

# Transparency in the Nuclear Non-Proliferation Regime

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## Introduction

Transparency is a principle to which all states should adhere because it helps to reinforce compliance with treaty obligations. The more that is known about the manner of implementation of a state's binding treaty commitments the greater will be the level of international trust in the regime. This is especially important in the Nuclear Non-Proliferation Treaty (NPT) given the nature of the deal that it represents. The act of self-denial of nuclear armaments by the non-nuclear weapon states (NNWS) rests strongly—but not exclusively—on the expectation that the nuclear weapon states (NWS) will bring about “the elimination from national arsenals of nuclear weapons and means of their delivery”. I say “not exclusively” because the NNWS also took the view that in negotiating the NPT the world would be a safer place without nuclear weapons—a sentiment that is shared by NWS but not yet implemented in a sufficiently systematic and progressive manner as the NNWS would like. In any event, at the heart of consummating the continuous call on all sides for strengthening the NPT lies improving the levels of transparency as a window on compliance.

## A short history of transparency in the NPT

The NPT itself has little to say about transparency except in the requirement of article III under which the NNWS are obliged to accept safeguards, negotiated with the International Atomic Energy Agency (IAEA), assuring the world that they are not breaching their treaty commitments by diverting nuclear energy from peaceful use to potential hostile use. While the IAEA was empowered to monitor compliance with those article III non-proliferation obligations, there was no equivalent body established to monitor compliance with the NNWS' disarmament commitments under article VI of the Treaty. The pace and nature of this disarmament process was left open for the NWS themselves to determine.<sup>1</sup> In the absence of transparent actions by the NWS to carry out their disarmament obligations, pressures have grown with the passage of time for more light to be shed on the efforts and intentions of the nuclear weapons-possessing parties.

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1 Paul Meyer, “Seeking the Accountability that should ensure the NPT's Permanence”, paper submitted to the Pugwash conference, Berlin, 1–4 July 2011, <<http://pugwashgroup.ca/events/documents/2011/NPTAccountBerlinJul2011Paul%20Meyer.docx>>.

## 1995

It can be seen in the outcomes of a number of NPT Review Conferences that transparency has become a buzzword in the nuclear non-proliferation regime especially in terms of expectations of the NWS. The action plan of the most recent Review Conference (held in May 2010) continues that tradition, notably in actions 2, 5(g), 19, 20 and 21. But before dealing with those paragraphs, let me refer briefly to the treatment of transparency by earlier Review Conferences.

The 1995 decision to extend the NPT indefinitely was a contentious but important one. It served usefully to remove concern that the NPT's contribution to reinforcing the nuclear non-proliferation norm might be jeopardized and that a destabilizing era of nuclear uncertainty might ensue.<sup>2</sup> Making the Treaty permanent via its indefinite extension, however, was part of a wider package of decisions, one of which as we shall see bears heavily on the aspect of transparency. The concept of "permanence with accountability", a notion embodying the belief that the NWS had a responsibility to account for their implementation of the nuclear disarmament provisions as the corollary of making the Treaty permanent, emerged as a key outcome of the 1995 Review Conference. This accountability requirement was however easier to articulate than to achieve.

The package<sup>3</sup> containing—and specifically linked to—the indefinite extension in 1995 included a resolution on the Middle East<sup>4</sup> and two decisions. The first decision was a commitment to strengthen the treaty review process:<sup>5</sup> the convening of a Preparatory Committee in each of the three years prior to the five-yearly Review Conference. The second decision was on the Principles and Objectives for Nuclear Non-Proliferation and Disarmament.<sup>6</sup> In the Principles and Objectives the states parties expressed their desire that "nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings **evaluated periodically** within the review process" (emphasis added). To effectively evaluate an outcome periodically, it goes without saying that a fair measure of transparency is required.

The decision on Principles and Objectives went on to state:

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below: ...

(c) The determined pursuit by the nuclear-weapon States of **systematic and progressive efforts** to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control". [emphasis added]

We shall return to the phrase "systematic and progressive efforts" shortly.

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2 Ibid.

3 *Extension of the Treaty on the Non-Proliferation of Nuclear Weapons*, document NPT/CONF.1995/32/DEC.3, 9 December 1996.

4 *Resolution on the Middle East*, document NPT/CONF.1995/32/RES/1, 9 December 1996.

5 *Strengthening the Review Process for the Treaty*, document NPT/CONF.1995/32/DEC.1, 9 December 1996.

6 *Principles and Objectives for nuclear Non-Proliferation and Disarmament*, document NPT/CONF.1995/32/DEC.2, 9 December 1996.

## 2000

In 2000, the Review Conference made explicit the connection between the newly agreed permanence of the Treaty (through its indefinite extension in 1995) and the expectation of transparency and accountability that accompanied it. The notions of periodic evaluation and systematic and progressive efforts towards the elimination of nuclear weapons, as highlighted in the decision on Principles and Objectives, were brought together through the provision of a specific **reporting** requirement.

At the 2000 Review Conference, in the section on article VI on nuclear disarmament, states parties agreed by consensus to a series of steps for systematic and progressive efforts to implement that provision. Step 12 of the Final Document of the 2000 Conference contained the requirement for the nuclear-disarming parties to submit:

Regular reports, within the framework of the NPT strengthened review process, by all States parties on the implementation of Article VI and paragraph 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, and recalling the Advisory Opinion of the International Court of Justice of 8 July 1996.

The security of all states parties is affected by the existence of nuclear weapons. The call in practical step 12 for reports “within the framework of the NPT strengthened review process” implies that states parties are expected to report regularly through the central forums of the strengthened review process, that is, the cyclical meetings of the Preparatory Committee and of the five-yearly Review Conference. The hope was that the submission of official reports to the NPT membership by the NWS on their actions in fulfilment of article VI would provide a basis for assessing and comparing the degree of compliance with the disarmament obligations of the Treaty, akin to the detailed submissions that many NNWS engaged in civilian nuclear activities are obliged to provide under article III to the IAEA, as negotiated in bilateral safeguards agreements with the Agency.<sup>7</sup>

## 2010

This expectation has been reinforced in action 20 of the 2010 Final Document. Action 20 also requires states parties to submit regular reports within the framework of the strengthened review process for the Treaty, in this instance on the implementation of the action plan itself. Action 20 then proceeds to repeat step 12’s references to the 1995 Decision on “Principles and Objectives” and the Advisory Opinion of the International Court of Justice.

Let us look at other mentions of transparency in the 2010 outcome. Under action 2 all states parties commit to apply the principles of irreversibility, verifiability and transparency in relation to the implementation of their treaty obligations. Under action 5 the NWS commit to accelerate concrete progress on the steps leading to nuclear disarmament, contained in the Final Document of the 2000 Review Conference, in a way that promotes international stability, peace and undiminished and increased security. To that end, they

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<sup>7</sup> Paul Meyer, “Seeking the Accountability that should ensure the NPT’s Permanence”, paper submitted to the Pugwash conference, Berlin, 1–4 July 2011, <<http://pugwashgroup.ca/events/documents/2011/NPTAccountBerlinJul2011Paul%20Meyer.docx>>.

are called upon in action 5(g) to further enhance transparency and increase mutual confidence.

Moreover, the NWS are called upon to report to the Preparatory Committee in 2014 on their various undertakings under action 5, including that on enhancing transparency. The states parties agreed that the 2015 Review Conference would take stock and consider the next steps for the full implementation of article VI of the Treaty. These reporting and stock-taking deadlines are hard-won outcomes, and their conscientious fulfilment will be crucial to the further strengthening of the regime, an objective to which (as mentioned earlier) all parties subscribe.

At this point it is appropriate to jump ahead in the analysis of the 2010 outcome to refer to action 21. As a “confidence-building measure”, all the NWS were encouraged by the Review Conference (acting collectively) to agree as soon as possible on a standard reporting form and to determine appropriate reporting intervals for the purpose of voluntarily providing standard information without prejudice to national security. At the same time, the Secretary-General of the United Nations was invited to establish a publicly accessible repository for the information provided by the NWS. In anticipation of such information being furnished, the UN Office for Disarmament Affairs (ODA) has established a page on its website as follows: “Information will be made available on this web page once action is taken in accordance with Action 21 of the Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons”.<sup>8</sup> In those terms, this might seem like a modest step, but the fact is that for the first time a mechanism has been established for the enhanced transparency sought by the NPT parties.

I will come back to this aspect shortly, but let me for the sake of completeness first outline the remaining references to transparency in the Action Plan. Under chapter F of the Plan dealing with other measures in support of nuclear disarmament, the Review Conference recognized that nuclear disarmament and achieving the peace and security of a world without nuclear weapons would require openness and cooperation, and affirmed the importance of enhanced confidence through increased transparency and effective verification.

The Conference also agreed on the importance of supporting cooperation among governments, the United Nations, other international and regional organizations and civil society aimed at increasing confidence, improving transparency and developing efficient verification capabilities related to nuclear disarmament (action 19).

## Proposals by states parties

Outcomes of Review Conferences on the issue of transparency more or less reflect the views of states expressed during them, as well as the transparency reports tabled by individual parties and proposals submitted by states. This paper does not attempt to summarize any of those forms of communication. But attention is drawn to a proposal<sup>9</sup> by Australia and New Zealand for systematizing reporting by NWS under four headings—

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8 See <[www.un.org/disarmament/WMD/Nuclear/Repository/](http://www.un.org/disarmament/WMD/Nuclear/Repository/)>.

9 *Working Paper submitted by Australia and New Zealand*, document NPT/CONF.2010/WP.40, 22 April 2010..

nuclear doctrine, fissile material policy, warhead and delivery vehicle numbers, and reductions of strategic and tactical weapons. The NWS were called upon to report along those lines at the five-yearly Review Conferences with updates at each Preparatory Committee meeting. After the Review Conference and in the light of action 21, the Foreign Ministers of Australia and New Zealand shared with the UN Secretary-General a possible reporting template.

More recently, the ideas contained in the Australia–New Zealand proposal have been taken forward by the group known as the Berlin Ten (also as the Friends of Non-Proliferation Treaty),<sup>10</sup> which has passed to the five NWS a draft reporting form as a means of “contributing further on nuclear disarmament transparency, as part of our efforts to encourage progress on this issue”.<sup>11</sup> It is now up to the NWS to agree on a common reporting format. Their readiness to do so will be a litmus test of their commitment to the Action Plan as a whole.

Before leaving this aspect of transparency, three points should be noted. The first is that behind the Secretary-General’s five-point proposal for nuclear disarmament is the concern that the “lack of an authoritative estimate of the total number of nuclear weapons testifies to the need for greater transparency”.<sup>12</sup> Secondly, the setting up by ODA of a facility for storing and making available such information is a significant response to the Secretary-General’s concerns and to the long-standing quest of the NNWS for greater transparency in efforts towards nuclear disarmament.

Thirdly, as already noted the monitoring of compliance of the NNWS with their NPT non-proliferation commitments is carried out by the IAEA. On the other hand, the disarmament obligations (article VI) of the NWS are not subject to institutional oversight. This is a sore point for most if not all of the NNWS. Some see it as exacerbating the underlying discriminatory nature of the NPT in distinguishing between states parties possessing nuclear weapons and those that forswore possession of them.<sup>13</sup> In any event, it was the original understanding of NNWS that this perceived discrimination in status would gradually disappear as the NWS made progress in fulfilling their disarmament obligations, the pace of which—four and a half decades later—is seen by many as grudging and dilatory. Hence, there is increased pressure for information of a regular and measurable nature. In the absence of a secretariat tasked with helping to implement the NPT, the system for reporting now within the grasp of states parties will allow the fulfilment by the NWS of their nuclear disarmament and non-proliferation obligations to be measured and monitored in parallel with the monitoring activities by the IAEA of the fulfilment by the NNWS of their non-proliferation commitments.

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10 Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the United Arab Emirates

11 Statement of the Third Ministerial Meeting of the Non-Proliferation and Disarmament Initiative, New York, 21 September 2011.

12 See <[www.un.org/disarmament/WMD/Nuclear/sg5point.shtml](http://www.un.org/disarmament/WMD/Nuclear/sg5point.shtml)>.

13 Paul Meyer, “Seeking the Accountability that should ensure the NPT’s Permanence”, paper submitted to the Pugwash conference, Berlin, 1–4 July 2011, <<http://pugwashgroup.ca/events/documents/2011/NPTAccountBerlinJul2011Paul%20Meyer.docx>>.

## Conclusions

It needs to be acknowledged in these concluding remarks that some NWS have shown themselves to be increasingly responsive to article VI reporting, and the considerable emphasis placed by all states parties on reporting in the outcome of the 2010 Review Conference reflects this development as much as the significance for the regime of openness of that kind. The United States' recent disclosures<sup>14</sup> on the public record in general are particularly welcome, especially for their level of detail.

A final comment on transparency is this. Engendering trust thereby strengthening the regime is not only a matter of providing information but of doing so regularly. Imposing timelines may be a sensitive issue (and I have not sought to do more than merely mention it here), but grudging disclosure of information will serve only to increase pressures for defining "regularly", not only in term of reporting but also in terms of other specific actions such as measurable rates of reduction of arsenals. Reporting regularly on systematic and progressive efforts towards nuclear disarmament by all NWS would further increase transparency and build international confidence helping to create a climate conducive to further disarmament.

To return again to the preamble of the NPT, its prospective parties are recorded in 1968 as "Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons ...". It is surely not too much to expect in that spirit that, to help put the Treaty onto a firmer footing, the NWS will make a concerted effort this review period to fulfil the transparency actions along with their other responsibilities under the Action Plan. The first Preparatory Committee this coming May should allow an opportunity for parties to get an indication of progress being made by the NWS, not only towards agreeing a standard reporting form but to backing their commitment to the NPT and the 2010 Action Plan through more systematic and progressive efforts to assure fellow parties that they take nuclear disarmament as seriously as non-proliferation.

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14 "New START Treaty Aggregate Numbers of Strategic Offensive Arms", US Department of State, Bureau of Arms Control, Verification and Compliance, 1 December, 2011



## Discussion Series on the NPT Action Plan

Moving towards the 2012 NPT Preparatory Committee, UNIDIR in partnership with the Geneva Forum will convene several briefings to provide a forum for discussion of certain elements of the Action Plan agreed at the 2010 NPT Review Conference. The aim of this series is encourage that tangible efforts be made to further strengthen international cooperation in nuclear disarmament and non-proliferation.

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