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## **Nuclear Non-Proliferation Regime and Nuclear Disarmament — Implementation of the 2000 Final Document —**

*Mitsuru KUROSAWA\**

International non-proliferation regime has been constructed in order to prevent the spread of nuclear weapons. In this context, non-nuclear-weapon states have demanded nuclear-weapon states to proceed to nuclear disarmament. Nuclear non-proliferation measures are meaningful in the sense that through preventing new nuclear-weapon states from emerging, it would not increase the possibility of nuclear war, and prevent the situation from going worse.

However, it has been argued that the regime is in essence discriminatory because it gives privileged status to the five nuclear-weapon states. In order to resolve this issue, the idea of nuclear disarmament within the framework of the nuclear non-proliferation regime came out. The idea has been pursued in order to mitigate the discriminatory nature of the regime and to establish more equal and peaceful world.

This paper will make a historical survey on this issue at first, by examining the process of treaty negotiation, in particular, the process of insertion of the Article VI and its significance. I will study the process of review conferences, in particular the arguments on the relationship between nuclear non-proliferation and nuclear disarmament at the 1995 NPT Review and Extension Conference, and the final document adopted at the 2000 NPT Review Conference.

Secondly, I will examine how the concrete nuclear disarmament measures included in the final document have been implemented after the Conference based on the arguments at the Preparatory Committees of the 2005 NPT Review Conference. The issues of comprehensive nuclear test ban treaty (CTBT), fissile material cut-off treaty (FMCT), non-strategic nuclear weapons (NSNW), negative security assurances (NSA), and diminishing role of nuclear weapons will be surveyed, as important measures for nuclear disarmament.

Lastly, I will conclude the paper with explaining the status of implementation and considering future challenges.

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## **Pursuit of Nuclear Disarmament under the Nuclear Non-Proliferation Regime**

### *Article VI of the Nuclear Non-Proliferation Treaty*

During the negotiation of the Nuclear Non-Proliferation Treaty (NPT) which started in the middle of the 1960s, the U.S. and the Soviet Union lead the process by taking initiative and submitting their draft treaties. However their identical draft treaty that did not include the provision for nuclear disarmament. In the Eighteen-Nation Committee on Disarmament (ENDC), non-nuclear-weapon states such as India, Sweden and Italy emphasized the relationship with nuclear disarmament, and Non-aligned States argued that measures to prohibit the spread of nuclear weapons should be coupled with or followed by tangible steps for nuclear disarmament.

As a result, a new Article VI was inserted at the final stage of the negotiation, based on Mexican proposal as a compromise between the nuclear-weapon states and the non-nuclear-weapon states. Article VI provides for the undertaking to pursue negotiations in good faith on nuclear disarmament and general and complete disarmament. It does not provide for the obligation to disarm nuclear weapons but to pursue negotiations for nuclear disarmament. The implementation of this obligation mainly depends on good faith of the nuclear-weapon states, but non-nuclear-weapon states can remind them of this obligation and demand the progress in negotiation based on this Article. The Treaty provides for possible holding of review conference every five years, which would review the operation of the Treaty including the progress in nuclear disarmament.

On July 1, 1968, when the Treaty was open for signature, President Johnson announced that the U.S. and the Soviet Union agreed to start talks on strategic arms limitation (SALT). It was the clear expression by the both Governments that they sincerely abided by the Article VI. Review conferences were held in 1975, 1980, 1985 and 1990, and concrete measures for nuclear disarmament were hotly argued, but they did not produce concrete results.

### *1995 NPT Review and Extension Conference*

In the negotiation of the NPT, the U.S. and the Soviet Union proposed that the Treaty should have an indefinite duration. On the other hand, non-nuclear-weapon states opposed the proposal, stating that they could not accept a treaty with

discriminatory nature for an indefinite period. As a result, it was decided that twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide how to extend it. In 1995, a review conference and an extension conference were held simultaneously as one conference.

The nuclear-weapon states that were strongly desiring to extend the Treaty indefinitely felt obliged to show how sincerely they were making efforts for nuclear disarmament. They agreed to start negotiations on a CTBT from January 1994, and also agreed the negotiating mandate for a FMCT. In addition, they all submitted a statement on negative security assurances (NSA) that they would not use or threat to use nuclear weapons against the non-nuclear-weapons states parties to the Treaty. The U.S. and Russia agreed on the reduction of their strategic nuclear warheads through the START process after the end of the Cold War, and the reduction has been implemented.

In their general statements at the Conference, many states, while agreeing to the indefinite extension, argued for some measures that could ensure the progress in nuclear disarmament. Consequently, the decision to extend the Treaty indefinitely was adopted as a package with two other decisions on “principles and objectives for nuclear non-proliferation and disarmament” and “strengthening the review process for the Treaty”. The former stipulates future courses for every aspects of the Treaty, and on nuclear disarmament in particular. It urged i) the completion of the negotiations on a CTBT no later than 1996, ii) immediate commencement and early conclusion on negotiations on a FMCT, and iii) the determined pursuit of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons. The latter provides to hold three preparatory committees in each of the three years prior to the review conference.

In the implementation of these measures, a CTBT was adopted in September 1996 and opened for signature in October 1996 with many states signed. The negotiations on a FMCT has never materialized, and as a result this commitment has not fulfilled. On nuclear reduction, no progress has been seen after this conference mainly because of the deterioration of U.S.-Russia relations. At this conference, nuclear elimination was agreed at as “the ultimate goal”.

### *2000 NPT Review Conference*

The 2000 NPT Review Conference succeeded in adopting a final document with positive engagement by each state and a president of the conference, in spite of the prior speculation that it would be impossible because the relationship between the

U.S. and Russia was deteriorating and no progress in nuclear disarmament was seen. The final document includes the concrete measures that should be taken in the coming five years as well as the evaluation of the development in the last five years in all aspects of the Treaty.

In reviewing the operation of the Article VI, the final document provides for the concrete nuclear disarmament measures that should be implemented in the future. The issue of future measures was intensively discussed in the Subsidiary Organ I at the Conference, and finally thirteen measures were agreed. On future disarmament measures, the New Agenda Coalition (NAC) that was established in 1998 and criticized the lack of the progress in nuclear disarmament, energetically proposed many measures for nuclear disarmament. Counterarguments came from the nuclear-weapon states, and discussions continued to find out compromises into the final document.

The NAC that consists of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden played a central role at the Conference. These states have been very enthusiastic for nuclear disarmament for a long time, and the NAC is a mixture of idealism of the NAM (Non-aligned Movement countries) and realism of the Western states.

The principal demand of the NAC was “an unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of the nuclear arsenals”. Finally the demand was accepted by all the nuclear-weapon states and included in the final document, although the content was watered down from the original proposal. On total elimination of nuclear weapons, the 2000 Conference accepted it as “an unequivocal undertaking” compared with the 1995 Conference accepted it as “the ultimate goal”. This means a big progress.

The thirteen steps for nuclear disarmament are as follows;

1. The importance and urgency of signatures and ratification of the CTBT
2. A moratorium on nuclear-weapon-test explosions
3. The necessity of negotiations on a FMCT
4. The necessity of establishing an subsidiary organ to deal with nuclear disarmament
5. The principle of irreversibility to apply to nuclear disarmament
6. An unequivocal undertaking to accomplish the total elimination of nuclear arsenals
7. The early entry into force of START II and the conclusion of START III while preserving and strengthening the ABM Treaty
8. The completion and implementation of the Trilateral Initiative

9. Steps by all the nuclear-weapon states leading to nuclear disarmament
  - Reduce nuclear weapons unilaterally
  - Increased transparency in nuclear weapon capabilities and implementation of Article VI
  - The further reduction of non-strategic nuclear weapons
  - Measures to further reduce the operational status of nuclear weapons system
  - A diminishing role for nuclear weapons in security policies
  - The engagement of all the nuclear-weapon states in the process leading to total elimination
10. Place fissile material no longer required for military purposes under verification
11. The ultimate objective is general and complete disarmament
12. Regular reports on the implementation of Article VI
13. The further development of the verification capabilities

### **The Implementation of Nuclear Disarmament Measures**

Since the 2000 NPT Review Conference adopted the final document<sup>1)</sup> in May 2000, the preparation for the 2005 NPT Review Conference has already started, and the first and second Preparatory Committees for it have been held in 2002 and 2003 respectively.

The final document was adopted by consensus which includes a variety of measures from nuclear non-proliferation, universality, non-compliance, nuclear disarmament, to IAEA safeguards, peaceful uses of nuclear energy, export control and others. In this paper, I will focus on some of the 13 steps for concrete nuclear disarmament measures as an implementation of the Article VI of the Treaty and negative security assurances.

After the last Review Conference in 2000, international security environment in general, and one concerning nuclear weapons in particular, has radically changed, mainly because the new U.S. Administration has adopted new security policies and defense doctrines and the terrorists' attacks on September 11th, 2001 have changed a threat perception of the U.S. and other countries.

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1) On the analysis of nuclear disarmament in the final document, see Mitsuru Kurosawa, "The NPT 2000 Review Conference and Nuclear Disarmament," *Osaka University Law Review*, No.48, February 2001, pp.1-38; Tariq Rauf, *Towards NPT 2005: An Action Plan for the "13-Steps" towards Nuclear Disarmament agreed at NPT 2000*, Center for Nonproliferation Studies, Monterey Institute of International Affairs, 2000; Tanya Ogilvie-White, Ben Sanders and John Simpson, *Putting the Final Document into Practice*, PPNN, 2002.

As a result, the U.S. policy has shifted to give its short-term and narrowly defined national security the highest priority, to decide and act rather unilaterally than through multilateral or international cooperation and to depend more on military powers than on international norms in resolving international disputes. The U.S. has not been enthusiastic in nuclear disarmament through the multilateral cooperative framework. On the contrary, the U.S. have suggested the research and development of a new type of small nuclear weapons, and violated some of the commitments and ignores many commitments of the final document.

### *Nuclear Disarmament in General*

In considering how the promises in the final document have been implemented, there are two fundamental issues that tend to backtrack the original undertakings in the final document.

The first issue is that the U.S. declared that it no longer supported all 13 steps. At the 2002 Preparatory Committee, the U.S. told that it no longer supported some of the Article VI conclusions in the Final Document from the 2000 NPT Review Conference. A prominent example of this is the ABM Treaty (**step 7**) and another example of a treaty we no longer support is the CTBT (**step 1**).<sup>2)</sup>

According to U.S. statement at the 2003 Preparatory Committee, "Some countries have expressed concern over what they believe to be a lack of progress on the 13 steps from the final document of the 2000 NPT Review Conference... No country believed it would be possible to implement all these steps by 2005 and none believed that all NWS would make identical progress... While the United States no longer supports all 13 steps, we unambiguously support Article VI and the goal of nuclear disarmament... We think it is a mistake to use strict adherence to the 13 steps as the only means by which NPT parties can fulfill their Article VI obligations. The fundamental test is whether the United States or any other state is moving in the direction set out in Article VI."<sup>3)</sup>

On the other hand, the New Agenda Coalition (NAC) expressed its concern at the level of implementation and fulfillment of the NPT, stating that "the Nuclear Weapon States must show strong leadership by fulfilling the obligations of the Treaty and their undertakings at the Review Conference in 2000. This is a vital

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2) Statement by Ambassador Eric C. Javits, Permanent Representative of the United States of America to the Conference on Disarmament, April 11, 2002, NPT PrepCom, Article VI – Special Time.

3) Information Paper from the United States Concerning Article VI of the NPT, May 1, 2003.

step in order to preserve the credibility and sustainability of the NPT. We need comprehensive implementation of the 13 steps – the blueprint for achieving nuclear disarmament, not lip service to them.”<sup>4)</sup>

Swedish delegation emphasized “the danger for the integrity of the whole NPT regime, if countries start to be selective with regards to commitments agreed upon. The Final Document of the Review Conference in 2000 including the 13 practical steps to nuclear disarmament is an integral part of the NPT regime. It is therefore a risk to the regime if State Parties state that they no longer support some of the steps.”<sup>5)</sup>

The second issue is concerned with the relationship between nuclear disarmament and general and complete disarmament (**step 11**). In spite of the fact that in the 2000 final document, “an unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their nuclear arsenals” (**step 6**) was stipulated separately from “reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament”, France reiterated its original position to deal with nuclear disarmament within the framework of general and complete disarmament.

In 2002, according to French statement, pro-active stance must be based on a principle of reality. In this instance, the objective of general and complete disarmament illustrates this principle and it is inseparable from nuclear disarmament.<sup>6)</sup> In 2003, France again emphasized general and complete disarmament by stating that “In 1995, when the Treaty was extended indefinitely, a programme of action was adopted with three objectives: a complete ban on nuclear tests; the cessation of production of fissile materials for nuclear weapons; the determination to go forward steadily and systematically toward a reduction in quantities of nuclear weapons within the framework of general and complete disarmament.”<sup>7)</sup> The EU statement also emphasizes the importance of “achieving our common goals of global nuclear disarmament and general and complete

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4) New Agenda Statement made on behalf of Brazil, Egypt, Ireland, Mexico, South Africa, Sweden and New Zealand by the Honorable Marian Hobbs, Minister of Disarmament of New Zealand, 28 April 2003.

5) Statement by H.E. Ambassador Henrik Salander, Permanent Representative of Sweden to the Conference on Disarmament, 2 May 2003.

6) Statement by Ambassador Hubert de la Fortelle, Permanent Representative of France to the Conference on Disarmament, Head of the French Delegation, 8 April 2002.

7) Statement by Ambassador Hubert de la Fortelle, Permanent Representative of France to the Conference on Disarmament, Head of the French Delegation, 28 April 2003.



disarmament.”<sup>8)</sup>

This idea leads to the very negative conclusion that unless there is progress in general and complete disarmament, there should be no nuclear disarmament. It is contrary to the general understanding that the nuclear-weapon states should make efforts for nuclear disarmament as an independent measure. The idea could be used as a pretext for non-progress in nuclear disarmament.

Based on these two negative tendencies, the NAC analyzes the situation as deteriorating, stating that “To-date there have been few advances in the implementation of the thirteen steps agreed to at the 2000 NPT Review Conference. We remain concerned that in the post Cold War security environment, security policies and defence doctrines continue to be based on the possession of nuclear weapons. The commitment to diminish the role of nuclear weapons in security policies and defence doctrines (**step 9-5**) has yet to materialise. This lack of progress is inconsistent with the unequivocal undertaking by nuclear-weapon States to achieve the total elimination of their nuclear arsenals. (**step 6**)”<sup>9)</sup>

The Chairman’s factual summary of the first Preparatory Committee in 2002 described that disappointment was expressed in the progress made in implementing the practical steps for nuclear disarmament.<sup>10)</sup> The Chairman’s factual summary of the second Preparatory Committee in 2003 summarizes the discussion and states that “Disappointment continued to be expressed in the progress made in implementing these steps, notwithstanding the recognition of the incremental nature of the process involved.”<sup>11)</sup>

Generally speaking, the five nuclear-weapon states (NWS) have emphasized their commitment to and implementation of nuclear disarmament, non-nuclear-weapon states (NNWS) have expressed their disappointment in this regard. The U.S. and Russia praised their achievement in the reduction of nuclear weapons through the Moscow Treaty, whose significance is examined later. The U.K., France and China have shown no new progress after 2000 in the field of nuclear disarmament.

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8) General Statement by Ambassador Tassos Kriekoukis, Permanent Representative of Greece on behalf of the European Union, 28 April 2003.

9) New Agenda Coalition Paper submitted by New Zealand on behalf of Brazil, Egypt, Ireland, Mexico, South Africa and Sweden as members of the NAC, NPT/CONF.2005/PC.II/16, 29 April 2003.

10) 2002 NPT Preparatory Committee, Chairman’s Factual Summary, 18 April 2002.

11) Annex II Chairman’s factual summary, in Report of the Preparatory Committee on its Second Session, NPT/CONF.2005/PC.II/50, 13 May 2003.

*Comprehensive Nuclear Test Ban Treaty (CTBT)*

**Steps 1 and 2** provide for the importance and urgency of signature and ratification of the CTBT and a moratorium of nuclear-weapon-test explosions. The treaty was signed in October 1996, but it has not yet entered into force, because of the lack of ratification by designated 13 states including the U.S., China, India, Pakistan, Israel, and North Korea. The U.S. attitude toward the CTBT under the Bush Administration is extremely negative and it is repeated that the Administration does not support the Treaty and will not ask its ratification to the Senate.

China has not ratified the Treaty, but keeps saying “China will continue its moratorium on nuclear testing and is committed to an early ratification by its legislature of the CTBT.”<sup>12)</sup> However, it is not clear how soon and how seriously China is proceeding to its ratification due to the lack of transparency.

Japan is the one of the strongest advocates for the CTBT, working hard for the early entry into force of the Treaty. Ambassador Inoguchi stressed that “the CTBT will not only contribute to preventing the spread of nuclear weapons, but also to constraining the qualitative improvement of nuclear weapons. The CTBT is one of the major pillars of the NPT regime as well as realistic and concrete instrument for the achievement of a nuclear-weapon-free world. It is truly regrettable that the CTBT has not yet come into force, more than six years after its adoption in 1996, leaving the future of nuclear disarmament in a state of uncertainty. Early entry into force of the CTBT must be achieved.”<sup>13)</sup>

Chairman’s summary states that “Strong support was expressed for the CTBT. The importance and urgency of the early entry into force of the Treaty was underscored. States which had not ratified the Treaty especially those remaining 13 states, and in particular those remaining two nuclear-weapon states, were urged to do so without delay.”<sup>14)</sup> The U.S. and China were referred as remaining two nuclear-weapon states.

In spite of the fact that the CTBT’s entry into force is one of the clearest concrete measures toward nuclear disarmament and listed as the first step among the 13 steps, opposition by the U.S. Administration continues to be the biggest

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12) Statement by H.M. Ambassador Hu Xiaodi, Head of Chinese Delegation at the 2nd Session of the Preparatory Committee for the 2005 NPT Review Conference, April 28, 2003.

13) Statement by H.M. Dr. Kuniko Inoguchi, Ambassador, Permanent Representative of Japan to the Conference on Disarmament, 29 April 2003.

14) Annex II Chairman’s factual summary (note 11)

stumbling block.

As the resumption of nuclear testing is suggested under the new U.S. nuclear policy, many states expressed their worry about U.S. attitude. The U.S. responded by stating that "While the U.S. will not pursue ratification of the CTBT, we continue to support the current moratorium on nuclear testing. The U.S. has not conducted a nuclear explosive test since 1992. We also support the establishment of the International Monitoring System for detecting nuclear tests. Proposals exist to decrease the time that it would take to resume nuclear testing, were that ever to be necessary. But that fact says nothing about the likelihood of a nuclear test. Nor does it relate to the development of a new nuclear weapon."<sup>15)</sup> However, it does not seem convincing to many non-nuclear-weapon states.

#### *Fissile Material Cut-Off Treaty (FMCT) and Nuclear Disarmament*

**Steps 3 and 4** ask the Conference on Disarmament (CD) to agree on a program of work which includes the immediate commencement of negotiations of a FMCT and the immediate establishment of a body to deal with nuclear disarmament respectively.

However, the CD has not been able to agree on the program of work. The CD has been in trouble for last several years with agreeing on a mandate, because member states are intransigent to maintain their nationalistic attitude in agreeing mandates and the CD is operating under the consensus rule not only in the final stage of adopting a draft treaty but also in the initial stage of adopting a negotiation mandate. Unless some remedies are taken soon, the *raison d'être* of the CD as the only multilateral negotiating body for disarmament will be lost and its very existence will be disputed.

#### *Strategic Offensive Reductions Treaty (Moscow Treaty)*

Strategic Offensive Reductions Treaty between the United States of America and the Russian Federation was signed on May 24, 2002 and entered into force on June 1, 2003. The Treaty will reduce each nuclear warheads to 1700-2200 by the end of the year 2012. The U.S. and Russia referred to the Moscow Treaty as a clear progress in the implementation of the Article VI of the NPT.

The Joint Statement by the two states submitted to the second PrepCom states

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15) Information Paper from the United States Concerning Article VI of the NPT, May 1, 2003.

that “The conclusion of the Moscow Treaty represents significant progress by the U.S. and Russia toward the goals of Article VI of the NPT. The Treaty’s reduction in the strategic nuclear arsenals of the two countries by two-thirds from the levels existing today is a major contribution to the case of nuclear disarmament.”<sup>16)</sup>

The U.S. explained the nature and substance of the Moscow Treaty in detail in its Information Paper as follows;

Following the successful completion in 2001 of reductions under START from over 10,000 deployed strategic warheads to under 6,000, the Moscow Treaty represents another major step in U.S. fulfillment of its NPT Article VI obligations... The Moscow Treaty reflects a new era and a strengthened U.S.-Russian strategic partnership. Because of this partnership, it was not necessary to incorporate hundreds of pages of cumbersome rules and procedures into the Treaty... By any measure, this Treaty is a meaningful accomplishment... Some warheads removed from operational service will be stored in active status, others will be stored but disabled and not available for quick redeployment, and some will be designated for retirement and dismantling... The Moscow Treaty is a new approach for a new time. The United States believe that the deep cuts in its nuclear arsenal called for in the Moscow Treaty further demonstrate its ongoing commitment to the NPT.<sup>17)</sup>

Russia also praised the Treaty saying “The conclusion at the Moscow Summit in May 2002 between Russia and the United States of the Strategic Offensive Reductions Treaty has become a new major step forward in nuclear disarmament... While concluding the new treaty in the sphere of the strategic offensive arms Russia and the United States took into account – and reflected it in its text – the commitment under Article VI of the Treaty on Nuclear Non-Proliferation. Assessing the significance of the agreement, President Vladimir V. Putin underscored that “in the letter and spirit this is the confirmation of a choice our countries make in favor of reduction of nuclear arsenals and joint work to strengthen the non-proliferation regimes for weapons of mass destruction”.<sup>18)</sup>

The European Union, Japan and some other countries welcome the conclusion of the Moscow Treaty. However, the EU added, “In this context, the principles of

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16) Joint Statement by the Russian Federation and the United States of America on the Moscow Treaty (SORT), NPT/CONF.2005/PC.II/21, 30 April 2003.

17) Information Paper from the United States Concerning Article VI of the NPT, May 1, 2003.

18) Statement by the Delegation of the Russian Federation at the second session of the Preparatory Committee for the 2005 Review Conference of the Parties to the NPT, April 28, 2003.

irreversibility and transparency remain important.”<sup>19)</sup>

On the other hand, the NAC, the NAM and China are critical to the Treaty.

The NAC criticizes the Treaty from several points of view by stating “A development over the past year that we take note of is the Moscow Treaty. We acknowledge that the Treaty is a positive step in defining the new relationship between the United States and the Russian Federation. We question however whether the legacy of the Cold War has really been left behind since the number of weapons on each side still amount to thousands. And we question the Treaty’s contribution to nuclear disarmament. The Treaty does not contain verification provisions and it ignores non-operational warheads. Reductions in the numbers of deployed strategic nuclear warheads are not a substitute for irreversible cuts in, and the total elimination of, nuclear weapons. We call on the United States and the Russian Federation to make the Treaty of Moscow an irreversible and verifiable instrument of nuclear disarmament.”<sup>20)</sup>

The NAM states also critical to the Treaty expressing that “While noting the signing of the Treaty on Strategic Offensive Reduction between the Russian Federation and the United States on 24 May 2002, we stress that reductions in deployments and in operational status cannot substitute for irreversible cuts in, and the total elimination of, nuclear weapons.”<sup>21)</sup> China also states that “The reduction of nuclear weapons should be carried out in accordance with the principle that it should, among other things, be effectively verifiable, irreversible and legally binding.”<sup>22)</sup>

The Moscow Treaty was taken note of but criticized from the point of the principles of irreversibility (**step 5**), transparency (**step 9-2**) and verifiability (**steps 10 and 13**), by the NAC, the NAM and China as well as even by the EU.

The Moscow Treaty takes the place of START process provided for in **step 7**, which recommends the early entry into force and full implementation of START II and the conclusion of START III. It also urges to preserve and strengthen the ABM

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19) General Statement by Ambassador Tassos Kriekoukis, Permanent Representative of Greece on Behalf of European Union, 28 April 2003.

20) New Agenda Statement made on behalf of Brazil, Egypt, Ireland, Mexico, South Africa, Sweden and New Zealand by the Honorable Marian Hobbs, Minister of Disarmament of New Zealand, 28 April 2003.

21) Statement by H.E. Ambassador Rastam Mohd Isa, Permanent Representative of Malaysia to the United Nations, New York, on behalf of the Non-Aligned Movement States Parties to the NPT, 28 April 2003.

22) Working Paper on nuclear disarmament and reducing the danger of nuclear war, submitted by China, NPT/CONF.2005/PC.II/WP.3, 28 April 2003.

Treaty. When we evaluate the Moscow Treaty in the context of progress in nuclear disarmament, we have to take into account all elements, that is, the merits and demerits of the present outcome that we have new Moscow Treaty, but we have lost START process, and we have no ABM Treaty any more because the U.S. decided to withdraw from it.

### *Non-Strategic Nuclear Weapons (NSNW)*

**Step 9-3** calls for the further reduction of non-strategic nuclear weapons. While during the Cold War era, focus was mainly adjusted on strategic nuclear weapons as was seen in SALT and START processes, the importance and necessity to deal with NSNW or tactical nuclear weapons (TNW) has been emphasized in the post Cold War security environment.

At the 2002 Preparatory Committee, the EU in its general statement emphasized the importance of non-strategic nuclear weapons for the first time, and encouraged relevant states to start negotiations on an effectively verifiable agreement on drastic reductions of these weapons.<sup>23)</sup>

Germany submitted a working paper on non-strategic nuclear weapons, and pointed out that there are significantly more nuclear warheads for tactical delivery systems than for strategic ones; many of the warheads are presumably old and might have already exceeded their original lifespan; there are perceptions that the barriers against their use are lower compared with strategic systems; storage and deployment patterns and possible additional transportation risks as well as the often smaller size foster concerns about enhanced proliferation risks and the danger that terrorists might gain access to them. It suggested following gradual approach.<sup>24)</sup>

- 1 Reporting by Russia and the U.S. on the implementation of the 1991/1992 Presidential Nuclear Initiative
- 2 Formalization of the Presidential Nuclear Initiative
- 3 Agreement on reciprocal exchange of information regarding readiness states, safety provisions and safety features
- 4 Start negotiation on non-strategic nuclear weapons
- 5 The NPT Review Conference and its Preparatory Committee should be regularly informed

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23) Statement by H.E. Carlos Miranda, Ambassador to Spain to the Conference on Disarmament on behalf of the European Union, 8 April 2002.

24) 2002 NPT Preparatory Committee, German Delegation, 11 April 2002, Non-Strategic Nuclear Weapons.

6 Take particular security precautions (i.e. physical protection)

Finland and Sweden welcomed the German initiative, and mentioned transparency, irreversibility, reduction of operational status and confidence-building measures as necessary elements in this regard. They recommended negotiations on a formal and legally binding verifiable agreement as soon as possible.<sup>25)</sup>

At the 2003 Preparatory Committee, the NAC emphasized that non-strategic nuclear weapons posed great threats on the following reasons. Their portability, proximity to areas of conflict and high probability of pre-delegation in case of military conflict increase the risk of proliferation and of early, pre-emptive, unauthorized or accidental use. They can be more easily and frequently transported than strategic nuclear weapons. They could be appealing to terrorists due to their relatively small size and sometimes less sophisticated safety and security devices.<sup>26)</sup>

In addition, concern about NSNW has recently increased because of the new nuclear policy of the Bush Administration. The U.S. policy emphasizes the importance and usefulness of low-yield non-strategic nuclear weapons in order to destroy mobile as well as hardened and deeply buried targets.

At the second PrepCom, the NAC proposed to take urgent action to achieve:

- 1 further reduction of NSNW in a transparent, verifiable and irreversible manner;
- 2 further confidence-building and transparency measures to reduce the threats posed by NSNW, including the exchange of data on holdings and status of NSNW, safety provisions, etc.
- 3 concrete agreed measures to reduce further the operational status of nuclear weapons system.
- 4 formalizing existing informal bilateral arrangements, initiatives and declarations regarding NSNW.
- 5 prohibition, as a first step, those types of NSNW that have already been removed from the arsenals.
- 6 enhancement of security and physical protection measures for the transport and storage of NSNW.<sup>27)</sup>

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25) Statement by H.E. Markku Reimaa on behalf of Finland and Sweden on Non-strategic Nuclear Weapons, April 11, 2002.

26) "Reduction of non-strategic nuclear weapons", Working Paper submitted by Austria, Mexico and Sweden, NPT/CONF.2005/PC.II/WP.13, 2 May 2003.

27) New Agenda Coalition Paper, submitted by New Zealand on behalf of Brazil, Egypt, Ireland, Mexico, South Africa and Sweden as members of the NAC, NPT/CONF.2005/PC.II/16, 29 April 2003.

The EU also encourages all states concerned to start negotiations on an effectively verifiable agreement to best achieve the greatest reduction of these weapons.

The U.S. is negative in making legally binding instruments for NSNW, explaining that “In recent years, the United States has looked at the prospect of formal arms control treaties on NSNW and concluded that such an approach is not possible. The nature of these weapons and their delivery systems make it far more difficult to have confidence in treaty implementation than is the case for strategic systems. Delivery systems for NSNW are often dual-use, i.e. for conventional and nuclear roles, which makes it very difficult to have confidence that they have been retired from a nuclear role.”<sup>28)</sup>

Russia is opposing to take up the issue as an independent measure by stating that “Russia proceeds from the understanding that it is impossible to consider the issues of tactical nuclear weapons separately from other kinds of armaments. This is the reason why well-known unilateral Russian initiatives in the sphere of disarmament in 1991-1992 are of comprehensive nature and, beside, the TNW touch upon other important issues which essentially influence strategic stability.”<sup>29)</sup>

Both the U.S. and Russia are rather reluctant to accept legal reduction of NSNW, but we should pursue measures such as confidence-building measures through exchange of data and information, and enhancement of security and physical protection measures of NSNW.

#### *Negative Security Assurances (NSA)*

Security assurances to non-nuclear-weapon states, in particular negative security assurances, have been a hot issue since the time when the NPT was negotiated. In the final document of 2000 Conference, “The Conference agreed that legally binding security assurances by the five nuclear-weapon states to the non-nuclear-weapon states strengthen the nuclear non-proliferation regime. The Conference calls upon the Preparatory Committee to make recommendations to the 2005 Review Conference on this issue.”

The NAM countries are very active in this point by stating that “the total elimination of nuclear weapons is the only absolute guarantee against the use of threat of use of nuclear weapons. We reiterate our conviction that pending the

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28) Information Paper from the United States Concerning Article VI of the NPT, May 1, 2003.

29) Statement by the Delegation of the Russian Federation at the second session of the Preparatory Committee for the 2005 Review Conference of the Parties to the NPT, April 28, 2003.



attainment of the total elimination of nuclear weapons, efforts for the conclusion of a universal, unconditional and a legally binding instrument on security assurances to non-nuclear-weapon states should be pursued as a matter of priority.”<sup>30)</sup>

The NAC submitted a working paper on security assurances with draft protocol or agreement annexed.<sup>31)</sup> They analyze the issue from the following five aspects:

- 1 identification of the States providing the security assurances;
- 2 identification of the beneficiaries of such security assurances;
- 3 the nature and scope of the security assurances being provided;
- 4 elements that would need to be included in legally binding instrument on security assurances; and
- 5 in what format such security assurances would be provided.

The draft protocol or agreement annexed includes both negative and positive security assurances.

Under the negative security assurances, the nuclear-weapon States as defined in the NPT undertake not to use or threaten to use nuclear weapons against non-nuclear-weapons States party to the Treaty which are in compliance with their obligations under Article II of the Treaty. In addition, the negative security assurances shall cease to apply in the event of an invasion or any other armed attack on a nuclear-weapon State's territory, its armed forces or other troops, its allies or on a State toward which it has a security commitment, carried out or sustained by such a non-nuclear-weapon State party to the Treaty in association or alliance with a nuclear-weapon state.

Under the positive security assurances, the States party undertake to take appropriate measures in response to a request for political, military, technical, medical, scientific or humanitarian assistance from a non-nuclear-weapon State party to the Treaty which is a victim of the use of nuclear weapons. In addition, the States party undertake to cooperate with the Security Council of the United Nations in the event of the use or threat of use of nuclear weapons. The Security Council shall consider measures in conformity with the Charter of the United Nations to address such an act or action.

In contrast with the NAM argument for universal and unconditional security

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30) Statement by H. E. Ambassador Rastam Hehd Isa, Permanent Representative of Malaysia to the United Nations, New York on behalf of the Non-aligned Movement States Parties to the NPT, 28 April 2003.

31) Working Paper: “Security Assurances”, submitted by New Zealand on behalf of Brazil, Egypt, Ireland, Mexico, Sweden, and South Africa as members of the NAC, NPT/CONF.2005/PC.H/WP.11, 1 May 2003.

assurances, the draft protocol or agreement proposed by the NAC contains the rights and obligations which seem reasonable by taking preceding resolution, document, and statements into account. This should be a basis for future discussion, leading to be included in the recommendation for the 2005 Review Conference.

### *U.S. Nuclear Policy*

The Final Document includes **step 9-5** that provides for a diminishing role for nuclear weapons in security policy.

On this point, the NAC expresses its concern that “The fact that evolving security policies and defense doctrines continue to be based on the possession of nuclear weapons, indeed entailing possibly new designs and generations of such weapons as a counter to conventional warfare, can only further destabilize the global security environment and the NPT regime.”<sup>32)</sup>

The NAM also criticizes U.S. policy by stating that “Strategic defense doctrines continue to set out rationales for the use of such weapons, as demonstrated by the recent policy review by one of the nuclear weapon states to consider expanding the circumstances under which these weapons could be used and the countries against whom they could be used. The possible development of new weapons and new targeting options to serve aggressive counter-proliferation purposes further undermines disarmament commitments.”<sup>33)</sup>

The chairman’s summary touches upon this issue by stating that “Concern and uncertainty about existing nuclear arsenals, new approaches to the future role of nuclear weapons, as well as the possible development of new generations of nuclear weapons were expressed.”<sup>34)</sup>

The U.S. responded to these concerns by stating that “The new nuclear policy adopted by President Bush is specifically directed toward a reduced reliance on nuclear weapons... The New Triad will reduce our dependence on nuclear weapons for deterrence through modernization of conventional forces, the addition

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32) New Agenda Statement made on behalf of Brazil, Egypt, Ireland, Mexico, South Africa, Sweden and New Zealand by the Honorable Marian Hobbs, Minister of Disarmament of New Zealand, 28 April 2003.

33) Statement by H. E. Ambassador Rastam Mehd Isa Permanent Representative of Malaysia to the United Nations, New York on behalf of the Non-Aligned Movement States Parties to the NPT, 28 April 2003.

34) Annex II Chairman’s factual summary (note 11)

of missile defenses, and other measures... The Department of Defense has not identified any requirements for new nuclear weapons. We have not produced a nuclear warhead in over a decade. Certainly, cost and feasibility studies related to possible nuclear modernization are undertaken. Such studies, however, in no way represent a decision to proceed with development of a new warhead... There has been no change in U.S. nuclear declaratory policy and the U.S. has not lowered the threshold for nuclear weapons use... There has been no change in U.S. negative security assurance policy.”<sup>35)</sup>

It is true that significance of strategic nuclear weapons has radically reduced because the threat from the Soviet Union in the Cold War disappeared. However, in recent years, the U.S. has increased the salience of non-strategic nuclear weapons as U.S. threat perception is now focusing on rogue states or terrorists. In order to respond this new threat, the U.S. seems to pursue small and low-yield nuclear weapons that could be used without much resistance.

Sweden strongly criticizes this development “as it would go against many of the commitment made in 2000 – unequivocal undertaking (**step 6**), the principle of irreversibility (**step 5**) and the diminishing role for nuclear weapons in security doctrines (**step 9-5**). It could also threaten one of the corner-stones of the nuclear non-proliferation and disarmament regime, namely the Comprehensive Test-Ban Treaty since the development of new weapons probably would require the resumption of nuclear testing. (**steps 1 and 2**)”<sup>36)</sup>

## Conclusion

In the last three years since the Final Document was adopted by consensus in May 2000, we have not seen significant progress in nuclear disarmament by implementing the 13 steps. Some of the steps have been abandoned and many of the steps have been ignored by the nuclear-weapon states. Implementation of the final document, in general, seems to be much less than expected in May 2000.

The early entry into force of the CTBT is almost impossible mainly because of U.S. opposition and non-ratification by other states including China, India, Israel, Pakistan and North Korea. Moratorium of nuclear testing is also under unstable standing because the U.S. propose to shorten the preparation time for testing,

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35) Information Paper from the United States Concerning Article VI of the NPT, May 1, 2003.

36) Statement by Sweden on behalf of Austria, Mexico and Sweden for the special time on nuclear disarmament: Introduction of working paper on reductions of non-strategic nuclear weapons, 30 April 2003.

although the five nuclear-weapon states maintain its moratorium.

The CD has not been working for several years and the nuclear-weapons states now look losing their interest in multilateral negotiations on nuclear disarmament.

The Moscow Treaty is one exception to general trend of no progress in nuclear disarmament. We should welcome the Treaty although it does not fulfill the principles of irreversibility, transparency and verifiability that are included in the Final Document. The real judgment of this Treaty will depend on how seriously and clearly the U.S. and Russia implement the obligations under the Treaty and how soon they proceed to the next step for further reduction. Compared with the START process, the Moscow Treaty is too slow, too ambiguous, and too flexible.

Both the U.S. and Russia are reluctant to reduce NSNW through legally binding instruments. However, as a new threat, we need to deal with NSNW more seriously and start negotiation wherever possible, such as strengthening their security and physical protection or exchange of their information for confidence building.

The nuclear-weapon states prefer the politically binding to legally binding security assurances. The Final Document states that "The Conference agreed that legally binding security assurances by the five nuclear-weapon states to the non-nuclear-weapon states strengthen the nuclear non-proliferation regime. The Conference calls upon the Preparatory Committee to make recommendations to the 2005 Review Conference on this issue." This means that the PrepCom should make recommendations on legally binding security assurances. The draft legal document submitted by the NAC seems quite reasonable in its rights and obligations, and it should be a basis of discussion this year and should be included in the recommendations to the 2005 NPT Review Conference.

In conclusion, recent trends in the progress in nuclear disarmament are deeply and significantly influenced by the U.S. nuclear policy and defense doctrines, which have a tendency to depend more on armed forces including nuclear weapons than on multilateral political or legal instruments and international organizations. The U.S. security policy in general seems depend more on rule of power than on rule of law.

It is necessary for us all to make every effort so that the U.S. will change its security policy in general, and nuclear policy in particular.

