

Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Compliance

Working paper submitted by Germany

I.

The NPT is the cornerstone of the global nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament. If it is to continue to fulfil this function every effort should be undertaken to maintain the authority and the integrity of the NPT. To this end compliance with the fundamental NPT obligations is of critical importance. Continuing proliferation and the possible risk of nuclear weapons programmes being pursued under cover of civilian nuclear programmes are matters of particular concern. The following considerations and proposals are presented for further discussion with a view to strengthening compliance specifically relating to the non-proliferation aspect of the NPT.

It goes without saying that the NPT has also established a firm relationship between disarmament and non-proliferation with the commitment of the nuclear weapons states to Art. VI of the NPT being the counterpart of the non-nuclear weapons states undertaking to renounce the acquisition and possession of nuclear weapons. Against the backdrop of growing frustration with the slow progress towards irreversible disarmament Germany acknowledges that a new momentum must be instilled into the disarmament process with a view to maintaining its credibility, which is also of key importance to the goal of ensuring the authority and integrity of the NPT.

II.

The issue of compliance with non-proliferation commitments under the NPT comprises five main aspects:

- ensuring the detectability of significant violations,
- effectively preventing any misuse of civilian nuclear programmes for military ends,
- securing and eliminating weapons usable nuclear materials and nuclear weapons,



- enhancing international response capabilities and enforcement,
- adopting a credible approach towards the de facto nuclear weapon States remaining outside the NPT.

It is suggested that these aspects be focal points in the 2005 NPT-Review Conference and that the Conference agrees on concrete measures and recommendations to enhance compliance with the Treaty. To that end it is suggested to consider the following draft recommendations:

1. Detection of Significant Violations

- *The universalization of the Additional Protocol (cf. INFCIRC/540) should be considered as a matter of particular urgency. All Member States should be called upon to sign and ratify the Additional Protocol within a short period to be determined.*
- *The Additional Protocol should be made the "standard" for the implementation of Art. III and as such the indispensable prerequisite for cooperation and assistance to be granted in line with Art. IV of the Treaty.*
- *NPT state parties should be encouraged provisionally to apply the Additional Protocol until it enters into force for them.*

2. Prevention of Misuse of Civilian Nuclear Programmes

- *The announcement by the Director General of the IAEA to appoint an expert panel tasked to examine possible solutions to the risks posed by the nuclear fuel cycle should be welcomed and the Director General be asked to provide an (interim) report by the expert panel in a timely manner in order to allow the NPT Review Conference to draw (preliminary) conclusions.*
- *Due to the immediate relevance of the issue to the NPT a solution should be sought in the context of the NPT. This solution should respect the basic bargains underpinning the Treaty and not require any formal amendments to it.*
- *The solution should not create new dividing lines among NPT member states. It should be balanced, consistent with the basic principles pertaining to international relations and universally applicable.*
- *Any constraints on enrichment and reprocessing should be accompanied by assurances for the reliable supply of nuclear fuel at market prices. These assurances should in the first instance consist of a guaranteed access to the fuel market.*
- *A de facto restriction of Article IV should be accompanied by far reaching nuclear disarmament measures by the nuclear weapon states (with a view to maintaining the balance of the fundamental bargain underlying the NPT).*

- *States that currently do not have enrichment and/or reprocessing facilities should be urged to voluntarily renounce the possession of such facilities even before a universally acceptable solution is found.*
- *NPT state parties should be encouraged to refrain from exporting sensitive technologies relating to enrichment and reprocessing; to that end they should adopt the necessary export controls (state parties should also commit to helping other state parties to establish effective national export control systems towards that end).*

3. Security of weapons usable nuclear materials and nuclear weapons

- *NPT member states should be encouraged to exchange data on existing stocks of HEU and plutonium with the aim of establishing an inventory at a global level, which could also represent a first step towards the creation of the data base, which is the indispensable prerequisite for the establishment of a nuclear weapon free world (cf. German Discussion paper of 11 May 2002)*
- *The Review Conference should recommend the establishment of a legally binding universal standard for the physical protection of nuclear materials (building on INFCIRC 225 and other work undertaken in the framework of the IAEA including the CPPNM).*
- *The cessation of the production of HEU and separated plutonium should be aimed at. The FMCT could be taken as a point of departure for these endeavours or even as a vehicle to achieve this objective.*
- *The elimination of all (surplus) stocks of weapons usable nuclear materials and nuclear warheads should be speeded up (cf. existing agreements and efforts regarding blend down of HEU and plutonium disposition; desirability of a follow-up agreement to the Moscow Treaty regarding the destruction of warheads to be reduced). Again an FMCT could provide a legal basis for the measures regarding the elimination of stocks. In addition cooperative threat reduction programmes can make an important contribution in this regard.*
- *The CD should be asked to revisit the issue of radiological weapons with a view to exploring the possibility of negotiating a convention prohibiting those weapons: such a convention could also support and provide added legitimacy to the efforts of the IAEA aimed at enhancing the security of radioactive sources (cf. German working paper CD/1681 of 22 August 2002).*

4. Enforcement

- *The role of the UN Security Council as the final arbiter of compliance should be strengthened; to that end the possibility of establishing a "Code of Conduct" for dealing with cases of serious violations of the NPT as well as other WMD instruments (in particular the BTWC and the CWC) could be examined. Such a "Code of Conduct" could also make provision for automatic responses.*

- *The role and capabilities of the NPT state parties should be strengthened through the establishment of communication procedures and mechanisms including a formal point of contact system. However such procedures and mechanisms should in no way conflict with or undermine the role of the IAEA regarding the Implementation of Articles III and IV of the NPT.*
- *New procedures should be adopted for withdrawals; these should include an obligation on the member state which contemplates exercising its right of withdrawal to hold prior consultations in the framework of an extraordinary conference of all NPT state parties.*
- *It should be recommended that special provisions governing a withdrawal should be established (possibly in the form of an understanding to be spelled out in the Final Document of the Review Conference and subsequently supported by the UN Security Council). These provisions should determine that the right of withdrawal cannot be exercised in cases where the state in question is or is alleged to be (with relevant investigations/procedures underway) in violation of the Treaty; in addition no state withdrawing from the NPT should have the right to benefit from the capacities that it has established in the nuclear field as a result of having made use of Article IV of the Treaty and/or having benefited from the assistance and cooperation provided under the Treaty by the IAEA or other state parties (i.a. possibility of establishing an obligation to shut down or return relevant capacities and equipment). Similarly states that withdraw from the NPT could be prohibited from using capacities they acquired while they were a member for the production of nuclear weapons.*

5. Universality

- *The NPT state parties should reaffirm their commitment to universalise the NPT, urge India, Pakistan and Israel to accede to the NPT as non nuclear weapon states without delay, commit themselves to adopt stringent export restrictions towards these three countries.*