

Contextualizing the 2004 NPT PrepCom

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About Us

This paper was prepared in collaboration with the Lawyers' Committee on Nuclear Policy (LCNP), the Western States Legal Foundation (WSLF), and Reaching Critical Will (RCW), the disarmament initiative of the Women's International League for Peace and Freedom (WILPF).

LCNP played a central role in the civil society campaign supporting the General Assembly request for an advisory opinion from the International Court of Justice on nuclear weapons, coordinated the drafting of the Model Nuclear Weapons Convention, and most recently produced with the Institute for Energy and Environmental Research the book, Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties.

WSLF has been a pioneer in exploring the connections between "stockpile stewardship," and other high technology weapons programs including missile defenses and weapons intended to operate through or from space. By analysis of military budget and other U.S. government source documents, WSLF has gone beyond the budget numbers to provide a picture of the global power projection strategy that these ambitious and expensive programs support. WSLF is a founding member of the Abolition 2000 Global Network to Eliminate Nuclear Weapons.

LCNP and WSLF are U.S. affiliates of the International Association of Lawyers Against Nuclear Arms (IALANA).

RCW works as an information service to all actors within the international disarmament community. We monitor all major international disarmament fora, including the GA First Committee, the CD, the UNDC, and, of course, the NPT meetings. We post all documents on our website- including working papers, reports, final documents, statements, resolutions, and treaties. We also report on all of these fora. During the First Committee, we publish weekly newsletters, the First Committee Monitor, distribute them to all delegations, our 1000 member subscription list and archive them on our website. We publish a daily newsletter during the NPT, the News in Review, a collection of NGO views on the NPT proceedings. We also publish a weekly report on the CD, as well as bi-monthly updates on other fora and developments in the international disarmament community. We also serve as the liaison between the Secretariats of these conferences and civil society.

For more information, please refer to the Contact Information on page 9.

We would like to thank the Government of Indonesia for the opportunity to present our views at this seminar.

Understanding the Relationship between Nonproliferation and Disarmament

Nonproliferation and disarmament are incontrovertibly two interdependent goals. Neither is possible in the absence of the other. It is naïve to expect the Nuclear Weapon States (NWS) to disarm in the absence of verifiable nonproliferation mechanisms. Likewise, it is unrealistic, discriminatory, and unsustainable for the majority Non-Nuclear Weapon States (NNWS) to continually renounce nuclear weapons without verifiable, irreversible nuclear disarmament.

However, over the past several years, there has been an increasing and systematic de-linkage of nonproliferation and disarmament, with an unbalanced focus on the former.

This de-linkage carries serious implications for the goal of disarmament, which after all, is the ultimate goal of the NPT. The nonproliferation measures of the treaty are indivisible means to the goal of nuclear disarmament. Without verifiable, irreversible disarmament, the treaty is doomed to failure.

In this section we will look at some of the national policies for nuclear weapons to understand how they are affecting the goal of disarmament and nonproliferation.

Trends in National Nuclear Policies

United States

As underlined in a series of recent policy documents at the highest level,ⁱ counterproliferation and preventive war policies in the United States have blurred the distinction between nuclear and conventional weapons. Nuclear weapons are no longer segregated, either doctrinally or operationally, from conventional weapons. Strategic Command's responsibilities have been expanded to include planning for both nuclear and conventional weapons. More generally, the U.S. in particular has turned away from a rule-of-law approach based on global treaty regimes.

In the United States, research and development is underway on nuclear weapons with new military capabilities and new nuclear weapons concepts, to carry out new policy missions, including potential pre-emptive use of nuclear weapons to counter the use of nuclear, chemical, or biological weapons against the U.S. or its allies.

This includes:

- so-called “mini-nukes” (under 5 KT and other “low yield” nuclear weapons;
- new missiles and delivery systems with dual-use capabilities nuclear and conventional);
- improved targeting techniques to make nuclear weapons “more useable”;
- modification of existing weapons types;
- a design contest between the Livermore and Los Alamos Laboratories to develop a Robust Nuclear Earth Penetrator (100-300 KT or more);
- newly established advanced warhead concept teams at the national nuclear weapons labs;

- options for replacement of the ICBMs at the core of the U.S. nuclear arsenal;
- a Modern Pit Production Facility to provide production capacity up to 450 plutonium bomb triggers per year;
- increased spending to enhance readiness to resume U.S. full-scale underground testing.

It is un-strategic to focus only on the weapons themselves. Instead, it is more useful to recognize the significance of an expanding nuclear weapons infrastructure in the context of the U.S. “national security” policies. History tells us that the continued pursuit of nuclear weapons knowledge by one state will be matched, to a greater or lesser degree by others. The longer such activity continues, the greater and more widespread the technical capacity for proliferation will be.ⁱⁱ

Russia

After two years, Russia has redeployed its Topol-M ICBMs in December, and has reportedly modified the original Topol to create a maneuverable warhead, which they claim is capable of evading missile defense. This new warhead was reportedly tested just a few weeks ago.

In February of this year, at the start of some of the biggest military exercises that Russia has undertaken in recent years, Colonel-General Yuri Baluyevsky stated that the new maneuverable warhead and the other missiles tested were in direct response to U.S. proliferation. “They are trying to make nuclear weapons an instrument of solving military tasks, lower the threshold of nuclear weapons use. Shouldn’t we react to that...I’m sure that we should and are doing that,” he said at the press conference, and as reported in the *International Herald Tribune*.

France

France this year renounced the option of U.S. style “mini-nukes,” but maintained that nuclear deterrence remains a central component of French national defense. Defense Minister Alliot-Marie claimed that “the great powers possessing nuclear weapons are not at all thinking of abandoning it.”

This statement and the policy behind it are in direct violation of Step 9(e) of the 13 Steps, as outlined in the 2000 NPT Final Document.ⁱⁱⁱ

Recent Initiatives in Multilateral Fora

The initiatives created within a multilateral framework over the past year or two have failed to put the necessary pressure on NWS to disarm. This alarming trend is evident in:

- the recent attempts at reframing the agenda of the CD to focus on the terrorist and WMD threat;
- the adoption of General Assembly resolution A/RES/58/126, which frames the issue of GA First Committee reform on the issue of terrorism, thereby eclipsing the dangerous role of nuclear weapons in international security;

- the UNDC cannot reach agreement on an agenda for this year. The NAM countries wish to resume deliberations on the two items that failed to reach consensus last year. The U.K. wishes to discuss verification and best practices in SALW, and the U.S. is pushing to discuss UNDC reform.

These points highlight once again how the NWS are attempting to thwart all multilateral fora that are *mandated* to discuss nuclear weapons disarmament. To do otherwise would require revisiting the mandates of these fora.

Negative Security Assurances

Codified, legalized, NSAs remain the best carrot for holding together of the NPT, with the exception, of course, of verifiable, irreversible disarmament.

In addition to their consistent pleas for “non-aggression pacts” as a way to diffuse the crisis on the Korean Peninsula, the DPRK made a statement to the CD on February 12^{iv}, hinting that NSAs, *in the context of the NPT*, would be a viable and welcomed incentive for them to rejoin the Treaty. Since the DPRK announced their withdrawal over a year ago, every State takes due time at nearly every multilateral fora to deplore their decision and urge them to reconsider. NSAs could make a contribution to bringing the DPRK back in to the NPT family, as well as preventing future breakouts.

NSA Precedents

NSAs have been a foremost issue under the NPT since the treaty’s creation. Today, they remain a viable way by which the Treaty could be heartily strengthened. In addition to the 1995 SC resolution, the decision undertaken at the 1995 Review Conference, States Parties are mandated by the consensus 2000 Final Document to make recommendations to the next Review Conference.

Last year, Iran and the NAC submitted separate working papers^v on NSAs in the context of the NPT. At this crucial last PrepCom, a unified NNWS front on the issue of NSAs is important. Compromise between the two working papers of 2003 should be found.

The first difference is the contexts in which these different papers are situated. Iran’s paper is much more explicit in its criticism of the United States, all but naming it. (Although they do name the U.S.’s Nuclear Posture Review.) Clearly, this was a political move by Iran, which was repudiating the claims, led by the U.S., that it is pursuing a clandestine weapons program.

In addition to further non-binding measures, such as more ad hoc guarantees and a follow up Security Council resolution, Iran’s paper calls for negotiations to take place at the CD, under an Ad Hoc Committee. It therefore would require involving non-NPT states India, Pakistan, and Israel in the negotiations, which would introduce major complications to say the least.

The NAC working paper, by contrast, does not identify the U.S.'s nuclear policy as something that necessitates movement on NSAs. In fact, the NAC, which is comprised of U.S. allies, includes thinly veiled recommendations for negotiations on NSAs to take into account the NATO nuclear umbrella policy, such that NSAs would not apply in the event of an attack on a US ally by a NNWS allied with a NWS.

The NAC paper therefore calls for the following:

- a general statement
- identification of States providing assurances (NWS)
- identification of those who would receive such assurances
- room for the qualifications and
- a mandate to the Security Council to act if a NSA recipient is threatened with nuclear weapons.

Recommendations:

Together, NAC and NAM may be able to persuade some close US allies which have been concerned by trends in US policy to widen theoretical circumstances of nuclear use to push for NSAs. A willingness to seek NSAs in the NPT context seems wise; an NPT protocol would not preclude addressing non-NPT nuclear-armed states policies in other ways.

In order to solicit the support of key allies, we recommend States Parties drop the implicit reference to the United States in any future working paper or recommendation.

In order to find a compromise on the NATO question, leaders on NSAs must hold informal discussions with the beneficiaries of NATO nuclear umbrella policy. Their unilateral support for the new working paper will be crucial at this time.

An NPT protocol would not preclude addressing non-NPT nuclear-armed states policies in other ways. The perennial issue of NSAs, which go back to the founding of the treaty, should also not be allowed to divert attention from the imperatives of verified, irreversible reduction and elimination of nuclear forces.

Speaking Out Against Vertical Proliferation

The linkages between vertical proliferation and our quest for negative security assurances must be explored further. The U.S., we know, does not favor codified NSAs, as they have made clear many times before, as recently as the last First Committee.^{vi} As the U.S. prepares the ground for an expanded nuclear infrastructure, researching new, more “useable” nuclear weapons, it is ever more important that NNWS seek codified assurances that they will not use them.

But is that enough?

Rather, there must be explicit reference at this PrepCom to the world's desire to stop *all* proliferation- horizontal and vertical. The best guarantee against the use or threat of use of nuclear weapons- large and small- is their elimination.

To deplore the proliferation that may be occurring in non-nuclear armed parts of the world, without equally deploring and working to halt the proliferation underway in the NWS is inequitable, unjust, ineffective to the nonproliferation regime at large, and further exacerbates the discriminatory nature of the NPT. An international nonproliferation regime that ignores the qualitative improvements to already existing arsenals implies the foolhardy notion that "the weapons themselves aren't bad; it's bad countries who seek them." This assumption must be dispelled.

We urge the NNWS to stand firm in the negotiations this year on recommendations. There must be references that call for, *inter alia*, the following:

- a halt to all qualitative improvements on arsenals;
- prohibition on not just the development, but the research of mini-nukes, RNEPs, and the other new designs that the NWS are looking into;
- the closure and monitoring of the nuclear weapons infrastructure in all nuclear weapons states to begin early in the process of disarmament;
- strongly urging the CD to move on an FMCT. Call upon those who have not yet stated their position to do so. Continue holding informal discussions in Geneva and in your capitals. The CD must be prodded from all angles if it is going to, at long last, break its 8 year stalemate.

Revisiting the Idea of a Fourth Special Session on Disarmament

The United States is correct in that it is pushing forth the idea of international institutional reform. However, the U.S. is pursuing reform in a piecemeal approach. They submitted a GA resolution on the issue, garnering dozens of co-signers before finally adopting it without a vote in the First Committee, and now they want the UNDC to take up this issue at its meeting next week. A more holistic approach, such as the one called for by Secretary General Kofi Annan in his speech to the GA this autumn, would be more equitable, more comprehensive, and more effective.

An SSOD IV could address, *inter alia*:

- CD stalemate, including the rules of procedure, membership, etc.;
- UNDC, including rules of procedure and mandate;
- Security Council's role on disarmament and nonproliferation;
- First Committee rules of procedures and mandate;

and more. The General Assembly remains the most equitable forum to discuss the most pressing issues of peace and security and should be utilized as such.

Conference on Nuclear Dangers

The world is a different place since the Secretary General first made the call for this conference in his Millennium Declaration. Some obvious differences include:

- 9/11
- the War on Terror
- the war in Iraq over suspected proliferation without UN approval
- the discovery of the A.Q. Khan network
- loss of faith in multilateral processes for disarmament

Faced with this new reality with which we must grapple, such a conference could address the issues that the current Security Council draft resolution on nonproliferation^{vii} is attempting to address, but in a much more egalitarian forum. Issues pertaining to preventing NBC trafficking, for instance, would not be mandated by a 15 member council, but rather all interested parties could develop a framework for implementing these new norms.

The Article IV loophole is undoubtedly going to be one of the most salient topics at this year's PrepCom, and at next year's Review as well. It is also on the agenda at this year's G8 summit in the U.S. It is safe to presume that the Article IV loophole as an issue of concern will not go away any time soon.

Bush and ElBaradei have both put forth their proposals; Bush in his address to the National Defense University and ElBaradei in a widely-publicized op-ed in the New York Times, immediately after the statement by Bush. How will the world address this? What are the pros and cons of each proposal? What other proposals could be devised?

Such a conference would also be the best forum to discuss the need for sustainable energy. The threat that Iran, for instances, faces at the moment, is entirely due to its pursuit of nuclear energy. With all of the other debates aside, including those over the safety, environmental soundness and cost of nuclear power, the pursuit of nuclear energy, for right or for wrong, places NNWS at risk. If, for example, Iran's energy needs could be met through another means, the entire potential crisis could be averted. This is why we maintain that sustainable energy research would promote and assert NNWS sovereignty, peace, and independence from the U.S.^{viii}

Such a conference would also easily support the intense support of civil society around the world, support that hasn't been matched since the Ottawa Process. It would also provide an egalitarian forum for both NWS and NNWS to address their equally pressing concerns of terrorism, proliferation, and nuclear disarmament.

Conclusion

The ideas and suggestions outlined here represent only a fraction of the resources available from civil society. It is our desire to offer these services and resources to the States Parties, as an expression of our support for your demonstrated commitment to the

abolition of nuclear weapons. We thank the government of Indonesia once again for allowing us the opportunity to present some of our ideas at this conference, and we urge all States Parties to fully utilize the NGO resources that are at your disposal.

The stakes at this PrepCom are clearly higher than ever before. As the NPT is the world's most successful multilateral treaty on the nonproliferation and disarmament of nuclear weapons, the States Parties carry the responsibility to uphold not only the NPT, but to also demonstrate the viability and efficacy of the multilateral framework of security.

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ⁱ Such documents include the Nuclear Posture Review, the National Security Strategy, and the National Strategy to Combat Weapons of Mass Destruction.

ⁱⁱ For more information, please refer to the document from the Western States Legal Foundation, available in your conference packet.

ⁱⁱⁱ States Parties are backtracking on key progress made in the last decade.

Far from fulfilling the 13 Practical Steps to disarmament, as outlined in the 2000 Review Conference Final Document, NWS have backtracked dramatically on these promises. Now, instead of looking at ways to move disarmament forward, we are now charged with upholding these agreements and preventing further backsliding.

Even though one of the steps was nullified less than two years after the 2000 Review Conference, when the U.S. unilaterally withdrew from the ABM Treaty thereby voiding the START process, the thirteen steps remain a useful measuring tool in assessing NWS commitment to disarmament.

Furthermore, a success such as the *UNANIMOUS* 13 steps should not be so quickly discarded. This document is probably second only to the first SSOD in terms of consensus-based dedication to disarmament. It is the best blueprint that we've come up with so far for visualizing a NWF World!

Lastly, the principles of the 13 Steps emphasize the fact that disarmament and nonproliferation are inseparable from each other. Pursuing one in the absence of the other is foolhardy and doomed to fail.

For more information on the various ways in which the NWS have backtracked on the 13 Steps, please refer to the soon-to-be-updated Shadow Report: Accountability is Democracy, Transparency is Security available at: <http://www.reachingcriticalwill.org/legal/npt/nptindex1.html>. The Shadow Report also contains a chapter that measures, step by step, NWS compliance with this historic blueprint for disarmament.

^{iv} All statements to the CD can be found at: <http://www.reachingcriticalwill.org/political/cd/cdindex.html>.

^v All working papers from 2003 are available at:

<http://www.reachingcriticalwill.org/legal/npt/wpindex.html>.

^{vi} All statements to the First Committee, including explanations of votes and draft resolutions, as well as NGO analysis on the Committee, can be found at:

<http://www.reachingcriticalwill.org/political/lcom/lcomindex1.html>.

^{vii} The draft Security Council resolution on proliferation of WMD, introduced by the United States is concerning to NGOs for several reasons, that can be discussed at further length later, if there is interest to do so.

Our main concerns with the draft resolution circulated March 24 include the following:

- its absolute silence, both rhetorical and substantive, on disarmament
- the legislative power of the Security Council to require states to enact national laws and measures to prohibit and prevent non-state trafficking and acquisition of WMD
- the implicit support to interdiction as contemplated under the Proliferation Security Initiative, but creates no mechanisms to ensure that any specific interception is justified and lawful

Why is this a matter for the 15 member Council? Why not the GA, or another appropriate multilateral body? The Security Council could adopt principles and guidelines, and save mandatory language for particular situations.

For more information on civil society's work on the new SC resolution, see:

<http://www.reachingcriticalwill.org/political/SC.html>.

^{viii} For more information on sustainable energy, including a draft convention establishing an International Sustainable Energy Agency, see Abolition 2000: www.abolition2000.org.