

**THE 2000 NPT
REVIEW
CONFERENCE**

CHALLENGES AND PROSPECTS

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The 2000 NPT Review Conference: Challenges and Prospects

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INTRODUCTION

The Sixth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)—the first important multilateral arms control forum of the new millennium—will be held at United Nations headquarters from 24 April through 19 May 2000. Already expectations have been lowered regarding the review of the operation and implementation of the Treaty during the five years since the historic 1995 NPT Review and Extension Conference (NPTREC) which agreed without a vote to an inter-linked package of decisions and resolution that extended the Treaty indefinitely, on 11 May 1995.

The fractious nature of the debates on lack of progress in nuclear disarmament at the 1997-1999 Preparatory Committee sessions for the 2000 NPT Review Conference, in the Conference on Disarmament (CD) and at the First Committee of the UN General Assembly, together with setbacks to the ratification and entry-into-force process of the Comprehensive Nuclear-Test Ban Treaty (CTBT), discord in U.S.-Russia and U.S.-China relations, U.S. missile defense plans, and nuclear-weapon states' (NWS) perceived obstructionism regarding the implementation of the strengthened review process, in addition to unresolved compliance questions regarding Iraq and DPRK, all indicate an inauspicious environment for a successful outcome at the forthcoming review conference. The ratification of START II on 14 April, followed by the ratification of the CTBT on 21 April, by the Russian Duma, while constituting important (but much delayed) steps in the right direction will not affect the outcome of the Review Conference.

In light of these negative developments, apparently fearing failure, South Africa withdrew from the presidency of the 2000 review conference on 2 November 1999—an unprecedented move, as never before has a *country* bailed out as conference president. Thus, generating a widespread perception that the conference had already been orphaned, making it ever more important to have leadership from key non-nuclear-weapon states (NNWS) and flexibility on the part of the NWS, in order to salvage some modest success. On 8 December 1999, the Preparatory Committee for the 2000 Review Conference met in a brief “resumed session” and accepted the nomination of Ambassador Abdallah Baali of Algeria as the President-designate to replace Ambassador Jacob Selebi of South Africa. Ambassador Baali's efforts at consultation and building common ground have dampened down some of the pessimism regarding the outcome(s) of the 2000 Review Conference, however, he will face major obstacles in steering the review conference to a positive result.

The aim of this paper is to offer perspectives on the conduct of the next—the sixth—Review Conference of the Parties to the NPT, and the first under the *strengthened* review process. It will be crucial to ensure a full and balanced review of compliance with all of the provisions of the Treaty, as well as of the implementation of the decisions and resolution of the 1995 NPTREC. This paper begins with a brief commentary on the NPT regime

followed by an analysis of Decisions 1 and 2 of the NPTREC, comments on the enhanced review process for the Treaty in light of these decisions, and offers perspectives on both procedural and substantive aspects of the work of the 2000 Review Conference.

NPT BARGAIN

The NPT remains a three-part bargain—nuclear nonproliferation, nuclear disarmament, and cooperation in the peaceful uses of nuclear energy under safeguards—with each part retaining equal importance. The Treaty itself does not refer to any pre-conditions for either nuclear nonproliferation or for nuclear disarmament. Each of these goals can be pursued either separately or in tandem with each other.

In general sovereign States join multilateral security regimes primarily out of narrow self interest not altruism. Furthermore, the preponderant majority of States take their regime commitments seriously and in many instances are prepared to continue to accept such commitments even when regime performance might be sub-optimal, provided they reach the determination that the overall benefits of regime maintenance outweigh the disadvantages of withdrawal or of regime collapse. However, if it is perceived that security regimes are not yielding expected or promised results, and if some countries are perceived as being in chronic deficit regarding fulfillment of their obligations, then it is inevitable that continuing commitment to such regimes is bound to falter or at least come under question. I fear that the NPT may indeed be close to reaching such a critical juncture.

Nuclear Nonproliferation Concerns:

- lack of universality of the Treaty and politically-driven responses to three proliferator states—Pakistan has been disproportionately sanctioned, India minimally sanctioned or tolerated, and Israel not only tolerated, not sanctioned, but actually rewarded with technological and economic largesse.
- activities of NWS—essentially those of the United States—i.e. stationing nuclear weapons outside national territory on the territorial space of allied NNWS, and so-called nuclear “sharing” and “training” involving NNWS party to the NPT.
- resolution of two instances of non-compliance—verification of the complete elimination of Iraq’s nuclear weapon program, prevention of its reconstitution, and restoration of full IAEA safeguards activities and inspections; and implementation of full IAEA safeguards inspections in North Korea and disposition of discrepancies regarding its plutonium separation campaigns.

Nuclear Disarmament Concerns:

- NWS to this day continue to thwart any attempt in all multilateral fora (be it the NPT review process, the Conference on Disarmament (CD), the First Committee, the UN Disarmament Commission (UNDC) or Special Sessions on Disarmament to engage in multilateral consideration of measures on nuclear disarmament;
- since the 1995 NPTREC, obstructionist elements in the U.S. Congress and the Russian Duma have opposed further nuclear arms reductions, sought to reverse previously agreed arms control measures, pursued achievement of absolute comprehensive security irrespective of its nonproliferation or arms race implications, and devalued multilateral approaches to security—the Duma’s adoption of a nuclear first-use doctrine, the defeat of the CTBT on the floor of the U.S. Senate, and U.S. Congressional support for unilateral deployments of anti-ballistic missile defenses in violation of the benchmark Anti-Ballistic Missile (ABM) Treaty, are the most recent manifestation of this phenomenon.

Impediments to Sharing of Civilian Nuclear Technology:

- multilateral and national export controls have been perceived as hampering the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy;

- unilateral policies and actions have served to undermine multilateral arrangements—this “politicization” of nuclear exports and export control arrangements is perceived as further undermining multilateral arrangements and agreements (e.g. paras 9, and 14 through 17 of the decision on “principles and objectives” adopted at the 1995 NPT REC).

NPT REVIEW

The conduct of the 2000 Review Conference will be governed, in large part, through the lens of the 1995 package of extension decisions and resolution, as well as the record of achievements or lack thereof in nuclear nonproliferation and nuclear disarmament over the preceding five years (1995-2000).

Decision 1 on “Strengthening the Review Process for the Treaty,”¹ elaborated a framework for an enhanced and a more substantive Treaty review process to facilitate a full and balanced review of the implementation of the NPT and to forward recommendations on future steps to the quinquennial NPT Review Conferences.

Decision 2 on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,”² established substantive guidelines and indicative targets designed to promote greater accountability regarding the full implementation of the Treaty.

Decision 3 on “Extension of the Treaty on the Non-Proliferation of Nuclear Weapons,”³ which emphasized the two preceding decisions adopted by the NPTREC and reaffirmed NPT Article VIII.3, was taken in accordance with Article X.2 that provided for the indefinite continuation in force of the Treaty and hence it was legally binding. The importance in this context of the two decisions on principles and objectives, and a strengthened treaty review process, was reflected in that they have been referred to respectively as “the hammer and the anvil of the post-NPT extension epoch.”⁴

In addition, a *Resolution* on the Middle East⁵ co-sponsored by the three depositary States was also adopted which *inter alia* endorsed the on-going peace process, stressed the importance of the Treaty’s universality in the region, and called for the establishment in the region of an effectively verifiable zone free nuclear as well as other weapons of mass destruction and their delivery systems.

The euphoria following the indefinite extension of the NPT quickly evaporated as bickering broke out at the NPTREC between some members of the Group of Non-Aligned States (NAM) and certain members of the Western and Others Group (WEOG) including the three Western nuclear-weapon states, over the heavy pressure applied by the NWS to secure indefinite extension and over the lack of binding agreement on a framework for nuclear disarmament.⁶ This resulted in the failure of the 1995 Review Conference to cap its historic success with a Final Declaration on the review of the implementation of the Treaty during the past five years (1990-1995).

In the five years that have elapsed since the indefinite extension, and as states finalize preparations for the forthcoming review conference in April-May 2000, deep differences have emerged over the meaning, significance and interpretation of the NPTREC decisions and resolution, as well as on their implementation, that have already cast a cloud over the new Treaty review process, even before it is put to the test at a review conference. These negative developments were amply evident at the last two sessions of the Preparatory Committee (PrepCom) in 1999 and 1998, which were unable to reach any consensus on nuclear disarmament, other Treaty related matters or on substantive recommendations to the review conference (as called for at the 1995 NPTREC).

THE NUCLEAR NONPROLIFERATION TREATY

The NPT signed on 1 July 1968 remains the bedrock of the post-World War II global nonproliferation regime. With 187 States party, this Treaty is the most widely adhered to and the most successful multilateral arms control agreement in history. Today, only four states remain non-parties: Cuba, India, Israel, and Pakistan. The NPT remains a crucial three-part bargain—nuclear nonproliferation, nuclear disarmament, and cooperation in the peaceful uses of nuclear energy under safeguards.

Furthermore, the Treaty “is not a stand-alone instrument. It is the centrepiece of a nuclear arms control regime consisting of a series of interlocking international treaties, arrangements, undertakings and norms aimed at halting the spread of nuclear weapons and advancing nuclear disarmament.”⁷ The NPT remains the only global legally binding instrument committing the NWS to disarm, and its indefinite extension in 1995 strengthened the global nuclear nonproliferation norm as well as the obligation for nuclear disarmament.

Responding to the most significant challenge to the NPT to date, i.e. the Indian nuclear detonations followed by those by Pakistan in May 1998, in contrast to the largely hypocritical statements emanating from the NWS, Canadian Foreign Minister Axworthy stressed that: “The nuclear nonproliferation regime is based on, and anchored in, international law and norms, as well as incorporated into international mechanisms. The NPT is fundamental, but the broader regime is a complex system of multilateral and bilateral agreements, arrangements and mechanisms intended to promote and achieve a world without nuclear weapons, sooner rather than later. This was valid during the Cold War and remains valid today. At the same time, the regime is intended to provide a framework to enable the world to make effective use of nuclear capability for peaceful purposes.”⁸

On the eve of the 2000 NPT Review Conference, the Treaty finds itself under threat on several fronts that require bold and concerted action:

- Nuclear tests by India and Pakistan have challenged the international nonproliferation norm established by the Treaty, and the international community still remains at a loss how to categorize and deal with these two states: as non-nuclear-weapon states not party to the NPT; nuclear weapon states not party to the Treaty; or threshold nuclear-weapon states? Similar concerns also apply to Israel.
- Compliance with the safeguards obligations and overall intent of the Treaty by two non-nuclear-weapon states—DPRK and Iraq—remains unresolved and in question.
- Nuclear disarmament obligations of the nuclear-weapon states essentially remain unfulfilled, despite certain negotiated and unilateral reductions by some of the NWS, and prospects continue to remain bleak for further reductions in the near-term—the defeat of the CTBT in the U.S. Senate, U.S. unilateral moves toward national missile defences in violation of the ABM Treaty, and the stalemate over START II ratification in the Russian Duma, are illustrative in this context.
- Many non-nuclear-weapon states believe that the strengthened review process for the Treaty has already been undermined, principally by the nuclear-weapon states. The “strengthened review process” agreed at the 1995 NPT Review and Extension Conference (NPTREC) has failed to deliver expected results thus increasing the frustration of many member states and consequently enhanced the prospects of failure at the 2000 review conference.

George Santayana warned that those who do not remember history are condemned to repeat it. A brief assessment of the outcomes of the 1995 NPTREC may therefore be in order.

Decision 1: Strengthening the Review Process for the Treaty

It is useful to recall that the original concept of a “strengthened review process” in the context of the extension decision, was first elaborated in a Canadian “non-paper” in early 1995.⁹ There were at least five important reasons behind this non-paper. First, it was clear that many NPT states had concluded that the 1995 NPTREC would provide the last meaningful opportunity to review the implementation of the Treaty and to seriously underscore its goals such as the complete elimination of nuclear weapons. Second, these states emphasized the purported leverage that the democratic nature of the extension decision—i.e. that the extension decision was based on a majority of states parties (Article X.2). Third, it was obvious that at least a narrow majority—but a legal majority nevertheless—favoured a limited extension (which was an option under Article X.2) that they believed would provide continuing leverage to force the pace of nuclear disarmament. Fourth, it was realized that in the expected search for a “price for

indefinite extension”, the NPTREC could easily degenerate into a chaotic welter of competing and contradictory initiatives. Fifth, it was evident that the existing structure, over the course of the past four review conferences, had not served the NPT membership well—but instead of setting up an entirely new structure that ran the risk of increasing polarization and divisiveness, it was important to retain the attractive features of the review process, eliminate redundancies, and to further build upon these in a constructive manner to endow the process with political substance that provided both explicit foresight as well as a stronger basis for measuring compliance. This translated into an initiative giving political substance to enhanced reviews and another initiative providing for continued advances in nuclear disarmament and reinforcement of the Treaty. Thus, the two tightly linked initiatives could give sufficient reassurance to states to be able to support indefinite extension “plus”.

The Canadian concept paper on a “Declaration of Recommitment to the NPT” outlined the characteristics of an “enhanced review process” as comprising, *inter alia*: 1) retention of the current structure of review conferences, but eliminating duplication and redundancy; 2) investing the preparatory process with a more substantive character (i.e. discussion of *both* procedural and substantive issues); 3) elaborating, at Review Conferences, indicative targets for compliance with given articles of the Treaty; and 4) establishing a framework for ways of strengthening the Treaty and its full implementation.

These ideas were absorbed into the South African draft on the enhanced review mechanism, and through the process of the President’s Consultations at the NPTREC were eventually elaborated in the decisions on the extension package.¹⁰ During the President’s Consultations, the drafters struck a political compromise between those who feared that in indefinitely extending the NPT the NNWS would lose their leverage as regards the NWS’ nuclear disarmament obligations, and those who preferred a simple extension of the Treaty without any collateral measures to complement the future implementation of the NPT. In other words, the compromise provided not only to make *all* States parties accountable for full compliance with the provisions of the Treaty, but more specifically to hold the NWS to fulfilling their Article VI commitments. To quote Ambassador Christopher Westdal (the-then Canadian ambassador for disarmament and the head of Canada’s delegation to the NPTREC): “The nuclear-weapon states need to understand that the non-nuclear weapon states accepted indefinite extension because they want the nuclear-weapon states to be permanently held accountable to Article VI on disarmament.”¹¹

Ambassador Dhanapala in his closing statement to the NPTREC also emphasized the concept of permanence with accountability, originally coined by Canada: “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 of the Treaty.”¹²

And, Dr. Lawrence Scheinman (the-then Assistant Director of the U.S. Arms Control and Disarmament Agency), speaking on the same issue but in a slightly different vein, summed it up as: “Interest in ‘strengthening’ or ‘enhancing’ the traditional treaty review process grew out of a concern shared by many non-nuclear weapon states that the nuclear weapon states would lose any incentive to make progress toward nuclear disarmament as called for by Article VI of the NPT once they had secured indefinite extension. A way to deal with this desire for greater nuclear weapon state accountability was to endow the NPT review conferences and the associated preparatory meetings with a more substantive character, thus ‘strengthening’ the process. This struck a chord with the NPT non-nuclear weapon state members who saw this as an opportunity to promote the goal of full implementation of the Treaty by all its parties including the nuclear weapon states.”¹³

The NPT created the precedent, for multilateral arms control agreements, of periodic reviews to assess the implementation of the Treaty after its entry into force.¹⁴ Article VIII.3 specifically provided for the first review conference to be held in Geneva in 1975, five years after the Treaty’s entry into force in 1970, and left open the option for subsequent quinquennial reviews thereafter if requested by a majority of states parties. In practice, however, NPT review conferences have been held every five years since 1975. The traditional procedure had been for a majority of parties to request the three depositaries (the United States, United Kingdom, and the-then USSR

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now Russian Federation) to initiate proceedings to hold a review conference. This wish was manifested through a draft resolution crafted in the UNGA First Committee (disarmament and international security) and subsequently adopted by the General Assembly, two years prior to the next Conference. The Final Declaration of the 1985 review conference, however, noted in its review of Article VIII that the “States Party to the Treaty participating in this Conference propose to the Depositary Governments that a fourth Conference to review the operation of the Treaty be convened in 1990”.¹⁵

Decision 1 comprised seven operative paragraphs, of which five dealt with review conferences (1,2, 5, 6, and 7), while two (3 and 4) deal with the Preparatory Committee.

It also institutionalized the past practice of five-yearly reviews, thus in effect it could be said to have clarified the meaning of Article VIII.3 in regularizing quinquennial reviews, as a way of strengthening the review process for the Treaty and to provide greater accountability. From 1995 on, there would be a near-continuous review process that no longer required the formality of a majority of states parties requesting the depositaries to arrange a review conference. Furthermore, each session of the Preparatory Committee was extended for a duration of ten working days, instead of the previous five. After 1995, the Preparatory Committee would meet in each of the three years prior to the next review conference, and if necessary, a fourth session could be held in the year of the conference. This doubling of the working days of the PrepCom was designed to facilitate a full and frank substantive exchange of views on all aspects of the operation and implementation of the Treaty, with the decisions and resolution of the NPTREC providing the guidance.

For the most part, the Preparatory Committee for previous review conferences traditionally focused primarily on procedural, logistical and legal matters. Decision 1 formalized the inclusion of substantive matters, along with procedural issues, in the work of the Preparatory Committee and clearly specified that:

“The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the Decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.”¹⁶

The key element of the strengthened review process was that the Preparatory Committee was specifically mandated to consider: 1) principles; 2) objectives; and 3) ways, in order to promote the full implementation of the Treaty, as well as its universality. In the 1997, 1998 and 1999 sessions of the Preparatory Committee these issues became a source of controversy and conflict as competing interpretations of Decision 1 emerged. The “intent” of the drafters of the 1995 extension package was to transform the review into a more credible and meaningful process of accountability for the Treaty’s implementation by all states parties, and for future reviews to encompass the full scope of the nuclear disarmament and nuclear nonproliferation agenda.

While endorsing the current structure of the three Main Committees (MC) set in place in 1985, at review conferences, Decision 1 (paragraph 5) also empowered the General Committee to resolve the question of overlap in the work of the MCs in a manner as to delegate responsibility for review and subsequent reporting on each specific issue to only one of the relevant Main Committees. The record of the previous four NPT review conferences suggested that the Main Committees’ program of work had been organized in an inefficient, somewhat redundant and inordinately complex manner. It is worth recalling that the 1975 and 1980 Review Conferences each operated with only two Main Committees—MC. I dealt with political and disarmament matters, while MC. II dealt with safeguards/export controls and peaceful uses. The near-failure of the 1975 Review Conference, and the complete failure of the 1980 Review Conference, to agree on a Final Declaration, together with the political requirement to give the Eastern Group the chairmanship of a Main Committee, led the United States at the third Review Conference in 1985 to propose three Main Committees and this established the precedent for the current MC structure and their allocation of work. Thus, the rationale for three Main Committees derived from more from crass political considerations rather than from reasons of inherent logic or increased efficiency.

The issue of setting up subsidiary bodies (paragraph 5), within the respective Main Committees, was not entirely new in 1995, as at previous review conferences informal working groups had been created to resolve certain clusters of issues and to draft language for the MC's report on the review of the Treaty. In 1995, for example, MC.I established an open-ended working group on security assurances, while MC.II established two working groups, one to consider nuclear-weapon-free zones and the other export controls. After 1995, the task of recommending the establishment of subsidiary bodies was assigned to the Preparatory Committee. Even this was not entirely a new practice as the PrepCom for the 1995 NPTREC had set up a working group to consider and report on its Rules of Procedure, and this group continued its work through the first few days of the NPTREC to try to finalize Rule 28.3 on the extension decision.

Decision 1 in building upon informal past practice formalized the role of subsidiary bodies in providing for a focused consideration of such issues. The "Strengthened Review Process" did not in any way limit the duration of such subsidiary bodies but, on the other hand, their mandate, scope, function and duration was not specified and the 1997-1999 Preparatory Committee also could not contribute any further guidance. There can be no reason why specific subsidiary bodies should not be mandated to work inter-sessionally or even on an on-going basis after 2000. Such a course of action might well yield an improvement in the quality of debate and of chances for the success of more complex initiatives, and potentially resolve more contentious issues before they flare up into open confrontation.

The final paragraph of Decision 1 enjoined states parties that the focus of Review Conferences on the implementation of the Treaty could look both back at the period under review as well as make recommendations on the areas where further progress was required and to identify the necessary means for its achievement. Future Review Conferences were charged with specifically addressing ways to strengthen the implementation of the Treaty and its universality. This suggested that at least two or more products were expected from future review conferences: an assessment of the operation of the Treaty, in the five-year period under review (i.e. 1995-2000); and a set of goals to promote the implementation of the Treaty in the next five-year period (i.e. from 2000 through 2005).¹⁷ Other products could include a clarification and reinforcement of the meaning and scope of the strengthened review process,¹⁸ update and assessment of progress regarding the Resolution on the Middle East; and deal with specific items such as a fissile material cut-off treaty, security assurances, or reducing the nuclear danger.¹⁹

One of the most important aspects of the Decisions on Strengthened Reviews and of Principles and Objectives was that of the evolving nature of the contents of both documents. That the process of reviewing the operation of the treaty was augmented at the NPTREC in 1995 implied that this could—and should—be repeated in the future. The same holds true of the Principles and Objectives. It would be prudent and productive to regard both documents as rolling texts to be reviewed and appropriately augmented quinquennially.

Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament

Interpreting and implementing Decision 2 has proven to be even more challenging and controversial than Decision 1. The drafters of this decision, while negotiating in the President's Consultations at the NPTREC, apparently intended to establish what was referred to subsequently as a "lodestar", "yardstick" or a "template" against which to measure future implementation of the Treaty.²⁰ Furthermore, this decision was characterized as comprising a rolling text that was designed to be dynamic and responsive to changing international conditions. John Holum (Director of the U.S. Arms Control and Disarmament Agency) described Decision 2 as "a rolling report card on the world's efforts to live up to the bargains struck in the NPT and since affirmed."²¹ In Dr. Scheinman's view, "The decision on principles and objectives outlined an 'agenda' of issues that the parties identified as important to future efforts to implement and sustain the NPT. It encompassed the elements generally regarded as critical to the long-term success of the treaty and of the nonproliferation regime that it supports."²² He noted further that: "Some NPT countries refer to the 'Principles and Objectives' decision as the 'yardstick' against which future progress will be measured.... For the United States, the 'Principles and Objectives' decision represents the important collective political interest and commitment of NPT parties to see further progress made toward assuring the full

implementation of the NPT and a useful reference point for our continued efforts toward that end. The recommendations outlined in the decision are ones we and others should strive to meet. However, it is the Treaty itself that is the source of our obligations and a full and balanced review of the Treaty is the objective of NPT review conferences.”²³

Peter Goosen (South Africa’s delegate at the NPTREC) asserted that in formulating the principles and objectives agreed in Decision 2 “it was important to stretch the parameters of the debate but yet not to break the envelope of what was possible.”²⁴ Ambassador Christopher Westdal (Canada) captured this theme succinctly: “Non-nuclear weapon states see indefinite extension as a permanent commitment by the nuclear weapon states to pursue disarmament. Thus, the non-nuclear weapon states will now in effect call on the nuclear weapon states to fulfill their commitments under Article VI: to lower the numbers of such weapons, and to get rid of them. That is the message to nuclear-weapon states, a message some of them might not welcome. The world has, in effect, proclaimed permanent values and what must be done now is to get on with the hard work of fulfilling them.”²⁵

Decisions 1 and 2 established new parameters of discourse on nonproliferation and nuclear disarmament, however, despite three sessions of the Preparatory Committee, the exact nature, context and output of this debate still has to be worked out and reinforced during the deliberations of the 2000 Review Conference. The challenge is that of finding credible ways for a balanced review of the Treaty, but this balance inevitably will need to favour a greater focus on the nuclear disarmament provisions of the NPT, as it was never the intent either of the drafters of the Treaty or of the extension package, or of the states parties at the NPTREC, to perpetuate the status of the nuclear-weapon states as permanent possessors of a category of mass destruction weapons eschewed by some 97 percent of the world’s states.

Decision 2 set out, under seven headings comprising 20 operative paragraphs, a set of indicative targets for the full implementation of the Treaty. These indicative targets related both to Treaty implementation matters as well as to other related nuclear nonproliferation and disarmament priorities that emanated from the NPT. Falling into the former category were nonproliferation (Articles I and II), safeguards (Article III), and peaceful uses of nuclear energy (Article IV), nuclear disarmament (Article VI), and nuclear-weapon-free zones (Article VII). In the latter category belonged universality and security assurances.

One of the key issues to be resolved at the 2000 Review Conference is whether the principles and objectives outlined in Decision 2 represented fixed targets or indicative targets that could be updated periodically, and as certain objectives were achieved (e.g., a comprehensive test ban treaty) other objectives take their place (e.g., multilateral nuclear arms reductions or general and complete disarmament)? The intent of the drafters was to regard Decision 2 as a “living document” that could be added to or subtracted from as merited by progress in nuclear nonproliferation and disarmament and other related developments. During the 1998 and 1999 sessions of the Preparatory Committee, it became clear that the prevailing view of states was not to try to revise the 1995 NPTREC decisions and resolution in 2000, but to consider new formulations. For example, at the 1997 PrepCom Canada submitted views on a “rolling document” for the strengthened review process,²⁶ at the 1998 PrepCom the Non-Aligned Movement submitted a working paper organized in an article-by-article format,²⁷ and at the 1999 session Canada and the non-aligned movement (NAM) separately submitted their respective versions of a draft 2000 principles and objectives.²⁸

Decision 3: Extension of the NPT

During the general debate at the 1995 NPTREC where more than 110 States Parties took the floor, some 80 countries backed indefinite extension, with 10 states (including seven Arab countries) opposed, and only seven states supported alternative proposals. The rest were uncommitted. In the second and third weeks of the 1995 NPTREC, three draft decisions on NPT extension were submitted by their supporters, to be tabled by the deadline of 5 May 1995. The first was a resolution from Mexico for indefinite extension combined with an attached list of recommendations for further action on nuclear disarmament. Mexico did not seek any co-sponsors, as such its draft extension decision had only Mexico as a formal backer.²⁹ The second was a simple decision based upon Article X.2,

proposed by Canada, to extend the Treaty indefinitely, which had gathered 103 (eventually 111) co-sponsors, each of which had affixed their signature to the draft extension decision as a way of visibly and unambiguously demonstrating that a legal majority of NPT States Parties supported unconditional indefinite extension.³⁰ And, the third, proposed by 11 “like-minded” states from the Non-Aligned Movement, advocated a rolling extension of 25-year fixed periods that would succeed one another automatically unless a majority of states parties decided otherwise.³¹

Given the fact that the Canadian-led draft extension decision clearly and unambiguously demonstrated that a majority supported indefinite extension of the Treaty, the President of the Conference had no choice but to work on that basis to extend this majority to encompass all of the States Parties present at the conference. Thus, as negotiations on the “principles and objectives”³² and on the “strengthened review process”³³ neared agreement, Ambassador Jayantha Dhanapala focused on dressing up Canada’s so-called “naked” or unconditional draft decision. Following three-and-a-half days of intensive debate, the President with the assistance of some 25 key States parties was able to devise language on indefinite extension³⁴ that was acceptable to all parties, in the sense that no State objected. This draft resolution “reaffirmed” the decisions on the “principles and objectives” and “strengthened review,” and then proceeded to note that since a quorum existed in accordance with Article X.2, the NPTREC had decided that “as a majority exists among States party to the Treaty for its indefinite extension, in accordance with article X.2, the Treaty shall continue in force indefinitely.”³⁵

In other words, the extension decision was directly linked to the two separate decisions on an enhanced review process and on principles and objectives for nonproliferation. Thus, on 11 May 1995, with a reference to the time of day as “high noon,” Ambassador Dhanapala secured the Conference participants’ acceptance of an extension package comprising three decisions on: (1) “strengthening the review process for the Treaty”; (2) “principles and objectives for nuclear nonproliferation and disarmament”; and (3) “indefinite extension.” The Conference then separately adopted each of the three decisions under the terms of NPT Article X.2 and thus made them legally binding on all NPT States parties. Immediately following the adoption of the three decisions, the NPTREC also adopted a Resolution on the Middle East—the only resolution referring to a specific region of the world.

The Resolution on the Middle East

As noted above, the fourth and final item adopted by the NPTREC, on 11 May 1995, was a Resolution on establishing a nuclear-weapon-free zone in the Middle East. As the Conference President was finalizing the extension package, late on 9 May 1995 a complication arose when a resolution on the Middle East co-sponsored by 14 Arab states was tabled, that had the potential to dislocate Ambassador Dhanapala’s efforts to secure final agreement on the extension package. This resolution highlighted Israel’s continuing refusal to join the NPT, its unsafeguarded nuclear facilities, and the consequent nuclear threat to regional security. The United States refused to accept any explicit singling out of Israel as a non-party to the NPT and as an operator of unsafeguarded nuclear facilities, on the grounds that singling out Israel might end up damaging the existing Middle East peace process and consequently the prospects of establishing a zone free of weapons of mass destruction in the region. As the stalemate between the U.S. and Egypt—the negotiator for the Arab League continued—the viability of the NPTREC teetered on the brink of collapse. This held up all attempts of the NPTREC to deal with the three decisions. After prolonged side discussions that involved satellite telephone instructions from President Bill Clinton, who at the time was in Moscow, and President Hosni Mubarak in Cairo, agreement eventually was reached on a compromise text of the resolution. In an unexpected move, the U.S. sought and received the support of the two other NPT depositaries—the United Kingdom and the Russian Federation—as co-sponsors. The result was that the Resolution on the Middle East received additional weight by being co-sponsored by all three depositaries of the NPT.³⁶

Another surprise was a last-minute objection by Iran regarding the Resolution’s endorsement of the Middle East peace process, that held up the crucial final plenary meeting for another two hours. Thus, on 11 May 1995, four momentous decisions on nonproliferation were agreed to without a vote by 174 NPT states—a major achievement under the circumstances, that led to the permanence of the NPT with accountability, as well as a special call to all NPT States party, and in particular the nuclear-weapon states to establish a nuclear-weapon-free zone

(NWFZ) in the Middle East.

The Resolution on the Middle East comprised 8 preambular and 6 operative paragraphs. The preamble reaffirmed the purpose and provisions of the NPT, recognized the nonproliferation benefits of NWFZs pursuant to Article VII, recalled the 31 January 1992 Security Council Resolution that affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international security, among other items. In its operative paragraphs, the Resolution endorsed the aims and objectives of the Middle East peace process and efforts to create a NWFZ and a zone free of other weapons of mass destruction, called upon all remaining States not parties to the Treaty to accede to it, and noted with concern the existence of unsafeguarded nuclear facilities in the region, in addition to other provisions.

This Resolution had the result of singling out the Middle East among other regions of proliferation concern, such as South Asia and Northeast Asia. It constituted the “price” that was paid by the NPT depositary and member states to ensure that the 14 Arab states which supported a “rolling” over an indefinite extension compromised and accepted not to stand in the way of the adoption of the indefinite extension package without a vote.

SUBSTANTIVE ISSUES AT THE 2000 NPT REVIEW CONFERENCE

Previous review conferences have traditionally addressed substantive matters in terms of the three general objectives of the NPT: nuclear nonproliferation, nuclear disarmament and safeguarded cooperation in the peaceful uses of atomic energy under a three Main Committee structure. It is likely, though not a foregone conclusion, that the format for a structured and balanced review will continue, however, the merits of an article-by-article review might be examined in the search for a rational, efficient and productive review process. In practice, however, the next review conference will have to deal with substantive issues of two types: issues emanating directly from the provisions of the NPT itself; and issues that bear on NPT matters but which do not stem directly from the Treaty. In general, political and security issues of the day have played a preponderant role at review conferences, since such conferences remain intensely political events. External developments that have already cast their shadow over the 2000 review conference include, among others: the consequences and implications of nuclear testing in South Asia; the longer-term implications of Russian reactions to NATO expansion and the alliance’s out-of-area use of force; the fate of the Anti-Ballistic Missile Treaty and U.S. plans for theatre and national missile defence systems, and the Washington’s threat to unilaterally abrogate the ABM Treaty if Russia does not agree to amendments allowing for a national U.S. missile defence; Russia’s pronouncements enhancing the role of nuclear weapons for national defence; the tenor of U.S.-China relations; developments in the Middle East, Korean Peninsula and South Asia; progress or lack thereof at the Conference on Disarmament on an FMCT and on nuclear disarmament; and defeat of the CTBT in the U.S. Senate and prospects for that Treaty’s ratification and entry-into-force.

The 1995 Decision 2 on “Principles and Objectives” set out seven key items and established a set of parameters to evaluate the implementation and operation of the Treaty that included: universality, security assurances, nonproliferation, nuclear disarmament, safeguards, peaceful uses of atomic energy and nuclear-weapon-free zones (*In the following discussion, I have changed the order of the items to reflect the order of the articles of the NPT, and have placed security assurances at the end of this section as this item is not formally in the Treaty.*)

Non-proliferation (Articles I / II)

The global nonproliferation norm was further strengthened with the indefinite extension of the NPT. In this context the review process of the Treaty provides states parties with the opportunity to exercise vigilance regarding full compliance with the Treaty in all its aspects as agreed in paragraph 2 of Decision 2. In this context it would be useful to recall the statement released on 31 January 1992 by the Security Council on the maintenance of international peace and security in a post-Cold War world.³⁷ The real importance of this Council statement lay in its recognition that the primary threat to international security emanated from the spread of nuclear weapons to countries in conflict prone regions, and that proliferation of all weapons of mass destruction must be prevented. In a sense, this statement also reflected the divergence in views on nuclear arms issues between the countries of the

North and the South. For the North, now that the Cold War is over and a number of arms reduction and confidence-building agreements are in the process of being implemented, the principal threat to security emanates not from the former East bloc but from the countries of the South that are believed to possess capabilities for nuclear and other weapons of mass destruction. For the South, the principal interest is in seeing not just the U.S. and Russia, but also Britain, China, and France reduce their nuclear arms in the first instance, with total elimination to follow, as well as a permanent end nuclear-weapon testing and an end to the further production of weapon-usable fissile material. Other important issues concern NATO nuclear sharing arrangements and stationed nuclear forces, whether an international nonproliferation norm has been created by the NPT regime and if so how would challenges to it be dealt with?

Another controversial question will be allegations of Western nuclear assistance to Israel's nuclear weapon program—especially collaboration (intangible proliferation) by the United States and (heavy water from) Norway. Reportedly, Israel in exchange for not overtly declaring its nuclear weapon capabilities secured the U.S.' agreement to halt its "visits" to the Dimona nuclear facility.³⁸ Furthermore, reportedly, Israel and South Africa may have conducted some 1 to 4 atmospheric tests in the South Atlantic—a *Vela* monitoring satellite apparently picked up the characteristic double flash of an atmospheric nuclear detonation in 1979, but the details were hushed up. Apparently, this series of tests was deliberately sited at a location on the very outer reaches of the *Vela*-series satellites' detection capabilities. Heavy water exports from Norway to Israel, that have not been fully accounted for, could also come up for examination.

Other issues concern continuing difficulties in assuring the compliance with the NPT of Iraq and DPRK. While UNSCOM inspections in Iraq had collapsed due to Iraqi obstructionism and political interference in, US intelligence agencies penetration and mismanagement of the Commission, the IAEA had destroyed the clandestine nuclear weapon program but still lacked answers to some five questions on previous suppliers, personnel. etc. In mid-December 1999, the UN Security Council approved Resolution 1284³⁹ which would set up a UN Monitoring Verification and Implementation Commission (UNMOVIC) to replace UNSCOM, pursuant to paragraph 9 (b) of UNSCR 687 (1991), UNMOVIC would undertake the responsibilities mandated to UNSCOM by the Council with regard to the verification of compliance by Iraq with its obligations under paragraphs 8, 9 and 10 of UNSCR 687 and other related resolutions. UNMOVIC would establish and operate a reinforced system of ongoing monitoring and verification, which would implement the plan approved by the Security Council in resolution 715 (1991) and address unresolved disarmament issues. It would bring a level of professionalism and independence that UNSCOM lacked. In mid-January 2000, the Security Council unanimously agreed to appoint Dr. Hans Blix (former Director-General of the IAEA as the Chairman of UNMOVIC) after rejecting the UN Secretary-General's nomination of Ambassador Rolf Ekeus (former head of UNSCOM) who had been picked from a pool of 26 candidates for the position. Also in mid-January, the IAEA sent an inspection team to Iraq to verify the presence of a small quantity of safeguarded uranium fuel. Regarding DPRK, the situation had not changed and the IAEA still did not have access to two sites at the Yong Byon facility.

The question of "stationed" nuclear forces has also come up at previous review conferences. Presently, only some 150 non-strategic U.S. nuclear weapons are deployed (or could be deployed) in six NATO countries: Belgium, Germany, Greece, Italy, Turkey and the U.K. It has been alleged by some NAM countries that NATO nuclear exercises involving participation of NATO NNWS NPT states, run counter to the NPT's nonproliferation obligations as these activities could involve indirect control of nuclear weapons or associated systems by NPT NNWS. The last time this allegation was made was at the 1999 NPT PrepCom. NATO's "Strategic Concept", which has not ruled out first-use of nuclear weapons despite overwhelming numerical and technological superiority, will also be a controversial issue.

In the past, Western states have refused to entertain any discussion on issues relating to NATO nuclear activities and to Israel's nuclear capability and assistance to it, and instead have preferred to focus on the non-compliant activities of Iraq and DPRK. How these controversial and politically charged issues will be addressed at the 2000 Review Conference remains to be seen—suffice it to say that dealing with these issues will be problematic.

Strengthened IAEA Safeguards (NPT Article III) and Export Controls

Decision 2 devoted five paragraphs to safeguards, the most on any single issue, thus highlighting the importance that states parties placed on compliance. Effective international safeguards, under NPT Article III and the related INFCIRC/153-type agreements with the IAEA, are an essential element of the nuclear nonproliferation regime. Export controls have also become an indispensable part of that regime, and derive from Article III.2 of the Treaty. Safeguards are a technical means to the political goal of verifying that NPT non-nuclear-weapon states are in compliance with their obligations under the Treaty. Following the discovery of Iraq's clandestine nuclear weapons program, and questions about North Korea's nuclear activities, safeguards have been strengthened through a greatly enhanced flow of information, the reaffirmation of the Agency's right to conduct "any time, any place" special inspections, together with new verification techniques (such as environmental monitoring and use of intelligence data). The IAEA now has in place an enhanced safeguards regime under its Additional Protocol (INFCIRC/540) and 46 Protocols have been approved, 45 have been signed, and seven are in force. However, 52 NPT NNWS still have to conclude NPT safeguards agreements (INFCIRC/153)⁴⁰—but these are countries without any nuclear activities.

According to the IAEA Annual Report for 1998, 222 safeguards agreements were in force with 138 States (and with Taiwan, China). NPT related safeguards agreements were in force with 126 states. The Agency was safeguarding 103,883 significant quantities (SQ) of nuclear material, and 897 facilities with 1,085 locations containing nuclear material were under IAEA safeguards. This safeguards effort was financed by approximately US\$82 million annually from the regular safeguards budget and some US\$20 million a year in additional contributions by member states.

Thus, for a paltry US\$100 million per year, the IAEA is safeguarding over 100,000 bomb-equivalents of nuclear material in 138 states. With the IAEA's budget effectively frozen, what conclusions can be drawn regarding states' commitment to preventing nuclear proliferation? One obvious conclusion is that the Agency is doing a remarkable job with very limited resources. Another is that those states which maintain a high profile in warning against further proliferation must seek to match nonproliferation rhetoric with multilateral commitments both at the political and financial levels. It is difficult to believe that states are serious about preventing further proliferation, when they provide only \$100 million a year for Agency safeguards but at the same time have no hesitation in spending hundreds of billions of dollars on military programs. States need to be persuaded to realize that the value of a "safeguards dollar" greatly outweighs that of a "counter-proliferation dollar" when it comes to preventing proliferation.

The safeguards program is under threat from two quarters: first, a zero-growth IAEA budget for the last decade, at a time of rapid expansion of safeguards to cover the entire scope of nuclear activities in South Africa, Argentina, Brazil, and NIS states; and second, resistance from some developing countries that perceive safeguards as an invasion of national sovereignty, as well as from certain traditionally secretive European Union countries reluctant to permit greater inspection access to their nuclear industries.

The 2000 Review Conference could endorse a call for an increase in the IAEA's budget as well as reinforcing the Agency's primary role in the verification of NNWS compliance with the NPT, and to the extent possible support an enhanced role for the IAEA in verifying nuclear disarmament by the NWS as well as by India, Israel and Pakistan—but the additional costs of safeguards activities in the NWS and the other three "proliferator" countries must be borne by these eight states.

The international nonproliferation regime also has emphasized multilateral control over nuclear technology transfer. National policies and export control instruments have been developed to supplement nonproliferation norms, and the 1995 NPTREC endorsed the application of export controls as a condition of supply as well as requiring full-scope safeguards by the recipient.

The very first control instrument was the 19 August 1943 "Quebec Agreement" between the U.S., U.K., and Canada on controlling uranium. In November 1945, Canadian Prime Minister Mackenzie King, British Prime

Minister Clement Attlee, and U.S. President Truman reached a tripartite agreement noting that international nuclear commerce requires “effective, reciprocal, and enforceable safeguards”.

Fritz Schmidt, the current chairman of the Zangger Committee, has noted that Article III.2 of the NPT required member states to only supply nuclear items (especially designed or prepared items) to NNWS if they had accepted NPT safeguards. The Zangger Committee, set up on 11 March 1971, had the task of establishing a list of items whose export would trigger safeguards, and defined procedures and conditions for permitting nuclear exports. Its objectives were to reach a common understanding on what constituted nuclear material, and equipment or material specially designed or prepared for the processing, use, or production of special fissionable material; and to consider procedures in relation to exports of nuclear materials and certain categories of equipment and material in the light of the commitment of states pursuant to Article III.2 of the NPT with a view to establishing a common understanding as to the way in which each state would interpret and implement this commitment.

This “trigger list” has been updated and revised eight times over time, most recently in June 1999. The Zangger Committee, with 33 members, is recognized as the “faithful interpreter” of Article III.2 of the NPT. A laudable development since the 1995 NPTREC has been China’s membership in the Zangger Committee (though it has remained outside the nuclear suppliers group).

The Nuclear Suppliers Group (NSG) or the London Club was set up in the aftermath of India’s “peaceful nuclear explosion” in 1974. Its original membership included France, which at that time was not a party to the NPT, and the NSG’s mandate was broader than that of the Zangger Committee, in that the NSG included controls on dual-use items and technologies, as well as physical security standards.

The NSG’s membership now stands at 35, and all members of the Zangger Committee are members of the NSG. All NSG members are required to implement full-scope safeguards as a condition of supply. NSG conditions for nuclear exports include: 1) Zangger conditions—peaceful use, safeguards, retransfer provision—to nuclear technology and hardware; 2) materials not defined in the IAEA Statute as ‘special fissionable material’, e.g. heavy water and its production plant, would also trigger safeguards; and 3) restraint on export of sensitive technology and materials, e.g. enrichment, reprocessing, for both NPT and non-NPT NNWS—exceeding Zangger Guidelines; non-explosive use commitment required prior to export; requirement for physical protection of nuclear materials and facilities against unauthorized use. INFCIRC/539 provided a useful summary history of the two nuclear export control regimes.

In October 1995, new unified guidelines set out fundamental principles for safeguards and export controls which included, *inter alia*, a nonproliferation principle, i.e. that regardless of type of recipient country, an export license should be denied unless a supplier was satisfied that the transfer involved would not contribute to nuclear proliferation.

In practice though export controls remain controversial, with developing states claiming discrimination. Another valid question pertains to the effectiveness of export controls, particularly given the nuclear weapon programs of India, Iraq, Israel and Pakistan. Export controls have also been tainted by charges of politicization and questions about their legality. A comparison of the treatment meted out to North Korea—which has been determined to be in breach of its NPT safeguards obligations, and Iran—which remains an NPT member in good standing with the Agency, is instructive in this context. For the future, what is required is greater transparency and co-operative dialogue between nuclear suppliers and nuclear recipients.

The 1995 “principles and objectives” called for greater transparency in export controls. In response, the NSG initiated a transparency program which involved the preparation of a background paper published by the IAEA in its INFCIRC series as number 539 on 15 September 1997. In addition, two international seminars have been held on the role of nuclear export controls: one at the IAEA in Vienna in October 1997 and a second at the UN in New York in April 1999.

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A new area of proliferation concern has been that of “intangible technology transfer” that involves the transfer of information or knowledge by: 1) intangible electronic means (the internet, fax or telephone); the export of services, for example consultancy services in dual-use fuels in a country of proliferation concern; 3) permanent migration of scientific expertise; and 4) education and training institutions, or industry.⁴¹ In this regard, many nuclear suppliers have developed “catch-all” controls to stop intangible exports not specifically listed or identified when there is evidence that such exports could assist proliferation activities.

Another unresolved question is about the future of the Zangger Committee, i.e. whether it should be absorbed into the NSG with its dual-use controls. As noted above, the Zangger Committee is the faithful interpreter of Article III and therefore fulfills a crucial role in NPT related export controls. Its meetings involve the participation of greater nuclear expertise than those of the NSG. The 2000 Review Conference should endorse the related but separate functions of the Zangger Committee and the NSG, and resist any attempts to subsume the former into the latter.

Many developing countries regard export controls as onerous and discriminatory. Supplier countries, on the other hand, consider export controls as supplementing safeguards and preventing nuclear proliferation. Some developing countries have raised this issue at both the 1995 NPT Review and Extension Conference and at previous review conferences, and it is probable that at future Review Conferences differences over export controls could well jeopardize the enhanced NPT review process.

The Review Conference could profitably discuss ways of promoting the early implementation of “strengthened safeguards” and of creating increased transparency in export controls, with a view to providing assessments on the political and technical feasibility on issues including, but not limited to: enhanced flow of information on national nuclear activities to the IAEA; new verification techniques (such as environmental monitoring and use of intelligence data); and “any time, any where” inspections.

Cooperation in Peaceful Uses of Atomic Energy (NPT Article IV)

A controversial issue waiting in the wings is the question of the treatment certain NPT parties found in breach of their safeguards agreements are receiving as compared to some in good standing. This refers to the nearly \$6 billion package offered to DPRK, including the supply of light water reactors, in return for allowing IAEA inspection of its nuclear facilities; while Iran where IAEA safeguards are in normal application, in addition to three “special visits” by the Agency, without problems is facing a U.S.-led blockade banning transfers of nuclear and dual-use items.

Furthermore, many NNWS believe that they are not privy to the full range of cooperation in the peaceful applications of nuclear technology, and that the nuclear suppliers are withholding nuclear technology transfers by citing unfounded proliferation concerns.

The Review Conference could assess the extent and nature of nuclear cooperation and make recommendations on enhancing such cooperation while at the same time ensuring full compliance with the safeguards provisions of the NPT. Other recommendations could focus on strengthened nuclear safety and security measures, enhanced standards for nuclear material accountancy, physical protection and transportation.

Peaceful Nuclear Explosions (Article V)

The NPT was drafted and negotiated in the late 1960s, in the hey day of the nuclear age when “peaceful nuclear explosions” (PNEs) were envisaged for a variety of purposes. For example, the U.S. Plowshare program was active from 1957 to 1973, and the Soviet one until 1985, and led to the Peaceful Nuclear Explosions Treaty in 1976. The original U.S. and Soviet draft of the NPT did not mention PNEs, but it was the U.S. that on 9 August 1966 proposed that nuclear-weapon states could perform nuclear explosions for peaceful applications under appropriate international observation for other states.⁴² Eventually, many other states played a role in the negotiation of the NPT

and Article V was finalized. Though several NNWS were interested in the expected benefits of PNEs, and the IAEA geared up to provide the necessary international observation and control, no PNEs were actually performed for any NNWS—and only one NNWS, India, carried out a PNE in May 1974.

While the first NPT Review Conference in 1975 devoted seven paragraphs endorsing and discussing Article V issues in its agreed “Final Declaration”, the third review conference in 1985 in its agreed “Final Declaration” contained only three paragraphs on Article V—the last of which noted that “...the potential benefits of the peaceful applications of nuclear explosions have not been demonstrated and that no requests for services related to the peaceful applications of nuclear explosions have been received by the IAEA since the Second NPT Review Conference.”

At the sessions of the Preparatory Committee for the 2000 Review Conference, several States party expressed the view that the provisions of Article V should be viewed in light of the CTBT. This development needs to be recognized and recorded as part of the review of the Treaty in 2000.

Nuclear Disarmament (Article VI)

Nuclear disarmament has been the make or break issue at all previous NPT review conferences. In addition to disagreements between NWS and NNWS over the pace and extent of nuclear arms reductions, States party have feuded over the central commitment in Article VI regarding nuclear disarmament and general and complete disarmament.

Frustrated by the NWS’ attempt to create a variety of linkages, a position paper on Article VI was submitted at the 1999 PrepCom by Canada.⁴³ This paper presented a legal opinion that Article VI recorded two undertakings by States party: 1) “...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 2) “...on a treaty on general and complete disarmament under strict and effective international control.” It argued that these were two distinct undertakings, with the first *not* being conditional to achievement of the second.

Furthermore, the paper quoted a U.S. negotiator of the NPT as having stated on 18 January 1968 that Article VI constituted a “solid affirmation of the responsibility of nuclear-weapon states to strive for effective measures regarding cessation of the nuclear arms race and disarmament. *Moreover, the article does not make the negotiation of those measures conditional upon their inclusion within the framework of a treaty on general and complete disarmament*” [emphasis added].⁴⁴ This debate undoubtedly will be renewed at the review conference and the credibility of the NWS will descend even lower as they attempt to maintain a linkage between the two distinct commitments contained in Article VI.

Paragraphs 3-4 of the 1995 “Principles and Objectives” related to nuclear disarmament, and reaffirmed the commitments under Article VI of the NPT. Paragraph 4 outlined a program of action in regard to the full realization and effective implementation of Article VI, that included: a) a Comprehensive Nuclear Test Ban Treaty (CTBT) be concluded no later than 1996; b) the immediate commencement and early conclusion of negotiations on a multilateral convention banning the production of fissile material for nuclear explosives (FMCT); and c) global nuclear weapon reductions, with the goals of eventual elimination of nuclear weapons, and general and complete disarmament.

In practice, however, in addition to the two specific measures noted above, additional nuclear disarmament measures will need to be considered, such as, for example: limitations on non-strategic nuclear weapons; verified destruction of warheads; the disposition of excess weapons fissile materials; and de-alerting and de-activation of deployed nuclear forces. However, for several years, there has been no progress at the Conference on Disarmament—the world’s sole multilateral arms control negotiating forum—on negotiating either a fissile material cut-off treaty much less nuclear disarmament.

Update on the 1995 Programme of Action

Comprehensive Nuclear-Test Ban Treaty

After nearly fifty years of debate and years of complex negotiations, a Comprehensive Nuclear-Test Ban Treaty was signed at the United Nations in New York on 24 September 1996. By early 2000, 155 states had signed the Treaty including the five nuclear weapon states, and 56 states had ratified. Of the 44 states whose ratification was necessary for entry into force, 41 had signed (excluding DPRK, India, and Pakistan) and 28 had ratified,⁴⁵ including France, the United Kingdom and the Russian Federation. The compromise entry-into-force (EIF) formula depends upon treaty ratification by 44 states of the CD, listed by name, that operated research or power reactors. India rejected this compromise, denied consensus at the CD on the adoption of the draft CTBT, and refused to sign the Treaty. Pakistan too linked its signature to that of India, and the DPRK also has not as yet signed.

As already noted, both India and Pakistan carried out nuclear tests in May 1998. In September 1998, at the UNGA India committed “not to stand the way of the CTBT”, which was widely interpreted as meaning that India would join the treaty, however, this statement was never clarified or interpreted by New Delhi. Pakistan too at UNGA committed to join the CTBT, but continued to link its signature to that of India. May is the month when conditions are propitious in the Pokhran desert area for nuclear tests, it is not clear whether India will conduct additional nuclear tests in 2000, now that the BJP has been re-elected. India’s “Draft Nuclear Doctrine” released on 17 August 1999 called for a “triad” implying a force requirement of between 350-400 nuclear weapons.⁴⁶ This would most certainly require additional nuclear testing by India, as well as continued production of weapon-usable fissile material.

On the other hand, reports in early 2000, suggested that India was expected to announce its willingness to sign the CTBT during U.S. President Bill Clinton’s visit in late March 2000 provided that all economic and technology sanctions were lifted. In turn, Pakistan too was reported to have been close to announcing its intention to sign the CTBT and to make that announcement in advance of India, in order to bring further pressure on New Delhi.⁴⁷ However, by mid-March it became clear that neither India nor Pakistan was anywhere near making a final decision on signing the CTBT or on considering a slow down in their nuclear and missile development programs.

The earliest that the CTBT could have entered into force was 24 September 1998, but without the ratification by all 44 designated states the CTBT cannot enter into force at all. However, under CTBT Article XIV(2) which was added at Canada’s insistence, the ratifiers and signatories to the Treaty held a political conference in Vienna on 6-8 October 1999 to discuss the implementation of the CTBT. The conference ended up with a very weak Final Declaration calling upon states to sign and ratify the CTBT. A major blow was inflicted to the CTBT when in mid-October 1999, the U.S. Senate decisively rejected ratification of the Treaty.

Given the current slow pace of ratifications and the defeat in the U.S. Senate, the CTBT’s entry-into-force remains uncertain. The Review Conference could take into account that one of the items in the program of action had been achieved—i.e. a CTBT had been completed and signed before the end of 1996—and that barring surprises, nuclear weapon testing by the original five proliferators halted, even though the CTBT had not yet entered into force. On the other hand, it is also likely that will be intense debate on issues such as: the science based stockpile stewardship (SBSS) program in the U.S. (and similar programs in China, France and Russia); the efficacy of the proto-type International Monitoring System (IMS); questions about sub-critical tests; and the status of national test sites.

Unless serious measures are undertaken to promote the early entry-into-force of the CTBT and a legally binding norm against further testing is established, there will be pressures in some of the NWS to resume nuclear

testing. Such a resumption of testing would be justified in the U.S. on the grounds of revitalizing an aging arsenal and maintaining the nuclear weapons production infrastructure,⁴⁸ in Russia in terms of certifying existing or new sub-strategic warhead designs to compensate for declining conventional forces, and in China as required for nuclear force modernization to respond to deployment of theatre- or national-missile defences by the U.S. These pressures are likely to be the strongest in Russia and China, and should these two countries resume nuclear testing it is unlikely that the U.S. would not respond in kind.

Fissile Material Cut-off Treaty

The program of action outlined in paragraph 4(b) of Decision 2 called for 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.” Such a multilateral treaty purportedly would further strengthen the legitimacy of the nonproliferation regime, and would add to the pressure on the hold-out states to place all of their nuclear facilities under IAEA safeguards. As well, it was claimed that it would complement strategic arms reduction treaties by facilitating verifiable stockpile reductions and prevent the manufacture or stockpiling of new weapon-grade fissile material.

As long ago as 1946, under the Baruch Plan tabled at the United Nations, the U.S. proposed placing under international control all dangerous aspects of the nuclear fuel cycle, including uranium enrichment and fuel reprocessing. Other proposals to this effect were made, in 1956 by President Eisenhower, in 1964 by President Johnson, in 1969 by President Nixon, and in 1993 by President Clinton. The Soviet Union in 1982, for the first time proposed a cut-off, as a first step toward a freeze on nuclear weapons, at the UN Second Special Session on Disarmament. In 1988, U.S. plutonium production was stopped due to safety reasons and a lack of demand. In 1989, President Gorbachev stated that the USSR would halt the production of HEU, and closed two plutonium producing reactors, with the remaining two to be closed by the year 2000. President Clinton in his UN speeches since 1993 has reiterated the call for such a ban on the production of weapon-grade material, and former Russian President Yeltsin was also in favour. Clinton in his speech noted that the U.S., Russia, France, and the United Kingdom had already halted production of fissile material for weapons.⁴⁹

In November 1993, UN General Assembly Resolution No. 48/27, on the “Prohibition of the Production of Fissionable Material for Weapon Purposes” was adopted by consensus. During 1994-1995, discussions took place at the Conference on Disarmament (CD) in Geneva to define a mandate to commence negotiations. On 25 March 1995, the Special Coordinator recommended a negotiating mandate based on the UNGA resolution of 1993, which was then adopted by the CD.

However, due to disagreements between the NWS and the threshold states, as well as others, no agreement had been possible in the CD even to agree on the negotiating format, i.e. to establish an Ad Hoc Committee. In the aftermath of the CTBT fiasco at the CD in August 1996, India had linked the establishment of an Ad Hoc Committee on a cut-off to that on nuclear disarmament—a move strongly opposed by the three Western NWS—thus continuing the stalemate at the CD into its 1997 and 1998 sessions. Furthermore, the General Assembly also had been unable in its 1994-1997 sessions to agree on a consensus resolution on a fissile material production ban; however, the UNGA agreed to resolution 53/77I by consensus on 4 December 1998. On the other hand, at the 1999 session of the UN General Assembly, the draft resolution on a FMCT (L.30) was withdrawn by its sponsors due to China’s insistence on a vote—as in Beijing’s view discussion of missile defence issues was more important than a FMCT.

At the 1997 PrepCom, it was agreed (as a result of Canadian and German joint proposals) to set aside time for consideration of a FMCT at the 1998 PrepCom. Such a discussion did take place both at the 1999 and 1998 PrepCom sessions but it only served to air well known positions from all sides. Acceptance of a compromise statement calling for the start of negotiations at the CD was rejected by the United States at the 1998 PrepCom, on the grounds that the PrepCom was not empowered to make statements on substantive matters. The 1999 NPT PrepCom also failed to agree on any recommendations, as the NWS opposed most of the proposed language on

nuclear disarmament.

Feeling the political heat after their nuclear detonations, both India and Pakistan modified their positions and the CD reached agreement on a decision and a presidential statement on 11 August 1998, "...to establish under item 1 of its agenda entitled "Cessation of the nuclear arms race and nuclear disarmament" an ad hoc committee which shall negotiate, on the basis of the report of the Special Coordinator (CD/1299) and the mandate contained therein, a non-discriminatory, multilateral and internationally and effectively verifiable treaty...".⁵⁰ Consequently, Ambassador Mark Moher (Canada) was appointed chair of the ad hoc committee, but no progress was registered on any of the key issues (such as scope, verification, stocks, etc.) in the remaining weeks of the 1998 session of the CD.

At its 1999 session the CD failed to re-establish the ad hoc committee, though some delegations including Canada, and South Africa tabled useful papers on various aspects of an FMCT. The stalemate continued due to several reasons, including refusal of production moratoria by India and Pakistan, linkage between FMCT and nuclear disarmament, and linkage with missile defences. India's nuclear doctrine clearly suggested the requirement for additional stocks of weapon-usable fissile material, as did Pakistan's response. And reportedly the U.S. was rebuffed in its approaches to Israel, when it sought Tel Aviv's support for FMT negotiation. At the start of the 2000 session of the CD on 18 January, it was not clear whether the CD would be able to reconstitute an ad hoc committee on a FMCT.

Given current developments, barring some miracle, it is unlikely that serious negotiation will have commenced on a fissile material treaty by the opening of the 2000 NPT conference, thus representing failure on the second item in the 1995 program of action.

Decision 2 specifically called for the immediate commencement and early conclusion of negotiations on a fissile material cut-off treaty—obviously, failure on this account will be reported at the 2000 Review Conference, unless the CD could re-establish an Ad Hoc Committee on a FMCT and start negotiations (which seemed improbable).

Perhaps, it might be best if at the Review Conference the issue of a multilateral fissile material treaty (FMT) were abandoned in lieu of an agreement among the five NWS to codify their moratoria on new production and to include transparency and safeguards measures. An FMT is a relic of the Cold War arms control agenda and it will not succeed in achieving through the backdoor what the NPT has not achieved—capture of the three undeclared NWS.

Nuclear Disarmament

The third item in the program of action referred to nuclear disarmament. With the end of the Cold War, "classical" nuclear arms control has moved away from its emphasis on confrontational and technological approaches to focusing on co-operative and essentially political approaches to avoiding nuclear war and furthering nuclear disarmament. The nuclear-weapon states have not put forward any multilateral or plurilateral agenda for the phasing-out of nuclear arms. Despite declaratory statements favouring an eventual phasing out of nuclear weapons, both the U.S. and Russia have only concurred to "study" the prospects of further reductions, though at the Cologne G-8 summit on 20 June 1999, Washington and Moscow agreed to discuss a START III framework as outlined earlier in Helsinki.

At the 21-22 March 1997, Helsinki summit between Presidents Clinton and Yeltsin, the U.S. rejected a Russian proposal to cut back to 1000-1500 deployed strategic nuclear warheads and instead proposed a START III framework of ceilings of 2,000-2,500 deployed strategic warheads on either side, as a way of facilitating ratification of START II by Russia.⁵¹ Of the three lesser nuclear weapon states, both France and the United Kingdom have unilaterally removed obsolete non-strategic nuclear weapons, cancelled or slowed down certain strategic modernization programs, and in some cases reduced the *op tempo* of their alert nuclear forces—but neither was prepared to renounce reliance on nuclear arms.⁵² China continued to modernize its strategic nuclear forces, citing the

threat from the U.S. and reportedly would continue with modernization as long as large nuclear arsenals continued to exist.

Even after the Cold War, nuclear weapons remained the principal danger to global security. The United States and Russia planned to reduce their deployed strategic arsenals by about 80 percent by the year 2007 and to cut back their non-strategic nuclear weapons by about a third to a half (under the framework of the 1991 unilateral reductions). Even so, at the turn of the century the five nuclear powers still retained a greater number of strategic nuclear warheads than they had collectively in 1970, when the NPT entered into force.

The 1994 U.S. Nuclear Posture Review and the 1996 Quadrennial Defense Review endorsed a nuclear force structure that would remain at START II levels, with an additional 5000 intact but non-deployed warheads as a 'strategic hedge'. Furthermore, in fall 1996 President Clinton approved a new Presidential Decision Directive (PDD 60) authorizing the use of nuclear weapons to deter chemical and biological weapon threats—this directive apparently could lead the U.S. to inadvertently authorize nuclear use in response to suspected BW threats.

Russia's new nuclear doctrine (1997) reintroduced the concept of a nuclear first strike which was recently reconfirmed. It continued with building and deploying new mobile ground-launched strategic missiles albeit fewer than it previously planned in order to meet START II levels, and had threatened to deploy new and additional non-strategic nuclear weapons as response to NATO enlargement. China's nuclear modernization continued, while the United Kingdom and France had cancelled or cut back certain strategic and non-strategic programs but persisted with strategic modernization in general. Nuclear weapon programs in India, Israel, and Pakistan were also continuing. In sum, unfortunately rather than diminishing in importance, nuclear weapons probably will continue to have a major impact on international security with detrimental consequences for the NPT.

Increasingly arms control experts are making the case for moving to minimal nuclear forces and the elimination of all nuclear arms, while others had noted that the United States and Russia would be hard put even to dismantle the number of warheads required under START I/II/III, given its limited warhead dismantling and fissile material storage capabilities.

Many non-nuclear weapon states took the opportunity at the 1995 NPT Review and Extension Conference to press the case for nuclear elimination as called for under Article VI, and the decision on "principles and objectives" contained the compromise language on this issue. As noted above, the NPTREC was unable to agree on a Final Declaration, due to irreconcilable differences between the NAM and the Western nuclear powers over the report of Main Committee I. These unresolvable differences were essentially over nuclear disarmament—the NWS did not offer any new proposals, nor were they willing to countenance any kind of a timetable for nuclear weapon reductions or elimination.⁵³

The frustration of the NNWS continued throughout the 1997, 1998 and 1999 sessions of the NPT PrepCom, and the NWS had nothing useful or new to report at the 1999 PrepCom. The NWS have taken to issuing joint statements extolling their virtues and listing the great progress achieved in nuclear disarmament, however, in 1999 there was no such joint statement due to China and Russia's anger over NATO's military actions in Kosovo and Serbia. While indeed nuclear disarmament has and is continuing to take place, there have been no new strategic arms reduction agreements since 1993 and the existing ones might be in jeopardy.

Furthermore, expansive new justifications for retaining nuclear weapons and broadening the conditions of their use, i.e. deterring biological and chemical attacks, as well as so-called "rogue" states, have been espoused.

At least eight items will shape much of the consideration of Article VI issues at the 2000 Review Conference: a) U.S. national missile defence plans; b) the START standstill; c) CTBT entry-into-force and ratification; d) the "New Agenda" for nuclear disarmament (furthering the process initiated by the 1996 Canberra Commission and the 1999 Tokyo Forum Reports); e) the continuing stalemate at the CD; f) the 1996 advisory opinion of the International Court of Justice; g) accountability and reductions in non-strategic or tactical nuclear

weapons; and h) nuclear weapon employment policies. Not all eight of these items are discussed here due to space constraints.

U.S. National Missile Defense Plans

The United States has been engaged in research, development and testing of components that could be used for a limited national missile defence system (NMD) since the early 1980s and throughout the 1990s, despite opposition and criticism from Russia on the grounds that the U.S. system would be in violation of the 1972 Anti-Ballistic Missile (ABM) Treaty and that it would lead to a destabilization of their nuclear deterrent relationship. After nearly four years of contentious negotiations, on 26 September 1997, the two sides concluded a package of agreements modifying the ABM Treaty.

These negotiations initiated by the U.S. to enable it to continue legally with its development and testing programs for theatre missile defences, were to establish “demarcation” criteria between permitted theatre missile defences (TMD) and prohibited strategic defences. The U.S. wanted the freedom to permit any TMD system that was not tested against long-range (greater than 3,500 kilometres) target missiles. Russia, however, wanted to prohibit high-speed TMD systems (which potentially could have a capability against strategic missiles). Given Russian opposition, it was only possible to reach a “lower-velocity agreement” covering theatre missile defence interceptors with a maximum demonstrated velocity of 3 kilometres/second or lower, and that during the testing of TMD components the ballistic target-missile used in the flight-test did not exceed a velocity of 5 kilometres/second or a range of 3,500 kilometres;⁵⁴ and a “higher-velocity agreement” covering theatre missile defence interceptors with a maximum demonstrated velocity exceeding 3 kilometres/second, and that during the testing of TMD components the ballistic target-missile used in the flight-test did not exceed a velocity of 5 kilometres/second or a range of 3,500 kilometres.⁵⁵

The two agreed statements reflected continuing differences between the U.S. and Russia. The higher-velocity agreement prohibited all space-based interceptors and stated certain principles governing any deployment of high-speed TMD systems: A) these may not be deployed against ABM Treaty partners; B) their scale of deployment—both number and geographic scope—must be consistent with a theatre missile threat; and C) TMD systems may only be deployed if they “will not pose a realistic threat to the strategic nuclear force” of an ABM Treaty partner.⁵⁶

Of the three principles, the third was particularly significant as it was a redefinition of Article VI (ABM Treaty) prohibition on TMD systems having a capability against strategic missiles. In the Treaty itself, the restriction applied to preventing a TMD system being given the capability to intercept a strategic missile. Under the higher-velocity agreement, the “force-on-force” criteria would permit a TMD system with a capability to intercept strategic missiles provided that these did not constitute “a realistic threat” to the strategic offensive force of the other side. The problem here was that the force-on-force capability of the defence would depend significantly on the size of the strategic offensive force. For instance, a TMD system that did not pose a realistic threat to large strategic offensive force of several thousand nuclear warheads, could well pose such a threat to a smaller arsenal of a few hundred warheads. Therefore, highly-capable or higher-velocity TMD systems would not only threaten the prospects for further strategic arms reductions below START II limits but could also spark additional force deployments by Russia (and by China, with all the attendant consequences in South Asia).

Under pressure from anti-arms control legislators in a Republican dominated U.S. Congress, on 22 July 1999 President Bill Clinton signed legislation stating it to be the policy of the United States to deploy a national missile defence system “as soon as technically feasible”. The stated purpose of the NMD system was to defend U.S. territory from attack by a limited number of intercontinental range ballistic missiles armed with atomic, biological or chemical warheads. The posited limited attacks, ranging from a few to tens of ballistic missiles, fall into three categories: a small unauthorized or accidental launch from Russia; an unauthorized or deliberate attack from China (which has some 20 plus ICBMs capable of reaching the U.S.); and a deliberate attack from a hostile state with emerging missile capabilities—such as North Korea.

In addition to NMD, the U.S. has also been developing and deploying theatre missile defences (TMD) to defend expeditionary U.S. forces and allies against regional- or shorter-range ballistic missiles.

The precise architecture of the proposed NMD system has not yet been finalized but its general characteristics and components have been mapped out. The proposed NMD would be deployed in three incrementally more capable stages. The first stage—capability 1 or “C-1” system is designed to defend against a few (up to five) simple incoming warheads (without decoys); the second stage, C-2, would provide protection against a few complex warheads (with decoys); and the third stage, C-3, would defend against many complex warheads. The C-1 system would have 20 to 100 interceptors deployed at a single site; C-2 100 interceptors also at a single site; and C-3 between 100 to 200 interceptors at multiple sites.⁵⁷

All three variants of the U.S. NMD system under consideration would require amendment of every substantive article in the 1972 Anti-Ballistic Missile (ABM) Treaty.⁵⁸ In January 1999, The U.S. administration proclaimed that it would render a deployment decision in summer 2000 based on four criteria: 1) the existence of a ballistic missile threat to the continental U.S. warranting deployment; 2) availability of operationally effective NMD technologies; 3) affordability; and 4) the impact on the ABM Treaty and arms control. Despite these criteria, in spring 1999, U.S. Defense Secretary Cohen threatened unilateral U.S. withdrawal from the ABM Treaty unless Russia cooperated in amending the agreement to permit U.S. NMD plans. In July 2000, President Clinton is scheduled to make a decision whether to deploy a NMD system or to defer such deployment. Only three of 19 intercept tests necessary for system development were anticipated before that date—and two of these had already failed, one in October 1999 and the other in January 2000—and the full sequence is unlikely to be completed until 2005.

These developments have already had significant negative effects on nuclear arms control diplomacy. At the CD, China has prevented the resumption of any consideration of a FMCT and has given notice that its main priority to negotiate a treaty preventing weapons in space. Russia too has steadfastly opposed U.S. NMD plans and has resisted tempting offers of technology sharing and financial inducements from the U.S.

At the 1999 UNGA, Russia and China co-sponsored resolution 54/54A on the integrity of the ABM Treaty. And several countries expressed concern about U.S. NMD plans and supported the continuing integrity of the ABM Treaty at the 1999 session of the NPT PrepCom.

Though Russia cannot afford a renewed arms race, it can respond in other ways. It has already indicated that if the U.S. deployed an NMD system, Russia would continue to deploy heavy missiles with multiple warheads—negating a key provision of the START II agreement—and would also deploy countermeasures. Such countermeasures would not only be in place for an intentional launch, but could also increase the possibilities of an accidental or unauthorized missile launch. Russia could also increase the state of readiness of its nuclear forces, thus enabling it to launch its missiles quickly if the U.S. attacked rather than having them destroyed on the ground. But such a heightened state of readiness would increase the risk of accidental launches and therefore decrease U.S. security. At the very least, concerns about missile defences would likely keep Russia from agreeing to de-alerting measures that would greatly reduce the chance of accidental or unauthorized launches. Russia has already increased its emphasis on sub-strategic nuclear weapons as well as early resort to such weapons.⁵⁹

Recent Chinese missile tests have included countermeasures, and China is likely to deploy additional countermeasures in the future. In any case, the uncertainties raised by U.S. NMD plans has increased the strain on U.S.-China relations will likely strengthen those in China who want to build up its nuclear forces. China obviously has the capability to expand its offensive forces in the next few decades by building more missiles and deploying multiple-warhead missiles to overwhelm any U.S. NMD.

While some modernization of China’s missile forces is likely in any event, U.S. NMD deployment will influence both the timing and scope of those efforts. To preserve its option to enlarge its nuclear arsenal, China will

need to produce additional quantities of weapon-grade fissile material thus delaying agreement on a FMCT, which the U.S. supports as a nonproliferation measure.

Russian and Chinese responses to a U.S. NMD deployment could also result in significant secondary responses. For example, China's nuclear build-up could lead to an Indian response followed by a build-up by Pakistan.

More generally, the demise of the ABM Treaty, the collapse of U.S.-Russian nuclear reductions, and the deterioration of the U.S.-Russian and U.S.-Chinese security relationships cannot help but threaten the viability of the NPT, which is predicated on continuing nuclear reductions by the nuclear-weapon states. In the medium- to long-run, the ultimate price of a U.S. NMD system may well be a world with more missiles and weapons of mass destruction.

Main Committee I is set to witness a bitter and fractious debate on U.S. NMD plans and this particular item will generate competing texts that will be impossible to reconcile, thus dooming the prospects of the completion of that committee's report. Furthermore, this item will also inject discord in any negotiation of a forward-looking "principles and objectives" document. The U.S. delegation is not likely to have much negotiating flexibility as it seems obvious that the higher echelons of the U.S. foreign policy establishment has demonstrated neither the foresight nor the wisdom of dealing with the ABM Treaty issue in the context of global arms control diplomacy and remains hostage to "rogue" elements within its polity that are ideologically opposed to multilateral arms control and favour reliance on unilateralism.

The question of US NMD plans has already had a profoundly damaging effect on U.S.-Russia and U.S.-China relations, and differences over this issue could well contribute to wrecking the review conference.

ICJ Advisory Opinion

On 8 July 1996, the International Court of Justice (ICJ) ruled on an advisory opinion requested the UN General Assembly (Resolution 49/75K of 15 December 1994) on the use of nuclear weapons in armed conflict.⁶⁰ While the ICJ opinion was inconclusive in general, the Court effectively concluded that the threat or use of nuclear weapons could be legally defensible only *in extremis* where national survival was at stake. The Court, however, unanimously found that: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."⁶¹

More specifically, the opinion added: "[T]he legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result - nuclear disarmament in all its aspects by adopting a particular course of conduct, namely the pursuit of negotiations on the matter in good faith."⁶²

The Court's opinion did not dictate any timetable or negotiating forum for reaching this result. The ICJ's emphasis on the obligatory character of NPT Article VI appeared to represent common legal ground between the NWS and the NNWS. Although the Court's opinion refrained from directly criticizing the current behaviour and practice of the NWS, it seemed rather evident that the most important NWS have for several decades preferred, and even insisted upon, an arms control approach based on minimizing the risks of possessing nuclear weapons rather than on prohibiting them.

Given the politics of nuclear weapons and their continuing role in international security, without concerted international pressure, in the short- to medium-term it is unlikely that regimes of prohibition of the type negotiated for biological and chemical weapons could be achieved for nuclear weapons. A constructive alternative, in the interim, might be to give greater weight to the legal commitment (under the NPT) of the NWS to pursue nuclear disarmament as a serious policy goal, and to urge the establishment at the CD of an *ad hoc* Committee for the substantive discussion and consideration of nuclear disarmament issues.

Since 1997, Malaysia has sponsored resolutions at the UN General Assembly making a link between the ICJ advisory opinion and a negotiation on a nuclear weapons convention. These resolutions have routinely won comfortable majority support, including strong backing from the NAM. In 1999, Malaysia sponsored resolution 54/54Q which again was widely supported. The ICJ advisory opinion was also referenced in the preamble of the New Agenda Coalition resolution "Towards a nuclear-weapon-free world: The need for a new Agenda". The 2000 Review Conference is bound to witness a heated debate on the relevance and applicability of the ICJ advisory opinion regarding the obligation of the NWS on nuclear disarmament.

Conference on Disarmament

Attempts by a number of states to establish an ad hoc committee at the CD to discuss nuclear disarmament have been consistently opposed particularly by the U.S. and Russia, with the support of the lesser NWS. For example, a U.S. view held that:

"Supporters of nuclear disarmament thus must take care what they ask for. To demand complete elimination of nuclear arms according to a fixed calendar is to throw sand into the gears of disarmament. It is a formula not for pressing ahead, but for standing still and resuming a sterile argument that leads nowhere. For it challenges not only existing weapons, but also an unshakeable premise of defence planning.

As a staunch friend of the CD, let me say that nuclear disarmament there would be an inappropriate forum taking up an unamenable subject. It is no act of friendship to elevate expectations for a forum far beyond its capacities. Climbing down from Cold War peaks of nuclear weapons has been an intricate process, involving careful bilateral trade-offs, specialized verification, and a constant and shifting menu of sensitive national security calculations. There is no realistic prospect that the CD could manage such an effort. And given the CD's recent history, I must ask as well, do we really want to make all further nuclear disarmament progress subject to the CD's rule of consensus?

But, we're told, the CD would not negotiate the treaties, but merely ventilate the issues -- and tell the nuclear weapon states how to proceed. Well, the CD is a negotiating body. As to further NWS nuclear disarmament, if it is a negotiation, the CD is ill-suited to do it; on the other hand, if it's not a negotiation, we should not water down the CD mission.

Last year's NPT conference itself recognized the practical realities. The program of action declares that the test ban and the fissile cut-off should be completed by the Conference on Disarmament. But it says efforts to reduce nuclear weapons should be pursued 'by the nuclear weapon states'. Those are the right assignments."⁶³

It is evident that positions on the future of nuclear disarmament, and the proper venue and format for negotiations, remain polarized with no compromise in sight. As expected, at the 1997 through 1999 sessions of the CD, discord reigned over the "Agenda" of the CD, with the NAM pressing for the establishment of an *Ad Hoc* Committee on nuclear disarmament and the three Western NWS plus Russia opposing any such initiative, and China pressing for an *Ad Hoc* committee on preventing weaponization of outer space. What is needed is flexibility in the NWS' position allowing for discussion and consideration of nuclear disarmament at the CD, with the actual negotiation left to the parties concerned.

New Agenda Coalition

Frustrated by the lack of progress on nuclear disarmament, on 9 June 1998, eight states issued a Joint Declaration on "A Nuclear-Weapons-Free World: The Need for a New Agenda". The foreign ministers of Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden joined together in reiterating the call for

the total elimination of nuclear weapons. This New Agenda Coalition then went on at the 1998 UNGA with 30 co-sponsors to introduce Resolution 53/77Y “Towards a nuclear-weapons-free world: The need for a new Agenda”, that was adopted by a vote of 114:18:38 on 4 December. What was significant was the pressure from the U.S. on its NATO allies to join it in opposing this resolution. Countries such as Canada, which had been pushing for discussion on nuclear disarmament at the CD, were inclined to support the resolution, but in the end under U.S. pressure 12 NATO countries decided to abstain rather than to oppose the new agenda resolution.

At the 1999 session of the UN General Assembly, the New Agenda Coalition put forward a revised version of its resolution (54/54G), with the support of nearly 60 other countries, that took into account many of the criticisms of NATO NNWS, thus making it in theory even more difficult for this group of states to abstain—in the end, 13 of NATO’s nineteen nations abstained.⁶⁴ In the absence of further progress in nuclear disarmament, the New Agenda provides a practical basis for a common framework that could be agreed at the 2000 review conference.

Earlier, on 2 February 1999, Belgium on behalf of five NATO members—Belgium, Germany, Italy, Netherlands and Norway) had proposed an ad hoc working group to study ways and means of establishing an exchange of information and views within the CD on endeavours toward nuclear disarmament.⁶⁵ This proposal remained under informal consideration during the 1999 sessions of the CD but no agreement could be reached. As the review conference drew closer, there were some signs that during its first session in 2000, the CD might eventually be able to break the deadlock—however, this would entail the simultaneous establishment of Ad Hoc Committees on a FMCT and PAROS and a working group on nuclear disarmament.

Thus, the stage has been set for yet again a fractious debate on nuclear disarmament in the context of an NPT review conference. The United States has already warned that “efforts to treat the NPT process as a single-minded referendum on the nuclear weapon states’ progress in nuclear disarmament are not well conceived.”⁶⁶ What might be useful during the Review Conference would be a consideration of different views on Article VI, with the aim of promoting a realistic and balanced consideration of the complex and highly political issues involved in the context of NPT obligations.

While actual negotiations on nuclear weapon reductions properly belong within the purview of the NWS, the NPT review process could usefully serve to provide an opportunity for a discussion on the guiding principles for future measures such as: enhanced transparency in the reduction process, i.e. reports provided by the NWS on the actual numbers of warheads currently deployed, in active and inactive status, and dismantled; greater openness on nuclear doctrine, i.e. current status of alert forces and targeting practices; and steps already taken and contemplated for further nuclear arms reductions leading to the eventual elimination of all nuclear weapons.

Mindful of the importance of the 2000 NPT review conference, it was expected that the U.S. apparently might have a somewhat flexible position at this year’s session of the CD, and could signal its willingness to informally discuss nuclear disarmament in a working group. However, China remained adamant in seeking an ad hoc committee on preventing an arms race in space (PAROS)—to target U.S. missile defence plans—and at the start of the January 2000 session of the CD, China again opposed establishment of a working group on nuclear disarmament in the absence of an ad hoc committee on PAROS. Darach Mac Fhionnbhairr of Ireland struck a key note when he stated that: “The prospects for a successful outcome at the 2000 Review will depend in large measure on the ability of states parties to forgo a common approach to nuclear disarmament as a priority goal coupled with a commitment to an accelerated process of reductions. It is difficult to envisage any substantive outcome to the Review without convergence on this fundamental issue.”⁶⁷

If certain NATO countries, such as Canada, decided to support a modified version of the New Agenda Coalition’s text, then it is quite possible that a large number of States party could also throw in their support. The effect could well be to isolate the NWS and to create a new polarity between the handful of NWS and the multitude of NNWS—such a development would not necessarily be unwelcome.

Sub-strategic nuclear weapons

Over the past decade attention has focused on reductions in, and safety and security of, strategic nuclear weapons in the context of START I/II and the denuclearization of the Soviet successor states—Belarus, Kazakhstan, and Ukraine. Sub-strategic, or tactical, nuclear weapons have been largely ignored following the successful conclusion and implementation of the 1987 INF Treaty and the fall 1991 Bush/Gorbachev unilateral initiatives on reductions in sub-strategic nuclear weapons. These weapons comprise those with ranges under 500 kilometres.

Under their respective unilateral initiatives of fall 1991, the U.S. would remove and destroy all ground-launched tactical nuclear weapons in Europe, as well as nuclear mines. In addition, all naval tactical nuclear weapons, including sea-launched cruise missiles, would be removed and stored on land. In all, the U.S. would reduce its inventory of sub-strategic nuclear weapons by more than one-third. The United States active tactical stockpile reportedly numbered approximately 1,500 warheads (with several thousands in storage), including some 150 B61 (Mod. -3, -4, -10) air-delivered warheads still deployed in six countries in Europe.

The Soviets responded by announcing the removal and elimination of tactical nuclear warheads from ground-launched missiles, artillery and mines, in addition to the removal of nuclear warheads from tactical aviation and naval units, and to place them in central storage. The Soviet reductions and eliminations would amount to more than two-thirds. In 1991, reportedly Russia held the entire stockpile of some 21,700 sub-strategic nuclear warheads produced by the former Soviet Union, of which some 13,000 were slated for elimination under the Gorbachev initiative thus leaving more than 7,000 in the active inventory.⁶⁸

Sub-strategic nuclear weapons traditionally have been deemed the most dangerous and the most destabilizing due to their portability, proximity to zones of conflict, lack of strong permissive action links, dangers of pre-delegation, and the risk of early, pre-emptive or, accidental use. Given the deterioration in the Russian armed forces and the nuclear complex, the safety and security of sub-strategic nuclear weapons remains an important concern. These concerns are further exacerbated following Russian threats to either re-deploy sub-strategic nuclear weapons in Belarus and some of the New Independent States or along Russia's western and southern borders and on ships in the Baltic sea, or to make additional ones. United States military planners, for their part, remain interested in the perceived deterrent value of sub-strategic nuclear systems to thwart chemical and biological weapons use by so-called "rogue" states.

With the advent of 'smart' advanced conventional munitions, sub-strategic nuclear weapons are no longer as crucial for military planners, as they once were during the height of the Cold War. Reportedly, even the United States Air Force would prefer to remove its remaining B61 nuclear bombs from Europe. Security would be enhanced if steps were taken to codify the 1991 Bush-Gorbachev declarations and to agree on a framework on data exchanges covering numbers and locations of sub-strategic nuclear warheads, monitored central storage, and warhead deactivation and dismantlement. Both the United States and the Russian Federation should be encouraged take steps to withdraw all sub-strategic nuclear weapons from Europe—i.e. the area from the Atlantic to the Urals—and further to consider the complete prohibition of this class of weapon, perhaps in the framework of START III.

Nuclear Deterrence and 'No-First-Use' in a Post-Cold War Environment

In today's post-Cold War world, defining national security merely, or primarily, in military terms conveys a false sense of reality. Nearly a half-century of Cold War fashioned the issue of security into powerful conventional simplifications that are no longer valid. Unfortunately, many of these traditional and out-moded concepts retain great currency amongst certain security analysts and defence planners, and the dominance of military and strategic considerations in the conduct of international relations endures as a pathetic legacy of the Cold War. While stability was, and continues, correctly to be of prime strategic importance, but in a transforming world its pursuit by some influential countries places exaggerated emphasis upon military concepts and relationships that are presumed still to lie at its core.

Deterrence, in particular, nuclear deterrence, overwhelmingly dominated the Cold War equation of international security. One of the resulting effects was to confuse diplomacy with strategy and this confusion continues to permeate the thinking of many even today. Deterrence rendered international relations into a basic process of bargaining with threats of force, coercion and submission of the adversary became the over-riding substance and purpose of foreign policy. Traditional statecraft taught that deterrence should not replace diplomacy. Nuclear weapons required, and still require, instant readiness for war-fighting. A resultant hair-trigger mentality suffused diplomacy and militarized international relations. Even though the leaders of the United States and the USSR had agreed that a nuclear war could not be won and must never be fought, nuclear weapons continued to be maintained on hair-trigger alert. This was an inescapable, but unnecessary, corollary of deterrence.

Despite their best efforts the supporters of the concept of nuclear deterrence could not prove that nuclear weapons had preserved the peace in Europe. What one could claim though was that they played a supporting role in preserving the peace. Nor could supporters of deterrence prove that the many crises during the Cold War were resolved or contained primarily by the threat of nuclear war.

The history of the Cold War is replete with compelling evidence of the pernicious effects of the open-ended quest for nuclear deterrence--this was one of the conclusions reached by Professors Janice Stein and Richard Ned Lebow in their detailed study entitled *We All Lost the Cold War*. The ultimate irony of nuclear deterrence may be the way in which the strategy of deterrence undermined much of the very political stability that the reality of deterrence should have created. Fear of nuclear war made leaders inwardly cautious, but their public posturing convinced their nuclear-armed adversaries that they were aggressive, risk-prone, and even irrational--leading to mutual insecurity and declining confidence in the robustness of deterrence.

The strategy of nuclear deterrence was ultimately self-defeating and it provoked the kind of behaviour that it should have prevented. Nuclear deterrence poisoned East-West relations. Supporters of the theology of nuclear deterrence mistakenly interpreted Cold War tensions and crises as evidence of the need for even more nuclear deterrence (mostly based on more and new types of nuclear weapons, and at the height of the Cold War the two superpowers had together deployed nearly 90,000 nuclear warheads).

In a post-Cold War world, the political value of nuclear weapons is precisely nil. Despite the changed political climate and the window of opportunity to restructure international relations away from reliance on nuclear weapons, many influential thinkers and military planners in the United States, NATO, and in other areas still believed in the integrity of nuclear deterrence--i.e. that stability and security would be jeopardized in the absence of nuclear deterrence. Such deeply embedded beliefs remained extraordinarily resistant to new thinking or to change. The myth of nuclear deterrence leads only to enhanced insecurity, uncertainty and hair-trigger nuclear arsenals.

Furthermore, supporters of nuclear deterrence remained so wound up in their esoteric theories that all they could conceive of was a reduced target set which drove nuclear weapon requirements, and were hard put to invent credible threats that would require maintaining high levels of nuclear weapons and hence nuclear deterrence. With the collapse of the Soviet Union, defence planners have had to live with a shrinking of their bloated Cold War nuclear arsenals and have had to reduce their target sets in order to comply with START restraints. On the U.S. side, present targeting requirements dictated that the U.S. could not go below 2,000-2,500 deployed strategic nuclear warheads, with about 5,000 kept in reserve, along with some 500 non-strategic nuclear warheads, for a total of about 8,000. Starkly put, Russia simply had little capacity to maintain even 1,000 strategic nuclear warheads, much less the several thousands, now permitted under existing START I and START II, and the proposed START III, agreements.

NATO's declared nuclear weapons employment policy was stated to be one where such weapons were weapons of last resort. NATO claimed that it needed nuclear weapons, or nuclear deterrence, for political purposes, i.e. to preserve peace and prevent coercion. Furthermore, nuclear weapons would deter threats or use of weapons of mass destruction (WMD). NATO claimed furthermore that by promoting European stability and discouraging WMD

threats, NATO's nuclear posture served the interests not only of the allies, but also of Russia and NATO's other partners.

Future threats to NATO do not emanate from overwhelmingly large conventional forces, poised to attack at a moment's notice, but will emanate from ethnic conflict, economic hardship, refugees, etc.—situations where nuclear deterrence or nuclear weapons would be useless. As regards WMD, there are no credible threats to Europe for the foreseeable future. Furthermore, nuclear threats except against other nuclear threats would be counter to the negative security assurances given by the NWS to NPT states under UN Security Council Resolution 984 of April 1995. Chemical and biological weapon, and ballistic missile, threats are vastly exaggerated. There is no evidence to suggest that Iraq was deterred by U.S. nuclear threats in 1991—it still launched ballistic missiles against Israel and Saudi Arabia, and Kuwait's oil wells were set afire, despite dire warnings from the United States.

At the NATO summit in Washington in April 1999, on the fiftieth anniversary of the alliance's founding, Canada supported by Germany forced the issue of a complete review of NATO's nuclear policy. However, due to the war in Kosovo NATO postponed the review. At the December 1999 NATO Foreign Minister's Meeting, Canada once again forced consideration of the issue of NATO's nuclear policy and secured a commitment for a revised strategic concept to be completed by December 2000—however, the omens indicated that the promised review would not result in changes in NATO's nuclear orthodoxy.

Given the inauspicious prospects for any major change in NATO's obsolete nuclear policy, it might be useful if this item were to be discussed at the review conference in the discussion on nuclear disarmament, with a view to promoting some transparency and possibly generating some added pressure on NATO member states to finally drag their "Strategic Concept" into the 21st century.

Nuclear-Weapon Free Zones (NPT Article VII)

Article VII of the NPT both recognized and encouraged the establishment of nuclear-weapon-free zones (NWFZs) as a means of promoting nuclear nonproliferation through regional measures. The 1995 NPT Review and Extension Conference also endorsed the concept of NWFZs and recommended that countries in various regions consider the establishment of zones free of all weapons of mass destruction, in particular the Middle East and Central Asia.

NWFZ agreements present additional effective options to complement global nonproliferation efforts and can serve to roll back proliferation where it has already taken place. Furthermore, NWFZs can create mutually binding obligations that can be more wide-ranging than those subsumed under the NPT. Although the concept of NWFZs actually pre-dates the NPT, until 1990 no NWFZ, except the Antarctic Treaty, was fully operational. Recently, however, considerable progress has been made in expanding the territory covered by NWFZs, and there is now a good prospect that before long five regional treaties covering over 100 countries and the entire southern hemisphere will be in full force.

Since the 1995 NPTREC two additional NWFZ agreements have been signed that establish such zones in Southeast Asia and in Africa, and Mongolia has unilaterally declared its nuclear-weapon-free status. In 1996, the U.S., the UK, and France, all signed the Protocols to the Treaty of Rarotonga. While attempts at UNGA since 1994, to set up a Southern Hemisphere NWFZ were unsuccessful, it was clear that there existed a broad measure of support for such a treaty.⁶⁹ Further, informal discussions have taken place on setting up a NWFZ in Central Asia, and Russia has been joined by Belarus and Ukraine in calling for a NWFZ in Central/Eastern Europe, as a counter to NATO expansion. On 28 February 1997, the five Central Asian heads of state signed the "Almaty Declaration", followed by the Tashkent Declaration by their foreign ministers on 15 September 1997, both of which called for the establishment of a NWFZ in their region. In addition, UNGA resolutions on a CANWFZ were adopted unanimously in 1997 and 1998. In 1999, however, failing consensus the issue of a CANWFZ was referred to the millennium assembly session in October 2000. A preliminary draft text of a Central Asian NWFZ treaty was completed in April 1999 and further refined at a meeting in Sapporo in October 1999 (where apparently agreement was reached on 90

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percent of the draft text). Another drafting session is scheduled to be held in Sapporo in early April 2000, however, certain unexpected complications had arisen in early March that threatened to scuttle this meeting.

On 30 April 1999, the UN Disarmament Commission adopted by consensus a report on the “Establishment of nuclear-weapon-free zones on the basis of arrangements freely arrived at among States of the region concerned.”

In addition to welcoming the conclusion of two additional NWFZs since 1995, Mongolia’s nuclear-weapon-free status, considerable progress toward concluding a third such zone since 1995, and the UNDC guidelines, the Review Conference could recommend modalities to assist countries and regions in assessing the viability of a NWFZ in their particular geographic environment, with a view to promoting a balanced and productive discussion on NWFZs during the new review process of the NPT, establishing additional zones.

Middle East Resolution

The 1999 Preparatory Committee noted in its final report the proposal by some delegations to establish a “subsidiary body” under Main Committee II “on the implementation of the resolution on the Middle East”.

At all three sessions of the PrepCom, Egypt made submissions on this item,⁷⁰ in addition to references in the NAM working papers. At PrepCom II, it was disagreement over compromise text on the resolution that provided the catalyst for that meeting’s collapse. At this session, the U.S. questioned the continuing relevance of this resolution and could not agree even to moderate language whose drafting was coordinated by Canada and Egypt.

The 1999 PrepCom, however, devoted a special session the Middle East but once again no agreement could be reached, though the U.S. position on the resolution’s relevance had changed. In essence, the U.S. maintained that it would deal with the Middle East as part of its global approach to nonproliferation, while Egypt and others favoured a regional focus. The European Union reiterated its commitment to the resolution and to its full implementation. And in a break with their previous practice, some Western states apparently were willing to name Israel as a non-NPT party in language dealing with the Middle East resolution.

The NAM working paper submitted at the 1999 PrepCom specifically recommended that “the 2000 review conference establish a subsidiary body to its Main Committee II to consider and recommend proposals on the implementation of the resolution on the Middle East....”⁷¹ Whether or not the Review Conference establishes a subsidiary body on this item, it will have to devote at least one session to a review on the implementation of the resolution with a view to formulating recommendations for further action. Given the lack of progress in the Middle East Peace Process, the rejection of the Israeli Knesset to discuss the nuclear question, and the growing impatience of the Arab League states regarding Israel’s nuclear weapon capacity, it is certain that this item will create major discord and create yet another obstacle in the path of achieving a successful result at the review conference.

Amendments and Review (Article VIII)

Though paragraphs 1 and 2 of Article VIII provide the modalities for amending the Treaty, the requirements for doing so are so complicated and involved that the Treaty is virtually unamendable. However, the support of only one-third or more States party is required to convene an amendment conference. In the past some States party have vaguely threatened to call an amendment conference to deal with Article VI matters, however, it is within the realm of possibility that some States party may push for an amendment conference—not in the hopes of amending the Treaty, but to draw attention to their grievances against the NWS. While the NWS and many of their allies might be opposed to such a course of action, the non-aligned hold more than two-thirds of the votes.

Article VIII.3 dealt with the review of the operation of the Treaty. As explained above, 1995 NPTREC Decision 1 has provided further clarity and guidance in this regard, and this development should be recognized and recorded at the 2000 Review Conference. Furthermore, it should be accepted that NPT reviews will henceforth occur quinquennially, as provided for in Decision 1, thus obviating the practice of seeking the support of the

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depositories or of passing UN General Assembly resolutions. NPT reviews are now automatic and regular, and the only utility of UNGA resolutions should be to request the UN to provide conference services for the Preparatory Committee and the Review Conference, with NPT parties assuming the financial costs.

Signature and Ratification (Article IX)

The item of interest under this Article is paragraph 3 which defines a NWS for the purposes of the NPT as “one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” Given the nuclear tests first by India and then by Pakistan in May 1998, and both states’ claim to nuclear-weapon status, it would be advisable for the 2000 Review Conference to clearly and strongly reinforce this definition.

Caution should also be expressed regarding engagement with India, Israel or Pakistan that might result in directly or indirectly bestowing any recognition on these states as nuclear-weapon states even if these states were not parties to the Treaty. Any recognition of new nuclear weapon states by any NPT signatory should be viewed as a material breach of the Treaty.

Withdrawal and Duration (Article X)

Withdrawal from the Treaty is permissible provided extraordinary events related to the subject matter of the Treaty have jeopardised the supreme national interests of a signatory State. Thus far, DPRK remains the only state to have ever given the requisite notice of withdrawal of three-months (on 12 March 1993) and then suspended the clock (on the 89th day) after it signed the “Joint Statement” with the U.S. on 11 June 1993, but it never rescinded its notice of withdrawal. Every effort should be made to obtain the cancellation of DPRK’s notice of withdrawal from the Treaty—however, given the current situation this does not seem realistic.

Some NNWS may threaten to leave the Treaty to protest the lack of full compliance by the NWS with Article VI of the Treaty. Such defections would not necessarily signal that States party would go on to develop nuclear arms, but rather to indicate that the NPT was no longer fulfilling the national security interests of these States party in the absence of full compliance with Article VI. Any moves to defect from the Treaty must be strongly resisted by the membership of the NPT.

In accordance with Article X.2 the Treaty was extended indefinitely on 11 May 1995. The permanent duration of the NPT should also be recognized and recorded in the product of the 2000 Review Conference.

Universality

At the time of the NPTREC the NPT had attracted 178 adherents. The number of states parties now stands at 187 (including Taiwan (China) and Yugoslavia), which means that 9 additional states have joined the Treaty. With the near-universal adherence to the Treaty—only Cuba, India, Israel and Pakistan remain outside the Treaty. The May 1998 nuclear tests by India and Pakistan, and both countries’ overt declarations claiming NWS status, posed a grievous challenge to the integrity of the Treaty and its associated regime. UN Security Council Resolution 1172 of June 1998 rejected recognition of any new NWS and established nonproliferation benchmarks for India and Pakistan—i.e. signing and ratifying the Comprehensive Nuclear-Test Ban Treaty; halting all further production of weapon-usable fissile material and joining the negotiation on a fissile material treaty at the Conference on Disarmament; limiting development and deployment of delivery vehicles for weapons of mass destruction (WMD); implementing strict export controls on sensitive materials and technologies for WMD; and resuming bilateral dialogue on resolving long-standing tensions and disputes, including Jammu and Kashmir.

Since May 1998, the U.S. had engaged in 11 bilateral rounds of negotiation with India and 9 with Pakistan on security matters including the benchmarks noted above, but at the same time the U.S. had backed away from insisting on full implementation of all or most of the benchmarks set out in the UNSCR 1172 and had gone to the

extent of indirectly accepting India (and Pakistan) as nuclear-weapon states.

These actions had given rise to growing ease about the nature and thrust of U.S. engagement policy with India and Pakistan following their May 1998 nuclear tests. Of particular concern for NPT states parties were statements made by senior U.S. officials accepting nuclear proliferation in South Asia and their perceived backing away from the requirements of UNSCR 1172.⁷²

The U.S.' engagement policy has been a failure, as neither India nor Pakistan had signed the CTBT at the time of this writing, nor stopped production of weapon-usable fissile material, nor halted testing of ballistic missiles, nor cut back their nuclear weapon programs, nor stopped the "induction" or deployment of nuclear forces.

In fact, India had gone to the extent of enunciating a draft nuclear doctrine that called for a "triad" of land, air and sea based, survivable, offensive nuclear forces with nuclear warhead requirements going up to several hundreds and ballistic missiles of both regional and intercontinental ranges.

And the G-8 High Level Task Force set up at the Birmingham G-8 Summit in 1998 essentially remained a farcical exercise, holding semi-annual meetings but with zero results.

At the 2000 Review Conference, political pressure is bound to increase on the three perennial hold-outs-- India, Israel, and Pakistan. In practice, however, bringing these three undeclared nuclear-weapon capable states into the Treaty poses not only major political but also technical challenges. In all three instances NPT membership will have to be preceded by a process of nuclear rollback and the precedent established by South Africa would be useful in this regard.

By way of background, the biggest challenge was not that of dismantling South Africa's weapons capability but that of the IAEA subsequently verifying the completeness of Pretoria's declaration of inventory of nuclear material and facilities.⁷³ This was the first time that the IAEA had "looked back" at a state's nuclear activities and had to verify operating records, declared outputs, completeness of dismantling and destruction, and the reassignment of dual-use equipment to peaceful or non-military work.⁷⁴ In this task, the IAEA's tasks were facilitated by full and extensive disclosures by South Africa and cooperative verification. This experience gained by the IAEA will be useful in verifying *post facto* other similar renunciations of weapons capabilities--were they to take place--in the threshold states or eventually in the NWS.

Operative paragraph 1 of Decision 2 called upon all states parties to promote universal adherence to the NPT. However, proponents of NPT universality need to exercise great care that in the interest of promoting universal adherence, the Treaty itself was not damaged or weakened. It is crucial therefore that no new nuclear weapon states are recognized directly or indirectly in any manner whatsoever, and that it is preferable to have three pariahs who are denied nuclear assistance and remain the focus of political and economic pressure than to damage the credibility of the Treaty by admitting these states without first clearly establishing the total destruction of all nuclear weapons and conversion of weapon-related facilities and fissile materials, as well as a comprehensive accounting of all previously unsafeguarded nuclear materials.

Finally, pending the capture of the three holdouts by the Treaty, it might be useful for NPT parties to consider, in the context of the deliberations of the Preparatory Committee, a harmonized approach for devising ways to encourage the adherence of all states still remaining outside the Treaty in conjunction with the application of full-scope safeguards on all (not just new) supply arrangements. Furthermore, the traditional approach of selective pressure and differentiated policies toward the three holdout states has failed miserably and must be re-examined with a view to developing a common nonproliferation strategy of "carrots" and "sticks".

I would strongly recommend that the Review Conference find the political will to explicitly name the countries still remaining outside the NPT and examine a variety of diplomatic and economic instruments to pressure the hold-outs to join the global nuclear nonproliferation norm as non-nuclear-weapon states.

Security Assurances

Since the initial attempts to conclude the NPT, security assurances to non-nuclear weapon states have been considered an important component of a credible global nonproliferation regime. UN Security Council Resolution 255 (1968) provided positive assurances, i.e., a pledge to come to the assistance of non-nuclear weapon states threatened with nuclear attack.

The NNWS have also sought negative assurances, (i.e., pledges by the nuclear powers not to use or threaten to use nuclear arms against NNWS). Negative security assurances are defined as a pledge not to use or threaten to use nuclear weapons against NPT non-nuclear weapon states.

At the First Special Session of the UN on Disarmament in 1978, the five nuclear powers gave separate negative security assurances. Only China's assurance was comprehensive and unconditional. Since that time Egypt, Nigeria and South Africa have worked on various drafts of negative security assurances.⁷⁵

Over time all five declared nuclear powers made unilateral and conditional statements on negative assurances in the context of NWFZs or other security arrangements, but the NNWS wanted to harmonize these negative assurances into a legally binding document. On the eve of the 1995 NPT Conference, the nuclear-weapon states agreed to Security Council Resolution 984 updating the earlier resolution, and four of the five nuclear weapon states harmonized their unilateral declarations. China did not join because its commitments were more far-reaching.

One continuing problem was that except for China, none of four other nuclear powers had unconditionally renounced the first use of nuclear weapons. In the context of the 1995 NPT Conference, many developing states had voiced the requirement for legally binding security assurances from the five nuclear weapon states—in the form of a multilateral, binding, Security Council resolution. In practice, however, the NWS issued a statement in Geneva in March 1995 on negative security assurances to NPT states and also agreed to Resolution 984 (11 April 1995) on positive assurances to NPT member states.⁷⁶ These, however, still fell short of legally binding assurances.

The controversial PDD 60 of the U.S., discussed in the section on nuclear disarmament, whereby the role of U.S. nuclear weapons included deterrence of CBW attacks raised questions about the efficacy of Washington's NSAs. Some prominent U.S.-based international lawyers were of the view that perhaps the ICJ could be asked to render an opinion to clarify this matter. Furthermore, the Russian Federation's nuclear doctrine was revised to rely more heavily on nuclear weapons including their first use.⁷⁷

At the 1997 PrepCom, South Africa proposed special time for discussion of security assurances at the 1998 session. At the 1998 PrepCom, South Africa outlined a working paper on a legally binding instrument on security assurances to be negotiated at the 2000 Review Conference, and reiterated and further developed these ideas at the 1999 PrepCom. This caused some controversy and certain states argued that such a course would undermine the CD, where this issue is also considered. Nonetheless, South Africa seems determined to raise this matter at the 2000 Review Conference. The Conference, however, could usefully consider a process to encourage the NWS to agree on enhanced, uniform and multilateral security assurances to NPT parties. Since declaring itself to be an NWS, in fall 1998 India offered security assurances to member states of NWFZs, however, this offer was not considered to be serious or to have any legal standing.

Middle East Resolution

Since 1995, the Middle East, especially the question of Israeli accession to the NPT as a NNWS has emerged as an issue squarely pitting the U.S. and its allies against the Arab states as well as the non-aligned countries (NAM). There was clear evidence that the U.S. would like to undermine the 1995 NPTREC Middle East Resolution and was opposed to utilizing the NPT review forum as a way of highlighting Israel's unsafeguarded and nuclear-weapon activities, or to bring pressure upon Israel. Indeed, the U.S.' disagreement to accept any

compromise language on the Middle East was the catalyst that led to the collapse of the 1998 NPT PrepCom and to bitter debate at the 1999 PrepCom. Lost in the shuffle was the crucial fact that the Middle East Resolution, every word of which had been cleared by the U.S. with Israel before the document was adopted by the NPTREC,⁷⁸ served as the mechanism which made it possible for the Arab states not to stand in the way of the Treaty's indefinite extension.

Attempts to refute the negotiating record of the NPTREC outcomes or to play politics with the Middle East Resolution has already proven to be controversial and counterproductive, and unless a positive approach to this matter is adopted, this issue will plague the conduct and atmosphere of the upcoming review conference.

Improvements in the Palestinian-Israeli and Jordanian-Israeli track of the Middle East Peace Process (MEPP) during 1999, and indications of the beginning of peace negotiations between Syria and Israel earlier this year have been positive developments. However, the chequered record of the MEPP has demonstrated that the process is subject to fits and starts, and given the crucial matters under negotiation the path will remain uncertain and rocky. Nonetheless, questions regarding Iraq's compliance with the NPT firstly, and with UNSCR 687 (and other related resolutions) secondarily, in addition to Israel's clandestine nuclear weapon capability enhanced by advanced conventional munitions and delivery platforms provided by its principal benefactors, will determine in a major way the discussion on the Middle East Resolution and consequently of the success or failure of the review conference itself.

As noted earlier in this paper, the 1995 package of decisions and resolution reflected an historic compromise reached at the NPTREC that enabled agreement on indefinite extension without a vote. Having said that, more thought needs to be devoted to what actions might be required regarding this resolution at the 2000 Review Conference, where it is certain that the Arab states, led by Egypt, will again stress the importance of universal application of the Treaty within their region. How will the Treaty membership react to, or deal with, any notice by some or all of the Arab states to either suspend their acceptance of the Treaty or to withdraw from it, if Israel does not renounce its nuclear weapon capability and announces a commitment to join the NPT as a non-nuclear weapon state within some specified time frame?

ROLE OF THE TREATY AND THE 1995 NPTREC DECISIONS AT THE 2000 REVIEW CONFERENCE

The traditional view of States regarding the scope of previous NPT review conferences was that it was the implementation of the *Treaty* that was being reviewed. The Treaty remained the source of legally binding commitments on the part of signatory States and, therefore, it was the Treaty which lay at the heart of the review process—in terms of “assuring that the purposes of the Preamble and the provisions of the Treaty are being realized”—as noted in Article VIII.3.

Given the context of the negotiation in 1995 on the decisions and resolution adopted by that Conference, and the conduct of the Preparatory Committee from 1997 through 1999, precedent has been established future reviews would need to focus not only on the implementation of the Treaty but also that of the NPTREC outcomes.

The three sessions of the PrepCom to date have reinforced only marginally the concepts of “permanence with accountability” (outlined in 1995) and of a qualitatively different review process. In this context, it can be asserted that the 1995 decisions on “principles and objectives” and on a “strengthened review process” are politically binding, whereas the extension decision is legally binding. Under customary international law, politically binding decisions could become equally as binding as those taken under specific treaty law. Failure to honour the 1995 NPTREC decisions could dissolve commitments to the Treaty's permanence. As such, it may be argued that the scope of future review conferences is: 1) to review the implementation of the Treaty *per se* as well as of the decisions and resolution adopted at the 1995 NPTREC; and 2) to make specific recommendations on strengthening the implementation of the Treaty (including achieving its universality) through a new principles and objectives document.

The 2000 Review Conference could consider adopting at least three “products” or “outcomes”: a backward looking report on the implementation of the Treaty and the NPTREC extension package between 1995-2000; a forward looking document focusing on specific substantive recommendations for the period 2000-2005 on promoting the full implementation of the Treaty and the 1995 package; a document further clarifying and interpreting the strengthened review process. Additional documents dealing with the Resolution on the Middle East or special issues such as universality, security assurances, or a fissile material treaty, could also be adopted.

The first task would involve a product, i.e. a final report, comprising an assessment of the implementation of the Treaty, plus the 1995 NPTREC decisions and resolution, from 1995 to 2000. This document—the final report—of the 2000 Conference could be structured either along traditional lines, based on the reports of the three Main Committees, comprising an evaluation of past implementation; or it could be based on an article-by-article review of the Treaty factoring in the 1995 NPTREC decisions and resolution.

The second task would involve the drafting and adoption of a Year 2000 “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, comprising specific recommendations and milestones directed at strengthening the full implementation of the Treaty and the 1995 NPTREC decisions and resolution. It would identify the areas in which progress should be sought in the full implementation of the Treaty over the next review period—e.g., nuclear disarmament; strengthened safeguards; nuclear-weapon-free zones—and the means through which—e.g., ratification and implementation of START II; negotiation, ratification and implementation of START III & IV involving the participation of all five NWS; negotiation, ratification and implementation of a fissile material treaty involving the five NWS, India, Israel and Pakistan; negotiation and implementation of INFCIRC/540 Additional Protocol by all NPT NNWS; negotiation of a NWFZ in Central Asia; and entry-into-force of the CTBT, Bangkok and Pelindaba NWFZ treaties. This 2000 “Principles and Objectives” could either emulate the structure of the 1995 “Principles and Objectives”, or alternatively it could reflect the articles and preambular paragraphs of the Treaty plus universality and security assurances. A “2000 Principles and Objectives” should strive to better reflect the structure of the Treaty and in this context to lay out the preferred goals and strategies for the next five year period. As such, the document while being substantive, pragmatic and results oriented, should also be concise and avoid unnecessary platitudes.

Other tasks could include a document clarifying and interpreting the “strengthened review” decision of 1995, given the amount of controversy and disagreement that was evident during the PrepCom sessions; a document dealing with the 1995 Middle East Resolution, providing updated understanding on its content and implementation; and possibly documents on nuclear disarmament, fissile material cut-off treaty and/or security assurances.

Adopting these products either by consensus or without a vote would be a worthy goal to strive for in 2000. However, given the present penchant of the NWS to minimize the scope of the 1995 NPTREC decisions and resolutions and that of some members of the NAM to push grandiose disarmament schemes, it is unlikely that harmony will prevail at the 2000 Review Conference. In the event that neither consensus nor agreement without a vote is achievable, it might be worthwhile for the Chair in consultation with an extended bureau and the “Friends of the Chair” to find an appropriate mechanism for capturing the views of an overwhelming majority of States present, rather than risking yet another failed NPT meeting.

Further Strengthening the NPT review process

The failure of the 1999 and 1998 sessions of the NPT PrepCom to agree on recommendations dealing with substantive matters, mainly due to the single-minded opposition of the NWS in rejecting moderately worded recommendations on nuclear disarmament and related nonproliferation priorities, has reduced the viability of the strengthened review process.

For the NWS, a strengthened review has come to mean only a discussion of substance and drafting of recommendations to the 2000 NPT Review Conference, without States Parties necessarily addressing issues of substance, or identifying agreed priorities for the implementation of the Treaty and the NPTREC decisions, or even

expressing views on current matters of importance to the Treaty.

What might be done to complete the preparations for the 2000 review conference, with a view to salvaging some vestiges of a strengthened review? The only practical way forward seems to be that based on innovative yet practical initiatives—i.e. devising qualitatively new modalities to promote the review and implementation of the Treaty, in accordance with the NPTREC decisions and resolution.

In 1995, a small number of states that were committed to the continuing viability of the NPT were successful in establishing unprecedented new parameters which were captured in NPTREC Decisions 1 and 2. A similar effort is now required to ensure “permanence with accountability” of the NPT—an effort that once again explores unprecedented measures—and stretches the parameters of the debate.

These might include, for example: redefining the consensus rule; revising the structure of the review process; refocusing the role of the depositaries; and augmenting the role of the chairs. Such views could be expressed through a document adopted by the conference interpreting and clarifying the meaning of NPTREC Decision 1 on a “strengthened review process”.

Redefining the consensus rule

According to the “Draft Rules of Procedure for the 2000 Review Conference”⁷⁹, reflecting the traditional rules of procedure governing the conduct of NPT review conferences, Rule 28 dealt with the “Adoption of Decisions”. This particular Rule (28) stated that:

- The task of the Conference being to review, pursuant to paragraph 3 of article VIII of the Treaty, the operation of the Treaty with a view to ensuring that the purposes of the preamble and the provisions of the Treaty are being realized, and thus to strengthen its effectiveness, every effort should be made to reach agreement on substantive matters by means of consensus. There should be no voting on such matters until all efforts to achieve consensus have been exhausted.
- Decisions on matters of procedure and in elections shall be taken by a majority of representatives present and voting.

Given the failure of the 1998 PrepCom, and the record of failures at previous review conferences to produce a consensus final report, perhaps it would be opportune to learn from past mistakes and to amend or adapt the rule for decision-making on substantive matters.

First, the rule needs to be updated from its present 1995 vintage. In making the Treaty of permanent duration in 1995, States Parties enriched the Treaty with the adoption without a vote of the decisions on a “strengthened review process” and on “principles and objectives”, as well as the Middle East resolution. Hence, any and all future strengthened reviews must take into account not only the Treaty but also the NPTREC outcomes. This leads us to the conclusion that the wording in Rule 28 needs to be updated to reflect the new reality. A preliminary draft of an updated Rule 28.1 might be as follows:

The task of the Conference being to review, pursuant to paragraph 3 of article VIII of the Treaty and of paragraph 7 of NPTREC Decision 1, the implementation of undertakings of States parties under the Treaty with a view to ensuring that the purposes of the preamble and the provisions of the Treaty [and the NPTREC decisions] are being realized, and thus to strengthen its effectiveness, every effort should be made to reach agreement on substantive matters by means of consensus. There should be no voting on such matters until all efforts to achieve consensus have been exhausted.

Generally speaking, “consensus” is understood to mean the absence of any objection by expressed by a participating State to the taking of the decision in question. Consensus, as such, could be redefined as to mean

consensus minus “x”, i.e. with 187 States parties consensus could be deemed to have been achieved if all States present and voting (at PrepCom sessions and at review conferences) agree to a common text except for a very small number (say between one to five, which desist from joining the rest).

Such a modified definition of consensus is by no means unknown in other international security fora. For example, several OSCE mechanisms envisage the possibility of undertaking executive action without the requirement of a traditionally defined consensus⁸⁰—the Prague mechanism of 1992 and the Moscow mechanism are two such cases in point.

Hence, a modified Rule 28.1 could provide for agreement on matters of substance—such as a “Principles and Objectives 2000”—by means of a modified consensus definition. Such an approach, on substance, would be preferable to a resort to voting as provided for in Rule 28.1.

The disadvantages of such an approach might be that the NWS and some of their allies could end up in this small group of up to five whose views might be over-ridden in the interests of the over-whelming majority. However, the risk of being over-ridden might well result in a more productive exchange of views between the NWS and the NNWS possibly resulting in compromise forward-looking text.

Already, in the context of the Preparatory Committee, some States parties have voiced their opinion on the merits of moving away from a strict definition of consensus as it has traditionally been applied.

For example, it is interesting to recall that in its plenary statement at the second session of the PrepCom, New Zealand stated: “There may be many areas on which we can agree now: those can be folded into the consensus recommendations before us. But we do not think that we need to necessarily be bound by consensus at this time. Rather our inclination would be, in areas where this is not achievable, to capture initiatives and proposals on the basis of them enjoying broad support and agreement. Confining ourselves to a consensus product might risk a sterile and probably meagre outcome. On many issues there is a strong coincidence in approach. But on others there are obvious differences. We should not be coy in recognizing them or in attempting to paper over them.”⁸¹

And, earlier at the 1997 PrepCom session, Japan went so far as to state that: “The Preparatory Committee should not prepare a consensus document at each one of its sessions, since doing so would be extremely difficult and much too time-consuming. Rather, the most appropriate and productive procedure would be for the Chairman of the Preparatory Committee for the session to issue his own summary report, with the relevant annexes. The report would be drafted under the Chairman’s sole responsibility and would not be binding on any delegation.”⁸²

At the 2000 Review Conference, procedural and factual reports could be issued under the authority of the “President”, even though Rule 28.2 provides for adoption of decisions on procedure by means of a majority of States present and voting. Thus, the final report of the 2000 Review Conference—a final report may be preferable to a final declaration—dealing with the implementation of the Treaty from 1995 to 2000, could be adopted either under the authority of the Chair (as described above) or through the mechanism of voting as stipulated under Rule 28.2-6. Again, in order to avoid the possibility of divisiveness resulting from voting, it would be preferable to rely upon the authority of the President to decide on matters of procedure.

On matters of substance, even though a modified consensus rule has been discussed above, it would be advisable to avoid the complication of voting. Instead, a compromise mechanism tried out at the 1985 and 1995 NPT conferences could be considered. In 1985, States parties agreed to disagree and the Final Declaration reflected the various views. However, neither group was prepared to be stubborn enough to prevent the inclusion of the other group’s preferred text (even though it itself did not fully subscribe to it).

In contrast, in 1995, through the mechanism of the President’s Consultations that produced Decisions 1 and 2, as well as the Resolution on the Middle East, even those States parties not supportive of indefinite extension felt that they had achieved enough and thus desisted from formally objecting to the adoption of the package of decisions

“without a vote”, and consequently of indefinite extension. As such, as a result of carefully negotiated political compromises, in 1995 even dissenting States were prepared to let the Conference adopt outcomes that they themselves did not fully support.

Therefore, at the 2000 Review Conference, in the absence of a traditional consensus, Ambassador Baali could consider either the 1985 or the 1995 formulations as a compromise solution. However, the 1995 methodology was clearly superior as clear and strong outcomes were adopted “without a vote” despite serious reservations on the part of some states (which were prepared not to be obstructionist in return for significant political compromises).

Revising the structure of the Treaty review process

Since 1985, NPT review conferences have structured the review of the Treaty into three main committees—broadly dealing respectively with nuclear nonproliferation and disarmament, safeguards and export controls, and cooperation in the peaceful uses of nuclear energy. This three main committee structure was devised by the U.S., for the 1985 review conference, in part to provide a committee for the Eastern group to chair.

The division of work between the three main committees has overlapped in places and has not proven especially efficient or conducive to generating agreed reports. Indeed three of the previous five NPT review conferences have failed to agree on final documents, while the 1985 conference only agreed on a report that reflected fundamental differences in views between States parties.

NPTREC Decision 1 retained the existing main committee structure but recommended discussion of the issue of overlap, and also recommended the establishment within the main committees of ‘subsidiary bodies’ or working groups to provide focused consideration of specific issues. Decision 1 empowered the PrepCom to recommend the creation of such subsidiary bodies for each review conference. This recommendation for subsidiary bodies merely regularized past practice at review conferences, where working groups or ‘friends of the chair’ would break off from the main committees to resolve differences on specific items, such as rules of procedure, security assurances, and export controls at the 1995 NPTREC. It was noteworthy that at the 1999 and 1998 PrepCom, the NWS rejected attempts to draft recommendations on setting up such bodies at the 2000 review conference.

The 1997 PrepCom contributed to further complicate the structure of the review process by creating so-called “clusters” based on the allocation of work of the main committees and then sub-divided the “clusters” according to the seven headings under the “principles and objectives”. Instead of contributing to a “structured and balanced” review this procedure introduced imbalances between the “clusters” even though each of the three “clusters” would be given equal time—leading inevitably to sterile, unproductive, debate as was evident in the 1998 and 1999 sessions of the Preparatory Committee.

A practical, common sense, approach to a revitalized review of the Treaty suggests an article-by-article approach, factoring in the relevant preambular paragraphs and NPTREC decisions (which would include items such as universality and security assurances, as well). In this context, it would be useful to modify the existing Main Committee structure and to re-organize the review process to deal sequentially with the articles and related preambular paragraphs of the Treaty, factoring in as required the seven principal themes from the 1995 “principles and objectives”. Subsidiary bodies, or working groups, could be established for the purpose of deliberation and drafting assessments and recommendations for the final report on Treaty implementation. Such an approach could facilitate a structured and balanced review of the Treaty and the NPTREC outcomes, in addition to providing greater focus on those elements of the Treaty requiring further effort for full implementation.

The working papers submitted by NAM at the three sessions of the PrepCom were all organized on an article-by-article basis reflecting the order of articles as they appear in the Treaty. Canada took the lead in 1999 in formally calling for an article-by-article review and also filed a reservation to the decision taken at the PrepCom on the allocation of items to the main committees.⁸³ Countries such as Japan and New Zealand, among others, were supportive of reconsidering the allocation of items to the main committees with a view to adopting an article-by-

article approach.

At the 2000 NPT Review Conference, it would make sense to organize both the “backward-” and the “forward-looking” products in accordance with the articles of the Treaty, followed by universality, security assurances, and the Middle East resolution. This procedural issue, unless resolved in the run up to the review conference, could well become a contentious matter possibly leading to a delay in the main committees commencing their work.

Refocusing the role of the depositaries

The NPT established the precedent for reviewing the operation of the Treaty. NPT article VIII.3 provided authority for the first review conference to be held in Geneva five years after its entry into force. At intervals of five years thereafter, further review conferences could be convened at the request made to the depositaries by a majority of States parties. Since 1975, NPT review conferences have been convened every five years. NPTREC Decision 1, however, reinterpreted article VIII.3 to the effect that review conferences shall continue to be held every five years in perpetuity beginning with the 2000 conference.

Traditionally the depositaries, at the request of NPT parties, made the preliminary preparations for review conferences, and in doing so heavily influenced the structure of the reviews. As noted above, the three main committee structure was invented by one of the depositaries. Over the years, reportedly the depositaries have come to exercise a preponderant degree of influence over the chairs of the PrepCom sessions and of the main committees, as well as over the presidency of the review conferences and their bureaux.

The Treaty did not invest the depositaries with any special privileges or responsibilities, save under article VIII.3 on convening review conferences, and under article IX.5 and 6, respectively, on recording and reporting accessions to the NPT and registering the Treaty pursuant to article 102 of the UN Charter. As such, the Treaty itself did not devolve any special or specific role or responsibility to the depositaries as regards the nature or the structure of the review process. However, traditionally the depositaries have exercised a lead role and the NNWS by default have allowed the depositaries to bring what could be considered as an undue degree of influence on how Treaty reviews are structured

Under the authority of NPTREC Decision 1, review conferences have been institutionalized on a quinquennial basis and there is no longer a requirement for NPT states to request the depositaries to convene review conferences. This is now the responsibility of all NPT States parties and can easily be expressed through appropriate resolutions drafted through the First Committee for adoption by the UN General Assembly. Thus, all States parties would take on the responsibility of ensuring the continuation of the strengthened review process.

The review process of the Treaty could benefit from the input of interested States parties, in addition to that provided by the depositaries. At the 2000 Review Conference, a recommendation could be made to establish an informal grouping comprising the depositaries and the coordinators of the three political groups, as well as a small number of other States with a past record of bridge-building in contributing to the review process, and might include for example: Algeria, Argentina, Australia, Brazil, Canada, Chile, Egypt, Malaysia, Mexico, Morocco, Nigeria, Republic of Korea, Ukraine and Zimbabwe. Such an informal grouping could not only provide useful assistance to the chair but also reflect a broader constellation of views that could serve to democratize the process and to potentially facilitate an improved and more productive consultative mechanism.

Jayantha Dhanapala, Under-Secretary General for Disarmament, has proposed the formation of “a voluntary group of ‘bridge-builders’ drawn from all regional and political groups to establish links among the treaty parties and to act as a ‘fire-brigade’ to defuse controversies and seek negotiated solutions to problems as they arise”.⁸⁴ The Report of the Tokyo Forum recommended that to support the NPT’s core bargain, a permanent secretariat and consultative commission be created to deal with questions of compliance and to consider strengthening measures for the Treaty.⁸⁵ Such a group—called an “Executive Council”⁸⁶ as suggested by Dhanapala—

could be set up at the next review conference and could serve to assist the president and vice-presidents, and could meet informally between review conferences to discuss with Treaty review matters.

President's Consultations

The role of the President of a NPT Review Conference is to manage, co-ordinate, provide leadership and vision, as well as to work tirelessly to build common ground with a view to achieving as robust an outcome as possible. Traditionally, Review Conference presidents have relied on consultation with a select, but geographically and politically representative group of countries, informally referred to as "Friends of the Chair." Such groups, which are necessarily kept small in membership, are organized to assist in identifying and building consensus.

At the 1995 NPTREC, Ambassador Dhanapala pulled together "President's Consultations" involving 25 of the principal players,⁸⁷ that were instrumental in crafting the language for the package of extension decisions. The President with the administrative help of the Secretariat played an important role in nudging and nurturing the Consultations to reach consensus. He relied on the device of "consultations" to hammer out the details of the package of decisions and resolution that made indefinite extension possible. In choosing the participants to the Consultations, the President was mindful to select a geographically and politically representative group, which also included the leaders of the traditional political groupings.

In deciding to launch his Presidential Consultations at an early stage, Ambassador Dhanapala pre-empted stalemate and divisive debate on the extension decision—something that nonetheless took place in Main Committee I, where lower level officials got embroiled in counterproductive exchanges. To consider the extension proposals in more detail, Ambassador Dhanapala pulled together the "Consultations" early in the second week.

The President, while recognizing that a clear majority existed for indefinite extension, did not overtly favour any particular option, and chose to table language on an extension decision in his Consultations only after agreement had been reached on the "principles" and "strengthened review." Finally, when presented with incontrovertible proof that a majority supported indefinite extension, as was the case when the Canadian list of co-sponsors was read out in a plenary session on 5 May 1995, the President worked to craft language on the extension decision in a manner that brought States parties together and presented the decision as a common victory for all—with no winners or losers. This was no mean achievement, as his task was unnecessarily complicated by so-called "triumphalist" messages from some Western NWS delegations.

As a result of the parallel President's Consultations, Main Committee I became "orphaned" and failed to reach agreement on its report, as the delegations concerned pulled their most senior diplomats into the President's Consultations where the negotiations on "principles and objectives" and on "enhanced review" had become the main focus of the Conference. It was important for Ambassador Dhanapala to maintain the confidence and trust of all States parties and he had to be careful to play an impartial but fair and firm role. In the end, the good will of States together with the constructive role of the President and the hard work done in the "President's Consultations", it became possible to secure the indefinite extension of the NPT.

In 1997, Ambassador Pasi Patokallio also convened an informal Chairman's consultations to which he invited some 22 states representing both a geographic and a political mix.⁸⁸ At the 1997 PrepCom, the principal bargaining on the structured and balanced review of the Treaty, and on the structure of the report and recommendations of the PrepCom, all took place within the Chairman's consultations. The draft of the "Chairman's Working Paper" was also put together in such Consultations, which in general benefited from the good will of States as none was interested in making the first PrepCom of the strengthened review process a failure.

Ambassador Eugenius Wyzner convened an informal Chairman's consultations, at the 1998 PrepCom, to which he invited some 23 states representing both a geographic and a political mix. However, this forum was supplemented by walk-ins (about 10) and failed to serve its purpose as it became divisive and argumentative⁸⁹. These Consultations were unable to resolve the deep differences that had appeared during the negotiations on the

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updating of the “Chairman’s Working Paper”. As good will and cooperative tendencies between various States and groups had been strained due to the argumentative nature of the Consultations, and the perceived uncooperative behaviour of the NWS, the President’s Consultations could not succeed in turning a sow’s ear into a silk purse.

In 1999, Ambassador Camilo Reyes engaged in careful advance preparations and consulted with many different delegations. In a unique, and smart move, prior to the opening of the PrepCom he apparently got key states to give him their “bottom line” positions. During the PrepCom itself he continued his practice of consultations with a number of individual countries as well as the Bureau. In the end, despite grand standing by some delegations, he was able to hold them to their earlier commitments and was successful in salvaging the PrepCom to at least agree on a procedural report with recommendations on the outcomes of the review conference. At the final session, despite deep divisions on substantive matters and the opposition of the NWS to accept anything except congratulatory language on nuclear disarmament, States nonetheless wanted the PrepCom to succeed in at least completing the procedural arrangements. In a break from previous practice, Ambassador Reyes after extensive consultations behind the scenes, held all negotiating/deliberative sessions with the involvement of States present. He wisely withstood strong pressure from several states to retire to a small room and start “negotiations” on the substantive recommendations.

While, on the one hand, the advantage of the mechanism of “President’s Consultations” is that it is easier to reach agreement among a small regionally and politically representative group; on the other hand, the vast majority of states are shut out of the process. This technique, however, is not new as at previous Review Conferences, the President of the Conference has relied on some “Friends of the Chair” grouping to provide assistance in negotiating key elements or issues. Such a process could work better if all of the group chairs would regularly consult with their respective membership and keep it well informed.

At the 2000 Review Conference, given its heavy workload and expectations, it would be useful for the President to convene “Consultations” involving the participation of no more than 25 States—based on their track record of contributions to the intellectual and conceptual capital of NPT reviews, as well as geographic and political representation. Care should be exercised in including only those delegations that have participated in such consultations in the past and thus have some experience of this particular format, and the trap avoided of including states merely for the sake of representation of some specific region.

It would be important to keep other delegations informed and engaged, and to achieve this end it would be useful for the President to hold periodic information sessions involving all States present. It is likely that Main Committees II and III would be able to agree on reports, but not Main Committee I. As such, the President’s Consultations likely will have to bear the burden of drafting not only a new principles and objectives, possibly an interpretation of the strengthened review process, but also pull together the report of Main Committee I and the Final Declaration. However, not all of this work need be reserved for the President’s Consultations, subsidiary bodies could be set up to produce drafts on certain issues that could then form a part of the documents or outcomes of the Review Conference.

All this suggests that smaller delegations will necessarily be handicapped, as probably would even some of the larger delegations. But then not all delegations necessarily need to be present or contribute to all aspects of the deliberations. Many States have traditionally championed single issues or a few issues—as such, these States could still make their contributions in the appropriate areas.

The credibility and capability of the Presidency will be key—it will be important to be, at the same time, fair and impartial yet firm and resolute. At times, the President will need to exercise strong leadership and withstand political pressure from the NWS and others without losing sight of promoting the interests of the Treaty and of the preponderant majority of States parties.

In this regard, Ambassador Abdallah Baali, the President-designate of the NPT 2000 Review Conference has already initiated consultations with the NWS as well as a broad range of NNWS to determine their views and

sense of priorities. These consultations need to continue on an on-going basis and the President would need to utilize these to achieve several objectives prior to the opening of the conference: 1) to obtain as wide a perspective as possible of the views and aspirations of States party; 2) to get an evaluation and assessment of the report and recommendations of the Preparatory Committee; 3) to determine the nature and content of the products or outcomes of the Review Conference; and 4) to demand and to receive assurances from States party regarding their full cooperation as well as of their preferences and guarantees of fall-back positions on key issues.

During the Review Conference, the President's emphasis obviously would be to strive to secure the best possible outcomes, however, should that not be achievable the President then should hold States to their fall-back positions and aim to secure acceptance of compromise outcomes "without a vote", in order to avoid yet another failed review conference. As a measure of good management, the President should continue with intensive consultations during the conference and keep all the participants well informed by convening short but frequent informal meetings.

Bureau

Traditionally, the Bureau for the Preparatory Committee consists of the President, the Chairs of the Main Committees, the representatives of the political groups, the three depositaries, and China. This leaves out the French, who in 1998 went into Bureau meetings, but desisted after objections filed by some states.

In 2000, it might be useful to consider a small expansion of the Bureau for the 2002-2005 Preparatory Committee to include those countries which have demonstrably contributed to the review process during the work of the Preparatory Committee. One proposal might be to include a few—perhaps five—additional states based on "merit", i.e. contributions made to the strengthened review process. Alternatively, the additional states might be distributed in a way to represent geographical regions of the world, rather than political groupings.

The Bureau for Review Conferences comprises the President, Chairs of the three Main Committees, the Drafting Committee and the Credentials Committee, as well as the three depositaries and China. There is a belief that the depositaries tend to dominate the Bureau and may perhaps extend undue influence over its proceedings. To counter this, as well as to provide for a broader perspective, it would be advisable for the President to have an "extended bureau" comprising some five to seven additional states based on their previous contributions to developing the strengthened review process.

In addition to the Bureau, the President is served by the Officers of the Conference: thirty-four Vice-Presidents, as well as a Chairman and two Vice-Chairmen for each of the three Main Committees, the Drafting Committee and the Credentials Committee.⁹⁰ Furthermore, the President is also served by a General Committee elected for the review conference. The General Committee shall assist the President in the general conduct of the business of the conference and, subject to the decisions of the Conference, shall ensure the coordination of its work.⁹¹ No two members of the General Committee shall be members of the same delegation and it shall be so constituted as to ensure its representative character.⁹²

The mechanism of the "Friends of the Chair" or "President's Consultations", in certain aspects, duplicates the work that the General Committee is supposed to do. Thus, an automatic conflict of interest and rivalry is created between the formally composed General Committee and the informal "President's Consultations". It might be useful in 2000, if the President were to regularly convene informal plenary sessions as well as meetings of the General Committee to keep all participating States party apprised of developments in the "President's Consultations".

Picking up from the decisions of the 1999 PrepCom, NPT-2000 President-designate Ambassador Baali reportedly had initiated intensive consultations with the NWS in capitals, as well as with in New York, Geneva and Vienna. In addition, reportedly, he was working toward completing the Bureau for the 2000 Conference. As of January, it was reported that Ambassador Andre Erdös (Hungary) was nominated as the Chairman of the Drafting Committee. Main Committees I, II and III would be chaired respectively by Ambassadors Camilo Reyes (Colombia), Adam Kobieracki and Markku Reimaa (Finland). The nomination of Chairman for the Credentials

Committee was still pending.

POLITICAL GROUPINGS

Even though the Cold War has ended and the old ideological divisions have been transformed for the most part, on international security issues the traditional regional groupings persist, despite their not being reflective of the current status of the international community. It can be said that all three regional groupings are facing internal stresses and strains. The Western group no longer represents a homogenous viewpoint, and within it a sub-group—the European Union—is emerging as a force with its own interests. Some non-nuclear-weapon states within the Western group, contrary to the preferences of their nuclear-weapon states allies and other friends, favour not only continuing but also achieving greater progress in nuclear disarmament.

The Eastern group rarely meets and it suffers from serious internal contradictions apparent to all. One specific contradiction is the continuing membership in this group of certain former Eastern bloc or former Warsaw Treaty Organization members, which are now members of an expanded NATO—the lynchpin of the Western group.

The non-aligned movement (NAM) continues in some disarray to its own detriment and apparently while the NAM has lost some coherence, common interests might coalesce on general principles, though on balance NAM cohesion cannot be counted upon. Reportedly, some 80 percent of group members reportedly do not actively participate in NAM deliberations. Nonetheless, at the 1998-1999 PrepCom, the NAM demonstrated new found solidarity and it will be interesting to see if this continues and grows under South African chairmanship.

Given the unnecessary tendencies toward rigidity and confrontation emanating from the obsolete Cold War driven group structure that still persists, interest-based coalitions could be formed on the basis of shared goals and involving the participation and involvement of the great majority of NPT states from across the traditional regional groupings to push for structural innovations as suggested above as a means of promoting substance and efficiency in the work of the Review Conference.

REVIEW OF THE PREPARATORY PROCESS FOR THE 2000 REVIEW CONFERENCE

Decision 1 of the 1995 NPTREC, “Strengthening the Review Process for the Treaty”, clarified and further enhanced the modalities for future reviews of the NPT. Paragraph 3 of Decision 1 stipulated that: “The [1995 NPT Review and Extension] 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”. As discussed in an earlier section dealing with the strengthened review process of the NPT, the purpose of the Preparatory Committee meetings was elaborated in paragraph 4 of Decision 1.

As noted earlier, Decision 1 clarified and enhanced the meaning of NPT Article VIII.3 thus regularizing future Treaty reviews and their preparatory process. It also made redundant the requirement of a majority of States Parties requesting the depositary states to convene review conferences, and by extension the practice of the depositaries sponsoring a UN General Assembly resolution calling for a review conference. This was a bizarre practice in any case, as for many years and to this day the membership of the UN General Assembly does not correspond to the membership of the Treaty, and therefore votes on UNGA resolutions on NPT reviews could never be unanimous.

PrepCom I: 1997⁹³

As diplomats tend to be creatures of habit, loath to break from custom no matter how inefficient or outdated, on 10 December 1996 the UN General Assembly adopted resolution 51/45A that took note of the decision of NPT States Parties, following appropriate consultations, to hold its first Preparatory Committee meeting on 7-18 April 1997, for the 2000 Review Conference.⁹⁴ Thus, the first blow was inflicted to the newly agreed concept of

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strengthened reviews barely 18 months after it was adopted, in that in preparing for the 2000 Review Conference and its Preparatory Committee, NPT States Parties ignored the very guidance they themselves had agreed at the historic 1995 NPTREC.

Consequently, the first session of the Preparatory Committee was held in New York from 7 through 18 April 1997, presided over by a representative of the Western Group—Ambassador Pasi Patokallio of Finland—and involved the participation of 149 States Parties. The first session adopted an agenda and program of work, again based on the framework utilized at pre-1995 preparatory committees. The Committee held a total of 9 meetings for a substantive discussion on the review of the operation of the Treaty taking into account the decisions and resolution adopted by the 1995NPTREC. The “structured” discussion was based on the three sets of Main Committee issues (clusters) used at review conferences since 1985.

On the question of the report and recommendations of the first session to the second session, there was intense controversy and discussion. In the end, after some heated exchanges in the Chairman’s Consultations, it was agreed (on the basis of a Canadian suggestion of producing a “distilled compilation” of proposals, not necessarily based on consensus, but to promote accountability and continuity) that the committee would produce a “rolling” progress report that could be updated at each subsequent session of the PrepCom. Accordingly, based on Canadian and South African suggestions made in the chairman’s consultations, Ambassador Patokallio proposed a report comprising three sections: I—Introduction, giving logistical details; II—a factual or technical report prepared by the Secretariat on the organization of the work of the committee, and of the 2000 Review Conference; and III—recommendations to the next session of the PrepCom. This report would have one annex containing summary records, another annex (“Chairman’s Working Paper”) consisting of points of general agreement, subject to review, an inventory or rolling list of proposed recommendations for consideration at subsequent sessions of the PrepCom, and official documents submitted by participating delegations.

After much intensive and sometimes corrosive debate involving consideration of all aspects of the Treaty in a “structured and balanced manner”, the first session concluded with general agreement (subject to Mexico’s reservation) on allocating time at the second session for discussion on three subject areas: security assurances; resolution on the Middle East; and FMCT. With respect to preparing recommendations to the 2000 review conference, as provided for in paragraph 4 of Decision 1, the first session reached “general agreement, subject to review and updating...and pending final agreement of all draft recommendations at the last session...”⁹⁵ on a “Chairman’s Working Paper” comprising 13 paragraphs reflecting both the headings of the 1995 “Principles and Objectives” as well as “Main Committee” issues. An additional 100 paragraphs were appended to this paper, organized on the same basis, comprising “specific proposals put forward by delegations for consideration...on the understanding that the proposals are without commitment by the Preparatory Committee and without prejudice to the position of any delegation...”⁹⁶ This arrangement reflected the view that the 13 paragraphs in the first part of the “Chairman’s Working Paper” were arrived at as a result of intensive negotiation in the Chairman’s Consultations and thus were agreed in general subject to review and final agreement at future sessions of the PrepCom, whereas the remaining 100 or so paragraphs represented national or group proposals on which further work needed to be done at subsequent sessions of the preparatory committee.

The PrepCom also agreed that the second session (to be held in 1998) would be chaired by a representative of the Group of Eastern European States and the third session (scheduled for 1999) be chaired by a representative of the Group of Non-Aligned States. Accordingly, Ambassador Tadeusz Strulak of Poland was nominated as Chair of the 1998 PrepCom. Dates and venues of future sessions were also agreed: 27 April through 8 May 1998 in Geneva; and 12 through 23 April 1999 in New York. Under methods of work, it was agreed that the Preparatory Committee would make every effort to adopt its decisions by consensus, and in the event consensus could not be reached, the Committee would then take decisions in accordance with the rules of procedure of the 1995 NPTREC applied *mutatis mutandis*. It was provisionally agreed, subject to further consultations, that the Review Conference would be held from 24 April through 19 May 2000 in New York. The atmosphere at the 1997 PrepCom though intense at times was aided by as much by a general desire of States to achieve a positive outcome at the initiation of a new qualitatively different process, as by the lack of general preparedness and lack of knowledge by many officials for

whom this was their first experience of a NPT review as their predecessors from the 1995 NPTREC had in the meantime been reassigned to other postings.

*PrepCom II: 1998*⁹⁷

The second session was convened in Geneva from 27 April through 8 May 1998. Ambassador Eugeniusz Wyzner of Poland was elected as Chair—in place of Ambassador Tadeusz Strulak who had been reassigned by Warsaw to another senior position. Ambassador Wyzner, though an experienced diplomat with long years of service, had not taken part in the first session of the PrepCom. The 1998 PrepCom involved the participation of 97 States Parties and held 16 meetings. Ambassador Andelfo Garcia Gonzalez was nominated by the NAM as Chair of the 1999 PrepCom, and Ambassador Markku Reimaa of Finland replaced Ambassador Patokallio (who had been appointed ambassador to Israel in the interim). Both Ambassadors Garcia and Reimaa were elected as Vice-Chairs of the second session.

The second session continued with the structure established at the first session, however, three specific items also formed the basis for an exchange of views as recommended by the 1997 PrepCom—i.e. security assurances, the resolution on the Middle East, and a FMCT.

The 1998 PrepCom very quickly began to degenerate into contentious and sometimes mean spirited negotiation in the Chairman's Consultations on building upon the 1997 "Chairman's Working Paper" and compendium of proposed recommendations to the 2000 Review Conference forward by the 1997 PrepCom. To a very large extent, the NWS reverted to a minimalist position on nuclear disarmament, the sponsors of the resolution on the Middle East—the U.S. in particular—adopted an unyielding stance even to the point of questioning the resolution's validity, and the Chairman was unable to provide useful guidance and thus lost both control and credibility. Another complicating factor was that of an overlap with the Human Rights Commission which was meeting in Geneva at the same time, thus drawing away at times certain delegates who were charged by their capitals with servicing both fora.

In an attempt to rescue the PrepCom from the certain stalemate toward which it was heading, Canada proposed a novel but pragmatic two-track approach. Track 1 would be to "enrich" the "Chairman's Working Paper" by building upon the agreed recommendations from 1997, while Track 2 would draft a short document reflecting the views of NPT states on issues of current interest or concern, such as: security assurances, the resolution on the Middle East, negotiation of a fissile material cut-off treaty, non-proliferation, nuclear disarmament, CTBT and safeguards.

The rationale was that NPT parties should be able to express views on promoting the full implementation of the Treaty, as well as on agreed issues of concern, at the PrepCom rather than having to wait for a review conference. Furthermore, this Track 2 document would serve two purposes: first, it would provide a mechanism for reaching compromise language on controversial items; and second, it would lead to the production of a text that could provide language for the Report of the PrepCom under heading "II: Procedural and Substantive Issues" of the 1997 report, which was split into procedural issues and "III: Substantive Issues".⁹⁸

The text that Canada proposed was for insertion under paragraph 21 of the draft report from the PrepCom session which stated: "The Committee [PrepCom] held an in-depth consideration of all three issues [security assurances, the Middle East resolution, and the FMCT] during which a number of proposals were made. In this connection, the following documents were issued:...." During the PrepCom, Canada worked with several delegations and was eventually able to secure general compromise language on seven items: security assurances, resolution on the Middle East, FMCT, nonproliferation, nuclear disarmament, CTBT and safeguards.⁹⁹

The purpose and utility of this Canadian document was not fully understood, and hence was opposed by the NWS and some states from the Western Group who argued that it could undermine the "Chairman's Working Paper" and would in certain cases duplicate material in it. Even though it had been drafted as a result of intense

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consultations with South Africa, Egypt (and the Arab group), and others, the United States indicated that it opposed the “Track 2” concept in principle.

Thus, as the Report of the PrepCom was being discussed paragraph by paragraph for adoption, on the final day of the meeting, it was the United States which openly objected to the inclusion in it of the Canadian proposal. Canada then called for a show of support, paragraph by paragraph, for its proposals, and again the single objection was voiced by the United States, which systematically rejected first the proposed text on security assurances and then the text on the resolution on the Middle East.

It was the rejection of the compromise text on the Middle East resolution that triggered the collapse of negotiations on the Report from the PrepCom session, following a blunt statement by the Chairman-designate of the 1999 PrepCom, speaking on behalf of the NAM, that his group would not agree to any part of the “Chairman’s Working Paper” unless it contained this Middle East language.

Yet, while the Middle East text provided the catalyst for the failure of the 1998 PrepCom, it was the deep-seated differences over the meaning and content of the strengthened review process that lay at the heart the disagreements. For earlier, led by the United States, the NWS had opposed in the Chairman’s Consultations any attempt to structure the debate at the 1999 PrepCom by adding the three special issues to the cluster debate; or to consider a similar setup for the 2000 Conference.

The “Chairman’s Working Paper” from the 1997 PrepCom was revised somewhat and enlarged from 13 to 27 paragraphs, while the compendium of proposals submitted by delegations went up to an incredible 336 paragraphs! In the end, no agreement at all was possible on the “Chairman’s Working Paper” as the NAM refused to agree to any thing in response to the U.S.’ adamant opposition to even moderately worded references to the resolution on the Middle East, and the 1998 PrepCom ended on a sour note and in failure.

PrepCom III: 1999

The third and last session of the PrepCom was held in New York from 10 through 21 May 1999, a month later than originally agreed in 1997, due to certain countries insisting on avoiding a conflict with the Human Rights Commission session in Geneva. After some proposals to postpone the PrepCom as late as near the end of the year, sanity prevailed and revised dates in May were agreed. Ambassador Camilo Reyes chaired this session as Ambassador Garcia had been reassigned by Bogota. The PrepCom involved the participation of 158 States Parties and held 21 meetings devoted to substantive discussion. It also devoted one meeting each to the following subject areas: nuclear disarmament; FMCT; and the resolution on the Middle East. Two meetings were devoted to a general debate and an exchange of views on the “expected products” of the review conference, seven meetings for drafting of recommendations, and two for the adoption of documents.

Ambassador Reyes provided inspired leadership and the PrepCom was eventually able to complete its work on outstanding procedural issues but was unable to agree on “recommendations” to the review conference. The 1999 PrepCom agreed on: amended rules of procedure (Rule 34) to provide for the possibility of setting up subsidiary bodies to the main committees (as recommended by NPTREC Decision 1) and Rule 44 to allow the CTBTO to attend as an intergovernmental organization; a provisional agenda for the 2000 review conference; proposed allocation of items to Main Committees (though the consideration of an “article by article” review was left to the conference to discuss further); financing of the conference; preparation of background documentation to be prepared by the Secretary-General of the conference (Hannelore Hoppe of the UN Department for Disarmament Affairs) on various articles of the Treaty, taking into account the decisions and resolution adopted by the 1995 NPTREC, in addition to relevant documentation to be prepared by the IAEA and the NWFZ secretariats; recommendations on the “outcomes” or products of the review conference; and officers of the conference.

The 1999 PrepCom unanimously endorsed the candidacy of Ambassador Jacob Selebi for the presidency of the 2000 Review Conference. It also recommended conference committee chairs: Main Committee I–(NAM)

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Colombia (Ambassador Reyes); Main Committee II–(Eastern Group) Poland; Main Committee III–(Western Group) Finland (Ambassador Reimaa); Drafting Committee–(Eastern Group) Poland; Credentials Committee–(NAM) Colombia.

Contrary to previous practice, Ambassador Reyes did not convene a formal “Chairman’s Consultations” but consulted often and widely and resorted to conducting business with all States present. While this format was somewhat unwieldy at times, it nonetheless kept participating states engaged and involved in the work of the PrepCom. He also heeded the advice of those states that recommended that he completely abandon the 1998 version of the disputed “Chairman’s Working Paper” and start anew, to the chagrin of some other states which had preferred to build upon or to enrich the 1998 text (NPT/CONF.2000/PC.III/35 of 9 June 1998).

On 14 May 1999 the Chairman presented a working document, a “Chairman’s Working Paper”, comprising 31 paragraphs covering eight substantive themes: universality; nonproliferation; nuclear disarmament; NWFZs; security assurances; safeguards; the resolution on the Middle East; and peaceful uses of nuclear energy.¹⁰⁰ This paper to an extent reflected the views expressed in the general debate and was put forward as a basis for further work. While Reyes’ paper managed to strike a relatively fine balance between competing views, it was immediately set upon by States Parties, some of whom considered it as going too far and others as not far enough.

Based on the comments received, on 20 May, Ambassador Reyes presented a revised version of his paper comprising 61 paragraphs but retaining the previous structure. Again there was intense pressure from some delegations to “negotiate”, but once again the Chair heeded sound advice and did not permit a line-by-line “negotiation” and the paper was discussed paragraph by paragraph on the basis of “no-objection” or “objection”—31 of the 61 paragraphs drew objections.

Intense pressure was put by a small group of states for the Chairman to repair to a back room with a small number of delegations to “negotiate” the draft recommendations to the review conference—even an attempt at a stampede to a back room was engineered by some delegates who proposed “negotiations” and then leapt to their feet and raced to a side room to occupy seats at the table. Fortunately, this ill advised attempt failed and Ambassador Reyes continued with a “discussion” (not negotiation) of his text based on the formula of “objection” or “no-objection” on a paragraph by paragraph basis.

The NWS rejected all references to nuclear disarmament save a paragraph recognizing nuclear reductions to date, and a bitter debate ensued on questions such as the Middle East and NATO nuclear “sharing” arrangements.

The heated and bitter discussion threatened to lead to a stalemate with the PrepCom ending without any agreement. The two versions of the “Chairman’s Working Paper” therefore do *not* have any official status, as these were never “negotiated” as such but only informally discussed to determine the broad range of States party’s views on their content—as such, they will comprise a resource, among other submissions, for the Review Conference but will not constitute a basis for the negotiation of a new forward-looking product.

On 21 May 1999, Canada circulated an informal concept paper, to the Chair and a small number of delegations across political groupings, on “A Possible Outcome for NPT Preparatory Committee III” presenting a proposal on reaching agreement on a report which would also “protect the positions of all delegations”. This paper suggested an outcome reflecting: A) procedural issues—a report on the work of the PrepCom and its decisions; B) proposed products for the 2000 Review Conference—reflecting the proposals made by the Chair on 18 May; and C) substantive subjects—comprising a factual outline of the work of the PrepCom and including the “Chairman’s Working Paper” of 14 May as well as of 20 May, and proposals and comments submitted by delegations, noting that these were not agreed to.

This concept was discussed with the Chair by several States, including Ireland and New Zealand which presented variants, and was eventually accepted. This compromise formula smoothed the way for the PrepCom to adopt its report on procedural issues and to forward the texts on substantive recommendations (although not agreed)

to the review conference.

The two “Chairman’s Working Papers” though they were not “negotiated” nor “agreed” nonetheless would serve as a resource of possible proposals at the review conference. Thus, the PrepCom was successful in completing its work on procedural issues but “was unable to reach agreement on any substantive recommendations to the 2000 Review Conference”.¹⁰¹

ASSESSMENT OF THE PREPCOM

In sum, even though the Preparatory Committee devoted more time to discussing substantive matters as compared to procedural issues, the only conclusion that can be reached is that the “strengthened review process” was undermined principally by the NWS, with a contributing part played by unprepared or under-prepared delegations.

None of the NWS contributed intellectual or conceptual capital toward the elaboration or development of a strengthened review process. They were satisfied by merely criticizing or opposing many constructive ideas or concepts advanced by certain NNWS.

Most, though not all, of the NWS however made an effort to table documents describing their actions in fulfilment of Article VI obligations. This documentation was merely a compilation of the record of nuclear dismantlements but did not provide much transparency on nuclear weapon holdings or inventories. The focus remained on inventory reductions. Furthermore, the NWS consistently rejected any and all proposals advanced by certain NNWS on future steps toward nuclear disarmament. On the other hand, many NNWS came unprepared and were not in a position to engage in debate.

Overall, the PrepCom succeeded in completing practically all of the necessary procedural arrangements. While this is laudable, it does not represent progress over past practice. And it certainly does not represent the fulfilment of a strengthened review process or of permanence with accountability.

It has been asserted that it is irresponsible to characterize the 1997-1999 PrepCom as a failure of the implementation of the strengthened review process. Such an observation can only be described as inaccurate and mistaken. There can be no escaping the reality that the NWS conspired to ensure that a strengthened review process would not take hold and that they prefer to return to pre-1995 “business as usual” and to render Decision 1, as well as the Middle East resolution, agreed at the 1995 NPTREC, as meaningless as possible.

Unless this is clearly recognized and robust measures are not undertaken to shore up the integrity of the 1995 extension package, confidence in the future of the NPT cannot be taken for granted. The result will be that the NPT will become a treaty of convenience not of principle.

PRODUCTS OR OUTCOMES OF THE 2000 REVIEW CONFERENCE

All past NPT Review Conferences have sought to reach an outcome, that is to produce a “Final Declaration” on the review and implementation of the Treaty as well as highlighting additional measures that could be taken in the future on enhancing the Treaty regime. The 1995 NPTREC had the additional task of producing an outcome on the future duration of the Treaty in accordance with Article X.2. Three out of the previous five review conferences have failed to agree on a “Final Document”—1980, 1990 and 1995.

Decision 1 on “strengthened reviews” recommended in its paragraph 7 that review conferences should look forward as well as back, evaluate results of the period under review, identify the areas in which and the means through further progress could be sought in the future about the implementation of the undertakings of the States Parties under the Treaty, and should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality. This guidance leaves open the option of whether the review conference should deal with these matters in one, two or more documents.

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A variety of views were expressed at the 1999 PrepCom during the exchange of views on the products of the review conference. In general, a majority of states interpreted Decision 1 as requiring two products or outcomes: the first reviewing and assessing the implementation of the Treaty in the light of the 1995 NPTREC decisions and resolution during the previous five years, i.e. a traditional “final document”; and second, a forward-looking document providing goals and objectives for the next five year period, i.e. a parallel to the 1995 “principles and objectives”. More specific views were elaborated on this matter by Canada and South Africa. In its plenary statement on 10 May 1999,¹⁰² Canada recommended that building upon the 1995 decision on “strengthening the review process”, *all* future review conferences should produce two primary documents on the substantive implementation of NPT obligations:

- a “backward-looking” or “Review” document which “should evaluate the results of the period (under review), including the implementation of undertakings of the States parties under the Treaty”; and
- a “forward-looking” or “Principles and Objectives” document in which we “identify the areas in which, and the means through which, further progress should be sought in the future.”

In addition, Canada noted that each review conference should consider the functioning of the review process itself, and if it is deemed necessary, a third document on the further enhancement of the strengthened review process should be produced. Within this generic approach, Canada proposed that the 2000 Review Conference specifically should have three key products:

- a backward-looking Review document;
- a forward-looking “Principles and Objectives 2000” document; and
- a forward-looking document on the further enhancement of the Strengthened Review Process.

New Zealand also supported three documents along the lines proposed by Canada.

South Africa circulated a working paper on the expected products of the 2000 Review Conference on 10 May 1999 that re-stated its position of 1998:¹⁰³ “Simply put, Review Conferences, must conduct their traditional review function, and they should identify future areas and the means by which (i.e. “ways”) further progress should be sought in the implementation of the Treaty. In doing this work the Review Conference must specifically address what might be done to strengthen the implementation of the Treaty and to achieve its universality.”¹⁰⁴ South Africa proposed that the Review Conference produce two documents:¹⁰⁵

- Document 1 – A 2000 Principles and Objectives that should look forward and identify the areas in which, and the means through which, further progress should be sought for the full implementation of the Treaty in the future, with specific reference to the next review period; and
- Document 2 – A Final Declaration that should look back over the period under review, evaluating the results of the period it is reviewing, including the implementation of the undertakings of the States Parties under the Treaty.

The United States, as well, supported a “traditional review document and a forward-looking document,”¹⁰⁶ as did Australia and Japan.

France and Iran, on the other hand, strongly argued in favour of a single “Final Declaration” comprising both backward- and forward-looking parts. Iran’s position was governed by its need to maintain leverage over both parts, and that the NWS in particular not wanting a failed 2000 conference could therefore be pressured into agreeing to some new version of a principles and objectives. Other NAM countries, including Egypt, Mexico and

Nigeria seemed persuaded by Iran's arguments.

France preferred the traditional approach of a final declaration emanating from the reports of the three main committees that would include both a review aspect and recommendations for the future aspect. It opposed redrafting of the 1995 principles and objectives, as well as "artificial documents, disconnected from the structure of the Conference's debates", and favoured "a presentation of the outcomes of the Review Conference in the form of three reports stemming from the main committees...", each with a backward- and a forward-looking aspect, and a common "chapeau" in the form of a synthesis of the three reports.¹⁰⁷ In hewing to this approach, France was alone among the European Union countries all of which favoured two separate documents.

Based on the views expressed by States Parties during his consultations, Ambassador Reyes circulated his recommendations on the products of the 2000 Review Conference, which essentially paralleled the framework suggested by Canada but also included the possibility of producing "special declarations regarding specific outstanding circumstances that can affect the aims of the Treaty..." (somewhat similar to the Canadian track 2 approach proposed at the 1998 and 1999 PrepCom sessions). This paper also attracted much comment and controversy, with the NWS objecting to anything beyond two documents. Eventually a compromise was arrived at whereby the PrepCom recommended that the Review Conference, taking into account the work and reports of the Main Committees, should:

- Evaluate the results of the period under review, including the implementation of the undertakings of the States parties under the Treaty;
- Identify the areas in which and the means through which further progress should be sought in the future;
- Address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality;
- Examine the functioning of the review process itself, taking account of experience since 1995;
- Reaffirm the validity and importance of the 1995 NPTREC decisions and resolution.

In addition, the 2000 Review Conference could also consider and adopt other outcomes. Thus, the mandate of the review conference is quite extensive and ambitious. Whether it can be achieved, however, in another question. Should the review conference persist with the 1985 framework of allocation of items to main committees (cluster approach), then it will have to produce reports for each of the three main committees in addition to the products outlined above—an unlikely achievement given past experience. On the other hand, were the review conference to adopt a straightforward approach whereby the various provisions of the Treaty were not artificially grouped together but considered article by article, then it might just be possible to achieve two or three products or outcomes.

Subsidiary Bodies

Based on the experience of the three review conferences from 1985 through 1995, which utilized the cluster or main committee approach that had proven to be inefficient and unwieldy, Decision 1 adopted by the 1995 NPTREC agreed that subsidiary bodies could be established within the respective main committees to provide a focused consideration (paragraph 6). This recommendation essentially upgraded the provision for "working groups" under Rule 34 of the rules of procedure. Since the start of the strengthened review process, South Africa has been the strongest supporter of establishing subsidiary bodies. The NWS remained lukewarm to this concept and only grudgingly accepted the amendment to Rule 34 while emphasizing that this did not necessarily imply that the 2000 review conference could establish subsidiary bodies. Areas of contention concerned the duration and mandate, as well as financial implications (documentation and interpretation), chairmanship, impact on smaller delegations, and competition over which issues should be addressed in such bodies.¹⁰⁸

After a protracted debate, the PrepCom "noted" that subsidiary bodies could be established within the main committees. It also noted the divergent positions of States Parties. Some delegations had proposed the establishment

of subsidiary bodies under Main Committee I on nuclear disarmament and under Main Committee II on the implementation of the resolution on the Middle East. Other delegations had proposed that such decisions should be taken by the review conference. The PrepCom decided that the question of the establishment of subsidiary bodies would be considered and resolved by the review conference.

Reportedly, in his consultations, Ambassador Baali was advised that were subsidiary bodies to be set up, these would not have a life beyond the duration of the 2000 Review Conference. Apparently, he was unable to find agreement on whether any subsidiary bodies would be set up. This procedural issue, unless resolved prior to the opening of the conference, could well take up valuable time.

CONCLUSION

While NPTREC Decision 1 clearly established that the purpose of the Preparatory Committee meetings is to undertake both preparatory and substantive work for the review of the operation of the Treaty in keeping with article VIII, paragraph 3, taking into account the decisions and the resolution adopted by the 1995 NPTREC, it became painfully evident at the PrepComs in 1998 and again in 1999 that the NWS have scant interest in or commitment to ensuring a qualitatively new strengthened review process that goes beyond tedious statements on matters of substance. They clearly opposed the preparatory committee becoming an on-going review mechanism for ensuring permanence with accountability.

During the 1998 PrepCom, speaking to NGOs, Dhanapala cautioned that the strengthened review process must be more than a mere “talk shop”.¹⁰⁹ Though the NWS have signed off on devoting at least fifty percent of the PrepCom’s working time to statements on substantive matters, by the same token they do not want the PrepCom to engage in any substantive work other than procedural preparations and drafting a list (whether agreed or not) of recommendations to the review conference.

It would not be a surprise, if at the 2000 Conference, some of the NWS insisted on allocating time to go through the verbiage generated by the PrepCom and resisted or delayed the formulation of a new document on “principles and objectives”. Again, as Dhanapala has noted:

“The leverage that the NNWS may have lost by agreeing to an indefinite extension does not have to be regained through confrontation or the extreme step of exercising their rights under Article X.1.... Initiatives must also come from the NWS to stimulate the review process in the same way that the decision to negotiate a CTBT paved the way for the success of the 1995 NPTREC. The review process must be given a fair chance to prove itself and realize its potential.”¹¹⁰

The package of inter-related extension decisions adopted at the 1995 NPTREC were the means by which NPT parties agreed without a vote to indefinitely extend the Treaty. The decisions were the product of both compromise and expectation. Compromise to make the NPT permanent as it enhanced the security of all states. Expectation that the decisions would help establish new parameters of discourse on nonproliferation and nuclear disarmament, beginning with the April 1997 session of the Preparatory Committee.

It is somewhat disturbing that the political milieu in which the 2000 Review Conference will convene does not look particularly hospitable to a harmonious and productive ushering in of the much vaunted “strengthened review process”, as not unexpectedly the NWS are seemingly striving to deflect attention from the lack of substantive new progress on nuclear disarmament while the NNWS will attempt to “hold the feet of the weapon states to the fire.” As aptly noted by Ambassador Hasmy bin Agam of Malaysia: “A new phase of persuading and prodding nuclear-weapon States to rethink their nuclear policy in the post-cold war era must begin.”¹¹¹

The burden on the shoulders of Ambassador Abdallah Baali of Algeria, the President-designate of the 2000 Review Conference will be both heavy and shifting. Given Canada and South Africa’s key role at the 1995 NPTREC, it would not be out of character for these two countries (assisted by other staunch proponents and

defenders of a strengthened review process) to ensure that the first review conference of the strengthened process establishes a positive and constructive precedent for future reviews of the Treaty.

The main challenge likely will be that of the high expectations and ambitious agendas of many non-nuclear weapon states, that will be pitted against the conservatism and obstructionism of most of the NWS—especially the U.S., which has already let it be known that it will be cautious about the creation of new precedents and will dampen down high expectations.

Canadian Ambassador Moher provided a sobering assessment on the future of the NPT when he outlined three alternative paths: “muddle through”; “road to disintegration”; and “construction for the future”.¹¹² In his assessment, the “muddle through” path was followed by many states leading to complacency and minimalist perspectives about the future of the Treaty. The “road to disintegration” could be wrought by those who had created a linkage between the failure to achieve complete nuclear disarmament leading to defections from the Treaty, and by those who while professing fidelity to the NPT would recognize new nuclear-weapon states. And, the “construction for the future” reflected the views of those who saw the NPT as “a work in progress” and who worked toward systematic and progressive efforts toward nuclear disarmament. In this context, Ambassador Moher emphasized the importance of the necessity for the 2000 review conference to agree on a new set of “principles and objectives.”

It must not be forgotten, however, that unless states parties are willing to demonstrate the same shared sense of purpose and compromise that delivered the indefinite extension of the NPT in 1995, they risk undermining the very Treaty that provides for their own and for global security.

If the NPT is undermined, or if some or a group of states threaten to leave the Treaty citing their dissatisfaction with the way in which the package of extension decisions is being implemented, the results would be disastrous—not only would proliferation dangers increase but the present climate for nuclear disarmament could be severely disrupted.

It is up to all NPT parties to ensure that the indefinite extension of the Treaty and its effectiveness is buttressed by the full implementation of the NPT in the context of the decisions of the 1995 NPTREC, and that this is manifested through a successful 2000 Review Conference that reaches consensus agreement on at least a new “principles and objectives for nuclear nonproliferation and nuclear disarmament 2000-2005”, as well as a final declaration in addition to other products, including a “further strengthening of the review process for the NPT”.

“We have met the enemy and he is us,” said the comic-strip sage Pogo. While the end of the Cold War has greatly reduced the traditional threat of superpower conflict, maintaining and even strengthening global nonproliferation regimes have become important new challenges. Despite its successes, the nonproliferation regime has sustained some severe blows and it remains the responsibility of the international community to shore up the regime.

The NPT bargain comprising nuclear nonproliferation, nuclear disarmament, and cooperation in peaceful uses of nuclear energy under safeguards remains essential to the future integrity and longevity of the regime. New strategies need to be devised to engage the holdouts and to encourage their normative behaviour—this would require, at a minimum, standardized responses to proliferation activities in India, Israel and Pakistan.

It is generally recognized that nuclear nonproliferation and nuclear disarmament are inter-linked. In this context, the challenge to the NWS is to fashion a strategy to de-legitimize nuclear weapons that follows the new logic of post-Cold War security dynamics and capitalizes on the possibilities opened by emerging strategic realities where inter-state war is declining.

Establishing new norms in concert with pro-active diplomacy to resolve regional conflicts, meshing supply-side restraints and demand-side motivations, offer the best prospect of reversing proliferation and shoring up a fraying NPT regime. A fundamental question that has not yet been adequately answered is: How important is

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nuclear nonproliferation, and what price in terms of nuclear disarmament are the NWS prepared to pay to realize the nonproliferation objective? The commitment of the NWS to the NPT is under question not the least given the lack of progress in achieving further nuclear disarmament, but also in terms of their living up to other negotiated arms control treaties.

General (ret'd.) George Lee Butler, former C-in-C of the United States Strategic Command, who was one of a very few nuclear war planners to evaluate the entirety of the 12,500 targets in the U.S.' single integrated operational plan (SIOP) for using nuclear weapons and reduced it down to 3,000 targets, concluded: "I long ago took to heart the words of Omar Bradley, spoken virtually a half century ago, when he observed, having seen the aftermath of the bombs on Hiroshima and Nagasaki, thus: 'We live in an age of nuclear giants and ethical infants. We live in a world that has achieved brilliance without wisdom, power without conscience. We've unlocked the mysteries of the atom and forgotten the lessons of the Sermon on the Mount. We know more about war than we know about peace, more about killing than we know about living'." ¹¹³

Living with nuclear weapons for more than half a century has been possible because of a nonproliferation regime anchored in the NPT. The overwhelming majority of states have concluded that their security interests are better served by not having nuclear weapons. The NPT regime has created a legal barrier against proliferation, established norms for cooperation in peaceful uses of nuclear technology, and put in place a comprehensive system of nuclear material accountancy and control buttressed by remote and on-site surveillance. But the world, despite its nonproliferation rhetoric has gotten by on the cheap—expending a mere \$100 million dollars a year on the IAEA safeguards system. Nonproliferation and disarmament require adequate financial investment.

Leadership whether on nuclear nonproliferation, nuclear disarmament or regional security issues depends on clarity of vision and clarity of commitment. Being satisfied with the lowest common denominator of agreement among states is at best an unreliable guide to security and stability. It is therefore vital to formulate a grand strategy for the prohibition of nuclear weapons as part of a broader vision of curbing the spread of nuclear weapons.

Success or failure of the Review Conference should be judged according to three criteria: 1) agreement on a procedure for factual reporting on an assessment of the implementation of the Treaty in light of the 1995 outcomes during the preceding five-year period; 2) agreement on substantive recommendations on promoting the full implementation of all aspects of the Treaty and the 1995 outcomes during the next five-year period; and 3) the development of conceptual and practical thinking building upon the new foundations laid in 1995 on the further strengthening of the NPT regime and the implementation of the Treaty's purposes and goals. ¹¹⁴

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NOTES

- ¹. 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organization and work of the Conference*, Decision 1 “Strengthening the Review Process for the Treaty,” (United Nations, New York: 1995), Annex, p.8.
- ². 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organization and work of the Conference*, Decision 2 “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,” (United Nations, New York: 1995), Annex, pp.9-12.
- ³. 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organization and work of the Conference*, Decision 3 “Extension of the Treaty on the Non-Proliferation of Nuclear Weapons,” (United Nations, New York: 1995), Annex, p.12-13.
- ⁴. Dr. Lawrence Scheinman (Assistant Director, Nonproliferation and Regional Arms Control, U.S. Arms Control and Disarmament Agency, “Remarks to the 13th Annual Ottawa NACD Verification Symposium,” Le Chateau Montebello, Ottawa Canada, March 13, 1996.
- ⁵. 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organization and work of the Conference*, “Resolution on the Middle East,” (United Nations, New York: 1995), Annex, pp.13-14.
- ⁶. For a description, see Tariq Rauf & Rebecca Johnson, “After the NPT’s Indefinite Extension: The Future of the Global Nonproliferation Regime,”(hereafter “Rauf & Johnson”) *The Nonproliferation Review* 3 (Fall 1995), p. 30; and Susan Welsh, “Delegate Perspectives on the 1995 NPT Review and Extension Conference,” (hereafter “Welsh”), *The Nonproliferation Review* 2 (Spring-Summer 1995), pp. 5-9.
- ⁷. The Hon. Alexander Downer, Minister of Foreign Affairs (Australia), “The NPT–Future Challenges and the Outlook for the 2000 Review Conference,” opening address delivered at the Conference on Nuclear Arms Control: Australian and Regional Perspectives Towards 2000, University of Queensland, Brisbane, 29 October 1999.
- ⁸. *Notes for a Statement by The Honourable Lloyd Axworthy Minister of Foreign Affairs to the Standing Committee on Foreign Affairs and International Trade “India’s Nuclear Testing: Implications for Nuclear Disarmament and the Nuclear Non-Proliferation Regime”*, Department of Foreign Affairs and International Trade (Ottawa, Canada: 26 May 1998).
- ⁹. Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs (Canada), *A Non-Paper on Strengthening Review Conferences*, (Ottawa: January 1995; revised March 1995), unpublished.
- ¹⁰. The term “strengthened” review process, in Decision 1, was crafted by Ambassador Adolfo Taylhardat (Venezuela), who prevailed in arguing that “enhancing implied only ‘cosmetic’ changes and that what was required was a process that should lead to a full implementation of the NPT, having in mind, specifically, Article VI.” Personal communication dated January 6, 1997. See also, Ambassador Taylhardat’s comments in Welsh, p. 9.
- ¹¹. As quoted in Welsh, p. 5.
- ¹². “Statement by the President,” Verbatim Record of the 19th Meeting (12 May 1995), *1995 NPTREC Final Document, Part III, Summary and Verbatim Records*, NPT/CONF.1995/32 (Part III), (United Nations, New York: 1996), p. 214.
- ¹³. Dr. Lawrence Scheinman (Assistant Director, Nonproliferation and Regional Arms Control, U.S. Arms Control and Disarmament Agency), “Remarks to the 13th Annual Ottawa NACD Verification Symposium,” Le Chateau Montebello, Ottawa Canada, March 13, 1996.

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- ¹⁴. Ben Sanders is probably the first analyst to make this observation. See Ben Sanders, "NPT Review Conferences and the 1995 Extension Conference: Working Towards Consensus," in Tariq Rauf ed. *Extending the NPT: Perpetuating the Global Norm* Aurora Papers 27, (Canadian Centre for Global Security), pp.43-44.
- ¹⁵. Rauf & Johnson, note 32, pp. 40-41.
- ¹⁶. NPT/CONF.1995/32 (Part I), Decision 1, paragraph 4.
- ¹⁷. See proposals by South Africa, NPT/CONF.2000/PC.II/17 (4 May 1998), and NPT/CONF.2000/PC.III/5 (5 May 1999); and by Canada, NPT/CONF.PC.III/3 (3 May 1999).
- ¹⁸. In 1999, Canada proposed a working paper on "Further enhancing the strengthened review process for the Treaty," NPT/CONF.2000/PC.III/3 (3 May 1999).
- ¹⁹. See "Recommendations of the PrepCom on Products of the NPT 2000 Review Conference" submitted by Canada to the Chairman of PrepCom III, on 18 May 1999; and "Final Outcome of the Conference" paragraphs 30-34 in the Final Report of the Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/1 (21 May 1999).
- ²⁰. Rauf & Johnson, p. 34.
- ²¹. The Hon. John D. Holum (Director, U.S. Arms Control and Disarmament Agency), "Remarks to the International Conference on Nuclear Nonproliferation, Sponsored by the Carnegie Endowment," Washington, D.C., February 12, 1996.
- ²². Scheinman, "Remarks to the 13th Annual Ottawa NACD Verification Symposium," March 13, 1996.
- ²³. The Honourable Lawrence Scheinman (Assistant Director, Nonproliferation and Regional Arms Control, U.S. Arms Control and Disarmament Agency), "Preparing for the 1997 NPT PrepCom - Address to the Regional Seminar sponsored by The Monterey Institute of International Studies, Centre for Nonproliferation Studies, International Organizations in Nonproliferation Project; University of Southampton, Programme for Promoting Nuclear Non-Proliferation; and The National Institute for Strategic Studies (Ukraine)," (Kyiv: September 28, 1996).
- ²⁴. Quoted in Welsh, p. 3.
- ²⁵. Quoted in Welsh, p. 5.
- ²⁶. NPT/CONF.2000/1997/PC.I/29 (21 April 1997).
- ²⁷. NPT/CONF.2000/PC.II/5 (28 April 1998) and Corr. 1 (30 April 1998).
- ²⁸. NPT/CONF.2000/PC.III/2 (3 May 1999) and NPT/CONF.2000/PC.III/1 (30 April 1999).
- ²⁹. NPT/CONF.1995/L.1/Rev.1.
- ³⁰. NPT/CONF.1995/L.2.
- ³¹. NPT/CONF.1995/L.3.
- ³². NPT/CONF.1995/L.5.
- ³³. NPT/CONF.1995/L.4.
- ³⁴. NPT/CONF.1995/L.6.
- ³⁵. Draft resolution NPT/CONF.1995/L.6, adopted as NPT/CONF.1995/32/DEC.3 on "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons."
- ³⁶. NPT/CONF.1995/32/RES.1.
- ³⁷. United Nations Security Council, S/23500, 31 January 1992, Report No. 92-04224F -- (Statement at the 3046th meeting of the Security Council, held at the level of Heads of State and Government).
- ³⁸. See, Avner Cohen, *Israel and the Bomb*, (New York 1998: Columbia University Press), chs. 10-11, p. 298.
- ³⁹. S/RES/1284 (1999), Adopted by the Security Council at its 4084th meeting, on 17 December

1999.

⁴⁰ Mohamed ElBaradei, Director General, *Statement to the General Conference* (27 September 1999), IAEA, <http://www.iaea.org>.

⁴¹ Henry Fox, "Review of Existing Export Control Regimes," presented at the United Nations Conference on Disarmament Issues in Nagasaki, November 1998, pp. 13-14.

⁴² Trevor Findley, *Nuclear Dynamite: The peaceful nuclear explosives fiasco*, (Brassey's Australia: 1990), p. 116.

⁴³ NPT/CONF.2000/PC.III/10 (12 May 1999).

⁴⁴ Ibid.

⁴⁵ See the CTBTO web site at <http://www.ctbto.org>; and Carnegie Endowment for International Peace, *Proliferation Brief* "Secretary Albright Champions Test Ban", Vol. II-No.15 (28 September 1999), <http://www.ceip.org/npp>.

⁴⁶ *Draft Report of the National Security Advisory Board on India's Nuclear Doctrine*, 17 August 1999, <http://www.meadev.gov.in/govt/opstm-indnuclid.htm>.

⁴⁷ Reported in *Dawn*, 9 January 2000. See also, Gaurav Kampani, "CTBT Endgame in South Asia?" on line at <http://cns.miis.edu/research/testban/sasia.htm>.

⁴⁸ See, for example, Andrew Koch, "Extending the nuclear family?", *Jane's Defence Review* (5 January 2000), p. 23.

⁴⁹ *Remarks by the President in Address to the 51st General Assembly of the United Nations*, p. 3.

⁵⁰ CD/1547, 12 August 1998, adopted at the 802nd Plenary on 11 August 1998.

⁵¹ Alison Mitchell, "Summit Talks End With Agreements, but Not for NATO," *The New York Times*, March 22, 1997, p. A 6.

⁵² See, example, *United Kingdom Strategic Defence Review, 'Modern Forces for a Modern World'*, United Kingdom Ministry of Defence (8 July 1998).

⁵³ Rauf & Johnson, p. 29.

⁵⁴ U.S. Department of State, *Fact Sheet: First Agreed Statement of September 26, 1997, Relating to the ABM Treaty*.

⁵⁵ U.S. Department of State, *Fact Sheet: Second Agreed Statement of September 26, 1997, Relating to the ABM Treaty*.

⁵⁶ U.S. Department of State, *Standing Consultative Commission, Second Agreed Statement Relating to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems of May 26, 1972*, (September 26, 1997).

⁵⁷ U.S. Ballistic Missile Defense Organization chart, "Preliminary Architecture for C-1/C-2/C-3 NMD System," cited in Lisbeth Gronlund and George Lewis, "How a Limited National Missile Defense Would Impact the ABM Treaty," *Arms Control Today* (November 1999), p. 10.

⁵⁸ See "Just Say 'No'," *Arms Control Today* (November 1999), p. 2.

⁵⁹ Presidential Decree 1300 dated 17 December 1997, *Rossiyskaya Gazeta* (Moscow), 26 December 1997, pp. 4-5; Michael Wines, "Harder Nuclear Arms Policy is Now Official Kremlin Line," *The New York Times*, 15 January 2000, pp. A1 and A5.

⁶⁰ International Court of Justice, "Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion by the General Assembly of the United Nations)," *Communiqué* No. 96/23 (8 July 1996).

⁶¹ Ibid., paragraph F.

⁶² Ibid., *Summary of the Advisory Opinion*: "Obligation to negotiate nuclear disarmament (paras. 98-103)." I am indebted to Ambassador George Bunn (Former General Counsel, U.S. Arms Control and Disarmament Agency, and a negotiator of the NPT) for highlighting the nuances and importance of the

ICJ decision.

⁶³ The Honourable John D. Holum (Director, U.S. Arms Control and Disarmament Agency), “Remarks to An International Seminar on Nuclear Disarmament after the Indefinite Extension of the NPT,” Kyoto, Japan (December 2, 1996).

⁶⁴ UNGA 54/54G (L.18*) *Towards a nuclear weapon free world: the need for a new agenda*, Introduced by New Zealand and co-sponsored by over 60, including Angola, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Burundi, Cameroon, Chile, Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Ghana, Grenada, Guatemala, Guyana, Haiti, Honduras, Ireland, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Malaysia, Mali, Mexico, Mozambique, New Zealand, Nicaragua, Niger, Nigeria, Panama, Papua New Guinea, Peru, Philippines, Samoa, San Marino, Saudi Arabia, Sierra Leone, Solomon Islands, South Africa, Swaziland, Sweden, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zambia and Zimbabwe. Vote on the resolution as a whole: 111:13:39. (NATO members abstaining: Belgium, Canada, Denmark, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Turkey).

⁶⁵ CD/PV.812 of 2 February 1999, reported under “Geneva Update No. 43” by Rebecca Johnson, *Disarmament Diplomacy* (December 1998/January 1999), p. 21.

⁶⁶ Holum (December 2, 1996), speaking in Kyoto.

⁶⁷ Darach Mac Fhionnbhairr, “Fulfilling Article VI Commitments on Nuclear Disarmament,” Workshop on the 2000 Conference of the Strengthened NPT Review, (Monterey Institute of International Studies), New York, 1 November 1999.

⁶⁸ Estimate prepared by Nikolai Sokov in January 1999 (Monterey Institute of International Studies).

⁶⁹ The vote on UNGA resolution (A/54/54L) on 1 December 1999 was 157:3:4; on resolution (A/53/77Q) on 4 December 1998 was 154:3:10; and on resolution (A51/56/Add.11), on 10 December 1996, was 129:3 against (France, United Kingdom, and United States):38 abstentions.

⁷⁰ NPT/CONF.2000/PC.I/5 (10 April 1997), NPT/CONF.2000/PC.II/22 (5 May 1998), NPT/CONF.2000/PC.III/12 (12 May 1999).

⁷¹ NPT/CONF.2000/PC.III/1 (30 April 2000), paragraph 42.

⁷² See for example, interview with Strobe Talbott in *The Hindu* (14 January 2000), on-line at: www.the-hindu.com/stories/05142523.htm; and Deputy Secretary of State Strobe Talbott, “Address at India International Center,” New Delhi, India (30 January 1999). However, in a WORLDNET “DIALOGUE” on “U.S. Policy on Nuclear Nonproliferation,” John Holum, Undersecretary for Arms Control and International Security, asserted that neither India nor Pakistan could be recognized as NWS under the NPT.

⁷³ Waldo Stumpf, “South Africa: Nuclear Technology and Nonproliferation,” letter to the editor, *Security Dialogue* (December 1993), pp. 497-498. For an interesting account of South Africa's nuclear weapon program, see: Frank Pabian, “South Africa's Nuclear Weapon Program: Lessons for U.S. Nonproliferation Policy,” *The Nonproliferation Review* (Fall 1995, Vol. 3, No. 1), pp. 1-19.

⁷⁴ Adolf von Baeckmann, Gary Dillon and Demetrius Perricos, “Nuclear Verification in South Africa,” *IAEA Bulletin* Vol. 37, No. 1), pp.42-48.

⁷⁵ At the 1999 PrepCom, South Africa submitted a draft protocol to the NPT on security assurances, NPT/CONF.2000/PC.III/9 (11 May 1999).

⁷⁶ Lewis A. Dunn, “High Noon for the NPT,” *Arms Control Today* (July/August 1995), p. 7.

⁷⁷ Presidential Decree 1300, dated 17 December 1997, *Rossiyskaya Gazeta* (Moscow), 26 December 1997, pp.4-5; and Michael Wines, “Harder Nuclear Arms Policy Is Now Official Kremlin Line,” *The New York Times* (15 January 2000), pp. A1 and A5.

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- 78 Private communication.
- 79 NPT/CONF.2000/PC.II/CRP.1, 6 May 1998.
- 80 See “OSCE Decision-Making” at <http://www.osceprag.cz/info/facts/decsmake.htm>.
- 81 Statement by the New Zealand Head of Delegation, HE Mr Clive Pearson, Ambassador for Disarmament, to the Second Session of the Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Geneva, 27 April 1998, pp. 3-4.
- 82 Summary of Statement by Japan, Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, First Session, Summary Record of the 2nd Meeting, New York, 8 April 1998, p. 15 (paragraph 69).
- 83 Statement by Ambassador Moher (Canada), NPT/CONF.2000/PC.III/SR.3, paragraph 44.
- 84 Jayantha Dhanapala, “The NPT Review Process: Identifying New Ideas to Strengthen the Regime,” *The Enhanced Review Process: Towards 2000*, UNIDIR Newsletter No. 37, p. 10.
- 85 *Facing Nuclear Dangers: An Action Plan for the 21st Century*, The Report of the Tokyo Forum for Nuclear Non-Proliferation and Disarmament (25 July 1999), <http://www.infojapan.org/policy/un/disarmament/forum/tokyo9907/key.htm>.
- 86 Jayantha Dhanapala; “The NPT review Process: Identifying New Ideas to Strengthen the Regime”, *The Enhanced Review Process: Towards 2000* (UNIDIR Newsletter 37, p.10).
- 87 Algeria, Australia, Canada, China, Colombia, Egypt, France, Germany, Hungary, Indonesia, Iran, Japan, Malaysia, Mexico, Netherlands, Nigeria, Poland, Romania, Russian Federation, South Africa, Sri Lanka, Sweden, the United Kingdom, the United States, and Venezuela.
- 88 Algeria, Canada, Chile, China, Colombia, Egypt, France, Germany, Indonesia, Iran, Japan, Malaysia, Mexico, Myanmar, Netherlands, Poland, Russian Federation, South Africa, Sweden, Ukraine, United Kingdom, United States. Australia walked into the consultations uninvited and was privately cautioned by the Chairman to only observe but not participate in the discussion taking place within the framework of the Chairman’s consultations.
- 89 Algeria, Argentina, Australia, Belgium, Canada, Chile, China, Colombia, Egypt, Finland, France, Germany, Hungary, Indonesia, Iran, Italy, Japan, Korea (RoK), Malaysia, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Poland, Romania, Russian Federation, South Africa, Sri Lanka, Sweden, Syria, Turkey, Ukraine, United Kingdom, United States.
- 90 NPT/CONF.2000/1, Annex VI: “Draft Rules of Procedure”, Rule 5, p. 107.
- 91 Ibid, Rule 9, p. 108.
- 92 Ibid, Rule 8(1), p. 107.
- 93 For a fuller description and analysis see *The Nonproliferation Review*: Tariq Rauf: “The April 1998 NPT PrepCom”, Vol. 2, Winter 1998; and Tariq Rauf: “Preparing for the April 1997 NPT PrepCom”, Vol. I/2 Winter 1997, <http://cns.miis.edu/cns/projects/ionp/index.htm#srp>.
- 94 *Report of the Preparatory Committee on its first session*, NPT/CONF.2000/PC.I/32, paragraph 1.
- 95 “Chairman’s Working Paper”, Annex II, *Report of the Preparatory Committee on its first session*, NPT/CONF.2000/PC.I/32, paragraph 3, p. 12.
- 96 Ibid., paragraph 4, p. 14.
- 97 For a fuller description and analysis see *The Nonproliferation Review*: Tariq Rauf and John Simpson: “The 1999 NPT Preparatory Committee”, Winter 1999; and Tariq Rauf: “The April 1998 NPT PrepCom”, Vol. 2, Winter 1998, <http://cns.miis.edu/cns/projects/ionp/index.htm#srp>.
- 98 NPT/CONF.2000/PC.II/CRP.2 (7 May 1998), “III. Substantive Issues” (paragraph 21), p.9.
- 99 NPT/CONF.2000/PC.II/34 (8 May 1998), “Proposals for inclusion in the Report of the Preparatory Committee at its second session-Submitted by Canada.”
- 100 NPT/CONF.2000/PC.III/29.

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- ¹⁰¹ NPT/CONF.2000/1, paragraph 19, p. 6.
- ¹⁰² *Statement of Ambassador Mark J. Moher, Permanent Representative and Ambassador of Canada to the United Nations for Disarmament, To the Third Preparatory Committee for the 2000 Review Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, 10 May 1999, pp. 2-3.
- ¹⁰³ NPT/CONF.2000/PC.III/17 (4 May 1998).
- ¹⁰⁴ *Statement by The Republic of South Africa at the 1999 Meeting of Preparatory Committee for the 2000 Nuclear Non-Proliferation Treaty Review Conference, on General Exchange of Views including in particular discussion on and consideration of Proposals on Expected Products of the 2000 Review Conference*, 10 May 1999, p. 3.
- ¹⁰⁵ NPT/CONF.2000/PC.III/5 (5 May 1999).
- ¹⁰⁶ NPT/CONF.2000/PC.III/6 (10 May 1999).
- ¹⁰⁷ “Intervention de S.E.M. Hubert de La Fortelle, Ambassadeur, Chef de la délégation française”, New York, 10 May 1999.
- ¹⁰⁸ NPT/CONF.2000/PC.III/6 (10 May 1999), p. 3.
- ¹⁰⁹ Cited in Douglas Roche, “An Analysis of the Second Preparatory Committee Meeting for the 2000 Review of the NPT,” Project Ploughshares at the University of Waterloo, p. 9, <http://watserv1.uwaterloo.ca/~plough/98prepcom.html>.
- ¹¹⁰ Dhanapala, *op. cit.*, *UNIDIR Newsletter No. 37*, p. 14.
- ¹¹¹ United Nations General Assembly, *Press Release GA/DIS/3052* (October 14, 1996), p. 10.
- ¹¹² Mark Moher, “The Nuclear Disarmament Agenda and the Future of the NPT,” *The Nonproliferation Review*, Fall 1999, Vol. 6, No. 4.
- ¹¹³ Statement before the Standing Committee on Foreign Affairs and International Trade, Parliament of Canada (Ottawa), 11 March 1999.
- ¹¹⁴ I am grateful to Ambassador Mark Moher of Canada for enunciating these criteria.