

Assessment Paper on Non-Proliferation

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Introduction: Understanding the Action Plan in Historical Perspective

The concern about the spread of nuclear weapons predated the opening for signature of the Non-Proliferation Treaty (NPT) in 1968.² However, since its entry into force in 1970, the NPT has been a key multilateral framework within which prevention of proliferation has been discussed, notably through the review process. This is mostly a political and diplomatic process that has to be understood as such. Therefore, understanding the implications of the non-proliferation section of the 2010 NPT Review Conference Action Plan requires an approach in context and in historical perspective.³

The first thing to keep in mind is that the previous Review Conference, in 2005, was a major failure. It was not the first review conference not to end up with a final document. The 1980, 1990 had failed to produce a final document agreed upon by consensus and even the historically successful 1995 review and extension conference ended up with a document which replaced the word consensus with the recognition that “a majority exists”.⁴ However, the 2005 Review Conference was widely perceived as “the biggest failure in the history of this Treaty.”⁵ Since then, the two North Korean nuclear tests in 2006 and 2009, the concerns about the Iranian nuclear program, the Syrian site of Al Kibar as well as the suspicions over the Burmese nuclear activities have fueled and renewed fears about further spread of nuclear

¹ This paper is solely the opinion of the author and does not necessarily reflect the official views of CISAC or of the organizers of the seminar of September, 29, 2011. The author wants to thank Jessica Bufford, Marc Finaud, Sara Kutchesfahani, Vasileios Savvidis and Bernard Sitt for comments on earlier versions of this paper.

² The framing of the problem of the spread of the weapons in terms of proliferation has unfortunate political effects which have been analysed elsewhere. See Benoît Pelopidas, “The Oracles of Proliferation. How Experts Maintain a Biased Historical Reading Limiting Policy Innovation”, *Nonproliferation Review* vol. 18 n°1, March 2011.

³ The Final Document of the 2010 NPT Review Conference, which includes the Action Plan (pp. 25sq), can be found at [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50(VOL.I)).

⁴ Jayantha Dhanapala, “The Management of NPT Diplomacy”, *Daedalus* vol. 139 n°1, Winter 2010, p. 63 ; William Potter, “The NPT Review Conference. 188 States in Search for Consensus”, *The International Spectator*, 3/2005, p. 20.

⁵ Harald Müller, “The 2005 NPT Review Conference: Reasons and Consequences of Failure and Options for Repair”, Weapons of Mass Destruction Commission, paper n°31, August 2005, available at <http://www.blixassociates.com/wp-content/uploads/2011/03/No31.pdf>.

weapons and, even, a possible collapse of the non-proliferation regime. It is true that Iran and Syria related issues have rarely been discussed during the 2010 Review Conference.⁶ However, the memory of a historical failure combined with several proliferation concerns and a *de facto* new nuclear weapon state – North Korea –, which status under the NPT is still open for discussion, has led to consider that “failure was never an option”, as one representative stated at the closing of the conference.⁷

Prospects of spread of nuclear weapons were obviously not the only sources of these fears but this short assessment paper will focus on the non-proliferation side and on the action items placed under this section of the Action Plan, *ie* actions 23 to 46. It will focus on three aspects before reaching conclusions and recommendations about how to implement these action items and prepare for the next stage of the NPT review process.

First, it will assess the non-proliferation action items under this category in this Action Plan in comparison with other possible non-proliferation policies that are absent or listed under other categories of the plan. Second, this paper will assess the existence and content of bargains between several components of the Treaty in the non-proliferation action items. Third, it will suggest the existence of tensions among some actions listed under the same category. This will lead to four final recommendations.

Non-Proliferation in the Action Plan : What is in, What is Out and What That Means

The understanding of non-proliferation in the second section of the Action Plan mainly focuses on transparency, increased support for the International Atomic Energy Agency, and dealing with non-compliance issues. There is no radical innovation in the proposals, so two aspects need to be remembered. First, assessing an effective non-proliferation policy is not only assessing the implementation of the action items listed under this name in the Action Plan. Second, and consequently, what has been left out of this section – and put in another section of the Action Plan – or left out of the entire Action Plan is interesting to understand.

Classical non-proliferation measures are now listed under disarmament or peaceful uses, or dealt with outside the NPT context. The calls for an entry into force of the Comprehensive Test Ban Treaty (CTBT) and a Fissile Material Cut-Off Treaty (FMCT) are listed under disarmament (actions 12 to 15) even if they can be considered as part of a non-proliferation strategy. Similarly, minimization of Highly Enriched Uranium is listed under peaceful uses of nuclear energy (action 61), and mostly dealt with in other venues, notably the Nuclear Security Summit of April 2010.

These action items suggest that the threat of nuclear terrorism is not a major rationale which would shape the struggle against the spread of proliferation in the NPT context. Very

⁶ Patricia Lewis, Gaukhar Mukhatzhanova, Miles Pomper, William Potter, “The NPT 2010 Review Conference: Deconstructing Consensus”, *CNS Special Report*, 17 June, 2010, p. 2, available at http://cns.miis.edu/stories/pdfs/100617_npt_2010_summary.pdf.

⁷ Quoted in *Ibid.*, p. 1.

little discussion was devoted to this topic during the four weeks of the Review Conference⁸ and the non-proliferation action items (action 41 to 46 on safety, security and accounting of nuclear materials) on this topic are pretty weak. Action 45 is the only one which includes the expression “nuclear terrorism”. It states that “The Conference encourages all States parties that have not yet done so to become party to the International Convention for the Suppression of Acts of Nuclear Terrorism as soon as possible.” This can be explained in three ways. First, the threat assessment coming from the US 2010 Nuclear Posture Review which considers nuclear terrorism as “the most immediate and extreme threat today”⁹ is not shared. Second, the issue has been addressed in other venues, like the UN Security Council – resolution 1887 of September 2009 –, the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, the Convention for the Suppression of Acts of Nuclear Terrorism, the 2010 Nuclear Security Summit held in Washington, and the creation of the IAEA trafficking database. – The fact that the Iranian crisis was not addressed during the Review Conference while a new round of sanctions was discussed at the United Nations Security Council is another example of this dynamic. – A third possible explanation would be to say that state parties to the NPT are satisfied enough with the way the issue of nuclear terrorism is addressed in these other fora so they do not feel the need to give it priority.

The non-proliferation action items also reveal that analyses that reduce the perceived strategic value of nuclear weapons are surprisingly limited to promote disarmament and not applied to non-proliferation goals.¹⁰ The disarmament actions calling for “policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons” (Action 1) or for a commitment “to accelerate concrete progress on the steps leading to nuclear disarmament” (Action 5) assume that the need to rely on nuclear weapons is overstated (see also several other disarmament actions). At a global level, these actions do not necessarily call for non-proliferation but require it. For example, action 5a : “Rapidly moving towards an overall reduction in the global stockpile of all types of nuclear weapons” requires non-proliferation as well as disarmament and calls for it. The reassessment of the value of this weapon system could lead potential proliferators to question their rationale; it could also convince decision-makers from non-nuclear weapon states not to change their mind and go for the bomb. However, it is surprisingly absent from the Action Plan as a non-proliferation tool.

After analyzing the content of the non-proliferation section of the Action Plan and its very limited innovation, one has to realize that this section can be read as an interpretation of the NPT which reaffirms and sets up specific bargains.

⁸ *Ibid.*, p. 15.

⁹ US Department of Defense, *Nuclear Posture Review Report*, April 2010, p. 3.

¹⁰ For proposals along this line, see Ken Berry, Patricia Lewis, Benoît Pelopidas, Nikolai Sokov and Ward Wilson, *Delegitimizing Nuclear Weapons*, CNS Occasional Paper, May 2010, available at http://cns.miis.edu/opapers/pdfs/delegitimizing_nuclear_weapons_may_2010.pdf.

The Non-Proliferation Section of the Action Plan as a Reading of the NPT: Finding the Bargains

The existence, extent and nature of a grand bargain or of specific bargains inside the NPT and the broader Non-Proliferation Regime have been the subject of a heated political and academic debate for decades.¹¹ Given that the Action Plan has been accepted by consensus and offers criteria which will be used in the next steps of the review process, it is worth examining which bargains are recognized in this particular document. This analysis will be limited to the non-proliferation action items and will distinguish between actions that repeat or reaffirm one or several articles of the NPT, the failed attempts at introducing innovations to the non-proliferation section of the Action Plan, and the action items which set up specific bargains which are otherwise disputed among interpreters of the Treaty.

First, most of actions 23 to 46 reaffirm in one way, shape or form, the obligations contracted under article I, II and III of the NPT or in the final documents of previous NPT review conferences. Action 35 may provide the best example. It reads as follows: “The Conference urges all States parties to ensure that their nuclear related exports do not directly or indirectly assist the development of nuclear weapons or other nuclear explosive devices and that such exports are in full conformity with the objectives and purposes of the Treaty as stipulated, particularly, in articles I, II and III of the Treaty, as well as the decision on principles and objectives of nuclear non-proliferation and disarmament adopted in 1995 by the Review and Extension Conference.” The Action Plan reaffirms a bargain between non-proliferation through safeguards and access to nuclear technology, which was expressed in article III-3 of the NPT.¹² In other words, the requirements of non-proliferation in terms of safeguards should not limit the right to access nuclear technology for peaceful purposes. It is true that “the Conference calls upon Member States to extend their cooperation to the Agency” (action 27). However, there is no innovative or strong additional non-proliferation obligation in the Action Plan.

Second, efforts regarding the universalization of the additional protocol to the comprehensive safeguards agreements of the IAEA (AP), the limitation of the right to withdraw from the NPT and nuclear security have not been very successful. The Western efforts to make the AP a gold standard of non-proliferation practice and tie it to article III obligations under the NPT have failed in spite of the considerable amount of time devoted to the discussion of this issue.¹³ The wording about the additional protocols of the safeguard agreements of the IAEA – actions 28 to 30 – is weak and only encourages States to bring them into force “as soon as possible and to implement them provisionally pending their entry

¹¹ See for instance the special issue of *International Affairs*, May 2007 and William Walker, *A Perpetual Menace: Nuclear Weapons and International Order*, London, Routledge, 2011.

¹² This article states that “The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of the Treaty.”

¹³ Patricia Lewis, Gaukhar Mukhatzhanova, Miles Pomper, William Potter, “The NPT 2010 Review Conference: Deconstructing Consensus”, *CNS Special Report*, 17 June, 2010, p. 3, 13, 14 19.

into force” (action 28). On its side, the IAEA is encouraged “to further facilitate and assist the States parties in the conclusion and entry into force of comprehensive safeguards agreements and additional protocols” (action 29). No tougher provision has been met either on the front of the conditions for withdrawal from the Treaty. Similarly, since 2009 at least, a few voices have suggested that nuclear security should become the “fourth pillar” of the Treaty, after non-proliferation, peaceful uses of nuclear energy and disarmament.¹⁴ Action 40 sets the tone of the Action Plan on this issue. It expresses a concern but ends up with vague ambitions limited by what is perceived as “possible”. It reads as follows: “The Conference encourages all States to maintain the highest possible standards of security and physical protection of nuclear materials and facilities.” As a matter of fact, little discussion was devoted to this issue during the 2010 NPT Review Conference and, as mentioned earlier, the actions dedicated to it in the non-proliferation section mostly reiterate previous legal obligations, invite to abide by them and “enhance international partnerships and capacity building” (action 44).

Third, the text of the Action Plan recognizes the demands from the Non-Aligned Movement (NAM) to condition further non-proliferation obligations to progress on the nuclear disarmament front.¹⁵ Action 30 states that “the Conference stresses that comprehensive safeguards and additional protocols should be universally applied once the complete elimination of nuclear weapons has been achieved.” It is true that the linkage is limited because it is only expected after the end state of a world without nuclear weapons has been reached. However, the recognition of this highly controversial bargain in the non-proliferation section of the Action Plan is worth noting. Such a bargain follows the reluctance of the non-nuclear weapon states members of the NAM countries to further tie their hands or cooperate on the non-proliferation front but also the interpretation of the Obama administration. In her opening statement before the Senate Foreign Relations Committee, on June 15, 2010, Assistant Secretary of State Rose Gottemoeller, US chief negotiator for the New Start Treaty, argued that “by demonstrating that we are living up to our obligations under Article VI of the Nuclear Non-Proliferation Treaty (NPT), we enhance our credibility to convince other governments to help strengthen the international nonproliferation regime and confront proliferators.”¹⁶

Even if most of the non-proliferation action items are neither strong nor very innovative and tend to provide incentives for states parties to keep doing what they already

¹⁴ See Government of the United Kingdom of Great Britain and Northern Ireland, Cabinet Office, “The Road to 2010: Addressing the Nuclear Question in the Twenty First Century,” July 2009, pp. 8, 10, 14, available at <http://www.official-documents.gov.uk/document/cm76/7675/7675.pdf>.

¹⁵ See for example, the statement by Ambassador Antonio Guerreiro of Brazil at the Main Committee II, on 10 May 2010. He stated that “it is simply not fair to expect non-nuclear-weapon states, which have already undertaken unequivocal, credible and verifiable commitments to foreswear nuclear weapons, to implement further enhanced verification measures, while the international community has yet to be presented with a timeframe within which to expect the achievement of a world free of nuclear weapons”. See also the address by H.E. Ahmed Aboul-Gheit, Minister for Foreign Affairs of the Arab Republic of Egypt, on 5 May 2010. Aboul-Gheit states that “the implementation by nuclear-weapon states of their obligations in the field of nuclear disarmament, including through the implementation of the new START agreement, for which we congratulate the United States and the Russian Federation, does not consequently commit non-nuclear-weapon states to accept any additional obligations, other than those stipulated in the Treaty neither in the field of non-proliferation nor in the field of peaceful uses of nuclear energy”.

¹⁶ The full text and video of the statement are available at <http://www.state.gov/t/avc/rls/143159.htm>.

do, they reflect a bargain between increased commitment to non-proliferation measures and actual progress on the nuclear disarmament front.

Tensions among Non-Proliferation Action Items

The relative weakness and lack of innovation of the non-proliferation action items should not lead one to think that this removes risks of tensions among separate action items. This sounds like a minor point but it emphasizes that there is a need to prioritize among action items one wants to implement.

For instance, positive and negative calls for universalization of the NPT are somehow in tension with calls to address and resolve all cases of non-compliance with safeguard obligations. Why is that? From a strict non-proliferation perspective, non-compliance is an obstacle towards universalization – since universalization without compliance is meaningless – and these two endeavours could and should work together. However, the right to withdraw from the NPT which is defined in article X-1 of the Treaty creates a possible tension between the goals of universalization and global compliance. This tension appears as soon as one realizes that universalization not only requires outsiders to become NPT Member States but also current Member States not to withdraw from the Treaty. Thus, “[exerting] all efforts to promote universal adherence to the Treaty, and not to undertake any actions that can negatively affect prospects for the universality of the Treaty” (action 23) might lead to refrain from “resolving all cases of noncompliance with safeguards obligations in full conformity with the IAEA statute and the respective legal obligations of Member States” (action 27) under the assumption that the state found in non-compliance might use its right under article X-1 to withdraw from the Treaty, leading to a step backward in terms of universality. Similarly, fully implementing actions 26 and 27 might lead to consider this risk is worth taking in the name of compliance, “in order to uphold the Treaty’s integrity and the authority of the safeguards system” (Action 26). It is true that the language of actions 26 and 27 about non-compliance are phrased in a very mild manner: the conference does not go beyond “[underscoring] the importance” of these issues. Nevertheless, it has become clear that the courses of action towards universalization and towards addressing non-compliance can be in tension with one another. A political decision about which one should take priority over the other one is needed, associated with diplomatic work aiming at convincing other states parties to share this order of priority. This is still true because the proposals trying to limit the right to withdraw from the treaty, which were addressed in subsidiary body 3 during the 2010 Review Conference, were met with the Syrian, Iranian, Libyan and Egyptian arguments that they would constitute a reinterpretation of the Treaty. In the end, no consensus could be found on this issue and the only result appears in the review section of the Final Document, stating that “numerous states” support a variety of measures to increase the costs of withdrawal.¹⁷

¹⁷ Patricia Lewis, Gaukhar Mukhatzhanova, Miles Pomper, William Potter, “The NPT 2010 Review Conference: Deconstructing Consensus”, *CNS Special Report, op. cit.*, p. 16.

In a nutshell, the lack of progress in terms of limiting the right to withdraw from the Treaty has put one of the slightly strong action items about universalization in possible tension with the requirement to effectively address non-compliance.

Conclusion : Four Recommendations

This analysis suggests that not much is new on the non-proliferation front in the Action Plan of the 2010 NPT Review Conference. However, this should not lead to conclude that the plan could or should be ignored. The four following recommendations suggest ways to implement the Action Plan while recognizing that effective policies to prevent the spread of nuclear weapons should be designed more broadly.

First, since the non-proliferation section of the Action Plan does not include all non-proliferation measures, national non-proliferation policies should be broader than the action items and articulated to the other aspects of nuclear policy. A policy choice might have to be made between an effective non-proliferation policy and the desire to improve the atmosphere for the next review conference so that the chances for a consensual final document are maximal.¹⁸

Second, one should not try to pursue non-proliferation only and isolate it from bargains which are recognized inside the Action Plan itself. The Action Plan has been accepted by consensus and denying its binding value might be very counterproductive. The failure of the 2005 Review Conference is a case in point. The denial of the political value of the 13 steps towards nuclear disarmament, which had been approved as a part of the final document of the 2000 NPT Review Conference, has participated in the failure of the 2005 Review Conference.¹⁹ In other words, one should move beyond discussions in terms of original intent or spirit of the Treaty and take into account the bargains that are delineated inside the Action Plan itself.

Third, one should focus on measurable action items. This suggests to neglect the actions items which ask states to keep doing what they are already doing and not to put a priority on the items which are vaguely defined. An example of this vagueness would be action 41 phrased as follows: “The Conference encourages all States parties to apply, as appropriate, the IAEA recommendations on the physical protection of nuclear material and nuclear facilities (INFCIRC/225/Rev.4 (Corrected)) and other relevant international instruments at the earliest possible date.” Action 28 for example provides a much clearer guideline for action based on which states will be held accountable. It states that “The conference encourages all States parties that have not yet done so to conclude and to bring into force additional protocols as soon as possible and to implement them provisionally pending their entry into force.” 26 states have signed the Additional Protocol but have not put

¹⁸ It is difficult to say that the mere existence of a final document can be a decisive criterion for the success of a Review Conference.

¹⁹ Jayantha Dhanapala, “The Management of NPT Diplomacy”, *op. cit.*, p. 65; Harald Müller, “A Nuclear Nonproliferation Test. Obama’s Nuclear Policy and the 2010 NPT Review Conference”, *Nonproliferation Review* vol. 18 n°1, March 2011, p. 219; Rebecca Johnson, “Politics and Protection: Why the 2005 NPT Review Conference Failed”, *Disarmament Diplomacy* n°80, April 2005.

it into force. Bahrain and Djibouti have signed their Model Additional Protocols to their safeguards agreements with the IAEA after the Review Conference and the Board of governors of the IAEA has now approved the one with Guinea.²⁰ This cannot necessarily be taken as a strong sign of progress but it could at least work as a leverage point for continuing implementation.

Fourth, and finally, one should not forget that initiatives that are launched and gain support during a Review Conference can successfully be promoted and implemented in other international fora. That was the case for the joint initiative aiming at reducing the use of highly enriched uranium in the civilian nuclear sector. It was first addressed as a Working Paper submitted by Iceland, Lithuania, Norway, and Sweden at the 2005 NPT Review Conference and has then been promoted at the IAEA and the Nuclear Security Summit. Implementing action items should therefore be considered as an opportunity for creative non-proliferation action inside as well as outside the NPT review process. Reassessing the value and utility of nuclear weapons could for example be used as a tool for non-proliferation and not only disarmament policies.

²⁰ These states are Andorra, Bahrain, Belarus, Benin, Cameroon, Cape Verde, The Republic of the Congo, Côte d'Ivoire, Djibouti, Honduras, India, Iran, Iraq, Kiribati, Kyrgyzstan, Liechtenstein, Malaysia, Namibia, Senegal, Serbia, Thailand, Timor-Leste, Togo, Tunisia, Vietnam and Zambia. See the companion report by *Reaching Critical Will*, chap. 4, p. 3.