“Permanence with Accountability”: An Elusive Goal of the NPT

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ABSTRACT

The slogan “permanence with accountability” emerged at the NPT’s 1995 Review and Extension Conference as a way of characterizing the outcome of that conference – the indefinite extension of the treaty coupled with enhanced means of ensuring accountability for the implementation of its provisions. Today some 25 years later, the validity of this concept is in question. Consistent efforts by the non-nuclear weapon states party to the NPT to persuade the treaty’s five nuclear weapon states to be more forthcoming in reporting to the NPT membership on their implementation of nuclear disarmament commitments has yielded little progress. Even the modest goal of accepting a standardized reporting format and periodicity for submitting implementation reports has eluded supporters. In the absence of a detailed and comparable data base how can NPT states parties effectively hold nuclear weapon states accountable? Amid the other serious stresses on the NPT in the leadup to its next Review Conference, a failure to address the long-standing plea for greater transparency as a prerequisite for accountability could sap the treaty of much of its remaining authority.

The “Grand Bargain” of 1995 and the Setting of Disarmament Priorities

During the historic 1995 Review and Extension Conference of the (Nuclear) Non-proliferation Treaty (NPT), the phrase “permanence with accountability” was used to characterize the outcome of that conference which provided both for the indefinite extension of the treaty, a set of “Principles and Objectives” for nuclear disarmament plus a “strengthened review process” which was to ensure an enhanced accountability of states parties for their implementation of the treaty. For many of the non-nuclear weapon states (NNWS) party to the NPT, this “permanence with accountability” was both a conceptual and practical measure to help ensure fulfillment by the nuclear weapon states (NWS) of their nuclear disarmament commitments absent the leverage that a fixed-term extension of the treaty would have provided1.

The interest in developing some standards by which to measure performance in realizing nuclear disarmament commitments was present from the origins of the NPT. The wording of its Article VI, while concise was anything but clear: “Each of the Parties to the Treaty undertakes to pursue negotiations 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 under strict and effective international control." The imprecision of this general formula with its lack of specificity as to the nature of these "effective measures" or any timeframe in which these actions were to be completed has frustrated many NNWS in trying to hold the NWS to account for their implementation of this treaty provision. As one veteran analyst has described Article VI: "This is still often referred to longingly as an obligation but was no more than a promise to act in good faith. There was no requirement to achieve any particular outcome in any given timeframe" (Freedman 2019, 17).

With the inherent ambiguity of the Article VI provision, there was an evident need to develop some more concrete measures with which to evaluate implementation. The "Principles and Objectives for Nuclear Non-proliferation and Disarmament" decision arrived at the 1995 conference was designed to provide tangible results and indicate relevant timeframes for achieving them. It set out three priorities: i) the conclusion of negotiations of a Comprehensive (Nuclear) Test Ban Treaty (CTBT) by 1996 [this was well underway at the Conference on Disarmament (CD) which had been working on the CTBT since 1994]; ii) "the immediate commencement and early conclusion of negotiations on a convention banning the production of fissile material for nuclear weapons"(FMCT); and iii) "the determined pursuit by the nuclear weapon states of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate aim of eliminating those weapons"²

This specification of two priority agreements with associated timeframes plus a more purposeful articulation of how the NWS should proceed in realizing Article VI commitments represented a significant advance over the vagueness of the treaty provision. The next review cycle leading up to the 2000 Review Conference did not however provide much satisfaction to those who had looked to the 1995 decision to ensure tangible progress on nuclear disarmament. The CTBT was indeed completed and opened for signature by the fall of 1996 (albeit only by means of a diplomatic manoeuvre that took it out of the Conference on Disarmament where consensus on its adoption was not forthcoming and introducing it into the UN General Assembly where it could be adopted via a vote). The peculiar entry into force requirements for the CTBT however, with the need for ratification by 44 named states, proved to be far too high of a bar and the treaty still has not entered into force (and currently with 8 holdout states may never do so).

The second priority agreement identified in the 1995 decision, the fissile material cut-off treaty (FMCT) fared even worse than the CTBT. Far from "immediate commencement" and "early conclusion" of these negotiations in the CD on the basis of the existing agreed mandate, no progress whatsoever was made on this file as the CD became increasingly dysfunctional as a negotiating forum with no sustained programme of work agreed upon since 1996.

Finally, the "systemic and progressive efforts to reduce nuclear weapons" on the part of the NWS was not registering much progress as the momentum of earlier bilateral US-Soviet/Russian strategic arms reduction accords had petered out. The START II agreements concluded in 1993 ultimately failed to enter into force and growing disagreements

²"Principles and Objectives for Nuclear Non-proliferation and Disarmament." NPT/CONF.1995/32/Dec2.
over US ballistic missile defence ended up in scuttling the 1997 bilateral agreements on ballistic missile defense delimitation and the envisaged START III.

2000 and the 13 “Practical Steps”

This lack of progress was exacerbated by the failure of the three Preparatory Committee meetings (PrepComs) of the review cycle to deliver on the raised expectations for substantive contributions the “strengthened review process” was supposed to bring about. This state of affairs prompted renewed efforts on the part of NNWS at the 2000 Review Conference to establish a better array of “benchmarks” with which to measure progress by the NWS in fulfilling their nuclear disarmament-related commitments. Spearheaded by the seven member New Agenda Coalition (NAC) this effort at the Review Conference resulted in the so-called “13 practical steps” that, in addition to reiterating the disarmament content of the 1995 “Principles and Objectives” decision, provided further specification as to the actions required of the NWS if they were to demonstrate progress in fulfilling their Art VI obligations. Among the measures there was a new “unequivocal undertaking “by the NWS to accomplish the total elimination of their nuclear weapons, the reduction of the “operational status” of deployed nuclear weapons, the preservation of the ABM Treaty, the reduction of the saliency of nuclear weapons in the security strategies of states and the development of the verification capabilities necessary to support nuclear disarmament. There was also a stipulation for states to submit “regular reports” on their implementation of Art VI and “Principles and Objectives” provisions.

Promoting a “Culture of Reporting”

Within its NPT policy Canada began to focus on this 12th step of reporting with a view to promoting the generation of nuclear disarmament-related data which would provide an empirical means to judge the progress being made on this front. Early in the 2005 review cycle Canada submitted a working paper that tried to encourage “a culture of reporting . . . as an information and reference source, as a means of assessing progress and to inform preparations and support discussions at the Preparatory Committees and Review Conferences”.

This emphasis on reporting found favour with the seven members of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden) that also saw its potential for eliciting more information from the NWS. In this light the reporting requirement was recognized to be not just a procedural, but also a substantive point meriting its inclusion in the “13 steps”. Certainly, this was understood by the NWS which resisted the notion of expanded reporting as opposed to the prevailing practice whereby the individual NWS would determine what, if any, information on their Article VI actions would be conveyed to the NPT membership at large. Often this information

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3“Final Document,” 2000 Review Conference of States Party to the Treaty on the Non-proliferation of Nuclear Weapons, NPT/CONF.2000/28 (Parts I and II).
4“Reporting by States Parties” paper submitted by Canada, NPT/CONF.2005/PC.II/WP2.
was not submitted as official documents of the NPT but distributed in glossy national-produced booklets made available on the margins of NPT meetings.

The rejection by the NWS of the proposition that reporting had become a new requirement as per the 2000 Final Document (and step 12) was made apparent in the initial PrepCom of the new cycle. France and US opposed a separate reference to reporting in the 2002 PrepCom’s Chair’s annotated agenda. Egypt on behalf of the New Agenda Coalition pushed backed and submitted a working paper that not only reaffirmed the obligatory nature of reporting but provided a concept of its desired contents. The NAC paper stipulated: “The reports on Article VI should cover issues and principles addressed by the 13 steps and include specific and complete information on each of these steps (inter alia the number and specifications of warheads and delivery systems in service; the number and specifications of reductions; de-alerting measures, and existing holdings of fissile materials, and achievements in the area of irreversibility, transparency and verifiability” (Project Ploughshares 2012, 8–9). In the lead up to the 2005 Review Conference the tension between the differing positions on what states were obligated to report was much in evidence. As described in an assessment of the 2003 PrepCom: “There exists a deadlock at the moment between those NWS that take a minimalist view of the reporting commitments and those NNWS who take a maximalist position” (Ogilvie-White and Simpson 2003, 53).

It should be noted as well that concerned NGOs were also expressing their support for the reporting requirement. At the 2002 PrepCom, a civil society statement delivered by Carol Naughton, Chair of the Campaign for Nuclear Disarmament indicated that step 12 was a start, but “to effectively evaluate success, markers are needed and a timeframe in which these are to be achieved set out.” The statement also flagged the importance of developing “a standardized format should be adopted to facilitate the analysis of global trends and country-by-country comparisons”\(^5\).

Support among NPT states parties for participating in reporting did seem to grow as a result of this advocacy by leading NNWS. A study undertaken by a Canadian NGO noted that while only 10 states submitted reports at the 2002 PrepCom, this figure grew to 28 states at both the 2003 and 2004 PrepComs and a record 35 states at the 2005 Review Conference (Project Ploughshares 2012, 5). Although the term “regular reports” from the 2000 outcome was not further defined, Canada indicated that this should be understood as a requirement to report annually and further suggested that reporting on state implementation should not be limited to Article VI matters, but should extend to the treaty in its entirety (its 2002 implementation report employed the structure of an article-by-article account). Part of the motivation for this suggested enlargement of scope for reporting was to elicit more forthcoming inputs from the NWS on disarmament in return as it were for more NNWS provided information on their implementation of the non-proliferation aspects of the treaty.

**Institutional Reform to Enhance Transparency and Accountability**

If reporting on treaty implementation was to be encouraged and the number of participants in it expanded, states would need some further incentives. The existing practice

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\(^5\)Reporting by States Parties to the NPT.” Civil society statement at the 2002 PrepCom. https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom02/NGOpres2002/10.pdf.
with respect to submitted reports was essentially to ignore them once received, unless a delegation happened to make a reference to a report during the proceedings. Ottawa decided that further measures to strengthen the review process were necessary and this judgment led to a proposal for a series of institutional reforms in NPT procedure. Embodied in a working paper entitled “Overcoming the institutional deficit of the NPT” initially presented to the 2004 PrepCom, the key suggestions were to replace the existing PrepComs with annual, fully empowered meetings of states parties, the establishment of some form of standing bureau to provide continuity and provision for convening extraordinary meetings of the states parties in the event of threats to the integrity of the treaty (the 2003 North Korean withdrawal from the NPT had highlighted this deficiency). It was thought that by having an authoritative destination for the implementation reports with the potential to have these reports become a focus for discussion, states would be incentivized to prepare them. As more states participated in providing such reports a degree of peer pressure would apply to others to follow suit, if only to demonstrate that they were faithfully fulfilling their treaty obligations. The envisaged link between reporting and a restructured system of NPT meetings was expressed in a separate working paper: “reporting can be considered as a valuable input to an eventual annual meeting of states parties.”

At the 2005 Review Conference, Canada packaged the reporting and institutional reform proposals in a working paper entitled “Achieving permanence with accountability” echoing the refrain from the 1995 conference. Unfortunately, due to the debacle that was the 2005 Review Conference, which lost over half of its available work time as a result of a protracted dispute over the agenda, the Canadian ideas received scant attention and the conference failed to produce a substantive outcome document.

Despite this setback Canada persevered in its efforts to gather support for institutional reform during the next review cycle, establishing a “contact group” in Geneva of interested states which had some 30 states participating. The decline in implementation reports being submitted after the peak of 35 at the 2005 conference remained an impetus for NNWS action. The number of reports submitted to each of the three PrepComs leading up to the 2010 Review Conference were only in the single digits and only 23 reports were presented to the 2010 meeting. Throughout the period subsequent to the 2000 Review Conference’s establishment of the “regular reporting” requirement, only two of the five NWS (Russia and China) submitted reports (Project Ploughshares 2012, 6).

2010 and the Call for a Standard Reporting Form

By the time of the 2010 Review Conference a “reform coalition” had been assembled with 17 states sponsoring a new paper setting out several, slightly reworked proposals for institutional reform. Politically significant, the sponsors represented a good cross-regional grouping of states, including Mexico, Nigeria, Japan, Thailand and Ukraine. Although the reform proposals gathered considerable support at the 2010 Review

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6. “Overcoming the institutional deficit of the NPT.” Paper submitted by Canada, NPT/CONF.2005/PC.III/WP1.

7. “Reporting by States parties.” Paper submitted by Canada, NPT/CONF.2005/PC.III/WP2.

8. “Achieving permanence with accountability.” Paper submitted by Canada, NPT/CONF.2005/WP.39. For a detailed discussion of the Canadian initiative to effect institutional reform in the NPT, see Meyer (2020).
Conference, opposition from some quarters prevented their inclusion in the consensus section of the outcome document and reference to them was confined to the non-agreed section of the document issued under the conference president’s own authority. There was a better result on the reporting issue, with Action item 20 of the Final Document reaffirming the requirement for “regular reports” and Action 21 specifying that the NWS should “agree as soon as possible on a standard reporting form and to determine appropriate reporting intervals”.

The quest for accountability on the basis of objective and ideally comparable data remained in the forefront for activist NNWS disappointed with the minimal progress being made by the NWS on disarmament. In an effort to provide further impetus to the disarmament track, the 2010 Review Conference yielded no less than 22 action items related to disarmament as part of the overall 64 action items agreed at the Conference (of course the mere increase from 13 “steps” to 22 “actions” doesn’t necessarily translate to actually making more progress and highlights the need for effective measures to monitor progress of which reporting was one).

The NPDI and a Proposed Standard Reporting Form

The next review cycle saw the emergence of a new grouping of NNWS featuring many of the same states that were active in the “reform coalition” of the 2010 Review Conference. Under the banner “The Non-proliferation and Disarmament Initiative” (NPDI) the grouping included 12 NNWS (Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the UAE – Nigeria and the Philippines were added later) and put “transparency” at the centre of its advocacy. In a working paper submitted to the 2012 PrepCom the NPDI stressed that “Increased transparency of information related to nuclear weapons is an important precondition for further progress in nuclear disarmament and verification.” It also revealed that the NPDI had developed a draft standard reporting form and had shared this form with the NWS in June 2011. This five-page form was annexed to the working paper and represented an effort to elicit in a systematic and consistent manner core nuclear weapon-related data including the number and types of warheads, both strategic and non-strategic (the latter never having been the subject of US-Russian arms control agreements) as well as those warheads deployed and non-deployed. Other sections of the form sought information on delivery systems, the number and types of nuclear weapons dismantled and reduced, the amount of fissile material produced for military purposes and “measures taken to diminish the role and significance of nuclear weapons in military and security concepts, doctrines and policies”.

The NPDI outreach to the NWS over a standard reporting form did not yield much in the way of greater transparency as the latter declined to take up the framework put forward by the former. The NWS did submit reports to the 2014 PrepCom (pursuant to a direction included in the 2010 Final Document) and presented these as fulfilling the call

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9"Further strengthening the review process of the Treaty on the Non-proliferation of Nuclear Weapons.” Paper submitted by 17 states, NPT/CONF.2010/WP4. For reference to reform ideas, see paragraphs 110–112, “Final Document 2010 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons” NPT/CONF.2010/50, Vol 1, Part 1.

10"Final Document 2010 Review Conference.”

11"Transparency and Nuclear Weapons.” Paper submitted by the NPDI states, NPT/CONF.2015/PCI/WP12, April 2012.
for a “common reporting form”. As part of a new process of NWS/P5 consultation launched after the 2010 Review Conference, the P5 declined to accept the disciplines of a standard reporting format and instead focused on the development of a “P5 Glossary of Key Nuclear Terms”. This “Glossary” was duly submitted by China at the 2015 Review Conference to faint applause.

12 In contrast, the NPDI working paper submitted to this meeting referred to the special significance of transparency and suggested that the 2015 Review Conference “recognize that the principle of transparency underpins the principles of verifiability and irreversibility”. It went on to call for the 2015 Review Conference “to highlight the relationship between increased transparency through regular reporting, utilizing a standard reporting form and the objective of accountability that is at the core of strengthening the Non-proliferation Treaty’s review process.”

The New Agenda Coalition similarly espoused the need for more detailed and systematic reporting on the part of the NWS. In its working paper, the NAC states called for the NWS to convey their implementation of their nuclear disarmament commitments in a manner “...that enables the States parties to regularly monitor progress, including through a detailed reporting format.” For the NPDI, the NAC and many other NNWS states this was the crux of the matter; if the principle of accountability was to be respected, the NWS would have to provide the comprehensive and comparable information on which such accountability could be based.

Civil society observers who shared the belief in the transparency-accountability dyad were even less impressed with the NWS inputs in the lead-up to 2015. As one analysis concluded: “The only things common to the national reporting provided by the nuclear weapon states in 2014 were their table of contents. The five reports differed on specificity in terms of structures, reporting categories and substance . . . . the descriptions lack the qualitative and quantitative specificity that would permit comparative analysis” (Meyer, Salander, and Mian 2015).

At the 2015 Review Conference, which failed to agree on an outcome document, the NPDI effort to ensure better reporting was obliged to largely tread water, simply repeating the call for the NWS to furnish annual reports employing a standard form. In a gesture towards encouraging higher rates of reporting generally (the 2015 Review Conference only received 25 national implementation reports), the NPDI also submitted a working paper setting out a template for NNWS to use when preparing their reports on treaty implementation15.

The Risks of the 2020 Review Conference and a Way Forward

The failure of the 2015 Review Conference to produce an outcome document and the increasing deterioration in the geo-political situation, exemplified by serious strains amongst the US, Russia and China and an erosion of the multilateral arms control

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12“PS Glossary of Key Nuclear Terms” submitted by China, NPT/CONF.2015/WP41, 5 May 2015.
13“Increased Transparency in nuclear disarmament.” Paper submitted by the NPDI states, NPT/CONF.2015/PCIII/WP10, 19 March 2014.
14“Moving forward with nuclear disarmament.” Paper submitted by the New Agenda Coalition, NPT/CONF.2015/ WP8, March 2015.
15“Transparency and Non-Nuclear Weapon States.” Paper submitted by NPDI states, NPT/CONF.2015/WP17, 20 March 2015.
framework, does not augur well for the NPT’s 2020 Review Conference. Initial plans to convene the Review Conference in the spring of 2020 in conjunction with the 50th anniversary of the treaty’s entry into force were derailed as a result of the COVID19 pandemic, which has had an especially severe impact on New York City. At the time of writing, the Review Conference is to be postponed until a date no later than April 2021, although whether an in-person meeting will still be feasible even then is uncertain. This general uncertainty about the future nature of NPT procedures has been exacerbated by the high levels of mistrust evident recently between Russia and the US. In the space of a couple of years, the NPT community has witnessed the termination of the INF treaty over compliance disputes, scant interest in extending the New START agreement on strategic forces which is due to expire in February 2021, the US withdrawal from the Joint Comprehensive Plan of Action (JCPOA) agreement regarding Iran’s nuclear program as well as an exit from the Open Skies Treaty. This retreat from arms control has cast a shadow over the entire NPT process. It certainly has not been conducive for the efforts by the NPDI and NAC groupings to persuade the NWS to embrace new, more demanding standards for reporting on their implementation of nuclear disarmament commitments.

If the 2020 NPT Review Conference whenever it is held, replicates the failure of the 2015 meeting it could fuel further discontent with the treaty and its apparent inability to deliver on nuclear disarmament commitments. Already critical assessments and even calls for repudiating the treaty are being generated by some observers. According to one of these: “These failures [on nuclear disarmament] line up as proof that nuclear weapon states have no intention to give up their nuclear weapons. Consequently, it may be time for states that are serious about nuclear disarmament to consider withdrawing from the NPT entirely” (Preorius and Sauer 2019). The existence since 2017 of the Treaty on the Prohibition of Nuclear Weapons (TPNW) may provide disaffected NNWS with the option of switching loyalty from the NPT to the TPNW as a way of signaling their discontent while remaining within a treaty-based nuclear control regime.

If this type of defection de jure or de facto from the NPT gains traction amongst NNWS, it could herald the demise of the treaty as the authoritative framework for global nuclear governance.

In order to avoid these risks, it will be incumbent on the NWS parties to the treaty to demonstrate a serious commitment to fulfilling the nuclear disarmament commitments agreed upon in the consensus outcomes of 1995, 2000 and 2010. It would seem a relatively easy step for the P5 to take to embrace the type of standard reporting format espoused over the last decade by NNWS and commit to this modest degree of accountability before the NPT community. In the overall scheme of things, it would seem a small price to pay for sustaining the NPT’s role as the preeminent legal framework for global nuclear governance.

**Disclosure Statement**

No potential conflict of interest was reported by the author.
Notes on Contributor

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