

Amending the non-proliferation regime

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To strengthen the international norm banning the proliferation of nuclear weapons, the 1968 Non-proliferation Treaty (NPT) must be adapted to the present national security requirements and the level of technological development in the field of nuclear energy. This could be achieved by amending the treaty so as to remove its shortcomings and fill the gaps that are becoming increasingly apparent. Among the possible amendments that could be envisaged:

Under Article I nuclear-weapon parties have undertaken not to transfer nuclear explosive devices to any recipient, directly or indirectly, and not to assist, encourage or induce any non-nuclear-weapon state to manufacture nuclear weapons.

Recommendation: The ban on “indirect” transfer to “any recipient” must be understood to cover transfer through military alliances. The obligation not to assist, encourage or induce the manufacture of nuclear explosive devices should be binding on non-nuclear-weapon parties as well.

Under Article III(2) supplies of nuclear material or equipment to any non-nuclear-weapon state may take place if they are subject to the International Atomic Energy Agency safeguards (IAEA) required by this article.

Recommendation: The “required” safeguards must be comprehensive, that is, applied in all peaceful nuclear activities of the supplied state. All parties should adopt the 1997 Protocol Additional to the 1972 Safeguards Agreement between states party to the NPT and the IAEA. A global register of stocks of plutonium and highly enriched uranium should be established and regularly updated. Withdrawal of nuclear material from international control for non-explosive purposes (such as propulsion) must be strictly circumscribed.

Under Article IV all parties have the inalienable right to use nuclear energy for peaceful purposes.

Recommendation: Parties may possess components of the peaceful nuclear fuel cycle subject to appropriate IAEA controls. Supplies of fuel for civilian nuclear reactors in countries not producing such fuel should be internationally guaranteed. Highly enriched uranium used for civilian purposes should be replaced by low-enriched uranium. Attacks on nuclear installations should be prohibited.

Under Article V potential benefits from peaceful applications of nuclear explosions are to be made available to non-nuclear-weapon parties.

Recommendation: This article should be deleted. It is now generally recognized that conventional explosives can produce results equivalent to those of nuclear explosives, without posing health or environmental risks.

Under Article VI the parties have pledged to negotiate measures relating to the cessation of the nuclear arms race and measures relating to nuclear disarmament.

Recommendation: It should be made explicit that measures relating to the arms race include adherence to the Comprehensive Nuclear-Test-Ban Treaty and the conclusion of a fissile material cut-off treaty, whereas measures relating to disarmament should lead to the elimination of nuclear weapons. Negotiations must be continuous and the agreements reached must be of indefinite duration.

Under Article VII the right of any group of states to assure the total absence of nuclear weapons in their region is affirmed.

Recommendation: This right should be reinforced by a ban on the transit of nuclear weapons through nuclear-weapon-free zones.

Under Article X each party may withdraw from the NPT if it decides that extraordinary events have jeopardized its supreme interests. Notice of withdrawal is to be given three months in advance.

Recommendation: Only a qualified majority of the parties should have the right to determine whether extraordinary events have occurred. Notice of withdrawal should be given one year in advance. Otherwise, the NPT must be considered irreversible, both in time of peace and in time of war. An international mechanism must be set up to deal with cases of non-compliance.

Under the protocol on “negative” security assurances accompanying nuclear-weapon-free zone treaties, each nuclear-weapon state is committed not to use or threaten to use a nuclear explosive device. This commitment was subsequently qualified by France, the Russian Federation, the United Kingdom and the United States stating that the assurances they offered would become invalid in the case of an invasion or any other attack on them, their territories, their armed forces or other troops, their allies, or on a state to which they have a security commitment, carried out or sustained by a non-nuclear-weapon state in association or alliance with a nuclear-weapon state. The four great powers have thus reserved for themselves the right to use nuclear weapons in a war started with non-nuclear means of warfare. Although it was conceived as a quid pro quo for the renunciation of nuclear weapons by non-nuclear-weapon states under the NPT, prohibition on the use of nuclear weapons may now be treated as a potential arms control measure to be negotiated by all states, regardless of their association with the NPT.

Recommendation: Employment of nuclear weapons must be definitively prohibited, except in case of reprisal for a nuclear aggression. A no-first-use obligation would facilitate the process of nuclear weapons elimination.

Under Article VIII the text of any proposed amendment to the NPT must be submitted to the depositary governments, distributed to the parties and considered at a conference convened at the request of at least one-third of the parties. To set the procedure in motion, unanimity or consensus is not needed. To be approved, an amendment requires a majority of votes, including those of the nuclear-weapon parties (as defined by the treaty) and those of other parties that are members of the IAEA Board of Governors on the day the text is circulated. Not all the changes proposed above would

entail new legally binding obligations. Some could take the form of politically binding undertakings or internationally agreed interpretations. In any event, by engaging in negotiations on the issues specified above, no country would run a risk to its security. In case of failure of the amendment process, the NPT would continue to be valid in its present form. The fear expressed by certain countries that amendments will lead to the break-up of the NPT is not justified.

