

**Preparatory Committee for the 1995 Conference
of the Parties to the Treaty
on the Non-Proliferation of Nuclear Weapons**

NPT/CONF.1995/PC.III/3
25 July 1994

ORIGINAL: ENGLISH

Third session
Geneva, 12-16 September 1994

IMPLEMENTATION OF ARTICLES I AND II OF THE TREATY ON
THE NON-PROLIFERATION OF NUCLEAR WEAPONS

Background paper by the Secretariat

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I. INTRODUCTION

1. At its second session, held from 17 to 21 January 1994, the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons invited the Secretary-General of the United Nations to prepare for the Committee's third session, to be held from 12 to 16 September 1994, a short background paper on the implementation of articles I and II of the Treaty, drawing "largely on the relevant discussions and results of the first, second, third and fourth review conferences" and taking into account "recent and current developments in the area of nuclear non-proliferation". The present paper is submitted in response to that request.

2. As articles I and II define respectively the basic obligations of the nuclear-weapon States and the non-nuclear-weapon States parties to the Treaty, 1/ their strict observance is central to the achievement of the Treaty's goals. This has been underscored at each of the four review conferences held since the entry into force of the Treaty.

II. REVIEW OF THE IMPLEMENTATION OF ARTICLES I AND II AT THE PRECEDING REVIEW CONFERENCES OF THE PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

3. In the Final Declaration of the first non-proliferation Treaty Review Conference (1975), 2/ adopted by consensus, the participants stated that the obligations undertaken under articles I and II of the Treaty had been faithfully observed by all parties, and that the continued strict observance of those articles remained central to the shared objective of averting the further proliferation of nuclear weapons.

4. At the second Review Conference (1980) no final declaration was adopted. In the general debate of the Conference, 3/ however, several parties made explicit comments on the implementation of articles I and II of the Treaty and noted that there had been no complaints or suggestions that States parties to the Treaty had failed to carry out obligations they had assumed. Nevertheless, concern was expressed about the increasing capability of some non-parties to the Treaty to develop nuclear weapons. Subsequently, in Main Committee I of the Conference, 4/ there was mention of the need to strengthen the implementation of the basic provisions of the Treaty. In this connection, it was emphasized that the fulfilment of the Treaty's objectives demanded that no party should in any way assist, encourage or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over them.

5. At the third Review Conference (1985), in the Final Declaration, 5/ adopted by consensus, the parties to the Treaty reiterated that the strict observance of the terms of articles I and II remained central to achieving the shared objectives of preventing under any circumstances the further proliferation of nuclear weapons and preserving the Treaty's vital contribution to peace and security, including to the peace and security of non-parties. They further stated:

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"The Conference acknowledged the declarations by nuclear-weapon States party to the Treaty that they had fulfilled their obligations under article I. The Conference further acknowledged the declarations that non-nuclear-weapon States party to the Treaty had fulfilled their obligations under article II. The Conference was of the view therefore that one of the primary objectives of the Treaty had been achieved in the period under review."

6. The Conference also expressed deep concern that the national nuclear programmes of some States not party to the Treaty might lead them to obtain a nuclear-weapon capability and, in this connection, stated that any further detonation of a nuclear explosive device by any non-nuclear-weapon State would constitute a most serious breach of the non-proliferation objective.

7. At the fourth Review Conference (1990), no final declaration was adopted. In the general debate 6/ and, subsequently, in Main Committee I 7/ participants once again recognized that the full and effective implementation of the Treaty played a major role in promoting international peace and security. They reaffirmed their determination to prevent the proliferation of nuclear weapons, which would lessen the security of all States and increase the risk of nuclear war. The positive developments in the international situation since the 1985 Review Conference, especially in the east-west context and the relations between the Union of Soviet Socialist Republics and the United States of America, were welcomed and the hope was expressed that that trend would be strengthened and become world wide. There was agreement that the strict observance of the terms of articles I and II made a vital contribution to peace and security, including the peace and security of non-parties. Declarations were made by nuclear-weapon States and non-nuclear-weapon States that they had fulfilled their obligations under article I and article II, respectively. However, deep concern was expressed once again that the national nuclear programmes of some States not party to the Treaty might lead them to develop a nuclear-weapon capability. Some participants saw the need for all States parties to continue to make every effort to ensure an effective implementation of export controls on items possibly destined for use in such nuclear programmes.

III. MAIN DEVELOPMENTS SINCE THE FOURTH NON-PROLIFERATION TREATY REVIEW CONFERENCE

8. In the period since the fourth Review Conference, several developments of direct relevance to the Treaty in general, and the implementation of its specific provisions in particular, have occurred. At a summit meeting of the Security Council held on 31 January 1992, a statement 8/ was adopted which affirmed that:

"The proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.

"On nuclear proliferation, they note the importance of the decision of many countries to adhere to the non-proliferation Treaty and emphasize the integral role in the implementation of that Treaty of fully effective International Atomic Energy Agency (IAEA) safeguards, as well as the importance of effective export controls. The members of the Council will take appropriate measures in the case of any violations notified to them by IAEA".

9. Other developments which attracted the attention of the international community concerned non-compliance with non-proliferation Treaty provisions on the one hand, and related safeguards agreements on the other. The first case stemmed from the revelations that Iraq had, over the years, engaged in activities inconsistent with its Treaty obligations under article II. The second case involved the failure of the Democratic People's Republic of Korea to comply with safeguards obligations. It is dealt with in background paper NPT/CONF.1995/PC.III/7.

10. The case of Iraq is directly relevant to article II of the Treaty. Following revelations in the aftermath of the Gulf War that, based on the reports in the hands of Member States, Iraq had attempted to acquire material for a nuclear weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Security Council took specific corrective action. By its resolution 687 (1991) of 3 April 1991 and all subsequent resolutions and decisions relating to the case, it requested Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968; to agree unconditionally not to acquire or develop nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities; to place all of its nuclear-weapon-usable materials under the exclusive control, for custody and removal, of IAEA, with the assistance and cooperation of the United Nations Special Commission; and to accept the plan for future ongoing monitoring and verification of its compliance with these undertakings.

11. Since the adoption of Security Council resolution 687 (1991), IAEA, with the assistance and cooperation of the Special Commission, has been engaged in the implementation of the relevant provisions of section C of that resolution as it relates to the nuclear field, and subsequent relevant resolutions and decisions, including resolutions 707 (1991) of 15 August 1991 and 715 (1991) of 11 October 1991, the former dealing with the question of Iraq's failure to comply fully with its obligations under resolution 687 (1991) and the latter providing approval of the plans by the Special Commission and IAEA for monitoring and verification of Iraq's compliance with the requests of the Council. (See background paper NPT/CONF.1995/PC.III/7 prepared by IAEA.)

12. Security Council resolution 707 (1991) reads in part as follows:

"1. Condemns Iraq's serious violation of a number of its obligations under section C of resolution 687 (1991) and of its undertakings to cooperate with the Special Commission and IAEA, which constitutes a material breach of the relevant provisions of that resolution which

established a cease-fire and provided the conditions essential to the restoration of peace and security in the region;

"2. Also condemns non-compliance by the Government of Iraq with its obligations under its safeguards agreement with IAEA, as established by the Board of Governors of the Agency in its resolution of 18 July 1991, which constitutes a violation of its commitments as a party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968."

13. Since then, progress has been made. By late 1993, Iraq had acknowledged its obligations under Security Council resolution 715 (1991) and the plans approved thereunder, and had undertaken to cooperate with the Special Commission and IAEA in the implementation of those plans. The Special Commission, in its report dated 24 June 1994, 9/ described the developments as follows:

"The situation is very different, generally for the better, from that which obtained at the time of the last report. Iraq has accepted resolution 715 (1991) and the plans for ongoing monitoring and verification. It has provided the Commission much new information about both its past programmes and its dual-purpose facilities. It is committed publicly to cooperate with the Special Commission and IAEA in the implementation of ongoing monitoring and verification and to respect their rights and privileges in doing so."

Notes

1/ Articles I and II of the non-proliferation Treaty read as follows:

"Article I

"Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

"Article II

"Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transfer or whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."

2/ NPT/CONF/35/I, annex I.

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- 3/ NPT/CONF.II/22/II, SR.1-19.
- 4/ Ibid., C.I/SR.1-12.
- 5/ NPT/CONF.III/64/I, annex I.
- 6/ NPT/CONF.IV/45/III.
- 7/ NPT/CONF.IV/45/II, document MC.I/1.
- 8/ S/23500.
- 9/ S/1994/750, para. 29.
