

**RESTRICTED DISTRIBUTION**  
**for PUGWASH Side Event**  
**23. April 2018**

Preparatory Committee for the 2020 Review  
Conference of the Parties to the Treaty on the  
Non-Proliferation of Nuclear Weapons

*Pugwash Side Event on the New Nuclear Arms Race and the NPT*

**Research Report on**  
**A “NUCLEAR OPTION” TO SAVE THE NPT?**

**F. Mautner-Markhof<sup>1</sup> and A.A. Soltanieh<sup>2</sup>**

**BACKGROUND**

Nuclear proliferation problems were already “present at the creation” of the UN and UNSC, whose five permanent veto-wielding members were the existing Nuclear Weapon States (NWS) at that time. Thus, possession of nuclear weapons (NW) was from the start associated with power and status. The NPT only confirmed this two-class system which gave privileges to the NWS that non-Nuclear Weapons States (NNWS) did not have and could not acquire. This led to the absolute determination of certain states not to be relegated to a “second class status” in the two-class NPT system, and thus not to join the NPT and to maintain the option of acquiring NW.

By becoming Parties to the NPT, the NNWS agreed not to develop, possess or acquire NWs and were obliged to accept comprehensive international safeguards, including on-site and intrusive inspections, on all of their declared (i.e., all, theoretically) nuclear facilities. In accepting their obligations under the NPT, the NNWS exercised their sovereignty not only in their own interest, but also to increase international security and stability. This was accomplished by their accepting 1) that comprehensive safeguards, which impact national sovereignty, would provide assurances to other states that nuclear material was being used solely for peaceful purposes, and 2.) that NWS would act in good faith to halt the NW arms race and achieve disarmament. Thus, by becoming parties to the NPT, the NNWS acted in the expectation that the NWS would fulfill

---

<sup>1</sup> *Dr. Frances Mautner-Markhof is Director of the Austrian Center for International Studies and a former IAEA official.*

<sup>2</sup> *Ambassador Ali A. Soltanieh is a former Ambassador of the Islamic Republic of Iran to the United Nations & other International Organizations in Vienna and Geneva; a Friend of the President of the NPT Review Conference in 2010; and Delegate to NPT conferences since 1990*

their treaty obligations in good faith. Membership in military alliances at the time also played a role in securing NNWS adherence to the Treaty.

All of the agreed undertakings and obligations in the NPT, by both the NWS and NNWS, formed the basis for the NPT regime, which sought to enhance international security not only through controlling the proliferation of NWs but also through obliging NWS to pursue arms reduction and disarmament.

## NPT EXPERIENCE AND ISSUES

Experience since the start of the NPT regime has shown that what was left out of the NPT has turned out to be as or more important than what was put in.

Those states which chose not to accede to the NPT (India, Israel, Pakistan) and the country which withdrew from the NPT (DPRK) have been the sources of some of the serious challenges, not only through their acquiring of NW but also in one case through consistently resisting the creation of a NWFZ in the Middle East, regularly called for by various NPT Review Conferences.

When India acquired NW, Pakistan claimed it felt “forced” to do so for its security. Neither Israel, Pakistan nor India suffered serious sanctions related to their acquisition of NWs. The DPRK has experienced decades-long sanctions which have been greatly sharpened since its development and testing of NWs and the associated delivery systems

A nuclear agreement between a NWS Party and a NWS not Party to the NPT created an exemption for the non-Party possessing NW which was a serious blow to the integrity of the NPT and a setback for the non-proliferation regime. The agreement involved a de facto recognition of this state as a NWS and did not require that it become a Party to the NPT. This created a dangerous precedent where another non-NPT NWS has come to expect the same treatment.

Other cases which have weakened the NPT relate to Libya and Iraq, which provide stark and important examples of what a state might expect if it relinquishes its NW program or is suspected/accused of having NW. Libya gave up its enrichment activities, which were nevertheless used as one of the pretexts for attacking it. In the case of Iraq, the existence of WMD was used as a pretext for starting an unprovoked “preventive war”, which was illegal under international law, despite no WMD ever having been found. there.

Article IV affirms “...the inalienable right of all Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty” and that “. All the Parties to the Treaty undertake to facilitate and have the right to participate in. the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy”.

Thus, all NNWS Parties have the right to pursue under safeguards all peaceful uses of nuclear energy, which includes nuclear power and its fuel cycle. But experience with NPT implementation as shown that all Parties have not always fulfilled their undertakings to facilitate access of all NNWS to all peaceful uses of nuclear energy.

NPT implementation has shown that while some NNWS Parties have been permitted to exercise these rights under Article IV, while others who have also accepted comprehensive safeguards and the Additional Protocol have been and continue to be prohibited from the development and use of certain fuel cycle activities. This differential application of Article IV has resulted in the so-called “gold standard” agreement which foregoes all reprocessing and enrichment activities. The argument for this differential implementation has been that such activities in some states could become proliferation threats, while in other states they are not. Since all these activities are required to be under international safeguards, this points to a problem in the implementation of Article IV.

Article IV implementation issues have also arisen in connection with the extensive reprocessing activities of one NNWS, where others have been denied this right, and to the lack of convincing energy-related reasons for that Party’s possession of very large amounts of plutonium, a significant part of which is stockpiled domestically. This has been a cause of concern for its neighbors and for the NPT regime.

The implementation of Article IV will again be tested through demands for access to enrichment and reprocessing activities in connection with any future nuclear agreement which may be concluded for the supply of a large number of nuclear reactors.

#### NWS NPT OBLIGATIONS: LACK OF ENFORCEMENT MECHANISMS

The NWS were obliged under Art. VI of the NPT to “undertake negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

A serious weakness of the NPT has been that it contains no deadlines for the cessation of the nuclear arms race nor for a treaty on general and complete disarmament. And it includes no means to enforce these NWS obligations, nor any legally binding penalties or sanctions for the non-fulfillment of their obligations associated with the letter and spirit of the NPT.

NPT non-compliance by NWS and their allies has involved, i.a., the stationing of NW on NNWS territories and the operational training for the use of NW provided by certain NWS to their NNWS allies; the continuous development and upgrading of NW to make them more “usable”; policies incorporating the threat and use of NW (including extended deterrence) by certain NWS; and the proliferation to and acquisition of NW by non-NPT states.

Another issue weakening the NPT regime, and international security and stability, is that the CTBT has not been able to enter into force because key states which must still ratify it have not yet done so. These states include two NWS permanent members of the UNSC and four other non-NPT states possessing NW. Of concern is the fact that the latest US Nuclear Posture Review envisages the possibility of NW tests, in contraction to the CTBT.

It is thus clear that the NWS, some more than others, do not feel bound by their NPT obligations. More and more money is being spent to develop and upgrade nuclear weapons and nuclear-related military capabilities, not only for deterrence but also for actual use; and arms control and reduction has come to a halt, with the non-observance of or withdrawal from key arms control

treaties. As for complete and verifiable nuclear disarmament, this goal may be unachievable, while arms control and reduction remain a realistic possibility.

After almost 50 years since the NPT's entry into force, what the NWS understand under "good faith" regarding Art. VI, I, II and other NPT obligations has become clear. Nothing has been achieved. NWS have yet to negotiate "in good faith on effective measures" to stop the nuclear arms race and on a "treaty for general and complete disarmament under strict international control".

## NPT SAFEGUARDS

.The cases of Iraq and the DPRK point to another basic problem of the international safeguards foreseen under the NPT, namely that only nuclear facilities and materials declared by the state could be inspected. This problem was later corrected under the provisions of the "Additional Protocol", whereby the IAEA could and did apply far more intrusive, wide-ranging and even unannounced inspections.

The more comprehensive and intrusive international safeguards under the Additional Protocol (AP) are aimed at verifying not only the non-diversion of declared nuclear material but also at providing assurances on the absence of undeclared material and facilities. Thus, safeguards under the AP verify the presence (non-diversion) of declared and the absence of undeclared nuclear materials and facilities. Integrated NPT safeguards now consist of a CSA (comprehensive safeguards agreement) and the AP (Additional Protocol).

The AP is not obligatory but one which Member States can voluntarily adhere to. While the AP is not a legal requirement under the NPT, as of April 2018 there were 129 Member States and Euratom for which the AP has entered into force, including all five NWS Parties to the NPT. Nineteen Member States including Iran have signed the AP but have yet to bring it into force. Under the JPCOA Iran, in addition to its comprehensive safeguards agreement with the IAEA, has accepted on a voluntary basis to implement the AP as if it has ratified it, and has also accepted additional measures going beyond the AP.

Needless to say, there are parties to the NPT that are of the view that the Comprehensive Safeguards Agreement(CSA) has sufficient coverage and do not believe that the Additional Protocol has to be considered as a complementary safeguards obligation..

The international safeguards agreed under the NPT and applied to NNWS were intended to provide both confidence in the NPT regime and early warning in the event that there was NNWS non-compliance with NPT obligations. NWS were under no obligations requiring safeguards, However, all NWS Parties to the NPT have accepted IAEA safeguards on a voluntary basis on some of their civil nuclear facilities, which they are free to designate for possible application of safeguards.

Safeguarding NWS activities were especially intended to not place non-NWS NPT Parties at a commercial disadvantage through the comprehensive safeguards applied to all their peaceful nuclear activities, which in a number of countries involves safeguards on many nuclear power plants and advanced nuclear fuel cycle facilities. Safeguards applied in NWS to selected civil facilities also support, inter alia, technical developments which enhance the effectiveness and efficiency of international safeguards. .

## KEY CURRENT ISSUES

The internationally negotiated Joint Comprehensive Plan of Action, or the Iran nuclear agreement, concluded between Iran, the P5 + 1 and the EU is widely considered to be a very important political, diplomatic, mutually beneficial achievement which contributes greatly to the strengthening and indeed survival of the NPT. Since the entry into force of the JCPOA in January 2016, the IAEA has consistently verified Iran's compliance with all of its international safeguards obligations under the JCPOA, which constitute the strictest safeguards regime ever applied to any NPT State Party.

Without the JCPOA, and with continued and extensive sanctions on Iran as well as the threats of attack on Iranian nuclear installations, Iran could have considered withdrawing from the NPT, with all its negative consequences.

Should one party to the JCPOA decide to withdraw from the agreement and re-impose sanctions, the impact of an end or even partial adherence to the JCPOA on the NPT regime and on the next NPT Review Conference in 2020 would be incalculable.

At his confirmation hearing before the US Senate Foreign Relations Committee on 12. April 2018, CIA Director Mike Pompeo, President Trump's nominee for US Secretary of State, stated in his views regarding the JCPOA that he had "seen no evidence that (Iran is) not in compliance today". And regarding the perceived need to "fix" or pull out of the deal he said: "Iran wasn't racing to a weapon before the deal. There is no indication that...if the deal no longer existed that they would immediately turn to racing to create a nuclear weapon..." To which the Iranian Foreign Minister replied on 13. April 2018: "... in the past Iran was sanctioned over false claims that it sought nuclear weapons. Now, sanctions must be reimposed because we seek no nukes?"

The DPRK has recently agreed to discuss its eventual denuclearization, if the stability and security of the state can be assured, and presumably if other conditions are met. This represents a positive development, likely involving a long and complex process, which will nevertheless lead to an important strengthening of the NPT regime.

## NUCLEAR WEAPONS CONVENTION

The Nuclear Weapons Convention (NWC) has been under discussion at the Conference on Disarmament (CD) since more than two decades. The NWS is a proposed treaty which, if adopted, would outlaw the use, possession, development, testing, deployment, and transfer of nuclear weapons, as well as mandate internationally verifiable dismantlement of nuclear arsenals. These NWC discussions at the CD never led to a negotiation because certain NWS preferred to pursue negotiations only on the FMTC (Fissile Material Cutoff Treaty).

Recently, civil society advocates and diplomatic efforts of many NNWS for nuclear disarmament have resulted in the Treaty on the Prohibition of Nuclear Weapons, and there has been less focus on the negotiation of the proposed NWC. But unlike a comprehensive convention, a treaty banning nuclear weapons does not include dismantlement and disarmament verification provisions, concentrating only on legal prohibitions on the use, possession, development, deployment, and transfer of nuclear weapons.

## TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

The recently concluded Treaty on the Prohibition of Nuclear Weapons or the Nuclear Weapons Ban Treaty (Ban Treaty) is in fact a manifestation of the frustration of the NNWS vis-à-vis the NWS non-compliance with their disarmament obligations. The Ban Treaty also was a result of concerns regarding the NWS. While the good intentions of the Ban Treaty proponents are not in doubt, the treaty will prove to be a serious challenge for the NPT regime and for the next NPT Review conference in 2020. Some have argued, convincingly, that this treaty makes the NPT regime weaker, not stronger. The Ban Treaty has also sidelined any further discussions on the NWC.

Much of what the Ban Treaty contains is also included in the NPT. So it may be asked: what if anything concrete did this treaty achieve? A ban is a prohibition. The reality is that there are thousands of NW, which cannot be banned out of existence. Only arms reduction and disarmament can reduce the threat and instability arising from the possession of NWs. And this is exactly what Art. VI of the NPT obligates the NWS to do.

The goal of the nuclear weapons ban treaty, the ban and total elimination of all NWs or global zero, is unrealistic, and not only because only NNWS are parties to this treaty. The achievement and verification of zero NW is and will be impossible. Since it will not be possible to verify with anything approaching 100% certainty that all NW have been eliminated, “in the kingdom of the blind (read zero NW) the one-eyed (read 1 NW) [will be] king”

The Ban Treaty focuses on the humanitarian dimensions of the existence and possible use of NW, concerns which have been widely acknowledged since the first use of a NW. The treaty lacks power of enforcement and universality, since all NWS and their allies have officially stated that they will have nothing to do with the treaty.

The boycott of the negotiation of the Ban Treaty by the NWS and many of the NNWS including Japan, the only victim of the use of nuclear weapons, is a clear indication of the lack of utility of the Ban Treaty in the future, without questioning the good intentions of the proponents of this Treaty.

The nuclear weapons ban treaty can weaken whatever leverage or pressure which the NNWS could have applied on NWS to fulfill their Art. VI and other NPT obligations.

## INEFFECTIVENESS OF NPT REVIEW CONFERENCES AND RESOLUTIONS

The NPT Review conference in 1995 adopted a resolution on (a) the establishment of Middle East Nuclear Weapons Free Zone (NWFZ) and (b) decided on a series of measures on nuclear disarmament by NWS. In fact, these were part of a package deal for the indefinite extension of the NPT. Neither of those two commitments has been implemented.

The Review Conference in 2000 adopted by consensus 13 unequivocal undertakings for disarmament, proposed by NAC (New Coalition Agenda). None of those major disarmament steps have been implemented.

The Review Conference in 2005 collapsed at the beginning due to the objection by one of the NWS to the inclusion of an agenda item referring to the decision of the 2000 conference.

The Review Conference in 2010 adopted by consensus an action plan including the mandate for the three Depository States Parties and the Secretary General of the United Nations to convene a conference in 2012 on Middle East NWFZ. The planned conference was to be held in Helsinki but was unilaterally indefinitely postponed by the United States. The other main decision of 2010 Review Conference concerned a series of measures on nuclear disarmament by NWS, none of which have been implemented.

The Review Conference in 2015 failed due to the objection to include humanitarian concerns of nuclear weapons by NWS as well as the disappointment concerning the Middle East NWFZ. This undoubtedly was a motivation for the Ban Treaty.

NNWS are individually in a very weak position. After decades-long non-compliance by the NWS with their commitments from various NPT Review Conferences as well as from other policy statements, there is little hope that one more piece of paper will achieve the unachievable:

#### SAVING THE NPT BY WORKING WITHIN THE NPT REGIME

Far more difficult but effective would be that the NNWS should work within the framework of the NPT to have the NWS fulfill in good faith their obligations under Articles I, II and VI of the NPT, and to correct other shortcomings of the Treaty.

One of the real weaknesses of the NPT has been that while NWS and the IAEA can refer NNWS to the UNSC if they deem a NNWS party to the NPT or an IAEA Member State not to be in compliance with its NPT and other relevant safeguards obligations, there are neither timelines for the NWS to fulfill their NPT obligations, nor penalties/sanctions on NWS for non-fulfillment of their obligations. This lopsidedness is the crux of the matter and is not corrected or even addressed by the nuclear weapons ban treaty.

What are the options which the NNWS have to secure NWS compliance with their NPT commitments and obligations, in particular Article VI?

Two possible options are:

- (a). NNWS working together can demand that the 2020 NPT Review Conference adopt decisions for (1) a legally binding deadline to start the negotiations envisaged under Art. VI; (2) a legally binding timeline for significant, verifiable reduction of NWS aimed at their ultimate elimination; and (3) legally binding measures to ensure compliance with all NPT obligations and to deal with non-compliance.
- (b) Under Art, VIII §1 of the NPT: “Any Party to the Treaty may propose amendments to this Treaty...after which the Depository Governments shall convene a conference...to consider such an amendment.” Thus, NNWS have the right to call for the convening of an amendment conference to amend Article VI of the NPT to address the issues addressed above.

It should be noted that Article VIII § 2 of the NPT states that “Any amendment to this Treaty must be approved by a majority of the votes of all Parties to the Treaty, including the votes of all nuclear weapon States Party to the Treaty...”

Thus, NWSs can basically veto (by not voting for) any amendments to the NPT approved by a majority of States Parties. If such a motion is taken by NWSs, then the last option would be the “nuclear option”.

#### A “NUCLEAR OPTION” TO SAVE THE NPT

There exists another option in connection with the rights of States Parties to the NPT to withdraw from the Treaty. Article X of the NPT states the conditions for this:

“Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.”

An option of last resort, the “nuclear option” to save the non-proliferation regime, would be the threat of collective withdrawal of NNWS from the NPT under Article X of the Treaty unless the NWS make a legally binding commitment to fulfill all their NPT obligations in good faith, in particular Articles I, II and VI, by agreed deadlines. This may be the strongest or even only means which the NNWS have to create the political pressure needed for the NWS to comply with their NPT obligations. All legal obligations prior to withdrawal would continue to be honored. If NNWS were forced to choose this option as a last resort, this would not imply a risk to international peace and security, since under the IAEA Statute, safeguards would still continue to be applied where required.

Vienna, 17. April 2018