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REFLECTIONS ON THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

Review conferences and the future of the NPT

BY JAYANTHA DHANAPALA AND TARIQ RAUF

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STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

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Jayantha Dhanapala and Tariq Rauf, April 2017

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A message from HE Kairat Abdrakhmanov*

Nuclear weapons are the most destructive weapons invented and used by humankind.

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is the foundation for the global nuclear non-proliferation and nuclear disarmament system, and facilitates the peaceful use of nuclear energy for development and prosperity. The NPT is the most widely adhered to multilateral nuclear arms control agreement, having achieved near universality. Only five countries are not signatories.

The international conferences in Oslo (2013), Nayarit (2014) and Vienna (2015) have highlighted the unacceptable humanitarian and ecological consequences of the detonation of a single modern nuclear weapon. Yet, the world continues to face the monumental challenge of finding ways to achieve the disarmament of more than 15 000 nuclear weapons and paving the way for the elimination of this last category of weapons of mass destruction. This realization has led a majority of United Nations member states to begin multilateral negotiations on a legally binding instrument to prohibit nuclear weapons, leading to their total elimination.

Despite five successful nuclear security summits in Moscow (1996), Washington, DC (2010), Seoul (2012), The Hague (2014) and Washington, DC (2016), 87 per cent of global stocks of weapon-usable highly-enriched uranium and plutonium remain outside any international accountability and verification.

Although the Comprehensive Nuclear-Test-Ban Treaty (CTBT) opened for signature in September 1996, two decades later it still languishes awaiting entry-into-force pending the signature/ratification of eight states. Despite this, more than 90 per cent of the international monitoring system is now in place and operational.

More than 110 countries are party to nuclear-weapon-free zone treaties, covering the entire southern hemisphere, including Central Asia and Mongolia in the northern hemisphere.

The year 2020 will mark the 50th, or golden, anniversary of the NPT and hopes remain high for a successful outcome of the 10th NPT review conference that will be held then. Preparations for this important conference will commence this year starting in Vienna.

Since its independence in 1991, the Republic of Kazakhstan and President Nursultan Nazarbayev have been at the forefront of promoting and strengthening global nuclear arms control regimes—including the NPT, the CTBT and nuclear-weapon-free zones. Kazakhstan's words always have been matched with deeds: the Semipalatinsk nuclear test site was permanently shut down by the Kazakh President's decree in 1991, after at least 456 nuclear tests had been carried out by the Soviet Union, and more than half a ton of weapon-

* HE Kairat Abdrakhmanov is the Minister of Foreign Affairs, Republic of Kazakhstan.

usable highly-enriched uranium was repatriated in 1994. Kazakhstan divested itself of more than 1400 Soviet nuclear weapons left on its territory and acceded to the NPT in 1994. In 2005 Kazakhstan blended down three tonnes of highly-enriched uranium to a level of low enrichment for peaceful use. It also led the effort to establish the Central Asian nuclear-weapon-free zone in 2006. The country announced its intention to host the IAEA low-enriched uranium bank in 2009, and the United Nations General Assembly endorsed President Nazarbayev's initiative in 2009 to declare the 29th August as the annual 'Day Against Nuclear Tests'.

Though Kazakhstan is the world's largest producer of uranium, it has decided against a national enrichment capability and is a founding partner of the International Uranium Enrichment Centre (IUEC) in Angarsk. As part of its membership to the UN Security Council, Kazakhstan is promoting a new unity to confront the modern challenges to global security.

President Nazarbayev remains deeply committed to supporting nuclear non-proliferation, reducing reliance on nuclear weapons, as well as the ultimate goal of global nuclear disarmament. He supports the creation of a universal Global Nuclear Security System to combine effective observance of nuclear weapon non-proliferation with clear international norms for the peaceful and safe use of nuclear energy. The Kazakh leader's manifesto 'The World. The 21st century', which was presented during the most recent Nuclear Security Summit in 2016, is considered to be a forward-thinking, long-term anti-nuclear action platform.

Kazakhstan remains a committed supporter of the UN General Assembly resolution on disarmament and non-proliferation education. In this context, on behalf of the Ministry of Foreign Affairs of Kazakhstan, I am very pleased to support the dissemination of this insightful and important book by Ambassador Jayantha Dhanapala and Tariq Rauf, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons: Review Conferences and the Future of the NPT*, published by the Stockholm International Peace Research Institute (SIPRI). I commend this book to all delegations taking part in the 2017 session of the NPT Preparatory Committee in Vienna, as well as in future sessions of the PrepCom and the 2020 Review Conference. I urge all NPT states parties to rise above narrow self-interests, resolve differences and unite for global security to prevent further proliferation of nuclear weapons, strengthen collaboration on the peaceful uses of nuclear energy, and resolve to achieve a world without nuclear weapons within the lifetime of our children.

Introduction

TARIQ RAUF AND JAYANTHA DHANAPALA

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), consisting of a brief eleven articles covering five pages, is the world's pre-eminent multilaterally negotiated nuclear arms control treaty.[1] Except for the United Nations Charter, the NPT has the largest number of states parties—India, Israel and Pakistan continue to defy the international nuclear non-proliferation and disarmament norms established through consensus by refusing to accede to the Treaty, and the Democratic People's Republic of Korea (DPRK) is the sole instance of a state party withdrawing from the NPT (in January 2003).

The NPT forever closed the door on states acquiring the status of 'nuclear-weapon states' (NWS) and remains the only global, legally binding, instrument committing the NWS to nuclear disarmament and for all states parties to pursue a treaty on general and complete disarmament.

The NPT always was and continues to remain a three-part bargain: nuclear non-proliferation; international cooperation in promoting the peaceful uses of nuclear energy across the entire nuclear fuel cycle under safeguards in conformity with the Treaty; and nuclear disarmament leading to the elimination of all nuclear weapons. The Treaty does not refer to any pre-conditions for nuclear non-proliferation or for nuclear disarmament. Each of the three objectives of the Treaty can be pursued either separately or in tandem with each other. The spirit of the NPT was succinctly captured by the-then Canadian Foreign Minister Lloyd Axworthy when he stated: 'The nuclear non-proliferation regime is based on, and anchored in, international law and norms, as well as incorporated into international mechanisms. The NPT is fundamental, but the broader regime is a complex system of multilateral and bilateral agreements, arrangements, and mechanisms intended to promote and achieve a world without nuclear weapons, sooner rather than later. This was valid during the Cold War and remains valid today. At the same time, the regime is intended to provide a framework to enable the world to make effective use of nuclear capability for peaceful purposes'.[2] This description of the purposes of the Treaty is as valid today and for the future as when it was first made.

The NPT established a precedent in requiring periodic reviews of its implementation by states parties. Accordingly, nine quinquennial review conferences have been convened since the Treaty entered into force in 1970. These were held respectively in 1975, 1980, 1985, 1990, 1995, 2000, 2010

[1] Treaty on the Non-Proliferation of Nuclear Weapons, IAEA Information Circular INFCIRC/140, 22 April 1970.

[2] Notes for a Statement by the Honourable Lloyd Axworthy, Minister of Foreign Affairs to the Standing Committee on Foreign Affairs and International Trade, Department of Foreign Affairs and International Trade (Ottawa, Canada: 26 May 1998), cited in Rauf. T., 'The 2000 NPT Review Conference', *The Nonproliferation Review/Spring 2000*, p. 147.

and 2015. The next review conference will be convened in the year 2020, which will mark the fiftieth anniversary of the entry-into-force of the NPT.

The Treaty also provided for states parties to decide on its future continuation twenty-five years after entry-into-force and also stipulated the options available: to continue in force indefinitely, or for an additional fixed period or periods, and that this decision shall be taken by a majority of the parties to the Treaty. The all-important review and extension conference was held at United Nations headquarters in 1995 and its presidency was entrusted to Ambassador Jayantha Dhanapala of Sri Lanka. The-then 179 states parties decided without a vote to extend the treaty indefinitely through an interlinked, inseparable and irrevocable, package of three decisions and a resolution. The decision on indefinite extension was based on the foundation provided by the decision of a strengthened review process for the Treaty, the decision on principles and objectives for nuclear non-proliferation and disarmament, and a resolution on the establishment of a zone free of nuclear and other weapons in the region of the Middle East. In achieving this historic outcome, key roles were played in particular by South Africa and Canada supported by many other states parties.

Since the indefinite extension of the NPT and following the 2000 Review Conference, states parties have failed to realize the full potential of the strengthened review process as described in this compendium leading to growing frustration and disruptive actions. While the non-proliferation pillar of the NPT has been steadily strengthened through the implementation of the additional protocol to safeguards agreements implemented by the International Atomic Energy Agency (IAEA) in non-nuclear-weapon states, strengthened nuclear export controls and relevant UN Security Council resolutions, there is growing impatience with the slow pace of nuclear disarmament by the NWS. This dissatisfaction lies at the heart of increasing tensions in review conferences leading to ill-tempered stalemate in 2005 and most recently in 2015. While NPT review conferences are mandated since 1995 to make recommendations on the implementation and universality of the Treaty—and in 2000 and 2010 agreed inter alia on specific measures contributing to nuclear disarmament—they are not a forum for the negotiation of a treaty or legally binding instrument on nuclear disarmament or prohibition of nuclear weapons, even though Article VI obligates the NWS to achieve nuclear disarmament.

Thus, many non-nuclear-weapon states (NNWS) have opted to go outside the NPT review process to pursue nuclear disarmament, notably through the humanitarian initiative on the consequences of nuclear weapons and the open-ended working group on taking forward multilateral negotiations on nuclear disarmament. None of these efforts have been successful given the opposition of the NWS and the nuclear-armed states not party to the Treaty. Reportedly many NNWS will push through a resolution at the 2016 session of the UN General Assembly and its First Committee on commencing negotiations on a

treaty banning nuclear weapons in one form or another, leading to further exacerbation of the divide with the nuclear-armed states and their allies.

The growing frustration and dissatisfaction with the practice or implementation of the strengthened review process in terms of failing to move the NWS on nuclear disarmament is now leading to calls to radically change or overturn the provisions of the 1995 decision and its elaboration in 2000, as states begin to prepare for the next review cycle commencing with the first session of the preparatory committee to be held in Vienna in 2017.[3]

In light of these negative developments and an increasing loss of institutional memory in foreign ministries and research institutes on the workings of the NPT review process—including the proceedings and outcomes of key review conferences in 1995, 2000 and 2010—the two authors believe that this compendium of essays could provide useful insights to the new generation of diplomats and researchers on how the Treaty and its review process have evolved through the previous two decades. It is also hoped that they may help promote more productive and harmonious conduct during the preparations for the 2020 review conference.

The authors are grateful to the Stockholm International Peace Research Institute (SIPRI) and the Ministry of Foreign Affairs of Sweden for their support in making this publication possible for dissemination through the Internet. We also are grateful to the United Nations Institute for Disarmament Research (UNIDIR), the United States Institute for Peace (USIP), the Council of the Pugwash Conferences on Science and World Affairs, and to SIPRI for their kind permission to reprint the respective chapters that were originally published by them. We would also like to thank the Editors Team at SIPRI for their useful editing suggestions and for the formatting and publication of this compendium. The views expressed in this publication are solely those of the authors and should not be taken in any way as representing the views of the five organizations listed above.

[3] See, Einhorn. R., *The NPT Review Process: Time to Try Something New*, Issue Brief (April 2016), James Martin Center for Nonproliferation Studies; Einhorn. R., "The NPT Review Process: The Need for a More Productive Approach", *Arms Control Today* (September 2016); for a rejoinder see, Dhanapala, J., *Who Is Afraid of Consensus? The NPT review process*, Issue Brief (August 2016), James Martin Center for Nonproliferation Studies.

Multilateral diplomacy and the NPT: An insider's account

JAYANTHA DHANAPALA WITH RANDY RYDELL

FOREWORD

On 24 January 1946, the United Nations General Assembly adopted its first resolution, which called for the elimination of all atomic weapons and 'all other major weapons adaptable to mass destruction.' On 5 March 1970, in a major step towards that goal, the Treaty on the Non-Proliferation of Nuclear Weapons established a strong legal norm against the international spread of nuclear weapons, while also obliging all its states parties to pursue negotiations in good faith on nuclear disarmament.

Today, however, according to most published estimates, tens of thousands of nuclear weapons remain in arsenals around the world. Some of the parties to the NPT have not fully complied with their obligations, and one party has declared its withdrawal from the treaty. Moreover, the Conference on Disarmament and United Nations disarmament bodies such as the Disarmament Commission and the First Committee of the General Assembly remain deeply divided on many key issues. These and other developments, should they persist, will further set back hopes for new progress in achieving the disarmament and non-proliferation objectives of the NPT regime.

This troubling state of affairs has given rise to many questions about the past and future of the NPT. Why was it decided to extend the treaty indefinitely in 1995? What commitments made that extension possible? Have they been upheld? What new commitments were made at the 2000 NPT Review Conference, and have they been implemented? As we look ahead to the 2005 Review Conference, what do we need to do to improve efforts to eliminate nuclear weapons stockpiles and control the global proliferation of nuclear weapons?

While this book does not seek to offer an official 'UN account' of the events it surveys, it draws instead upon personal experience and emerges as both timely and authoritative. Its author, Jayantha Dhanapala, served with distinction as the United Nations Under-Secretary-General for Disarmament Affairs from 1998 to 2003. This experience, coupled with his service as President of the 1995 NPT Review and Extension Conference, uniquely qualifies him to address these challenging questions. His analysis and his distinct points of view, rooted in a strong commitment to multilateral cooperation and the importance of treaty compliance, deserve the close attention of all who seek a safer, more secure world for all.

Kofi A. Annan
Secretary-General, United Nations
November 2004

PREFACE

This account of the 1995 NPT Review and Extension Conference has been gestation for several years. My daily responsibilities—first as a working diplomat for my country and later as a member of United Nations Secretary General Kofi Annan's senior management team in New York—prevented me from getting down to the task of transferring the book in my head to a written form. The first opportunity I had was when I completed my term in the United Nations at the end of May 2003 and had a year's respite until I was invited by the President of Sri Lanka to manage my country's peace process from June 2004.

The years since I was privileged to preside over the month long nuclear Non-Proliferation Treaty Review and Extension Conference (NPTREC) of 1995 have given me time for quiet reflection. Historical hindsight, or in Wordsworth's phrase 'recollections in tranquillity', does help to give the writer a depth of perspective and a breadth of vision. This was assisted by copious notes and papers that I kept; by the numerous articles written on the NPTREC by myself and others and by many discussions and interviews over the years.

The NPT remains a living treaty that will evolve in response to the challenges of history. Despite its seemingly impossible amendment procedures, there are other ways for the treaty to adapt and change in its implementation and in the achievement of a nuclear weapon-free world. I have never believed that the NPT is a perfect treaty. Like all documents produced through negotiations among nation states with different interests it has its imperfections. But it is the best hope we have—together with the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and the International Atomic Energy Agency (IAEA) as a watchdog—to achieve an end to nuclear weapons.

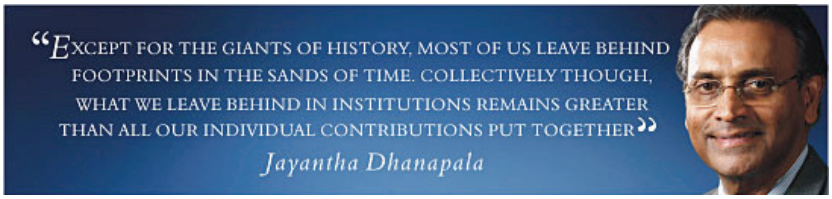
This book is not a personal memoir alone. It is an analytical record of a significant multilateral conference in the field of international peace and security that succeeded remarkably in adopting final decisions without a vote. Multilateralism can and does work given the right people making the right efforts. Despite the many encomiums earned by me from the international community, my peer diplomats and the media I know that the success of the NPTREC was essentially a team effort—from the delegates, from the excellent group of Conference officials and from the United Nations Secretariat staff. Barbara Crossette of the *New York Times* quoted me in her article in the Sunday, 14 May 1995 issue of her paper as saying—'The President of a conference is not a magician who can produce a rabbit out of a hat. The rabbit must be in the hat and must want to come out. All we can do is to coax it occasionally.' I wish there was more 'coaxing' at international conferences so that we could have more agreements through consensus on the vital issues that divide us.

There are many debts to record in the writing of this book. The Core Group of the Programme for the Promotion of Nuclear Non-proliferation (PPNN) was a group of friends of the NPT, which was formed shortly after the 1985 Review Conference with Ben Sanders as Chairman and John Simpson as Executive Director. Till about 1997, when I left shortly before the Group disbanded through lack of financial support. PPNN functioned as a centre of excellence for the discussion and debate of NPT issues from which I learned a great deal. I am grateful to all the members of this Group and to the expert participants of its many seminars and conferences for their sharing of their knowledge and experience. Likewise my diplomatic colleagues and friends in Geneva and New York where disarmament fora exist also helped me in our discussions and negotiations. They are too numerous to mention individually.

Perhaps to no other single individual do I owe more in the writing of this book than to Dr Randy Rydell—colleague in the UN Department for Disarmament Affairs, friend for many years since we first met in the run up to NPTREC and a comrade in the great cause of disarmament. The dedication of his time and effort to guide me and assist me in the writing of this book has been invaluable and I remain deeply grateful. Needless to say the faults in the book are entirely mine.

My wife has had to endure a great deal as I returned to Sri Lanka—ostensibly to spend more time with her but only to bury myself in the wonderful study she lovingly arranged for me to assemble all my books in one place at the end of my nomadic career as a diplomat. I am more grateful than she can ever know for her love and patience.

Finally, I must acknowledge the generous support of the MacArthur Foundation but for whose grant this writing project would never have been possible. I also thank the United Nations Institute for Disarmament Research (UNIDIR) UNIDIR and its Director, Dr Patricia Lewis, and the Stockholm International Peace Research Institute (SIPRI) and its Director, Alyson J. K. Bailes, for agreeing to publish this account in 2005. Finally, I am grateful for the diligent work of my Research Assistant, Ms Mihiri Weerasinghe, whose organizational and research skills helped enormously during the preparation of this study.



I. INTRODUCTION

The Treaty on the Non-proliferation of Nuclear Weapons (NPT) signed in London, Moscow and Washington on 1 July 1968 is in many ways an unusual treaty. One of its unusual features is the fact that, unlike most treaties in international law, it contained a provision for the treaty to be extended twenty-five years after it came into force. Article X (2) states 'Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.'

Thus from 17 April to 12 May 1995 175 of the 178 parties to the NPT met in New York to decide not on whether the Treaty should be extended but rather for how long. The Conference was the Review and Extension Conference (NPTREC) and consequently it was also the task of the conference to review the performance of the Treaty for the period 1990-1995 in accordance with Article VIII (3) which stipulates five yearly Review Conferences. It was my privilege, having been nominated by the group of Non-aligned countries, to be the President of this historic conference.

Previous Review Conferences of the NPT had been extremely contentious. Final Documents were only adopted in the first Review Conference held in 1975 reportedly because of the forceful personality of the Swedish Chairperson Ingar Thorsson. The 1980 Second Review Conference ended in a failure. The Third Review Conference, which I attended as the Head of the Sri Lanka delegation and Chairman of Main Committee I, managed with great difficulty to adopt a Final Document by consensus because of an unusual formulation which recorded a disagreement between some countries and the 'overwhelming majority' on the issue of a Comprehensive Nuclear Test Ban Treaty (CTBT). The Fourth Review Conference ran aground amidst bitter debate on precisely the same issue—the CTBT.

The omens for the success of the 1995 conference were therefore not at all propitious not only because it sought a consensus on the review of the NPT's performance but because it, more ambitiously, sought an extension of the Treaty by a majority vote. Well before the conference consultations had begun within Foreign Offices and among like-minded states on strategies to be adopted for the conference. It was to be a major challenge to the process of multilateralism. The conference was held at a time when multilateral endeavours were beset with great complexity most commonly resulting in their failure. A growing sense of pessimism, and indeed cynicism, prevailed over multilateralism in general and the United Nations headed by Boutros Boutros Ghali in particular. The adoption therefore of a package of three decisions, including the decision to extend the NPT indefinitely, and a Resolution on the Middle East during the NPT Review and Extension Conference without a vote was a rare success and has been hailed as a

diplomatic triumph. The kudos for the success has been variously claimed by the Clinton Administration, individual Western countries and diplomats and others but little has been done to analyze the ingredients for this success deconstructing the complex process as a means of identifying lessons that could be learned and applied to other multilateral negotiating processes.

Indeed the NPTREC is a historic conference for several reasons. It rendered permanent the legal prohibition of the acquisition of nuclear weapons by non-nuclear weapon states parties (NNWS) to the Treaty and took the international community further down the road towards nuclear disarmament. It was also the first major multilateral nuclear disarmament conference held after the end of the Cold War. Except for India, which did not attend at all, many non-parties to the Treaty attended as Observers. Finally the Conference proved that large multilateral conferences could be concluded on time and without acrimony and divisive voting.

The prelude

The approach to the 1995 Nuclear Non-Proliferation Treaty (NPT) Review & Extension Conference left observers in no doubt of the historical importance of the Conference and the profound significance, for international peace and security, of the decisions to be taken there. Long before the preparatory process was finally launched by the UN General Assembly Resolution 47/52A in 1992, a number of books and articles were published and strategy sessions in Foreign Offices involving decision-making at the highest levels had commenced in anticipation of the Conference. A series of scenarios were sketched out predicated on the inevitability of a divisive vote on the Treaty extension. Accordingly, the campaign trail of the Western nuclear weapon states and Russia led to the Governments of the NPT states-parties in an orchestrated effort to persuade them on the merits of voting for an indefinite and unconditional extension of the NPT. The support of the UN Secretary-General was also obtained in this campaign.

Thus the highly charged political nature of the Conference was calibrated at an early stage. It was clearly established as a high priority foreign policy objective of the Western and Eastern Groups that the 1995 NPT Review and Extension Conference had to end with an indefinite and unconditional extension of the Treaty. After that objective was set the arguments advanced for this became curiously less important than the gathering in of the required votes. The need for the permanence of the world's most widely subscribed to multilateral disarmament treaty as a strong international legal bulwark against nuclear weapon proliferation had its intrinsic merits especially after the revelation of the Iraqi programme and the threat of DPRK leaving the NPT. And yet its persuasive power had also to depend on the record of achievement in other aspects of the Treaty on nuclear disarmament; on international co-operation in the peaceful uses of nuclear energy; on security assurances for

non-nuclear weapon states; on nuclear weapon free zones especially in the Middle East; on the credibility of safeguards and other issues including the universality of the Treaty.

The Policy Framework for the Extension Decision

The significant reduction of the awesome nuclear arsenals of the USA and Russia through the INF Treaty, START I and START II in the process of ending the Cold War arms spiral was an incontrovertible fact. Never mind that we still had more nuclear arms in 1995 than when the NPT was first signed—an equally incontrovertible fact that the Non-Aligned countries and NGOs kept advancing. Never mind too that nuclear weapons remained very much a part of the security doctrines of the nuclear weapon states whether as a nuclear deterrent, a fallback weapon of last resort vigorously justified under Article 5 I of the UN Charter, or a weapon to be retargeted towards upstart Third World potentates.

However, as the six-part series of Washington Post articles from 10-14 April 1995, revealed, it was the US policy decision to end nuclear weapon tests and negotiate a multilateral nuclear test ban that was crucial. With great intuitive foresight the US Arms Control and Disarmament Agency (ACDA) had seized upon this symbol of nuclear disarmament, which had been held aloft by the Non-Aligned Movement (NAM), at all previous NPT Review Conferences with telling effect. The absence of a CTBT signed, sealed and delivered at the 1995 Conference was not vital as long as there was the irreversible prospect of one in the near term. That prospect was further assured by the strategic US decision to drop its insistence during the CD negotiations on a 10-year exit clause and by the joint UK-French decision to abandon their position on testing in exceptional circumstances. The certainty of achieving a CTBT together with the decision to negotiate a treaty on the cut-off of the production of fissile material (pace the problem of having to deal with stockpiles) miraculously transformed the mirage of a nuclear-weapon-free world into a foreseeable objective.

This significant policy shift on the CTBT was achieved more quickly than the shift on security assurances for non-nuclear weapon states although the latter seemed less controversial. With pressure from the NAM, and most particularly from Arab countries vitally concerned over positive security assurances, the Nuclear Five, now assembled all together for the first time within the NPT regime, laboured long and hard to produce Security Council Resolution 984 on the very eve of the Conference. Within the Five China was ready for a no-first use security assurance while at the other end of the spectrum UK and France held out against Treaty-based legally binding guarantees that the NAM continue to demand.

On none of the other issues of the NPT Conference was there any significant policy progress on the part of the nuclear-weapon states before the

Conference. The reconciliation of the fundamental and inalienable right under Article IV of the Treaty to have access to the peaceful uses of nuclear energy with the existence of export control regimes, and even sanctions against particular countries, remained in abeyance. The modest demands for increased financial resources to developing countries in the NPT even for non-controversial non-power needs in vital areas such as medicine and agriculture were ignored. On nuclear-weapon-free zones, beyond support for the principle—especially in the context of the incipient African zone—no significant change was announced on the long overdue signature of the Protocols to the Treaty of Rarotonga. Finally, on the all-important question of the universality of the Treaty, while the anti-NPT rhetoric of some was effectively neutralized, no moves were evident to persuade the holdout states to join following the admirable South African example.

It was clear therefore, that a least-cost strategy had been adopted to achieve a desired outcome of the 1995 Conference and a high-powered campaign was mounted not only to garner the votes of NPT parties, but also to swell the ranks of the NPT signatories, which finally totalled 178 at the Conference—a handsome 96 per cent of the UN membership. High-level contacts and visits to almost all countries were features of this intensive campaign the success of which, assiduously documented by pro-NPT extension NGOs, began to appear slowly at first until the momentum gathered when the Conference began.

Extension Options and Decision-Making

From my perspective of the Presidency, after the unanimous decision on its incumbent at the second session of the Preparatory Committee in January 1993, it was evident that the Conference should be an occasion for the strengthening of the Treaty and not its weakening. The emphasis on majoritarian principles of decision-making was thus counter productive even if the Treaty stipulated that the extension decision should be taken by a majority. Voting had been avoided at past Review Conferences even though explicitly provided for in the Rules of Procedures, mainly because of the magnanimity and good sense of the NAM who did enjoy the benefits of majority support for their positions at these Conferences. The decision on the extension of the Treaty had also to flow out of a thorough review of the operation of the Treaty although proposals were made for a snap vote on the extension in the first week of the Conference. A decision by consensus was the optimum result for the future viability of the Treaty and its capacity to attract universality. The public display of a division in the ranks of the NPT parties on the extension issue could have serious repercussions for the stability of the NPT regime and for international security.

The danger of a confrontation over the extension issue was real. At the same time, the absence of any clearly articulated alternatives to an indefinite extension with wide support was an advantage to the indefinite extension

camp. Proposals for 25-year rollover periods of extensions, a fixed 25-year period and a fixed shorter period were advanced from time to time without the support from a political or regional group of countries which would have lent them greater weight. These proposals were also not pushed with the same proselytizing zeal of the indefinite extension supporters. This led to pledges of support for the indefinite extension from different regions and different groups making it increasingly difficult for the NAM to evolve its own position on the extension.

By the time the Conference opened on 17th April 1995, the votes were in for a majority decision to extend the Treaty indefinitely. That such a majority would not be the moral victory desirable for the Treaty would not have deterred the supporters of indefinite extension from going to a vote. Evidence of some fragility of the support for an indefinite extension was seen on the eve of the Conference over the debate, in the context of drafting Rule of Procedure 28.3, on whether the extension vote should be conducted in secret or in the open. A simultaneous vote on all draft resolutions had already been accepted as a result of a NAM initiative. This effectively thwarted the move to have a separate and snap vote on the extension alone. The demand for a secret vote, even from countries that were ready to support an indefinite extension, was seen as a defiant assertion of their independence and affirmation of their right to vote in the mode they chose. In the event the problem was never resolved despite consultations right through the Conference and arrangements were made by the Secretariat for both options of a secret ballot and a ballot by name. The adoption of the extension decision without a vote obviated the need for a procedural vote on whether that decision should be voted on secretly or not. The outcome of this procedural vote will, therefore, remain tantalizingly obscure. I was relieved of the onerous task of exercising my prerogative as President to propose an acceptable modality to break this deadlock.

Conference Proceedings

Apart from the dispute on the rule of procedure for voting on the extension decision the preparatory process of the Conference had proceeded remarkably smoothly. It was also well attended, foreshadowing the record attendance of 175 state parties at the Conference itself. Despite some difficulties in the early sessions of the Preparatory Committee, the agenda was agreed upon, including the allocation of items among the three Main Committees; the nomination of the office- bearers unanimously accepted; cost-sharing and background documentation decided on and the Rules of Procedure (sans 28.3 of course) adopted. Exchanges of views on substantive issues, which took place for the first time in the Preparatory Committee revealed the deep differences among states-parties on a number of issues other than the extension of the Treaty.

The General Debate of the Conference showed that a large majority of the speakers favoured an indefinite extension of the Treaty. Consultations by the

President with delegations who remained uncommitted and who did not speak in the debate indicated a clear trend in favour of the indefinite extension option. However, other trends were also evident. Some delegations wanted the right to vote in secret. All wanted concrete steps taken towards nuclear disarmament and were emphatic that the indefinite extension of the Treaty was not a carte blanche for the nuclear weapon states to retain their monopoly over the possession of these weapons forever.

The statement of the Foreign Minister of South Africa in the general debate was one of the defining moments of the Conference. While announcing his delegation's decision to support the indefinite extension of the Treaty, he called, *inter alia*, for a Declaration of Principles on Nuclear Non-Proliferation and Nuclear Disarmament as a 'yardstick' to measure the implementation of Treaty undertakings and a strengthening of the Review Process. These ideas proved influential and provided the building blocks for the agreement that was finally reached. The failure of the Bandung Conference, held in the second week of the NPT Conference, to forge a common NAM position on the extension decision and the mode of voting weakened the opposition to the extension decision. An unfortunate mood of 'triumphalism' was displayed by some Western delegations confident of the unassailable majority they had gathered.

Three draft resolutions were finally tabled by the due date. They were the draft resolution for an indefinite extension with a co-sponsorship that showed an obvious majority; a draft resolution by Mexico for an indefinite extension but with a number of measures that went along with it; and, finally, a draft resolution by the 'like-minded States' within NAM led by Indonesia for an extension by 25 year roll-over periods with a review and extension conference at the end of each period. The task of voting simultaneously on these three draft resolutions would have been both difficult and confusing. The Mexican resolution was attractive to many that had co-sponsored the bald decision on indefinite extension and the result was, therefore, not a foregone conclusion.

Conference Management and the Evolution of a Decision Without Voting

The history of the past Review Conferences had been a chequered one with two out of four failing to produce a Final Declaration due to a lack of consensus. The importance of sound Conference management and confidence and trust amongst the key players were obvious needs if the 1995 Conference was to succeed. Thus, a timetable with the front-loading of the Conference to ensure that the review aspect was completed by the end of the third week leaving the final week for the extension decision was one of the strategies devised. In the event the review and extension aspects were so closely inter-twined that a strict separation was not possible. Moreover, the President's Consultations, which began in earnest in the second week, focussed largely on the extension decision, leaving the Main Committees to discuss the review of

the Treaty. This was to have its repercussions especially with regard to the disarmament aspects of the review, which were finally responsible for the failure to agree on a Final Declaration.

The device of the President's Consultations for the negotiation of key-decisions was an expanded version of a similar group used in the 1985 Review Conference. The fact that the Consultations included group co-ordinators who were encouraged to report to their constituencies on its proceedings and bring back responses ensured transparency and accountability .This mechanism of consultations was used to good effect in negotiating the Decision on Principles and Objectives for Nuclear Non-proliferation and Disarmament and the Decision on the Strengthening of the Review Process for the Treaty. In the final week, the President also presented his proposal for a Decision on the Extension of the Treaty which was finalized in the group before presentation to the groups and, thereafter, to the Conference.

In addition to the President's Consultations, the General Committee was also used as a clearinghouse for administrative problems in the Conference as well as a discussion forum for some of the issues that were discussed in the President's Consultations. Further transparency was ensured by weekly Press Conferences held by the President at which the Chairman or their representatives of the Committees were also invited to be present.

Following the South African initiative, the shape of an agreement became clear mid-way during the Conference. A package consisting of a declaration of principles on nuclear non- proliferation and nuclear disarmament, a strengthening of the review process of the Treaty and an agreement on the universality of the Treaty especially in the Middle East, was considered to be the goal. Out of a concern that the delicate negotiations should not be ruptured, delegations did not make it explicit that the basis of this agreement would have to be some recognition of the ground reality that a majority existed in the Conference for an indefinite extension. A key contribution to the emerging consensus was provided by the Indonesian Foreign Minister Ali Alatas, who arrived in New York after the Bandung meeting and was briefed by the President on the package. He proposed, *inter alia,* a more explicit linkage between the documents on the Principles and Objectives of Nuclear Non- Proliferation and Nuclear Disarmament and the Strengthening of the Review Process of the Treaty. This resulted in three parallel decisions being presented to the Conference with built-in linkages although it was acknowledged that while the extension decision was legally binding the other two decisions were politically binding. By the beginning of the fourth week, the two draft decisions on the Principles and Objectives of Nuclear Non-proliferation and Disarmament and the Strengthening of the Review Process of the Treaty were in final shape. The crucial, legally binding draft Decision on the Extension of the Treaty was crafted by the President and presented on Monday, May 8th. After subsequent discussion at the President's Consultations, it was finalized and was ready for adoption on Wednesday,

May 10 as envisaged in the Rules of Procedure. At that point it was necessary for urgent consultations to be conducted on the Middle East issue to ensure that Arab states-parties would find it possible to accept the draft Decisions without a vote.

On this vexed problem a separate track of negotiations conducted without the involvement of the President had reached a stalemate. The request for its inclusion as part of the package, resulted in accelerated activity under the aegis of the President and finally concluded with a Resolution that could be adopted without a vote. The resolution was co-sponsored by the three depository States of the Treaty, adding great weight to the call for universality of the Treaty in the Middle East and the acceptance of IAEA safeguards on nuclear facilities in the region. Thus, the Conference was able to adopt three parallel decisions and a Resolution on the Middle East on Friday, May 11th bringing to a successful conclusion the extension aspect of the Conference. Regrettably, the focus of attention on the extension issue had resulted in less time and diplomatic effort being devoted to the review aspect. In a strangely ironical comment on the decision just adopted to strengthen the review process, the 1995 Conference was unable to agree on a Final Declaration. The reasons for this were complex, but the lack of time and preoccupation with the extension decision were clearly dominant. It would not be accurate to read into this failure anything more than this. Nor would it be right to base pessimistic forecasts for future review conferences on this experience

The Future of a Permanently Extended NPT

Only history can judge the wisdom of the decisions taken at the 1995 Conference. If the pledges made in the politically-binding decisions on the Principles and Objectives of Nuclear Non- proliferation and Disarmament and the Strengthening of the Review Process of the Treaty were fulfilled within the shortest possible time frame, the decision to extend the Treaty indefinitely would be vindicated. However, any departure from the sincere implementation of the decisions will lead not only to cynicism over the freedom and democratization of the post Cold War world order but also to a dangerous build-up of dissatisfaction amongst a majority of Treaty parties, who could at any moment, invoke their rights under Article 10: 1 and leave the Treaty even if it was not to acquire nuclear weapons. This erosion in the confidence of the Treaty and its objectives must never be allowed to happen. The impermanence of permanence should not be put to the test. On 7 June 1995 the NAM Co-ordinating Bureau meeting in New York established a new standing committee on disarmament chaired by Indonesia whose task, inter alia was to monitor the implementation of NPT undertakings and 1995 NPT Conference commitments.

A number of undertakings had to be fulfi11ed in the short term and they included the conclusion of a genuine CTBT 1996. This helped to ignore the

nuclear weapon tests conducted by France and China shortly after the 1995 Conference concluded. The following chapters will describe and analyze the proceedings of the Conference and subsequent developments that could have an impact on the future of the NPT. Some have argued that the success of the Conference together with the conclusion of the CTBT influenced India to test its nuclear devices and declare itself a nuclear weapon state with Pakistan following suit. Others have argued that faced with the permanence of the division between nuclear weapon states and non-nuclear weapon states cheating and clandestine development of nuclear weapons was inevitable.

The success of the 1995 Conference, despite the negative interpretation of some, illustrates the enormous potential of multilateral disarmament conferences for constructive progress. The tensions and the prevailing differences of opinion did not obstruct a final outcome that was acceptable to all. Its real durability now depends on the sincerity with which the decisions will be observed in the future.

II. THE 1995 CONFERENCE PREPARATORY PROCESS

Introduction: Setting the Context

The best way to frame the context of the NPT Review and Extension Conference (NPTREC) of 1995 is to begin by recognizing that the event did not occur in a historical vacuum. It occurred instead in the context of historical events and conditions on two levels. There was what might loosely be called an internal context, and an external context. While these contexts did not inexorably determine the outcome of that historic conference, they surely affected the process leading up to the event as well as its actual deliberations.

Throughout the brief description of these various contexts that follow, it should be borne in mind that while the broader context in many ways influenced the review process, I believe it is fair to say that—in ways we can only at this point imagine given the relatively recent nature of these events—the NPTREC itself in some way may have had its own impacts upon broader conditions of international peace and security.

If the language of the treaty and its various interpretative understandings that followed from its various Review Conferences are fully implemented, these unique NPT contributions to world security will become more apparent to all and will be uniformly positive. Unfortunately, the reverse is also true: if the treaty is interpreted through spurious legal reasoning to justify the perpetual possession or acquisition of nuclear weaponry—or quasi-imperial nuclear market relationships governing the peaceful use of the atom—events relating to the evolution of this treaty could well produce profoundly negative effects for the security of all countries. So while *context counts*, so do concrete outcomes.

The External Context

A historian of the deeper roots of the NPT would no doubt trace its original roots to concerns that existed even before the nuclear attacks on Hiroshima and Nagasaki in 1945. It is well known that various scientists and key policy makers recognized at the time that the US nuclear monopoly would be short-lived—i.e., that proliferation would be inevitable, a prediction that unfortunately proved to be quite accurate, as first the Soviet Union, then the United Kingdom acquired the bomb, followed in a few years by France and China, thereby rounding out the current set of countries recognized in the NPT as 'nuclear-weapon states.'

In the years following the strategic nuclear rivalry between the United States and the Soviet Union in the late 1950's—years noted for the collapse of early post-war efforts to establish international controls over conventional arms and to eliminate nuclear weapons; the advent and rapid development of inter-

continental missiles; the conduct of hundreds of nuclear tests in many geographical environments; belligerent nuclear doctrines that included possibilities of first strikes and attacks on cities; the nuclear scare presented by the Cuban Missile Crisis, and other such worries—the world community came increasingly to recognize the need for a multilateral legal instrument to halt the proliferation of nuclear weapons and to seek their eventual elimination.

As global challenges, non-proliferation and disarmament could simply not be achieved by the foreign or defence policies of a single country, even one allied in a ad hoc coalitions of the willing. Something more was required, something multilateral in the fullest sense of the term, something permanent. That 'something' proved to the be the NPT—a treaty boldly aiming not just to put the 'bad nuclear genie' back in its bottle, but to ensure that the ' good disarmament genie' will remain free to serve humanity.

These developments and these visions of a better world together comprise the 'external' context leading ultimately to the signing of the NPT in 1968 and its entry into force two years later. The external context, of course, did not stop influencing the NPT in 1970, as subsequent developments produced their own independent effects upon the treaty regime. The bipolar nuclear rivalry between the United States and the Soviet Union resulted in a substantial increase in the nuclear arsenals of both countries, notwithstanding the disarmament obligations of both parties described in Article VI of the treaty. Subsequently, with a growing 'détente' between the nuclear superpowers, and later with the collapse of the Soviet Union and the end of the Cold War, hopes grew throughout the world community for concrete progress in fulfilling the full promise of the NPT, in particular its aim of eliminating all nuclear weapons.

The NPTREC was, significantly, the treaty's first Review Conference involving the participation of all five nuclear-weapon States. It was also the first such Review Conference to occur since the end of the Cold War. Though the external environment was rapidly changing, however, many geopolitical hallmarks of the old balance of power lingered on—and in the eyes of many, continue to the present day. These include the persistence of tens of thousands of nuclear weapons (many on hair trigger alert), the lack of verifiable data on the size of these stockpiles, ongoing efforts to improve existing arsenals, the persistence of first-use nuclear doctrines, continued foreign deployment of nuclear weapons, the continued production or use of nuclear-weapons material (plutonium and highly-enriched uranium), the development of new long-range delivery systems, the existence of various supplier cartels and exclusive export control regimes, and many other such features of the bygone Cold War era.

Overlaid against this tapestry of nuclear-arms competition were the growing demands from the vast majority of peoples of the United Nations for assistance in meeting dire needs for economic and social development. And as populations continued to grow, so grew the demands for energy, with its consequent effects upon our common global environment. The NPT's

'external' environment was thus shaped by an array of military, political, economic, and environmental issues that were inherent in broader trends of contemporary international relations. Attempts to understand what happened in the NPT's review process require close recognition of the importance of these considerations—indeed, I believe that disputes over the terms for the peaceful uses of nuclear energy, non-proliferation, and disarmament simply cannot be understood apart from the impacts from these broader contexts which have spawned and nurtured just such disputes. The NPT is, in this sense, both a mirror of our external world, and a valuable instrument to improve it.

The Internal Context

While it is difficult for individual states to dominate the entire international environment in every issue area, the 'internal' context of the treaty, however, is quite another matter, for here we see enormous possibilities for constructive action by individual States—and as we will see, even individual persons—in wilfully shaping the evolution of events.

To be sure, much of the NPT's internal process is subject to the vagaries of chance, drift, complacency, incompetence, and other such hallmarks of diplomacy (both national and multilateral). Just as context counts, so does process: the internal process of deliberations does indeed have a significant bearing upon outcomes. The calibre of leadership within key political groups, the various capabilities provided by the United Nations Secretariat, the political and public relations skills of the non-governmental organizations, and what I collectively call the basic skills of 'conference management' have a lot to do with concrete outcomes in the NPT process. It is true, major decisions are still made in the national capitals of the States parties—yet it would be grossly misleading to construe the NPT review process as being driven by 'remote control.' Far from it, the skills of individual participants have a great deal to do with concrete results. So also does the personal 'chemistry' among individual participants irrespective of the sharp political divisions or alliances that may exist among them. I recall that at the 1985 Review Conference Ambassador Lew Dunn of the USA had a difficult task to follow his brief under the Reagan Administration. And yet with patient personal diplomacy he won the confidence and friendship of other key participants. This enabled a constructive compromise to emerge especially on the controversial issue of the CTBT. The 1990 Review Conference, in contrast, saw the reverse happen with soured personal relationships among key delegates aggravating the political problems.

A distinguishing characteristic of the NPT review process is the extent to which it is volitional—when a Final Declaration emerges from a Review Conference, it emerges because the States parties wanted it to emerge. Similarly, when a Review Conference is unable to reach the consensus needed

to produce such a declaration, this too is a 'willed' outcome. Some people like to use the term, 'failure,' to describe a Review Conference that is unable to agree on a Final Declaration. In a sense, I suppose this would be correct, if the intended meaning is to denote a failure of political will. Thus blaming a review process for its 'failure' to produce a Final Declaration is somewhat akin to blaming a thermometer for high readings on a hot day !

By and large, such 'failures' may more often and more appropriately be laid at the doorstep of individual States parties rather than some inherent structural or institutional flaw in the treaty regime itself. Such flaws, however, do undeniably exist and indeed part of the whole purpose of the review process is to discover improved ways and means to implement the treaty. Time and again, when a particular Review Conference is unable to reach a consensus on a Final Declaration, this 'failure' is likely a mere symptom of some deeper political problem that is of great concern to a determined group of States parties. These concerns may relate to some dissatisfaction with the internal treaty review process or it may reflect external realities of the broader international political environment. The review process is in this sense a kind of instrument for gauging the overall health and vitality of a treaty regime. Perhaps a barometer may be a better analogy—the review process can be a pretty good predictor of whether one should prepare for storms or sunny weather. As we shall see, this is particularly true of the review conferences leading up to NPTREC.

One final caveat is in order as a prelude for interpreting the results of past Review Conferences: the NPT is a unique multilateral legal instrument in that one of its key provisions included a provision for a review conference. Article VIII (3) provides that:

> Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments [i.e., the United States, United Kingdom, and, at the time, the Soviet Union], the convening of further conferences with the same objective of reviewing the operation of the Treaty.

The specific caveat is that the NPT Review Process is not a sterile or immutable bureaucratic exercise: it is fundamentally a *learning* process, subject to change and adaptation over time. It could also, unfortunately, be approached by some states parties as a ritualistic exercise to be endured so that the status quo can be preserved.

Review Conferences Leading up to 1995: An Overview

There were four Review Conferences prior to the historic 'Review and Extension' Conference in 1995. The first four (in 1975, 1980, 1985, and 1990)

took place in Geneva, while the NPTREC convened at UN Headquarters in New York. Participation at each five-year event reflected the growing treaty membership—from 91 States parties in 1975 to 40 in 1990. In 1995, 175 of the treaty's 178 States parties were in attendance, a statistic that no doubt reflects both the unique and historic nature of the 'extension' decision and the venue: more countries, particularly from developing countries with small missions, were able to participate at an event taking place at UN Headquarters than at the Palais des Nations in Geneva. With respect to outcomes, the States parties attending the Review Conferences of 1975 and 1985 were able to reach a consensus on a Final Declaration, while those attending the corresponding events in 1980 and 1990 'failed' to reach such a consensus, in the sense I have discussed above. The various events associated with these four Review Conferences collectively constitute the 'internal' context for the conference in 1995.

1975

The 1975 Review Conference (which took place from 5 to 30 May) was unique in that it was the first to take place under the treaty, and as such, it in many ways served as a precedent for substantive debates and procedural deliberations to continue in subsequent years. It became quite apparent both in the preparations for this event and in its actual unfolding that various groups of States parties would coalesce around their respective policy preferences. Hence we saw in 1975 some solidarity among the three nuclear-weapon States (NWS) in attendance (then, the United States, United Kingdom, and the Soviet Union)—supported by many members of the Eastern and Western blocs—on issues relating to (*inter alia*) the treaty's universality safeguards standards, while many developing countries associated with the Non-Aligned Movement (NAM) focused more on disarmament, the need for legally-binding security assurances, and peaceful uses of nuclear energy. As a harbinger of concerns that would persist in the subsequent Review Conferences, there were significant disagreements over whether the NWS had fulfilled their disarmament obligations under Article VI. Some non-nuclear weapon States (NNWS)—along with many other states—strongly urged the conclusion of a Comprehensive Nuclear-Test-Ban Treaty (CTBT) and progress in arranging for legally-binding security assurances. Some NNWS also argued that the treaty's safeguards system placed them at a disadvantage to non-parties who were still able to engage in peaceful nuclear cooperation outside the treaty.

Despite these disagreements, and due in no small degree to the determination and diplomatic skills of the Conference's President, Mrs Inga Thorsson of Sweden, (a strong personality whom I only got to know in her declining years) the 1975 Review Conference reached a consensus on a Final Declaration. The States parties had agreed to establish a Drafting Committee, but when it was unable to reach a consensus on language dealing largely with

nuclear disarmament, Mrs Thorsson drafted a Final Declaration that described her own views on the broad themes of the Conference. Following further deliberations and amendments, this text ultimately was able to command a consensus. Mexico, speaking for the 'Group of 77,' stated that while it would not oppose the consensus, it would insist that its interpretative statement be included in the final document behind the Final Declaration.[1]

1980

The Second NPT Review Conference was not so fortunate, in the sense that it was unable to reach a consensus on a Final Declaration, following extensive deliberations from 11 August to 7 September. The substantive agenda was quite similar to the one deliberated in 1975, as was the general configuration of groups, with the NWS and the developed NNWS battling the NNWS from less developed countries on familiar issues. Once again, Article VI proved to be a fertile ground for debate—over disarmament, security assurances, the need for a CTBT, and other related issues. Many delegations urged further efforts toward universal membership. Several States parties voiced concerns over ongoing nuclear cooperation with non-parties that did not have full-scope or 'comprehensive' safeguards, as required of NNWS under Article III of the treaty. Many NAM countries voiced concerns over the apparent discriminatory nature of controls in the field of the peaceful uses of nuclear energy. The debate also featured more discussion of compliance with the non-proliferation obligations under the NPT (Articles I and II). Hence the expansion of the treaty's membership (from 91 at the 1975 Conference to 112), did not have a significant impact in achieving new progress on the major issues of contention. It may be that the consensus reached at the General Assembly's first Special Session on Disarmament in 1978 may have created some higher expectations among many of its participants from across the globe—expectations that led to new frustrations over the slow record of achievement in the field of nuclear disarmament. This was the first Review Conference which my country, Sri Lanka, attended having ratified the NPT between the two Conferences.

1985

The NPT's 1985 Review Conference took place from 27 August to 21 September in Geneva. I led the Sri Lanka delegation and, having already presided over the final PrepCom, I also chaired Main Committee I. By now

[1] For further discussion on this and on the issue of consensus at other Review Conferences before 1995, see Ben Sanders, 'NPT Review Conferences and the Role of Consensus,' ISSUE BRIEF No. 4, April 1995 (Mountbatten Center of International Studies, University of Southampton, UK), p. 2-3. See also 'Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons' (New York: United Nations Department for Disarmament Affairs), 2000, p. 20-29.

the treaty's membership had grown to 131. This Conference took place in a significantly changed international security environment. In 1981, Israel had attacked and destroyed Iraq's safeguarded nuclear reactor in Baghdad. The Soviet and US weapons stockpiles grew to their Cold War peak in this general period (recognizing here that we do not have verifiable figures on the actual size of these arsenals, neither then nor now). There were persisting concerns over nuclear-weapon-related activities in various non-parties (e.g., Israel and South Africa, among others). Once again, Article VI issues focused on the lack of significant progress in eliminating nuclear stockpiles, the lack of legally-binding security assurances for the NNWS, and the perennial absence of the CTBT. The 'success' of this Conference in at least agreeing to a Final Declaration was due in large part to my ability to resolve a large number of contentious issues in Main Committee I and the efforts the Conference President—Ambassador Mohamed Shaker of Egypt—who relied upon a small, informal group of advisers consisting of the Committee Chairmen (there were now three Main Committees), representatives of regional groups and the Depositary States, along with various heads of delegations, members of the Secretariat, and other individuals. The aim was to reach compromises on the text of a Final Declaration—which resulted in some language that could be characterized as representing an 'agreement to disagree,' over issues including the CTBT. As in 1975, the NAM agreed not to have a vote on their declaration, but to have it included in the Final Document; other language so disposed related to the nuclear 'freeze' and attacks on nuclear facilities. Thus, while the participants recognized that a vote on the contentious items would make consensus impossible, they also demonstrated some willingness to reach compromises on general issues while preserving the integrity of national positions. As later summarized by Ben Sanders, 'Consensus' on the Final Declaration was obtained through the artifice of carrying statements that could not be agreed to as separate parts of the Final Document.[2]

1990

The NPT's fourth Review Conference was held on 20 August to 14 September 1990, and like the 1980 Conference, it was unable to reach a consensus on a Final Declaration. The total number of States parties had now grown to 140. Again, the CTBT, lack of nuclear disarmament, and the need for binding security assurances figured prominently in the deliberations over Article VI. Concerns among many developing countries over perceived obstacles to the peaceful use of nuclear energy had grown. Some delegations questioned the effectiveness of IAEA safeguards, especially in the context of growing concerns over suspicious nuclear activities in Iraq, a NNWS under the treaty. The continuing inability of the NWS to conclude a CTBT surely did not help

[2] Sanders, p. 3.

to foster a consensus on a Final Declaration. In his account of the Conference, Ambassador Thomas Graham of the US delegation subsequently offered his own explanation, 'Miguel Marin-Bosch [of the Mexican delegation] … single-handedly wrecked the 1990 NPT Review Conference over the CTBT issue.'[3]

I was a frustrated observer of the collapse of this Review Conference—having taken a leave of absence from my Government to accept the post of Director of the United Nations Institute of Disarmament Research (UNIDIR). As I have noted already, the bad personal rapport among some delegates—even within the same regional group—contributed to an atmosphere that was scarcely conducive to the success of the conference. Poor conference management skills were also evident. Some of us from the Core Group of the Programme for the Promotion of Nuclear Non-proliferation (PPNN)—an informal group that was formed after the 1985 Review Conference by Ben Sanders and John Simpson—huddled together on the final night to devise ways and means of salvaging the Conference but it was too late.

Activities of the Preparatory Committee to the 1995 NPTREC

The Preparatory Committee (PrepCom) for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was established in accordance with U.N. General Assembly resolution 47/52A of 9 December 1992. The PrepCom met for four, well-attended sessions (instead of the customary three) between 1993 and January 1995, in addition to a short inter-sessional meeting in April 2005 to address voting procedure ('rule 28'). Collectively, the activities at these events served as somewhat of an extended, dress rehearsal of many of the major substantive and procedural issues that would come to dominate the 2005 NPTREC.[4] Consistent with past practice, the PrepCom decided that the Conference would have three Main Committees (dealing respectively with non-proliferation and disarmament matters, safeguards and nuclear-weapon-free zones, and peaceful uses of nuclear energy). There would also be a Drafting Committee (to draft the Final Declaration), a Credentials Committee (to confirm the credentials of delegates), and a General Committee composed of Conference officials with responsibility for overall management.

The First and Second PrepComs

Relative to the work of the Third and Fourth PrepComs, there is actually little to say about the first two PrepComs, which took place respectively on 10-14 May 1993 and 17-21 January 1994, both in New York. The primary focus of

[3] Thomas Graham Jr., *Disarmament Sketches* (Seattle: University of Washington Press, 2002), p. 275.

[4] For a more detailed description of the activities of the PrepCom, see 'Final Report of the Preparatory Committee for the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,' NPT/CONF.1995/1, 1 February 1995.

all the PrepComs was on procedural issues, with substantive issues the focus of some discussion during the exchange of views. How the procedural issues were resolved, however, and the manner in which they were resolved, very definitely are questions pertaining to a distinctly political process.

The procedural questions addressed at the first two sessions were relatively non-controversial and included such matters as electing the chairpersons of the early sessions of the PrepCom, establishing the location of the Review Conference, requesting background papers (several of which related to nuclear disarmament) from the Secretariat, inviting the Director General of the IAEA to prepare background documentation relating to safeguards and peaceful uses, while also inviting the Director General of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) and the Secretariat of the South Pacific Forum to prepare background papers dealing with their respective nuclear-weapon-free zones. The UN Secretary-General's representative to the PrepCom was Mr. Prvoslav Davinic, the Director of the UN's Centre for Disarmament Affairs.

At the first session, Poland (representing the Group of Eastern European States) announced it wished to propose a candidate for the presidency of the NPTREC and Indonesia (on behalf of the Group of Non-Aligned and Other States) offered my own name as a candidate. Following Poland's decision at the second session to withdraw its candidacy, the second session unanimously endorsed my own candidacy for that position. This early endorsement was invaluable in my efforts to engage in private consultations with numerous delegations to prepare myself for the heavy responsibilities I would face in 1995.[5]

My decision to offer myself as President was probably conceived as I watched the collapse of the 1990 Review Conference. The-then President of Sri Lanka, Ranasinghe Premadasa, had no problem with sponsoring my name when I talked to him about this shortly after I returned to Sri Lanka from my UNIDIR assignment. However some tortuous bureaucratic procedures and obstructionism in Colombo had to be endured before my able colleagues in New York—Nihal Rodrigo and H.M.G.S. Palihakkara—piloted the nomination through.

The second session also agreed to allow representatives of non-party States to attend as observers, while the third PrepCom agreed to give representatives of inter-governmental organizations similar status. The second session also agreed to allow NGO representatives to observe open PrepCom meetings, starting with the Third PrepCom—all together, 91 NGOs attended meetings of the Committee. I had always believed that the efforts of the NGO community were vital to the achievement of disarmament goals and worked hard during

[5] Earlier, I had served as Chairman of the third PrepCom for the Third Review Conference in April-May 1985, and later as Chairman of Main Committee I of the Third Review Conference, which took place in September of that year.

the NPT review process an later in my capacity as Under-Secretary-General for Disarmament affairs to enhance their participation in that process and in activities elsewhere in the U.N. disarmament machinery.

It was already apparent in these early meetings, however, that a significant number of states supported an indefinite extension of the treaty, and that an equally significant number of states wished to tie the duration of the extension to concrete results in fulfilling treaty obligations, particularly with respect to nuclear disarmament. Recognizing the importance of the 1995 Conference, the second session decided to make 'every effort' to adopt its decisions by consensus, and if that proved not possible, it would then take decisions in accordance with the rules of the procedure of the Fourth Review Conference. I realized at the time that a divisive vote on the extension of the treaty would be dangerous to the NPT regime and therefore devoted quite literally 'every effort' over the years to follow in trying to forge such a consensus. Fortunately, there was overwhelming support for an extension per se—my task was to seek a consensus on precisely how this was to be accomplished.

The Third and Fourth PrepComs

By the time of the Third PrepCom in September 1994, however, the scope and depth of the divisions among NPT States parties were becoming much clearer. In short, there was substantial evidence of a growing North-South split on many treaty-related issues. This was especially evident with respect to nuclear disarmament, where the NWS and many states of the Western and Eastern Groups were relatively satisfied with the track record of progress in disarmament, to the dismay of most states of the Non-Aligned Group (coordinated by Indonesia), which saw little to celebrate, and much to criticize both with respect to the lack of disarmament and what many saw as obstacles to peaceful uses of nuclear energy.

The concerns of the Non-Aligned Group related largely to the historical legacy of past review conferences, or what I have described above as the 'internal context' of the NPT. Based on the lack of progress in many areas of great importance to this Group—including the CTBT, a fissile material treaty, security assurances, and nuclear disarmament[6]—suspicions grew within this Group that the 'review' half of the 1995 Conference would be eclipsed by the juggernaut on behalf of the indefinite extension, led by the NWS in alliance with the Western and Eastern Groups. Another concern facing the Group was that this juggernaut would move for a snap vote early in the Conference, thereby substantially weakening the 'review' part of the event—a horrible

[6] As testimony to the long-term stability of the goals of the Non-Aligned Group with respect to disarmament issues, the 'Group of Eight' non-aligned States raised these same four concerns in a document submitted to the Eighteen Nation Committee on Disarmament in 1966 during the negotiation of the NPT. See Joint Memorandum on Non-Proliferation of Nuclear Weapons (ENDC/178), UN Document DC/228 (1966).

outcome for the Non-Aligned Group given its conviction that the two parts of the Conference were inextricably linked. Unfortunately for the Group, its members voiced widely divergent views and many were the subject of heavy lobbying or what many have called 'pressure' to support the indefinite extension. There were also significant differences among the members on what specific conditions should be attached to the treaty extension, how long the extension should last, and what criteria should be used to gauge progress in achieving disarmament goals. In contrast to these divisions, the coalition in favour of an indefinite extension had a clear and unambiguous goal and enjoyed the backing of the most powerful countries, measured at least by military and economic strength.

As President-designate I had, perforce, to opt out of an active role in the NAM group. At the same time I could see that the lack of energetic leadership prevented the NAM from forging a united position on the extension issues before inroads were made into their ranks by the advocates of an indefinite extension.

The Third PrepCom also left several important procedural issues unresolved—there was no agreement on who should chair the next PrepCom meeting, and no agreement on the distribution of Conference chairs. Ultimately, the PrepCom did agree to recommend a Nigerian candidate (Isaac Ayewah overcame a challenge from the more experienced Venezuelan Ambassador Adolfo Taylhardat) to be the chair of Main Committee I, a Hungarian candidate (André Erdös) for Main Committee II, a Dutch candidate (Jaap Ramaker) for Main Committee III, a Polish candidate for the Drafting Committee (Tadeusz Strulak—who had withdrawn his candidature for the post of President recognising the strength of the NAM and respecting the established practice), and a then-unnamed non-aligned candidate for the Credentials Committee.

Since the first and second PreComs had deferred the decision on the agenda, the third PrepCom took up the issue. After Iran objected strongly to a recommendation by the chairman of the third PrepCom, Ambassador Ayewah, that a decision on the extension should come before the reports of the Main Committees, the PrepCom was able to reach a compromise in which the extension decision would come after the conclusion of the review but before the adoption of the Final Document. The organization of work at the NPTREC eventually made this academic.

The Third PrepCom was not able to resolve the issue of voting procedure—including how various proposals would be voted upon, what order they would be considered, whether the votes would be in secret or recorded, etc. After the Fourth PrepCom also could not reach such an agreement, an informal intersessional consultative meeting took place in New York on 14-15 April 1995, just a few days before the conference. Article X(2) of the NPT had explicitly stated that the extension decision 'shall be taken by' a majority of the Parties to the Treaty—but it did not prescribe any specific voting

procedure. The participants at the April intersessional meeting agreed that the voting would take place on the May 10 if no consensus had been reached, and agreed that if no proposal had a majority, the one with the smallest number of votes would be dropped and voting would resume in a subsequent round—a voting proposal originally introduced by Indonesia. As of the start of the Review Conference, there was still no agreement on the issue of secret voting—while the Western and Eastern Groups favoured recorded voting, the Non-Aligned Group sought a secret ballot to protect their members from pressure tactics of the proponents of the indefinite extension.

During the PrepCom deliberations, George Bunn and Charles Van Doren—two experienced NPT authorities—explored the possibilities of a series of automatic 25-year extensions, in which the treaty would be extended for 25 years and automatically re-extended for the same amount of time unless there was a majority vote against.[7]

Venezuela, meanwhile, proposed a 25-year extension followed by another review and extension conference, though the proposal ran into some legal objections relating to the lack of explicit legal authority in the treaty for convening a second conference for such a purpose.[8] Later, the South African delegation proposed a modified version of the Bunn/Van Doren option, providing for 25-year extensions upon the positive vote on behalf of each such extension.[9] In addition, the Nigerian delegation offered a proposal for the UN Secretariat to prepare a legal interpretation of the treaty's Article X(2) and the legality of different extension options—when no agreement was reached, Nigeria subsequently took the issue to the General Assembly, which adopted a resolution requesting the Secretariat to prepare a compilation of States Parties' views, opinions, and legal interpretations of that article.[10] In sum, while the Non-Aligned States were opposed to an unconditional, indefinite extension, they were unable to unite behind a concrete counter-proposal.

An unusual fourth PrepCom session was needed in 23-27 January 1995 to work on some additional unfinished business leading up to the Review Conference, including the adoption of the provisional agenda and the financial arrangements, and the appointment of conference officers. The session was unable, however, to finalize the draft rules of procedure, so it agreed that the chairman of an informal working group would hold further informal consultations on rule 28.3, which dealt with voting. Those consultations were

[7] George Bunn and Charles Van Doren, 'Two Options for the 1995 NPT Extension Conference Revisited (Washington, D.C.: Lawyers Alliance for World Security, 1992).

[8] Statement by the Permanent Representative of Vienna, Ambassador Adolfo Taylhardat, to the Third Session of the Preparatory Committee of the Conference on the Review and Extension of the NPT, 13 September 1994.

[9] Statement by Mr. F. O. Bergh, Deputy-Permanent Representative of South Africa to the Fourth Meeting of the Preparatory Committee of the 1995 NPT Review and Extension Conference, 24 January 1995.

[10] UNGA Resolution 49/75F, adopted on 15 December 1994 by 103 votes to 40 (mostly from members of the Western and Eastern Groups) and 25 abstentions.

held on 14-15 April. Ultimately, the difficult voting issue (which involved conflicting proposals for secret vs. recorded voting methods and procedures for dealing with a vote that failed to produce a majority) proved to be somewhat moot, given that the Review Conference's three Decisions and the Middle East Resolution were adopted without a vote.

The PrepCom in Retrospect

The various meetings of the PrepCom to the NPTREC were important in many respects beyond their role in laying the procedural and administrative foundation for the indefinite extension. They also established a precedent for future PrepComs to consider substantive issues and hence offered a rudimentary model for the subsequent decision in 1995 on strengthening the review process. They also achieved some progress in opening up the NPT review process to greater participation by NGOs. And, surprisingly enough given the many differences voiced among the States parties, the PrepCom was able to reach agreement on all but two thorny procedural issues—the nature of the NPTREC's Final Document(s) and voting procedure for the decision on the extension. It did what a PrepCom is supposed to do: recommend ways in which the Review Conference should conduct its business, and prepare States parties for the complex diplomacy that lies ahead.

Most importantly, however, they—and the Review Conference to follow—ultimately showed how a multilateral process can genuinely work to advance the security interests of the States parties, while strengthening international peace and security. Though most of the activity in the PrepComs was focused on procedural issues, the line between procedural and substantive can be at times blurred, even non-existent. In a political environment characterized by actors with widely-shared interests in international peace and security—but widely-divergent priorities with respect to the actions needed to achieve such goals—it should come as no surprise to find hard-fought, at times testy debates at various stages in this process. Given the 'sovereign equality' of all Member States under the U.N. Charter, we should view such differences not simply as an endemic quality of our current system of nation-states, but in this specific context, a sign of the importance that the States parties attach to the future of their treaty. In this sense, nothing would be worse for the NPT than a silent review process, or one in which nobody deemed worthy to attend.

By the end of the last session of the PrepCom, it was quite apparent that the NPT would be extended, though it was not entirely certain that the extension would be indefinite or without conditions. Clearly, much work lay ahead, and the Review Conference was just around the corner.

III. GROUP POSITIONS AT THE CONFERENCE

Introduction: Why Groups Matter

Only States matter—or some may say. After all, only States can conclude treaties, and only States can become members of the United Nations. Only states have formal legislatures, constitutions, armies, spy services, mints, and tax authorities. Yet the past, present, and future of the NPT simply cannot be adequately understood when viewed exclusively through the lens of the State, viewed as the solitary meaningful 'actor' in world affairs. Understanding this is the first step to understanding the underlying political dynamic that influences the evolution of the NPT and many other treaties.

Consider briefly the changing nature of international society—what I have called earlier the 'external context' of the NPT. We see a proliferation of States, along with groups both within and between those states. We see a proliferation also of intergovernmental organizations set up by States to address their common goals. We see the rapid growth of non-governmental organizations (NGOs) that have both direct and indirect influences on the design, implementation, and reform of State policies.

Amid this ever-changing structural environment, we also see a growing complexity of issues facing States, as the factors that States must consider in designing their national policies increasingly becomes global in scope, under the inexorable influences of modern advancements in communications technology, the ease of international travel, expanding markets, and growing awareness of the reality of 'transnational' challenges pertaining to the environment, health, and of course, international peace and security.

Adding to this complexity is the proliferation of groups within countries and even within their own State bureaucracies. Today, 'foreign affairs' is rarely the exclusive prerogative of ministries or departments bearing that name—national policies, as a result, are themselves often compromises or the product of bargains among diverse groups both inside governments and, I believe increasingly even with groups in civil society.

In such a climate, when States parties to a treaty like the NPT meet to deliberate its future—and when they are obliged to reach decisions about the future of that treaty in a highly-restricted time frame—the importance of group dynamics becomes all the more apparent and undeniable. This basic reality has profound implications for the conduct of international diplomacy—it argues strongly for multilateral approaches to problems, for a recognition of the positive contributions from groups in civil society in addressing even the most difficult problems of peace and security, and for our purposes today, it argues for approaches to 'conference management' that recognize the vital role played by groups in working toward compromises that can eventually lead to a consensus on new approaches to meeting common needs. A unique

type of process of compromise and consensus making among groups led to the indefinite extension of the NPT. This process is the subject of this and the subsequent chapters.

The Key Groups in the NPT Review and Extension Process: A Brief Overview

Space does not permit a comprehensive description of the full range of groups involved in the decision in 1995 to extend the NPT indefinitely, and it surely does not allow for any examination of the various groups and coalitions inside individual governments that shaped national policies on this issue. Nor does space allow credit to be given to each individual who contributed most constructively to the negotiation of compromises in this complex process, nor indeed to those who jeopardized this process through their inflexibility—or their anger, pride, or bitterness in not achieving all they may have hoped to achieve. Diplomacy, after all, is a very human endeavour, not a factory operation and egos play their role.

Nevertheless, it is fair (though somewhat regrettable) to say that the most convenient breakdown of these groups would continued to focus on geographic considerations relating uncomfortably to circumstances to the bygone age of the Cold War. In crudest form, there is much in the NPT review and extension process—as well as the diplomatic actions that followed the extension in 1995—that suggests a deepening of a 'North-South' geographical split among nations. There are numerous exceptions to this broad generalization, of course, that are easily documented—including, for example, the desire of certain highly developed, non-nuclear-weapon states to support the goal of global nuclear disarmament as strongly as it is supported by most developing countries, if not more so.

Nevertheless, there is ample evidence of a North/South divide on such questions as peaceful uses of nuclear energy, and the utility and fairness of nuclear export control systems. States in the North that have security policies based on various 'nuclear umbrellas' are, not surprisingly, less inclined to champion urgent actions needed to achieve global nuclear disarmament, and in some cases are even less inclined to view it as a real priority at all. Despite these differences, however, it is the commonality of interest across all the key groups—both in the preservation of the NPT and in its future success in eliminating nuclear weapons and achieving the treaty's other goals—that remains the surprising theme of the NPT story. If the future of the NPT is to have a happy ending, it will be one that is built on precisely this foundation—and if the edifice crumbles, architects will likely pinpoint the cause in a weakened foundation.

Most narratives about the NPTREC identify three key groups with central roles to play in the process: the Western Group; Eastern Group; and the Non-Aligned Group, leaving aside China's self-described status as a 'group of one.'

An important fourth group—the Arab Group—focused more narrowly on problems relating to Israel and the need for the treaty to become universal in membership. Given its overlapping membership and shared views on most substantive issues, I prefer for the task at hand to view the Arab Group as a focused sub-group within the Non-Aligned rather than a group unto itself. A simple listing of these major groups unfortunately ignores the diverse contributions from the over 700 representatives from 195 NGOs that participated in some way in the NPTREC—contributions in providing members for State delegations, distributing information to the delegations and the news media, and perhaps most importantly, contributions in helping average citizens to understand what was at stake for them.[1] Nevertheless, because only States are parties to the NPT and are ultimately responsible for the implementation of the treaty, I would like to focus my personal observations about the activities of these State-based groups in the course of both decisions to extend the NPT indefinitely and to review its implementation.

The Western Group

The Group of Western States is, technically, somewhat of a misnomer, since it also includes some States located in the geographic 'east,' including Japan and Australia, for example. They together comprised about 25 States at the NPTREC, and consist largely of members of NATO—states that periodically (and ritualistically) reaffirm their appreciation of the contribution of the 'nuclear umbrella' to their collective security, and largely vote together or adopt similar positions in multilateral disarmament forums like the Conference on Disarmament, the First Committee of the General Assembly, and the United Nations Disarmament Commission, particularly on matters relating to nuclear disarmament. These are states with well-developed economies that are highly interdependent in terms of trade, travel, communications, and other shared interests and values. They are the countries with the largest nuclear energy establishments (not to ignore the large nuclear industries in Russia and China). When they work together, and at times even working alone, such states can have considerable clout—indeed, it is their common recognition of strength-through-cooperation that led such states to participate in such a group in the first place: coordinated group action, in short, served specific national interests better than could unilateral action. Even the powerful had cause to unite.

[1] For a very discussion of this issue and the entire Conference, see Rebecca Johnson, 'Indefinite extension of the Non-Proliferation Treaty: Risks and Reckonings' Acronym No. 7, September 1995, p. 23-24 (on NGOs) of 88 pages.

The Eastern Group

In 1995, the Eastern Group consisted of about 20 States loosely associated with the former Soviet Union and its close allies. In a post Cold War context this group was no longer linked by a common political perspective. They came together only to sponsor group candidates for positions in the NPTREC. The Russian Federation had by the beginning of the conference decided that it was in their national interest to support the indefinite extension. In the NPTREC, they met frequently with their counterparts in the Western Group and both were strongly united on the goal of achieving an indefinite extension of the treaty. This Group primarily interacted on procedural issues and was not itself a major source of substantive contributions in terms of the actual decisions to extend the treaty indefinitely. Given that many of the States in this Group wished to become, and in fact later became, members of NATO and/or the European Union, it was not at all surprising that the Western and Eastern Groups worked closely together throughout the NPTREC deliberations. They collaborated often.

The Non-Aligned Group (NAM)

The Non-Aligned Group consisted at the time of over 100 States affiliated with neither of the groups above. Its members were and remain primarily developing countries that viewed the NPT as an important means to pursue their individual and collective self-interests in ridding the world of nuclear weapons, while expanding opportunities to reap whatever civilian benefits could be obtained from the peaceful uses of nuclear energy. In theory, one would expect the large size of this Group to carry some extraordinary weight throughout the NPT review process, and in fact it did make extremely important contributions to the final result in 1995, as we shall see in the next chapter. While no less cognizant of the notion of strength-through-cooperation, the diverse geographic, cultural, economic, and political circumstances of countries in this Group made such cooperation exceedingly difficult to orchestrate on a timely and effective basis. The potential influence of this Group (and the Non-Aligned Movement whose goals it represents) was readily acknowledged by Ambassador Thomas Graham, a key member of the US delegation to the NPT, who wrote in his memoirs that 'No option [on treaty extension] could prevail against coordinated NAM opposition.'[2]

At the same time the NAM, as a movement and not an organization, was loosely knit. The lack of strong leadership and co-ordination resulted in little effort to evolve a NAM position until it was too late. I know that some Western countries looked to NAM for a principled position, which they could take into account in formulating their national position. When the NAM tried

[2] Thomas Graham Jr., *Disarmament Sketches* (Seattle: University of Washington Press, 2002), p. 260.

eventually to forge a position in Bandung they failed because many of them had already been wooed and won over.

The Groups in Action

For convenience, I will first examine the exchange of views in the General Debate, because it was here that many States parties staked out their official national bargaining positions. Group positions soon coalesced around many of these positions. Next I will offer some preliminary observations on the negotiating process itself—this will serve as a prelude to consideration of the actual decisions and the fate of the review process, subjects for the next chapter.

General Debate

I will not attempt to summarize all what was said in the 116 statements by States parties in the General Debate, as this could only repeat the reliable summaries that have already been prepared by others.[3] While it was by no means sure that a majority existed for indefinite extension as the Conference was opened, no witness to these early proceedings could fail to notice the substantial support—significantly, across all the key groups—in favour of such an outcome. Rebecca Johnson's widely-respected Acronym Institute, for example, counted thirty-five statements that explicitly called for an indefinite and unconditional extension, with forty-four more that favoured the indefinite extension with no specific reference to unconditionality. Seven Arab States tied their support for indefinite extension to achieving universality. Three States opposed indefinite extension while eighteen offered no specific preference. The various statements contained a wide variety of possible alternatives for an extension—including a single, fixed-term extension (Nigeria), a 'rolling' extension (Indonesia, Iran, Myanmar, Papua New Guinea, and Thailand), a rollover to another extension conference (Venezuela), and just a 'long term' extension (Sri Lanka).

Yet if the support for an extension was clear, it was also clear even in these opening statements that the States parties expected to accomplish more—much more—from the review and extension process than simply to rubberstamp the status quo and make it perpetual.

As has become customary at previous Review Conferences, and well illustrated at the PrepCom sessions leading the NPTREC, themes relating to nuclear disarmament figured prominently in the General Debate—these include subjects related to the need for a CTBT, a ban on the production of fissile material for nuclear weapons and other nuclear explosive devices, positive and negative security assurances for the NNWS, and the need for

[3] I refer in particular to the work of Rebecca Johnson in Acronym No. 7, op. cit., note 1.

further development of nuclear-weapon-free zones. Non-proliferation of course also received considerable attention in these statements, particularly with respect to the importance of IAEA safeguards, the need to strengthen such safeguards, the need for universal membership, and a recognition of the need to comply with non-proliferation and other obligations under the treaty. Other themes receiving attention by various affected states included issues relating to the transportation and dumping of nuclear wastes, as well as nuclear safety, physical security, and environmental concerns.

By virtually every serious post facto account of the General Debate, the most influential statement was offered by South Africa's Foreign Minister, Alfred Nzo, who announced on 19 April that South Africa—a new State party that had just relinquished its nuclear arsenal—would in principle support an indefinite extension. The statement is significant in that it also contained a proposal for agreement on a set of 'Principles for Nuclear Non-Proliferation and Disarmament' to serve as a 'lodestar' or 'yardstick' for assessing progress in achieving the treaty's goals.

The intent here was clearly not to offer an amendment to the treaty per se.[4] The 'principles' incorporated many familiar themes that pervaded past Review Conferences: nuclear non-proliferation; safeguards; peaceful uses; fissile material controls; a 'reduction' in nuclear arsenals; a CTBT; nuclear-weapon-free zones; and security assurances. The statement also included a proposal to establish an open-ended 'committee' to consider (between the Review Conferences) ways to strengthen the review process. Though the 'committee' idea was ultimately dropped, the idea underlying it—namely, the fact that the NPT neglects an institutional infrastructure—has by no means disappeared as a concern of the States parties, as was apparent in the 2000 Review Conference and the PrepComs leading to the 2005 Review Conference. In its own statement, Sri Lanka also proposed a feasibility study to examine the possible establishment of some kind of 'institution' to address NPT compliance issues.

Such proposals, I believe, are harbingers of what is in store for future Review Conferences, and they echo my longstanding conviction that the NPT would indeed benefit from the establishment of some permanent institutional infrastructure to deal with both routine and important issues that arise between the various five-year Review Conferences.

The statement by Mexico was also noteworthy in that it outlined some of the key elements in one of the major alternatives offered to the unconditional, indefinite extension: namely, a proposal linking an indefinite extension to certain 'recommendations' dealing with the CTBT, the fissile material ban, security assurances, safeguards, nuclear disarmament, and a strengthened

[4] Rebecca Johnson summarized the situation as follows, 'The trick will be to make the yardstick sturdy enough to use as a lever, if necessary, but not so pointed that the nuclear-weapon states will refuse to go near it.' Rebecca Johnson, 'Deadlines for Decisions,' Acronym Update No. 15, 5 May 1995.

review process. Mexico also supported the creation of some 'intersessional mechanism' between the Review Conferences, a proposal that evolved into support for what would become the new PrepCom process, as later agreed in the key decision on strengthening the review process.

Semantics

A close reader of these statements might detect some curious semantic themes that were to re-appear later in the Review Conference—in particular the use of such terms as: 'pressure'; 'linkage'; 'yardstick'; and 'leverage.' Here, 'pressure' referred to claims made by many States, particularly developing countries, that the bloc in favour of unconditional indefinite extension was using some heavy-handed diplomacy against individual states to win votes. In an interview after the Conference, Canadian Ambassador Christopher Westdal admitted as much, saying, 'Of course pressure was applied regarding the decision on extension—powerful countries often exert pressure over important issues.'[5]

The second interesting term was 'linkage'—in the context of the Review Process, this mainly had to do with the relationship between various elements of the three key decisions that formed the 'package' along with the Middle East Resolution. I will elaborate on this linkage in the next chapter.

As noted earlier, the 'yardstick' notion appeared in South Africa's speech in the General Debate. I do not believe the package of decisions on the extension can be effectively understood without an appreciation of this term. In essence, both the 'principles and objectives' and the provisions of the 'strengthened review process' offer constructive, practical benchmarks for assessing State behaviour under the treaty. When reference was made early in the Review Conference to 'indefinite extension *plus*,' this extra element consisted of enhanced accountability, which would be achieved through the adoption and implementation of the integrated package of closely linked understandings in the final Decisions and the Middle East Resolution, with progress assessed in future PrepComs and Review Conferences using the various yardsticks available in the decisions 'package,' in the treaty itself, and in understandings reached among the States parties in Review Conferences to come (notably the 'thirteen steps' for nuclear disarmament agreed at the 2000 NPT Review Conference). Together, these yardsticks are strengthening the NPT review process as a 'results-based' enterprise.

The fourth term, 'leverage,' refers to the belief among many States Parties, especially but not exclusively in the developing world, that the 25-year

[5] As quoted in Susan B. Welch, 'Delegate Perspectives on the 1995 NPT Review and Extension Conference,' *Non-Proliferation Review*, Spring/Summer 1995, p. 5. He went on to insist, however, that it 'It is simplistic, unduly cynical, and simply wrong to regard the outcome as the result of a massive weapon state power play' (p. 5). For some specific illustrations of this pressure, see Johnson, op.cit., note 1, p. 9-10.

extension offered the NNWS some influence in encouraging the NWS to live up to their own responsibilities under the treaty, in particular with respect to disarmament and peaceful uses of nuclear energy. These states felt that the very possibility that a future extension would not be approved would provide a substantial incentive for the NWS to live up to their commitments under the treaty. I must admit that I myself shared this view, having personally preferred the alternative of an automatic 25-year rolling extension, subject to a majority vote against the extension.[6] The concept of leverage, however, will likely persist well beyond the demise of the 25-year extension option. The nightmare here is that States parties, facing chronic non-compliance with key parts of the treaty (especially dealing with disarmament issues), will ultimately feel compelled to use the alternative 'leverage' offered in Article X(1) of the treaty—namely, to implement their legal right to withdraw.

The Groups in Retrospect

Actions, they say, speak louder than words, and the actions of the States parties participating in the NPTREC clearly placed a high premium on group coordination. I would like to make some general observations about the structure and dynamics of the group process.

Canada's former ambassador to the Conference on Disarmament (CD), Gerald Shannon, stated in his farewell address that the traditional country groupings in the CD were, in essence, relics of the Cold War and had become 'artificial and unproductive.'[7] It is indeed true that groups formed to address certain contemporary common needs must remain in touch with—and adapt to—changing political environments around them. Such statements are largely aimed at the NAM whose continued existence remains an irritant to some. NAM members respond by querying the rationale for NATO long after the end of the Cold War especially with the OSCE embracing a wide spectrum of countries.

The groups come into existence because their members see such forms of cooperation as a way of expressing their common identity and of pursuing their common interests. For example, many of the needs and demands that have long comprised the agenda of the non-aligned movement in the fields of economic and social development—not to mention disarmament—have remained unsatisfied. Though the adjective 'non-aligned' seems somewhat anachronistic in a post-Cold War world, the needs for a common identity and for collective action to address common interests remains very much alive among these states. With due respect to Mark Twain, it is premature to be

[6] Thomas Graham took note of this in *Disarmament Sketches*, p. 285.

[7] Ambassador Gerald Shannon, speech to the CD, 8 June [1995—check], CD/PV.707; cited by Rebecca Johnson in Acronym No. 7, p. 62.

writing any obituary for the non-aligned movement and its respective 'Group' in the NPT review process.

Efforts from within the Non-Aligned Group actually accomplished quite a bit during the NPTREC deliberations, even in the face of the failure of its various efforts to achieve a 25-year extension. Without these efforts, there would have been no 'package' of decisions, no 'programme of action' for nuclear disarmament, and a much weaker foundation for future progress in the PrepComs and Review Conferences to come. I believe these achievements will indeed give this Group additional 'leverage' down the road, while also enabling advocates in other groups new tools for pursuing their common interests in achieving the disarmament, non-proliferation, and peaceful cooperation goals at the heart of the treaty.

A very real—but under-appreciated—challenge for future participants in the NPT review process will be in the realm of 'conference management.' Any multilateral treaty involving a membership almost as large as the United Nations Charter must cope with the multiplicity of interests of its States parties, and this will inevitably mean dealing with groups of states who combine to pursue their shared interests. In such a climate, mundane matters like time management and even certain questions of logistical detail take on a much more substantive meaning.

In short, conference officials and coordinators of the respective Groups must work together closely to ensure that the process will maximize opportunities for compromise and consensus. This will inevitably require the ability to engage in closed consultations and informal discussions so that States are not confronted with the unpleasant choice of having to abandon an entrenched public position to accept the proverbial 'half a loaf.' In an interview after the Conference, Peter Goosen of the South African delegation stated that 'In the negotiating process, you do not get everything you want but what you can live with.'[8]

I believe that the need for such informal consultations necessitates a group approach just on practical grounds—it is not humanly possible for conference officials to consult individually with literally every State party on every issue and to negotiate bargains accordingly. Group politics are therefore endemic in the NPT review process and are likely to remain so throughout its existence. The key to moving forward, I believe, will be a shared, unyielding, stubborn commitment to fixed ends—disarmament, non-proliferation, and peaceful uses—coupled with a shared readiness to reach compromises over the specific paths, instruments, ways, and means to achieve those ends.

While group dynamics comprise an important motor in any conference the ability, not just of the conference officials like the President but also of individual delegates who are trusted and respected, to undertake cross-group

[8] Welch, op.cit., note 5, p. 3.

discussions influences the building of consensus and the forging of agreements.

The next chapter will explore some of these themes further by focusing specifically on the negotiations leading to the adoption of the three Decisions and the Middle East Resolution.

IV. THE ADOPTION OF THE PACKAGE

Introduction: A Treaty Worth Preserving

In the months leading up to the opening of the 1995 NPT Review and Extension Conference, and indeed even well into the event itself, nobody could comfortably have predicted the final outcome. Looking back on the crucial four weeks of the conference (17 April to 12 May), I recall that my sentiments ran the full gamut from deep frustration and despair to, at long last, relief that the States parties were finally able to reach the common ground they needed to place the Treaty on a firmer foundation, both in time and in substance. I never lost faith, however, in the value of multilateral approaches to the difficult problems before us and my central objective of achieving a consensus as far as possible.

Many who have followed the evolution of this treaty over the years, and who have witnessed its incremental growth towards universal membership, have also recognized that the Treaty had an Achilles Heel—its invidious division of the world into two status categories: those who had nuclear weapons and those who did not. Genuine security could only be found in a treaty that was widely perceived as legitimate, and legitimacy would never be achieved in a world permanently divided into an 'upstairs' and 'downstairs' arrangement, where the basic rules are dictated *de haut en bas*. This legitimacy could only be achieved if the States parties could establish a track record of success not just in halting the geographical spread of such weapons, but in progressively eliminating such weapons outright. Yet as April 1995 arrived, it was a very inauspicious sign indeed that there may well have been more nuclear weapons in existence in 1995 than when the Treaty entered into force in 1970 (though estimates vary due to the lack of real transparency on existing stockpiles).

I believed then and continue to believe now that the indefinite extension of the NPT was, therefore, not an end in itself, but a necessary foundation for achieving all the key objectives of the treaty, in particular the goal of global nuclear disarmament. This indeed was the stated objective of the three Western nuclear weapon states in their discussions with me. There could be little hope for disarmament in a world where more and more countries are acquiring nuclear weapons. There could be little hope for easing restrictions on nuclear technology transfers in a world where more and more countries are seeking such technology to make bombs. And there could be little hope for non-proliferation in a world structured by the rules of nuclear apartheid. At its best, and despite its flaws, the NPT offers hope for progress in all these areas, precisely because the Treaty recognizes the inherent linkages between these interdependent and mutually reinforcing goals.

Achieving such goals will inevitably require enlightened leadership by the nuclear-weapon states in taking the steps needed to eliminate their nuclear arsenals and related weapons-capabilities, a firm determination by the non-

nuclear-weapon states to live up to their non-proliferation and safeguards commitments, and a readiness of all States parties to ensure that their nuclear activities are oriented exclusively for peaceful purposes. This is the fundamental 'bargain' of the NPT, and the 'bargaining' that led to the indefinite extension of the treaty is the subject of this chapter.

The process of 'getting to yes,' so to speak, was not entirely left to chance and random events, though they surely had their roles to play. The multi-year coordinated effort led by the United States in alliance with those who favoured the indefinite extension did not just emerge from nowhere, as Thomas Graham makes quite clear in the description of the NPTREC in his memoirs.[1] Many other countries took their own preparations just as seriously. It would be somewhat disingenuous, however, to declare now that there was a single, concrete 'strategy' to ensure the specific final outcome. Individual States parties had their own suggestions to make, the Groups worked out common positions on many of these, and indeed I had some of my own ideas about how best to achieve a happy ending, or at least one that all could accept.

The Delicate Issue of Voting

When the Conference opened on 17 April, the States parties still had not agreed to the contentious 'Rule 28.3,' which dealt with the adoption of the decision on the extension. This matter took up an extraordinary amount of time, and ultimately proved to be moot, since the three final Decisions and the Middle East Resolution were adopted without a vote. Nevertheless, a brief discussion of this issue would help to shed some light on some of the underlying political dynamics at work behind the scenes of the Conference.

Under the NPT, rules of procedure are considered by the PrepCom and ultimately decided upon by the Review Conference. Such rules are needed to guide the work of the entire Review Conference and cover (inter alia) the all-important voting procedures. The draft rules for the NPTREC were submitted during the first PrepCom and the second session set up an informal working group to work on agreed language. By the fourth PrepCom, the working group had agreed on all the rules except the one dealing with the adoption of decisions, rule 28. Because of the custom that none of the rules of procedure could be adopted unless all were adopted, the States parties had to hold intersessional consultations just prior (on 14 and 15 April) to the opening of the Review Conference in a final attempt to reach agreement. By the time the Conference opened on 17 April, however, there was still no agreement on the voting procedure, apart from a general understanding shared by all States parties that the extension should be taken by consensus. Unfortunately, Article X.2 of the NPT provided little guidance on the precise method of voting on the

[1] Thomas Graham Jr., *Disarmament Sketches* (Seattle: University of Washington Press, 2003), p. 257-293.

extension—this was a matter for the States parties to decide. Lacking such a consensus, the Conference therefore decided on its first day to adopt only as provisional the draft rules of procedure, and was able to make the rules final only shortly before the Conference adjourned.

What were the problems? First, this particular Conference had two official functions: to review the implementation of the treaty and to make a decision on its extension—traditionally, the review process reaches its agreements by consensus, yet the Treaty explicitly provided that the extension decision could be carried by majority vote. This distinction raised additional questions about the specific relationship between the review and the extension parts of the Conference, including such issues as how the various decisions would appear in the final documents and in what order they would be considered.

Iran raised another problem that needed to be resolved: what procedure would be followed if more than one proposal for the extension of the Treaty was tabled? This involved such matters as determining which proposal would be considered first, what would happen if no proposal gained a majority, and other such issues. As of early 1995, Mexico, the Non-Aligned Group, the United Kingdom, Indonesia, and the Russian Federation offered their views on how to address this issue.[2]

As the date of the Review Conference was approaching, the voting option getting most attention was a proposal from Indonesia, under which all extension proposals would be voted upon simultaneously and on a secret ballot—the proposal with the majority of the States parties would be the final decision; and if no proposal had a majority, the option with the smallest vote would be dropped and there would be another ballot(s).[3] Variations of this proposal were considered at the 14-15 April intersessional consultations. As those consultations drew to a close, the Non-Aligned Group and Western Group continued to differ on the balloting procedure, the date on which a decision would be taken, and on the specific issue of open roll-call vs. secret balloting. Citing concerns over pressure, the Non-Aligned Group wanted a secret ballot and the Western and Eastern Groups wanted the traditional roll-call method. This was, in short, another example of a North-South divide. Just hours before the Conference opened, there was general agreement that voting would begin on the last Wednesday of the Conference (as proposed by the Non-Aligned Group) and that an elimination process would take place after the first ballot, if needed (also along the basic lines of the Non-Aligned proposal). There was no agreement, however, on whether the balloting should be in secret or not. By the time this issue was finally settled on 10 May (which left the issue for the Conference to decide should a ballot be needed), the three key decisions were well on their way to adoption without a vote.

[2] See Appendix 2 of the Final Report of the PrepCom NPT/CONF.1995/1.

[3] Indonesian proposal submitted (on behalf of the Non-Aligned Group) to the Rules of Procedure Informal Working Group, 24 January 1995.

The Delicate Tactics of 'Conference Management'

I recognized early on that the process of reaching agreement on the 'extension' would not be easy. I also understood quite well that the purpose of the Conference was not simply to extend the treaty but also to review its implementation. I believed that all delegations recognized the importance of the review process—there were differences, however, over the weights that the various delegations and Groups attached to the tasks of reviewing the treaty versus deciding upon its future. Timing was important: many delegations (especially but by no means exclusively) of the Non-Aligned Group wanted to avoid any hasty consideration of the extension until this review had been completed. Lacking any precedent to build upon for dealing with this unique 'review and extension' conference, I chose to pursue a two-track approach focused on both of these important tasks.

While formal statements were being made in the opening days of the Conference during the General Debate, the Main Committees were also holding their first meetings to review the implementation of the treaty. Recognizing the difficulties that lay ahead with the extension decision, I decided to commence a process of informal consultations with delegations to occur simultaneously with the work of the Main Committees. Prudent time management accounts for much of this decision, though I understood well the common expectation that the final decisions should be by consensus and I wanted to do all I could to bring us all to this agreed destination. Since the *raison d'être* of the Main Committees is to consider the implementation of the treaty and seek to reach agreement on language for their own reports, I felt that my own time as President would be best invested in working out compromises with respect to the extension issue and this is where I concentrated my efforts in the first three weeks of the conference.[4]

Thus I obtained general agreement to 'front-load' the proceedings by ensuring that the review process got underway early in the Conference, so that the deliberations in the three Main Committees could conclude by the third week, leaving the last week to conclude our work. I had been in too many conferences where the clock had to be stopped in nail-biting final sessions—usually in the small hours of the morning—to adopt the final document. In the next chapter, I will describe the problems encountered by the Main Committees in achieving their goals. That would be the first track—the 'R' of the NPTREC.

[4] My interest in achieving a consensus was not just personal. As stated in Rule 28 of the Rules of Procedure, 'There should be no voting on such [substantive] matters until all efforts to achieve consensus have been exhausted.' NPT/CONF.1995/28, 9 May 1995. On 24 January 1995, Indonesia (on behalf of the Non-Aligned Group) addressed a working paper to the Chairman of the Fourth PrepCom indicating a preference to apply the rule of consensus 'when decided on the extension of the NPT.' NPT/CONF.1995/PC.IV/4, 24 January 1995, para. 6, p. 3.

Overview of the 'Presidential Consultations'

For the second track, I set up a small informal working group—called simply, 'Presidential Consultations' (PC)—in order to forge a consensus if possible on the issue of extension. A decade earlier, I had served as Chairman of Main Committee I at the Third Review Conference in 1985 (and I also had chaired the Third PrepCom for that Review Conference earlier that year). The States parties on that occasion were able to reach a consensus on a Final Declaration and I appreciated how important small, informal groups could be in assisting the President to build a consensus. The PC, therefore, was in many respects modelled after the smaller group set up by Mohamed Shaker, the President of the Third Review Conference.[5] My intention in forming such a group in 1995 was to consider very early in our proceedings the difficult issues surrounding the extension per se, what would accompany the extension (i.e., what was often at the time called an 'extension-plus'), and how we could reach a consensus.[6]

Though I regret that it was not practical to include all of the States parties in such a working group (and considering that the 175 States parties participating in 1995 was then the largest number ever to attend a Review Conference), I took great care to ensure a fair balance of participants, both in terms of geography and interests. I also believed quite strongly in transparency—so I encouraged the Group Coordinators to consult regularly to their members and to keep me informed of their views. I also met periodically with the press and NGOs. I took all of these steps because I believed they would help in establishing and strengthening the legitimacy of the work of the PC in the eyes of non-participants. Selecting whom to include in these consultations was no easy matter. Many countries with excellent non-proliferation credentials—such as Finland, Argentina, and Peru, for example—were not invited to participate simply to keep the size of the group manageable for practical discussions. I surely had no intent to bruise egos in this selection process (though this may have been to some extent both inevitable and understandable). Towards the end of the conference Peru was given a seat in the consultations when Taylhardat of Venezuela left the conference having courageously disagreed with his government's changed instructions.

After consultations with many delegations, I decided to include representatives of the following States parties in the Presidential Consultations (listed alphabetically): Algeria; Australia; Canada; China; Colombia; Egypt; France; Germany; Hungary; Indonesia; Iran; Japan; Malaysia; Mexico; the Netherlands; Poland; Romania; Russian Federation; Senegal; South Africa; Sri Lanka; Sweden; Venezuela; United Kingdom; and United States. These

[5] For a brief summary, see Ben Sanders, 'NPT Review Conferences and the Role of Consensus,' PPNN Issue Review No. 4, April 1995, p. 2.

[6] For some further discussion, see 'Assessment by President Dhanapala', *Disarmament Times*, Vol. XVIII, No. 4, Special Issue # 4, 18 May 1995.

represented the nuclear-weapon states, the Group Coordinators; the principal Office-Bearers of the Conference; and various countries that I felt had significant points of view that should be represented. I also kept the Conference's General Committee (established under the Rules of Procedure to deal with administrative issues) informed of the general developments within the PC. In addition, I of course benefited enormously from the substantive and administrative support provided by the dedicated staff of the UN Secretariat.

Progress in Negotiating a 'Package'

By the second week of the Conference, and relying upon my personal consultations as well as formal positions put forward in statements made during the General Debate, I recognized that we were likely to be facing some form of decision on an indefinite extension. This became especially clear after an important ministerial meeting took place on 25-27 April in Bandung, Indonesia, involving the Coordinating Bureau of the Non-Aligned Movement. Facing opposition to a 25-year rolling extension and some strong support (led by Benin and South Africa) for an indefinite extension, the meeting adjourned without a consensus NAM position on the issue.[7] The press was reporting in early May that Western diplomatic sources were confident they had sufficient support for an indefinite extension.[8]

I also understood, however, that many of the States parties—even some that had endorsed Canada's proposal for an unconditional indefinite extension—were not very satisfied with that position, especially given the large number of States that had voiced their concerns over how various parts of the Treaty had been implemented, particularly with respect to disarmament, both in the General Debate and in the tempestuous deliberations in Main Committee I. I held consultations with every delegation that had not declared their position in the General Debate and ascertained for myself that, while there was a majority for an indefinite extension, there was also a strong desire for more to be done in nuclear disarmament. Though Canada succeeded in marshalling what looked like (and eventually became) majority support for its proposed Decision, I remained determined to continue the search within the Presidential Consultations for the means that would permit a Decision on an indefinite extension without a vote, if possible. I felt strongly that a divided vote for an indefinite extension would be bad for the Treaty—given the vital international

[7] Even after the first week, it was apparent that there was significant support in the Non-Aligned Group for an indefinite extension, as the following States had already endorsed an 'indefinite' or 'unlimited' extension: Antigua and Barbuda, Bahamas, Benin, Brunei Darussalam, Côte d'Ivoire, Honduras, Liberia, Madagascar, Mongolia, Mozambique, Peru, Senegal, Singapore, South Africa, and Trinidad and Tobago. Argentina, Bolivia, Botswana, Cambodia, Ecuador, Figi, the Maldives, Panama, Paraguay, and the Philippines later endorsed the indefinite extension. See NPT/CONF.1995/SR.2 to SR.13.

[8] Mark Hibbs, 'Halfway Through, Indefinite NPT Extension Assured, West Says,' *Nucleonics Week*, 4 May 1995, p. 8.

security interests involved, I believed that a division on the fundamental issue of the length of the extension would send the wrong signal about the confidence the States parties had in their Treaty and their willingness to fulfill its obligations.

By the end of that second week, my effort was focused less on securing the indefinite extension per se than on hammering out a consensus on what would accompany it—in short, the 'plus' part of the concept of 'indefinite extension-plus.' Impressed by South Africa's proposal of 19 April for various 'principles' of nuclear non-proliferation and disarmament' in a strengthened review process, and well aware of the positive reaction it received across all the Groups, I consulted with the South African delegation and asked if they would start work on two separate documents, one dealing with principles for nuclear non-proliferation and disarmament and the other dealing with measures to strengthen the review process.[9]

My goal, in short, was to see if we could find a way to make an indefinite extension more attractive to those States parties that still wanted a shorter-term extension. If the main concern of many of the NNWS related to the fear of the loss of 'leverage' over the NWS on disarmament, I felt that there might be some alternative ways for the NNWS to retain or perhaps even to expand that leverage. Limiting the extension was, in short, not the only means available to achieve such a goal—and the Treaty's review process offered the key to enhancing accountability.

South Africa, however, was certainly not the only State to recognize the considerable merits of a strengthened review process. Mexico—a country widely respected for its longstanding leadership on behalf of global nuclear disarmament—had asked the Secretariat on 21 April to circulate a 'working paper' offering several proposals that it wished to see 'annexed to whatever decision is adopted' on the extension of the treaty.[10] The paper identified five substantive goals it wished to see included (i.e., CTBT, fissile material treaty, security assurances, strengthening IAEA safeguards, and nuclear disarmament), plus several criteria for strengthening the review process. Under these criteria, each five-year Review Conference would (1) retain the three main committees, which would examine how each of the Treaty's provisions has been implemented and consider how to strengthen the review process; (2) 'seek to establish specific objectives' to attain full compliance,

[9] A senior member of the South African delegation, Abdul Samad Minty, denied after the Conference that his country was 'pressured' to support the indefinite extension. He said his country 'took an independent decision in its own interest.' He further denied that South Africa was responsible for the NAM's inability to reach a consensus at Bandung, saying that the country 'couldn't be the cause of a lack of consensus which already existed.' As for the final Decisions, he added that South Africa 'prefers to have weaker wording that will be carried out to stronger words that will not be implemented.' As quoted in Mark Hibbs, 'South Africa 'Moved Beyond NAM' in Support of Firm NPT Extension,' *Nucleonics Week*, 11 May 1995, p. 13.

[10] Letter from Ambassador Sergio Gonzales Galvez to the Secretary-General of the NPTREC, NPT/CONF.1995/23, 21 April 1995.

including whenever possible, 'by setting goals with specific time-frames'; (3) establish 'mechanisms' to conduct negotiations between Review Conferences; and (4) commence this process at the 2000 NPT Review Conference by examining compliance with the commitments undertaken at the 1995 Conference.

On 1 May, Mexico circulated a 'draft resolution' containing these four criteria for the review process but omitting any specific time frame for extending the NPT.[11] The draft also contained hortatory language ('urge', 'reiterate', 'request', and 'call upon') concerning the CTBT, fissile material, security assurances, and disarmament goals. Following further consultations, Mexico revised its resolution as follows: the treaty would now be extended indefinitely; the four substantive objectives would remain, except that the disarmament goal would include a call on the NWS to 'cease all production' of nuclear weapons; and new goals were added concerning the Conference on Disarmament, strengthening safeguards, peaceful uses, and nuclear-weapon-free zones.[12]

It is relevant at this stage to refer to the role of Ambassador Miguel Marin Bosch of Mexico who had represented his country at the CD and was regarded as a thorn in the side of the USA and the Western Group because of his fierce advocacy of nuclear disarmament. Following his work in the PrepComs it was rumoured that the US had urged the Mexican Government to clip the wings of Miguel Marin Bosch. He remained on the delegation but was unusually subdued. This was unfortunate and I was therefore happy to see this able diplomat return from hibernation to play an important role in the UN Secretary-General's Advisory Board on Disarmament Matters and in his country's Foreign Ministry before he retired to teach at University.

Thus as we entered the first week of May, the PC was deeply involved in considering several variations of the 'indefinite extension-plus' theme, with the 'plus' element having to do with reforms in the review process, including the basic principles that it would consider. At this point, we were looking at some specific alternative ways to reinforce the decision on indefinite extension—including South Africa's efforts in the PC in drafting two separate decisions dealing with the 'principles' and strengthening the review process; and Mexico's draft resolution that would combine its preferred principles and review process language in a single text. A third option—a 25-year rolling extension—was the approach preferred by a group of eleven 'like-minded' States in the Non-Aligned Group led by Indonesia. Like Mexico, Indonesia also appreciated the merit of ensuring that the review process would focus on specific concrete 'objectives.' As our consultations proceeded, I could see we were proceeding with the right spirit of compromise, but we still had lots of work ahead.

[11] NPT/CONF.1995/L.1, 1 May 1995.
[12] NPT/CONF.1995/L.1/Rev.1, 5 May 1995.

Though my work in the PC was never easy, my fundamental challenge emerged quite starkly on 5 May (Friday), when three proposals were officially tabled for consideration by the Conference:

L.1/Rev.1 (Mexico)—(as described above)[13];
L.2 (Canada, with 104 co-sponsors largely from the Western and Eastern Groups but with significant co-sponsorship from countries in the Non-Aligned Group)—a draft decision for an indefinite and unconditional extension[14]; and
L.3 (Indonesia, on behalf of eleven 'like-minded' states in the Non-Aligned Group)—a draft decision for automatic 25-year rolling extensions subject to a possible negative vote, with a provision that future review conferences 'shall identify specific objectives to be achieved' and 'shall make concrete recommendations' for achieving such objectives.[15]

On 8 May (Monday), I called to order the fifteenth plenary meeting of the NPTREC. I noted that three proposals had been submitted for the extension of the treaty and that, as there was no consensus on any of them, I proposed that the Conference defer a decision on the extension for 48 hours so that I could make every effort to achieve a general agreement. The Conference agreed. Later that day, I met with several delegations and the Groups to outline my own proposal for a 'package' of decisions that I hoped would permit an indefinite extension of the Treaty without a vote.

Wrapping Up the Package

My 'package' consisted of two separate Decisions on 'Strengthening the Review Process' (Decision 1) and 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament' (Decision 2)—both of which I described as 'politically-binding'—and a legally-binding Decision on the 'Extension of the Treaty on the Non-Proliferation of Nuclear Weapons' (Decision 3).[16] By 'politically-binding' I did not mean that the two Decisions were only intended to apply to the present policies of the States parties, nor did I wish to imply that they would be in some way discretionary in terms of future policies. Just as Decision 3 placed the indefinite extension on a firm legal foundation, so too were Decisions 1 and 2 intended to strengthen the Treaty's political foundation. I am convinced beyond any doubt whatsoever that without this political foundation—which at the last minute of the Conference was expanded to include the Middle East Resolution—the States parties would never have been able to agree to the indefinite extension without a vote. I

[13] NPT/CONF.1995/L.1/Rev.1.
[14] NPT/CONF.1995/L.2.
[15] NPT/CONF.1995/L.3.
[16] The texts of these Decisions and the Middle East Resolution may be found in the Final Document of the 1995 NPT Review and Extension Conference, NPT/CONF.1995/32 (Part I), Annex, p. 8-14. I used the term, 'politically-binding,' in my Closing Statement to the Conference on 12 May.

thought it reasonable that a treaty addressing such weighty issues would benefit from a reinforced foundation.

Decision 1: Strengthening the Review Process.

My task of drafting a Decision on strengthening the review process was assisted by contributions from many members of the PC—this was very definitely a collaborative affair. On 1 May, Germany contributed a two-page working paper that proposed a brief outline for this decision, featuring provisions on: the frequency of review conferences (every five years, with a preparatory process starting two years beforehand); their structure (there would be three Main Committees with the option of creating 'Ad Hoc Working Groups' for specific issues); the preparatory process (stressing the role of the PrepComs in ensuring that the work of the Review Conference is 'properly prepared' and that this role could include establishing ad hoc groups on topical issues); the Final Declarations of the Review Conferences (they 'should look forward as well as back'); and universality (the Review Conferences should pay particular attention to this).

On 3 and 4 May, I drafted a 'President's Summary' of this Decision, based on my ongoing consultations. It contained, inter alia, provisions for—a Review Conference every five years; three PrepCom sessions prior to the Review Conference (each of which to last one week with the possibility of convening a fourth, to make procedural preparations for the next Review Conference and to 'consider specific ways' to promote the full implementation and universality of the Treaty as well as to 'make recommendations' thereon); three Main Committees with a coordinating role for the General Committee; the authority of the Main Committees to create 'subsidiary bodies' focused on specific issues; and a responsibility to 'look forward as well as back' and to address what might be done to strengthen the implementation of the Treaty and to achieve its universality.

On 8 May, Indonesia proposed the following—an extension of the PrepCom sessions from a week to ('normally') 10 days; the PrepComs should consider 'specific ways' to promote full implementation of the Treaty and its universality; and that the Review Conferences should, inter alia, 'evaluate' the results of the previous review period. Indonesia's proposal also contained several 'objectives' relating to specific goals relating to nuclear disarmament. While these 'objectives' were ultimately not included in the Decision on the review process, they were added to the 'principles' Decision, hence leading to its 'Principles and Objectives' title.

The next day, building on the desire of the Indonesians (and others) to establish some linkage between the Decisions—as well as a widely-shared view that the PrepComs should consider both substantive as well as procedural issues—my proposed draft included as subjects within the focus of the Review Conferences 'items identified in the Decision on Principles and Objectives for

Nuclear Non-Proliferation and Disarmament.' This cross-reference was essential in clarifying that the focus of the review process should not be limited only to procedural issues. The 'principles and objectives' were to serve as yardsticks to use in gauging progress in achieving the most fundamental goals of the treaty. The PrepComs were also to 'make recommendations' to the Review Conference concerning the implementation of the Treaty.

After further intense consultations, I issued a slightly revised draft on 10 May of this Decision, which then became an official conference document.[17] The new draft contained the phrase, 'principles, objectives and ways'—this helped to clarify further (lest there be any doubt) that the PrepComs were to focus on practical measures to improve implementation. My earlier draft had begun the description of the PrepCom's mandate by addressing its procedural role—the new draft reversed the order to address its more prescriptive functions vis-à-vis the full implementation and universality of the treaty, followed by its role in making procedural preparations. On 11 May, the Conference formally adopted this Decision as part of the package.

Decision 2: Principles and Objectives.

Our deliberations in the PC also concentrated on the text of a draft we had initially called, 'Declaration of Principles for Nuclear Non-Proliferation and Disarmament.' As of 30 April, the eighth draft (and more were to follow) of this Declaration stated that the principles were intended 'as a yardstick' for measuring and monitoring the implementation of the treaty. It also mentioned the wish 'to enhance and strengthen the Review process.' The body of the draft Declaration contained six sections that corresponded to the following issue areas of greatest concern to the States parties, as reflected in the General Debate and elsewhere in our deliberations—non-proliferation; universality; safeguards; peaceful uses; nuclear disarmament; and nuclear-weapon-free zones.

The 30 April draft also contained a separate section dealing with measures needed 'to enhance and strengthen the process of reviewing the operation of the treaty.' This structure mirrored the original South African proposal as articulated by Foreign Minister Nzo on 19 April in the General Debate. The Declaration at this point contained a requirement for the Depository States to convene a special 'Meeting of States Parties' prior to the next PrepCom to consider (and to make recommendations on) proposals to strengthen the review process. We later decided that this should be the role of the PrepCom. In the interest of promoting early agreement in the PC on measures to strengthen the review process, I decided to separate out the review component of this Declaration and make it into a separate Decision.

[17] NPT/CONF.1995/L.4, 10 May 1995.

On 9 May, and following contributions from many delegations (too numerous to describe in this summary), I had completed a draft of the Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament' (P&O). This version included within the section on 'Nuclear Disarmament' a 'programme of action' for implementing Article VI, which included the negotiation of a CTBT by the end of 1996, the 'immediate commencement and early conclusion' of negotiations on a fissile material convention, the 'determined pursuit' by the NWS of 'systematic and progressive efforts' to 'reduce' nuclear weapons globally, with the 'ultimate goals' of nuclear disarmament and general and complete disarmament. The draft also added a separate section on 'security assurances,' emphasizing that 'further steps should be considered' beyond the UN Security Council's Resolution 984 (adopted on 11 April) on security assurances for non-nuclear-weapon States party to the Treaty.

To underscore the close relationship between these key Decisions, the third paragraph of the preamble explicitly linked the P&O to the strengthened review process. This linkage would also appear in the body of the Decision, which requested the President of the Conference to bring this Decision, along with the Decisions on the extension and on strengthening the review process, to the attention of the Heads of State or Government and to 'seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.' With some small changes in my 9 May draft (e.g., dropping a reference to the Final Declaration which was never agreed), the Conference adopted the P&O without a vote on 11 May.

I believe that final agreement on the P&O marked a new chapter in the history of disarmament. Its very existence is eloquent testimony to the firm, even relentless determination of the States parties to demand concrete evidence of progress in achieving the important goals of this treaty. Henceforth, the strengthened review process, using yardsticks provided by the P&O, have given the States parties a 'results-based' approach to achieving the key disarmament, non-proliferation, and peaceful use goals that lie at the heart of the Treaty. This was the approach that ultimately made the Decision on the indefinite extension both possible and desirable.

Decision 3: The Indefinite Extension

I had drafted by hand an outline on 1 May that contained 12 preambular paragraphs touching upon all the major themes that had pervaded our deliberations, followed by a 'Decision on Extension,' with no further details. I left this in the strictest confidence with my delegation colleagues Rohan Perera and H.M.G.S. Palihakkara as I went to Washington D.C. for the weekend to attend to my duties as Ambassador of Sri Lanka to the USA. I met them on my return and we made some small changes. Taking into account the progress we had made in drafting the decisions on 'principles and objectives'

and 'strengthening the review process,' I issued a revised draft on 7 May containing an Operative Paragraph that the Conference—-

Decides, by consensus, that in terms of Article X.2 a majority exists among the States Parties for the indefinite extension of the Treaty and the Treaty shall accordingly continue in force indefinitely.

I had also reduced the number of preambular paragraphs from 12 to the following four: the first simply noted the convening of the Conference; the second stressed that full compliance and universal adherence were essential to international peace and security and the attainment of the 'ultimate goal'[18] of the complete elimination of nuclear weapons; the third took note of the Decisions on strengthening the review process and on 'Principles for Nuclear Non-Proliferation and Disarmament'; and the fourth simply noted the existence of the requisite quorum. The third paragraph was especially important in tying all the Decisions into what we were calling a common 'package.' Indonesian Foreign Minister Ali Alatas—who had a critical meeting with me on Friday, 5 May—was helpful here in promoting this idea of linking the various Decisions through cross references. I felt it was especially important for this linkage to appear in the preamble of the Decision on the indefinite extension—we owed it to posterity to clarify the specific context in which the indefinite extension was agreed.

I presented my draft to the groups explaining my reasoning .By 9 May, we had a new draft of this decision. Here the 'ultimate goals' in the preamble were expanded to include a treaty on the general and complete disarmament (language adopted from the Treaty); and the words, 'by consensus,' were dropped to satisfy the desire by some States parties to distinguish between a consensus for the indefinite extension and agreement that a majority exists for such an extension. The Operative Paragraph was accordingly redrafted to read:

Decides that, as a majority exists among States Party to the Treaty for its indefinite extension, in accordance with its article X.2, the Treaty shall continue in force indefinitely.

In short, the Decision emerged as a simple statement of fact—it was (as Canada had conclusively shown) absolutely incontestable that a majority favoured the indefinite extension, hence the specific terms of article X.2 had been satisfied. So in short, the Decision merely called the proverbial spade a spade. This language became the official document that the Conference adopted without a vote on 11 May.

[18] I interpreted this term to mean the supreme goal of the Treaty, as opposed to the last to be achieved. In the Final Document of the 2000 NPT Review Conference, the States parties clarified that the treaty's 'ultimate goal' was 'general and complete disarmament.'

Middle East Resolution

On 8 May, I had informed the Conference that—in accordance with the (then still-provisional) Rules of Procedure—the Conference would defer action on decisions for 48 hours. The next day, however, fourteen Arab states (which was short of the full membership of the Arab League) introduced a resolution that—voiced deep concern over Israel's unsafeguarded nuclear facilities; called upon Israel to accede to the Treaty without delay; called upon all states in the Middle East to take practical steps to establish a zone in the region free of all weapons of mass destruction and their delivery systems; called upon all other States parties to work for this goal; and invited the NWS to grant security guarantees to the Middle Eastern States parties.[19]

The Arab States had long ago made it clear that they attached great importance to this issue, as was apparent in their statements during the General Debate and in deliberations thereafter. Thomas Graham, a key member of the US delegation, has since written that Egypt informed the United States in 1994 that it 'would not support indefinite extension or even a long extension unless, prior to the conference, Israel took a 'concrete step' in the direction of eventual NPT membership.'[20] He added that this position 'never changed appreciably in spite of a number of direct discussions with the Israelis and meetings between President Mubarak, President Clinton, Foreign Minister Moussa, and Secretary of State Christopher.'[21] While the Arab League never endorsed its position, Egypt still had considerable Arab support (as indicated by its list of cosponsors) and clearly felt the time had come to address this issue.

Though at the time I had not yet been involved in those discussions, and thus must rely on second-hand accounts, the introduction of the Middle East resolution brought me directly into the process of finding a way ahead for the Conference. Egyptian Ambassador Nabil el-Araby—a friend of long standing—personally appealed to me to find a solution to the problem since their own efforts had failed. Since there was no consensus to mention Israel by name, nor on an alternative proposal to name the other States in the Middle East that were non-parties (at the time, these were Djibouti, Oman, and the United Arab Emirates), I had no choice but to ask the Conference for another delay of 24 hours to allow consultations to resolve this issue. Having worked so hard to achieve an extension without a vote, I was extremely reluctant to see this progress unravel at this late stage in the Conference.

The solution lay in amending the resolution to incorporate some language from the report of Main Committee III, which called upon 'those remaining

[19] NPT/CONF.1995/L.7, 9 May 1995.
[20] Thomas Graham Jr., *Disarmament Sketches*, p. 268.
[21] Ibid., p. 269.

States not Parties to the Treaty to accede to it …'.[22] The Resolution went on to call for full-scope safeguards in the Middle East and further reinforced language in the P&O on the need for universal adherence to the Treaty. When the sponsoring States would not agree to sponsor this text, I asked Ambassador Graham of the US delegation if the NPT Depositaries (Russian Federation, United Kingdom, and United States) would jointly agree to co-sponsor, which they did. Following a last-minute drafting amendment insisted upon by Iran pertaining to a reference to the Middle East peace process, for which I am most grateful to my Sri Lankan colleague Ambassador Nihal Rodrigo, the Conference adopted this resolution without a vote on 11 May after the three Decisions. The actual adoption was not without its drama and some humour as my gavel went down with remarkable speed.

Though the 'package' of the three Decisions and the Resolution were technically separate, I personally do not believe the Conference would have adopted the indefinite extension without a vote if the Resolution issue had not been settled as it was. In this sense, therefore, there surely was a link between all these documents that was significant enough to justify viewing them as forming a single, integrated package, notwithstanding the technicalities of how the pieces ultimately fell into place.

The NPTREC in Retrospect

Canadian Ambassador Chris Westdal has repeatedly used the phrase, 'permanence with accountability' to summarize the results of the NPTREC and I think that is a fair assessment. It surely encapsulates the notion of 'indefinite extension-plus' that so many States parties wished to see as the result of this event.

Both of these key terms—'accountability' and 'plus'—would not have been necessary, however, if everybody was satisfied with how the treaty was achieving its fundamental goals relating to disarmament, non-proliferation, and peaceful uses. If everybody had been content, the conference would simply have adopted Canada's draft decision for an unconditional, indefinite extension and that would be the end of it.

Yet the hard-fought battles over what was specifically needed to enhance accountability, coupled with the failure of the Review Conference to agree on a Final Declaration (discussed in the next chapter), should remind us all that the 'permanence' of the NPT will always remain contingent upon the political will and behaviour of its States parties. The Conference did not set the NPT on 'auto-pilot.'

The many supporters for indefinite extension clearly worked assiduously to achieve their goal. For their part, the NWS did not by any means take the

[22] Operative paragraph two of the Resolution on the Middle East, in NPT/CONF.1995/32 (Part I), p. 14.

extension decision for granted and some of their initiatives probably did help them to win votes. Though some of such support may have resulted from the 'pressure' that was allegedly exerted upon numerous States parties, it is important also to recall that the nuclear-weapon States (the United States in particular) had been moving steadily in those years to a strong stance of support for the CTBT and, pending its conclusion, a moratorium on nuclear testing. Given the high priority that past Review Conferences had attached to the CTBT, such gestures were welcome to say the least. Similarly, the NWS also got the message that something more was expected of them when it comes to security assurances; so, on 11 April, the Security Council adopted a resolution on the subject (however short it may have fallen from a binding legal obligation). In this light, it will be very useful indeed for the treaty's 'strengthened review process' to have some specific benchmarks or yardsticks for gauging additional progress in the years ahead.

I therefore believe Thomas Graham got it exactly right when he wrote after this event, 'it is important to understand that a failure to meet the obligations of the Statement of Principles and Objectives—especially reductions in nuclear weapons—will endanger the permanent status of the NPT or even the NPT regime itself.'[23]

The NPTREC, while not solving all the Treaty's problems, did however achieve some extremely important goals. Participants recognized the importance of good 'conference management' not just in implementing agreed procedures but also in shaping positive substantive results. They saw how a multilateral diplomatic arena—one approaching universal membership—proved itself capable of bringing States together, despite their many competing and diverse policy priorities, in an effort to serve their collective interest in international peace and security. They also saw that non-governmental organizations do indeed have very constructive roles to play in keeping delegations informed, providing advice, and educating the public.

The net result was therefore a composite of key elements of proposals by all the major Groups—even including China, whose 'group of one' had consistently argued for a 'smooth' extension. In the end, the Western/Eastern Groups and their allies got their indefinite extension that was not legally conditioned upon the prior fulfillment of any specific initiatives; while the Non-Aligned Group gained back some of the 'leverage' it lost through the indefinite extension, by succeeding ultimately in reaching agreement to strengthen the review process by increasing accountability and transparency, and by integrating into future review processes a set of principles and objectives to serve as 'yardsticks' for assessing how well the treaty is being implemented. This is very much what I had in mind when I delivered my closing statement to the Conference on 12 May, saying that 'It is important for

[23] Graham, p. 291.

us all to remember always that there were no winners or losers in this Conference. It was the Treaty that won.'

What the future holds for the NPT remains of course to be seen. What is clear, however, is that 1995 marked a crucial year not just for the extension of the Treaty, but also for its review process. How ironic it was that in the year when the review process was strengthened to achieve the Treaty's goals, the NPTREC was unable to reach a consensus on a Final Declaration—the culmination of that process. How this happened will be the focus of the next chapter.

V. THE REVIEW OF THE TREATY IN THE COMMITTEES

Introduction: The Vital Role of the Review Process

Thanks to the Decisions taken in 1995, the NPT was extended indefinitely, as part of a package deal that involved a strengthened review process and some new 'yardsticks' in the Principles and Objectives. Yet as any tailor knows, the finest yardstick is only as good as the vision of the one using it.

The proof of the wisdom and efficacy of Treaty's new standards—and the vision of its States parties—will be found in the evolution of the review process. Though the 'review' undertaken in 1995—before these reforms were agreed—was not successful in producing a Final Declaration, it nonetheless offers many insights into the perils and pitfalls of treaty implementation that merit close examination by all who care not just about the treaty, but also about the future of international peace and security.

The importance of this review process is magnified by one of the Treaty's greatest liabilities: its weak institutional infrastructure, a surprising attribute indeed, given the Treaty's obvious value in advancing the security interests of its States parties.

Yet the NPT has no permanent 'secretariat' to assist the States parties both at and between the Review Conferences—its only 'institutional memory' is contained in the heads of the individuals (or their files) inside the Governments of its States parties, the UN's Department for Disarmament Affairs, and the hundreds of NGOs[1] that try to gather and disseminate information about the Treaty, while seeking to improve its implementation.

It has no 'Executive Council' to address treaty-related developments that might require some coordinated multilateral responses.

It has the benefits of the technical contributions from the IAEA in the fields of safeguards, physical security, nuclear safety, and cooperation in the peaceful uses of nuclear energy, but the Treaty still lacks an institutional infrastructure of support to assist in the pursuit of disarmament and non-proliferation goals not related to safeguards. While the IAEA has sought for many years to assist the nuclear-weapon states in fulfilling their responsibilities under Article VI (e.g., the 'Trilateral Initiative' aimed at safeguarding fissile material from dismantled weapons[2]), the NWS have

[1] Though these groups are too numerous to identify individually, I would like to pay my respects in particular to the Acronym Institute (and its indefatigable Executive Director Rebecca Johnson) in London and Reaching Critical Will (a New York-based project of the Women's International League for Peace and Freedom currently managed by Rhianna Tyson) for the superb work they have done in covering NPT issues and in promoting nuclear disarmament and non-proliferation.

[2] Established in 1996 by the US, Russia, and the IAEA, the Trilateral Initiative was intended to consider technical means for the IAEA to verify the removal of 'excess' nuclear material from the nuclear arsenals of both countries. After 8 years of studies, however, the IAEA stated in 2004 that 'we have yet to receive a request by either of the States concerned to further pursue these arrangements.'

shown little enthusiasm for entrusting the Agency with significant new responsibilities in this field, at least not yet.

This weak infrastructure—what Canada has recently (and aptly) called the NPT's 'institutional deficit'[3]—has substantially and unnecessarily held back the development of the NPT regime.[4] Facing such an institutional handicap, the treaty's review process becomes all the more important—indeed indispensable—to its States parties. It serves absolutely indispensable roles in holding States parties accountable for the commitments they have made under the Treaty. It provides a common forum for the parties to tout their achievements or to criticize the lack of them. It serves as a common arena for diplomatic deliberations on how to deal *multilaterally* with specific challenges arising under the Treaty (e.g. safeguards violations by States parties, such as those revealed in recent years in Iraq, Iran, and the DPRK). And it also provides the States parties a common opportunity to consider ways to interpret and to adapt their Treaty to suit changing national and international circumstances. Together, these constitute the real meaning of the 'backward and forward' look agreed in the 1995 Decision on strengthening the review process.

In a sense, the NPT's review process is somewhat of a diagnostic tool for its States parties collectively to use in gauging the health of the Treaty, as seen in the behaviour of its members. Viewed in this light, the inability of a specific Review Conference to agree on a Final Declaration may—or may not—bear witness to some flaw in the treaty regime itself. After all, one should not blame the thermometer when a fever arrives.

When a review process 'fails' to produce a Final Declaration, this may tell us more about the general conditions of international peace and security than about any intrinsic shortcoming in the Treaty per se. A close examination of some of the reasons why there was no such declaration in 1995 will help us better to understand where to look in search of reforms.

An Overview of the Key Committees

One of the important purposes of an NPT Review Conference's 'Rules of Procedure' is to identify the official responsibilities of the Conference's principal Committees. As was the case with past Review Conferences, much of the real 'work' of the review itself was done in the Main Committees. These were of course not the only Committees—there was also a 'General Committee' that dealt with administrative matters, a 'Credentials Committee' (responsible for handling the credentials of the participating States parties),

Statement by Vilmos Cserveny to the Third Session of the PrepCom to the 2005 NPT Review Conference, 26 April 2004, p. 5.

[3] 'Overcoming the institutional deficit of the NPT,' NPT/CONF.2005/PC.III/WP.1, 5 April 2004.

[4] I have also raised this issue on other occasions. See J. Dhanapala, 'The NPT Review Process: Identifying new Ideas to Strengthen the Regime,' *UNIDIR Newsletter*, No. 37 (1998), p. 9-14.

and a 'Drafting Committee' whose job it was to edit or draft all texts referred to it by the Conference or a Main Committee, including drafts of the Conference's Final Declaration.[5] The membership of the Main Committees was open to all participating States parties.

The Conference's draft 'Agenda'—which is typically annexed to the Final Report of the PrepCom before a Review Conference—spells out (inter alia) the basic mandate of the Conference as a whole, as well as the specific items to be allocated to the Main Committees. This document is drafted by the PrepCom sessions and formally adopted at the opening of the Review Conferences.[6] The 1995 Agenda provided that the Conference shall 'review of the operation of the Treaty' in the following areas:

(a) Non-proliferation of nuclear weapons, disarmament and international peace and security;
(b) Security assurances;
(c) Safeguards and nuclear-weapon free zones; and
(d) The peaceful uses of nuclear energy.[7]

In accordance with its Agenda, Main Committee I was to review the operation of the treaty with respect to issues (a) and (b) above, while Main Committee II would cover issue (c) and Main Committee III had responsibility for issue (d). Until 1985, Review Conferences were structured into two Main Committees. I had to preside over a difficult consultative process where the Eastern Group insisted they were being short-changed in the distribution of the Conference posts. Consequently, Ambassador Rolf Ekeus of Sweden drafted an ingenious scheme to have three Main Committees, ensuring that the Eastern Group also had a Chairman. Despite the strange rationale for the three Committee structure, this did provided more focused attention to various aspects of the Treaty. Some overlap in the subjects treated by Main Committees II and III were noticed in the 1995 NPTREC and efforts were made to streamline this.

There is always some degree of overlapping, however, in the jurisdiction of some of these Committees, as for example various facets of the broad subject of 'non-proliferation' inevitably relate in one way or another to the work of each of the Main Committees. This overlapping of 'issues' is further accompanied by an overlapping of 'membership,' as all participating States parties are members of all the Main Committees. Nevertheless, the work of these key 'review' Committees are substantively distinct to such an extent that

[5] For this Conference, the 'Credentials Committee' was covered by 'Rule 3,' whereas the General Committee was described in Rules 8 and 9, the Main Committees were covered by Rules 34 and 35, and the Drafting Committee was the focus of Rule 36. 'Draft Rules of Procedure,' Annex III, NPT/CONF.1995/1.

[6] The NPTREC opened officially on 17 April 1995.

[7] NPT/CONF.1995/1, 'Provisional Agenda,' Annex IV.

it is not at all unusual for Committees to differ considerably in their ability to reach a consensus. This was surely the case at the NPTREC, where Main Committee I—which had to grapple with some very difficult and contentious political issues relating to disarmament and non-proliferation—was never able to reach a consensus, while Main Committees II and III were able to agree on much of their respective reports and to eliminate most of the remaining disputed language in the Drafting Committee.

Another significant event at the NPTREC's opening meeting on 17 April was the official election of the three Main Committee Chairmen: Isaac E. Ayewah of Nigeria (Main Committee I); André Erdös of Hungary (Main Committee II); and Jaap Ramaker of the Netherlands (Main Committee III). Tadeusz Strulak of Poland was also elected to chair the Drafting Committee. All four had key roles to play in the course of the review deliberations that lay ahead. There had been a tussle for Main Committee I Chairman, which the Nigerians won by insisting on their man since Africa had to have a post.

Activities of the Main Committees

Much of the tone and substance of the work undertaken the Main Committees reflected themes voiced by the 116 States parties that participated in the general debate, which lasted from 18 to 25 April. The previous chapter noted that there were deep differences on important issues in many of these statements, particularly on the issues of nuclear disarmament, concerns over compliance with non-proliferation commitments (e.g., vis-à-vis Iraq and the DPRK), nuclear export controls, and other issues. These differences spilled over into the work of the Main Committees, which began their work even before the general debate had concluded.

Main Committee I

Main Committee I held 12 formal meetings between 19 April and 6 May and engaged in extensive informal consultations.[8] In an effort to assist its deliberations, the Committee established two 'working groups' to deal with issues relating respectively to security assurances on nuclear weapon-free zones. The latter working group was a joint effort, arranged in agreement with the Chairman of Main Committee II. Due to deep-seated differences amongst its members, however, the Committee was unable to meet its deadline of 5 May to submit its report. Moreover, the report (a 32-page 'rolling text') that it finally did submit on 8 May was replete with 'bracketed' text—in other words, language that had not been agreed.[9]

[8] For the summary records of the discussions, see NPT/CONF.1995/MC.I/SR.1-12.
[9] Report of Main Committee I, NPT/CONF.1995/MC.I/1, 8 May 1995.

One of those bracketed paragraphs (dealing with foreign deployments of nuclear weapons) appeared in no less than eight versions.[10] In that instance, the bracketed language ranged from an assertion that the Conference 'agrees that existing security arrangements are implemented in full compliance with articles I and II of the Treaty' to a counter-claim that the Conference 'notes with grave concern the nuclear collaboration among certain nuclear-weapon States and their collaboration with certain States non-parties to the Treaty …'.[11] In a Committee working paper, the non-aligned States parties had proposed language for the Report, under which the Conference 'reiterates that prohibitions of transfers of nuclear weapons … includes transfers between nuclear-weapon states' and 'remains concerned about' the ability of certain non-parties to obtain nuclear materials, technology and know-how to develop nuclear weapons.'[12] This issue came up especially in reference to Israel, and was a theme later to pervade deliberations over the Middle East Resolution. Yet there was a broad perception in the Committee that the NNWS parties (apart from Iraq and the special case of the DPRK) had complied with their non-proliferation obligations under Article II.

The extent that the review had become polarized is most apparent with respect to its treatment of disarmament issues under Article VI, where the NWS argued they were fully complying with their duties, while many NNWS questioned the adequacy of the progress in this field—voicing concerns (inter alia) over the large numbers of such weapons that remain and ongoing efforts to improve them qualitatively.[13]

Another contentious issue concerned the CTBT, a perennial thorn in the side of the NWS at past Review Conferences, yet an issue on which many believed progress was now possible, given the new post-Cold War environment. While there were differences of view over the timing of when a CTBT should be concluded, the Conference later agreed (in the P&O Decision) that 'negotiations' should 'be concluded no later than 1996.' Many NNWS called for nuclear test moratoria before the CTBT enters into force.

With respect to the production of fissile material—another long-standing goal of the world community—there was widespread agreement on the need for the early conclusion of a non-discriminatory, multilaterally and internationally and effectively verifiable treaty banning the production of such material for nuclear weapons or other nuclear explosive devices. There was no consensus, however, over the status of stocks of previously produced materials, an issue that had long frustrated progress at the Conference on Disarmament, and that remains today a source of great disagreement.

[10] Ibid., paragraphs 9 through 9(okt).
[11] NPT/CONF.1995/MC.I/1, para 9.
[12] See NPT/CONF.1995/MC.1/WP.9, 8 May 1995.
[13] See NPT/CONF.1995/MC.I/WP.5, 2 May 1995, paragraphs 13-16.

Perhaps the most interesting point about the Committee's treatment of the security assurances issue is the general level of dissatisfaction with the adequacy of UN Security Council Resolution 984 particularly among the non-aligned States. While the Resolution was widely acclaimed, many participants felt something more was needed—something legally-binding, a theme found in many working papers addressing this issue.[14]

Main Committee II

As noted above, Main Committee II focused mostly on safeguards and nuclear-weapon free zones, as well as export controls.[15] It held 10 formal meetings from 19 April to 5 May 1995, during which the Chairman and Vice-Chairmen engaged in informal consultations on specific items on the agenda. The Committee established a working group to deal with nuclear-weapon-free zones (chaired by Enrique de la Torre of Argentina) and a 'drafting group' to consider language on export controls (chaired by Philip MacKinnon of Canada).

Unlike the Report of Main Committee I, the Report of Main Committee II had relatively few brackets—the few that existed pertained to issues relating to Iraq, the DPRK, the establishment of a Middle East nuclear-free-zone, and related language dealing with Israel.[16]

With respect to nuclear-weapon-free zones, the Committee was in general agreement of the value of such zones in enhancing regional and global security, and in contributing to nuclear non-proliferation and disarmament objectives. The most significant disagreements on this issue related to the Middle East, which the Conference later resolved in the course of adopting the Middle East Resolution. There was also no consensus on a proposal by Belarus to create such a zone in Central Europe.

Safeguards issues were a significant focus of the deliberations of this Committee. There were 14 working papers submitted on this issue, with nine of them coming from a group of developed NNWS known as the 'G-11.'[17] These papers and the deliberations in general endorsed the IAEA's '93+2' programme of strengthened safeguards, as well as the importance of full-scope IAEA safeguards, and of the placement of fissile materials from dismantled nuclear weapons under IAEA safeguards. One G-11 paper also called for a halt to the construction of new research reactors fuelled by highly-enriched

[14] The following States submitted working papers on security assurances: Egypt; Myanmar (on behalf of 12 non-aligned States); Nigeria; and Indonesia. For full texts, see NPT/CONF.1995/32 (Part II), in the Working Papers of Main Committee I, p. 279 ff.

[15] For the summary records of the discussions, see NPT/CONF.1995/MC.II/SR.1-10.

[16] The Report of Main Committee II is available at NPT/CONF.1995/MC.II/1, 5 May 1995.

[17] The members were: Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway, and Sweden. See NPT/CONF.1995/MC.II/WP.1-9.

uranium—a position that would receive further attention in the years ahead as fears of the dangers of nuclear terrorism continued to grow.[18]

The Non-Aligned Countries submitted their own working paper addressing safeguards, NWFZ, and export controls.[19] This paper contained a strong statement of support for safeguards—in particular for making full-scope safeguards a 'condition of supply of nuclear materials and technology' (a position later reflected in paragraph 12 of the Conference's P&O Decision) and also reaffirmed strongly the value of NWFZs. It also underscored the importance of ensuring that export controls are non-discriminatory and do not impede peaceful uses—it called for the establishment of an 'ad hoc committee' to formulate 'criteria and procedures' for export controls to NNWS and to agree on an export control trigger list.

With respect to the bracketed language, Iraq objected to language in the report calling on Iraq 'to continue its cooperation fully' with the IAEA, arguing that Iraq had already destroyed its nuclear programme. There were additional difficulties with respect to the implementation of safeguards in the DPRK.

The main message coming from Main Committee II, in sharp contrast to the work of Main Committee I, was one of broad consensus, even if total agreement proved elusive by the 5 May deadline for submitting the report. The Committee agreed on the need for a wider application of safeguards; the separation of peaceful from military nuclear activities in the NWS; the contributions of regional systems of accounting and control in cooperation with the IAEA; the need for strong safeguards over direct-use material and for greater transparency over the use of all such material; and many other issues.

Main Committee III

Main Committee III focused on the peaceful uses of nuclear energy.[20] It held 6 formal meetings from 20 April to 5 May 1995. The Committee began its work with a general exchange of views and then proceeded to hold nine open-ended drafting group meetings to consider specific proposals and wording to include in the Committee's Report concerning the Final Declaration.[21] As was the case with Main Committee II, the deliberations in Main Committee III also yielded a virtual consensus on the key items on its agenda.

As has now become customary, the language in Article IV of the Treaty about the 'inalienable right' of all parties to the peaceful uses of nuclear energy was subject to some distinctly North vs. South interpretations. The Non-Aligned Countries, for example, stated this right in unqualified,

[18] NPT/CONF.1995/MC.II/WP.7, 21 April 1995.
[19] NPT/CONF.1995/MC.II/WP.18, 1 May 1995.
[20] For the summary records of the discussions, see NPT/CONF.1995/MC.III/SR.1-6.
[21] The Report of Main Committee III is available at NPT/CONF.1995/MC.III/1, 5 May 1995.

categorical terms[22], while the working paper of the developed NNWS (the G-11), for example, linked this right to 'in conformity with articles I and II of the Treaty'[23] (language later adopted in the Committee's Report).

The Report stressed the role of the IAEA in strengthening nuclear safety, while recognizing that this was the primary responsibility of individual States. It also underscored the importance of a strong national infrastructure for dealing with radiation protection, physical security, and waste management. In rather direct, un-bracketed language, the Report also proposed the following language for the Final Declaration on the subject of attacks on nuclear facilities:

The Conference also considers that attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.[24]

Taking special note of the concerns of small island developing States and other coastal States, the Report also highlighted the security concerns surrounding the transport of fissile nuclear material, and endorsed various measures to strengthen controls over such shipments.[25] The Committee also underscored the importance of strengthening nuclear waste management—on this subject, the Report stressed issues relating to protecting human health and the environment (rather than possible terrorist threats).[26]

The Committee voiced its strong support for the IAEA's technical cooperation with developing countries. The Committee, however, was ultimately not able to submit a consensus report due to an amendment requested at the last minute by Iran, under which the Conference would voice its 'regret' over the existence of 'unilaterally enforced restrictive measures'—words that related to the controls exercised by the Nuclear Suppliers Group.[27]

With respect to the issue of the 'peaceful applications of nuclear explosions' under Article V of the Treaty, the Report reached compromise language noting that the once-envisaged benefits of such explosions had not materialized, and recommending that the Conference on Disarmament 'take this situation and future developments into account' on this issue. The compromise language was needed because China did not want to rule out such

[22] NPT/CONF.1995/MC.III/WP.5, 28 April 1995.

[23] NPT/CONF.1995/MC.III/WP.1, 24 April 1995.

[24] NPT/CONF.1995/MC.III/1, paragraph II(A)(8).

[25] Ibid., paragraph II(B)(10).

[26] Ibid., paragraphs II (C)(14-16).

[27] Ibid., paragraph III(11). Iran here used the same text found in the NAM's working paper on Article IV issues—compare NPT/CONF.1995/MC.III/WP.5, paragraph 7.

explosions in the context of a CTBT[28]—a stance that was dropped later in the Conference on Disarmament negotiations on the CTBT.

The Tone of the Deliberations

Much has been made of the rather poisonous tone of the discussions that took place within Main Committee I. Rauf and Charnetski, for example, have written that:

> … the nuclear-weapon states … were loath to accept criticism for their various failures … The non-nuclear-weapon states … led by the 'radicals' pushed for unrealistic schedules or timetables for nuclear weapons reductions and elimination. The carping at times was not only juvenile, dishonest and disingenuous, but also obstinate and counter-productive.[29]

Many of the non-aligned countries were particularly disappointed with the outcome of the review process, especially those parts of the process that were the focus of this Committee. According to one account, some 'complained that the West's version of negotiating was deleting from the text all language suggested by the non-aligned.'[30] Years later, a key US delegate, Thomas Graham, would offer a different view: 'Ambassador Ayewah seemed to regard the committee as a court to try the nuclear weapon states' observance of the Article VI obligations and as a result he was ineffective.'[31] Facing what they perceived to be inadequate progress in achieving disarmament goals, many of the non-aligned—as well as other non-nuclear-weapon states in other groups (including for example Sweden, Austria, and Ireland)—felt that the review process should be a forum for registering their disappointment with the lack of progress on disarmament and raising expectations for further results in this area. Shortly after the Conference, Ambassador Nugroho Wisnumurti of Indonesia—capturing the sentiments of many participants—spoke of some 'bitterness' at the final result of the NPTREC, in particular over the lack of a Final Declaration.[32]

I received some complaints about the steering of the Main Committee I and with the comments of the Chairman. I did address the Committee, appealing for a constructive approach.

[28] United Nations Department for Disarmament Affairs, *The United Nations Disarmament Yearbook*, Volume 20 (New York: United Nations, 1995), p. 16.

[29] T. Rauf and J. Charnetski, 'The 1995 Review and Extension Conference of the Non-Proliferation Treaty: How History was Made?', *Pacific Research*, May 1995, p. 20.

[30] Rebecca Johnson and Jim Wurst, 'NPT Review Founders over Divergent Views of Disarmament,' *Disarmament Times*, vol. XVIII, No. 4, Special Issue 4, 18 May 1995, p. 4.

[31] Thomas Graham Jr., *Disarmament Sketches* (Seattle: University of Washington Press, 2002), p. 283.

[32] Nugroho Wisnumurti, interview by Susan Welch, 'Delegate Perspectives on the 1995 NPT Review and Extension Conference,' *Nonproliferation Review*, Spring/Summer 1995, p. 6.

Patching up such differences in Main Committee I would appear in retrospect to have required less the skills of a diplomat than the supernatural talents of a wizard. Being an active participant in the debate, however, the Chairman of that Committee was unable to position himself as a neutral arbiter for reaching a consensus on compromise language, nor did he seek to perform such a role.

It would, however, be both be unfair and inaccurate to say that Main Committee I was in disagreement on literally every issue. There was widespread recognition of the Treaty's contributions to international peace and security. Meanwhile, the other two Committees had also been able to reach agreement on virtually all of the major items on their agendas. In the Conference's last hours, therefore, I still saw some hope for a possible agreement on a Final Declaration. I thought it was still worth a try.

Deadlock in the Drafting Committee

By any standard, the Drafting Committee had an extremely difficult challenge in working out an agreed text for a Final Declaration, especially in light of the heavily bracketed Report provided by Main Committee I. As Tadeusz Strulak struggled to find compromise language relating to Articles I, II, and VI, Richard Starr of Australia continued his patient and efforts on the issue of security assurances. By 11 May, he succeeded in reaching agreement on a text that was free of brackets, a rather extraordinary achievement under the difficult circumstances.[33] Philip Mackinnon also succeeded in overcoming some enormous obstacles by gaining agreement on language dealing with export controls.

By early evening on 12 May, there were some eleven bracketed paragraphs that remained dealing with Article I and II issues, while seven (of 45) paragraphs relating to Article III remained in brackets (concerning Iraq, the DPRK[34], nuclear transfers, and export controls). The language on Article was in good shape: by the last day of the Conference, Iran had withdrawn its paragraph against 'unilaterally enforced restrictive measures' and there were no more brackets on that issue.

As noted above, Main Committee III had succeeded in working out un-bracketed language (satisfactory to China) on 'peaceful applications of nuclear explosions'.

This left the 19 bracketed paragraphs dealing with Article VI and two bracketed paragraphs on Article VII (dealing with the Middle East and Israel's unsafeguarded nuclear programme). Such was the situation in the early evening on 12 May.

[33] I am indebted to Rebecca Johnson for her useful reconstruction of these events. See Rebecca Johnson, *Indefinite Extension of the Non-Proliferation Treaty: Risks and Reckonings*, pp. 50-52.

[34] I had received a letter from the DPRK's Permanent Representative to the United Nations on 9 May indicating that his country 'will not participate in adopting decisions or documents at the conference'.

With the Drafting Committee still in deadlock, despite having made some significant progress, I met with concerned delegations to see if we could reach the compromises needed for a Final Declaration.

Just Missing the Final Declaration

The conventional wisdom is that the NPTREC did not agree to a Final Declaration simply because it ran out of time. This was surely a theme I stressed myself at the time as well as many other observers and it is rather well backed by the facts. Yet this interpretation does not fully capture the circumstances we were facing at the time. It is of course incontrovertible that we did indeed run out of time. Yet it was also beyond dispute that the participants—not to mention the NGOs and media—were also exhausted from the four weeks of hard work needed to establish a sustainable foundation for the indefinite extension without a vote. We often tend to forget a feature that multilateral negotiations share with all negotiations over momentous issues: they are a fundamentally human process, filled with unpredictable developments, and susceptible to some basic emotions (pride, anger, and bitterness) and physical exhaustion. I know of nobody who participated actively in our deliberations who did not experience some, if not all, of such symptoms.

Yet the lack of time and fatigue only explain so much—not everything. Did the multiple brackets in the report of Main Committee I signify the use of what one observer has called, 'the instrument of vengeance'?[35] Perhaps, though a better explanation might be found in the lack of political will, squared: first, the non-aligned had compromised extensively in the process of reaching the Decisions on the indefinite extension and the P&O, and was in no mood to weaken further its positions in the review process; and second, the nuclear-weapon States, having won their long-sought indefinite extension, likely saw little incentive to make their own compromises needed to get a Final Declaration.

I did all I could to salvage the review process, though I certainly regretted that the Drafting Committee had been unable to make more progress in crafting a draft Final Document, in particular with respect to the items covered by Main Committees I. I had extensive consultations with delegations after the extension vote on this issue, as part of a collective effort to bring the review process to a positive result. We tried to see if a consensus was possible on the agreed language—after all, as the NPTREC curtain was falling, the Drafting Committee was able to remove the remaining brackets from most of the Reports submitted by Main Committees II and III. We had a 'Friends of the Chair' effort underway to deal with unresolved issues relating to Articles I and

[35] Anonymous quote, cited by Rebecca Johnson, *Indefinite Extension of the Non-Proliferation Treaty: Risks and Reckonings*, Acronym No. 7, September 1995, p. 40.

II, nuclear-weapon-free zones, security assurances, and disarmament. I personally chaired a marathon meeting on the night of 12 May in pursuit of the elusive consensus on the Final Declaration. We had explored the possibility of including (as was done in 1985) disputed language in the Final Document instead of the Final Declaration, but were unable to agree on that. Instead, I opened the final plenary at 10:30 pm on 12 May and we proceeded to adopt the Drafting Committee's report and Final Document without any Final Declaration. The Conference did agree to include the Reports of the three Main Committees in the Final Document, but these texts did not reflect the compromise language worked out after those reports had been submitted to the Drafting Committee.

One post mortem of the 1995 review process reached the following conclusion:

> As a result of the parallel Presidential Consultations, Main Committee I became 'orphaned' as the delegations concerned pulled their more senior diplomats into the Presidential Consultations, where the negotiations on 'principles' and 'enhanced review' had become the main focus of the Conference.[36]

Yet would the outcome have been different if these 'more senior diplomats' had stayed personally engaged with the work of the Main Committees? Does the 'orphan' thesis hold water? Could the underlying disagreements over major substantive issues relating to disarmament have been expeditiously resolved if only there had been a change of personnel in the Main Committee meetings?

While one can no doubt find some evidence to back up all these various explanations, my personal belief is that two powerful groups of States parties—the non-aligned and the nuclear-weapon States along with many supporters in the Western and Eastern Groups—decided that the compromises needed to achieve a Final Declaration were just not worth the perceived costs they would have had to pay. In short, having no Final Declaration was a 'less-bad' outcome than having an authoritative text that contained watered down language of what was actually wanted—language that could well prejudice future negotiating positions.

The final Report of the Drafting Committee is instructive in this respect.[37] After recording that the Committee had held 11 meetings between 28 April to 12 May, the Report went on to note that 'strenuous efforts were made to achieve a consensus final declaration' and that the Committee 'tried to broaden the area of agreement on a great number of issues' handled by the Main Committees, but 'consensus could not be achieved.'[38] The political will

[36] Tariq Rauf and Rebecca Johnson, 'After the NPT's Indefinite Extension: The Future of the Global Non-Proliferation Regime,' *Nonproliferation Review*, Fall 1995, p. 29.

[37] Report of the Drafting Committee, NPT/CONF.1995/DC/1, 16 May 1995.

[38] Ibid., para. 5

needed to 'broaden the area of agreement' was missing. It would take another five years for that political will to produce another NPT Final Declaration.

VI. THE AFTERMATH

Introduction: From Words to Deeds

Though there were of course some disappointments—especially in the inability to reach a consensus on a Final Declaration and the lack of some additional concessions from the nuclear-weapon States on disarmament—I welcomed the outcome of this Conference. I felt then and continue to feel today that the fundamental commitments of the Treaty relating to non-proliferation and disarmament deserved to be framed in the most binding and permanent language that international law could provide. I recognized that the hope for the future of the Treaty rested entirely on the readiness of its States parties to live up to their commitments, and I appreciated the importance of the strengthened review process—guided by the yardsticks offered by the language of the Treaty itself and the newly-agreed Principles and Objectives—in achieving this goal.

Almost a decade has now passed since the NPTREC adjourned. In 2005, the Treaty will mark the thirty-fifth anniversary of its entry into force—in other words, we are well beyond the 'early date' mentioned in Article VI for substantial progress on nuclear disarmament. Though nobody could reasonably expect the States parties to achieve literally all the ambitious goals of this Treaty even after so many years, I do believe that a sufficient amount of time has passed to render some preliminary judgments on how the Treaty and its associated regime are doing to meet their many challenges.

In brief, the Treaty faces two broad types of challenges: external and internal. External challenges refer to developments arising from broader political, economic, and technological trends in international relations, as well as from unilateral or collective actions taken by States outside the Treaty's review process (which together encompasses the sessions of the Preparatory Committee and the five-year Review Conferences). Internal challenges are those arising inside that process per se.

Such a typology of challenges is of course somewhat arbitrary and simplistic—as not every 'challenge' will neatly fit in one category or the other. Yet for our purposes it will suffice in helping to underscore that the relationship between the Treaty and its broader international context is two-directional. Yes, the general conditions of international peace and security will indeed shape the future of the Treaty. Yet it is also true that the full implementation of the Treaty will make its own unique contributions on behalf of a safer world for all. In short, the great Treaty goals of disarmament and non-proliferation need not await an end to all conflict and divisions in the world, nor the achievement of the ultimate goal of 'general and complete disarmament.'

What is most needed, therefore, is simple congruency—developments both inside the Treaty and outside of it must be mutually reinforcing and in harmony. Unfortunately, the track record of State behaviour since 1995 gives

way to substantial, and I believe legitimate, concerns for the future of this Treaty, notwithstanding some significant achievements in both contexts.

External Challenges

1995.

China's decision to conduct a nuclear test on 15 May 1995—just days after the NPTREC adjourned—was not the most auspicious omen for the Treaty, to say the least. A month later, France announced it would conduct a series of eight nuclear tests before ultimately joining a CTBT (which was not yet open for signature). Meanwhile, rumours were circulating in the press that various parts of the US government wished to preserve the ability to conduct small-scale nuclear explosions (still huge by conventional standards) even within a CTBT. On 17 August, China conducted another test, followed by a French test on 5 September, two more in October, another in November, and yet another in December. The UN Disarmament Commission met shortly after the NPTREC and continued what can only be described as a 'dialogue of the deaf'—there was surely no new momentum for disarmament in that forum that year. On 23 September, the Conference on Disarmament closed its 1995 session without any agreement on a CTBT nor any consensus on a fissile material treaty (the CD had agreed just before the NPTREC to create a negotiating mandate for such a treaty). In October, the US Department of Energy announced the US would be conducting a series of sub-critical tests (tests of nuclear weapons without any explosive yield from fissile material). Later that year we saw the same familiar pattern of deeply divided votes in the First Committee of the General Assembly on resolutions dealing with nuclear disarmament.

Yet the news that year was not entirely bad. In the weeks before the NPTREC, the NWS did take some steps to—so to speak—catch up on their disarmament commitments. In early April, the UK and France dropped their insistence on placing into the CTBT authority to conduct periodic tests for purposes of safety. The UK announced the same month it was planning to phase out its free-fall bomb, the WE-177. The NWS (minus China) issued a joint statement on 6 April reaffirming their commitment to pursue nuclear disarmament, while the Security Council adopted on 11 April a resolution on nuclear security assurances (Resolution 984), albeit it non-binding and drafted in caveated language. This latter move was of course undertaken before the NPTREC as a 'sweetener' to the non-nuclear weapon states in general and the NAM in particular.

On 11 August, President Clinton stated that the US would support a 'zero-yield' CTBT—in short, a treaty that would not allow any explosions from fissile nuclear materials however small in yield, a stance also endorsed by France and the UK. There was also some progress with respect to nuclear-weapon-free zones: France, the UK, and US announced in October that they

would sign the Protocols of the Raratonga Treaty (to create a Southeast Asian NWFZ), and the Bangkok Treaty (to create a South Pacific NWFZ) was signed by 10 States in December. In the realm of export controls, 33 states agreed in December to participate in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. While still a plurilateral, rather than fully multilateral, initiative, that initiative at least represented another political commitment by some countries to advance a shared non-proliferation goal.

1996.

The year began on a positive note, with the US Senate voting to ratify START II by an overwhelming majority and without amendment. Other positive developments that year included:

- France's announcement in January that it would commence a moratorium on nuclear tests.
- A set of major decisions announced by France in February to stop producing fissile material for nuclear weapons, to eliminate its ground-based nuclear missiles, to close its Pacific nuclear test site, to reduce the alert level of its nuclear forces, and to reduce the number of its nuclear submarines.
- In March, France, the UK, and US signed the Raratonga Treaty Protocols.
- In April, forty-three African States signed the Pelindaba Treaty (to create an African NWFZ).
- In June, China dropped its insistence on a right to conduct 'peaceful nuclear explosions' under a CTBT.
- In July, the International Court of Justice issued its historic Advisory Opinion on the legality of the threat or use of nuclear weapons. The Court found unanimously that 'there exists an obligation to … bring to a conclusion negotiations leading to nuclear disarmament.' (The Opinion, however, was non-binding and was not accepted by all NWS.)
- In July, China declared a moratorium on nuclear testing.
- In August, the Canberra Commission issued its influential report, which found that—the continued existence of nuclear weapons is a 'constant stimulus' to their future proliferation; the NWS should make an 'unequivocal commitment' to nuclear disarmament and take specific 'practical steps' to achieve it, including de-alerting. I was honoured to serve as a member of that Commission.
- In September, the General Assembly adopted the CTBT by a vote of 158-3-5—this met one of the 'benchmarks' in the P&O (though

the treaty has still not entered into force). Later that month, the Treaty was open for signature and all five NWS signed on 24 September.

- In November, the Preparatory Commission for the CTBT Organization was established in Vienna.
- In December, two very senior, retired US Generals (Goodpaster and Butler) joined with an international group of Generals and Admirals in a collective call for global nuclear disarmament—this was a very positive initiative from civil society, in helping to lend weight to the view that disarmament is a means to strengthen security.

Yet, as with each year to follow, there were also some setbacks, including: another French nuclear test in January; and a Chinese nuclear test in June and another (its last) in July. While public protests , mainly against the French tests, were conducted throughout the world the fact that both France and China had promised to sign the CTBT and end testing forever assuaged world opinion.

1997.

Following a summit meeting in March held in Helsinki, Presidents Clinton and Yeltsin issued a Joint Statement on Parameters on Future Reductions in Nuclear Forces—this Statement was especially significant in that it would have included in START III measures (yet to be negotiated) to establish transparency in warhead inventories and their destruction. In short, it addressed the issues of transparency and irreversibility called for in the P&O (along with further reductions). In September, France announced the de-targeting of its nuclear forces. China joined the Zangger Group (established by a group of States parties to the NPT to implement export controls under Article III of the Treaty).

In May, however, NATO re-affirmed its nuclear doctrine, while declaring (in the NATO-Russian Founding Act) that it had no intention to deploy nuclear weapons in new NATO member states. In December, Russia announced it would be deploying a new ICBM, the Topol-M.

1998.

Among the more encouraging events this year included:

- In February, a joint statement by fifty former Heads of Government for eliminating nuclear weapons.
- In March, the UK retires its last tactical nuclear bomb. Later, in July, the UK Government issued the results of its Strategic Defence Review, which indicated the country would cut its

nuclear arsenal to under 200 weapons, including only one nuclear submarine on de-alerted status.

- In March, the Bangkok Treaty entered into force—although disagreements with the nuclear weapon states of the West still prevented them from signing the protocols.
- In May, the IAEA Board of Governors approved the Model Additional Protocol, significantly strengthening safeguards, a key P&O goal.
- In April, France and the UK ratify the CTBT—a very significant development indeed.
- In June, a group of states (later called the 'New Agenda Coalition' or NAC) issued its 'Eight Nation Declaration' outlining steps needed to achieve nuclear disarmament. Its members were: Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia (who later withdrew from the Coalition), South Africa, and Sweden. A separate but closely affiliated 'Middle Powers Initiative'—a civil-society initiative led by the distinguished Canadian Senator Douglas Roche—was established in March, and it continues to work closely with NAC countries on a shared agenda.
- In August, the CD established an Ad Hoc Committee with a mandate to commence negotiations on a fissile material treaty
- In September, Russia and the US announced (inter alia) that each would remove 50 metric tons of plutonium from their military stockpiles.
- In September, Brazil acceded to the NPT, bringing the Treaty a step closer to universal membership, a key P&O goal.
- In December, the UN General Assembly adopted a resolution ('Towards a Nuclear-Weapon-Free World') introduced by the NAC; several additional NAC resolutions would follow in the years to come.

Yet several events that year overshadowed this progress.

The most troubling news of course came from South Asia, starting with India's announcement on 11 May that it had conducted three nuclear tests, followed by another announcement on 13 May of two additional tests. This led to Pakistan's announcement on 28 May of five nuclear tests, followed by the announcement of another one on 30 May. Although these tests were conducted by non-parties to the NPT, and to the CTBT, they were flagrantly inconsistent with long-standing global non-proliferation and disarmament norms (which both countries had long officially supported). In June, the Security Council unanimously condemned the tests and called upon both countries (inter alia) to join the NPT. Subsequent developments (not included in this chronology) included tit-for-tat tests of nuclear-capable missiles.

Henceforth, South Asia would be engaged in a wasteful and dangerous regional arms race involving both missiles and nuclear weapons—though many countries imposed some form of sanction for the tests, these have since been lifted and many in the world community now believe that both countries may actually have benefited from the tests, through their access to new forms of technical, military, and economic assistance in the years to follow. (In March 2004, the US announced that Pakistan would be treated as a 'major non-NATO ally' for export control and defence cooperation purposes.)

Among the more alarming developments that year concerning nuclear-capable missiles were Pakistan's launch in April of its 1,500 km-range Ghauri missile, and Iran's test launch in July of its 1,300 km-range Shahab-3 missile. Amid these developments, the US 'Rumsfeld Commission' issued in July a hair-raising (and widely-believed to be exaggerated) report on the global missile threat, which later served to help rationalize the US deployment of a national missile defence system not allowed by the ABM Treaty. The relevance of these developments for the NPT is clear: the Preamble of the NPT calls for the 'elimination' of the means of delivering nuclear weapons, and strategic missile defences have long been recognized as creating new incentives for the vertical and horizontal proliferation of nuclear-tipped missiles.

Closing out 1998 were a US announcement that it would be producing tritium for weapons from a civilian nuclear reactor, and a Russian sub-critical nuclear test—both in December.

1999.

More negative developments took place in 1999. In April, NATO issued its 'Strategic Concept' outlining a nuclear doctrine that continued to assess nuclear weapons as 'essential' in meeting NATO security needs. A few days later, Russian President Putin signed a decree providing for the future development and deployment of tactical nuclear weapons. Both developments were hardly compatible with the P&O's call for 'systematic and progressive efforts to reduce nuclear weapons globally.' As if following doctrinal suit, India released in August its own draft nuclear doctrine that featured (inter alia) reliance on a 'triad.' China tested an ICBM in August. But worst of all, on 28 October, the US Senate voted 51 to 48 against ratification of the CTBT—one of the 'crown jewels' of the P&O.

There just was not much good news this year. In June, Russia and the US agreed to discussions on START III. The 'Tokyo Forum on Nuclear Non-Proliferation and Disarmament' issued its report in July. In October—two weeks before the Senate rejected the CTBT—interested States organized a conference on facilitating the entry into force of the Treaty and adopted a Final Declaration. It was that kind of year.

2000.

The year began with Russia's announcement of its new 'National Security Concept,' which included a provision for the first-use of nuclear weapons, reversing a long-standing Russian policy; the action was widely interpreted as related to NATO expansion. In April, however, the Russian Duma ratified both START II (while attaching conditions to it relating to the ABM Treaty) and the CTBT. At their summit in June, Presidents Clinton and Putin agreed to remove 34 metric tons of plutonium from their military stocks. President Putin issued a statement in November calling for reductions of strategic weapons to below 1500, but the proposal was tied to the continued viability of the ABM Treaty. This was the year of the NPT Review Conference, which will be discussed later.

2001.

In April, Russia announced it would continue nuclear cooperation with India, even though India would not agree to full-scope IAEA safeguards—the P&O had made such safeguards 'a necessary precondition' for new nuclear cooperation. In 1 May, President Bush delivered a major speech on national security at the National Defense University, in which he outlined the strategic vision of the new Administration—it included a desire to 'leave behind the constraints' of the ABM Treaty, and a commitment to 'achieving a credible deterrent with the lowest-possible nuclear weapons consistent with our national security needs.' While the 11 September terrorist attacks in the United States made everybody more concerned over the possible acquisition of nuclear weapons (or other weapons of mass destruction) by terrorists, they also led to a major international preoccupation with counter-terrorist efforts that in my opinion have unfortunately diverted attention from the urgent need for progress in WMD disarmament. There was, however, still talk of reductions. At a summit meeting in November, President Bush proposed a unilateral US reduction in deployed strategic nuclear weapons to a level of 1700-2200, while President Putin stated he favoured a lower number and one registered as a treaty. On 13 December, the US formally announced its intention to leave the ABM Treaty—the departure would take effect in six months. The departure freed Russia from having to comply with START II, which would have eliminated multiple-warhead weapons and heavy ICBMs.

2002.

The year began with the US announcement of its 'Nuclear Posture Review,' which called for reductions of deployed strategic nuclear weapons to a level of 1700-2200, while also reaffirming the need for nuclear weapons in a new 'triad,' and calling for the study of new, lower-yield nuclear weapons. In remarks on 11 February, the US Undersecretary for Arms Control, John

Bolton, dismissed the significance of security assurances against the use of nuclear weapons—a perennial issue at all NPT Review Conferences. On 24 May, Russia and the US signed the Strategic Offensive Reductions Treaty (SORT), which established a 1700-2200 level for deployments of strategic nuclear weapons, but left unaddressed questions of verification, transparency, and irreversibility. The treaty—which does not address weapons held in reserve and which also does not require the physical destruction of a single warhead—is set to expire in 2012 and has a three-month withdrawal clause. A week later, the US announced it would resume production of 'plutonium pits' for nuclear weapons. Reflecting simultaneously the decline of apparent interest in the physical elimination of nuclear weapons, with the rise of interest in addressing non-proliferation goals, the industrial G-8 countries agreed at a summit meeting in Kananaskis, Canada, to spent $20 billion over the next decade to implement a new 'Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.' The investment in non-proliferation is fully consistent with many goals of the P&O and indeed the terms of the NPT itself—what is missing is an equivalent investment of resources to the problem of disarmament. In September, the US issued a 'National Security Strategy' document that featured an emphasis on the merits of pre-emptive military action to prevent future WMD threats; in December, the US issued a 'National Security Strategy to Combat Weapons of Mass Destruction' which affirms that the US will retain a first-use nuclear option. In November in the Hague, a group of States announced the formation of the 'International Code of Conduct' for missiles focusing on non-proliferation and arms control issues, but not disarmament. The same month, Cuba acceded to the NPT, a welcome event indeed for the Treaty. The year closed out however with the expulsion of the IAEA from the DPRK on 27 December.

2003.

As in previous years, this year had its ups and downs. On 10 January, the DPRK announced its intention to withdraw from the NPT. In June and July, the countries participating in the newly announced US 'Proliferation Security Initiative' (PSI) met respectively in Madrid and Brisbane to coordinate a common approach for interdicting shipments of WMD-related commodities.[1] On 11 November, the IAEA adopted a resolution that was critical of Iran for not fully complying with its safeguards agreement—this makes the third NPT NNWS to have been found by the IAEA to be in significant violation of its safeguards commitments (Iran, Iraq, and the DPRK). In December, a US defence bill becomes law which authorizes research on low-yield nuclear weapons, thereby reversing an earlier prohibition on such research. On 8

[1] President Bush announced this initiative in a speech in Krakow, Poland, on 31 May 2003. 'Remarks by the President to the People of Poland,' White House Press Release, 31 May 2003; available at <http://www.whitehouse.gov/news/releases/2003/05/print/20030531-3.html>.

December, the US was the sole country to vote against a UN General Assembly resolution calling for entry into force of the CTBT. The Swedish government announced on 17 December the creation of a new international Commission on Weapons of Mass Destruction, chaired by former UNMOVIC director Hans Blix. I am pleased to be a member of this commission, which will produce its report at the end of 2005. Also in December, Brazil voiced its opposition to agreeing to the IAEA's Additional Protocol.

With respect to Iraq, 2003 would be the year an international coalition would go to war—without approval by the Security Council—largely to address perceived threats posed by that country's WMD. The effort followed a decade of international sanctions and UN/IAEA inspections in Iraq, and amid continued international doubts about Iraq's ability or willingness to eliminate such weapons and their delivery vehicles. When no such weapons were ultimately found, intelligence agencies of key coalition partners were subject to widespread national and international criticism. There were many lessons from this experience, however, that may prove to be a silver-lining on an otherwise tragic situation—there is greater international appreciation now of the importance of on-the-ground inspections and of multilateral cooperation in addressing WMD threats. Unfortunately, the experience has also cast great doubts on the reliability of intelligence information relating to WMD threats. By eliminating the materials that are used to make WMD, however, disarmament may yet emerge as a preferred international course for alleviating or eliminating possible WMD terrorist threats.

2004.

The year began very auspiciously, with Libya revealing extraordinary details about its past WMD development activities and commencing concrete steps to dismantle all relevant projects. Libya also ratified the CTBT in January and, in March, agreed to the IAEA Additional Protocol.

Yet overshadowing these developments was the shocking news that Pakistan's foremost nuclear scientist, Dr Abdul Qadeer Khan, had been at the centre of an intercontinental web of illicit nuclear deals involving the most sensitive nuclear technology (i.e., weapons designs and uranium enrichment technology). It was surely among the most flagrant instances of nuclear-weapons proliferation in history, though the Pakistani Government maintains it had no official authorization or approval.[2]

Other relevant developments in 2004 included a speech by President Bush on 11 February at the National Defense University outlining seven-part plan to 'counter' the threat of WMD—including: an expansion of PSI to allow 'direct action against proliferation networks'; a call for strengthened national efforts

[2] On 4 February, Dr Khan made a short televised statement in which he expressed his 'apologies' for his actions. A full text of this speech is available at <http://www.fas.org/nuke/guide/pakistan/nuke/aqkhan020404.html>.

against WMD proliferation globally (including adoption of a US-sponsored Security Council resolution later adopted on 28 April as Resolution 1540); stronger controls over weapons from the Cold War; a proposal for the Nuclear Supplier Group not to sell sensitive fuel cycle technology (enrichment and reprocessing) to countries that do not already possess 'full-scale, functioning' plants; establishing the Additional Protocol as an essential precondition for nuclear cooperation; creation on the IAEA Board of a special committee on safeguards and verification; and the prohibition of countries 'under investigation' for violating nuclear non-proliferation obligations from serving on the IAEA Board. In May, the US also announced a 'Global Threat Reduction Initiative,' stressing the importance of physical security over special materials used in making WMD.

In March, the IAEA adopted a resolution deploring Iran's failure to comply with its safeguards obligations.[3] Thus Iran—the country that fought so hard against language on nuclear export controls in Main Committees II and III of the NPTREC—has now found itself implicated for serious safeguards violations, involving activities that Iran now admits included illicit imports of sensitive nuclear technology.

In September, the New York Times reported that the Republic of Korea had 'secretly produced a small amount of near-weapons grade uranium,'[4] a report quickly denied by the President of the Korean Atomic Energy Research Institute, who—while admitting the enrichment of uranium—said that it was 'an amount so small it was almost invisible and to levels that were not close' to weapons grade.[5] If the IAEA's ongoing investigation of this development confirms a violation of safeguards, this would not only represent a setback for nuclear non-proliferation in East Asia, but it would also provide new evidence of the need for the world to re-examine the adequacy of existing rules and norms governing the nuclear fuel cycle.

This, however, brings us to another set of issues relating to the 'internal' challenges facing the NPT regime. I will not cover these developments in the same level of detail as the discussion of the NPTREC, but will instead only highlight what I believe are the most significant issues.

Internal Challenges

Since 1995, the States parties have held six formal sessions of the PrepComs (three each leading up to the 2000 and 2005 Review Conferences

[3] GOV/2004/21, 13 March 2004.

[4] David E. Sanger and William Broad, 'South Koreans Say Secret Work Refined Uranium,' *New York Times*, 3 September, p. 1.

[5] Remarks of Chang In Soon, quoted in Anthony Faiola, 'S. Korean Official Attempts to East Nuclear Concerns,' *Washington Post*, 8 September 2004, p. A20. The day before, the same official stated, 'To be frank, our researchers are not that aware of the international accords'; remarks cited by James Brooke, 'South Korean Scientist Calls Uranium Test 'Academic',' *New York Times*, 7 September 2004, p. 13.

respectively). While necessarily preliminary, this record can provide some clues about how well the 'strengthened review process' is working and what might be needed by way of further improvements. Beyond doubt the most significant development here was the very successful 2000 Review Conference. The road to that success, however, was quite difficult and, as we shall see, the prospects for the 2005 Review Conference remain clouded.

The 1997 Session of the PrepCom

The first session of the PrepCom for the 2000 Review Conference took place in New York from 7 to 18 April 1997. The session was attended by representatives of 149 States parties, the IAEA, the South Pacific Forum (observer), 113 NGOs, and the following non-parties as observers: Brazil, Cuba, Israel, and Pakistan. This PrepCom session held 15 meetings.[6]

The 1997 PrepCom session was significant in that it was the first since the 1995 Decision on strengthening the review process and was a kind of litmus test for how well that process was going to work. In accordance with that Decision, the PrepCom did cover both substantive and procedural issues, using the same three issue 'clusters' adopted at the NPTREC.

Much of its work was routine and business-like. The PrepCom, for example, agreed on: its own agenda; the working languages; rules governing the participation of non-parties, NGOs, and intergovernmental organizations; the records that would be kept; and other such issues. It also decided upon the method for selecting the Chairmen of the PrepComs: the Western Group would propose the Chairman for the first PrepCom, the Eastern Group would propose the Chairman of the second PrepCom, and the Non-Aligned Group would propose the Chairman for the third PrepCom and the President of the 2000 Review Conference). Pasi Patokallio (of Finland) would chair the first PrepCom. In terms of work methods, every effort would be made to proceed by consensus or if this was not possible, to make decisions in accordance with the 1995 NPTREC's rules of procedure.

The PrepCom also decided the venues and dates of future PrepCom meetings: the second PrepCom would be in Geneva (27 April to 8 May 1998) and the third would be in New York from 12-23 April 1999. The next Review Conference would be held in New York from 24 April to 19 May 2000.

Many delegations submitted substantive proposals for language to be included in the Report of the first session. Using these proposals and on the basis of his informal consultations, the Chairman prepared a synthesis of the various proposals, which the PrepCom agreed to attach to its Report in the form of a 'Chairman's working paper'—for use in the next PrepCom. The preparation of this paper proved to be the main point of controversy at the

[6] Report of the Preparatory Commission on its first session, NPT/CONF.2000/PC.I/32, 18 April 1997. Summary records available for the opening meeting (NPT/CONF.2000/PC.I/SR.1), the general debate (NPT/CONF.2000/PC.I/SR.2-3), and the closing meeting (NPT/CONF.2000/PC.I/SR.13,15).

event—originally intended as a 'Chairman's paper' but was later adopted with the alternative title, following objections from Mexico that the draft had implicitly downgraded the importance of disarmament.[7] The paper had recommended that time at the second PrepCom be allocated to address the issues of security assurances, the Middle East resolution, and the fissile material issue. It should be noted that the NWS submitted a joint statement that, inter alia, reaffirmed their determination to continue their pursuit of 'systematic and progress efforts' to reduce nuclear weapons globally, with the 'ultimate goal' of eliminating such weapons, and of general and complete disarmament under strict and effective international control.[8]

The 1998 Session of the PrepCom

The second session of the PrepCom took place in Geneva from 27 April to 8 May 1998. The session was attended by representatives of 97 States parties (the smaller number due to the Geneva location), the IAEA, four regional intergovernmental organizations (observers), the Preparatory Commission for the CTBTO, 76 NGOs, and the following non-parties as observers: Brazil and Israel. The 1998 PrepCom session held 16 meetings.[9] The PrepCom elected Andelfo Garcia Gonzalez of Colombia to serve as Chairman of its third session. This session was chaired by Eugeniusz Wyzner of Poland.

After a general exchange of views (with 33 statements) the PrepCom went on to consider several working papers containing a wide variety of proposals for language to be included in the Report. While the PrepCom decided to reaffirm the venue and dates of the 2000 Review Conference, it was unable to reach agreement on draft rules of procedure and therefore deferred a decision to the third session. The substantive issues registering most disagreement related to the Middle East, security assurances, nuclear disarmament, as well as export controls, and attacks on nuclear facilities.[10] Much of the discussion cantered on what to include in the Chairman's working paper. As has become customary, there were several meetings of informal working groups. South Africa had proposed that there should be additional time allocated at the third PrepCom for nuclear disarmament, and Egypt proposed the same for the Middle East. By the end of the session, the Chairman's working paper[11] had

[7] For a useful summary and discussion of the first PrepCom, see Tariq Rauf, 'Preparing for the April 1998 NPT PrepCom: The Significance of Procedural Issues in the Strengthened Review Process,' Conference on South East Asia: Regional Security and Nuclear Non-Proliferation, PPNN Paper CB22/10, Bangkok, Thailand, 18-21 November 1997.

[8] NPT/CONF.2000/PC.I/2, 8 April 1997.

[9] See Report of the Preparatory Committee on its second session, NPT/CONF.2000/PC.II/36, 9 June 1998. For summary records of the opening meeting, general debate, and closing meeting, see NPT/CONF.2000/PC.II/SR.1-4, and 16.

[10] For a more detailed discussion, see Rebecca Johnson, 'Brinkmanship,' Second NPT PrepCom, Acronym Institute Briefing No. 9, 8 May 1998.

[11] NPT/CONF.2000/PC.II/35, 9 June 1998.

expanded to 51 pages and there was no agreement on additional procedural preparations for the 2000 Review Conference. At the close of the session, many delegations voicing their disappointment that more was not accomplished.[12]

The 1999 session of the PrepCom

The third (and final) session of the PrepCom took place in New York from 10 May to 21 May 1999. This was a particularly important session, since its job was to seek agreement on a set of recommendations for the 2000 Review Conference based on its review of the Treaty. The session was attended by representatives of 158 States parties, the IAEA, five regional intergovernmental organizations (observers), the Preparatory Commission for the CTBTO, 'over 70' NGOs (the exact number was not reported), and the following non-parties as observers: Cuba, Israel, and Pakistan. This PrepCom session held 21 meetings;[13] one meeting was devoted to three specific issues: nuclear disarmament; fissile material treaty; and the resolution on the Middle East. There was also a general exchange of views on the expected outcomes from the Review Conference (i.e., a forward and backward look, addressing what could be done to strengthen the Treaty and to achieve its universality, and covering the functioning of the review process itself). The PrepCom elected Camilo Reyes Rodríguez (to succeed Andelfo Garcia Gonzalez) of Colombia to serve as Chairman of its third session.

This session was a disappointment, mainly because it was unable to agree on substantive recommendations to the 2000 Review Conference. After extensive consultations, the Chairman put forward a working paper of draft recommendations, which was revised after further consultations and issued as a Chairman's working paper of 20 May 1999.[14] There was no consensus to accept the recommended text of this paper. On the procedural side, the PrepCom did reaffirm the time and venue of the 2000 Review Conference, agree to recommend the draft rules of procedure, adopt the provisional agenda and the proposed allocation of items to the Main Committees, agree on financing of the Conference, and invite the Secretary-General to assist prepare some background documentation for the Review Conference. The session also agreed to recommend that the three Main Committees should be chaired by representatives from the following groups, respectively: Non-Aligned (I); Eastern Group (II); and Western Group (III). In addition, the session agreed

[12] See Tariq Rauf, 'PrepCom Opinion: Farewell to the NPT's Strengthened Review Process?,' *Disarmament Diplomacy*, Issue No. 26, May 1998, at <http://www.acronym.org.uk/dd/dd26/26tariq.htm>.

[13] See Final Report of the Preparatory Committee for the 2000 NPT Review Conference, NPT/CONF.2000/1, 21 May 1999. For summary records of the opening meeting, general debate, and closing meeting, see NPT/CONF.2000/PC.III/SR.1-3 and 19.

[14] Final Report of the Preparatory Committee for the 2000 NPT Review Conference, Annex IV.

that an Eastern Group representative should chair the Drafting Committee and a Non-Aligned Group representative should chair the Credentials Committee. The PrepCom adopted its final report at its last meeting on 21 May, amid growing worries about the prospects for the forthcoming Review Conference.[15]

The 2000 NPT Review Conference

Considering the lack of consensus on substantive recommendations in the PrepCom, it was a pleasant surprise not just to see the 2000 Review Conference produce a consensus Final Document, but to produce one with some real substance. Indeed watching from my seat as Under-Secretary-General for Disarmament Affairs I could not but help feel a sense of elation and vindication that my stewardship of the NPTREC had borne fruit despite the disappointments of the intervening years. In an article published after the Conference adjourned, US representative Norm Wulf welcomed the result, noting that both Indonesia (speaking for the Non-Aligned Group) and Mexico (speaking for the New Agenda Coalition) did so as well.[16] Rebecca Johnson also concluded that 'overall the review process has provided greater accountability and more leverage on the weapon states than in the past.'[17]

Why was this a surprise? Surely the 'external' climate was less than auspicious for this event. The US Senate had refused to ratify the CTBT in 1999. The US, Russia, and China had serious disagreements over missile defence and space weapons issues. The Indian and Pakistani nuclear tests in 1998 reminded the world that nuclear weapons proliferation was something more than just an abstract possibility. There had been safeguards violations by NPT States parties—Iraq and the DPRK. And the 2005 PrepCom process had failed to agree on substantive recommendations.

Yet there simply is no simple determinism in the NPT process—external events surely play an important role in shaping the climate for negotiations within the various NPT deliberative arena, but they are in themselves not a very good indicator of actual results. This shows that there is something about the 'internal' process of the NPT that carries some weight in shaping results. I would suggest that these factors include the diplomatic capabilities of key participants in that process, well-informed lobbying efforts by NGO groups and individuals in civil society, private bilateral consultations before the Conference by States parties that have divergent priorities (I have US and

[15] For a discussion of these worries, see Rebecca Johnson, 'NPT Report: The NPT Third PrepCom: What Happened and How,' *Disarmament Diplomacy*, Issue No. 37, May 1999, at <http://www.acronym.org.uk/dd/dd37/37npt.htm>.

[16] Norman A. Wulf, 'Observations from the 2000 NPT Review Conference,' *Arms Control Today*, November 2000. He called the Final Document, 'a truly consensus, substantive final document.'

[17] Rebecca Johnson, 'The 2000 NPT Review Conference: A Delicate, Hard-Won Compromise,' *Disarmament Diplomacy*, No. 46, May 2000, in <http://www.acronym.org.uk/dd/dd46/46npt.htm>.

Egypt in mind here but there are no doubt many other examples), and a basic shared view among the participants that a successful outcome was important for the Treaty, and thereby important to each participant's national interests.

In my opinion, the most significant outcome was the agreement by the NWS to language on specific 'practical steps for the systematic and progressive efforts to implement article VI' of the Treaty along with the disarmament paragraph of the 1995 P&O.[18] I was particularly pleased that the NWS recognized the need to make an 'unequivocal undertaking' to accomplish the total elimination of nuclear weapons—this is language virtually right out of the report of the 1996 Canberra Commission and the seven members of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, Sweden) deserve great credit for their persistence, their willingness to make prudent compromises while holding firm on what counts. The 'thirteen steps' for nuclear disarmament do much more than add a few more 'ticks' on the 'yardstick' created in 1995—although greater clarity was both necessary and appreciated.[19]

As was the case in 1995, the 2000 Review Conference illustrated the merit of good 'conference management'—especially the importance of confidential small-group negotiations, pre-Conference preparations, and early resolution of procedural matters (notably the success of Abdallah Baali, the Conference President, in reaching agreement on two subsidiary bodies just before the Conference opened). The productive manner in which the NAC and NWS were able to discover some common ground both in the 'backward' assessment underway in Main Committee I under Chairman Camillo Reyes—and in the 'forward' look taken by its Subsidiary Body dealing with Article VI issues under Chairman Clive Pearson—were key to the success of the Conference. As a key US delegate later stated, 'quite simply, the alternative to this 'five plus seven' negotiation would have been no consensus, substantive final document.'[20] President Baali was able in the end to bring in other delegations into these discussions, which helped enormously in expanding the legitimacy of the agreed language by broadening the participation in who helped to frame it. I believe it was also a wise decision for the Conference to decide early on that the first two PrepComs would henceforth focus on substantive issues while the third PrepCom would concentrate on recommendations and resolving procedural issues for the next Review Conference—this was a sensible US proposal that all delegations will find useful in the years ahead.

[18] The source of the 'thirteen steps' is the Final Document of the 2000 NPT Review Conference, NPT/CONF.2000/28 (Part I), para 15, p. 14-15.

[19] After the Conference, Mexico's Ambassador Antonio de Icaza stated the following about the agreed disarmament language, 'what has always been implicit has now become explicit and this act both reinforces and revitalizes the treaty.'

[20] Wulf, op. cit. p. 5.

The Conference's determination to reach agreement was best symbolized by the heroic efforts made on its last day as negotiations continued overnight—thanks to a decision to stop the Conference's clock—to resolve a last-minute dispute between the US and Iraq over language about Iraq's compliance with the Treaty. The entire portfolio of Middle East—including such matters as the mentioning of Israel by name, or the naming of the other States in the region that had not yet concluded their own safeguards agreements required under the Treaty—were later described by Norm Wulf as 'the Conference's most intractable problem.'[21] Yet even here, the States parties were able to show enough give and take to reach a consensus.

In his post-Conference article, however, Ambassador Wulf also claimed that 'it is a mistake to try to accomplish in the NPT review process what is unachievable in other forums—whether on a regional issue or in dealing with the goal of nuclear disarmament.'[22] On this point I must disagree. If the NPT review process is not the place 'to try to accomplish' progress in addressing nuclear disarmament, where should the States parties pursue this goal? Where else should the States parties go to examine collectively the record of implementing Article VI responsibilities? Granted, the real decisions in this field will remain the sovereign prerogative of the NWS themselves, but it also true that the NPT is a vitally important arena for reminding the NWS of their obligations under the Treaty, for drawing public attention to their commitments, as well as for interpreting those obligations and adjusting them to deal with changing circumstances and expectations. Regional nuclear-weapon-free zones and other relevant regional issues also belong in the NPT arena. When the Treaty review process is only allowed to review issues on which there is full agreement, the days of the Treaty will be numbered.

Disarmament was of course not the only area on which progress was made at the 2000 Review Conference. The States parties held together in condemning the nuclear tests in 1998 by India and Pakistan, and stood behind Security Council Resolution 1172 concerning those tests, while underscoring the continuing importance of additional efforts to achieve universal membership in the Treaty. The Conference also recognized the important contributions of the IAEA in the field of safeguards, technical assistance, and physical security, and the vital need for States parties to strengthen their own national activities in many of these areas. The coastal and small island states once again were able to draw attention to the hazards of shipments of radioactive materials and nuclear waste. Countries that felt that the basic standards and practices of export controls should be both designed and implemented on a more multilateral—as opposed to the current plurilateral methods—had their chance to voice their desired reforms.

[21] Wulf, op. cit., p. 5.
[22] Wulf, op. cit., p. 9.

Thus, at the end of the day, the 2000 Review Conference emerged as a success from both a substantive and procedural standpoint. One cannot deny, however, the wisdom in Rebecca Johnson's own conclusion after this event: 'the words adopted in 2000 will mean nothing without political will and pressure to get the steps implemented.'[23] For some clues as to the legacy of the 2000 Review Conference, we must now turn to the work of the PrepComs leading up to 2005 Review Conference.

The 2002 Session of the PrepCom

In the vicissitudes of interaction between the NPT's internal and external environment, one development following the 2000 Review Conference is particularly noteworthy: the election of George Bush as US President in November 2000. Unlike his predecessor, the new US President did not support the CTBT; he was critical of continued US membership in the ABM Treaty; and he was also much more suspicious of the role of multilateral institutions—and multilateralism in general. Would the new US Administration back off from the commitments made by its predecessor? In short, would the 'politically binding' commitments made in 1995 and 2000 hold up? And if not, what would be the implications for the strengthened review process, if not the future of the Treaty itself?

Canadian Senator Douglas Roche is one whom I would regard as almost the 'conscience of the NPT.' A member of the Conservative Party in Canada, he was also the founder and President of the Middle Powers Initiative, an international civil-society initiative to promote concrete, practical steps in the field of nuclear disarmament. Here is how he summarized the results of the 2002 session of the PrepCom for the 2005 Review Conference:

An exercise in frustration, the first meeting of the Preparatory Committee for the 2005 Review of the Non-Proliferation Treaty dashed the hopes raised at the 2000 Review for serious progress on nuclear disarmament. Not only did the Nuclear Weapons States (NWS) step back from their 'unequivocal undertaking' to negotiate the total elimination of their nuclear arsenals, the PrepCom could not even agree on how implementation reports will be made. Extensive wrangling over a timetable for the PrepCom meetings signalled the deep divisions persisting in the international community on the future of nuclear weapons. With the United States openly admitting that its new approach consists of nuclear and non-nuclear offensive systems and stating that it 'no longer supports' some of the 13 Practical Steps agreed to in 2000 (e.g., ABM Treaty, CTBT), the NPT has been severely wounded.[24]

[23] Johnnson, op. cit., May 2000.

[24] Douglas Roche, 'The NPT: Crisis and Challenge,' Report and Assessment of Non-Proliferation Treaty Preparatory Committee Meeting, New York, 8-19 April, 2002, p. 3, at <http://www.gsinstitute.org/archives/000095.shtml>.

What exactly happened? The PrepCom met in New York from 8 to 19 April 2002, with 138 States parties participating.[25] It fulfilled many of its formal responsibilities: it elected a Chairman (Henrik Salander of Sweden) and decided that the Chairman of the second PrepCom in 2003 would be László Molnár of Hungary; it set the dates and venues of the remaining PrepComs and the 2005 Review Conference (which would be held in New York n 2-27 May 2005); it agreed to make 'every effort' to achieve consensus; it authorized the attendance of non-parties as observers (Cuba attended) and representatives of regional and intergovernmental organizations (participating were five regional organizations, the International Committee of the Red Cross, and the Preparatory Commission for the CTBT); and reached other procedural decisions concerning the working language, finances, the nomination of the provisional Secretary-General, et al.

The PrepCom held five meetings of general debate involving 66 statements—including many statements addressing compliance and terrorism issues recognizing that this was the first PrepCom after the 9/11 tragedy. It also held a special meeting to allow 14 NGO representatives (out of 62 that attended) to address the PrepCom; and met in 19 meetings for preparatory work related to the 2005 Review Conference. There were three special meetings dealing specifically with nuclear disarmament, regional issues (including the Middle East Resolution), and safety and security. The main product—aside from the various working papers offered by the delegations—was a factual summary prepared by the Chairman and attached to the Report as an annex, without amendment or formal adoption by the PrepCom.

On the issue of reporting, which proved contentious, both Canada[26] and the New Agenda Coalition[27] had tried to encourage more regular reports. Step number 12 of the 2000 Review Conference's 13 steps provided for 'regular reports'—and the Middle East Resolution also had a reporting requirement—but these mandates contained no further details on either the schedule for submitting such reports or their content. Germany had also submitted a working paper on non-strategic nuclear weapons that proposed greater reporting on implementation of the 1991/1992 'presidential nuclear initiatives'—unilateral US and Russian commitments to reduce such weapons.[28]

Though there was no consensus, the reporting issue will no doubt arise in the future, as the States parties continue their efforts to improve the review process's transparency and accountability. The NWS, in their statements and various papers not formally included as official documents, provided some

[25] Report of the First Session of the Preparatory Committee for the 2005 NPT Review Conference, NPT/CONF.2005/PC.I/21, 19 April 2002. For the available summary records, see: NPT/CONF.2005/PC.I/SR.1-4, 6, and 18-19.

[26] NPT/CONF.2005/PC.I/WP.3.

[27] NPT/CONF.2005/PC.I/9.

[28] NPT/CONF.2005/PC.I/WP.5.

description of what they were doing to implement their Article VI responsibilities, but many delegations found such descriptions lacking in detail and non-verifiable. That was my perception, and has been for some time. I think Canada, Germany, and the NAC are on the right track on this issue and hope they will continue to pursue it along with others who support this approach in the other Groups. There is some poignant irony in the exhaustive and intrusive safeguards verification and transparency measures that are required of the non-nuclear-weapon states and the impression one gets from the NWS view their own reporting requirements are purely discretionary. It is of course true that the reporting standards could be clarified in terms of their regularity and content. This double standard will therefore remain for future PrepComs and Review Conferences to resolve in the years ahead.

There was some evidence of NWS retreating from the 13 steps—the US, for example, said that it only 'generally agrees' with these steps, and that it now opposes two of them (relating to the CTBT and the ABM Treaty). Yet I believe it is premature to lose all hope for progress in implementing these agreed standards. For all the talk at the 1995 NPTREC and the 2000 Review Conference about yardsticks, I doubt the States parties will give up in their effort to perfect these measuring devices and to employ them with keen vision.

The 2003 Session of the PrepCom

The second session of the PrepCom for the 2005 Review Conference took place in Geneva on 28 April to 9 May 2003, with László Molnár of Hungary as its Chairman.[29] While the session met most of its key administrative goals (except for the election of the Chairman of the third session given the lack of an agreed candidate), the consultations and debate indicated much discontent among the States parties with the implementation of the Treaty. Also noteworthy was the fact that this was the first PrepCom following the ouster of Saddam Hussein by coalition forces—this 'external' event (connected at the time with fears about Iraq's alleged WMD capabilities) no doubt contributed to the heavy theme of 'compliance' in the statements and informal deliberations—as did certain 'internal' events relating to the Treaty, in particular new revelations about safeguards violations by Iran and the DPRK's announcement in January that it was leaving the NPT.

The PrepCom held 19 meetings, four of which were devoted to the general debate involving 45 statements. The PrepCom devoted one meeting for presentations from 11 speakers (37 NGOs attended). Four regional organizations participated as observers as did the Preparatory Commission for the CTBTO. Aside from the opening and closing meeting, there were 12 meetings on substantive issues. The Chairman, due to divergent views among

[29] NPT/CONF.2005/PC.II/50, 13 May 2003. For summary records of the open and closing meetings and general debate, see NPT/CONF.2005/PC.II/SR.1-4 and 19.

the delegations over the status of the DPRK, announced that he would be holding the country's nameplate for the session. During the session, the Chairman followed a Canadian (et al.) suggestion and encouraged greater 'interaction' among delegations during the deliberations—a step that was not earth-shaking, but possibly a useful precedent for future work in the preparatory committee and review processes. The Chairman's 'factual summary,' prepared on his own and without the need for approval, was attached to the Report.

Among the many issues discussed at this PrepCom, the following are among the more noteworthy:

Article VI.

The NWS continued their practice of not issuing formal 'reports' on their implementation of Article VI, though they did provide oral descriptions of their activities and some provided informal papers and factsheets. While the US and Russia heralded the Strategic Offensive Reductions Treaty in a joint statement,[30] several other delegations (notably the NAC, Sweden, Brazil, and China) questioned the contribution of that treaty to actual disarmament, noting the lack of transparency, verification, and its reversibility. I noted that the NAC statement (presented by News Zealand) described the track record in the field of nuclear disarmament as 'dismal.'[31] The UK submitted a working paper updating the PrepCom on its work with respect to the verification of nuclear disarmament, one of a series of papers the UK has drafted on this important subject, to their credit.[32]

Security Assurances.

A perennial issue at the PrepComs, security assurances came up in this session in another context. Speaking for South Africa, Peter Goosen cautioned against granting security assurances to non-parties (i.e., the DPRK), saying that this could send a 'bad message, a message that would advise that those states who have for nearly 30 years been in compliance with their NPT non-proliferation obligations are not able to rely on the NPT to achieve legally binding security assurances, whereas the threat of nuclear weapons proliferation leads to this being granted.' Goosen added that 'security assurances rightfully belong to those who have given up the nuclear weapon option—as opposed to those who are still keeping their options open.'[33] (Germany had similarly submitted its

[30] NPT/CONF.2005/PC.II/21, 30 April 2003.

[31] Marian Hobbs, on behalf of the New Agenda Coalition, General Debate, April 28, 2003.

[32] NPT/CONF.2005/PC.II/WP.1, 23 April 2003.

[33] Statement by Peter Goosen, 2nd PrepCom to the 2005 NPT Review Conference, 1 May 2003; cited in Rebecca Johnson, 'Rogues and Rhetoric: The 2003 NPT PrepCom Slides Backwards,' *Disarmament Diplomacy*, No. 71, June/July 2003, at footnote 60.

own report at the first PrepCom on specific practical measures needed to attain a nuclear-weapon-free world.[34])

Non-strategic weapons.

Non-strategic nuclear weapons have been a subject of growing interest in recent years, fuelled probably by rumours that the US was undertaking research on new low-yield weapons, Russia's new strategic nuclear doctrine (responding to NATO expansion) which elevated the role of non-strategic nuclear weapons, and new physical security concerns over such weapons given rising concerns about terrorist threats. Austria, Mexico, and Sweden jointly introduced a working paper on how these issues could be addressed, proposals which included greater transparency and conversion of 1991/1992 unilateral reductions into binding legal commitments.[35] Germany, the NAC countries, and many others have raised this issue as well and offered their own suggestions.

Reporting.

It was encouraging that more States submitted reports this year (relative to 2002) concerning nuclear disarmament and the Middle East Resolution (in accordance with paragraph 12 of the 'thirteen steps' from the 2000 Review Conference and paragraph 16 of the 1995 Middle East Resolution). Canada, which has championed this issue on other occasions, issued a working paper offering some useful suggestions on how to improve the preparation of such reports.[36] The NWS, however, did not submit formal written reports on their disarmament activities, nor did they express any interest in requiring such reports to have specific formats.

Education.

Egypt, Hungary, Japan, Mexico, New Zealand, Peru, Poland, and Sweden introduced a working paper on disarmament and non-proliferation education, another subject of growing interest to States parties.[37] I am particularly pleased to see that this issue has been taken up in the NPT, given the work I had invested in promoting this issue while serving as Under-Secretary General of the UN Department for Disarmament Affairs. The paper commended the recommendations of a UN report prepared by a group of experts for the Secretary-General.[38]

[34] NPT/CONF.2005/PC.1/WP.4, 11 April 2002.
[35] NPT/CONF.2005/PC.II/WP.13, 2 May 2003.
[36] NPT/CONF.2005/PC.II/WP.2, 24 April 2003.
[37] NPT/CONF.2005/PC.II/WP.18, 7 May 2003.
[38] A/57/124, 30 August 2002.

NGO Access.

There were many criticisms from NGOs about their problems in gaining access to both documents and the delegations during this PrepCom. I have long believed that the time has come to expand NGO access and took some steps in this direction when I served at the UN, but much remains to be done.[39] On a personal note, this was the final NPT meeting that I was to attend as an international civil servant and I could not conclude that the state of the Treaty was healthy at the time.

The 2004 Session of the PrepCom

The 2004 session of the PrepCom for the 2005 Review Conference succeeded in achieving very little, with strong disagreements spilling over into both substantive and procedural issues.[40] This was especially unfortunate, since this was the final PrepCom before the 2005 Review conference, one mandated to produce actual recommendations, not just a factual summary of its deliberations.

Here is how Canadian Senator Douglas Roche summarized the event:

> The meeting at the UN in New York ended May 7, 2004 in disarray, the delegates unable to agree even on an agenda and background documentation for the Review Conference. Acrimony and weak leadership characterized the PrepCom. Issues of substance concerning the future of nuclear weapons were lost in the procedural wrangling that dominated the final two days of the two-week meeting . . . the present crisis is the worst in the 34-year history of the NPT.[41]

Another keen observer, Rebecca Johnson, offered a similar judgment:

> After two weeks of lacklustre debates, with much repetition and very few new ideas, the last day of the meeting turned into a bad-tempered shambles that ended in near farce, with a series of confused decisions taken without interpretation, with the majority speaking English [following a scheduled departure of interpreters] but two delegations insisting on French.[42]

The Conference was held in New York from 26 April to 7 May 2004, with 123 States parties participating. There were 30 meetings, organized along the same clusters and issue blocks adopted at the most recent PrepComs. The Chairman was Ambassador Sudjadnan Parhnohadiningrat of Indonesia, who was proposed by the Non-Aligned Group only after the second PrepCom.

[39] For further details, see Rebecca Johnson, 'Rogues and Rhetoric,' op. cit.

[40] NPT/CONF.2005/1, 20 May 2004. For summary records of the opening meeting, general debate, and closing meeting, see NPT/CONF.2005/PC.III/SR.1-3 and 5.

[41] Douglas Roche, 'Re-nuclearization or Disarmament: A Fateful Choice for Humanity,' Middle Powers Initiative, May 2004, p. 1. (Available at: <www.middlepowers.org/mpi/pubs/npt-analysis/pdf>).

[42] Rebecca Johnson, 'Confusion and Anger as NPT Meeting Closes in New York,' Interim Update, Acronym Institute, 8 May 2004. (Available at: <www.acronym.org.uk/npt/04interim.htm>).

Three regional organizations attended, in addition to the Preparatory Commission for the CTBTO and the International Committee of the Red Cross. There were 69 NGOs represented, 13 of which made oral presentations to the Conference. Perhaps its most notable procedural decision, which came late in the Conference, was the unanimous endorsement of Ambassador Sérgio de Queiroz Duarte of Brazil for the presidency of the 2005 Review Conference. The Chairman's factual summary was included only as a 'working paper'[43] along with the Chairman's eight-page working paper that euphemistically identified issues and proposals that 'required further discussion.'[44] The Conference also agreed on the formula for electing the Chairmen of the key Committees.

There is little point, at this stage in my account, to re-cultivate the ground already well established in the PrepComs following the successful 2000 NPT Review Conference. Very detailed accounts of the last PrepCom are available elsewhere.[45] The disputes are essentially the same—to some, almost certainly the majority of the States parties, the basic problem concerns promises not kept in the field of disarmament, but also to some extent with respect to the peaceful uses of nuclear energy. To others—largely in the Western and Eastern Groups—the real problem concerns the need for greater compliance with non-proliferation commitments.

We have covered much ground in this saga, and the time has come to place all the various facts into some broader context of international peace and security. For this purpose, I would now like to examine the NPT as a regime, for the reforms I believe are necessary will require a functioning regime to achieve their full promise.

[43] NPT/CONF.2005/PC.III/WP.27, 10 May 2004.

[44] NPT/CONF.2005/PC.III/WP.30, 21 May 2004.

[45] See in particular, Rebecca Johnson, 'Report on the 2004 NPT PrepCom,' *Disarmament Diplomacy*, May/June 2004. (Available at: <www.acronym.org.uk/dd/dd77/77npt.htm>); and Douglas Roche (2004), op. cit.

VII. THE NPT AS A TREATY REGIME

Introduction: Understanding the NPT in its Wider Context

Previous chapters have described many events concerning the package of decisions in 1995 that resulted in the indefinite extension of the Treaty, as well additional developments over the years that followed. One could at this point simply jump to a list of prescriptions to improve the implementation of the Treaty for future generations, but this would presuppose that isolated facts are a sufficient basis for making such recommendations. To get from raw facts to prescriptions, we need to cross the bridge of interpretation.

I believe it is especially important to view the NPT as a treaty regime, one that shares many qualities with other regimes. The deeper we understand these qualities—in particular the factors that influence the behaviour of its States parties—the stronger will be our foundation for improving the overall health of this regime.

We live in a world of rules and norms.[1] Some regulate common day-to-day international activities in the fields of air transportation, communication, public health and the environment, and other such areas. Others comprise the basic architecture of international peace and security. Virtually all of these rules and norms are taken for granted—yet they have profound effects in defining conditions in the world today and in shaping the world of future generations.

In a world of sovereign nation states, it is astonishing not only that such rules and norms persist, but also that *compliance* has itself become a norm. Louis Henkin's dictum—that 'almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time'[2]—remains valid even in our current environment, which is often characterized by glaring headlines about the dangers arising from weapons of mass destruction (WMD—i.e., nuclear, biological, or chemical weapons).

The global scope of the dangers posed by such weapons, as well as the global scope of the market for the materials and technology to make them, argues strongly for fully multilateral approaches to eliminate such dangers. This, in essence, is the *raison d'être* for the multilateral regimes that have grown around the NPT, the Biological Weapons Convention (BWC), and the Chemical Weapons Convention (CWC). In contrast to approaches that emphasize unilateralism, the use of military force, and civil defence measures as a sufficient basis for confronting WMD threats, the alternative approach stresses multilateral cooperation and more diplomatic methods of enforcing compliance, together undertaken within the evolving WMD regimes.

[1] The discussion that follows in this section draws heavily upon the author's earlier work, 'Deadly Weapons and Their Emerging Regimes: Asia's Peril and Promise,' *Asia-Pacific Review*, November 2003, Vol. 10, No. 2., pp. 19-35.

[2] Louis Henkin, *How Nations Behave* (London: Pall Mall Press, 1968), p. 42.

The entire international community—which faces conflicts both inside and between states—has an enormous stake in the success of these multilateral regimes. Since these regimes are not self-sustaining, an increasingly important role will be played by global leaders in strengthening these regimes in the interests of international peace and security. The importance of these regimes—in particular the NPT regime—and their implications for international peace and security are the twin subjects of this chapter. The discussion will help to clarifying exactly why the indefinite extension of the NPT in 1995 was so vitally important.

The Relevance of Regimes

Regimes undeniably shape the behaviour of states. By buttressing the rule of international law, they bring order to an otherwise anarchic world. How they accomplish this requires some answers to some specific questions about these regimes, including—what are their goals, who sets these goals, who is a member, why do states join, why do they comply, what happens if they do not comply, and how does the regime change over time? And finally, are we better off with regimes than without them? This is no small challenge.

Basically, a regime is a framework of rules or expectations that states create to regulate their interactions in an issue area. Regimes exist because of the unacceptable costs of unrestrained competition for selfish benefits without them. Countries join regimes because they recognize that their marginal loss of freedom or sovereignty by joining is far less than their marginal gains of membership. In short, states join regimes because multilateralism pays dividends that unilateralism cannot match. Regimes do not set their own goals: their member states set the goals and provide the means to achieve them—not surprisingly, these regimes are intended to serve the concrete national security interests of their members. Issues of compliance and enforcement vary with the type of regime and the varying extents to which the respective norms are binding upon their members.

Disarmament Regimes and Non-Proliferation Regimes

There are legally-binding regimes and there are regimes based exclusively on political commitments. Regimes also differ in their basic goal, as in disarmament versus non-proliferation. Some are more detailed than others in elaborating requirements for transparency and verification.

The most legally-binding and universal are the treaty-based regimes aiming at the elimination of WMD. Given the desired irreversibility of disarmament, it is not at all surprising that the regimes created to serve this goal would be set forth in formal treaties and that they would also be open to the membership of the entire world community. One could reasonably assume that states would not give up their most deadly weapons lightly—and that they would

prefer to rely upon commitments registered in the most obligatory form possible, rather than just policy statements, handshakes, winks, nods, toasts, and other gestures of contingent consent.

By contrast, the least-binding controls and most constrained memberships are those that deal strictly with the non-proliferation of such weapons, such as the export control regimes maintained by Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. Regimes dedicated only to non-proliferation tend not to be universal and their rules are determined not by the many, but by the few. These rules are agreed in a clubby environment, typically in private meetings. A common denominator of these regimes is the existence of suppliers cartels—what some call 'coalitions of the willing' on behalf of global norms, while others, usually from the developing South, believe such regimes are motivated by less noble goals. Many specialists view these regimes as weak since they lack any means of verification and enforcement, a weakness further compounded by their lack of universal membership.

Disarmament regimes are different, however, because the goal they seek to achieve is truly universal in scope and undeniably equitable. In this sense, there are no double standards in these regimes—all the parties to the BWC and CWC have agreed to forswear these respective weapons systems. Nuclear-weapon-free zone regimes also confer equal benefits and have symmetrical obligations. The NPT falls into a different category, given the imbalance in the treaty requirements for the two categories of its members—the nuclear-weapon-states and the non-nuclear-weapon states—though all of its parties share a common commitment to disarmament.

Despite their differences, both non-proliferation and disarmament regimes remain 'works in progress' and must adapt to new challenges. They surely make the world more secure than it would be without them—the 'worst-case scenarios' without such regimes are surely far worse than the worst-case scenarios with them. The regimes have especially important roles to play in promoting compliance and confidence building.

Though burdened by conditions attached by some states in becoming parties, the CWC's system of verification includes an organization that can perform on-site inspections and other functions necessary to ensure compliance. Yet the BWC still lacks any such verification mechanism, and the NPT—which never had an executive secretariat—only provides for verifying compliance with nuclear safeguards commitments. For its part, the CTBT also has an extensive global monitoring system, though because the treaty has still not entered into force, the world is left to rely on fragile, voluntary moratoria that a country can end simply by issuing a press release.

The Regimes under Fire

Hence we find ourselves at a peculiar juncture with respect to these disarmament regimes. Weakened by erratic and often inadequate funding—and deprived of unqualified verification mandates or in some cases relevant institutions to implement them—the utility of these regimes has been questioned by commentators in some of the states that are responsible for these limitations. Some sceptics refuse to credit the treaty-based regimes for the pattern of compliance by the overwhelming majority of their states parties. Other critics and non-parties object that the treaties either are discriminatory or place them at security disadvantages regionally.

Though the NPT has specifically been labelled as discriminatory, it remains the only treaty locking the five nuclear-weapon states into a binding legal obligation with respect to nuclear disarmament. The treaty now has 188 States parties (assuming that the DPRK is out of the regime—though its withdrawal is not recognized by many states), just four short of universal membership. While impressive, the CWC (with its 164 parties) and the BWC (with its 151) still have some catching up to do before becoming fully universal. Nevertheless, these treaties together do far more on behalf of global norms than any of the non-proliferation regimes—regimes whose greatest contributions are in complementing efforts to achieve global disarmament goals.

The relevance of both types of regimes is determined far less by their specific attributes than by the policies and practices of the states that compose them. Their relevance will grow to the extent that states come to understand how regimes enhance their security, especially relative to their alternatives of armed self-help and unilateralism.

This is not to say that the regimes are without their problems. Regimes have not grown very evenly across the wide variety of current or emerging weapons systems. Examples of weaponry that are not now subject to regime constraints include—missiles, small arms, light weapons and other conventional arms, outer space weapons *per se*, unmanned aerial vehicles (UAVs), and new types of WMD. All the regimes are weak in the area of enforcement—since none confronts potential violators with mandatory, multilaterally-imposed consequences—unless material breaches are reported to the Security Council and acted upon.

We also continue to hear states accusing each other of violating their disarmament or non-proliferation obligations, yet we rarely see any hard evidence at an early enough stage to support such accusations. Nor do we see such cases being brought before the UN Security Council for enforcement action—except of course in the case of Iraq and the DPRK.

Then there is the problem of the lack of congruency between treaty obligations and domestic laws and policies—a problem that is especially apparent with respect to export controls and nuclear weapons doctrines. It is

also seen in the absence of specialized disarmament offices in governments, and the lack of investment in research and development to support disarmament goals—in sharp contrast to the ample funds available for maintaining nuclear stockpiles and undertaking research on new weapons. We have grown accustomed to seeing such terms 'stockpile stewardship,' 'nuclear weapons infrastructure,' and the 'revolution in military affairs,' while there are no parallel efforts underway to give effect to parallel notions of 'disarmament stewardship,' 'disarmament infrastructure,' and 'revolution in disarmament affairs.' The very words we use therefore tell us a lot about the underlying policy goals they represent.

Other state actions are limiting the contributions of these treaty-based regimes. Many key treaties are not yet in force, like the CTBT, or have been abandoned, like START II and the ABM Treaty. Some of the new treaties and non-binding regimes lack both disarmament commitments and even the goal of establishing an international means of verification—this includes the Moscow Treaty (SORT) and the Hague Code of Conduct (HCOC) against ballistic missile proliferation. Many states still have an allergy to transparency. They continue to resist, for example, providing details about how many weapons they have destroyed or possess, and (with few exceptions) how much weapons-usable material they have produced or are stockpiling.

Lastly, treaties have states as their parties—this leaves a gap in the rule of law with respect to the duties of individuals and groups—an alarming problem in light of global terrorist threats, and the difficulties of weak or failed states in implementing treaty obligations. Perhaps the International Criminal Court may one day fill this gap, but that is another problem for another day.

If the treaty-based regimes are to achieve their full potential, they will require stronger support from all nation states, from the most powerful—who have the financial, political, and technological means—to the smallest and most vulnerable of states, whose desperate conditions can, if ignored, become a seedbed for future global catastrophes.

The Different Stages of Regimes

It is of course impossible to predict the future of these regimes, and any discussion of this subject must recognize that regimes are not static arrangements, but dynamic, living systems. They even have their own life-cycles—with evolutionary stages that range from genesis, growth, decline, and collapse—in addition, of course, to the stage of steady state maintenance. Though there is no formal missile disarmament regime, for example, there are early signs that the world community is at least aware of the absence of norms for missiles—a point made in a statement by the Secretary-General Kofi Annan in April 1999—and is taking some preliminary steps to address this problem. Evidence of such steps is seen in the UN General Assembly's adoption in 2000 of a resolution calling on the Secretary-General to undertake

a study, with the assistance of a panel of governmental experts, on the subject of missiles in all its aspects.[3] The General Assembly received this report in 2002[4] and its First Committee adopted another resolution requesting a follow-up study, beginning in 2004.[5] Though these fledgling initiatives hardly constitute a satisfactory response to the goal set forth in the preamble of the NPT of eliminating delivery systems for nuclear weapons, they may over time lead to the genesis of a new, missile disarmament regime. Pursuant to the international Programme of Action adopted in 2001 at the UN to curb illicit trafficking in small arms and light weapons—and the expert group investigating the feasibility of a universal system of marking and tracing—we may someday witness the emergence of a new regime governing such weaponry as well.[6]

The 'growth' stage of a regime is best documented by the sheer number of states that are members of regimes, the rate at which new states are joining, the track record of compliance by the states parties, and the extent to which the members are integrating their international commitments into domestic laws. All three WMD regimes also require further support from the administrative machinery of their member states in the field of disarmament, and their potential for further growth will also be a function of the level of understanding among the general public of the functions and benefits of these regimes. Growth is also associated with adaptation to changed conditions, as illustrated by the adoption of an Additional Protocol to IAEA Safeguards Agreements after the discovery of Iraq's clandestine nuclear weapon programme.

Warning signs of the decline of regimes are equally important to monitor. The most reliable are indicators of behaviour that is in direct conflict with the fundamental norms of the regime. Military doctrines that call for the first-use of nuclear weapons or that herald such weapons as 'essential' or 'vital' to maintain security are difficult to reconcile with the goal of disarmament, as are investments in new nuclear weapons and facilities to produce or to perfect them. Such practices give rise to a 'do as we say, not as we do' syndrome that undercuts the legitimacy of the overall regime. Other hallmarks of a regime in danger of decline occur when its member states adamantly refuse to yield to the demands of transparency, or when they announce policies that are premised on the explicit or implicit assumption that disarmament and non-proliferation efforts will fail—policies that go far in helping us to understand

[3] UN General Assembly, Resolution 55/33 A, adopted 20 November 2000, by a vote of 95-0-65. For a full text, see: http://disarmament.un.org/ddapublications/res-dec55.pdf.

[4] A/57/229, 23 July 2002. For a copy of this report in six languages, see: <http://disarmament.un.org/wmd/missiles.htm>.

[5] UN General Assembly, Resolution 57/71, adopted 22 November 2002 by a vote of 104-3-60. For a full text, see: <http://disarmament.un.org/ddapublications/res-dec57.pdf>.

[6] Texts of the Programme of Action in six languages are available at: <http://disarmament.un.org/cab/poa.html>.

why world military expenditures are now rapidly approaching the $1 trillion mark, with no ceiling in sight.

We are all fortunate that no multilateral disarmament regime has yet entered into the stage of collapse, though this possibility cannot at all be excluded. Collapsing regimes—like the whole system of collective security between the two World Wars—owe their fates to actions and inactions of their member states. If the goals of the regime are not manifested in state policy, are not defended when they are challenged, are applied only selectively, are ignored in budget allocations, are starved of institutional support, and are allowed to be displaced by other priorities and expedient objectives—it is at this point that regimes are truly in danger of collapse.

Great care must of course also be taken with respect to protecting against the collapse of the other two key WMD-related treaties, the BWC and CWC. Technological advances in the field of non-lethal weapons may present some difficult challenges for the prohibitions in these treaties. Other problems arise from their lack of universality, continuing allegations of violations by States parties to these treaties, and the very slow pace of progress on chemical weapons disarmament.

Even the mighty NPT is not invulnerable to the risks of decline or collapse. The proven cases of non-compliance by non-nuclear-weapon states—and the snail's pace of nuclear disarmament over the 34-year history of the NPT—have not contributed to the health of this regime. Additional concerns have arisen over the apparent unwillingness of the nuclear-weapon states to implement their 'unequivocal undertaking' to nuclear disarmament made at the 2000 NPT Review Conference—as evidenced by the lack of progress on the 13 steps to nuclear disarmament agreed at that event. These and other such developments suggest strongly that comfortable assumptions about the indefinite existence of this treaty are ill advised, to say the least. In this respect, the 2002 US-sponsored General Assembly resolution on 'Compliance with arms limitation and disarmament and non-proliferation agreements' marked a welcome step forward, for it '*Urges* all States parties to arms limitation and disarmament and non-proliferation agreements to implement and comply with the entirety of all provisions of such agreements.'[7] The more this resolution is observed, the brighter will be the prospects for the NPT regime.

Focus on the NPT

By any measure, the NPT has contributed much to international peace and security. The treaty is of course much more than just a 'non-proliferation' treaty. It also obligates all its parties to pursue negotiations in good faith on

[7] UN General Assembly, Resolution 57/86, adopted on 22 November 2002 without a vote. For a full text, see: <http://disarmament.un.org/ddapublications/res-dec57.pdf>.

effective measures relating to nuclear disarmament, a duty unanimously reaffirmed by the International Court of Justice in its historic advisory opinion of 1996. Yet while the original architects of this treaty appreciated the inseparable link between disarmament and non-proliferation, nobody ever argued that the NPT alone offers any 'silver bullet' that will instantly produce a nuclear-weapons-free world.

The fulfillment of its basic goals depends upon one crucial factor—the existence, persistence, and ultimate triumph of political will. Any objective assessment and prognosis of this treaty must therefore consider the current state of that political will and what is needed—from civil society and its leaders—to strengthen it in the years ahead.

Any such assessment must recognize that political will does not appear out of thin air—it is nurtured and practiced by human beings who are, after all, the ultimate beneficiaries of the success of global non-proliferation and disarmament efforts. Treaties can say many significant things, but if there is no political will to implement them—or to defend them when they are challenged by contradictory policies—they risk becoming mere ornamental offerings to dead or dying concepts, ready to be cast aside by the course of events. Nobody can afford to remain ambivalent about the outcome of such events, especially when they might one day include a nuclear war.

The Treaty Yesterday

If all States parties to the NPT back in 1995 were fully content with the treaty's implementation, the crucial Review and Extension Conference that year would have been a *pro forma* event yielding only one, unsurprising outcome: an indefinite extension. Yet such a decision was anything but a foregone conclusion. What made the difference in 1995 was the existence of strong political will for a specific outcome and a certain willingness on behalf of the States parties to demonstrate the give-and-take needed to achieve the integrated 'package' of decisions and the resolution that provided the political and legal foundation for the indefinite extension. This outcome was, in short, the result of resolute political will that forged the parochialism of separate national perspectives into a unity representing the common interest of humankind—it was, as it were, multilateralism at one of its finest moments.

As seen in the last Chapter, however, many of the events in the intervening years have only reinforced my concerns over the long-term future of this Treaty. The incomplete and uneven implementation of the treaty's review process offers many warning signs of trouble ahead for the NPT.

The principal functions of the NPT's review process are essentially to assess results—in other words, to sort out the differences between areas of no progress, apparent progress, and real progress—and to consider ways to promote its full implementation. Accountability is the *raison d'être* of the review process. In the years immediately after 1995, however, the NPT has

suffered many blows from both outside and inside the treaty regime. Looking back over these events, I would say that the single most alarming development in this period was the shock of eleven nuclear tests in South Asia by two non-NPT states—a harsh reminder of the treaty's lack of universality, and a resounding 'vote of no confidence' by these states in the value of the treaty in advancing their security interests. The safeguards violations by four NPT States parties—the DPRK, Iran, Iraq, and Libya—surely also rank high on the list of concerns facing the regime. The non-nuclear-weapon States, meanwhile, have repeatedly objected (both in the NPT arena and in other multilateral fora including the UN General Assembly's First Committee and the UN Disarmament Commission) to the lack of concrete evidence of progress on nuclear disarmament, and the lack of transparency with respect to the P5's nuclear-weapons programmes. The revelations about the intercontinental bazaar in nuclear weapons materials and technology master-minded by Pakistan's Dr A.Q. Khan only further underscored the problems stemming from the treaty's lack of universal membership.

Nevertheless, the 2000 NPT Review Conference marked several steps forward for the treaty—and for multilateralism—especially the agreement on thirteen practical steps for the systematic and progressive efforts to implement article VI of the treaty, relating to nuclear disarmament. Included among these steps was an 'unequivocal undertaking' by the nuclear weapon states 'to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament.' While the ability of the States parties to agree on a Final Document was itself a significant achievement, the thirteen steps were especially welcome, for they provided an invaluable set of benchmarks for assessing progress in achieving nuclear disarmament.

The Treaty Today

My musings about the NPT in 1995 and the succeeding years, however, are not intended purely for historical interest—I raise them because of their direct bearing upon the status of the NPT today and its future.

The complacency I feared in 1995 is now running rampant—many states view the 1995 indefinite extension as a 'done-deal,' rather than a continuing work-in-progress.

While the States parties have demonstrated an excellent record overall of living up to their NPT obligations, compliance issues nevertheless continue to arise with respect both to disarmament and non-proliferation.

Universality raises another challenge that remains very much with us today—and I mean 'universality' here in a double sense: in retaining States parties as members of treaty, and in bringing in new members. The DPRK's announcement of its intention to withdraw from the NPT raises a closely related issue of the 'irreversibility' of NPT commitments, an issue that is not

at all fully resolved and that will continue to shape the future of the treaty.[8] It also raises the issue as to whether states should have their sovereign right to leave critical treaties like the NPT curtailed in some way.[9]

The widely-reported difficulties of coordinating a multilateral response to the DPRK's announcement, and the persistence of allegations concerning the nuclear-weapons aspirations among some additional non-nuclear-weapons states, together raise additional questions relating to the basic capability to enforce the treaty.

Another serious and persisting problem facing the treaty is its lack of transparency, particularly with respect to details about the size of the five nuclear-weapons programmes and their respective stocks of fissile nuclear material. Without doubt the clearest indicator of a problem in this area relates to the futility of persistent efforts by the non-nuclear-weapons States and many groups in civil society to obtain a definitive answer to the most fundamental question of all—how many nuclear weapons exist in the world? What is, in other words, our 'base-line' for gauging progress in nuclear disarmament?

Surveying the various nuclear arsenals in its 2004 Yearbook, the Stockholm International Peace Research Institute reports that the five NPT nuclear-weapon-states possessed an estimated 36,500 warheads at the end of 2003.[10] The Natural Resources Defense Council's latest assessment (in September/October 2003) was that these States together had about 29,800 warheads.[11] Yet who is right, and how is the world to verify such claims?

The answer is more than academic—if SIPRI's figure of 36,500 is compared with another NRDC estimate of the number of weapons that existed when the NPT entered into force in 1970—38,153—this shows a reduction of 1,653 over the life of the treaty—or an annual reduction of only about 48 weapons a year.[12] Can the world afford to wait literally hundreds of years to achieve the nuclear disarmament goal in Article VI? This is hardly convincing evidence of 'good faith' efforts to fulfil that promise.

Adding to this problem, some nuclear-weapon states are devising new rationales and doctrines to expand the circumstances in which these weapons would be used—including doctrines that threaten pre-emptive nuclear strikes, even against non-nuclear-weapon states, and that reaffirm the great value of

[8] For a full text of the DPRK's announcement of 10 January 2003, see: <http://cns.miis.edu/research/korea/nptstate.htm>.

[9] At the third session of the PrepCom for the 2005 NPT Review Conference, Germany offered some ideas on 'Strengthening the NPT against withdrawal and non-compliance.' See NPT/CONF.2005/PC.III/WP.15, 29 April 2005.

[10] For a convenient summary, see: <http://editors.sipri.se/pubs/yb04/ch15.html>.

[11] Robert S. Norris and Hans M. Kristensen, 'Nuclear Pursuits,' *Bulletin of the Atomic Scientists*, September/October 2003, p. 71-2, at <www.thebulletin.org/issues/nukenotes/so03nukenote.html>.

[12] Natural Resources Defense Council, 'Global Nuclear Stockpile, 1945-2002,' in *Bulletin of the Atomic Scientists* (November/December 2002), p. 103.

such weapons in advancing key security interests. They are also considering the development of new nuclear weapons. Many other NPT non-nuclear-weapon States, while supporting disarmament as a goal, continue to enjoy the security benefits from the nuclear umbrella, which remains based on the deadly doctrine of nuclear deterrence. Meanwhile, the votes each year on nuclear disarmament resolutions in the General Assembly's First Committee remain deeply divided, the Conference on Disarmament has been unable to make any progress on nuclear disarmament for many years, nor has the UN Disarmament Commission.

These observations do not gainsay the welcome progress in recent years, but only point to some very serious challenges that continue to face the treaty in such a climate. The Strategic Offensive Reductions Treaty is reportedly reducing significantly the numbers of deployed strategic nuclear weapons possessed by the United States and the Russian Federation—a welcome development indeed, even considering that the treaty did not require the physical destruction of a single warhead or delivery system. From the perspective of the other NPT States parties, there is virtually no transparency in these reductions—and certainly no independent verification. The nuclear-weapon states, meanwhile, continue to resist efforts by some states—notably Canada and Germany—to address the transparency problem through improved reporting requirements. Many countries are also noting the lack of substantial progress in fulfilling most of the other thirteen steps for nuclear disarmament.

In light of this mixed track record of achievement, States parties should not read too much into the indefinite extension of the NPT. What they should be doing is considering additional ways to strengthen its regime. The next chapter will offer some specific reforms that I believe will achieve this worthy goal.

VIII. THE ROAD AHEAD

Introduction: The Treaty Tomorrow

Of all the challenges ahead for the Treaty, complacency is arguably the greatest to overcome, because the NPT is not implemented on auto-pilot. It requires constant vigilance, care, and attention not just by responsible government officials, but also by the non-governmental community, the news media, and the general public—for though governments implement the treaty, the people ultimately control the governments.

The 'indefinite' extension of the Treaty should not, therefore, be viewed in any way as 'unconditional,' despite many common but misleading assertions to the contrary.[1] The history of the 1995 NPT Review and Extension Conference shows clearly that when the States parties were presented with a Canadian proposal for a simple unconditional extension, they chose instead to adopt a 'package' of decisions that allowed the indefinite extension. And since that package would not have been agreed without adoption of the Middle East Resolution, one may justifiably view all three Decisions and the Resolution as together constituting the 'package' that led to the indefinite extension. In short, if the decision on the indefinite extension were truly unconditional, there would have been no need for any 'package.'

This 'package' is not locked in time, but continually evolving under the influence of international events, policies of powerful governments, lobbying efforts by concerned citizens, habits of State behaviour, diverse global trends in technology (e.g. the race between research on weapons and verification), and many other considerations. The best way to assess the health of the Treaty regime lies in the close and regular examination of the documented track record of compliance with the requirements of the Treaty itself, the commitments that allowed for the indefinite extension, and other such understandings agreed at subsequent NPT Review Conferences. This underscores the vital importance of the Treaty review process and the procedural and institutional factors that will influence it over the years ahead. Yet the future of the Treaty will not be determined by questions of procedure alone, but also by the fate of the substantive issues considered in this process.

Ultimately, the best guarantee against complacency is to be found in the level of confidence among the States parties in the basic legitimacy or fairness of the treaty—and here I have some concerns, for there is a persisting, widespread perception amongst many States parties that the fundamental NPT bargain is in fact discriminatory after all, as many of its critics have long

[1] For example, US Secretary of State Warren Christopher claimed in 1996 that 'We achieved the indefinite and unconditional extension of the Nuclear Non-Proliferation Treaty.' Testimony before the United States House of Representatives, Committee on Appropriations, Subcommittee on Commerce, Justice, and State, 15 May 1996.

maintained. So how can the States parties best prevent their hard-fought 'bargain' from deteriorating into a swindle?

They will succeed only through steady, well-documented progress in achieving the goals of the Treaty through its strengthened review process. This is what is required to exorcise once and for all the ghost of 'nuclear apartheid' from the NPT—or indeed to achieve all of the Treaty's other important goals. Addressing the States parties at the opening of the 2000 NPT Review Conference, U.N. Secretary-General Kofi Annan called upon all participants to 'embark on a results-based treaty review process focusing on specific benchmarks.'[2] He was exactly right and fortunately many States parties have taken his advice.

The overall health of the Treaty will thus depend upon progress on two fronts: substantive and procedural. Of these, I believe that the substantive dimension is most important, because a deep and broad level of consensus among the States parties about the fundamental principles and objectives of the treaty—and the means to achieve them—will greatly facilitate navigation on the procedural road ahead. If there is little agreement on substantive policy issues, I am sceptical of the amount of progress one can reasonably expect to achieve by focusing exclusively on procedural reforms, which in the end offer no substitute for political will. Procedural reform, however, should not be dismissed as a secondary priority, given its potentially useful contributions in discovering and elaborating the institutional or administrative mechanisms needed to expand the ground of common agreement on substantive issues. We need to see progress on both fronts.

Matters of Substance

The NPT is like virtually every other multilateral treaty—its 'matters of substance' are those that pertain to the basic aims of the Treaty: its fundamental goals and principles. Though there are many suitable ways to identify such matters, I will follow the approach used in Decision 2 of the NPT Review and Extension Conference to differentiate the various 'principles and objectives,' treating each in the order of their original appearance.

1. Universality. Though the most fundamental disarmament and non-proliferation *goals* of the NPT are obviously universal in scope, its *membership* is not, as Israel, India, Pakistan, and the DPRK remain outside the Treaty. Universality of membership thus remains a vitally important goal of the NPT, though the prospects for achieving this goal were dealt a grievous—if not grave—blow by the nuclear tests by India and Pakistan in 1998.

Yet as important as universal membership may be, I do not believe that literally any price should be paid to achieve it. In particular, I do not believe that any new States parties should be accorded any special status, especially

[2] Secretary-General Kofi Annan, Press Release SG/SM/7367, 24 April 2000.

the status of a new 'nuclear-weapon-State Party.' I also believe it would be bad for the Treaty if non-parties were given special benefits—including security assurances and greater access to peaceful nuclear technology or very sensitive dual-use goods without full-scope IAEA safeguards—that are not provided to States parties in good standing. If many of the rights and privileges of NPT membership are provided to non-parties, this would have the pernicious result of weakening the incentives to join the Treaty while also encouraging existing parties to re-consider their continued membership—after all, why remain bound to the constraints of a treaty if one can reap the same benefits without those constraints?

Solving the NPT's universality problem will require some significant work outside the framework of the Treaty itself. With respect to Israel, it will require substantial progress in the Middle East peace process, constructive steps toward establishing a zone free of weapons of mass destruction in the region, a substantial reduction in conventional forces by all States in this zone, and strengthened security assurances for all NPT parties, not just those in the Middle East. With respect to India and Pakistan, the world community should try to build upon the slender foundation offered by both countries: namely, their respective declaratory policies that they support the goal of global nuclear disarmament. To the extent that a 'fissile material' treaty and the Comprehensive Test Ban Treaty are stepping stones to that goal, the world should encourage both countries to bring such treaties into force. I believe that India's chances for becoming a permanent member of the Security Council would improve if it were to seek membership as a non-nuclear-weapon state—such a development would also help to dispel the notion that a country requires nuclear weapons to be powerful or recognized as such. The DPRK will, I believe, return to the NPT, probably in the context of a broader settlement of political and security issues on the Korean peninsula.

The NPT States parties should not, however, be too impatient in achieving the goal of full universal membership—it will take some time to achieve this goal, and the longer the security and economic benefits of treaty membership are excluded from non-parties, the greater will be the incentive to join. Decision 2 of the NPTREC called upon 'all States parties' to make 'every effort' to achieve the goal of universal membership. The 'strengthened review process' would be the logical place to document such efforts, as well as to determine what additional efforts will be needed.

2. Non-proliferation. Halting the global spread of nuclear weapons is much more than simply an end in itself—it is also necessary to achieve global nuclear disarmament. The big, though often unheralded, news in this field is how the overwhelming majority of States parties to the NPT have lived up to their non-proliferation commitments. Though violations of this norm have been rare relative to this level of general compliance, the IAEA has in recent years determined that four NPT non-nuclear-States parties—Iraq, Iran, Libya, and the DPRK—have failed to comply with their nuclear safeguards

agreements under the Treaty. Iraq, Libya, and the DPRK have gone somewhat further by publicly admitting to having nuclear weapons programmes, while Iran has steadfastly denied any interest in acquiring such weapons and nobody has yet succeeded in proving beyond doubt that a nuclear weapons programme does in fact exist in Iran.

While it is incontrovertible that these four States had failed to comply with their safeguards commitments, there is little ground for concluding that 'what was past is prologue.' Beaten in war, bereft of a nuclear-weapons programme, and weakened by years of multilateral sanctions, Iraq is no longer a serious proliferation threat and the resumption of the implementation of the 'ongoing monitoring and verification' (OMV) provided in Security Council Resolution 687 (1991) will help to ensure that it will not restart its weapons effort. Iran has signed the IAEA's Additional Protocol and has promised to comply with it even before ratification, which it has yet to do (as of August 2004). Yet Iran still has to provide further details to the IAEA about its past acquisitions and use of enrichment and reprocessing technology. Iran has also agreed to 'suspend' its fuel-cycle operations, though it has never said the suspension was permanent. Ultimately, I believe this issue of the fuel cycle will be resolved at the international level, as discussed below in the section on peaceful uses of nuclear energy. Libya has evidently 'come clean' with its past efforts to acquire nuclear weapons and has cooperated extensively in dismantling and destroying that programme. I believe a zone free of weapons of mass destruction in the Middle East would be the best way to advance the NPT's non-proliferation and disarmament goals throughout this region. The future of the DPRK issue is impossible to predict—at worst, the country may seek to retain or expand its nuclear-weapons capabilities, which would destabilize the region and could result in an armed conflict of unimaginable dimensions; at best, the country will resume its membership in the NPT and destroy all its nuclear-weapons capabilities.

Proliferation, of course, often has both a supply-side and a demand-side, and continued efforts will be needed to ensure that no country helps another to acquire nuclear weapons. This supply-side of the equation is in many ways the area where some of the most dynamic changes are taking place. Though the NPT's 'not in any way to assist' taboo is found only in Article I of the Treaty—which applies to the obligations of nuclear-weapon States parties—it is clear that today the taboo applies not just to all parties, but to all Members of the United Nations. Both Decision 2 of the 1995 NPTREC and the Final Document of the 2000 NPT Review Conference stated that 'every effort should be taken to implement the Treaty in all its aspects to prevent the proliferation' of nuclear weapons. Outside the NPT, the UN General Assembly has adopted several resolutions by large majorities that call upon all

States to refrain from actions that would lead to proliferation.[3] Yet these resolutions, however significant politically, are not legally binding. On 28 April 2004, however, the Security Council took a major step in making non-proliferation mandatory: it adopted Resolution 1540, which contained the following decision—-

> that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials ....[4]

Under Article 25 of the UN Charter, 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.' While helping significantly here in forging a binding international norm of non-proliferation, the Security Council, however, has yet to declare nuclear weapons per se a 'threat to international peace and security' nor has it in recent decades produced any resolutions on the subject of nuclear disarmament, the subject of my next section.

3. Disarmament. The language on disarmament in Article VI of the NPT, while far short of the kind of binding legal obligation that would be found in a 'nuclear weapons convention,' nevertheless leaves little doubt as to its intent. It contains an undertaking by 'each of the Parties'—not just the nuclear-weapon States—to 'pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.' This language clearly intended something beyond negotiations *ad infinitum*. In its 1996 Advisory Opinion on the threat and use of nuclear weapons, the International Court of Justice unanimously affirmed that 'There exists an obligation to pursue in good faith and bring to a conclusion [emphasis added] negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.'[5]

Widespread dissatisfaction with the level of progress in achieving this aim led to the inclusion in Decision 2 of the 1995 NPTREC of a 'programme of action' on nuclear disarmament, which called or completion of negotiations on a Comprehensive Nuclear Test ban, immediate commencement and early conclusion of a fissile materials treaty, and 'the determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear

[3] These include Resolution 58/51 ('Towards a nuclear-weapon-free world: a new agenda'), 8 December 2003 and Resolution 58/59 ('A path to the total elimination of nuclear weapons'), 8 December 2003.

[4] S/RES/1540, operative paragraph 3, adopted 28 April 2004. The Resolution went on to detail specific non-proliferation controls that States must implement (e.g. transportation, physical security, and export controls, including the enactment of criminal and civil penalties).

[5] International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996; available at <http://www.icj-cij.org/icjwww/icases/iunan/iunanframe.htm>.

Thirteen Practical Steps for Nuclear Disarmament

1. CTBT.
2. Nuclear test moratorium.
3. Conference on Disarmament: negotiations on fissile materials treaty.
4. Conference on Disarmament: establish a subsidiary body to deal with nuclear disarmament.
5. The principle of irreversibility.
6. Unequivocal undertaking by the nuclear-weapon-States (NWS) to eliminate their nuclear arsenals leading to disarmament.
7. The early entry into force of START II; the conclusion of START III; preserving the ABMT.
8. The completion and implementation of the Trilateral Initiative.
9. Steps by all the nuclear-weapon States leading to nuclear disarmament in a way that promotes international stability, and based on the principle of undiminished security for all:
   - Unilateral reductions;
   - Increased transparency;
   - The further reduction of non-strategic nuclear weapons;
   - De-alerting;
   - A diminishing role for nuclear weapons in security policies;
   - The engagement as soon as appropriate of all the nuclear-weapon States.
10. Arrangements by the NWS to place fissile material no longer required for military purposes under IAEA or other relevant international verification.
11. Reaffirmation that the ultimate objective is general and complete disarmament under effective international control.
12. Regular reports, within the NPT's strengthened review process.
13. The further development of verification capabilities.

weapons globally, with the ultimate goal of eliminating those weapons, and by all States of general and complete disarmament under strict international control.' Persisting concerns, however, led at the 2000 NPT Review Conference to agreement on the 'thirteen practical steps' for implementing this article and the relevant provisions on nuclear disarmament in the 1995 Principles and Objectives. The box below provides a brief summary of the thirteen steps.[6]

[6] Summarized from Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Vol. I, Part I, p. 14-15.

Unfortunately, there has been little progress in achieving any of these 'steps' since the 2000 Review Conference. While the moratorium on nuclear tests has held up (with respect to NPT States parties), the CTBT has still not entered into force and is opposed by the United States. The Conference on Disarmament remains in deadlock. The 2002 US/Russian 'Strategic Offensive Reductions Treaty' did not require the elimination of a single nuclear weapon or delivery vehicle, nor did it require the 'irreversible' elimination of fissile materials for those weapons. The nuclear-weapon-States have made their 'unequivocal undertaking' to eliminate their nuclear arsenals, yet elimination still remains only a distant goal. The US withdrawal from the ABM Treaty had the effect of ending both that treaty and START II, while placing hopes for START III in limbo if not displacing that goal entirely. There has been very little progress in implementing the 'Trilateral Initiative,' under which US and Russian weapons materials were to be placed under safeguards. There have reportedly been some unilateral reductions, but since these are unverified, it is difficult—given the lack of transparency—to determine the extent this has actually occurred. The United Kingdom and France have de-alerted their nuclear forces, though the United States and Russia continue to maintain some part of their nuclear forces on high alert. Some nuclear-weapon-States are continuing to undertake research on such weapons, while exploring new roles for them in security policies. The 'thirteen steps' clarified that the 'ultimate goal' was 'general and complete disarmament,' rather than eliminating nuclear weapons—this was to ensure that the nuclear-weapon States do not use the failure to achieve 'general and complete disarmament' as an excuse not to eliminate their nuclear weapons. Even the requirement for 'regular reports' (step 12 of the thirteen steps) has been challenged by the nuclear-weapon States, who continue to resist making detailed written reports on their nuclear arsenals or specific steps taken to eliminate them.

This record is most unfortunate for the long-term future of the NPT. The best prescription at this point would be for the States parties to continue using the thirteen steps as benchmarks for assessing the behaviour of each of the nuclear-weapon-States in implementing Article VI and their disarmament-related commitments made in 1995 and 2000. Non-compliance or only partial compliance in this area may well lead to an equivalent non-compliance or partial compliance with respect to non-proliferation commitments—either of which would gravely jeopardize international peace and security, not just the NPT.

4. Nuclear-Weapon-Free Zones. While nuclear-weapon-free zones now cover virtually the entire southern hemisphere, they could contribute much more to international peace and security in the years ahead. In my capacity as UN Under-Secretary-General for Disarmament Affairs, I worked hard on behalf of the establishment of such a zone in Central Asia—an enormous region that once hosted large numbers of Soviet nuclear weapons. While experts from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and

Uzbekistan were able to reach agreement on a draft treaty, no such treaty has yet been signed. I hope these countries continue their efforts to create such a zone, and that the world community—especially the nuclear-weapon-States—will do their part to assist in this great effort.

Nuclear-weapon-free zones also deserve to be on the table as possible solutions to the NPT's challenge of achieving universal membership, given the enormous potential value of establishing such zones in the Middle East, South Asia, and in East Asia—even though such a goal will likely take many years to achieve. Another longer-term goal worth considering is the establishment of such a zone in Central Europe. Recalling that the common agreed goal is global nuclear disarmament, I hope that European leaders will some day come to recognize that their individual and collective security interests would be best served by establishing such a zone across the entire continent.

A more practical ambition would be to pursue the early entry into force of the Pelindaba Treaty (creating a nuclear-weapon-free zone in Africa) and agreement of the nuclear-weapon-States to ratify the relevant Protocol to the Bangkok Treaty (creating such a zone in Southeast Asia).

5. Security Assurances. The main challenge here is for the nuclear-weapon-States to provide the non-nuclear-weapon States with legally-binding assurances against the threat or use of nuclear weapons (negative assurances) and for assistance in the event of such an attack (positive assurances). While they have provided such assurances in legally-binding form to members of nuclear-weapon-free zones—pursuant to the Protocols to the treaties creating such zones—some nuclear-weapon-States continue to reserve an option of using such weapons against non-nuclear-weapon States. The 1995 Principles and Objectives danced around this issue—while 'noting' Security Council Resolution 984 of 1995 and various non-binding declarations of the nuclear-weapon States on this issue, the 1995 Conference agreed that 'further steps should be considered' and that these steps 'could take the form of an internationally legally binding instrument.'[7] The Final Document of the 2000 NPT Review Conference used similar language, though it also contains a statement that the 'Conference agrees that legally binding security assurances ... strengthen the nuclear non-proliferation regime.'[8]

I think that this issue will eventually get resolved, most likely in the form of some kind of 'protocol' to the NPT. In May 2003, the New Agenda Coalition (consisting of Brazil, Egypt, Ireland, Mexico, Sweden, and South Africa) submitted a 'working paper' on this issue at the second session of the Preparatory Committee for the 2005 NPT Review Conference.[9] Annexed to that paper is a carefully-prepared draft protocol (or agreement) containing the relevant assurances. The sponsors specifically designed this protocol as an

[7] Decision 2, 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament,' para. 8.
[8] Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Volume I, Part I, p. 15.
[9] NPT/CONF.2005/PC.II/WP.11, 1 May 2003.

instrument to be negotiated 'within the NPT umbrella,' given their conviction that 'security assurances rightfully belong to those who have given up the nuclear weapon option as opposed to those who are still keeping their options open.'[10]

While it is true that such a proposal would not be fully comprehensive, in the sense that the States providing such assurances would only be the five NPT nuclear-weapon-States, I believe that such assurances would represent an enormous step forward for the Treaty, for the security interests of its non-nuclear-weapon States, and as a result, for international peace and security.

6. Safeguards. Here is another area where I do expect to see some significant progress in the years ahead.

First, the IAEA has noted repeatedly in recent years that several States parties have not yet concluded their required safeguards agreements with the Agency.[11] While many of these States are not engaged in significant nuclear activities, the safeguards requirements of Article III of the Treaty apply to 'each' non-nuclear-weapon State without exception. If need be, perhaps the time has come for the IAEA in its next NPT statement to name the specific States parties that still not concluded their required safeguards agreements.

Second, I note that support appears to be strong and growing for making the Additional Protocol (along with the comprehensive NPT safeguards agreement) the new 'verification standard'.[12] I suspect this trend will continue in the years ahead, as it eventually becomes another 'benchmark' for assessing progress in achieving the Treaty's safeguards objectives.

Third, the 1995 Principles and Objectives contain a statement that States considering 'new supply arrangements' should require 'as a necessary precondition' the acceptance of full-scope IAEA safeguards, a standard also endorsed in the Final Document of the 2000 NPT Review Conference. I hope that Russia's apparent determination to proceed with its commitment to build nuclear power plants in India without such safeguards will not jeopardize this sound multilateral standard, though this remains a distinct possibility.

Fourth, I remain hopeful that the nuclear-weapon States will ultimately decide to put fissile material recovered from dismantled nuclear weapons under safeguards, along the lines of the US/Russia/IAEA Trilateral Initiative.[13] It is hard to envisage serious progress in disarmament—irreversible progress in particular—without such an application of safeguards.

[10] Ibid., para. 2, page 2.

[11] In April 2004, a representative of the IAEA informed NPT States Parties that '44 non-nuclear-weapon States party to the NPT have yet to fulfil their legal obligation to bring into force an NPT safeguards agreement with the Agency.' Vilmos Cserveny, Statement to the Third Session of the 2005 NPT Review Conference, New York, 26 April 2004.

[12] The European Union has endorsed this view among many other States. See Statement by Mr. Adrian McDade on behalf of the European Union, third session of the Preparatory Committee to the 2005 NPT Review Conference, 29 April 2004.

[13] For further information on the Trilateral Initiative, see Thomas E. Shea, 'Report of the Trilateral Initiative,' *IAEA Bulletin*, 43/4/2001, p. 49-53.

Finally, I would like to identify one challenge that the NPT safeguards system has yet to overcome—its reliance upon periodic crises to expedite required reforms. The clearest case of this was the origin of the '93+2' programme and the evolution of the Additional Protocol following the 'catalyst' of the 1991 war in Iraq and the subsequent revelation of Iraq's nuclear-weapons programme. Safeguards improvements should not have to await such calamities, particularly considering the proliferation and terrorist risks from future commercial uses of fissile nuclear material. If the risks from such uses are too grave even for enhanced safeguards to address, the world may be better off seeking to ban such activities outright rather than endlessly trying to perfect safeguards approaches that, at best, could only 'limit' such risks. We should not merely be seeking to achieve 'fewer' incidents of nuclear terrorism or proliferation, but should set our sights somewhat higher.

7. Peaceful Uses of Nuclear Energy. The last substantive issue from the 1995 Principles and Objectives concerns the 'peaceful' uses of nuclear energy, an 'inalienable right' under Article IV of the NPT. This is an extremely difficult issue, since it gives rise to conflicts between internal goals of the Treaty, which on the one hand seeks to promote the 'fullest possible exchange of equipment, materials and scientific and technological information' for peaceful uses of nuclear energy, while on the other hand seeks to defend a standard of 'not in any way to assist' that has now become a mandatory global norm. Non-nuclear-weapon states have an honest and legitimate grievance against the way nuclear export control standards have been set and are being implemented today. To many of such countries, the Nuclear Suppliers Group and Zangger Committee simply lack legitimacy, because they lack universal membership, yet they purport to establish global standards. These suppliers regime also have little transparency and accountability, are non-binding, and have no enforcement mechanisms. Non-members of these ad hoc suppliers regimes therefore are forced to comply with norms they had no voice in creating, which for many States only leads to what might be called, 'vexation without representation.'

The tragic terrorist attacks in the United States on 11 September 2001 have undoubtedly raised the world's consciousness of the potential disasters that would arise should terrorist groups eventually acquire the means to produce even a single nuclear weapon, or other weapons of mass destruction on a large scale. Nuclear weapons require one of two materials—highly-enriched uranium or plutonium—both of which exist today in various countries for 'peaceful uses.' Yet the speed with which such material (especially highly-enriched uranium) can be converted into nuclear explosives, the well-known limitations of material accounting systems especially over historical production of such material, the extreme toxicity of even tiny amounts of plutonium, the devastating effects of even a single nuclear detonation, and the fact that a quantity of such material 'sufficient' to make a nuclear weapon is

readily transportable—all these argue strongly for some substantial restrictions on the legitimate scope of 'peaceful use' of such materials.

The questions then become: who should draw the lines, and what specific activities should be prohibited? The IAEA Director General Mohamed ElBaradei has offered a proposal to restrict the production and processing of enriched uranium and plutonium 'exclusively to facilities under multinational control.'[14] The IAEA has established an 'Experts Group' to consider ways to tighten international controls on the nuclear fuel cycle. In announcing this initiative, Dr ElBaradei stated that 'Common sense and recent experience make clear that the Nuclear Non-Proliferation Treaty, which has served us well since 1970, must be tailored to fit 21st century realities [emphasis added].'[15]

The 'peaceful uses' issue, therefore, will likely remain at the top of the agenda for future NPT conferences for years to come. If mere restrictions will not be sufficient to eliminate the risk of misuse of these materials, the world may well have to decide to ban such uses altogether—but such a decision should be made multilaterally, preferably in the context of the NPT. Groups of experts and coalitions of concerned states can help to inform this process, but should not supplant it.

The issue of 'peaceful uses,' however, goes well beyond uses of sensitive nuclear materials. It also covers a wide range of scientific and technical activities in the health, medical, and agricultural fields—activities that can benefit all humanity and that have no nuclear proliferation risk. A significant expansion of such forms of assistance is clearly needed in the years ahead—for their own merits, not as a 'pay-off' for consenting to stricter controls over sensitive nuclear materials. The Non-Aligned Movement has been calling for increased technical assistance in these fields for many years, and much more could—and should—be done to meet this legitimate demand.[16]

This brings us to the challenging issue of how the States parties to the NPT are to ensure that their solemn principles and objectives are being served by Treaty implementation. Here the focus shifts to NPT's review process.

The Future of the Strengthened Review Process

Nothing better illustrates the 'living' nature of international law than to observe the evolution of the NPT review process in recent years. The original architects of the NPT did not include many details in the Treaty itself on

[14] Mohamed ElBaradei, 'Towards a Safer World,' *The Economist*, 16 October 2003; available at <http://www.iaea.org/NewsCenter/Statements/2003/ebTE20031016.shtml>.

[15] Mohamed ElBaradei, quoted in 'In Focus: Revisiting the Nuclear Fuel Cycle,' IAEA News Center, 12 August 2004, available at http://www.iaea.org/NewsCenter/Focus/FuelCycle/controls.html.

[16] Most recently, see statement by Malaysian Ambassador Hussein Haniff (on behalf of NAM), Third Session of the Preparatory Committee for the 2005 NPT Review Conference, 29 April 2004; available at <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysiaCL3.pdf>.

precisely how the review process would operate. Article VIII(3) simply provided that five years after entry into force (i.e. in 1975) there shall be a conference of the Parties 'in order to review the operation' of the Treaty 'with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.' It also provided that the Parties, at five-year intervals thereafter, may convene further conferences 'with the same objective.'

The Legacy from 1995

The States parties attending the 1995 NPTREC were not entirely satisfied with this language and felt it needed some elaboration—so they adopted Decision 1 on 'Strengthening the Review Process for the Treaty.' This Decision marked a major step forward in the adaptive growth of the Treaty regime. The Decision firmed up the assumption that Review Conferences would in fact be held every five years, and that a Preparatory Committee would meet in each of the three years prior to such conferences, in 10-day working sessions.

The key change, however, was the clarification of the purpose of the review process. Instead of vaguely 'reviewing the operation' of the Treaty, future review processes would have more concrete goals, including the promotion of universality. In addition to making procedural preparations for the next Review Conference, the Preparatory Committee, for example, would consider 'principles, objectives, and ways' to promote treaty implementation, and would make recommendations thereupon to the Review Conference. The specific 'principles and objectives' include those contained in Decision 2 adopted at the 1995 NPTREC.

It also, very significantly, provided that Review Conferences 'should look forward as well as back'—this language significantly clarifies the intent of Article VII(3) of the Treaty by recognizing that the basic functions of the review process were not simply descriptive or analytical, but also prescriptive. It specifically authorized the Review Conference to 'identify the areas in which, and the means through which, further progress should be sought in the future.' This is very much what I had in mind when I later described the NPT review process as 'an agenda-setting exercise.'[17]

Structurally, Decision 1 also registered the intent of the States parties to retain the three Main Committees, while authorizing the General Committee to resolve questions of overlapping jurisdiction. It also allowed for the establishment of 'subsidiary bodies' for more focused consideration of specific issues, and indicated that the Preparatory Committee would make recommendations on which such bodies should be established.

[17] Jayantha Dhanapala, 'The NPT Review Process: Identifying New Ideas to Strengthen the Regime,' *UNIDIR Newsletter*, No. 37, 1998, p. 11.

The Legacy from 2000

The Final Document of the 2000 NPT Review Conference further contributed to the formal, procedural evolution of the review process. Specifically, it clarified that the purpose of the first two sessions of the Preparatory Committee would be to 'consider principles, objectives, and ways in order to promote the full implementation of the Treaty, as well as its universality.' It provided that each session should consider 'specific matters of substance' relating to the 1995 package, along with the outcomes of subsequent Review Conferences.

Though the parties normally meet only for sessions of the Preparatory Committee and the Review Conference, the 2000 Final Document also called upon the Chairpersons of the sessions to 'carry out consultations' to 'prepare the ground' on the outcomes and agendas of those sessions. This rather innocuous provision could perhaps be seen as a small step toward giving the review process some greater continuity—to the extent that such 'consultations' would take place in the inter-sessional period. Procedural arrangements should be 'finalized' at the last session of the Preparatory Committee.

The States parties also clarified in 2000 the nature of the report to be prepared by the Chairpersons of the Preparatory Committee sessions—the reports should contain a factual summary to be transmitted to the next session for further discussion. The key purpose of the third session would be to 'make every effort to produce a consensus report' to the Review Conference.

Finally, the 2000 Conference agreed that non-governmental organizations should be allocated a meeting at each of the sessions of the Preparatory Committee and the Review Conference 'to address' the participants.

Building on 1995 and 2000

While there have been many proposals to reform the review process since 2000, I would like to single out a few of these in particular because of their great significance for the future credibility of that process.

The Chronic 'Institutional Deficit'

Given the extraordinary implications of even a single nuclear detonation for international peace and security, I have always found it rather odd that the States parties to the NPT only meet on an annual basis and lack any permanent structures of institutional support. This is a rather complicated problem that probably has its roots in some 'penny-wise, pound-foolish' thinking about the potential costs of endowing the NPT with such support. Some observers might fear that such an apparatus could result in some competition with the IAEA. Others no doubt simply believe that inasmuch as the day-to-day

implementation of the treaty is done by its States parties, there is simply no need for a new multilateral institution to support this work.

Whatever the rationales, I remain convinced that the NPT would benefit the creation of such an institution—but what specifically would it do?

Writing in another UNIDIR publication in 1998, I offered the following proposal:

> ... it is time that States parties consider the possibility of electing a governing council for the NPT to act as an ombudsman to receive complaints about non-compliance and difficulties which States parties may be experiencing in the treaty regime ... The NPT needs a body comparable to the Executive Councils in the Organisation for the Prohibition of Chemical Weapons and the future CTBT Organization which could then make recommendations to the general membership and, if necessary, to the Security Council ... It could help to strengthen the regime by hearing complaints and reporting to the sessions of the PrepCom and the review conferences.[18]

Everybody who has followed the NPT over the years knows that despite the overwhelming extent of compliance with the Treaty, allegations of non-compliance persist among some of the States parties. Everybody also knows that some of the parties have grievances over the operation of the Treaty, including disputes over the implementation of export controls, the slow pace of disarmament, or the uneven application of non-proliferation standards in national laws and policies. Why, therefore, must the States parties sit back and wait for the opening of a new session of a Preparatory Committee or a Review Conference to raise such issues? While it is true that states can raise such matters in other multilateral settings, such as the First Committee of the General Assembly, or can address such issues bilaterally, it still seems desirable for the States parties to have some more permanent institutional support for these purposes specifically in the unique setting of the NPT. Given that the NPT still lacks fully universal membership, it would be problematic to treat these Treaty issues in forums with sitting non-parties.

Evidently I am not alone in holding such views on this institutional matter. At the 2000 NPT Review Conference, Ireland introduced a working paper that pointed out that 'It is immediately apparent that by comparison with other treaties, the Non-Proliferation Treaty is deficient in not providing for a General Conference, an Executive Council or a Secretariat.'[19] The paper noted that States parties continued to view the outputs of the post-1995 Preparatory Committee sessions as 'provisional' until considered by the Review Conference—'This,' the paper concluded, 'can hardly be described as a strengthened review process.'[20]

[18] Ibid., p. 11.

[19] 'Strengthening the review process for the Treaty,' revised working paper submitted by Ireland, NPT/CONF.2000/WP.4/Rev.1, 4 May 2000, at para. 5.

[20] Ibid., paragraph 4.

Ireland went on to propose a radical change in the entire review process, containing the following elements:

- Establishment of a General Conference of States Parties, with decision-making authorities, to meet in years other than those in which Review Conferences are held; these conferences would last three to four days (as opposed to the 10 working days normally required for sessions of the Preparatory Committee). In addition to its function of reviewing the implementation of the Treaty, the General Conference would also have authority to convene an 'extraordinary conference' to address issues requiring an 'immediate response.'[21]
- Creation of a 'small secretariat' within the UN's Department for Disarmament Affairs to distribute information received from the States parties and to prepare an annual report to the General Conference, in addition to organizing the annual conferences.

At the 2003 session of the Preparatory Committee, the NGO Committee on Disarmament floated a related proposal in its briefing to the States parties.[22] Focusing in particular on the way the DPRK implemented its withdrawal from the NPT, this proposal calls for the creation of a 'mechanism for convening [the States parties] on an emergency basis.' The mechanism would allow for an early meeting to consider specific crisis situations—it would have authority to take decisions by voting and would meet in the General Assembly. The NGO Committee also proposed the establishment of 'NPT task forces' on specific issues and the establishment of a 'permanent treaty secretariat.'

There are many difficulties with this proposal, not the least of which would include unresolved issues relating to the relationship between this 'mechanism' and the existing authorities of the IAEA and the Security Council. Nevertheless, it is difficult to question the proposal's pithy observation that 'the NPT is rather bare-boned in the mechanisms department.'

- In 2004, Canada took up this set of issues in a working paper it submitted to the third session of the Preparatory Committee for the 2005 NPT Review Conference.[23] Similar in many ways to the Irish proposal of 2000—including its basic premise that 'the NPT

[21] Ibid., paragraphs 7 and 9.

[22] Presentation by Aaron Tovish on behalf of the NGO Committee on Disarmament, 'Needed: an NPT emergency response mechanism,' Second Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 30 April 2003; available at: <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/emergency.htm>.

[23] 'Overcoming the institutional deficit of the NPT,' working paper submitted by Canada, NPT/CONF.2005/PC.III/WP.1, 5 April 2004.

lacks provisions and institutional machinery to protect adequately the interests of its States Parties'—it called for the following:

- Replace the present Preparatory Committees with 'Annual General Conferences of States Parties' both to consider and to 'decide on' any issues covered by the Treaty; these conferences would last one week, except for the year preceding a Review Conference, when it would meet for two weeks to carry out the function of a preparatory committee for that event.
- Creation of a 'standing bureau of the Treaty' consisting of the bureau of the review process, consisting of the President and Chairs of the forthcoming five-year Review Conference; this bureau would be empowered (at the request of a Depositary Government, the UN Secretary-General, or pursuant to a consensus decision of the States parties) to 'convene extraordinary sessions' of the General Conference 'when situations arose that threatened the integrity or viability of the Treaty'; the UN Department for Disarmament Affairs would 'within existing resources' support the bureau, the annual conferences, and any extraordinary sessions.

Legitimate questions could be raised, however, about the practical ability of the Department for Disarmament Affairs—the smallest department in the UN Secretariat with a budget even smaller than what the UN spends each year on 'cleaning and waste disposal services'[24]—to undertake this additional work 'within existing resources.' If the States parties wish to create some institutional infrastructure for the NPT, they will eventually have to recognize that the relevant institutional organs will require some resources (both people and budget) to undertake the desired activities.

Interactive Deliberations

At the 2003 session of the Preparatory Committee to the 2005 NPT Review Conference, South Africa's representative, Peter Goosen, observed that 'it is questionable whether the present strengthened review, as agreed to in 2000, is having the desired outcome and effect that was envisaged.' [25] In particular, he noted the lack of substantive work of the process, relative to its attention to procedural issues, and claimed the process 'to date demonstrated an inability to provide for substantive inter-action between the States Parties.' To strengthen the process, he introduced the following proposal:

[24] The UN's expenditures for 2003 for such services was $14,237,694 compared to an annual DDA budget about half that amount; see <http://www.un.org/Depts/ptd/03com50.htm>.

[25] Statement by Peter Goosen, Second Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 28 April 2003; available at: <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/southafrica.htm>.

- The Preparatory Committee sessions should be retained, though one week of each session should be devoted to a specific agreed issue, somewhat along the lines of the substantive sessions underway in the review process of the Biological Weapons Convention.
- The purpose of these special substantive meetings would be 'to discuss, and promote common understanding and effective action' on the agreed issues (two issues for 2007, two for 2008, and one for 2009), with decisions taken by consensus.
- Each Preparatory Committee meeting would be 'prepared by' a two-week meeting of experts, who would prepare 'factual reports' describing their work.

At the same session, Germany also spoke in favour of a 'focused, result oriented agenda,' urging the States parties to 'concentrate on those aspects which are crucial to the successful outcome of the review process.'[26] Germany also stressed that 'we consider enhanced interaction indispensable' in strengthening the review process. This sentiment was also reflected in the opening statement made by Lázló Molnár of Hungary, the chairman of the 2003 session, who called upon the participants 'to engage in a constructive and interactive debate.'[27]

There are many practical difficulties to overcome in promoting greater interactive exchanges between delegations participating in the review process. Many representatives are reluctant to speak without explicit, pre-approved language from their capitals. Some individuals are simply better equipped to engage in such exchanges than others, and genuine debate is an anathema to the ill-informed. Bona fide 'debates' would, moreover, consume time, which is a scarce commodity in the review process. Some of these problems could be overcome by earlier issuance of reports by national delegations, or though the advance circulation of official statements. The earlier such documentation is available, the earlier individual delegations can make known their intention to raise specific questions during a forthcoming session of the Preparatory Committee or at a Review Conference. I see no reason why a particular State party could not work out in advance a list of questions it intends to raise with other State parties.

One possible result of such communications could be a diplomatic analogue of a legislative 'colloquy'—or a pre-arranged dialogue between representatives prepared for any of a number of purposes, including to clarify an intent, to present new information, to explain a policy, and other such aims. The fate of this issue of interactivity is entirely in the hands of the States

[26] Statement by Amb. Volker Heinsberg, Session Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 8 May 2003.

[27] Lázló Molnár, opening statement, Session Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 28 April 2003.

parties—if there is political will to engage in constructive exchanges, it will happen; if there is no political will, then this too should be a worthy subject for discussion in the review process and for those outside it.

In her book, The March of Folly, Barbara Tuchman wrote that 'What government needs is great askers.'[28] I believe the same is true of the NPT review process. The States parties would do well to protect themselves (and the Treaty) from a phenomenon that Tuchman called, 'wooden-headedness,' which she described as 'assessing a situation in terms of preconceived fixed notions while ignoring or rejecting any contrary signs.'[29] Greater interaction and genuine exchanges of views offer a healthy antidote for this particular malady.

Transparency

On one level, the NPT review process is remarkably transparent. Capable non-governmental organizations—like Reaching Critical Will[30] and the Acronym Institute[31]—have been able to acquire much of the relevant working documentation of the review process, including official statements, and to make it readily available to others through the Internet. The Department for Disarmament Affairs maintains much of this written information on its own web site (though not the official statements).[32]

Yet many difficulties remain in this area. One of the worst is the highly uneven quality of the information provided by the nuclear-weapon States on their progress in the field of nuclear disarmament. There are no formal 'reports' per se from the States on these issues, only a curious assortment of oral statements, pamphlets, brochures, non-papers, bar-charts without numbered indices, and fact sheets that together still do not answer even the most basic question, so essential in establishing a 'base-line' for assessing progress in disarmament: namely, how many nuclear weapons exist? Germany once called for a 'register' of nuclear weapons, but the proposal fell on deaf ears and unseeing eyes—it has more recently called for a global 'inventory' of fissile nuclear materials.[33] Both are fine ideas, awaiting only the political will

[28] Barbara Tuchman, *The March of Folly: From Troy to Vietnam* (New York: Knopf, 1984), p. 384.

[29] Ibid., p. 7.

[30] See <http://www.reachingcriticalwill.org/legal/npt/nptindex1.html>.

[31] See <http://www.acronym.org.uk/npt/index.htm>. Acronym's director, Rebecca Johnson, also publishes excellent analyses of activities throughout the NPT review process.

[32] See <http://disarmament.un.org:8080/wmd/npt/index.html>.

[33] Germany's then-Foreign Minister Klaus Kinkel first proposed the register idea in 1993. For a useful discussion of both issues, see Harald Mueller, 'A Ban on Production of Fissile Materials for Weapons Purposes: Doomed Prospects?,' Programme for the Promotion of Nuclear Non-Proliferation, Issue Review No. 13, April 1998, available at: <http://www.ppnn.soton.ac.uk/ir13.pdf>. For a more recent illustration of Germany's proposals to create 'a reliable inventory of all nuclear weapons and stocks of fissile material usable for military purposes,' see 'Attaining a Nuclear-Weapon-Free World,' working paper submitted by Germany to the First Session of the Preparatory Committee to the 2005 NPT Review Conference, New York, 11 April 2002.

to implement them. Though improvements in reporting will not necessarily guarantee real progress in disarmament, it is indispensable in measuring and assessing such progress and can also help in building political support for additional initiatives in this field.[34]

Meanwhile, the absence of reliable data on the implementation of export controls—licensing in particular—has greatly hindered the growth of multilateral support for such controls, while generating many suspicions about double standards and discrimination. With the public in many countries is denied details about export controls—even basic statistics like number of export license denials and approvals—it is small wonder that debates about export controls have tended to generate more heat than light. The remedy is of course greater transparency, but this will require States parties to make some fundamental decisions on the importance of revealing this information, in the interest of building international support for export controls.

It is just hard to imagine how the NPT can pursue 'non-proliferation' goals without greater consensus among all the States parties on the norms and modalities of such controls. Greater transparency in implementing such controls will enhance their legitimacy. Some States parties have recognized the importance of export control reform.[35]

The most detailed and sustained efforts to initiate reforms in the NPT review process bearing upon transparency have come from Canada, in particular its efforts to build upon two important agreements reached at the 2000 NPT Review Conference.[36] The first was contained in step 12 of the thirteen 'practical steps' for nuclear disarmament, which reads as follows:

> Regular reports, within the framework of the strengthened review process for the Non-Proliferation Treaty, by all States parties on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament', and recalling the advisory opinion of the International Court of Justice of 8 July 1996.[37]

[34] Former Canadian Senator Douglas Roche has cautioned that '... the suggestion that better reporting methods in the NPT process will make the world a safer place is diverting if not disingenuous. ... It is not information about nuclear weapons that is the real issue; it is rather the possession, deployment and threat to use nuclear weapons. ... Standardized reporting may ... increase the comfort level of governments with the status quo.' Senator Douglas Roche, 'Ritualistic Façade: Report and Assessment of Non-Proliferation Treaty Preparatory Committee Meeting, Geneva, April 28-May 9, 2003,' [2003], p. 22; at <http://www.gsinstitute.org/mpi/pubs/prepcomreport_0503.pdf>.

[35] See working paper on export controls submitted by Germany, Second Session of the Preparatory Committee of the 2005 NPT Review Conference, NPT/CONF.2005/PC.II/WP.14, 29 April 2004. This paper, however, does not mention transparency as an area of needed reform.

[36] Working paper submitted by Canada to the First Session of the 2005 NPT Review Conference, New York, NPT/CONF.2005/PC.I/WP.3, 9 April 2002 and working paper submitted by Canada to the Second Session of the 2005 NPT Review Conference, Geneva, NPT/CONF.2005/PC.II/WP.2, 24 April 2003.

[37] Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Volume I, Part I, p. 14-15.

The second was a separate requirement for reports on progress in implementing the 1995 Middle East resolution.[38] The latter requirement was expressly intended to encourage reports to both the Preparatory Committee sessions and to the 2005 Review Conference. Canada's concern is that these requirements 'lack detail on the object, scope, format and framework of reporting.'[39] At the first session (in New York in 2002) of the PrepCom for the 2005 Review Conference, Canada pointed out that 'it would be advantageous to develop a standard reporting format' for such reports, while avoiding an 'excessively burdensome format' to encourage greater reporting. Also noteworthy is the fact that the scope of Canada's own reporting covers all the articles of the Treaty, not just those dealing with disarmament and the Middle East resolution. At the second session of the PrepCom in Geneva in 2003, Canada stressed that 'the real potential of reports ... has only just begun to be explored' and urged the States parties the case for creating a 'culture of reporting.'[40] Canada will continue to work for reforms in this area at the 2005 Review Conference, and the New Agenda Coalition has also described reporting requirements as 'an integral and essential element' for consideration by the Preparatory Committee and the Review Process.[41]

It is noteworthy that Canada's initiative was assisted by a rather exhaustive series of studies and consultations on this issue with several NGOs.[42]

Contributions from Civil Society

The future of the NPT will also be shaped in extremely important ways by the support it receives from civil society—a society that UN Secretary-General Kofi Annan has repeatedly called 'the new superpower'[43]—for even as the power of states continues to grow, so too do the underlying forces of popular sovereignty that provide the foundation for all political authority.

The Final Document of the 2000 NPT Review Conference reaffirmed that 'the total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons.'[44] I believe that an informed, united, and determined public offers the only absolute guarantee of actually achieving this goal, along with the goals of non-proliferation and efforts against nuclear terrorism. The NGO's help to educate the public mainly

[38] Ibid., p. 18.

[39] NPT/CONF.2005/PC.I/WP.3, p. 2.

[40] NPT/CONF.2005/PC.II/PWP.2, 24 April 2003.

[41] NPT/CONF.2005/PC.I/WP.10, 16 April 2002.

[42] See 'Transparency with Accountability,' Report on the Roundtable on Reporting by States Party to the NPT, Ottawa, 19-20 June 2003, <http://www.web.net/~cnanw/Roundtablereport.pdf>.

[43] Secretary-General Kofi Annan, 'In Address to Links, Inc., Secretary-General Stresses that Governments and United Nations Need Civil Society, NGOS, and Private Sector,' UN Press Release SG/SM/7201, 28 October 1999.

[44] NPT/CONF.2000/28, Volume I (Part I), p. 15. For the full text of the Final Document, see: <http://disarmament.un.org/wmd/npt/2000FD.pdf>.

by making information available, by offering opportunities to 'participate' in various ways in an array of multilateral disarmament forums including the NPT review process, and by assisting the news media in their own coverage of relevant issues. The NGO's also bring new ideas into the process, as noted in the previous section.

I believe strongly that the States parties should do everything possible to expand NGO access to delegations and to information from the Preparatory Committee and Review Conferences. I am also convinced that the States parties should support initiatives to promote disarmament and non-proliferation education—Egypt, Hungary, Japan, Mexico, New Zealand, Peru, Poland, and Sweden have jointly introduced working papers in recent years addressing this issue.[45] An educated public is potentially one of the NPT's greatest allies—but the public requires information and support to play this role and States parties should follow the lead of those who are advocating further progress in this area.

I would also like to note a lengthy working paper submitted by Canada to the second session of the Preparatory Committee for the 2005 NPT Review Conference, on 'NGO Participation.'[46] This paper is informative in describing the various roles of NGO in the NPT review process, as well as useful in exploring various options for enhanced NGO participation in this process. Many of these reforms are logistical in nature—focused for example on seating arrangements, access to information, briefings, accreditation, and other such issues. I hope more States parties will also consider having NGO advisers in the national delegations—not as a substitute for independent participation by NGOs at NPT events, but as yet another means to inspire some fresh thinking among the delegations.

One of the unfortunate side-effects of the events of 11 September has been that strengthened security controls at some international meetings—including those in the NPT review process—have been onerous for the NGOs. One veteran practitioner, Rebecca Johnson, has recently written that—-

> For NGOs seeking to exchange information and interact with the diplomats and governments, the conditions are getting so bad that working with the UN and treaty system is taking a high and increasing toll; so high, perhaps, that few may soon be left willing to do it on an independent, consistent basis.[47]

[45] NPT/CONF.2005/PC.III/WP.17, 29 April 2004; and NPT/CONF.2005/PC.II/WP.18, 7 May 2003. See also the web site of the UN Department for Disarmament Affairs, at <http://disarmament2.un.org/education/>.

[46] NPT/CONF.2005/PC.II/WP.16, 6 May 2003.

[47] Rebecca Johnson, 'Rogues and Rhetoric: The 2003 NPT PrepCom Slides Backwards Disarmament Diplomacy,' Issue No. 71, June—July 2003, at <http://www.acronym.org.uk/dd/dd71/71npt.htm>.

With many disarmament-related NGO's already suffering from the lack of financial support, it is truly a tragedy for the Treaty if these woes are further compounded by new administrative obstacles.

Irreversibility

'Irreversibility' is often viewed narrowly in the context of strategic nuclear arms control and disarmament agreements—the world expects such agreements not to be readily reversed. Yet the DPRK's decision to withdraw from the Treaty has inspired many States parties to take a second look at the three-months-notice withdrawal provision in Article X(1) of the Treaty. The real issue here is not the 'right' to withdraw, which is explicit in the Treaty and unlikely to be dropped through any amendment. Instead, the issue really relates to the conditions and procedures for implementing this right. On this issue, Germany has recently introduced a working paper on 'Strengthening the NPT against withdrawal and non-compliance' that outlines some practical suggestions on how the actual process of withdrawal should be reformed.[48] I believe Germany is on the right track here—it is highly unlikely that the States parties would reach a consensus on an outright abrogation of the right of withdrawal, though it is indeed possible that they might agree on some specific steps that must be taken in implementing such a step.

Verification

In an NPT context, discussions about 'verification' typically center on safeguards-related issues. In recent years, however, States parties have given increased attention to the problem of verifying the implementation of disarmament commitments as well. To its credit, the British Government has commissioned some technical studies of the problem of verifying nuclear disarmament and has summarized the basic findings of these studies in three interesting working papers, submitted at the 2000 NPT Review Conference and two of the PrepComs for the 2005 NPT Review Conference.[49] In terms of the 2005 NPT Review Conference, I hope the States parties—and all who are concerned with the future of this Treaty—will review these studies and ask the other nuclear-weapon States what they are doing in this area. Such studies are exactly what one would expect to see from States that are serious about implementing their disarmament commitments—and indeed, the lack of them is troubling.

The United Kingdom is of course not the only State party that has ventured to make practical suggestions on how global nuclear disarmament could actually be achieved and verified. Germany submitted a working paper at the

[48] NPT/CONF.2005/PC.III/WP.15, 29 April 2004.

[49] NPT/CONF.2000/MC.I/WP.6, 4 May 2000; NPT/CONF.2005/PC.II/WP.1, 23 April 2003; and NPT/CONF.2005/PC.III/WP.3, 8 April 2004.

first session of the Preparatory Committee for the 2005 NPT Review Conference on 'Attaining a nuclear-weapon-free world,' which outlines many ideas on the technical 'prerequisites' for achieving this goal.[50] Without listing them separately, I also refer the reader to numerous resolutions introduced in the General Assembly on this issue.[51] While there is no scarcity of ideas on how to move this agenda forward, there remain certain questions to address concerning the specific tactics of how to achieve concrete progress in achieving disarmament under the Treaty.

Some Practical Tactics for Strengthening All the WMD Regimes

What will be most important in shaping the future of the NPT or the other WMD regimes? The answers depend upon the support these treaties—and their basic goals—have among the people and its leaders. More specifically, the goals of these treaties will be achieved as a result of political will, as expressed on three dimensions: (1) from the 'bottom-up'—that is, as manifested in domestic political forces; (2) from the 'outside-in'—which refers to the role of international diplomacy and its combined effect upon states that continue to possess WMD; and (3) from the level of the political leadership in executive and legislative branches around the world, particularly in the States that continue to possess such weaponry or who continue to claim to benefit from such weapons through alliance relationships. I believe that collective action in defence of these regimes from the international community would help enormously on all three of these dimensions.

How can countries work to strengthen these regimes? Here are some practical suggestions:

- By voting together in relevant multilateral disarmament fora, including the First Committee of the UN General Assembly, and the review conferences of the NPT, BWC, and CWC.
- By ensuring that the political leaders of these countries explicitly identify disarmament and non-proliferation issues in their public addresses, including in the statements by the heads of state and government made in the opening days of each new UN General Assembly session.
- By organizing inter-governmental regional seminars and workshops, with participation by members of civil society, to identify challenges facing these regimes and to explore common approaches to meet them.
- By launching disarmament and non-proliferation education programmes to ensure that the next generation of leaders will be

[50] NPT/CONF.2005/PC.I/WP.4, 11 April 2002.

[51] For the latest, 2003 resolutions, see <http://disarmament2.un.org/ddapublications/res-dec58.pdf>.

able and motivated to sustain progress in eliminating all WMD, to reduce reliance on other deadly weapons, and to resolve political conflicts without the use of force.

- By promoting full, universal membership in the NPT, BWC, and CWC, and full compliance with their terms—including disarmament.
- By repeatedly raising WMD disarmament and non-proliferation issues in bilateral discussions with countries that continue to possess such weapons.
- By issuing joint statements and/or resolutions in meetings of key regional organizations.
- By enacting domestic legislation prohibiting any development of any weapons of mass destruction or any contribution to their development in any country.
- By encouraging the news media and groups in civil society to focus on the continuing threats posed by WMD wherever they exist and the need to eliminate such threats by eliminating the weapons and the underlying conflicts that provide pretexts to acquire them.
- By opposing the production, acquisition, or trade in separated plutonium or highly-enriched uranium and by supporting efforts in the Conference on Disarmament and elsewhere to achieve an equitable, global ban on such materials.
- By vigorously supporting WMD-free zones, including the nuclear-weapons-free zone proposed for Central Asia, the adoption by the nuclear-weapon-states of the Protocol to the Bangkok Treaty for a nuclear-weapon-free zone in Southeast Asia, and possible extensions of the WMD-free zone concept elsewhere (including specifically the Korean peninsula).

The entire world is facing a strategic crossroads. It can succumb to the temptations of unilateralism and militarism, and embark on a deadly and expensive 'race to the bottom' of international standards of international peace and security. This is a syndrome manifested in rising military expenditures, new efforts to acquire WMD (or to help other to acquire them), the pursuit of long-range weapons delivery systems, and the gradual abandonment of multilateral disarmament and non-proliferation treaty regimes. This is a road that leads to disaster, a Hobbesian 'state of nature'—a war of all against all.

The alternative is an approach that builds upon the idea of 'mutual gain'—namely, the benefits from cooperation, self-restraint, reductions in weapons stockpiles, defence conversion projects to ensure that former weapons workers have gainful civilian jobs, and renewed efforts to strengthen multilateral treaty regimes. This is the road that all countries should choose.

Conclusion

Despite the many challenges that lie ahead, treaty-based regimes remain enormously 'relevant' in serving international peace and security. They offer many hard-law advantages over their ad hoc political counterparts among the various regulatory regimes. They are binding. They have or are approaching universal membership. They have the permanence of law. Some have institutions staffed with full-time professionals dedicated to building confidence in compliance. And they have the most precious treasure of all—legitimacy, both because they enshrine universal norms and because legislatures had to approve their ratification.

With legitimacy, the regimes can continue to grow and to enhance the conditions of international peace and security. If they lost that legitimacy, they would lose all hope for effectiveness, and they would risk collapsing. We cannot rely on the regimes alone to prevent this from happening. We can only hope that the member states of these regimes will understand the benefits they stand to gain from the success and permanence of these regimes, and will provide them the support they deserve.

Needless to say, the strength of governmental commitments to these regimes will be heavily dependent upon the understanding and support from civil society, not just the arms control and disarmament community.

Just as the Charter of the United Nations was anchored among the 'peoples of the United Nations,' so too will the future of regimes be determined by the support they enjoy among the peoples of the world and their leaders. United in a just cause, the people can and indeed must move the world.

IX. NPTREC CLOSING STATEMENT BY PRESIDENT JAYANTHA DHANAPALA, 12 MAY 1995

The President: The States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) have had a truly unique encounter with history. We have emerged from that tryst with our Treaty not merely extended indefinitely but greatly strengthened by the solidarity of its adherents participating in this Conference in their total commitment to the objectives of the Treaty, to the need for its universality and with a collective determination to achieve the goal of the complete elimination of nuclear weapons. A historic Conference has therefore ended with a historic agreement.

We have concluded the work of the 1995 Review and Extension Conference of the Parties to the NPT with some momentous decisions. That it was possible to arrive at these decisions without a vote is indeed a vote of confidence in the political and security regime underpinned by our Treaty, which is the only global security compact with near-universal membership.

I do not wish to impose my interpretation in regard to the nature or the content of the agreement reached. It is nevertheless my duty as the President of the Conference to highlight the significance of our collective achievement and the need for all States Parties to consolidate and implement these important decisions.

It is also important for us all to remember always that there were no winners or losers in this Conference: it was the Treaty that won. No one delegation and no one group brought us within reach of that success. All delegations and all groups contributed to the success we all achieved for the Treaty and for ourselves. There is therefore no reason for smug complacency about the past performance of States Parties to the Treaty. There is still less room for any relaxation of our pursuit of the prevention of the proliferation of nuclear weapons, the achievement of the complete elimination of those weapons through their prohibition and the promotion of cooperation in the field of the peaceful use of nuclear energy. It is less important to debate what is legally binding and what is politically binding. What is more important is that through delicate and painstaking negotiations the States Parties were able to craft a balanced and forward-looking agreement that they are committed to implementing in a systematic and progressive manner.

They will also periodically review and evaluate the implementation of the package of principles and objectives, together with the provisions of the Treaty. This review and evaluation process will be ongoing, regular and action-oriented. The institutional infrastructure required to operationalize this process has also been put in place. All these elements of the agreed package

represent a framework to further the objectives of the Treaty regime, the endurance of which is essential for the future security order of the world.

The strengthened review process that we have established will now ensure a sharper focus on review conferences of the future and their preparatory committees. These forums of rigorous accountability will play a more crucial role in the operation of the Treaty than ever before. As States Parties to the Treaty, we have to ensure that we make maximum use of this mechanism of accountability in the fulfillment of the undertakings in the Treaty.

Our Treaty has been rendered permanent by our actions at this Conference. The permanence of the Treaty does not represent a permanence of unbalanced obligations, nor does it represent the permanence of nuclear apartheid between nuclear haves and have-nots.

What it does represent is our collective dedication to the permanence of an international legal barrier against nuclear proliferation so that we can forge ahead in our tasks towards a nuclear-weapon-free world.

I want to highlight the unmistakable message emanating from this Conference: non-proliferation and disarmament can be pursued only jointly, not at each other's expense. Delegations voiced their strong support for the Treaty as a legal basis for achieving non-proliferation and disarmament. The final output of our Conference encapsulates those sentiments and provides a political, legal and institutional framework for translating them into reality in a verifiable, progressive and systematic manner. As President of the Conference, I urge all States Parties now to proceed with dispatch to implement this important package.

In my opening statement, in accepting the honour of presiding over this historic Conference, I said that we had a historic opportunity of making a statement against the possession and use of nuclear weapons for all States for all time. That statement has been made, and it will be heard in the world and reverberate for years to come. The final realization of the objective of nuclear disarmament will prove the wisdom of our Conference decisions.

In emphasizing the importance of the results achieved, let me not minimize the concerns and differences that we have had to take cognizance of. That would not be fair to those delegations that have made genuine compromises; nor would it be in the interests of the Treaty. However, the very fact that the delegations were willing and able to address frankly their fundamental security concerns and negotiate viable compromises within the context of the Treaty is a reaffirmation that the Treaty has indeed become a truly broad-based security framework.

Despite the absence of a final declaration because of lack of time and lack of agreement on certain parts of the reports of the Main Committees, especially Main Committee I, the three Main Committees were able to develop general agreement on several crucial questions dealing with disarmament, non-proliferation, safeguards, negative security assurances and peaceful uses of nuclear energy. These will provide invaluable inputs in the implementation of

the decisions of this Conference, in particular in the strengthened review process.

Multilateralism and the consensual approach have prevailed over parochial and divisive politics. The painstaking process of enlarging the area of agreement through consultation and compromise was ultimately more fruitful than proselytization with pieces of paper. One month of hard work and complex negotiations has brought about a political package that points to an incremental way forward in non-proliferation and disarmament. The objectives and principles on non-proliferation and disarmament, together with the strengthened review process, which are intricately bound up with the decision on the extension of the Treaty, represent a pathfinder for a nuclear-weapon-free world.

Over the past 25 years non-governmental organizations have performed valuable services for the Non-Proliferation Treaty in encouragement, ideas, public support and advocacy of further progress towards the goals of the Treaty. I should like to pay them a sincere tribute for their dedication. The expertise and resources of non-governmental organizations are being increasingly integrated into various facets of human endeavours within and among States, including in the context of the United Nations. Arrangements for communication between non-governmental organizations and NPT parties should therefore be improved. For that purpose, consideration might be given to the possibility of having a presentation of one to two days to delegates by non-governmental organizations, in written and oral format, which would encourage maximum exchange of ideas between non-governmental organizations and delegates during the Preparatory Committee meetings and at Review Conferences. The Centre for Disarmament Affairs could take on the organization of these improved contacts.

Let me, before concluding, thank the Chairmen of the Main Committees, the Vice-Presidents and the other officials for the support and advice they gave me in the management tasks of this Conference. I should also like to thank the Secretary-General and his diligent staff for the splendid job they have done under difficult conditions. Let me also thank the conference services staff and interpreters and all the other Secretariat staff whose services were invisible but indispensable. Above all, I should like sincerely to thank all delegations who have given me unreserved support and encouragement for my efforts at seeking agreement. All of you inspired me in my convictions about the need for a consensus approach to decision-making.

I should like, therefore, to express my deepest gratitude to all delegations for the support, flexibility and cooperation extended to me at all times.

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Planning for the 2010 NPT Review Conference: A Practitioner's overview

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'Once more unto the breach, dear friends, once more'
(*King Henry V*, Act 3, Scene I, Shakespeare)

1. The Importance of 2010

It is the season. Every five years, since 1970, a multilateral treaty viewed by some as flawed and discriminatory and by many as, at best, controversial, attracts global attention.

In 1995, when the Treaty for the Non-proliferation of Nuclear Weapons (NPT) had to be extended under its unusual provisions, the NPT received heightened attention. In other years, preparations and predictions about the NPT Review Conferences are almost ritualistically the subject of discussions among nation states, scholars, the media and civil society.

After each Review Conference is over, analyses of its perceived success or failure, engage the attention of the same circles briefly, and then, all is forgotten until the eve of the next Review Conference. This rite has begun as we approach the May 2010 NPT's Eighth Review Conference. The battle cry of King Henry V may not be an entirely appropriate quote.

Nevertheless, the opportunity to arrive at a constructive consensus among the parties of the NPT on its future is being repeated this year. So are the exhortations for a success so vital for the survival of the NPT as the lynchpin of international nuclear non-proliferation and disarmament efforts. A consensus among the parties to the NPT is thus crucial in both the nuclear non-proliferation and nuclear disarmament discourse internationally.

There is, however, a difference this time round. The 2005 Review Conference held during the second term of US President George W. Bush was an undisguised failure, which left many states disappointed and even angry. It was followed by the failure of the 60th United Nations General Assembly (UNGA) Summit failing to agree on the nuclear disarmament sections of the Declaration that was finally adopted without them. 2005 thus, was not only a bad year, but also signified the nadir of multilateral diplomacy in the area of nuclear disarmament and nuclear non-proliferation.

The election of the first African-American as President of the United States of America on a platform that included the reaffirmation of multilateralism and the vision of a nuclear weapon-free world has led to great expectations. These expectations can either be fulfilled (even partially) or betrayed before the Review Conference.

They can also receive a boost or a blow by the outcome of the conference. Security Council Resolution 1887 of 24 September 2009 called on all States parties of the NPT to co-operate to ensure a successful NPT Review Conference setting 'realistic and achievable goals in all of the Treaty's three pillars'.[1] That will mean different things to different NPT parties. A mutuality of interests should determine what is 'realistic and achievable' in 2010.

The 'Thirteen Steps' of the 2000 Review Conference's Final Document[2] were 'realistic and achievable' to the five Nuclear Weapon States (NWS), including the US, at that time but in 2005 they were not. Goal posts cannot be shifted away from a mutuality of interests with changes of administration in individual countries.

Independent of the circumstances under which the Conference will be held in 2010, there is the question as to how the NPT can sustain another failure to adopt a Final Document by consensus. Such an agreement has been possible on four occasions—if we include the adoption of the 'package' of three decisions and the Resolution on the Middle East in 1995.[3] Agreement was not reached in 1980, 1990 and 2005.

Perceptions of the success and failure of conferences vary in accordance with political perspectives. The mere fact that a large number of parties to the treaty assemble to debate on whether treaty obligations have been fulfilled, and to chart a course for the future is regarded by some as satisfactory.

However if a conference is to succeed the focus must not be on mere process—a trap of most multilateral conferences. It should be on substance where fundamental differences are not papered over by skilful but temporary drafting exercises that crack as time passes.

A reason why the 2010 Conference will be more important than usual is that the danger of nuclear weapon proliferation is closely linked to climate change and the irrefutable scientific evidence (notably in the four reports of the Inter-governmental Panel on Climate Change) that carbon emitting sources of energy need to be replaced.

Nuclear power has emerged as a strong preference but uneasy reactions arising from the absence of a firewall between the peaceful and non-peaceful uses of nuclear energy have to be addressed. In his statement to the sixty fourth regular session of the United Nations General Assembly on 2nd November 2009, the IAEA's then Director General ElBaradei said:

[1] United Nations, 'Historic Summit of Security Council Pledges Support for Progression Stalled Efforts to End Nuclear Weapons Proliferation Resolution 1887 (2009) Adopted with 14 Heads of State, Government Present', Security Council SC/9746, 24.11.2009, <http://www.un.org/News/Press/docs/2009/sc9746.doc.htm >, (Accessed on 24.11.2009).

[2] See Final document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, pp. 14-15 <http://www.un.org/spanish/Depts/dda/2000FD.pdf>, (accessed on 24.11.2009).

[3] Dhanapala, Jayantha, with Rydell, R., *Multilateral Diplomacy and the NPT—An Insider's Account*, Geneva, United Nations Publications, 2005, pp 47-57.

'The world seems set for a significant expansion in the use of nuclear power, with scores of countries expressing interest in introducing it as part of their energy mix. Not surprisingly, most of these are from the developing world, which urgently needs a dramatic increase in electricity supply if it is to lift its people out of poverty. Energy is the engine of development. For many countries, nuclear power, with its good performance and safety record, is a way to meet their surging demand for energy, reduce their vulnerability to fluctuations in the cost of fossil fuels and combat climate change. The IAEA has adjusted its priorities to focus more on the nuclear power programmes of what we call the 'newcomers.' '[4]

The inconclusive outcome of the UN Climate Change Conference in Copenhagen December 7-18 has extended the debate on how the international community must resolve the acute problem of climate change. It therefore, has a bearing on the NPT Conference. So also do the current controversies over the DPRK, Iran and Syria and the US-Russian negotiation on replacing the START agreement that expired on December 5, 2009.

2. The Treaty in the Context of Disarmament and Arms Control

History records the invention, proliferation and use of weapons. It also records efforts to reduce arsenals and regulate the spread and use of weapons. This corresponds to humankind's twin and contradictory propensities for war and peace. With the development of technology, weapons have become increasingly lethal and have resulted in larger numbers of civilian casualties. With widening global trade, weapons and materials for weapon manufacture have been exported and imported like any other commodity at increasing costs including opportunity costs.

According to the Stockholm International Peace Research Institute (SIPRI) world military expenditure in 2008 is estimated to have been $ 1464 billion—2.4 per cent of world GDP and 45 per cent up from 1999 a decade earlier. The USA alone accounted for 41.5 per cent of this global expenditure. Global arms transfers are estimated to have been $ 51.1billion in 2007. They fuelled 16 major armed conflicts in the world in 2008.[5]

The emergence in the 20th century of chemical, biological and nuclear weapons as weapons of mass destruction (WMD), as distinct from conventional weapons, marked a watershed. These weapons were shown to be vastly more destructive of human life and of material property with long-lasting ecological and genetic effects. Thus the elimination or control of WMD became the priority of the UN and the international community. The very first UN General Assembly resolution adopted on 24 January1946 called

[4] ElBaradei, Mohamed, 'Statement to the Sixty-Fourth Regular Session of the United Nations General Assembly', UNGA, New York, USA, 2 November 2009, <http://www.iaea.org/NewsCenter/Statements/2009/ebsp2009n017.html>, (accessed on 24.11.2009).

[5] SIPRI, Yearbook 2009 Armaments, Disarmament, and International Security, *Summary*, SIPRI, 2009 pp 2,10,11, 14,15.

for the 'Establishment of a Commission to deal with the problems raised by the discovery of atomic energy' whose terms of reference included 'the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.' The 1972 Biological and Toxin Weapons Convention with 171[6] parties and the 1993 Chemical Weapons Convention with 184 parties[7] banned these two categories of WMD. The only WMD not subject to a universal ban is the nuclear weapon.

Bilateral treaties between the two largest nuclear weapon states—the US and Russia who have an estimated 95 per cent of these weapons—and multilateral treaties banning nuclear tests (Comprehensive Nuclear Test Ban Treaty—CTBT) and the proliferation of these weapons (NPT) have sought to regulate their vertical and horizontal proliferation. It is estimated by SIPRI that today there are altogether more than 23,300 nuclear warheads in the world with USA, Russia, UK, France, China, India, Pakistan and Israel possessing 8392 deployed warheads[8] many of which are ready to be launched within minutes.

The normative structure with regard to all weapons has two aspects. One is to seek disarmament in terms of universal bans on inhumane weapons or particular categories of weapons for humanitarian and collective security reasons. The other is to seek arms control in terms of levels of arsenals or prevention of new possessors. Disarmament requires verifiable destruction of existing weapons, cessation of production, sale, storage, transfer or acquisition.

Thus the total outlawing (as distinct from arms limitation or reduction) of biological weapons, chemical weapons, anti-personnel land mines, cluster munitions, laser weapons and other categories has been achieved globally even though the multilateral treaties negotiated for these purposes may not be universal and the verification of their observance not always reliable. General and complete disarmament has been the agreed goal of the UN. Whether disarmament results in security or whether security must precede disarmament remains a 'which comes first—the chicken or the egg?' argument disputed by some members.

Chapter II, Article 2 (4) of the UN Charter specifically asks all member states to 'refrain in their international relations from the threat or use of force'[9]. At the same time Chapter VII, Article 51 refers to the 'inherent right

[6] BTWC, 'Status of the Convention',< http://www.opbw.org/>, (accessed on 24.11.2009).

[7] Arms Control Association, 'Chemical Weapons Convention Signatories and State Parties' <http://www.armscontrol.org/factsheets/cwcsig>, (Accessed on 24.11.2009).

[8] SIPRI. Op. cit p16.

[9] United Nations, 'Charter of the United Nations', <http://www.un.org/en/documents/charter/chapter1.shtml>, (accessed on 24.11.2009).

of individual or collective self-defence if an armed attack occurs against a member of the United Nations' [10] until the Security Council acts.

The one treaty which attempts a combination of the disarmament and arms control aspects is the NPT, which is the world's most widely subscribed to disarmament treaty. It openly accepts two categories of state parties—NWS and Non-Nuclear Weapon States (NNWS).

In terms of the disarmament approach NWS are only exhorted, as treaty parties, to negotiate the reduction and elimination of their weapons. In contrast, NNWS are totally forbidden to acquire such weapons and the IAEA is empowered to enter into arrangements with them when peaceful uses of nuclear energy are involved, and to verify that there is no diversion for non-peaceful purposes. In its 1996 Advisory Opinion the International Court of Justice stated that the NWS had a legal obligation to negotiate nuclear disarmament but this has had little impact on the NWS.

As far as arms control is concerned, NWS are permitted to retain their weapons with the restraints that apply through other bilateral and multilateral treaties. The only legal commitment by the NWS to nuclear disarmament in a multilateral treaty (apart from the preambular part of the CTBT which has not entered into force as yet) is Article VI of the NPT.

This discriminatory approach creating an apartheid system between NWS and NNWS has been the cause of tensions within the NPT. They have been exacerbated over the 40-year history of the treaty. The existence of Israel, India and Pakistan as nuclear weapon armed countries outside the NPT (and with this proliferation alleged to have been assisted by the NWS and others within the NPT) and the recent grant of benefits to India that were hitherto confined to NNWS within the NPT, has increased the strains on the NPT.

The discovery of Iraq's clandestine nuclear weapon programme in the early 1990s; the withdrawal of the Democratic Peoples Republic of Korea (DPRK) from the NPT and its subsequent nuclear weapon tests; the acknowledgment and rectification of Libya's non-compliance; and the continuing questions and tensions over Iran's nuclear programme have seriously weakened the NPT as a non-proliferation measure.

Within the ambiguity of the NPT's normative approach regional conflicts breed insecurity for which nuclear weapons seem an answer to some. For others, nuclear weapons are a badge of great power status.

At this juncture, only a reunification of the disarmament approach and a non-proliferation approach can save the treaty. This is especially important because impending climate change is driving many countries towards nuclear energy in a 'nuclear renaissance'. However, the technologies of peaceful uses and non-peaceful uses can no longer be kept in sealed compartments.

[10] United Nations, 'Charter of the United Nations', <http://www.un.org/en/documents/charter/chapter7.shtml>, (accessed on 24.11.2009).

The threat of nuclear terrorism is also real. In the US the op-eds in the Wall Street Journal in 2007[11] and 2008[12] by elder statesmen Shultz, Kissinger, Nunn and Perry calling for a nuclear weapon-free world and the end of nuclear deterrence theory have been echoed by similar sentiments in the UK, Italy, Norway, France, Germany, Poland, The Netherlands and Belgium.

More importantly, they were endorsed by President Obama in his campaign, in subsequent policy statements, and in his historic chairing of the UN Security Council in September 2009. The translation of those promises into action will lead the world into the only viable normative approach with regard to WMD—their total and universal elimination under strict verification.

3. Origins, Review Conferences and the Practice of Conference Diplomacy

The NPT is a unique treaty in many ways, as noted already. It seeks to combine the outright prohibition aspect of disarmament treaties with regard to NNWS in Articles I-III and the hortatory approach of the arms control treaties as far as the NWS are concerned in Article IV and VI. It thus falls between two stools.

It also contains a provision, in Article X.2, for a conference to be convened 25 years after its entry into force to decide whether it should be extended indefinitely or 'for an additional fixed period or periods'.

As mentioned earlier, Article VIII.3 of the Treaty also provides for Review Conferences at five yearly intervals. If diplomacy is the application of tact, skill and intelligence in the conduct of international relations among nation states then both these Treaty provisions offer opportunities for the active exercise of diplomacy on the part of the parties to the Treaty. That is undoubtedly a shared but nevertheless asymmetrical responsibility of the NWS and the NNWS.

The NPT is, therefore, unlike other treaties which are usually for an indefinite duration and are frozen in time—except for amendment procedures that are normally difficult to implement. In this situation the internal dynamics of Treaty Conferences assume special importance while the external context including instructions from capitals continues to have their undisputed influence.

Thus, the 1995 NPT Review and Extension Conference and the Review Conferences held in five yearly intervals since 1975 merit close analysis for

[11] Shultz, George P., Perry, William J., Kissinger Henry A., and Nunn, Sam 'A World Free of Nuclear Weapons,' *The Wall street Journal*, 4 January 2007, p A15.

[12] Shultz, George P., Perry ,William J., Kissinger Henry A. , and Nunn , Sam, 'Toward a Nuclear Free World', *The Wall street Journal*, 15 January 2008, p. 13 <http://online.wsj.com/article/SB120036422673589947.html?mod=opinion_main_commentaries> (accessed on 24.11.2009).

the interplay of diplomatic efforts by the NWS and NNWS, and the impact these had on the future course of the Treaty.

The approach of the 2010 Review Conference is an appropriate moment for the study of this diplomacy which also involves the management of these conferences.

The content of NPT diplomacy is not merely the interaction of delegations at NPT conferences and in between, but also the management of the conferences by the office-bearers elected to the various positions by the success or failure of the conferences. In this context the initiative of the James Martin Center for Non-proliferation Studies in the Monterey Institute for International Studies to collate the 'institutional memory' of past NPT Conferences and make them available to office-bearers and participating delegations of the 2010 Conference must be welcomed.

It will be seen that the most intractable issues do not necessarily cause conferences to implode and collapse without agreement if there is sufficient goodwill and creative diplomacy. Likewise a negative personal chemistry among leaders of key delegations and poor conference management are likely to exclude any hope of accommodation or compromise.[13]

Negotiation, Signature and Ratification

The negotiating record of the NPT—as revealed especially in Mohamed Shaker's pioneering study[14]—indicates that it was largely a product of the US and then USSR delegations who were co-Chairmen of the Eighteen Nation Disarmament Conference (ENDC)—the predecessor negotiating body of today's Conference on Disarmament.

Prior to that in 1959, the UNGA adopted resolution 1380 (XIV) proposed by Ireland that called for NWS to refrain from providing nuclear weapons to NNWS.[15] Two years later, another Irish draft resolution on the Prevention of the Wider Dissemination of Nuclear Weapons was also adopted by the Assembly. What was distinctive is that the 1959 and 1961 resolutions represent the views of the NNWS. Of these, the Irish sponsored resolution 1665 (XVI), adopted unanimously in the UNGA on 4 December 1961, can be regarded as the genesis of the NPT.

The transition from the UNGA, where voting is equitable with each member state having one vote, to the ENDC, where the co-Chairmen were in a clear position of authority and influence as super powers in the Cold War era in a body of 18 states, was significant. The more evenly balanced interests of the NWS and the NNWS in the Irish resolution mutated to a treaty draft that was

[13] Dhanapala, Jayantha, with Rydell, R, op. cit, p 16.

[14] Mohamed, I Shaker, *The nuclear non-proliferation treaty: origin and implementation, 1959-1979*, London, Oceana Publications, 1980.

[15] In the same year, UNGA resolution 1378 (XIV) put 'general and complete disarmament' on its agenda, where it has been ever since.

heavily weighted towards NWS interests. At the same time the co-Chairmen were aware that the treaty draft had to attract the support of a wide range of NNWS.

The main opposition came from Germany and Italy who felt they were targeted and it is their diplomacy that helped create the limited duration of the NPT to 25 years. Article VI—widely regarded as the 'Disarmament' pillar of the NPT—was the result of developing countries and NNWS like Mexico whose redoubtable Ambassador Alphonse Garcia-Robles spearheaded the fight for the inclusion of this Article.

By this time the Non-Aligned Movement (NAM), which had its first summit in Belgrade in 1961 with 25 countries from all continents pledged to pursue an independent foreign policy unattached to the two blocs, was beginning to assert influence in global politics. The article was a watered down version of what Mexico and others proposed and was eventually placed, deliberately, within the context of 'general and complete disarmament'. It was perhaps the best possible outcome given the strength of the NWS in the ENDC.

Garcia-Robles played a leading role in the conclusion of the 1967 Treaty of Tlatelolco which made Latin America and the Caribbean the first inhabited nuclear weapon-free zone before the conclusion of the NPT. He was later to share the 1982 Nobel Peace Prize with Ambassador Alva Myrdal of Sweden—another outstanding disarmament diplomat.

In the formulation of Article X.1, the withdrawal clause of the NPT, (now very much the centre of discussion after the DPRK left the NPT) it is clear from the negotiating record that the US introduced this but that Egypt, Burma (now Myanmar), Brazil and Nigeria had a role in the final language adopted. The focus at the time was on states exercising their sovereign right to withdraw on the basis of other states parties not complying with their obligations.

The NPT was signed on 1 July 1968 and entered into force in 1970. Its membership has expanded from 91 in 1975 to 190 (if we include the DPRK) in 2009. The three depositary states—the USA, Russia and the UK—have strongly encouraged other states to join, contributing to this expansion. However, it is true that assertive US diplomacy has succeeded in convincing many countries to join the NPT as NNWS. At certain stages opponents of the NPT like India have tried to counter-act this diplomacy—especially in South Asia—but without much success.

A dramatic spurt in accessions was visible prior to the 1995 Review and Extension Conference. While of course sovereign countries take such decisions in their national interest, the entry of longstanding holdouts like Argentina, Brazil and South Africa and the three former USSR states—Belarus, Ukraine and Kazakhstan—which, at the end of the Cold War, had Russian nuclear weapons on their soil, represent a diplomatic success for the depositary states.

The Review Conferences 1975-1990

Four Review Conferences were held during this period in Geneva with two of them (1975 and 1985) being able to adopt a Final Declaration by consensus and two (1980 and 1990) failing to do so. It is, as noted earlier, arguable whether the success or failure of Review Conferences can be judged by the adoption of a Final Declaration.

Firstly, although the Conference rules of procedure provide for voting, decisions are generally taken by consensus out of an increasing concern not to be divisive in vital issues of security. This empowers individual delegations or small groups of delegations to obstruct consensus and prevent the adoption of a Final Declaration. How long this practice will endure is difficult to predict. It has occasionally been broken through exasperation in some forums like in UNCTAD. Therefore, the adoption of a Final Document by consensus is in itself an undoubted success. That must however depend on the extent to which the treaty parties implement the promises and commitments that are embodied in the Final Documents.

Secondly, the adoption of a Final Declaration is regarded by some as less important than a comprehensive discussion of how the Treaty has been implemented in all its aspects. That may appear to be an artificial rationalization of a failure in diplomacy. The fact is that the adoption of a Final Declaration is the expression of a collective political will. Failure to do so could be a symptom of a deeper political malaise or a demonstration of dissatisfaction with specific aspects of the review process such as when the Arab group of countries focuses on a demand for Israel to join the NPT as a NNWS. The adoption of a Final Declaration is also influenced by the prevailing global atmosphere. Thus a Final Declaration at a Review Conference is also undoubtedly a political barometer.

The 1975 Review Conference: The 1975 Review Conference being the first Review Conference of the NPT served as a precedent with the Non-aligned group of NNWS– functioning under the 'Group of 77' title—ready to confront the three NWS in the NPT at the time—the US, USSR and UK.

Article VI was the key area of dispute and the Comprehensive Test Ban Treaty (CTBT) was a principal demand in addition to security assurances for the NNWS. The eventual adoption of a Final Declaration was less a reflection of a political agreement among the parties and more a tribute to the forceful personality of its President, Inga Thorsson of Sweden, who is said to have rammed her own draft through after the Drafting Committee failed to reach consensus on the nuclear disarmament aspects. Mexico, as spokesman of the 'Group of 77' made an interpretative statement of the Final Declaration, which was incorporated as a Conference document. Thus an uneasy compromise was arrived at.

The 1980 Review Conference: The 1980 Review Conference followed the remarkable success of the UNGA's First Special Session on Disarmament (SSOD I) held in 1978 and expectations were high.

The Carter Administration in the US had been weakened considerably by the overthrow of the Shah in Iran and the subsequent student take-over of the US Embassy with its staff held in a prolonged hostage crisis. US diplomats were in no mood to be accommodating to Non-aligned demands. The relations between the US and the USSR were strained by the Soviet invasion of Afghanistan. The Non-aligned themselves were divided with tensions between Iran and Iraq which erupted into a nasty war after the Review Conference.

The issues on which sharp divisions arose were on Article VI and the CTBT, security assurances, Article III and nuclear-sharing as being contrary to Articles I and II. After the success of SSOD I the NAM were not going to settle for anything less and so a deadlock resulted with no Final Declaration emerging.

The 1985 Review Conference: In preparation for the 1985 Review Conference, the writer chaired the Third Session of the Preparatory Committee (which decided, following negotiations ably conducted by Ambassador Rolf Ekeus of Sweden, on the current structure of three Main Committees allocating subject areas and apportioning of their Chairs to the Western, Eastern and NAM groups) and went on to chair Main Committee I of the 1985 Review Conference, which was held during the first term of US President Reagan.

Israel had attacked and destroyed Iraq's IAEA-safeguarded nuclear reactor. Despite this inclement atmosphere, NPT diplomacy reached one of its heights under the able Presidency of Ambassador Mohammed Shaker of Egypt (himself an authority on the NPT). His innovative diplomacy included assembling a representative group of advisers who helped to steer the Conference to the successful adoption of a Final Declaration. Before that however numerous hurdles had to be cleared as sharp and irreconcilable divisions arose over disarmament issues especially the CTBT.

It was evident that instructions to the US delegation were very tight and the writer conceived of a drafting exercise similar to the Shanghai Communiqué of February 28, 1972 at the end of President Nixon's historic visit to China. That communiqué had stated China's position and the US position on many controversial issues separately with no attempt to bridge the differences. Thus a draft with an overwhelming majority of delegations expressing their support for a CTBT with a few delegations holding a contrary view was finally accepted helping to break the stalemate preventing a consensus.

This formula of 'agreeing to disagree' was unusual but helped to adopt a Final Declaration. The personal diplomacy of the leader of the US delegation, Ambassador Lewis Dunn, who painstakingly built relationships with the main office bearers of the Review Conference throughout all the sessions of the Preparatory Committee, was another ingredient in the success of the 1985

Conference. In the final hours of the Conference the hard work on the more substantive issues were almost wrecked over a non-NPT related dispute between Iran and Iraq. This was also resolved by a drafting exercise, which satisfied both parties, and in the small hours of the morning with the clock having been stopped, the Conference was successfully concluded.

The 1990 Review Conference: The 1990 Review Conference had to confront a renewed NAM demand for a CTBT, which could not be resolved through drafting tricks or innovative diplomacy. Although the Mexican delegation is accused of having 'wrecked' the conference standing out resolutely against any compromise, it must also be stated that the President of the Conference and other key delegations lacked the flexibility to devise diplomatic solutions or procedural fixes.

On the other hand, this is possibly an example of the limits of NPT diplomacy when the political context is so difficult that no diplomacy could overcome the differences among delegations. The lesson to be drawn is that politics and diplomacy must go hand in hand if multilateral Conferences are to succeed. There has to be political will to adopt decisions in a Conference and creative diplomacy alone will not be enough.

The 1995 NPT Review and Extension Conference (NPTREC)

The preparation for the NPTREC and its month-long conduct presented a huge diplomatic challenge. A detailed description is provided in 'Multilateral Diplomacy and the NPT—An Insider's Account'[16] by the writer. The NPT depositary states, led by the USA, were clear that an indefinite extension was their goal and US diplomats worked in capitals to achieve this end.

Ambassador Thomas Graham Jr. visited many capitals and his book 'Disarmament Sketches'[17] describes his efforts. While Russia, UK and France supported the same objective there was no evidence of the same organized diplomatic offensive. China maintained publicly that it wanted 'a smooth extension' but, with one eye on NAM, declined to be more explicit or active. The political atmosphere around NPTREC was made favourable by the Clinton Administration's decision to begin negotiating a CTBT in the Conference on Disarmament thus removing one of the most contentious issues in NPT Conferences.

South Africa was a key target of US diplomacy with the aura that it had acquired following Nelson Mandela's assumption of the leadership of this nation and its emergence as a non-racial democracy replacing the white minority regime of the past. More significantly, South Africa had joined the NPT as a non-nuclear weapon state after destroying its nuclear devices under

[16] Dhanapala, Jayantha, with Rydell, R, op. cit.

[17] Graham, Thomas Jr, *Disarmament Sketches, Three Decades of Arms Control and International Law*, Seattle, University of Washington Press, 2002.

the International Atomic Energy Agency's (IAEA) supervision. A special link is said to have been established between US Vice-President Al Gore (who addressed the opening of the NPTREC) and South African Vice-President Thabo Mbeki on the NPTREC ensuring South Africa's support for an indefinite extension of the NPT. This was an undoubted diplomatic triumph especially as South Africa had proposed another 25-year extension during the preparatory committee stage. It proved to be crucial when the key decision was taken.

Similar diplomacy was attempted by the US with the Arab group of countries and Egypt in particular but was less successful. The then Egyptian Foreign Minister Amr Moussa remained critical of Israel's rejection of the NPT and demanded a solution to this in terms of his President's proposal of the Middle East as a weapons of mass destruction free zone.

Another critic of US NPT policy was the able Mexican diplomat Miguel Marin Bosch who was marginalized allegedly under US pressure. A series of articles in the 'Washington Post' on the eve of the NPTREC outlined US policy and its diplomatic efforts.

In marked contrast to the well-organized US diplomatic offensive the NAM countries had no similar campaign. No alternative to indefinite extension was conceptualized clearly and pursued vigorously although many delegations proposed extensions of varying length since an extension of a limited duration would have given their group the leverage it wanted. Even the critics outside the NPT, like India, made no effort to see that its wishes for a deadlocked conference were realized through an organized NAM stance.

The identification of the office-bearers of the NPTREC, principally its President, was achieved at an early stage. Two names were proposed at the very first session of the Preparatory Committee and the name of the writer was confirmed at the second session. This provided ample time for consultations to be conducted and for diplomatic strategies to be planned. In contrast the confirmation of the President-elect for the 2010 NPT Review Conference was confirmed at the third session of the Preparatory Committee in May 2009. Because of the complexity and importance of the NPTREC in comparison to normal 5 yearly Review Conferences, four sessions of the Preparatory Committee were necessary and yet there was no complete agreement on the Rules of Procedure.

The diplomatic wrangling on this was on the mode of voting if it came to voting. Was it to be by secret ballot or by open ballot? The NAM countries overwhelmingly preferred the former while the Western group preferred the latter. The importance of this decision revolved round the wording of Article X: 2 which stipulated that the extension decision be taken 'by a majority of the Parties to the Treaty.' This deadlock remained unresolved throughout the NPTREC and it was just as well that the adoption of the final package of three decisions and the Resolution on the Middle East was adopted without a vote.

At the opening of the Conference it was clear, as a result of the President interviewing delegations who had not openly announced their extension preference, that a majority did exist for an indefinite extension. It was therefore left to the writer to craft a procedure that would legitimize this as well as reflect the overwhelming view that the extension should be conditioned on specific guarantees that nuclear disarmament would be achieved. To respond to that challenge the conference device of a small group, styled the 'President's Consultations', was adopted somewhat along the lines of Ambassador Shaker's group in the 1985 Review Conference.

The group included all the Conference office-holders, the five NWS in the NPT, the chairs of the political groups and key delegations selected by the writer. It was conceived as an 'inner cabinet' or a laboratory to discuss the all-important extension issue which transcended the normal business of the Main Committees. The device was not entirely undemocratic or lacking in transparency because Group leaders (and all delegations belonged to a Group except for China) were encouraged to report back to their groups regularly and seek their endorsement on the decisions being taken.

The fact that the results of these consultations were endorsed by the entire Conference proved that it was effective multilateral diplomacy rather than seeking to arrive at decisions in the plenary through an unwieldy debate. The composition of the group was undoubtedly arbitrary and that was resented by some of the delegations that were excluded, hurting the egos of their Ambassadors.

In terms of conference diplomacy however, it was the practical and effective thing to do as events turned out. It is doubtful that the same device can be adopted in future with all delegations now asserting their right to participate fully in decision-making. It was within this group that the two Decisions 'Strengthening the Review Process for the Treaty' and 'Principles and Objectives for Nuclear Non-proliferation and Disarmament' were drafted over a two-week process.

The writer handled the drafting of the key legal decision on the extension and the weaving of the three Decisions into a package himself and announced it to a large representative gathering. The dispute over the Rule of Procedure on whether the voting should be secret or open was unlikely to have been resolved given the strongly held positions. The writer would have had to break the deadlock with a vote and this decision, be it by open or secret vote, would itself have been highly contentious. It was also the writer's conviction, voiced repeatedly, that voting on a treaty as important as the NPT would expose the treaty membership as a house divided eroding the viability of the treaty. As President of the Conference the writer's main task was to fulfill the terms of Article X.2 that the decision on the extension of the treaty had to be taken by a 'majority of the parties to the treaty'. What better way to do this than by agreeing that there was a consensus that such a majority existed? The formulation thus presented by the writer was irrefutable and was met with

widespread agreement. In the event the package was not unwrapped but some tinkering of the wording in Decision I was agreed upon dropping the word 'a consensus' for simply 'deciding that, as a majority exists...'. This satisfied the purists among the NAM members who resisted being a part of the consensus. And yet, because they could not deny that a majority did exist for an indefinite extension they agreed that the entire package would be adopted without a vote!

The contentious issue of the Middle East which, according to the wishes of the Arab Group, had proceeded on a separate track had not made any progress. The writer was approached for a solution at a very late stage of the Conference. It was both late and risky to reopen the package of three decisions that had been negotiated. This resulted in special consultations on a Resolution on the Middle East with key delegations present and agreement was finally reached. Failure to consult Iran proved almost disastrous when the Resolution came up for adoption but was resolved during a recess in the plenary on the final day.

While the Extension aspect of the Conference appeared to have been conducted successfully the Review aspect in the key political areas handled by Main Committee I was a diplomatic failure (Main Committees II and III thanks to the efficiency of their Chairmen concluded their work on technical aspects of the NPT successfully). The writer's last-minute intervention to rescue the process in Main Committee I did not succeed. This was not, in the final analysis, a major setback since the main outcome—a decision on the extension—had been achieved.

Review Conferences of 2000 and 2005: The two conferences of 2000 and 2005 offer a study in contrast not only because 2000 saw the adoption of a landmark Final Declaration with its well-known 'Thirteen Steps'[18] and 2005 ended in disarray. One conference saw constructive diplomacy working towards a positive conclusion while the other under the Bush Administration and with Ambassador John Bolton as Permanent Representative of the USA in New York was polarized from the beginning with little or no bridge-building efforts.

The run-up to the 2000 Review Conference was helped by the conclusion of the CTBT and its signature by several countries although the US Senate rejected its ratification. The Indian and Pakistani tests of 1998 were undoubted setbacks for the global objectives of nuclear non-proliferation and nuclear disarmament despite the fact that these two countries were neither bound by the NPT nor the CTBT.

The Preparatory Committee sessions were also marred by persistent efforts of the NWS to conduct 'business as usual' ignoring the major changes

[18] See Final document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, pp. 14-15 <http://www.un.org/spanish/Depts/dda/2000FD.pdf>, (accessed on 24.11.2009).

achieved in 1995 in terms of strengthening the review process. In marked contrast the Review Conference proved a success. Its President—Ambassador Baali of Algeria—proved that a background in disarmament diplomacy was not necessarily a pre-requisite as long as you had multilateral diplomatic skills. Main Committee Chairman Ambassador Camillo Reyes of Colombia and the Chairman of the subsidiary body on Article VI issues—Ambassador Pearson of New Zealand—showed great diplomatic skills in guiding their discussions to a consensus. Thus the needs of good conference management were well served.

The 'Thirteen Steps' and the 'unequivocal undertaking' of the NWS to achieve the elimination of nuclear weapons were among the successes of the 2000 Conference although subsequent events were to show how ephemeral this could be. The conference almost ran aground on a dispute between Iraq and the USA but this was eventually resolved.

The approach to the 2005 NPT Review Conference was not auspicious as the NWS began to retreat from the 'Thirteen Steps', the Bush Administration's Nuclear Posture Review of 2002 envisaged the actual use of nuclear weapons and the US and her allies invaded Iraq in 2003. The DPRK and Iran continued to be regarded with concern. The Conference failed to adopt a Final Declaration and is described by one commentator as 'the biggest failure in the history of this Treaty'[19] Disagreement among the parties arose along all the fault-lines and only four and a half days of the 4 week long conference were spent on substantive issues. The rest of the time was spent on procedural wrangling—surely a recipe for the failure of any conference. Whether this was by intention of those who wanted no substantive discussion or whether it was accidental is not clear.

Politically, the lines were drawn when the Bush Administration rejected the 2000 Final Declaration and all references to it. There was thus little room for diplomacy. The New Agenda Coalition (NAC), which had been so active in the 2000 Conference, was a pale shadow in 2005 perhaps because of changes in the leadership or a basic lack of cohesion. A new group emerged—The 'NATO 7'—comprising the Netherlands, Belgium, Italy, Spain, Norway, Lithuania and Romania but even their efforts could not rescue the conference.

The NAM was not united. Egypt seemed determined to end the Conference without sacrificing any of the gains achieved in 2000 even if it meant a failed Conference. Clearly then the 2005 Conference was doomed to fail because of the political climate. At the same time, except for a few delegations like the NATO 7, few were interested in salvaging it through diplomatic initiatives. Squabbling over procedure was no substitute for diplomacy but there was little else to do given the huge disagreements.

[19] Müller, Harald, 'The 2005 NPT Review Conference: Reasons and Consequences of Failure and Options for Repair' *WMDC*, No 31, August 2005 <http://www.wmdcommission.org/files/No31.pdf>, (accessed on 27 May 2009).

Commentators have pointed out that the negative outcome of the final Preparatory Committee meeting in 2004 presaged the failure of the 2005 Review Conference. By that yardstick the fact that the 2009 Preparatory Committee meeting adopted an agenda for 2010 and took other procedural decisions smoothly, despite not being able to agree on substantive recommendations for 2010, is a happy augury. At the very least the 2010 conference will not be ensnared in a procedural debate on the agenda as happened in 2005.

Features of NPT Diplomacy

A number of features in NPT diplomacy stand out as one approaches the 2010 Review Conference, especially with the Third Session of the Preparatory Committee concluding successfully on May 15, 2009 in New York—albeit without agreeing on a set of recommendations. While the positions of delegations follow instructions from capitals, it is not surprising that some act at their own discretion within the limits of flexibility permitted by their Governments. This allows for individuals to show initiative in finding solutions to problems. It is also possible that the stances taken by individual delegations on the conference floor can be changed as a result of diplomatic demarches taken by powerful countries in capitals compelling delegations to change their positions. Given the confidentiality of diplomatic communications we will not know what pressures are exerted on NPT parties or what linkages are made as a part of the ongoing diplomatic activity in conferences.

The functioning of various groups within NPT Conferences does assist the work of the conferences and is an important element of NPT diplomacy. The groups are the Western Group—which includes Japan, Australia, NATO and the EU; the Eastern Group—which includes Russia and the former USSR states but which has, post Cold War, no political role and functions today only to agree on common candidates for NPT positions; and, finally, the NAM which decides collectively on political issues—but is sub-divided into the Asian, African and Latin American & Caribbean groups for purposes of agreeing on candidates for NPT Conference positions.

In addition the NAM have within it the Arab group which meets to discuss and decide on Middle East issues and which the NAM generally accepts. The five NWS meet among themselves during Conferences and in between. After some of these meetings joint statements are issued representing common positions.

No group exists uniting all the NNWS and it is left to temporary coalitions like the NAC to form transcontinental groupings to espouse common positions. Such groupings can be very effective and it has been an omission that more diplomatic energy has not gone into forging alliances which could serve as ‘bridge builders’ among the treaty parties and act as a ‘fire brigade’ to

defuse controversies as well as seek negotiated solutions to problems as they arise.[20] Group meetings usually take place prior to the commencement of the day's conference proceedings but can also be held at any moment to co-ordinate group positions.

The political strength of the NAM derives from its numbers and its solidarity and the other groups do not always welcome that. It provides protection for the smaller and weaker countries within it. Countries within the Western Group do not always find themselves in agreement.

As noted earlier the selection and appointment of office-bearers of Review Conferences should be done in a careful and timely manner and not left to fortuitous circumstances. Not every Chairman or President need have detailed knowledge of the NPT and its history provided he or she has the necessary diplomatic skills to strive for a consensus that strengthens the treaty.

The Secretariat of NPT Conferences is staffed by members of the UN's Office of Disarmament Affairs and the IAEA. While they are international civil servants who are mandated to help service the needs of conferences through their experience and objective vantage point they could often provide advice that help the outcome of the conference. In this context the 'institutional deficit' of the NPT must be remedied. There is no permanent body that acts as an administrative entity for the NPT. The UN staff perform the functions they do in addition to their other duties. Ireland and Canada have presented working papers on this subject and NGOs have also raised it. This infrastructure for the NPT will greatly aid the exercise of NPT diplomacy and to oppose it because of the cost seems short-sighted.

An important role for a new unit in the NPT is dispute settlement. The dispute settlement mechanism in the World Trading Organization (WTO) offers a useful model to adapt for NPT purposes. All states party to the NPT would have to agree to enforce the rules of compliance. This mutually agreed mechanism will ensure the objectivity of procedures and a genuine rule-based system. With so many charges and counter-charges on compliance this mechanism would be an excellent innovation without prejudice to any action that might be taken by the Security Council

Non Governmental Organisations (NGOs) representing civil society are another element of NPT diplomacy that is significant. While the quality of NGOs may vary and some perform a 'think tank' and research role, others can be useful pressure groups. Increasingly, the NGOs play a 'diplomatic' role. Some have their representatives actually included in delegations. Others organize briefing seminars for delegations which are extremely useful for young diplomats attending their first NPT conference so as to understand the past proceedings and the details of the current issues. These seminars and the briefing books made available also afford the opportunity of beginning

[20] See also: Dhanapala, Jayantha, 'The NPT Review Process: Identifying New Ideas to Strengthen the Regime', *UNIDIR Newsletter The Enhanced Review Process: Towards 2000*, No 37, 1998, p 10.

discussions in an informal setting which could hopefully lead to consensus when the conference actually takes place.

The NPT by its very structure and content encourages the practice of diplomacy in its Conferences. It is a living treaty which despite its seemingly impossible amendment procedure adapts and changes through the Final Declarations of its Review Conferences and the NPTREC's package of decisions. It is the only multilateral treaty which commits the NWS to nuclear disarmament. Despite problems within the NPT its Conferences are well attended and attract widespread media attention. The longevity of the NPT and its near universality are a tribute to the multilateral diplomacy that has supported it.

However, diplomacy must be informed by a political will to make the NPT work. Absent that political will the NPT cannot be sustainable especially with its division into the two categories of NWS and NNWS. Barbara Crossette writing to the New York Times in her article of Sunday 14 May 1995 quoted the writer as having said—'The President of a conference is not a magician who can produce a rabbit out of a hat. The rabbit must be in the hat and must want to come out. All we can do is to coax it occasionally.' NPT diplomacy is, finally, a 'coaxing' process.

4. Repairing the damage

Any human-made institution—in this instance a multilateral treaty in a visceral area of the national security of countries—must show wear and tear after several years of existence. In the case of the NPT, with the tensions and strains of the original bargain, and strong sentiments of unequal obligations between the NWS and NNWS, problems emerged early and have steadily aggravated as further commitments undertaken at successive Review Conferences were seen to be unfulfilled.

The vision of a nuclear weapon-free world was most famously dismissed by the former Prime Minister of Britain, Margaret Thatcher, as a 'pie in the sky'. Such was the derision which greeted the seriously argued disarmament scenario put forward by many NNWS, especially from the NAM, as well as many responsible non-governmental organizations such as Pugwash. It was therefore a refreshing change when distinguished former leaders of US Administrations combined to write—not one but two—op-eds to a conservative US journal, the Wall Street Journal, calling for precisely that 'pie in the sky'. The need for broader support for this welcome initiative by Messrs. Shultz, Kissinger, Nunn and Perry was obvious. Not only do many of the NWS and NATO retain policies that are predicated on the first use of nuclear weapons, but some also have plans for pre-emptive strikes and the building of new weapons which could lead to a violation of the taboo on the use of nuclear weapons since Hiroshima and Nagasaki.

Moreover, these policies continue to be supported by statements coming out of the US Pentagon and by retired commanders of NATO countries who see 'no realistic prospect of a nuclear free world'[21] and recommend a grand strategy of the USA, NATO and the EU in which, 'The first use of nuclear weapons must remain in the quiver of escalation as the ultimate instrument to prevent the use of weapons of mass destruction'[22]. Faced with this entrenched attitude in favour of nuclear weapons and their use, broader support for nuclear disarmament leading to the elimination of the 23,300[23] nuclear weapons in the world must come essentially from the governments and peoples of the NWS two of which, the USA and Russia—who, as stated earlier, have 95 per cent of the weapons—have had important Presidential changes with far-reaching repercussions in their bilateral relations.

At the same time the NNWS also have a right and an obligation, in this interdependent globalized world, to take steps that will help usher in a nuclear weapon-free world. It must be clear, however, that the NNWS do not form a monolithic group. There are the NNWS who are allied to NWS and who enjoy the benefits of a security umbrella by belonging to a security pact or a security alliance with 'nuclear sharing' arrangements. Their independence of action is limited as is their capacity to influence the policies of NWS—unless there is a radical change resulting in a break of their links with NWS and/or NATO, which seems unlikely in the short term.

Thus, expectations with regard to NNWS members of NATO and countries like Japan and the Republic of Korea who have security arrangements with the USA must be lower. It must also be kept in mind that five NNWS—Belgium, Germany, Italy the Netherlands and Turkey—apart from France and the UK, have an estimated 200-250 nuclear weapons deployed on their territories[24]. The involvement of the NNWS in Ballistic Missile Defence plans clearly linked to nuclear weapons strategy is another factor compromising these NNWS.

The opportunity of the NATO Summit in April 2008 and in 2009 on the occasion of NATO's Sixtieth Anniversary, for the role of nuclear weapons in NATO's 1999 Strategic Concept to be reviewed was missed.

We are then left with the NNWS who are members of the NAM and others who are, together, states parties of the NPT. This group of countries has consistently urged the NWS to fulfill their NPT obligations under Article VI with nuclear disarmament leading to the elimination of nuclear weapons; sought negative security assurances in a treaty format; demanded the entry into force of the CTBT and the negotiation of a non-discriminatory fissile

[21] Traynor, Ian, 'Pre-emptive nuclear strike a key option, Nato told', *The Guardian*, 22 January 2008, <http://www.guardian.co.uk/world/2008/jan/22/nato.nuclear>, (24.11.2009).

[22] Loc.cit.

[23] SIPRI YEARBOOK 2009, Op cit, p 16.

[24] The Nuclear Information Project, 'US Nuclear Weapons in Europe, new report provide unprecedented details', <http://www.nukestrat.com/us/afn/nato.htm>, (24.11.2009).

material production ban—demands that have been encapsulated in the Thirteen Steps contained in the Final Document of the 2000 NPT Review Conference.

As noted earlier, NNWS have sometimes formed coalitions such as the NAC and the Seven Nation Initiative transcending regional groupings. They have also taken steps among themselves to establish nuclear weapon-free zones in specific geographical areas confirming their non-nuclear status but also limiting the ability of NWS to station and transport their nuclear weapons freely.

Despite some modest successes that have been achieved as a result of the pressure of the NNWS –such as the negotiation and signature of the CTBT in 1996 and the Advisory Opinion of the International Court of Justice in the same year—the NNWS have faced firm opposition in all the multilateral fora available to them. Their position has been weakened by proved instances of nuclear proliferation undertaken clandestinely by Iraq, the Democratic People's Republic of Korea (which subsequently left the NPT) and Libya and continuing questions over the nuclear programme of Iran. In addition, the attempts by terrorist groups to acquire weapons of mass destruction (WMD) and the revelations of a black-market in nuclear materials and nuclear technology run by Pakistan's Dr A. Q. Khan has imposed on the NNWS the need to ensure the non-proliferation credentials of NNWS while demanding that the NWS fulfill their obligations.

We have therefore reached a situation where the fulfillment of the reciprocal—albeit asymmetrical—obligations of the NWS and NNWS can together help to usher in a nuclear weapon free world. The obligations of the NNWS can be accepted without in any way violating their rights under the UN Charter or the NPT. Support by NNWS for a rule-based world order would be the main approach. The non-proliferation regime has the NPT at its core but involves other treaties and arrangements. Strengthening the existing legal instruments underpinning the non-proliferation regime is a common task for both the NWS and NNWS.

First and foremost, there is the Comprehensive Safeguards Agreements (CSA) which all NNWS should sign with the IAEA as a firm undertaking of the norm under Article III of the NPT. Twenty-four NNWS who are party to the NPT have not brought such agreements into force: ten NNWS have signed but not enforced their CSAs: six have not signed although the Board of Governors has approved their CSAs: and, eight countries have not submitted their CSAs to the Board of Governors.[25]

In addition there is the need to sign the Additional Protocol of the IAEA negotiated after the discovery of Iraq's secret nuclear weapon development programme at the conclusion of the Gulf War. It is well established that this

[25]IAEA, Fact sheets and FAQ's, <http://www.iaea.org/Publications/Factsheets/English/nptstatus_overview.html>, (24.11.2009).

greatly expands the verification of the peaceful uses of nuclear energy by the IAEA under Article III of the NPT and augments the confidence of all states that there is no diversion to non-peaceful purposes. At the time of writing the Additional Protocol is in force in respect of 88 NNWS[26]. Considering this, other states should also sign and ratify the Additional Protocol and have it enter into force, especially in the case of those who have significant peaceful nuclear energy programmes to safeguard.

As a means of combating the problem of the proliferation of WMD and terrorist groups acquiring WMD the UN Security Council adopted Resolution 1540 and established a mechanism for its implementation. In instances where NNWS have peaceful programmes for nuclear energy special safeguards were expected to be in place and where necessary the UN was to assist in strengthening the capacity of NNWS in this regard. As of 1st July 2008, 147 NNWS have submitted at least one national report to the 1540 Committee, but despite the 1540 Committee's requests for further information only 95 NNWS have submitted additional reports[27]. The other NNWS must submit their reports in order to co-operate in this important multilateral effort to combat WMD terrorism.

The need for the physical protection of nuclear materials and nuclear facilities cannot be over-emphasized. NNWS who have not become parties to the International Convention for the Suppression of Nuclear Terrorism and the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities should do so expeditiously.

All nuclear installations are vulnerable to terrorist or criminal attacks and the November 2007 criminal trespass into the Pelindaba nuclear facility in South Africa is a case in point although the IAEA has certified that, in this instance, sensitive nuclear areas were not under threat. Nuclear weapons are of course inherently dangerous. There can be no safe hands for them—just as much as there can be no right and wrong hands for their possession. And yet the custody of these weapons by nihilistic, fanatical groups with no conventional state controls or legal procedures would certainly enhance the risks of the use of these weapons.

We also have the CTBT which has not entered into force because nine countries of the required 44 in Annex II have either not signed or ratified the Treaty. NNWS must not only maintain the pressure through Article 14 Conferences for the states concerned to sign and ratify the CTBT so as to bring it into force, but those NNWS among the nine—Iran, Egypt and Indonesia—must honour their obligation to ratify the Treaty. They must all

[26] A total of 127 states including the NWS and India have signed it, See IAEA, Safeguards and Verification, < http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html> (24.11.2009).

[27] UN Security Council, S/2008/493, Report of the Committee established pursuant to Security Council resolution 1540 (2004), 30 July 2008, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/409/78/PDF/N0840978.pdf?OpenElement>, (24.11.2009).

also participate in the verification network—the International Monitoring System—which successfully detected the DPRK explosions. Thus the recent actions of Malaysia and Colombia to ratify the CTBT must be welcomed.

Among the nuclear weapon-free-zone treaties that the NNWS have initiated as a pro- active measure to eliminate nuclear weapons from the geographical areas in which they are situated, the Pelindaba Treaty has now entered into force in Africa because the requisite number of ratifications—28—has finally been achieved. Some African countries—all NNWS—still have an obligation to ratify this important Treaty.

All the five Central Asian countries have ratified the Central Asian Nuclear Weapon-free Zone Treaty but the three Western NWS—USA, UK and France—have not signed the protocol respecting this nuclear weapon-free zone.

NNWS have an obligation as members of the Geneva-based Conference on Disarmament (CD) to ensure that this negotiating body begins to function after a stalemate that has gone on for over a decade. The adoption of a programme of work in 2009 led to expectations of work actually beginning with negotiations on a Fissile Material Cut-off Treaty (FMCT) and discussions in other areas like nuclear disarmament, negative security assurances and outer space going on in parallel. While the cause for this stalemate does not lie entirely with the NNWS, redoubled efforts by them could reactivate the CD and help make 2010 the 'breakthrough year' that Secretary-General Ban Ki-moon had hoped 2009 would be. It is especially important that a treaty banning the production of fissile material be negotiated and NNWS must increase the pressure on NWS for this. A Treaty for Negative Security Assurances also has to be an objective of the NNWS and the value of this in guaranteeing nuclear non-proliferation is self-evident.

An insidious undermining of the legal regime underpinning nuclear disarmament and non-proliferation is the manner in which non-NPT nuclear weapon-armed states are being accorded privileges by the NWS. For example, the Indo-US nuclear co-operation agreement flies in the face of Security Council Resolution 1172. NNWS, especially those in the Nuclear Suppliers Group, failed to reject a NWS-driven move where its realpolitik trumped the principles of the nuclear disarmament and non- proliferation regime.

Peaceful Uses of Nuclear Energy

The cumulative impact of high energy prices and the environmental fears raised by scientific findings about climate change have led to an increased demand for nuclear energy. NNWS within the NPT rightly cite Article IV of the NPT on 'the inalienable right of all the parties to the treaty to develop research, production and use of nuclear energy for peaceful purposes without

discrimination'[28]. The same article affirms the right to 'participate in the fullest exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy'.[29] Prior to the current controversy over Iran's nuclear programme complaints had been registered by NNWS over the implementation of this article and the existence of extra-NPT mechanisms like the Nuclear Suppliers Group which control access to nuclear technology and nuclear materials especially when non-NPT countries were given this access freely. Some have argued that the right embedded in Article IV is not absolute and is qualified by the words 'in conformity with Articles I and II'[30] but the determination of the extent of that conformity is often subjective and coloured by political considerations. The IAEA must be the arbiter of this.

Uranium enrichment or plutonium reprocessing facilities are being undertaken by some NNWS with more countries planning to do so. They increase the risk of disasters like Chernobyl and Three Mile Island, nuclear weapon proliferation and attacks or theft by terrorist groups despite the best safeguards. An estimated fifteen per cent of the world's electricity comes from nuclear power with 436[31] nuclear reactors being operational. Fifty-three more reactors are under construction—nine of them in NNWS[32]. A hundred and thirty are planned and 250 are proposed[33]. Thirty countries that have not had nuclear power before are among those with plans to have nuclear reactors in the future[34]. Proliferation resistant technology for nuclear power is still work in progress. Proposals are also being made for the elimination of Highly Enriched Uranium (HEU) in civilian nuclear programmes and the James Martin Centre for Nonproliferation Studies at the Monterey Institute for International Studies has a Model HEU Code of Conduct developed. Until IAEA proposals for a multilateral approach to fuel assurance and supply are accepted NNWS will encounter obstacles and the perception of double standards will be difficult to avoid accentuating the gap between the North and the South. A moratorium on new nuclear power projects for NNWS would not be practicable unless accepted globally without discrimination. An important factor in the debate on the peaceful uses of nuclear energy is the role of the

[28] IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>.

[29] Loc cit.

[30] Loc.cit.

[31] IAEA, 'Nuclear power plants information-number of reactors in operation worldwide', <http://www.iaea.org/cgi-bin/db.page.pl/pris.oprconst.htm>, (accessed on 30.11.2009).

[32] IAEA, 'Nuclear power plants information-number of reactors under construction worldwide', <http://www.iaea.org/cgi-bin/db.page.pl/pris.opercap.htm>, (accessed on 30.11.2009).

[33] World Nuclear Association, 'Plans for new reactors worldwide', September 2009, <http://www.world-nuclear.org/info/inf17.html>, (Accessed on 30.11.2009).

[34] World Nuclear Association, 'Emerging Nuclear Energy Countries', 26.11.2009, <http://www.world-nuclear.org/info/inf102.html>, (Accessed on 30.11.2009).

nuclear industry largely dominated by companies in the Western industrial states such as Areva of France.

Decreased reliance on nuclear energy and the search for new types of energy must of course be encouraged both as a means of controlling carbon emissions and as a way to decrease reliance on nuclear energy. Dr J. Craig Venter, in his Richard Dimbleby Lecture on BBC in 2008, argues that increasing CO2 concentrations and rising populations will impose unprecedented stress on our ecology and natural resources which cannot be avoided by changes in life styles or fuel conservation. Looking to biology and genomics to create new technology he believes that 'the new fields of synthetic biology, synthetic genomics and metabolic engineering.....will enable us to create new fuels to replace oil and coal.'[35] Thus the alternative to burning oil and coal is not necessarily the proliferation of nuclear power plants. Dr Arjun Makijani's book 'Nuclear-free and Carbon-free'[36] shows how a zero CO2 US economy can be achieved without the use of nuclear power and without acquiring carbon credits from other countries. Brazil as a NNWS has already shown the potential of ethanol and bio-fuels are becoming increasingly popular although warnings have been issued against the widespread replacement of agricultural land growing food with land producing bio-fuel. Developing countries among the NNWS can thus look to avoid the mistakes of the industrialized countries and explore other sources of energy to power their development efforts.

The 'Good' news—Dismal as the current global situation may be, it is useful to remind ourselves that we have not arrived at the nightmare scenario envisioned by the late US President John F. Kennedy, who foresaw a situation of twenty to twenty-five nuclear armed states. The overwhelming majority of NNWS that are in the NPT genuinely believe that nuclear weapon possession is not in their security interest. However, as recent events have shown, the existence of a two-tier world of nuclear haves and have-nots cannot be sustained.

Still, there have been some positive non-proliferation developments as well. On 19th December 2003, Libya announced that it was abandoning its own programmes of developing weapons of mass destruction—a remarkable success of quiet diplomacy. A number of steps have been taken to tackle the problem of nuclear proliferation, such as the Co-operative Threat Reduction Initiative pioneered by US Senators Richard Lugar and Sam Nunn, the Global Threat Reduction Initiative, the aggressive and still controversial Proliferation Security Initiative, and the Additional Protocols of the IAEA.

While these steps can contribute to security, they cannot, separately or together, stem the tide of nuclear proliferation that arises from the continuing

[35] Venter, J. Craig Dr, The Richard Dimbleby Lecture 2007: Dr J Craig Venter—A DNA-Driven World, 5.12.2007 <http://www.bbc.co.uk/pressoffice/pressreleases/stories/2007/12_december/05/dimbleby.shtml>, (accessed on 24.11.2009).

[36] Makijani, Arjun, *Carbon-Free and Nuclear-Free: A Roadmap for US Energy Policy*, <http://www.ieer.org/carbonfree/CarbonFreeNuclearFree.pdf>, (accessed on 24.11.2009).

political and military value attached to nuclear weapons as a result of the policies of the NWS. The incontrovertible fact is that nuclear disarmament and nuclear non-proliferation have a symbiotic relationship. They are mutually reinforcing. We cannot have progress in one without progress in the other. If nuclear weapons did not exist under a verifiable regime they could not proliferate.

The Weapons of Mass Destruction Commission, of which the writer was a member, said in its 2006 Report that, 'So long as any state has such weapons—especially nuclear weapons—others will want them. So long as any such weapons remain in any state's arsenal, there is a high risk that they will one day be used, by design or accident. Any such use would be catastrophic.'[37]

What the NWS can do

Nuclear weapons are designed to cause terror and destruction on a vastly greater scale than any conventional weapon, killing thousands in a single attack and leaving behind ecological and genetic effects that can persist indefinitely.

President Obama's Prague speech of 5 April stated clearly—'The existence of thousands of nuclear weapons is the most dangerous legacy of the Cold war….One nuclear weapon exploded in one city—be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague—could kill hundreds of thousands of people. And no matter where it happens there is no end to what the consequences might be—for our global safety, our security, our society, our economy, to our ultimate survival.'[38]

The risk that these nuclear weapons will be used—by states or terrorists, by accident or design—has actually increased in recent years. This threat, combined with the certainty of climate change, presents an ominous dual challenge to humanity. But exhorting against complacency is not a counsel to despair.

From Jared Diamond's impressive book, 'Collapse,' we draw the lesson that, throughout history, not all societies facing imminent danger have failed. With long-term planning and a willingness to reconsider core values, even societies at extreme risk are able to avert collapse.

Globalization and the information and communications technology (ICT) revolution have made our challenges more complex, but also offer us tools to assess and mitigate the problems we have created. Along with our scientific advances, our advances in governance—embodied in international institutions

[37] Weapons of Mass Destruction Commission, *Weapons of Terror, Freeing the World of Nuclear, Biological, and Chemical Arms*, 2006 <http://www.wmdcommission.org/files/Weapons_of_Terror.pdf>, (accessed on 24.11.2009).

[38] The White House, Remarks By President Barack Obama, Hradcany Square, Prague, Czech Republic, 5 April 2009, <http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/>, (24.11.2009).

and international law—provide us mechanisms to coordinate the collective action that is needed to rid the world of weapons of mass destruction and take corrective action on climate change.

At least in the security field, the disastrous policies that have brought us to this point of crisis have run their course. The work of former IAEA Director-General Mohammed ElBaradei is a signal that, in politics, practical diplomacy can and does yield results. So too was the Libya case, in which diplomacy and engagement helped end a decades-long weapon program. These results were long overdue, but they point to what can be achieved in other areas—an especially important reminder when military strikes are still contemplated as an approach to fighting proliferation, notwithstanding the lessons of Iraq.

Developments outside the NPT also would contribute to this unravelling. In May 1998 India announced the conduct of tests of nuclear devices and was followed soon after by Pakistan. Although, as stated earlier, neither country was a member of the NPT or the CTBT, these tests were clearly a setback to the prevailing nuclear non-proliferation and disarmament norms. They were widely condemned, most notably in UN Security Council Resolution 1172, and triggered limited sanctions by the United States and other Western countries.

Today, one may note the contrast between the strong language in that resolution and the terms of the US-India nuclear cooperation deal—a disparity that vividly illustrates the inconsistent application of non-proliferation norms especially by the NWS.

George Perkovich has cogently argued that the 'democratic bomb'[39] strategy—approval of nuclear weapons in the hands of countries with assuredly democratic government, and disapproval when possessed by other 'regimes'—is inherently contradictory and cannot succeed; when the central problem is the weapons themselves, any distinction between 'good proliferators' and 'bad proliferators' cannot be sustained.

Henry Kissinger, discussing the case of Iran, wrote that 'it is the fact not the provenance of further proliferation that needs to be resisted. . . . We should oppose nuclear proliferation even to a democratic Iran.'[40]

A further contrast is the differential punishment meted out in instances of proven proliferation—despite the stringent conditions of UN Security Council Resolution 1540, which was adopted to prevent non state actors and terrorist groups from acquiring weapons of mass destruction.

The 1540 Committee, which is comprised of all Security Council members, was tasked with monitoring member states' compliance with Resolution 1540. Enforcement, however, has been inconsistent. Recent revelations into the

[39] Perkovic G, 'Democratic Bomb' Carnegie Endowment for International Peace, *Policy Brief*, Vol 49, November 2006.

[40] Kissinger, A. H, 'Diplomacy and Iran's Nuclear Weapons', *The San Diego Union Tribune*, 13 February 2005, <http://legacy.signonsandiego.com/uniontrib/20050213/news_mz1e13kiss.html>, (accessed on 24.11.2009).

workings of A. Q. Khan's illicit trafficking network—which were well known to Western intelligence agencies for some time—resulted in a mere three convictions and relatively light jail sentences. The Tinner family in Switzerland are reported to have been let off lightly and the papers connected with their case shredded. Numerous other instances of the theft, illegal trafficking, and smuggling of nuclear material have been detected in the post-9/11 atmosphere of heightened concern over international terrorism. Yet in many countries the punishment for these violators is no greater than that for corrupt businessmen or prolific Internet 'spammers'.

As has been noted above, despite the setbacks to the NPT regime after 1995, the Review Conference of 2000 was a remarkable success due largely to the energetic efforts of a group of countries drawn from different regional groups that called themselves 'The New Agenda Coalition.' Their firm pressure, and the aversion of the nuclear powers to an open rupture, resulted in the adoption of a final document that contained thirteen specific and practical steps for nuclear disarmament.

These steps have become the centrepiece for those committed to the success of the NPT. Subsequent failure by nuclear weapon states to achieve them, despite commitments made at the 2000 Review Conference, has led to the further unravelling of the consensus and a mood of disillusionment. In fact, instead of implementing the promised thirteen steps, leading nuclear-armed states reversed the progress of earlier years.

Arms control agreements, such as the 1972 Anti-Ballistic Missile treaty (ABM), were abrogated. The Strategic Offensive Reductions Treaty (SORT) between the United States and the Russian Federation, while a gesture toward nuclear disarmament, was deliberately silent on issues of verification and on actual destruction of weapons. Moreover, the de-emphasis on nuclear weapons in the security doctrines of the major powers after the Cold War was replaced by a fresh salience. This was evident in the 2002 Nuclear Posture Review by the United States, and in the reversal by the Russian Federation of its policy of no first use of nuclear weapons against non-nuclear weapon states. Thus a taboo even during the Cold War was being pronounced as policy. Unless the 2002 NPR is revised there remains the prospect of nuclear escalation violating commitments made in 1995 and 2000, and ignoring principles of proportional response enshrined in international law and expressly affirmed in the Advisory Opinion of the International Court of Justice in 1996.

Meanwhile, concepts of deterrence have spread to South Asia and are invoked by both India and Pakistan to justify their nuclear arsenals as militarily necessary.

The United States, with its plans during the Bush-Cheney Administration, of 'bunker buster' weapons and the Reliable Replacement Warhead, reflected this new reliance on nuclear weapons as an active element of military strategy, a development that dangerously lowers the threshold for nuclear use.

In Prague on 5 April 2009, President Obama said, 'We will reduce the role of nuclear weapons in our national security strategy and urge others to do the same.'[41] It remains to be seen what the Nuclear Posture Review of the Obama Administration will reveal on the role of nuclear weapons in the defence strategy of the US.

Russia's former President Putin, in a speech in Munich on February 10, 2007, hinted at withdrawal from the Intermediate Range Nuclear Forces Treaty (INF) and the Treaty on Conventional Armed Forces in Europe (CFE), two important achievements after the Cold War, citing threats to the security of his country.

Thus, by words and by deeds, the critical importance of a relationship between the two powers that possess the majority of nuclear weapons in the world is manifest Although talks between the two nations are said to have gone into several rounds in order to prepare for the expiration of disarmament agreements between them in 2009 and 2012, success in these negotiations is not a foregone conclusion.

US plans to deploy components of a missile defence system in Poland and the Czech Republic were seen as a provocation and a break from prior promises. This has now been rectified by Obama. Together with China's launch of an anti-satellite weapon in space, these are still ominous signs of a fresh arms race. All NWS are engaged in modernizing their weapons with China actually reported to have increased the number of its weapons.

In the United Kingdom, a Labour government won parliamentary approval for renewal of the Trident submarines at a cost of $40 billion, up to 3 percent of its annual defence budget for thirty years. Many statements in support of a nuclear weapon-free world have been made by the Prime Minister and others. The as yet vaguely defined plan to convert UK into a 'disarmament laboratory' and the expected announcement of the verification of a nuclear weapon ban enhances UK's image despite the decision on the Trident.

Meanwhile the Geneva-based Conference on Disarmament (CD) although adopting a programme of work at long last remains deadlocked on commencing work. It is thus unable to move on vital issues such as the Fissile Material Cut-off Treaty, negative security assurances, and the prevention of an arms race in outer space—let alone on eliminating nuclear weapons. The failure of the Western nuclear weapon states to ratify the protocols of certain nuclear weapon-free zones is another drawback—it is to the credit of the five Central Asian states that they concluded the Central Asia Nuclear Weapon-free Zone (CANWFZ) in September 2006 in defiance of heavy pressure from the United States, the United Kingdom, and France.

[41] The White House, 'Remarks By President Barack Obama', Hradcany Square, Prague, Czech Republic, 5 April 2009, <http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/>, (accessed on 24.11.2009).

While Obama's Prague speech of April 5, 2009 has been welcomed, action on his promises is awaited. The political difficulties he faces within the US especially in Congress are not to be under-estimated. Obtaining the votes of 67 US Senators across party lines for the ratification of the new US-Russian strategic arms treaty that is still being negotiated and the CTBT may prove a challenge. Beyond this the new Nuclear Posture Review will be an acid test of Obama's plans for a nuclear weapon-free world. It must show a de-emphasis on nuclear weapons in US defence strategy if it is to be credible to the NNWS. Statements, such as that made by Air Force General Kevin Chilton of the Strategic Air Command on 11 November 2009 predicting that the US will still need nuclear weapons 40 years[42] hence are not helpful as are other contradictions within the US Administration.

NWS are no longer averse to reporting their performance in terms of their Article VI obligations. This is an important step towards transparency and a frank exchange of information which must be at the core of a conscientious review exercise of the NPT.

Among the many steps NWS can take in 2010—including those set out in the Thirteen Steps of the 2000 NPT Review Conference Final Document—is the de-alerting of nuclear weapons. US weapons were subject to a Single Integrated Operational Plan (SIOP) during the Cold War. According to Norris and Kristensen the new plan is Operation Plan 8010-08 Global Deterrence and Strike described as being ' a family of plans applicable in wider range of scenarios'.[43] This means that strike options have been included. It is argued that even in a deterrence scenario early warnings do not distinguish between nuclear or conventional attacks. Thus a launch on warning is in fact a first use of nuclear weapons. Norris and Kristensen state that a lower level of nuclear weapons to 1000-1500 nuclear warheads would not leave latitude for flexible options and a variety of targets. It will therefore be necessary for other NWS to also reduce their nuclear weapon arsenals. De-alerting is the range of measures taken to prevent an immediate launch of nuclear weapons so that some space is created for political or diplomatic negotiations before the irrevocable launch of a nuclear weapon.

Other suggestions include the declaration of a no first use policy for all of the NWS. That will depend on the outcome of the Nuclear Posture Review in the US and the response of NWS like France and Russia. More ambitiously

[42] Matishak, M, 'Strategic Command Chief Predicts US Will Need Nuclear Weapons for Next 40 Years', *Global Security Newswire*, 11 November 2009, <http://www.globalsecuritynewswire.org/gsn/nw_20091111_4409.php> (accessed 24.11.200).

[43] Norris R.S., and Kristensen, H. M., 'Nuclear Notebook: US nuclear forces, 2009', *The Bulletin of the Atomic Scientist*, March/April 2009, Vol 65, no 2, pp 59-69, <http://www.thebulletin.org/files/065002008.pdf>, (accessed 24.11.2009).

some have called for a Security Council resolution on declaring the use of nuclear weapons as a 'crime against humanity'. [44]

The removal of US nuclear weapons on the territories of 5 NATO countries would help create a good climate for the NPT Review Conference. Germany's new Government has made this a policy objective.

5. The special cases of non-compliance among the NNWS and the Middle East issue

While setbacks to the process of nuclear disarmament have continued, there have been setbacks in the non-proliferation field as well, of which Iraq represents the central case. Iraq's clandestine development of a nuclear weapons program was effectively destroyed after the first Gulf war under Security Council Resolutions 687 and others, and through actions implemented by the IAEA, UNSCOM, and UNMOVIC. Yet this success, painstakingly achieved through a decade of multilateral action, was not apparent. Faulty intelligence and allegations that the program still existed led, inter alia, to the ruinous invasion of Iraq, despite the failure to find evidence to prove these allegations. The war's results have exposed the limitations of counter-proliferation measures. Obama's statement 'No single nations (sic) should pick and choose which nations holds nuclear weapons'[45] in his Cairo speech of 4 June, 2009 offers no comfort since both NWS and NNWS must be held to their NPT obligations.

The DPRK case is more difficult to assess. When first brought to the attention of the Security Council, it was deflected to a negotiation process that ended in the Agreed Framework in 1994. That agreement was inadequately implemented, and as the Bush administration adopted a truculent attitude to the DPRK, the situation worsened until the DPRK, which had announced its withdrawal from the NPT, tested a nuclear weapon in 2006. That act of proliferation created a sense of urgency and triggered Security Council sanctions.

The Six-Nation talks convened by China finally reached an agreement, announced on February 13, 2007. However, the implementation of the agreement ran into problems and DPRK reversed its position detonating a further test. Any agreement reached in future requires regular supervision so that it does not go the way of the earlier Agreed Framework.

Finally, there is the continuing case of Iran, whose failure to provide the IAEA with required information has led to deep suspicions that its plans for

[44] Johnson, Rebecca, 'Presentation by Dr Rebecca Johnson, Acronym Institute for Disarmament Diplomacy, European Parliament, Socialist Group Conference, 9 December 2008', *The Acronym Institute for disarmament diplomacy,* <http://www.acronym.org.uk/uk/sgep.htm>, (24.11.2009).

[45] The White House, 'Remarks by the President on a New Beginning', Cairo University, Cairo Egypt, 4 June 2009, <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/>, (accessed 24.11.2009).

nuclear power may lead to a nuclear weapons program. This has been compounded by Iran's noncompliance with UN Security Council Resolution 1737, barring its enrichment of uranium. In addition to the Natanz site the revelation of another site Fordow, near Qom, has complicated the issue. There is no doubt that the problem cannot be resolved unilaterally and requires a political and diplomatic process in which all sides must cooperate and compromise. The domestic politics within Iran are widely believed to contribute to the complexity of the issue delaying a resolution. Iran's failure to report certain activities in the nuclear field to the IAEA has created acute mistrust. Its co-operation with the IAEA has not been consistent and important design information has been withheld.

The signature of the Additional Protocol without ratifying it has not helped. The sanctions approach has only intensified Iranian nationalism. Persistent threats of a strike against Iranian nuclear installations and a fog of disinformation aggravate the issue. Diplomacy appears the best route especially with the advent of the Obama Administration.

However, what appeared to be a promising breakthrough with the intervention of the IAEA Director-General on October 1 has not elicited an unambiguous response from Iran. A solution could still be worked out in the months preceding the NPT Review Conference. If not the question of Iran is likely to obstruct the smooth functioning of the 2010 Review Conference either through procedural debates or through sharp disagreements on substance.

Syria is also a case that may be raised at the 2010 NPT Review Conference regarding non-compliance. The attack by Israel on a Syrian site at Dair Alzour has been shrouded in secrecy. The IAEA has conducted investigations but has alleged that Syria has not co-operated in determining the origins of the samples taken from the site which Syria insists are non-nuclear. This lack of transparency creates doubts and suspicions but it is unlikely that agreement will be reached at the Review Conference on what should be done about this.

For the Arab NPT states parties the 1995 Resolution on the Middle East remains a most important issue and the lack of agreement on this proved to be one of the key factors causing the failure of the 2005 Conference. Indeed it is argued by some that the Middle East resolution forms the fourth pillar of the NPT along with non-proliferation, disarmament and the peaceful uses of nuclear energy.

In 2010, with the current impasse on the Middle East, the situation will be even more serious and diplomatic efforts to engage the Arab states on this issue must begin urgently. Article VII is a very useful guide. The fact that there are already a number of nuclear weapon-free zones is an encouragement to the Middle East that what was regarded as unattainable in some regions is in fact attainable.

Argentina and Brazil were once regarded as being on the brink of becoming nuclear weapon states. However, today they have signed up not only to the

Treaty of Tlatelolco but also to the NPT [with a bilateral arrangement, Agencia Brasileno-Argentina de Contabilidad y Control de Materiales Nucleares (ABACC) between them] and are regarded as countries in good standing in both those treaties. The expectation of having a zone free of weapons of mass destruction in the Middle East is thus not naïve. The 1995 resolution on the Middle East, adopted as part of the package that led to the indefinite extension of the NPT, remains a rallying point for the Arab states. Operative paragraph 5 of that said very clearly that it 'calls upon all states in the Middle East to take practical steps in appropriate forums aimed at making progress towards inter alia the establishment of an effective, verifiable Middle East zone free of weapons of mass destruction (nuclear, chemical and biological) and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective'.

The achievement of a zone free of weapons of mass destruction in the Middle East was an integral part of this resolution. It is indisputable that there would not have been an indefinite extension of the NPT in 1995 without the Resolution on the Middle East. It was crucial to the package that the Arab countries in the NPT were able to come on board with an indefinite extension because of this resolution. It was an agreement made in the last few hours of the conference negotiations.

Compromises had to be made by the Arab group and by the nuclear weapon states and others in order to achieve this important breakthrough. But that breakthrough was in 1995. Today in 2010, we are still far away from achieving the important first steps that are necessary to implement Paragraph 5 of that resolution. It is clear that this issue will once again, as it did in 2000 and 2005, be a major issue at the 2010 review conference. Therefore, there needs to be a plan of action and some progress evident.

Since 1995, there have been a number of developments take place in the Middle East. The invasion of Iraq on the pretext that Iraq had weapons of mass destruction, only to discover that there were no weapons of mass destruction.; the controversy regarding the nuclear programme of Iran which is seen as a part of the 'greater' Middle East and; as mentioned earlier, the case of Libya.

In the background of all that there is also the precedent of the Arms Control and Regional Security (ACRS), working group—one of the five in the Madrid Peace process that continued briefly and which has now sputtered out and the Quartet with its ambitious roadmap, which appears to have led us nowhere. But there is also an incipient peace process initiated by the new President of the United States with his very able Middle East peace negotiator, Senator Mitchell, at the forefront. Therefore, there is hope yet that there will be some progress in which this issue of a zone free of weapons of mass destruction will take a very important place. What is important is that the entire global south is free today of nuclear weapons following the Pelindaba Treaty and the Central Asian nuclear weapon-free zone entering into force this year. The fact that

formulations regarding this issue did not meet with objections at the 2009 NPT Preparatory Committee session should encourage the Arab states.

The UN Security Council resolution 1887 that was adopted in September in New York does make a specific reference in a preambular paragraph to the importance of nuclear weapon-free zones. It talks about welcoming and supporting steps to conclude such zones and reaffirms 'the conviction that the establishment of internationally recognised nuclear weapon-free zones on the basis of arrangements freely arrived at among the states of the region concerned.' [46]Clearly what is disguised by that diplomatic formulation is the fact that there is one state in the Middle East region—Israel—that is not ready 'to freely arrive' at a zone free of weapons of mass destruction.

At a minimum the 2010 Conference after a full debate on this issue must either appoint a special co-ordinator to explore the implementation of the 1995 Resolution on the Middle East or set up a committee which will do so and make recommendations to the next Preparatory Committee meeting for the 2015 Review Conference. This will be a practical step which will provide some momentum within the NPT to this vexed issue and may satisfy the Arab states while other processes go on outside the framework of the NPT. The Egyptians are reportedly in favour of convening an international conference in 2011 on the resolution on the Middle East. Such a conference could turn out to be a success or a failure and placing all bets on one conference may not be as wise as having a credible co-ordinator acceptable to all sides who could make progress and report to preparatory committee meetings leading up to the 2015 Review Conference.

It is a tribute to the Arab states that those who were not members of the NPT in 1995 joined the treaty soon thereafter in the hope that the Resolution on the Middle East would be implemented. Their disappointment must not be allowed to fester and sap their trust in the NPT.

The NPT must be viewed in its totality. No one aspect can be singled out for implementation without upsetting the fundamental equilibrium that exists among the non-proliferation, disarmament, and peaceful uses of nuclear energy components of the treaty.

The special cases of alleged and proven non-compliance are unlikely to be resolved within the framework of a NPT Review Conference. They will have to be negotiated within bilateral or multilateral diplomatic talks.

[46] United Nations, 'Historic Summit Of Security Council Pledges Support For Progression Stalled Efforts To End Nuclear Weapons Proliferation Resolution 1887 (2009) Adopted with 14 Heads of State, Government Present', Security Council SC/9746, 24.11.2009, <http://www.un.org/news/press/docs/2009/sc9746.doc.htm>, (accessed 24.11.200).

A new consensus?

A global consensus on disarmament, utopian and elusive as it may seem, has in fact been achieved many times in the past. On January 24, 1946, the UN General Assembly adopted its first resolution calling for the elimination of all atomic weapons and 'all other major weapons adaptable to mass destruction.'[47] Later, in 1978, the First Special Session of the UN General Assembly devoted to disarmament (SSOD I) agreed on a consensus Final Document that represents what is still the highest watermark of agreement on the entire range of disarmament issues and has never been surpassed.

In 1996, with the sole exception of India, a consensus was also achieved—first in the CD and then in the UNGA—on the CTBT. A bilateral consensus that 'nuclear war cannot be won and must never be fought' was reached in 1986 at Reykjavik between Presidents Reagan and Gorbachev as a prelude to agreements on nuclear disarmament. To be sure, such consensus has depended on a congruent political will among the leaders of the most powerful states, which all have elements of their security establishment that are deeply invested in nuclear arms. There are signs that, given the seriousness of the challenges confronting the international community, we may be able to go back to restoring this consensus as a step toward negotiating nuclear disarmament agreements and buttressing the NPT.

As mentioned, on January 4, 2007 the Wall Street Journal published a remarkable op-ed piece written by George Shultz, William Perry, Henry Kissinger, and Sam Nunn—all former holders of high office in the United States, all highly influential today. They called for 'reversing reliance on nuclear weapons globally'[48] and viewed the doctrine of nuclear deterrence as obsolete, increasingly hazardous, and decreasingly effective. Recalling past efforts to rid the world of nuclear weapons, they called for a rekindling of the Reagan-Gorbachev vision and the achievement of a nuclear-weapon-free world as a 'joint enterprise.'[49] Identifying a series of agreed and urgent steps, the four included many of the measures featured in the 'Thirteen steps' of the 2000 NPT Review Conference and the sixty recommendations of the WMD Commission.

The article was followed a few days later in the same newspaper by an article by former Soviet president Gorbachev endorsing the four Americans' views and also calling for a dialogue between the nuclear weapon states and non-nuclear weapon states within the framework of the NPT on the elimination of nuclear weapons.[50]

[47] United Nations, Resolution on the 'Establishment Of A Commission To Deal With The Problem Raised By The Discovery Of Atomic Energy', 24 January 1946, <http://www.un.org/documents/ga/res/1/ares1.htm>, (accessed 24.11.2009).

[48] George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn, 'A World Free of Nuclear Weapons,' *The Wall Street Journal*, 4 January 2007, p A15.

[49] Ibid.

[50] Gorbachev, Mikhail, 'The Nuclear Threat', *The Wall Street Journal*, 31 1.2007.

A breakthrough in reconstructing the fractured consensus must come through the political leadership of key countries. Public opinion—especially in democracies—can force policy changes through the electoral process, and civil society organizations must work relentlessly to achieve this. Four of the five nuclear weapon states in the NPT have changed their longstanding political leadership. This provides a unique opportunity for a change of policy on nuclear weapons. First, the presidential election in France (although the nuclear issue was not among the subjects being debated in the campaign); in the United Kingdom, Prime Minister Blair stepped down to be replaced by Gordon Brown who faces elections in 2010; in 2008, both the Russian Federation and the United States had elections for a new president. This virtually simultaneous change in the political leadership of key countries provides an opportunity in the post–Cold War world to make fundamental changes that can pull the world back from the brink.

The agreement reached among the five permanent members of the Security Council—all NWS in the NPT—on Security Council Resolution 1887 is also significant even though the language was more on non-proliferation than disarmament. Steps to support and strengthen the NPT were agreed upon. The Washington Summit on Nuclear Security convened by President Obama this April is an opportunity to reach consensus on an important aspect safeguarding nuclear materials and nuclear technology.

This new setting could be perfect for pursuing Recommendation 59 of the WMD Commission[51], which urges the convening of a world summit on the disarmament, non-proliferation, and terrorist use of weapons of mass destruction. The date for such a summit should be after the 2010 Review Conference, providing thorough preparation and an opportunity for new leaders to take their seats. Such a summit would represent a historic moment for the world to prove that in this era of globalization we recognize the dangers to our global society and will take the right decisions at the right moment so that the world we live in can be a world future generations can live with.

As will be noted later civil society is also in support of this change and a growing demand for a Nuclear Weapon Convention has been embraced by the UN Secretary-General who announced a 5-point plan on nuclear disarmament on October 24, 2008.[52]

[51] WMDC, 'Disarmament and Non Proliferation'-Presentation by Dr Hans Blix, Chairman of the Weapons of Mass Destruction Commission, at the research institute FLASCO, Santiago de Chile, 2 November 2006, <http://www.wmdcommission.org/files/Summary per cent20Asia per cent20Nov per cent2006.pdf>, (accessed on 24.11.2009).

[52] Ki-moon, Ban, 'Contagious' Doctrine Of Deterrence Has Made Non-Proliferation More Difficult, Raised New Risks, Secretary-General Says In Address To East-West Institute', New York, 24 October 2008, <http://www.un.org/News/Press/docs/2008/sgsm11881.doc.htm>, (accessed on 24.11.2009).

6. Reforming the NPT

From time to time proposals have been made to strengthen the NPT without throwing the baby out with the bathwater. Michael Spies writing in the Spring 2009 issue of 'Disarmament Diplomacy'[53] has a comprehensive survey of the proposals made at past NPT gatherings and their present status. These seek to have new procedures adopted through decisions taken at the Review Conferences without tinkering with the NPT itself. One example is the adoption of Decision I and Decision II in the package of the 1995 NPTREC.

A major drawback of this category of reforms is that the commitments made are not legally binding and are even reversible. A change of administration in one country could lead to a change of policy as with the Bush Administration repudiating the 2000 NPT Review Conference's Final Document. A change of atmosphere can also be caused by the announcement of new policies. That was evident at the Third Preparatory Committee meeting in May 2009 when President Obama sent a message to the meeting. Despite that, no agreement was reached among the parties. More substantive action reflecting policy change is needed to bridge the gap between the NWS and NNWS.

Proposals have varied from arriving at new bargains to other extra-NPT arrangements which will build confidence before the 2010 conference and ensure its success. It is not the intention of this writer to make a comprehensive survey of all the proposals that have been made but rather to identify and comment on a selection of them that have been made more recently. They have come from US writers and from NGOs.

Lewis A. Dunn in 'Assessing the Past, Building the Future' published in Nonproliferation Review of July 2009 has developed a series of what he calls 'metrics' [54] to assess the successes and failures of the NPT and makes proposals for the 2010 Conference for implementation before 2015 when the next Review Conference is held. Dunn writes from the perspective of a former Ambassador who led the US delegation to the 1985 Review Conference and was an advisor in the US delegation in 1995.

Thus while conceding pre-NPT collusion between US and UK, USSR and China and France, UK and Israel in nuclear weapon programmes he sees no 'comparable cases of witting assistance'[55] by US, USSR/Russia and UK since 1968 violating Article I and rejects the argument that the Indo-US nuclear deal conflicts with the 'not to assist' part of the Article. However Dunn acknowledges that greater progress on Article VI issues will strengthen international support on non-proliferation. In proposing 'three separate but

[53] Spies Michael, 'Towards 2010 and Beyond Proposals, Positions and Prospects: Issues facing the 2010 NPT Review Conference', Disarmament Diplomacy, Issue No 90, Spring 2009, <http://www.acronym.org.uk/dd/dd90/90nptms.htm>, (accessed on 41.11.2009).

[54] Dunn, Lewis A., 'Assessing the Past, Building the Future', *Nonproliferation Review,* Vol.16, No.2, July 2009.

[55] Ibid.

linked NPT Action Plans: one for non-proliferation, one for peaceful uses, and one for nuclear disarmament'[56] to be agreed upon at the 2010 NPT Review Conference Dunn sees the components of these plans being drawn from the consensus documents already adopted in past Final Documents of NPT Review Conferences which enjoyed consensus. The significant elements, as distinct from a reaffirmation of the key articles in the NPT, in the steps Dunn recommends for adoption at the 2010 Conference to strengthen the NPR are –

- A consensus on what actions would violate the 'no manufacture' prohibition in Article II
- An encouragement of universal adherence to the Additional Protocol, a consensus on making this a condition of nuclear supply and an affirmation of the IAEA Statute's Article XII on access 'at all times, to all places' (regarding Article III)
- Building support for new fuel cycle approaches (presumably as a voluntary option for NNWS regarding Article IV)
- Reaffirming the 'unequivocal undertaking' to eliminate nuclear weapons made in 2000; developing a new Action Plan including CTBT entry-into-force and developing new template of transparency actions on Article VI implementation and nuclear postures
- Affirming a Security Council role and responsibility in respect of Article X and asking the Zangger Committee to agree on procedures regarding equipment and materials supplied to countries withdrawing from the NPT.

Not all of the above will meet consensus but they are constructive proposals. Dunn fails to propose a fix to the festering grievances of the Arab countries on the non-implementation of the 1995 Resolution on the Middle East, on the majority demand of the NNWS for negative security assurances and on a number of other issues. However, the framework of three separate but inter-linked action plans is a basis to work on if only there was also an assurance that they will be implemented and not be overtaken by events such as a change of administration in Washington D.C. before 2015.

The next set of proposals to consider is less specific and more political. They are contained in Scott D. Sagan's 'Shared responsibilities for nuclear disarmament' which was published in Daedalus, Fall 2009.[57] The point of departure for the article is the revival of interest in nuclear disarmament in the US following the op-eds of George Shultz *et al* and the adoption of their

[56] Ibid.

[57] Sagan ,Scott D., 'Shared responsibilities for nuclear disarmament', *Daedalus*, Vol. 138 no. 4, Fall 2009, pp157-168, <http://cisac.stanford.edu/publications/shared_responsibilities_for_nuclear_disarmament/>, (accessed on 24.11.2009).

vision for a nuclear weapon-free world in the US Presidential Campaign and, after assuming office, by President Obama.

Sagan reminds us pertinently that the Article VI commitment of the US is actually reinforced by US law under the US Constitution. The gravamen of Sagan's argument is that there must be a shared responsibilities between NWS and NNWS on nuclear disarmament issues. Applying this argument to Article IV and VI will not help exculpate the NWS and/or developed countries given the text of the Treaty and the record. In Article IV while 'all parties'[58] have the 'inalienable right'[59] to the peaceful uses of nuclear energy and to facilitate and participate in the 'fullest possible exchange of equipment, materials and scientific and technological information'[60] there is clear reference to parties 'in a position to do so'[61] to making a contribution either alone or together with other states or international organizations towards the development of the peaceful uses of nuclear energy 'especially in the territories' of NNWS in the NPT 'with due consideration for the needs of the developing areas of the world.'[62]

That places the NPT in the context of the North/South relationship and the global transfer of aid and technology. It is the development part of the NPT which has been lost sight of. For a long time developing countries have complained that in the IAEA the developed countries had used their weight and influence to get more allocations for Safeguards than for Technical Co-operation even when the assistance was for non-power projects like in agriculture and medicine. The special programme of assistance for developing NNWS within the NPT—known as Footnote A projects—was always under-funded. No incentives were offered to the NNWS. The developing countries among the NNWS cannot also be blamed for the general under-funding of the IAEA.

In Article VI, although it has been noted earlier that the primary obligation of the NWS in the Irish sponsored resolution in the UNGA was deliberately blurred when the NPT was drafted, the current wording places the disarmament obligation on 'each of the parties'[63] to pursue negotiations on nuclear disarmament. That the NNWS have done so through collective measures in sponsoring and adopting resolutions in the UNGA and in working in other multilateral forums is indisputable.

More importantly an objective reading must surely conclude that the NWS states, and their allies, have more capabilities, and consequently responsibilities, than the NNWS in implementing this Article. Moreover the

[58] IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] Ibid.

International Court of Justice's Advisory Opinion of 1996 makes it abundantly clear that the NWS have special responsibilities and arguing for 'shared responsibilities' here does not help. Certainly the NNWS have their share of responsibilities in all aspects—such as in signing and ratifying the CTBT and the Additional Protocol—of the NPT and these have been set out above but to interpret shared responsibility as equal responsibility is mistaken. And yet focusing on what some developed NNWS countries are doing in developing verification technology is relevant.

The NPT parties have another objective to pursue within the NPT. The institutional deficit in the NPT as a weakness. This argument has been carried forward by the Sri Lanka and Canadian delegations in NPT fora and by the Middle Powers Initiative (MPI) among the NGOs. No cohesive mechanism or administrative support (apart from the under-resourced UN Office for Disarmament Affairs) exists for the NPT unlike in the case of the Organisation for the Prohibition of Chemical Weapons (OPCW) for the Chemical Weapons Convention (CWC).

The IAEA functions vis-à-vis the NPT are confined to Article III and that too under the authority of its Board and the Security Council, with no authority to refer matters to the NPT parties who should have a voice in the governance of their Treaty especially with regard to compliance assessment.

The need for NNWS to demand a Secretariat or a Governing Council has grown more urgent in the light of so many controversial issues fundamental to the NPT and its future. In between Review Conferences the NPT's governance and administrative needs could, at a minimum, be served by a body made up of office-bearers of past Review Conferences. Unfortunately, the three depositary states and the other NWS within the NPT have only favoured the status quo and have shown no inclination to accept any proposals for change. There is a grave danger that when they do propose changes that are beneficial to the NPT the NNWS will be opposed to it unless there is reciprocity. Any multilateral treaty must reflect a mutuality of interests if it is to survive and serve the interests of the international community.

A final set of proposals appeared in the Carnegie Endowment for International Peace publication of November 2009 'Restoring the NPT: Essential Steps for 2010' by Deepti Choubey[64]. Emphasizing the joint endeavour facing NWS and NNWS it calls on the US to take steps to obtain domestic and international support for nuclear disarmament and asks the NNWS to respond positively to the policies of Obama. Choubey warns against an overload of expectations of the 2010 Conference and the assumption that it is going to be a 'make or break' moment for the NPT. Based on a sampling of opinions obtained from a group of diplomats—heavily weighted towards the West—Choubey makes general recommendations and recommendations

[64] Choubey, Deepti, *Restoring the NPT: Essential Steps for 2010*, Carnegie Endowment for International Peace, 2009.

specifically addressed to the US and groups of NPT states. It is doubtful that the NNWS will be satisfied with the general and generic endorsement of principles at a time when more concrete actions are expected as a long delayed implementation of the original NPT bargain and past Review Conference declarations.

The Amendment Route

There has been considerable speculation on whether more NNWS will want to opt out of the NPT using the Article X withdrawal clause and a number of commentaries have been written as to how this can be prevented[65]. The reason for this withdrawal could either be a disguised desire to acquire nuclear weapons (as in the case of the DPRK) or as a gesture of protest. The Article is now being read in conjunction with the UN Charter and the rest of the NPT as being a limited right to be enjoyed by Treaty parties and not an absolute one.

A more assertive role for the Security Council in considering the withdrawal of a state party will require agreement among its five permanent members. Past Preparatory Committee meetings for the Review Conference have seen statements expressing concern over the exercise of the right to withdrawal but no action has been agreed upon. The fact that the Security Council has powers in maintaining international peace and security to act when the withdrawal of a state from the NPT is reported cannot be disputed. It has not acted so far in relation to DPRK.

At the Security Council Summit meeting on 24 September 2009, presided over by President Obama, Resolution 1887 was adopted. On this specific issue of NPT withdrawal operative paragraph 17 undertook 'to address without delay'[66] any state's notice of withdrawal from the NPT and affirmed that it would remain responsible under international law for NPT violations committed while being a party. That is a threat to countries seeking to escape any punitive action for NPT violations and obviously it refers to NNWS and not to NWS. It does not apply to NNWS who may want to leave the NPT out of disaffection.

Converting Article X into a more coercive enjoiner could be possible de facto through the Security Council when the withdrawal of a state party is reported to it. This of course may seem like imprisoning states parties cutting at the root of the sovereign right of states to join and leave treaties in accordance with their perception of their national security. It will cause deep resentment especially among the NAM.

[65] See for example: Bunn, G and Rhinelander J, 'The Right to Withdraw from the NPT: Article X is Not Unconditional', *Disarmament Diplomacy*, Issue No.79, April/May 2005, <http://www.acronym.org.uk/dd/dd79/79gbjr.htm>, (accessed on 24.11.2009).

[66] United Nations, 'Resolution 1887(2009)', 24 September 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/523/74/PDF/N0952374.pdf?OpenElement>, (accessed on 24.22.2009).

A less drastic and contentious route of manifesting the deep frustration of the NNWS over the unequal aspects of the NPT, and in particular the favoured treatment given to the holdout states who have moved over the threshold and enjoy a favoured relationship with the Western NWS, would be to take the amendment route. This is being discussed and may be activated by the disaffected nations if the 2010 Conference ends in a failure.

Like most treaties the NPT does embody a provision for amendment in Article VIII.1 and Article VIII.2. The Vienna Convention on the Law of Treaties (VCLT) at Articles 39-41 deals with amendments to a treaty. The procedure in the NPT is self-evidently tortuous and doomed to fail if even one of the NWS does not favour it. The process may be initiated by any state-party who submits the text of the amendment or amendments to the three depositary Governments who are obliged to circulate it/them to all parties to the NPT. Thereafter one-third of the parties (i.e.64) or more must request the depositary governments to convene a conference to consider the amendments.

If the NAM decides on this course of action there is no doubt that they will have the numbers for this course of action that the depositary governments will find impossible to obstruct in terms of the NPT. They may of course resort to diplomatic means and /or political pressure to prevent this.

However the success of any amendment or amendments adopted at the Conference—by a vote or by consensus—will be difficult in terms of Article VIII.2 which requires them to be adopted by a majority of all the parties (i.e. more than 95) 'including the votes of all nuclear weapon states party to the Treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Agency.'[67] Assuming that this hurdle is overcome a further hurdle confronts the entry into force of the amendment. Entry into force depends on the 'deposit of such instruments of ratification of all nuclear-weapon states party to the Treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency.'[68]

It is obvious that only a unique collocation of circumstances where the NWS and NNWS agree on a set of amendments will make amendments to the NPT possible. That can be achieved if a realistic set of amendments are crafted combining the interests of both the NWS and the NNWS and genuinely aimed at strengthening all three pillars of the NPT—non-proliferation, disarmament and the peaceful uses of nuclear energy. A mischievous amendment could also be initiated as a means of applying political pressure on the NWS leading to an actual Amendment Conference but failing thereafter to clear the hurdles required to adopt the amendment/s. Some delegations recall the attempt made in the late 1980s to convert the 1963 Partial Test Ban Treaty into a

[67] IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>.

[68] Ibid.

Comprehensive Nuclear Test Ban Treaty co-ordinated by the Parliamentarian for Global Action—the New York based NGO. It began with a resolution 40/80 adopted at the First Committee of the UN General Assembly in 1985 and consequent resolutions 41/46 of 1986, 42/26 of 1987[69], 43/63 of 1988, etc that led to the actual convening of the Conference. Eventually the move was abandoned since it was overtaken by the decision on the part of all states in the CD (after a key decision of the Clinton Administration) to negotiate a CTBT.

It is argued that a similar amendment move, though doomed to fail, could lead to an acceleration of steps leading to a nuclear weapon-free world favoured by the Obama Administration. This amendment procedure thus gives the NNWS the rare leverage they lost with the indefinite extension of the NPT. Clearly the initiative must appear to be balanced and it is useful to examine what amendments could be proposed with credibility.

James Crawford and Philippe Sands, in a 1996 Background Paper for the Canberra Commission on the Elimination of Nuclear Weapons, examined the legal aspects and options for a convention prohibiting nuclear weapons. Among the options explored were the formal amendment of existing treaties and the adoption of one or more protocols to existing treaties. They write, 'The general principle for the amendment of treaty is the same as for their conclusion ,i.e. the principle of consent'[70] and go on to acknowledge that the NPT amendment procedure is 'stringent'. However when discussing the possibility of adopting a protocol to an existing treaty they state that 'But the fact that a treaty such as the NPT is silent on the issue of protocols does not preclude their adoption….'[71] And conclude that, 'There is thus no legal obstacle to adopting a protocol to the NPT. Indeed this may allow new provisions to be adopted without the initial support of all nuclear weapons state parties (or all other parties which are members of the Board of Governors of the IAEA).'

Crawford and Sands rightly note that there are no provisions for a protocol to be proposed, negotiated or adopted. This is a loophole that may be explored by disgruntled NNWS. However it is unlikely that it will go unchallenged by the depository states and the NWS. A legal squabble could thus ensue at a NPT conference and its outcome may have to be voted upon. An interpretation by the International Court of Justice could be sought by the NNWS but again it is unlikely to be accepted by the NWS.

Assuming that the path to either amendments or a Protocol is taken with all its risks, it is interesting to discuss what specific amendments or protocols might be proposed. It is unlikely that anyone would propose a fresh definition

[69] Tovish, Aron, 'Urging entry into force: Lessons from the Partial Test Ban Treaty amendment effort', *Disarmament Forum* 2, p 39, <http://www.unidir.ch/pdf/articles/pdf-art2492.pdf>, (accessed on 30.11.2009).

[70] Crawford James, and Sands Philippe, 'Legal Aspects of a Nuclear Weapons Convention', Background Papers, Canberra Commission on the Elimination of Nuclear Weapons, August 1996.

[71] Ibid p 287.

of a NWS which would admit India, Israel, Pakistan and the DPRK as NWS into the NPT. On Article I the prohibition applying to NWS to aid NNWS to manufacture nuclear weapons could be extended to NNWS as well since some NNWS have the capacity to provide nuclear material and technology and between and among NWS too since US assistance to UK has been alleged. Moreover NNWS would like to be assured that NWS outside the NPT are not assisted by NWS in the refinement and technical upgrading of their nuclear weapons programme. This would apply particularly to the Arab states vis-à-vis the nuclear programme of Israel. In addition the current formulation of the Article refers to 'not in any way to assist, encourage or induce any non-nuclear-weapon state to manufacture or otherwise acquire nuclear weapons……'.[72] Many opponents of the Indo-US nuclear co-operation deal see it as a contravention of this provision in the NPT and would like it amended to be more specific. Of course it would mean shutting the stable door after the horse has bolted but it would certainly help prevent any repetition of this violation of the NPT—a step that Arab states are especially wary of in respect of Israel. The 'nuclear sharing' or 'geographical proliferation' of US nuclear weapons in Europe has been a persistent concern and the assertion of US control over them has not alleviated concerns on how this conforms with Article I. Specific language to prevent such 'sharing' would be necessary especially since other NWS can also use this precedent in future.

No amendments to Article II appear to be necessary. On Article III, it is this writer's view that the IAEA Safeguards Agreements mentioned in the NPT should be updated and complemented by a mention of the Additional Protocol which should also be signed by all NNWS. This will be controversial to some 97 NNWS in the NPT who have still either not signed or ratified the Additional Protocol. It is however a necessary confidence building measure for the future. India has done so with regard to her civilian nuclear power facilities despite being outside the NPT. Article II.3 can be expanded to include the fact that safeguards should be implemented in a way that does not jeopardize the national security concerns of states (in addition to the prevention of hampering their 'economic or technological development' or 'international co-operation in the field of peaceful nuclear activities'). This should contribute towards assuaging concerns of NNWS that IAEA inspections may be abused to probe national security areas.

Article IV is a controversial article because of Iran's nuclear programme and the enrichment of uranium currently not prohibited by the NPT. While retaining the 'inalienable right' of NNWS to have nuclear energy for peaceful purposes it is possible that an amendment to prohibit all parties from producing fissile material for explosive purposes be incorporated. This would

[72] IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>.

apply to both NWS and NNWS anticipating the conclusion of a Fissile Material Cut-off Treaty (FMCT) in the Conference on Disarmament.

The NWS in the NPT will find this non-controversial since they have announced that they have either stopped fissile material production or have a moratorium on production. The NWS outside the NPT—who are known to have reservations about a FMCT—will not be covered by this. NNWS should have no reservations on this given their adherence to Article II because low enriched uranium can be still produced by them if they so wish and the signature of the additional Protocol now required under the amendment proposed to Article III should be a confidence building measure for all parties. In Article IV.2 the 'fullest possible exchange' of nuclear commerce for peaceful purposes could be further guaranteed so that those countries not producing civilian nuclear reactor fuel could have access to international fuel banks.

Article V is by common consent a 'sleeping' provision since peaceful nuclear explosions are prohibited under the CTBT. However, the USA and China among the NWS and five NNWS in the NPT have currently not ratified the CTBT. Consequently the Article will require an amendment to prohibit peaceful nuclear explosions or be deleted altogether. The amendment to Article VI could be among the most controversial and fiercely resisted by the NWS. Here the Advisory Opinion of the ICJ is relevant and must be incorporated. The burden of responsibility must clearly be upon the NWS. Some NNWS may want a date for nuclear disarmament specified but this would be unrealistic and needlessly controversial. Article VII on nuclear weapon free zones (NWFZs) and regional treaties may be amended so as to ensure that NWS sign the protocols to existing and future NWFZ treaties. Any move to prescribe a NWFZ for a particular region in the NPT would be unrealistic especially in respect of the Middle East since a key player—Israel—is not bound by the NPT.

Article VIII needs to be updated in terms of the package of decisions adopted at the 1995 NPTREC so that the indefinite duration of the Treaty and the enhanced powers of the review Conference are reflected in the Treaty itself.

Article X will be the target of states parties who want to deprive parties of this right to withdrawal and this will be fiercely resisted by some of the NNWS. A compromise could be to agree that any benefits accruing to a state party which exercises the option of withdrawal would have to be returned to the suppliers.[73]

As far as proposed Protocols are concerned the Mayors for Peace non-governmental organization have proposed a Hiroshima-Nagasaki Protocol spearheaded by the Mayors of the only two cities which have suffered nuclear

[73] The writer wishes to acknowledge his debt to a private communication from Dr Jozef Goldblat with regard to the content of the amendments.

weapon attacks. The launch of this draft protocol at the 2005 Geneva Preparatory Committee meeting of the NPT Review Conference is significant.[74] The campaign continued in May 2009 at the New York Preparatory Committee meeting and is being conducted by the dynamic Mayor of Hiroshima with delegations to key Governments in international capitals. So far no Government of a NPT party has committed support to this protocol.

At the time of writing the Mayors for Peace have adapted their proposal and now propose a draft Decision for the 2010 NPT Review Conference. This appears to have been caused by the lukewarm reaction of both states party to the NPT and other NGOs to the draft Protocol idea and the content of the draft protocol. The Obama speech of April 2009 in Prague has rendered some of the positions redundant. Others may cause complications in the achievement of the objectives the proponents share with the Obama Administration. The draft Decision being circulated proposes:

- the launch of negotiations on a convention or framework of agreements for nuclear disarmament.
- the establishment of the target date of 2015 for ceasing the acquisition of nuclear weapons and preparations for their use and of 2020 for the elimination of all nuclear weapons and their infrastructure.
- the adoption of voluntary measures by states of measures assisting the realization of the 2015 target date, ratification of the CTBT and the secure storage of fissile material.
- the co-operation in establishing institutions required for a convention or framework of agreements for nuclear disarmament and the universality of the NPT.

The success or failure of this effort by the Mayors for Peace depends on the states parties and their political decision whether to adopt this proposal as the best strategy. If the chances of success are the criterion and not political pressure a Decision may be adopted by voting at the Review Conference. Thereafter it is moot whether the Decision could be implemented. Decisions taken in 1995 and at other Review Conferences—such as the 13 steps of the 2000 Conference—have remained unimplemented. If however, the purpose is to apply political pressure then beginning the amendment process may be a more useful route to pursue if a NPT states party or a group of state parties have the political will do so and are ready to withstand the pressures of the NWS and their more powerful allies.

[74] See website of Mayors for Peace, <www.2020visioncampaign.org>.

The Role of Civil Society

The role of civil society in nuclear disarmament and nuclear non-proliferation during the Cold war is now acknowledged to be significant. This has declined since the Cold War ended but there are signs that with the impetus provided to the nuclear disarmament debate by the Wall Street Journal op-ed articles by Shultz *et al* and the policies of the Obama Administration this is changing. Likeminded op-ed articles published in the newspapers of US allies like the UK, Germany, Italy and even France have been significant. The Global Zero campaign with its celebrities and financial resources and the more mass based campaign for a Nuclear Weapon Convention appear to be energized.

A WorldPublicOpinion.org poll of 21 nations published in December 2008 revealed that people in all 21 countries favoured an international agreement for eliminating nuclear weapons in most cases by majorities ranging from 62 per cent to 93 per cent. In the five NWS of the NPT the elimination of nuclear weapons according to a timeline was favoured by 77 per cent in the US; 69 per cent in Russia; 83 per cent in China; 86 per cent in France and 81 per cent in UK. Among the non NPT NWS the figures were less impressive—62 per cent in India; 46 per cent in Pakistan and 67 per cent in Israel.[75]

NNWS have enjoyed a close relationship with Non-governmental organizations (NGOs) in the disarmament community. It has been a mutually reinforcing relationship in multilateral fora and this must continue. The official statements of governmental delegations of smaller developing countries have often been better informed in the technicalities of disarmament issues because of the work of NGOs like the Nobel Peace Prize winning Pugwash with its scientific expertise while the diplomacy of NNWS has helped achieve positive results in the campaigns of civil society. It is well known, for example, that the public opinion outcry in the 1950s and Pandit Nehru's influential call for a test ban led to the Partial Test Ban Treaty (PTBT) of 1963.

Both the NWS and the NNWS must therefore support the work of civil society groups which are devoted to scientific research on nuclear disarmament, nuclear non-proliferation and verification and to the advocacy of these policies. The wealthier NNWS will need to ensure financial resources to these groups since they have suffered from neglect as other causes demand the resources of foundations and governments. Mobilizing public opinion is a vital task in which NNWS must be active within their own countries and through NGOs in other countries too. Organizing public opinion polls in NNWS and peaceful demonstrations as manifestations of mass support for nuclear disarmament and nuclear non-proliferation requires collaborative effort. With democratic systems this will be a key factor in achieving policy changes in

[75] World Public Opinion Org, 'Publics around the World Favor International Agreement to Eliminate All Nuclear Weapons', <http://www.worldpublicopinion.org/pipa/articles/international_security_bt/577.php?lb=btis&pnt=577&nid=&id=>, (accessed on 24.11.2009).

NWS. In disarmament we have already had a remarkably successful coalition forged between civil society and key governments such as Norway and Canada to bring about the 1997 Mine Ban Convention. Similar coalitions are working in the cause of a ban on Cluster Munitions and an Arms Trade Treaty. With the priority disarmament issue of nuclear disarmament this coalition between civil society and NNWS must develop into a major engine driving the cause of nuclear disarmament and nuclear non-proliferation.

Advocacy of verified reductions of nuclear forces, de-alerting of nuclear weapons and the convening of a World Summit as recommended by the Weapons of Mass Destruction Commission Report of 2006 would be key issues to focus upon. Irrespective of issue-based coalitions between civil society and the Governments of NPT states parties it is useful for national delegations to have representatives of civil society on their delegations. In the past this has been done mainly by NNWS delegations but the US and UK have also had academics and former Ambassadors on their delegations and this precedent must be welcomed.

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Evaluating the 2010 NPT Review Conference

JAYANTHA DHANAPALA

Summary

The 2010 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons (NPT) concluded on 28 May, with the States parties agreeing to a final document that reiterated their commitment to nuclear disarmament. This expression of solidarity was important for reaffirming the treaty's legitimacy in the wake of the seventh review conference in 2005, which failed to yield a final document.

The 2010 final document was also important in the face of long-standing tensions between the five nuclear weapon States (NWS) and the 185 non-nuclear weapon States (NNWS) that are party to the treaty and nuclear weapon–related developments that had raised serious questions about the treaty's efficacy as a non-proliferation instrument.

With all that weighed against it, the 2010 Review Conference benefited from a number of trends and developments, including an international atmosphere conducive to multilateralism in general and nuclear disarmament in particular.

Despite more propitious circumstances than in the past, the 2010 Review Conference opened amid great uncertainty and proceeded in three distinct phases—the plenary debate, the negotiations in the main committees, and the return to the plenary for a tense seesaw before the final denouement between pessimistic prospects of failure and optimistic expectations of success.

Much of the discussion centered on debates between NWS and NNWS on the four main pillars of the NPT: nuclear disarmament, nuclear non-proliferation, access to peaceful uses of nuclear energy, and the creation of a weapons of mass destruction–free zone (WMDFZ) in the Middle East.

Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT (disarmament, non-proliferation, and access to peaceful uses of nuclear energy) remains unfulfilled. Further, the conflict in the Middle East presents an increasingly significant obstacle to the treaty's future effectiveness.

Introduction

The 2010 Review Conference on the NPT concluded on 28 May, with the States parties agreeing to a final document that reiterated their commitment to nuclear disarmament. This unexpected expression of solidarity was important for reaffirming the treaty's legitimacy in the wake of the 2005 Review Conference, which failed to yield a final document, in the face of long-

standing tensions between the five nuclear weapon States (NWS) and the 185 non-nuclear weapon States (NNWS) that are party to the treaty, and in the context of nuclear weapon related developments that raised serious questions about the treaty's efficacy as a non-proliferation instrument.

The NPT, which was signed in 1968 and entered into force in 1970, is the world's most widely subscribed to disarmament treaty, with 190 States party to it at present.[1] NWS are obliged, as parties to the treaty, to negotiate the reduction and elimination of their weapons and to ensure that NNWS, especially developing countries, have full access to peaceful uses of nuclear energy as an 'inalienable right'.[2] NNWS are prohibited from acquiring nuclear weapons, but they may run peaceful nuclear energy programmes as long as they make safeguard arrangements with the International Atomic Energy Agency (IAEA) that ensure the programmes are not employed for non-peaceful purposes.

After providing a brief survey of the challenges that the NPT has faced in the recent past and of key developments in the nuclear non-proliferation arena, this report offers a high-level review of the 2010 Review Conference and then examines the issues and debates surrounding the four main pillars of the NPT: nuclear disarmament, nuclear non-proliferation, the accessibility of peaceful uses of nuclear energy, and the creation of a weapons of mass destruction–free zone (WMDFZ) in the Middle East. It concludes with reflections on the future of the NPT and offers recommendations to ensure that the treaty remains the cornerstone of the international non-proliferation regime.

The Context

The NPT has long been strained by allegations from the NNWS that the NWS have not reduced their nuclear arsenals sufficiently per the terms of Article 6 of the treaty, have not provided treaty-based guarantees that NNWS will not be attacked with nuclear weapons, and in general have enjoyed a monopoly of nuclear weapon possession without moving toward a nuclear weapon–free world. The treaty has been further weakened by the discovery of Iraq's clandestine nuclear weapon programme in the early 1990s, the withdrawal of the Democratic People's Republic of Korea (DPRK) from the NPT and its subsequent nuclear weapon tests, the acknowledgment and rectification of Libya's noncompliance, the persisting questions about a reported Syrian nuclear reactor destroyed by Israel, and the continuing tensions over Iran's nuclear programme.[3]

[1] The treaty stipulates the convening of a review conference every five years. In 1995, at the fifth review conference, the treaty was extended indefinitely.

[2] As far as arms control is concerned, that is, control of the level of arsenals, NWS are permitted to retain their weapons with the restraints that apply through other bilateral and multilateral treaties.

[3] IAEA director general Yukiya Amano, in his statement to the Eighth NPT Review Conference, mentioned that sixty countries were considering acquiring nuclear power and that ten to twenty-five of

In addition to the long-entrenched tensions over persistent proliferation questions about the DPRK, Iran, and Syria and the demand for new proliferation barriers ('gold standards'), such as the universalization of the IAEA additional protocol and the 'multilateralization' of the fuel cycle, the review conference faced the potential for a repeat of 2005 for a number of key reasons. The domestic US debate over Iran, which included partisan posturing between the Republican right wing and the Obama administration, rumors about an imminent pre-emptive strike on Iran by Israel, and the threat of additional sanctions on Iran all promised another conference breakdown, as did the precedent created by the Nuclear Suppliers Group (NSG) on 6 September 2008, which, at the urging of the United States, granted India privileges hitherto reserved for NPT non-nuclear-weapon States, causing fears that Israel would be the next country to be so favored. The problem of deciding how to implement the 1995 NPT resolution that called for a WMDFZ in the Middle East also suggested that the States parties would fail to adopt a final document by consensus.

The preparatory committee meeting in May 2009—the final meeting before the 2010 Review Conference—succeeded in clearing the underbrush of procedural problems that had bedeviled the failed 2005 Review Conference. That said, the more important adoption of recommendations to be conveyed by the preparatory committee to the review conference ran aground on the tensions that had plagued the NWS and NNWS since the NPT was signed and suggested a retread of the past. This difficulty was a reminder that more political repairs were needed in advance of and during the conference and that proclaimed policy changes had to be translated into practice.

With all that weighed against it, the 2010 Review Conference did benefit from a number of trends and developments. To begin, an international atmosphere conducive to multilateralism in general and nuclear disarmament in particular had undoubtedly been created prior to the conference: First, by the ground-breaking op-eds in the Wall Street Journal by four US elder statesmen—George Shultz, Henry Kissinger, Sam Nunn, and William Perry—that possessed a rare display of bipartisan apostasy over the Cold War sacred cows of nuclear deterrence and nuclear weapons; and second, by the elevation of this opinion to public policy by President Barack Obama in his April 2009 speech in Prague, which was both dramatically bold and pragmatically circumscribed.

While public opinion and civil society organizations applauded Obama's vision, atmosphere is a limited driver of global decision-making and thus governments around the world reacted cautiously to it. Even though Obama's speech had failed to cast a spell over the international community, the non-

them would have their first nuclear power plant by 2030. In this regard, he stressed the importance of having the additional protocol in force as a confidence-building exercise and stated that ninety-eight countries had already become signatories to it. The additional protocol was adopted in 1997 after the discovery of Iraq's clandestine nuclear weapons programme.

proliferation regime made undeniable progress over the following year for a number of reasons. First, the two major NWS—the United States and Russia—which together own 95 percent of the nuclear weapons in the world, negotiated a new Strategic Arms Reduction Treaty (START) in a welcome return to seriously negotiated, verifiable, and irreversible disarmament treaties. Second, a new US Nuclear Posture Review was announced, greatly reducing the likelihood of the actual use of nuclear weapons and providing security assurances for the majority of NNWS. Third, UN Security Council Resolution 1887, which resulted from the September 2009 G-20 summit presided over by President Obama, signaled a new emphasis on nuclear non-proliferation (though the resolution's disarmament component was considered by the NNWS to be slight, with the French accused as the main NWS responsible for the weak language). Fourth, the United States Institute of Peace and Elliott School of The George Washington University's conference on nuclear weapon–free zones (NWFZs) before the second conference of NWFZ countries in April 2010 led to greater focus by the international community on this less-publicized aspect of the NPT, a focus that was greatly appreciated by the countries concerned and that may have contributed to the United States' decision to submit the protocols of two of the NWFZs (Africa and the South Pacific) for ratification to the US Senate. And fifth, a Nuclear Security Summit had locked in forty-seven leaders in a commitment to secure nuclear materials and facilities. Although the small print of the reported achievements led to the charge by some that the glass was half empty, even the strongest critics among the NNWS had to concede that progress on nuclear disarmament was being made.

Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT . . . remains unfulfilled.

Despite more propitious circumstances than in the past, the 2010 Review Conference opened on May 3, in New York amid great uncertainty, with 172 States parties (Palestine participated as a non-State party observer) and 121 non-governmental organizations (NGOs) in attendance. Indeed, based on the conviction that the NPT was in crisis mode and that another failed conference would be a serious blow to this centerpiece of the global non-proliferation regime, NGOs and think tanks organized numerous international meetings and a rash of official consultations among governments in advance of the conference.

Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT (disarmament for non-proliferation and access to peaceful uses of nuclear energy) remains unfulfilled. Further, the conflict in the Middle East presents an increasingly significant obstacle to the treaty's future effectiveness. Indeed, the indefinite extension of the NPT in 1995 became possible only with the adoption of a resolution on the Middle East. In short, without further progress

on the Middle East peace process, the non-proliferation regime may still falter in the years ahead due to unresolved concerns about the slow pace of nuclear disarmament and the problems over the implementation of Article 4 of the NPT (which provides for access to peaceful uses of nuclear energy) and the policies of the NSG—which even before the ink was dry on the 2010 NPT Review Conference Final Document deviated from agreed upon policy by continuing with the India nuclear cooperation deal and creating special conditions for the Republic of Korea (ROK)—this, while China supplies reactors to Pakistan.

The Conference

The 2010 Review Conference seems, in retrospect, to have had three phases—the plenary debate, the negotiations in the main committees, and the return to the plenary for a tense seesaw before the final denouement between pessimistic prospects of failure and optimistic expectations of success.

Plenary

US secretary of State Hillary Clinton's opening remarks set a positive tone for the conference. Quoting from President Obama's message to the conference, she emphasized that the United States would do its part in seeking the peace and security of a world without nuclear weapons, that there were rights and responsibilities under the NPT, that while the majority of States observed its norms there were a 'few outliers,' and that it was important to 'think outside the blocs.' She also made references to the DPRK and Iran. Recapitulating the achievements of the Obama administration, she announced that the United States would henceforth become more transparent by declaring the exact number of nuclear weapons it possesses (the Pentagon announced that same day that the figure was 5,113),[4] that protocols for the NWFZs in Africa and the South Pacific were being sent to the Senate for ratification and that discussions would be held regarding the Central Asian and Southeast Asian NWFZs, and that $50 million would be given to a new IAEA Peaceful Uses Initiative for the use of non-power related nuclear energy in developing countries, with other States contributing another $50 million. She warned that while the United States did not seek amendments to the treaty, there should be penalties for violations of it. Her announcements were received well by the NNWS, especially those in the Nonaligned Movement (NAM).

[4] The opening statements of the other NWS—Russia, the United Kingdom, France, and China—followed predictable lines, with calls for undiminished security for all and a commitment to the NPT and the success of the conference. However, none of them followed the good example of the United States by announcing the details of their nuclear arsenals. The United Kingdom eventually did so toward the end of the conference, declaring from London that it had 225 nuclear warheads.

On the eve of the conference, the NGOs at the conference had conducted a well-attended rally and were buoyed by the event's success, and their afternoon session on the first Friday was well organized and featured many statements in support of a Nuclear Weapons Convention (NWC)—a rallying point that is likely to be increasingly popular in the post–review conference phase.

Overall, this first two-week phase of the conference was smooth sailing, with mostly routine statements in the plenary debate and a general feel-good atmosphere. Not even Mahmoud Ahmadinejad's fierce critique of the NWS could disrupt this mood.

Main Committees

Although the conference had broken into the three main committees and negotiations had begun over the final document in the conference's second week, the second phase lasted in fact from 17–21 May, when the chairpersons of the committees submitted draft reports as a basis for discussion. For the first time, subsidiary bodies had been set up in each of the committees to deal with nuclear disarmament, regional issues and nuclear weapon–free zones, and other issues, including Article 10 (the treaty withdrawal issue). The withdrawal of Iranian objections to the establishment of a subsidiary body dealing with larger institutional and treaty withdrawal issues was the first sign of Iranian cooperation during the conference. On 17 May, news broke that the Brazilian-Turkish mediation over the swap of Iranian uranium for uranium enriched abroad had succeeded, adding to the buoyancy of the mood. However, the United States soon announced that it would lodge sanctions against Iran in the Security Council and a temporary gloom descended upon the delegates as they feared the impact of the news on the conference. But the fears proved unfounded, both because the actual voting in the Security Council was held off until after the review conference had ended and because the Iranian delegation showed no adverse change in its conduct.

However, the redlines that key delegations, such as the NWS, did not want crossed were clearly demarcated as delegations began to spell out their positions. By the end of the second phase (that is, the end of the third week), in accordance with the plan of the president of the conference, Libran Cabactulan, the three main committees' chairmen produced revised drafts of their reports. The first draft of the first main committee chairman was regarded as too ambitious (although the NAM States were encouraged by it). Some tensions were evident in this committee over the decision to move the action from the main committees to the plenary in the fourth week since no consensus had yet been reached. A few delegations wanted the work of the main committees to continue so that differences could be resolved there. Cabactulan compromised by allowing the main committees one more day.

Plenary Redux

On Tuesday, 25 May, Cabactculan produced a draft final declaration that was based on what the main committees' chairmen had prepared but that reflected his perceptions of where consensus could be found. Prior to that, on Monday, 24 May, when the plenary reconvened as scheduled in the programme of work, the NWS had moved in a seemingly orchestrated manner to declare firm positions. This led to speculation among the NNWS that the NWS had met over the weekend and had decided on a 'get-tough' policy. The policies of the NWS, if accepted, would have inevitably resulted in a dilution of the final conference document into a weaker document than that produced in 2000. The NAM States were clear that this would be unacceptable. At this stage the trajectory of the conference appeared to be heading toward collapse. Rumors of a possible vote were afloat despite the fact that such an action had no precedent. Decision-making in NPT review conferences had been undertaken, by convention, on the basis of consensus, although Rule 28 of the rules of procedure did provide for voting if all efforts to reach consensus broke down. The pros and cons of a failed conference were pondered.

Throughout the conference, the principle of non-proliferation, the first pillar of the NPT, and its vital link to peace and security was strongly upheld and reflected in the final declaration. There was no agreement on enforcing compliance or recourse to the Security Council.

The conference saw fluctuating fortunes in the final week. The main flow of the conference proceeded in the plenary on the basis of the president's draft, but components of it, especially those relating to the 1995 resolution on the Middle East, were negotiated elsewhere, with Arab-US discussions reportedly going on in Washington and a seventeen-State delegation (the five NWS and key NNWS from the NAM and Europe) huddle at the Egyptian mission in New York deciding on the final compromises. All this came to a head when Cabactulan presented another revised draft on Thursday, 27 May, informing delegations that it was, in his judgment, the best possible outcome. Although the draft generally accepted the redlines laid down by the NWS, Cabactulan adopted a drafting technique of referring to some views as belonging to 'numerous parties'; in one instance, he stated a 'majority of States' held a particular view. This obviated the need to reach consensus and followed a practice used in the 1985 NPT Review Conference Final Document in relation to conflicting views on the Comprehensive Nuclear Test Ban Treaty (CTBT) issue. (The CTBT issue remained controversial in 1990 and caused the collapse of that conference.) No attempt was made to qualify or quantify 'numerous' or 'a majority,' and the conference appeared ready to accept this.

There was no time for further negotiations and despite the text falling short of the optimum expectations of individual delegations, there was a growing realization that this was the last chance for an agreement. The NGO blogs were guardedly optimistic and had reconciled themselves to a weak final

document. With the rumor that it was only Iran who had not signified its consent, the meeting of the plenary was postponed first from 11 a.m. on Friday, 28 May, to 12 p.m., and then to 3 p.m. in the main General Assembly Hall. Despite the tension, the declaration was finally presented, with Cabactulan making a distinction between the first review part (which carried a footnote saying this part was the responsibility of the president) and the future-oriented action part. Finally, to the relief of all delegations, the conference came to a close, with varying levels of satisfaction. In an effort to prove that a balanced consideration of all three pillars of the NPT had taken place, the final document's action plan had twenty-four actions on non-proliferation, twenty-two on disarmament, and eighteen on peaceful uses of nuclear energy.

Unlike the 2000 conference, the bridge-building transcontinental group known as the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden) was not a driving force and yielded to the NAM States, which were led by the Egyptian permanent representative to the United Nations, Ambassador Maged Abdel Aziz. Cabactulan had wanted to avoid appointing a 'friends of the chair' group, fearing that the exclusion of some States could prove controversial. However, he did decide, ahead of the beginning of the conference, on coordinators to conduct negotiations in the subsidiary groups. He also had Norway convene a focus group, which included key radical members of the NAM, to pre-empt any adverse repercussions in the final plenary session when the draft declaration came up for adoption. This proved to be a wise strategy. The conference was mainly a negotiation between the NAM States and the NWS, with the timely intervention by the focus group that had convened in the Egyptian mission and the work of coordinators such as Irish ambassador Alison Kelly.

The Debates

Nuclear Proliferation

Throughout the conference, the principle of non-proliferation, the first pillar of the NPT, and its vital link to peace and security was strongly upheld and reflected in the final declaration. There was no agreement on enforcing compliance or recourse to the Security Council. The record of proliferation among the NPT NNWS in the period being reviewed included the case of DPRK and questions regarding Iran and Syria. The NNWS raised the NSG's decision on India following the Indo-US nuclear cooperation deal, calling it a violation of Article 1 and repeating their argument that the placement of US nuclear weapons on the territories of five NATO parties in Europe represented a form of proliferation. The specific issues debated were the following:

- Compliance. After a healthy debate at the conference, the review part of the final declaration emphasized that 'concern over

compliance . . . should be pursued by diplomatic means in accordance with the provisions of the Treaty and the Charter of the United Nations.' The reference to the UN Charter was added in the final draft to reflect the views of the West. This formulation effectively rules out the use of force, even though Article 42 in Chapter VII of the UN Charter provides for the collective use of force by the United Nations if the Security Council so decides.

- DPRK. The document 'condemned with the strongest possible terms the nuclear test explosions' carried out by the DPRK, recalled the relevant UN Security Council resolutions, and concluded that the DPRK 'cannot have the status of a nuclear-weapon-State.' This same wording was used in the 2000 Review Conference document to refer to India and Pakistan. China attempted to soften this language on the DPRK, which was probably one reason why this part of the document was 'noted' and not adopted. In discussing Article 10 and withdrawal from the NPT—applicable both to DPRK and Iran—the final document affirmed the right to withdraw at paragraph 120, noting the 'divergent views regarding its interpretation with respect to other relevant international law.' A description of a view held 'by many States' was that a withdrawing party remains responsible for any violations of the NPT committed prior to withdrawal. Two following paragraphs identify 'numerous States' as having specific views regarding the consequences that would follow withdrawal by such a party.
- In the 'action' section that was adopted, the conference 'strongly' urged DPRK to fulfill its commitments under the Six-Party Talks and to return to the NPT and adhere to IAEA safeguards. Support for the Six-Party Talks and a resolution of the DPRK problem via diplomatic means was also mentioned.
- Iran. The final declaration did not name Iran lest this gave Iran an excuse for disrupting the conference. The emphasis on diplomatic solutions to noncompliance also helped. Paragraph 10 of the final declaration's review section upheld the authority of the IAEA for verification of non-proliferation, via safeguards asking that concerns should be referred to that body with evidence and information for investigation. Paragraph 11 reaffirmed the importance of access to the Security Council (the NAM States added the UN General Assembly to this) by the IAEA in ensuring compliance with safeguards agreements. A general reference, aimed at Iran, in paragraph 23, spoke of 'concerns expressed by numerous parties' with regard to matters of noncompliance. 'Numerous parties' here no doubt referred to Western States and

others critical of Iran. Paragraph 76 refers to the dangers of attacks or threats of attack on nuclear facilities 'devoted to peaceful purposes' and states, as an opinion of the conference, that these threats and/or attacks raise 'serious concerns on the application of international law on the use of force in such cases.' It was added that 'a majority of States parties' (a reference presumably to the NAM States) suggested 'a legally binding instrument be considered in this regard.'

- Indo-US nuclear cooperation. The Indo-US deal featured lightly in the discussions, and while States parties acknowledged that the deal could not be undone, they were quite firm that no more exceptions should be made. Thus, paragraph 13 recalled paragraph 12 of Decision II in the 1995 NPT Review and Extension Conference whereby new supply arrangements had to align with non-proliferation obligations and comprehensive IAEA safeguards. This statement is unlikely to deter China from providing reactors to Pakistan. In the action part of the declaration (paragraph 35), all parties are urged 'to ensure that their nuclear-related exports do not directly or indirectly assist the development of nuclear weapons or other nuclear explosive devices' and that such exports comply with the NPT and the 1995 NPT Review and Extension Conference decisions. This exhortation was intended as a warning against deals with Pakistan and Israel, but given the ease with which past conference documents were disregarded, NNWS cannot rest assured on this issue.
- Additional protocol. The application of the IAEA additional protocol—as a mandatory requirement for benefiting from peaceful uses of nuclear energy and the 'multilateralization' of the fuel cycle—was sought by some NWS and Western States in order to place additional safeguards against proliferation and to discourage national enrichment of uranium. Many NNWS, such as Brazil, Egypt, South Africa, and Argentina, resisted this move on the grounds that it infringed on their sovereignty and represented an additional obligation heaped on NNWS in an already asymmetrical division of obligations under which the NWS were barely touched. In fact, 133 States have had their additional protocols approved by the IAEA Board of Governors, and 102 of those States are currently implementing them. This illustrates that as a voluntary measure the additional protocol has served as a confidence-building measure.

The disagreement within the conference on this was reflected in paragraph 18, where the conference notes 'that numerous States were of the view' that the additional protocol was an integral part of the IAEA safeguards system

and in paragraph 19, which States that 'many States recognize that comprehensive safeguards agreements and additional protocols are among the integral elements of the IAEA safeguards system.' At the same time, the entire conference 'notes that the additional protocol represents a significant confidence-building measure' and 'encourages all States parties' to 'conclude and bring into force an additional protocol.' The same disagreement is reflected elsewhere too. However, in the action plan section (Action 28) adopted by the conference, the hortatory consensual language is as follows: 'The Conference encourages all States parties which have not yet done so to conclude and bring into force additional protocols as soon as possible and to implement them provisionally pending their entry into force.'

Nuclear Disarmament

The 2000 Review Conference Final Document was regarded by NAM States and supporters of nuclear disarmament, the second pillar of the NPT, as the highest benchmark so far achieved in the NPT review process by virtue of the 'unequivocal undertaking' by the NWS to the total elimination of nuclear weapons through thirteen steps. This benchmark was rejected at the 2005 Review Conference, however, so the NAM States were especially wary at the start of the 2010 conference, despite the Obama administration's commitment to the vision of a nuclear weapon–free world and the achievements registered in the months preceding the conference. The NAM working paper contained a NAM wish list, and the NGOs increasingly mobilized around a demand for an NWC, which was among the points mentioned by the UN secretary-general in his five-point plan of October 2008. The United States had accepted the goal of a nuclear weapon–free world but excluded an NWC as a means of achieving this and hedged on a time frame.

The plenary debate and the NGO session in the first week set out the battle lines. The increasing conservatism of France and Russia relative to the United States was of particular interest. The United Kingdom, which formed a new government after the conference opened, moved to the right and abandoned the pro-disarmament policies of the Labor government, even opposing a Swiss–International Committee of the Red Cross inspired reference to international humanitarian law in the use of nuclear weapons. That reference was finally included as a principle and objective in the context of the 'catastrophic humanitarian consequences of any use of nuclear weapons.' China, except for a ritualistic reference to its no-first-use declaratory policy and some sympathy for NAM positions, maintained solidarity with the NWS.

Faced with this solid NWS phalanx, the NNWS and NAM in particular wanted to ensure that they did not retreat behind the 2000 achievement. The first draft that emerged from the main committee was too optimistic and provoked an aggressive response from the NWS. The next draft came back diluted and was watered down further in the hands of the president. What was

achieved, however, was seen by most delegations as marginally better than the 2000 achievement, though the subjective nature of the text promised future battles. Specific issues addressed included the following:

- The 'unequivocal undertaking.' In the review section of the declaration, paragraph 80 reaffirms the commitment made by the NWS in 2000 to totally eliminate their nuclear arsenals.
- The NWC. An NWC was not mentioned directly in the action plan but was made note of in paragraph 82 as part of the UN secretary-general's five-point proposal 'to inter alia consider negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments.' This marked the achievement of another NNWS objective.
- Timelines. The insistence by the NAM on a time-bound framework for achieving a world free of nuclear weapons was met with stubborn resistance by the NWS. In paragraph 83, it was affirmed that the final phase of nuclear disarmament should be within a legal framework, which only a 'majority of States parties believe should include specified timelines.'
- The CTBT, new START, etc. Other features of the review section of the document included calls to bring the CTBT into force; to diminish the role of nuclear weapons in security policies (e.g., in nuclear posture reviews); to welcome the new START between the United States and Russia; to 'de-alert' and 'de-target' nuclear weapons; to increase the transparency of some NWS (i.e., the United States and United Kingdom) with regard to the number of nuclear weapons they have; and to recognize 'the legitimate interest' of the NNWS in constraining the development and qualitative improvement of nuclear weapons.
- Conclusions and recommendations for follow-on actions. In this section a total of twenty-two actions were adopted. The 'unequivocal undertaking' of the NWS to achieve the total elimination of nuclear weapons was reaffirmed, but unlike in earlier drafts, the word 'accountability' was dropped in the final document, meaning the NWS could refuse to be held responsible for their failure to undertake meaningful 'good faith' nuclear-disarmament measures. The practical steps mentioned in 2000 were reaffirmed as valid. In the face of strong Russian resistance to any mention of 'tactical nuclear weapons,' the NNWS and others had to content themselves with references to 'all types of nuclear weapons,' especially in Action 3. The United States and Russia committed themselves to entry into force of the new START and to continue discussions thereafter on further reductions. Action 5, over which there was considerable

controversy, emerged as a weak compromise, with the NWS being called upon 'to promptly engage' on a series of specific actions, such as reducing their stockpiles, dealing with all types of nuclear weapons irrespective of their location, and reporting on further disarmament measures by 2014 so that the 2015 Review Conference could take appropriate stock and consider future steps. The NNWS had wanted a firmer commitment from the NWS to these specific actions, because they knew that the weaker formulation that finally emerged could cause future problems. The exclusion of specific timelines and language that had been included in earlier drafts and that made reference to 'no first use' and the 'de-alerting' of nuclear weapons was a blow to the NNWS.

- Other aspects. The final document passed the 'security assurances' issue on to the Geneva-based Conference on Disarmament (CD); strongly endorsed the CTBT with all committing to ratify it; called a Fissile Materials Cut-off Treaty (FMCT) a desirable objective within the CD (although, because of China, no agreement was reached on a moratorium on further production of fissile material pending a FMCT); welcomed the entry into force of the NWFZs in Africa and Central Asia and asked NWS to implement their security assurances to States within NWFZs; accepted regular reporting by all (as a compromise to naming the NWS alone) parties on nuclear-disarmament obligations (although a weak formulation was inserted for NWS so that the NWS 'are encouraged to agree' to a standard reporting form and predetermined intervals for the voluntary provision of information to be made available in a UN repository); and made reference to the importance of disarmament and non-proliferation education.
- India, Israel, Pakistan. The universality of the NPT was addressed with a call to India, Israel, and Pakistan to join unconditionally the NPT as NNWS.

Peaceful Uses of Nuclear Energy

The debate over access to the peaceful uses of nuclear energy, the third pillar of the NPT, was closely linked to the debate on nuclear non-proliferation. It was agreed that each State party had the right to define its national energy policy. Most of this discussion came within the ambit of the IAEA, for which support was expressed, and underlined the principles of Article 4. Preferential treatment to the NNWS and the special needs of developing countries were duly recognized.

The IAEA guidelines for nuclear safety and security that had been endorsed at the Washington Security Summit were highlighted without any controversy. All relevant conventions were mentioned and adherence to them encouraged. Spent fuel and radioactive waste management issues, attacks on nuclear facilities, safe nuclear-fuel transport, and development of a new generation of proliferation-resistant nuclear reactors were also subjects agreed upon.

On the use of uranium, the conference welcomed the voluntary efforts to minimize the use of highly enriched uranium (HEU) in the civilian sector and through Action 61 encouraged States to further 'minimize highly enriched uranium in civilian stocks and use where technically and economically feasible.' The conference also noted, in its 'review' section,

Russia's establishment of a low-enriched-uranium (LEU) reserve for use by IAEA member States and made a modest reference to the importance of discussing, under the IAEA's aegis, the possibilities of creating non-discriminatory 'voluntary multilateral mechanisms for assurance of nuclear fuel supply, as well as possible schemes dealing with the end of the back-end of the fuel cycle.' This mention represented a limp end to the plethora of proposals that had been made in the recent past over the so-called nuclear renaissance and the consequent concern that this would facilitate nuclear weapon proliferation. The former head of the IAEA, Mohamed ElBaradei, had been at the forefront of such proposals, but the lukewarm response of major NNWS such as Brazil, South Africa, and Egypt that wanted national enrichment of uranium had deflated this move. In addition, the February 2010 research report by the Canadian Nuclear Energy Futures Project cited economic security and fuel waste problems to prove that the claims for a nuclear renaissance were overblown.[5]

Following the generous offer made by the United States in the plenary debate, Action 55 welcomed the extra budgetary contributions pledged to the IAEA's Peaceful Uses Initiative and encouraged others to help raise the $100 million required over the next five years.

The Middle East

The fourth major issue at stake in the conference was how to move forward with the resolution adopted in 1995 on the establishment of a WMDFZ in the Middle East. The success achieved in resolving this issue brought credit to Egypt and to the United States and was without doubt the main success of this conference. However, it did not compensate for the disappointment of the NNWS over the disarmament section of the final declaration.

Before the 2010 conference, it was recognized that the conference could break down if no progress was achieved in implementing the 1995 resolution.

[5] See Frechette, L., and Findlay, T., *The Future of Nuclear Energy to 2030: Final Report of the Nuclear Energy Futures Project* (Waterloo, Canada: Centre for International Governance Innovation, 2010).

Diplomatic messages were no doubt exchanged between Cairo, Washington, and other capitals. NGOs such as Pugwash also intervened to ensure progress on this issue and held a side event for this purpose.

The subsidiary body appointed for the consideration of this issue was fortunate to have Ambassador Kelly nominated as its chair. Her assiduous consulting and deft drafting helped to achieve a consensus. Using the various proposals that had been made at previous NPT meetings and at the review conference, Ambassador Kelly built a credible proposal. Because of the sensitivity of the subject, much of the negotiations were kept confidential.

One requirement of the United States was that Israel should not be named in the final text, but the Arabs maintained that the naming of Israel as a country outside the NPT had been accepted in the 2000 document and that they could not retreat from that precedent. The United States' alleged stance was that if Israel were to be named, then so too should Iran, a stance at which the Arabs balked. The United States also maintained that it could not guarantee Israel's attendance at a WMDFZ in the Middle East conference that had been requested by Egypt.

Despite this, the first draft proposal presented by Ambassador Kelly on 25 May contained an agreement on a WMDFZ in the Middle East conference to be held in 2012, with the UN secretary-general appointing a special coordinator to consult and prepare for it and follow up on its results. Other complementary action called for in the draft included the hosting of a seminar by the European Union and background documentation from the IAEA and the Organization for the Prohibition of Chemical Weapons. The draft also referenced links to the Middle East peace process and to processes related to WMD elimination.

However, because of dissatisfaction with the first draft (presumably from the United States), Ambassador Kelly went back to consulting her subsidiary body. Her final draft was included in the president's final declaration draft presented on 27 May. The main differences between the earlier draft and this newer draft were (1) that the 2012 conference would be co-convened by the UN secretary-general and the cosponsors of the 1995 resolution (the United States, the United Kingdom, and Russia) in consultation with States of the region and that it would be attended by 'all States of the Middle East'; and (2) that a 'facilitator' (it was reported that Israel did not like the 'special coordinator' title) would be appointed by the UN secretary-general and that the cosponsors of the 1995 resolution would consult with the States in the region and prepare the conference, implement its follow-on steps, and report on those steps to the NPT 2015 Review Conference and to preparatory committee meetings.

A host government would be designated by the UN secretary-general and the co-sponsors of the 1995 resolution for the 2012 conference. This compromise seemed acceptable to the Arabs. The role secured for the cosponsors of the 1995 resolution ensured that the United States would be able

to influence the choice of the facilitator, since ascribing this responsibility to the UN secretary-general alone was unacceptable to Israel. No mention was made as to how the conference and the facilitator would be financed.

However, the success of an agreement on the convening of a conference seemed to be spoiled when the US delegation, in its concluding statement, reiterated its support for the 1995 resolution and the WMDFZ in the Middle East but regretted that its ability to ensure a WMDFZ was jeopardized by the 'singling out of Israel.' Many observers saw this statement as a disingenuous one, because all the document did was recall the 2000 language, which stated that Israel's accession to the NPT was important. Further, elsewhere the 2010 document called upon India, Israel, and Pakistan to join the NPT, to which the United States made no objection.

The US delegation's statement was followed the same day by one from President Obama, who, after applauding the results of the conference, said that he deplored the mentioning of Israel by name and identified Iran as the main threat to the NPT in the region. US national security adviser James Jones went further and cast doubt on whether the conference would ever take place unless all countries in the region attended. This post conference reselling by the United States seemed to spoil the prospects for the future conference, but Arab reactions have been muted, presumably because this was an expected scenario.

The Future of the NPT

Most observers felt that the 2010 Review Conference was a huge success. On the institutional and procedural level, the conference reinforced and strengthened the review process. States parties agreed on the importance of having an informal and voluntary group of past and incumbent chairs available to pass on the lessons learned to future chairs. In addition, States parties committed to making funding available for one staff officer in the UN Office of Disarmament to monitor and follow non-proliferation matters on a permanent and continuous basis.

That said, an objective assessment of the conference involves honest answers to the more political questions related to the future of the regime. In this regard, the divided views attributed in the final declaration to 'a majority of States parties' and to 'numerous parties' cannot be sustained. While the formulation was largely neutral and referred to different groups at various points in the declaration, these divisions have to be resolved within the NPT.

Two representative opinions that spoke to the success of the conference came from the US and Egyptian delegations. As the US delegation's Ellen Tauscher stated, 'The Final Document this Conference adopted today advances President Obama's vision. It reflects our collective commitment to uphold and strengthen this cornerstone of the international non-proliferation regime. It also demonstrates our unified resolve to strengthen the Treaty's three pillars—disarmament, non-proliferation, and peaceful uses of nuclear

energy—with the inclusion of recommendations for follow-on actions. This forward-looking and balanced action plan establishes benchmarks for future progress and concrete actions.'

Egyptian ambassador Maged Abdel Aziz, speaking on behalf of the NAM, conceded that while the NAM did not achieve all that it wanted, it had decided to 'take advantage of the emerging goodwill.' Was this a message of thanks by the NNWS in general and the NAM in particular to President Obama for what he had achieved for nuclear disarmament? The final document of the conference is regarded by Egypt as a basis for a future 'deal,' and the ambassador promised to pursue NAM priorities in the run-up to the 2015 Review Conference. They include the elimination of all nuclear weapons by 2025 and the beginning of negotiations for an NWC and a Negative Security Assurances treaty.

Although the relief of the NWS over the adoption of the final declaration's conclusions and recommendations and the lukewarm reaction by the NAM States and the pro-disarmament NGOs has bought the NPT another five years, the tensions endemic in the central bargain remain. Good-faith implementation of the document's action plan will be crucial, as will progress on the new START, and ratification of the CTBT by the United States. The future course of the Six-Nation Talks on DPRK, the resolution of the questions over Iran's nuclear programme, and the outcomes of the 2012 Middle East conference will also determine the future of the NPT. The NPT has survived another challenge, but without further action by the NWS, the non-proliferation regime may well fray.

Recommendations

The States parties to the NPT clearly cannot rest on the laurels of this qualified success and have equal responsibility not only to fulfill the commitments made at the 2010 Review Conference but also to reinforce the NPT as the world's most important nuclear non-proliferation and disarmament treaty. To this end, the following specific actions are needed:

- The new START must be ratified by the US
- Senate and the Russian Duma by the end of 2010 so that the next phase in US-Russian nuclear disarmament negotiations can begin.
- The process of bringing the CTBT into force must begin with urgency. This includes the initiation of the ratification process in the US Senate by 2011, as well as in countries that have yet to sign or ratify the treaty.
- The Conference on Disarmament must begin negotiations on an FMCT, or the international community must find an alternative forum for doing so.

- The Six-Party Talks on DPRK must begin and reach a conclusion before the transition in that country's leadership.
- Talks with Iran should begin as soon as possible with mutual assurances.
- Agreement on steps to begin negotiations on a WMDFZ in the Middle East must begin in 2011. These steps include the appointment of a facilitator and credible preparations for the 2012 conference.
- The IAEA funding situation must improve, and assistance to developing countries for peaceful non-power-related uses of nuclear energy should be extended from the new fund.
- A campaign for greater adherence to the additional protocol should be aggressively led, and attention to nuclear-security requirements must increase.
- The use of HEU must be phased out and more encouragement should be given through tax incentives and other means for the use of LEU in nuclear power.
- The already agreed-upon steps to strengthen the institutional aspects of the NPT must be implemented.

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Assessing the 2015 NPT Review Conference

TARIQ RAUF

Overview

The 2015 Review Conference of the nuclear Non-Proliferation Treaty (NPT) failed to agree on a Final Document after four weeks of tedious discussions and negotiations between 27 April and 22 May 2015. This unfortunate but entirely avoidable outcome is a big setback for efforts to rid the Middle East of nuclear and other weapons of mass destruction, and for nuclear disarmament.

Some misleading narratives have developed on why the review conference failed, assigning blame wrongly and providing cover for those states parties that prevented the adoption of the President's draft final document. This brief assessment seeks to set the record straight.

The NPT Disarmament Stalemate

The main fissures in the area of nuclear disarmament concerned the humanitarian impact/consequences of nuclear weapons (HINW); and the push to get the review conference to agree to launch a process leading to a legally binding treaty, convention or instrument to 'close the legal gap' in article VI of the NPT on 'effective measures' to prohibit nuclear weapons and achieve nuclear disarmament.

Within the larger group of some 159 NNWS generally supportive of the HINW concept, the New Agenda Coalition (NAC), consisting of Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa, advocated a menu of options: (a) a comprehensive nuclear-weapons convention; (b) a nuclear-weapons-ban treaty; (c) a framework agreement containing mutually supporting instruments; and (d) a hybrid arrangement.

The five NWS, supported by the members of the Non-Proliferation Disarmament Initiative (NPDI) and a group of 26 states led by Australia, did not support efforts that would lead directly to a legally binding instrument on nuclear disarmament, but instead advocated putting in place 'building blocks' (a euphemism for a step-by-step approach) that might eventually lead to nuclear disarmament. Of the NPDI states (Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Nigeria, the Philippines, Poland, Turkey and the United Arab Emirates), seven are so-called umbrella states that rely on security guarantees from NWS.

The 120-strong Non-Aligned Movement proposed a plan of action for the elimination of all nuclear weapons in an irreversible and verifiable manner. This would be achieved in three successive phases: first phase 2015–2020; second phase 2020–2025; and third phase: 2025–2030.

The NWS openly dismissed the credibility of the HINW, rejected claims that there was any new information or data on the consequences of nuclear detonations or that their nuclear weapons faced risks of accidental detonation, and remained wedded to a step-by-step approach to nuclear disarmament based on the principles of strategic stability and undiminished security for all.

Middle East zone free of nuclear weapons and other weapons of mass destruction

The other bone of contention was the fraught issue of the implementation of the 1995 Resolution on the Middle East, adopted as part of the package on indefinitely extending the NPT, and the action agreed at the 2010 NPT Review Conference on convening a conference of the Middle East states on establishing a zone free of nuclear weapons and other weapons of mass destruction in the region.

It was clear that the gaps had widened not narrowed in the period 2010–2015. The unnecessary victim of this debacle was the facilitator of the postponed 2012 Middle East conference, who was abandoned by all sides despite his dedicated efforts to hold multilateral consultations involving Israel and the Arab states during 2013–2014. International politics makes no friends and abides by no principles.

The draft Final Document of the 2015 NPT Review Conference proposed 1 March 2016 as the date for the convening of a Middle East conference, following consensus-based consultations among all the states of the Middle East.

Conduct of the Review Conference

With regard to the conduct of the review conference, it was noticeable that there was a lack of effective coordination in the conference bureau, a lack of clarity on how and what the President intended to achieve as an outcome and its content, and a pronounced lack of imagination on the part of delegations to achieve the best outputs from the strengthened review process (SRP) and to use the SRP to achieve the best results.

The closed-door, off-site, 'Presidential Consultations' in the final week involving some 20 delegations were undemocratic and non-inclusive. Austria, Australia, Brazil, Cuba, Egypt, Iran, Ireland, Japan, Mexico, the Netherlands, New Zealand, Peru, South Africa, Sweden, Switzerland and the five NWS all took part.

These nineteenth century diplomatic practices and cold war groupings prevailed even though they are no longer relevant and incapable of dealing with current issues and priorities. Issue-based coalitions—the NAC, the NPDI and the Humanitarian Initiative—are more relevant but lack coherence and are mired in intra-group divisions.

Disturbing tendencies

There has also been a disturbing tendency for non-parties to the Treaty to be given preferential treatment and protection at the expense of states parties, especially by some depositary states. Examples here would include the 2005 US-India nuclear cooperation agreement, the so-called exemption in 2008 by the Nuclear Suppliers Group (NSG), and the current push for membership for India in the NSG led by the US. In addition, preferential treatment for Israel in the NPT and IAEA contexts by Western countries has served to deflect progress on the establishment of a zone free of nuclear and other weapons of mass destruction and an accounting of Israel's nuclear weapon programme. Furthermore, there is a lack of follow-up of rhetorical calls for NPT universality with regard to India, Israel and Pakistan.

Main Committee I

Main Committee I (MC.I) considered issues related to nuclear disarmament. The main areas of discussion concerned: (a) the humanitarian impact of nuclear weapons (HINW)—the concept that an understanding of the catastrophic consequences of the use of nuclear weapons should underpin all approaches towards nuclear disarmament; and (b) related efforts to persuade the 2015 NPT Review Conference to agree to launch a process leading to a legally binding treaty, convention or instrument to 'close the legal gap' in Article VII of the NPT on 'effective measures' to prohibit nuclear weapons and achieve nuclear disarmament.

The NWS dismissed all the recommendations suggested by the NNWS for prohibiting and eliminating nuclear weapons and remained wedded to their step-by-step approach to nuclear disarmament based on the principles of strategic stability and undiminished security for all states.

Some of the NWS, together with a group of nearly 30 NNWS (including Australia, Japan, New Zealand, South Korea and members of the North Atlantic Treaty Organization that rely on US nuclear guarantees) that remain seemingly indefinitely wedded to notions of nuclear deterrence, rejected all recommendations by other NNWS on accelerating the pace and scope of nuclear disarmament.

Despite protracted discussions on nuclear disarmament in MC.I—and in SB.I and in a focus group of 20 states convened off-site by the conference president—the divisions within the NNWS and between the NWS and a large proportion of the NNWS led to a total deadlock in negotiations. In the end, as noted above, the conference president produced her best effort to draft a final document on the final day, which was considered below expectations in terms of its provisions on nuclear disarmament and controversial, according to certain Western states, in terms of its proposals on the Middle East. The conference president's efforts proved unsuccessful as three Western states

rejected the draft. The NAM and some other states claimed in their statements after the collapse of the 2015 NPT Review Conference that they could have accepted the conference president's weak compromise text had her draft final document not been rejected.

Although the conference president's draft final document did not command consensus, it did contain some useful recommendations on nuclear disarmament. It reaffirmed that the full and effective implementation of the NPT and the regime of nuclear non-proliferation and nuclear disarmament in all its aspects has a vital role in promoting international peace and security. It also reaffirmed the need for the nuclear-weapon States 'to comply with their nuclear disarmament obligations under the Treaty NPT and to completely implement their nuclear disarmament commitments, including the 13 practical steps and the plan of action on nuclear disarmament, that were agreed by consensus at the 2000 and 2010 Review Conferences of the Treaty, in order to accomplish the total elimination of their nuclear weapons'. It 'noted the meetings of the nuclear-weapon States held in Paris (2011), Washington (2012), Geneva (2013), Beijing (2014) and London (2015), which fostered dialogue and common approaches amongst themselves to strengthen the Treaty and the continuation of this process and related bilateral efforts'. The President's text 'recognized that the indefinite extension of the Treaty at the 1995 Review and Extension Conference did not imply the indefinite possession of nuclear weapons by the nuclear-weapon States'.

The President's text reiterated deep concern 'at the catastrophic humanitarian consequences of any use of nuclear weapons'. It acknowledged 'the devastation that would be visited upon all humankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples'. It noted 'the growing interest during the 2010–2015 review cycle of non-nuclear-weapon States parties in the humanitarian impact of nuclear weapons'. The text noted 'the conferences that were held in Oslo (March 2013), Nayarit (February 2014) and Vienna (December 2014), which added to the knowledge of non-nuclear-weapon States and civil society of the catastrophic consequences of any nuclear weapon detonation and the associated risks posed by nuclear weapons'.

It noted 'the various joint statements delivered at the Review Conference that addressed humanitarian dimensions of nuclear weapons, including by Austria on behalf of 159 States parties on the Humanitarian Consequences of Nuclear Weapons and by Australia on behalf of 26 States parties on the Humanitarian Consequences of Nuclear Weapons'. The President's text noted 'the Pledge presented at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons by Austria and supported by 93 States parties, including the Community of Latin American and Caribbean States, which met at the level of Heads of State or Government'.

The conference president's draft final document reaffirmed the importance of the entry into force of the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) at the earliest possible date, and emphasized the responsibility of all signatories to promote the CTBT. It noted that the CTBT is a vital multilateral instrument for nuclear disarmament and nuclear non-proliferation.

The conference president's draft final document also specified certain concrete benchmarks and timelines based on the working papers and statements made in the plenary, the MC.I and the SB.I, as well as during off-site negotiations:

1. Nuclear weapons must never be used again.
2. There is an urgent need for the NWS to implement the steps leading to nuclear disarmament agreed to in the final documents of the 2000 and 2010 NPT Review Conferences in a way that promotes international stability, peace and security, and is based on the principle of undiminished and increased security for all.
3. The NWS must engage in all processes over the course of the next NPT review cycle, with a view to achieving rapid reductions in the global stockpile of nuclear weapons.
4. All states parties concerned should ratify the nuclear weapon-free zone treaties and their relevant protocols and review any related reservations and interpretive declarations over the course of the next NPT review cycle, with a view to the withdrawal of such reservations and declarations.
5. All states parties should immediately begin negotiations of a treaty banning the production of fissile material for use in nuclear weapons or other nuclear explosive devices in accordance with the report of the Special Coordinator of 1995 and the mandate contained therein.
6. All states parties should pursue and intensify efforts to develop the nuclear disarmament verification capabilities—taking into account the role of the International Atomic Energy Agency (IAEA) in the area of verification—that will be required to (a) provide assurance of compliance with the various joint statements and disarmament agreements, and (b) achieve and maintain a world without nuclear weapons.

Main Committee II

MC.II addressed issues concerning safeguards, nuclear security, export controls and nuclear weapon-free zones, as well as regional issues concerning the Middle East, South Asia and the Democratic People's Republic of Korea (North Korea). The bulk of the text in the chair's working paper reporting on MC.II was drawn from working papers and the interventions of states, which in turn were based on the texts of resolutions adopted by the IAEA General Conference in 2014. Even though the chair's working paper did not command consensus, it is useful to note some of its salient elements.

The chair's working paper expressed the MC.II's support for the IAEA, the authority responsible for assuring compliance with safeguards agreements, and stressed the importance of maintaining the credibility, effectiveness and integrity of IAEA safeguards. It welcomed the fact that 172 states had comprehensive safeguards agreements in force, 6 additional states had brought their NPT safeguards agreements into force since 2010, and 124 states had in force additional protocols to safeguards agreements.

The chair's working paper highlighted the MC.II's support for nuclear security (noting that responsibility for this rests with each state), stressed the importance of physical protection of all nuclear material and facilities, and reaffirmed the central role of the IAEA in strengthening the nuclear security framework globally.

The paper noted support for nuclear weapon-free zones and called for the ratification by the NWS of the relevant protocols on nuclear weapon-free zone treaties in security assurances.

In addition, the Chair's paper noted that the strict observance of all the provisions of the Treaty remains central to achieving the shared objectives of the total elimination of nuclear weapons, preventing, under any circumstances, the further proliferation of nuclear weapons and preserving the Treaty's vital contribution to peace and security. It emphasized that responses to concerns over compliance with any obligation under the Treaty by any State party should be pursued by diplomatic means, in accordance with the provisions of the Treaty and the Charter of the United Nations.

The Chair's paper reaffirmed, as in 2000 and 2010, that the IAEA is the competent authority responsible for verifying and assuring, in accordance with the Statute of IAEA and the IAEA safeguards system, compliance by states parties with the safeguards agreements undertaken in fulfilment of their obligations under article III, paragraph 1, of the Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. And that nothing should be done to undermine the authority of the IAEA in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements should direct such concerns, along with supporting evidence and information, for the IAEA to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate. The working paper expressed concern over cases of non-compliance with the NPT by states parties, and called on non-compliant states to move promptly to full compliance with their obligations. It underscored the importance of complying with the non-proliferation obligations and addressing all non-compliance matters in order to uphold the NPT's integrity and the authority of IAEA safeguards.

The Chair's paper stressed that the non-proliferation and safeguards commitments in the Treaty are also essential for peaceful nuclear commerce and cooperation and that IAEA safeguards make a vital contribution to the environment for peaceful nuclear development and international cooperation

in the peaceful uses of nuclear energy. It noted that safeguards should be implemented in a manner designed to comply with article IV of the Treaty and avoid hampering the economic or technological development of states parties or international cooperation in the field of peaceful nuclear activities.

With regard to safeguards, the paper noted that, in the case of a state party with a comprehensive safeguards agreement and an additional protocol in force, the comprehensive safeguards agreement and the additional protocol represent the enhanced verification standard for that state, which enables the IAEA to provide increased assurances on the non-diversion of declared nuclear material and on the absence of undeclared nuclear material and activities in the State as a whole. The paper noted that it is the sovereign decision of any State to conclude an additional protocol, but once in force or applied provisionally, the additional protocol is a legal obligation. And, it emphasized the importance of maintaining the credibility, effectiveness, and integrity of IAEA safeguards, and stresses that safeguards implementation should remain technically based, effective, transparent, non-discriminatory, and objective.

Regarding internationally recognized nuclear weapon-free zones on the basis of arrangements freely arrived at among the states of the region concerned, the chair's working paper noted that the further establishment of new zones strengthens the nuclear non-proliferation regime and contributes towards realizing the objectives of nuclear disarmament. The paper called on the NWS to bring into effect the security assurances provided by nuclear weapon-free zone treaties and their protocols. It underlined the importance of the establishment of nuclear weapon-free zones where they do not exist, especially in the Middle East. The working paper reaffirmed the urgency and importance of achieving universality of the NPT. It called on all states in the Middle East that have not yet acceded to the NPT to do so as NNWS so as to achieve its universality at an early date.

SB.II, which reported to MC.II, dealt with regional issues but was unable to reach any agreement on the implementation of the 1995 NPT Review and Extension Conference Resolution (1995 Resolution on the Middle East) on establishing a zone free of nuclear weapons and all other WMD (and their delivery systems) in the Middle East (MENWFZ/WMDFZ). Nor was there any agreement on the convening of a conference on a MENWFZ/WMDFZ, as had been agreed at the 2010 NPT Review Conference. Some members of the Group of Arab States expressed frustration regarding the failure of the NPT depositary states that co-sponsored the 1995 Resolution on the Middle East—Russia, the UK and the USA—and the facilitator appointed by the UN Secretary-General to convene a conference on a MENWFZ/WMDFZ.

The Group of Arab States proposed a new framework for the Middle East conference to be convened by the UN Secretary-General within 180 days from the adoption of the final document of the 2015 NPT Review Conference aimed at launching a process to conclude a legally binding treaty establishing

a MENWFZ/WMDFZ. This conference would take as its terms of reference the 1995 Resolution on the Middle East and would establish two working groups (WG): WG.I would deal with the scope, geographic delimitation, prohibitions and interim measures, and WG.II would deal with verification and implementation. The conference would meet annually in plenary and WG format, and its convening would not be postponed. In effect, this proposal placed the entire onus for the convening of the conference on the UN Secretary-General and excluded any role for the three NPT depositary state co-sponsors of the 1995 Resolution on the Middle East.

This proposal did not secure the approval of the three NPT depositary state co-sponsors and protracted negotiations continued in the sidelines of the 2015 NPT Review Conference. In a bid to break the deadlock, Russia proposed a compromise solution principally based on input from Egypt. In summary, the Russian proposal was as follows:

- A Middle East conference should be convened no later than 1 March 2016, with the aim of launching a continuous process of negotiating and concluding a legally binding treaty establishing a MENWFZ/WMDFZ.
- In preparation for the conference, all states in the Middle East should engage in intensive direct consultations in appropriate formats, with the intention of reaching consensus on an agenda and a final document for the conference.
- Should the states of the Middle East fail to agree among themselves on the necessary arrangements for the conference by 15 January 2016, the UN Secretary-General, in consultation with the co-sponsors of the 1995 Resolution on the Middle East, would issue invitations to all states in the region to a conference to be convened by 1 March 2016.
- The terms of reference of the conference would be the 1995 Resolution on the Middle East, all substantive decisions would be taken by consensus, and the conference would define the follow-up steps leading to the establishment of a MENWFZ/WMDFZ.

Two of the three NPT depositary state co-sponsors, the UK and the USA, opposed being excluded from the preparations for the Middle East conference and were of the view that the Group of Arab States would hold the conference despite potential objections from Israel, which is not a party to the NPT, although it did attend the 2015 NPT Review Conference as an observer. As noted above, the UK and the USA, supported by Canada, rejected the conference president's compromise draft final document. Russia supported the Group of Arab States' proposal and announced that it would issue compromise text to bridge the differences; however, it did not provide such text.

Main Committee III

MC.III covered peaceful uses and applications of nuclear energy, international nuclear cooperation, nuclear safety, provisions for withdrawal from the NPT, universalization of the NPT, and the strengthened review process of the NPT. The most contentious discussions were on strengthening the criteria to be met by a state in the event of its withdrawal from the NPT, international cooperation on the transfer of nuclear materials and technologies, and the review process. No agreement was achieved on strengthening the withdrawal provisions or on changing the review process beyond what was agreed on these issues at the 1995 and 2000 NPT Review Conferences.

The chair's working paper reflected broad general agreement even though it was not formally agreed by the MC.III; several of its main recommendations are presented below. It reaffirmed the unimpeded exercise of the inalienable right in accordance with article IV of the Treaty as essential to maintain the balance between rights and obligations of states parties under the Treaty, including the use of nuclear energy for peaceful purposes. Among other things, the working paper encouraged, to the extent possible, transparency and inclusiveness in export control policies to ensure and facilitate, to the fullest extent possible, access by developing states parties to nuclear material, equipment or technology for peaceful purposes, in accordance with the provisions of the NPT. It recognized that regional cooperative arrangements for the promotion of the peaceful use of nuclear energy can be an effective means of providing assistance and facilitating technology transfer, complementing the technical cooperation activities of the IAEA in individual countries, with each state party having the right to define its national energy policy. It recognized the safety and security issues associated with nuclear energy, as well as the importance of managing spent fuel and radioactive waste in a sustainable manner, while nuclear safety and nuclear security remain national responsibilities. In this regard, The working paper recognized the primary responsibility of individual states for maintaining the safety and security of their nuclear installations, and the crucial importance of an adequate national technical, human and regulatory infrastructure in nuclear safety, radiological protection and spent fuel and radioactive waste management, as well as an independent and effective regulatory body. It encouraged all states that had not yet done so, to become party to the 1994 Convention on Nuclear Safety, the 1986 Convention on Early Notification of a Nuclear Accident, the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, and the 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

The working paper noted that attacks or threats of attacks on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety, have dangerous political, economic and environmental implications, and could raise

serious issues pertaining to international law. The working paper stated that—pursuant to Action 64 of the action plan adopted at the 2010 NPT Review Conference—states parties should abide by decision GC(53)/DEC/13 of the 2009 IAEA General Conference on the prohibition of armed attack or threat of attack against nuclear installations, during operation or under construction.

The working paper also noted the establishment of a reserve of low-enriched uranium (LEU) in the Russia in December 2010 for the use of IAEA member states. It recalled that the establishment of an IAEA owned and operated LEU Bank was approved by the IAEA Board of Governors in December 2010, and welcomed Kazakhstan's offer to host the IAEA LEU Bank.

Conclusions

The strong outright rejection, in the late evening of 22 May 2015, by the United States, supported by the United Kingdom and a belligerent Canada, of the proposals in the draft final document for a Middle East nuclear weapon- and weapons of mass destruction-free zone put the 2015 NPT review conference out of its misery to the relief of many given their dissatisfaction regarding the weak recommendations on nuclear disarmament.

Contrary to the claims of these three states, the proposed action in the draft document on the Middle East called for all states of the region to reach a consensus on the agenda for a conference to be held no later than 1 March 2016, to which all these states would have been invited. Such a course of action is not unprecedented. In 2007 the NPT Preparatory Committee convened on the scheduled date without an agreed agenda and negotiated one in informal sessions, and the Conference on Disarmament commences its work each year without prior agreement on its agenda. The responsibility for the failure of the 2015 NPT Review Conference, therefore, should be assigned to those states that rejected the draft final document.

In reality, even though the rejection by the USA and two of its close allies was received with imperceptible sighs of relief by those states for which the draft final document was much too weak on the nuclear disarmament front and thus saved them from raising their own objections. Even so, it is somewhat misleading to claim that that the US objections to the Middle East part were based on the intransigence of Egypt and the Arab states. In reality, the Arab Group of states was prepared to join consensus for adopting the President's draft final document despite its flaws. Likewise, the Group of Non-Aligned states also expressed its view that it was ready to accept the president's text despite its shortcomings and was surprised that two of the three states that had blocked consensus were depositaries of the NPT.

In sum, responsibility for the failure of the 2015 NPT Review Conference can be placed on the inflexibility of delegations, improper implementation of the strengthened review process and an absence of leadership. The Treaty will continue in force, but the failure in 2015 was disappointing because it

represented a wasted opportunity to advance the objectives and goals of the NPT, which is universally regarded as the cornerstone of the global nuclear non-proliferation and nuclear disarmament regime.

This failure means that the agreed '64 actions' of the 2010 NPT Review Conference remain to be fully implemented and an opportunity has been lost to agree on ways and means to strengthen the NPT regime. While the NPT will survive, the credibility of the regime has been severely damaged by the inflexibility of states parties, and dangerous new tendencies and developments are on the rise. These include an unchecked resurgence in the saliency of nuclear weapons in European security, setbacks for reducing and eliminating nuclear weapons, increasing discord both between and among the NNWS and NWS, deteriorating confidence in the NPT among the Arab states parties, and an overall loss of credibility for the nuclear disarmament pillar of the NPT.

Preparing for the 2017 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process

TARIQ RAUF

Introduction

The first session of the Preparatory Committee, scheduled for 2 through 12 May 2017 at the Vienna International Centre (VIC), will launch the opening of preparations for the 2020 Review Conference of the NPT which will mark the 50th anniversary of the Treaty. This session will provide another opportunity for the States parties to properly implement an improved strengthened review process for the Treaty and, therefore, has the potential to effectuate the promise of a qualitatively improved process to review the implementation of the Treaty and to make preliminary recommendations on strengthening the implementation and authority of the NPT. The 2017 Preparatory Committee will be chaired by Ambassador Henk Cor van der Kwast, the Netherlands' Permanent Representative to the United Nations in Geneva. On hand, fortunately, also will be the chair-designate of the second session of the PrepCom, to be held in Geneva in 2018, Ambassador Adam Bugajski, Poland's Permanent Representative to the International Atomic Energy Agency (IAEA) in Vienna, as well as Ambassador Rafael Grossi, Permanent Representative of Argentina to the IAEA, who is proposed for President of the 2020 Review Conference; thus facilitating continuity between the first two sessions of the PrepCom and laying the groundwork for 2020.

This chapter reviews, in brief, the origins and functioning of the strengthened review process for the NPT, and then provides guidance and recommendations on the conduct of the 2017 PrepCom and its outcome document.

Improving the Effectiveness of the Strengthened Review Process

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) remains the world's most widely adhered to multilateral nuclear arms control agreement. The NPT was the first such treaty to include a mechanism to periodically review and assess its functioning and to find ways of strengthening its implementation and achieving universality. In accordance with Article VIII(3), the first review conference was held in 1975, five years after entry into force of the Treaty and subsequent ones held every five years thereafter. The review conferences in 1975 and 1985 organized their work in two main committees—Main Committee I (chaired by a representative of the

Non-Aligned Movement (NAM) addressed political matters while Main Committee II (chaired by a representative of the Western group) dealt with peaceful uses of nuclear energy. Staring at the 1985 Review Conference, Ambassador Rolf Ekéus (Sweden) proposed a new format to organize the work of the conference in three Main Committees, thus the Eastern Group also had a chairman. The three Main Committee structure enabled better focused discussion on different aspects of the Treaty, despite some overlap in the issues dealt with particularly in Main Committees II and III.[1] The Preparatory Committee was mandated to make procedural preparations for the review conference only but not to consider matters of substance such as non-proliferation, peaceful uses of nuclear energy, nuclear disarmament and related issues.

A key decision adopted by the 1995 Non-Proliferation Treaty Review and Extension Conference (NPTREC) was on strengthening the review process for the Treaty.[2] This strengthened review process mandated the Preparatory Committee to focus on *substantive* matters and to make *recommendations* to the Review Conference on principles, objectives and ways of promoting the full implementation of the NPT, as well as on completing procedural arrangements for the review conference.[3] Four cycles of the Preparatory Committee, from 1997–1999, 2002–2004, 2007–2009 and 2012–2014, while completing practically all of the procedural arrangements nevertheless failed to agree on any substantive recommendations to the review conferences of 2000, 2005, 2010 and 2015; contrary to the mandate and expectations of Decision I adopted by the 1995 NPTREC. This failure to agree on substantive recommendations to the review conference cannot be attributed to alleged failings of the strengthened review process but was the inevitable consequence of irreconcilable (and growing) political differences between States parties, narrow political agendas and priorities of some States, and the lack of sufficient political will to achieve practical compromises in the interest of strengthening the integrity and authority of the Treaty and promoting its full implementation as agreed by States parties in 1995.

Clarification of the Purposes of the Preparatory Committee

The 2000 NPT Conference agreed on "Improving the effectiveness of the strengthened review process", which reaffirmed, clarified and enhanced the mandate of the Preparatory Committee as contained in the decision from the

[1] Dhanapala, J. and Rauf, T., *Reflections on the Treaty on the Non-proliferation of Nuclear Weapons* (SIPRI: Stockholm Oct. 2016), p. 59.

[2] Final Document of the 1995 NPT Review and Extension Conference, NPT/CONF.1995/32 (Part I), Decision 1, 'Strengthening the Review Process for the Treaty', Annex, p. 8.

[3] Rauf, T. and Johnson, R., 'After the NPT's indefinite extension: the future of the global nonproliferation regime', *Nonproliferation Review* (Fall 1995).

1995 NPTREC.[4] Thus, the Preparatory Committee is specifically mandated to consider:

- specific matters of substance relating to the implementation of the Treaty and decisions 1 and 2, as well as the Resolution on the Middle East adopted in 1995 by the NPTREC;
- the outcome of the 2000 NPT Conference (practical steps for the systematic and progressive efforts to implement Article VI of the Treaty and paragraphs 3 and 4(c) of the 1995 Decision on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", (as well as agreed outcomes of subsequent review conferences, such as the 2010 "actions") and improving the effectiveness of the strengthened review process for the Treaty); and
- developments affecting the operation and purpose of the Treaty.[5]

The consideration of the issues at each session of the Preparatory Committee should be factually summarized and the results transmitted in a report to the next session for further discussion. At its third, or as appropriate fourth session, the Preparatory Committee taking into account the deliberations and results of its previous sessions should make every effort to produce a consensus report containing recommendations to the review conference. Procedural arrangements for the review conference should be finalized at the last session of the Preparatory Committee.

The 2002–2004, 2007–2009 and 2012–2014 cycles of the Preparatory Committee each attempted unsuccessfully in different ways to fulfill the mandate of a "factual summary report". These failures were largely due to the exuberance of States to submit lengthy and often repetitive "working papers" and "reports" that they insisted be fully reflected in the Chair's factual summary along with the views of States expressed during the general debate and "focused" discussions, thus leading to excessively long draft summary reports often in excess of 50 paragraphs and sometimes up to 100 paragraphs. Furthermore, many States parties wanted to "negotiate" the text of the Chair's summary report and in doing so either objected to the Chair's wording and/or suggested additional or revised wording that rendered the exercise unmanageable and requiring much more time than was available.[6] In addition, States parties expressed reluctance to accept the Chair's summary report on

[4] NPT/CONF.1995/32 (Part I), Decision 1 (note 2).

[5] Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 'Review of the operation of the Treaty, taking into account the decisions and resolution adopted by the 1995 NPT Review and Extension Conference, Improving the effectiveness of the strengthened review process for the NPT', Paragraph 5 (Improving the effectiveness of the strengthened review process for the NPT), NPT/CONF.2000/28 (Vol. I, Part I and II), 25 May 2000.

[6] See e.g. Potter, W. C., Nikitin, M. B. and Rauf, T., 'Interview, Ambassador Henrik Salander on the 2002 NPT Preparatory Committee', *Nonproliferation Review* (Summer 2002), pp. 5–6.

the grounds that it did not reflect their final positions which would be presented by them at the review conference—in effect, States were not prepared to accept the Chair's summary reports or recommendations at any session of the PrepCom citing various reasons.

As mandated by the 2000 Review Conference final document, Preparatory Committee sessions can allocate specific time to address specific relevant issues on matters of substance under each of the three "clusters"—nuclear disarmament, nuclear non-proliferation and peaceful uses of nuclear energy.

NGOs shall be allocated a meeting at each session of the Preparatory Committee and at the review conference to address States parties, but are not permitted to engage in interactive discussions with States parties.

The 2000 Final Document sub-paragraph 12 of paragraph 15 under Article VI requires consideration of reports on the implementation of Article VI and paragraphs 3 and 4(c) of the "principles and objectives" and recalling the 1996 advisory opinion of the International Court of Justice (ICJ) on nuclear disarmament. These regular reports within the framework of the NPT strengthened review process logically should be considered by the preparatory committee and by the review conference. And, Final Document 2000 sub-paragraph 7 of paragraph 16 under Article VII requires consideration of reports on the steps undertaken by States parties to promote the achievement of a Middle East NWFZ as well as of other weapons of mass destruction and the realization of the 1995 Middle East resolution by the preparatory committee and by the review conference. In connection with reporting, the 2010 and 2015 Review Conferences included certain "actions" regarding the implementation of the 1995 Resolution on the Middle East. These reporting requirements are discussed further in another section below.

In practice, the "reports" submitted by States parties on their implementation of the Treaty, nuclear disarmament and the Middle East resolution, had little or no relevance in the drafting of the summary reports of the PrepCom sessions and the reports of Main Committees in review conferences, in part because of the impracticality of reflecting the tedious views contained in numerous lengthy working papers and reports as well as those expressed in statements and interventions. Thus, the Chairs tended to prepare their summary reports and/or working papers based more on the views expressed verbally during the proceedings with only marginal references to the States' working papers and reports as a matter of practicality given the time constraints.

Greater Accountability

Given the growing sense of frustration regarding the failure of States working through the strengthened review process to overcome their deepening political differences on substantive matters, several States expressed their concerns at the 2000–2015 NPT Review Conferences and made proposals for further improvements. Several States made specific references on improving the

review process, and a number of working papers were submitted to the 2000–2015 Review Conferences for consideration. Working papers were submitted by Australia, Canada (with Australia, Austria, Chile, Germany, Ireland, Italy, Japan, Mexico, the Netherlands, New Zealand, Nigeria, Poland, Sweden, Switzerland, Thailand and Ukraine), Ireland, Japan, the Netherlands, Nigeria, Norway, Myanmar, the Non-Aligned Movement (NAM), South Africa, Ukraine and the United States.

Several common themes were discernible in some of the papers, all shared a commitment to enhancing accountability through a reinforced strengthened review process and all were interested in achieving *inter alia*:

- a better focus to the substantive work of the Preparatory Committee;
- an improved structuring of the work programme;
- an appropriate substantive reporting format;
- a capability to address and report on international and regional issues or events having a bearing on the authority and integrity of the Treaty; and
- overall improvements and clarity in the strengthened review process leading up to review conferences.

Other proposals included inter alia an annual conference of States parties with decision-making powers, an "extraordinary meeting", a "management board" to serve as a permanent secretariat for the Treaty; addressing the institutional deficit, a "compliance monitoring mechanism", a "Chairs' Circle", a "Treaty support unit", that the Preparatory Committee consider the implementation of the Treaty and issue a report in this regard, and an open-ended standing committee to work inter-sessionally to follow up on recommendations concerning the implementation of the NPT including the 1995 NPTREC decisions and resolution.

Towards 2020

The guidance on improving the effectiveness of the strengthened review process, contained in the 2000 Final Document remains valid and is designed to provide for greater accountability regarding the full implementation of all aspects of the Treaty and to achieve its universality; (including the 1995, 2000 and 2010 benchmarks) and on the implementation of the 1995 resolution on the Middle East. The guidance is quite clear and the value is not clear of attempts to reinterpret, reformulate, or to backtrack from the 1995 and 2000 texts on the strengthened review process for the Treaty—instead the focus needs to be on bridging political differences in the interest of the Treaty. The success of an improved strengthened review process during the current preparatory cycle starting with the 2017 PrepCom will depend upon:

- the constructive and cooperative role played by the NWS;

- the constructive role and support of the NNWS;
- preparations by States and their support for the Chairs; and
- international political developments affecting the NPT.

The 2017 NPT Preparatory Committee

For the first session of the Preparatory Committee in 2017 it is crucial that the States parties come to the Preparatory Committee well-prepared and with a positive outlook for laying the groundwork for a full, balanced, and credible review of the Treaty as provided for in NPT Article VIII.3, Decision 1 of 1995 NPTREC, and the section of the 2000 Final Document on "Improving the effectiveness of the strengthened review process", including as well the agreed outcomes of the 1995, 2000 and 2010 review conferences.

Dates, Venue, Chairs

The first session of the Preparatory Committee for the 2020 NPT Review Conference will take place at the Vienna International Centre (VIC), the complex housing the IAEA, CTBTO and the UN in Vienna (Austria), from 2 through 12 May 2017. In keeping with previous practice, the first session of the Preparatory Committee will be chaired by a representative of the Western Group, which has endorsed the candidacy of Ambassador Henk Cor van der Kwast of the Netherlands. A heavy responsibility rests on the shoulders of the Chair in providing good direction and thereby ensuring a positive outcome at the first session of the Preparatory Committee, not only because of concerns about the pace and future of nuclear arms reductions, cooperation in peaceful uses of nuclear energy, compliance with IAEA safeguards, nuclear safety and security, withdrawal, universality, and regional issues in particular the Middle East and the Democratic People's Republic of Korea (DPRK); but because of the importance of implementing the improved strengthened review process along a path that can be sustained in subsequent years.

The Eastern Group and the NAM will chair the second and the third sessions of the Preparatory Committee, respectively, in 2018 and 2019. As noted above, Ambassador Adam Bugajski of Poland would be nominated by the Eastern Group to chair the 2018 session. The chair for the 2019 session presumably will be from the Asia-Pacific NAM States parties. A fourth session, if necessary, could be held in 2020, which according to the rotation, presumably would be chaired by the Western Group. The 2020 Review Conference will be chaired by the NAM (in accordance with past practice and for political reasons because it represents the largest grouping of NPT parties). As noted above, the candidate likely to be proposed from the Latin America and Caribbean region will be Ambassador Rafael Grossi of Argentina (even though Argentina formally is not a member of NAM).

In the past until 2004, the locations of Preparatory Committee sessions have alternated between New York and Geneva, but starting in 2007 the first

session has taken place in Vienna. Review Conferences have been held in Geneva until the 1990 NPT Conference, after which they have been held in New York. With the 1995 NPTREC, it was agreed informally that all subsequent review conferences would be held in New York, given that the largest number of countries have representation at the UN headquarters, hence the 1995–2015 Review Conferences have been held in New York as will the 2020 conference.

Opening

In keeping with past precedent, the Preparatory Committee could be opened by the Representative of the UN Secretary-General or by the President of the 2015 NPT Review Conference.

After a few brief comments noting NPT Article VIII.3 on the review of the Treaty, the related decisions and resolution of the 1995 NPTREC, the 2000 and 2010 Final Documents as well as the relevant UNGA resolution (A/RES/70/238 of 11 December 2015), to establish the legal basis for the Preparatory Committee, the candidacy as Chair of Ambassador Henk Cor van der Kwast would be announced. Following past practice, as States parties would have previously consulted and reached agreement, the Committee would unanimously elect the Chair. Ambassador van der Kwast, as the newly elected Chair, would then give a short opening statement, probably expressing some preliminary views on the conduct and organization of the work of the Preparatory Committee and seek the support of States parties present for a harmonious and productive session.

The candidacy of Ambassador Bugajski on behalf of the Group of Eastern States for the chairmanship of the second session of the Preparatory Committee could be announced and subsequently confirmed. Nominations of the candidature for the chair of the 2019 session and of the presidency of the 2020 NPT Review Conference could also be announced, if agreed amongst the NAM States parties. The persons elected, when not serving as Chair, would serve as Vice-Chair during the meetings of the PrepCom.

The first meeting of the Preparatory Committee, would also decide on a number of important items including: “Agenda” and “Programme of Work”, as well as invite the UN Secretary-General to nominate an official (from the Office for Disarmament Affairs), in consultation the Preparatory Committee, to act as provisional Secretary-General of the 2020 NPT Conference, a nomination to be later confirmed by the Conference itself. This official would be nominated as the Secretary of the Preparatory Committee, to coordinate the logistical and administrative arrangements (i.e. preparation of summary/verbatim records, if required; secretarial, interpretation and translation arrangements; prepare cost estimates for the work of the Preparatory Committee; etc.), and to provide assistance to the Chair.

The dates for the 2018 and 2019 sessions of the PrepCom, and of the 2020 Review Conference, also could be agreed and this year's inaugural session of the PrepCom.

Agenda

The "Agenda" would set out the list of items to be considered by the Preparatory Committee, while the "Programme of Work" would deal with the organization of the work of the Preparatory Committee. In this regard, NPT parties will need to identify the issues to be addressed by the Preparatory Committee, agree to a work schedule to deal with those matters, while ensuring that adequate time is allocated for discussing each item. The Agenda should outline the sequence for the conduct of the proceedings of the Preparatory Committee. In reality, the draft agenda would be drawn up under the guidance of the Chair-designate of the Preparatory Committee (in consultation with the depositaries and other States) by the United Nations Office for Disarmament Affairs—that provides secretariat services to the NPT review process. A possible notional listing of agenda items based on past practice appears purely for discussion purposes in Annex I.

Timetable and Programme of Work

Annex II outlines a notional timetable based on the principle of a "structured and balanced review" and generally organized in terms of the delineation of items as agreed in 1995–2015.

The "Programme of Work" has traditionally dealt with the organization and procedures for both the Preparatory Committee as well as the Review Conference. Annex III(A) outlines a programme of work based on the principle of a "structured and balanced review" along traditional lines, while Annex III(B) outlines a programme of work also based on the principle of a "structured and balanced review" but organized in terms of an *article-by-article* review. The Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC) are considered article-by-article in their respective review and States parties' conferences, and it is time that the NPT also follows a similar practice. Such a modality could help in dealing with the question of overlap as mandated in paragraph 5 of Decision 1 (1995 NPTREC).

It would be desirable if the programme of work for the PrepCom can be quickly agreed at the outset. The Preparatory Committee will have to consider certain procedural issues such as the: composition of the bureau (vice chairs); dates and venues for the sessions in 2018 and 2019; working languages; and methods of work; and for the Review Conference, issues such as: date and venue; rules of procedure; financing; background documentation; agenda; etc. However, under the guidance provided in the 2000 Final Document, these items need not be finalized until the final session of the Preparatory Committee in 2019; on the other hand, many of these are pretty much routine

matters and can be easily agreed up front. How to deal with the reporting requirements established in 2000 and 2010, could be clarified in time for 2020.

The tone and thrust of not only the 2017 session of the Preparatory Committee, but also of its future sessions, will be influenced by the "Indicative Timetable" outlining the "Programme of Work". The Preparatory Committee in 2017 likely will have a total of 18 working sessions—two per day over each of 9 days, given that 1 May is a UN holiday. The opening session should not only complete the ceremonial proceedings—statements opening the Preparatory Committee, election of the Chair, organization of the work (i.e. the Agenda)—but also should commence the general exchange of views, or opening statements by States outlining their priorities and objectives. The general debate could be completed in two sessions, provided opening statements are limited to five minutes or less each—with the full texts to be electronically circulated in English and uploaded to the website of the UN Office for Disarmament Affairs in real time. (States do themselves a disservice when they do not circulate their statements in English, rules of procedure regarding working languages notwithstanding.)

One working session is to be set aside for NGO presentations, and this session should take place directly after the conclusion of the general exchange of views. This is to better factor in the views of civil society stakeholders, and it is time to consider also inviting representatives from the nuclear industry to present their views in a separate session.

The next 12 working sessions could address the following sets of issues reflecting the three general purposes of the Treaty: (*a*) nuclear non-proliferation and nuclear disarmament; (*b*) safeguards and nuclear-weapon-free zones; and (*c*) facilitating cooperation in the peaceful uses of nuclear energy. Thus, each set of issues would have four working sessions. Furthermore, the discussions within each set of issues could be further structured to enable a consideration of relevant matters or blocs of issues.

Under nuclear non-proliferation and nuclear disarmament, for example: two working sessions could address the implementation of Articles I and II and preambular paragraphs 1 to 3, and Article VI and preambular paragraphs 8 to 12; the third session could discuss the reports requested by the 2010 and 2000 Review Conferences; and the last session could review security assurances.

The discussions on safeguards could be organized to deal with: in one session, the application and strengthening of comprehensive and strengthened safeguards; in the second session, compliance with IAEA safeguards and the NPT; and the third session could address nuclear safety and nuclear security.

Regional issues and the implementation of the 1995 resolution on the Middle East, and the nuclear programme and activities of the DPRK, deserve a session of their own under cluster 2.

The assessments on peaceful uses of nuclear energy, could address: cooperation in peaceful uses and multinational approaches to the nuclear fuel

cycle in one session; technical cooperation and transfers in the second session, and issues such as nuclear and transport safety and security plus nuclear liability in one session.

Achieving the universality of the Treaty, addressing concerns regarding withdrawal from the Treaty and other related matters could be discussed in a separate session.

One working session could be devoted to an exchange of views on the improved strengthened review process but taking due care not to undermine Decision 1 of the 1995 NPTREC and the 2000 guidance.

Such a division of labour or programme of work could provide sufficient time and opportunity to address all of the important current issues of concern to NPT States, in a structured and balanced matter.

This would leave the entire last day for discussion of the draft summary report of the Preparatory Committee and the release of a *Statement on the "State of the NPT 2017"* (as described in a later section of this paper). However, in practice, the Chair should have initiated the drafting of the summary report and the *Statement* before the end of the first week, and engaged in extensive consultations in securing both input and support for this exercise.

Article-by-Article Review

An *alternative approach* to the work programme could be to structure the work of the Preparatory Committee to enable a straightforward, yet structured and balanced, review of the implementation of all articles of the NPT, organized on an *article-by-article* basis.[7] The first four working sessions, over the first two days, would be structured as described above. But the next 9 working sessions would each deal sequentially with the first nine articles of the Treaty along with the relevant preambular paragraphs. Items such as physical protection, nuclear terrorism and others, would be subsumed in the discussions under relevant or related articles.

One working session each could be devoted to: the strengthened review process and reporting requirements; universality; the Middle East resolution and regional issues such as the DPRK; security assurances; compliance; and the "practical steps"; leaving the final day for the finalization of the report of the Preparatory Committee and the Statement on the "State of the NPT 2017".

An *article-by-article* structuring of the discussions could be both simple yet time efficient and would represent a paradigm change in the way the implementation of the NPT has been viewed. Such an approach could also facilitate both a backward and a forward look at each article, and its associated

[7] Rauf, T., 'PrepCom opinion: farewell to the NPT's strengthened review process?', *Disarmament Diplomacy*, no. 26 (May 1998); 'Strengthened review process for the NPT in disarray', *Ploughshares Monitor*, vol. 19, no. 2 (June 1998); and Markram, T., *Options for Further Strengthening of the NPT's Review Process by 2015*, UN Office for Disarmament Affairs (UNODA) Occasional Papers, no. 22 (UNODA: Dec. 2012).

issues, in a consolidated manner but with reference to the "Conclusions and recommendations for follow-on actions" agreed in 2010, and the earlier outcomes of 2000 and 1995.

A similar programme of work could also serve as guidance for the 2018 and 2019 sessions of the PrepCom, taking into account relevant international developments.

Special Focus or Allocation of Time

Beginning with the 1998 session of the Preparatory Committee, precedent was established for allocating time for the consideration of specific items within the overall context of nuclear disarmament and other substantive issues. Thus, *inter alia*, a fissile material cut-off treaty, security assurances, and the Middle East were each allocated a meeting.

The 2000 Final Document in its guidance on the enhanced strengthened review focus (paragraph 3) clearly stipulates that specific time is to be allocated at sessions of the Preparatory Committee to address specific relevant issues. There is no linear correlation between the allocation of specific time to particular issues at the Preparatory Committee and the allocation of specific issues to subsidiary bodies at the Review Conference.

In my view, given recent developments and the continuing deadlock at the CD, it might not make much sense to allocate specific time in 2017 to reiterate well known positions on the FMCT stated in the CD, without detracting from the importance of the FMCT as a significant nuclear disarmament measure, as the NPT review process is not the forum to resolve the continuing deadlock at the CD. The FMCT and the CTBT could be discussed in the general part of the consideration of Article VI issues. A more practical approach could be to provide for focused discussion on current important items such as: the state of nuclear disarmament; compliance; strengthening physical protection of nuclear and radioactive materials; preventing nuclear terrorism; nuclear fuel cycle arrangements; and strengthened IAEA safeguards, among other issues. Other items deserving specific time include a discussion on the reporting requirements (nuclear disarmament and the Middle East), improving the effectiveness of the strengthened review process and security assurances. However, in practice, the Chair of the 2017 Preparatory Committee could consider advance consultations to reach agreement on which items would be allocated specific time.

Summary Records

The Preparatory Committee session will also have to decide on the manner of keeping summary (and/or verbatim) records of the meetings of each session, records of decisions, and on the nature of a progress report on the work of the Committee and any recommendations for work in future sessions, as well as on press releases, to be issued at the conclusion of each session of the

Preparatory Committee. In keeping with previous practice, and to keep costs in check, it is probable that summary records will be kept on the opening and closing meetings, and the general exchange of views. The discussions and recommendations on substantive matters would be reflected in the main body of the report of the Preparatory Committee to be agreed by consensus; failing that, the general thrust of the substantive discussions could be captured in the Chair's report—this issue is discussed below in some detail. Over the last four review cycles, NGOs such as the Acronym Institute and Reaching Critical Will have provided useful services by posting working papers on the Internet and providing their own daily assessment—such contributions should be encouraged and facilitated. Digital records are now being kept and these include all statements, working papers, CRPs and official documents of the PrepCom. NGOs have been particularly agile in posting statements and documents on the Internet—this informal practice should be encouraged and supported.

Rules of Procedure

In general, Preparatory Committee sessions in the past have not formally adopted their own specific rules of procedure, but have drawn upon the rules of procedure for the previous Review Conferences for guidance if decisions could not be reached on the basis of consensus. Thus, the Preparatory Committee could apply mutatis mutandis the Rules of Procedure of the 2015 NPT Review Conference. Under the guidance provided in the 2000 Final Document, the last session of the Preparatory Committee is charged with finalizing procedural arrangements. Thus, the 2018 or 2019 sessions of the Preparatory Committee could consider finalize agreement of the "Rules of Procedure" for the 2020 NPT Conference. In practice these would be the same as those for the 2015 Review Conference, with minor technical amendments as required.

Participation

The Preparatory Committee will need to decide on the participation of non-NPT parties. Previous sessions of the Preparatory Committee have decided to follow past practice and to permit non-NPT States to attend the open sessions of Preparatory Committee as "observers" with the right to receive Preparatory Committee documentation but to circulate their own documentation, if any, at their own cost to NPT parties—however, after 1998 none have showed up formally, though some have lurked about in the corridors, while Israel attended as an observer in 2015. Non-NPT States would sit at the back of the meeting room behind their country name-plates but would not have the right to make statements, interventions, or to participate in the deliberations except as observers.

However, the possibility should be explored of allocating time for engaging with the non-NPT States in a structured and substantive manner. In this context, the Chair could suggest a special meeting on the margins of the Preparatory Committee—for example, during a lunch break or in the evening—at which the non-parties could make statements and engage the NPT States parties in a substantive exchange of views on nuclear non-proliferation, nuclear disarmament, export controls, universality and the Middle East. This is now especially important as the 48 participating States in the Nuclear Suppliers Group (NSG) are well advanced in considering extension of membership to non-NPT States and many NSG supplier States already are providing nuclear cooperation to nuclear armed non-NPT States without requiring from them any binding commitment on nuclear disarmament and restraint in their fast developing nuclear weapon capabilities—thus de facto creating a new category of States which possess nuclear weapons, operate unsafeguarded nuclear facilities and benefit from nuclear cooperation provided by NPT States without being parties to the NPT and to the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

The status of the DPRK, which gave notice in January 2003 of its withdrawal from the Treaty, has remained an unresolved matter, (i.e. whether NPT States consider the DPRK as remaining a State Party or having left the Treaty). Starting with the 2003 Preparatory Committee, the Chair has kept the DPRK nameplate in his custody and it has not been assigned a seat in the usual alphabetical place in the meeting room. This stratagem in the past has avoided arguments about the DPRK's status regarding the NPT, though it seems this practice was discontinued from 2012. As there is no possibility that the DPRK will show up at an NPT meeting, there is no need to be concerned about keeping a DPRK nameplate in reserve in the custody of the Chair.

The participation of NGOs has been regularized by the 2000 Final Document. NGOs can attend the open sessions, while seated in the public gallery, to receive official documentation but to circulate their own documentation at their own cost, outside the official meeting room. One afternoon session should be set aside for NGOs to make presentations to delegates. It is recommended that this be done as early as possible in the Preparatory Committee. Furthermore, access by NGOs to working papers and other documents of the Preparatory Committee should be facilitated. As noted above, NGOs have been particularly agile in posting statements and documents on the Internet—this informal practice should be encouraged and supported.

Specialized agencies and international and regional Intergovernmental Organizations such as the CTBTO, the Arab League, OPANAL, EU, ICRC OPCW, OIC and others have in the past been accorded privileges to attend the Preparatory Committee, but they can only circulate speeches, not deliver them verbally. Given the integral relationship of the CTBT to the NPT, the status of the CTBT could be elevated by giving the CTBTO a speaking slot in the

opening session of the PrepCom and a place in the secretariat for the NPT review process.

General Exchange of Views

The General Exchange of Views could well involve a protracted discussion on substantive issues relating to the implementation of the Treaty, as well as on the meaning, interpretation, and operationalization of the "actions" agreed in 2010, and earlier commitments in 2000 and 1995. Given the limited time available, it is recommended that the general exchange of views commence in the very first session, on the morning of Tuesday, 2 May, right after the completion of the initial procedural elements. In this context, shorter rather than longer statements would lend themselves to an efficient use of limited time, and group statements such as those by the EU and the NAM also should be limited given that individual member States of these entities also take the floor in their national capacity. If the effectiveness of the strengthened process is to be improved, one important component needs to be better time management. Again, the Chair should be in a good position to complete his prior consultations in the previous week, or the weekend, preceding the opening of the Preparatory Committee, thus initiating an efficient and timely start and approach to work. The practice of efficient time management adopted by the Chair of the 2014 PrepCom set a good precedent.

Chair's Consultations

Much, of course, will depend upon the Chair-designate of Preparatory Committee I, and how he guides the first session of the Preparatory Committee through some rough territory to a successful conclusion. Traditionally, Chairs have relied on consultation with a select, but geographically and politically representative group of countries, informally referred to as "Friends of the Chair." Such groups, which are necessarily kept small in membership, were organized to assist in identifying and building consensus.

At the 1995 NPTREC, Ambassador Dhanapala pulled together "President's Consultations" involving 25 of the principal players, that was instrumental in crafting the language for the package of extension decisions. Ambassador Pasi Patokallio (1997) followed suit with a slightly smaller group of some 22 States, while Ambassador Eugeniusz Wyzner (1998) also tried the same (but lost control with a large number of states "walking-in"), and Ambassador Camilio Reyes (1999) worked informally with an unstructured group.

In 2000, Ambassador Abdallah Baali consulted widely but avoided setting up a "Friends of the President" group and this practice served to be beneficial in securing the support of States for the President's initiatives—in this endeavour he was greatly assisted by the side negotiations between the New Agenda Coalition and the nuclear-weapon States on nuclear disarmament, and between Egypt and the United States on the Resolution on the Middle East.

During the 2002–2004 Preparatory Committee cycle, in 2002 Ambassador Henrik Salander, in 2003 Ambassador László Molnár, and in 2004 Ambassador Sudjadnan Parnohadinigrat, all avoided a formal "Friends of the Chair" group, but consulted with ad hoc groupings of States on various substantive matters.

At the 2005 Conference, formal consultations with select groups were eschewed in favour of consultations with regional groups, or other informal groupings based in specific issues. During the 2007–2009 Preparatory Committee cycle, in 2007 Ambassador Yukiya Amano, in 2008 Ambassador Volodomyr Yelchenko, and in 2009 Ambassador Boniface Chidyausiku, generally followed the previous practice.

In 2010, a cross-regional group of some 16+ States was instrumental in assisting the President in the latter half of the Conference; and some 20 States attended the President's consultations in 2015. During the 2012–2014 Preparatory Committee sessions, Ambassador Peter Woolcott in 2012 and Ambassador Cornel Feruţă in 2013 met informally with small groups of States in addition to the regional groups and issue-based coalitions, while in 2014 Ambassador Enriquè Romàn-Morey consulted widely with individual States, regional and issue-based groups but did not convene "Friends of the Chair" consultations.

In 2014, the PrepCom Chair did not convene formal consultations, but consulted widely and frequently including with the nuclear-weapon States, issue-based groupings such as the NAC and the Non-Proliferation and Disarmament Initiative (NPDI) among others, and with regional groupings as well as interested States individually. Thus, it may be desirable that the 2017 PrepCom Chair dispense with a formal "Friends of the Chair" group but engage in frequent and wide ranging consultations on an on-going basis with regional, sub-regional and issue-specific groupings, and importantly keep the PrepCom informed fully on a timely (daily) basis in a spirit of pro-active transparency—this can easily be achieved by a short update briefing by the Chair just before the close of proceedings each and every day without exception, the tendency for Chairs to "disappear" in backroom discussions is not only disruptive but also disrespectful of States parties. This would serve to create confidence and bolster trust in the Chair, strengthen transparency and a provide channel of information—the practices of Byzantine consultations in the shadows or side-rooms hopefully are consigned to the history books.

The prevalence of social media and "tweets" by delegates cannot substitute for proper and regular updates provided to all delegates. The result would be to further cement the practice of openness and wide ranging consultation, thus building greater support for the Chair's constructive initiatives to guide the preparatory committee to a successful outcome that is acceptable to all participating States. The global power balances are changing and this shift will become more evident in the NPT review process.

Vienna Issues

For several review cycles, a group of now 12 States calling themselves the "Vienna Group of Ten"[8] have been submitting working papers on NPT issues relating to Articles III and IV, (i.e. on safeguards and verification, export controls, cooperation in peaceful uses of nuclear energy, nuclear safety and nuclear security, and the CTBT). Fortunately, in 2015 they submitted only one working paper rather than several as in the past, but it was 16 pages long.[9] The Vienna Group of Ten essentially introduces text into the NPT review process on the so-called "Vienna issues" derived mainly from the various resolutions adopted by the IAEA General Conference with the result in certain cases of reopening differences that were papered over at the IAEA; thus consuming valuable time thrashing out matters already discussed at the IAEA. Also included is text from discussions at the CTBTO.

A better approach would be to reflect the negotiated compromises in IAEA General Conference resolutions rather than reopening issues already discussed at the IAEA that results in unproductive and contentious discussions including involving delegates not fully attuned to the particularities of the IAEA based discussions. Attempts to reopen contentious issues in the NPT context such as making the additional protocol the new verification standard, on nuclear security and nuclear safety, will not result in agreement or consensus if this could not be achieved at the IAEA. The agreed text from IAEA and CTBTO resolutions can be incorporated in the Chair's summary report, though this does not necessarily mean that discussion on contentious issues is completely avoided. Contrary to some accounts, progressive proposals came from within the IAEA, such as to strengthen IAEA safeguards after the 1991 Iraq war through the "93+2" programme, rescind the small quantities protocol (for States with little or no nuclear material), integrated safeguards and the State-level approach, strengthen nuclear security and safety, and multinational approaches to the nuclear fuel cycle, among others. Similarly, the CTBTO has generated new ideas such as the integrated field exercises, science and technology benefits of the International Monitoring System, the Group of Eminent Persons, and Youth for CTBTO, among others. These proposals to strengthen the IAEA and the CTBTO did not emanate from the NPT review process but from the two international nuclear verification organizations—the NPT review process broadened endorsement as the Treaty has more States parties than the membership of the IAEA and the CTBTO.

[8] Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden.

[9] 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 'Addressing "Vienna issues": the Comprehensive Nuclear-Test-Ban Treaty, compliance and verification, export controls, cooperation in the peaceful uses of nuclear energy, nuclear safety, nuclear security and withdrawal from the Non-Proliferation Treaty', NPT/CONF.2015/WP.1, 2 Mar. 2015.

Reportedly, there are moves afoot to focus the Vienna session of the PrepCom on "Vienna issues" (such as, safeguards, safety, security); the Geneva session of the PrepCom in 2018 on "Geneva issues" (including FMCT, NSA, nuclear disarmament); and, the 2019 session in New York on "New York issues" (such as, nuclear disarmament and NWFZs). While this might seem an attractive way to at first glance to order the work of the successive sessions of the PrepCom, in practice it is unlikely to be an improvement over current practice and in any case most States will call for the proceedings to cover all significant issues and not to "favour" any except for those assigned to consideration under specific time. Furthermore, since Geneva-based diplomats attend all sessions of the PrepCom, as such there is not much to be gained by introducing 'venue based' discussions. A more useful approach might be an article-by-article review as presented above.

Products or Outcomes of the Preparatory Committee

The sessions of the Preparatory Committee respectively for the 2015, 2010, 2005 and 2000 Review Conferences experimented with different approaches ranging from a rolling text or progress report to be updated at each subsequent session of the PrepCom to a short document reflecting the views of NPT States on substantive matters of current importance relevant to the Treaty to a lengthy Chairman's Working Paper (except in 2014). In the end, given unresolvable differences as noted above, the end result was that the report of the Preparatory Committee would comprise a technical part on procedural issues, a factual outline of the substantive work of the Preparatory Committee (including as appendices the Chairman's Working Paper, as well as proposals submitted by delegations concerning the Chairman's Working Paper, on the clear understanding that these did not command consensus at the Preparatory Committee).

The previous four Preparatory Committee cycles were both disappointing and damaging. While more time was devoted to discussing substantive matters as compared to procedural issues, the strengthened review process was undermined. Only a very few States contributed intellectual or conceptual capital toward the elaboration or development of an effective or results-oriented strengthened review process. Most were satisfied by merely criticizing or opposing constructive ideas and concepts.

Will a similar fate befall the 2017 Preparatory Committee and its future sessions? Will there be cooperation or undermining of the improved strengthened review process? Will delegations be adequately prepared and briefed? While it is too early to provide definitive answers, there are important lessons to be derived from the previous experiences. These are that: those States that developed the new guidance on the strengthened review process have the responsibility to demonstrate a continuing leadership role; the Chair must consult widely and frequently in advance in order to try to chart out a

course of action conducive to a positive outcome; delegations must engage in proper preparations and adequately brief those among their ranks who were not present in 2015; and a results- or product-oriented approach based on pragmatism must be adopted.

Product of the 2017 Preparatory Committee

The 2000 Final Document provided additional guidance for the work and mandate of the Preparatory Committee. It reaffirmed NPTREC Decision 1 on "Strengthening the Review Process for the Treaty", that provided for in its paragraph 4 that:

> "The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the decision on principles and objectives for nuclear non-proliferation and disarmament, adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference."

This mandate was clarified and enhanced in the 2000 Final Document's section on "Improving the effectiveness of the strengthened review process for the NPT" (paragraph 7):

> "The consideration of the issues at each session of the Preparatory Committee should be factually summarized and its results transmitted in a report to the next session for further discussion. At its third and, as appropriate, fourth sessions, the Preparatory Committee, taking into account the deliberations and results of its previous sessions, should make every effort to produce a consensus report containing recommendations to the Review Conference."

A faithful reading of the guidance agreed by NPT States would suggest that beginning in 2000 the Preparatory Committee is mandated to produce a report for transmission to subsequent sessions, and at its final session for every effort to be made to produce a consensus report containing recommendations to the review conference. Each session should produce a report factually summarizing the consideration of issues at that session. Learning from previous experience, the 2000 Conference guidance does not require that the first two (or three) sessions necessarily produce a consensus report. Obviously, every effort should be made to agree to such a factual summary report, but failing consensus there is the possibility for the Chairman to produce her/his version of a concise summary report and to transmit it to the

next session under his/her authority (subject to approval of such action by the Preparatory Committee).

A factual summary report reflecting the consideration of issues could be drafted in a number of different ways. It could comprise a condensed reflection of views of States on the issues discussed, drafted by the Chair and the Secretariat staff, or alternatively drafted by States parties through negotiation. While some States parties might be reluctant to give this task to the Chair, in practice it would be more efficient and less controversial to charge the Chair to produce a draft and for the Preparatory Committee to forward it to the next session with a minimum of negotiation.

Another model could be a report reflecting the views of groupings of States; such views would reflect both convergence and divergence but would be an honest and precise rendition of the proceedings. It could be produced on the authority of the Chair. Another part of the report could be agreed by consensus on recommendations for further action in implementing the Treaty (and the 2010/2000/1995 documents) during the period leading up to the next (2018) session of the Preparatory Committee.

Would a factual summary report comprise of one section addressing a review of the implementation of the Treaty (and the 1995–2010 documents) during the period June 2015 through April 2017, and another section dealing with recommendations for further action in implementing the Treaty and the 1995–2010 "actions" during the period leading up to the 2018 session of the Preparatory Committee? The guidance contained in the 1995 and 2000 documents would support such an interpretation.

The report of the Preparatory Committee should be factual, concise and reflect "elements" rather than detailed repetitive text which would require prolonged negotiations. Ideally, the report could consist of some paragraphs covering procedural elements and review of implementation during the period 2015–2017 (of the Treaty and the 1995, 2000 and 2010 outcomes), and some paragraphs on forward-looking elements covering the period 2017–2018. This could be accomplished in a report of between 20–30 paragraphs—the 2014 Chair's working paper could be a relevant guide.

In the 1997–1999 PrepCom cycle, a "rolling text" was considered (i.e. that the report and recommendations from the 1997 session would be taken up at the 1998 session and further developed and elaborated, and the consolidated rolling text finalized at the 1999 session). In practice, the "rolling text" became a nightmare document containing paragraphs that had been provisionally agreed, paragraphs that remained under discussion pending agreement and paragraphs not yet discussed, running into nearly 200 paragraphs with dozens of bracketed text. It was not surprising that in the end no agreement could be reached on a report and recommendations to the 2000 Review Conference. A rolling text was not proposed or tried out at the review cycles in 2002–2004 and later. Will another better organized attempt at

producing a "rolling text" in 2017 be successful, remains to be seen though its chances of success likely may be poor?

Whatever form is adopted for the factual summary prepared by the Chair, the report must be accorded formal status and it should comprise an integral part of the report of the first session of the Preparatory Committee. This means that it should appear in the main body of the report of the Preparatory Committee and not as an appendix or annex. The working papers submitted by States can be appended to the report of the Preparatory Committee and transmitted to the next session to serve as inputs. States should make every effort to keep their Working Papers short and not more than 1 to 2 pages in length.

Status of the Preparatory Committee

It is frequently asserted by some States parties that the final compromises cannot be reached until the final session of the PrepCom and that therefore there should not be high expectations for the earlier sessions to agree on matters of substance, and that *only* at Review Conferences can meaningful agreements be reached. Such a view detracts from the importance and relevance of the work of the PrepCom and overloads the Review Conference. The work of the PrepCom must be accorded enhanced credibility and its sessions utilized to set interim targets or objectives to promote the full implementation of the Treaty in the intervening year between PrepCom sessions. In order to enhance the relevance of the PrepCom to the nuclear non-proliferation and nuclear disarmament challenges of the day, it is essential that the PrepCom sessions focus on taking the pulse of the Treaty and recommend appropriate actions as necessary to strengthen the implementation, authority and credibility of the NPT by adopting at each session a "Statement on the State of the NPT".

Statement on the "State of the NPT"

In order that the PrepCom sessions focus on taking the pulse of the Treaty and recommend appropriate actions as necessary to strengthen the implementation, authority and credibility of the NPT, as was recommended by Canada in 1998, the PrepCom should be able to adopt a "Statement" by the PrepCom on the "State of the NPT" in each of its sessions. Such a Statement, patterned on the Statement by the President of the Security Council on behalf of the Council, would reflect the general views of States parties on the prevailing international situation as it relates to the NPT at the time of the PrepCom. For example, the 2017 Statement *inter alia* could express concern about the two nuclear tests carried out in 2016 by the DPRK and call for resumption of negotiations on a nuclear-weapon-free Korean peninsula, welcome the entry-into-force of the Amendment to the (IAEA) Convention on the Physical Protection of Nuclear

Material (CPPNM) in May 2016, encourage the Russian Federation and the United States to conclude a follow-on treaty to the New START and to preserve and respect the INF Treaty, encourage the remaining eight Annex II States to sign and/or ratify the CTBT, encourage consultations on the implementation of the 1995 Resolution on the Middle East, welcome the 2016 IAEA Safeguards Implementation Report, the IAEA Reports on Nuclear Energy, Nuclear Security, Nuclear Safety and others, etc. Such a Statement need not exceed one to two pages, should be endorsed by the PrepCom, issued by the Chair on behalf of the PrepCom and circulated for disarmament at the Conference on Disarmament and the UN General Assembly.

Conclusion

The effective implementation of a well-designed, results-oriented, strengthened review process is central to the fulfilment of the principle of "permanence with accountability". The review process, comprising the Preparatory Committee sessions, the Review Conference itself, and any other mechanisms agreed by the States parties should address two basic questions: for what are States parties accountable; and how that accountability is to be exercised? The strengthened review process must be "product-oriented" and structured to facilitate the attainment of the objective of permanence with accountability, that entails accountability by all NPT States for compliance with and fulfilment of undertakings under the Treaty and the 2010 "actions" (and previous commitments from 2000 and 1995).

ANNEX I. Preparatory Committee for NPT 2020 Review Conference: Notional Agenda

1. Opening of the session/[Address on behalf of by the UN Secretary General].

2. Election of the Chair.

3. Adoption of the Agenda.

4. Adoption of the Provisional Rules of Procedure (NPT 2010 RC).

5. General debate on issues related to all aspects of the work of the Preparatory Committee.

6. Statements by non-governmental organizations.

7. Preparatory work for the review of the operation of the Treaty in accordance with Article VIII, paragraph 3, of the Treaty, in particular, consideration of principles, objectives and ways to promote the full implementation of the Treaty, as well as its universality, including specific matters of substance related to the implementation of the Treaty and Decisions 1 and 2, as well as the resolution on the Middle East, adopted in 1995; the Final Document of the 2000 Review Conference; and the conclusions and recommendations for follow-on actions adopted at the 2010 Review Conference.

8. Organization of work of the Preparatory Committee:
   (a) Election of officers;
   (b) Dates and venues for further sessions;
   (c) Methods of work:
      (i) Decision-making;
      (ii) Participation;
      (iii) Working languages;
      (iv) Records and Documents; and
      (v) Reports [as required by 2000 and 2010 Final Documents].

9. Reports on substantive and procedural issues, recommendations to the next session of the Preparatory Committee, and draft recommendations to the Review Conference (at the final session).

10. Organization of the 2020 Review Conference:

(a) Dates and venue;
(b) Draft rules of procedure;
(c) Election of the President and other officers;
(d) Appointment of the Secretary-General;
(e) Provisional agenda;
(f) Financing of the Review Conference, including its Preparatory Committee;
(g) Background Documentation; and
(h) Reports [as mandated in the 2000 and 2010 Final Documents].

11. Final Document(s).

12. Adoption of the final report and recommendations of the Preparatory Committee to the Review Conference.

13. Any other matters.

ANNEX II. Notional Indicative Timetable: 2017 NPT Prepcom

Week One 2–5 May 2017	Monday, 1 May	Tuesday, 2 May	Wednesday, 3 May	Thursday, 4 May	Friday, 5 May
	UN Holiday	10:00 - Opening of the session - Organization of work of PrepCom 15:00 General Debate (item 5)	10:00 General Debate (item 5) 15:00 Statements by NGOs (item 6)	10:00 Cluster 1 issues 15:00 Cluster 1 issues (including Reports)	10:00 Cluster 1 issues Specific issue: nuclear disarmament and security assurances 15:00 Cluster 1 issues: Specific issue: nuclear disarmament and security assurances
Week Two 8–12 May 2017	**Monday, 8 May**	**Tuesday, 9 May**	**Wednesday, 10 May**	**Thursday, 11 May**	**Friday, 12 May**
	10:00 Cluster 2 issues 15:00 Cluster 2 issues	10:00 Cluster 2 Regional issues including Middle East and 1995 ME RES, and DPRK 15:00 Cluster 2 Regional issues incl. Middle East and 1995 ME RES, and DPRK	10:00 Cluster 3 issues 15:00 Cluster 3 issues	10:00 Cluster 3 issues Specific issue: Nuclear safety and nuclear security 15:00 - Strengthened review process - Other provisions of the NPT, incl. Article X	10:00 Draft report 15:00 - Adoption of the report - Statement on the State of the NPT - AOB

ANNEX III (A). NPT Preparatory Committee 2017 Notional Programme of Work (Traditional Format)

Monday, 1 May	United Nations "May Day" Holiday.
Tuesday, 2 May	
[*09:00–10:00*	*Informal Consultations*].
10:00–13:00	Opening of the session (item 1 of the agenda). Election of the Chair (item 2). Adoption of the Agenda (item 3). Adoption of the Provisional Rules of Procedure (NPTRC 2010) (item 4). Organization of work of the Preparatory Committee (items 5 and 6). General exchange of views (item 5).
15:00–18:00	General exchange of views (item 5).
Wednesday, 3 May	
10:00–13:00	General exchange of views (item 5).
15:00–18:00	Statements by NGOs (item 6).
Thursday, 4 May	
10:00–13:00	Cluster 1: *Articles I* and *II* and preambular paragraphs 1 to 3, *Article VI* and preambular paragraphs 8 to 12.
15:00–18:00	Cluster 1: *Articles I* and *II* and preambular paragraphs 1 to 3, *Article VI* and preambular paragraphs 8 to 12. Discussion on and consideration of any proposals and reports on the implementation of the 2010 "action plan", as well as of Article VI, paragraph 4(c), of the 1995 Decision on Principles and Objectives for nuclear non-proliferation and disarmament, and the practical steps agreed in the Final Declaration of the 2000 Review Conference, and recalling the 1996 ICJ advisory opinion.
Friday, 5 May	
10:00–13:00	Cluster 1: *Articles I* and *II* and preambular paragraphs 1 to 3, *Article VI* and preambular paragraphs 8 to 12.

	Discussion on nuclear disarmament and security assurances.
15:00–18:00	Cluster 1: *Articles I* and *II* and preambular paragraphs 1 to 3, *Article VI* and preambular paragraphs 8 to 12. Discussion on nuclear disarmament and security assurances.
Monday, 8 May	
10:00–13:00	Cluster 2: *Article III* and preambular paragraphs 4 and 5, especially in their relationship to *Article IV* and preambular paragraphs 6 and 7; *Articles I* and *II* and preambular paragraphs 1 to 3 in their relationship to *Articles III* and *IV*; *Article VII*.
15:00–18:00	Cluster 2: *Article III* and preambular paragraphs 4 and 5, especially in their relationship to *Article IV* and preambular paragraphs 6 and 7; *Articles I* and *II* and preambular paragraphs 1 to 3 in their relationship to *Articles III* and *IV*; *Article VII*.
Tuesday, 9 May	
10:00–13:00	Discussion on and consideration of any proposals and reports on the 1995 NPTREC Resolution on the Middle East, and the proposed 2012 Conference.
15:00–18:00	Discussion on and consideration of any proposals and reports on the 1995 NPTREC Resolution on the Middle East, and the proposed 2012 Conference.
Wednesday, 10 May	
10:00–13:00	Cluster 3: *Articles III(3)* and *IV*, preambular paragraphs 6 and 7, especially in their relationship to *Article III(1), (2), (4)* and preambular paragraphs 4 and 5; and *Article V*. Discussion on and consideration of any proposals on strengthening physical protection of nuclear material and other radioactive materials.
15:00–18:00	Cluster 3: *Articles III(3)* and *IV*, preambular paragraphs 6 and 7, especially in their relationship to *Article III (1), (2), (4)* and preambular paragraphs 4 and 5; and *Article V*.

	Discussion on and consideration of any proposals on combatting nuclear terrorism and illicit trafficking in nuclear and radioactive materials.
Thursday, 11 May	
10:00–13:00	Cluster 3: *Articles III(3)* and *IV*, preambular paragraphs 6 and 7, especially in their relationship to *Article III(1), (2), (4)* and preambular paragraphs 4 and 5; and *Article V*. Discussion on and consideration of any proposals on nuclear and transport safety, and liability.
15:00–18:00	Other provisions of the Treaty. Discussion on and consideration of any proposals on achieving the universality of the NPT; Article X. Discussion on and consideration of any proposals on Improving the effectiveness of the strengthened review process.
Friday, 12 May	
10:00–13:00	Consideration of the draft report of the Preparatory Committee.
15:00–18:00	Consideration [and adoption] of the report of the Preparatory Committee. Statement on the "State of the NPT 2017". Any other matters.

ANNEX III (B). NPT Preparatory Committee 2017: Notional Programme of Work (Article-by-Article)

Monday, 1 May	United Nations "May Day" Holiday.
Tuesday, 2 May	
[*09:00–10:00*	*Informal Consultations*].
10:00–13:00	Opening of the session (item 1 of the agenda). Election of the Chair (item 2). Adoption of the Agenda (item 3). Adoption of the Provisional Rules of Procedure (NPTRC 2010) (item 4). Organization of work of the Preparatory Committee (items 5 and 6). General exchange of views.
15:00–18:00	General exchange of views.
Wednesday, 3 May	
10:00–13:00	General exchange of views Presentation(s) by NGOs.
15:00–18:00	Presentation(s) by NGOs.
Thursday, 4 May	
10:00–13:00	*Article I* and preambular paragraphs 1 to 3.
15:00–18:00	*Article II* and preambular paragraphs 1 to 3.
Friday, 5 May	
10:00–13:00	*Article III* and preambular paragraphs 4 to 5.
15:00–18:00	*Article IV* and preambular paragraphs 6 to 7.
Monday, 8 May	
10:00–13:00	*Article V* and preambular paragraph 8.
15:00–18:00	*Article VI* and preambular paragraphs 8 to 12.
Tuesday, 9 May	
10:00–13:00	*Article VII*.
15:00–18:00	*Article VIII*.

	Discussion on and consideration of any proposals on improving the effectiveness of the strengthened review process.
Wednesday, 10 May	
10:00–13:00	*Article IX*. Discussion on and consideration of any proposals on achieving the universality of the NPT.
15:00–1800	Discussion on and consideration of any proposals and reports on the 1995 resolution on the Middle East, 2012 Conference on the Middle East, DPRK.
Thursday, 11 May	
10:00–13:00	Discussion on and consideration of any proposals on security assurances for non-nuclear weapon States parties to the NPT. 15:00–18:00 *Article X* and withdrawal from the Treaty, other provisions.
Friday, 12 May	
10:00–13:00	Consideration of the report of the Preparatory Committee.
15:00–18:00	Consideration [and adoption] of the report of the Preparatory Committee. Statement on the "State of the NPT 2017". Any other matters.

The 2020 NPT Review Conference: A Guide to Procedural Matters

TARIQ RAUF

Overview

The 2020 Review Conference will mark the 50th anniversary of the entry into force of the Non-Proliferation Treaty (NPT).[1] The NPT is widely regarded as the cornerstone of the nuclear non-proliferation and disarmament regime. The strengthened NPT review process provides the framework for reviewing the operation and implementation of the Treaty and the outcomes of review conferences. The review conferences, and their preparatory committees, serve the purpose of reviewing and updating interpretations of the Treaty and devising the steps to be taken to further strengthen the NPT regime.

Given developments in the field of international security, few of the commitments agreed by the NPT states at the 1995, 2000 and 2010 review conferences have been fulfilled, leading to growing frustration and discord among the parties to the NPT.

The focus of this paper is on strengthening the review process for the NPT, including procedural matters covering the agenda, the Main Committees, the allocation of items to the Main Committees, the subsidiary bodies, review, recommendations, the reports of the Main Committees and the final document, with a view to presenting assessments and making recommendations that promote a successful outcome at the 2020 NPT Review Conference.

Introduction

The NPT is the world's most successful and most widely adhered to multilateral arms control treaty. It is widely regarded as the cornerstone of global nuclear governance, covering nuclear non-proliferation, nuclear disarmament and peaceful uses of nuclear energy.

The NPT opened for signature on 1 July 1968 and entered into force on 5 March 1970, on deposit of the signature and ratification instruments of 40 states parties and the three depositary states—the United Kingdom, the Soviet Union and the United States. At present, all the states in the world are party to the NPT apart from India, Israel and Pakistan, which have not signed the Treaty, the DPRK, which withdrew from the Treaty in April 2003, and South Sudan—a state that emerged in 2011. Palestine has also acceded to the NPT and deposited its instrument of ratification with the United Nations Secretary-

[1] Treaty on the Non-Proliferation of Nuclear Weapons, article IX.3, IAEA: INFCIRC/140, 22 April 1970, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf>.

General and the three depositary states for the NPT.[2] One of the depositary states has confirmed Palestine's accession as a state party as of 10 February 2015 and circulated a notification to this effect. With Palestine, the NPT has 190 states parties.

At the risk of oversimplification, it could be said that the NPT contains within it a balance between the responsibilities and obligations of the two categories of states parties defined by the Treaty—non-nuclear weapon states (NNWS) and nuclear-weapon states (NWS). The latter are defined in the NPT as those states that had manufactured and exploded a nuclear explosive device before 1 January 1967.[3] This balance revolves around three sets of considerations: a commitment not to develop nuclear weapons by the NNWS and acceptance of IAEA safeguards (verification);[4] nuclear disarmament by the NWS;[5] and the inalienable right of all states parties to make peaceful use of nuclear energy, with due consideration for the needs of the developing world.[6] Other provisions of the Treaty deal with the right of any group of states to conclude regional nuclear weapon-free zone treaties to assure the total absence of nuclear weapons on their respective territories.[7] The right of states parties to withdraw from the Treaty in the exercise of their national sovereignty is provided for along with a procedure for doing so.[8]

In recognition of the balance of commitments between the NNWS and the NWS, the NPT was the first multilateral treaty in modern times to include a provision for the review of the operation of the Treaty, with a view to ensuring that the purposes of the Preamble and the provisions of the Treaty are being realized.[9] The NPT called for a review conference of the parties to be held in Geneva, Switzerland, five years after the entry into force of the Treaty, and at intervals of five years thereafter, if requested by a majority of states parties.[10] Accordingly, the first NPT review conference was held in Geneva in 1975 and review conferences have been every five years thereafter. Since 1995, the review conferences have been held in New York.

Furthermore, the Treaty called for the convening of a conference of states parties 25 years after its entry into force to decide whether the Treaty should continue in force indefinitely, or be extended for an additional fixed period or

[2] State of Palestine, Palestine Liberation Organization, Negotiations Affairs Department, 'Statement by PLO Executive Committee Member Dr Saeb Erekat on Palestine's Accession to International Treaties', 31 Dec. 2014, <http://unispal.un.org/UNISPAL.NSF/0/6AC3115500C569E985257DC100552B95#sthash.AaanJiin.dpuf>, and <http://unispal.un.org/UNISPAL.NSF/0/6AC3115500C569E985257DC100552B95>.

[3] NPT article IX.

[4] NPT article II and III.

[5] NPT article VI.

[6] NPT article IV.

[7] NPT article VII.

[8] NPT article X.2.

[9] NPT article VIII.2.

[10] NPT article VIII.3.

periods, with the decision to be taken by a majority of states parties.[11] In 1995 the Treaty was extended indefinitely by the states parties on the basis of an integrated package of decisions and a resolution adopted without a vote.[12]

The 2020 Review Conference will be shaped by the outcomes of the 2010, 2000 and 1995 review conferences in terms of agreed actions, steps and principles and objectives, as well as the overhang of the frustrations of the catastrophic 2015 Review Conference and the dynamics of various international nuclear disarmament and non-proliferation developments.

In this context it would be instructive to recall the 1995 Review and Extension Conference (NPTREC) Decision 1, on "Strengthening the Review Process for the Treaty" that elaborated a framework for an enhanced, more substantive Treaty review process. This framework was intended to facilitate a full and balanced review of the implementation of the NPT and to forward recommendations on future steps to the quinquennial NPT Review Conferences. Decision 2, on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament," established substantive guidelines and indicative targets designed to promote greater accountability regarding the full implementation of the Treaty. Decision 3, on "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons," emphasized the two preceding decisions, thereby clearly linking them to the indefinite continuation in force of the Treaty. In addition, the resolution on the Middle East endorsed the on-going peace process, stressed the importance of the Treaty's universality in the region, and called for the establishment in the region of an effectively verifiable zone free of nuclear and other weapons of mass destruction and their delivery systems.

It would not be an exaggeration to note that in the two decades that have elapsed since the indefinite extension of the treaty in 1995, deep differences have emerged over the meaning and significance of the 1995 decisions and resolution. These have unnecessarily cast a cloud over the strengthened review process, and more and more delegates have resorted to placing blame for their failure to agree on outcome documents on the nature of the review process than on the reality of their inability to negotiate compromises and on their declining understanding of the NPT review process. In essence, the failure to negotiate binding nuclear disarmament measures at NPT review conferences is blamed on perceived failings of the review process rather than on the lack of negotiating skills and political compromises.

On the eve of the start of the preparatory committee for the 2020 NPT Review Conference, the Treaty is under threat on several fronts that require bold and concerted action. George Santayana warned that those who do not

[11] NPT article X.2.

[12] 1995 NPT Review and Extension Conference, Decision 3, <http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision_3.pdf>.

remember history are condemned to repeat it. A brief summary of the 1995 and 2000 strengthened review process therefore would be in order.

Strengthening the Review Process for the Treaty

The original concept of a "strengthened review process" in the context of the extension decision was first elaborated in a Canadian "non-paper" in early 1995.[6]

Some of the motivations for this non-paper are worth recalling. First, it was clear that many NPT states had concluded that the 1995 NPTREC would provide the last meaningful opportunity to review the implementation of the Treaty and to seriously underscore its goals such as the complete elimination of nuclear weapons. Second, it was obvious that at least a narrow majority — but a legal majority nevertheless—favoured a limited extension (which was an option under Article X.2). They believed a limited extension would provide continuing leverage to force the pace of nuclear disarmament. Third, it was evident that the existing Review Conference structure had not served the NPT membership well. But instead of setting up an entirely new structure that ran the risk of increasing polarization, it was important to retain the attractive features of the review process and to build upon these to endow the process with greater foresight and a stronger basis for measuring compliance. This translated into an initiative giving political substance to enhanced reviews and another initiative providing continued advances in nuclear disarmament and reinforcement of the Treaty. Thus, the two tightly linked initiatives could give sufficient reassurance to states for them to be able to support indefinite extension "plus," rather than only a limited extension.

The key element of the strengthened review process was that the Preparatory Committee for subsequent NPT Review Conferences was specifically mandated to consider principles, objectives, and ways to promote the full implementation of the Treaty, as well as its universality. The final paragraph of Decision 1 specified that Review Conferences, in considering the implementation of the Treaty, could look both back at the period under review as well as make recommendations for further progress and on the necessary means for its achievement. The "intent" of the drafters was to transform future reviews into a qualitatively strengthened process that would increase all states parties' accountability for the Treaty's implementation, and encompass the full scope of the nuclear disarmament and nuclear non-proliferation agenda. In the 1997, 1998, and 1999 PrepCom sessions these issues became a source of controversy and conflict as competing interpretations of Decision 1 emerged.

The implementation of the strengthened review process for the 1997-1999 sessions of the preparatory committee (PrepCom) for the 2000 NPT review conference was stymied from the start by the interference of at least two of the three depositary states in the preparations being undertaken by the conference bureau at the UN Department for Disarmament Affairs that provides the

conference services. Thus, from the very beginning the strengthened review process was hampered and not properly implemented. As the principal force behind the conceptual framework for the strengthened review process, Canada took the lead at the 2000 review conference in clarifying and elaborating the procedural arrangements, with the support of Japan, the Netherlands and Norway. The actual drafting of the elaboration of strengthened review process was done by the author in close consultation with the conference president, Abdallah Baali of Algeria. The 2000 review conference reaffirmed, clarified, and enhanced the mandate of the PrepCom as set out in the decision from the 1995 NPT Review and Extension Conference. The 2000 Review Conference specified that the first two sessions of the PrepCom (starting in 2002), as well as its following sessions, should consider: specific matters of substance relating to the implementation of the NPT and of the 1995 Review and Extension Conference decisions, as well as the Resolution on the Middle East; the outcomes of subsequent Review Conferences; and developments affecting the operation and purposes of the Treaty.

According to the 2000 Review Conference Final Document, the deliberations of each of the first two sessions of the PrepCom were to be factually summarized and the results transmitted in a report to the next PrepCom session for further discussion. At its third, or as appropriate fourth session, the PrepCom, taking into account the deliberations and results of its previous sessions, was mandated to make every effort to produce a consensus report containing specific recommendations to the 2005 Review Conference on the implementation and universality of the Treaty as well as on the implementation of the 1995 package of decisions and resolution. Furthermore, the 2000 Final Document required consideration of reports by all states parties on the implementation of Article VI (nuclear disarmament) and related measures contained in the 1995 "Principles and Objectives". These regular reports within the framework of the strengthened NPT review process logically would be considered by the PrepCom and by the Review Conference. These reporting requirements, rather unexpectedly, became a major matter of contention at the 2002 PrepCom, at one stage even threatening to scuttle the entire meeting. The 2005 Review Conference unnecessarily complicated its proceedings over the agenda given the problematic changes proposed by the United States, eventually a compromise agreement allowed the conference to proceed but eventually it collapsed in disagreement. The 2007 PrepCom too opened in discord and its weak chairmanship led to protracted delay in its work and in the end it only worked for its last three days and ended in discord, as did the succeeding sessions in 2008 and 2009. The 2010 Review Conference again witnessed major differences on several substantive matters, but eventually was rescued by astute diplomacy led by Egypt on the Middle East and by Austria on nuclear disarmament that surprisingly resulted in agreement on 64 so-called "actions" on the three pillars of the Treaty but in disagreement on the review part of the final

document. The three sessions of the preparatory committee for the 2015 Review Conference also were confrontational, though the chair of the third session (2014) produced a compromise report that could have been adopted but by the end of the session frustration and confrontation were rife and the PrepCom failed to agree to any recommendations. The fate of the 2015 Review Conference has been described in the preceding chapter.

The 2020 NPT Review Conference: Scenario

The 2020 Review Conference (Conference) of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons is expected to convene in the United Nations General Assembly Hall during April-May 2020. The Preparatory Committee for the 2020 Review Conference, which will convene in Vienna in 2017,[13] is mandated to set out an agenda and structure for the conduct of the Conference. This section contains a scenario for the likely running of the conference based on the standard format for the agenda of the review conference based on past practice for the 2010 and 2015 review conferences.

Election of the President

The Conference opens with an Acting President which will be the Chair of the 2019 session of the Preparatory Committee for the 2020 NPT Conference.[14] Following the Acting President's opening comments, during which the candidacy for the President of the Conference will be presented, the states parties are expected to acclaim the President who then will over their responsibilities and deliver an opening statement.

Address by the United Nations Secretary-General

The United Nations Secretary-General is invited to address the Conference.

[13] At the 2005 NPT Review Conference, which was unable to reach agreement on its final declaration, it was agreed that the first session of the Preparatory Committee for the 2010 Review Conference would be held in Vienna to coincide with the 50th anniversary of the founding of the IAEA. The proposal was made by this author informally in his capacity as Alternate Head of the IAEA Delegation to the 2005 review conference, following a discussion with a delegate who shall remain unidentified, to the Ambassador for Disarmament of Austria to formally propose holding the 2007 session of the PrepCom in Vienna—overnight agreement was obtained from the Austrian Ministry European and International Affairs and the Austrian delegation then secured the consent of the European Union member states. The proposal was accepted by delegations attending Main Committee II (nuclear verification and safeguards) and it was agreed that the PrepCom would convene in Vienna in 2007. Consequently, the PrepCom met in its first session in 2007 and since then it has become practice to hold the first session of each review cycle in Vienna, as such the PrepCom will meet in Vienna in 2017.

[14] Final Report of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2015/1, 14 May 2014, Annex IV, <http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/1&referer=http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/documents.html&Lang=E>.

Address by the Director General of the International Atomic Energy Agency
The Director General of the International Atomic Energy Agency addresses the Conference.

Adoption of the Final Report of the Preparatory Committee
This is usually a formality.

Rules of Procedure
The Conference then adopts its Rules of Procedure. These are updated from the previous conference.[15]

The United Nations and the International Atomic Energy Agency
Pursuant to Rule 44.2 of the draft rules of procedure, the Secretary-General of the United Nations and the Director General of the International Atomic Energy Agency, or their representatives, are entitled to attend meetings of the plenary and of the Main Committees and to receive all Conference documents. They are also entitled to submit material, both orally and in writing.[16]

Specialized Agencies and International and Regional Intergovernmental Organizations
Requests for observer status from specialized agencies and international and regional intergovernmental organizations are considered. At its third session, the Preparatory Committee recommends that such agencies and organizations be invited to make oral presentations to the Conference at the discretion of the Conference, on a case-by-case basis.[17]

Non-Governmental Organizations
The Conference considers and approves the participation of representatives of non-governmental organizations (NGOs) and civil society in meetings, other than those designated closed, and agrees to them receiving Conference documents. In addition, in accordance with past practice, non-governmental organizations and civil society are allowed to make written material available, at their own expense, to the participants in the Conference and to address the

[15] Final Report of the Preparatory Committee (2014), Annex III.

[16] Final Report of the Preparatory Committee (2014), Rules of Procedure, p.39.

[17] Final Report of the Preparatory Committee (2014), para. 24, p.7. These are likely to be from among the African Union (AU), the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC), the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), the Organization for the Prohibition of Chemical Weapons (OPCW); the European Union (EU), the International Committee of the Red Cross (ICRC), the Inter-Parliamentary Union (IPU), the International Science and Technology Centre (ISTC), the League of Arab States (LAS), the North Atlantic Treaty Organization (NATO), the NATO Parliamentary Assembly, the Organization of the Islamic Conference (OIC), the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) and the Pacific Islands Forum.

Conference, consistent with the final document of the 2000 Review Conference.[18]

Officers of the Main Committees

The Conference elects the Chairs of the three Main Committees and their Vice Chairs, the Chair of the General Committee, the Chair of the Credentials Committee and the Chair of the Drafting Committee. According to standard practice, at its third session to be held in 2019, the Preparatory Committee is expected to recommend that Main Committee I should be chaired by a representative of the Group of Non-Aligned states parties to the Treaty (NAM) who was the Chair of the third session of the Preparatory Committee; Main Committee II should be chaired by a representative of the Group of Eastern European States who was the Chair of the second session of the Preparatory Committee; and that Main Committee III should be chaired by a representative of the Western and Others Group (WEOG) who was the Chair of the first session of the Preparatory Committee.[19] In accordance with rule 5 of the rules of procedure, the Conference then elects two Vice-Chairs for each of the three Main Committees.[20]

Officers of the Drafting Committee and the Credentials Committee

In accordance with rule 5 of the rules of procedure, the Conference elects two Vice-Chairs for the Drafting Committee and the Credentials Committee.[21] The 2014 session of the Preparatory Committee recommended that the post of Chair of the Drafting Committee be assumed by a representative of the Group of Eastern European States, and the post of Chair of the Credentials Committee by a representative of the Group of Non-Aligned States Parties to the Treaty.[22]

The President seeks the support of the Conference for the appointment of a Credentials Committee, which will have a mandate to examine and report on the credentials of delegates. Credentials in the form of Full Powers for each delegation, signed by the designated authority according to the national legislation of each state—the Head of State, Head of Government or Minister

[18] Final Report of the Preparatory Committee (2014), para. 25, p.7.

[19] Final Report of the Preparatory Committee (2014), para. 27, p.7. The following candidates for the posts of Chairman have been endorsed by the respective Groups of states: for Main Committee I, Mr Enrique Romàn-Morey (Peru), Chair of the 2014 NPT PrepCom; for Main Committee II, Mr Cristian Istrate (Romania), substitute for Mr Cornel Feruta (Romania) Chair on NPT PrepCom 2013; for Main Committee III, Mr David Stuart (Australia) substitute for Mr Peter Woolcott (Australia) Chair on the 2012 NPT PrepCom.

[20] Final Report of the Preparatory Committee (2014), Rules of Procedure, p.30. The following is the breakdown for the posts of Vice-Chairmen: for Main Committee I, one representative each from Group of Eastern European States and the Western and Others Group (WEOG); for Main Committee II, one representative each from the NAM and WEOG; for Main Committee III, one representative each from the Group of Eastern European States and NAM.

[21] Final Report of the Preparatory Committee (2014), Rules of Procedure, p.30

[22] Final Report of the Preparatory Committee (2014), para. 28, pp.7-8.

for Foreign Affairs—are submitted to the Conference Secretariat, preferably in advance of the start of the Conference but, failing that, during the Conference.

Vice Presidents of the Conference
Also in accordance with rule 5 of the rules of procedure, the Conference elects 34 Vice-Presidents of the Conference: seven from the Eastern Group, 16 from the NAM, 10 from WEOG and one from China.

Agenda of the Conference
The next item of business is to adopt the Agenda of the Conference, which is essentially an updated version of the agenda for the 2015 review conference (derived from the agendas for the 2000 and 2010 conferences). The 2017 session of the PrepCom is expected to adopt a Provisional Agenda for the Conference and allocate items to the three Main Committees (see below).

Appointment of the Secretary-General of the Conference
The provisional Secretary-General for the 2020 conference, who also would have assisted the Preparatory Committee, from the United Nations Office for Disarmament Affairs,[23] would be confirmed as Secretary-General. S/he will assist the President with the management of administrative arrangements for the conference such as drafting and preparation of procedural conference documents, room reservations, precis writers and interpreters, list of delegates attending the conference, support staff for the committee chairs, and other related arrangements.

Adoption of the Agenda of the Conference
The Conference adopts its agenda based on Annex IV of the Report of the PrepCom. The Agenda has 20 items of business but the key item is item 16, which calls for a 'Review of the operation of the Treaty, as provided for in its article VIII, paragraph 3, taking into account the Decisions and the Resolution adopted by the 1995 Review and Extension Conference, the Final Document of the 2000 Review Conference and the conclusions and recommendations for follow-on actions of the 2010 Review Conference' – no reference would be made to the 2015 review conference as it had failed to agree to a final document. Item 16 also includes within it a breakdown of the articles of the Treaty as they are to be reviewed. This breakdown essentially allocates the items to the Main Committees, which are adopted in a separate Decision.

Programme of Work of the Conference
The Programme of Work (PoW) is approved under item 13. This covers the distribution of work, and the sessions of the Main Committees and their

[23] Usually the Head of the Weapons of Mass Destruction Branch in the Office for Disarmament Affairs at the United Nations Secretariat.

respective subsidiary bodies over the course of the Conference. In the first week the Conference decides on the establishment of a subsidiary body for each of the three Main Committees and elects their Chairs, who are chosen on the basis of general support rather than regional group affiliation.

Given the rather dysfunctional relationship between the Main Committee chairs and Subsidiary Body chairs at previous review conferences 2000-2015, it is my recommendation that:

- The Chair of each Main Committee also serves as the Chair of the respective Subsidiary Body, with the Vice Chairs assisting with the chairing of the Main Committees.
- Given its special character, a 'Friend of the President/Chair' or 'Special Coordinator' could be appointed at the 2017 session of the PrepCom to facilitate the review of the implementation of the 1995 Resolution on the Middle East and the relevant 2000 and 2010 recommendations and actions, and also prepare the recommendations/actions for the 2020-2025 period for adoption by the 2020 Review Conference. This Friend of the President/Chair or Special Coordinator would report to the chairs of the 2018 and 2019 sessions of the PrepCom and to President of the 2020 Conference through the Chair of Main Committee II.

As the Main Committees do *not* meet concurrently with their subsidiary bodies, it would be perfectly feasible for the committee chairs to also chair their subsidiary bodies. This is recommended because past experience in 2000 and 2010 has shown that although the subsidiary bodies successfully negotiated forward-looking recommendations, and in 2015 the subsidiary bodies were unable to agree on recommendations, the committees themselves were isolated and failed to agree on the review of the Treaty. With the committee chair in control of both the committee and its subsidiary body, it is more likely that the committees will be able to fulfill their mandates. Each Main Committee is generally allocated 14 sessions, including at least four sessions for their respective subsidiary bodies. Additional informal sessions of the subsidiary bodies could be held if required, subject to the availability of conference space.

Financing of the Conference and its Preparatory Committee

The Conference considers the distribution of the costs of the Conference and the scale of payments by each of the states parties pursuant to rule 12.[24] Traditionally, the NWS cover 55 per cent of the costs and the NNWS 45 per cent.

[24] Final Report of the Preparatory Committee (2014), Appendix, pp. 41–46.

General Debate

The states parties make their opening statements. The order of the speakers is determined by seniority: Heads of State or Government first, followed by Ministers and assistant Ministers, and so on, and by the order in which the conference secretariat receives requests for inclusion on the list of speakers. 'Inscription' on the list of speakers would commence at the United Nations Headquarters in New York at a date to be announced some two to three weeks in advance of the opening of the conference. There is a growing tendency for foreign ministers to make their opening statements on the first day. It was unprecedented but welcomed that the President of a state party (Iran) addressed the Conference in 2010.

Role of the Treaty: Nuclear Non-Proliferation and Nuclear Disarmament

THE Conference considers the 'Role of the Treaty in the promotion of non-proliferation of nuclear weapons and of nuclear disarmament in strengthening international peace and security, and measures aimed at strengthening the implementation of the Treaty and achieving its universality' (item 17).

Reports of the Main Committees

Towards the end of the Conference, meeting in plenary states parties negotiate the finalization and adoption of the draft reports of the three Main Committees, including the reports of their respective subsidiary bodies.

Consideration and Adoption of the Final Document(s)

The reports of the Main Committees are combined into one or more Final Documents of the Conference, which also include the administrative details. These are considered for adoption under item 19. The Final Document is finalized by the President with the assistance of states parties and may involve intensive negotiations and interactions between concerned capitals. The Drafting Committee is responsible for consolidating the administrative, procedural and substantive parts into a single document, however, in practice since 2000 this in fact is done under the authority of the Conference President and the traditional role of the Drafting Committee as an arbiter in finalizing text on substantive matters has been taken over by the President.

Any other Business

States may raise any issues related to the Treaty that they consider important, including expressions of thanks to the President and the Conference Secretariat.

Allocation of items to the Main Committees

The standard allocation of items to the Main Committees of the Conference is outlined in items16 and 17 of the Conference agenda.[25] Item 16 of the agenda calls upon each of the three Main Committees to review of the operation of the Treaty, as provided for in its article VIII, paragraph 3, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference, the Final Document of the 2000 Review Conference and the conclusions and recommendations for follow-on actions of the 2010 Review Conference, in accordance with distribution of issues as noted below.

Main Committee I
Main Committee I reviews the implementation of the provisions of the Treaty related to nuclear disarmament—articles I and II together with preambular paragraphs 1-3, and article VI along with preambular paragraphs 8-12. It also considers security assurances from nuclear-weapon states to non-nuclear-weapon states, including UN Security Council resolutions 255 adopted in 1968 (positive assurances) and 984 adopted in 1995 (negative assurances).

Main Committee II
Main Committee II reviews the implementation of the provisions of the Treaty related to nuclear safeguards (verification) and nuclear-weapon-free zones—article III along with preambular paragraphs 4 and 5, especially in their relationship to article IV and preambular paragraphs 6 and 7; articles I and II and preambular paragraphs 1 to 3 in their relationship to articles III and IV; and article VII—regional issues, including the Middle East[26].

Main Committee III
Main Committee III reviews the implementation of the provisions of the Treaty related to the inalienable right of all parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II; article V on benefits of peaceful nuclear explosions (overtaken by the CTBT); and other provisions of the Treaty—withdrawal, strengthened review process, disarmament and non-proliferation education.

Background Documentation
Background documentation will cover developments during the 2015-2020 period with respect to the decisions and the resolution adopted by the 1995 Review and Extension Conference, the Final Document of the 2000 Review

[25] Final Report of the Preparatory Committee (2014), Annex V.

[26] Including the implementation of the Resolution on the Middle East adopted by the 1995 NPT Review and Extension Conference, and in that regard the relevant provisions of the final documents of the 2000 and 2010 Conferences.

Conference and the conclusions and recommendations for follow-on actions of the 2010 Review Conference.[27] Background documentation is invited from the United Nations, the IAEA, the Organization for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), the South Pacific Forum on the South Pacific Nuclear-Free-Zone Treaty, the African Commission on Nuclear Energy (AFCONE) of the African NWFZ Treaty, the depositary of the SEANWFZ Treaty, the depositary of the Central Asian NWFZ Treaty, and Mongolia on its (single State) nuclear weapon-free status. In practice, not much attention is devoted to the background documentation. Nor is it reviewed or considered formally in any of the Main Committees or their respective subsidiary bodies. At the 2015 NPT review conference not a single mention was made regarding any of the background documentation.

Regional, Cross-Cutting and Issue-Based Groups

The cold war groups are alive and well in multilateral nuclear arms control diplomacy, including at NPT Review Conferences: the Non-Aligned Movement (NAM), the Western and the Eastern Groups and the Group of One—China. The European Union has emerged as a regional group, but is increasingly beset with internal differences between its NWS and NNWS. The League of Arab States (LAS) is active on the Middle East issue, but has internal differences. The New Agenda Coalition, a force in 2000, is now much weakened. The Non-Proliferation and Disarmament Initiative (NPDI) is a new issue-based group, but its strength is also its greatest weakness—it is a diverse group that includes members of nuclear-armed alliances and states with regional agendas. The five NWS form a powerful group, but they too have recently been beset with major differences. The dealerting coalition is a group of states that advocates the dealerting of operational nuclear weapons. The Humanitarian Initiative has mushroomed since 2012 but it too has serious internal differences as well as differences with the NWS. The Vienna Group of Ten develops working papers on non-proliferation safeguards and peaceful uses of nuclear energy, as well as export controls, safety and security.[28]

Improving the Effectiveness of the Strengthened Review Process

The 1995 Non-Proliferation Treaty Review and Extension Conference (NPTREC) adopted a key decision on strengthening the review process for the Treaty.[29] This strengthened review process mandated the Preparatory

[27] Final Report of the Preparatory Committee (2014), Annex VI.

[28] For a full discussion see Potter, W. and and Mukhatzhanova, G., 'Coalitions to watch at the 2015 NPT Review Conference', <http://www.nti.org/analysis/articles/coalitions-watch-2015-npt-review-conference/>.

[29] United Nations, the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document, Part I: Organization and work of the Conference*, Decision 1, 'Strengthening the Review Process for the Treaty,' (United Nations: New York. 1995), Annex, p.8.

Committee to focus on substantive matters and to make recommendations to the Review Conference on principles, objectives and ways to promote the full implementation of the NPT, as well as on completing procedural arrangements.

In 1997–1999, 2002–2004, 2007–2009 and 2012–2014, the Preparatory Committee, while completing practically all of the procedural arrangements, nonetheless failed to agree on any substantive recommendations to the review conferences of 2000, 2005, 2010 or 2015, contrary to the mandate and expectation of Decision I adopted by the 1995 NPTREC. Some NNWS accused the NWS of deliberately obstructing the strengthened review process, while the NWS in turn charged some of the NNWS with harbouring unrealistic expectations.

Greater Accountability

In extending the Treaty indefinitely in 1995, states parties decided to strengthen the review process to provide for greater accountability for the implementation of the NPT and of the decisions and recommendations of review conferences.[30] The 1995 Conference decided, among other things, that:

- the **present structure of three main committees should continue** and the question of an overlap of issues being discussed in more than one committee should be resolved in the General Committee, which will coordinate the work of the committees so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one committee;

- **subsidiary bodies could be established within the respective main committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues**; the establishment of subsidiary bodies would be recommended by the Preparatory Committee in relation to the specific objectives of the Review Conference;

- **Review conferences should look forward as well as back**; they should evaluate the results of the period they are reviewing, including the implementation of the Treaty, and identify the areas in which, and the means through which further progress should be sought in the future, while also addressing specifically what might be done to strengthen the implementation of the Treaty and achieve its universality.

[30] United Nations, 1995 NPT Review and Extension Conference, Decision 1, *Strengthening the Review Process for the Treaty*, <http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision_I.pdf>.

In practice, states have failed to review and rationalize the work of the Main Committees in order to avoid time wasting overlap and to consider each specific issue in only one committee.

The 2000 Conference reaffirmed the Decision on 'Strengthening the Review Process for the Treaty' adopted at the 1995 Review and Extension Conference.[31] It also reaffirmed that subsidiary bodies can be established at the Review Conference to address specific relevant issues. Since the establishment of subsidiary bodies at the 2000, 2010 and 2015 conferences, it is now generally agreed that such bodies are to be established at each conference. Any attempt to reopen or question this practice can only be regarded as malicious in intent, and designed to create an unnecessary stalemate. Each subsidiary body is open-ended and expected to hold at least four meetings within the overall time allocated to its main committee. All meetings are held in private.

Regrettably, states parties failed to agree in 2015 to fulfil the mandate of agreeing to a review of the implementation of the Treaty in the period under review and to make recommendations for the five-year period to 2020. Every effort should be made in each main committee to prepare and agree on a report that should looks forward as well as back. One reason for the failure could be that states devoted their maximum efforts to drafting forward-looking recommendations and neglected to devote the same level of effort to the review part – unfortunately this seems to be a trend as was witnessed in 2010 and 1995 when the review conference was unable to agree on the review part of the final document. This problem might possibly be remedied by having the Chair of each main committee also concurrently chair its subsidiary body, and thereby maintain a holistic view of the work of the committee and develop its report with an integral connection between the forward- and the backward-looking sections.

The 2000 Conference clarified and strengthened the role of the Preparatory Committee. In reaffirming Decision I of 1995 as a whole, the 2000 Conference reconfirmed the dual mandate of the review conference to both review the implementation of the Treaty in the previous five years and to make recommendations on strengthening Treaty implementation over the next five years. In order to honour and remain true to the package of the 1995 decisions and resolution on the basis of which the Treaty was extended indefinitely, it is incumbent on all states parties, the Conference President and the Bureau to ensure that the provisions of the strengthened review process are implemented in full in good faith. This means, as in 2000, that the 2020 Conference should prepare and adopt by consensus a Final Document that makes recommendations on the implementation of the Treaty for the 2020–

[31] 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document, *Improving the Effectiveness of the Strengthened Review Process for the Treaty,* NPT/CONF.2000/28 (Parts I and II).

2025 period and reviews the implementation of conference decisions and outcomes over the 2015–2020 period.

In order to facilitate this, every effort must be made to adopt by consensus the review part of the document, failing which, the different points of view of states parties should be reflected. The forward-looking part, however, must be adopted by consensus in order to ensure the buy-in of all states parties.

The guidance on improving the effectiveness of the strengthened review process, contained in the 1995 and 2000 Final Documents, will remain valid unless adapted at the 2020 NPT Conference while preserving the integrity of the 1995 decision on the strengthened review process. It is designed to provide for greater accountability regarding the full implementation of all aspects of the Treaty and to achieve its universality; and in particular accountability regarding the implementation of article VI on nuclear disarmament (including the 1995, 2000 and 2010 benchmarks) and on the implementation of the 1995 resolution on the Middle East. The guidance is quite clear and it would be disingenuous to try to reinterpret, reformulate or backtrack from the 1995 and 2000 texts on the strengthened review process for the Treaty.

The success of an improved and strengthened review process for the 2020 Review Conference will depend on:

- a constructive and cooperative role played by the NWS;
- the constructive role and support of the NNWS;
- constructive engagement between the NNWS and the NWS;
- adequate preparations by states and their support for the presidents/chairpersons;
- flexibility and commitment to the implementation of the Treaty and the 1995–2000 outcomes;
- recognition that the review conference is not a negotiating forum for legally binding measures on nuclear disarmament and non-proliferation but a forum to review the implementation of the Treaty as well as review conference decisions and recommendations; and
- international political developments affecting the NPT.

The 2020 NPT Review Conference

President's Consultations

Much, of course, will depend on the President-designate of the Review Conference and how s/he guides the conference through some rough territory to a successful conclusion. Traditionally, presidents have relied on consultation with a select, but geographically and politically representative group of countries, informally referred to as the 'Friends of the Chair', or 'Presidents' Consultations'. Such groups, which are necessarily kept small,

were organized to assist with identifying and building consensus in 1995, 2010 and 2015.

In the 1995 NPT Review and Extension Conference, Ambassador Dhanapala pulled together President's Consultations involving 25 of the principal players.[32] This was instrumental in crafting the language for the package of extension decisions. The key players that took the lead in providing ideas for consensus were Canada and South Africa. In this regard, Canada convened and chaired three cross-regional and issue-based groupings to secure a majority in favour of indefinite extension.[33] These were the Mason Group,[34] the Cosmopolitan Core Group,[35] and the co-sponsors list management group.[36]

In 2000 Conference President Abdallah Baali consulted widely but avoided setting up a formal 'Friends of the President's group.[37] This practice proved beneficial in securing the support of states for the President's Initiative. An issue-based group comprising the New Agenda Coalition and the five NWS, informally chaired by Norway, carried out intensive negotiations in the margins. President Abdallah Baali sat in on many of the meetings of this group to keep himself informed. The compromise language on nuclear disarmament was hammered out in this forum. In order to break the deadlock, the president asked some 35 delegations representing all regional groupings and interest groups to meet with him to deal with the difficult issues left over from the reports of the three Main Committees. Many other delegations also wanted to contribute to this effort, and they too were present in the meeting room. Despite requests from some to restrict the number of delegations present, the President persevered with this format in a spirit of openness and transparency. He put Japan in charge of resolving open issues in Main Committee 2. In addition, Canada chaired side-negotiations to craft language on the Middle East that also involved intense bilateral negotiations between Egypt and the USA, and among a few other engaged parties.

[32] The 25 were: Algeria, Australia, Canada, China, Colombia, Egypt, France, Germany, Hungary, Indonesia, Iran, Japan, Malaysia, Mexico, the Netherlands, Nigeria, Poland, Romania, the Russian Federation, South Africa, Sri Lanka, Sweden, the United Kingdom, the United States and Venezuela.

[33] For a full description see Rauf, T. and Johnson, R., 'After the NPT's indefinite extension: the future of the global non-proliferation regime', *Nonproliferation Review*, vol. 3, no. 1 (Fall 1995).

[34] The Mason Group is an informal grouping of 39 countries: Canada, France, Germany, Italy, Spain, Portugal, Greece, Turkey, Belgium, Luxembourg, The Netherlands, Denmark, Norway, Iceland, Australia, New Zealand, Japan, Ireland, Austria, Finland, Sweden, Argentina, Bulgaria, Czech Republic, Estonia, Hungary, Republic of Korea, Latvia, Lithuania, Poland, Romania, Russia, Slovakia, Slovenia, Belarus, Moldova, Switzerland, United Kingdom and the United States. The group was named after the Canadian Ambassador for Disarmament Peggy Mason.

[35] The members of the Cosmopolitan Core Group are: Canada, Argentina, Australia, Bahamas, Cameroon, Ethiopia, Germany, Honduras, Hungary, Japan, Fiji, New Zealand, Senegal, Singapore, South Africa, and South Korea.

[36] The members of the co-sponsors list management group are France, Germany, Japan, the Netherlands, the United Kingdom and the United States.

[37] For a full account see Rauf, T., 'Interview: Ambassador Abdallah Baali on the 2000 NPT Review Conference', *Nonproliferation Review* vol. 7, no. 3 (Fall 2000).

In 2010 a cross-regional working group was formed at a dinner hosted by the Egyptian ambassador.[38] The composition of this group was: Argentina, Austria, Brazil, China, Cuba, Egypt, France, Iran, Japan, Mexico, Norway, the Russian Federation, South Africa, Ukraine, the UK, Uruguay and the USA. Others taking part on different occasions included Ireland, Germany and Spain (as holder of the EU presidency). This working group met frequently during the last two weeks to work out the contours of the final report. In parallel, Austria chaired the subsidiary body on nuclear disarmament, and Ireland on the Middle East. The key compromises on the 'actions' on nuclear disarmament and on the Middle East were negotiated in the margins of these two subsidiary bodies, again with intensive negotiations and consultations involving regional and NWS capitals.

During the 2012–2014 sessions of the Preparatory Committee for the 2015 NPT Review Conference, the chairs did not constitute formal or informal advisory groups but relied on broadly based consultations.

At the third and final session of the Preparatory Committee in 2014, the Chair was encouraged by some parties to set up an advisory or consultative group to provide advice to the Chair. However, the Chair decided not to establish such a group but engaged in extensive consultations with the representatives of the New Agenda Coalition, the Arab Group, the Non-Aligned Movement, the Humanitarian Initiative and the NWS, as well as certain states interested in regional issues.

In 2015, the closed-door, off-site, 'Presidential consultations' in the last week of the conference, involving some 20 delegations, were undemocratic and non-inclusive. The states that took part were Austria, Australia, Brazil, Cuba, Egypt, Iran, Ireland, Japan, Mexico, Netherlands, New Zealand, Peru, South Africa, Sweden, Switzerland and the five NWS. Such nineteenth century diplomatic practices prevailed even though these are no longer relevant and are incapable of dealing with current issues and priorities.[39]

Therefore, in 2020, it may be desirable for the President to dispense with formal a President's Consultations group and instead engage in frequent and wide-ranging consultations on an ongoing basis with political, regional, subregional and issue-specific groupings as was done successfully in 2000.

As discussed above, with the chairs guiding the work of their committees and respective subsidiary bodies, closely assisted by their vice-chairs, in regular consultation with the President and the regional, cross-cutting and

[38] For a full account, see Potter, W. et al., 'The 2010 NPT Review Conference: deconstructing consensus', *CNS Special Report*, 17 June 2000, <http://cns.miis.edu/stories/pdfs/100617_npt_2010_summary.pdf>.

[39] See Rauf, T., "The 2015 NPT Review Conference: setting the record straight", SIPRI (24 June 2015), <https://www.sipri.org/node/384>; and Potter, W., 'The Unfulfilled Promise of the 2015 NPT Review Conference', *Survival: Global Politics and Strategy* (February-March 2016), pp. 151-178.

issue-based groups, as well as other interested states parties, the prospects of achieving a substantive agreed outcome can be significantly improved.

Relying on secretive, cabal-like consultations and negotiations in back rooms or off-site is unlikely to deliver the desired outcomes, given the current international security situation and the growing frustration of many states parties with the implementation of the previously agreed actions and recommendations.

In an age of instant social media communications, secretive and exclusive consultations breed mistrust that in turn leads to frustration and conflict. Hence, maximum transparency is called for and, following the precedent set by Conference President Baali in 2000, negotiations on hard issues and differences should be carried out in the open in the presence of all states parties. This has the added benefit of exposing those with maximalist or uncompromising positions, rather than giving them the benefit of vetoes behind closed doors. Slavish devotion to the ossified formats of multilateral disarmament and non-proliferation negotiations as practiced at the First Committee and the Conference on Disarmament can lead in only one direction: deadlock and failure.

Thus, transparency, open channels of information sharing and negotiation will help engender trust in the President and the Bureau. The result would be to cement the practice of openness and wide-ranging consultations, thus building greater support for the President's constructive initiatives to guide the Review Conference to a successful outcome that will be acceptable to all participating NPT states and strengthen the credibility of the NPT and its related nuclear non-proliferation and disarmament regime.

Product(s) or Outcome(s) of the 2020 Review Conference

All past NPT Review Conferences have sought to reach an outcome, that is, to produce a 'Final Declaration' on the review and implementation of the Treaty while also highlighting additional measures that could be taken in the future to enhance the Treaty regime. The 1995 NPTREC had the additional task of producing an outcome on the future duration of the Treaty in accordance with article X.2. Four of the previous nine review conferences failed to agree on a Final Document– in 1980, 1990, 2005 and 2015.

As noted above, 1995 NPTREC Decision 1 on 'strengthened reviews' recommended in its paragraph 7 that review conferences should look forward as well as back, evaluate the results of the period under review and identify the areas in which and the means for further progress should be sought in the future with reference to implementation of the undertakings of the states parties under the Treaty. They should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality. This guidance leaves open the option of whether the review conference should deal with these matters in one, two or more documents.

A variety of views were expressed in the two previous review cycles on the products of a review conference. In general, a majority of states interpreted Decision 1 as requiring two products or outcomes: one reviewing and assessing the implementation of the Treaty in the light of the 1995 NPTREC decisions and resolution during the previous five years, that is, a traditional 'final document'; the second, a forward-looking document setting goals and objectives for the next five-year period, in line with the 1995 'principles and objectives', the 2000 'thirteen-steps' and the 2010 'actions'.

Thus, building on the 1995 and 2000 'strengthening of the review process', *all* future review conferences should produce two primary documents on the substantive implementation of NPT and related obligations:

- a 'backward-looking' or 'review' document, which should evaluate the results of the period under review, including the implementation of the undertakings of the states parties under the Treaty and the 1995/2000/2010 outcomes; and
- a 'forward-looking' document identifying the areas in which, and the means through which, further progress should be sought over the next review period, 2020-2025.

In addition, each review conference/cycle should consider the functioning of the review process itself and, if it is deemed necessary, a third document on further enhancement of the strengthened review process should be produced. Within this generic approach, the 2020 Review Conference should aim to have three key products:

- a backward-looking review document;
- a forward-looking 'principles and objectives 2020' document; and
- a forward-looking document on the further enhancement of the strengthened review process while affirming the integrity and validity of the 1995/2000 review process.

As previously noted, in 2000 states parties adopted by consensus a fully negotiated and fully agreed final document calling for an unequivocal undertaking on the total elimination of nuclear weapons, establishing agreed practical steps for further progress in nuclear disarmament and nuclear non-proliferation, and further enhancing elements of a strengthened review process. Comprising more than 150 paragraphs and covering all aspects of the NPT, as well as certain regional issues and the strengthened review process, the final document represented the latest collective word of the then 187 states parties on politically binding guidelines on the future implementation of the NPT and the conduct of an enhanced, strengthened review process.

The 2000 Final Document does indeed comprise three important but interlinked parts:

- a backward review of the implementation of the Treaty;

- a 13-point action plan on 'practical steps for the systematic and progressive efforts to implement article VI' and 'paragraphs 3 and 4(c) of the 1995 Decision on Principles and Objectives for nuclear non-proliferation and disarmament'; and
- proposals for improving the effectiveness of the strengthened review process of the Treaty.

In 2010 the Conference failed to adopt a fully negotiated Final Document that comprised both a review and a forward-looking part. The review part of the 2010 outcome did not command consensus. The Conference decided to take note of the 'Review of the operation of the Treaty, as provided for in its article VIII (3), taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference'. It was recorded in a footnote as the President's responsibility and that it reflected to the best of his knowledge what had transpired with regard to matters of review. The Conference decided to adopt the 'Conclusions and recommendations for follow-on actions'.[40] As already indicated, the 2015 review conference abjectly failed to agree on a final document – this was as a result of the inability of states parties to make the necessary political compromises and cannot be regarded as a failure of the strengthened review process for the Treaty.

Thus, the 2020Review Conference taking into account the work and reports of the Main Committees, including the reports of their respective Subsidiary Bodies, could:

- Evaluate the results of the period under review (2015–2020), including the implementation of the undertakings of the states parties under the Treaty and the 1995/2000/2010 outcomes;
- Identify the areas in which and the means through which further progress should be sought in the future;
- Address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality;
- Examine the functioning of the review process itself, taking account of experience since 2000 while preserving the integrity of the 1995 decision on the strengthened review process; and
- Reaffirm the validity and importance of the 1995 NPTREC decisions and resolution, and the 2000 and 2010 Final Documents.

Thus, it is quite clear that the 2020 NPT Review Conference will need to consider at least the following items:

[40] The 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, NPT/CONF.2010/50 (vol. I), para. 30, p. 40, <http://www.un.org/en/conf/npt/2010/>.

- A backward review of the implementation of the Treaty (2015–2020);
- A forward-looking action plan on further progress in strengthening the implementation of the Treaty in order to achieve its universality (2020–2025);
- An assessment of, and recommendations for further action on, the implementation of the 1995 decisions and the 2000/2010 final documents;
- An assessment of, and recommendations for further action on, the implementation of the 1995 NPTREC Resolution on the Middle East and the related 2010 actions; and,
- A forward-looking set of recommendations on further improving the effectiveness and efficiency of the strengthened review process (2020–2025).

In addition, the 2020 Review Conference could also consider and adopt other recommendations related to strengthening the integrity and authority of the Treaty and the outcomes of the 1995, 2000 and 2010 Review Conferences.

Conclusion and recommendations

In the light of inauspicious international developments, the growing detritus of arms control agreements cast aside, and new found animosities over the future of nuclear disarmament, expectations already are being questioned for a successful outcome to the 2020 Review Conference. The effective implementation of a well-designed, results-oriented, strengthened review process is central to the fulfilment of the principle of 'permanence with accountability'.

- The 2020 Review Conference should address two basic questions: 'For what are states parties accountable?'; and 'How is that accountability to be exercised'?
- The strengthened review process must be 'product-oriented' and structured to facilitate the attainment of the objectives of permanence with accountability, which entails accountability by all NPT states for compliance with and the fulfilment of undertakings under the Treaty, the 2010–2000 final documents and the 1995 decisions and resolution.
- The 2020 Conference should prepare and adopt by consensus a Final Document that makes recommendations on the implementation of the Treaty and Review Conference decisions and outcomes over the period 2020–2025, and also reviews implementation over the period 2015–2020.

- Every effort must be made to adopt by consensus the review part of the Final Document, failing which the different points of view of states parties should be reflected. The forward-looking part, however, must be adopted by consensus in order to ensure the buy-in of all states parties.
- The Chair of each Main Committee should also serve as the Chair of the respective Subsidiary Body, with the Vice Chairs of the committees assisting in the chairing of the Main Committees.
- Given the special status of the 1995 Resolution on the Middle East, a Friend of the President/Chair or 'Special Coordinator' should be appointed to facilitate review of the implementation of the 1995 Resolution and the relevant 2000 and 2010 recommendations and actions, and also prepare the recommendations/actions in this regard for the 2020–2025 period for adoption by the 2020 Review Conference. The Friend of the President/Chair or Special Coordinator would report to the President of the 2020 Conference through the Chair of Main Committee II.
- It might be desirable for the President to dispense with a formal Presidents' Consultations group and instead engage in frequent and wide-ranging consultations on an ongoing basis with political, regional, subregional and issue-specific groupings. Negotiations on hard issues and differences should be carried out in the open in the presence of all states parties.

Conclusions: The Future of the NPT

TARIQ RAUF AND JAYANTHA DHANAPALA

Despite increasing talk regarding the precarious state of the nuclear Non-Proliferation Treaty (NPT), 191 states parties remain committed to it.[1] Because of the NPT some 20 states that could have developed nuclear weapons, did not do so and placed the entirety of their nuclear activities under full scope IAEA safeguards. The NPT remains the only international treaty under which the five nuclear-weapon states (NWS) feel constrained to explain their nuclear force doctrines and report on the reduction measures that they have undertaken—in no forum other than the NPT review process, do the NWS engage on nuclear disarmament measures regardless of their inadequacy in the view of many non-nuclear-weapon states (NNWS). The NPT also establishes a framework for international cooperation in the peaceful uses and applications of nuclear energy for human development through the technical cooperation programmes of the IAEA.

It is undeniable that a small number of states in the conflict-ridden region of the Middle East were found to be in violation of their IAEA/NPT safeguards agreements. Iraq[2] and Syria's[3] undeclared nuclear programmes were destroyed through unilateral military actions of certain states, while Libya renounced its programme through a negotiated trilateral agreement (involving the United Kingdom and the United States). Possible military dimensions to Iran's nuclear activities were resolved through a multilateral negotiated agreement (involving Iran, the European Union, France, Germany and the UK, and Russia and the USA). The Democratic People's Republic of Korea (DPRK or North Korea) being the only state party to withdraw from the Treaty in 2003 went on to test a nuclear weapon in 2006 followed by successive tests in 2009, 2013 and 2016. Others such as Egypt, Romania and South Korea that had undeclared nuclear activities, resolved concerns through working with the IAEA. Three countries—Belarus, Kazakhstan and Ukraine—that had Soviet nuclear weapons stationed in their territories, returned these weapons to the Russian Federation and acceded to the Treaty as NNWS. Argentina and Brazil sorted out their differences and established a mutual nuclear verification system with the IAEA. South Africa unilaterally dismantled its small stock of

[1] United Nations Office for Disarmament Affairs, *Treaty on the Non-Proliferation of Nuclear Weapons*, <http://disarmament.un.org/treaties/t/npt>.

[2] Iraq's undeclared nuclear facilities were partly destroyed in the US military air strikes on the Tuwaitha nuclear complex during the 1991 Gulf War, and the remaining part was destroyed by the IAEA Action Team together with the United Nations Special Commission on Iraq (UNSCOM) established under UN Security Council resolution 687, see IAEA, *INVO* (Iraq Nuclear Verification Office) *& Iraq Chronology*, <https://www.iaea.org/OurWork/SV/Invo/chronology.html>.

[3] International Atomic Energy Agency, Report by the Director General, *Implementation of the NPT Safeguards Agreement in the Syrian Arab Republic*, GOV/2008/60, 19 November 2008.

nuclear weapons and transitioned to acceding to the NPT as a NNWS. And, there are several other examples of renunciation of nuclear weapon aspirations.

The NPT has now come as far as it can to a stage of maturity and to a plateau; prospects for nuclear weapons renunciation by India, Israel, North Korea and Pakistan are essentially non-existent. On the nuclear disarmament side of the ledger, far-reaching reduction and stability measures were agreed at the 2000 and 2010 NPT Review Conferences but these have been honoured more in the breach. The Treaty has reached a position where further progress towards nuclear disarmament through the review process cannot be achieved—indeed none of the bilateral Russia/USSR-US and unilateral reductions by France, Russia, the UK and the USA were negotiated or implemented through the NPT. Thus, the inescapable conclusion is that the NPT has not succeeded in the full realization of the objectives of article VI of the Treaty on nuclear disarmament, despite the best efforts of the NNWS acting through the review process or through the 1996 advisory opinion of the International Court of Justice. On the other hand, the nuclear safeguards, nuclear security, nuclear safety and nuclear export control obligations on the NNWS have been steadily strengthened and have become more burdensome, including through instrumental use of the UN Security Council's adoption of non-proliferation resolutions under chapter VII of the UN Charter.[4]

Yet the NWS and their allies in nuclear-defence arrangements have relentlessly kept up the pressure for further strengthening of nuclear safeguards, nuclear security and export controls—how much is enough is defined by them as never being enough.

Not surprisingly there is growing fatigue and frustration in the inability and powerlessness of the majority of NNWS to move on nuclear disarmament through the review process. Consequently, many non-diplomats from NWS and research institute experts are flailing around attacking the efficacy of the review process largely ignoring the corrosive effects of worsening political relations, hardened positions, lack of flexibility, decline in negotiating skills for compromise, and growing ignorance of the sophistication of the strengthened review process.

NPT review conferences were never designed to be forums for either negotiating legally binding treaties or conventions on nuclear weapons, or for nuclear verification measures for IAEA safeguards, or for battling over major international political controversies and differences especially relating to 'compliance' with IAEA safeguards by NNWS.

The appropriate forum for negotiating specific treaties or conventions on nuclear weapons and disarmament is the Conference on Disarmament (CD), as duly mandated by the first UN Special Session on Disarmament (UNSSOD-I)

[4] See, United Nations Security Council resolutions 1540 (2004) and 1887 (2009).

in 1978—though NPT review conferences could make recommendations on measures for implementing article VI on nuclear disarmament.

As regards nuclear verification and safeguards, the appropriate forum for strengthening safeguards is the IAEA. In recognition of this, in 1995, in 2000 and again in 2010, the agreed final document emphasized inter alia that "the International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the Statute of the Agency and the Agency's safeguards system, compliance with its safeguards agreements with States parties undertaken in fulfilment of their obligations under article III, paragraph 1, of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns, along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate".[5]

The proper place to assess and review safeguards compliance concerns is the IAEA Board of Governors where technical reports on non-compliant states are presented by the Director General, reviewed by the Board which can demand corrective actions through resolutions and can even report non-compliance to the UN Security Council for further action under chapter VII of the Charter. Other than polemics, no useful purpose can be served in getting into the details of safeguards implementation matters in review conferences. Similarly, the forum of developing and strengthening recommendations, fundamentals and guidelines for nuclear safety and nuclear security again is the IAEA.

Article VIII.3 of the Treaty calls for review conferences to review the operation of the NPT with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. Decision I adopted by the 1995 NPTREC elaborated on the meaning of the review of the operation of the Treaty and stipulated that review conferences should: (*a*) look forward as well as back; (*b*) evaluate the results of the period they are reviewing, including the implementation of undertakings of the states parties under the Treaty; (*c*) identify the areas in which, and the means through which further progress should be sought in the future; and (*d*) also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.[6]

As preparations commence for the first session of the preparatory committee for the 2020 Review Conference to convene in Vienna in 2017, it is essential

[5] 1995 NPT Review and Extension Conference, Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament, para. 9.

[6] 1995 NPT Review and Extension Conference, Decision 1: Strengthening the Review Process for the Treaty, para. 7.

that delegates and experts better understand the scope and purpose of the strengthened review process in order to strive to achieve more productive results and realize its full potential. The essays in this compilation written by two authors with direct long-term involvement with the NPT review process, will hopefully contribute to capacity building and providing a practitioner's viewpoint.

On 12 May 1995, in his closing statement as President of the historic NPT Review and Extension Conference which extended the treaty for an indefinite duration, Jayantha Dhanapala stated: 'The permanence of the Treaty does not represent a permanence of unbalanced obligations, nor does it represent the permanence of nuclear apartheid between nuclear haves and have-nots. What it does represent is our collective dedication to the permanence of an international legal barrier against nuclear proliferation so that we can forge ahead in our tasks towards a nuclear weapon-free world'.

Implementing Decision I of the 1995 Package to strengthen the review process has been a hard struggle. Many of the other elements of the package as well as commitments made in the 2000 Review Conference were rejected in 2005. All states experience changes of government either through democratic elections or through other means but the principle of state succession should apply not only in respect of treaties but also in respect of conference commitments made in consequence of Treaty obligations. There can be no 'exceptionalism' in this respect. Unless states parties agree on this principle they will continue to engage in mutual recrimination over fulfilling past commitments. Decision I enjoined all 'to look forward as well as backward' at review conferences but when there is no confidence that past commitments are the basis for future action, states parties will be condemned to operate with fogged-up rear view mirrors only.

NPT review conferences are not rituals. They are intended as honest five yearly stocktaking exercises in a process of rigorous accountability holding states parties to their obligations in the past and recalibrating objectives for the future in a cumulative process. Such assured predictability in the future course of this Treaty would dispel any suspense as to whether future review conferences are likely to be successes or failures and how much further the tensile strength of the NPT can be tested.

Radical changes are needed in a complex world. In the same manner as two categories of weapons of mass destruction—biological and chemical weapons—have been prohibited, and anti-personnel landmines and cluster munitions banned as inhumane conventional weapons, the push to begin the process of outlawing nuclear weapons cannot wait any longer. In 1995, the Nobel Committee, when it awarded Pugwash the Nobel Peace Prize recognized the Pugwash 'desire to see all nuclear arms destroyed and, ultimately, in a vision of other solutions to international disputes than war'. It is time to convert this aspiration to reality.

Speaking at an event on assessing the 1999 session of the NPT Preparatory Committee, Mark Moher, Canada's Ambassador to the United Nations for Disarmament, aptly summarized the future of the NPT in terms of three alternative paths: the 'muddle through' path; the 'road to disintegration'; and that of 'construction for the future'.[7] The following is a modified version of the three paths in light of recent developments.

Thus far states have persisted on a 'muddle through' path in the belief that the NPT, whatever the difficulties, will always have some value for pursuing nuclear disarmament, nuclear non-proliferation and the peaceful uses of nuclear energy, in keeping with the indefinite extension of the Treaty in 1995. In this context, the usual group of 20-25 'friends of the NPT' continue to wield considerable power and influence and most of them militate strongly against any significant changes in the pursuit of nuclear disarmament as they are confident that the NPT will remain in place, especially following its indefinite extension in 1995. Not surprisingly, this leads to a rather complacent, minimalist attitude.

The 'road to disintegration' is seen as a possibility by states in two camps. One camp argues that persistent failure to achieve complete nuclear disarmament or even consistent progress in that direction inevitably will lead to defections from the Treaty in significant numbers. This camp remains highly critical of the 1995 decision on the indefinite extension of the Treaty on the grounds it gave the NWS a blank cheque for the future. They cite the evidence already given above as confirming their view that the five NWS have no real intention to eliminate their nuclear weapons over any time period.

Overlapping with this camp is a group of states that are interminably attached to the NWS through military and political defence arrangements, and continue to resist calls for major nuclear disarmament measures especially through a legally binding instrument. In addition, the formal acceptance of nuclear weapons in South Asia, particularly the special privileges granted to India (that are exceptional both in relation to NWS and NNWS), despite protestations of fidelity to the NPT can only have a corrosive effect and inevitably feed the 'disintegration' option.

The 'construction for the future' option is supported by a growing number of states that see the NPT as an evolving work in progress that can never be complete in its current form—and given the impossibility of 'amending' the Treaty, they are seeking new avenues to complete the work of the NPT outside the framework of the Treaty. Thus, they will aim to push for negotiations on a legally binding instrument on the prohibition of nuclear weapons through a General Assembly mechanism where their numbers can prevail.

[7] Moher, M., 'The Nuclear Disarmament Agenda and the Future of the NPT', *The Nonproliferation Review/Fall 1999*.

The final outcome regarding which path will prevail will be based on the answer to one direct question: does the NPT continue to be of central value to its states parties?

We hope that the collective wisdom of states parties will be up to this challenge.

ANNEX A. Treaty on the Non-Proliferation of Nuclear Weapons

The States concluding this Treaty, hereinafter referred to as the "Parties to the Treaty",

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to co-operate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in co-operation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the co-operation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from

national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

ARTICLE I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient 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 transferor 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.

ARTICLE III

1. Each Non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

3. The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this Article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

ARTICLE IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

ARTICLE V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

ARTICLE VI

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

ARTICLE VII

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

ARTICLE VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments that shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised. At intervals of five years thereafter. a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

ARTICLE IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for
convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

ARTICLE XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed this Treaty. DONE in triplicate, at the cities of London, Moscow and Washington, the first day of July, one thousand nine hundred and sixty-eight.

ANNEX B. 'The Package'—Key Documents of the 1995 NPTREC[1]

Decision 1

STRENGTHENING THE REVIEW PROCESS FOR THE TREATY

1. The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons examined the implementation of article VIII, paragraph 3, of the Treaty and agreed to strengthen the review process for the operation of the Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.

2. The States party to the Treaty participating in the Conference decided, in accordance with article VIII, paragraph 3, that Review Conferences should continue to be held every five years and that, accordingly, the next Review Conference should be held in the year 2000.

3. The Conference decided that, beginning in 1997, the Preparatory Committee should hold, normally for a duration of 10 working days, a meeting in each of the three years prior to the Review Conference. If necessary, a fourth preparatory meeting may be held in the year of the Conference.

4. The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the decision on principles and objectives for nuclear non-proliferation and disarmament, adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.

5. The Conference also concluded that the present structure of three Main Committees should continue and the question of an overlap of issues being discussed in more than one Committee should be resolved in the General Committee, which would coordinate the work of the Committees so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one Committee.

6. It was also agreed that subsidiary bodies could be established within the respective Main Committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues. The establishment of such subsidiary bodies would be recommended by the Preparatory Committee for each Review Conference in relation to the specific objectives of the Review Conference.

7. The Conference further agreed that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what

[1] <https://www.un.org/disarmament/wmd/nuclear/npt1995/>.

might be done to strengthen the implementation of the Treaty and to achieve its universality.

Decision 2

PRINCIPLES AND OBJECTIVES FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the preamble and articles of the Treaty on the Non-Proliferation of Nuclear Weapons,

Welcoming the end of the cold war, the ensuing easing of international tension and the strengthening of trust between States,

Desiring a set of principles and objectives in accordance with which nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings evaluated periodically within the review process provided for in article VIII, paragraph 3, of the Treaty, the enhancement and strengthening of which is welcomed,

Reiterating the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

The Conference affirms the need to continue to move with determination towards the full realization and effective implementation of the provisions of the Treaty, and accordingly adopts the following principles and objectives:

Universality

1. Universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All States not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those States that operate unsafeguarded nuclear facilities. Every effort should be made by all States parties to achieve this objective.

Non-proliferation

2. The proliferation of nuclear weapons would seriously increase the danger of nuclear war. The Treaty on the Non-Proliferation of Nuclear Weapons has a vital role to play in preventing the proliferation of nuclear weapons. Every effort should be made to implement the Treaty in all its aspects to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by States parties to the Treaty.

Nuclear disarmament

3. Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. The undertakings with regard to nuclear disarmament as set out in the Treaty on the Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear weapon States reaffirm their

commitment, as stated in article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below:

(a) The completion by the Conference on Disarmament of the negotiations on a universal and internationally and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty no later than 1996. Pending the entry into force of a Comprehensive Test-Ban Treaty, the nuclear-weapon States should exercise utmost restraint;

(b) The immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices, in accordance with the statement of the Special Coordinator of the Conference on Disarmament and the mandate contained therein;

(c) The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.

Nuclear-weapon-free zones

5. The conviction that the establishment of internationally recognized nuclear-weapon-free zones, on the basis of arrangements freely arrived at among the States of the region concerned, enhances global and regional peace and security is reaffirmed.

6. The development of nuclear-weapon-free zones, especially in regions of tension, such as in the Middle East, as well as the establishment of zones free of all weapons of mass destruction, should be encouraged as a matter of priority, taking into account the specific characteristics of each region. The establishment of additional nuclear-weapon-free zones by the time of the Review Conference in the year 2000 would be welcome.

7. The cooperation of all the nuclear-weapon States and their respect and support for the relevant protocols is necessary for the maximum effectiveness of such nuclear-weapon-free zones and the relevant protocols.

Security assurances

8. Noting United Nations Security Council resolution 984 (1995), which was adopted unanimously on 11 April 1995, as well as the declarations of the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon States party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.

Safeguards

9. The International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the statute of the Agency and the Agency's safeguards system, compliance with its safeguards agreements with States parties

undertaken in fulfillment of their obligations under article III, paragraph 1, of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns, along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.

10. All States parties required by article III of the Treaty to sign and bring into force comprehensive safeguards agreements and which have not yet done so should do so without delay.

11. International Atomic Energy Agency safeguards should be regularly assessed and evaluated. Decisions adopted by its Board of Governors aimed at further strengthening the effectiveness of Agency safeguards should be supported and implemented and the Agency's capability to detect undeclared nuclear activities should be increased. Also, States not party to the Treaty on the Non-Proliferation of Nuclear Weapons should be urged to enter into comprehensive safeguards agreements with the Agency.

12. New supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

13. Nuclear fissile material transferred from military use to peaceful nuclear activities should, as soon as practicable, be placed under Agency safeguards in the framework of the voluntary safeguards agreements in place with the nuclear-weapon States. Safeguards should be universally applied once the complete elimination of nuclear weapons has been achieved.

Peaceful uses of nuclear energy

14. Particular importance should be attached to ensuring the exercise of the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I, II as well as III of the Treaty.

15. Undertakings to facilitate participation in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy should be fully implemented.

16. In all activities designed to promote the peaceful uses of nuclear energy, preferential treatment should be given to the non-nuclear-weapon States party to the Treaty, taking the needs of developing countries particularly into account.

17. Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.

18. All States should, through rigorous national measures and international cooperation, maintain the highest practicable levels of nuclear safety, including in waste management, and observe standards and guidelines in nuclear materials accounting, physical protection and transport of nuclear materials.

19. Every effort should be made to ensure that the International Atomic Energy Agency has the financial and human resources necessary to meet effectively its responsibilities in the areas of technical cooperation, safeguards and nuclear safety. The Agency should also be encouraged to intensify its efforts aimed at finding ways and means for funding technical assistance through predictable and assured resources.

20. Attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.

The Conference requests that the President of the Conference bring the present decision, the decision on strengthening the review process for the Treaty and the decision on the extension of the Treaty on the Non-Proliferation of Nuclear Weapons, to the attention of the heads of State or Government of all States and seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.

Decision 3

EXTENSION OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Having convened in New York from 17 April to 12 May 1995, in accordance with article VIII, paragraph 3, and article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons,

Having reviewed the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

Having reaffirmed article VIII, paragraph 3, of the Treaty and the need for its continued implementation in a strengthened manner and, to this end, emphasizing the decision on strengthening the review process for the Treaty and the decision on principles and objectives for nuclear non-proliferation and disarmament, also adopted by the Conference,

Having established that the Conference is quorate in accordance with article X, paragraph 2, of the Treaty,

Decides that, as a majority exists among States party to the Treaty for its indefinitely extension, in accordance with article X, paragraph 2, the Treaty shall continue in force indefinitely.

Resolution on the Middle East

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the purpose and provisions of the Treaty on the Non-Proliferation of Nuclear Weapons,

Recognizing that, pursuant to article VII of the Treaty, the establishment of nuclear-weapon-free zones contributes to strengthening the international non-proliferation regime,

Recalling that the Security Council, in its statement of 31 January 1992, a/ affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international peace and security, Recalling also General Assembly resolutions adopted by consensus supporting the establishment of a nuclear-weapon-free zone in the Middle East, the latest of which is resolution 49/71 of 15 December 1994,

Recalling further the relevant resolutions adopted by the General Conference of the International Atomic Energy Agency concerning the application of Agency safeguards in the Middle East, the latest of which is GC(XXXVIII)/RES/21 of 23 September 1994, and noting the danger of nuclear proliferation, especially in areas of tension,

Bearing in mind Security Council resolution 687 (1991) and in particular paragraph 14 thereof, Noting Security Council resolution 984 (1995) and paragraph 8 of the decision on principles and objectives for nuclear non-proliferation and disarmament adopted by the Conference on 11 May 1995,

Bearing in mind the other decisions adopted by the Conference on 11 May 1995,

1. Endorses the aims and objectives of the Middle East peace process and recognizes that efforts in this regard, as well as other efforts, contribute to, inter alia, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction;

2. Notes with satisfaction that, in its report (NPT/CONF.1995/MC.III/1), Main Committee III of the Conference recommended that the Conference "call on those remaining States not parties to the Treaty to accede to it, thereby accepting an international legally binding commitment not to acquire nuclear weapons or nuclear explosive devices and to accept International Atomic Energy Agency safeguards on all their nuclear activities";

3. Notes with concern the continued existence in the Middle East of unsafeguarded nuclear facilities, and reaffirms in this connection the recommendation contained in section VI, paragraph 3, of the report of Main Committee III urging those non-parties to the Treaty on the Non-Proliferation of Nuclear Weapons that operate unsafeguarded nuclear facilities to accept full- scope International Atomic Energy Agency safeguards;

4. Reaffirms the importance of the early realization of universal adherence to the Treaty, and calls upon all States of the Middle East that have not yet done so, without

exception, to accede to the Treaty as soon as possible and to place their nuclear facilities under full-scope International Atomic Energy Agency safeguards;

5. Calls upon all States in the Middle East to take practical steps in appropriate forums aimed at making progress towards, inter alia, the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective;

6. Calls upon all States party to the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular the nuclear-weapon States, to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems.

ANNEX C. 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document[1]

Volume I

Part I Improving the effectiveness of the strengthened review process for the Treaty

1. The States parties reaffirmed the provisions in the Decision on "Strengthening the Review Process for the Treaty" adopted at the 1995 Review and Extension Conference.

2. The States parties stressed that three sessions of the Preparatory Committee, normally for a duration of 10 working days each, should be held in the years prior to the Review Conference. A fourth session, would, if necessary, be held in the year of the Review Conference.

3. The States parties recommended that specific time be allocated at sessions of the Preparatory Committee to address specific relevant issues.

4. Recalling the Decision on subsidiary bodies of the 2000 Review Conference (NPT/CONF.2000/DEC.1), subsidiary bodies can be established at the Review Conference to address specific relevant issues.

5. The States parties, recalling paragraph 4 of Decision 1 of the 1995 NPT Review and Extension Conference, agreed that the purpose of the first two sessions of the Preparatory Committee would be to "consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality". To this end, each session of the Preparatory Committee should consider specific matters of substance relating to the implementation of the Treaty and Decisions 1 and 2, as well as the Resolution on the Middle East adopted in 1995, and the outcomes of subsequent Review Conferences, including developments affecting the operation and purpose of the Treaty.

6. The States parties also agreed that the Chairpersons of the sessions of the Preparatory Committee should carry out consultations with the States parties to prepare the ground for the outcome of the sessions as well as their agenda.

7. The consideration of the issues at each session of the Preparatory Committee should be factually summarized and its results transmitted in a report to the next session for further discussion. At its third and, as appropriate, fourth sessions, the Preparatory Committee, taking into account the deliberations and results of its previous sessions, should make every effort to produce a consensus report containing recommendations to the Review Conference.

8. The States parties agreed that the procedural arrangements for the Review Conference should be finalized at the last session of the Preparatory Committee.

[1] <https://www.un.org/disarmament/wmd/nuclear/npt2000/final-documents>.

9. The States parties also agreed that a meeting should be allocated to non-governmental organizations to address each session of the Preparatory Committee and the Review Conference.

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