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# PROGRAMME FOR PROMOTING NUCLEAR NON-PROLIFERATION

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## The Strengthened Review Process of the NPT: Lessons of the Past and Options for the Future

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### Foreword

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### Background

At the 1995 Review and Extension Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), a decision was made to give this Treaty an indefinite duration. This decision was mutually conditioned by two further decisions on *Strengthening the Review Process* and on *Principles and Objectives for Nuclear Non-Proliferation and Disarmament* and a resolution, sponsored by the three NPT depositary states, on the Middle East. The first of the decisions mandated changes to the function and operation of Review Conferences and their Preparatory Committees (PrepComs). With regard to the PrepComs, these were expected to make recommendations on substance and on the establishment of subsidiary bodies at Review Conferences in addition to their traditional procedural tasks. At the last session of the PrepCom for the 2000 NPT Review Conference in 1999, no such recommendations were forthcoming. As a consequence, the PrepCom stated in its report<sup>1</sup> (para.32) that:

The 2000 Review Conference should examine the functioning of the review process itself, taking account of experience since 1995, and may wish to reflect appropriately the conclusions of its examination.

Given its origins in a political bargaining process among a group of states with a wide range of perspectives on its substance and purpose, it should not have been surprising that problems would emerge over the implementation of the decision on *Strengthening the Review Process*. In evaluating what these have been, this Issue Review will briefly review the contents of the decision; examine what occurred in the three sessions of the PrepCom for the 2000 NPT Review Conference that took place in 1997, 1998 and 1999; offer an appraisal of the functioning of the strengthened review process in those sessions; and consider some options for the types of conclusions that might emerge from the examination of the functioning of the review by the Review Conference.

### The 1995 Decision on Strengthening the Review Process

The 1995 decision on *Strengthening the Review Process* contained three paragraphs related exclusively to NPT Review Conferences, two to the PrepComs for them, and one to both.

The first of the paragraphs dealing with Review Conferences, (para.2), formalised and confirmed what had already become a customary practice, namely that they should be held every five years. A second, (para.5), 'concluded that the present structure of three main Committees should continue', and set out methods of preventing overlaps between their work. The third, (para.7), emphasised 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.

One of the paragraphs dealing with the PrepComs (para.3) mandated the holding of their sessions 'normally for a duration of 10 working days' in 'each of the three years prior to the Review Conference'. It also allowed for a fourth session to be held in the year of the Conference. A second (para.4) specified that these PrepCom sessions were to have two tasks. One task was:

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 therein to the Review Conference.

The 'principles, objectives and ways' were to include those identified in the *Principles and Objectives* decision. The second task was to 'make the procedural preparations for the next Review Conference.'

The final paragraph (para.6) dealt with both Review Conferences and their PrepComs. It sought to facilitate a 'focused consideration' of 'specific issues relevant to the Treaty' by making it possible to establish 'subsidiary bodies' within 'the respective Main Committees'. It delegated the task of recommending the establishment of such bodies 'in relation to the specific objectives of the Review Conference' to 'the Preparatory Committee for each Review Conference'.

Several issues were not directly addressed in the document containing this decision, including:

- the substantive agenda for the PrepCom sessions;
- whether PrepCom sessions could undertake tasks other than making recommendations to Review Conferences;
- what were to be the specific outcomes or products of PrepCom sessions and Review Conferences; and
- the functions of the 'subsidiary bodies' that PrepComs could recommend for creation within the Main Committees of Review Conferences.

In addition, it should be noted that the second decision document, that on *Principles and Objectives*, stated in its preamble that it was the product of a desire for:

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 VIDL, paragraph 3, of the Treaty.

However, this document did not specify how this evaluation was to be implemented.

### The 1997 PrepCom Session<sup>2</sup>

The strengthened review process began in April 1997 with the opening of the first session of the PrepCom for the 2000 NPT Review Conference in New York. After a short, formal general debate, the parties engaged in informal discussions on three 'sets of issues (clusters)', which bore a very close resemblance to the items covered by each of the Main Committees in 1995. Equal time was allocated for the discussions within each of these clusters. A decision was taken that 'summary records would be provided at each session of the Committee's opening meeting, the general debate and the closing meeting'. Representatives of Non-Governmental Organisations (NGOs) were allowed to address the delegations in the conference room during a half-day session set aside for this purpose, and were allowed to be present at the meetings where summary records were to be taken.

The 1997 PrepCom session resulted in three types of activity taking place:

- the circulation of working papers on a variety of topics, in a manner similar to Review Conferences;
- a general debate on each of the clusters of issues, with prepared statements being made on national positions, rather than any spontaneous dialogue occurring between the parties; and
- the convening by the Chairman of an informal Consultative Group of 20–25 states, which sought to produce a document reporting on the outcome of the session.

The latter body concentrated its attention on two issues:

- producing a 'rolling text' on substantive matters that might be passed on to the Review Conference; and
- agreeing on a set of recommendations to the 1998 PrepCom session on how this session might conduct its business.

The result of this activity was a document containing four elements:

- a report on substantive and procedural issues relevant to the 2000 Review Conference and the 1998 PrepCom session [pp. 1–9];
- a Chairman's Statement [p. 10];
- the summary records of the 1997 session [Annex I, p. 11]; and
- a Chairman's Working Paper [Annex II, pp. 12–44].

In practice, the report on the session did not cover the substantive discussions, but did record the procedural decisions that had been taken. The Chairman's Statement arose from the desire of some delegations to have a more focused discussion at the 1998 PrepCom session on certain key issues [security assurances, the *Resolution on the Middle East* and a ban on the production of fissile materials for nuclear explosive devices]. The summary records contained a reference to their document numbers only, while the Chairman's Working Paper contained a recommendation that in 1998:

the official documents and other proposals submitted by delegations ... will be taken into account during further work on

draft recommendations to the Review Conference and also the working paper submitted by the Chairman which will be interpreted in the light of the official documents and other proposals made by delegations.

This Working Paper contained two substantive elements:

- text where general agreement existed 'pending final agreement on all draft recommendations at the last session'; and
- a collation of the many proposals that had been made by delegations in the course of the session, structured around similar sub-headings.

No attempt was made in this Working Paper to separate the forward looked elements from the backward looking ones.

Some participants saw the first element of the Chairman's Working Paper as the basis for negotiated texts on the substantive products of the PrepCom and the Review Conference, with the second element serving as a 'resource' which the PrepCom and the Review Conference might draw upon in its future work. In addition, it is worthy of note that the nuclear-weapon states made a single joint statement in the course of the session, and several made national ones, detailing the progress they had made in fulfilling their disarmament commitments under Article VI of the Treaty. This indicated that they saw the PrepCom sessions as places where they were expected to offer an accounting of their disarmament activities over the previous year or years.

### The 1998 PrepCom Session<sup>3</sup>

This PrepCom session comprised a plenary debate; three cluster discussions, with time allocated at the end of each cluster for an exchange of views on the special topics selected in 1997; and a discussion and negotiation on recommendations to the next PrepCom and the 2000 Review Conference.

The cluster debates once again involved prepared statements but few meaningful exchanges. Four sets of significant disagreements emerged from these discussions:

- whether the PrepCom sessions should be seeking to generate a rolling text for transmission to the Review Conference, or would produce its recommendations to the Review Conference in some other way at the final session of the PrepCom;
- whether the sessions would be 'mini-review' meetings, whose main function would be to subject the implementation of the Treaty and the objectives contained in the *Principles and Objectives* decision to a review almost every year, with a brief substantive report on its discussions being produced on each session;
- whether rule 34 of the rules of procedure should be amended to take into account the 'subsidiary bodies' that the decision document on *Strengthening the Review Conference* mandated PrepComs to recommend for creation by NPT Review Conferences; and
- differences over the status and implications of the 1995 *Resolution on the Middle East* and how it might be implemented.

Attempts to develop the texts inherited from the 1997 PrepCom session were slow to get under way, concentrating initially on editing the lengthy collation of proposals contained in the second part of the Chairman's Working Paper from the previous year. By the middle of the second week, the deep divisions over rule 34; the Canadian proposal for a report on the substantive discussions; and the *Resolution on the Middle East* were becoming increasingly obvious. At that point the Chairman took a decision to reorient his consultations around three working groups, focusing on:

- ‘enriching’ the first section of the 1997 Chairman’s Working Paper;
- trying to resolve the most urgent procedural issues, including rule 34 and the allocation of time to specific subjects in the next PrepCom session; and
- the Canadian proposal for a report on the substantive discussions.<sup>4</sup>

By the final evening some progress had been made by the first of these working groups, little by the second and an amended version of the text proposed by Canada for the substantive report was in existence from the third. This included language on the *Resolution on the Middle East*. However, when the latter was considered in plenary, the United States representative indicated his objection in principle to this document, as he argued that it had no direct linkage to the sole substantive task given to the PrepCom in the 1995 decision, namely making recommendations to the 2000 Review Conference. A request was then made by Canada for the document to be considered paragraph by paragraph, with the states parties indicating if they agreed with each paragraph in turn. When the paragraph dealing with the *Resolution on the Middle East* was objected to by the United States, however, the chair of the Non-Aligned caucus group indicated that his group were not prepared to proceed further if this paragraph was not in the report of the session. At this point, further efforts to reach agreement on both this draft report on current substantive issues, and on all other matters, were abandoned.

As a consequence, in 1998:

- there was no Chairman’s Statement on how the 1999 PrepCom session was to be organised;
- there was no Chairman’s Working Paper, though the work that had been done on the two elements of the 1997 Chairman’s Working Paper was annexed to the formal report of the session as a working paper;
- no decisions had been taken on the production of the background documents for the 2000 Review Conference;
- no recommendations had been agreed for the creation of ‘subsidiary bodies’ at the Review Conference; and
- no decisions had been taken on the rewording of para. 34 of the draft rules of procedure to incorporate specific wording on such bodies.

### The 1999 PrepCom Session<sup>5</sup>

The 1999 session of the PrepCom started with a single day devoted to a plenary exchange of views. Many of the statements and exchanges made during this opening session, the cluster debates which followed, and the discussions on the three topics selected for a special allocation of time in 1997, reflected the deteriorating international security environment. NATO enlargement; nuclear sharing; a Central European Nuclear-Weapon-Free Zone (NWFZ); US national and theatre missile defence systems; the Middle East; interim measures of arms control; the South Asian nuclear tests; START; tactical nuclear weapons and no-first-use agreements all figured prominently in these statements. In addition, China made clear from the start that, following the aerial bombing of its embassy in Belgrade by NATO, its interventions would be strongly influenced by these events. After the general exchange of views, the Chairman convened debates in three clusters, with time again allocated within each for the subjects earmarked for special consideration at the 1997 session.

The second week of the session was devoted to producing recommendations for the Conference. This was assisted by extensive informal consultations, which produced agreement on many of the outstanding procedural issues, including:

- designation of the Conference President (who subsequently withdrew after being transferred to another post by his government and a new one had to be designated) and the nomination of its Secretary-General and the Chairs of its Main Committees;
- dates of the Conference;
- amendment to rule 34 of the rules of procedure to permit the establishment of ‘subsidiary bodies’; and
- background documentation to be prepared for the Review Conference.

Canada did not attempt to re-introduce the idea of a report on the substantive discussions at this session, but its delegation argued for an abandonment of the arrangements under which the Treaty was reviewed on the basis of three clusters of issues in favour of an article-by-article review.<sup>6</sup> Agreement was finally reached on the allocation of items to Main Committees, but without prejudice to proposals for other arrangements.

Extensive discussions took place throughout the session on the nature and number of the documents to be produced by Review Conferences. Initially, a large majority of the delegations appeared to be in favour of two documents, a backward-looking one and a forward-looking one, with others arguing for a third document on the functioning of the strengthened review process and yet others for further documents on specific issues, such as the protocol on security assurances proposed by South Africa. The only states arguing at the beginning for the traditional single Final Declaration were France, supported by Egypt and Iran, but as the session progressed this view gained more supporters.

Meanwhile, at the end of the first week of the session, the Chairman had distributed two working papers. The first contained recommendations from the PrepCom on the products of the Review Conference, as well as other organisational questions such as which ‘subsidiary bodies’ it might create. The second was a paper setting out possible substantive recommendations from the PrepCom to the Conference. The working paper on ‘products’ evolved considerably in the course of the second week and was twice re-issued in a significantly modified form. The changes focused on three distinct issues:

- the number of written products or ‘outcomes’ of the Review Conference. The paper *left the Review Conference to seek to resolve this basic question*;
- the specific recommendations to be made to the 2000 Review Conference on the establishment of ‘subsidiary bodies’. Contested proposals were made for such bodies to be created within Main Committee I (disarmament) and Main Committee II (the *Resolution on the Middle East*). *All decisions on the creation of specific subsidiary bodies were remitted to the Review Conference*; and
- item 17 on the draft Agenda for the Review Conference. It was agreed to change the wording of this Item to cover ‘measures aimed at strengthening the implementation of the Treaty and achieving its universality’, and discussion of this was allocated to all three Main Committees, thus offering a specific context for discussing the contents of the three collateral documents of 1995 in all of them.

The second working paper distributed by the Chairman was a reworking of the first element of the Chair’s Working Papers from the first and second sessions. The 1999 document consisted of 31 paragraphs, structured under the headings used in the 1995 *Principles and Objectives* decision document. Discussion on this paper was conducted by requesting comments on a paragraph by paragraph basis. At the end of this process delegations were encouraged to put all proposals on the text that had been made orally in written form for consideration by the Chairman. At this stage in the proceedings, mid-way

through the second week, the expectation of many delegations was that the Chairman would rapidly produce a revised text of what were seen as the substantive recommendations of the PrepCom to the Review Conference, and that detailed negotiations on its wording would then follow in a smaller group.

This Chairman's text incorporated some of the specific proposals made in the earlier discussions of the draft, to which no strong objections had been made, and removed some of the sections which had attracted significant opposition. As a result, the document expanded from 31 to 61 paragraphs. When the Chairman indicated that he proposed to move into detailed negotiations on the text, several delegations indicated they were willing to accept the document in its existing form if its status was that of material to be forwarded to the Review Conference for further development, and not as a set of consensus recommendations: others did not.

At this point, the Chairman moved to a discussion of his second text on a paragraph-by-paragraph basis, in order to discover which paragraphs were unacceptable in their existing form. 31 out of the 61 paragraphs were objected to during this process. As this exercise proceeded, however, it became clear to many delegations that the key to whether the document would represent an agreed set of 'recommendations' to the Review Conference was to be found in whether its contents would have priority status over other inputs into that Conference. There was no agreement on a way forward, and as a consequence, the session ended with both versions of the Chairman's Working Paper being forwarded to the Review Conference; no indication being offered of which of the 61 paragraphs in the second version had been objected to; and the report of the session recording that *'the Preparatory Committee was unable to reach agreement on any substantive recommendations to the 2000 Review Conference'*.

### **An Appraisal of the Operations of the Preparatory Committee, 1997–99**

In any appraisal of the operation of the PrepCom during 1997–99, two contextual factors must be taken into account. First, many of the differences over its operation had links to intractable substantive issues generated by events external to the PrepCom process. Second, the changes in the role of the PrepCom were only one element of the strengthened review process: the other was changes in the way the Review Conference itself was to be conducted. As a consequence, the first cycle of the strengthened review process may need to be completed before it will be possible to evaluate fully the effectiveness of that process. However, it is feasible at this point to make an interim assessment of the way the PrepCom functioned between 1997 and 1999, and to identify the options for change in the workings of the PrepCom that the Review Conference could consider for implementation in the period 2000–05.

#### ***The PrepCom's Role***

It appears that from 1995 onwards, states variously viewed the role of the PrepCom as fulfilling at least four different general objectives:

- placing more regular political pressure on parties to implement their commitments under the Treaty by forcing them to address the issues normally discussed at Review Conferences and requiring states to account for their performance, on a near-annual basis;
- making the process of reviewing the Treaty at a Review Conference more effective and using the time of that Conference more efficiently by preparing the ground for its debates in advance;

- providing the parties with the opportunity of discussing relevant emerging issues on a more timely basis than before; and
- placing greater emphasis than before on 'looking forward' as well as 'looking back'.

In the course of its three sessions the PrepCom arguably has:

- placed more regular pressure on states parties to address whether they were fulfilling their commitment under the Treaty. However, its effectiveness is a matter for debate;
- attempted to prepare the ground more effectively for debate at the Review Conference by discussing substance extensively, and introducing a mechanism to focus discussion on specific issues. However, it failed to make any substantive recommendations or produce an agreed product from those discussions;
- sought to address both 'forward-looking' and 'backward-looking' issues. However, it did not differentiate between the two in draft documents nor make any systematic assessment of the implementation of the *Principles and Objectives* decision; and
- attempted to discuss and report on contemporaneous issues. However, no agreement was possible on either the principle or content of such reports.

#### ***The Substantive Outcomes of the PrepCom***

Throughout its operation the PrepCom for the 2000 Review Conference was hampered by lack of clear guidance as to the detailed nature of the substantive product it should seek to produce. This guidance was lacking because in the first cycle of the strengthened process, there was no experience to base judgements on what the Review Conference itself would need from the PrepCom. As a consequence, a range of possible outcomes from the PrepCom was suggested, including:

- a 'rolling text' which would form the recommendations from the PrepCom to the Review Conference. This could either be consensual in nature or drafted on the basis of there being both agreed and non-agreed items;
- a collation of proposals and other texts for use by the Review Conference as resource material, and having equal standing to national working papers;
- a text summarising the debates from each PrepCom session; and
- a text distinguishing between the review of the operations of the Treaty since the last Review Conference and the targets that might be agreed to or adopted by the parties for the next five year period.

#### ***Disagreements over Principles***

At the core of the difficulties over the implementation of the strengthened review process were disagreements in principle. These will need to be taken into account if any agreement is to emerge at the 2000 Conference on the implementation mechanisms for that process in 2000–05. They included whether:

- PrepCom sessions could address issues which might not be relevant to discussions at the Conference that follows;
- PrepCom sessions were meetings of the parties to the NPT with decision-making powers, or subordinate bodies of a Review Conference, which alone has the ability to make decisions;
- the strengthened review process should implement more focused procedures, or should continue to allocate equal time to the issues covered by the Main Committees; and
- the strengthened review process should be regarded as a single, coherent activity, held together by the requirement to start preparing material for the Final Declaration of a

Review Conference three years before it is to be held, or could be desegregated, with some PrepCom sessions performing one range of tasks and others a different range?

### Some Interim Conclusions

Several evaluations have emerged of the success or failure of the PrepCom for the 2000 Review Conference. Some observers argue that as the process is still in its infancy, it was only to be expected that its mechanisms did not operate in a particularly effective manner. They have suggested that nevertheless the PrepCom served a useful function by providing a road map showing the various routes the strengthened review process might wish to take procedurally; airing substantive issues; and creating a useful resource for the Conference in the form of the various Chairman's Working Papers. Others believe that the outcome of the PrepCom was determined by outside events and that if the international security climate had been more propitious, it would have been able to function effectively through the mechanisms it was using. Yet others blame the NWS for the inability of the PrepCom to agree recommendations, by not living up to the commitments they made in 1995.

A final group, however, believe that it is unrealistic to expect the PrepCom to play the role of making recommendations on substance that it was given by the 1995 decision. They argue that each PrepCom session is part of a five-year cycle that culminates in a Review Conference, which must assess past performance and prescribe future action. Formulating recommendations for specific language on the way the Treaty has operated in the past, and on the needs and nature of future action, inevitably involves a process of laborious bargaining between states parties. There will always be different views on many of the issues discussed, and this means that producing any generally acceptable recommendations from this process involves compromises all around. As national or caucus group positions might have to be sacrificed, these necessary compromises will only be made when all other possibilities have been exhausted. The moment for this is at the end of the negotiation process, rather than during it, and thus in the final week of a Conference, and not at the earlier PrepCom stage. Only when issues are uncontroversial might recommendations emerge from the PrepCom process, but the evidence of the 1999 session suggests that states parties are not prepared to have these sent to the Conference in isolation.

Even if this last view is accepted, however, it does not mean that the key elements of the strengthened review process cannot be implemented. There is no apparent disagreement on what constitutes a strengthened review process, namely that:

- substance should be discussed by the PrepComs;
- the NWS should be called to account for their nuclear disarmament activities on a near-annual basis; and
- the review process should look forward as well as back.

Disagreements do exist, however, over the issues of principle identified earlier in this Issue Review. Unless and until these differences can be resolved, ignored or by-passed, the modalities of the strengthened review process and its outcome threaten to remain a contested area.

### The Review Conference's role in 'reviewing the review'

If the Review Conference is to recommend a specific mode of operation for the review process in 2000–05, it must start from the *Strengthening the Review Process* decision of 1995, and the need for it to be neither rewritten nor by-passed. Rather, the objective should be to interpret and clarify any ambiguous language in this decision, and reach agreement in a consensual

manner on issues of detail on which it was silent. One responsibility of the 2000 Review Conference will be to clarify the purpose of the PrepCom and provide it with a more workable set of proposals for implementing the decision on *Strengthening the Review Process*. Although this will not be an easy task, it may be assisted by decisions on its own products and outcomes. These decisions will offer the PrepCom for the 2005 NPT Review Conference more positive guidance than was available to its predecessor on the types of recommendations it should produce.

Within that context, it seems desirable for the Review Conference to first reach agreement on the general purpose of the strengthened review process, and then establish the role of the PrepCom within it. It will need to make clear the status of the PrepCom. Is it a meeting of the parties rather than a subordinate body of a Review Conference, and does it have the authority to produce interim reports? If states parties answer 'yes' to the latter question, an annual assessment of progress towards the goals set by a previous Review Conference will be possible. If states parties answer 'no' to both parts of this second question, the issue becomes what tasks should the PrepCom undertake?

It could engage in the type of accounting for actions by the NWS witnessed from 1997–99, and engage in drafting language on relatively non-controversial substantive matters for a 'rolling text', though whether many states parties would regard this as worthwhile must be open to doubt. It is unlikely they will wish to invest much time and effort in such proceedings, or send senior diplomats and significant delegations to three PrepCom sessions that were merely talking shops. Under these conditions the strengthened review process could die a slow death for lack of support.

This suggests that the majority of states parties are only likely to continue to support the strengthened review process and participate in it fully if the PrepCom is deemed to have the authority to make interim evaluations and judgements of progress towards the full implementation of the NPT. Only under those conditions is a meaningful and cost-effective strengthening of the review process likely to be perceived by most states parties as having been achieved.

### Options for the Next Cycle of the Strengthened Review Process

Two basic caveats have to be made before drawing conclusions from the experience of the PrepCom in 1997–99. One is that this experience cannot be evaluated in isolation from external circumstances and from an appreciation of the PrepCom's essentially experimental nature. The second is that it is premature to make any final assessment of the success or failure of the strengthened review process until the first and second cycles have occurred. In the meantime, however, it is necessary to draw interim conclusions at the 2000 Review Conference, and seek to implement any changes deemed necessary to enable the process to operate more effectively in the period through to 2005.

Such changes must focus, above all, on strengthening the effectiveness of the review process in achieving its substantive aims. They will involve making judgements among competing proposals for how this could be done. A range of these exists, and by way of conclusion this *Issue Review* offers a brief description of two of them. Both assume that PrepCom sessions must have some authority to produce interim reports, and that the aspiration to concentrate on producing a 'rolling text' for NPT Review Conferences would be abandoned. Whether these changes will be acceptable to all the states parties attending the 2000 NPT Review Conference, however, remains to be seen.

### **An Implementing or Accounting Committee**

The first option, involving a process of periodic reviews of the implementation of the Treaty, has two variants. The first is that the PrepCom should become an 'implementing committee'.<sup>7</sup> This would be structured to promote discussions aimed at the adoption of an annual 'snapshot' of progress towards the previous Review Conference's forward-looking goals, and of the obstacles that are impeding this. Each session would create markers against which the following year's progress could be compared and offer a means of assessing, on an annual basis, the implementation of the previous Review Conference's decisions and objectives.

The second variant, an 'accounting' committee,<sup>8</sup> focuses on making states more accountable for fulfilling their obligations under the Treaty. This has its roots in a statement made by Jayantha Dhanapala, President of the 1995 NPT Review and Extension Conference, in which he suggested that the strengthened review process could provide permanence of the NPT 'with accountability'.<sup>9</sup> This has also been a theme echoed by Canadian government officials.<sup>10</sup> However, what this implies has been the subject of differing interpretations. While the NWS have had significant progress to report on nuclear disarmament over the last five years, and have produced accounts of what they have done at PrepCom sessions, many states parties have interpreted accountability as covering both what the NWS had and had not done in living up to their Article VI obligations, and how they intend to remedy perceived deficiencies.

To implement 'permanence with accountability', the NWS (and possibly other states),<sup>11</sup> would make statements at each session of a PrepCom on the ways in which they have implemented their obligations under the Treaty; what they have done to meet the objectives set at a previous Review Conference; and what they would do to implement their obligations under the Treaty in the future. Mechanisms might also be created to enable a dialogue to take place on these statements at each PrepCom session through a question and answer process (possibly involving questions at one session and answers at the next). At the end of each year's PrepCom session a report would be made on the discussion, if necessary in a non-consensual manner. Thus the essence of this variant is that it involves both looking forward as well as back.

### **Giving Sessions of the PrepCom Different tasks**

In the period 1995-7, some consideration was given to the idea of having each of the three initial PrepCom sessions concentrate on issues within the remit of one of the Main Committees only, and possibly moving their venue between New York, Geneva and Vienna to facilitate this.<sup>12</sup> This proposal was not implemented, but it did indicate that an alternative method of organising PrepCom sessions within the strengthened review process was to have them focus upon different issues. With the perception emerging strongly from the PrepCom experience in 1997-99 that the early PrepCom sessions are not suitable for engaging in preparations of recommendations to Review Conferences, one way forward may be to disaggregate the tasks of PrepCom sessions, though not necessarily in the manner suggested before the 1997 PrepCom session.

Many ways of implementing such a disaggregation are possible. One which may merit further examination and development is to have states parties meet periodically in the three years [or possibly even four years] prior to the year of a review conference to review progress in implementing the Treaty in the previous period, possibly in the form of the 'implementing' or 'accounting' committee discussed above. This task, if undertaken annually, might be accomplished in a

period other than the 10 working days suggested in the 1995 decision. In the year of a Review Conference, however, one or more further PrepCom sessions of a longer duration might be held, with the specific mandate of making the procedural and substantive preparations for the Conference. One further variant of this option would be to task early sessions of the PrepCom with just collecting ideas and proposals, and only engaging in detailed negotiations on recommendations to the Review Conference at its later sessions.

### **References and Notes**

1. NPT/CONF.2000/1, 21 May 1999
2. For more detailed accounts of this session see *PPNN Newsbrief* No.38, 2nd Quarter 1997, pp1-4 and Rebecca Johnson, 'Reviewing the NPT: The 1997 PrepCom', *Disarmament Diplomacy*, Issue No.14, April 1997, pp 9-25.
3. For more detailed accounts of this session see *PPNN Newsbrief* No.42, 2nd Quarter 1998, pp1-3 and Rebecca Johnson, 'NPT Updates: Reports from the 1998 PrepCom', *Disarmament Diplomacy*, Issue No.25, April 1998 pp 15-20 and 'Reviewing the Non-Proliferation Treaty: Problems and Processes', *Acronym Report* No12, September 1998.
4. The basis for these proposals was contained in a Canadian informal paper *Track II: Canadian Comments* of 6 May 1998. The substantive proposal for language for the report on the session was contained in the Canadian document NPT/CONF.200/PC.II/34.
5. For more detailed accounts of this session see *PPNN Newsbrief* No.46, 2nd Quarter 1999, pp1-5 and Rebecca Johnson, 'NPT Report', *Disarmament Diplomacy*, Issue No.37, May 1999, pp 8-27.
6. 'Further enhancing the strengthened review process for the Treaty: Working paper submitted by Canada', NPT/CONF.2000/PC.III/3.
7. This idea has been advocated by Rebecca Johnson in her *Acronym Report 13, Non-Proliferation Treaty: Challenging Times*, Part III, pp 4-6, <http://www.acronym.org.uk/a13pt3.htm>.
8. John Simpson, *An Appraisal of the Strengthened Review Process, 1997-1999*, unpublished paper prepared for International Briefing Seminar on Issues and Options for the 2000 NPT Conference (PPNN Paper No.CG27/2), Chauncey Conference Center, Princeton, New Jersey, 10-12 March 2000. However, the origins of this operationalisation of the idea are to be found in an informal paper on the subject developed jointly with Ben Sanders.
9. For a later reiteration of this idea, see Jayantha Dhanapala, 'The NPT Regime: External and Internal Challenges,' statement at *The Seventh Carnegie International Non-Proliferation Conference*, January 11, 1999 at <http://www.ceip.org/programs/npp/dhanapala.htm>
10. See NPT/CONF.2000/PC.III/3, op. cit. and Interview with Christopher Westdal, Canadian Ambassador for Disarmament reported in 'Delegates Perspectives on the 1995 NPT Review and Extension Conference', *The Nonproliferation Review*, Spring/Summer 1995, Vol2:3, p 2 where he stated 'Our main objective for the Conference was to gain permanence [of the NPT] with accountability'.
11. There seems no intrinsic reason why NPT commitments in areas other than disarmament might not be handled in the same manner.
12. The idea being promoted prior to 1997 was that Main Committee I issues might be dealt with in Geneva where the CD delegations were based; Main Committee II issues in Vienna where the IAEA Ambassadors were based and Main Committee III issues in New York.

### **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 universal-

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

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