

High-Level Seminar on Weapons of Mass Destruction:

Challenges and Legal Issues for the 2005 Non-proliferation Treaty Review Conference: a Transatlantic Dialogue

Part I. Challenges and Opportunities for the 2005 NPT Review Conference: Strengthening the Non-Proliferation Regime

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Thank you, Viscount Davignon. First, allow me to thank the Royal Institute for International Relations, Institute for International Law of Catholic University of Leuven and United Nations Association of Flanders for inviting me to this seminar and giving me this opportunity to share my thoughts with you. I hope this seminar will bring about good ideas for dealing with the current urgent question of weapons of mass destruction, especially in view of the coming NPT Review Conference.

On March 4 this year, the Treaty on the Non-Proliferation of Nuclear Weapons marked 35th year since its entry into force. On the fortnight of the 35th anniversary, Secretary-General Kofi Annan stated, “the Treaty has defied gloomy predictions that, today, we would find

between 15 and 50 nuclear-weapon States.” The treaty had succeeded in keeping such industrial powers as Japan, Germany, Sweden, Switzerland, Canada or Australia from becoming nuclear weapon States. This is a great accomplishment of the Treaty. As the Secretary-General continued to state, “with 188 States parties, it is the most universally supported international treaty.” “Given the grave perils that nuclear proliferation poses for all States, the NPT has been a true cornerstone of global security.”

“Yet today, the NPT confronts profound challenges to its effectiveness and credibility.” The Director General of the IAEA, Mohamed ElBaradei, said the NPT is facing a “major challenge.” The Secretary-General’s High-level Panel on Threats, Challenges and Change warned in its recent report that we are “approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation.”

The NPT had been challenged by the clandestine efforts to acquire nuclear weapons by Iraq, North Korea or DPRK, and Libya. North Korea has declared it had withdrawn from the NPT and now it says it possesses nuclear weapons. Suspicions still persist about other countries that may be trying to obtain nuclear weapons clandestinely. The IAEA’s efforts to strengthen its verification capability with the Model Additional Protocol have still a long way to go with only less than a third of its members having put the Additional Protocols in force. In the meantime, Dr. A.Q. Khan’s black market supply network was revealed to show the pervasive extent of underground operations to help clandestine nuclear weapons programs. Yet, IAEA’s another effort to tighten the control of nuclear fuel cycle seems to have received only mixed reaction from the countries around the world. Even though there has been a certain progress, the pace of nuclear disarmament is not satisfactory to many and there is yet a long way to go.

At the 2005 NPT Review Conference in May, these challenges will test the commitment of all States to the three pillars of the NPT: non-proliferation, disarmament, and peaceful uses of nuclear technology. It is regrettable that the participants in the Conference have not yet been able to agree on the provisional agenda of the Conference. Then they will have to agree on the basic organization of the Conference including the question of what subsidiary bodies the Conference should establish to work on specific questions. The President designate of the Conference, Ambassador Sergio Duarte, is engaged in intensive consultations with the participants of the Conference to find possible ways to resolve these questions. Behind the procedural disputes over the Review Conference lies the basic confrontation between those who attach priority to nuclear disarmament and those who consider nuclear non-proliferation to be an urgent priority under the current circumstances.

I think nuclear disarmament and nuclear non-proliferation are mutually reinforcing subjects. Without credible progress on the disarmament side, it becomes increasingly difficult to mobilize the countries around the world for non-proliferation. In a world where proliferation crisis takes place one after another you cannot see a good prospect for nuclear disarmament. As the Secretary-General recently stated, “Progress in both disarmament and non-proliferation will be essential, and neither should be held hostage to the other.”

He further stated that “Recent efforts by nuclear-weapon States towards disarmament should be recognized, yet the unique status of these States also entails unique responsibility.

They should do even more to inspire confidence in their commitments. Meanwhile, it is imperative to recognize that nuclear proliferation threatens not some, but all States. Thus, all States parties should agree to necessary measures for more credible verification and enforcement for the NPT.”

The Secretary-General will be releasing his Report on Implementation of the Millennium Declaration in connection with the implementation of the report of the High Level Panel on Threats, Challenges and Change sometime next week. In this report he will be recommending priority measures to strengthen the NPT, for consideration by the coming Review Conference and by Heads of State gathered at the summit meeting scheduled for September. He will be challenging the Review Conference and Heads of State not only to strengthen the NPT, but also to demonstrate the continuing relevance and indispensability of multilateral regimes and fora in safeguarding global security.

As I see it, there are now seven major gaps in the global nuclear non-proliferation regime. These gaps are now threatening to undermine the treaty’s basic objective. First, it is the gap created by non-participation of countries in the NPT. They are India, Israel and Pakistan. The second gap is a new and quite disturbing phenomenon. It is withdrawal from the treaty. Third, there is the verification gap. The fourth may be called the nuclear fuel cycle gap. The fifth is the rising concern about the terrorist nexus with WMD. The sixth is what I may call the enforcement gap. And, last but not the least, there is the disarmament gap. All these gaps are threatening to undermine the NPT. The coming NPT Review Conference has to take credible actions on these gaps so that it can uphold the NPT as a viable robust cornerstone of nuclear disarmament and non-proliferation.

On the first gap of non-participating states of the NPT, there have been numerous calls made by NPT Review Conferences, U.N. General Assembly resolutions and IAEA General Conference resolutions. On India and Pakistan, Security Council resolution 1172 adopted in 1998 clearly urged both countries to become parties to the NPT as non-nuclear weapon states. But, nothing has happened so far.

In relation to Israel, there has long been the proposal for Middle East Zone Free of Nuclear Weapons or Weapons of Mass Destruction. Resolutions have been adopted in the U.N. General Assembly and the IAEA General Conference very often with consensus but little progress has been made so far to move the proposal forward. Recipes are there but there has been no move. I think there is a need to mobilize political will and wisdom to come up with concrete and practical ways to move these ideas forward. I know some argue that a Weapons Free Zone cannot be achieved until peace in the region is achieved. But I do not think we can wait for peace to be achieved. I do not want to see a situation where the next time there is a serious regional confrontation, people in the region see the real threat of use of WMD. We have to put a brake on WMD now.

I appreciate the efforts being made by the UNIDIR, or the United Nations Disarmament Research Institute, by the Director-General of the IAEA and other people to start discussions on practical ways to make progress towards the goal of a Middle East Nuclear Weapon Free Zone.

The second gap of withdrawal from the NPT is an urgent question before us. Those who crafted the treaty's withdrawal provisions must have thought they would never have to see them actually used. But it happened. Whether it was legal or not, the North Korean withdrawal from the treaty announced in January 2003 threatens to ignite cascading effects. On this, the NPT Review Conference not only needs to come up with a strong position against such withdrawal but also needs to work urgently on the question of the DPRK.

Almost everybody agrees that the question should be solved peacefully and is counting on the success of the six-party talks. But, how can we do so? Can the six-party talks work magic? One underlying dilemma here is whether you should reward with political and economic incentives a country that had violated its obligations under the NPT and the IAEA safeguards and withdrew from them. Should we or should we not? Perhaps, the answer is not that black and white. Someone has to work out a formula for solving the question and has to do so rather quickly because the clock is ticking.

As to the third gap of verification, the answer is there already. Countries must sign up to the Additional Protocol to the IAEA Safeguards agreements. The Secretary-General's High Level Panel recommended that "the IAEA Board of Governors should recognize the Model Additional Protocol as today's standard for IAEA safeguards." It is sad to see even this much of progress is slow to be achieved either in the context of the IAEA Governing Board or the NPT Review Conference. I can well see the political and emotional resistance against moving fast on this because of the frustration on slow progress on the disarmament side. While this is understandable, it is certainly no justification to delay the action on the non-proliferation side. I wish to see concrete progress on this front.

The fourth gap of the nuclear fuel cycle is an old and new issue. I think this is an old issue with renewed urgency. Compared to the time when the NPT was crafted, technology and material have become far easier to obtain today as we have witnessed in Dr. Khan's black market. Countries can go very close to having nuclear weapon production capability without breaking the existing non-proliferation rules.

The coming NPT Review Conference has to identify ways to put a brake on countries coming so close to possessing weapons fissile material production capability. Otherwise, countries may start calling the treaty not only useless but also even harmful because it provides legitimate cover for countries with hidden intention to acquire almost all capability necessary for weapons manufacturing. Mohamed ElBaradei said, "We just cannot continue business as usual that every country can build its own factories for separating plutonium or enriching uranium." He said he would propose a moratorium on countries developing the nuclear fuel cycle in return for guarantees of delivery of nuclear fuel for peaceful production of electricity. This is one practical way of putting a restraint on the nuclear fuel cycle.

Another possibility is to come up with a definition to draw the boundaries to what constitutes legitimate "peaceful use" of nuclear energy. I recall that the Secretary-General stated on the recent NPT anniversary that while the right to peaceful uses of nuclear technology should be preserved, States parties should agree to exercise this right in conformity with non-proliferation obligations, and with due regard for current challenges to the NPT.

Related to this is the question of Iran's nuclear programme. It is an urgent issue that perhaps cannot wait for the results of multilateral consideration of future nuclear fuel cycle. There is no doubt that there were serious non-compliances with the IAEA reporting requirements. Indeed, everybody prefers a peaceful solution and many are counting on the results of the negotiations between Iran and the EU3. But, as I see the situation, the question does not seem to be an easy one and the stakes are quite high.

The September 11 attack raised the fear of what will happen if next time around terrorists used WMD, or what is called radioactive dispersal devices. This fifth gap of the terrorist nexus with WMD has been recently addressed in the Security Council. Resolution 1540 of the Council created a new global norm against assistance to terrorist groups in acquiring WMD and mandated "all States (to) take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery." I am currently working with the Chairman of the Committee established for the implementation of the resolution to secure its full implementation. Adopting a resolution is one thing. Implementing it is another. If this resolution is implemented to its full extent, the resolution can achieve a great deal in slowing the proliferation of WMD to terrorists and other non-state actors. However, even then, this resolution alone cannot stop terrorists getting their hands on WMD. There have to be many additional efforts to be made by willing states individually and collectively. For example, the Secretary-General's High Level Panel encouraged Member States to join the Proliferation Security Initiative to strengthen the practical non-proliferation efforts by the countries around the world.

The sixth gap is that of enforcement. After all the efforts in safeguards, verification and persuasion, if a country that is determined to do so violates its treaty obligations and proceeds with a nuclear weapons program, what do you do? The NPT only has a limited reference to the Security Council concerning withdrawal of a party to the Treaty. Recent history has shown that the IAEA or any other verification entity is powerless unless there is an ultimate entity for enforcement.

The Security Council in 1992 had declared that the proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The Secretary-General's High Level Panel recommended "the Council should be prepared to act in cases of serious concern over non-compliance with non-proliferation and safeguards standards." The Secretary-General's Advisory Board on Disarmament Matters also recommended "for cases referred to the Security Council, timely and efficient decision-making should be ensured." This was coupled with a number of specific recommendations to strengthen the means of the Council to examine the cases referred to it. I earnestly look forward to a serious consideration by the Council of these recommendations.

Last, there is the disarmament gap. The Secretary-General's High-level Panel has argued that this gap must be closed in order "to further diminish the perceived value of nuclear weapons and secure robust international cooperation to staunch proliferation." There are a whole series of proposals to move the nuclear disarmament agenda forward including a number of recommendations made by the Secretary-General's High Level Panel. Among them are

reaffirmation of nuclear disarmament commitment and negative security assurances, de-alerting and other measures to reduce the risk of accidental nuclear war, and negotiation of a fissile material cut-off treaty.

I have mentioned a series of proposals and suggestions to fill the seven gaps. Given the urgency of the situation I hope the relevant entities such as the NPT Review Conference, IAEA Board of Governors, the Security Council, the Conference on Disarmament and the Summit meeting scheduled for September take urgent action on them. We need what I may call *an urgent action plan* to stop the erosion of the NPT, arrest nuclear proliferation and promote disarmament. The Secretary-General's High-level Panel and his Advisory Board on Disarmament Matters have offered blueprints for such a plan. The Secretary-General will be offering his practical recommendations next week. I encourage all concerned to consider these recommendations seriously. I know many participants of those forums are aware of the urgency but it seems the rigid rules of procedure that require consensus agreement on almost everything prevent them from achieving the desired results. I would urge them to try even harder testing the limits of their consensus rules. I would like to challenge all those concerned to think and act more boldly to reinvigorate the nuclear non-proliferation and disarmament regime.

Otherwise, if we fail to act in a meaningful way, there may be an increasing tendency that like-minded countries come to work together to take actions to supplement or to build on the existing nuclear non-proliferation regime centred around the NPT, and whether we like it or not that may be ultimately the way we may have to look to; *an NPT Plus*.

As we mark this year the sixtieth anniversary of Hiroshima and Nagasaki and the sixtieth anniversary of the creation of the United Nations, I sincerely hope this seminar today will shed light on the specific ways and means to achieve a world free from the fear of weapons of mass destruction.

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