

# DISARMAMENT

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## **Strengthening the NPT and the Nuclear Non-Proliferation Regime**

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## Towards a Genuine Nuclear Non-Proliferation Regime

Miguel Marín-Bosch

Until 1945 the world was a nuclear-weapon-free zone. Since then it has been flooded with tens of thousands of nuclear weapons—on land, on sea and in the air. For almost fifty years the international community has been grappling with the problem of the existence of nuclear weapons, their possible use by some and acquisition by others. However, it has yet to agree on a clearly defined path with regard to these weapons of mass destruction .

To some, the cold war provided the needed rationale, if one dare speak of “rationale” in this context, for a nuclear-arms build-up. Bigger and better weapons were developed and more accurate missiles were deployed. Then smaller and better warheads were built. During the late 1940s and 1950s, diverse theories were advanced regarding the nature of these weapons and their possible use in war. As the so-called “nuclear club” grew, so did the fears of a further and further proliferation of such weapons. Individuals were accused of passing the secret of the bomb to others and nations were classified as to their real or perceived intentions “to go nuclear”. By the late 1950s many countries were searching for a way to stop the spread of nuclear weapons. But, if one could perhaps prevent the physical acquisition of weapons, it was to

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prove impossible to halt the acquisition of the knowledge and know-how necessary to build them.

To others, the mere existence of nuclear weapons posed an unparalleled threat to the survival of mankind. Nuclear weapons were intrinsically evil and should therefore be banned. The enormous mushroom clouds of the atmospheric tests came to symbolize that evil. Doomsday scenarios were described in print, on film and in music, and the so-called “atomic alert” mentality invaded the classrooms of the principal nuclear-weapon States.

Over time the advocates of nuclear weapons—the defenders of the legitimacy of their role in international relations—began to lose ground. During the 1980s, at the height of cold war rhetoric, doubts were expressed with regard, not to the legitimacy, but to the *utility*, of nuclear weapons. As early as 1976, presidential candidate Jimmy Carter had referred to the “elimination” of nuclear weapons as a tangible goal. But that position was couched in rather moralistic terms, not unlike those used in United Nations General Assembly resolutions sponsored by those seeking to ban nuclear weapons altogether.

### **The debate regarding weapons of mass destruction**

The approach that began to emerge in the early 1980s was different in that it was based on a utilitarian premise: did one really need nuclear weapons? That approach has evolved even further in the late 1980s and early 1990s and some milestones are obvious: the discussions between Presidents Reagan and Gorbachev at the 1986 Reykjavik Summit; the collapse of the USSR and the end of the cold war; and the experience of the war in the Persian Gulf.

It was, in fact, in the sands of the Middle East that United States military leaders learned something which only

some theoreticians had proposed earlier: a military force equipped with high-technology conventional weapons could defeat a large army that might even have chemical and other weapons of mass destruction. The lesson was clear and its effects were immediate: the United States decided to intensify the negotiations on a convention for the elimination of chemical weapons (CW). The idea here, as it had been in 1971 with regard to bacteriological (biological) weapons (BW), was rather simple: the United States was ready to give up unilaterally its CW stocks because it did not have any use for them; and the corollary was obvious—no one else should have them. The advantages of a BW-free and later a CW-free world outweighed the advantage of any possible military use of those weapons. Today we seem to be approaching a similar but perhaps not yet identical situation with regard to nuclear weapons. Does it make sense to maintain the enormous nuclear stockpiles of the 1980s? The answer is no, according to the 1991 and 1993 Strategic Arms Reduction Treaties (START I and START II).

The cold war logic, if indeed there was a logic to the cold war, has lost its underpinnings. Now, in Europe and elsewhere, there is a struggle between those leaders who continue to seek some sort of justification for maintaining nuclear weapons and those who feel that the usefulness of nuclear weapons has disappeared and that, therefore, they should be banned through a multilateral agreement that will ensure an end to their production. The lines are beginning to be drawn and the debate will undoubtedly intensify as we draw closer to the 1995 review and extension Conference of the Treaty on the Non-Proliferation of Nuclear Weapons. What we are witnessing now is a rebirth of the international debate of the 1960s, a debate that was truncated with the signing of the NPT in 1968.

The idea of creating nuclear-weapon-free areas was seen as the first step towards achieving a nuclear-free world.

Like individual families that declared their homes or neighbourhoods nuclear-weapon-free zones, individual States first addressed this question in the 1950s when the *geographic* spread of nuclear weapons began. Some countries accepted the physical presence of nuclear weapons on their territory; others did not and declared themselves nuclear-free. The Antarctic Treaty of 1959 was aimed at ensuring that region's *demilitarization*, including its nuclear-free status. The 1967 Treaty of Tlatelolco sought the military denuclearization of Latin America and the Caribbean. In it the States of the area proclaimed their region a nuclear-weapon-free zone and then negotiated the terms of cooperation that they required from the nuclear-weapon States, including negative security assurances. The underlying philosophy of the Treaty of Tlatelolco and other, subsequent, regional treaties was one of avoiding a nuclear competition in the area while seeking protection from possible attacks from beyond. It thus recognized that the nuclear arms build-up elsewhere in the world would probably continue.

Whereas the Treaty of Tlatelolco is a step towards a nuclear-free world, the aim of the NPT was defined in different terms. It stressed the urgency of freezing at five the number of nuclear-weapon States by securing a commitment from other States that they would not "go nuclear". In return, non-nuclear-weapon States obtained a promise from the nuclear-weapon States that they would begin to reduce their nuclear stockpiles and stop nuclear testing. Almost a quarter of a century later and despite the levels set by START I and START II, those nuclear stockpiles are still larger than they were in 1970 and testing has continued, although here, too, there are now encouraging signs.

Its critics notwithstanding, the NPT has achieved, by and large, its main goal. By adhering to a multilateral legal instrument such as the NPT, a number of countries put an end to internal debates on whether to go nuclear or not. Some

countries, such as Canada, renounced nuclear weapons in the late 1940s, long before the NPT. For others, however, the negotiations that led to the NPT in 1968 were the catalyst that finally resolved their domestic debates. This was the case in Sweden, for example. These and other nations were torn between two sets of conflicting considerations. On the one hand, if nuclear weapons were instrumental in keeping the peace between East and West, why would they not have similar effects in other regions? On the other hand, the more countries with nuclear weapons, the greater the danger. Or, to put it in shorthand, the argument was between “what is good for the goose is good for the gander” and “the fewer the better”. And the NPT embodied the triumph of the latter position.

### **The NPT nuclear caste system**

The NPT codified the division of the world’s nations into two groups: the five nuclear-weapon States (China, France, USSR, United Kingdom and United States) and the rest. In article IX, paragraph 3, the NPT identified those five States as follows: “For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967”. The NPT is the only international instrument that defines the membership of the so-called “nuclear club”. It is therefore the legal foundation of the present asymmetrical nuclear regime. That asymmetry has been recognized and accepted by the more than 150 non-nuclear-weapon States parties. In other words, the world’s nuclear caste society has been sanctioned by practically all countries. And yet the tension continues between the nuclear haves and have-nots.

The NPT is considered to be the corner-stone of the present non-proliferation regime. In recent years it has been joined by China and France, as well as dozens of other

countries, including South Africa. In 1995, twenty-five years after its entry into force, the parties will decide, by a simple majority, whether “the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods” (article X, paragraph 2). This provision—unique in multilateral arms regulation treaties—was included for a very simple and healthy reason: the non-nuclear-weapon States, led by the Federal Republic of Germany, Italy, Japan and Switzerland, wanted a safety valve in order to review the implementation of the Treaty’s provisions before undertaking a permanent commitment not to exercise their own nuclear option. They wanted to review in particular the provisions regarding nuclear disarmament and especially a comprehensive nuclear test ban. These are the provisions that have been at the centre of the five-year reviews held in 1975, 1980, 1985 and 1990. In 1995 the parties will combine the fifth quinquennial review with the extension Conference.

Quite obviously, the reasons that led to the inclusion of the Treaty’s review and limited duration are still valid. Unfortunately, considerations of a different nature have led a group of Western countries to attempt to shift the focus of the debate to other, secondary questions. These include the tightening of safeguards and the strengthening of unilaterally proclaimed guidelines for the export of sensitive technologies. Interestingly enough, the proponents of this shift are the very same countries that oppose the participation of non-governmental organizations in the preparatory process of the 1995 NPT Conference and yet insisted on broad NGO participation in the Vienna World Human Rights Conference in 1993 and the United Nations Conference on Environment and Development in 1992. Why so much transparency in those areas and so little in nuclear disarmament?

## **“Weapons control”**

With the end of the cold war, covert activities and secrecy have given way to increasing openness. One result of this trend has been the publication of a string of horror stories of nuclear mismanagement in the former Soviet Union. Another is the call, made initially by Japan and the European Community, for greater transparency in conventional arms transfers which resulted in the establishment in 1992 of the United Nations Register of Conventional Arms. All of this is encouraging to those who believe that the road towards a less armed world begins with an inventory of existing stockpiles and information on arms transfers. But, for now, the emphasis has been on *conventional* weapons, especially in situations where, according to General Assembly resolution 46/36L, “excessive and destabilizing arms build-ups pose a threat to national, regional and international peace and security”.

In order to gain widespread acceptance of the United Nations Register of Conventional Arms, the developed countries agreed to its eventual expansion, and the Conference on Disarmament was requested “to address the problems of, and the elaboration of practical means to increase, openness and transparency related to the transfer of high technology with military applications and to weapons of mass destruction, in accordance with existing legal instruments”. For the time being, therefore, the Register is limited to conventional weapons while weapons of mass destruction should be dealt with within the existing legal instruments. But these matters must certainly be addressed as well by the entire international community.

Nuclear and chemical disarmament will neither be easy nor cheap. What is one going to do with the tens of thousands of tons of chemical warfare agents when we do not yet know what to do with our civilian toxic waste? What will be done with the 200 tons of plutonium and the 1,000 tons of

highly enriched uranium? And what will the thousands of unemployed scientists do?

The transition from a militarily bipolar and confrontational world to one of greater cooperation and understanding will not be very smooth. This is borne out by the war in the Persian Gulf, the rise of nationalism and ethnic conflicts in Europe and the persistent penury, famine, and political instability in some developing countries. And some of the current trends in disarmament will certainly not make that transition any easier. A handful of countries cannot proclaim themselves the custodians of an “international security” that they themselves have defined according to their own particular interests.

The non-proliferation of weapons of mass destruction and of their ballistic missiles is a subject that has acquired increasing importance in the light of the war in the Persian Gulf. At the same time, the indiscriminate trade in conventional arms—intensified by the voracity of the sellers and/or the mindlessness of the buyers—has become a general concern; hence the 1991 London proposals of the G-7 countries and those of France, a series of meetings of the five permanent members of the Security Council and the 1991 European-Japanese initiative at the United Nations for greater transparency in conventional arms transfers.

The foregoing is part of a trend—all too evident—to multiply the so-called “suppliers cartels”, such as the Nuclear Suppliers’ Club, the Missile Technology Control Regime and the Australia Group (chemical and biological materials), all aimed at imposing export restrictions on equipment and technology. This trend was also apparent in the negotiations for a chemical weapons Convention, as it was in 1991 at the Third Review Conference of the BW Convention. In sum, the thrust of the initiatives taken thus far with regard to non-proliferation has been to preserve a monopoly over such

weapons and ballistic technology and “to manage better” the conventional arms trade. Another way should be sought, one in which all States participate in the quest for a lasting and equitable solution to this problem.

### **Non-proliferation in all its aspects**

The proliferation of weapons and military technologies has been a constant in history. From the dawn of the atomic age, scientists and political leaders have been concerned with the danger of their further spread. Only a few nations have had the material resources and the scientific knowledge necessary for the production of atomic bombs. Canada’s unilateral decision (and that of a number of European countries), together with the constitutional bans imposed by the allies on Germany and Japan, reduced even further the potential nuclear Powers.

With the 1963 Moscow Treaty, the door to the horizontal proliferation of nuclear weapons was partially closed when testing was banned in the atmosphere, in outer space and under water. But underground nuclear testing has continued for three decades. Therein lies the importance that a vast majority of States parties to the 1963 Treaty attach to that Treaty’s ongoing Amendment Conference, aimed at converting it into a comprehensive nuclear test ban.

The 1968 NPT was the first international instrument aimed at preventing the horizontal proliferation of a specific type of weapon. To achieve this, the USSR, the United Kingdom, and the United States had to make certain concessions and commit themselves to negotiate agreements on the vertical non-proliferation of those weapons. The key to halt both vertical and horizontal proliferation is a comprehensive nuclear test-ban treaty. As the former Director of the United States Arms Control and Disarmament Agency, Gerard C. Smith, wrote in 1990: “It is difficult to conceive of

any single measure that would do more to stem the spread of the nuclear scourge than a comprehensive ban on nuclear testing".<sup>1</sup> Ambassador Smith is not the first high official of a nuclear-weapon State whose opinion on nuclear testing changed after leaving Government service. Something similar has occurred in the scientific community, especially among those directly involved in testing programmes. Once retired, some of these scientists have ceased to attempt to justify testing and, with a change of heart, have joined the ranks of those seeking a test ban.

During the NPT negotiations in 1967 and 1968, a link was established between the NPT's limited duration and the fulfilment of its provisions regarding nuclear disarmament, that is, a comprehensive test ban and the reduction of the *then* existing nuclear arsenals. The NPT will not run out in 1995; rather, a majority of the parties will have to decide how long it will be extended. The adequate preparation of that extension Conference is crucial to the future of nuclear disarmament efforts.

Whereas in the conventional arms field States are being required to be more transparent, at least in their transfers of such weapons, in the nuclear sphere there continues to be supplier secrecy and silence. Transparency has yet to pervade nuclear matters, as it will pervade chemical disarmament with the entry into force of the 1993 chemical weapons Convention.

In recent years almost all nuclear-weapon States have begun to move towards nuclear disarmament. Nuclear-testing moratoria are in place in three of the five nuclear-weapon States and a fourth is observing a *de facto* moratorium. START I and START II are, as already noted, significant steps towards reversing four decades of nuclear competition—unbridled at first and later, with the 1972 and 1979 Strategic Arms Limitation Treaties (SALT I and II), better managed and controlled. China

and France have finally joined the NPT and this will allow for a fuller examination of the kind of nuclear non-proliferation regime that will be required for the next century.

### **The NPT: signs of aging**

Over the past few years, however, the current nuclear non-proliferation regime—based largely on the NPT but which, according to most Western countries, also covers the suppliers clubs—has begun to reveal certain cracks. To be sure, no one ever professed the regime to be watertight. But progress in nuclear science and technology, together with some unforeseen developments, have underlined the need for a general review of today's regime. By way of example, here are some elements that might be covered in such a review.

In contrast to the 1960s, the 1990s are witnessing a blurring of the lines between nuclear-weapon States and some non-nuclear-weapon States. Some States that are not declared nuclear-weapon States are importing large quantities of plutonium for their advanced civilian nuclear industry. These and other highly industrialized countries are “potential nuclear-weapon States”, since they could produce a nuclear device in a matter of months or weeks. Then there are the so-called “nuclear threshold States”, countries that have significant nuclear programmes but are not parties to the NPT (India, Israel and Pakistan). Argentina and Brazil were once on that list, but they have recently taken a number of steps to join the Tlatelolco Treaty. There is now a third category of non-NPT country, the “temporary nuclear-weapon State”, a category which has included Belarus and South Africa.

In the USSR, nuclear weapons were stationed in Belarus, Kazakhstan and the Ukraine, as well as Russia. The collapse of the Soviet Union was so sudden that Russia, as its successor State, had no time to remove nuclear weapons from Belarus, Kazakhstan and Ukraine. After a rather confused

process, all three new States committed themselves to implement the START agreements, declared themselves non-nuclear-weapon States and reiterated their intention to join the NPT as such. In Ukraine, however, the situation remains unclear. So far this year there has been a lively domestic debate regarding whether or not to “return” the nuclear weapons to Russia. Some leaders seek economic aid in exchange for doing so quickly. Others believe that Russia poses a nuclear threat and, therefore, wish to keep the weapons as a deterrent. And there are many that enjoy the international “status” that comes with possessing nuclear weapons.

Ukraine has 176 intercontinental missiles charged with 1,240 warheads, as well as some 600 nuclear warheads on about 40 bombers. According to the Russians, those missiles cannot be launched without access to the secret code in Moscow. But the Kiev scientists are close to decoding it. According to the Ukrainians, they have no intention of launching those missiles, they simply want to preserve temporarily their “nuclear status”.

Russia, as the successor State to the USSR, is committed by the NPT “not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly” (article I). What will the international community do if Ukraine manages to keep its nuclear arsenal? Could it be said that Russia, as the successor State of the USSR, has violated the NPT by transferring, albeit unwittingly, nuclear weapons to another State? What is the responsibility of a State that involuntarily violates a treaty?

South Africa is a most unusual case. Its adherence to the NPT in July 1991 was acclaimed by the international community. On 24 March 1993, however, President de Klerk announced<sup>2</sup> that, between 1979 and 1989, South Africa had produced six nuclear weapons and had some of the compo-

components and the highly enriched uranium for a seventh device. He stated that these devices had been intended as deterrents, that no nuclear test was ever conducted and that the dismantling of the programme began in November 1989. The dismantling operation of the devices and the transfer of the nuclear material involved to the State's Atomic Energy Corporation for storage were completed in September 1991. In other words, it is possible that, upon acceding to the NPT in July of that year, South Africa was still a nuclear-weapon State.

The foregoing are some of the questions which the NPT parties should examine during the preparatory process, begun in May 1993, of the 1995 review and extension Conference. Another question concerns what occurred in Iraq, a party to the NPT, and why it happened. United Nations and IAEA inspectors have found an impressive amount of material in Iraq—enriched uranium, tools, machines, electronic equipment, computers, precision instruments, etc.—that point to an ambitious nuclear programme. And the list of suppliers reads like a “Who’s Who” of the nuclear industry: the companies are from France, Germany, Italy, Japan, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States.

How is it possible that for years, especially in the 1980s, this so-called “sensitive” material was exported and in such quantities (for example, 1.7 tons of enriched uranium and 580 tons of natural uranium) without any Government of the exporting States (all of them NPT parties) suspecting that the Iraqis were building something?

What will be the impact of the recent case of the Democratic People's Republic of Korea on the future of the non-proliferation regime established by the NPT? The DPRK has also tested successfully an intermediate-range ballistic missile (about 1,000 km).

In Japan, the developments in the DPRK have given rise to a debate regarding its own future in the nuclear field. Some have begun to utter the unthinkable: the possibility that Japan, in turn, might decide to produce ballistic missiles and nuclear weapons.

The continued presence of nuclear weapons in Ukraine could have a similar impact on some European countries. A nuclear Ukraine could reverse the present trend of “diminished nuclear threat”. It could have an impact on France’s policy of “minimum deterrence”, and public opinion in countries such as Germany and perhaps Poland would ask how long they could continue to live between two nuclear-weapon States. The response might surprise us.

The chemical weapons Convention, opened for signature in January 1993, attempts to remedy these rather confusing situations regarding the non-proliferation of weapons of mass destruction. The Convention requires each party to declare, once the Convention enters into force, whether it possesses chemical weapons, whether there are such weapons on its territory, whether it has transferred or received them since 1 January 1946 and whether there are (or were) CW facilities on its territory. Therein lies the key to the Convention’s uniform regime for all parties.

The chemical weapons Convention has yet to enter into force and its implementation is still in the realm of the theoretical. But it will establish a more equitable non-proliferation regime: those parties which have chemical weapons must destroy their stockpiles and all parties are subjected to a single verification system. There is nothing resembling a *chemical* caste society. Nor is there one for biological weapons. This exists only in the nuclear field, and it will have to disappear soon if we are to build a nuclear non-proliferation regime that is genuine, universal and equitable. Nuclear-weapon States (and some others) cannot continue to demand a

right to observe others' nuclear installations, either unilaterally or through IAEA, or both. This is certainly not conducive to the climate of confidence or openness so often required of other countries with regard to other weapons and weapons systems.

## **Conclusion**

The international community in general and the five nuclear-weapon States in particular now have an opportunity to move forward decisively in the field of nuclear disarmament. The preparatory process of the 1995 NPT review and extension Conference offers the best vehicle for undertaking a frank dialogue on the future nuclear non-proliferation regime. Some countries are still hesitant to embark on such an exercise. They fear that it might "unravel the NPT"; they argue that the NPT "should not be held hostage to a CTBT"; they act, not unlike ostriches, as if everything is just fine and all that is needed is to extend the NPT indefinitely and unconditionally after 1995, tighten unilaterally imposed export restrictions of sensitive or dual-purpose technology and, if necessary, organize unilateral action against any would-be proliferator.

The fact is that the NPT is already unravelling and that it has indeed been held hostage for years to the nuclear-weapon States' determination to continue to build and improve their nuclear arsenals and thus try to maintain their nuclear monopoly. Supplier cartels have simply not worked and unilateral coercive action is simply out of place. Moreover, the calls for an indefinite and unconditional extension of the NPT, which are being made well in advance of the 1995 review, are in themselves preconditioning and prejudging the results of that Conference.

The NPT parties would be well advised to follow a different course of action. Previous NPT Review Conferences have left the discussion and resolution of substantive issues to

the very last moment. The preparatory process for those Conferences has been perfunctory, dealing mostly with organizational questions. The 1995 Conference is different from all past NPT Conferences in that it will have to decide on the Treaty's future duration. Moreover, as already noted, the 1990s are different from the 1970s and 1980s. The NPT parties must therefore initiate at once a substantive discussion of the Treaty's provisions with a view to identifying possible shortcomings and reaching agreed solutions to them. This cannot be left to the 1995 Conference itself.

The NPT parties might begin by asking themselves a number of questions: Have the non-nuclear-weapon States abided by the Treaty's provisions? Have the nuclear-weapon States lived up to their side of the bargain struck in 1968 regarding mutual and balanced obligations? Have some of the NPT's provisions ceased to make sense? What is the relationship between the NPT and treaties establishing nuclear-weapon-free zones? Is there a need to strengthen the NPT's verification system and, if so, how should it be improved? What are the implications of an indefinite extension of the Treaty? What would be the purpose of extending it for "an additional fixed period or periods"? What nuclear disarmament measures could the non-nuclear-weapon States reasonably expect the nuclear-weapon States to achieve in the near future? In short, what kind of a nuclear non-proliferation regime do the NPT parties want for the next century and how can the NPT help to ensure it?

## **Notes**

- 1 *Arms Control Today*, November 1990.
- 2 The statement was circulated as a United Nations document (A/48/126).