

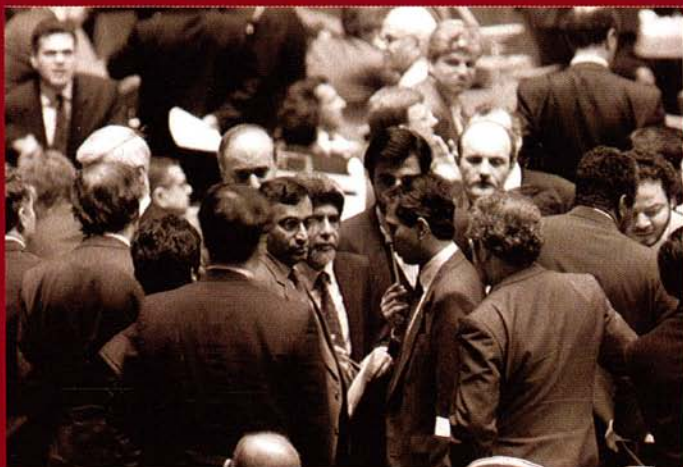
UNITED NATIONS INSTITUTE  
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# **Multilateral Diplomacy and the NPT**

## **An Insider's Account**

by Jayantha Dhanapala with Randy Rydell  
Foreword by  
United Nations Secretary-General Kofi A. Annan



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Jayantha Dhanapala  
with Randy Rydell

UNIDIR  
United Nations Institute for Disarmament Research  
Geneva, Switzerland



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## PREFACE

This book has been in 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 help 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, which 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 which 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, the 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 United Nations 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. To my children—Kiran and Sivanka—my affectionate appreciation for their support and encouragement.

I wish to acknowledge the generous support of the MacArthur Foundation but for whose grant this writing project would never have been possible. I also thank UNIDIR and its Director, Dr Patricia Lewis, and SIPRI and its Director, Alyson Bailes, for agreeing to co-publish this book. 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.

Jayantha Dhanapala



## 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

## ACRONYMS

ACDA	US Arms Control and Disarmament Agency
ABM	Anti-Ballistic Missile
BWC	Biological Weapons Convention
CD	Conference on Disarmament (Geneva)
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization (Preparatory Commission)
CWC	Chemical Weapons Convention
DDA	United Nations Department for Disarmament Affairs
DPRK	Democratic People's Republic of Korea
HCOG	Hague Code of Conduct Against the Proliferation of Ballistic Missiles
IAEA	International Atomic Energy Agency
ICBM	Intercontinental Ballistic Missile
INF	Intermediate-Range Nuclear Forces Treaty
NNWS	Non-Nuclear-Weapon States (NPT)
NAC	New Agenda Coalition
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NPTREC	1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (17 April-12 May 1995)
NWS	Nuclear-Weapon States (NPT)
OPANAL	Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
OSCE	Organization for Security and Co-operation in Europe
P&O	Principles and Objectives for Nuclear Non-Proliferation and Disarmament
PPNN	Programme for the Promotion of Nuclear Non- Proliferation
PSI	Proliferation Security Initiative
SIPRI	Stockholm International Peace Research Institute
START	Strategic Arms Reduction Treaty



Moscow Treaty	Strategic Offensive Reductions Treaty
UAV	Un-manned Aerial Vehicle
UNIDIR	United Nations Institute for Disarmament Research
WMD	Weapons of mass destruction (nuclear, biological and chemical weapons)

## CHAPTER 1

### INTRODUCTION: AN OVERVIEW OF THE PROCESS LEADING TO THE INDEFINITE EXTENSION

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) signed at 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 its extension 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 NPT Review and Extension Conference (NPTREC) also had the task of reviewing the performance of the treaty for the period 1990-1995 in accordance with article VIII(3), which stipulates that Review Conferences be held every five years. 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.<sup>1</sup> A Final Declaration was adopted in the first Review Conference held in 1975 reportedly because of the forceful personality of the Swedish Chairperson Inga Thorsson. The 1980 Second Review Conference ended in a failure. The Third Review Conference in 1985, 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 Declaration 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 NPTREC 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, with a positive result, and without acrimony and divisive voting.

## **THE PRELUDE<sup>2</sup>**

The approach to the 1995 NPTREC 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

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before the preparatory process was finally launched by the United Nations 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 of the merits of voting for an indefinite and unconditional extension of the NPT. The support of the United Nations Secretary-General was also obtained in this campaign.

Thus the highly charged political nature of the Conference was set at an early stage. It was clearly established as a high priority foreign policy objective of the Western and Eastern Groups that the NPTREC 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 to make permanent 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 the Democratic People's Republic of Korea (DPRK) to leave the NPT. And yet the permanent extension of the treaty had also to depend on the record of its performance in other aspects—on nuclear disarmament; on international cooperation in the peaceful uses of nuclear energy; on security assurances for NNWS; 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 Soviet Union and the US through the Intermediate-Range Nuclear Forces (INF) Treaty and the Strategic Arms Reduction Treaties (START I and START II) in the process of ending the Cold War arms spiral was an incontrovertible fact. Never mind that by some estimates more nuclear arms existed in 1995 than when the NPT was first signed, a concern frequently advanced by the Non-Aligned countries and non-governmental organizations (NGOs).<sup>3</sup> 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 51 of the United Nations Charter, or a weapon to be aimed at 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 negotiations at the Conference on Disarmament (CD) on a 10-year exit clause and by the joint United Kingdom-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 (living aside the problem of having to deal with stockpiles) miraculously transformed the vision 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 NNWS, although the latter seemed less controversial. With pressure from the NAM, and most particularly from Arab countries vitally concerned with 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 the United Kingdom and France held out against treaty-based legally binding guarantees that the NAM continued 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 (NWS) before the NPTREC. 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 by developing countries for increased financial resources to meet 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 efforts were evident to persuade the holdout states to join following the admirable South African example.

It was clear therefore, that a lowest 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% of the United Nations 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 achieve universality. The public display of 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 for those who supported an indefinite extension of the treaty. Proposals for 25-year rollover periods of extensions, a fixed 25-year period and a fixed shorter period were advanced from time to time, although without the support of 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 as that which drove the campaign for indefinite extension. 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, there was strong and growing support among the states parties 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 in the support for an indefinite extension appeared 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 snap vote on the extension issue 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 as 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 eventual adoption of the extension decision by consensus obviated the need for a procedural vote on whether that decision should be voted on secretly or not. The outcome of such a 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.

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## 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 (save for rule 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 states parties favoured an indefinite extension of the treaty. Consultations by the President with delegations that remained uncommitted and that 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 question and the mode of voting weakened the opposition to an indefinite extension. 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 among 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 the members of their respective groups 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 of the Committees or their representatives were also invited to be present.

After the South African initiative, the shape of an agreement became clear halfway through 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—including the membership of all states in the Middle East—was considered to be the goal.

Out of a concern that the delicate negotiations not be upset, delegations did not make it explicit that the basis of this agreement would have to be some recognition of the fact that a majority of parties at the Conference favoured 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 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 ready. 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, 10 May as envisaged in the Rules

of Procedure. At this point, urgent consultations become necessary to ensure that Arab states parties would find it possible to accept the draft decision without a vote.

On this vexing problem a separate spate of negotiations conducted without the involvement of the President had reached a stalemate. Ultimately, the necessity to incorporate an agreement on the matter into the package resulted in accelerated activity under the aegis of the President, which resulted in 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 the respect of the treaty in the Middle East and the acceptance of IAEA safeguards on nuclear facilities in the region. Thus, the NPTREC was able to adopt three parallel decisions and a resolution on the Middle East on Friday, 11 May bringing to a successful conclusion the extension aspect of the Conference.<sup>4</sup>

Regrettably, the focus of attention on the extension issue had meant less time and effort being devoted to the review aspect. In a strangely ironical twist to 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 the most prominent. It would be a mistake to read into this failure anything more than this, however. 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 amount of time, 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 dissatisfaction among a majority of treaty parties, who could at any moment, invoke their rights under article X(1) and leave the treaty even if it was not to acquire nuclear weapons. This erosion of

confidence in 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 Coordinating 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 fulfilled in the short term and they included the early conclusion of a genuine CTBT. This helped to ignore the nuclear weapon tests by France and China shortly after the 1995 Conference. 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. Surely the danger is that if countries reach the conclusion that the NPT is just a means to establish a permanent division between nuclear-weapon and non-nuclear-weapon states, the world community will witness future cheating and clandestine development of nuclear weapons.

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 prevailing differences of opinion did not impede a final outcome acceptable to all. Yet the true worth of this outcome will depend in the years to follow on the readiness of the states parties to implement the key 1995 NPTREC decisions, along with other commitments made at future NPT Review Conferences, and, of course, the obligations of the treaty itself. The remainder of this study will examine in closer detail the process leading to the 1995 outcome and the results that followed.



## CHAPTER 2

### THE 1995 CONFERENCE PREPARATORY PROCESS

#### INTRODUCTION: SETTING THE CONTEXT

The best way to introduce the context of the NPTREC is to begin by recognizing that the Conference did not occur in a historical vacuum. Rather, it took place in a wider environment consisting of the treaty's internal and an external contexts. While these contexts did not inexorably determine the outcome of this historic conference, they surely affected the events leading up to it as well as its actual deliberations.

Throughout the brief description of these contexts that follows, it should also 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 provisions of the treaty and the different understandings that followed from the various Review Conferences are fully implemented, the 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 provisions of the treaty are spuriously implemented and merely used 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 origins of the NPT would no doubt trace its initial 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 set of countries recognized in the NPT as “nuclear-weapon states”.

In the years following the nuclear rivalry between the Soviet Union and the United States in the late 1950s—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 of 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 means of any one single country, even one supported by 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 be the NPT—a treaty boldly aiming not simply to put the “bad nuclear genie” back in its bottle, but to ensure that the “good nuclear genie” remained 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 nuclear rivalry between the Soviet Union and the United States 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, *détente* between the nuclear superpowers, and then the collapse of the Soviet Union and the end of the Cold War, spread hope throughout the world community for concrete progress in fulfilling the full promise of the NPT, in particular its aim of eliminating all nuclear weapons.

Significantly, the NPTREC was the treaty's first Review Conference to involve the participation of all five NWS. It was also the first Review Conference to occur after the end of the Cold War. Although the external environment was rapidly changing, many geopolitical hallmarks of the Cold War 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, on-going 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.

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 at the 1995 NPT Review and Extension Conference 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 broader context by which they were spawned and nurtured. 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 spectrum of the international environment, the matter is quite different when it comes to the internal context of treaty negotiations, which offers 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 context is subject to the vagaries of chance, drift, complacency, incompetence and other such hallmarks of diplomacy. While ultimate outcomes are shaped in profoundly significant ways by factors in the external environment, the internal context has its own significant impacts upon events that merit close examination. For example, the caliber of leadership within key political groups, the various capacities provided by the United Nations Secretariat, the political and public relations skills of the NGOs, and what I collectively call the basic skills of "conference management" have a lot to do with concrete outcomes in the NPT Review Conference processes. It is true, that 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 Lewis Dunn of the US 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 is correct, if the intended meaning is to denote a failure of political will. Yet blaming a review process for such a "failure" is somewhat akin to blaming a thermometer for torrid weather!

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

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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 the 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 was particularly true of the Review Conferences leading up to NPTREC.

One final caveat is in order as a prelude to interpreting the results of past Review Conferences: the NPT is a unique multilateral legal instrument in that one of its key clauses included what at the time was a novel 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, the 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 ensure 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 of 1995. The first four (in 1975, 1980, 1985 and 1990) took place in Geneva, while the NPTREC convened at the United Nations Headquarters in New York. Participation at each Conference

reflected the growing treaty membership—from 91 states parties in 1975 to 140 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 the United Nations 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 of the Conference in 1995.

#### REVIEW CONFERENCE OF 1975

The 1975 Review Conference (which took place from 5 to 30 May) was unique in that it was the first such Conference to take place under the treaty, and as such, in many ways, it served as a precedent for substantive debates and procedural deliberations 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. As such, in 1975 we saw some solidarity among the three NWS in attendance (then, the United States, the 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 and safeguards standards, while many developing countries associated with the 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 NNWS strongly urged the conclusion of a 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.<sup>5</sup>

#### REVIEW CONFERENCE OF 1980

The Second NPT Review Conference was not so fortunate. Despite extensive deliberations from 11 August to 7 September the Conference was unable to reach a consensus on a Final Declaration. 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 higher expectations among many of its participants—expectations that led to new frustrations over the slow pace 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.

## REVIEW CONFERENCE OF 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 session of the Preparatory Committee (PrepCom), I also chaired Main Committee I. By now 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 ability of this Conference to agree a Final Declaration was due in large part to my authority, as Chairman of Main Committee I, to resolve a large number of contentious issues coupled with the efforts the Conference President—Ambassador Mohamed Shaker of Egypt—who relied on a small, informal group of advisers consisting of the Committee Chairmen (there were 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 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.<sup>6</sup>

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## REVIEW CONFERENCE OF 1990

The NPT's Fourth Review Conference was held from 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 to foster a consensus on a Final Declaration. In his account of the Conference, Ambassador Thomas Graham of the US subsequently offered his own explanation, "Miguel Marín Bosch [of the Mexican delegation] ... single-handedly wrecked the 1990 NPT Review Conference over the CTBT issue."<sup>7</sup>

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 for 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 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 PrepCom for the 1995 Conference of the Parties to the NPT was established in accordance with United Nations 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 1995 to

address voting procedure (rule 28). Collectively, activities at these events served rather as an extended, dress rehearsal of many of the major substantive and procedural issues that would come to dominate the 1995 NPTREC.<sup>8</sup> 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 all the PrepComs was on procedural issues, with substantive concerns raised only in some discussions during the exchange of views. How these procedural issues were eventually resolved, is a matter 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 United Nations Secretary-General's representative to the PrepCom was Mr Prvoslav Davinic, the Director of the United Nations' Centre for Disarmament Affairs.

At the first session, Poland (representing the Group of Eastern European States) announced that it wished to propose a candidate for the presidency of the NPTREC, and Indonesia (on behalf of the Group of Non-

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Aligned and Other States) offered my own name as a candidate. Following Poland's decision at the second session to withdraw its candidate, I was unanimously endorsed 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.<sup>9</sup>

My decision to become a candidate for the office of President was probably conceived as I watched the collapse of the 1990 Review Conference. The then President of Sri Lanka, Ranasinghe Premadasa, had agreed to support my bid 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 the NPT review process and later in my capacity as Under-Secretary-General for Disarmament Affairs to enhance their participation in that process and in activities elsewhere in the United Nations 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 the fulfillment of 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 did not prove possible, to take decisions in accordance with the Rules of 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 literally "every effort" subsequently to trying to forge a consensus that would avoid this. 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 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 existing track record, 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. Because of the lack of progress in many areas of great importance to all members of this Group—including the CTBT, a fissile material treaty, security assurances and nuclear disarmament<sup>10</sup>—suspicions were growing among them that the “Review” half of the 1995 Conference would be eclipsed by the juggernaut on behalf of the indefinite extension of the NPT, led by the NWS in coalition with the Western and Eastern Group countries. Another concern facing the Non-Aligned 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 outcome for the Group given its conviction that the two parts of the Conference were inextricably linked.

Unfortunately for the Non-Aligned Group, its members held 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 extension of the treaty, how long the extension should last, and what criteria should be used to gauge progress in achieving disarmament goals. In contrast to the divided NAM, 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 refrain from taking 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 having its ranks thinned 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 attribution 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 recognizing 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 PrepComs 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 subsequent organization of the work at the NPTREC, however, mooted this decision.

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

meeting agreed that the voting would take place on 10 May 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 scheme originally introduced by Indonesia. As of the start of the Review Conference, there was still no agreement on whether voting would be secret. While the Western and Eastern Groups favoured open voting, the Non-Aligned Group sought a secret ballot to protect their members from pressure from the proponents of indefinite extension.

During the PrepCom deliberations, George Bunn and Charles Van Doren—two experienced NPT authorities—explored the possibility of automatic 25-year extensions, whereby 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> In addition, the Nigerian delegation offered a proposal that the United Nations 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 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.<sup>14</sup> In sum, while the non-aligned states were opposed to an unconditional, indefinite extension, they were unable to unite behind a concrete counter-proposal.

The exceptional Fourth PrepCom session of 23-27 January 1995 was needed in 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 held on 14-15 April. Ultimately, the difficult voting issue

(which involved conflicting proposals for secret vs. open voting methods and procedures for dealing with a vote that failed to produce a majority) proved to be overtaken by events given that the Review Conference's three decisions and the Middle East resolution were adopted without a vote.

### THE PREPCOM IN RETROSPECT

The various sessions 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 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 present 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 the voting procedure for the decision on the extension. Overall thus the PrepCom did what it was 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, the PrepCom—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 very thin, even non-existent. In a political environment characterized by actors with widely-shared goals but widely-divergent priorities with respect to the actions needed to achieve these, 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 United Nations Charter, we should view such differences not simply as an endemic quality of our current system of nation-states, but in this specific context, as a sign of the importance that 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 that 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.

## CHAPTER 3

### GROUP POSITIONS AT THE CONFERENCE

#### INTRODUCTION: WHY GROUPS MATTER

Only states matter—or so 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 alone. Realizing 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 groupings both within and between those states. We see a proliferation also of inter-governmental organizations set up by states to address their common goals. We see the rapid growth of NGOs that have both direct and indirect influences on the design, implementation and reform of state policies.

Amid this ever-changing environment, we also see a growing complexity of the issues facing states, whose national policies are increasingly driven by global concerns, 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 national 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 under the pressure of time—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 building 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<sup>15</sup>**

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.<sup>16</sup> 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 at not achieving all they may have hoped to achieve. Diplomacy, after all, is a very human endeavour, and egos play their role.

Nevertheless, it is fair (though somewhat regrettable) to say that the most convenient breakdown of these groups would continue to focus on geographic considerations relating uncomfortably to circumstances of 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 NNWS 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 the 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 which played a central role in the process: the Western Group; the 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 such as 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.<sup>17</sup> 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 on the activities of these state 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”, such as Japan and Australia, for example. The Group comprised about 25 states at the NPTREC, consisting largely of members of the North Atlantic Treaty Organization (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 CD, 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.

### 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. Members 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 its national interest to support the indefinite extension.) At 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

The Non-Aligned Group consisted at the time of over 100 states affiliated with neither of the previous two groups. 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, due to its large size, one would expect this Group to carry 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. However, while no less mindful of the notion of strength-through-cooperation, the diverse geographic, cultural, economic and political circumstances of its constituent countries made cooperation exceedingly difficult to orchestrate on a timely and effective basis. The potential influence of this Group 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.”<sup>18</sup>

At the same time the NAM, as a movement and not an organization, was loosely knit. The lack of strong leadership and coordination 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 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 laid out their official national positions. Group policies 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.<sup>19</sup> While it was not yet certain that a majority existed for indefinite extension when the Conference 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 35 statements that explicitly called for an indefinite and unconditional extension, with 44 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 18 showed 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 from 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 to 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 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 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*.<sup>20</sup> 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” proposal was ultimately dropped, the idea underlying it—namely, the fact that the NPT lacks institutional infrastructure—has by no means disappeared as a concern of the states parties, as was apparent at 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 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.”<sup>21</sup>

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 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.<sup>22</sup> 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 at 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 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”.<sup>23</sup> 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 Organization for Security Cooperation in Europe (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 NAM 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 writing any obituary for the NAM and its respective “Group” in the NPT review process.

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 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.”<sup>24</sup>

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 ways and means to achieve those ends.

While group dynamics comprise an important motor in any conference, the specific tasks of building a consensus and forging agreements depend significantly upon the availability and willingness of trusted and respected conference officials and delegates to undertake cross-group discussions.

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.





## CHAPTER 4

### THE ADOPTION OF THE PACKAGE

#### INTRODUCTION: A TREATY WORTH PRESERVING

In the months leading up to the opening of the NPTREC, and indeed even well into the event itself, nobody could comfortably have predicted the precise 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 was to achieve 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 has an Achilles Heel—its invidious division of the world into two status categories: those who have nuclear weapons and those who do 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 NWS in taking the steps needed to eliminate their nuclear arsenals and related weapons-capabilities, a firm determination by the NNWS 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, though this surely had its role to play. The multi-year coordinated effort led by the US in alliance with those who favoured the indefinite extension of the treaty did not just emerge from nowhere, as Thomas Graham makes quite clear in the description of the NPTREC in his memoirs.<sup>25</sup> 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 a few 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 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 provisionally 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.<sup>26</sup>

As the date of the Review Conference approached, the voting option obtaining most attention was a proposal from Indonesia, under which all extension proposals would be voted upon simultaneously by 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).<sup>27</sup> 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 while 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.

### 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.<sup>28</sup>

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 finalize our work. I had been in too many conferences where the clock had to be stopped in nailbiting 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.

### OVERVIEW OF THE “PRESIDENTIAL CONSULTATIONS”

For the second track, I set up a small informal working group—called simply, “Presidential Consultations”—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

Presidential Consultations, therefore, was in many respects modeled after the smaller group set up by Mohamed Shaker, the President of the Third Review Conference.<sup>29</sup> 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.<sup>30</sup>

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 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 Presidential Consultations 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 Ambassador Taylhardat of Venezuela left the conference reportedly because of disagreement with official policy.

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 represented the NWS, 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 Presidential Consultations. In addition, I of course

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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 NAM. 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.<sup>31</sup> The press was reporting in early May that Western diplomatic sources were confident they had sufficient support for an indefinite extension.<sup>32</sup>

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 its 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 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-nonproliferation and disarmament and the other dealing with measures to strengthen the review process.<sup>33</sup>

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.<sup>34</sup> 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, 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.<sup>35</sup> The draft also contained hortatory language (“urge”,

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“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 would be added concerning the CD, strengthening safeguards, peaceful uses, and nuclear-weapon-free zones.<sup>36</sup>

It is relevant at this stage to refer to the role of Ambassador Miguel Marín Bosch of Mexico, who had represented his country at the CD and was widely regarded as a stalwart champion of nuclear disarmament. Following his work in the PrepComs, he remained on the delegation but was unusually subdued. In the years that followed, I was happy to see this able diplomat return from hibernation to play an important role in the United Nations Secretary-General’s Advisory Board on Disarmament Matters, and to chair a Group of Governmental Experts that produced a path-breaking study for the General Assembly on disarmament and non-proliferation education<sup>37</sup>—before assuming his professorship at the Universidad Iberoamericana.

Thus as we entered the first week of May, the Presidential Consultations group 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 Presidential Consultations 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 advanced, I could see we were proceeding with the right spirit of compromise, but we still had lots of work ahead.

Though my work in the Presidential Consultations 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)<sup>38</sup>;
- 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<sup>39</sup>; 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.<sup>40</sup>

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).<sup>41</sup> 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 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 Presidential Consultations—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; that 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.<sup>42</sup> 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 Presidential Consultations 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 Presidential Consultations 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.

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 United Nations Security Council’s resolution 984 (adopted on 11 April) on security assurances for NNWS 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 US. 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”<sup>43</sup> 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 May 5—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 of 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.

The decision therefore 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.

**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, 14 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 (WMD) 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.<sup>44</sup>



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.”<sup>45</sup> 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.”<sup>46</sup> 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 of 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 States not Parties to the Treaty to accede to it...”.<sup>47</sup> 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 have been 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 many supporters for indefinite extension clearly worked assiduously to achieve their goal. For their part, the NWS did not by any means take the 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 NWS (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."<sup>48</sup>

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 NGOs 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 obtained 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 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.



## CHAPTER 5

### 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 yardsticks are only as good as the vision of those who use them.

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 United Nations' Department for Disarmament Affairs (DDA), and the hundreds of NGOs<sup>49</sup> 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 NWS in fulfilling their responsibilities under article VI (e.g., the Trilateral Initiative aimed at safeguarding fissile material from dismantled weapons<sup>50</sup>), the NWS have 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”<sup>51</sup>—has substantially and unnecessarily held back the development of the NPT regime.<sup>52</sup> 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 forward and backward 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. 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.

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## 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), 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.<sup>53</sup> Membership in 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.<sup>54</sup> 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.<sup>55</sup>

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 shortchanged 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 provide 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 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 Erdős 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 in the naming of the 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 in 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--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 activities 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.<sup>56</sup> 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 among 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.<sup>57</sup>

One of those bracketed paragraphs (dealing with foreign deployments of nuclear weapons) appeared in no less than eight versions.<sup>58</sup> 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 NWS and their collaboration with certain States non-parties to the Treaty.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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 a CTBT, 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 CD, and that remains today a source of great disagreement.

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 United Nations 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.<sup>62</sup>

## MAIN COMMITTEE II

As noted above, Main Committee II focused mostly on safeguards and nuclear-weapon free zones, as well as export controls.<sup>63</sup> 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.<sup>64</sup>

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With respect to nuclear-weapon-free zones, the Committee was in general agreement on 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.<sup>65</sup> 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 uranium—a position that would receive further attention in the years ahead as fears of the dangers of nuclear terrorism continued to grow.<sup>66</sup>

The non-aligned countries submitted their own working paper addressing safeguards, NWFZ and export controls.<sup>67</sup> 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 clause 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.<sup>68</sup> It held six 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.<sup>69</sup> 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, categorical terms,<sup>70</sup> 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<sup>71</sup> (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.<sup>72</sup>

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.<sup>73</sup> 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).<sup>74</sup>

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.<sup>75</sup>

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-envisioned benefits of such explosions had not materialized, and recommending that the CD 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 explosions in the context of a CTBT<sup>76</sup>—a stance that was dropped later in the CD 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.<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup> Facing what they perceived to be inadequate progress in achieving disarmament goals, many of the non-aligned—as well as other NNWS 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.<sup>80</sup>

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.

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.<sup>81</sup> 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,<sup>82</sup> nuclear transfers and export controls). The language on article IV 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 unbracketed 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.

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 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”?<sup>83</sup> 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 were in no mood to weaken further their positions in the review process; and second, the NWS, 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 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

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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.<sup>84</sup>

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 NWS 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.<sup>85</sup> 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.<sup>86</sup> The political will needed to broaden the area of agreement was

missing. Only time would tell whether the solemn words in the NPTREC package would see their fulfillment in the deeds of the states parties over the years to come.

## CHAPTER 6

### 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 NWS 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 CD 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 that 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 United Kingdom and France dropped their insistence on placing into the CTBT authority to conduct periodic tests for purposes of safety. The United Kingdom 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 an inducement for the NNWS 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 United Kingdom. There was also some progress with respect to nuclear-weapon-free zones: France, the United Kingdom, and the 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 United Kingdom and the US signed the Rarotonga Treaty Protocols;
- In April, 43 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 intercontinental ballistic missile (ICBM), the Topol-M.

**1998.** Among the more encouraging events this year included:

- In February, 50 former heads of government issued a joint statement in favour of eliminating nuclear weapons;
- In March, the United Kingdom retired 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 United Kingdom ratified 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 widely viewed as 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. I was later asked by Secretary-General Kofi Annan to meet US Deputy Secretary of State Strobe Talbott to ascertain the content of his dialogue with the two South Asian countries in the light of the strong views of others who supported the UN Security Council resolution. Subsequent developments (not included in this chronology) included several tests of nuclear-capable missiles by both countries.

Over the years to follow, both countries would continue their competition to develop and produce both missiles and nuclear weapons. Though many countries imposed some form of sanction for the tests, these were soon 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 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 Anti-Ballistic Missile (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". 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.

**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 1,500, 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 WMD) 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 1,700-2,200, 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 1,700-2,200, 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 (Moscow Treaty), which established a 1,700-2,200 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 spend US\$ 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 in 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, a group of states announced the formation of an International Code of Conduct Against Ballistic Missile Proliferation<sup>87</sup> 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.<sup>88</sup> 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 became law, which authorizes research on low-yield nuclear weapons, thereby reversing an earlier prohibition on such research. On 8 December, the US was the sole country to vote against a United Nations 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 United Nations/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.

The year ended auspiciously, with televised announcements on 19 December by US President George W. Bush, British Prime Minister Tony Blair and Libyan Foreign Minister Abd al-Rahman Mohammed Shalgam, that Libya had agreed to abandon its programmes to acquire weapons of mass destruction and long-range missiles.<sup>89</sup>

**2004.** Libya continued to demonstrate its commitment to abandon its WMD programmes throughout the year. In January, it ratified the CTBT and agreed in March 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.<sup>90</sup>

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 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.<sup>91</sup> In June, the IAEA issued a report by its Director General on the implementation of safeguards in Iran; the report found that while Iran had been cooperating with the Agency, its cooperation had fallen short of what was required.<sup>92</sup> The report also provided details about Iran's undeclared imports of nuclear equipment from foreign intermediaries.

In September, the *New York Times* reported that the Republic of Korea had secretly produced a small amount of near-weapons grade uranium,<sup>93</sup>

a report quickly denied by the President of the Korean Atomic Energy Research Institute, whom—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.<sup>94</sup> 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 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 PREP COM

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.<sup>95</sup>

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 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.<sup>96</sup> 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.<sup>97</sup>



### THE 1998 SESSION OF THE PREP COM

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 CTBT Organization (CTBTO), 76 NGOs, and the following non-parties as observers: Brazil and Israel. The 1998 PrepCom session held 16 meetings.<sup>98</sup> 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.<sup>99</sup> Much of the discussion centered 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<sup>100</sup> had 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 voiced their disappointment that more was not accomplished.<sup>101</sup>

### THE 1999 SESSION OF THE PREP COM

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;<sup>102</sup> 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.<sup>103</sup> 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 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.<sup>104</sup>

### 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.<sup>105</sup> Rebecca Johnson also concluded that “overall the review process has provided greater accountability and more leverage on the weapon states than in the past.”<sup>106</sup>

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 defense 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 2000 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 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.<sup>107</sup> 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 and 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” to the “yardstick” created in 1995—although greater clarity was both necessary and appreciated.<sup>108</sup>

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.”<sup>109</sup> 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.

The Conference’s determination to reach agreement was best symbolized by the heroic efforts made by Canadian Ambassador Christopher Westdal, who chaired Main Committee II’s “Subsidiary body 2” that addressed very difficult regional issues, including the implementation of the 1995 Middle East resolution, and issues relating to Iraq, South Asia and the DPRK. Following a decision to stop the Conference’s clock on the last day, negotiations continued overnight 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 issues—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.”<sup>110</sup> 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.”<sup>111</sup> 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.

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.”<sup>112</sup> 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 PREP COM

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 signaled 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.<sup>113</sup>

What exactly happened? The PrepCom met in New York from 8 to 19 April 2002, with 138 states parties participating.<sup>114</sup> 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 Lszl Molnr of Hungary; it set the dates and venues of the remaining PrepComs and the 2005 Review Conference (which would be held in New York from 2 to 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, etc.

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 11 September tragedy. It also held a 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<sup>115</sup> and the New Agenda Coalition<sup>116</sup> 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. In addition, Germany had submitted a working paper with a reporting proposal on the implementation of the 1991/1992 Presidential Nuclear Initiatives—i.e., the unilateral US and Russian commitments to reduce non-strategic nuclear weapons.<sup>117</sup>

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 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 NNWS and the impression one gets that 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. In view of 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 PREP COM

The second session of the PrepCom for the 2005 Review Conference took place in Geneva on 28 April to 9 May 2003, with Lszl Molnr of Hungary as its Chairman.<sup>118</sup> 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 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 Moscow Treaty in a joint statement,<sup>119</sup> 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".<sup>120</sup> The United Kingdom 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 United Kingdom has drafted on this important subject, to their credit.<sup>121</sup>

**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."<sup>122</sup> (Germany had similarly submitted its own report at the first PrepCom on specific practical measures needed to attain a nuclear-weapon-free world.<sup>123</sup>)

**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.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> I am particularly pleased to see that this issue has been taken up in the NPT, given the work I had invested in promoting it while serving as Under-Secretary General of the DDA. The paper commanded the recommendations of a UN report prepared by a group of experts for the Secretary-General.<sup>127</sup>

**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 United Nations, but much remains to be done.<sup>128</sup>

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 PREP COM

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.<sup>129</sup> 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.<sup>130</sup>

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.<sup>131</sup>

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. 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"<sup>132</sup> along with the Chairman's eight-page working paper that euphemistically identified issues and proposals that "required further discussion."<sup>133</sup> 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.<sup>134</sup> 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.



## CHAPTER 7

### 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.<sup>135</sup> 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"<sup>136</sup>—remains valid even in our current environment, which is

often characterized by glaring headlines about the dangers arising from WMD.

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.

The entire international community—which faces conflicts both within 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 clarify exactly why the indefinite extension of the NPT in 1995 was so vitally important.

## THE RELEVANCE OF REGIMES

Regimes undeniably influence 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, or simply because states perceive that their interests would be better served by cooperation than by acting alone. 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. With respect to WMD regimes created to pursue non-proliferation and disarmament goals, the NPT, BWC and CWC are most legally-binding and universal in membership—states in several regions have reinforced these regimes by establishing nuclear-weapon-free or WMD-free zones covering their respective territories. 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 NNWS—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.

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## 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 NWS into a binding legal obligation with respect to nuclear disarmament. As of November 2004, the United Nations describes the treaty as having 189 states parties—there are different opinions, however, among the member states about the status of the DPRK following its declared withdrawal from the treaty. While impressive, the CWC (with its 167 parties) and the BWC (with its 152) 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*, un-manned 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—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 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-legally binding regimes lack both disarmament commitments and even the goal of establishing an international means of verification—this includes the Moscow Treaty and the Hague Code of Conduct (HCOG) 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 United Nations 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.<sup>137</sup> The General Assembly received this report in 2002<sup>138</sup> and its First Committee adopted another resolution requesting a follow-up study, beginning in 2004.<sup>139</sup> 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 United Nations 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.<sup>140</sup>

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 why world military expenditures are now rapidly approaching the US\$ 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 NNWS—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 NWS 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.”<sup>141</sup> 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. It is of course much more than just a “non-proliferation” treaty. It also obligates all its parties to pursue negotiations in good faith on 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 NNWS, meanwhile, have repeatedly objected (both in the NPT arena and in other multilateral fora including the United Nations General Assembly’s First Committee and the United Nations Disarmament Commission) to the lack of concrete evidence of progress on nuclear disarmament, and the lack of transparency with respect to the NWS’ 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 13 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 13 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.<sup>142</sup> 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.<sup>143</sup>

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 NNWS, 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 NWS’ 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 NNWS 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 “baseline” for gauging progress in nuclear disarmament?

Surveying the various nuclear arsenals in its 2004 Yearbook, the Stockholm International Peace Research Institute (SIPRI) reports that the five NPT nuclear-weapon-states possessed an estimated 36,500 warheads at the end of 2003.<sup>144</sup> The Natural Resources Defense Council’s latest assessment (in September/October 2003) was that these states together had about 29,800 warheads.<sup>145</sup> 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.<sup>146</sup> 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 fulfill that promise.

Adding to this problem, some NWS 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 NNWS, and that reaffirm the great value of such weapons in advancing key security interests. They are also considering the development of new nuclear weapons. Many other NPT NNWS, 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 CD has been unable to make any progress on nuclear disarmament for many years, nor has the United Nations 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 Moscow 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 NWS, 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 13 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 consider additional ways to strengthen its regime. The next chapter will offer some specific reforms that I believe will achieve this worthy goal.



## CHAPTER 8

### 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.<sup>147</sup> The history of the NPTREC 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 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, United Nations Secretary-General Kofi Annan called upon all participants to “embark on a results-based treaty review process focusing on specific benchmarks.”<sup>148</sup> 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 skeptical 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.

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## MATTERS OF SUBSTANCE

The NPT is like every other 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 NPTREC to differentiate the various “principles and objectives”, treating each in the order of their original appearance.

### 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 (in the eyes of many) 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 serious setback 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 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 WMD 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. The DPRK will, I believe, one day 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.

#### 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 NNWS—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” 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 WMD 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, 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 NWS 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 United Nations General Assembly has adopted several resolutions by large majorities that call upon all states to refrain from actions that would lead to proliferation.<sup>149</sup> 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 (*inter alia*) 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 ...<sup>150</sup>



Under article 25 of the United Nations 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.

### 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 NWS—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.”<sup>151</sup>

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 for the completion of negotiations on a CTBT, 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 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 table below provides a brief summary of the 13 steps.<sup>152</sup>

### Summary of the Thirteen Practical Steps for Nuclear Disarmament

1. CTBT.
2. Nuclear test moratorium.
3. CD: negotiations on fissile materials treaty.
4. CD: establish a subsidiary body to deal with nuclear disarmament.
5. The principle of irreversibility.
6. Unequivocal undertaking by the 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 ABM treaty.
8. The completion and implementation of the Trilateral Initiative.
9. Steps by all the NWS 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 NWS.
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.

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 CD remains in deadlock. The 2002 Moscow 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 NWS 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 NWS are continuing to conduct 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 NWS 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 13 steps) has been challenged by the NWS, which 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 13 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.

#### **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 United Nations 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).

## SECURITY ASSURANCES

The main challenge here is for the nuclear-weapon-states to provide the NNWS 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 NNWS. The 1995 Principles and Objectives danced around this issue—while “noting” Security Council resolution 984 of 1995 and various non-binding declarations of the NWS 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.”<sup>153</sup> 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.”<sup>154</sup>

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.<sup>155</sup> Annexed to that paper was a carefully-prepared draft protocol (or agreement) containing the relevant assurances. The sponsors specifically designed this protocol as an 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.”<sup>156</sup>

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 NNWS, and as a result, for international peace and security.

### 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.<sup>157</sup> While many of these states are not engaged in significant nuclear activities, the safeguards requirements of article III of the treaty apply to “each” NNWS 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 have 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”.<sup>158</sup> 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 contains 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 believe that is a responsible standard.

Fourth, I remain hopeful that the NWS will ultimately decide to put fissile material recovered from dismantled nuclear weapons under safeguards, along the lines of the US/Russia/IAEA Trilateral Initiative.<sup>159</sup> It is hard to envisage serious progress in disarmament—irreversible progress in particular—without such an application of safeguards.

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.

#### 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. NNWS 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 WMD 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.”<sup>160</sup> 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 21<sup>st</sup> century realities* [emphasis added].”<sup>161</sup>

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.

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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 NAM 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.<sup>162</sup>

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 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”.<sup>163</sup>

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.

## **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

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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 NGOs 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.<sup>164</sup>

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.”<sup>165</sup> 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.”<sup>166</sup>

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.”<sup>167</sup>
- Creation of a “small secretariat” within the DDA 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.<sup>168</sup> 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.<sup>169</sup> Similar in many ways to the Irish proposal of 2000—including its basic premise that “the NPT 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 United Nations 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 DDA 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 DDA—the smallest department in the UN Secretariat with a budget even smaller than what the United Nations spends each year on “cleaning and waste disposal services”<sup>170</sup>—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.”<sup>171</sup> 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:

- 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.”<sup>172</sup> 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”.<sup>173</sup>

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. Genuine “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 through 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 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.”<sup>174</sup> 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.”<sup>175</sup> 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 NGOs—like Reaching Critical Will<sup>176</sup> and the Acronym Institute<sup>177</sup>—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. DDA maintains much of this written information on its own web site (though not the official statements).<sup>178</sup>

Yet many difficulties remain in this area. One of the worst is the highly uneven quality of the information provided by the NWS 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 “baseline” 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.<sup>179</sup> Both are fine ideas, awaiting only the political will 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.<sup>180</sup>

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.<sup>181</sup>

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.<sup>182</sup> The first was contained in step 12 of the 13 “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.<sup>183</sup>

The second was a separate requirement for reports on progress in implementing the 1995 Middle East resolution.<sup>184</sup> 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".<sup>185</sup> 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."<sup>186</sup> 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.<sup>187</sup>

It is noteworthy that Canada's initiative was assisted by a rather exhaustive series of studies and consultations on this issue with several NGOs.<sup>188</sup>

#### 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—which United Nations Secretary-General Kofi Annan has repeatedly called "the new superpower"<sup>189</sup>—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. In the United Nations Millennium Declaration, the member states resolved "To give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organization's goals and programmes."<sup>190</sup>

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."<sup>191</sup> 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 NGOs help to educate the public mainly 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

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news media in their own coverage of relevant issues. The NGOs 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.<sup>192</sup> 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”.<sup>193</sup> 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.<sup>194</sup>

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" which outlines some practical suggestions on how the actual process of withdrawal should be reformed.<sup>195</sup> 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.<sup>196</sup> 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 NWS 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 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.<sup>197</sup> Without listing them separately, I also refer the reader to numerous resolutions introduced in the General Assembly on this issue.<sup>198</sup> 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 United Nations General Assembly.
- By expanding cooperation between the various groups of states parties participating at 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 United Nations 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 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 WMD 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 CD 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.

#### Notes

- <sup>1</sup> For a recent study of the final documents produced by these Conferences, see Carlton Stoiber, “The Evolution of NPT Review Conference Final Documents, 1975-2000”, *The Non-Proliferation Review*, Fall/Winter 2003, pp. 126-166.
- <sup>2</sup> The remainder of this chapter draws heavily upon an article I wrote shortly after the NPTREC adjourned in May 1995, when memories were fresh. The original text appeared in Jayantha Dhanapala, “The 1995 Review and Extension Conference of the Nuclear Non-Proliferation Treaty: Outcome of the Conference”, in *Disarmament: A Periodic Review by the United Nations*, Vol. XVIII, No. 3, pp. 1-14.
- <sup>3</sup> The Natural Resources Defense Council has for several years been estimating the size of the global stockpile of nuclear weapons. Its historical assessment in 2000 indicated that there were 39,691 nuclear weapons when the NPT entered into force in 1970, and 43,200 by the time of the 1995 NPTREC. “Global Nuclear Stockpiles, 1945-2000”, *Bulletin of the Atomic Scientists*, March/April 2000, p. 79. Estimates vary, however, given the lack of detailed official statistics available to the public.
- <sup>4</sup> These documents together comprise the “package” agreed at the NPT—for the full texts, see Appendix B of this study.
- <sup>5</sup> 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”, *PPNN Issues Review*, No. 4, April 1995, pp. 2-3, <http://www.ppnn.soton.ac.uk/ir04.pdf>. See also “Review Conference of the Parties to the Treaty on the Non-

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- Proliferation of Nuclear Weapons”, UN Department of Disarmament Affairs, New York: DDA, 2000, pp. 20-29.
- <sup>6</sup> Sanders, *op. cit.*, p. 3.
- <sup>7</sup> Thomas Graham Jr., *Disarmament Sketches*, Seattle: University of Washington Press, 2002, p. 275.
- <sup>8</sup> 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.
- <sup>9</sup> 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.
- <sup>10</sup> 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.
- <sup>11</sup> George Bunn and Charles Van Doren, “Two Options for the 1995 NPT Extension Conference Revisited”, Washington, DC: Lawyers Alliance for World Security, 1992.
- <sup>12</sup> 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.
- <sup>13</sup> 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.
- <sup>14</sup> United Nations General Assembly 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.
- <sup>15</sup> This chapter examines the activities of the largest groups of states parties active at the NPTREC and does not address the work of many smaller groups on specific treaty-related issues, including safeguards, the transportation of nuclear materials, the dumping of radioactive wastes in the ocean and the concerns of subregional groups.



- <sup>16</sup> See Appendix E for a list of all the research institutes and non-governmental organizations that participated in the 1995 NPTREC.
- <sup>17</sup> For a very useful discussion of this issue and the entire Conference, see Rebecca Johnson, "Indefinite Extension of the Non-Proliferation Treaty: Risks and Reckonings", ACRONYM Report No. 7, September 1995, pp. 23-24, <http://www.acronym.org.uk/acrorep/acro7.htm>.
- <sup>18</sup> Graham, op. cit., p. 260.
- <sup>19</sup> I refer in particular to the work of Johnson, op. cit.
- <sup>20</sup> 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.
- <sup>21</sup> 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, *ibid.*, pp. 9-10.
- <sup>22</sup> Graham took note of this in op. cit., p. 285.
- <sup>23</sup> Ambassador Gerald Shannon, speech to the CD, 8 June 1995, CD/PV.707; cited by Johnson in op. cit., September 1995, p. 62.
- <sup>24</sup> Welch, op. cit., p. 3.
- <sup>25</sup> Graham, op. cit., pp. 257-293.
- <sup>26</sup> See Appendix 2 of the Final Report of the PrepCom NPT/CONF.1995/1.
- <sup>27</sup> Indonesian proposal submitted (on behalf of the Non-Aligned Group) to the Rules of Procedure Informal Working Group, 24 January 1995.
- <sup>28</sup> 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, paragraph 6, p. 3.
- <sup>29</sup> For a brief summary, see Sanders, op. cit., p. 2.
- <sup>30</sup> For some further discussion, see "Assessment by President Dhanapala", *Disarmament Times*, Vol. XVIII, No. 4, Special Issue # 4, 18 May 1995.

- <sup>31</sup> 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, Fiji, the Maldives, Panama, Paraguay, and the Philippines later endorsed the indefinite extension. See NPT/CONF.1995/SR.2 to SR.13.
- <sup>32</sup> Mark Hibbs, “Halfway Through, Indefinite NPT Extension Assured, West Says”, *Nucleonics Week*, 4 May 1995, p. 8.
- <sup>33</sup> 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.
- <sup>34</sup> Letter from Ambassador Sergio Gonzales Galvez to the Secretary-General of the NPTREC, NPT/CONF.1995/23, 21 April 1995.
- <sup>35</sup> NPT/CONF.1995/L.1, 1 May 1995.
- <sup>36</sup> NPT/CONF.1995/L.1/Rev.1, 5 May 1995.
- <sup>37</sup> United Nations General Assembly, Report of the Secretary-General, “United Nations Study on Disarmament and Non-Proliferation Education”, A/57/124, 30 August 2002.
- <sup>38</sup> NPT/CONF.1995/L.1/Rev.1.
- <sup>39</sup> NPT/CONF.1995/L.2.
- <sup>40</sup> NPT/CONF.1995/L.3.
- <sup>41</sup> 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.
- <sup>42</sup> NPT/CONF.1995/L.4, 10 May 1995.
- <sup>43</sup> 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."
- 44 NPT/CONF.1995/L.7, 9 May 1995.
- 45 Graham, *op. cit.*, p. 268.
- 46 *Ibid.*, p. 269.
- 47 Operative paragraph two of the resolution on the Middle East, in NPT/CONF.1995/32 (Part I), p. 14.
- 48 Graham, *op. cit.*, p. 291.
- 49 Though the efforts by these groups (see Appendix E for a list of those that participated at the 1995 NPTREC) are too numerous to discuss in detail, I would like to pay my respects in particular to the Acronym Institute in London and Reaching Critical Will (a New York-based project of the Women's International League for Peace and Freedom established in 1999) for the superb work they have done in covering NPT issues over the years and in promoting nuclear disarmament and non-proliferation.
- 50 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 eight 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." Statement by Vilmos Cserveny to the Third Session of the PrepCom to the 2005 NPT Review Conference, 26 April 2004, p. 5.
- 51 "Overcoming the institutional deficit of the NPT", NPT/CONF.2005/PC.III/WP.1, 5 April 2004.
- 52 I have also raised this issue on other occasions. See Jayantha Dhanapala, "The NPT Review Process: Identifying new Ideas to Strengthen the Regime", *UNIDIR Newsletter*, No. 37, 1998, pp. 9-14.
- 53 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.
- 54 The NPTREC opened officially on 17 April 1995.
- 55 NPT/CONF.1995/1, "Provisional Agenda", Annex IV.
- 56 For the summary records of the discussions, see NPT/CONF.1995/MC.I/SR.1-12.
- 57 Report of Main Committee I, NPT/CONF.1995/MC.I/1, 8 May 1995.
- 58 *Ibid.*, paragraphs 9 through 9(akt).

- 59 NPT/CONF.1995/MC.I/1, para 9.
- 60 See NPT/CONF.1995/MC.1/WP.9, 8 May 1995.
- 61 See NPT/CONF.1995/MC.I/WP.5, 2 May 1995, paragraphs 13-16.
- 62 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.
- 63 For the summary records of the discussions, see NPT/CONF.1995/MC.II/SR.1-10.
- 64 The Report of Main Committee II is available at NPT/CONF.1995/MC.II/1, 5 May 1995.
- 65 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.
- 66 NPT/CONF.1995/MC.II/WP.7, 21 April 1995.
- 67 NPT/CONF.1995/MC.II/WP.18, 1 May 1995.
- 68 For the summary records of the discussions, see NPT/CONF.1995/MC.III/SR.1-6.
- 69 The Report of Main Committee III is available at NPT/CONF.1995/MC.III/1, 5 May 1995.
- 70 NPT/CONF.1995/MC.III/WP.5, 28 April 1995.
- 71 NPT/CONF.1995/MC.III/WP.1, 24 April 1995.
- 72 NPT/CONF.1995/MC.III/1, paragraph II(A)(8).
- 73 Ibid., paragraph II(B)(10).
- 74 Ibid., paragraphs II (C)(14-16).
- 75 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.
- 76 United Nations DDA, *The United Nations Disarmament Yearbook*, Vol. 20, New York: United Nations, 1995, p. 16.
- 77 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.
- 78 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.
- 79 Graham, op. cit., p. 283.
- 80 Nugroho Wisnumurti, interview by Susan Welch, "Delegate Perspectives on the 1995 NPT Review and Extension Conference", *Nonproliferation Review*, Spring/Summer 1995, p. 6.

- <sup>81</sup> I am indebted to Rebecca Johnson for her useful reconstruction of these events. See Johnson, *op. cit.*, September 1995, pp. 50-52.
- <sup>82</sup> 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."
- <sup>83</sup> Anonymous quote cited by Johnson, *op. cit.*, September 1995, p. 40.
- <sup>84</sup> 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.
- <sup>85</sup> Report of the Drafting Committee, NPT/CONF.1995/DC/1, 16 May 1995.
- <sup>86</sup> *Ibid.*, paragraph 5.
- <sup>87</sup> It is now called the "Hague Code of Conduct Against Ballistic Missile Proliferation". For further details, see [http://www.minbuza.nl/default.asp?CMS\\_ITEM=MBZ460166&CMS\\_NOCOOKIES=YES](http://www.minbuza.nl/default.asp?CMS_ITEM=MBZ460166&CMS_NOCOOKIES=YES).
- <sup>88</sup> 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, <http://www.whitehouse.gov/news/releases/2003/05/print/20030531-3.html>.
- <sup>89</sup> "Libya Agrees to Give Up Banned Weapons Qaddafi to Respect Nonproliferation Treaty", *Facts on File World News Digest*, 19 December 2003, p. 1009A1. Libya had been an NPT state party since 1975 and a state party to the Biological Weapons Convention (BWC) since 1982. It acceded to the Chemical Weapons Convention on 6 January 2004.
- <sup>90</sup> 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>.
- <sup>91</sup> GOV/2004/21, 13 March 2004.
- <sup>92</sup> IAEA, Report by the Director General on "Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran", GOV/2004/34, 18 June 2004, p. 1.
- <sup>93</sup> David E. Sanger and William Broad, "South Koreans Say Secret Work Refined Uranium", *New York Times*, 3 September, p. 1.
- <sup>94</sup> Remarks of Chang In Soon, quoted in Anthony Faiola, "S. Korean Official Attempts to Ease 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.
- <sup>95</sup> 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).
- <sup>96</sup> 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.
- <sup>97</sup> NPT/CONF.2000/PC.I/2, 8 April 1997.
- <sup>98</sup> 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.
- <sup>99</sup> For a more detailed discussion, see Rebecca Johnson, "Brinkmanship", Second NPT PrepCom, ACRONYM Institute Briefing No. 9, 8 May 1998.
- <sup>100</sup> NPT/CONF.2000/PC.II/35, 9 June 1998.
- <sup>101</sup> See Tariq Rauf, "PrepCom Opinion: Farewell to the NPT's Strengthened Review Process?", *Disarmament Diplomacy*, No. 26, May 1998, <http://www.acronym.org.uk/dd/dd26/26tariq.htm>.
- <sup>102</sup> 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.
- <sup>103</sup> Final Report of the Preparatory Committee for the 2000 NPT Review Conference, Annex IV.
- <sup>104</sup> For a discussion of these worries, see Rebecca Johnson, "NPT Report: The NPT Third PrepCom: What Happened and How", *Disarmament Diplomacy*, No. 37, May 1999, <http://www.acronym.org.uk/dd/dd37/37npt.htm>.
- <sup>105</sup> 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."
- <sup>106</sup> Rebecca Johnson, "The 2000 NPT Review Conference: A Delicate, Hard-Won Compromise", *Disarmament Diplomacy*, No. 46, May 2000, <http://www.acronym.org.uk/dd/dd46/46npt.htm>.

- <sup>107</sup> The source of the “thirteen steps” is the Final Document of the 2000 NPT Review Conference, NPT/CONF.2000/28 (Part I), paragraph 15, pp. 14-15.
- <sup>108</sup> 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.”
- <sup>109</sup> Wulf, *op. cit.* p. 5.
- <sup>110</sup> *Ibid.*
- <sup>111</sup> *Ibid.*, p. 9.
- <sup>112</sup> Johnson, *op. cit.*, May 2000.
- <sup>113</sup> 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, <http://www.gsinstitute.org/archives/000095.shtml>.
- <sup>114</sup> 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.
- <sup>115</sup> NPT/CONF.2005/PC.I/WP.3.
- <sup>116</sup> NPT/CONF.2005/PC.I/9.
- <sup>117</sup> NPT/CONF.2005/PC.I/WP.5.
- <sup>118</sup> 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.
- <sup>119</sup> NPT/CONF.2005/PC.II/21, 30 April 2003.
- <sup>120</sup> Marian Hobbs, on behalf of the New Agenda Coalition, general debate, 28 April 2003.
- <sup>121</sup> NPT/CONF.2005/PC.II/WP.1, 23 April 2003.
- <sup>122</sup> Statement by Peter Goosen, 2<sup>nd</sup> 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.
- <sup>123</sup> NPT/CONF.2005/PC.I/WP.4, 11 April 2002.
- <sup>124</sup> NPT/CONF.2005/PC.II/WP.13, 2 May 2003.
- <sup>125</sup> NPT/CONF.2005/PC.II/WP.2, 24 April 2003.
- <sup>126</sup> NPT/CONF.2005/PC.II/WP.18, 7 May 2003.
- <sup>127</sup> A/57/124, 30 August 2002.
- <sup>128</sup> For further details see Johnson, *op. cit.*, June/July 2003.

- <sup>129</sup> 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.
- <sup>130</sup> Douglas Roche, "Re-nuclearization or Disarmament: A Fateful Choice for Humanity", Middle Powers Initiative, May 2004, p. 1, <http://www.gsinsitute.org/mpi/pubs/npt-analysis.pdf>.
- <sup>131</sup> Rebecca Johnson, "Confusion and Anger as NPT Meeting Closes in New York", Interim Update, ACRONYM Institute, 8 May 2004, [www.acronym.org.uk/npt/04interim.htm](http://www.acronym.org.uk/npt/04interim.htm).
- <sup>132</sup> NPT/CONF.2005/PC.III/WP.27, 10 May 2004.
- <sup>133</sup> NPT/CONF.2005/PC.III/WP.30, 21 May 2004.
- <sup>134</sup> See in particular, Rebecca Johnson, "Report on the 2004 NPT PrepCom", *Disarmament Diplomacy*, May/June 2004, [www.acronym.org.uk/dd/dd77/77npt.htm](http://www.acronym.org.uk/dd/dd77/77npt.htm)); and Roche, 2004, op. cit.
- <sup>135</sup> 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.
- <sup>136</sup> Louis Henkin, *How Nations Behave*, London: Pall Mall Press, 1968, p. 42.
- <sup>137</sup> 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>.
- <sup>138</sup> A/57/229, 23 July 2002. For a copy of this report in six languages, see <http://disarmament.un.org/wmd/missiles.htm>.
- <sup>139</sup> 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>.
- <sup>140</sup> Texts of the Programme of Action in six languages are available at <http://disarmament.un.org/cab/poa.html>.
- <sup>141</sup> 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>.
- <sup>142</sup> For a full text of the DPRK's announcement of 10 January 2003, see <http://cns.miis.edu/research/korea/nptstate.htm>.
- <sup>143</sup> 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.



- <sup>144</sup> For a convenient summary, see <http://editors.sipri.se/pubs/yb04/ch15.html>.
- <sup>145</sup> Robert S. Norris and Hans M. Kristensen, "Nuclear Pursuits", *Bulletin of the Atomic Scientists*, September/October 2003, pp. 71-2, [www.thebulletin.org/issues/nukenotes/so03nukenote.html](http://www.thebulletin.org/issues/nukenotes/so03nukenote.html).
- <sup>146</sup> Natural Resources Defense Council, "Global Nuclear Stockpile, 1945-2002", in *Bulletin of the Atomic Scientists*, November/December 2002, p. 103.
- <sup>147</sup> 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.
- <sup>148</sup> Secretary-General Kofi Annan, Press Release SG/SM/7367, 24 April 2000.
- <sup>149</sup> 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.
- <sup>150</sup> 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).
- <sup>151</sup> International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>.
- <sup>152</sup> Summarized from Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Vol. I, Part I, pp. 14-15.
- <sup>153</sup> Decision 2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", paragraph 8.
- <sup>154</sup> Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Vol. I, Part I, p. 15.
- <sup>155</sup> NPT/CONF.2005/PC.II/WP.11, 1 May 2003.
- <sup>156</sup> *Ibid.*, paragraph 2, p. 2.
- <sup>157</sup> In April 2004, a representative of the IAEA informed NPT states parties that "44 NNWS party to the NPT have yet to fulfill 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.

- <sup>158</sup> 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.
- <sup>159</sup> For further information on the Trilateral Initiative, see Thomas E. Shea, "Report of the Trilateral Initiative", *IAEA Bulletin*, 43/4/2001, pp. 49-53.
- <sup>160</sup> Mohamed ElBaradei, "Towards a Safer World", *The Economist*, 16 October 2003, <http://www.iaea.org/NewsCenter/Statements/2003/ebTE20031016.shtml>.
- <sup>161</sup> Mohamed ElBaradei, quoted in "In Focus: Revisiting the Nuclear Fuel Cycle", IAEA News Center, 12 August 2004, <http://www.iaea.org/NewsCenter/Focus/FuelCycle/controls.html>.
- <sup>162</sup> 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, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysiaCL3.pdf>
- <sup>163</sup> Dhanapala, 1998, p. 11.
- <sup>164</sup> *Ibid.*, p. 11.
- <sup>165</sup> "Strengthening the review process for the Treaty", revised working paper submitted by Ireland, NPT/CONF.2000/WP.4/Rev.1, 4 May 2000, at paragraph 5.
- <sup>166</sup> *Ibid.*, paragraph 4.
- <sup>167</sup> *Ibid.*, paragraphs 7 and 9.
- <sup>168</sup> 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, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/emergency.htm>.
- <sup>169</sup> "Overcoming the institutional deficit of the NPT", working paper submitted by Canada, NPT/CONF.2005/PC.III/WP.1, 5 April 2004.
- <sup>170</sup> The United Nations' expenditures for 2003 for such services was US\$ 14,237,694 compared to an annual DDA budget about half that amount; see <http://www.un.org/Depts/ptd/03com50.htm>
- <sup>171</sup> Statement by Peter Goosen, Second Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/southafrica.htm>.

- <sup>172</sup> Statement by Ambassador Volker Heinsberg, Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 8 May 2003.
- <sup>173</sup> Lázló Molnár, opening statement, Session of the Preparatory Committee for the 2005 NPT Review Conference, Geneva, 28 April 2003.
- <sup>174</sup> Barbara Tuchman, *The March of Folly: From Troy to Vietnam*, New York: Knopf, 1984, p. 384.
- <sup>175</sup> *Ibid.*, p. 7.
- <sup>176</sup> See <http://www.reachingcriticalwill.org/legal/npt/nptindex1.html>.
- <sup>177</sup> 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.
- <sup>178</sup> See <http://disarmament.un.org:8080/wmd/npt/index.html>.
- <sup>179</sup> 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?", *PPNN Issue Review*, No. 13, April 1998, <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.
- <sup>180</sup> 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, 28 April-9 May 2003", 2003, p. 22, [http://www.gs institute.org/mpi/pubs/prepcomreport\\_0503.pdf](http://www.gs institute.org/mpi/pubs/prepcomreport_0503.pdf).
- <sup>181</sup> 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.

- <sup>182</sup> 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.
- <sup>183</sup> Final Document, 2000 NPT Review Conference, NPT/CONF.2000/28, Vol. I, Part I, pp. 14-15.
- <sup>184</sup> *Ibid.*, p. 18.
- <sup>185</sup> NPT/CONF.2005/PC.I/WP.3, p. 2.
- <sup>186</sup> NPT/CONF.2005/PC.II/PWP.2, 24 April 2003.
- <sup>187</sup> NPT/CONF.2005/PC.I/WP.10, 16 April 2002.
- <sup>188</sup> 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>.
- <sup>189</sup> Secretary-General Kofi Annan, "Secretary-General, Addressing Participants at Millennium Forum, Calls for Intensified 'NGO Revolution'", UN Press Release SG/SM/7411, 22 May 2000.
- <sup>190</sup> United Nations Millennium Declaration, A/RES/55/2, 18 September 2000.
- <sup>191</sup> NPT/CONF.2000/28, Vol. I, Part I, p. 15. For the full text of the Final Document, see <http://disarmament.un.org/wmd/npt/2000FD.pdf>.
- <sup>192</sup> NPT/CONF.2005/PC.III/WP.17, 29 April 2004; and NPT/CONF.2005/PC.II/WP.18, 7 May 2003. See also the website of DDA, <http://disarmament2.un.org/education/>.
- <sup>193</sup> NPT/CONF.2005/PC.II/WP.16, 6 May 2003.
- <sup>194</sup> Johnson, June-July 2003.
- <sup>195</sup> NPT/CONF.2005/PC.III/WP.15, 29 April 2004.
- <sup>196</sup> 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.
- <sup>197</sup> NPT/CONF.2005/PC.I/WP.4, 11 April 2002.
- <sup>198</sup> For the latest, 2003 resolutions, see <http://disarmament2.un.org/ddapublications/res-dec58.pdf>.



## APPENDIX 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 weapons 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 whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

**Article II**

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any 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 the 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 co-operate 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 which 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 Depositories 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 regards 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.<sup>1</sup>

**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 authorized, 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.

Source: UN Department for Disarmament Affairs,  
<http://disarmament2.un.org/wmd/npt/npttext.html>.

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<sup>1</sup> On 11 May 1995, in accordance with article X, paragraph 2, the Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons decided that the Treaty should continue in force indefinitely (see decision 3).



## APPENDIX B

### **“THE PACKAGE”—Key Documents of the NPTREC**

#### 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 might be done to strengthen the implementation of the Treaty and to achieve its universality.

Source: UN Department for Disarmament Affairs,  
<http://disarmament2.un.org/wmd/npt/1995dec1.htm>.

### 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,

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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

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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 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.

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.

Source: UN Department for Disarmament Affairs,  
<http://disarmament2.un.org/wmd/npt/1995dec2.htm>.

### 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 indefinite extension, in accordance with article X, paragraph 2, the Treaty shall continue in force indefinitely.

Source: UN Department for Disarmament Affairs,  
<http://disarmament2.un.org/wmd/npt/1995dec3.htm>.

#### 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,<sup>1</sup> 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,

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<sup>1</sup> S/23500.

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.

*Source:* UN Department for Disarmament Affairs,  
<http://disarmament2.un.org/wmd/npt/1995RESME.htm>.

## APPENDIX C

### 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 fulfilment 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.

*Source:* NPT/CONF. 1995/PV.19, 13 May 1995, at <http://www.un.org/Depts/ddar/nptconf/217a.htm>.

## APPENDIX D

### WEB-ACCESSIBLE STATEMENTS BY JAYANTHA DHANAPALA ON THE NPT

“The NPT—Yesterday, Today, and Tomorrow: Keynote Address”, Event hosted by Middle Powers Initiative, A Programme of the Global Security Institute, Palais des Nations, Geneva, Switzerland, 29 April 2003,  
<http://disarmament2.un.org/speech/29april2003.htm>.

“The NPT and the Future of Nuclear Weapons”, Workshop on the Outcome and Implementation of the 2002 NPT PrepCom, Monterey Institute of International Studies, L’Impérial Palace, Annecy, France, 14 July 2002,  
<http://disarmament2.un.org/speech/14july2002.htm>.

“The NPT, Nuclear Disarmament, and Terrorism”, Conference on Nuclear Dangers and the State of Security Treaties, Institute for Energy and Environmental Research, United Nations, New York, 9 April 2002,  
<http://disarmament2.un.org/speech/09apr2002.htm>.

“The NPT Regime: Progress and Promises”, Symposium on International Safeguards: Verification and Nuclear Material Security, IAEA, Vienna, Austria, 29 October 2001,  
<http://disarmament2.un.org/speech/29oct2001.htm>.

“Multilateralism and the Future of the Global Nuclear Nonproliferation Regime”, *The Nonproliferation Review*, CNS, MIIS, Fall 2001,  
<http://disarmament2.un.org/speech/nprwfall01.pdf>.

“Keynote Address: Towards NPT 2005: An Action Plan for the 13 Steps”, MPI Strategy Consultation, United Nations, 29 April 2001,  
<http://disarmament2.un.org/speech/29apr2001.htm>.

“Eliminating Nuclear Arsenals: The NPT Pledge and What It Means”, All-Party Group on Global Security and Non-Proliferation House of Commons, London, 3 July 2000,  
[http://disarmament2.un.org/speech/uk\\_commons\\_speech.htm](http://disarmament2.un.org/speech/uk_commons_speech.htm).

“Strategic Stability, Nuclear Non-Proliferation and Disarmament and the 2000 NPT Review Conference”, Opening Address, The 12 Regional Disarmament Meeting in the Asia-Pacific Region, Kathmandu, Nepal, 15-17 February 2000,

<http://disarmament2.un.org/speech/KATHMANDU2000.htm>.

“The NPT at a Crossroads”, *The Nonproliferation Review*, Vol. 7, No. 1, Spring 2000,

<http://www.cns.miis.edu/pubs/npr/vol07/71/dhana71.pdf>.

“Reinforcing the NPT Regime”, International Workshop on the 2000 Conference of the Strengthened NPT Review Process, Monterey Institute of International Studies, Regal UN Plaza Hotel, New York, NY, 1 November 1999,

<http://disarmament2.un.org/speech/1Nov99.htm>.

“Reinforcing the NPT Regime: International Challenges and Opportunities”, *IAEA Bulletin*, Vol. 41, No. 4, April 1999, pp. 5-8,

<http://www.iaea.org/worldatom/Periodicals/Bulletin/Bull414/article2.pdf>.

“The NPT Regime: External and Internal Challenges”, Seventh Carnegie International Non-Proliferation Conference, Carnegie Endowment for International Peace, Washington, D.C., 11 January 1999,

<http://disarmament2.un.org/speech/Address1.PDF>.

“The Future of the Non-Proliferation Regime After the Inaidan and Pakistani Nuclear Tests”, George Washington University, Washington, D.C., 6 November 1998,

<http://disarmament2.un.org/speech/6Nov1998.htm>.

## APPENDIX E

### RESEARCH INSTITUTES AND NON-GOVERNMENTAL ORGANIZATIONS PARTICIPATING AT THE 1995 NPT REVIEW AND EXTENSION CONFERENCE

Source: Final Document, 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.1995/32 (Part II), p. 550-576.

ACRONYM Consortium  
American Friends Service Committee  
American Nuclear Society  
Analytic Services Corporation  
Aotearoa-New Zealand Foundation for Peace Studies  
ARC-PEACE  
Arms Control Association  
Austin College  
Australian National University (Peace Research Centre)  
Business Executives for National Security  
British American Security Information Council  
Brown University  
Campaign: Making 1995 A Turning Point Toward a Nuclear Free World  
Campaign for the Non-Proliferation Treaty  
Campaign for Nuclear Disarmament  
Campaign for Nuclear Disarmament New Zealand  
Canadian Peace Alliance  
Canadian Voice of Women for Peace  
Carnegie Endowment for International Peace  
Center for Defense Information  
Center for International Studies (MIT)  
Center for Science and International Affairs (Harvard)  
Center for War, Peace, and the News Media (NYU)  
Central Research Institute of Electric Power Industry  
Centre for International Peacebuilding  
Centre for Political Studies in Russia (PIR Center)  
Centro de Investigacin para la Paz  
Christian Peace Conference

CIS Nonproliferation Project (Monterey Institute)  
Citizens' Assembly to Stop the Spread of Weapons  
Citizens' Nuclear Information Center  
Citizens for Total Energy  
Communications Coordination Committee  
Coordinating Centre among Arab Peace Organizations  
CTB Clearinghouse  
Defense and Arms Control Studies Program (MIT)  
Economists Allied for Arms Reduction  
Fast for the Abolition of Nuclear Weapons  
FORATOM  
Foreign Policy Association  
Forum for Strategic and Security Studies  
Foundation for Research on International Environment, National  
Development and Security  
Franciscans International  
General Board of Global Ministries of the United Methodist Church  
Geneva International Peace Research Institute  
Gensuikin  
George Mason University  
Global Education Associates  
Gran Fraternidad Universal  
Gray Panthers  
Greenpeace International  
Hebrew University of Jerusalem  
Henry L. Stimson Center  
IFIAS—Institute for International Assistance and Solidarity  
Institute for Defence Studies and Analyses  
Institute for Defense and Disarmament Studies  
Institute for Energy and Environmental Research  
Institute for Science and International Security  
International Association of Lawyers Against Nuclear Arms  
International Association for Volunteer Effort  
International Fellowship of Reconciliation  
International Mahavir Jain Mission  
International Network of Engineers and Scientists Against Proliferation  
International Nuclear Non-Proliferation Alliance  
International Peace Bureau  
International Peace Research Institute, Oslo  
International Physicians for the Prevention of Nuclear War

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International Synergy Institute  
International Youth and Student Movement for the United Nations  
Jesse Lee Memorial United Methodist Church  
Korean Federation for Environmental Movement  
Lancaster University, Centre for Defence and International Security Studies  
Lawyers Alliance for World Security  
Lawyers' Committee on Nuclear Policy  
Los Alamos Study Group  
Manhattan II Project  
MEDACT  
Monterey Institute of International Studies  
Le Mouvement de la Paix  
National Depleted Uranium Citizens' Network  
National Peace Council  
Nei til Atomvåpen  
NGO Committee on Disarmament  
Nonproliferation Association of Moscow  
Norwegian Peace Alliance  
NRDC—Natural Resources Defense Council  
Nuclear Age Peace Foundation  
Nuclear Control Institute  
Nuclear Energy Institute  
Nuclear Society International, Moscow  
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