

2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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The Treaty on the Non-Proliferation of Nuclear Weapons as the cornerstone of the nuclear disarmament and non-proliferation regime and its relationship to other relevant treaties

Working paper submitted by Austria

1. Austria shares with other States parties to the Treaty on the Non-Proliferation of Nuclear Weapons the conviction that the Non-Proliferation Treaty is the cornerstone of the nuclear disarmament and non-proliferation regime. Based on its well-known three pillars of disarmament, non-proliferation and peaceful uses, the Treaty established the framework that has led to and guided a complex set of international instruments for implementing and strengthening the international nuclear disarmament and non-proliferation regime.

Peaceful uses

2. A good case in point is the area of peaceful uses foreseen in article IV of the Non-Proliferation Treaty. Its slim text lays down the principles without delving into implementation:

Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

3. Consequently, a large number of legal instruments were adopted over the past 50 years to give effect to the principles outlined in article IV. In the area of nuclear security, there has been a constant process of implementation and efforts to strengthen the regime. For instance, the Convention on the Physical Protection of Nuclear



Material, which entered into force on 8 February 1987, deals with physical protection measures to be applied to nuclear material in international transport, as well as measures related to criminal offences regarding nuclear material. The 2005 amendment, in force since 8 May 2016, expands the scope of the Convention to nuclear material in domestic use, storage and transport and to nuclear facilities. The International Convention for the Suppression of Acts of Nuclear Terrorism, in force since 7 July 2007, contains agreements with regard to offences relating to the unlawful and intentional possession and use of radioactive material or a radioactive device and the use of or damage to nuclear facilities.¹

4. Equally, in the area of nuclear safety, following the Chernobyl nuclear plant accident, the international community tried to mitigate the dramatic consequences of such disasters by further strengthening the international regime. The most pertinent examples here are the Convention on Early Notification of a Nuclear Accident, which entered into force on 27 October 1986 and established a notification system for nuclear accidents, as well as the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, which entered into force on 26 February 1987. More recently, the Convention on Nuclear Safety, which entered into force on 24 October 1996 and contains fundamental safety principles related to the operation of land-based civil nuclear power plants, as well as the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, which entered into force on 18 June 2001 and establishes fundamental safety principles, have further improved the regime.²

5. This brief overview represents merely an excerpt of legally binding instruments adopted in order to implement and strengthen the peaceful uses pillar of the Non-Proliferation Treaty. By its very nature, the Treaty does not contain legal provisions on all issues that are necessary for its full implementation. Therefore, further legal instruments are required for the Treaty's full implementation.

Non-proliferation

6. The non-proliferation pillar of the Non-Proliferation Treaty is the most clearly defined in the Non-Proliferation Treaty text:

Article I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

Article III

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the

¹ See www.iaea.org/topics/nuclear-security-conventions.

² See <https://www.iaea.org/topics/nuclear-safety-conventions/>.

International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

3. 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 cooperation 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.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this Article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

7. This pillar has equally required a plethora of legal instruments, as well as practical implementation via an international organization, the International Atomic Energy Agency (IAEA), to give effect to its articles. The instrument explicitly foreseen by the Non-Proliferation Treaty and created immediately after the Treaty's adoption is the comprehensive safeguards agreement concluded between non-nuclear-weapon States parties to the Treaty and IAEA according to article III.1 of the Treaty. To date, IAEA has concluded 175 comprehensive safeguards agreements. These allow the Agency to apply safeguards to all nuclear material in the territory, jurisdiction or control of the State for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.³

8. These comprehensive safeguards agreements are complemented by an additional protocol in order to enable access to information about and access to all parts of a State's nuclear fuel cycle. As at 31 December 2021, 138 countries have such additional protocols in force.

9. Multilateral legal instruments have also been developed to implement the non-proliferation pillar, with varying degrees of success. One such instrument considered to contribute to articles I, II and VI is the Comprehensive Nuclear Test

³ See International Atomic Energy Agency, documents INFCIRC/153 and INFCIRC/153/Corr.

Ban Treaty adopted in 1996. While that Treaty makes no reference to the Non-Proliferation Treaty in its text, the Non-Proliferation Treaty review process includes clear references and commitments to the Comprehensive Nuclear Test Ban Treaty, such as in actions 10 to 14 of the 2010 Action Plan. Unfortunately, in the more than 20 years since its adoption, the Treaty has not yet entered into force and, despite interim measures such as the creation of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, has not been able to fully contribute to the implementation of the Non-Proliferation Treaty.

10. Another relevant instrument would be a future treaty on fissile material. By prohibiting the production of fissile material for nuclear weapons, the treaty would have the potential to contribute to the aims of both articles I and II, but also of article VI of the Non-Proliferation Treaty. Despite continuous attempts to make progress within the framework of the Conference on Disarmament, even the start of negotiations on such a treaty has been blocked for decades, again holding back the implementation of the Non-Proliferation Treaty.

11. Again, this section only provides a cursory overview of the plethora of legal instruments adopted to implement and strengthen the non-proliferation pillar of the Non-Proliferation Treaty, illustrating the need for such instruments in order to properly give effect to the Treaty.

Disarmament

12. Article VI of the Non-Proliferation Treaty is approximately as brief as the peaceful uses pillar and explicitly stipulates that effective measures are needed for its implementation:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

13. While the above-mentioned fissile material treaty and the Comprehensive Nuclear Test Ban Treaty have the potential to positively affect the implementation of article VI, this pillar has to date been primarily implemented through bilateral agreements. As such, concrete progress has been achieved through the conclusion and implementation of arms control agreements between the Russian Federation and the United States, the two largest possessors.

14. While the now regrettably defunct Intermediate-Range Nuclear Forces Treaty, signed in 1987, did not contain references to the Non-Proliferation Treaty, numerous arms limitation and reduction treaties have included explicit references to the Non-Proliferation Treaty and its article VI. The new Strategic Arms Reduction Treaty (New START), signed in 2010, contains the following preambular paragraph:

Committed to the fulfilment of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968, and to the achievement of the historic goal of freeing humanity from the nuclear threat

This explicitly confirms that nuclear arms control and disarmament agreements serve the implementation of article VI.

15. Other examples include references to the Non-Proliferation Treaty and its article VI in the Treaty between the Russian Federation and the United States of America on Strategic Offensive Reductions (SORT) Treaty signed in 2002,⁴ the

⁴ “Mindful of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968”.

Strategic Arms Reduction Treaty (START I),⁵ signed in 1991, and the Interim Agreement between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms (Interim Agreement (SALT I)), signed on 26 May 1972.⁶

16. These explicit references to the fulfilment of article VI “obligations” in the Interim Agreement (SALT I) of 1972, START I of 1991, SORT of 2002 and New START of 2010 clearly show that the United States and the Union of Soviet Socialist Republics/Russian Federation recognize that such treaties are considered to be in fulfilment of the Non-Proliferation Treaty.

17. The authors, like many other States, are on record as having acknowledged and applauded the progress achieved by the implementation of these bilateral agreements. Unfortunately, it appears that this part of the implementation of article VI is slowing down, and there are even concrete signs of a dangerous reversal.

18. After the Anti-Ballistic Missile Treaty and the Treaty on Conventional Armed Forces in Europe, as well as the withdrawal of the United States from the Joint Comprehensive Plan of Action, the Intermediate-Range Nuclear Forces Treaty has become the latest agreement to cease to be in force. That Treaty made a tangible contribution to the implementation of article VI and had a positive impact on security, in particular in Europe. The failure of the two parties to the Intermediate-Range Nuclear Forces Treaty to resolve implementation issues in accordance with the procedures therein resulted in the termination of the Treaty. The undoing of a major achievement in the nuclear disarmament and non-proliferation architecture runs counter to the implementation of the article VI obligations and leads to the dangerous spectre of the restationing of ground-launched intermediate-range missiles in Europe. Any restationing of such missiles in Europe and beyond by these two countries would stand in clear contrast to the implementation of article VI obligations.

19. New START is set to expire in early 2026, requiring urgent negotiations for a successor instrument. Failing to replace it with a successor instrument that would bring further reductions would amount to regressing on Non-Proliferation Treaty disarmament obligations. Urgent dialogue on further reductions in a future new agreement between the United States and the Russian Federation would be in line with article VI obligations.

20. It is generally accepted that the full implementation of article VI requires a legally binding norm to prohibit nuclear weapons, since otherwise a world free of nuclear weapons cannot be achieved or maintained. This legally binding norm, indispensable for the full implementation of article VI, came about by the adoption by 122 countries of the Treaty on the Prohibition of Nuclear Weapons on 7 July 2017. The Treaty explicitly builds on the Non-Proliferation Treaty, as acknowledged in its preamble:

Reaffirming also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security

21. The drafters of the Treaty on the Prohibition of Nuclear Weapons were motivated by the very same concerns about the devastating humanitarian

⁵ “Mindful of their undertakings with regard to strategic offensive arms in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968; Article XI of the Treaty on the Limitation of Anti-Ballistic Missile Systems of May 26, 1972; and the Washington Summit Joint Statement of June 1, 1990”.

⁶ “Mindful of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons”.

consequences of nuclear weapons,⁷ as further explored during three humanitarian conferences held in Oslo; Nayarit, Mexico; and Vienna. A prohibition of use alone would be insufficient for nuclear weapons in the light of the risks inherent in the weapons as well as in the systems connected to them. The prohibition itself, of course, only represents one step, which will need to be followed by further steps to achieve the ultimate goal of a world free of nuclear weapons.

22. The Treaty, in force since 22 January 2021, contains clear pathways towards a world free of nuclear weapons in its article 4, representing an effective measure as foreseen in article VI of the Non-Proliferation Treaty. Furthermore, the prohibitions in article 1 of the Treaty on the Prohibition of Nuclear Weapons strengthen the global non-proliferation and disarmament regime.

23. Besides contributing to the implementation of article VI, the Treaty on the Prohibition of Nuclear Weapons in fact also contributes to the non-proliferation pillar of the Non-Proliferation Treaty. States parties signing up to the clear norm against nuclear weapons sign a binding legal commitment that goes beyond the Non-Proliferation Treaty, as it includes prohibitions on stationing as well as the use and threat of use of nuclear weapons. Similarly, the safeguards provisions contained in article 3 of the Treaty on the Prohibition of Nuclear Weapons exceed the Non-Proliferation Treaty requirements in that they require all States parties, without distinction, to apply a comprehensive safeguards agreement as a minimum and – also as a minimum – to maintain their level of safeguards at the time of the entry into force of the Treaty on the Prohibition of Nuclear Weapons. That Treaty thus effectively contributes to the implementation not only of article VI but of the Non-Proliferation Treaty as a whole.

The importance of compliance

24. The Non-Proliferation Treaty represents a grand bargain between its three pillars of disarmament, non-proliferation and peaceful uses. The implementation of the obligations under all three pillars is essential for States parties to the Treaty. While the scorecard looks good with regard to non-proliferation and peaceful uses, the implementation of disarmament obligations under article VI is severely lagging and, 50 years after its entry into force, far from complete. Equally, attempts at accelerating progress, including the 13 steps agreed upon at the 2000 Review Conference and the action plan agreed at the 2010 Review Conference, have not been fully implemented.

25. The central importance of compliance with obligations under disarmament and non-proliferation treaties has been highlighted in the context of other such treaties over recent months. Treaties have collapsed or are under serious threat of collapsing because of issues of non-compliance, severely undermining confidence in multilateral disarmament and non-proliferation agreements.

26. Equally concerning are recent attempts to narrowly interpret central provisions, specifically article VI, or to backtrack from them, which call into question the commitment of States parties to the grand bargain contained in the Non-Proliferation Treaty. Indeed, countries may well be tempted to follow that example and interpret the other pillars equally narrowly. Furthermore, arguments to the effect that new

⁷ Compare the relevant phrasing in the preamble to the Non-Proliferation Treaty (“Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of people,”) with that in the preamble to the Treaty on the Prohibition of Nuclear Weapons (“Deeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances”).

conditions need to be fulfilled before treaty provisions can be implemented, coupled with modernization and upgrading programmes, carry the danger that other States parties may be tempted to follow a similar logic, leading to reduced compliance on a greater scale.

27. Consequently, any form of non-compliance or reduced compliance weakens treaties. Current dangerous trends of non-compliance and reduced compliance erode trust not only in individual treaties but in the disarmament and non-proliferation regime as a whole, including the Non-Proliferation Treaty as its cornerstone.

Conclusion

28. The Non-Proliferation Treaty, as the cornerstone of the nuclear disarmament and non-proliferation regime, is the well-established foundation that needs to be implemented and strengthened by further instruments that are built upon it. While this has been actively pursued in the peaceful uses and non-proliferation pillars, the disarmament pillar has lagged and there is a danger of backtracking. The adoption of the Treaty on the Prohibition of Nuclear Weapons follows the logic of the two other pillars of the Non-Proliferation Treaty, by providing an effective measure, as foreseen in article VI of the Non-Proliferation Treaty, towards nuclear disarmament. The Treaty on the Prohibition of Nuclear Weapons is an indispensable step for fully implementing article VI, which will need to be followed by further effective measures to achieve the ultimate joint goal of a world free of nuclear weapons. By signing and ratifying the Treaty on the Prohibition of Nuclear Weapons, States demonstrate their clear attachment to the Non-Proliferation Treaty, as well as to full compliance with its provisions.

29. The nuclear disarmament and non-proliferation architecture is highly interwoven and interdependent. Developments in one part of the architecture will have a major impact on the Non-Proliferation Treaty as its cornerstone. It is therefore essential that utmost efforts are exerted not to allow the (further) demise of existing elements of the architecture.

30. Full compliance with the Non-Proliferation Treaty obligations, including those in article VI, and with commitments undertaken during the review process is essential. Such compliance must not be subjected to limiting interpretations or new conditions, as this would severely weaken the Treaty.

Recommendations

31. In the light of the foregoing, it is suggested that the following recommendations be made regarding the subject matter of the present working paper for the 2020 Review Conference:

(a) To call upon all States, and in particular the nuclear-weapon States, to fulfil their obligations under the Non-Proliferation Treaty and commitments undertaken under previous review conferences, including their unfulfilled obligations and commitments under the disarmament pillar;

(b) To acknowledge the relationship of the Non-Proliferation Treaty to other relevant treaties;

(c) To acknowledge the need for further effective measures to implement article VI of the Non-Proliferation Treaty, such as the Treaty on the Prohibition of Nuclear Weapons;

(d) To refrain from reinterpreting existing agreed commitments and setting new conditions for their implementation;

(e) To acknowledge the inherent danger in the erosion of the treaty-based disarmament and non-proliferation architecture, as shown through the Anti-Ballistic Missile Treaty, the Treaty on Conventional Armed Forces in Europe, the Intermediate-Range Nuclear Forces Treaty and the Joint Comprehensive Plan of Action being either terminated or severely threatened;

(f) To call upon all States to engage in resolving compliance issues in relation to arms control and disarmament treaties;

(g) To swiftly negotiate and conclude a successor treaty to New START that would bring about further reductions, in order to prevent the backsliding of compliance with article VI;

(h) To call upon the Russian Federation and the United States to refrain from restationing systems prohibited under the Intermediate-Range Nuclear Forces Treaty and to urgently negotiate a successor agreement.
