



1. Nuclear Disarmament

How Much Have the Five Nuclear Powers Promised in the Non-Proliferation Treaty?

George Bunn and Roland M. Timerbaev



Introduction

The 1968 Nuclear Non-Proliferation Treaty (NPT) constitutes a bargain between five nuclear-weapon powers (Britain, China, France, Russia and the United States) and 160 other NPT parties that do not have nuclear weapons (See Appendix B for a listing of NPT parties states). The non-nuclear-weapon parties, among other things, agree not to acquire nuclear weapons without insisting that the five give up their weapons—at least for the time being. Instead, under Article VI of the NPT, all parties agree “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”¹ (See Appendix A for a full text of the treaty.)

The purpose of this paper is to consider the meaning of this language. Under what circumstances does Article VI obligate the five NPT nuclear-weapon parties to negotiate toward zero nuclear weapons in national arsenals? Must there *first* be agreement on more measures designed to limit the production and use of nuclear

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weapons, greater reductions in nuclear weapons, fewer international tensions or sharp cuts in conventional arms? Is it sufficient for the present to negotiate toward the lesser goal of Article VI, "cessation of the nuclear arms race"? (Long-sought measures toward that goal are a ban on all nuclear tests, a restraint in the production of fissionable material for nuclear weapons, and a prohibition on the use of nuclear weapons except in response to a nuclear attack.) In an attempt to answer these and related questions, we will look at the text of the NPT, its negotiating history, and the practice of its members in implementing its terms.

The negotiation of the NPT during the mid-1960s was led by the Soviet Union and the United States—then the two "co-chairs" of the multilateral Geneva disarmament conference. The treaty's main purpose was to halt the spread of nuclear weapons to additional countries beyond the five that had tested nuclear weapons by 1967—Britain, China, France, the Soviet Union and the United States.² It has been joined by more than 155 non-nuclear-weapon countries having the same goal. But, unwilling to legitimize forever a "discriminatory" world divided between the five that had nuclear weapons and the many that did not, those without nuclear weapons forced a compromise. The compromise limited the NPT to a first term of 25 years; imposed Article VI on the nuclear-weapon parties; required review of the NPT every five years to determine whether this and other obligations were being realized; called for such a review in the same year (1995) that the parties were to decide by majority vote how much longer the treaty should last; and established the right to withdraw from the treaty if "extraordinary events" relating to nuclear non-proliferation jeopardized "the supreme interests" of a party concerned.³ As described below, the NPT's negotiating history and the practice of the parties in implementing it suggest that a reason for this compromise, from the point of view of the non-nuclear-weapon countries, was to keep pressure on the nuclear-weapon powers to halt the nuclear arms race and to move toward zero nuclear weapons. First, however, let us turn to Article VI itself to look for an answer to the question of *when* negotiation toward *zero* nuclear weapons is required.

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The Meaning of Article VI as Derived from its Text

Article VI itself shows that first priority was to be given to negotiation of measures "relating to cessation of the nuclear arms race." This phrase was followed immediately by "at an early date." In contrast, Article VI's call for negotiations relating to "nuclear disarmament" and on "general and complete disarmament" was not qualified by language suggesting that their achievement was to be given similar urgency. Article VI clearly gave priority to "cessation-of-the-nuclear-arms-race" measures. While not stating that they had to be negotiated first—before nuclear-reductions talks became obligatory—it gave them greater urgency.

When Article VI was negotiated, both American and Soviet plans for "general and complete disarmament" on the Geneva negotiating table called for zero *national* nuclear weapons by the third and last stage of disarmament.⁴ This was, however, only to be undertaken in conjunction with world-wide reductions of national armed forces and conventional arms to very low levels. In the U.S. plan, the pre-conditions for moving to zero included reduced international tension, improved mechanisms for peaceful settlement of international disputes, and a strengthened United Nations peace force.⁵

Did Article VI establish the same linkages and pre-conditions for "nuclear disarmament" as Soviet or U.S. plans did for "general and complete disarmament"? The Article VI obligation to negotiate on measures "*relating to . . . nuclear disarmament*" (emphasis added) could include a variety of measures that would reduce deployed nuclear weapons to levels far short of zero. Did Article VI require negotiation of "nuclear disarmament"—meaning zero national nuclear weapons—without the accompanying drastic reductions in conventional weapons and armed forces contemplated by both the American and Soviet plans for general and complete disarmament? Did the requirement include the reduction in tensions and the strengthened UN, as called for by the American plan?

"Disarmament" can sometimes mean reductions short of zero.⁶ However, the ordinary meaning of "nuclear disarmament" clearly *includes* zero even if it also includes reductions short of zero. Therefore, the obligation to negotiate on measures "relating to . . . nuclear disarmament" seems to include, among other things, zero. Thus,

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one meaning of Article VI, probably its plainest, is for eventual negotiations dealing with the elimination of nuclear weapons through either of two routes: (1) toward "nuclear disarmament" without linkages and preconditions, and (2) toward "general and complete disarmament" with them.

The NPT's preamble, however, suggests a different meaning. It contains two relevant provisions, one suggesting the purpose of negotiations relating to "nuclear disarmament," and the other of negotiations—concurrent or sequential—relating to "general and complete disarmament." In the first provision, the parties declare:

their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to take effective measures *in the direction of* nuclear disarmament⁷

In the second instance, the parties state their desire:

to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery *pursuant to a treaty* on general and complete disarmament under strict and effective international control⁸

The contrasting language of these two preambular provisions suggests that Article VI does not require negotiation on proposals calling for zero nuclear weapons except in the context of general and complete disarmament, including the pre-conditions—easing of international tensions and strengthening of trust between states. At the same time, "effective measures *in the direction of nuclear disarmament*" (but presumably short of it) are to be pursued without reference to general and complete disarmament or to such conditions precedent. Therefore, one could argue from the preamble that the achievement of complete nuclear disarmament was only contemplated in the context of general and complete disarmament.

There is thus some conflict between the plain meaning of Article VI itself and the preambular provisions suggesting its purpose. However, the negotiating history of the treaty and the practice of the parties suggest that pursuit of zero was foreseen along two alternative routes: one to "nuclear disarmament" without a requirement of linkages and pre-conditions, and the other to "general and complete disarmament" with linkages and pre-conditions.

The Meaning of Article VI as Derived from its Negotiating History

In 1962, soon after the adoption of the "Irish resolution" by the UN General Assembly calling for a non-proliferation agreement, the United States met with a group of its NATO allies who were also members of the multilateral Geneva disarmament conference where such an agreement was to be discussed. Two U.S.-proposed options considered at this meeting were declarations by countries having nuclear weapons not to disseminate them to those that did not, and separate declarations by those that did not—not to acquire them. At the meeting, Italy expressed reservations about such declarations unless there were promises from the countries having nuclear weapons to get rid of them eventually.⁹ Later in 1962, the Italians acquiesced in a revised U.S. non-dissemination draft for the countries having nuclear weapons. This draft would not have required a non-acquisition promise from countries not having them, and it would have permitted the use of U.S. nuclear weapons by a multilaterally-manned naval force of NATO countries (the so-called MLF) in which Italy could participate.¹⁰ The Soviet Union, however, rejected this draft.¹¹

Criticism of a non-proliferation accord that discriminated by permitting some but not others to have nuclear weapons was thus raised originally by a U.S. ally—Italy. Moreover, the Italians seemed to speak for the Germans as well; for Cold War reasons, the Federal Republic of Germany (West Germany) had not at that point been invited to participate in the Geneva disarmament conference.¹² When the Italians later proposed that countries not having nuclear weapons forswear acquiring them in short-term unilateral declarations pending negotiation of additional obligations for those having nuclear weapons (including steps toward nuclear disarmament), German Chancellor Erhard

The measures mentioned most often in the negotiating history are a test ban, cut-off and prohibition on use.


announced that Germany had already signed a non-acquisition declaration and called upon others to follow suit.¹³ This Italian-German idea seemed to imply that if they and other countries with the potential to make nuclear weapons renounced them, the nuclear-weapon powers should take steps toward nuclear disarmament.



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When the focus later shifted to Soviet and U.S. drafts for a non-proliferation treaty of unlimited duration, Germany pointed out that more was needed than such a "limited" NPT:

It is incumbent on the nuclear-weapon powers to stop the further development of increasingly more dangerous weapons, not to increase existing stocks, including the means of their delivery, to begin reducing them, to stop the production of fissionable material for military purposes, and to aim at a comprehensive test ban. When the nuclear-weapon powers explicitly announce their willingness to take their own steps to restrict and reduce armaments, a limited non-proliferation treaty would be the beginning of international cooperation for a genuine guarantee of peace in the nuclear age The execution of the promised disarmament measures [by nuclear-weapon powers] could be checked by an international authority at each further stage of disarmament process The nuclear-weapon powers are called upon to take the next steps¹⁴



This statement was issued after several years of negotiations had made agreement on an NPT seem possible in the near future. The first public U.S. draft NPT in 1965 had been followed soon by a Soviet counter proposal. Both called for a treaty of unlimited duration that would prohibit those having nuclear weapons from disseminating them to those that did not, and that would prohibit those that did not have nuclear weapons from acquiring them. Neither draft contained any article obligating the countries having nuclear weapons to negotiate an end to the nuclear arms race or to reduce their nuclear arsenals. The major differences concerned how they would deal with existing and planned multilateral arrangements within NATO for control over nuclear weapons that might be used in response to an attack by the Soviet-led Warsaw Pact.¹⁵

At Geneva, Italy submitted a draft short-term "unilateral-renunciation" declaration for advanced non-nuclear-weapon countries that was essentially a counter proposal to the draft U.S. treaty. In the Italian proposal, the non-nuclear-weapon declarants were to meet just before the end of an initial term of years to review "the progress which has been made toward international agreements to prevent the spread of nuclear weapons, or to halt the nuclear arms race, and to reduce nuclear arsenals." Any decision by these declarants to extend their declarations would be based upon this review—including, clearly, what progress the nuclear-weapon powers had made toward limiting and reducing their nuclear weapons.¹⁶

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The "Non-Aligned Eight," the non-aligned, non-nuclear-weapon countries represented at the Geneva conference, then made the same point about a non-proliferation treaty:

A treaty on non-proliferation of nuclear weapons is not an end in itself but only a means to an end. That end is the achievement of *general and complete disarmament, and, more particularly, nuclear disarmament*. The eight delegations are convinced that measures to prohibit the spread of nuclear weapons should, therefore, be *coupled with or followed by tangible steps*, to halt the nuclear arms race and to limit, reduce and eliminate stocks of nuclear weapons and the means of their delivery.¹⁷

Later in 1965, after negotiations among many delegations, the General Assembly adopted a resolution containing guiding principles for the negotiation of a non-proliferation treaty. Among other things, the resolution said that such a treaty "should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear powers" and that it should be a step towards "general and complete disarmament and, more particularly, nuclear disarmament."¹⁸ Thus, the UN resolution, the non-aligned memorandum, and the Italian proposal all called for progress *toward* "nuclear disarmament" even before the steps and conditions necessary for general and complete disarmament had been achieved.

When the Geneva conference resumed in 1966, the debate centered on how to link a non-proliferation treaty with steps toward nuclear disarmament. The Egyptian delegate proposed that a non-proliferation treaty include a "*legal obligation* to halt the nuclear arms race, limit, reduce and eliminate stocks of nuclear weapons and delivery vehicles, and to that end continue and expedite negotiations in order to reach agreement on concrete measures." With such an obligation, he said, countries not having nuclear weapons could judge "objectively" whether sufficient progress had been made by those having them to satisfy the treaty, and they could withdraw from it if progress was so small as to constitute "non-observance."¹⁹

The Non-Aligned Eight agreed on a new memorandum listing specific proposals for "tangible steps to halt the nuclear arms race and to limit, reduce and eliminate the stocks of nuclear weapons and the means of their delivery." These included a ban on nuclear testing, an end to the production of fissionable material for weapons, and "a freeze and a gradual reduction of the stocks of nuclear weapons

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and the means of their delivery, the banning of the use of nuclear weapons and assurance of the security of non-nuclear-weapon states." The memorandum added: "Such different steps could be embodied in a treaty as part of its provisions or as a declaration of intention."²⁰

In 1967, after the Soviet Union and the United States had resolved many of their differences and submitted identical drafts of a treaty, the Mexican delegation proposed the following article as an amendment:

Each nuclear-weapon State Party to this Treaty undertakes to pursue negotiations in good faith, with all speed and perseverance, to arrive at further agreements regarding the prohibition of nuclear weapon tests, the cessation of the manufacture of nuclear weapons, the liquidation of their existing stockpiles, the elimination from nuclear arsenals of nuclear weapons and the means of their delivery, as well as to reach agreement on a treaty on general and complete disarmament under strict and effective international control.²¹

This language clearly contemplated that negotiations for the elimination of nuclear weapons from national stockpiles could take place outside the context of general and complete disarmament. Brazil, Burma, India, Romania and Switzerland made somewhat similar proposals—that the treaty contain language obligating the nuclear-weapon powers to "adopt," "take," "resolve . . . to undertake," or "undertake . . . to negotiate" specific steps toward nuclear disarmament.²² None of these proposals mentioned general and complete disarmament.

Even earlier, U.S. allies considering a U.S.-Soviet draft before it was made public at Geneva had expressed interest in linking non-prolif-

One route to "nuclear disarmament" was foreseen without preconditions, and another to "general and complete disarmament" with them.

eration obligations to new limitations on the nuclear arms race. The Canadian representative had said: "It is neither unnatural nor unreasonable that countries forgoing their option to produce nuclear weapons should wish to ensure that their act of self-denial should in turn lead the nuclear weapon powers to undertake tangible steps to reduce and eliminate their vast stockpiles of nuclear weapons and delivery vehicles."²³ The Japanese foreign minister had

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announced that a treaty prohibiting non-proliferation should "go further to make clear the sincere intention on the part of the the countries which possess nuclear weapons to make efforts toward nuclear disarmament" ²⁴ The British representative had argued that the treaty's terms "must provide the *means of redress* for the non-nuclear powers if the nuclear states are unreasonably slow in translating their intentions ["to halt and reverse" the nuclear arms race] into action." ²⁵ (The "means of redress" commonly mentioned at the Geneva conference were: [1] withdrawal from the NPT by have-nots; [2] meetings of the parties every five years to review the treaty; and [3] a meeting at the end of its initial term to consider how long to extend it. ²⁶)

The Soviet Union and the United States had no choice but to heed these views if they wanted to secure widespread adherence to a non-proliferation treaty. They revised the Mexican language, deleting references to specific measures and proposing what became the obligation in Article VI to negotiate "in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament . . ." ²⁷

They later revised their draft Treaty to offer a review conference every five years of the treaty's life instead of once at the end of the first five. Also, treaty duration was changed from "unlimited" to an initial term of 25 years at the end of which the parties would review whether the treaty's obligations were being observed and decide how much longer it should last. ²⁸

For Article VI and other obligations, these arrangements provided something akin to enforcement. The negotiators assumed that the Security Council would deal with treaty violations that constituted a threat to the peace because the UN Charter already gave it that authority. ²⁹ However, the five acknowledged nuclear-weapon powers were each permanent members of the Security Council with veto power. No new authority was provided in the NPT to refer disputes over alleged treaty violations to the Security Council, to World Court adjudication, to mediation, or to arbitration. A dissatisfied party could withdraw from the treaty, but that required a report by it to the Security Council stating that its "supreme interests" had been jeopardized by "extraordinary events related to the subject




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matter of the treaty."³⁰ Examples could be the development of nuclear explosives by a hostile neighbor or a credible nuclear-weapon threat against its territory or forces by a nuclear-weapon state. From the point of view of the countries not having nuclear weapons, the provisions for conferences to review the implementation of the NPT every five years and to consider its extension after 25 were the most important opportunities available to pressure parties having nuclear weapons to negotiate seriously to limit or eliminate them.

In a statement offering the final NPT text to the General Assembly, the U.S. representative to the United Nations, former U.S. Supreme Court Justice Arthur Goldberg, stated that these added provisions gave Article VI "*further force*." He added:

My country believes that the *permanent viability* of this treaty will *depend in large measure on our success in the further negotiations contemplated by Article VI*. . . . Following the conclusion of this treaty, my government will, in the spirit of Article VI . . . pursue further disarmament negotiations with redoubled zeal and hope and with promptness³¹



To many, Article VI's "pursue negotiations in good faith" may seem so vague as to be almost meaningless. In other contexts, however, both national and international courts have given it sufficient meaning to make it an enforceable promise where there is a judicial system that has jurisdiction.³² In the NPT, as we have seen, that was not offered. But, if those not having nuclear weapons were not satisfied that the five were complying with Article VI, their most important remedies beyond criticism were to frustrate agreement at review conferences every five years and to refuse to vote for a long extension for the NPT in 1995. As we shall see, they have already prevented consensus at two of the four review conferences because they thought the nuclear-weapon parties were not living up to their Article VI obligations.

The Practice of the NPT Parties Pursuant to Article VI

The NPT was opened for signature on July 1, 1968. At the signing, President Johnson announced that, consistent with the NPT's purpose of promoting arms control and disarmament, agreement had been reached with the Soviet Union for negotiations on the

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limitation and reduction of strategic ballistic missiles and defenses against them.³³ On the same day, the Soviet government issued a memorandum agreeing to negotiate on strategic delivery vehicles and proposing, in addition, negotiation on a list of eight other arms control measures, including "cessation of production of nuclear weapons and the reduction and elimination of stockpiles"—separately from general and complete disarmament.³⁴

Later that summer at the Geneva conference, the Soviet Union, the United States, and the other countries present gave meaning to Article VI by agreeing to an agenda of measures that could be discussed there under a heading taken from Article VI's "effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament." The agenda *under this heading* included "the cessation of testing, the non-use of nuclear weapons, the cessation of production of fissionable materials for weapons use, the cessation of manufacture of weapons, and reduction and subsequent *elimination* of nuclear stockpiles, nuclear free zones, etc." (emphasis added). The "effective measures . . ." heading was first on the agenda. General and complete disarmament was fourth.³⁵

Thus, as interpreted by the Geneva conference that had helped negotiate the NPT, negotiations for elimination of nuclear stockpiles pursuant to Article VI could and should take place either under "nuclear disarmament" without the specified pre-conditions, or under general and complete disarmament with them. During the period

In the eyes of the non-nuclear NPT parties, a CTB is the most important measure the nuclear weapon states can adopt.

when tensions had not yet been eased and trust between states had not been strengthened, the more meaningful of these two routes toward the elimination of all nuclear weapons would clearly be the first.

This assessment has been reflected in the practice of the parties. The U.S. and U.S.S.R. pursued negotiations bilaterally on their nuclear arsenals, eventually reaching extremely important agreements on reductions. General and complete disarmament, although it has been mentioned on the agenda of the Geneva Conference, was not seriously addressed by the nuclear-weapon states in the 26 years since "agenda item 4" was originally adopted. Complaints about this

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lack of action have not been prominent in the four NPT review conferences.

Relying in part upon Article VI, more than 160 countries have so far joined the NPT. Among the few that presented special statements to the depositary governments when they joined, the majority mentioned the importance of achieving agreements pursuant to Article VI.³⁶ At each of the four NPT review conferences held so far, the slow progress of the nuclear powers in implementing Article VI has gotten the most attention of the delegates. Indeed, the failure to negotiate a comprehensive test ban despite both Article VI and a separate preambular paragraph calling for CTB negotiations has been the single most contentious issue. Two of the four review conferences (in 1980 and 1990) broke up without achieving a consensus on any final declaration on the implementation of the NPT because of disagreement over language relating to the failure to negotiate a comprehensive test ban. (By agreement, decisions at these conferences were by consensus.)

By 1975, the SALT I Interim Agreement and the ABM Treaty had been achieved. But the non-aligned parties nevertheless criticized the Soviet Union and the United States for failure to live up to their part of the NPT bargain and achieve more than this. The conference president summarized their views by saying they "rather impatiently await concrete and binding results of on-going bilateral negotiations, aiming at ending the quantitative and qualitative arms race, and reducing substantially the levels of nuclear armaments The comprehensive test ban is clearly recognized as a most decisive element in these efforts. Article VI must be implemented in letter and spirit."³⁷ A compromise final declaration was agreed at the last minute containing recommendations on the test ban, on further steps in the SALT process, and on other nuclear arms control measures.³⁸

At the 1980 review conference, the non-aligned NPT members prevented a consensus on a final declaration even though serious U.S.-Soviet-U.K. negotiations on ending nuclear testing had made progress. The conference followed the Soviet invasion of Afghanistan and the sharp Western reaction to that invasion. The non-aligned countries again indicated that the nuclear-weapon parties, through their failure to agree on a comprehensive test ban, on bringing the SALT II treaty into force, and on continuing negotiations to achieve

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substantial reductions in strategic offensive arms, had not kept their end of the NPT bargain.³⁹

At the 1985 review conference, there was little new progress pursuant to Article VI to report, but U.S.-Soviet strategic arms negotiations had just begun in Geneva after a long lapse and a Reagan-Gorbachev summit meeting was imminent. After several years of sharpened East-West hostility, the delegates to the conference were reluctant to criticize such hopeful efforts too severely and thus permitted a consensus on a final declaration.

The 1985 conference declaration is of particular interest here, since the language relating to Article VI reflects agreement by the NPT's parties that zero nuclear weapons were to be pursued, but not solely in the context of general and complete disarmament. The declaration summarized with approval the final report of the 1978 special session of the UN General Assembly dealing with disarmament. That report had noted that progress *toward* general and complete disarmament could be taken by specific steps which should be implemented within a few years. It outlined a "Programme of Action" to accomplish such steps without awaiting agreement on general and complete disarmament. This included "a comprehensive, phased programme with agreed time-frames, whenever feasible, for progressive and balanced reduction of stockpiles of nuclear weapons and their means of delivery, leading to *their ultimate and complete elimination at the earliest possible time.*"⁴⁰

To put this in the context of Article VI, the 1985 NPT review conference's final declaration summarized it with approval. NPT parties in 1985 thus agreed that the "phased programme" leading to zero was within the Article VI obligation relating to "nuclear disarmament," not just that relating to general and complete disarmament.⁴¹ The final report also reflected sharp criticism by the non-nuclear-weapon parties of the failure to achieve a nuclear test ban; it also contained this language:

[T]he Conference noted that certain states Party to the Treaty [understood to mean Britain and the United States], while committed to the goal of an effectively verifiable comprehensive Nuclear Test-Ban Treaty, considered *deep and verifiable reductions in existing arsenals of nuclear weapons* as the highest priority in the process of pursuing the objectives of Article VI.⁴²

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This clearly implied that deep cuts in nuclear weapons could and should be negotiated outside the context of general and complete disarmament (as was later done in START I and START II).

By the time of the 1990 review conference, there had been successful Reagan-Gorbachev summits, an end to the Cold War, agreement on an Intermediate-Range Nuclear Force (INF) treaty, and progress toward the first START treaty. Both of these treaties were intended to reduce nuclear delivery vehicles, but both had or would have the additional effect of withdrawing nuclear warheads from active deployment. However, in 1990 a consensus final declaration again proved elusive, owing primarily to the failure of the nuclear powers to achieve a test ban. Mexico, the leader of the non-aligned countries, refused to accept a compromise such as that of 1985—a compromise that would have criticized the failure to achieve a test ban pursuant to Article VI, but also would have reflected views of Britain and the United States such as those quoted above.⁴³

Conclusions on the Meaning of Article VI

1. Article VI said that measures relating to "cessation of the nuclear arms race at an early date" were to be negotiated when the treaty entered into force (1970). The three such measures most often mentioned in the negotiating history and in the parties' 1968 agreement on an agenda to implement Article VI were a ban on nuclear testing; a cut-off in the production of fissionable materials for nuclear weapons; and a prohibition on the use of nuclear weapons.

After almost 25 years, none of these measures has been achieved in internationally binding form. There exist four-power, reciprocal moratoria on testing (China being the sole holdout), a U.S.-Soviet Threshold Test Ban Treaty, unilateral cut-offs of fissionable-material production for weapons by the United States and soon by Russia, and national declarations promising not to use nuclear weapons on non-nuclear-weapon countries by each of the five powers—with differences in their coverage.⁴⁴ Negotiations for multilateral treaties covering all three measures—to end tests and production of material for weapons and to ban their use with agreed exceptions—are now on the agenda of the Conference on Disarmament (CD) in Geneva. But agreements since 1970 in the "cessation-of-the-nuclear-arms-race" category are quite few.

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The five countries accepted by the NPT as nuclear-weapon states have a clear Article VI obligation to negotiate in good faith on all three of these measures at Geneva. The measures have greater urgency under Article VI than measures relating to "nuclear disarmament"—though they are not required to be completed before an obligation to negotiate toward nuclear disarmament arises.

Three of the five nuclear-weapon powers—Britain, the Soviet Union (now Russia) and the United States—participated in the last serious test ban negotiations ending in 1980. All five are members of the multilateral CD in Geneva, but China and France (also members of the CD) were not obliged to negotiate in good faith on "cessation-of-the-nuclear-arms-race" measures until they joined the NPT in 1992.

Until this year, there had been little recent discussion in the CD about a cut-off in the production of fissile material for nuclear weapons. However, a 1993 UN General Assembly resolution on such a cut-off, new support from the United States, and the joint US-Russian statement of January 14, 1994—in which both powers "expressed their resolve to implement

effective measures to limit and reduce nuclear weapons" and announced that "an important contribution to the goal of non-proliferation of nuclear weapons would be made by a verifiable ban on the production of fissile materials for nuclear weapons and by the most rapid conclusion of an interna-

tional convention to this effect"—may all give impetus to that subject.⁴⁵ At the beginning of its 1994 session, the CD appointed a Special Coordinator (a representative of Canada) to consult the other parties on the scope and forum for negotiating "a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices."

There have been no American or Russian plans to go to zero nuclear weapons. The NPT requires more than this.


Disagreement over exceptions to an obligation not to use nuclear weapons against non-nuclear-weapon states has prevented agreement on a treaty on the non-use of nuclear weapons at Geneva for years.⁴⁶ However, new efforts are likely in view of both the upcoming 1995 NPT review and extension conference and the need of assurances to persuade Ukraine to release the nuclear weapons left



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on its territory when it declared independence.⁴⁷ In the January 14, 1994 trilateral statement signed in Moscow by the presidents of Russia, United States, and Ukraine, the first two agreed to give Ukraine identical security assurances as soon as it accedes to the NPT. Thus all three measures (CTB, cut-off, and security assurances) will, in all likelihood, receive new attention during 1994.

2. Of the three "cessation-of-the-nuclear-arms-race" measures, the comprehensive test ban has always been mentioned as a first-order priority; recall that it alone is specified in the preamble of the NPT.⁴⁸ At the preceding four NPT review conferences, the failure to achieve a CTB received the greatest attention and was the reason two of the four conferences adjourned without agreement on a final declaration. In the eyes of the NPT parties not having nuclear weapons, there is no question that a CTB is the most important measure the nuclear-weapon states can adopt in satisfying their Article VI obligations.



There will be two important differences at the 1995 conference from past NPT review conferences. The first is that a failure to reach agreement at the 1995 conference could mean an end to the NPT. For the first time, the NPT parties not having nuclear weapons will possess real bargaining leverage vis-à-vis the nuclear powers to push for a test ban. Realizing their leverage, the non-aligned members of the Geneva CD issued a statement on December 1, 1993 in which they demanded achievement of a "final text" of a CTBT during 1994.⁴⁹

The second difference is that the decision on the length of the NPT extension will be made by majority voting, not by the consensus procedure of the review conferences. This is especially significant since the parties will be asked to decide the treaty's term of renewal, not just to comment on the treaty's performance. Moreover, this important conference decision cannot be blocked by a small minority as was the case with decisions at past review conferences.

What impact will these changes have on the prospects for achieving a test ban? NPT parties seeking such a ban would certainly not get what they want by bringing the NPT to an end. Moreover, all or most of the developing countries that are among the strongest advocates of a test ban have an interest in continuing the NPT as long as it is seen as effective in preventing other countries from securing

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nuclear weapons and in promoting trade in nuclear material and equipment under safeguards.⁵⁰ But given the failure of the nuclear-weapon countries to achieve a test ban for 25 years, the developing countries may not trust them to agree on a CTB without exerting strong pressure on them to do so.

One developing-country proposal to deal with this dilemma could be to extend the NPT in 1995 for a short period, perhaps two years, in order to provide more time for test ban negotiations, and then to extend it for a longer period if a test ban has been achieved. There are, however, serious doubts about the legality of this proposal, and the result of a two-year extension could well be an end to the NPT in 1997.⁵¹

A more likely alternative of the non-nuclear parties could be to call for a recess of the 1995 conference, perhaps for six months, with the idea of reconvening it to make the extension decision once a test ban has been achieved.⁵² Since the non-aligned countries constitute some two-thirds of the NPT's membership, they have it within their power to precipitate such a recess if they cooperate. Moreover, since preventing proliferation depends so heavily on the consent of all the countries capable of building nuclear weapons, the proponents of a long NPT extension are unlikely to press their proposal to a vote in 1995 unless they have a substantial majority. Having nuclear-capable countries going home mad from the conference and threatening withdrawal from the NPT would be an unhealthy result.⁵³ Given the interest of almost all the NPT parties in preventing the NPT from lapsing after a short (two years?) extension, a recess of the 1995 conference until a test ban is negotiated seems quite possible if no test ban text has been agreed to by the opening of the conference.⁵⁴

3. Turning to Article VI measures "relating to . . . nuclear disarmament," the Soviet Union and the United States have implemented the INF treaty eliminating their intermediate-range nuclear forces. In the START I and II treaties, Russia and the United States have agreed on deep cuts down to at least 3,500 warheads each in their strategic nuclear forces. By reciprocal action, Russia and the United States have deactivated, withdrawn, or dismantled many nuclear warheads of all ranges, including many not covered by the INF and START treaties. These are major achievements in compliance with

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the obligation of Article VI to negotiate in good faith on measures "relating to . . . nuclear disarmament."

So far, the other three nuclear-weapon parties, Britain, China and France, have not participated in the American-Soviet (now Russian) negotiations to reduce nuclear weapons. China and France did not become obligated to do so until they joined the NPT in 1992, but they will surely need to talk about nuclear reductions with the other nuclear-weapon powers before the 1995 conference opens to demonstrate compliance with Article VI.

Russia and the United States have not yet had any serious negotiations on going below the final START II levels of land-based and sea-based strategic missile warheads—levels *higher* than what existed on both sides in 1970 when the NPT went into effect.⁵⁵ Furthermore, except for 30-year old plans for general and complete disarmament and a Gorbachev proposal of 1986 to eliminate nuclear weapons by the year 2000, there have been no specific American or Russian national plans for going to zero—much less talks between the two or among the five toward that end. Article VI clearly requires more than this.

4. The NPT's preambular language dealing with general and complete disarmament suggests that "easing of international tensions and the strengthening of international trust between states" was thought necessary in 1968 to facilitate the "elimination from national arsenals of nuclear weapons and the means of their delivery." Even if these pre-conditions must be met not just for "general and complete disarmament," but also for "nuclear disarmament," the fear of a U.S.-Russian nuclear exchange has receded greatly with the end of the Cold War. That has eased East-West tensions. However, the world remains a dangerous place. Regional conflicts, ethnic violence, nationalistic separatism and civil wars have in fact increased since the Cold War's end. The peaceful world necessary as a prerequisite for deep cuts in conventional armaments has not yet arrived, the UN has not yet shown itself capable enough of handling violent disputes, and general and complete disarmament still does not seem to be realistic.

But the plain meaning of Article VI, its negotiating history, and the parties' practice in implementing it all suggest that these pre-

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conditions do not need to be satisfied to trigger an obligation to negotiate in good faith toward zero nuclear weapons along the "nuclear disarmament" route. After 25 years and an end to the Cold War, the time has been reached when Article VI requires all five nuclear-weapon states to begin such talks. Article VI does not say whether negotiating toward zero means taking one step downward after another through one negotiation after another, or a "phased programme" involving a package of steps agreed in one long negotiation. At the same time, Article VI does not authorize an avoidance of negotiations by any of the five just because the Americans and Russians have agreed to reduce to 3,500 strategic warheads. Indeed, all five nuclear powers have a present, pressing obligation to begin discussing proposals for moving in the direction of zero along one route or the other.⁵⁶

Notes

Editors' Introduction

1. Report to the UN and the UN Disarmament Commission of August 28, 1968, ENDC/236, *Documents on Disarmament, 1968*, pp. 591,593.
2. David Koplow's paper was written in 1992, before the Clinton administration supported the resumption of CTB negotiations in the CD and made the achievement of a CTB a first-order priority. Nevertheless, Koplow's paper contains research relevant to the NPT extension conference in 1995, and to the achievement of associated arms control agreements well after 1995, and is therefore included in this volume.
3. Statement by the Press Secretary, the White House Office of the Press Secretary, Mar. 15, 1994.
4. R. Jeffrey Smith, "Clinton Decides to Retain Bush Nuclear Arms Policy," *The Washington Post* (Sept. 22), 1994, pp. A1, A26.
5. See, "Preparing for the 1995 NPT Conference: ACT Interviews Thomas Graham, Jr.," *Arms Control Today* 24 (July/Aug. 1994), p. 12.
6. R. Jeffrey Smith, *op cit*.
7. For examples of this argument, see Secretary of Defense Les Aspin's speech to the National Academy of Sciences on December 7, 1993 announcing the new U.S. counterproliferation policy; Mark Dean Millot, "Facing the Emerging Reality of Regional Nuclear Adversaries," *The Washington Quarterly* (Summer 1994); and Peter W. Rodman, "A Grown-Ups Guide to Non-Proliferation," *The National Review* (July 5, 1993).
8. Wolfgang K.H. Panofsky and George Bunn, "The Doctrine of the Nuclear-Weapon States and the Future of Non-Proliferation," *Arms Control Today* 24 (July/Aug. 1994), pp. 3-9. (Emphasis in the original.)

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1. The full text of Article VI reads:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on

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general and complete disarmament under strict and effective international control.

2. The 1967 date comes from the NPT: Art. IX.3 defines "nuclear-weapon state," for the purposes of the treaty, as one "which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967." That included only the five mentioned in the text. The NPT's purpose was to prevent increases in this number if that was possible. The 1961 "Irish resolution," the UN General Assembly resolution that was the origin of the NPT negotiations, sought a treaty in which nuclear-weapon states would promise not to disseminate nuclear weapons or information on their manufacture, and non-nuclear-weapon states "would undertake not to manufacture or otherwise acquire control of such weapons." UNGA Res. 1665 (XVI), Dec. 4, 1961. See G. Bunn, *Arms Control by Committee: Managing Negotiations with the Russians* (Stanford University Press, 1992), pp. 64-66.
3. See NPT Arts. VI, VII.3 and X.
4. See, e.g., Soviet Proposal Submitted to the Eighteen-Nation Disarmament Committee: Draft Treaty on General and Complete Disarmament Under Strict International Control, Mar. 15, 1962, ACDA, *Documents on Disarmament, 1962*, pp. 103-127; U.S. Proposal Submitted to the Eighteen-Nation Disarmament Committee: Outline of Basic Provisions of a Treaty on General and Complete Disarmament in a Peaceful World, April 18, 1962, ACDA, *Documents on Disarmament, 1962*, pp. 351-382.
5. See U.S. proposal, cited above, pp. 352-53, 367-68, 374-75, 380-81.
6. One meaning for "disarm" is to "reduce armed forces." See *Webster's Ninth New Collegiate Dictionary* (Merriam-Webster, 1986), p. 359.
7. NPT, 8th preambular paragraph, (emphasis added).
8. NPT, 11th preambular paragraph, (emphasis added).
9. Dept. of State Telegram 13195 to NATO capitals, Feb. 28, 1962, National Security Archive (NSA), Nuclear Non-Proliferation Collection.
10. Dept. of State Telegram 01153 to NATO capitals of Mar. 2, 1962, NSA, NNP Collection.
11. See George Bunn, *Arms Control by Committee: Managing Negotiations with the Russians* (Stanford University Press, 1992), p. 66.
12. See George Bunn and Charles N. Van Doren, "Options for Extension of the NPT: the Intention of the Drafters of Article X.2," in Bunn, Fischer and Van Doren, *Options & Opportunities: The NPT Extension Conference of 1995* (Programme for Promoting Nuclear Non-Proliferation, 1991), pp. 3-6.
13. Bunn and Van Doren, cited above, p. 5.
14. Memorandum of the Federal Republic of Germany to other governments, April 7, 1967, ACDA, *Documents on Disarmament, 1967*, pp. 179, 180, 182.
15. ACDA, *International Negotiations on the Treaty on the Non-Proliferation of Nuclear Weapons* (GPO, 1969), pp. 133, 135.
16. Italian Proposal Submitted to the Eighteen Nation Disarmament

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- Committee: Draft of Unilateral Nonacquisition Declaration, September 14, 1965, *Documents on Disarmament, 1965* (1966), p. 411-12.
17. ACDA, *Documents on Disarmament, 1965*, p. 424-25 (emphasis added).
 18. UNGA Res. 2028 of Nov. 19, 1965, ACDA, *Documents on Disarmament, 1965*, pp. 532-34.
 19. Statement of March 3, 1966, ACDA, *Documents on Disarmament, 1966*, pp. 68, 77 (emphasis added).
 20. Memorandum of Aug. 19, 1966, ACDA, *Documents on Disarmament, 1966*, pp. 576-78.
 21. Mexican Working Paper of Sept. 19, 1967, ACDA, *Documents on Disarmament, 1967*, pp. 394-95.
 22. Brazilian Amendments of October 31, 1967, *Documents on Disarmament, 1967*, p. 546; Statement of the Burmese representative of Oct. 10, 1967, *Documents, 1967*, p. 459, 463; Statement of Indian Delegate of Sept. 28, 1967, *Documents, 1967*, pp. 430, 440; Rumanian Working Paper of October 19, 1967, *Documents, 1967*, pp. 525-26; Swiss Aide-Memoire of Nov. 17, 1967, *Documents, 1967*, pp. 572-574.
 23. Statement of Feb. 24, 1967 ENDC/PV.289.
 24. Statement to the Dict, Mar. 14, 1967.
 25. Statement of Feb. 23, 1967, ENDC/PV.288 (emphasis added).
 26. Bunn and Van Doren, cited above, at pp. 5-8.
 27. Revised identical American and Soviet NPT drafts of Jan. 18, 1968, in ACDA, *International Negotiation of the Treaty on the Non-Proliferation of Nuclear Weapons* (GPO, 1969), pp. 150, 153-54. The earlier Soviet and U.S. drafts also appear in this book.
 28. ACDA, *International Negotiations*, cited above, at pp. 150-59. These changes appeared in drafts of Jan. 18, 1968 and March 11, 1968.
 29. U.N. Charter, chap. VII.
 30. NPT Art. X.1.
 31. Statement of April 26, 1968, ACDA, *Documents on Disarmament, 1968*, p. 230-231 (emphasis added).
 32. David A. Koplow, "Passing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?" 1993 *Wis. Law Review*, pp. 301, 367-374.
 33. Statement of July 1, 1968, ACDA, *Documents on Disarmament, 1968*, pp. 458-60.
 34. Memorandum of July 1, 1968, ACDA, *Documents on Disarmament, 1968*, pp. 466-70.
 35. Report to the United Nations and the UN Disarmament Commission of August 28, 1968, ENDC/236, ACDA, *Documents on Disarmament, 1968*, pp. 591, 593.
 36. These included Australia, Germany, Japan, Indonesia, Turkey and Yugoslavia.

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37. Warren H. Donnelly & Robert L. Beckman, "Nuclear Non-Proliferation Treaty Conference," reprinted in Environment and Natural Resources Policy Division of the Congressional Research Service, 99th Cong., 1st Sess., *Nuclear Proliferation Factbook*, p. 577, 581 (1985).
38. Final Declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, May 30, 1975, ACDA, *Documents on Disarmament, 1975*, pp. 146, 153-155.
39. Working paper submitted by the Group of 77 non-aligned countries on Aug. 26, 1980. NPT/CONF. II/C.1/2.
40. Final Document of the Tenth Special Session of the General Assembly, June 30, 1978, ACDA, *Documents on Disarmament, 1978*, pp. 411, 420-21 (emphasis added).
41. Final Declaration by the Third Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Sept. 21, 1985. ACDA, *Documents on Disarmament, 1985*, pp. 641, 650-56.
42. Mohamed I. Shaker, "The Legacy of the 1985 Nuclear Non-Proliferation Treaty Review Conference: The President's Reflections [Shaker was president of the conference]," in John Simpson, ed., *Nuclear Non-Proliferation: An Agenda for the 1990s* (Cambridge, UK: Cambridge University Press, 1987), pp. 9, 10, 15 (emphasis added).
43. Charles N. Van Doren and George Bunn, "Progress and Peril at the Fourth NPT Review Conference," *Arms Control Today* (Oct. 1990), p. 89.
44. See George Bunn and Roland Timerbaev, "Security Assurances to Non-Nuclear-Weapon States," *The Nonproliferation Review*, v.1, no.1 (Fall 1993), p. 11.
45. UNGA Res.48/75L (1993); Statement of President Clinton to UNGA, Sept. 27, 1993; White House Fact Sheet on nuclear issues dated Sept. 27, 1993; Joint Statement by the President of the Russian Federation and the President of the United States on the Non-Proliferation of Weapons of Mass Destruction and the Means of their Delivery dated January 14, 1994.
46. For a report showing the current differences of views at the Geneva conference on this subject, see "Report of the Ad Hoc Committee on Effective International Arrangements to Assure Non-Nuclear-Weapon States against the Use or Threat of Use of Nuclear Weapons," Conference on Disarmament, CD/1219, August 25, 1993.
47. See Bunn and Timerbaev, "Security Assurances . . .," cited above.
48. For an argument that, until the United States agreed to resume negotiations for a comprehensive test ban, it was in violation of Article VI, see Koplow, "Passing Good Faith . . .," cited above.
49. Doc. CD/1231.
50. See G. Bunn, "The Non-Proliferation Treaty of 1968 and its Extension in 1995," *Nonproliferation Review* (published by the Monterey Institute for International Studies) Winter 1994, v.1, no.2, pp. 51-60.
51. See Bunn and Van Doren, "Options for Extension . . .," cited above, p. 10.

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52. Cf. William Epstein, "Amendment Conference is Best Way to Achieve Early CTBT & Help NPT," *Disarmament Times* (Dec. 21, 1993), p. 4.
53. See Lewis Dunn, "NPT 1995: Time to Shift Gears," *Arms Control Today* 23 (November 1994), pp. 14-19.
54. For an argument that such a recess would not bring the NPT to an end, see Bunn and Van Doren, "Options for Extension . . .," cited above, pp. 9-10. For further discussion, see Serge Sur, "The problem of the continuance in force of the NPT after 1995 in the absence of a decision extending the Treaty—UNIDIR/91/52" and the reply from David Fischer, "Postscript—Some Comments on Professor Sur's Note," both in Bunn, Fischer and Van Doren, "Options & Opportunities . . .," cited above.
55. The total Russian and U.S. land-based and sea-based strategic nuclear missile warheads (not counting gravity bombs or cruise missiles launched from aircraft) will be about 2,200 each if START II is fully implemented. *New York Times*, Dec. 30, 1992, table entitled "Limiting Nuclear Warheads." These were what seemed the most threatening warheads during the mid-1960s when the NPT was negotiated, and are therefore the most important from the viewpoint of Art. VI. At the end of 1969, at the beginning of the SALT negotiations just before the NPT went into effect, the number of Soviet and U.S. strategic missile warheads that both sides assumed would be frozen if SALT produced an immediate freeze was under 2,000, including all those deployed and in the "pipeline." Lawrence D. Weiler, *The Arms Race, Secret Negotiations and Congress* (Occasional Paper No. 12, Stanley Foundation, 1976), p. 16.
56. For non-governmental proposals for drastic reductions in, and elimination of, national nuclear arsenals, see Gerard C. Smith, "Take Nuclear Weapons into Custody," *Bulletin of the Atomic Scientists*, December 1990; Roger D. Speed, "International Control of Nuclear Weapons" (Center for International Security and Arms Control, Stanford University, publication forthcoming in 1994); Joseph Rotblat, Jack Steinberger and Bhalchandra Udgaonkar, eds., *A Nuclear-Weapon-Free World* (Westview Press, 1993); Edward Teller, "Revival of the Baruch Plan," January 1992 (unpublished memorandum); Robert S. McNamara, "The Changing Nature of Global Security and its Impact on South Asia," Address to the Indian Defence Policy Forum, November 20, 1992, A publication of the Washington Council on Non-Proliferation; Andrew J. Goodpaster, "Further Retns on Nuclear Arms: Next Steps for the Major Nuclear Powers", The Atlantic Council, Consultation Paper Series, August 1993; Roland Timerbaev, "Nonproliferation Organizations and Regimes Beyond 1995," (to be published in 1994 in *Beyond 1995?* by the Center for National Security Studies, Los Alamos National Laboratory).

Chapter 2: Two Options for the NPT Extension Conference

1. This was part of a monograph entitled *Options and Opportunities: The NPT Extension Conference of 1995* (Programme for Promoting Nuclear Non-Proliferation, 1991) to which we and David Fischer contributed.
2. See Annex 1 by David Fischer to the article cited above, "Article X.2 of the Nuclear Non-Proliferation Treaty and the Nature of its 1995 Extension