



**Strengthening the Nuclear Nonproliferation  
Regime:  
Searching for Common Ground**

**Verification of and compliance with the nuclear  
nonproliferation regime:  
Renewed commitments or new approaches?**

**A Report by the  
Monterey Nonproliferation Strategy Group**

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## **I. Introduction**

Conceived as a small body of experienced practitioners and analysts, the Monterey Nonproliferation Strategy Group (MNSG) aims to identify the basis for forging consensus or near-consensus on creative but realistic approaches that address the key nuclear proliferation challenges.

In response to the current proliferation predicament and the potential impact of another “failed” Review Conference in 2010, the Strategy Group met in New York on 3 and 4 November 2006 to consider verification of and compliance with the nuclear nonproliferation regime with the aim of identifying a narrow set of items on which some convergence of views may be found. This meeting followed the April 2006 meeting at which the Group considered current concerns related to Article IV of the Nuclear Nonproliferation Treaty (NPT) and related fissile material issues.

In addressing the overall question “Verification of and compliance with the nuclear nonproliferation regime: Renewed commitments or new approaches?” the Strategy Group considered the strengths and weaknesses of international verification, and the role of national intelligence in this regard. It discussed ways in which to improve treaty verification and compliance, as well as regional approaches to verification. It also considered responses to cases of non-compliance. Given increased disparities between the levels of verification and compliance provisions, the Group examined approaches to restoring this imbalance. It also investigated the role of the International Atomic Energy Agency (IAEA) and the Security Council in this regard. The second Strategy Group also considered and identified ways to prevent potential breakouts from the nuclear nonproliferation regime.

Strategy Group meetings are held under “Chatham House rules,” and as such, this report does not attribute any positions to specific Strategy Group members, nor is it indicative of the level of agreement among Group members for the issues addressed therein. The report is meant to give an overview of the range of issues discussed at the meeting and highlights the policy options identified.

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## **II. Potential common ground: Observations and Policy Prescriptions**

The Strategy Group aims to identify and further develop the basis for forging consensus or near-consensus on creative but realistic approaches that address the key nuclear proliferation challenges. At its second session, a number of potential common ground issues relevant to verification of and compliance with the nuclear nonproliferation regime were identified.

### **I. General Observations:**

1. The Group reiterated that the purpose of the Nuclear Nonproliferation Treaty (NPT) and its “grand bargain” should be revisited to reinforce the Treaty’s relevance. The Group also considered issues of legitimacy and fairness of the regime to be closely tied to the relevance and reinvigoration of the Treaty.
2. The Group agreed that the NPT was negotiated in a different political environment, and that it appears unable to cope with current proliferation challenges, be they political, security or technical. It was, however, pointed out that technical attempts to bridge the gap between verification and compliance provisions cannot solve this problem given political realities.
3. The Group recalled the findings and recommendations presented in the recent report of the Weapons of Mass Destruction Commission. In particular, it was pointed out that to be legitimate and accepted, the standards for nonproliferation and verification should be created through participation of all states rather than “handed down” or imposed by a few.

## **II. Weaknesses and strengths in the verification and compliance regime**

### ***The role of national intelligence***

4. While the Group agreed that international intelligence gathering mechanisms are clearly preferable to national ones, national intelligence can contribute to international verification, provided such intelligence is verified and used carefully. Given the nature of, and the limited means available to, international organizations such as the IAEA, it cannot be expected that these organizations should have greater access to information and be authorized to use it as freely as national intelligence services would.
5. The Group highlighted the importance of recruiting experts with international personalities who should not have allegiance to any particular government. If verification teams are perceived as "impartial search machines," their findings would be more credible.

### ***Improving treaty verification and compliance***

6. The Group considered whether nonproliferation and arms control agreements can be truly enforced, and if not, whether such treaties are providing only a false sense of security to states that fully honor their commitments and expect other parties to act likewise. While arms control treaties and other multilateral initiatives are difficult to enforce, they offer political assurances to the majority of states, and make the actions of a potential non-compliant minority more complicated and politically costly.
7. The Group generally agreed that current problems with verification and compliance are primarily the result of a demise in the legitimacy of the whole system and the lack of political will to work, in good faith, on building consensus. While improving technical means would be useful, it alone would not be sufficient to strengthen the nonproliferation regime. While a ready and realistic solution to restoring political will and good faith does not appear available in the current environment, a number of proposals were considered by the Group:

- a. The rights under Article IV of the NPT should be available only to states in full compliance with their NPT obligations. It should be easier for compliant states to receive assistance in peaceful uses, and nuclear cooperation should be leveraged in favor of NPT states parties rather than states outside the regime, be they in possession of nuclear weapons or not.
- b. The Model Additional Protocol should be transformed into a universal standard for implementation of Article III, and should become an essential prerequisite for cooperation and receiving assistance in peaceful uses of nuclear energy. It was, however, observed that there is currently no agreement at the IAEA Board of Governors regarding the universalization and standardization of the Additional Protocol. Since the Additional Protocol is largely viewed as an additional burden on the non-nuclear-weapon states (NNWS), opposition to its obligatory implementation is not likely to be overcome without significant progress on issues of concern to the NNWS, particularly arms reductions and negotiations on disarmament.
- c. To enhance the objectiveness of verification and create an independent verification body or independent inspectors' teams that would report to the Security Council. However, any such development should not undermine the authority of the IAEA.
- d. Compliance with the nonproliferation commitments could be encouraged through mechanisms on assurances of nuclear fuel supply, which would reduce the motivation to pursue enrichment by incentive rather than limitation of rights. However, suspicions on the part of many NNWS that such mechanisms would restrict individual states' access to technologies and material would need to be overcome.

### ***Regional approaches to verification***

8. While recognizing that not all regions of the world are of the same security and proliferation concern, the Group welcomed the idea of promoting regional approaches to verification, as a means of confidence

building and enhancing compliance in the regions of most proliferation concern. Taking into account the experience of the European Atomic Energy Community (EURATOM) and the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), regional verification systems could be established, with IAEA safeguards remaining the basis for any such safeguards system. The establishment of nuclear-weapon-free zones should also be promoted more actively.

***Responding to cases of non-compliance: alternatives to treaty framework***

9. The Group generally agreed that an increasing number of initiatives and actions outside the treaties framework tended to undermine the treaty regime while not necessarily solving pertinent problems effectively. At the same time, negotiations and approaches outside the treaties could be useful, if the states engaged possess certain credibility and do not simply represent the Security Council, which is largely perceived as biased and non-representative.

**III. Disparities between the levels of verification and compliance provisions**

10. Recognizing that there is a perceived need that NPT members should sit in judgment of Treaty compliance and not the UN Security Council or the IAEA Board of Governors, the Group considered a number of proposals, including the creation of a standing NPT secretariat and/or convening annual meetings of states parties to review the Treaty's implementation. It was, however, pointed out that the problem relates mainly to the lack of political will, not the lack of venues and institutions, and that the creation of another body or convening another conference by themselves will not eliminate existing distrust and imbalances.

***A holistic approach to verification: restoring the balance***

11. The Group pointed to the need for states to report on their fulfillment of NPT commitments under all articles, and especially the NWS on their implementation of Article VI. It also considered proposals for

independent mechanisms to verify compliance with each of the potentially contentious NPT articles, particularly Articles I, II, IV and VI. It was considered that clear measurements and indicators need to be identified to verify compliance and evaluate progress.

12. Group members also suggested that reinforcement of the NPT would require the entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT), maintaining the moratoria on nuclear testing in the meantime, and the commencement of negotiations on a fissile material cut-off treaty (FMCT).

***Can non-verifiable agreements be effective in strengthening the regime?***

13. The Group expressed little support to the idea of non-verifiable agreements, pointing out that conclusion and implementation of such agreements are not currently realistic.

***Discrepancies between the provisions for verification and compliance***

14. The Group agreed that the lack of clear compliance provisions generally reflects the assumption that states enter international agreements with an intention to comply and expecting other parties to do likewise.

**IV. The Role of the IAEA and the Security Council**

***Compliance provisions: closing the gap?***

15. There was no agreement on whether to close the gap between the role of the IAEA and the Security Council in verifying and enforcing compliance. Some Group members suggested that the IAEA Board of Governors should have more authority to react to cases of non-compliance, while others proposed expanding the potential of the UN Security Council to perform this function. Several members highlighted the need for provisions to ensure a more structured response from the Security Council in cases of non-compliance.

### ***The disputable role of the Security Council***

16. The Group in general agreed that coercion is viewed as the primary means for dealing with a non-compliant state, but questioned the effectiveness of such approach. The Group considered ways to improve the Security Council's potential to address verification and compliance in a more objective manner, and in this context, identified the need to enhance the expertise and tools available to the Council. There was, however, no general agreement on how much of a role the Security Council in its current form should play in verifying compliance in the nuclear nonproliferation regime.
17. The Group also considered Security Council resolution 1540 as a mechanism to strengthen the nuclear nonproliferation regime, but there was a divergence of views on its effectiveness. It was recommended that Security Council resolution 1540 should be considered as an additional opportunity to reach out to states who currently view the nonproliferation measures as irrelevant to them, and to strengthen compliance with the existing nonproliferation and disarmament treaties.
18. While a meaningful reform of the Security Council is not likely to be implemented in a foreseeable future, the Group felt that changes in its procedures and approaches to decision making could be promoted. A widely supported suggestion in this respect was involving states outside the Council in the discussions before adopting a nonproliferation resolution.

### ***Expanding the role of the IAEA***

19. The issue of expanding or transforming the role of the IAEA did not generate much discussion in the Strategy Group. It was, however, pointed out that the Agency should more effectively use existing enforcement powers under its Statute. It was also emphasized that increasing pressure and the threat of punitive action by the Security Council seem to defy the purpose of the Agency's work.

### **V. Preventing and Identifying Potential Breakouts**

20. The Group expressed concern that North Korea's withdrawal from the NPT, lack of progress on resolving the stand-off on the Iranian nuclear program, the disappointing outcome of the 2005 Review Conference, and a seeming lack of political will to implement all aspects of the Treaty, add to a growing perception that more states may withdraw from the Treaty.

#### ***Potential breakouts: reading the signs***

21. The Group considered that predicting a breakout or assessing the risks associated with such an event would require an examination of capabilities and motives. The motives for such action would include the security equation and matters of status and political clout. While there are less clear indicators on the capabilities side, the acquisition of research reactors that operate on natural uranium and heavy water along with plutonium reprocessing facilities could be considered as significant.

#### ***Preventing a breakout***

22. While the need to treat states in the regime fairly and in a balanced manner calls for impartial institutional approaches, a practical solution of problems often requires a more flexible approach. In this context, the Group considered a two track approach in preventing breakouts/walkouts: an institutional and a case-by-case one.
23. The group mostly agreed that for some countries buttressing nonproliferation norms and supporting nuclear disarmament would be a motivation to remain in the treaty/regime.
24. An element that provoked strong views by several participants was the idea of offering nuclear security guarantees to countries that contemplate withdrawal. Group participants argued that implementation of such policy would further erode the regime, harden the stance of proliferators and prompt other states to consider withdrawal from the Treaty.

### **III. Overview of weaknesses and strengths in the verification and compliance regime**

The Group considered the problems associated with international verification mechanisms and if any viable alternatives to multilateral verification exist. A broad overview of strengths and weaknesses of international verification was provided, in terms of both technical limitations and political considerations, its effectiveness in detecting violations, and problems related to the interpretation of findings. The Group discussed if and how national means of verification could be used as an alternative to, or in support of, international mechanisms. The idea of broader use of national means provoked an energetic response, with the majority of the Group cautioning against reliance on intelligence provided by any given state.

The Group also considered if nonproliferation and arms control agreements can be truly enforced, and if not, whether such treaties are providing only a false sense of security to states that fully honor their commitments and expect other parties to act likewise. It was argued that while enforcing arms control treaties and other multilateral initiatives is technically difficult, they offer political assurances to the majority of states, and make the actions of a potential non-compliant minority more complicated and politically costly. Addressing the issue of reaction to cases of non-compliance, several options for responsive action, some of which lie outside the treaty framework, were outlined.

#### ***Strengths and weaknesses of international verification, and the role of national intelligence***

A paper presented to the Strategy Group argued that international verification could only be as effective as states, particularly the inspected state, would allow it to be. The examples of North Korea and Iran demonstrate that the cooperation of the state in question is essential, and coercion of sovereign states into accepting extensive inspections through sanctions or other forms of pressure is not necessarily realistic. Even if it succeeds, it is a costly measure which also requires agreement and cooperation of at least several parties.

Detection of violations and diversions – a key aspect of verification – is often dependent on national intelligence transfers. Given the nature of, and the limited means available to, international organizations such as the IAEA, it cannot be expected that these organizations should have greater access to information and be authorized to use it as freely as national intelligence services would. In selecting experts and inspectors, international organizations often have to strike difficult balances between regional representation and expertise – a reality that national agencies do not face. Furthermore, it is not a given that selected international inspectors would be impartial and reliable. In this respect, the Group highlighted the importance of recruiting experts with international personalities who should not have allegiance to any particular government. If verification teams are perceived as “impartial search machines,” their findings would be more credible.

- i. International verification offers a number of significant advantages, primarily in terms of political acceptability.
- ii. It is more likely that inspectors from an international or regional organization, as opposed to a national intelligence service, would be granted entry into a country and access to facilities.
- iii. Findings and results of international inspections, as opposed to evidence presented by a single state, have greater political credibility and authority, making decision-making in bodies such as the IAEA Board of Governors and UN Security Council more probable.
- iv. Effective international verification has a deterrent effect – if there is a realistic possibility of detection and adequate response, it may help deter states from non-compliance.
- v. Exclusion of provisions for international verification from multilateral non-proliferation and disarmament agreements results in “declaratory” arms control, which lacks credibility and further complicates the assessment of compliance.

While the Group agreed that international mechanisms are clearly preferable to national ones, it was also agreed that national intelligence can contribute to international verification, but that such intelligence should be used very carefully. Some participants suggested that it might be appropriate to use

national intelligence data as leads for initiating international inspections on a cooperative, non-confrontational basis. Others, however, pointed out that such approach does not sufficiently address the problem of reliability of information and protection from abuse for political purposes. For example, the questions of who and how will evaluate the accuracy of provided intelligence, and whether one state's data could be viewed as more credible than data provided by another party, remain open.

### ***Improving treaty verification and compliance***

The Strategy Group generally agreed that current problems with verification and compliance are primarily the result of a demise in the legitimacy of the whole system and the lack of political will to work, in good faith, on building consensus. While improving technical means would be useful, it alone would not be sufficient to strengthen the nonproliferation regime. It is necessary to pursue and strengthen relevant international norms, to ensure that states adhere to broadly agreed principles and regulations, as opposed to be coerced into compliance. Still, while a ready and realistic solution to restoring political will and good faith does not appear available in the current environment, certain proposals of more technical nature are worth consideration.

- i. Several participants agreed that the rights under Article IV should be exercised only by states in full compliance with their NPT obligations. It should be easier for compliant states to receive assistance in peaceful uses, and nuclear cooperation should be leveraged in favor of NPT states parties rather than states outside the regime, be they in possession of nuclear weapons or not.
- ii. Several participants also voiced support for the transformation of the Additional Protocol into a universal standard for implementation of Article III. In this regard, it was considered that the Additional Protocol should become an essential prerequisite for cooperation and receiving assistance in peaceful uses of nuclear energy in line with Article IV. It was pointed out, however, that there is currently no agreement at the IAEA Board of Governors regarding the universalization and standardization of the Additional Protocol and not much real effort to promote

the instrument is observed. The Additional Protocol is largely viewed as an additional burden on the non-nuclear-weapon states (NNWS), and the opposition to its obligatory implementation is not likely to be overcome without significant progress on issues of concern to the NNWS, particularly arms reductions and negotiations on disarmament.

- iii. To enhance the objectiveness of verification, some participants proposed creating an independent verification body or independent inspectors' teams that would report to the IAEA. In this context, it was also noted that the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) has accumulated valuable experience, and its role could be redefined to transform the Commission into a permanent verification body. At the same time, it is necessary to ensure that any such development does not undermine the authority of the IAEA. Given that discussions regarding the future of UNMOVIC have been taking place at the Security Council, yet no decision has been made, the Group could explore the issue further and promote its proposals.
- iv. To encourage compliance with the nonproliferation commitments, it was suggested to consider mechanisms on assurances of nuclear fuel supply, which would reduce the motivation to pursue enrichment by incentive rather than limitation of rights. One of the challenges here would be overcoming the suspicions on the part of NNWS about the proposals on multilateral fuel cycles and other initiatives that restrict individual states' access to technologies and material. A more detailed discussion on assurances of supply, however, was held at the April 2007 meeting of the Strategy Group.

### ***Regional approaches to verification***

Recognizing that not all regions of the world have the same security and proliferation concerns, and enhanced verification mechanisms such as the Additional Protocol are not in place universally, regions could take initiative in implementing additional measures for verification and confidence building. As one of the Group participants argued, enhancing

regional nuclear transparency measures would build confidence that states are truly compliant and are not pursuing nuclear weapons. Taking into account the experience of EURATOM and OPANAL, regional verification systems could be established, with IAEA safeguards remaining the basis for any such safeguards system. It might also be useful to tailor complementary and specific nuclear verification and confidence building measures for each region. The Group agreed that such initiatives would be helpful, but also underlined that they should be coordinated with the IAEA and properly endorsed, so that regional inspections and findings possess the necessary credibility in the overall regime framework.

***Responding to cases of non-compliance: alternatives to treaty framework***

While verification could in many respects be reduced to purely technical matters, the interpretation of findings and consecutive responses are inevitably politically loaded, influenced by the interests of the more powerful states and their relations with the allegedly non-compliant party. Since the Security Council has assumed the role of final arbiter on noncompliance as well as the administrator of "punishment," the response to serious cases of noncompliance is contingent on the Council consensus, which has become increasingly more difficult to achieve. Furthermore, compliance provisions in nonproliferation and arms control agreements are scarce, which increasingly prompts states to pursue options outside their framework.

Several alternatives to actions within the treaty were identified and their respective advantages and drawbacks discussed.

- i. Negotiated outcomes are always favored, but negotiations have to be tailored to individual cases, involving a limited number of states. Negotiations therefore often occur outside the treaty framework and run the risk of undermining the validity of treaty norms. Besides, if a clandestine program has moved beyond a certain point of indigenous capabilities, the target state may be tempted to prolong the talks to allow time for the program to be completed and present the world with a *fait accompli*.

- ii. While military strike aimed at destroying the facilities or prompting a regime change seems a simple option, its effectiveness is highly questionable. Once military action is taken, it is hard to define if it was effective or only served to delay proliferation, hardening the determination for long-term non-compliance. Moreover, the 1981 attack on the Ozark reactor in Iraq may have prompted states to hide and protect their facilities. If the goal of a military strike is regime change, not only does it lack legitimacy, but it also detracts from the main goal – the return of the state into compliance and restoration of trust.
- iii. Assimilation of a proliferated state – as seems to be the case with the US-India nuclear cooperation agreement - raises a whole series of questions. If the assimilation rule is to be applied, it means that nine nuclear weapon powers should be recognized, which will not only undermine the NPT, but require its re-negotiation. Given the current divide between the NWS and NNWS, which is likely to be only further exacerbated by assimilation of proliferators, the renegotiation or amendment of the NPT appears entirely in the realm of the impossible.
- iv. If assimilation, as well as other options, is to be used selectively, on a case-by-case basis, it raises the question of what criteria should be applied. For instance, if the prerequisite for acceptance be friendly relations with one or more NWS, the objective of nonproliferation appears to transform into selective proliferation, where a very small group gets to decide which "responsible" states receive preferential treatment. Overtly discriminative, an approach based on individual states rather than principles and regime rules overall undermines the regime and almost inevitably will lack any basis in international law or achieve political consensus.

The Group generally agreed that an increasing number of initiatives and actions outside the treaties framework tended to undermine the treaty regime while not necessarily solving pertinent problems effectively. At the same time, some of the participants also argued that negotiations and approaches outside the treaties could be useful, if the states engaged possess

certain credibility and do not simply represent the Security Council, which is largely perceived as biased and non-representative.

#### **IV. Disparities between the levels of verification and compliance provisions**

Having discussed the advantages of the international verification and compliance system and the challenges it faces, the Group considered a holistic approach to addressing these challenges. Some of the speakers focused on the disparities between verification and compliance provisions in international arms control treaties, where the former is spelled out in varying degrees of detail while the latter hardly appears in the texts. Others concentrated on the imbalance between the provisions for verification of non-proliferation and disarmament commitments, emphasizing the pertinence of restoring the parity for the regime to remain adequate. Proposals put forward focused on enhanced verification and reporting on different elements of the NPT.

It was pointed out that there is an inherent inequity in a situation where nonproliferation obligations are monitored by an international organization – the IAEA - with a safeguards budget of \$130 million, while the disarmament obligations are subject to a “self-defined” good-faith approach with little or no external scrutiny. Furthermore, current efforts to strengthen the regime are mostly aimed at expanding the verification procedures on nonproliferation obligations and limiting the acquisition of nuclear technology by NNWS. The debate on how far limitations can go without infringing the rights under Article IV is open and contributes to the polarization of views within the NPT membership. If initiatives on enhancing verification are to be consistent with the spirit of the NPT, the Treaty should be dealt with comprehensively.

The Group agreed that there is a perceived need that the NPT members should sit in judgment of Treaty compliance, not the UN Security Council, due to its limited membership, and not the IAEA Board of Governors where non-state parties hold seats. To address this gap, some participants suggested creating a

standing NPT secretariat and/or convening annual meetings of states parties to review the Treaty’s implementation. They argued that the establishment of such bodies would help redress the imbalance and provide an adequate venue to address regime problems in the periods between Review Conferences. Others, however, pointed out that the problem is one of political will and the lack thereof, not the lack of venues and institutions, and that the creation of another body or convening another conference by themselves will not eliminate existing distrust and imbalances. It was also emphasized that the NWS, the United States in particular, are likely to object to the creation of another body or the convening of annual state party meetings.

#### ***Holistic approach to verification: restoring the balance***

Several speakers pointed to the need for states to report on their fulfillment of NPT commitments under all articles, and especially the NWS on their implementation of Article VI. NWS could, for example, table reports on arms reductions as official documents at the Review Conferences, as the Russian Federation and China did in 2005. Not only would such reports help achieve a more balanced implementation of the Treaty, but such reporting could provide an empirical basis for meaningful discussion on the pace and nature of disarmament.

A more proactive proposal envisioned setting up independent mechanisms for verification and compliance review for each of the potentially contentious NPT articles, particularly Articles I, II, IV and VI. Neutral international technical teams should be empowered to operate such mechanisms and report the violations to the IAEA Board of Governors. Technical evaluation and conclusions of such teams should be considered adequate to draw conclusions on compliance. In a similar vein, creation of a special Article VI monitoring unit within the IAEA itself would greatly contribute to demonstrating a balanced concern with implementation of Treaty obligations. The Agency’s statute may have to be amended to accommodate provisions for such unit, and the Group agreed it is a subject worth further exploration.

In this context, clear measurements and indicators will have to be identified to verify compliance and evaluate progress. A suggestion was made to use the “thirteen practical steps”

adopted at the 2000 NPT Review Conference as a benchmark for evaluating compliance with Article VI. It was also suggested that procedures for verification and evaluating progress should be set up, taking into account concerns over the access to sensitive nuclear weapon-related information and facilities.

Taking a broader view at the regime, some participants also suggested that reinforcement of the NPT requires the entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT) and at least the commencement of negotiations on a fissile material cut-off treaty (FMCT). In this regard, it is important that the moratoria on nuclear testing are maintained in the meantime, especially since this norm appears more fragile now in light of the North Korean test and modernization of nuclear arsenals pursued by several NWS.

#### ***Can non-verifiable agreements be effective in strengthening the regime?***

The Group expressed little support to the idea of non-verifiable agreements, pointing out that conclusion and implementation of such agreements are not currently realistic. Views were, however, divergent on the U.S. proposal on an FMCT tabled at the Conference on Disarmament (CD) during 2006. Some participants argued that the proposal could at least serve as a basis to commence negotiations, and verification provisions could be added later on. Others, however, argued that the intent to work out verification mechanisms should be clearly recognized from the start, and since is not the current U.S. position, negotiations are bound to stall should verification be brought up by CD delegations who favor a verifiable treaty. It was also mentioned that FMCT-related developments at the 2006 CD sessions and at the 2006 General Assembly First Committee have shown that a verifiable future treaty remains crucial to most member states.

#### ***Discrepancies between the provisions for verification and compliance***

In arms control treaties, provisions related to compliance are generally minimal compared to those concerning verification. In the case of the NPT, the text does not mention compliance or any means to address non-compliance at all. While Article III deals with verification in some

detail and prescribes the implementation of IAEA Safeguards by NNWS, compliance is enforced in terms of the IAEA Statute and Safeguards Agreements. The IAEA Board of Governors has thus assumed the responsibility for judging NPT compliance. Still, these documents and bodies address compliance with only some of the obligations of the Treaty. It was pointed out that in the absence of clear compliance provisions, there exists an implicit assumption that any case of serious non-compliance would be referred to the UN Security Council, leading to some form of punitive action.

Although very complex in its own right, verification is easier than compliance, since it can to some extent be reduced to a technical level where experts conduct inspections and provide technical assessments and conclusions. Political decisions are still essential for adopting any sort of verification system, but the issue is nonetheless bounded by technical or scientific considerations. Compliance, on the other hand, is almost always a political issue. Even in a case where a non-compliant state should be brought back into compliance, several subjective aspects need to be considered, for example: the seriousness of breach, its duration, whether it was inadvertent, and what the mitigating circumstances were, if any. Deciding on further action therefore becomes even more complex and politically loaded, as it involves judgments about severity of the action, possible reaction of the non-compliant state, incentives versus disincentives and state behavior in general.

The Group agreed that the lack of clear compliance provisions generally reflects the assumption that states enter international agreements with an intention to comply and expecting other parties to do likewise. The motivation to comply is the value of a treaty, the security and other benefits it offers, rather than the prospect of serious punishment for violations. As sovereign actors, states retain the right to withdraw from international agreements if they no longer suit their national interests; so theoretically, there is little reason for a state to breach a treaty. Admittedly, such approach does not account for free-riding, or using the protection the treaty offers while secretly carrying out banned activities or building the sufficient capability just before withdrawal.

### ***Compliance provisions: closing the gap?***

It was argued that the apparent discrepancy between verification and compliance provisions should be addressed only to a certain extent, as an attempt to bring non-compliance mechanisms to a similar level of detail as verification systems would be quite futile. It was suggested that it would be useful to examine how the role of treaty organizations could be expanded to deal with non-compliance, and what kind of measures could be made available to them. While some participants suggested that bodies such as the IAEA Board of Governors should have more authority to react to cases of non-compliance, others proposed expanding the potential of the UN Security Council to perform this function. In this vein, several participants highlighted the need for provisions to ensure a more structured response from the Security Council.

One participant proposed that the Security Council should adopt a general resolution establishing the basic tenets of a non-proliferation consensus, as a follow-up to the 1992 Presidential Statement. It was also suggested to establish a “code of conduct” to be observed in cases of serious violations of the NPT and other non-proliferation agreements, or adopt a “chapeau-type” Security Council resolution, in which the consequences of non-compliance are clearly spelled out. A number of participants, however, objected to creating such automaticity. It was pointed out that there is a fine line between non-discrimination and flexibility, and getting caught up in a set of “automatic” measures will not effectively address a given situation. An alternative proposal was to devise a set of potential consequences, such as targeted sanctions, with enough flexibility on the exact course of action built into such provisions. Another participant suggested instead that cases of non-compliance should automatically become an item on the Council’s agenda, regardless of which state is in question. It is also necessary to have adequate follow-up on Chapter VII resolutions, so that this important tool does not completely turn into a declaratory exercise.

## **V. The Role of the IAEA and the Security Council**

This Group addressed the relationship between the IAEA and Security Council in verifying compliance with the NPT. Participants discussed the “division of responsibilities” between the Agency and the Council, and whether such division should be transformed to improve its effectiveness. The Group considered whether the IAEA’s mandate should be expanded, and whether there should be closer cooperation between the Agency and the Security Council resulting in a stronger regime and more cohesive handling of verification and compliance issues. In this regard, one participant pointed out that the Security Council’s involvement in resolving the Iranian issue has only complicated the work of the IAEA, as Iran keeps scaling down its cooperation with the Agency. In the meantime, the Council has yet to formulate a practical solution.

It was emphasized that the IAEA is primarily a technical organization with a limited mandate focused on accounting for nuclear material and verification that it has not been diverted to weapons purposes. The Model Additional Protocol allows broadening the scope of inspections, including the verification that all relevant materials and facilities had been declared. Beyond that, however, the IAEA lacks legal authority to pursue investigation of possible nuclear weapons related activity in the absence of direct involvement of nuclear material. The IAEA also possesses limited power to deal with cases of non-compliance, as the Statute envisions the withdrawal of assistance in peaceful uses and the return of material and equipment provided under such assistance. It remains unclear, however, how the latter provision should be enforced or by whom.

The Security Council, on the other hand, is a political body with the responsibility of maintaining international peace and security. Compared to the IAEA, the Council has a greater potential to enforce its decisions, acting under Chapter VII of the UN Charter. It was pointed out that it is generally assumed or spelled out – such as in the Chemical Weapons Convention – that serious cases of non-compliance should be referred to the Security Council. However, its role as the judge of compliance and enforcer of the NPT is

increasingly being questioned. There is considerable lack of trust in the Council both because of its past failures to act and given its lack of legitimacy in representing today's world. It was also pointed out that there exists a perception among NNWS that permanent members of the Security Council are not living up to their disarmament commitments, and strategic interests of the P-5 take precedence over the non-proliferation concerns.

### ***The disputable role of the Security Council***

Debates and decisions at the Security Council are highly politicized, and, as argued by one of the participants, there is currently little prospect for measures to depoliticize the Council's role in enforcing nonproliferation commitments. Not only do strategic interests of the five permanent members influence Council decisions, but the very circumstances that lead to the Council's involvement limit the options available to it.

The Group in general agreed that coercion is viewed as the primary means for dealing with a non-compliant state and questioned the effectiveness of such approach. It was pointed out that in the "carrots and sticks" approach, sticks are becoming an almost automatic choice, while incentives are rather unjustly viewed as "appeasing." One of the speakers also mentioned that NGOs and select states have in the past played an important role in shaping the thinking about the need for options other than force.

The Group considered ways to improve the Security Council's potential to address verification and compliance in a more objective manner, and in this context, identified the need to enhance the expertise and tools available to the Council. One proposal made suggested the creation of special committees supported by groups of experts and the UN Secretariat, tasked to deal with the implementation of nonproliferation-related resolutions. Some of the participants suggested that UNMOVIC be transformed into a permanent body conducting special inspections under the Council's authority.

There was, however, no general agreement on how much of a role the Security Council in its current form should play in verifying compliance in the nuclear nonproliferation regime. It was pointed out that there exists a sizable gap in the

biological weapons and missiles sphere in terms of verification, and that the Security Council could perhaps close this gap with appropriate tools and resources at its disposal. In the nuclear sphere, however, expansion of the Security Council involvement risks undermining the authority of the IAEA. In addition, expanding the role of the Council in verifying compliance with nonproliferation commitments further calls into question the balance and fairness of the system, especially considering that the Council would not act on violations of Article VI of the NPT.

The Group also considered Security Council resolution 1540 as a mechanism to strengthen the nuclear nonproliferation regime. There was, however, divergence of views on its effectiveness, and some participants shared the suspicions and dissatisfaction voiced by many states that the resolution places an additional burden on NNWS. Others argued that sufficient attention has not been given to exploring the resolution's full potential. It was recommended that Security Council resolution 1540 should be considered as an additional opportunity to reach out to states who currently view the nonproliferation measures as irrelevant to them, and to strengthen compliance with the existing nonproliferation and disarmament treaties

While a meaningful reform of the Security Council is not likely to be implemented in a foreseeable future, certain changes in its procedures and approaches to decision making could be promoted. A widely supported suggestion in this respect was involving states outside the Council in the discussions before adopting a nonproliferation resolution.

### ***Expanding the role of the IAEA***

The issue of expanding or transforming the role of the IAEA did not generate much discussion in the Strategy Group. It was, however, pointed out that the Agency should more effectively use existing enforcement powers under its Statute. While no specific proposals on making such exercise effective, or practically possible, were addressed, a suggestion was made to explore whether the IAEA and its mandate should be extended to cover other, or possibly all articles of the Treaty. This would make the Agency more fully the authorized verification and implementation organization for the NPT.

One participant argued that the IAEA does not need more authority, but more cooperation and transparency. But, for states to fully cooperate with the Agency and remain transparent about their programs and intentions, they need to feel sufficiently safe and confident about the regime, the organization's credibility, and objective interpretation of findings. In this regard, it was pointed out that increasing pressure and threat of punitive action by the Security Council seem to defy the purpose of the Agency's work. Some participants therefore recommended that relations between the Agency and the Security Council should not be brought closer together, so as to avoid the two bodies from undermining or discrediting each other through blending their mandates and realms.

## **VI. Preventing and Identifying Potential Breakouts**

The Group expressed concern that North Korea's withdrawal from the NPT, lack of progress on resolving the stand-off on the Iranian nuclear program, the disappointing outcome of the 2005 Review Conference, and a seeming lack of political will to implement all aspects of the Treaty, add to a growing perception that more states may withdraw from the Treaty.

While some have suggested that any withdrawal from the NPT should automatically be considered a threat to international peace and security, several participants pointed out that withdrawal from the Treaty does not necessarily constitute an exit from the regime. A state might be a party to a nuclear-weapon-free zone and/or continue its cooperation with the IAEA outside the treaty framework. Withdrawal from the NPT in this case would be a manifestation of dissatisfaction with the way it is implemented, and with the lack of balance and fairness in its provisions and interpretations. It was, however questioned whether a state would "out of principle" withdraw from a treaty. The possibility that a state would withdraw from the NPT, but remain a party to a NWFZ places a new emphasis on promoting these regional arrangements.

It was suggested that a withdrawal should be considered a "breakout" when a state leaves with the intention to develop a nuclear weapons

program, or if it is already in the process of doing so, as was the case with North Korea. Another participant offered a different set of definitions, arguing that "breakout" will occur when a state that has secretly acquired nuclear-weapon capability, if not weapons themselves, withdraws from the NPT. It was suggested that a state that withdraws by exercising its sovereign right without the intention to develop nuclear weapons, or the capability, should be considered a "walkout." A state that slowly progresses towards a weapons capability, engaging in "nuclear hedging," was referred to as "creep-out."

### ***Potential breakouts: reading the signs***

It was pointed out that predicting a breakout or assessing the risks associated with such an event requires an examination of capabilities and motives. The motives for such action would include the security equation and matters of status and political clout. While there are less clear indicators on the capabilities side, the acquisition of research reactors that operate on natural uranium and heavy water along with plutonium reprocessing facilities could be considered as significant. In this regard, the examples of Israel, India, Taiwan (in the 1970s) and North Korea, which built such combinations for military purposes, were mentioned.

Two approaches were suggested to identify a potential breakout: one focused on enhanced detection systems, and the other on observing states' statements and behavior as well as domestic politics. The first approach envisions a further expansion of the verification system to cover components and activities that may be characteristic of a weapons program. Seeing as majority of such components are in fact dual-use, the state should be invited to document civilian projects for which they are intended. The other approach concentrates on potential walkouts and envisions a country-by-country observation of trends, domestic debates and political declarations of the states whose security situation and regional realities provide additional motivation for acquiring nuclear weapons. Japan, South Korea, Saudi Arabia and Turkey are cases in point. It is also important to observe the developments in influential countries that may feel betrayed by the regime – such as Brazil.

### ***Preventing a breakout***

While the need to treat states in the regime fairly and in a balanced manner calls for impartial institutional approaches, a practical solution of problems often requires a more flexible approach. In this context, a two track approach in preventing breakouts/walkouts was suggested: an institutional and a case-by-case one.

On the institutional side, it was suggested that the Security Council declare that any withdrawal would be a matter of concern to it, and that the Council would be ready to act in cases of breakouts accompanied by NPT violations. Addressing the possibility of convening a special NPT conference in cases of notifications of withdrawal, the majority of participants doubted the utility of such a move, arguing that it could only highlight the existing divisions while almost inevitably failing to achieve an agreement.

In the case-by-case track, it was proposed that potential walkouts be dealt with individually, so that responses are tailored to their particular needs and reasons to withdraw. It was mentioned that in all likelihood, the United States with or without the involvement of other NWS would deal with potential walkouts. Overall, the case-by-case approach was criticized for its discriminative nature, yet it was also suggested that should the number of such cases be very limited, it could be a reasonable and realistic enough solution. A point that most of the group agreed on was that for some countries (such as Japan), buttressing nonproliferation norms and supporting nuclear disarmament would be a motivation to remain in the treaty/regime.

An element that provoked strong views by several participants was the idea of offering nuclear security guarantees to countries that contemplate withdrawal. Group participants argued that implementation of such policy would further erode the regime, harden the stance of proliferators and prompt other states to consider withdrawal from the Treaty.

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