BEYOND THE GRAND BARGAIN: THE ROLE AND RELEVANCE OF THE NPT

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The 2015 NPT Review Conference

- No consensus on Final Document

- The draft document: a good compromise leaves everybody disappointed?

- What is the continued relevance of the NPT?

- What is the role of its Review Conferences?
The NPT and the non-proliferation regime

• Treaty types
  • Contract treaties (*traité-contrat*)
  • Law-making treaties (*traité-loi*)/Constitutional treaties

• What is the NPT?
  • Text and preamble
  • Grand Bargain
  • Subsequent interpretations

• Relevance?
The NPT as a constitution

- Common, shared goals and obligations
- Creates basic norms and structures
- Indeterminacy of provisions
- Relies on creation of additional legal instruments
- Evolution through interpretation
Evolution through interpretation

• Articles I and II: non-proliferation obligations
  • Scope

• Article III: safeguards
  • Safeguards standards

• Article IV.1: peaceful uses of nuclear energy
  • Relation to Article III

• Article V: peaceful nuclear explosions
  • V. CTBT

• Article VI: nuclear disarmament
  • Obligation of result
The role of Review Conferences

- Final Documents: not legally binding
  - Possible indirect legal effect

- Teleological interpretation of treaties
  - Vienna Convention on the Law of Treaties

- Subsequent agreement and practice
  - Can emanate from Review Conferences
  - Common and consistent practice
  - Manifest intention that this is basis for interpretation

- Review Conferences
  - Forum for creation *opinio juris*
  - Forum for creating or harmonizing practice
Perspectives and observations

• NPT has remained relevant by combining law and practice to develop its regime

• Review Conferences focus too much on “Grand Bargain” and “pillar-balancing”

• Legal and political aspects often get mixed up

• Impact of Review Conferences should be understood and debates restructured accordingly

• In difficult times, focus on smaller steps may be more productive