

GENESIS AND DEVELOPMENT OF THE NPT: AN OVERVIEW OF THE REVIEW PROCESS

SERGIO DUARTE
Ambassador-at-large of Brazil
For Disarmament and Non-proliferation

I was asked to speak on the genesis of the NPT and assess its review process. I shall try to address these subjects briefly, from a Brazilian perspective.

As a junior member of the Brazilian delegation to the Eighteen-Nation Disarmament Committee (ENDC) from 1966 to 1968, I had the opportunity to witness the way in which the text of what became the NPT was presented at that Conference by the then two co-Chairmen and how it was considered to have been finalized and subsequently sent by the co-Chairmen to the General Assembly, which endorsed it at its 23rd Session, in 1968. As for the review process, I did participate personally as Observer for Brazil in the 1980, 1985 and 1990 Review Conferences, when my country was not a Party to the Treaty. The following remarks reflect my own personal experience and my concerns for the future of the regime instituted by the NPT.

In May 2005, almost 37 years will have elapsed between the inception of the Treaty and what will be its seventh review. Much has happened in this period, including the fact that Brazil became a Party to the instrument. I shall try to compress the history of those years in a few paragraphs, but I shall start a little earlier, in 1965.

At the 20th Session of the General Assembly, also in 1965, the countries that composed the Group of Eight at the ENDC (Burma, Egypt, Ethiopia, India, Mexico, Nigeria, Sweden and Brazil) sponsored a resolution which was adopted by consensus and took the number 2028. It set five basic principles which should guide negotiations of a non-proliferation treaty within the ENDC. Such basic principles were:

1. The treaty should be devoid of any loopholes which might permit nuclear or non-nuclear weapon Powers to proliferate, directly or indirectly, nuclear weapons in any form;
2. The treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear weapon Powers;
3. The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament;
4. There should be acceptable and workable provisions to ensure the effectiveness of the treaty;
5. Nothing in the treaty should adversely affect the right of any group of states to conclude regional treaties in order to ensure the total absence of nuclear weapons in their territories

Less than two years later, the two co-Chairmen of the ENDC presented identical drafts of a non-proliferation treaty, which apparently had been pre-negotiated exclusively between their two Governments. Debates and proposals occupied the 1967 and 1968 session of the ENDC, and the final version of the treaty, also prepared by the two co-Chairmen, was sent by them to the General Assembly. Many delegations, including that of Brazil and other members of the Group of Eight, felt that the resulting text had not taken their concerns satisfactorily into account. That view lies at the root of the reluctance of my country, and several others, to become a Party to the NPT during the first decades of its existence.

Over the years, however, the Treaty gradually gained the acceptance of the wise majority of the world community. Very few countries now remain outside its purview. Many reasons concurred for that outcome, but this is not the place to try to analyze them. Suffice it to say that security perspectives changed markedly over that 37-year period, and so did the ways in which non-nuclear countries viewed the uses of nuclear energy. Also changed were considerations of regional or global prestige and power; the possession of nuclear weapons is no longer seen by many as necessary instrument for worldwide influence. Public opinion played an important role in this regard. Moreover, the strategic configuration of the world at the end of the 20th century no longer resembled that of 1968, and it continued to change since. The result was that some of the hold-outs, like Brazil, came to the conclusion that they could better contribute to the goals of nuclear disarmament and non-proliferation from the inside, rather than from the outside of the NPT. Others, however, went on to develop independent nuclear capabilities, according to their own security perceptions.

The dire predictions of the fifties, to the effect that in a couple of decades thence there would be 15 to 25 nuclear weapon countries, did not materialize. It is of course impossible to quantify how much of this situation is due to the existence and the wide acceptance of the NPT; but undoubtedly the Treaty contributed decisively to preventing the uncontrolled spread of nuclear weapons, although so far it has contributed little to the objective of nuclear disarmament. So much for the past history of the NPT. The task that remains before us is to make sure that the Treaty realizes the aspirations of the majority of its Parties, that is, achievement of a nuclear-weapon free world in which all nations can benefit equally and without discrimination from the peaceful applications of nuclear energy.

The Review Conferences provided for in the Treaty constitute the institutional framework to monitor the effectiveness and facilitate the improvement of the non-proliferation regime. As we know, ideological polarization and a climate of distrust, hostility and confrontation characterized the environment in which the first three of these Conferences took place. At the time of the fourth, in 1990, the features of the new international order after the Cold War were still undefined. Although increasing in numbers, the membership of the Treaty in that period still did not include countries whose achievements or intentions in the nuclear field made their participation attractive for the regime aimed at in the Treaty, such as Brazil, Argentina, South Africa, Israel, Pakistan

and India, which could be considered as “threshold” countries. China and France, which fitted the definition of “nuclear weapon nations” according to the NPT, also stayed away from it during that period.

It is worth noting that only two of these four Review Conferences were able to adopt consensual Final Documents. Nevertheless, one can recognize a number of important features behind the deliberations and the results of the first three Review Conferences, namely:

- the preoccupation of the United States, the USSR and their allies to promote the Treaty, ignoring its shortcomings and minimizing the criticism to it;
- efforts by the nuclear-weapon States, particularly in the West, to complement the non-proliferation regime through informal co-ordination mechanisms aiming at imposing restrictions and export controls beyond the provisions of the NPT;
- the frustrations of several non-nuclear weapons Parties with the meager results in nuclear co-operation for peaceful purposes, and
- equal frustration with the lack of progress in the cessation of the nuclear arms race and nuclear disarmament, which led to efforts by those countries at promoting measures in that direction notably the cessation of nuclear tests in all environments, as well as binding negative security guarantees.

At the fourth Review Conference the focus on the achievement of a CTBT and the question of security assurances came to the forefront. This was due mainly to the perceived need for some visible progress before deciding on the extension of the NPT at the next Review Conference, in 1995. The CTBT was indeed negotiated, but unfortunately, the prospects for its early entry into force still seem nihil. Just before the Conference, the Security Council adopted Resolution 984, acknowledging unilateral declarations on negative security assurances. Although helpful, that recognition falls short of a binding commitment.

In short, the first four Review Conferences show the evolution of two fundamental trends: on the one hand, the strengthening and consolidation of the horizontal non-proliferation regime; on the other, the increasing perception of insufficient progress with regard to the cessation of the nuclear arms race and nuclear disarmament, compounded by the failure of attempts to even start meaningful multilateral negotiations on those issues.

In 1995, the fifth Conference focused on the indefinite extension of the Treaty. By then, frustration with the lack of progress in nuclear disarmament had increased. Nevertheless, the indefinite extension, a legally binding decision was finally adopted without any corresponding strengthened and/or binding commitment to nuclear disarmament on the part of the nuclear-weapon Parties. Instead, two novel ideas found expression in the package of decisions adopted: a “strengthened review process”: and a number of objectives and goals to be achieved in the field of disarmament and non-proliferation. The strengthened process comprised meetings of a Preparatory Committee

on each of the three years before the Review Conferences; the Preparatory Committee was mandated to consider "principles, objectives and ways" aimed at promoting the full implementation of the NPT through a set of objectives and goals consubstantiated in a "program of action", as well as promoting the universality of the Treaty; furthermore, it was agreed that the Review Conferences should "look forward as well as back", that is, not only examine the performance of the Treaty in the period of five years immediately before, but make substantive recommendations for future action.

The indefinite extension decision was very significant for all Parties. On the one hand, it not only prevented a major breach but also did away with the uncertainty regarding the duration and authority of the instrument; on the other, it means that the non-nuclear-weapon Parties could no longer count on that uncertainty as a means of exerting pressure on the nuclear-weapon Parties. The level of satisfaction or dissatisfaction with the regime would from then on depend on the degree and form of the implementation of the decisions adopted by the 1995 Review Conference, especially those dealing with the strengthened review process and with the effectiveness of the "program of action" regarding non-proliferation and nuclear disarmament.

The last Review Conference, in 2000, was seen by most, if not all of the Parties, as an unexpected success. First, because it was able to adopt a Final Document, an outcome that had not happened since 1985. Again the NPT emerged reinforced as an instrument from which all parties expect to derive security benefits, despite its imbalances and asymmetries. Second, by building upon the strengthened review process, it was possible to discuss substantive questions pertaining to the implementation of all provisions of the treaty, particularly those regarding nuclear disarmament. Third, in what many regard as its most important result, the Review Conference recognized an "unequivocal undertaking" by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States Parties are committed under Article VI". This was seen as an important conceptual advancement in the understanding of the reach of Article VI. Moreover, the adoption of the "13 practical steps" to implement Article VI represented the spelling out of consensual measures on nuclear disarmament. So far, however, concrete progress toward their implementation has eluded us.

As we try to prepare for the next Conference in 2005, in which such measures are to be reviewed, the panorama looks bleak indeed. Since 2000, the world has witnessed unprecedented and frightening developments which have opened a new dimension in international relations: the emergence of so-called "non-State actors" which utterly disregard the customary rules of acceptable behavior upon which mankind has relied up to a not so distant past. Reaction to such an unprecedented situation threatens to stretch the limits of the basic tenets of international law. Beside, new strategic and tactical doctrines predicated not only on the use of nuclear weapons but also on the development of new types which make their use more likely have recently come to the fore. The trend to address universal problems via the constitution of small groups of "like-minded nations" poses serious concerns for the validity of important international agreements. Serious challenges to the non-proliferation regime have arisen both from within and from

without the range of the NPT. We face a strange situation in which proposals have been made to deal with the internal challenges by increasing discriminatory restrictions on non-nuclear-weapon Parties in good standing, while the nuclear-weapon ones show no will to accept any multilaterally negotiated curbs on their freedom of action; at the same time, the *de facto* nuclear status of non-Parties seems to be accepted and even rewarded. A disturbing tendency has emerged to backtrack on some of the “13 Steps”, which adds to a perception that commitments are not taken seriously, despite rhetorical claims to the contrary. Apparently, the age-old principle of “pacta sunt servanda” is slowly disappearing from international life.

During this preparatory stage of the 2005 Review Conference, several proposals have been made to address relevant issues that have arisen in the recent past. I believe we should address with equal vigor issues that have not yet been resolved to the satisfaction of the Parties. There is a need, for instance, to reinforce the commitment to the “13 Steps”, even if allowance must be made for the evolution in bilateral measures of armament reduction. We clearly cannot afford to see progress achieved by consensus only five years ago to be lightly dismissed. Ideas for the adoption of stringent restrictions on activities of non-nuclear-weapons Parties regarding their obligations. Since suggestions have been made to reinterpret some words or expressions contained in the Treaty, we might also look at the meaning of “non-proliferation” as it appears in the second preambular paragraph, so that there is no doubt that the objective of the NPT is to curb all aspects of proliferation. Further, it should also be made clear that the Treaty in no way can be interpreted as legitimizing the indefinite possession of nuclear weapons, nor does it allow for the continuous development and improvement of the nuclear weapon capabilities of the current possessors. For too long, over the past 37 years, have we lived with unclear signals or ambiguous attitudes with respect to nuclear disarmament. It is high time to clarify these issues.

Two years ago, the then Undersecretary General of the United Nations and former President of the Review Conference of the NPT, Jayantha Dhanapala, remarked in an article:

“.....ultimately I believe that the indefinite perpetuation of this deadlock on nuclear disarmament will jeopardize the regime far more than even last year’s nuclear detonations.”

We should all ponder the simple and inescapable truth contained in these words.