

## DRAFT

### BRIEF RELECTIONS ON THE NUCLEAR NON-PROLIFERATION REGIME

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The NPT has been a huge success story for 35 years in stemming nuclear proliferation. In the 1990s, however, cracks begun to emerge in that regime and they have grown and become serious enough to threaten the stability of the entire regime.

Where do most of the problems lie?

1. Structural and legal weakness of the NPT grounded in its traditional bargain: full access to fuel cycle technologies and right to withdraw on short notice (and practically keep all its nuclear facilities and material acquired under safeguards) in return for nuclear abstinence
2. Indirect and imperfect connection between NPT obligations and safeguards arrangements (e.g. the safeguards cover only fissile material not weaponization activities, they are oriented exclusively toward deterring and detecting diversion but not acquisition of weapons grade fissile material)
3. Structural weaknesses of the IAEA grounded in its corporate culture (engagement with ISP above all, lack of transparency in reporting, lack of focus for verification effort --universality at all cost--, unwillingness to admit weaknesses and vulnerabilities of the safeguards, reluctance to employ Special Inspections), total dependence on external intelligence, design flaws and legal constraints (e.g., INFCIRC 153 is weaker in key areas than INFIRC 66).
4. Lack of flexibility of the global regime to address specific regional circumstances such as those prevailing in South Asia and the Middle East.

Many of these weaknesses emanate from the IAEA schizophrenic origins as an agency designed to promote peaceful uses of nuclear technology under Atoms for Peace. Others have to do with the changing nature of the nuclear proliferation challenge, where not only the technology has widely disseminated (especially in centrifuge enrichment) but the key problems lie not from the likes of Australia, Germany, Italy, Switzerland, Sweden, and even Brazil and Argentina, but from the DPRK, Iran, Iraq, Libya, etc.

It is sad and ironic that the sole legitimate international nuclear watchdog, staffed by some first rate professional, and tasked with such hugely important tasks is not up to the challenge presented by current proliferation trends.

It is quite obvious that we can no longer realistically expect to promote new treaties and conventions that have both global scope as well as genuine meaning in stemming proliferation. The fate of the CTBT, and the extended deadlock in the CD are quite telling in this respect. Nor is it likely that we will be able to promote a consensus around the formulation and implementation of verification measures that are tighter than those already incorporated in the Additional Protocol (and even its implementation is hesitant at best). The failures to exercise the Challenge Inspections mechanism in the context of CWC as well as to agree on verification measures for the BWC are a few cases in point. Finally, we must also acknowledge the profound weakness of the present enforcement mechanisms for non-proliferation treaties and agreements. Non-compliance issues are only reluctantly referred to UNSC, and even when this happens the UNSC typically fails to generate a consensus to take an effective corrective action. The cases of the DPRK and Iraq are cases in point.

So what can and should still be done? We should try to retain as best we can the current NPT regime and the existing the Safeguards arrangements) including wherever possible the AP) and make efforts to improve on them wherever possible without formal negotiations (e.g. like changing the IAEA corporate culture while being guided in our new efforts by **eight practical principles**:

1. Opting for arrangements among the **like minded as a substitute to new universal initiatives**. The examples of the Ottawa process on landmines and the U.S. Proliferation Support Initiative are showing us the way;
2. Assigning much greater emphasis to the promotion of **regional arrangements** (rather than global mechanisms) as only these can be adjusted to fit the unique circumstances and time horizons of key regions;
3. Emphasizing **access to facilities and technologies over materials diversion** (which are the focus of current safeguards arrangements);
4. Employing wherever possible **collective or at least joint ownership and/or management of fuel cycle facilities as a critical complement to verification** (the Euratom model);
5. Adopting a new approach toward verification that retains the universality norm yet practices it in a discriminate fashion, where track record, size of infrastructure, and lack of transparency affect both the scope and resources devoted to the verification effort (otherwise you end up spending most of the resources on countries like Canada, France, and the UK)
6. Tying in access to technology (and in the case of reactors continued supply of fresh fuel) to compliance with obligations as an extra incentive to secure compliance and attain enforcement.
7. Shifting the burden of proof for compliance with non-proliferation obligations to the State parties undertaking them. A state that fails to address promptly and adequately concerns and suspicions regarding its non-proliferation conduct will automatically forfeit its rights to sensitive technology and supplies.
8. Finally, adopting a policy that explicitly recognizes the utility of defensive as well as coercive measures, all the way up to the use of force as a legitimate means for enforcing non-proliferation. This should be done, of course, under the inherent right of individual or collective self defense (under Article 51 of the UN Charter) and subject to the standard caveat that use of force should be a means of last resort, namely when other instruments have been tried and failed, or at least that there is a reasonable expectation that will do so.

What does all that boil down to in practice? It means that we ought to promote new norms toward nuclear non-proliferation that builds on the existing nuclear order and tries to offset its weaknesses and vulnerabilities. Its point of departure should be an agreement among the likeminded on a new practical interpretation of Article IV of the NPT. It ought to actively discourage constructions of new **national** fuel cycle facilities. It should further prohibit any transfer of such facilities and the material that is needed to construct them. And true to the original spirit of Atoms for Peace enshrined in Article IV, it should offer nations that abide by this norm to receive and operate as “black boxes” new nuclear power reactors, ones that are both safe and proliferation resistant. The fuel for these reactors will be supplied from the outside either by the original vendor of the reactor or by some other entity, that will also be charged with guaranteeing the supply of fuel so long as the recipients continues to adhere to this new norm. The spent fuel would similarly be withdrawn from the operating nations as soon as it is practical to do so.

The advantages inherent in such a new approach are clear. It requires no (painstaking effort to negotiate a) new formal treaty nor renegotiation of an old one, merely an agreement among of the

eight major nuclear reactor suppliers. Furthermore, it is bound to have an immediate impact on the non-proliferation scene while still addressing the growing demands for clean, safe, and especially non-fossil source of energy, especially in the developing world.