
Fiddling While Rome Burns?

The 2004 Session of the PrepCom for the 2005 Review Conference

JOHN SIMPSON AND JENNY NIELSEN

A range of disturbing developments in the international nuclear nonproliferation arena took place during the twelve months between the 2003 and 2004 sessions of the Preparatory Committee (PrepCom) for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (2005 NPT RevCon). Yet the 2004 session, as many of those attending might be forgiven for characterizing it, was a case of “fiddling while Rome burns.” While most of the key contemporary issues found their way into the debates at the PrepCom’s 2004 session, its ending was confused and confusing. This outcome served to reinforce those voices arguing that the NPT is neither where the nuclear nonproliferation “action” is, nor a forum for serious dialogue and potential agreement on nuclear nonproliferation issues. For them, moves by “coalitions of the willing”—rather than collective action in an NPT form—are now the main method for effectively combating noncompliance with the existing nonproliferation norms and rules.

Closer analysis of what happened also suggests that this meeting saw the beginnings of a far-reaching struggle between those who now seek to modify the existing understandings and rules underpinning the NPT’s nonproliferation provisions, and to implement them effectively, and those who are equally adamant that its disarmament provisions should also be further developed and implemented. The

roots of this struggle, the differing threat perceptions of the NPT parties, only started to become fully transparent after September 11, 2001 (9/11); its consequences were being expressed through what appeared to be esoteric procedural and linguistic disagreements, but which were in practice a classical political debate involving “coded language.” What follows will therefore be an attempt to provide a descriptive account of this meeting, the key issues that it attempted to address, and the problems it encountered. It will then offer an analysis of the “coded” debate and some thoughts on its implications for the 2005 RevCon.

THE PURPOSES OF THE 2004 PREP COM SESSION

The third and final session of the PrepCom for the 2005 NPT RevCon had three main functions: to exchange information and perspectives among states on the current status and priorities of the nuclear nonproliferation regime, to make recommendations on substantive and organizational matters to the RevCon, and to make the necessary procedural arrangements for it. Given these varied tasks, it was perhaps inevitable that substantive and procedural debate would become intertwined. However, this proved to be the first time since 1994-1995 that agreement on the necessary procedural arrangements to enable the RevCon to start was held hostage to the resolution of substantive issues.

Traditionally, an NPT PrepCom has been tasked with agreeing on eight sets of issues in advance of a RevCon: its dates and venue, its draft rules of procedure, its president and other officers, its secretary general, its provisional agenda, the financial arrangements for the entire review cycle, background documentation for the RevCon, and the documents the RevCon is to seek to produce.

In 1995, as necessary for the indefinite extension of the treaty, two further tasks were assigned to the PrepCom by the document *Strengthening the Review Process for the Treaty*.¹ These involved making recommendations to review conferences on “Principles, objectives and ways to promote the full implementation of the Treaty, as

well as its universality” (para.4) and to establish subsidiary bodies within its three main committees to provide a focused discussion on issues relevant to the treaty (para.6). In 2000, this incremental process of adding tasks to the PrepCom was taken further when its Final Document “called” on the “Preparatory Committee to make recommendations to the 2005 Review Conference” on “legally binding security assurances by the five nuclear-weapon States to the non-nuclear-weapon States parties” to the NPT.²

EVENTS AT THE 2004 PREP COM SESSION

The 2004 PrepCom session took place over 10 working days in the United Nations building in New York from Monday, April 26 to Friday, May 7, 2004, under the chairmanship of Indonesian Ambassador Sudjandnan Parnohadiningrat. Nominally, the meeting was attended by 123 of 189 states parties to the treaty. Also represented were the International Atomic Energy Agency (IAEA), five international and regional intergovernmental organizations,³ and 69 non-governmental organizations.⁴ Although officials from India, Israel, and Pakistan—the only remaining states not parties to the treaty—could have attended, formally they were not present.⁵

To avoid what threatened to be an unproductive debate on the legal status of the Democratic People’s Republic of Korea’s (DPRK’s) notice of withdrawal from the NPT,⁶ one of the first formal actions of the Indonesian chairman after opening the session was to follow the practice of his predecessor in 2003 and retain the DPRK’s nameplate in his custody. He then introduced the draft indicative timetable of work for the session. This timetable split the time available into two parts, with the first week devoted to initial plenary statements and then more detailed statements in three “cluster” sessions.⁷ The latter part had periods of “special time” devoted to specific topics subsumed within them. The second week was then to be devoted to the recommendations the PrepCom might make to the RevCon. However, no agreement over the timetable could be reached immediately because of, among other things, disagreements over the allo-

cation of special time to a discussion of security assurances.⁸ There was no objection to implementing the indicative timetable prior to the special time sessions, however, so the opening general statements from states parties extended into Wednesday afternoon, with that morning being given over to 13 presentations by representatives of nongovernmental organizations (NGOs).⁹

The first meeting devoted to decisions on the procedural items on the agenda was initiated in closed session on Wednesday afternoon, followed by further closed meetings devoted to the three “cluster” subjects and then three special time sessions.¹⁰ The latter excluded the topic of security assurances. This arrangement enabled agreement to be reached on the implementation of the draft indicative timetable by the first Thursday afternoon. By then, however, the number of delegations wishing to speak had resulted with the committee falling significantly behind its agreed schedule of work. Thus, instead of the cluster and special time debates ending by lunchtime on Monday of the second week, as originally planned, it was a day later before this happened. In addition, after the cluster sessions had started, the PrepCom reversed the position it had taken since 1997 on NGO observers attending these meetings, by allowing them to attend “on a case-by-case basis” and “without it constituting a precedent.”¹¹

The remainder of the PrepCom was occupied with seeking to fulfill the requirements placed upon it by past NPT Review Conferences. In practice, it failed to do so in several areas. In 2004, consensus was achieved only on its dates and venue, rules of procedure, president and other officers, secretary general, and financing. These decisions were fewer than those agreed on in 1999 for the 2000 RevCon, and constituted the absolute minimum level of decision making needed to enable preparations for the 2005 RevCon to move forward. On the positive side, the PrepCom did agree on the rules of procedure for the 2005 RevCon, as well as on the office holders and financial arrangements. The agreement on the rules of procedure was not an uncomplicated process. According to one analyst, agreement was reached only “following considerable wrangling, especially

concerning Rule 44 on participation by NGOs and by international organisations.”¹²

More negatively, there was also no agreement on the Provisional Agenda for the RevCon. This last occurred in 1995 in the special circumstances surrounding the Review and Extension Conference. In 2004 the lack of consensus arose from a dispute over certain commitments contained in the Final Document from the 2000 NPT RevCon. Although the refusal to agree on the Provisional Agenda appeared superficially to be a pointless exercise, in fact it arose from a U.S. wish to reduce the status and authority of the 2000 Final Document relative to the 1995 RevCon decisions and the text of the treaty. Different interpretations, by France and the United States in particular, of the agreements reached in 2000 over the “13 practical steps” toward disarmament, and in particular their implications for the relationship between nuclear disarmament and general and complete disarmament, prevented agreement on an agenda.¹³

There was no agreement was reached on the provision of background documents for the Review Conference (i.e. reports from the UN Secretariat, the IAEA, and other regional and functional international organizations on events relevant to the NPT in the period since the last Review Conference). This conference will be the first time since 1975, when NPT RevCon meetings started, that such documentation will not be available to national delegations. The immediate reason was an unresolved disagreement over references in these documents to the 1995 *Resolution on the Middle East*¹⁴ contained in the Final Document of the 2000 RevCon. The contextual explanation was to be found in the U.S. position over the agenda and its opposition to positive references to the Comprehensive Test Ban Treaty (CTBT) and to France making agreement on language describing documentation conditional on the wording of specific agenda items.

The question of recommendations on subsidiary bodies to the main committees was not discussed in any detail, mainly because of lack of time and the apparently irresolvable differences over this matter between the Non-Aligned Movement (NAM) states and the

positions taken by states such as the United States, the United Kingdom, and France. The former believed that a decision on subsidiary bodies should be taken by the PrepCom, as mandated by the 1995 document on strengthening the review process for the treaty, while the latter argued that, as in 1999, it should be taken at the RevCon itself. The more specific issue of making a recommendation on these assurances became subsumed under this wider contested question of whether any recommendations should be made by the PrepCom about subsidiary bodies.

Although the issue of ways and means to implement the treaty and subsequent commitments made at NPT Review Conferences was addressed at length by state delegations in their substantive statements during the first part of the session, no proposals for recommendations related to implementation were made in the draft report on the PrepCom tabled by the chair.¹⁵ However, the chairman did produce a draft Factual Summary, apparently covering the substantive discussions during all three PrepCom sessions. This document had not been mandated by previous RevCons, unlike those from the first two sessions.¹⁶ It should be noted, however, that consultations prior to the session had indicated support for a document containing material which might be of assistance to the states parties in 2005. The chairman appears to have been seeking to produce a negotiated document through to the middle of the second week, but then was persuaded—given the lack of time and the divergence of positions—to abandon this objective in favor of a Chairman's Summary. The content of the Draft Factual Summary was objected to by a number of states parties, particularly the United States (and France), with the United States converting a speech that commented negatively on the text into a PrepCom working paper in order to underline its position.¹⁷

As a consequence, the extended final session of the meeting was only able to agree that it should be published as a working paper of the PrepCom and not annexed to the Final Report on the work of the PrepCom's three sessions.¹⁸ The chairman's summaries of the first two PrepCom sessions had been attached to the final reports of the

first two sessions. However, these were not attached to the Final Report of the PrepComs as a whole, leading to some confusion. In addition, a number of paragraphs of the draft Final Report (13, 29, 34, 36-39, and 42), which had been circulated by the chairman a day before the meeting ended, were the subject of disagreements and were omitted from the definitive Final Report,¹⁹ while one additional paragraph (29) was added.²⁰ Several states parties sought to amend the language contained in the draft Final Report, and to record their position, the chair “announced his intention, as agreed by the Committee to circulate under his own responsibility a Chairman’s working paper on issues and proposals that required further discussion by the Committee.”²¹ This second chairman’s working paper,²² dated May 21, 2004, contains the various paragraphs and amendments to paragraphs in the draft Final Report of the PrepCom that had been proposed by states parties.

These procedural devices enabled the truncated final report to be agreed on just before 8 pm on Friday evening, after the session was continued for two hours without interpretation to enable agreement to be reached on its content. The post-session publication of the U.S. national statement, the chairman’s draft summary and the listing of a proposed amendment to the Final Report as conference working papers, indicates the flavor of the confusion, uncertainty, and disagreements that surrounded the hours before the session finally ended.

It is important to recognize that the minimalist outcome of the 2004 PrepCom session and the nature of its ending was a direct consequence of differences between key groups of states parties over substantive policy issues. It was not, as might have appeared to be the case, a needless series of quarrels over minor procedural matters. The coded disagreements were centred upon two specific issues. One was the desire of the NAM states to send a message to other states parties about issues that they perceived to be ones of principle, in particular the necessity to fulfil consensus commitments made at previous NPT Review Conferences. The second was attempts by other states, including France and the United States, to enhance

their bargaining positions in 2005 over their interpretation of the commitments they had entered into in 2000. This coded debate also appeared to be behind the initial wrangling over the indicative timetable for the session, and whether or not special time was to be allocated within the cluster debates for focused discussion of specific issues. Here the message concerned the scope and focus of subsidiary bodies at the 2005 Review Conference, as well as the decision taken in 2000 that each session of the PrepCom should consider “specific matters of substance.” Underlying this initial skirmishing over positions likely to be adopted in 2005, however, were several profound differences over priorities, which had emerged from the substantive debates.

THE 2004 PREP COM: SUBSTANTIVE ISSUES

At the substantive level, the third PrepCom session mainly focused on exchanging information on the policies and attitudes of states parties toward a well-established and familiar range of treaty issues. These issues included the nuclear disarmament obligations of the nuclear weapon states (NWS), including nonstrategic nuclear weapons; compliance with nuclear nonproliferation commitments; negative security assurances; universality of the treaty; IAEA responsibilities, including the promotion of peaceful uses of nuclear energy and the implementation and verification of safeguards (especially the Model Additional Protocol); regional issues, notably nuclear-weapon-free zones in the Middle East and elsewhere; export controls; and reporting on states’ implementation of the NPT.

Disarmament versus Proliferation

As in the preceding two PrepCom sessions, a range of statements were made by non-nuclear weapon states (NNWS) stressing their concern with the lack of progress on NWS disarmament commitments. Seventeen of the session’s national working papers²³ addressed this issue. Attention was particularly focused on the implementation of the “13 practical steps” contained in the Final Document

agreed by the 2000 NPT RevCon. Various NNWS reiterated their general concerns about what they regarded as the backtracking by NWS on their disarmament commitments and obligations, in particular the Ant-Ballistic Missile (ABM) Treaty and the CTBT. The New Agenda Coalition (NAC)²⁴ states, Iran, Austria, Sweden, and Ukraine, highlighted their concerns over research and development work on non-strategic nuclear weapons, while Austria, Sweden, and Ukraine submitted a working paper on the need for global reductions in such weapons, and the need for international instruments to control them.²⁵

Related to this concern were calls to reduce the role of nuclear weapons in NWS security policies, particularly those of the United States. The salience of the 13 practical steps was interwoven into the NAC and NAM statements, while the Republic of Korea described them as a roadmap toward achieving the ultimate goal of nuclear disarmament rather than a mere measuring stick to gauge progress.²⁶ Many speakers called for the establishment of a subsidiary body in the Conference on Disarmament (CD) to address disarmament, and there were calls for visible progress in nuclear disarmament and its transparent reporting. Among critics of the slow progress toward nuclear disarmament was the Brazilian President-elect of the 2005 RevCon, Ambassador Sergio Duarte, who commented at a workshop in Jakarta a few weeks before the PrepCom that “so far...concrete progress toward...implementation has eluded us.”²⁷

The NWS, for their part, listed their actions in reducing global numbers of deployed weapons, their progress in dismantling their nuclear stockpiles, and their efforts to dispose safely of the materials from these weapons, as well as denying claims that they were seeking to deploy ‘usable’ nuclear weapons. They presented detailed interpretations of their progress in meeting the NPT disarmament obligations, though they remained reluctant to offer these assessments in any standard or regular format. The United States, in its working paper, complained of the minimal recognition for its “enormous positive strides in nuclear force reductions,” including the Treaty on Strategic Offensive Reductions (SORT), and the lack of

appreciation of and for these achievements.²⁸ China indirectly criticized the activities of the other NWS, including their alleged development of low-yield nuclear weapons, and stressed the importance of preventing the weaponization of outer space, a concern raised also by several NNWS.²⁹ Only the United Kingdom addressed itself in detail to the “practical step” concerning verification of disarmament, with a working paper on the technologies and processes that would be needed to verify it.³⁰

Several delegates linked their concerns over disarmament to the issues of non-compliance with, and the lack of commitment to, non-proliferation obligations. In a Brazilian statement it was argued that “the expression ‘non-proliferation’ contained in the Preamble is meant to apply both to the horizontal and the vertical aspect of proliferation.”³¹ Treatment of this issue, however, tended to reflect the differing priorities displayed by states parties. The United States and some of its allies, for example, clearly regarded the threat of proliferation and noncompliance with nonproliferation obligations as having a higher priority than nuclear disarmament under current circumstances. This position was made transparent by a U.S. statement and paper, *The Contemporary Crisis of Compliance*,³² as well as by the focus on this topic displayed by many other states parties. It also underlay criticisms by the United States of the lack of emphasis in the Chairman’s Factual Summary on the noncompliance crisis the treaty is facing, especially with regard to Iran, which it compared unfavorably to the allegedly unbalanced approach it had adopted toward disarmament issues.³³

Statements regarding noncompliance during the PrepCom focused predominantly on the inconsistencies uncovered by IAEA reports on Iranian nuclear activity, and the contested claims that Iran was engaged in a covert nuclear-weapon programme. In response to U.S. allegations, Iranian statements were somewhat more muted than in the 2003 session,³⁴ but its delegates continued to argue that Iran was in compliance with its NPT obligations and was cooperating fully with the IAEA over the safeguarding of its nuclear facilities.³⁵ One U.S. statement grouped the DPRK, Iran, Iraq, and Libya as four known

cases of diversion of nuclear activities, in violation of Articles II and III of the Treaty.³⁶

Uncertainty was also expressed about the opaque nuclear-weapon and treaty status of the DPRK. Many states urged it to comply with its IAEA safeguards commitments. The dismantling of the covert Libyan program was welcomed, though some states expressed apprehension that it had been possible for it to advance so far toward a weapon capability without this becoming public knowledge. Associated concerns were over the extent of the A.Q Khan nuclear procurement network, the difficulties of closing it down, and the possibility of similar operations remaining undetected currently and in the future.

These developments led to a range of proposals being advanced to respond to noncompliance worries. Most involved technical changes to the way states could develop nuclear programs, in order to prevent additional states from acquiring a full nuclear fuel cycle. Changes were also sought to make it more difficult for states to withdraw from their NPT safeguards and compliance agreements after giving the required 90 days notice, with Germany producing a working paper on this topic.³⁷ Proposals were also advanced to boost IAEA safeguards capabilities by making the Additional Protocol a safeguards standard for states both within and outside the treaty.³⁸ Finally, there was a range of proposals to strengthen export controls, as well as to enhance the standards of physical security at nuclear facilities.

Security Assurances

The Final Document of the 2000 RevCon had tasked the 2004 PrepCom with making recommendations to the 2005 RevCon on the issue of legally binding security assurances.³⁹ Such assurances can be either negative (i.e. NWS not threatening NNWS with nuclear weapons) or positive (the provision of assistance to NPT NNWS threatened by the use of nuclear weapons). Security assurances have always been a contentious issue at NPT meetings, as the negotiations from 1965-1968 leading to the signature of the NPT

had included arguments that they should be included in the treaty, though this aim was not realized. Many NAM states have regarded them as a necessary safeguard of the security in the interim period before nuclear disarmament is attained. China has consistently linked them to an agreement on no first use of nuclear weapons.

Discussions on this subject at the 2004 PrepCom followed predictable lines, given events at previous PrepCom sessions. The demand for legally binding negative security assurances from the NWS continued to figure prominently in the statements by members of the NAC and NAM,⁴⁰ and in particular by South Africa.⁴¹ It had proposed language for legally binding assurances during the 1999 PrepCom session,⁴² and in 2003 this language had been incorporated into a NAC working paper submitted to that year's PrepCom session.⁴³ This language based itself in the main on existing consensus treaty and other language, and the assurances contained in it were conditional.

Iran was one of many NAM NNWS to speak on this issue. Its representative referred back to proposals on negative security assurances its delegation had made in a working paper submitted to the 2003 PrepCom.⁴⁴ The document argued that the United States' Nuclear Posture Review⁴⁵ posed new threats to NNWS, as the policies it contained were targeted specifically at them, and included threats of use and the development of nonstrategic nuclear weapons or "mini-nukes." The Iranian statement also reminded the PrepCom that such actions by NWS would be in contradiction to their 1995 unilateral statements⁴⁶ and UN Security Council Resolution 984.⁴⁷ These had offered to NPT NNWS both negative security assurances, in all but one case qualified, and limited positive assurances, against use or threat of use of nuclear weapons.

The majority of the NWS argued that they were prepared to provide unconditional security assurances to the NPT NNWS, but only in the context of Nuclear Weapon Free Zone (NWFZ) treaties. They pointed out that through this route the majority of the NPT NNWS could obtain such assurances.⁴⁸ The United States, however, appeared to regard any discussions on the South African (NAC) draft

text as opening the door to developments that were undesirable from its perspective. It argued in a working paper⁴⁹ that attempts to extend current nuclear security assurances into the general nuclear non-use area, as proposed by China, were of decreasing relevance “when measured against the very real threat from NPT violators and non-state actors.”⁵⁰ The United States was thus attempting to justify its position on this issue by linking it to more general assessments of the new nuclear threat environment, as against the traditional NPT agenda.

By contrast, China produced two working papers containing recommendations on security assurances.⁵¹ One called for downgrading nuclear weapons in national security strategies, an international convention on no first use of nuclear weapons, and an “international legal instrument on no use or threaten to use nuclear weapons against non-nuclear-weapon states or nuclear-weapon-free zones at any time or under any circumstances.”⁵² The second, on the establishment of NWFZs, also recommended the implementation of legally binding negative security assurances.⁵³ China also called for the reestablishment of an ad hoc committee of the CD on negative security assurances, rather than having negotiations take place in an NPT forum.

The debate in 2004 thus made transparent the existence of two main disagreements over security assurances among the NPT parties: the need for legally binding security assurances and their relationship to no-first-use agreements. Both have long roots in the NPT review process. A new development was that the former now appeared to be viewed by the United States and its allies, as with nuclear disarmament, as decreasingly relevant to their perceptions of the major threats emanating from the new global security environment, while the latter was seen as positively harmful to attempts to develop policies of deterrence against those threats.

Safeguards and Peaceful Uses

The debates over IAEA safeguards and peaceful use of atomic energy focused on the threats posed by noncompliance with the non-

proliferation elements of the NPT. They thus formed part of the broader debate about the future priorities and mechanisms of the nonproliferation system, led by the United States. The debate over safeguards had two main elements: the need to enhance the operation of safeguards through all parties signing additional protocols to give the IAEA enhanced capabilities to detect clandestine nuclear activities, and concerns dating from the 1970s about the inability of the NPT restraints to prevent what was then described as “nuclear pregnancy” (i.e. the ability of a NNWS to legitimately acquire an infrastructure to acquire key nuclear-weapon materials through its peaceful nuclear energy provisions, and then give the required 90 days notice to withdraw from the treaty and move to nuclear-weapon status). In both cases, the DPRK withdrawal from the NPT; the nonreporting to the IAEA of specific Iranian nuclear activities, as well as its promised ratification of an additional protocol; and the clandestine nuclear activities of the A.Q. Khan network and Libya served as vehicles to address these issues.

One product of the debates over the IAEA safeguards system was that many states articulated the view that the Additional Protocol, coupled with the revised safeguards implementation arrangements agreed after 1991, now constituted the new “safeguards standard” and that, together with internationally agreed physical security standards, should be the condition for supply of nuclear and nuclear-related items to nonstate parties.⁵⁴ More controversial, however, was the balance between the agency’s promotion of the peaceful uses of nuclear energy and its implementation of safeguards. In the former area, the series of proposals made by the IAEA Secretary-General, the United States, and the United Kingdom, among others, for changes to both the interpretation of the NPT and the nuclear export control regime was not well received by a number of NAM states,⁵⁵ including Iran.⁵⁶ Iran argued that such proposals would affect their rights to economic development inherent in article IV of the treaty.⁵⁷ This was particularly so with the U.S. proposal that no enrichment or reprocessing plants should be built in states that were not already operating such technology, a move clearly aimed at

preventing completion of Iran's enrichment plant. These proposals also had links to the desire of some states to make withdrawal from the treaty more difficult, thus placing further obstacles in the way of a state party attempting to move from "nuclear pregnancy" to nuclear-weapon status.

Universality, Regional Issues, and The Middle East Resolution

Parties continued to argue that all states not currently in the NPT should enter as NNWS, though greater emphasis was placed on the need for such states to control their nuclear exports given the revelations about the A.Q. Khan proliferation procurement network based in Pakistan. The implementation of the 1995 *Resolution on the Middle East* continued to be contentious at this PrepCom session, as it had been in the previous ones, as did the position of Israel. Fourteen states submitted reports on this issue, as requested by the 2000 Final Document.⁵⁸

Reporting and "Overcoming the Institutional Deficit"

At the two previous PrepCom sessions, reporting was singled out as a tool for promoting "a culture of transparency"⁵⁹ and accountability. It had been argued that a standardized reporting template was required, especially for the 13 practical steps toward disarmament, in order to foster implementation of the treaty and measure progress and compliance more effectively. This issue remained a source of friction between delegations in 2004, with the need for regular, transparent, and complete reporting obligations by NWS continuing to be promoted by NNWS, notably Canada and members of the NAC. Canada submitted a working paper on this subject.⁶⁰ Of particular note was the increase in states reporting voluntarily on paper on their implementation of all articles of the treaty (9),⁶¹ not just on the implementation of Article VI as mandated by the 2000 Final Document (13).⁶²

In the 2003 session, arguments were advanced by a number of countries for providing the NPT with an institutional framework so that it could react more effectively to events.⁶³ In 2004 Canada attempted to crystalize some of these ideas in a working paper, *Overcoming the Institutional Deficit of the NPT*.⁶⁴ Opposition to implementing these changes came from three sources: those who felt there were more important issues for NPT meetings to address, those who did not wish NPT meetings other than the RevCons to have decision-making powers, and those who felt that any urgent issue should be dealt with by the IAEA Board of Governors and the UN Security Council alone, and that the insertion of an NPT body into the process would delay and complicate matters, rather than the opposite. However, given that the 2004 session did not agree on any recommendations, it seems highly likely that the issue of revising the review process once again and creating permanent institutions for the NPT will be items that several states will raise in 2005.

AN ANALYSIS OF THE PREP COM: THE CORE ISSUES

Prior to 1991, the basis for discussions at NPT conferences was the prospect of a global catastrophe unless nuclear weapons could be controlled. Nuclear nonproliferation was a necessary step to reduce the risk that the United States and the Soviet Union would become involved in a nuclear event through the independent actions of allies and proxies, and to facilitate nuclear disarmament. Avoiding nuclear war between the two states was therefore the first priority of the NPT parties, and it drove all sides to seek both nonproliferation and disarmament objectives in a balanced fashion. Events at the 2004 NPT PrepCom session, however, suggest that the significant changes in threat perceptions among states parties over the past thirteen years have generated major differences between them in the core security threats that face them, and thus in how international nuclear nonproliferation and disarmament policies should be implemented.

The statements, reports, and working papers submitted by the United States and its allies focused on the threats to them of further horizontal proliferation, with the focus on Iran and the DPRK. In contrast, NAM states' documents and statements emphasised the continuing threat posed to them by existing nuclear weapon stocks and the NWS, their concerns over the new usable nuclear weapons the United States was allegedly developing, and the lack of progress on implementing the 13 practical steps toward disarmament. These disagreements over threat perceptions and policy priorities dominated the 2004 session, even though superficially events suggested at times that states were engaged in political game playing, if not theatre.

Two positions that seem destined to dominate the 2005 RevCon were developed at this meeting. In the first, United States delegates argued that the NPT is currently in the midst of a compliance crisis and the collective response of its states parties would determine the future credibility of its regime. This alarming warning was showcased in their paper entitled *The Contemporary Crisis of Compliance*.⁶⁵ This document emphasized the inseparable connection between Articles II, III and IV, echoing the U.S. statement in the 2003 session that "Article IV does not exist in a vacuum."⁶⁶ Iran, Libya, Iraq, and North Korea were identified as cases of noncompliance in which nuclear weapon programs had been pursued under the guise of legitimate peaceful nuclear programs. It was emphasised that noncompliance with the NPT regime by these states represents a threat to international peace and the security of all states, as well as "fundamental challenges to the non-proliferation regime as a whole."⁶⁷

At the same time, it was recognized by U.S. delegates that attempting to produce hard evidence of such programs is difficult, if not impossible, because of the dual-use facilities involved and the covert nature of such programs. The implicit standard of noncompliance in the treaty has been the testing of a nuclear device, but this criterion was now inadequate. One consequence was the need to raise standards of technical verification. A second was to accept

that intelligence on the intentions of a state, rather than its capabilities, might need to play a central role in evaluating noncompliance.⁶⁸

The responses of NAM delegates to this argument about intent illustrated some of the reasons there is now a crisis of compliance. By its nature, a policy based on perceptions of intent is likely to be applied in a discriminatory way. Yet the NPT seeks to be nondiscriminatory, other than accepting the (temporary) special status of the five nuclear-weapon states. Thus such a policy would have to be applied consistently to both Iran and Israel in order to gain approval from the NAM, especially the Arab states. At the same time, U.S. accusations of clandestine nuclear programs, particularly those involving Iran, are often seen as based on prejudice rather than intelligence assessments of actual capabilities. In such circumstances, NAM arguments that the regime is being operated in an unfair and discriminatory manner are difficult to refute, unless the U.S. argument about priorities has more general acceptance.

The second position underlies the attitudes and thinking of a majority of NPT parties, and particularly the NAM states. Its foundation is that when, in 1995, the NPT was given an indefinite duration, it was on the basis of two collateral documents that created an incremental review process, through which disarmament and non-proliferation commitments could be accounted for, developed, and implemented in a linear fashion. The 2000 RevCon served to start and consolidate this process and the expectations surrounding it, particularly given the development of the general Article VI disarmament commitments into the much more specific 13 practical steps. This process, as one of the steps states, was regarded as “irreversible.” Yet U.S. action on one of the steps, and inaction on another, has raised doubts about the degree of commitment the United States and other NWS have in implementing not only this “irreversible” process, but any other commitments they may make at future NPT meetings. In particular, it places a premium on not accepting any degradation of the commitments entered into in 2000, even at the price of not legitimating changes in policies on nondisarmament areas in 2005.

Thus the crisis is not only one of compliance and disarmament, it also concerns the NPT review process and the future of the NPT itself, other than in its role as a standard-setting instrument. The failure of the PrepCom to produce any substantive recommendations for the second time suggests that this part of the 1995 revisions to the review process may not be workable. On the other hand, it could be argued that the function of the process is not to generate consensus agreements, but to explore differences so that they may be better addressed at the RevCon.

Similar sentiments were reiterated in the U.S. statement outlining its objections to the Chairman's Summary: "we may all wish for consensus, but saying that we have consensus does not make it so."⁶⁹ U.S. Assistant Secretary of State John S. Wolf commented during an interview following the PrepCom that, "it is not surprising that it [2004 PrepCom] didn't come up with substantive recommendations"⁷⁰ as the RevCon, not the PrepComs, tends to be the setting for dialogue and decisions to take place on substantive recommendations. All of this indicates that significant differences now exist over the role the post-1995 NPT review process should be performing. At one extreme, should the PrepComs operate mainly as information exchanges and abandon their mandate to provide substantive recommendations to RevCons, even though this move would undermine part of the basis of the 1995 agreements? On the other, should they be given decision-making powers to act on behalf of the RevCon, either in emergencies or as a normal mode of operation?

SOME CONCLUSIONS

The NPT is often described as the cornerstone of the nuclear non-proliferation regime, a characterization used in several statements to the 2004 PrepCom. It is true that the treaty is the legal cornerstone for UN and national actions against proliferators outside the treaty and those in noncompliance with their IAEA safeguards and NPT obligations, but the role of its review process has emerged in an incremental and not necessarily well-thought-out manner. It is

not a vehicle to amend the treaty, though it clearly has a role in reinterpreting how it might be implemented, and in setting and legitimizing the evolving standards of behavior expected of its parties with respect to relevant activities. What it cannot do, however, is directly affect events beyond these limits, such as enforcing compliance with the NPT or disarmament commitments. Thus the roles of the review process, while important, are limited, bounded, and not orientated toward direct action.

At the same time, the NPT review process has been the focus of attempts at “task expansion.”⁷¹ Its 2000 13 practical step, an exercise of setting out a contemporary disarmament agenda and priorities, could be argued to be a good example of this, as has been its move into areas such as transport of nuclear waste, nuclear terrorism, and control of radioactive sources. But attempts to transform this agenda-setting function into a continuous decision-making one in the nuclear energy area may push the envelope too far. The process is also plagued by a general misunderstanding of its limited functions, especially in the global media, and great significance and weight placed on obtaining a consensus outcome from RevCons. While desirable, the lack of this consensus will not alter the significance of the commitments states have made throughout the treaty, and some would argue that exploring disagreements in-depth may be more profitable than generating an unexceptional document.

What has emerged from the 2004 PrepCom session is that the global arrangements for dealing with nuclear proliferation and disarmament now face three central challenges. The first is that the threat perceptions and security priorities of significant groups of the states parties are drifting apart, and with them the opportunities for legitimizing actions to strengthen implementation of both the nonproliferation and disarmament provisions of the NPT. Enhancement and extension of fuel cycle controls are now competing with further development of the disarmament agenda as the area for priority action. Key questions for the RevCon will be whether a package deal is possible between these two objectives that would satisfy all interested parties and who would broker it. Superficially, such an out-

come is extremely unlikely, particularly if the NAC or a similar active grouping was absent in 2005.

The second and linked crisis concerns security assurances. On the one hand, many developed states see these as having a low priority; by contrast, the NAM sees them as both a traditional agenda item and something they value given their own threat perceptions. Again, the questions for 2005 may be whether there is a mid-ground here within which delegates can manoeuvre, and what grouping or mechanism can be found to develop this?

A third crisis concerns the role and relevance of the NPT. This issue is not only a matter of the desirable role that its review process might perform, but also the bypassing of the treaty review process by the powerful developed states in favor of more direct instruments for influencing the course of national (and non-state) programmes to develop nuclear weapons. These instruments include the Proliferation Security Initiative,⁷² the G8 Global Partnership,⁷³ and UN Security Council resolution 1540.⁷⁴ While regarded by the states initiating these developments as means by which to act rapidly and directly against proliferation, they also place decision-making power in a very few hands, and can also be seen as aimed at denying the NAM and some other NNWS participation in nonproliferation decision-making processes. Effectiveness and participation therefore appear to be on a collision course, and the consequences may be felt at the NPT Rev Con in 2005. Whether the NPT parties will fiddle while the cornerstone of the nonproliferation is slowly undermined as a decision-making body is now an open question. Alternatively, can all parties be brought together in a manner that will both enhance participation in decision making and make implementation of the treaty more effective?

¹ *Strengthening the Review Process for the Treaty, Decision of the 1995 Review and Extension Conference of the Nuclear Non-Proliferation Treaty*, 1995 NPT RevCon document NPT/CONF.1995/32/Dec.1, May 11, 1995.

² This recommendation is contained in the section on Article VII (2) of the Final Document of the 2000 RevCon, 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, 2000 NPT RevCon document NPT/CONF/2000/28, May 22, 2000, p.15.

³ These five IGOs were the Agency for the Prohibition of Nuclear Weapons in Latin America and the

Caribbean (OPANAL), the Preparatory Commission for the Comprehensive Test-Ban Treaty Organization (CTBTO), the European Commission; the International Committee of the Red Cross (ICRC), and the League of Arab States. For a listing of delegates representing these IGOs, see *List of Participants*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/INF.4, May 6, 2004, pp.77-78.

⁴ *Draft Final Report of the Preparatory Committee to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/CRP.4, May 5, 2004, p.5, para. 13. For the listing of the nongovernmental organizations at the 2004 PrepCom, see *List of nongovernmental organizations*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/INF.2, April 26, 2004. For a listing of individual delegates representing the NGOs, see NPT/CONF.2005/PC.III/INF.4, pp.79-100.

⁵ The absence of observers from non-NPT states in 2004 was in contrast to the 2002 session, when officials from Cuba, a non-NPT state at the time, attended. In 2002 Cuba's attendance was significant and was seen as a positive indication of engagement and a step forward toward accession. Cuba acceded to the NPT in November 2002.

⁶ When the DPRK announced it was withdrawing from the NPT immediately on January 10, 2003, it was the unanimous view of the states parties that it could not do so by reactivating its 1994 notice of withdrawal, which it claimed it had suspended just before its 90-day notice period was completed. It then gave the required 90 day notice of withdrawal to most, but not all, of the states parties, but it did not offer any formal explanation of why it was choosing to withdraw. This has resulted in differing legal opinions among the parties as to whether the requirements that would enable it to withdraw have been fulfilled, and thus whether or not it is still a party to the treaty.

⁷ The subjects contained in the "clusters" are similar to those covered by each of the main committees in a RevCon. The first cluster of issues covered nonproliferation of nuclear weapons, disarmament, and international peace and security. The second related to nonproliferation of nuclear weapons, safeguards, and nuclear-weapon-free zones, as well as regional issues. The third involved peaceful uses of nuclear energy.

⁸ The point at issue here was the perceived direct connection between allocating "special time" to a subject at the PrepCom session and the creation of subsidiary bodies in the RevCon. In 2000, two of the three subjects that were allocated special time (Disarmament and Regional Issues-The Middle East) became the subject of subsidiary bodies. Thus allocation of special time to security assurances was seen as a method of strengthening the case for a subsidiary body on this in 2005—while denying it would have the opposite effect.

⁹ For a listing and text of the NGO presentations to the 2004 NPT PrepCom see, *Reaching Critical Will, "NGO Presentations to the 2004 NPT PrepCom, New York,"* <<http://www.reachingcriticalwill.org/legal/npt/prepcom04/NGOpres.html>>.

¹⁰ The special time sessions were on disarmament; regional issues, including the Middle East; and safety and security of peaceful nuclear programs.

¹¹ NPT/CONF.2005/PC.III/CRP.4, p.5, para.13.

¹² Rebecca Johnson, "Report on the 2004 NPT PrepCom," *Disarmament Diplomacy* 77 (May/June 2004), p.24.

¹³ The issue of the varying difference in interpretation of specific disarmament obligations as agreed to in the 13 steps was apparent as states parties provided their clarifications. For example, France notably clarified that its interpretation of its "unequivocal commitment" to nuclear disarmament as contained in the 13 steps remains conditional to the realization of general and complete disarmament (GCD). See Rebecca Johnson, "The 2000 NPT Review Conference," *Disarmament Diplomacy* 46 (May 2000), p.9, and Tanya Ogilvie-White and John Simpson "The NPT and Its 2003 PrepCom Session: A Regime in Need of Intensive Care," *Nonproliferation Review* 10 (Spring 2003), p. 4.

¹⁴ *Resolution on the Middle East*, 1995 NPT RevCon document NPT/CONF.1995/32/RES.1, May 11, 1995.

¹⁵ NPT/CONF.2005/PC.III/CRP.4

¹⁶ The preparation of a factual summary of each of the first two PrepCom sessions (of the three total) is contained in the seventh provision of the section "Improving the effectiveness of the strengthened review process for the NPT" of the 2000 RevCon's Final Document. NPT/CONF/2000/28, p.20. Accordingly, Chairman Salander produced a Factual Summary of the 2002 NPT PrepCom. See, *The First Session of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Report of the Preparatory Committee on its first session, Chairman's factual summary*, 2002

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NPT PrepCom document NPT/CONF.2005/PC.II/21, April 19, 2002, Annex II, pp.12-16. Chairman Molnár produced a Factual Summary of the 2003 PrepCom. See, *The Second Session of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Report of the Preparatory Committee on its second session, Chairman's factual summary*, NPT/CONF.2005/PC.II/50, May 13, 2003, Annex II, pp.15-25. At the third NPT PrepCom session, the 2000 RevCon Final Document provision calls for the preparation of a consensus report containing recommendations to the RevCon. The states parties were unable to agree on a consensus report for the 2005 RevCon.

¹⁷ *United States Statement*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP.28, May 10, 2004.
¹⁸ *Chairman's Summary*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP.27, May 10, 2004. Although the Chairman's Summary was not annexed to the Final Report, as the text was disputed as not being "factual" and representative, it is listed as one of the PrepCom documents in the second annex to that report. This technical manoeuvre enabled the information it contained to be transmitted to the RevCon. It contains copious references to "States Parties." The United States objected to this in its statement and working paper, as it claimed this language implied some type of general agreement with the text. However, the final version of the Chairman's Factual Summary included a disclaimer over this term, indicating that it "is not intended to imply unanimity among States parties and is used without prejudice to the positions of delegations at the 2005 Review Conference" (p.1).

¹⁹ *Final report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, 2004 NPT PrepCom document NPT/CONF.2005/1, May 20, 2004.

²⁰ It should be noted that this paragraph on the rights of NGOs expands and reinforces the existing Rule 23 of the Rules of Procedure for RevCons, which states that "The plenary meetings of the Conference and the meetings of the main Committees shall be held in public unless the body concerned decides otherwise."

²¹ Quoted from footnote reference in the Final Report of the PrepCom, NPT/CONF.2005/1, p. 9.

²² *Chairman's working paper*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP.30, May 21, 2004.

²³ Australia, the Republic of Korea, Japan, the Netherlands, Portugal, Sweden, Mexico, Ukraine, Romania, Norway, Greece, Spain, the Islamic Republic of Iran, Belgium, and Finland all submitted reports at the 2004 PrepCom on Article VI and paragraph 4 (c) of the 1995 decision. Working papers on disarmament were submitted by the United Kingdom and China.

²⁴ The NAC is a grouping of seven NNWS committed to the promotion of progress in implementation of nuclear disarmament and non-proliferation. The group's members include: Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden. *Working paper on reductions of non-strategic nuclear weapons submitted by Austria, Sweden and Ukraine*, 2004 NPT PrepCom document NPT.CONF.2005/PC.III/WP.13, April 29, 2004.

²⁵ *Implementation of Article VI and paragraph 4 (c) of the 1995 Decision on "Principles and objectives for nuclear non-proliferation and disarmament"*: Report submitted by the Republic of Korea, NPT.CONF.2005/PC.III/10, April 24, 2004.

²⁶ Ambassador Sérgio Duarte, "Genesis and Development of the NPT: An Overview of the Review Process," statement to the Workshop Towards the 2005 NPT Review Conference: Challenges and Prospects, held in Jakarta, Indonesia from 29-31 March 2004, p.4.

²⁷ NPT/CONF.2005/PC.III/WP.28, p.3.

²⁸ *Working paper on the issue of nuclear disarmament and reduction of the danger of nuclear war, report submitted by China*, 2004 NPT PrepCom document NPT.CONF.2005/PC.III/WP.4, April 22, 2004.

²⁹ *Verification of nuclear disarmament: Second interim report on studies into the verification of nuclear warheads and their components: Working paper submitted by the United Kingdom of Great Britain and Northern Ireland*, NPT.CONF.2005/PC.III/WP.3, April 8, 2004.

³⁰ Ambassador Sérgio Duarte of Brazil, statement to the general debate sessions of the 2004 PrepCom, April 27, 2004, p.3. [DO THESE DOCS HAVE TITLES?]

³¹ *The contemporary crisis of compliance: Submitted by the United States*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/46, May 7, 2004.

³² NPT/CONF.2005/PC.III/WP.28

³³ Statement by Mr. Amir Zamaninia to the 2003 NPT PrepCom, May 9, 2003. This statement exemplifies the Iranian response to U.S. accusations during the 2003 PrepCom. For the text of other Iranian statements

to the 2003 PrepCom, see, <<http://missions.itu.int/~missiran/NPT2003.htm#statement06>>.

³⁴ The following Iranian statements presented to the 2004 PrepCom included statements confirming Iran's compliance with treaty's provisions and cooperation with the IAEA. Statement by the Iranian delegation to the Cluster II discussions, pp.2-3; statement by the Iranian delegation to the 2004 NPT PrepCom Cluster I discussions, p.3.; and statement by Gholam Ali Khoshroo to the the 2004 NPT PrepCom general debate discussions, April 27, 2004, p.5.

³⁵ Paula A. Desutter, "NPT: Noncompliance Challenges and Opportunities," statement to the 2004 NPT PrepCom, April 30, 2004.

³⁶ *Strengthening the NPT against withdrawal and non-compliance, Suggestions for the establishment of procedures and mechanisms: Working paper submitted by Germany*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP.15, April 29, 2004.

³⁷ During the Cluster II session on implementing safeguards, many statements were made confirming the need for the implementing the Model Additional Protocol in addition to the existing comprehensive safeguards arrangements as the contemporary safeguards standard. Ambassador Rastam Mohd Isa of Malaysia, statement on behalf of the NAM to the 2004 NPT PrepCom , April 29, 2004.

This statement notably stressed "the importance of achieving the universal application of the IAEA's safeguards system," (p.2, para.12).

³⁸ This recommendation is contained in the section on Article VII (2) of the Final Document of the 2000 RevCon. NPT/CONF/2000/28, Part I, p.15.

³⁹ The NAM's specific call for legally binding security assurances are contained in the statement presented by Malaysia. Ambassador Hussein Haniff of Malaysia, statement on behalf of the NAM to the Cluster I session of the 2004 NPT PrepCom, April 30, 2004, p.2, para. 3.

⁴⁰ Republic of South Africa, statement on the issue of security assurances to the Cluster I discussions of the 2004 NPT PrepCom, April 2004.

⁴¹ "Draft Protocol on the Prohibition of the Use or Threat of Use of Nuclear weapons Against Non-Nuclear Weapon States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons." This proposed protocol is contained in a working paper submitted by South Africa, NPT/CONF.2000/PC.III/9, dated May 11, 1999.

⁴² *Working Paper: "Security Assurances," Submitted by New Zealand on behalf of Brazil, Egypt, Ireland, Mexico, Sweden and South Africa as members of the New Agenda Coalition (NAC)*, NPT/CONF.2005/PC.II/WP.11, May 1, 2003, Annex.

⁴³ *Negative Security Assurances, Working Paper submitted by the Islamic Republic of Iran*, NPT/CONF.2005/PC.II/WP.14, May 5, 2003.

⁴⁴ The Nuclear Posture Review was submitted to Congress on December 31, 2001, and published on January 8, 2002. See, "Nuclear Review Posture [Excerpts]," Global Security Organization Web site, <<http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>>, and "News Transcript of Special Briefing on the Nuclear Posture Review," United States Department of Defense Web site, <http://www.defenselink.mil/transcripts/2002/t01092002_t0109npr.html>.

⁴⁵ In April 1995, prior to the 1995 NPT Review and Extension Conference, all the NWS made unilateral pledges on negative security assurances to states parties. In fact only the Chinese one was unqualified; the rest restricted their applications to situations where other nuclear-weapon states were not involved. For details see "NPT Briefing Book, April 2004 Edition," Mounbatten Centre for International Studies, <[http://www.mcis.soton.ac.uk/Site_Files/Site_Resources/Briefing_Book_2004_\(PrepCom_version\).pdf](http://www.mcis.soton.ac.uk/Site_Files/Site_Resources/Briefing_Book_2004_(PrepCom_version).pdf)>, J-1-4.

⁴⁶ UN Security Council resolution 984, April 11, 1995.

⁴⁷ One key issue in this context is the non-entry into force of the Pelindaba Treaty establishing a NWFZ in Africa. This issue has been pending for eight years as the treaty has yet to obtain the necessary 28 ratifications needed to bring it into force. If further ratifications were to occur, and it came into force, it would almost double the number of NPT NNWS in receipt of unconditional negative security assurances.

⁴⁸ NPT/CONF.2005/PC.III/WP.28 This document, dated May 10, 2004, articulated U.S. objections to material contained in the draft Chairman's Summary.

⁴⁹ *Ibid*, p.3.

⁵⁰ *Working paper on nuclear-weapon-free-zones submitted by China*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP.6 , April 22, 2004, and *Working paper on security assurances submitted by China*, 2004

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NPT PrepCom document NPT/CONF.2005/PC.III/WP9, April 22, 2004.

⁵¹ NPT/CONF.2005/PC.III/WP9, p.1, para. 1.

⁵² NPT/CONF.2005/PC.III/WP6

⁵³ An overwhelming majority of statements presented during the Cluster II session called for instituting the Model Additional Protocol together with a comprehensive safeguards agreement to represent the current verification standard pursuant to Article III.1. The statement by Ambassador David Mason of Australia to the 2004 NPT PrepCom, April 29, 2004, furthermore, recommended “that the 2005 Review Conference take a decision that the AP is mandatory under Article III of the Treaty,” (p.1).

⁵⁴ The NAM called for further commitment by NWS to assist with peaceful nuclear technology and objected to the “undue restrictions on exports” to NNWS. These arguments were presented in the statement by Ambassador Hussein Haniff of Malaysia on behalf of the Non-Aligned States Parties to the NPT (to the Cluster III session), April 29, 2004. Notably, the Brazilian statement to the Cluster III session by Ambassador Sérgio de Queiroz Duarte, April 2004, emphasized that “the monopoly on weapons must not become a monopoly on technology,” (p.2).

⁵⁵ The Iranian delegation presented its arguments orally to the proposals for limiting peaceful nuclear assistance, particularly in relation to the proposed limitation of fuel cycle activities. *Statement by the Islamic Republic of Iran before NPT 2005 Review Conference—PrepCom III, Peaceful Uses of Nuclear Energy*, April 2004.

⁵⁶ It should be noted that the rights contained in article IV are not unconstrained; however, they have to be exercised “in conformity with Articles I and II” of the NPT.

⁵⁷ The states involved were Canada, United Kingdom, China, Australia, Morocco, Japan, Syria, Sweden, Egypt, Iran, France, United States, Tunisia, and Algeria. The reports were, respectively, in *NPT/CONF.2005/PC.III/2*, 3, 6, 8, 12, 15, 19, 21, 26, 32, 35, 40, 47 and 48.

⁵⁸ *Reporting by States parties: Working paper submitted by Canada*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP2, April 5, 2004, p.1, para. 2.

⁵⁹ *Ibid.*

⁶⁰ The states involved were Canada, Lithuania, Slovakia, Hungary, New Zealand, Iran, Luxembourg, Austria, and Kazakhstan. The reports were, respectively, in *NPT/CONF.2005/PC.III/1*, 5, 13, 18, 27, 33, 34, 36, and 44.

⁶¹ The states involved were Australia, Switzerland, Republic of Korea, Japan, Netherlands, Portugal, Sweden, Mexico, Ukraine, Romania, Norway, Greece, Spain, Ireland, Belgium, Finland, Malaysia and the Czech Republic. The reports were, respectively, in *NPT/CONF.2005/PC.III/7*, 9, 10, 14, 16, 20, 22, 23, 24, 25, 28, 29, 31, 37, 38, 39, 41 and 45.

⁶² During the 2003 PrepCom, Canada, the NAC, New Zealand and South Africa emphasized the need for increased transparency and complete reporting. Additionally, suggestions were made on instituting an interactive exchange on substantive issues, particularly on disarmament.

⁶³ *Overcoming the Institutional Deficit of the NPT: Working paper submitted by Canada*, 2004 NPT PrepCom document NPT/CONF.2005/PC.III/WP1, April 5, 2004.

⁶⁴ NPT/CONF.2005/PC.III/46

⁶⁵ *Statement on Peaceful Nuclear Cooperation and NPT Article IV by Dr. Andrew K. Semmel, Alternative Representative of the United States of America to the Second Session of the 2005 PrepCom to the 2004 NPT PrepCom*, May 7, 2003, p.5.

⁶⁶ NPT/CONF.2005/PC.III/46, p.2

⁶⁷ Various statements and documents presented by the U.S. representatives to the 2004 PrepCom indicate that activities that imply intent can determine noncompliance. Among the recommendations for the 2005 RevCon, submitted in *United States' Working paper: Recommendations to the 2005 NPT Review Conference—Strengthening Implementation on Articles I, II, III, IV*, NPT/CONF.2005/PC.III/WP19, April 30, 2004, insistence on “a high standard of compliance with Article II” is included (par. 5, p.2). According to the standard suggested by the United States, “enforcement of the prohibition on the manufacture or acquisition of nuclear weapons cannot wait until a non-nuclear-weapon state has a finished nuclear weapon,” (p.2, para. 5). Furthermore, “even if there is no evidence that a component of a nuclear weapon has been manufactured, the totality of certain nuclear and nuclear-related activities in a NNWS could point toward an intent to violate Article II whether through the manufacture of a nuclear weapons or through seeking or receiving

assistance in the manufacture of nuclear weapons,” (p.2, para. 6). John S. Wolfe, U.S. Assistant Secretary for Nonproliferation, presented arguments to “underscore that actual possession of a nuclear weapon is not the only instance in which a violation of Article II occurs.” In this statement, Wolfe lists general “common sense” factors that indicate intent to use a state’s nuclear infrastructure to conceal nuclear weapons development, and argues that while some may consider these “mere circumstantial evidence . . . when determining intent, this is most frequently all that is available.” Wolf criticized the standard of proof of an actual nuclear weapon test as “folly” and indicated that “judgments as to the purpose of a Party’s nuclear activities go hand in hand with an evaluation” of noncompliance. Furthermore confirming the U.S. standard for noncompliance, Wolfe stresses that “waiting for overt, unambiguous breaches of Article II and Article III before we act weakens the NPT and threatens international security.” John S. Wolfe, statement to the 2004 NPT PrepCom, April 30, 2004. Additionally, in an interview conducted following the 2004 NPT PrepCom, John Wolfe confirmed that the interpretation of compliance includes “both capabilities and intentions” and “willful deception ought to be part of what countries take into account” when judging compliance. Wade Boese and Miles A. Pomper, “The Bush Administration’s Nonproliferation Policy: An interview with Assistant Secretary of State John S. Wolf,” *Arms Control Today* 34, (June 2004) pp.15-6.

⁶⁸ NPT/CONE2005/PC.III/WP28, p.3.

⁶⁹ Comments by Assistant Secretary of State John S. Wolf in Boese and Pomper, “The Bush Administration’s Nonproliferation Policy.”

⁷⁰ Ernst Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford: Stanford University Press, 1964).

⁷¹ The Proliferation Security Initiative (PSI), the voluntary commitments by a group of states aimed at countering proliferation of WMD and delivery systems through improved domestic and collective capabilities to interdict transfers of WMD, introduced by President Bush in May 2003, is gaining momentum. Notably, however, Cuba submitted a working paper to the 2004 PrepCom, which it dedicated specifically to outlining its objections to the PSI, including the argument that it weakens the nuclear nonproliferation regime and the role of the treaty (NPT/CONE2005/PC.III/WP20). Although arguably influenced by bilateral political relations, Cuba’s criticisms of the U.S.-led PSI nonetheless present sustainable arguments that may be widely held by other NPT state parties.

⁷² The G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, launched at the Kananaskis Summit in June 2002, is another initiative to counter proliferation outside the treaty. Furthermore, at the June 2004 Sea Island Summit the G-8 adopted an Action Plan on Nonproliferation that supports the proposals presented by U.S. President Bush on February 11, 2004, at the National Defense University. See, *G-8 Action Plan on Nonproliferation*, Sea Island G-8 Summit document, June 9, 2004.

⁷³ UN Security Council resolution 1540, April 28, 2004.