



Procedure and Substance in the NPT Review Cycle: The Example of Nuclear Disarmament

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I have been asked to speak today on how the Nuclear Nonproliferation Treaty (NPT) review cycle can deal with what some describe as its "procedural deficit," including how the review process can increase Parties' accountability to their obligations and contribute to making progress on important issues of concern relating to the authority, integrity, and implementation of the Treaty.

I. The "Substantive Deficit"

I hope you will not think me too much the contrarian, however, if I suggest that I think this may be asking the wrong question. Talk of a "procedural deficit" implies that there is some kind of procedural gap that needs to be filled if the NPT regime is to work right. Nevertheless, while I understand the temptation to develop new and additional procedural mechanisms when a regime is challenged, as the NPT is today, I fear that such an approach could merely replicate today's procedural difficulties on a different stage. The real problem is not so much a lack of "procedures" as it is an unhealthy *fixation* upon them -- a fixation that has made it hard for Parties to use the review cycle as it was intended to be used: namely, as a forum for articulating views and developing common positions on key substantive challenges facing the NPT regime.

As I have discussed elsewhere, the review cycle neither is nor was intended to be either a legislative or an executive body. What it *can* do is catalyze and help give direction to measures by groups of countries and by individual states, either in other institutional fora or outside such structures, to support and reinforce the Treaty regime and advance its goals.

The issue of withdrawal from the NPT by its violators is one example of how this can work. Short of opening up the Treaty itself for amendment, a step that few would support because of the unpredictability of its outcome, there is little that the NPT review process itself can do, *directly*, to make such kinds of withdrawal more costly and unattractive. Nevertheless, the review process has a very important role to play in providing a forum in which interested Parties can develop and build support for common positions on this issue. These positions can, in turn, drive initiatives that have real impact.

In a paper on NPT withdrawal the United States released last month, for instance, we set forth a number of ways in which the international community could help deter withdrawal by violators of the Treaty. These potential steps involve the United Nations Security Council, the Nuclear Suppliers Group (NSG), and the International Atomic Energy Agency (IAEA). Because the reasons such institutions might get involved in deterring potential violators from withdrawing are related to but do not involve oversight of the implementation of the NPT *per se*, the NPT review process does not have any formal say vis-à-vis their involvement, and no amount of energy devoted to closing a "procedural deficit" will put the review forum in a position to play the roles that these institutions are designed to play in such matters. Nevertheless, the review process is very important to the equation, because it provides a unique global forum in which these issues can be discussed and broad answers developed.

Making progress in important areas does not require the layering-on of new NPT review cycle mechanisms. It requires discussion and gradual policy convergence among states, which is precisely what the review cycle is designed to facilitate. Rather than a "procedural deficit," I believe we should be worrying about a "substantive deficit" -- that is, we should be concerned with the difficulty Parties have had in getting *through and beyond* procedural matters in order to have the full, honest, and open substantive discussions necessary for catalytic processes to occur.

II. Getting Past Procedure

In our consultations on NPT matters, I have stressed that the best way to get through the procedural minefields that caused so much pain in the last review cycle is to adopt a new approach to setting forth the agenda for meetings and the allocation of time for particular topics. This approach would employ simple, unspecific, and broadly-inclusive phrasings that allow all issues of concern to have a home within review process discussions, yet avoid specific call-outs for pet topics and particular concerns. Thus, for instance, we believe that the best agenda for the 2007 Preparatory Committee (PrepCom) meeting would be one that is as broad and unspecific as possible. It would allow for debate on all topics of concern, but avoid politically-charged designations of particular subjects as special foci of discussion.

We recognize, however, that this approach -- by itself -- might fail to address some countries' worries that matters of key concern to them might receive insufficient attention. Indeed, some might suspect that a lack of specific reference to their favorite topic in an agenda formulation meant that this topic would be ignored. That is why it is vital for relevant Parties emphatically to commit themselves to full engagement on the key issues of concern to others. If this commitment is clear enough up front, we believe it can replace the assurances currently sought by some countries in the form of specific call-outs for favored topics. By a bargain in which procedural restraint is given in return for emphatic substantive engagement, the review process can avoid once again becoming paralyzed by substantive disagreements fought out through procedural vehicles.

I would like to offer nuclear disarmament as an example of the way in which this could work. For reasons I will discuss in a moment, it is no secret that the U.S. Government seeks a PrepCom agenda that does not explicitly reference certain past Review Conference documents that we feel provide inadequate guides to disarmament efforts today. Such references are just the sort of procedural item that sparks controversy and difficulty and risk reviving the acrimony and difficulties of past meetings. To avoid such problems, we advocate a broadly inclusive but general and unspecific agenda formulation without such specific references. Our formula would allow discussion of all disarmament topics -- including those encompassed in past documents -- but would avoid reopening longstanding disputes because it would not place explicit emphasis upon controversial elements.

But such procedural restraint is only part of the equation. We recognize the importance of nuclear disarmament as a topic for review cycle discussions. We also understand that some countries may worry that our desire to avoid such references in the agenda stems from some desire to duck discussion of these issues, or from some lack of commitment to disarmament. Accordingly, we are coupling our procedural initiative on the agenda with a demonstrable commitment to full debate and discussion of nuclear disarmament during this review cycle. This clear commitment to engagement and dialogue should put to rest any worries some might have that these matters will not receive the full hearing they deserve.

And since I fully understand that it would be an inadequate answer simply to *declare* that the United States stands ready to engage in such a comprehensive disarmament dialogue, I would like to *demonstrate* our commitment to you. Consequently, for the remainder of my remarks, I hope you will permit me to speak rather candidly about nuclear disarmament. Such candor must begin with a frank discussion of what the NPT actually *says* about disarmament -- and, significantly, what it does *not say*. But after clearing the air in that respect, I would like to demonstrate our commitment to dialogue by releasing several papers the U.S. Government has prepared in order to set forth our views on a range of disarmament matters.

III. Disarmament Obligations, Article VI, and the Review Process

Let me first try to clear up some persistent misunderstandings about the NPT's key disarmament provision, Article VI. As you know, Article VI provides that

"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."

I will spare you a detailed history of how Article VI came to be written, but it is not a coincidence that it was written in such unspecific terms. Parties undertake *to pursue* merely *negotiations* related to disarmament, and though they must do this in good faith, the Treaty carefully avoids requiring any specific action by any particular point in time -- except for ending the nuclear arms race by what is unhelpfully described merely as "an early date." Indeed, to the extent that the Treaty suggests anything about specific disarmament milestones, in the disarmament paragraphs of the Preamble, it seems to envision nuclear disarmament only occurring *pursuant to* -- that is, not *prior to* -- a treaty on general and complete disarmament. (Hopefully we can all do better than *that*, but the Treaty does not require it.)

The International Court of Justice tried in 1996 to read into these vague aspirational generalities an obligation "to conclude" disarmament agreements, but this reading is not supported by the actual text of Article VI, which was drafted by lawyers who knew how to impose clear obligations when they wanted to, but who did not do so here. Moreover, the ICJ's view runs entirely contrary to the negotiating history of Article VI, of which the Court gave no sign of being at all aware -- perhaps because the meaning of Article VI was never properly raised and argued before that body in the first place. (We should remember that pursuant to its Statute, the ICJ has no authority to render advisory opinions on questions that were not asked of it. The 1996 case in which its *dictum* about Article VI appears involved only a question about the legality of the use of nuclear weapons.)

If one reads the negotiating history of Article VI, it will be clear that its lack of specificity is no accident. Indeed, during the long negotiations at the United Nations' Eighteen Nation Disarmament Committee (ENDC), attempts were repeatedly made to insert specific disarmament obligations that paralleled the nonproliferation obligations then taking shape in what became Articles I and II of the final Treaty. Time after time, countries such as India, Sweden, Burma, and the then-United Arab Republic tried to add concrete disarmament requirements to the drafts under consideration. But each time, these attempts failed to win the support they needed, and were abandoned. And so, in a September 1965 joint memorandum, the non-aligned members of the ENDC declared that the emerging Nonproliferation Treaty should instead merely be "coupled with or followed by" steps toward disarmament.

Canada and others subsequently expressed what in effect became the compromise solution, arguing that the nuclear weapon states should make "a clear and compelling declaration of intent to embark on the process of nuclear arms control" (emphasis added). This led to the adoption in 1967 of the approach embodied in the final text. Pursuant to this approach, rather than *requiring* anything concrete with respect to disarmament, the Treaty would merely express the clear *intention* of the nuclear weapons states to move toward it in the framework of a treaty on general and complete disarmament. Mexico then added the final element, by proposing the phrasing about "negotiations in good faith" -- a formulation which did not, incidentally, require anything more than their *pursuit*. As Mexico's Ambassador Castaneda noted, demanding the inclusion of specific disarmament measures at that point would have been tantamount to opposing the treaty itself. With these compromise amendments, the final text of Article VI had been reached.

Both the plain meaning of the text of Article VI and its negotiating history thus make clear that the disarmament provisions of the NPT are not substantively equivalent to the Treaty's nonproliferation obligations. Nor is this really surprising, for the primary motivation for the NPT was to reduce the risk of nuclear war and to do so explicitly in the Treaty by obligations designed to prevent the spread of nuclear weapons to additional states. Certainly, there was an awareness that nuclear war could also occur through actions by those already in possession of nuclear weapons. (This is why, for instance, Article VI urges an end to the nuclear arms race at an early date.) Importantly, however, Article VI makes clear that measures to address that risk are envisioned as occurring separately from the NPT. For better or worse, Article VI actually does *not* contain concrete disarmament requirements, and it is wrong to contend today that its drafters included the sort of specific proposals that in reality they considered but *declined* to adopt.

Do not mistake my point, however. None of what I have just said means that disarmament issues are unimportant, nor do such observations write out of the NPT the very significant emphasis placed in the Preamble and in Article VI upon the need to move toward nuclear disarmament. Nor indeed do such comments make it any less true that *all* States Party have solemnly pledged their support for these goals and to pursue them in good faith.

In fact, disarmament issues have a particular salience for us in the NPT review process, for a review of the negotiating history of Article VI also reveals that the review cycle was created in part to provide a forum for debating how much progress States Party were making in moving toward the goals expressed in the Treaty. In fact, this was a point first made by the United States, which suggested that rather than requiring actual disarmament steps, the Treaty should include provisions for a review process to give Parties the chance to raise concerns they might have that the treaty "should be accompanied by progress to halt and reduce rising nuclear stocks."

So disarmament issues are subjects ripe for discussion in NPT fora during the review cycle. It is thus incumbent upon all Parties to debate and discuss what progress has been made in achieving the objectives of Article VI and the Preamble, and what still needs to be done. So if we in the United States have ever tried to duck debate on these topics, shame on us.

But while we have quite rightly sought to emphasize areas in which the NPT faces its gravest challenges, I do not believe that we have ever shied away from engagement on disarmament matters. And I hope that in the remainder of my remarks, I can not only convince you of our longstanding and continuing seriousness about disarmament, but also challenge you to engage in more thoughtful and practical discussions of how it is that we can all work together to bring the world to the point where the total elimination of nuclear weapons can actually be achieved.

IV U.S. Disarmament Positions

As part of our commitment to engaging in full and candid discussions with our diplomatic counterparts and other opinion-leaders on these matters, I am pleased to announce the release today of four U.S. position papers on disarmament issues. We have prepared these papers, and are making them available in advance of the PrepCom, to help make our perspectives as clear as possible and catalyze productive debates on disarmament during the lead-up to the 2007 NPT Preparatory Committee meeting at the end of next month.

I will summarize these papers here only very briefly, and I hope you will read them carefully. I believe they demonstrate clearly what the United States has done and is doing today to make the goals of the Article VI and the Preamble a reality. I also hope they will succeed in sparking a dialogue about how, in the complexities of the real world, it might finally be possible to achieve - and sustain - the total elimination of nuclear weapons. I have only a limited supply of paper copies of the papers here today, but we will post them on the U.S. State Department website. Let me take a few minutes quickly to walk you through them.

A. The U.S. Record

The [first paper](#) sets forth the United States' outstanding record of accomplishments related to nuclear disarmament. Those of you who have read U.S. materials prepared for previous NPT meetings will find much of this material familiar, but you should note that this paper does not merely reiterate the accomplishments of the past. These accomplishments continue today.

We have eliminated more than 13,000 nuclear weapons since 1988 and gotten rid of more than 1,000 ballistic missiles and 450 missile silos. But this process is not over. The Bush Administration dismantled the last W-56 warhead for the Minuteman II missile in June 2006, and it has requested significant *increases* in the current budget for nuclear warhead dismantlement. We are currently in the process of drawing down our strategic warhead numbers in order to meet Moscow Treaty targets. When we have completed this task, our nuclear arsenal will be at about a quarter of its size at the end of the Cold War, and will have reached its lowest level since the Eisenhower Administration. The Bush Administration has also continued longstanding reductions in delivery systems, and we recently announced that we will eliminate about 400 Advanced Cruise Missiles currently deployed with the B-52 bomber fleet.

We have not produced any uranium for use in nuclear weapons since 1964, nor any plutonium for such purposes since 1988, and we have scrupulously observed the nuclear testing moratorium we announced in 1992. We have also been actively *removing* fissile material from our nuclear weapons programs, placing some of it under International Atomic Energy Agency (IAEA) safeguards, and down-blending some 90 tons of highly-enriched uranium (HEU) from defense nuclear programs for use in civilian power reactors. The most recent step in this process occurred as recently as November 2005, when the Bush Administration announced that it would remove another 200 metric tons of HEU from any further use as fissile material in U.S. nuclear warheads. This is enough material, according to IAEA figures, to make 8,000 nuclear weapons. Meanwhile, the United States in May 2006 became the first (and so far only) country to introduce a draft Fissile Material Cutoff Treaty (FMCT) at the UN Conference on Disarmament.

The United States is also beginning development of the Reliable Replacement Warhead (RRW), which will help us to continue to meet our deterrence needs until the total elimination of nuclear weapons can be achieved, but to do so with safer warheads, fewer warheads, and less potential need to resume nuclear testing. The RRW, which adds no new nuclear weapons capabilities, thus supports and will help advance the disarmament objectives of the NPT.

For those of you who now acknowledge the reductions we have made since the end of the Cold War but think the United States may nonetheless be *increasing its reliance* upon nuclear weapons, rest assured that this is false. Indeed, pursuant to our Nuclear Posture Review (NPR) of 2001, the United States is reducing its formerly exclusive reliance upon nuclear weapons for strategic deterrence. In place of the exclusively nuclear strategic "Triad" of the Cold War, the United States relies increasingly on a combination of non-nuclear offensive strike capabilities, active and passive defenses (including ballistic missile defenses), and a robust and responsive defense industrial infrastructure to satisfy the requirements of strategic deterrence with a lessened emphasis on nuclear weapons.

The Strategic Arms Reduction Treaty (START I) will expire in 2009, and the Moscow Treaty in 2012. We have already begun high-level discussions with the Russians about what our future strategic security relationship should look like. It is too early to say much about those talks, but I should emphasize that U.S. officials have made it clear that they hope to ensure that transparency and confidence-building measures remain an enduring part of the U.S.-Russia relationship as it continues to mature in a post-Cold War environment. The reductions that followed the end of the Cold War highlight the role that easing tension and strengthening trust among nations must play in achieving the goals of Article VI and the Preamble to the NPT.

Finally, I wish to stress the link between nonproliferation compliance and disarmament progress, a link that Article VI itself makes by stressing the need to end nuclear arms race behavior. Strict compliance with nonproliferation obligations is an essential step toward disarmament, and the world cannot expect to achieve and sustain the elimination of existing nuclear weapons programs if it cannot prevent the development of new ones.

As the non-aligned members of the ENDC noted in a 1965 draft resolution during NPT negotiations, a guiding principle was for the draft treaty to be "*a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament.*" Nonproliferation alone, in other words, is not sufficient as the goal for the international community, but it is absolutely *necessary* if the world is to have any hope of finally achieving disarmament.

B. FMCT

The [second U.S. paper](#) concerns our proposal for a Fissile Material Cutoff Treaty. I won't recapitulate its contents now, for U.S. representatives have spoken long and well about its merits, and about the need for other delegations to the Conference to end their counter-productive policies of "linkage" that have prevented any movement to date on this treaty.

C. Achieving and Sustaining Elimination

The [third U.S. paper](#) focuses upon the need to create an international environment in which it would be possible to achieve the objectives of Article VI and the Preamble. It begins by noting the emphasis in the Treaty's Preamble upon lessening tension and strengthening trust among nations in order to facilitate disarmament. The paper then discusses the U.S. commitment to extended deterrence, pointing out the ways in which deterrence serves both nonproliferation and disarmament interests by helping reduce the incentives of technologically-sophisticated U.S. allies to pursue nuclear weapons themselves. Historically, the U.S. nuclear "umbrella" has been an important factor in the decisions by a number of countries to forgo having their own nuclear weapons programs and in convincing others to abandon nuclear weapons programs that were already underway. Today, it provides a powerful stabilizing force that helps keep in check the danger of new nuclear arms race dynamics. This is an important fact to bear in mind, for such deterrent must be both acknowledged *and maintained* during the period in which nuclear weapons continue to exist in the world prior to their elimination.

Building upon this point, the paper then discusses certain aspects of what the global security environment might have to look like if it were to become both possible and realistic to achieve the elimination of nuclear weapons. First, the nations of the world must make dramatic progress in easing tensions and building trust in order to help create the conditions for a world in which elimination of nuclear weapons is possible. The end of the Cold War, and its role in persuading the nuclear superpowers to move towards disarmament, illustrate the importance of such trust. Significantly, neither Article VI nor the Preamble addresses itself solely to nuclear weapon states. Rather, it is incumbent upon *all* States Party to contribute to the lessening of tensions and strengthening of trust that will be necessary for further progress in achieving the goals of Article VI and the Preamble.

Second, there must be confidence that all states will faithfully adhere to nuclear nonproliferation commitments such as those of the NPT. Third, there must be confidence that countries and individuals that engage in or provide support to illicit weapons of mass destruction (WMD) programs are fully and finally out of the proliferation business. Fourth, the pursuit of other WMD and their delivery systems must be halted, and existing programs of this type terminated. Fifth, there would need to be means to develop ways in which any deterrent requirements that remain *after* nuclear disarmament could be met in a non-nuclear and "non-WMD" fashion.

Sixth, there would need to be assurances against development or reconstitution of nuclear weapons capabilities (*i.e.* "breakout" from a disarmament regime) or of other WMD, as well as means to enforce those assurances. Because fissile material and nuclear technology will remain in the world -- and because knowledge of the basic physics of nuclear weaponry cannot be eradicated -- it would also need to be clear that a violator would not be able to realize the intended strategic benefits of his violation. The principle of "irreversibility" in nuclear disarmament, therefore, should not be understood and approached as solely a technical matter, for this would be impossible to achieve. Instead, irreversibility should be seen as a requirement that strategic dynamics be set in place that will ensure the maintenance over time of a balance of costs and benefits such that would-be violators understand that potential development or reconstitution of nuclear weapons would be against their interest.

D. Facilitating Disarmament

In the [fourth U.S. paper](#), the United States reemphasizes its commitment to the goals expressed in Article VI and the Preamble to the NPT, and offers some suggestions about how the Treaty review process can help Parties understand and create the conditions in which it would be possible to achieve these goals.

As I have emphasized before, the world changes over time, and we must ensure that our policy prescriptions change accordingly. Many positions expressed in past Review Conference documents will no doubt remain of enduring importance, but others may age less gracefully, while new issues will surely arise. It is up to all of us continuously to evaluate the situation, and use the review process to encourage support for measures that in today's world promote fulfillment of the Treaty's provisions and achievement of the purposes expressed in its Preamble.

It is no secret that the United States believes that the "Thirteen Steps" on disarmament from the Final Document of the 2000 Review Conference today constitute an inadequate set of policy priorities for helping to achieve the goals of Article VI and the Preamble. But because the United States remains steadfastly committed to these goals, we feel it is an insufficient answer merely to point out the obsolescence of the "Thirteen Steps." Disarmament issues, as I have indicated, *are* of great importance, and the world needs more -- not less -- serious and thoughtful discussion of how to achieve these goals. Accordingly, in this fourth paper, we discuss a number of ways in which the Treaty review process could help update international thinking and build upon the lessons of recent experience in order to facilitate real movement toward the NPT's objectives. Not all of you, perhaps, will agree with everything we mention. But let it no longer be said that we are not actively engaged in dialogue about how to move the world in realistic ways toward disarmament.

V. *Conclusion*

My quick summaries here do not do these papers justice. Nor do I have any doubt that reasonable people can disagree about many of these matters. I hope, however, that we can demonstrate that we do wish to engage seriously on these matters - and that supporters of nuclear disarmament need have no worries that such issues will receive anything other than the full hearing they deserve during this review cycle.

Let me emphasize again that such engagement *is what the review process is for*. However free Article VI may in fact be of concrete disarmament requirements, we cannot ignore the important goals set forth in it and in the Preamble, and we cannot ignore disarmament issues as States Party set about reviewing how well the NPT is living up to its promise.

Rather than curse each other's blindness, it is our responsibility to engage with each other on such matters. For anyone who takes seriously the Preamble's wise focus upon lessening tensions and strengthening trust among nations in order to facilitate disarmament, there is no alternative to such engagement. With luck, it will contribute to building a world in which the elimination of nuclear weapons ceases to be merely a utopian fantasy and instead becomes a practical and sustainable reality.

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