

INTERVIEW

KEEPING THE NPT TOGETHER

A Thankless Job in a Climate of Mistrust

An interview by **Jean du Preez** with Ambassador **Sergio Duarte**

The Nonproliferation Review (NPR) recently interviewed Ambassador Sergio de Queiroz Duarte of Brazil, who presided over the 2005 Seventh Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Ambassador Duarte discussed his views on the outcome of the conference and the future of the treaty. He provided NPR with valuable insights into the outcome of the conference and also shared his thoughts on some of the most pressing issues confronting the NPT today, including the Middle East, nuclear terrorism, elimination of the threat of highly enriched uranium in the civilian nuclear sector, proposals to limit access to the nuclear fuel cycle, nuclear disarmament, and negative security assurances. Blaming the failed conference on a general lack of political commitment among states parties and their unwillingness to negotiate common solutions, Ambassador Duarte stressed that “the conference should face squarely its own failure without my attempting to disguise or sugarcoat the deep differences of view, which must be resolved with courage and determination by the states parties if they want the treaty to remain effective.” He emphasized that if states fail to act on their overriding interest in upholding the NPT, especially if states parties continue to ignore or disregard their nonproliferation and nuclear disarmament obligations, some states might come to believe that their security interests are no longer served by the treaty. The future prospects of the NPT would then “look dire indeed.”

KEYWORDS: NPT; Duarte; 2005 Review Conference; Nuclear nonproliferation; Nuclear disarmament

The 2005 Seventh Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) highlighted some of the deepest divisions among parties to the treaty since its inception 35 years ago. Held from May 2–27, 2005, under the presidency of Ambassador Sergio de Queiroz Duarte of Brazil, the conference offered NPT states parties an opportunity to find effective solutions to the serious challenges currently facing the NPT. Unfortunately, as United Nations Secretary-General Kofi Annan remarked after the conference adjourned without adopting any substantive document, the treaty members “missed an opportunity” to take effective action.¹ Reflecting this outcome, some analysts already view the treaty as outdated and doomed to fail, as it has proved inadequate to the nonproliferation challenges of the 21st century. Review conferences should, however, be judged not just by whether they succeed in the adoption of a consensus final declaration. Although short on substance, the 2005 Review Conference (RevCon) did allow states parties to reaffirm their commitment to the treaty as the cornerstone of the global nuclear

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nonproliferation regime and provided a forum to explore new ways to strengthen the treaty in the face of contemporary challenges.

Following its longstanding tradition of interviewing presiding officers of NPT review conferences and preparatory committees, the *Nonproliferation Review (NPR)* recently sat down with Ambassador Duarte to discuss his views on the outcome of the conference and the future of the treaty. Ambassador Duarte provided valuable insights into the outcome of the conference and also shared his thoughts on some of the most pressing issues confronting the NPT today, including the Middle East, nuclear terrorism, eliminating the threat of highly enriched uranium (HEU) in the civilian nuclear sector, proposals to limit access to the nuclear fuel cycle, nuclear disarmament, and negative security assurances (NSAs).

Responding to criticism that his leadership was somehow to blame for the failure of the conference, Ambassador Duarte recalled a phrase by the 13th-century Persian Sufi poet Rumi: "Welcome difficulty as a familiar comrade; joke with torment brought by a friend."² As he argued in this interview, his task as president was "a thankless job," and the responsibility for a successful review conference and the future of the nuclear nonproliferation regime lies not with the conference president alone, but with all states parties. Blaming the failed conference on a general lack of political commitment among states parties and their unwillingness to negotiate common solutions, Ambassador Duarte stressed that "the conference should face squarely its own failure without my attempting to disguise or sugarcoat the deep differences of view, which must be resolved with courage and determination by the states parties if they want the treaty to remain effective." He emphasized that if states fail to act on their overriding interest in upholding the NPT, especially if states parties continue to ignore or disregard their nonproliferation and nuclear disarmament obligations, some states might come to believe that their security interests are no longer served by the treaty. The future prospects of the NPT would then "look dire indeed."

Ambassador Duarte is a veteran Brazilian disarmament negotiator who served on his country's delegation to the Eighteen-Nation Disarmament Committee during the negotiations of the NPT. He also served as alternate representative of his country to the successor body, the Conference on Disarmament, and represented Brazil at numerous meetings of the United Nations General Assembly First Main Committee and the United Nations Disarmament Commission. Other positions he held in this field include the presidency of the 1988 Review Conference of the Seabed Treaty and the chair of the International Atomic Energy Agency (IAEA) Board of Governors. He has also served as Brazilian ambassador to Nicaragua, Canada, the People's Republic of China, and Austria (including the IAEA and other international organizations in Vienna). Prior to his retirement in 2004, he held the position of ambassador-at-large for disarmament and nonproliferation for Brazil.

NPR: What national and international political developments prior to the 2005 Review Conference influenced its atmosphere and outcome?

Duarte: This is a very broad question, one that would be answered in different ways by different observers. There are those who will attach greater weight to some circumstances,

and others who will say that other factors were more, or less, relevant. In my view, since the 2000 RevCon, and even before, there were several developments that impacted the 2005 conference. A non-exhaustive list, in no particular order of importance, might include: the continuing paralysis of the Conference on Disarmament; the slow pace and meager results of negotiations with North Korea about its nuclear program; the difficulties and disappointment surrounding the failure of the CTBT [Comprehensive Test Ban Treaty] to enter into force; the discovery of a clandestine nuclear program in Iraq and later accusations of new illegal activities which led to the invasion and current occupation of that country; the emergence of India and Pakistan as de facto nuclear weapon states outside the NPT; the unclear status of Israel regarding the possession of nuclear weapons; the perception by many non-nuclear weapon states (NNWS) that the nuclear weapon states (NWS) are not committed to implementing the "13 steps" adopted at the 2000 Review Conference, or Article VI of the NPT; the continued reliance of NWS on military doctrines predicated on the possible use of nuclear weapons against NNWS; the absence of agreement on negative security assurances; the doubts raised about Iran's nuclear program; the formulation of proposals designed to further restrict peaceful nuclear activities in NNWS; the emergence of terrorism as a tool of political extremism and the concerns about a terrorist nuclear threat; and the trend toward the formation of "coalitions of the willing" to combat what some saw as serious threats to their security. All these and other developments have played a role in shaping the atmosphere under which the 2005 Review Conference and its preparatory sessions met and in the respective outcomes of those meetings.

***NPR:* Many critics of the 2005 Review Conference believe that the conference was a failure because no final document could be adopted. Do you agree with this assessment? What were your initial expectations about the outcome of the conference? Were general expectations that the conference would be able to find consensus solutions to the many challenges facing the treaty today realistic? How satisfied were you with the outcome of the conference?**

Duarte: Simply adopting a document is not an end in itself. In my view, what really matters is that significant agreements are reached and recorded in a way that can be accepted and complied with by all. There is no better-known way to record agreements and monitor compliance with them than the approval of a clear, straightforward document at the end of a discussion. The Final Document adopted by the 2005 Review Conference does not contain any agreement on any of the substantive questions that faced the conference. However, some parts of the reports of the Main Committees may be useful for future work. On the other hand, the international community has seen time and again that agreements in the field of disarmament, reached and adopted by consensus and duly recorded in solemn declarations accepted by all, have been downgraded and/or rejected before having a chance to be implemented. The Final Document of the First Special Session of the General Assembly on Disarmament (now relegated to oblivion and even derided by some) is a case in point. So, to a certain extent, are the outcomes of the 1995 and 2000 Review Conferences.

I had no reason to be optimistic about the outcome of the conference. In fact, when asked about my expectations prior to the conference, I recall responding more than once that I was “reasonably pessimistic.” I could not, of course, have offered an outright negative assessment, lest I hasten the realization of self-fulfilling prophecies about the outcome, made even before the second session of the Preparatory Committee (Prepcom) in 2003. I was also struck, during my consultations prior to the conference, by the general pessimistic mood among states parties. Given several negative political developments that impacted the conference, the lack of progress during the preparatory committee phase—especially the failure of the third session to discuss questions of substance—and the inability of the parties to agree on some of the more pressing procedural issues, I believe most parties shared my concerns. But then again many had hopes that somehow something miraculous could happen at the 11th hour. Unfortunately, these hopes had no base in reality. As I stated several times after the conference, I was deeply disappointed at the lack of results. I concur with Secretary-General Kofi Annan that the 2005 Review Conference was “a missed opportunity.”

NPR: Many reasons have been offered for why the 2005 Review Conference failed. Many believed that the ability of the conference to achieve consensus was a “mission impossible” well before it commenced, resulting in an attitude of indifference by many key states. Some noted the lack of experienced diplomats in key delegations, such as the United States, while others pointed to the failure of the 2004 NPT Preparatory Committee session to agree upon an agenda. Still others put the blame squarely on the conference president. And some blamed the outcome on the intransigence of some NWS—particularly the United States—which refused to acknowledge the outcome of the 2000 Review Conference, creating a negative atmosphere. In your opinion, why did the conference fail?

Duarte: Everyone is entitled to his or her opinion on why the conference failed, but I do not think it is constructive to look for culprits to blame. Instead of looking for scapegoats, it would be more productive, both for governments and outside observers and analysts, to reflect on the motivations and on the evolution of the attitudes of different state parties, and groups of states parties, regarding the relevance of the NPT to their own security needs and the credibility of agreements reached at past NPT review conferences. Wishful thinking is not a good guide to evaluate the conference. The successful outcome of a review conference, and beyond it, the future of the nonproliferation regime, are the responsibility of all states parties. Of course, a few countries are usually more active and outspoken than others in defending what they see as their interests. It is obvious, however, that any agreement that is seen as not responding to the interests of its contracting parties cannot last.

At the 2005 conference, some parties adopted controversial views during the procedural discussions on points that they must have considered of paramount importance. They received varying degrees of support from their respective regional groups or allies. But mistrust and intransigence prevailed, resulting in an early procedural impasse that prevented the conference from starting its substantive work. The reasons for

the different postures were not entirely clear, but they certainly stem from deeper security perceptions. The perceived attitude of indifference to the outcome of the conference by many parties suggests a diminished faith in the ability of the NPT, and indeed in the multilateral machinery as a whole, to deal effectively with questions regarding disarmament, nonproliferation, and international security. This trend is worrisome for those who believe the guarantee of security and stability lies in the faithful observance of multilaterally agreed commitments and not on ad hoc mechanisms created by a few countries.

On my own role, I recall Dr. Hans Blix saying that my mission as president was “a thankless job.” I did not expect any gratitude beyond the very heartening recognition of my efforts, my patience, and my fairness made by the individual parties and regional groups during their closing statements. The task of the president of a conference of that magnitude is not to win a popularity contest at the grandstands, but to do the utmost to facilitate consensus. Unfortunately, he or she cannot manufacture or impose solutions. These must be worked out by the parties. If they are unwilling to discuss the relevant issues, and prefer to prevent substantive discussion through procedural wrangling, there is not much that the president can do. In the prevailing climate of mistrust and intransigence, I think that to have at least provided a procedural basis for the conference to start its substantive work should be considered more than adequate. The chairs of the Main Committees and subsidiary bodies also deserve the appreciation of the states parties for their efforts, even though no agreement could be reached.

***NPR:* Given the failure of the PrepCom to reach agreement on the agenda and other procedural issues, how did you approach this difficult task, and to what extent were you successful in reaching agreements before the start of the conference?**

Duarte: The agenda—particularly item 16, which had not been agreed on at the third session of the Prepcom in 2004—was of course one of the important procedural topics of my consultations with states parties.³ I arrived in New York two and a half weeks before the conference and held a series of meetings with representatives of the parties that had indicated difficulties with the proposed formulations for item 16. However, as became clear at the start of the conference, these efforts were not successful.

***NPR:* In addition to the agenda, North Korea’s status presented a tough challenge in your preparations for the conference. How did you approach the issue? In hindsight, do you think this was the most appropriate approach?**

Duarte: I consulted mainly with the participants of the six-party talks on the North Korean nuclear program who are parties to the NPT. I also consulted those parties which had expressed concern that North Korea’s status had not been discussed during the Prepcom sessions and at the prospect that it would not be addressed at the conference itself. In these consultations, I inquired whether there would be agreement to my using the “Molnár formula” once again, with a slight amendment to indicate that there was a continuing concern over the status of the DPRK [Democratic People’s Republic of Korea],

and to acknowledge the view of some states parties that the issue should be taken up at an early occasion.⁴ After consensus had been reached on this proposal, I finalized my statement on the question, which was read and accepted at the start of the conference.⁵

***NPR:* The disagreements over the agenda continued during the first few days of the conference, giving a clear indication as to the direction the conference was heading. Did you at any point consider closing the conference to convene again at a later date?**

Duarte: The possibility of adjourning the conference and reconvening it at a later date was mentioned to me by a few participants, including nongovernmental observers. I did not see any evidence of consensus building around this idea, and in fact did not even consult formally on it. A decision to reconvene the conference at a later date would have required reaching agreement on the venue, date, availability of conference services, funding, and preparatory work. Given the history of the three Prepcom sessions (2002–2004), I do not believe the idea would have progressed beyond wishful thinking that somehow time would solve the problems related to the NPT. It is interesting to note that no state party made such a suggestion in any pressing or formal manner. It is difficult to work with hypotheses, but my impression is that had it been officially made, it would not have gained consensus.

***NPR:* When you realized that the failure of Main Committee II to adopt a final report placed the outcome of the entire conference in jeopardy, did you consider an alternative outcome, such as a short political declaration or a presidential statement?**

Duarte: I have no doubt that the majority of the participants believed that the adoption of a final document that reflected substantive agreement would have guaranteed the success of the conference. However, this view was not shared by all participants. At least one party had stated even before the second PrepCom session that no final document would be needed, and that a thorough discussion of issues would be a sufficient measure of success. As the conference progressed with little or no chance of achieving agreement, it seemed to me that a few more states parties would be satisfied if the conference ended without any consensual substantive report. In the view of several delegations, such an outcome would have left intact the results of the 1995 and 2000 Review Conferences. Many also seem to have reasoned that the absence of a substantive final document meant that no additional restraints would be placed on NNWS, nor would NWS be bound by any further commitments. Under the circumstances, it seemed to me that to discuss actively the possibility of an alternative outcome while the three Main Committees were still striving, against all odds, to achieve at least some measure of consensus, would undermine the efforts of the dedicated chairs of the subsidiary bodies. When it became obvious that no consensus on substance would be possible in the Main Committees, I did try, with help of the Secretariat, to put together a short declaration that could be adopted by the conference without discussion. However, preliminary reactions made it clear that this was an impossible dream. In this regard, I should also point out that not even the five

NWS (Permanent 5), which have important interests in common, were able to agree on a joint declaration, despite several months of discussions.

I decided against the option of a presidential statement that did not obligate anyone but me, bearing in mind the treatment and melancholic fate of similar statements in the past. I therefore closed the meeting without attempting to sum up the proceedings. I felt that it would hardly be constructive to have yet another procedural debate in the final hours of the conference (“stopping the clock” would not have been possible given the financial and logistical implications), or to “adopt,” “take note,” “annex,” or “append” a statement by the president to the records of the conference before it slid into oblivion. It seemed to me that the conference should face squarely its own failure without my attempting to disguise or sugarcoat the deep differences of view, which must be resolved with courage and determination by the states parties if they want the treaty to remain effective. I still believe that honestly assessing the failure of the 2005 conference may spur constructive action leading up to the 2010 Review Conference.

NPR: **Considering the difficulties in reaching consensus on the agenda and the creation of subsidiary bodies, what lessons could be learned from this experience to avoid a similar deadlock at future review conferences? Would you suggest redefining the role of preparatory committee sessions in the future? If so, how?**

Duarte: I do not see anything wrong with the existing conference machinery. The problem is the way in which the states are willing, or not willing, to make use of it. It would of course be best to avoid infusing procedural decisions with substantive elements or connotations. This approach is not always feasible, but one should try to draft procedural decisions, particularly the agenda, in a way that is as neutral and concise as possible and allows for discussion of all relevant questions. Otherwise, one starts treading treacherous ground, as shown by the abstruse solution of the use of presidential statements and appended asterisks to achieve agreement on something that should have been simple. The more one tries to explain, the more confusing things get. Only through a painstaking effort which took several days, a great deal of patience on my part, and with the dedicated help of a number of delegates from all three regional groups—who could see the forest beyond the trees—and with the assistance of the Secretariat, was it finally possible to achieve a consensus on both agenda item 16 and the program of work, including subsidiary bodies and their chairs. By then, of course, time had run out and mistrust was at its highest level. But deadlocks will always happen if delegations are intent on blocking the proceedings rather than on reaching agreements. Once again, the problem is not the procedure, but the way states parties deliberately manipulate procedures. I believe that if parties are willing to negotiate they will arrive at agreed recommendations, be it at one or more preparatory meetings or at the conference itself. But if they start out without the will to negotiate, agreement will always be beyond reach.

NPR: **What are your views on alternatives to the consensus-based model of NPT decisionmaking? Do you believe this model is a strength or weakness of the review process and why?**

Duarte: I would paraphrase Sir Winston Churchill by saying that consensus is perhaps the worst way to achieve results in multilateral bodies dealing with matters of national and international security, except for all the other ways. I believe that once consensus is achieved, what really matters is whether the parties to such agreement(s) are willing to abide by the consensual decisions. In the context of the NPT review process, I believe it is a mistake to force situations of confrontation in which certain decisions that appeal to a wide majority are thrust upon a small number of states parties, or even only one party which has different views and concerns. The idea of “consensus minus one” would in my view be more divisive than constructive. I believe that path would have negative consequences. For that reason, I deliberately avoided situations of this kind at the 2005 Review Conference, and I believe I was right.

NPR: **Moving on to some of the critical substantive issues that were addressed at the conference, what role did the 1995 Resolution on the Middle East play in light of the states parties’ apparent inability to move forward in its implementation? How does the lack of progress on the Middle East resolution affect the 1995 decision to indefinitely extend the NPT?**

Duarte: The declaration on the Middle East was one of the main elements that permitted final consensus on the indefinite extension of the treaty at the 1995 Review and Extension Conference. It also played a significant role in the agreements reached at the 2000 Review Conference. Following the third PrepCom session in 2004, the Egyptian delegation, mainly supported by the Non-Aligned Movement (NAM), as well as by other countries, had taken the lead in insisting that the validity of the outcomes of 1995 and 2000 conferences be recognized explicitly in the agenda of the 2005 Review Conference.⁶ While one delegation insisted that the agenda should take into account “recent developments,” others firmly opposed such a reference.⁷ My consultations with a number of key delegations, before and during the first weeks of the conference, could not resolve these differences, which threatened to jeopardize the whole conference. It took a painstaking effort—including the assistance of the regional group coordinators and a few dedicated delegations within the regional groups—to devise a convoluted solution to the impasse through a presidential statement regarding item 16 of the agenda. By then, of course, there was no time or willingness to tackle the substantive issues, including following up on the 1995 Resolution on the Middle East. I should emphasize that several states parties consider the results of the 1995 conference, including the treaty’s indefinite extension, as a package, all elements of which are interdependent and to be respected. This issue remains highly controversial, adding to the strains besetting the treaty. A satisfactory resolution must be found if the 2010 Review Conference is to avoid the fate of the 2005 meeting.

NPR: **Ever since the first PrepCom session in 2002, the issue of nuclear terrorism has permeated the review process debate. Do you believe that the NPT is adequate and/or sufficient to address this new challenge? If not, should the NPT itself be strengthened or should other measures be implemented to supplement the treaty?**

Duarte: I do not believe the NPT is by itself an adequate instrument to address questions such as the threat of nuclear terrorism. It can, and does, play a role. The effective enforcement of safeguards applied by the IAEA is certainly a means to help prevent that threat. The NPT must also be complemented by other, more specific international instruments, however. The NPT only binds states, not individuals or non-state actors. In my view, the most important requirement for any international measure aimed at combating nuclear terrorism (or terrorism in general) is that it be multilaterally negotiated and accepted. Understanding that terrorism is a threat to every state, and not just to a few obvious targets, and that nuclear terrorism is an unacceptable risk to the stability of the world as we know it, is the key to success in reducing and eventually eliminating this threat.

NPR: **In your opinion, should the reduction of highly enriched uranium (HEU) in the civilian nuclear sector be placed at the top of the NPT agenda? What actions should be taken by the NPT member states to reduce the risk of nuclear terrorism?**

Duarte: I most definitely believe that, at least for the time being, this question should not be the only one at the top. For several states parties, there are other, equally important considerations that need to be addressed before they would be prepared to consider further restrictions on what they regard as the legitimate pursuit of civilian nuclear programs in accordance with the commitments they accepted under the NPT. As for the threat of nuclear terrorism, I believe that the greatest threat comes from those who already possess the weapons with which to intimidate others, and from their apparent reluctance to get rid of them, rather than from those who do not possess such weapons. The obvious answer to these threats is of course to implement effective nuclear disarmament measures. Let us also remember that to date, the international community has been unable to produce a consensual definition of terrorism.

NPR: **The issues of nuclear disarmament and NSAs once again played a central role in producing a divisive debate at the conference. Nevertheless, Main Committee I, which addressed these issues, was the only of the three committees that agreed to attach the committee chair's paper to its report. Even considering that this agreement was premised on the understanding that the chair's paper did not represent agreement among all states parties, how do you view this development? Do you foresee any progress on some of these issues during the next review cycle? If so, which?**

Duarte: Let me start with the last question. Progress on nuclear disarmament is in my view essential for progress on the other problems that the NPT is facing right now. Disarmament issues will certainly require attention before and at the next review conference. The question of security assurances is an important aspect of the broader disarmament issue, and it should be seen in its proper perspective. Negative security assurances are interim measures and must not be taken as legitimizing the indefinite possession of nuclear weapons. I believe one of the few steps forward taken at the 2005

Review Conference was that the question of NSAs was for the first time formally included in the purview of Main Committee I. The inclusion of NSAs among the issues to be discussed within Main Committee I had always been controversial at previous Review Conferences. Considering the formulation of the mandate of Main Committee I at the 2005 conference, I hope that NSAs will in the future be recognized as one of the matters under the heading "nuclear disarmament."⁸

The decision of Main Committee I to attach its chair's paper to its report is in itself auspicious, since it is one of the few instances of agreement at the conference. Any incremental progress, even of a procedural nature as in this case, must be developed and expanded upon in the search for further agreements. By the same token, the fact that the other two chairs' papers were not endorsed by their respective committees does not in any way detract from their possible usefulness in the future. The absence of a final document in the traditional form may in fact enhance the importance of these three reports, the contents of which could provide valuable focus for future work.

As for the possibility of future progress on nuclear disarmament, it is in my view imperative that the states parties understand its relationship to progress on nonproliferation. One of the obvious underlying causes of the failed 2005 Review Conference was the reluctance by some key states parties to acknowledge other states parties' concerns, let alone agree to discuss them in a serious and objective manner. This applies to both sides of the spectrum. However, the majority of delegations would have engaged in a constructive dialogue, if only they had been given the opportunity to do so. Progress in nuclear disarmament would facilitate progress in other areas, just as progress on nonproliferation should make it easier to achieve progress in nuclear disarmament. In no way, however, should progress in one set of questions be made hostage to progress in the other. If all states parties adopt this type of approach, success in 2010 may be feasible.

NPR: Proposals to limit and or control access to the nuclear fuel cycle also led to deep divisions among states parties. While some progress toward a common understanding was made in Main Committee III, what in your view led to the committee's inability to reach agreement on this issue? How should the issue be resolved?

Duarte: My personal belief is that there is a widespread perception of the need for more effective verification of peaceful nuclear activities in NNWS in order to ensure that there is no proliferation. It is vitally important that all states parties be satisfied that all other states parties are fully obligated to their treaty commitments. Instruments such as the Additional Protocol have gained support in some quarters, but despite efforts by many delegations at the conference, several other parties believe that any agreement to make the Additional Protocol the required level of safeguard compliance under the NPT would require progress in other areas. Since the conference had very little time to negotiate any substantive issues, the opportunity was lost. Other proposals that are on the table regarding the fuel cycle are relatively new and need further debate if a solution is to be found.

The work of Main Committee III was useful and must be pursued, principally in informal debate. This debate should not, however, take place in a closed circle of states

parties dedicated to their own preferred ways of solving problems related to the fuel cycle. A legitimate concern exists in several NNWS with relatively advanced peaceful programs that further development of their programs would be hampered by the current emphasis on further restricting access to the fuel cycle. Any approach in this regard must be balanced against legitimate concerns over the possibility of proliferation. The NPT is discriminatory by its very nature. The NNWS have recognized and accepted the imbalance of their obligations versus that of the NWS, for the sake of preventing the acquisition of nuclear weapons by additional nations. We should, however, guard against creating another tier of discrimination, namely between the haves and have-nots of technology. I recall that one of the main issues discussed during the negotiations of the draft treaty in the 1960s was concern that technological progress in NNWS would be stopped or curbed. In response, the proponents of the treaty added what is now Article V, which ultimately proved to be inconsequential but at the time represented an acknowledgement of the deep technological gulf between the two categories of parties proposed in the draft.⁹ The same can be said of Article IV and the recognition of the "inalienable right to develop research, production and use of nuclear energy for peaceful uses," which, unlike Article V, does have important consequences.¹⁰ Since the treaty was negotiated, several NNWS have made considerable advancements in peaceful nuclear activities. These states have an understandable desire to be technologically able to face the inevitable decline of non-renewable sources of energy in the coming decades, without having to depend on the will of a handful of powerful countries or the vagaries of the international political situation for access to nuclear fuel. Unless these concerns are taken into account, it will be very hard to achieve a solution that satisfies both sides of the debate.

NPR: What effects could the July 2005 proposal for enhanced civilian nuclear cooperation between the United States and India have for the NPT? How might this proposal, if implemented, impact the distinction between NNWS and NWS and the bargains between them that lie at the core of the NPT?

Duarte: Universality under the terms of the NPT is central to its maximum efficacy. Given the exclusive character of its definition of a "nuclear weapon state," any act or omission that amounts to a de facto recognition of the nuclear weapon status of those non-parties to the NPT that have developed a nuclear weapon capability, is obviously a blow to the nonproliferation regime embodied in the treaty. If a non-party achieves nuclear capability on its own and is subsequently rewarded for it by a state party or group of parties, the NNWS in good standing cannot but come to the conclusion that there must be some advantage in exercising the military nuclear option. In the absence of progress toward nuclear disarmament and of credible negative security assurances, some may reason that they also have a right to resort to what they regard as adequate ways to respond to perceived threats to their national security, particularly vis-à-vis states which acquired nuclear weapons and are not bound by the NPT.

Let me recall that several parties voiced regret during the 2005 Review Conference at having agreed to the indefinite extension of the NPT in 1995. While there are of course other causes for that regret beyond the emergence of nuclear-capable nations outside the

treaty, one cannot ignore reality: The fact is, two states outside the treaty came to possess nuclear weapons and are not bound by the provisions of the instrument. Academics have speculated on how to evolve a set of principles that would bring those states closer to the NPT. One cannot help but think, however, that to give those states, albeit informally, similar status as the five exclusively recognized by the NPT would defy one of the treaty's fundamental premises and risk unraveling the treaty itself. On the other hand, not to do anything would perpetuate a source of discontent and inequality. The fault, of course, lies with the way in which the original proponents of the treaty, and their respective allies, saw the world in the late 1960s. Unfortunately, reality has a way of catching up with international agreements.

***NPR:* What, if any, surprises were there with respect to the issues that were or were not raised at the conference?**

Duarte: No surprises. Individual delegations, or groups of delegations, raised the issues that they considered important, with little regard, and in some cases with no regard at all, for what others considered relevant. A "critical mass" of converging views at the conference that might have generated a momentum toward a meaningful result never developed. On the contrary, attitudes and opinions remained widely divergent. Mistrust and intransigence permeated the whole atmosphere and prevented sober assessment and common responses to challenges that demand urgent attention from the international community.

***NPR:* Looking forward, what do you believe needs to be accomplished at the 2010 Review Conference to achieve progress? What are the key issues that should be addressed?**

Duarte: I would not speculate on that, except to say that at the next review conference the states parties should try much harder to accomplish what they did not achieve in 2005, starting with an agenda that is not used as a device to block the work of the conference. The key issue, in my view, will be how to inspire renewed confidence in the NPT.

***NPR:* Although nothing was agreed at the conference, it is commonly understood that the first PrepCom session for the 2010 conference will be held in 2007. How do you suggest the next year be used productively in preparation for that meeting?**

Duarte: There is no lack of venues and occasions for productive dialogue among key states parties to the NPT. In the margins of meetings such as the United Nations General Assembly, the Conference on Disarmament (if it decides to continue in session), and the International Atomic Energy Agency, as well as in regional meetings, ideas can be presented, discussed, and assessed. Some nongovernmental organizations also hold useful seminars and workshops where suggestions and proposals are informally debated. Most dangerous would be to leave things as they currently stand out of lack of interest or trust.

NPR: If there is no way to come to an agreement about the critical agenda-setting points prior to the 2010 Review Conference, do you think it would be useful to exclude certain topics to prevent a repeat of 2005?

Duarte: The price of excluding topics—provided this could be achieved, which I doubt very much—would be the irrelevance of the discussion in 2010 and ultimately the irrelevance of the treaty itself. One cannot think that issues can be resolved by simply pretending that they do not exist.

NPR: How optimistic are you about the future of the NPT? What reforms, if any, do you see as necessary for the strengthening of the NPT review process?

Duarte: I am very worried about the future and the credibility of the NPT, considering the general trend away from multilateralism. In the past decade, multilateral progress on issues such as the environment, international penal responsibility, chemical weapons, or the cessation of all nuclear tests has encountered serious difficulties. In matters of disarmament and international security, this trend became painfully obvious at the 2005 World Summit, just a few months after the frustrating result of the 2005 Review Conference. Regarding the NPT, several analysts have pointed out that a situation in which a handful of states feels entitled to possess and keep improving nuclear weapons under the justification of what they claim are the interests of their national security, while the majority are forbidden to exercise an identical option for similar motivations, is untenable in the long run. Yet, the NPT remains the only international nonproliferation instrument that has worldwide reach. Most observers would agree that it has fulfilled a useful role. Its original proponents saw the NPT mainly, and perhaps exclusively, as a barrier to prevent proliferation, while most of its successive adherents placed equal emphasis on the provisions dealing with progress toward nuclear disarmament and with the right to peaceful applications of nuclear energy. Several states parties have come to distrust the good faith of others. A couple of NNWS are accused of using the treaty to foster alleged nuclear weapon ambitions, and NWS are suspected of trying to interpret the treaty as legitimizing and providing a legal basis for the perpetuation of their exclusive possession of nuclear arsenals. If commitments undertaken by states parties under the NPT, regarding both nonproliferation and nuclear disarmament, continue to be perceived as ignored or disregarded, and if there is no common, overriding interest in upholding the treaty, or if states parties come to believe that their security interests are no longer served by the NPT, then the prospects for the treaty look dire indeed.

In my view, one way in which progress could be found is in seeking ways to improve the *accountability* of every state party—nuclear and non-nuclear alike—to its commitments under the treaty. Every state party would need to be satisfied that every other party is complying with its obligations. Again, I do not think there is anything wrong with the review process, as long as parties do not backtrack from, or negate what they have agreed to do, and as long as they are willing to demonstrate in a credible way their compliance with all provisions of the treaty. Changes in the machinery are a poor substitute for the

lack of will to achieve progress. The problem is not the review process, but the way in which it has been manipulated.

NPR: In recent years, new nonproliferation and counterproliferation measures such as the Proliferation Security Initiative (PSI) have emerged. How do you foresee such measures affecting the role of the NPT in the nonproliferation regime?

Duarte: May I simply stress that to be effective, measures to prevent misuse of nuclear materials must be truly multilateral, rather than the product of a coalition of willing, or willful, nations. Cooperation based on the recognition of a grave and common danger is the key to pooling the resources of the entire international community to combat that danger.

NPR: Many analysts have already come to the conclusion that the NPT is outdated and no longer serves the purpose for which it was designed. Do you agree? Given the treaty's negotiating history, and the withdrawal provisions of Article X, do you think the treaty should be replaced? If so, with what?

Duarte: To answer that question, one must be clear about what the NPT was designed for. One should remember that the draft treaty was introduced in the mid-1960s by the co-chairs of the Eighteen Nation Disarmament Committee who had first negotiated it between themselves and then consulted with a few other delegations.¹¹ While lively discussions were held for several months in the disarmament committee, no agreement was reached. The co-chairs, however, made some changes and submitted their text to the 1968 UN General Assembly session under their own responsibility. The General Assembly duly endorsed the treaty and commended it to the signature of member states by a majority vote. Whatever the design of the original drafters was, the wide majority of those who adhered over the next three decades agree that the NPT has a threefold purpose: to limit the number of NWS to the five it recognizes as such, to promote the reduction and eventual elimination of all nuclear arsenals, and to foster the peaceful uses of nuclear energy without discrimination.

Article X, which reflects a well-known principle of international law, was one of the very few substantive issues on which a meaningful discussion was held in the last days of the 2005 Review Conference. Although no definitive conclusions were reached, it seems obvious that at least the majority of states parties, if not all, believe that the right of withdrawal must be upheld, provided the conditions stipulated in that article are fulfilled. No party seemed willing to endorse the proposition that membership in an international treaty is a straitjacket from which no escape is possible. The ability of a state party to develop nuclear technology in a way that does not infringe the letter of the treaty, but places it in a position to acquire a nuclear explosive device, and then to withdraw to complete the weaponization of its capability legally as a non-party, has recently raised considerable concern, and rightly so. The problem, of course, is how effectively to outlaw this practice without running the risk of opening up the NPT for other potentially divisive amendments. A number of conditions that must be satisfied before withdrawing have

been proposed, but even if they are accepted by consensus at a review conference, they could not have the same legal force as the provisions of the treaty itself and cannot be regarded as superseding those provisions.

Several observers would probably agree with the proposition that the treaty is outdated, and not only with respect to the withdrawal clause. It would not be reasonable to suppose that the original drafters of the NPT were clairvoyant enough to have foreseen more than 35 years ago, in the international climate prevailing at the time of the Cold War, the tensions and challenges that the NPT is experiencing in the 21st century. To decry the NPT as outdated is probably an extreme view, but the treaty is obviously under strain.

I do not think anyone can say for sure what the NPT could, or should, be replaced with. But the lessons of the past decades indicate that to be successful, any initiative to replace the treaty would have to be multilaterally negotiated and take into account the legitimate concerns and aspirations of the world community as a whole, not just those of a limited group of powerful nations. In light of recent international events and attitudes, this task would be formidable.

NOTES

1. Kofi A. Annan, "Break the Nuclear Deadlock," *International Herald Tribune*, May 30, 2005.
2. From Jalalu'ddin Rumi, *The Illuminated Rumi*, translated by Coleman Barks (New York: Broadway, 1997).
3. Item 16 of the agenda, entitled "Review of the Operation of the Treaty," included most substantive issues related to the NPT. A disagreement over how to define this part of the agenda delayed the conference for over two weeks, effectively depriving the session of adequate time to consider substantive issues.
4. *NPR* editorial note: The chair of the second PrepCom session, Ambassador László Molnár (Hungary), initiated the practice of keeping the nameplate of the Democratic People's Republic of North Korea (DPRK) with the presiding officer for the duration of the session without prejudice to the outcome of ongoing consultations on North Korea's status and its nuclear weapons ambitions. Since his approach received overall support, the chair of the third PrepCom session and the president of the 2005 Review Conference followed the same practice. Also see Jean du Preez, "Interview with László Molnár, The Second NPT Preparatory Committee: Issues, Results, Implications for the 2005 Review Conference," *Nonproliferation Review* 11 (Spring 2004), pp. 13–25.
5. The president's statement is referenced in the Final Document of the 2005 Review Conference (NPT/CONF.2005/57 (Part I)).
6. *NPR* editorial note: Disagreement over whether or not to reference the outcome of the 2000 Review Conference in paragraph 16 of the draft conference agenda led to the failure by the third PrepCom session to adopt the agenda.
7. *NPR* editorial note: The United States argued during the third PrepCom session, as well as during consultations on the agenda during the Review Conference, that the agenda should not only include reference to the outcomes of the 1995 and 2000 Review

Conferences, but also include “recent developments” presumably referring to concerns over Iran’s nuclear program.

8. The mandate for Main Committee I included (a) the review of the implementation of the provisions of the treaty relating to nonproliferation of nuclear weapons, disarmament, and international peace and security; and (b) security assurances. NPT/CONF2005/DEC.1 of May 18, 2005.
9. *NPR* editorial note: In accordance with Article V, each state party should take appropriate measures to ensure that under appropriate international observation and procedures, the potential benefits of peaceful applications of nuclear explosions will be made available to NNWS party to the treaty on a non-discriminatory basis. At the 2000 Review Conference the states parties agreed that the provisions of this article no longer apply given the provisions of the CTBT.
10. Article IV (1) of the Treaty on the Non-Proliferation of Nuclear Weapons.
11. *NPR* editorial note: At its first meeting in March 1962, the Eighteen Nation Disarmament Committee agreed to a synoptic procedural arrangement conferring on the United States and the Soviet Union privileged procedural control and leadership positions through the permanent co-chairmanship office. The two chairs were required to consult with each other and other delegations as desirable with the aim of facilitating both informal and formal negotiations. Doc. ENDC/1 of 14 March 1962.