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PLENARY I

Challenges to the NPT Regime and Initiatives to Overcome Them

Session 2: 2010 Nuclear Non-Proliferation Treaty Review Conference:
Crafting a Consensus

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In order to have a successful NPT review conference in 2010, all the states parties to the NPT must be cooperative for repairing and strengthening the nuclear non-proliferation regime that is the cornerstone of the current international peace and security system, by taking into account and responding to newly emerging challenges and by learning lessons from the previous review conferences.

I Previous Review Conferences

The 1995 review conference was held with the extension conference together. As a majority expressed their support for an indefinite extension at an early stage of the conference, the effort was exerted to decide it in consensus or without vote. As a result, the decision 3 on an indefinite extension was agreed as a package with the decision 1 on strengthening the review process for the treaty and the decision 2 on principles and objectives for nuclear non-proliferation and disarmament as well as the resolution on the Middle East.

Participating states were very cooperative to find out a formula for the indefinite extension with accountability. The decisions were adopted without vote, as the states were so cooperative to have a packaged deal.

The 2000 review conference was held when there was a strong confrontation between the U.S. and Russia on security issues in general, and

the ABM Treaty and U.S. program on missile defence in particular. However, the five nuclear-weapon states agreed to a common statement by shelving outstanding issues, paving the way for consultation between the five and the members of New Agenda Coalition. It resulted in the agreement to the final document adopted by consensus, which provides for 13 steps for nuclear disarmament including an unequivocal undertaking by the nuclear-weapon state to eliminate their nuclear arsenals.

Contrary to the two previous conferences, the 2005 review conference was full of confrontation even before its opening. Agenda was not agreed until almost the end of the session, mainly because of the difference of opinions on whether the agenda should include the reference to the documents adopted at previous conferences. The atmosphere of the conference was also very confrontational and strong criticism was often exchanged among participants. There was no atmosphere of compromise among states.

In order to have a successful 2010 review conference, we all have to exert efforts for strengthening confidence and trust between the nuclear-weapon states and the non-nuclear-weapon states, in particular non-aligned movement states on the one hand and among the five nuclear-weapon states on the other hand.

The atmosphere of the first and second sessions of preparatory committee for the 2010 review conference held in 2007 and 2008 respectively seems to be better than 2005. However, there still remains sharp difference of opinions.

II New Challenges to the NPT

The NPT has confronted with many challenges after the end of the Cold War that were not anticipated at the time of treaty negotiation. They started from former Soviet Union's loose nukes and Iraq's clandestine nuclear weapon program just after the end of the Cold War. India and Pakistan, non-parties to the NPT, conducted nuclear tests in 1998. North Korea was suspected to have clandestine nuclear weapons program since early 1990s and declared the withdrawal from the NPT twice, and conducted

a nuclear test in 2006.

Iran has been working hard to improve its uranium enrichment capability as peaceful uses of nuclear energy in spite of strong and repeated demands from the international community to stop it. Libya once had a nuclear weapons program, too.

The terrorists' attacks to the U.S. in September 2001 suggested the high possibility that a terrorist group may use weapons of mass destruction once they get them. Nuclear black market network by Mr. A. Q. Kahn was revealed in 2004, which was a dangerous behind-the-scene transaction of nuclear technology, material and equipment.

With the desire for independent energy security, many non-nuclear-weapon states want to have their own nuclear fuel cycle including uranium enrichment and plutonium reprocessing.

III Measures Taken to Deal with New Challenges

Many measures have been taken to cope with new challenges by the international community and in particular upon the initiative of the U.S. The result so far seems to be mixed. When you judge the appropriateness of the measures taken, you should take into account not only its effectiveness, but also its legality and legitimacy.

1 Additional Protocol to the IAEA Safeguards Agreement

Mainly to respond to Iraq case where Iraq had clandestine nuclear programs that were not declared to the IAEA, the additional protocol was negotiated and adopted at the IAEA as a new legal instrument. Its legality and legitimacy is secured but its universalization has not attained yet. Many industrial states argue that the additional protocol should be a safeguards standard and some of them further argue that it should be a condition for nuclear export.

2 Export Control by the Nuclear Suppliers Group (NSG)

The guidelines agreed among the members of the NSG have been expanded after the end of the Cold War by including dual use items, and threat of diversion to nuclear terrorists, and introducing catch-all regulation. These guidelines are politically binding among the members. These

measures are necessary for nuclear non-proliferation, but sometimes non-aligned states criticize them for their lack of legitimacy.

The proposal to refuse to sell enrichment and reprocessing equipment and technologies to any states that does not already possess full-scale, functioning enrichment and reprocessing plants meets criticism that it would introduce further discrimination.

3 Proliferation Security Initiative (PSI)

The PSI under the leadership of the U.S. in 2003 envisions the interdiction of the shipment of weapons of mass destruction, by taking actions to board and search any vessel that is reasonably suspected of transporting such cargos, and seize such cargos. There are 15 core members and the initiative is now supported by more than 70 states.

The initiative is gaining legitimacy though some states are still opposing, and it is necessary that the activities be conducted by strictly observing the rules of international law and domestic law.

4 UN Security Council Resolution 1540

The United Nations Security Council unanimously adopted the resolution 1540 in April 2004, which demands member states to adopt and enforce laws which prohibit any non-state actor to manufacture, possess or use weapons of mass destruction. This is a new kind of "international legislation" by the Security Council resolution that is legally binding all member states as it was adopted under Chapter VII of the Charter.

It was a smart way to impose legally binding obligation on member states without a formal treaty negotiation that usually takes a long time, needs compromise for opponents, and lacks full membership. It is not clear that we can use this method again and again.

5 Global Partnership

G8 Global Partnership was agreed at 2002 Kananaskis Summit as a follow-up to the Nuclear Threat Reduction (NTR) program since 1991 as a cooperative enterprise to deal with the issues of non-proliferation, disarmament, terrorism and nuclear safety in former Soviet Union. This is a cooperative enterprise based on the agreement among states concerned.

6 Iraq War

Iraq war was a conspicuous example of the U.S. counter-proliferation policy based on the perception that Iraq had weapons of mass destruction and Iraq had connection with Al Qaeda. Lacking the authorization by the United Nations Security Council, the U.S. action is regarded illegal under current international law. The president of the American Society of International Law told that 90% of the members of the society understood it illegal. With many states opposing the war, it also lacks legitimacy, and in addition, its effectiveness is in doubt.

7 U.S-India Nuclear Deal

The U.S. regards the deal as a way to involve India in the international nuclear non-proliferation regime. It is urgent to take the non-parties into the regime. However, the deal is completely unbalanced, because India would be admitted as a nuclear-weapon state without undertaking any obligation of nuclear disarmament, for example, to sign the CTBT or to stop producing nuclear material for weapons.

As a result it would destroy the very foundation of the NPT, that is, no increase of nuclear-weapon states beyond the five. Japan would not have signed or ratified the NPT, if it had known that India would be permitted as a new nuclear-weapon state.

It is necessary and urgent to take measures to respond to new challenges to the international nuclear non-proliferation regime. However, when you take a new measure, you should take into account its legality and legitimacy as well as its effectiveness. When a new measure proves its legality and legitimacy, it would be accepted by almost all members of the international community, strengthening its effectiveness.

IV Relations between Nuclear Non-proliferation and Nuclear Disarmament

There are two main reasons for the nuclear-weapon states should seriously take nuclear disarmament measures for a successful 2010 review conference and also for a more peaceful and secure international community. First, the three pillars, that is, nuclear non-proliferation, nuclear disarmament and peaceful uses of nuclear energy, should be treated in a

balanced and equitable manner. Second, for a new non-proliferation measure to get support from non-nuclear-weapon states, it is necessary for the nuclear-weapon states fulfill their obligation of nuclear disarmament.

1 Three Pillars of the NPT

In the review process of the NPT, there has been a consensus among parties that the Treaty rests on the three pillars and the importance of balanced, full and non-selective application and implementation of the Treaty has been stressed. It is also generally agreed that non-proliferation and disarmament are mutually reinforcing.

In 2000, the review conference, based on the decisions in 1995 review conference, succeeded to adopt a final document by consensus that includes all three pillars in a balanced way.

However, in the review process for the 2005 review conference, the U.S started to express its reluctance to support the 13 nuclear disarmament steps agreed in 2000. In 2004, the U.S. argued that we should focus our discussion on nuclear non-proliferation, in particular violation of non-proliferation obligation, and we should not waste time by discussing nuclear disarmament as there is no problem in disarmament.

This attitude lead the U.S. to deny the inclusion of the decisions of 1995 and 2000 review conferences into an item of the agenda for the 2005 review conference. The confrontation on the agenda made substantive discussion impossible for two weeks. That is the one of the main reasons why the 2005 review conference failed.

In order to have a successful 2010 review conference, it is necessary to take the three pillars in a balanced way.

2 Nuclear Disarmament to Get Support for Nuclear Non-proliferation

Measures taken to strengthen non-proliferation aspect may restrict the right to use nuclear energy for peaceful purposes. From this point of view, many non-aligned states oppose new measures for non-proliferation.

However, they sometimes oppose a new measure for non-proliferation not necessarily because it would jeopardize their peaceful nuclear activities, but mainly because it would impose a new obligation to them while the nuclear-weapon states have not fulfilled their obligation of nuclear disarmament. This point is very important for the nuclear-weapon states to

take into account when they take new measures for non-proliferation.

It means that their opposition is not from technical, but from political point of view. In many cases, they have no technical basis for nuclear activities that is proposed to prohibit, such as uranium enrichment or plutonium reprocessing.

Those who support stricter nuclear non-proliferation with paying no attention to nuclear disarmament argue that even if the U.S. or other nuclear-weapon states reduce nuclear weapons or take other nuclear disarmament measures, it would not change the attitude of potential nuclear-weapon states such as North Korea or Iran. It is true that nuclear disarmament measures taken by the nuclear-weapon states would not stop potential nuclear-weapon states from proceeding.

However, what is important is to get support from the majority of non-nuclear-weapon states that have no intention to have nuclear weapons but reluctant to support new kinds of non-proliferation measures. It is because they feel that the balance of obligations between the nuclear-weapon states and non-nuclear-weapon states is not preserved when new measures are imposed only on them while the nuclear-weapon states have not fulfilled their obligation of nuclear disarmament.

3 Practical Steps for Nuclear Disarmament

The article "A World Free of Nuclear Weapons" in January 2007 in the Wall Street Journal by four wise U.S. former high-ranking officials is encouraging to the efforts towards nuclear abolition. The project is continuous, expanding the support for the argument. The two candidates for a U.S. president are strongly influenced by this new movement. Mr. Obama expressed his support for the vision of a world free of nuclear weapons while Mr. McCain argues for a deep cut of nuclear weapons, suggesting the indirect support for the project.

This idea should be more positively and widely discussed internationally and domestically, in particular in the nuclear-weapon states. In the U.S. nuclear issue including this new idea is one of the hottest issues for the presidential campaign.

In parallel with this argument, we should also take practical steps for nuclear disarmament as soon as possible, even before the 2010 review conference. The article by the four wise men recommends agreeing eight

urgent steps as the groundwork for a world free of nuclear threat.

As the practical steps for nuclear disarmament, we should agree and implement the following measures as soon as possible.

- 1) De-alerting nuclear weapons
- 2) Further reduction of strategic nuclear weapons by treaty
- 3) Elimination of tactical nuclear weapons
- 4) Entry into force of the CTBT
- 5) Immediate negotiation and early conclusion of a FMCT
- 6) Negative security assurances and no first use of nuclear weapons

V Conclusion

First, in order to have a successful 2010 review conference, it is indispensable to develop good and cooperative relations among the five nuclear-weapon states as well as between the nuclear-weapon states and non-nuclear-weapon states.

Second, when you introduce a new measure to cope with non-proliferation challenge, you have to take into account its legality and legitimacy as well as its effectiveness.

Third, in order to strengthen the international nuclear non-proliferation regime, the nuclear-weapon states have to take nuclear disarmament measures to keep balance among the three pillars and to get support for a new non-proliferation measure.