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TREATY ON THE NON-PROLIFERATION OF
NUCLEAR WEAPONS: NEW REVIEW CYCLE AND
2012 PREPARATORY COMMITTEE

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TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS: NEW REVIEW CYCLE AND 2012 PREPARATORY COMMITTEE

Abstract:

At present, there are important challenges for the nuclear non-proliferation regime, which is based on the Treaty of Non-Proliferation of Nuclear Weapons (NPT). In the last four decades, some States have developed nuclear military capabilities, remaining outside the Treaty. Moreover, there has been a renaissance of nuclear energy as a response to new energy needs in emerging economic powers. The prospects of a growing development and diffusion of nuclear technology in the world, taking into account its dual-use capabilities – i.e. its capacity to be used for peaceful uses and, at the same time, to pave the way for the development of its military uses – remains a significant challenge when preserving a balance between technical progress and world stability. The NPT, throughout its four decades of existence, has allowed the international community to delay, to a great extent, the process of proliferation. The outcome of the NPT Preparatory Committee in 2012 confirms that the expectations of the international community for this meeting have been met, establishing the agenda for the intercessional review process of the Treaty, which will be completed in the Review Conference in 2015. However, in forthcoming years the nuclear non-proliferation regime will be under severe strain; this will have a significant impact on the conference and will test the capacity of the NPT framework to adapt to the new international scenario.

Keywords:

Nuclear proliferation - Treaty on the Non-Proliferation of Nuclear Weapons – nuclear energy – nuclear technology –Preparatory Committee- NPT

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TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force in 1970 and is cornerstone of the multilateral nuclear non-proliferation regime.¹ The International Atomic Energy Agency (IAEA) plays a key role in the implementation of the NPT, as it facilitates international cooperation for peaceful purposes and is responsible for the verification through inspections to guarantee that there are no diversions for military purposes.

The Treaty on the Non-proliferation of Nuclear Weapons (NPT) rests on three mutually-reinforcing pillars: non-proliferation, peaceful use of nuclear energy and disarmament. Currently, the treaty is the framework to maintain the balance between international security and technical progress in this field. The challenges currently faced by the international community and the risks of proliferation are important reasons to highlight the importance of maintaining the validity of the Treaty and further promoting its universality.

Under articles I, II and III of the NPT, *Nuclear-weapons states* (United States, Russia, China, United Kingdom and France) undertake not to transfer nuclear weapons to other states, and non-nuclear-weapons states undertake not to receive them and to conclude safeguard agreements with the IAEA to verify that their civilian nuclear programmes do not get diverted to military uses.

Article IV of the NPT recognises the right of all States Party to the Treaty to use nuclear energy for peaceful purposes and establishes the principle of international cooperation for the development of nuclear energy.

Under article VI of the NPT, all Parties to the Treaty undertake to pursue negotiations regarding the cessation of the nuclear arms and a treaty on general and complete disarmament under strict and effective international control.

At present, we can identify three main problems in the nuclear non-proliferation regime based on the NPT:

- The treaty is not universal, as some countries have not signed it and have acquired nuclear weapons (India, Pakistan and Israel).
- A clandestine nuclear proliferation programme has developed. Some States Parties have developed clandestine programs to acquire nuclear weapons. Past cases are Iraq,

¹ See: instrument of 13 December 1987 on Spain's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, made in London, Moscow and Washington on July 1st 1968. *BOE. Boletín Oficial del Estado n. 313, 31 December 1987.*

Libya and Syria. The current concern of the international community is focused on Iran and the Democratic People's Republic of Korea (which announced its withdrawal from the Treaty).

- 42 years after the entry into force of the Treaty, nuclear-weapons states have not carried out the disarmament process to which they undertook in the NPT.

In order to assess compliance with the provisions of NPT and to set new commitments, Review Conferences will be held every 5 years, each of them following three annual Preparatory Committees. The last four NPT Review Conferences were of particular relevance.

1) In the 1995 Review Conference, a historical agreement was reached to extend the validity of the NPT indefinitely. This new commitment by non-nuclear-weapons states was reached in exchange for the adoption of a Resolution on the Middle East that makes reference to the existence of “unsafeguarded nuclear facilities” in the region and asks Israel (the only state in the region that is not party to the NPT) to sign it. At subsequent conferences, Arab states have denounced that nothing has been done to effectively implement this Resolution.

2) In the 2000 Review Conference, a final consensus document that included “13 practical steps” to make progress towards total disarmament was adopted. Even though some progress has been made (agreements to reduce strategic nuclear weapons between Russia and the US, such as START and SORT), the process of total disarmament is limited.

3 The 2005 Review Conference did not produce a consensus document and was chiefly focused on debating procedural issues related to the agenda of the meeting, without any substantial progress.

4) The Review Conference held in May 2013 made significant progress, as a Final Consensus Document including an Action Plan was adopted². One of the political highlights of this Action Plan was the convention of a conference in 2012 to establish a free zone of nuclear weapons and other weapons of mass destruction, thus laying the foundations for a political process that may help in increasing stability and mutual trust among regional countries.

The NPT Review Conferences bring together important political issues related to international security and the nuclear threat. The most important are: Iran and North Korea, which have

² NPT RevCon [Final Document- NPT/CONF.2010/50](#).

been reported to the Security Council within the framework of Chapter VII of the UN Charter; the conflict in the Middle East, since Israel is not a party to the NPT and after a resolution was adopted in 1995 for the creation of a zone free of nuclear weapons and other weapons of mass destruction in the Middle East; the request for further efforts on the disarmament process from nuclear powers as recognised by Article VI of the Treaty; the entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT); the negotiation of a Fissile Material Cut-off Treaty (FMCT).

There are other issues in the NPT framework addressed in the review cycles of the Treaty, derived from the former: its universality, the reinforcement of the NPT review and the conditions for the withdrawal of a State Party in accordance with Article X of the Treaty.

The Preparatory Committee of the NPT met in 2012 (Vienna, 30 April-11 May), presided over by Australian Ambassador Peter Woolcott. It dealt with procedural issues and addressed the substantive aspects of the three pillars of the Treaty for the next Review Conference. This session has been the latest event of this process and the first in the review cycle of 2012-2015.

ASSESSMENT ON THE PREPARATORY COMMITTEE IN 2012

The Preparatory Committee has achieved its fundamental goal, as it established an agenda for the review cycle of the Treaty (2012-2015), appointed the Committee chairmanship and initiated discussions regarding the progress made in the three pillars and the 2010 Action Plan. During the general discussion, many States Parties highlighted the need for nuclear-weapon states to advance disarmament. A group of countries focused on the serious humanitarian consequences of an eventual use of nuclear weapons in an armed conflict, an issue that will be addressed in forthcoming meetings prior to the 2015 Review Conference. Nevertheless, the 2010 Action Plan was the central issue discussed, as well as progress made since the last Review Conference.

In a joint statement, the five Nuclear-weapon states expressed their commitment to the NPT process as well as their willingness to inform about the progress of nuclear disarmament at the 2014 Preparatory Committee session. Other states, especially Mexico, Norway and Austria expressed their concern on the limited progress made in this field.

Another issue raised during the general discussion was Iran's non-compliance with the obligations provided for in the Treaty. Iran accused the European Union of having a double standard regarding this issue.

During the sectorial discussions, the Preparatory Committee addressed the three pillars of the Treaty: non-proliferation, peaceful uses and disarmament. The meeting concluded with a “Chairman's factual summary”³.

NON-PROLIFERATION

Most states highlighted the importance of the IAEA and its safeguards system, although some differences arose regarding the role and status of the Additional Protocols to the Safeguards Agreements. All states supported the universalization of the Treaty, but non-aligned countries focused mainly on Israel, overlooking India and Pakistan.

Regarding regional proliferation, Western countries highlighted non-compliance of the obligations provided for in the Treaty by Iran, the Democratic People's Republic of Korea and Syria, and called for more cooperation with the IAEA and with the UN Security Council. Iran and Syria claimed that Western countries were “actively promoting proliferation in countries like Israel and India.”

As foreseen in the 2010 Action Plan, the facilitator of the Conference, the Finnish Under-Secretary Mr. Lajaava, informed the Preparatory Committee about the state of preparations, although he gave no details about the agenda or the chosen date. Mr. Laajava informed about his consultations with states of the region, but he could not guarantee the participation of all these countries in the conference. In this discussion, several countries expressed their concern about the situation in Iran and Syria, which complicated the setting of a date for the 2012 Conference, given the current regional context. Many non-aligned countries, especially Iran and the Arab League members, blamed Israel for the lack of progress made and demanded its participation in the Conference.

Since 1974, a UN General Assembly Resolution regarding a zone free of nuclear weapons and other weapons of mass destruction in the Middle East is adopted every year (the latest, UNGA Resolution 63/38). Israel supports these resolutions, but insists that it will be impossible to achieve the goals until progress has been made towards a just, durable and global peace in the region. This area would also include other weapons of mass destruction, like chemical and radiological weapons, and their launching systems. Egypt and the rest of the Arab countries denounce the lack of progress in implementing the 1995 Resolution and insist that not enough pressure is exerted on Israel to access the NPT and submit to IAEA's inspections of its nuclear facilities. Moreover, Egypt and Syria have not signed the Chemical Weapons Convention. Israel

³ Document “NPT/CONF/2015/PCI/WP.53”, Vienna: UN, 2012.

has signed the Convention but has not yet ratified it.

Other relevant issues of the “non-proliferation” pillar of the NPT were the definition of the international verification standard, the measures to avoid nuclear proliferation among non-state actors and the conditions for withdrawal from the Treaty.

Looking ahead, it is important to define an *international verification standard*, which should be based on the model of the Safeguards Agreements and the Additional Protocol.

Another important challenge discussed was how to avoid diversion of sensitive technologies to non-state terrorist organisations. Resolution 1540 adopted in 2004 by the UN Security Council is the framework from which measures must be developed to avoid that terrorists acquire nuclear or radioactive materials to carry out attacks with weapons of mass destruction. This involves strengthening nuclear security, an activity in which the IAEA is essential.

Finally, a way to strengthen the NPT based on an understanding on conditions of a state’s withdrawal from the Treaty. Regarding article X of the NPT on conditions of a state’s withdrawal from the Treaty, there were no changes in the positions taken during the 2010 Review Conference, in which no agreement was reached on the interpretation and the scope of Article X. Iran did not deem necessary to discuss this issue, as it had only happened once (North Korea), and placing conditions to the withdrawal from the Treaty in accordance with Article X was unacceptable unless an amendment of the Treaty was made, which has not yet taken place.

The need to address the proliferation challenges posed by North Korea and Iran through an understanding among States Parties regarding breaches of the Treaty was also addressed.

PEACEFUL USES OF NUCLEAR ENERGY

This was another issue discussed in the Preparatory Committee. Technological security, physical security and safeguards were mainly addressed by Western and some non-aligned countries. There were many references to the Fukushima accident and the need to fill technological security vacuums for their negative impact on the environment.

G-77 countries asked for more support in technical cooperation for peaceful uses, including cooperation provided through the IAEA. They also called for the elimination of the established obstacles to technology transfers through export control regimes, as they regard them as a hindrance to development of peaceful uses.

There were different opinions regarding the creation of a bank of low-enriched uranium for producing nuclear fuel within the IAEA framework, which was seen by Western countries as a crucial point for consolidating multilateral approaches on the nuclear fuel cycle. Brazil and several other non-aligned countries expressed reservations to this issue. There is a controversial issue in this context: the efforts to create multilateral mechanisms that ensure the supply of nuclear fuel to any country requiring it, without the need to establish national mechanisms of uranium enrichment and avoiding the risks of diversion to military programmes they would entail. Many states support the concept of responsible development of peaceful uses of nuclear energy, based on the concepts of security, non-proliferation and on multilateral approaches on the nuclear fuel cycle. Every state has the right to define its own energy strategy, in accordance with the inalienable right to peaceful uses recognised in Article IV of the NPT. This requires having the highest security, physical protection and non-proliferation standards, a task in which they can be assisted by the IAEA.

Nuclear physical protection and the results of the Nuclear Security Summit held in Seoul were also discussed in many interventions. All agreed on the key role of the IAEA. Iran, for its part, criticised the process of nuclear security summits, as it considered them as an “exclusive platform” that does not represent all IAEA member states.

The right to peaceful uses of nuclear energy (in accordance with Article IV of the NPT) is a key issue given the current interest of many countries in developing large-scale energy production and the proliferation risks it entails, including terrorist groups acquiring nuclear material.

DISARMAMENT

The current momentum of disarmament and arms control –visible not only at the intergovernmental level, but also in public opinion- is reflected in UN Security Council Resolution 1887 and in the new START agreement between Russia and the US. This also implies continuing the support for creating *nuclear-weapon-free zones* in accordance with the agreements freely accepted by the countries of the region and, especially, with Resolution on the Middle East adopted in the NPT Review Conference in 1995.

Nuclear-weapon states provided information about their progress in reducing nuclear arsenals, while non-aligned countries demanded further efforts, including a modification of military doctrines based on the potential use of nuclear weapons. In particular, members of the *New Agenda Coalition* (New Zealand, Brazil, Mexico, Egypt, Ireland, Sweden and South Africa) were very critical on the lack of progress in nuclear disarmament, virtually reduced to the new START Treaty between Russia and the US, in addition to some unilateral reductions by France and the UK.

Regarding *negative security* on the use of nuclear weapons, non-aligned countries and the New Agenda Coalition requested legally-binding commitments. Since it has not been possible to make progress towards a complete nuclear disarmament, some countries have demanded nuclear-weapon non-use assurances against their territories (negative security) by nuclear-weapon states. Through the establishment of Nuclear-Weapon-Free Zones (Tlatelolco Treaty in Latin America; Pelindaba Treaty in Africa; Bangkok Treaty in Southeast Asia; Rarotonga Treaty in the South Pacific; Semipalatinsk Treaty in Central Asia), these treaties included annexes that had to be adopted by nuclear powers and take up negative security of that kind. Security Council Resolution 984 adopted in 1995 includes the assurances given by the five nuclear-weapon states, although these assurances are not legally binding and do not include the threat of use of nuclear weapons, as is demanded by non-aligned countries.

A common demand in all meetings on nuclear disarmament is the negotiation of a legally-binding international instrument that grants assurances to States Parties to the NPT against the use or threat of use of nuclear weapons. Moreover, not all treaties on nuclear-weapon-free zones have been negotiated taking into account the position of all countries involved. As a consequence, some nuclear-weapon states refuse to sign some of the annexed protocols on this issue.

SPAIN AND THE EUROPEAN UNION IN THE NPT REVIEW CYCLE

Spain, within the EU framework, has given priority to certain aspects of the NPT review cycle. First, reaffirming the commitment of the States Party with their obligations and supporting the universality of the Treaty. Spain has also sought to strengthen the implementation of the Treaty through specific and pragmatic measures based on the three pillars and on the creation of a nuclear-weapon-free zone and a zone free of weapons of mass destruction. Finally, we must highlight Spain's commitment with disarmament and arms control processes, in which the Comprehensive Nuclear-Test-Ban Treaty plays a key role⁴. Similarly, it is highly important to start negotiations on a Fissile Material Cut-off Treaty in the Conference on Disarmament. Regarding NPT in general, Spain hopes for a balanced progress in the three pillars: non-proliferation, disarmament and cooperation on peaceful uses of nuclear energy.

Within the NPT framework, EU's position has usually been a "lowest common denominator" that reconciles the interests of countries like France and the UK (nuclear powers); neutral countries strongly committed with nuclear disarmament⁵; Austria, opposed to any approach

⁴ Although this treaty has not yet entered into force, it would be pertinent to respect the moratorium on test explosions and proceed to the decommissioning of all military facilities for nuclear tests.

⁵ The case of Sweden and Ireland, members of the *New Agenda Coalition* along with countries like Egypt, Brazil,

that favours the promotion of nuclear energy; and the group formed by countries in a middle position, like Spain, that try to find a balance for international security and stability. Furthermore, the EU plays a major role as the leading contributor to the IAEA cooperation programmes.

The goals of Spain and the EU in this process are embodied in the Council Decision on the position of the European Union for the 2010 Review Conference of the NPT⁶:

- The EU wishes to cooperate with the international community to reaffirm the fundamental principles of the Treaty as the cornerstone of the non-proliferation regime.
- This policy is based on a balanced approach among the three pillars of the Treaty – disarmament, non-proliferation and peaceful uses- through pragmatic and consensual measures to foster international efforts in this direction.
- The European Union reaffirms its commitment to achieve a safer world and create the conditions for a world free of nuclear weapons.

The European Union regards the Non-Proliferation Treaty as the cornerstone of the international system of nuclear non-proliferation, the fundamental basis for attaining nuclear disarmament in accordance with article VI of the NPT, as well as an important part of the future development of nuclear energy applications for peaceful uses.

The goal of the European Union is to reinforce the international system of nuclear non-proliferation, promoting substantial and balanced results from the Review Conference of the Treaty to achieve realist and tangible progress towards the goals enshrined in the NPT.

PROSPECTS FOR THE 2015 REVIEW CONFERENCE: KEY ISSUES

At present, the attempts to limit nuclear proliferation focus on preserving the adequate balance among the three pillars of the Treaty on the Non-Proliferation of Nuclear Weapons: nuclear disarmament, non-proliferation mechanisms and cooperation on peaceful uses of nuclear energy. Throughout its four decades of existence, the NPT has significantly allowed the delay of this process. Although in 1968 it was estimated that there would be more than 20

Mexico and New Zealand.

⁶ COUNCIL DECISION 2010/212/CFSP, 29 March 2010, relating to the position of the European Union for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. This Council Decision was drawn up and adopted during Spain's Presidency of the EU in 2010.

nuclear powers by the turn of the century, currently, there are only 9 states with nuclear military capabilities. Nowadays, not only are there challenges, but also great opportunities to overcome them: the bipolar world of the Cold War is over; the risk of a global confrontation is significantly reduced, becoming a remote and unlikely possibility today; both nuclear superpowers, Russia and the US, started a process of reduction of their nuclear arsenals in 1991 and have signed a new treaty on nuclear disarmament that will reduce their arsenals by 30%. Furthermore, Russia and the US share a worldview without nuclear weapons (in a future still not defined). Other nuclear powers like France and the UK have carried out substantial unilateral reductions of their arsenals.

As was mentioned above, the renaissance of nuclear energy for civilian purposes, the process of dissemination of sensitive materials and technologies related to the nuclear sector and the dual-use application of many of them are the essential features of the international arena regarding nuclear proliferation risks.

Technologies coming from Western industrialised countries have disseminated through legitimate trade, illicit trafficking or illicit manufacture of replicas in other regions of the world. A local development of certain technologies has taken place in different countries, often based in technical know-how and equipment acquired from the most advanced suppliers.

In addition to incorporating to the market of new suppliers of these technologies, a new commercial network for the flow of these materials has emerged, out of the reach of multilateral mechanisms of export control, especially of the Nuclear Suppliers Group.

Furthermore, the decision of the Nuclear Suppliers Group adopted in 2008 to make an exception to allow nuclear exports to India and the announcement made by China in 2010 on future exports to Pakistan for its civil nuclear programme raise serious questions about the functioning and the future effectiveness of this export control regime.

Many important issues about nuclear non-proliferation have been left out of the 2010 Action Plan, as they were only included in a symbolic text drafted by the president of the Conference reflecting the state of discussions. In this field, there are major differences among the States Parties to the Treaty regarding:

- The role of the Additional Protocols to the Safeguards Agreements as part of a reinforced verification standard.
- An effective and transparent scope of export control mechanisms so that they do not restrict nuclear technology trade for peaceful uses.

- The desirability of elaborating a legally binding instrument banning attacks or threats of attack to nuclear facilities for peaceful uses.
- The request of many countries to establish a legal framework and a precise timetable for nuclear disarmament in accordance with Article VI of the Treaty.
- The different interpretations on the opinion of the International Court of Justice on the legality of the use or threat of use of nuclear weapons (The Hague, 8 July 1996). It should be noted that in international law, the prohibition to use other weapons of mass destruction, like chemical and radiological weapons, is unambiguous.
- The different approaches regarding the right to withdraw from the Treaty, provided for in Article X. Many states –especially technology suppliers- argue that the State Party withdrawing from the NPT, besides being responsible for violations prior to its withdrawal, should place under safeguards all its nuclear facilities acquired through technology imports when it was a Party to the Treaty. They also point out the need to include a clause for the dismantling and return of such technologies in case of withdrawal. Most non-aligned countries reject this approach.

In short, the current scenario is characterised by a world that has evolved from having a single nuclear power in 1945 to having eight in 1998, a country with limited nuclear capabilities (North Korea) and other countries making progress towards the critical technological threshold. Furthermore, there are important differences on the interpretation of the NPT and the degree of compliance in the last decades, as new challenges related to the development of the civil energy sector, international trade and the emergence of new economic powers arise. Nuclear proliferation has evolved as a result of technological developments and transactions carried out in the last decades, but above all, as a result of strong strategic motivations of certain countries for the sake of their national security or hegemonic ambitions, disrupting the regime based on the NPT since 1970. At present, there are no indications that this trend will change. On the contrary, dormant conflicts –strategic or ideological- in different regions of the world seem to increase tensions related to nuclear proliferation. This process could even reach forms of asymmetric conflict with non-state actors.

This scenario, in which the growing energy demand of emerging economies and the need to mitigate climate change by reducing carbon emissions overlap, has major contradictions that need to be resolved through cooperation of the entire international community, as main economic interests are also at stake. This is a very delicate process which requires keeping a balance among the three pillars of the NPT mentioned above and developing new mechanisms to reinforce mutual trust, as progress towards disarmament has been insufficient until now, and the effectiveness of verification and export control mechanisms has been limited.

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There are several issues that should be addressed in the near future to push this process forward. A collective effort is essential to comply with the Action Plan included in the final document of the NPT Review Conference and to keep the open dialogue to continue with the multilateral negotiation on all discussed issues that have not yet been resolved.

It is also essential to promote new initiatives, preparing a conference on the creation of a zone free of nuclear weapons and other weapons of mass destruction in the Middle East in 2012, including all regional countries and starting a negotiation on a treaty banning the production of fissile material during the Conference on Disarmament. The entry into force of the Comprehensive Nuclear Test Ban Treaty would be a significant step in this process.

Finally, it is essential to strengthen the role of the International Atomic Energy Agency as the guarantor of the delicate balance between non-proliferation and cooperation in the field of peaceful uses of nuclear energy, which would require making progress towards the consolidation of a new standard verification universally accepted, based on the Global Safeguards Agreements and the Additional Protocol, as a corollary of multilateral transparency and mutual trust.

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