatory manner. Once it is accepted that there are problems that need addressing, NPT States Parties should be able to objectively consider the multilateral proposals on the table and move forward collaboratively.

Strengthening Verification and Compliance

See *BASIC-ORG Briefings: 1 (Strengthening the NPT Regime); 3 (Security Assurances); 6 (DPRK); 9 (Illegality); 11 (Universality); 12 (IAEA Safeguards); 13 (Compliance); and 15 (Iran)*

In the recent past terrorist threats, illicit trade, compliance evasion and withdrawal from the NPT have posed serious threats to the integrity of the Treaty. Compliance is not limited to non-proliferation but also applies to nuclear disarmament obligations. Yet the NPT has no secretariat, no annual decision-making body and no executive. This 'institutional deficit' constrains effectiveness. UNSC Resolution 1540 does have a reporting requirement, something that could be adopted as a confidence-building measure by NPT States Parties. Effective verification measures provide the tools through which compliance is monitored in other treaties and should be applicable to the NPT.

UNSC Resolution 1540 and the Proliferation Security Initiative, if implemented correctly and made universal, could be seen as a logical expansion of the non-proliferation and disarmament regime. Accurate and timely intelligence is a critical element in detecting illicit activity and potential threats. Additionally, how to avoid and respond to declarations of NPT withdrawal is a key problem that needs to be addressed. Discussion on international inspection and verification is also essential, as non-compliance must be seen to attract punitive action.

During the ensuing debate, the following issues were aired:

1. Proposals for improving institutional effectiveness:

- The 'institutional deficit' of the Treaty requires remedial action and cannot be deferred indefinitely. 'Permanence with accountability' is required
- Annual meetings could replace the PrepComs and be charged with decision-making. Extraordinary meetings could be called to address possible violations
- Further discussion on the need for new mechanisms is required, in particular would new mechanisms be any more effective and how much might new institutional arrangements cost?

2. Compliance and accountability:

- Accountability could be enhanced by systematic and mandatory annual reporting of activity
- There remains real difficulty in assessing compliance and who should decide. State Parties need to give further thought to devising a non-discriminatory mechanism or procedure for dealing with this compliance deficit
- The role of the NNWS is not passive as active vigilance on compliance is needed to ensure non-proliferation, peaceful use and progress on nuclear disarmament
- Care needs to be taken to ensure that enhanced compliance measures do not conflict with the rule of international law

- Compliance should not be seen as *a la carte* but as referring to both Treaty obligations **and** Review Conference commitments
- The preference among some States Parties for the 2005 Review Conference to downplay or re-interpret Article VI commitments while simultaneously seeking to strengthen discipline in non-proliferation compliance is a recipe for failure

3. Non-compliance:

- A corrosive message has been sent out to the international community by two years of inactivity in response to the DPRK's violations
- It is time to develop a set of intermediate mechanisms to deal with non-compliance before resort to the UNSC. For example, it would strengthen the NPT regime if there were a clear and universally understood regime of incentives for moving towards full compliance and progressive disincentives for moves towards non-compliance and withdrawal
- Objective criteria are needed for assessing non-compliance
- Existing verification tools must be brought to bear via the IAEA Additional Protocol

If States Parties find the status quo satisfactory, then they will perceive no need for change. However, many States Parties conclude that the Treaty has received substantial shocks and see a clear need for new approaches. Many see the need for interim mechanisms, or benchmarks for compliance monitoring, between what can be realistically dealt with by the IAEA before referral to the UNSC. A standing bureau could offer consistent, appropriate and timely responses to events. Past Review Conferences have endorsed other external mechanisms such as the Nuclear Suppliers Group. The same could be possible for the Proliferation Security Initiative (PSI).

Fulfilling Disarmament Obligations

See BASIC-ORG Briefings: 1 (Strengthening the NPT Regime); 2 (NWFZ); 4 (CTBT); 5 (Mutual Defence Agreement); 8 (NATO Nuclear Sharing); 9 (Illegality); 10 (Nuclear Disarmament by the NWS); 11 (Universality); and 14 (Qualitative Developments in Nuclear Weapons)

The 2000 Review Conference Final Document was an important political declaration and remains the benchmark for progress in meeting disarmament and non-proliferation commitments and expectations. Re-affirmation of the disarmament commitments from 2000 is significant. Establishing criteria for monitoring compliance under Article VI would be valuable, as would agreements on the next multilateral and bilateral steps on nuclear disarmament.

The Moscow Treaty is a helpful confidence-building measure, not a disarmament measure. But the process needs to advance from de-alerting to elimination and delegitimise the embedded concept of a non-deployed nuclear 'hedge' arsenal. Washington and Moscow have both indicated a willingness to discuss their tactical or sub-strategic warhead holdings. A declaration of a moratorium on the research into and development of new nuclear weapons deployment would be a welcome step given earlier disarmament agreements. The re-affirmation of the testing moratorium is a minimum requirement followed by the entry-into-force of the CTBT. The establishment of a NWFZ in the Middle East also requires further discussion at the

Review Conference with the development of interim recommendations to work towards a NWFZ.

During the ensuing debate, the following issues were aired:

1. Disarmament commitments:

- Re-affirmation of commitments is important for implementation of agreements
- Implementation of Article VI obligations is seen by many States Parties as critical since they have been delayed for too long

2. NWS transparency:

- Transparency is needed on NWS warhead numbers, delivery vehicles and fissile material stocks
- There was sense of a growing consensus on the need for greater transparency and accountability that was welcomed

3. Disagreement on NATO's tactical nuclear weapons:

- It was argued that nuclear weapons based in Europe belong to the United States, not to NATO
- Others argued that European NNWS obligations under the NPT clash with NATO agreements

4. The relevance of nuclear deterrence:

- It was argued that nuclear weapons do not function as an effective deterrent against the prevalent 'low-tech' terrorist activity on and since 9/11, and therefore are irrelevant to the current primary threats to national and international security

This session concluded with several statements of optimism and raised hopes going into the Review Conference. Many felt that the discussion had been informative and educational and that essential developments for making progress had been placed on the table.

However, on a cautionary note, problems are likely to arise over **what constitutes Article VI compliance**. Is a willingness to engage in 'good faith' negotiations sufficient? Can the claims that nuclear weapons are maintained at 'the lowest levels for national security' or 'strict sufficiency' or as a 'minimum deterrent' be sustained? These parameters are framed by the NWS in terms of self-restraint for the good of all and in a step-by-step approach to disarmament. However, their security is still founded on the continued possession of nuclear weapons for national security. Clearly, this understanding is not considered acceptable to the majority of NNWS.

Achieving a successful outcome

NPT States Parties were asked in this session how the Review Conference could be used to encourage a recommitment to existing legal obligations and political agreements in order to achieve a comprehensive and balanced programme of action on both non-proliferation and disarmament.

'Success' has been generally associated with the idea of 'strengthening' the NPT, primarily through stricter 'compliance' with commitments and obligations, but these

are all relative terms that require some consensus on definition. If a relatively equal balance between the three pillars of the NPT is required, then what are the key issues where progress is both needed and possible? Is it necessary to produce a Final Document for the Review Conference to be declared a success?

During the ensuing debate, the following issues were aired:

1. Emphasis on the '13-steps':

- Re-affirming existing commitments is a crucial confidence-building measure
- Agreements reached in 2005 must build on, not replace those reached in 1995 and 2000
- Alternatively, history has moved on since 2000 and too much emphasis on the 13 steps could be constraining
- Political will is needed to make progress and set further objectives

2. On the issue of 'balance':

- A balanced approach is necessary but trade-offs between the pillars is likely to be damaging to the integrity of the Treaty as whole, even if the difficulties of negotiating either small clusters of thematic bargains or a grander 'new bargain' could be overcome
- 'Balance' and 'success' are general and vague concepts that may contribute to suggestions of failure if target policy outcomes are not realised
- Alternatively, a balanced outcome is important as it respects the essential bargain at the heart of the Treaty
- Differing threat perceptions lead to differing interpretations of what is required at the Review Conference

3. On 'success':

- Success can be marked by a reasonable, consensual evaluation of what has happened in the last five years and where to get to in the next five years
- Success will reaffirm the primacy of the NPT as the international non-proliferation framework: the integrity of the Treaty is the key common concern
- The objective of the Review Conference should be to achieve a Final Document but it is not crucial for the outcome to be declared a success
- Success can be achieved if the authority and effectiveness of the NPT has been enhanced
- Reaffirmation and implementation are the keys to a successful outcome.
- Negotiations should avoid confrontation at the Review Conference but recognise differences

This was a complex and philosophical debate, which went some way towards laying the groundwork for shared understanding on concepts and interpretation in preparation for the negotiations in New York. It was suggested that the French word 'equilibre' is a much better way of exploring what is meant by 'balance'. The NPT is in a process of dynamic equilibrium and the negotiations need to find the balance point within it. To achieve 'equilibre' at the Review Conference, delegations must accept the principle of compliance **by** all States Parties, **for** all States Parties.

Civil society and the NPT

ORG Director John Sloboda's concluding remarks are incorporated here to indicate the growing importance of civil society engagement with governments in helping to shape the direction and pace of non-proliferation and nuclear disarmament. This particular dialogue process with, and between, civil servants and civil society is a case in point. The responses from delegations to our work have generally been upbeat, and it is our hope that this work has assisted dialogues which could add to the possibility of positive outcomes at the Review Conference by the end of May 2005.

Closing remarks by John Sloboda, Director, Oxford Research Group

The aim of the seminar in Geneva was to add value to the NPT review process. If it has achieved this, then it did so as a result of a co-operative will between governments and NGOs. This will to co-operate is, perhaps, stronger than it has ever been. Ten years ago, typical government-NGO relations were characterised by mutual suspicion. Many governments attempted to manage NGOs by keeping them at bay. NGOs responded by protest and confrontation. Today we see many more examples of co-operation and mutual respect. This benefits both government and NGOs.

Government benefits because:

- NGOs bring expertise and fresh ideas;
- NGOs are a conduit between government and civil society; and
- NGOs provide channels for public awareness and education, filling gaps left by the mainstream media.

NGOs benefit because:

- Positive engagement encourages NGOs to develop mature and constructive activity; and
- Openness by governments allows NGOs to catalyse a nuanced government-civil society dialogue (rather than a polarised mud-slinging exchange, which benefits no one).

NGOs and civil society will be with government delegations in New York – in unprecedented numbers and with unprecedented levels of organisation. They will be watching them, debating with them, projecting their words and actions to a worldwide constituency. They do this, not because they mistrust the delegations, or want to thwart them, but because they recognise the profound importance of their work, and the momentous consequences of the decision they take, and the agreements they reach, or fail to reach. Like the vast majority of the delegations, NGOs and civil society want the conference to succeed.

What is success? This was well expressed by one of the seminar's participating state representatives as: "an outcome which reconfirms the validity of the NPT in all its aspects as a central political element for international stability with a view to its universalisation".