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## Issues and Options for the 2000 NPT Review Conference

BY EMILY BAILEY AND JOHN SIMPSON

### Foreword

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### Background

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which was opened for signature in 1968, is the legal cornerstone of the nuclear non-proliferation regime. It came into force in 1970 and has three core elements: commitments by non-nuclear weapon states (NNWS) not to acquire nuclear explosive devices and to implement measures providing assurance that they are not seeking to do so; pledges by the five recognised nuclear-weapon states (NWS) not to transfer nuclear explosive devices to any other state, not to assist NNWS to acquire them, and to pursue negotiations on nuclear disarmament "in good faith"; and assurances that all states parties will be free to exploit fully the peaceful benefits of nuclear energy. Implementation of the regime to verify the NNWS assurances is the responsibility of the International Atomic Energy Agency (IAEA). The NPT has no secretariat or executive body, but the text provided for a conference of the parties to be held every five years to review its operation. The first of these Review Conferences was held in 1975, and later ones at five-yearly intervals thereafter. They focused mainly on conducting a retrospective review of the operations of the Treaty, for which they sought to produce by consensus a Final Declaration summarising their work and conclusions.

The Treaty had no definite duration written into its text. Rather this issue was remitted to a Conference of the parties to be held twenty-five years after its entry into force [i.e., in 1995]. This conference recognised that a majority of the parties favoured making the Treaty permanent, through a process which involved adopting without a vote first collectively, and then individually, three decision documents on *Extension of the Treaty on the Non-Proliferation of Nuclear Weapons; Strengthening the Review Process for the Treaty; and Principles and Objectives for Nuclear Non-Proliferation and Disarmament*. In addition, to gain the adherence of Arab and other states to the package, the parties also passed without a vote a *Resolution on the Middle East* sponsored by the three NPT depositary states, the Russian Federation, the United Kingdom and the United States.

As a consequence of these decisions, it became mandatory to hold Review Conferences every five years. These were to "look forward as well as back", and to "address specifically what might be done to strengthen the implementation of the

Treaty and to achieve its universality". They were to remain structured around the work of three Main Committees, but parties could establish "subsidiary bodies" within them to provide for a focused consideration of specific issues.

The most significant changes, however, were those made to the sessions of their Preparatory Committee (PrepCom). These were in future to address substantive issues, as well as procedural preparations. Three major adjustments were also made to the objectives and operations of the review process. First, PrepComs were to provide draft recommendations on substantive matters, as well as procedural ones, to the Review Conference that was to follow. Second, these recommendations were to focus on future action by considering "principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality". These principles and objectives might also act as yardsticks to be used by Review Conferences to evaluate the operations of the Treaty. Finally, PrepComs were mandated to make recommendations to Review Conferences on the creation of "subsidiary bodies" within Main Committees.

### The PrepCom Sessions for the 2000 NPT Review Conference

Three PrepCom sessions, each of 10 working days, were held in advance of the 2000 NPT Review Conference. Details of events at these sessions are contained in Issue Review 18, *The Strengthened Review Process of the NPT: Lessons of the Past and Options for the Future*. The consequence of these sessions was that although the necessary procedural arrangements were made to enable the Review Conference to take place, they failed to produce any recommendations on substantive matters or on the specific "subsidiary bodies" that might be created within its Main Committees. This left it unclear whether and how the substantive work undertaken by the PrepCom was to be used in the work of the Review Conference.

### The 2000 NPT Review Conference: Continuity and Change

Nominally, the 2000 NPT Review Conference, like its predecessors, has a clear task. It must review the operation of the Treaty, but in addition it may now have to:

- review the implementation of the *Principles and Objectives*;
- identify the areas in which and the means through which further progress should be sought;
- address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality;

- review the implementation of the *Resolution on the Middle East*, either in isolation or as part of the *Principles and Objectives*; and,
- examine the functioning of the strengthened review process.

It will also have to decide through what products it will report on its work, and what use it will make of the materials produced through the PrepCom process. For although no substantive recommendations were forthcoming from the PrepCom, its report does contain the Chairman's working papers, as well as the working papers submitted by individual states parties and groups of states. These texts could either be ignored, used as resource materials for the Review Conference, or, in some cases, taken as the initial drafts of possible products.

Agreement exists on the following procedural matters:

- the organisation of the work of the Review Conference, including its dates and venue;
- its draft rules of procedure;
- the Presidency and other officers of the Conference;
- its agenda;
- its background documentation;
- its financing; and,
- the allocation of items to the Main Committees.

However, this positive situation masks the many difficulties the President is likely to confront in organising its work. Handling the additional tasks imposed on the Review Conference by the decision-document on *Strengthening the Review Process* will require careful consideration and considerable pre-planning. In the analysis which follows, the main changes in the tasks and functioning of the 2000 Review Conference in comparison with the pre-1995 situation will be highlighted as those tasks and management issues are examined in turn.

#### *i. Reviewing the operation of the Treaty*

The *Strengthening the Review Process* document stipulated that the review of the operation of the Treaty should be structured around three Main Committees, as it had been previously. The PrepCom confirmed this arrangement while calling for the General Committee to eliminate overlaps on subject matter between the Main Committees. However, at least one delegation, that of Canada, has called for an article by article review of the Treaty, rather than one based on the grouping of Main Committee subjects. Others, however, opposed such a change on the grounds that safeguards and peaceful uses would by implication be down-graded in their significance. While the 2000 Review Conference will continue to be structured on the basis of the three Main Committees, some may seek to change this arrangement for future Review Conferences.

#### *ii. The implementation of the Principles and Objectives*

The *Strengthening the Review Process* document specifies that the PrepCom for the 2000 Review Conference should have considered "principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and [made] recommendations thereon to the Review Conference. These [were to have included] those identified in the Decision on *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*." Despite the fact that no recommendations were agreed on these matters, some states may call for a review of the implementation of these *Principles and Objectives*. Such calls seem likely to

raise at least two procedural issues: where such a review is to be conducted, and how any conclusions emerging from its deliberations are to be recorded. While some may be satisfied with the contents of the *Principles and Objectives* headings being incorporated into the Main Committee discussions and reports, others may insist on a more systematic review of this document.

#### *iii. The production of a "looking-forward" document*

A key innovative element of *Strengthening the Review Process* was that Review Conferences were in future to "look forward as well as back"; that they should "identify the areas in which, and the means through which, further progress should be sought in the future"; and that they should also "address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality". These instructions are central to the strengthened process, as many NNWS saw them as offering a channel through which they could participate actively in setting the content and pace of the nuclear disarmament agenda. As a consequence, some expect every Review Conference to negotiate a new set of *Principles and Objectives*. Others, however, take the view that, as the programme of action contained in the *Principles and Objectives* has not yet been implemented, such a document is currently unnecessary.

To be effective, a new set of *Principles and Objectives* would need the support of all the parties that might have to implement them. This implies a consensus decision, or at least one agreed without a vote, and raises the issue of where and how such a document would best be negotiated. A number of options exist in this area, but none are ideal. It might be done in each of the Main Committees under Agenda Item 17. However, negotiating in three distinct forums texts on forward-looking elements to which all states would bind themselves, and then having the Drafting Committee bring them together, would not be easy. Alternatively, the route taken in 1995 could be used, with the decision document being negotiated in a small and informal Presidential Consultative Group.

#### *iv. The creation of subsidiary bodies within the Main Committees*

The *Strengthening the Review Process* document provided for subsidiary bodies to be established within Main Committees "for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues". PrepComs were to make recommendations for such subsidiary bodies to the Review Conference. Although the PrepCom for the 2000 Review Conference agreed to change Rule 34 of the Rules of Procedures to allow the establishment of these bodies, it could not agree on any specific recommendations to create them, though it was recorded in the 'Proposed Allocation of Items to the Main Committees of the Conference' that South Africa called for one on nuclear disarmament, and Egypt for one on the implementation of the *Resolution on the Middle East*. The possibility also exists that South Africa may propose that a 'Protocol on Security Assurances' should be negotiated in a subsidiary body of the Review Conference, while it has been suggested that any review of the implementation of the strengthened review process might also be conducted in such a body (see vi. below).

#### *v. The implementation of the Resolution on the Middle East and universality of the Treaty*

The issues surrounding the *Resolution on the Middle East* proved to be one of the main areas of substantive disagreement at the PrepCom sessions. Egypt pointed out that this *Resolu-*

tion was an integral part of the package of decisions taken in 1995, and wished to review the steps taken by its sponsors, and particularly the United States, to implement it. They had some success in the course of the PrepCom sessions in ensuring that reference was made several times in its reports to the implementation of the *Resolution* and to achieving universality of the Treaty. At its third session the United States agreed that the UN Secretariat should produce background documentation on the implementation of the *Resolution* despite having resisted this request during the second session. Although Agenda Item 17 would allow the issue to be discussed in all three Main Committees, Egypt has already made it clear that it wishes it to be dealt with in a subsidiary body to Main Committee II, despite United States' resistance to this. Egypt has also indicated that any conclusions reached during these deliberations might be handled as a discrete output from the Conference.

#### **vi. A review of the operations of the Strengthened Review Process**

In the section of its report on the *Final Outcome of the Conference*, the PrepCom recommended that the "2000 Review Conference should examine the functioning of the review process itself, taking account of experience since 1995." This was agreed as a result of the widespread perception that the operations of the PrepCom had not been as effective as some had anticipated. There had been high hopes in 1995 that the PrepCom sessions would provide NNWS with a near-annual means of pressurising the NWS to live up to their Article VI obligations. However, the precise purpose of the work of the PrepCom and details of how it was to function were not specified at that time. A variety of views emerged on this matter in the course of the three sessions of the PrepCom, but no agreement was reached on a way forward. The Review Conference will have to resolve these issues if the second cycle of the strengthened review process is to operate more effectively than the first. This will mean agreeing an interpretation of the wording of the *Strengthening the Review Process* document that will make the process more effective.

The specific problems encountered by the PrepCom in implementing *Strengthening the Review Process*, and an account of its proceedings, are contained in the companion Issue Review 18. The issue of where and how they will be discussed at the Review Conference, and whether it should produce a separate document on this issue remains problematic. As suggested above, it is probable that there will be calls for a subsidiary body to be established in one of the Main Committees to examine the functioning of the Review Process, though some delegations may favour it being handled in a small Presidential Consultative Group.

#### **vii. The product(s) of the Conference**

Prior to 1995, it was accepted that the product of the Review Conferences should be a single Final Declaration agreed by consensus. In 2000, the Review Conference will have to consider whether there should be more than one product, and what they might be. The types of product that might result include:

- a single, integrated Final Declaration reporting on the activities undertaken during the Review Conference, possibly with a separate section on forward-looking elements;
- two documents, one containing a forward-looking set of proposals for a 2000 version of the *Principles and Objectives*; and one a backward-looking review of the operation of the Treaty in the last five years, based either on the articles of the Treaty and its preamble or the *Principles and Objectives* or both;

- a document on the future functioning of the strengthened review process; and
- reports of the work of any subsidiary bodies created by the Conference.

There was much debate and no agreement at the 1999 PrepCom session as to whether there should be two documents, one forward looking and one backward looking, or a single integrated text. The core issue for some delegations appeared to be whether or not a separate forward-looking document containing a new programme of action for nuclear disarmament would provide the best tool for applying leverage on the NWS to live up to their nuclear disarmament obligations. Some argued that linking forward-looking and backward-looking elements in a single document, in which nothing was agreed until everything was agreed, would enable more pressure to be applied to the NWS to agree compromise wording; whereas if two documents were contemplated, the NWS might be prepared to be flexible in one but not in the other. Others appeared to believe that separating out the forward programme of action from the rest of the review text would permit a more effective future evaluation of whether or not there had been acceptable progress on the implementation of Article VI.

#### **viii. The starting text(s) for the Conference outcome**

The text or texts upon which the Main Committees start their drafting work will also shape the outcome of the Conference. In the past, the starting point for this has been the text of the Final Declaration generated by the last Conference, irrespective of whether or not there was consensus upon it. This precedent will probably be questioned in 2000 for several reasons:

- The text of the 1995 Review Conference Final Document was not agreed. Indeed the last time a text was agreed by consensus was in 1985, and then the consensus contained at least one element where the states made clear the existence of differences between them.
- There are several changes inherent in the strengthened review process that may necessitate significant restructuring of the templates used in the past for the Committee Reports. Although they did have forward-looking paragraphs, such issues were not systematically addressed, nor did they consider "specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality".
- The existence of several Chairman's Working Papers from the three PrepCom sessions. The Working Paper of 1997 was agreed, the one of 1998 was not, and in 1999 two Working Papers were reproduced in the final report.

The President will also have the option of starting work on the basis of a completely new text, perhaps one which he himself has drawn up.

#### **ix. The levels of consensus needed to agree an outcome**

The issue of whether products necessarily need to be agreed by consensus is of significance for many of the issues discussed above. In the past, each Main Committee produced a report and the Conference Drafting Committee integrated all three into a Final Declaration. Some believe that it would be acceptable to agree a Final Declaration on the review of the operation of the Treaty in 2000 on the basis of a similar textual device to that used in 1985, either by noting differences of opinion or reservations on certain paragraphs, or by drafting the text more extensively along the lines of "some thought this, some thought that" and agreeing that the description of the varied views is accurate.

While some delegations may accept that a “review” document could be agreed by something less than consensus most delegations are likely to regard full consensus, as imperative for any forward-looking element which contained commitments to future action.

It is likely that a successful ‘review’ will depend on agreement on a document that falls short of consensus.

#### **x. The functioning of the caucus groupings**

The management of past NPT Review Conferences has relied heavily upon the existence of three distinct and relatively well-organised caucus groupings; the Eastern Group, the Western European and Others Group (WEOG) and the Non-Aligned Movement (NAM). Their leaders would participate in consultative meetings with the President where they would be expected to present their group’s agreed position, and afterwards report back to their group on what had happened. Since 1990, however, these groups have started to erode. The Eastern Group, apart from meeting to determine officers for the Review Conference, for which it still retains an allocation, appears to be defunct, and several of its members are now in NATO. The NAM still operates, but it has several regional groupings and viewpoints within it. The WEOG is also active, but some resentment and confusion exists over the EU states within it, which some claim act as a dominant “group within a group”, while there also exists major differences of perspective over nuclear weapons between the states that are in NATO and those that are not. This decline of the old groupings has been paralleled by the emergence of new cross-cutting interest-based groups, such as the New Agenda Coalition (NAC). This contains members of all the old groups and is seeking to gain broader support for its policies. There is also intermittent co-operation amongst the NWS. However, it is doubtful if these activities are sufficient to substitute for the stabilising effects of the old and much stronger group system.

The President will therefore face a difficult task if he is to achieve any form of consensus among the multiple viewpoints and interests represented within the traditional groupings. If he is to consult only a limited group of states, he will have to find a way of ensuring not only that the increasingly diverse viewpoints found within the States Parties are represented, but that effective communications are maintained with all states to keep them informed of what is taking place.

### **Substantive Issues and the 2000 NPT Review Conference**

What emerges from the above discussion is that the 2000 NPT Review Conference will be more difficult to manage effectively than those of the past. However, whether or not States Parties can agree on substantive issues will ultimately determine the success or failure of the Conference. If the substantive issues are intractable, effective conference management is unlikely to be able to overcome them. There follows an analysis of where the points of substantive disagreement may arise, and what options are available for handling them. For convenience, these issues will be reviewed using the framework adopted by the 1995 *Principles and Objectives* decision document.

#### **a. Universality**

The NPT makes no explicit mention of the subject of universality, which explains why this issue has always merited a separate agenda item at review conferences. However, the first substantive paragraph in the 1995 *Principles and Objectives* document calls on all states not yet party to the Treaty to accede to it at the earliest date, and states that “every effort should be made by all States parties to achieve this objective”.

There are now only four states with nuclear activities outside the Treaty: Cuba, India, Israel and Pakistan. Cuba has no unsafeguarded nuclear facilities; it has ratified an Additional Protocol to its existing IAEA safeguards agreement; it is a signatory of the Treaty of Tlatelolco; and its refusal to sign the NPT appears to be related to non-nuclear issues, such as the continued existence of the US Guantanamo base. As a consequence its non-signature of the NPT is regarded in many quarters as lacking major significance, as it appears highly unlikely to be engaged in a nuclear-weapon programme, and thus is the least likely of the non-NPT parties to generate controversy at the Review Conference.

Israel is now the only non-signatory to the NPT in the Middle East. This makes it possible for the Conference to address Israel’s nuclear activities directly without naming it, by urging those non-party states in the Middle East region to act in specific ways. While the United States has been willing to see Israel named along with other non-parties, and to join in calls for all of them to accede to the Treaty, it has been unwilling to have it named in isolation and in a regional context. In addition, it has been unwilling to engage in discussion on steps to implement the 1995 *Resolution on the Middle East* at the Review Conference.

Whether States Parties can resolve their differences over this issue at the Review Conference will depend to a large degree on progress in the Middle East peace process. The handling of this issue at the Review Conference has been complicated by proposals to institute a subsidiary body on its implementation in Main Committee II, which the United States has indicated it will resist. Whether this becomes a major obstacle to consensual wording on universality will depend upon the ability of the Arab States and the United States to reach compromises on this multi-faceted issue.

The nuclear tests by India and Pakistan in May 1998 generated a variety of views over how to respond to them. While no NPT state has suggested that they be invited to join the NPT as NWS, a legal impossibility under the terms of the Treaty, there is a major concern not to appear to acquiesce to, or reward, their actions in breaking the norm against proliferation. Some states believe that the Review Conference should agree to condemn the actions of India and Pakistan; others, including some of India’s smaller neighbours, are adamantly opposed to such a response as they see it as counter-productive. Some of these states believe efforts should focus on persuading India and Pakistan to co-operate in taking other non-proliferation initiatives including: signing and ratifying the CTBT; entering into negotiations on an FMCT; following the export control guidelines of the NSG; and participating in wide-ranging bilateral confidence and security building measures. While some have suggested that safety and security technology from the NWS (permissive action links (PALs) for example) should be shared with India and Pakistan to avoid accidents and security breaches, most States Parties regard this as unacceptable on two grounds: it would be seen to reward the two states for their proliferation activities and it would breach Article I of the NPT. The problem confronting the Review Conference will be how to reconcile these diverse and strongly held views in a consensual text.

Few positive ideas emerged in the PrepCom for initiatives that the States Parties to the NPT might take to open a constructive dialogue with the non-parties. The only exception was a proposal made by Malaysia at the 1999 PrepCom, which was not discussed in any detail in that forum. This proposed that there should be high-level consultations on an annual basis between representatives of the NPT States Parties and countries remaining outside the Treaty, as a first step towards linking these states with the NPT. This proposal may be

advanced again at the 2000 Review Conference, and act as a focus for discussing the options for collective action on Universality.

#### **b) Nuclear non-proliferation**

The *Principles and Objectives* document calls for every effort to be made to implement the Treaty in all its aspects, without hampering the peaceful uses of nuclear energy by its States Parties. The core issue likely to give grounds for disagreements under this heading will be allegations of non-compliance by NPT parties with their obligations under Articles I and II of the Treaty. In the case of Article I, this may involve accusations that specific NWS or NNWS have assisted other states to acquire nuclear weapons. Accusations have been made in the past that transfers of information, technology and materials between NWS constitute a breach of Article I, though the NWS have always denied that the Treaty prevents this. In addition, the NAM working paper at the 1999 PrepCom called on the NWS to refrain from "nuclear sharing for military purposes under any kind of security arrangements". This was aimed at NATO nuclear arrangements and co-operation between the NWS, and at alleged US nuclear co-operation with Israel. One aim of the NAM proposal on this issue appears to be to reinterpret the Treaty to exclude physical transfers of nuclear weapons between NWS and NNWS in all circumstances.

Allegations under Article II are likely to centre upon the position and actions of Iraq and the DPRK, and their alleged breaches of their IAEA safeguards agreements during the 1990s. Some argue that as these breaches occurred before 1995 they are not relevant to this Review Conference. It remains unclear whether the disagreements in the UN Security Council over how to handle WMD disarmament in Iraq will also be a major issue at the NPT Review Conference, as these do not centre upon nuclear matters. Currently, it appears unlikely that other allegations of breaches of Article II will be made against any other States Parties.

#### **c) Nuclear disarmament**

The implementation of the nuclear disarmament article of the NPT, Article VI, has been the main source of disagreement at all past NPT Review Conferences. The 2000 Conference is likely to be no exception. Most NNWS parties view the disarmament obligations undertaken by the NWS as being at least as important as the non-proliferation commitments they themselves have made. The *Principles and Objectives* called on the NWS to reaffirm their commitment to nuclear disarmament and set out a number of objectives to be achieved in a "Programme of Action".

The disarmament section of the *Principles and Objectives* was significant for at least two reasons: the NWS appeared to accept that the NNWS had a role in determining the disarmament agenda; and it appeared to enshrine agreement on a "step by step" approach to nuclear disarmament, rather than a move to nuclear disarmament within a time-bound framework. To many, the latter seemed a step away from the rhetorical battles of the past and to herald a time when genuine progress might be made on a co-operative basis.

However, the review of the achievements of the Programme of Action in the five years to 2000 is likely to lead the majority of States Parties to conclude that movement towards its goals has been slow and disappointing. While a CTBT has been negotiated, the recent failure of the US Senate to ratify the Treaty places its implementation in grave doubt. Efforts to initiate negotiations in the CD on an FMCT have faltered on differences over whether or not stocks should be included in the scope of the negotiations and linkages with other issues,

such as PAROS. Although it was agreed in 1998 that an *ad hoc* committee should be established on the subject, the CD has subsequently had difficulties in setting it up, and questions have been raised about whether the Shannon Mandate, the agreed basis for the negotiations, still remains valid.

The third element of the Programme of Action called for the "determined pursuit by the NWS of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons". Some NWS had significant progress to report in the years immediately after the 1995 Conference on reductions in arsenals, increased transparency and safety and security initiatives. But in the last few years this progress has slowed, and international tensions have increased. START II has not been ratified, formal START III negotiations have not yet begun, and the three smaller NWS appear unwilling to enter into any disarmament negotiations until the number of weapons in the two largest NWS have been reduced to a figure closer to their own stockpiles. Meanwhile, the development and probable deployment in the United States of national and theatre missile defences (NMD and TMD) is seen as a step that could ignite a new nuclear arms race. This emerging strategic debate threatens to make the NWS unwilling to make commitments to further steps of nuclear disarmament, thereby reducing the possibility of achieving consensus on this issue at the Conference, as well as making it less likely that the P5 can establish a common position. Under these circumstances, agreeing on elements in a forward-looking document relating to disarmament at the Review Conference is likely to be difficult.

At the PrepCom sessions the NWS appeared to consider that by describing the disarmament actions they had undertaken they were providing the "accountability" that Ambassador Dhanapala linked to the permanence of the Treaty in 1995. Several of the NNWS have made clear, however, that they regard "accountability" as encompassing a much more interactive process. They want the NWS to account for what they have not done, and for the NNWS to be allowed to play a much more positive role in setting the agenda for what the NWS will do in the future. The NAC has tried to build a broad-based coalition behind its proposals for practical disarmament and confidence building measures. In addition, South Africa has indicated that it will call for the establishment of a subsidiary body on the subject. If such a body is set up, the Programme of Action may form part of its mandate. At the Review Conference the NAC may also urge the NWS to restate their commitment to nuclear disarmament as they did in the UN General Assembly in 1999. However, the NWS have argued in the past that such a restatement would raise questions over the strength of their existing commitments and weaken the perception that all NPT commitments are binding indefinitely.

#### **d) Nuclear-weapon-free zones (NWFZs)**

The *Principles and Objectives* set a target that additional NWFZs should be created by 2000. This target has been met. The South East Asian NWFZ Treaty was opened for signature in December 1995 and the African one in April 1996. The protocol to the former has not yet been signed by the NWS, while the latter has yet to enter into force. Mongolia has gained UN General Assembly recognition as a one-state self-declared NWFZ, while negotiations to produce and agree the text for a Central Asian NWFZ Treaty are well advanced. Thus a majority of NPT parties now reside within a NWFZ, and have the opportunity of receiving security assurances from the NWS. However, the long-standing aspirations for a Middle East Zone Free of Weapons of Mass Destruction remain unfulfilled. In addition, Belarus called for a nuclear-

weapon free “space” in Central and Eastern Europe at the 1999 PrepCom session, though this move was vigorously opposed by many of the smaller states of Central and Eastern Europe that have aspirations to join NATO. It is these latter two issues that may become the focus of debate at the Review Conference.

#### **e) Security assurances**

The *Principles and Objectives* called upon the NWS to consider further steps to “assure NNWS to the Treaty against the use or threat of use of nuclear weapons.” It noted that: “these steps could take the form of an internationally binding instrument”. However, the Western NWS have argued that more than 100 NNWS have been offered such security assurances through their potential membership of NWFZs, and no steps have been taken towards negotiating a legally binding global instrument. There are thus likely to be further calls at the Review Conference for such an instrument to be negotiated, with South Africa proposing that it should be in the form of a protocol to the NPT. This would probably require the establishment of a subsidiary body on the matter or a special NPT Conference. Again, some of the NWS are likely to resist these ideas, especially if the subsidiary body was scheduled to meet intersessionally, and much will depend on the significance attached by the NNWS to this issue at this Review Conference.

#### **f) Safeguards**

Since 1991 when the existence of a clandestine nuclear weapon programme in Iraq was revealed, a range of actions (known as ‘93+2’) have been taken to enhance the scope and effectiveness of the IAEA/NPT safeguards. Many proposed measures were rapidly adopted and implemented because authority already existed for them under the existing agreement, based on the model in IAEA document INFCIRC/153. Others were deemed to require additional legal authority, and this was to be provided through an Additional Protocol to INFCIRC/153 safeguards, a model of which was agreed as INFCIRC/540. A few states have already brought such a Protocol into force, but many are still attempting to do so, in some cases in the face of complicated domestic legal difficulties. It is thus likely that there will be calls at the Review Conference for more States Parties both to negotiate an Additional Protocol with the IAEA, and to take the necessary legal steps to bring it into force. It is likely that the NWS, which have voluntary safeguards agreements with the IAEA, will also be urged to bring their Additional Protocols into force.

#### **g) Peaceful uses**

Two specific issues may be the subject of disagreements under this heading. One involves the tension between the exercise of a state’s “inalienable right” to use nuclear energy for peaceful purposes contained in Article IV of the Treaty, and the duty of exporting states not to assist nuclear proliferators. This tension has become focused upon the implementation of national export controls, and the international guidelines agreed between a number of supplier states to ensure that they are applied uniformly. The supplier states involved, the Nuclear Suppliers Group (NSG), have made overt efforts to become more transparent about their activities, but whether the Information Seminars held by them in 1997 and 1999 constitute the comprehensive dialogue with non-members demanded by some of the latter may be one of the subjects for debate.

A second issue concerns the conditions under which nuclear items will be supplied to non-NPT parties, and particularly whether that supply should be conditional on IAEA/NPT safeguards being applied on all nuclear materials within a

recipient state, or just to the items to be exported and the facilities in which they will be used. This is essentially an argument concerning China’s nuclear-related exports to Pakistan and Russia’s potential nuclear-related ones to India. A newly emerging issue in this context, however, is whether such safeguards should also be interpreted to include the commitments contained in the Additional Protocol, and thus whether states that have not signed an Additional Protocol should be denied technical assistance with their nuclear programmes.

### **Some Conclusions**

Three sets of general conclusions appear to emerge from this analysis of the issues facing those attending the 2000 NPT Review Conference. One is that the tasks to be undertaken by this Review Conference will differ appreciably from those encountered in the past. There will be many more of them, and thus co-ordinating the activities of the Review Conference threatens to be very demanding. This places a premium upon the Presidency arriving at a decision in its relatively early stages on key organisational issues such as the number of outcomes that should be sought; how separate forward and backward looking texts are to be produced, if it is decided to proceed down this path; whether the *Principles and Objectives* are to be reviewed as well as the Treaty; whether and what subsidiary bodies are to be created; and how any review of the implementation of the strengthened review process is to be conducted. In the absence of clear decisions on these options, the Review Conference may start to drift and end in a state of indecision and confusion.

The second is that unless unanticipated events and issues arise before the end of the Review Conference, two central substantive issues seem likely to dominate it. One is Universality and the other Disarmament. On the former, much may depend on factors external to the Conference such as the state of the Middle East peace process. On the latter, the state of international tensions, especially between the NWS, and US domestic politics may play a significant role. In neither case will consensus be easy to achieve in a forward-looking document.

The third general conclusion is that, in order that the Conference should not finish in confusion and a lack of direction, it seems imperative that some agreement should be reached on how the NPT review process is to be implemented in future. Clear and early decisions on the conduct of the 2000 Review Conference will assist this process. If the Conference does succeed in generating this clear guidance for the future, it will have achieved at least a partial success.

### **Documentation**

#### **Strengthening the Review Process for the Treaty**

1. The Conference examined the implementation of article VIII,3, of the Treaty and agreed to strengthen the review process for the operation of the Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.
2. The States party to the Treaty participating in the Conference decided, in accordance with article VIII,3, of the Treaty, that Review Conferences should continue to be held every five years and that, accordingly, the next Review Conference should be held in the year 2000.
3. The Conference decided that, beginning in 1997, the Preparatory Committee should hold, normally for a duration of 10 working days, a meeting in each of the three years prior to the Review Conference. If necessary, a fourth preparatory meeting may be held in the year of the Conference.
4. The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the Decision on Principles and Objectives for Nuclear

Non-Proliferation and Disarmament adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.

5. The Conference also concluded that the present structure of three Main Committees should continue and the question of an overlap of issues being discussed in more than one Committee should be resolved in the General Committee, which would coordinate the work of the Committees so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one Committee.

6. It was also agreed that subsidiary bodies could be established within the respective Main Committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues. The establishment of such subsidiary bodies would be recommended by the Preparatory Committee for each Review Conference in relation to the specific objectives of the Review Conference.

7. The Conference agreed further that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.

## **Principles and Objectives for Nuclear Non-Proliferation and Disarmament**

*Reaffirming* the preamble and articles of the Treaty on the Non-Proliferation of Nuclear Weapons,

*Welcoming* the end of the cold war, the ensuing easing of international tension and the strengthening of the trust between States,

*Desiring* a set of principles and objectives in accordance with which nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings evaluated periodically within the review process provided for in article VIII (3) of the Treaty, the enhancement and strengthening of which is welcomed,

*Reiterating* the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

*The Conference affirms* the need to continue to move with determination towards the full realisation and effective implementation of the provisions of the Treaty, and accordingly adopts the following principles and objectives:

### *Universality*

1. Universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All States not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those States that operate unsafeguarded nuclear facilities. Every effort should be made by all States parties to achieve this objective.

### *Non-proliferation*

2. The proliferation of nuclear weapons would seriously increase the danger of nuclear war. The Treaty on the Non-Proliferation of Nuclear Weapons has a vital role to play in preventing the proliferation of nuclear weapons. Every effort should be made to implement the Treaty in all its aspects to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by States parties to the Treaty.

### *Nuclear disarmament*

3. Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. The undertakings with regard to nuclear disarmament as set out in the Treaty on Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear-weapon States reaffirm their commitment, as stated in article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below:

(a) The completion by the Conference on Disarmament of the negotiations on a universal and internationally and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty no later than 1996. Pending

the entry into force of a Comprehensive Test-Ban Treaty, the nuclear-weapon States should exercise utmost restraint;

(b) The immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices, in accordance with the statement of the Special Coordinator of the Conference on Disarmament and the mandate contained therein;

(c) The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.

### *Nuclear-weapon-free zones*

5. The conviction that the establishment of internationally recognized nuclear-weapon-free zones, on the basis of arrangements freely arrived at among the States of the region concerned, enhances global and regional peace and security is reaffirmed.

6. The development of nuclear-weapon-free zones, especially in regions of tension, such as in the Middle East, as well as the establishment of zones free of all weapons of mass destruction should be encouraged as a matter of priority, taking into account the specific characteristics of each region. The establishment of additional nuclear-weapon-free zones by the time of the Review Conference in the year 2000 would be welcome.

7. The cooperation of all the nuclear-weapon States and their respect and support for the relevant protocols is necessary for the maximum effectiveness of such nuclear-weapon-free zones and the relevant protocols.

### *Security assurances*

8. Noting United Nations Security Council resolution 984 (1995), which was adopted unanimously on 11 April 1995, as well as the declarations by the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon States party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.

### *Safeguards*

9. The International Atomic Energy Agency (IAEA) is the competent authority responsible to verify and assure, in accordance with the statute of the IAEA and the Agency's safeguards system, compliance with its safeguards agreements with States parties undertaken in fulfilment of their obligations under article III(1) of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the IAEA in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns, along with supporting evidence and information, to the IAEA to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.

10. All States parties required by article III of the Treaty to sign and bring into force comprehensive safeguards agreements and which have not yet done so should do so without delay.

11. IAEA safeguards should be regularly assessed and evaluated. Decisions adopted by its Board of Governors aimed at further strengthening the effectiveness of IAEA safeguards should be supported and implemented and the IAEA's capability to detect undeclared nuclear activities should be increased. Also States not party to the Treaty on the Non-Proliferation of Nuclear Weapons should be urged to enter into comprehensive safeguards agreements with the IAEA.

12. New supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon States should require, as a necessary precondition, acceptance of IAEA full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.

13. Nuclear fissile material transferred from military use to peaceful nuclear activities should, as soon as practicable, be placed under IAEA safeguards in the framework of the voluntary safeguards agreements in place with the nuclear-weapon States. Safeguards should be universally applied once the complete elimination of nuclear weapons has been achieved.

#### *Peaceful uses of nuclear energy*

14. Particular importance should be attached to ensuring the exercise of the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I, II as well as III of the Treaty.

15. Undertakings to facilitate participation in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy should be fully implemented.

16. In all activities designed to promote the peaceful uses of nuclear energy, preferential treatment should be given to the non-nuclear-weapon States party to the Treaty, taking the needs of developing countries particularly into account.

17. Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.

18. All States should, through rigorous national measures and international cooperation, maintain the highest practicable levels of nuclear safety, including in waste management, and observe standards and guidelines in nuclear materials accounting, physical protection and transport of nuclear materials.

19. Every effort should be made to ensure that the IAEA has the financial and human resources necessary in order to meet effectively its responsibilities in the areas of technical cooperation, safeguards and nuclear safety. The IAEA should also be encouraged to intensify its efforts aimed at finding ways and means for funding technical assistance through predictable and assured resources.

20. Attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.

*The Conference requests* that the President of the Conference bring this decision, the Decision on Strengthening the Review Process of the Treaty and the Decision on the Extension of the Treaty to the attention of the heads of State or Government of all States and seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.

#### **Extension of the Treaty on the Non-Proliferation of Nuclear Weapons**

*The Conference of the States Party to the Treaty on the Non-Proliferation of Nuclear Weapons* (hereinafter referred to as 'the Treaty') convened in New York from 17 April to 12 May 1995, in accordance with articles VIII,3 and X,2 of the Treaty,

*Having reviewed* the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

*Having reaffirmed* article VIII,3 of the Treaty and the need for its continued implementation in a strengthened manner and, to this end, emphasizing the Decision on Strengthening the Review Process for the Treaty and the Decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament also adopted by the Conference,

*Having established* that the Conference is quorate in accordance with article X,2 of the Treaty,

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

#### **Resolution on the Middle East**

*The Conference of the States parties to the Treaty on the Non-Proliferation of Nuclear Weapons,*

*Reaffirming* the purpose and provisions of the Treaty on the Non-Proliferation of Nuclear Weapons,

*Recognizing* that, pursuant to article VII of the Treaty on the Non-Proliferation of Nuclear Weapons, the establishment of nuclear-weapon-free zones contributes to strengthening the international non-proliferation regime,

*Recalling* that the Security Council, in its statement of 31 January 1992, affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international peace and security,

*Recalling also* General Assembly resolutions adopted by consensus supporting the establishment of a nuclear-weapon-free zone in the Middle East, the latest of which is resolution 49/71 of 15 December 1994,

*Recalling further* the relevant resolutions adopted by the General Conference of the International Atomic Energy Agency concerning the application of Agency safeguards in the Middle East, the latest of which is GC(XXXVIII)/RES/21 of 23 September 1994, and noting the danger of nuclear proliferation, especially in areas of tension,

*Bearing in mind* Security Council resolution 687 (1991) and in particular paragraph 14 thereof,

*Noting* Security Council resolution 984 (1995) and paragraph 8 of the Decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament adopted by the Conference on 11 May 1995,

*Bearing in mind* the other Decisions adopted by the Conference on 11 May 1995,

1. *Endorses* the aims and objectives of the Middle East peace process and recognizes that efforts in this regard as well as other efforts contribute to, *inter alia*, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction;

2. *Notes with satisfaction* that in its report Main Committee III of the Conference (NPT/CONF.1995/MC.III/1) recommended that the Conference 'call on those remaining States not parties to the Treaty to accede to it, thereby accepting an international legally binding commitment not to acquire nuclear weapons or nuclear explosive devices and to accept International Atomic Energy Agency safeguards on all their nuclear activities';

3. *Notes with concern* the continued existence in the Middle East of unsafeguarded nuclear facilities, and reaffirms in this connection the recommendation contained in paragraph VI/3 of the report of Main Committee III urging those non-parties to the Treaty which operate unsafeguarded nuclear facilities to accept full scope International Atomic Energy Agency safeguards;

4. *Reaffirms* the importance of the early realization of universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons, and *calls upon* all States of the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible and to place their nuclear facilities under full scope International Atomic Energy Agency safeguards;

5. *Calls upon* all States in the Middle East to take practical steps in appropriate forums aimed at making progress towards, *inter alia*, the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective;

6. *Calls upon* all States party to the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular the nuclear-weapon States, to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems.

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*Emily Bailey is the Programme Co-ordinator of PPNN and John Simpson is its Programme Director.*

#### **The Programme for Promoting Nuclear Non-Proliferation**

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