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# PROGRAMME FOR PROMOTING NUCLEAR NON-PROLIFERATION

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## Why the 1999 Preparatory Committee Session for the 2000 NPT Review Conference is So Crucial for the Strengthened Review Process

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### Foreword

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### Background

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is the legal cornerstone of the nuclear non-proliferation regime. It 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. As a consequence, the NPT text is structured around the existence of two classes of states: NWS (defined within the Treaty as those states which had exploded a nuclear device prior to 1 January 1967) and NNWS. Each of these has differing commitments under the Treaty.

Underpinning the Treaty, and thus also underpinning the regime, are the implicit understandings that the international norm should be one of no state possessing nuclear weapons, as they are intrinsically unacceptable to the international community; that the five states with declared stockpiles of nuclear weapons should seek to dispose of them; and that a distinction can be drawn between unacceptable nuclear programmes to produce explosive devices and other, acceptable and peaceful, nuclear energy activities.

Implementation of the NPT verification regime is the responsibility of the International Atomic Energy Agency (IAEA). The Treaty text was deposited with the United Kingdom, United States and the USSR [now the Russian Federation], rather than the United Nations. The NPT has no secretariat but the Treaty text provided for a conference

of the parties to be held every five years to review its operation, if the parties so wished.

Two consequences arose from this latter provision in the period from 1975 to 1995. First, Review Conferences were held every five years after the entry-into-force of the Treaty in 1970, with the Depositary States accepting during this time that they should regard them as regular events. Second, these conferences focused mainly on conducting a retrospective review of the operation of the Treaty in the light of its Preamble and Articles, from which they sought to produce by consensus a Final Declaration containing prescriptions for what might be done to strengthen its operation.

Those who drafted the NPT in 1967–1968 chose not to make any definitive decision on its duration: rather they suspended this for 25 years. The delayed decision on the duration of the Treaty was taken in 1995. The Review Conference held that year recognised that there was a majority of the parties in favour of making the Treaty permanent through a process which involved adopting collectively, and then individually, three decision documents without a vote. One, *Extension of the Treaty on the Non-Proliferation of Nuclear Weapons* recorded that the majority of the parties were in favour of an indefinite extension to the Treaty;<sup>1</sup> a second, *Strengthening the Review Process for the Treaty*, set out a series of decisions to strengthen the review process for the Treaty;<sup>2</sup> and a third, *Principles and Objectives for Nuclear Non-Proliferation and Disarmament* laid out a series of principles to underpin future activities in the non-proliferation and disarmament areas, and a number of more immediate objectives that the parties should seek to achieve.<sup>3</sup> In addition, in order to gain the adherence of Arab and other states to the package, the parties passed a *Resolution on the Middle East* sponsored by the three Depositary States.<sup>4</sup>

In retrospect, the decisions taken in 1995 changed the nature of the NPT review process in a number of obvious, and some not so obvious, ways. It became mandatory to hold Review Conferences every five years. They were to 'look forward as well as back', evaluating the results of the period they were reviewing, including the implementation of the undertakings made by the States Parties under the Treaty, and identifying the areas in which, and the means through

which, further progress should be sought in the future. These Conferences were also to 'address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality'. They would continue to be structured around the work of three Main Committees, but parties were to be free to establish 'subsidiary bodies' within Main Committees in order to provide for a focused consideration of specific issues.

Significant changes were also made in the arrangements for the Preparatory Committee (PrepCom) for each Review Conference. This Committee was in future to address substantive issues, as well as procedural preparations, and was specifically tasked with considering '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 that was to follow. These 'principles, objectives and ways' were to include those identified in the 1995 decision document on *Principles and Objectives for Non-Proliferation and Disarmament*. PrepComs were also to make recommendations on the establishment of 'subsidiary bodies' within Review Conference Main Committees. PrepCom sessions were to be held in each of the three years prior to a review conference and would normally last 10 working days. The option was also offered of holding a fourth session in the year of a Review Conference.

Three major changes in the objectives and operation of the review process thus emerged from the 1995 decisions. First, PrepComs were to produce draft recommendations on substantive matters, as well as procedural ones, for the Review Conference that followed to consider for adoption. Second, these recommendations were to focus on positive proposals for future action in the areas of nuclear non-proliferation and disarmament. Such proposals might also act as yardsticks which a Review Conference could use to help assess the degree to which the parties had fulfilled their commitments under the Treaty. Finally, PrepComs could also make recommendations to the Review Conference that was to follow on the creation of 'subsidiary bodies' within its Main Committees.

It should be noted that although the conference accepted the indefinite duration of the NPT without a vote in 1995, it was unable to agree on a document reporting on the results of the review of the operation of the Treaty. Consensus on such a Final Declaration had been the central objective of every previous Review Conference, both in order to provide a focus for its discussions and as a means of recording the collective views of the parties on the operation of the Treaty.

### Events at the 1997 PrepCom session

By the time the first session of the PrepCom for the 2000 NPT Review Conference met in April 1997, it had become apparent that the decision documents from 1995 contained little guidance on many of the modalities of the revised review process. Although there existed a set of established activities and procedures in relation to the pre-1995 situation, it was unclear how many would and should be incorporated in the strengthened review process, what new procedures should be introduced, what type of 'recommendations' the PrepCom sessions should seek to transmit to review conferences and how they should do this.

Several major conceptual problems also existed over the altered nature of the PrepCom sessions. One was whether these sessions were to concentrate exclusively on producing material for possible inclusion in documents emerging from review conferences, or were to be 'mini-review conferences' evaluating on a near-annual basis the performance of the parties in implementing the Treaty. Yet another concerned the product or products of the new review process. Should the 2000 and subsequent Review Conferences seek, as in the past, to draft a single Final Declaration reporting on the results of the review process or should they seek to negotiate two separate documents: one retrospectively reviewing the implementation of the Treaty in the previous five years and another setting out principles and objectives that the parties should seek to implement in the next five years? Logically, answers to these questions would determine the form of the recommendations that a PrepCom should transmit to its associated Review Conference. Those issues in turn were related to a further matter: the status of the 1995 decision documents in comparison to the Treaty text.

There was a common view among the parties, however, that a key attribute of the 'strengthened' review process was that PrepComs should address substance. One result was that the 1997 PrepCom session concentrated on this, rather than attempting to debate the uncertain modalities of the strengthened review process. As a consequence its Chairman, Ambassador Pasi Patokallio of Finland, secured early agreement from those present on a two pronged approach to the structuring of the proceedings.

The first element of the approach was to have the scheduling of the session modelled closely on that of a review conference. An initial plenary debate was to be followed by discussions based on a division of the articles of the Treaty, and the subjects inherent in them, into three clusters of related issues. The listing of subjects to be discussed under each cluster was similar to that of the items allocated to the three Main Committees at review conferences.<sup>5</sup> Equal time for discussion was allocated to each of the clusters.

The second element of the approach was to seek to produce an agreed report from the session. This resulted in text<sup>6</sup> on substantive and procedural issues that had three significant elements: a report on the organization and work of the first PrepCom session, an annex to the report entitled *Chairman's Working Paper*, and a *Chairman's Statement*, issued as a conference document. Paragraph 3 of the *Chairman's Working Paper* identified language for recommendations to the 2000 Review Conference upon which there might be a consensus among those attending the session, and paragraph 4 contained all the proposals made by delegations during the session. Both paragraphs looked back to review the implementation of the treaty and looked forward to propose possible future action. Both used the subjects covered by the Main Committees as the primary means of organizing their substance, but also incorporated the topics contained in the 1995 *Principles and Objectives* decision document as sub-headings, thus side-stepping the issue of the status of the Treaty text in comparison to the 1995 decision documents. *The Chairman's Statement* contained a recommendation that the next PrepCom session should allocate specific time to the discussion of three issues: a Fissile Material Cut-Off Treaty, Security Assurances and the *Resolution on the Middle East*.

The decision to hold the cluster discussions in closed session, from which observer delegations were also excluded, suggested that the Chairman envisaged the PrepCom operating in a similar fashion to the Main Committees at Review Conferences. In the past, these had started to negotiate texts once they had moved beyond the initial plenary statements by the delegations, and in that context had conducted negotiations in a flexible manner in informal session. Although in 1997 the Chairman invited representatives to engage in interactive and relatively unstructured discussions on the issues within each cluster, they were reluctant to do so, and instead made a series of formal statements of their states' positions. In part this was because they had no text around which to organise any interactive discussions: all negotiations on elements for the short consensus text to be included in the *Chairman's Working Paper* were conducted in a separate Chairman's consultative group.

While this inaugural session appeared to have launched the strengthened review process in an effective manner, in that substance had been discussed and a report adopted, the disagreements that delayed the ending of the 1997 session gave a clear indication of some of the problems inherent in the arrangements through which this result had been achieved. One was that some parties were reluctant to agree in 1997 to a document (paragraph 3 of the *Chairman's Working Paper*) containing recommendations that might not be addressed again until the 2000 Review Conference, three years later. Although the familiar diplomatic formula of 'nothing is agreed until everything is agreed' was applied to this document, in practice elements of any text that has been conditionally agreed on often prove difficult to change. In addition, while some delegations regarded the recommendations to the next PrepCom session on the allocation of time to specific subjects — the *Chairman's Statement* — as a way of making the PrepCom process focused, productive and cumulative and of avoiding repetition of debate in each PrepCom, others believed that this approach would lead to a downgrading of the priority attached to the discussion of what they regarded as core items, such as nuclear disarmament.

### Events at the 1998 PrepCom session

By the time the second PrepCom session approached, it was clear that some of the conceptual and organisational issues which had been visible at the first session were starting to emerge again. Disagreements persisted over whether the time for discussing the specific subjects should be found within their parent cluster or separate from it, and whether a significant amount of time should be allocated in the PrepCom schedule for the discussion and formulation of its recommendations to the review conference. A compromise schedule was eventually agreed on which retained an agenda structured around a plenary debate and three separate cluster discussions. Time was allocated at the end of each cluster for the specific subjects, and a limited period of time at the end of the session was provided for plenary discussions on recommendations to the next PrepCom and the 2000 Review Conference.

The cluster debates were characterised by prepared statements and few meaningful exchanges. In the absence of any formal record of these discussions, several delegations, including some of the NWS, distributed their statements in written form to other delegations and to NGOs.

One interpretation of this behaviour was that they were concerned to demonstrate that they were implementing the 'permanence with accountability' that the President of the 1995 conference had indicated was the basis for the indefinite extension of the Treaty.

Four foci for disagreement emerged from the plenary debate and the cluster discussions:

- The nature of the substantive recommendations to the Review Conference and the process by which they should be produced. The main questions relating to this issue were whether a rolling text for ultimate transmission to the Review Conference should be carried forward from one PrepCom session to the next, and whether all the recommendations in this text should be open to revision at the next session.
- Whether the PrepCom sessions could and should report on substantive issues that would not necessarily be of significance and/or be reported on in 2000. This 'dual track' approach was advocated in particular by Canada on the basis that the first PrepCom Session adopted a report containing a heading entitled 'Substantive and Procedural Issues',<sup>7</sup> though the substantive element was not developed in 1997. Canada argued that the PrepCom sessions should therefore consider and report on 'whether there is any specific topic or topics that should be addressed pragmatically now — in 1998 and not just in 2000',<sup>8</sup> and in particular topics allocated specific time at that session.
- Whether Rule 34 of the rules of procedure<sup>9</sup> should be changed to refer to the possibility of the setting up of subsidiary bodies by the Review Conference, made possible by paragraph 6 of the 1995 decision document on *Strengthening the Review Process*. This change was advocated in particular by South Africa which called, *inter alia*, for the setting up of a subsidiary body by the Review Conference to examine nuclear disarmament. Others, concerned at the possibility that such a subsidiary body might become an inter-sessional forum to examine nuclear disarmament and/or a rival to the Conference on Disarmament (CD), argued that the existing Rule 34 language allowing for 'Working Groups' subsumed these bodies and made change unnecessary.
- The status of the *Resolution on the Middle East* adopted in 1995. The Arab League and the NAM both called for the implementation of the *Resolution*; Egypt tabled papers recommending ways in which it could be addressed. The United States argued that the Middle East should not be singled out for special treatment and appeared to question the status of the *Resolution* in relation to the other three decisions taken in 1995. This affected the decision on providing background documentation to the 2000 Review Conference as the United States objected to requests from Arab states for the United Nations Secretariat to provide information on the *Resolution's* implementation.

Few steps were taken to initiate discussions on texts of recommendations to the Review Conference until the end of the first week when an informal Chairman's Consultative Group was convened. Initial attention focused on streamlining paragraph 4<sup>10</sup> of the 1997 *Chairman's Working Paper*. Agreement was difficult, little of substance was added and few duplications were removed.

Half way through the second week, as it became apparent that there were deep divisions between states over Rule 34, the 'dual track' approach and the *Resolution on the Middle*

East, the Chairman's consultations sub-divided into three working groups. The existing group continued to examine substantive recommendations but shifted its focus to 'enriching' paragraph 3 of the 1997 *Chairman's Working Paper*<sup>11</sup> by adding further language on which consensus was possible; another group focused on procedural issues (Rule 34 and the allocation of time to specific subjects); while a third group, focusing on the Canadian proposals for a 'dual track' approach, entered into negotiations on the wording for a section of the report on the session relating to the cluster discussions on current issues, including language on the *Resolution*.

Efforts to reach agreement on the areas of contention listed above failed and the Chairman could only gain agreement on a procedural report to allow the next PrepCom Session to occur.<sup>12</sup> Ostensibly, the failure resulted from the United States' opposition in principle to the 'dual track' approach. This led to Canada requesting a paragraph by paragraph vote on the draft section of the report relating to the substantive issues discussed during the session. When this was taken, the United States voted first against the paragraph dealing with security assurances and then the one addressing the implementation of the *Resolution on the Middle East*. At that point the NAM caucus group, in support of its Arab members, refused to accept deletion of the paragraph relating to the *Resolution*. The resulting impasse led the participants in the session to abandon further efforts to reach agreement on the draft section reporting on substantive issues, and on all other matters. However, the record of what had been provisionally agreed on in the Chairman's consultations on the redrafting of the 1997 *Chairman's Working Paper* was listed in the procedural report on the session as a conference document.<sup>13</sup>

One consequence of the failure of the 1998 PrepCom session to produce a substantive report was that many observers regarded both the current review, and the initiation of an on-going strengthened review process, as being in considerable difficulties. At least two possible explanations were advanced for this. One was that the modalities for implementing the strengthening of the review process were inappropriate: the second was that the intractable political problems confronting the 1998 session were insurmountable, and thus the existence of a review process based on different modalities would have made no difference to the outcome. The first explanation suggests that solutions to current difficulties can be found in procedural and organisational innovations: the second that the political foundations of the Treaty and its associated regime, and particularly the perceptions of common purpose which bind their members together, are under threat and need reinforcing. The outcome of the 1999 PrepCom session may be thus be crucial, *inter alia*, in determining which of these explanations is more persuasive.

### **The 1999 PrepCom Session: What needs to be addressed**

Representatives of states parties attending the 1999 PrepCom session will confront both procedural and substantive issues. There are two particular problems that the Chairman of the session, Ambassador Camilo Reyes Rodriques of Colombia, will be aware of: first that he has received no recommendations from the 1998 PrepCom session on how to organize the 1999 PrepCom session; and

second that many ostensibly procedural recommendations which the 1999 PrepCom should make to the Review Conference mask thorny questions about the contested nature of the strengthened review process.

### **The Organisation of the 1999 Session**

The 1997 session established a pattern of starting with a plenary debate and moving to cluster discussions, but it also devoted a half-day session to presentations by NGOs and initiated a practice of drafting the report from the session through presidential consultative mechanisms. In addition, a recommendation existed that time should be allocated to discussion of three specific issues. In 1999 the Chairman and the delegations to the PrepCom may or may not wish to follow these precedents.

The first challenge confronting the Chairman is the need for prior agreement on the scheduling of the 1999 session. If the past is any guide, it will start with a series of plenary statements by the parties, followed by NGO statements and then cluster debates. There are also likely to be allocations of time for discussion of specific items. The 1998 precedent suggest that arguments may be advanced for dealing with the *Resolution on the Middle East*, a Fissile Material Cut-Off Treaty (FMCT), nuclear disarmament and security assurances in this way.

Other more radical suggestions for structuring the PrepCom include dispensing with the General Debate; holding plenary and other sessions to consider the nature of the strengthened review process; and restructuring the cluster discussions to allow more time for covering contentious issues. There has long been some concern that the current allocation, while allowing equal time for different aspects of the Treaty, does not take into consideration the fact that some relatively non-contentious issues are accorded the same amount of time as issues, such as nuclear disarmament, that may generate lengthy debate. The 1995 document on *Strengthening the Review Process* required the retention of the Main Committee structure for the Review Conference while allowing a reallocation of subjects. The view has been advanced that the PrepComs should use this flexibility to make fundamental changes to the allocation of subjects within the clusters and by implication to the Main Committees of review conferences.

The experience of 1998 suggests that the key to a productive outcome in 1999 may lie in the handling by the Chairman of the negotiations on the texts to be produced by participants in the session. This will require striking an effective balance between using small and representative negotiating groups to undertake these tasks, and giving all parties who attend a sense of effective participation in the deliberations. The latter requires a mixture of the opportunity to take part in plenary and cluster debates and the existence of an effective system of group caucusing. Thus, while it is important that plenary and cluster discussions should occur, it is crucial that informal discussions take place on the various possible products of the session. How these are to be organised, and their scheduling, is a matter for the Chairman and his Bureau, but it may give impetus to the meeting if the outstanding procedural issues could be addressed and settled early in the session.

### ***Procedural Decisions and Recommendations to the 2000 Review Conference***

The 1999 PrepCom will need to address:

- the nomination of the President of the 2000 Review Conference;
- the provisional agenda of the Conference;
- the rules of procedure for the Conference;
- how many conference background papers to commission, and from whom to commission them — the UN Secretariat, IAEA, OPANAL *et al.* These decisions have in the past been made by the penultimate PrepCom session, so that the draft papers could be scrutinised at the final one before presentation to a review conference. This arrangement does not appear feasible in current circumstances, and it should also be noted that since the documents are the responsibility of the organisations that produce them, the PrepCom has no power to make changes to them; and
- the nature of any PrepCom report on substantive and procedural issues and on its recommendations to the 2000 Review Conference.

It is also possible that the PrepCom will have to decide whether to hold a fourth session in 2000.

There is an understanding that a person from the NAM caucus group will be the President of the 2000 Review Conference, and their nominee is likely to be Ambassador J.S. Selebi of South Africa. Agreement on the rules of procedure, commissioning of background documents, agreement on the PrepCom session report and the recommendations to the Review Conference may again raise controversy due to the continued existence of the issues already discussed on page 3, above. It is unlikely that States Parties will resolve them easily and the Chairman may wish to address these issues at an early stage in his consultations.

Lack of consensus on the nature of the strengthened review process is likely to hamper the PrepCom's efforts to agree on the form of its procedural and substantive reports and on its recommendations to the Review Conference. States Parties may have to seek common ground on this issue if they are to make further progress. While many would prefer to leave this to the Review Conference itself, others argue that it is the job of the PrepCom to help the Review Conference establish how to proceed. For example, one analyst familiar with the NPT review process argues that the best way of achieving such a common view point would be for the PrepCom to make a recommendation to the Review Conference on the documents that the Conference should seek to produce.<sup>14</sup> In a similar vein, South Africa submitted a working paper to the 1998 PrepCom Session describing the documents that it believed the 2000 Review Conference should develop, and the type of report the PrepCom should produce to assist the Review Conference in this regard.<sup>15</sup>

The basic questions about the products of the 2000 Review Conference that may need to be addressed in this context include:

- whether they should be in the form of a single Final Declaration, or two separate documents, one looking back at the period 1995–2000 and another looking forward to 2000–2005;
- whether they should be agreed on by consensus, in whole or in part, or by some alternative arrangement;

- whether the Review Conference should examine the experience of the PrepCom sessions in 1997–1999 in implementing the strengthened review conference, and make recommendations on how the PrepCom might be organised in the period 2002–2004.

The Chairman, may wish to consider stimulating discussion on these issues at the 1999 PrepCom Session.

These uncertainties have a direct impact on what the 1999 PrepCom session should attempt to achieve, in particular whether it should seek to produce a draft version of a document that focuses on future needs for adoption by consensus, perhaps based on paragraph 1 of the 1998 *Chairman's Working Paper* (equivalent to paragraph 3 of the 1997 *Chairman Working Paper*) and/or should attempt to split the collation of proposals made by States Parties in paragraph 2 of the 1998 *Chairman's Working Paper* (equivalent to paragraph 4 of the 1997 *Chairman's Working Paper*) into those which are forward-looking and those which are backward-looking. It also remains an open question whether Canada will persist with its proposal to have the PrepCom session report on the range of current substantive issues it has discussed. How much of the work of the PrepCom might be dealt with in the cluster discussions and how much through the Chairman's consultative process is another contentious issue.

One possible option to bring these sets of issues together in order to make recommendations to the Review Conference would be to give those involved in the cluster debates the task of streamlining the compendium of proposals contained in paragraph 2 of the 1998 *Chairman's Working Paper*, and possibly with separating out the forward-looking proposals from the backward-looking ones, while leaving negotiations on developing the draft version of the consensus forward-looking recommendations, and any proposals for amending the implementation of the strengthened review process, to the Chairman's consultations. A second option would be to set aside all aspirations to undertake the latter two tasks, and instead have the session concentrate its attention on the minimalist objective of streamlining the collation of proposals and separating out the forward-looking ones from the backward-looking ones, in order to provide the Review Conference with materials upon which to base its deliberations.

### ***Substantive Issues and the 1999 PrepCom***

Several sets of political issues are likely to affect the ability of the 1999 PrepCom to transmit substantive recommendations to the 2000 NPT Review Conference. Some of these have made frequent appearances in past NPT discussions: others could be injected into the debates for the first time at this session because of contemporary events and developments. For convenience, they will be discussed within the framework adopted by the 1995 Principles and Objectives decision document.

### ***Universality***

NPT member states subscribe to the practical goal of bringing all possible parties into the Treaty. In current circumstances this means that attention will be focused upon the four UN member states which are currently non-members of the NPT: Cuba, India, Israel and Pakistan. Of these, Cuba has no unsafeguarded nuclear facilities and it is a signatory of the Treaty of Tlatelolco (which established

the Latin American nuclear-weapon-free zone). Its refusal to sign the NPT appears to be related to non-nuclear issues, such as the continued existence of the US Guantanamo base, and as a consequence it is the least likely non-NPT party to generate controversy.<sup>16</sup>

Israel is now the only state in the Middle East which is a non-signatory of the NPT. This makes it possible for the Conference to address Israel's activities directly without naming it, by urging those non-party states in the Middle East region to act in specific ways. However, the differences between those states that wished to see agreement on steps to implement the 1995 *Resolution on the Middle East*, which was a pre-requisite for Arab states to acquiesce to the indefinite extension of the Treaty, and those that sought to avoid this, was the immediate cause, as noted above, of the inability of the 1998 PrepCom session to agree on a substantive report. The *Resolution* included a call to 'all states of the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible'. There is little indication that these differences will be less acute in May 1999 than twelve months ago. Moreover, the 4 May deadline for the completion of the Oslo Peace Process and the run-up to elections for a new Prime Minister and government of Israel, which are due to take place in mid-May, may exacerbate tensions over the matter. Thus the prospects for agreement on this issue appear limited at best.

The nuclear tests conducted by India and Pakistan in May 1998, immediately after the second PrepCom session, appear to make extremely remote the prospects of them acceding to the NPT as non-nuclear-weapon states, while the wording of the Treaty precludes them from acceding as nuclear-weapon states. Many states parties to the Treaty were extremely concerned that the international norm established by the NPT against the proliferation of nuclear weapons had been breached. Many had also hoped that agreement on a Comprehensive Test Ban Treaty (CTBT) meant that an international norm against the testing of nuclear weapons was developing and were extremely concerned that India and Pakistan had undermined this prospect. States parties will wish to voice their opinions on these issues, and highlight the need to ensure that the two states do not gain status or any other rewards from their actions. Whether they will be able to do so in a collective manner, however, may depend on whether those states which took a principled stand against the Canadian 'dual track' proposals in 1998 will sustain this posture in 1999. On a positive note, however, all states may wish to acknowledge Brazil's accession to the Treaty since the last PrepCom session.

One final item, loosely related to the issue of universality, should also be noted. It has remained unresolved for some years, and has been given added significance by the current armed conflict in the Balkans. Following the break-up of the Socialist Federal Republic of Yugoslavia (SFRY), a state party to the NPT of long standing, several of its constituent republics acceded to the Treaty as independent states. The Federal Republic of Yugoslavia (FRY), which comprises Montenegro and Serbia, claimed they were entitled to attend NPT meetings as representatives of the SFRY. This claim was contested by the newly independent republics and their supporters. The NPT depositaries (the Russian Federation, the United Kingdom and the United States) have handled this issue previously by agreeing to resolve it in consultation

with other states parties, while persuading the FRY not to take the SFRY seat at NPT meetings. To date, however, it is not clear that these consultations have produced any positive result.

### **Nuclear Non-Proliferation**

Since neither India nor Pakistan were NPT parties, their actions in testing nuclear devices do not constitute breaches of the Treaty. The core issue under this heading therefore remains compliance with articles I and II by its parties. In the case of article I this may involve accusations that specific NWS or NNWS have assisted other states to acquire nuclear weapons, and in the case of article II that specific NNWS have been seeking to do so. Accusations have been made in the past also that transfers of information, technology and material between NWS constitute a breach of article I. The NWS, however, deny that the exchanges that have taken place constitute any breach of the Treaty. These cases all highlight its lack of any mechanisms, other than the Review Conference process, for dealing with such allegations. Finally, the issue of the stationing of nuclear weapons on the territories of non-nuclear-weapon states, and their access to such weapons, may be raised in the context of NATO enlargement to include the Czech Republic, Hungary and Poland.

### **Nuclear Disarmament**

Disagreement over this issue has been a permanent feature of past NPT meetings, as a result of the Treaty being viewed by most parties as being both a non-proliferation and disarmament treaty. Its article VI is the only legal document through which the NWS have committed themselves to negotiate 'in good faith on effective measures relating to nuclear disarmament'. The 1995 *Principles and Objectives* decision document specified a programme of action which contained an immediate objective of a CTBT by 1996; a longer term objective of an FMCT; and a general objective of the determined pursuit by the NWS of systematic and progressive efforts to reduce nuclear weapons globally. The first has been achieved. Some limited progress has been made on the second through the establishment in 1998 of an *ad hoc* committee to negotiate a fissile materials ban in the CD. However, the work of this Committee appears to be stalled in 1999, in part because of the refusal of specific NWS to agree to discuss how to "pursue" nuclear disarmament, and thus address the implementation of the third general objective.

The lack of visible movement towards disarmament does not generate great optimism that the political situation in 1999 will be conducive to productive discussions on this issue. The NATO bombing of targets in the FRY led to the Russian Duma taking no action to ratify START II, while only two of the five NWS have ratified the CTBT, and the outcome of the September 1999 conference to discuss its entry into force is uncertain. The US appears to be moving slowly towards a decision to deploy a national ballistic-missile defence system, which would undermine some of the foundations of current arms control agreements. Above all, little progress appears to be being made towards a common vision for a future global disarmament process which could determine the priorities for disarmament in the five-year period beyond 2000. The latter is something that the Review Conference may wish to address and the PrepCom session discuss in order to identify a range of alternative actions to recommend to that Conference in that context.

## **Nuclear-Weapon-Free Zones (NWFZs)**

The target set by in the 1995 *Principles and Objectives* decision document was that additional NWFZs should be created by 2000. This target has been met. The South East Asian 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, however, while the latter has not obtained sufficient ratifications to bring it into force. In addition, Mongolia has gained UN General Assembly recognition as a one-state, self-declared NWFZ, while negotiations to produce an agreed text on a Central Asian NWFZ treaty are well advanced. Thus a majority of NPT parties now reside within a NWFZ, with the numbers likely to rise further. However, the aspirations of Middle East states to create a zone free of weapons of mass destruction remain unfulfilled.

## **Security Assurances**

Security assurances are viewed by many NNWS within the NPT as interim measures for their security pending the arrival of a nuclear-weapon-free world. They are also seen as a *quid pro quo* to NNWS from the NWS for becoming parties to the NPT. Such assurances have been given in the past in two forms: negative ones committing NWS not to attack them, and positive ones of assistance in the event of threat of attack or attack with nuclear weapons. In addition, there has been a long-standing debate over whether both types of assurance should be offered to NPT NNWS only, or to all NNWS. This situation has been complicated further by India and Pakistan's self-declared nuclear-weapon stance.

The current thrust of these exchanges centres on whether negative assurances should be provided in a legally binding form, and whether they should go beyond the existing unilateral declarations on the subject made by the nuclear-weapon states. In addition, China believes that they should encompass no-first-use commitments by all the NWS. The United States, on the other hand, has argued at past PrepCom sessions that unconditional negative assurances should be provided to those states which are parties to a NWFZ, but not necessarily to those NPT parties which are outside such zones. While it is unclear what priority NNWS attach to this issue at the moment, it is likely to be a significant element in their agenda of issues to be addressed at the PrepCom session.

## **Safeguards**

Since 1990 and the revelations of the existence of a clandestine nuclear weapon programme in Iraq, an NPT party, a range of actions have been taken to enhance the scope and effectiveness of the IAEA/NPT safeguards system based upon the standard agreement between member states and the Agency, known as INFCIRC/153. These culminated in 1993 in the initiation of a process to comprehensively strengthen that system, known informally as '93+2'. Many of the measures proposed were rapidly adopted and implemented because authority already existed for this under the existing agreement. Others were deemed to require additional legal authority, and this was to be provided through an Additional Protocol to INFCIRC/153, INFCIRC/540 (corrected). Some states have now ratified this Protocol but, until all states have done so, its existence creates two parallel safeguards systems. Great efforts are

thus likely to be made in the period before the 2000 Review Conference to encourage all NPT parties to do so.

## **Peaceful Uses of Nuclear Energy**

Two specific issues may be aired under this heading in debates in 1999. 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 efforts recently to become more transparent about their activities, but whether the Information Seminars held by them in 1997 and 1998 constitute the comprehensive dialogue with non-members demanded by some of the latter may be a matter of 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-type 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 Chinese nuclear-related exports to Pakistan and Russian 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.

## **Conclusions: Choices for the 1999 PrepCom Session**

The 1999 PrepCom session is an important one in the history of the NPT, for the success or failure of the 2000 Review Conference may depend on its work. If the 2000 Review Conference does not produce an outcome which indicates to the majority of States Parties that the review process has been materially strengthened, then many of them may conclude that the NWS have reneged on the commitments they made in 1995 at the time the Treaty was extended. Such an outcome would weaken the Treaty and the nuclear non-proliferation regime at a time when the global political situation, afflicted not least by armed conflict in the Balkans, the testing of nuclear weapons by non-state parties in South Asia and continuing problems in the Middle East, is in particular need of the stability it provides. Under these adverse circumstances the machinations of conference diplomacy may appear subsidiary issues, but a successful outcome to the PrepCom session will nevertheless play a part in ensuring the non-proliferation of nuclear weapons and furthering nuclear disarmament.

The proceedings of the 1998 session demonstrated that procedural, organisational and substantive issues have become inextricably intertwined in the NPT review process. If the 1999 PrepCom is to avoid the pitfalls encountered in 1998 and to forward substantive recommendations to the 2000 Review Conference it will need to identify what role it can most constructively play. From that perspective, the central choice facing the Chairman and the participants in the 1999 PrepCom Session is between leaving the issue of the nature of the strengthened review process for discussion at the Review Conference in 2000, or choosing to take up the matter and give it impetus by addressing the question in

1999. The former option might reduce the time available for the Review Conference to discuss substantive issues; the latter may provide guidance to the Review Conference on the way ahead for the strengthened review process and alert the Conference President to the potential stumbling blocks in this area.

This choice is crucial because its consequences for the organisation of the PrepCom are radically different. If the former route is chosen, the PrepCom is likely to focus its work on the *Chairman's Working Paper* by developing the draft consensus text and adding to, and refining, the compendium text of states' proposals. In addition, efforts might be made to sub-divide the texts, especially the latter one, into forward-looking and backward-looking sections. Both documents could then be transmitted to the Review Conference as the recommended bases for producing either the forward- and backward-looking components of a single Final Declaration, or for drafting two documents, a forward-looking and a backward-looking one. One further option would be for the latter to be adopted by a method short of consensus.

If the latter path is chosen, then work on the *Chairman's Working Paper* may become subordinated to forging agreement on the nature of the strengthened review process and its products. This will raise issues which States Parties may find difficult to resolve in the limited time of the PrepCom Session, including:

- The products to be produced by review conferences.
- Whether and how the *Principles and Objectives* document should be used to evaluate the implementation of the Treaty over the previous five years?
- Which decisions should be taken by consensus and which by methods short of this?
- Whether PrepCom sessions should be regarded as annual meetings of the parties, similar to the practice found in some other multilateral disarmament treaties or as mini-review conferences; or alternatively whether they should concentrate on preparations for a review conference?
- Whether participants in each PrepCom session should be able to discuss and report on their discussions of current substantive issues?

Irrespective of which of those two paths is followed, if States Parties choose to raise particular issues related to procedure, the PrepCom session will have to address them. In addition, those issues that were the main stumbling blocks in 1998 remain unresolved. It is likely that these issues: the nature of the PrepCom session's recommendations to the Review Conference; whether or not the PrepCom is empowered to make its own substantive report; whether Rule 34 should be changed to incorporate the term 'Subsidiary Body'; and how to deal with the *Resolution on the Middle East*, will be raised in 1999 and the PrepCom must be prepared to address them.

All of these matters will inevitably interact with the political atmosphere in which the PrepCom session will be held. One major uncertainty in this context is the impact of the armed conflict in the Balkans. Other factors will be any further political and nuclear developments in the Middle East, South Asia and Iraq; the status of the START and ABM treaties; and the development of national missile defences by the United States. This is therefore going to be an NPT

meeting where the impact of events outside the conference chamber may be great, and will compound the serious problems inherent in the uncertain modalities of the strengthened NPT review process. Many delegations will therefore look forward to 10–23 May with concern, and with the knowledge that unless firm organisational and procedural decisions are taken early in the meeting, the recommendations that the 1999 PrepCom session should send to the Review Conference under the mandate given to it by the 1995 decision document will be very difficult to forge.

## References and Notes

1. NPT/CONF.1995/32/DEC.3 [NPT/CONF.1995/L.6], proposed by the President.
2. NPT/CONF.1995/32/DEC.1 [NPT/CONF.1995/L.4] proposed by the President.
3. NPT/CONF.1995/32/DEC.2 [NPT/CONF.1995/L.5] proposed by the President.
4. NPT/CONF.1995/32/RES.1 [NPT/CONF.1995/L.8 (as amended).]
5. The sole, and rather confusing, exception to this was Nuclear-Weapon-Free Zones. They were discussed in cluster two, though they continued to be reported upon under the heading of Main Committee I in both 1997 and 1998.
6. NPT/CONF.2000/PC.I/32.
7. Ibid.
8. Statement of Mark J. Moher, Representative and Ambassador of Canada to the United Nations for Disarmament to the Second Preparatory Committee of the 2000 Review Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 27 April 1998, p. 2.
9. The Draft Rules of Procedure are reproduced in the seventh edition of the *PPNN Briefing Book Volume II*.
10. This became paragraph 2 in the 1998 draft document [NPT/CONF.2000/PC.II/35].
11. This became paragraph 1 in the 1998 draft document.
12. NPT/CONF.2000/PC.II/36.
13. NPT/CONF.2000/PC.II/35.
14. See Rebecca Johnson, 'Use 1999 to Rescue the NPT Review Process', *Disarmament Diplomacy*, 33, December 1998/January 1999, pp. 3&4.
15. NPT/CONF.2000/PC.II/17.
16. See Lawrence Scheinman, 'Engaging Non-NPT Parties in the Nuclear Non-Proliferation Regime', *PPNN Issue Review No.16*, May 1999, p. 2.

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