

THE 1999 NPT PREPCOM

by Tariq Rauf and John Simpson

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On Monday, April 12, 1999, the third two-week session of the Preparatory Committee (PrepCom) for the 2000 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is scheduled to convene at United Nations headquarters in New York.¹ On the one hand, this meeting is unlikely to remove any of the specific proliferation threats that currently confront the international community. On the other, however, it will be an important indicator of the health of the global nuclear nonproliferation regime, and of the issues that may need to be addressed in the future if political support for the Treaty from the majority of NPT parties is to be sustained. The outcome of the meeting will therefore be of concern to all of those seeking to strengthen this regime to meet the challenges of the next century.

The content and nature of this PrepCom session are a direct result of decisions taken in 1995 to make the NPT review process more effective, in particular more forward-looking and product-oriented. These decisions were linked politically to a concurrent decision to give the Treaty an indefinite duration. An important method of sustaining political support for the regime and per-

suading parties that it is in their interests to back its further strengthening is thus to ensure that the changed review process for the Treaty is fully implemented. Unfortunately, events at the 1997 and 1998 sessions of the PrepCom suggest that this is far from being achieved, and that disagreement exists among the parties on how to strengthen the review process and on the substantive objectives they should seek through it for promoting nuclear nonproliferation and nuclear disarmament.

Unless substantial progress can be made in both of these areas in 1999, the parties will go into the 2000 Review Conference with little to show for their participation in the changed review process. This will place great pressure upon that conference to produce a positive, forward-looking result. At the same time, the core of the Treaty may have been weakened. Because the NPT lacks a permanent executive organization, the review process has become its functional equivalent. If this process is discredited in the eyes of the Treaty parties, the credibility of the Treaty itself, and its related regime, may also be undermined. Much therefore rides on the outcome of the 1999 PrepCom session. A positive product from the session, in the form of a set of clear recom-

mendations, will be an indicator that the reform and strengthening of the Treaty and the regime, initiated in 1995, is back on track; a negative outcome may be perceived as undermining the common interests that underpin both the Treaty and the regime and promoting a fragmentation of the political support so necessary for them to survive.

The primary aim of this report is to help parties prepare for the 1999 NPT PrepCom and the next—the sixth—Review Conference of the Parties to the NPT, which will be the first under the strengthened review process. It is organized in four parts: background—what happened in 1995-1998; procedural and organizational matters for the 1999 PrepCom; substantive issues for the 1999 PrepCom; and conclusions—what are the prospects for a positive outcome and what may need to be done to secure such a result.

BACKGROUND

The NPT, signed on July 1, 1968, is the bedrock of the post-World War II global nonproliferation regime. With 187 states parties, this Treaty is the most widely adhered to and the most successful multilateral arms control treaty in history. At present it has more members than the United Nations,² and only four states are non-parties: Cuba, India, Israel, and Pakistan.

The NPT created the precedent of periodic reviews to assess the implementation of multilateral arms control agreements.³ Article VIII.3 specifically provided for the first Review Conference to be held in Geneva in 1975, five years after the Treaty's entry into force in 1970, and left open the option for subsequent quinquennial reviews thereafter if requested by a majority of states parties. As a consequence, NPT review conferences were held every five years after 1975 to review the implementation of the Treaty in the preceding five-year period.

In the negotiations from 1965 to 1968 on drafting the NPT, the leading industrial non-nuclear weapon states were reluctant to accept a nonproliferation instrument of indefinite duration. As a result, Article X.2 of the NPT stipulated that a conference on the future of the Treaty would be held 25 years after its entry into force.⁴

In accordance with this provision, the NPT Review and Extension Conference (NPTREC) was convened at the United Nations in New York, from April 12 to May 12, 1995. On May 11, 174 states parties gave the Treaty

an indefinite duration by agreeing without a vote to a package of interlinked decisions. Decision 1, on "Strengthening the Review Process for the Treaty,"⁵ elaborated a framework for an enhanced and a more substantive process of reviewing the implementation of the NPT and forwarding recommendations on future steps to the quinquennial NPT Review Conferences. Decision 2, on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament,"⁶ set out substantive guidelines and indicative targets designed to promote greater accountability regarding the full implementation of the Treaty. Decision 3, on "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons,"⁷ taken in accordance with the provisions of Article X.2, emphasized the two preceding decisions adopted by the NPTREC and reaffirmed the provisions of Article VIII.3. Its main function, however, was to provide a vehicle for confirming in a legally binding form that the Treaty was to have an indefinite duration. In addition, a resolution on the Middle East⁸ was also adopted which *inter alia* endorsed the ongoing peace process and called upon all states in the region to accede to the Treaty and to establish an effectively verifiable zone free of weapons of mass destruction and their delivery systems.

In the four years that have elapsed since the indefinite extension, and after two sessions of the PrepCom for the next NPT Review Conference in 2000, progress has been made on certain procedural issues. However, significant differences have emerged over the nature and interpretation of the NPTREC decisions as well as on their implementation.

The original concept of linking a "strengthened review process" to the extension decision was first elaborated in a Canadian "non-paper" in early 1995.⁹ Its ideas found their way into the South African draft on the enhanced review mechanism, and through the process of the President's Consultations at the NPTREC were eventually elaborated in the decisions on the extension package. The outcome was a political compromise between those who feared that, in indefinitely extending the NPT, the non-nuclear weapon states (NNWS) would lose their leverage on the nuclear weapon states (NWS) with respect to the latter's nuclear disarmament obligations, and those who preferred a simple extension of the Treaty without any collateral measures to assist in the future implementation of the NPT. This compromise made all states parties accountable for full compliance with the provisions of the Treaty, including the NWS with re-

spect to the Article VI requirement to pursue nuclear disarmament. Ambassador Dhanapala, the President of the 1995 NPTREC, in his closing statement emphasized that the final decision involved both permanence and accountability regarding the future of the Treaty. In his present capacity as UN Under-Secretary General for Disarmament Affairs, Ambassador Dhanapala recently reiterated this view succinctly:

I believe that it is important to recall that with the decision in May 1995 to strengthen the review process for the NPT, States parties had underlined their willingness to accept greater accountability of their actions and to ensure that the undertakings contained in the Treaty and in the decisions adopted at the Review and Extension Conference will have greater prospects of being achieved.¹⁰

Decision 1 on “strengthening the review process” comprised seven operative paragraphs, of which five dealt with review conferences (1, 2, 5, 6, and 7), while two (3 and 4) related to the PrepComs for these conferences. The meaning and scope of some of the paragraphs may be better understood if read in conjunction with others.

Decision 1 institutionalized the past practice of five-yearly reviews by regularizing quinquennial review conferences. Furthermore, the PrepCom would meet in sessions of 10 working days, instead of the previous five. This doubling of the working days was intended to facilitate a full and frank exchange of views on Treaty implementation, as well as make possible the negotiation of recommendations for transmission to review conferences.

Earlier PrepComs had focused primarily on procedural, logistical, and legal matters. Decision 1 formalized the inclusion of substantive matters in the work of the PrepCom, by specifying that:

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

make the procedural preparations for the next Review Conference.¹¹

In many ways this is the crux of the strengthened review process, in that the Preparatory Committee is now specifically mandated to consider: (1) principles; (2) objectives; and (3) ways, in order to promote the full implementation of the Treaty, as well as its universality. In the 1997 and 1998 sessions of the PrepCom, these issues have become a source of controversy and conflict as competing interpretations of Decision 1 have emerged.¹²

While endorsing the existing structure of three Main Committees (MC) at review conferences, Decision 1 (paragraph 5) also empowered their General Committees to delegate responsibility for review and subsequent reporting on each specific issue to only one of the MCs, thus removing any overlaps between them. It also discussed setting up subsidiary bodies within the MCs. This procedure was not entirely new as, at previous review conferences, informal working groups had been created within the MCs, to try to resolve certain clusters of issues and to draft language for the MCs’ reports on the review of the Treaty. After 1995, however, the task of recommending the establishment of subsidiary bodies was assigned to the PrepCom. Decision 1, in building upon informal past practice, formalized the role of subsidiary bodies in providing for a focused consideration of specific issues relevant to the Treaty. In so doing, it left open several questions about such subsidiary bodies (e.g., would they continue to function between review conferences; could the PrepCom set up its own subsidiary bodies; would their mandate be confined to a single issue; and how many of them would be created?).

The final paragraph of Decision 1 enjoined states parties attending review conferences to look back at the period under review, as well as forward to the future, and to make recommendations on the areas where further progress was required and identify the necessary means for its achievement. Future Review Conferences were charged with specifically addressing ways to strengthen the implementation of the Treaty and to achieve its universality. This suggested that at least two products were expected from future review conferences: an assessment of the operation of the Treaty in the five-year period under review (i.e., 1995-2000); and a set of goals to promote the implementation of the Treaty in the next five-year period (i.e., 2000-2005).

THE 1997 AND 1998 PREPCOMS

At its 1997 session, the PrepCom for the 2000 NPT Review Conference was formally tasked with both making procedural preparations for that conference and implementing Decision 1 by addressing substantive matters. The 1997 PrepCom therefore established an important precedent for future Treaty reviews as well as for the interpretation and implementation of the NPTREC decisions. At its first meeting, on April 7, 1997, the PrepCom adopted a nine-item Agenda. This sought to create a qualitatively different review process by addressing “specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.” Accordingly, the PrepCom engaged in a substantive, four-and-a-half-day discussion on Agenda item 4, “Preparatory work for the review of the operation of the Treaty in accordance with article VIII, paragraph 3, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons.”¹³

Early actions of the 1997 PrepCom included assigning chairs and setting dates for the 1998 and 1999 sessions and the 2000 Conference. The Group of Non-Aligned and other States (NAM) was assigned the 1999 and 2000 chairs. Ambassador Andelfo Garcia Gonzalez of Colombia, who was the nominee of the NAM to Chair the 1999 PrepCom, was reassigned in late 1998, and Ambassador Camilio Reyes Rodriguez of Colombia will now replace him. The NAM has yet to formally nominate its candidate for the Presidency of the 2000 Review Conference, though unconfirmed reports suggest that Ambassador J.S. Selebi of South Africa may be a leading candidate for that post.

With one exception, the PrepCom at its first session in 1997 decided to use the three sets of issues (or “clusters”) contained in annex V of the Final Report of the Preparatory Committee to the 1995 Review and Extension Conference¹⁴ as the basis for structuring its discussions. This comprised: Cluster 1 (MC. I issues)—nonproliferation, nuclear disarmament, and security assurances; Cluster 2 (MC. II issues)—safeguards and export controls; and Cluster 3 (MC. III issues)—peaceful uses of nuclear energy. The one exception was nuclear-weapon-free zones (NWFZ), which in 1995 were discussed as an MC. II issue, but in 1997 as a Cluster 1 matter. Universality or universal adherence to the Treaty was also to be discussed by the PrepCom, together with

a reaffirmation of the commitment of states parties to the preamble and articles of the NPT.

The 1997 PrepCom decided to make every effort to adopt its decisions by consensus. In the event that consensus could not be reached, the PrepCom would then take decisions in accordance with the rules of procedure of the 1995 Review and Extension Conference, which would be applied *mutatis mutandis*. The PrepCom at its second session considered the 1995 rules of procedure as the basis for the conduct of the 2000 NPT Conference, but agreement could not be reached on one aspect—whether in Rule 34 the term “subsidiary bodies” (used in Decision 1) should be substituted for “working groups.”

The PrepCom also decided to follow past practice and to permit non-NPT states, as well as NGOs, specialized agencies, and regional intergovernmental organizations, to attend the open sessions as “observers.” Accordingly, Brazil, Cuba, Israel, and Pakistan attended the 1997 session as observers, but in 1998 Pakistan was not present. The South Pacific Forum and the Organization for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) also attended, as did more than 100 NGOs in 1997 and 76 in 1998.

On the question of the report and recommendations from one session to the next session of the PrepCom, intense discussion and controversy remains. In 1997, it was agreed (on the basis of a Canadian suggestion to produce a “distilled compilation” of proposals, not necessarily based on consensus, in order to promote accountability and continuity) that the PrepCom would produce a “rolling” progress report or text that could be updated at each of its subsequent sessions. Ambassador Pasi Patokallio of Finland, chair of the 1997 session, proposed a report comprising three sections: (I) an introduction, giving logistical details; (II) a factual or technical report prepared by the Secretariat on the work of the PrepCom and the 2000 Review Conference, comprising substantive and procedural issues and official documents submitted by participating delegations; and (III) recommendations to the next session of the PrepCom, with an annex containing summary records, another annex (Chairman’s Working Paper) consisting of points of general agreement, subject to review and updating (paragraph 3), and an inventory or rolling list of proposed recommendations for consideration at subsequent sessions of the PrepCom (paragraph 4).

Originally, the Chairman proposed language for part III of the report that included the PrepCom's recommendation that in its second session the PrepCom should allocate time for the consideration of: (a) security assurances for NPT parties (proposed by South Africa); (b) the 1995 NPTREC resolution on the Middle East (proposed by Egypt); and (c) a fissile material cut-off treaty (FMCT, proposed by Canada and Germany). This particular categorization of items for special consideration at the second session of the PrepCom was perceived by Mexico as having the consequence of downgrading the relative priority of nuclear disarmament, and also of giving priority to the Chairman's paper over proposals made by national delegations and regional groups. The rationale for this was that both security assurances and a fissile material cut-off treaty were already included under cluster 1 (MC. I) issues, as was nuclear disarmament, and that allocating specific time for them could be perceived as diluting the importance that states parties attached to nuclear disarmament. In addition, Mexico and some other delegations appeared to be concerned that it was premature for the PrepCom to determine the items for discussion at its future sessions or at the Review Conference itself.

As a consequence of the decisions made in 1997, the 1998 PrepCom had to consider and decide on several items of business, including:

- (1) confirming the dates and venues of the third (and last) session of the PrepCom and of the Review Conference;
- (2) nominating and confirming the Chair of the third session of the PrepCom and confirming the President of the 2000 Review Conference;
- (3) finalizing the PrepCom report on substantive and procedural issues and recommendations to the Review Conference;
- (4) preparing the provisional agenda of the Review Conference;
- (5) financing of the PrepCom and of the Review Conference;
- (6) establishing rules of procedure; and
- (7) preparing and considering background documentation.

In addition, the PrepCom at its second session had to allocate time for the consideration of the three substantive items noted in the Chairman's statement, the other parts of the Chairman's Working Paper, and the official documents submitted by delegations at the first session.

The documentation alone involved more than 100 pages, with states submitting at least 27 official documents. This documentation and inventory of proposals remained "subject to review and updating" with no possibility of reaching agreement on recommendations to the Review Conference "pending final agreement on all draft recommendations at the last session."

On procedure, the 1998 session confirmed the dates and venue of the 1999 session and the NAM's chairmanship, as proposed at the 1997 session. Although the other items listed above were discussed to a greater or lesser extent, no agreement could be reached on them.

The cluster discussion on substantive matters, including the three special issues identified in 1997, consisted mostly of a series of national statements of position, rather than an interactive debate. In contrast to 1997, the Chairman's consultations in 1998 produced major disagreements over "enriching" the 1997 "Chairman's Working Paper" through consideration of and agreement on a streamlining of the text contained in paragraph 4. Some delegations submitted additional new text and refused to delete previous text that in many cases was repetitive or redundant. The NWS for the most part went into a holding strategy, which thwarted most efforts by various NNWS to develop consensus text on nuclear disarmament and other issues. Continuity of process in this situation was not helped by the absence of the 1997 Chairman, Ambassador Patokallio, and the fact that the 1998 Chairman, Ambassador Eugeniusz Wyzner of Poland, although a highly experienced senior diplomat, had not been present in 1997.

In addition, a new issue emerged in 1998 following a proposal by Canada that the PrepCom should pursue a two-track approach. Track 1 was to enrich the Chairman's Working Paper by building upon the agreed recommendations from 1997, while track 2 was to draft a short document reflecting the views of NPT states on issues of current interest or concern, such as security assurances, the Middle East, a fissile material cut-off treaty, nuclear disarmament, and safeguards.¹⁵ The rationale was that NPT parties should be able to express views on promoting the full implementation of the Treaty, as well as on agreed issues of concern, at the PrepCom, rather than having to wait for a Review Conference. Furthermore, this track 2 document was to lead to the production of a text that could provide language on substantive issues for the Report of the PrepCom under heading "II: Procedural and Substantive Issues" of

the 1997 report, which was split into headings “II. Procedural Issues” and “III. Substantive Issues” in 1998. The text that Canada proposed was for insertion under paragraph 21 of the draft report from the PrepCom session, which stated: “The Committee [PrepCom] held an in-depth consideration of all three issues [security assurances, the Middle East resolution, and the FMCT] during which a number of proposals were made. In this connection, the following documents were issued:....”¹⁶

The purpose of this Canadian document was not fully understood, and hence was opposed by some states from the Western Group that argued that it could undermine the Chairman’s Working Paper and would in certain cases duplicate material in it. Even though it had been drafted as a result of intense consultations with South Africa, Egypt (and the Arab group), and others, the United States indicated that it opposed the “track 2” concept in principle. Thus, as the Report of the PrepCom was being discussed paragraph by paragraph for adoption, on the final day of the meeting, the United States objected to the inclusion in it of the Canadian proposal. Canada then called for a show of support, paragraph by paragraph, for its proposals, and again the single objection was voiced by the United States, which rejected first the proposed text on security assurances and then the text on the resolution on the Middle East. The rejection of the compromise text on the Middle East resolution triggered the collapse of negotiations on the Report from the PrepCom session, following a blunt statement by the Chairman-designate of the 1999 PrepCom, speaking on behalf of the NAM, that his group would not agree to any part of the Chairman’s Working Paper unless it contained this compromise Middle East language. Yet, while the Middle East text provided the catalyst for the failure of the 1998 PrepCom, it was the deep-seated differences over the meaning and content of the strengthened review process that lay at the heart of the disagreements. For earlier, led by the United States, the NWS had opposed in the Chairman’s Consultations any attempt to structure the debate at the 1999 PrepCom by adding the three special issues to the cluster debate, or to consider a similar setup for the 2000 Conference.

In the end, a stunted report on the work of the session was finally adopted late on May 8, 1998.¹⁷ This five-page report summarized the particulars of the meetings held at the second session and addressed several procedural issues. But the report made no mention of any aspect of the substantive deliberations at the 1998

PrepCom, neither the “cluster debate” nor an additional one-and-one-half days spent discussing security assurances, the resolution on the Middle East, and the FMCT.¹⁸

Furthermore, the status of the 1998 version of paragraph 3 of the “Chairman’s Working Paper”¹⁹ remains unclear, as it was not formally or even provisionally adopted and consequently the report of the PrepCom makes no reference to it, even though it was listed as a conference document in the 1998 report. As compared to the 13 sub-paragraphs of provisionally agreed draft recommendations in the 1997 version, the 1998 draft was expanded to 27 sub-paragraphs and the structure changed somewhat. The 1998 version of paragraph 4 of the Chairman’s Working Paper remains repetitive in places and is poorly drafted. Yet, although the list of specific proposals put forward by delegations is larger than in 1997, it could still form part of the raw material for inclusion in the final version of the Chairman’s Paper containing recommendations for the Review Conference. It also remains uncertain whether paragraph 3 of Annex II of the Chairman’s Paper would form the basis for a new version of the “principles and objectives” or a similar decision document to be adopted at the 2000 Review Conference.

PROCEDURAL ISSUES AT THE 1999 NPT PREPCOM

The third session of the PrepCom in 1999 will face a range of challenges from its outset. Unless states parties go into the third session already prepared and with a clear sense of intent to reach agreement on both procedural matters and substantive recommendations, the 1999 session is likely to be as inconclusive as the 1998 one. Only 10 working days are now available to the Preparatory Committee, assuming that a fourth session in 2000 will *not* be held, and a number of key items need to be finalized before the start of the Review Conference in 2000. These include:

- (1) nominating the President of the 2000 Review Conference;
- (2) finalizing the PrepCom report on both procedural and substantive issues, as well as recommendations to the Review Conference;
- (3) preparing the provisional agenda of the Review Conference;
- (4) establishing rules of procedure; and
- (5) preparing and considering background documentation.

In addition, the PrepCom will have to consider whether to allocate time for the consideration of certain substantive items separately from any cluster debates. It will also have to decide whether to further develop the 1997 (and 1998) Chairman's working paper(s) and the official documents submitted by delegations at the previous two sessions, or to start anew in drafting a report and recommendations. An efficient way of dealing with these documents and proposals might be to divide them by subject matter under the appropriate articles of the Treaty, or failing that within the appropriate clusters, and to discard duplicate proposals. Working groups could be established to deal with material falling within clusters of Treaty articles or the existing PrepCom clusters, in order to speed up the consideration of the various issues and to facilitate progress in drafting the recommendations of the PrepCom to the Review Conference. To promote efficiency in its work, the PrepCom could decide to focus its deliberations on producing a forward-looking "distilled compilation" of recommendations for the 2000 Review Conference. In this regard, it would be encouraging if the general debate could be dispensed with altogether in the third session, and for the PrepCom to start with a short series of cluster debates to reflect developments since 1998, and then move rapidly into a drafting mode to finalize its report and recommendations to the 2000 conference.

It may also be essential to devote some effort toward developing common ground on the meaning, interpretation, and implementation of the concept of the "strengthened review process." In this regard, much will depend upon the skill, preparation, and leadership demonstrated by the Chairman.

The PrepCom should adopt the rules of procedure for the 2000 conference, and thus find a way of finessing disagreement on the wording of Rule 34. For example, the PrepCom could state in its report that "working groups" subsume "subsidiary bodies." Regarding background documentation, given the short time available prior to the Review Conference, it might be advisable to follow precedent to charge the Conference Secretariat, the International Atomic Energy Agency, the Argentine-Brazil Agency for Accounting and Control of Nuclear Materials, and the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean to prepare appropriate brief but factual documentation covering the period 1995-2000, and for this documentation then to be considered in a special one-day session of the

PrepCom to be convened in the margins of the 1999 UN General Assembly, rather than at a fourth full session of the PrepCom.

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

The traditional view of states regarding the scope of previous NPT review conferences was that it was the implementation of the *Treaty* that was being reviewed. The Treaty was the source of legally binding commitments on the part of signatory states and, therefore, the Treaty should be the heart of the review process—in terms of "assuring that the purposes of the Preamble and the provisions of the Treaty are being realized"—as noted in Article VIII.3. At the 1997 PrepCom, the United States stressed that "It was essential to bear in mind that the obligations of the States parties stemmed from the Non-Proliferation Treaty, which should, therefore, be considered the primary source of guidance."²⁰ An alternate view, held, for example, by China, Canada, and New Zealand, was that the Treaty had been enhanced by the decisions of 1995 and therefore future reviews must take into account not only the Treaty but the decisions and resolution agreed at the 1995 NPTREC.²¹ Canada emphasized that "...while the review process should focus on the Treaty itself, work should be guided by the conclusions of the 1995 Conference of the Parties, specifically the recommendations contained in the principles and objectives and in the decision on strengthening the review process..."²² New Zealand noted that "The decisions adopted...[in 1995]... had placed the Treaty and its subsequent reviews within the framework of an enhanced multilateral nuclear nonproliferation and disarmament process."²³

The preceding statements reveal that states parties still have not come to a common understanding on the scope of the strengthened review process and of the role of the Treaty and the NPTREC outcomes in that process. Jayantha Dhanapala thus recently cautioned: "The success of the [2000 Review] Conference will ultimately depend on the evolution of fresh consensual approaches transcending political divisions and the abandonment of rigid postures or complacent attitudes over the 'done deal' of the Treaty's indefinite extension."²⁴

Decision 1 of the 1995 NPTREC on "strengthening the review process for the Treaty" provided only lim-

ited clarity on the scope of future review conferences. It included the provision 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.²⁵

Given the context of the negotiation in 1995 and the decisions adopted by that Conference, it can be asserted that future reviews will need to focus not only on the implementation of the Treaty but also on that of the NPTREC outcomes. As an expression of general principles as well as key goals to be achieved, the 1995 principles and objectives provide an important context and touchstone for assessing the implementation of the Treaty in the period under review.

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

The first task would involve a product, i.e., a final report, comprising several elements. First would be an assessment of the implementation of the Treaty, plus the 1995 NPTREC decisions and resolution, from 1995 to 2000. In addition, the report would identify the areas in which further progress should be sought in the full implementation of the Treaty over the next review pe-

riod—e.g., nuclear disarmament, strengthened safeguards, nuclear-weapon-free zones—as well as the means through which these goals might be reached—e.g., ratification and implementation of START II; negotiation, ratification, and implementation of further nuclear arms reductions involving the participation of all five NWS; negotiation, ratification, and implementation of an FMCT involving the five NWS, India, Israel, and Pakistan; negotiation and implementation of additional safeguards protocols by all NPT NNWS; negotiation of an NWFZ in Central Asia; and entry into force of the CTBT and the Bangkok and Pelindaba NWFZ treaties. This final report of the 2000 Conference could be structured either along traditional lines, based on the reports of the three Main Committees, comprising both an evaluation of past implementation and recommendations for future progress; or it could be based on an article-by-article review of the Treaty factoring in the 1995 NPTREC decisions and resolution.

The second task would involve the drafting and adoption of a Year 2000 “Principles and Objectives for Nuclear Non-Proliferation and Disarmament” (Y2KP&O), comprising specific recommendations and milestones directed at strengthening the full implementation of the Treaty and the 1995 NPTREC decisions and resolution. This Y2KP&O could either emulate the structure of the 1995 P&O, or alternatively it could reflect the articles and preambular paragraphs of the Treaty with the addition of sections on universality and security assurances. Such a document should strive to reflect the structure of the Treaty and in this context to lay out the preferred goals and strategies for the next five-year period.

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

SUBSTANTIVE ISSUES FOR THE 1999 PREPCOM

The substantive issues which have in the past played a central role in determining the outcome of NPT conferences and meetings fall into two categories: matters that are linked to the inherent nature of the Treaty and the commitments contained within it, and issues that arise out of contemporary events, often taking place in parallel with these conferences and meetings. The impact of the former upon an approaching NPT meeting can be predicted with some certainty; the consequences of the latter are much more problematic. Examples of the first are the debates over the progress towards nuclear disarmament made by the NWS, which have occurred in virtually every NPT review meeting that has been convened. Examples of the second include the May 4 deadline for completion of the Oslo Peace Process in the Middle East, just after the 1999 PrepCom session is scheduled to conclude; the 50th anniversary summit of the North Atlantic Alliance in Washington, DC, which might witness some controversy on the issues of non-strategic nuclear weapons and no-first-use of nuclear weapons in the context of the review of NATO's Strategic Concept; and the dynamics at the 1999 session of the Conference on Disarmament as it resumes its deliberations on the negotiation of an FMCT and consideration of sensitive subjects such as nuclear disarmament and security assurances.

The task of identifying the key substantive issues inherent in the Treaty and likely to confront the 1999 NPT PrepCom session has been made slightly easier by the existence of the 1995 decision document on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" and the outcomes of the PrepCom sessions in 1997 and 1998. As a consequence, these substantive issues are most conveniently discussed using the "principles and objectives" headings of *Universality, Non-proliferation, Nuclear Disarmament, Nuclear-Weapon-Free Zones, Security Assurances, Safeguards, and Peaceful Uses of Nuclear Energy*. However, since there was no agreement at the 1998 session on the agenda for the 1999 session, in particular on whether the concept of structuring debate around clusters of issues should be retained, it remains unclear how the way the meeting is structured might shape the salience of these substantive issues in determining the outcome of the session.

Universality

In both the 1997 and 1998 sessions, there was agreement on the desirability of achieving universal membership in the Treaty, and that the then-five states not party to it (Brazil, Cuba, India, Israel, and Pakistan) should accede to it.²⁶ However, in 1998 the PrepCom became deadlocked by disagreement between Arab states and the United States on whether more specific recommendations for action should be made in the context of the Middle East, and in particular whether Israel should be named in them as the only remaining state in the region outside the NPT. This was the overt cause of the failure of that session to agree any recommendations to the 1999 session or the 2000 Review Conference, as discussed in an earlier section. In recent weeks, Egypt has again raised the issue of Israel's nuclear weapon capability and the level of its own commitment to the NPT in the absence of Israel's membership in the Treaty as a NNWS.

The issue of Israel and the implementation of the Resolution on the Middle East will therefore almost certainly loom large in discussions at the 1999 PrepCom session. The new elements in this situation in 1999 are the proximity of the session to the May 4 deadline for completing the Oslo Peace Process—the threat from the Palestinians to declare themselves an independent state at that date if the process has not been completed on time—and the elections for a new Israeli prime minister and government due to start in mid-May. Whether the Arab states and the United States, the two chief protagonists in this context, are prepared to compromise on this issue is likely to depend upon starting discussions on the matter very early in the session, and upon the evolution of political attitudes and actions within Israel and Palestine in the period before and during the PrepCom session.

Until 1997, the issue of universality in general lacked a clear focus, as several significant states still remained outside the Treaty. By early 1998, only five states remained in this category, and in practice the issue revolved around the three states, India, Israel, and Pakistan, that were known to have unsafeguarded facilities capable of producing fissile material that could be used to make nuclear devices. Arguments had occurred at previous NPT meetings about the desirability of naming all states that were in this position, but non-aligned solidarity had tended to militate against any naming of India and Pakistan.

The nuclear tests by India and Pakistan in May 1998, and India's overt declaration of being an NWS, significantly changed this context. They suggested that these two states were unlikely to accede to the NPT through the route taken by South Africa, namely by dismantling their covert nuclear explosive capabilities and then joining the Treaty, while the wording of the Treaty itself precluded them joining it as nuclear weapon states.²⁷ This situation was compounded by the strong reactions to the tests from many significant NNWS, whose original decision to seek membership was heavily conditioned by an assumption that no more nuclear weapon states would be created beyond the initial five.

While there is likely to be little, if any, support for the tests from NPT parties, it is unclear how they will choose to react to these events at the 1999 session. It is likely that time will be devoted to denouncing the two rounds of nuclear detonations conducted by India in mid-May, and the retaliatory tests by Pakistan. Some parties will undoubtedly wish to condemn the actions, but whether agreement can be reached on specific moves that all parties should take is less certain, particularly if any agreements brokered by the United States²⁸ to limit the consequences of the tests appear to be rewarding, or at least not penalizing, the two states for their actions. However, the international community has already spoken authoritatively on the South Asian tests and has elaborated benchmarks as stipulated in Security Council Resolution 1172 and the Group of Eight Industrialized States (G-8) statement, and in the sentiment expressed in the statement of the NAM Summit in Durban. Thus, the parties could settle for registering condemnation of the tests and restating these existing benchmarks.

More profoundly, the actions of the two states have challenged the assumption that a norm of nonproliferation had been created and was being sustained in appearance, if not in fact. In this context, it would be useful to recognize that India's and Pakistan's nuclear tests cannot change the nuclear nonproliferation architecture. Neither India nor Pakistan, nor Israel for that matter, can be recognized as NWS under the NPT. Their status continues as threshold states, and thus pariahs as regards the NPT regime. At the same time, these recent developments attest to the need for uniform and harmonized anti-proliferation strategies to be devised and implemented in South Asia and the Middle East. In addition, although the states were not parties to the NPT or con-

strained by any legal commitments from conducting their nuclear tests, their actions have generated a perception that the NPT should have been able to prevent their activities and, by its inability to do so, has in some ill-defined manner failed. This perception may need to be refuted by the PrepCom, and emphasis placed on more positive developments, such as Brazil's accession to the NPT in September 1998.

Nuclear Nonproliferation

The core issue in this context is compliance with the Treaty, particularly Articles I and II. If past NPT meetings are a guide, this could result in three sets of issues being aired in 1999. The most prominent of these would be alleged breaches of Article II of the Treaty²⁹ by NNWS, through actions designed to facilitate the production of nuclear devices, in particular by North Korea and Iraq, and possibly by Iran. Much will depend on how events on the Korean peninsula and the fate of UNSCOM and the International Atomic Energy Agency (IAEA) monitoring activities in Iraq have evolved. A second, more controversial issue is the legitimacy of storing or stationing nuclear weapons belonging to one of the five NWS on the territory of an NNWS. Finally, there is the question of whether the NWS have breached their nuclear disarmament commitments under Article VI of the Treaty.

Events in Iraq at the end of 1998 make it probable that the general issue of how to respond to cases of alleged noncompliance with the NPT will play an increasingly significant role in debates surrounding the NPT. On the one hand, an overt inability of the nuclear nonproliferation regime to respond to cases of noncompliance in an effective way seems likely to bring the regime into disrepute and weaken support for the NPT. It may also undermine belief in the goal of nuclear disarmament, if the international community is seen as incapable of controlling Iraq's weapon of mass destruction programs despite the sweeping inspection powers nominally possessed by the UN Special Commission on Iraq (UNSCOM).³⁰ On the other hand, the NPT lacks internal mechanisms for dealing with such allegations: unlike the Chemical Weapons Convention, it does not even have a permanent secretariat. This has led to suggestions in the past for creating ad hoc mechanisms, such as a compliance committee. Thus both specific cases and the general issue of how to deal with noncompliance seem likely to be central to any debates on the matter in 1999.

Nuclear Disarmament

Disagreements over whether progress has occurred toward the goal of nuclear disarmament have been a perennial feature of past NPT review meetings. Their significance derives from several factors. One is that the NPT, through Article VI, is the only legal document in which NWS have committed themselves to "pursuing negotiations in good faith on effective measures relating to...nuclear disarmament." Its significance in this context was highlighted by the use made of it by the Judges in the International Court of Justice in 1996 in delivering their advisory opinion on nuclear weapons, when they argued that this committed the NWS to not just negotiate on nuclear disarmament, but also to conclude agreements on it.³¹ Thus the NPT is seen as a valuable context within which NNWS can pressure NWS for more action on nuclear disarmament. A second factor is that implicit in the NPT text is the proposition that the possession of nuclear weapons by the NWS is not a permanent situation, and that the NPT is thus both a nuclear disarmament and nuclear nonproliferation treaty, with the latter being a contributing condition for achievement of the former, and vice versa. Thus, politically and from a security perspective, nuclear disarmament is regarded as an important method of strengthening both the NPT and the nonproliferation regime.

The "principles and objectives" of 1995 emerged in the context of a debate between two perspectives upon the nuclear disarmament process: that it had to be driven by a "time-bound framework" for achieving disarmament, or that it should be seen as an interactive process where actions would change perceptions, and permit further actions to occur,³² and thus only the initial actions could be specified in detail and have time-targets attached to them.

The decision document was based on this second set of ideas. It specified a "programme of action" containing three specific measures: an immediate objective, the completion of negotiations on a Comprehensive Test Ban Treaty (CTBT) by the end of 1996; a follow-on objective, the "early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear devices" (otherwise known as a Fissile Material Cut-Off Treaty or FMCT); and the "determined pursuit by the nuclear weapon States of systematic and progressive efforts to reduce nuclear weapons globally."³³

By January 1999, three developments had taken place in this context. One was that a CTBT had opened for signature in September 1996, but with a provision³⁴ that made entry into force dependent upon ratification by all 44 states operating research reactors. In the event that these ratifications had not been forthcoming three years after its opening for signature, a conference of those states that had ratified it would be held to consider how to expedite entry into force, and repeated annually thereafter. This conference is being planned for late September 1999. In addition, only two NWS, France and the United Kingdom, have currently ratified the Treaty. Three of the 44 still have not signed: North Korea, India, and Pakistan. It is unclear whether this issue of entry into force of the CTBT will be left to the September 1999 conference, or will figure in discussions in the April 1999 NPT PrepCom session.

A second development was that after two years of deadlock in the Conference on Disarmament (CD) over whether negotiations on an FMCT and discussions on a future program for disarmament should proceed in parallel, the South Asian tests inspired the creation of an ad hoc committee on an FMCT based on the mandate contained in the March 1995 report of the Special Coordinator.³⁵ The substantive issue that had been preventing progress on this matter had been whether the treaty should cover existing stocks of nuclear materials, or only prohibit new production. The decision to proceed suggested that this conflict will in future be conducted within the negotiations, rather than before they start. The significance of the FMCT for the 1999 PrepCom session may thus depend on how negotiations within the CD on this matter evolve in early 1999.

A third development has been the increasing frustration felt by representatives of many NNWS at the lack of any agreed new international vision for nuclear disarmament. The so-called "decatalogue," or agenda for the work of the CD, had its origins in the 1950s. Given the vastly different international environment of the 1990s, there has been an increasing perception that this needs to be revisited and a new agenda created to reflect current realities. This was seen on June 9, 1998 in the announcement of an eight-nation initiative "Towards a Nuclear-Weapon-Free World: The Need for a New Agenda."³⁶ The eight states came from all the existing main UN caucus groups,³⁷ and they later sponsored Resolution L.48 at the First Committee and Resolution 53/77Y in the UN General Assembly. What was notable

was that 12 NATO states abstained rather than voting no, as urged by the three Western NWS, thus hinting at a major change in their nuclear policy. This group will undoubtedly wish to develop this issue further in the 1999 NPT PrepCom session, while the five NWS may wish to produce a further joint statement on this issue, as they did in 1997 and 1998.³⁸

In reality, however, not much has changed on the nuclear disarmament front since 1995: START II still remains to be ratified by Russia and has not entered into force for either party to that agreement; the protocols to the Bangkok NWFZ treaty still need to be ratified by all five NWS and the Pelindaba NWFZ protocols by three of the NWS; and the CTBT has not been ratified by three NWS. Both Russia and China are modernizing strategic nuclear forces, and the United States is repackaging certain existing warheads and formulating new missions for its nuclear forces. More negatively, on January 20, 1999, US Defense Secretary William Cohen announced that the United States was restructuring its missile defense program for a decision point in June 2000 that would allow for the deployment of a limited national missile defense.³⁹ This would require amending the 1972 Anti-Ballistic Missile (ABM) Treaty, or if the Russians were not amenable to this, could lead to the United States renouncing the ABM Treaty. Not surprisingly, the responses from China and Russia to this announcement were not encouraging,⁴⁰ thus potentially setting the stage for fractious discussion at the PrepCom and further delaying if not scuttling any hopes for Duma ratification of START II. It must be recognized that with imperilled top leadership both in Moscow and in Washington, together with a right-wing-dominated US Congress which is fundamentally opposed to nuclear arms reductions and a nationalist Duma struggling to maintain some semblance of respect for Russia as a great power, the die is cast. Significant new movement in nuclear disarmament may now be impossible before 2001.

The issue of a new disarmament agenda is closely linked to a further internal NPT question, namely whether in 2000 the Review Conference should attempt to formulate a listing of measures constituting a "programme of action" similar to that generated in 1995. While an FMCT might take the place of a CTBT as an immediate objective, there is no obvious agreed follow-on objective even though a number of intermediate steps can be identified. The 1999 PrepCom session may there-

fore see debate on the range of alternatives that exist in this category, and some attempt to identify those around which a consensus might be created.

Nuclear-Weapon-Free Zones

In 1995, the NPT Review Conference set itself a target of creating an additional nuclear-weapon-free zone (NWFZ) by 2000. In fact, two additional zonal agreements were reached: the Southeast Asian NWFZ opened for signature in December 1995 and entered into force in 1997; the African one opened for signature in April 1996 but has yet to enter into force. Substantive issues are currently arising in relation to these zones. In the case of the zone in Southeast Asia, the problems arise from difficulties that some of the NWS perceive with specific aspects of the Treaty, including the method of delineating the zone and whether their commitments are towards the zone as a whole, or the individual states that have ratified the Treaty. As a result, the NWS have yet to ratify the Protocol attached to the zone providing the states within it with negative security assurances. In the case of the African Zone, the slowness of those states within the zone to ratify the Treaty, and thus produce the 28 ratifications necessary to bring it into force, has resulted in the mechanisms for implementing the Treaty not yet being created. So although two additional zones are in existence, neither is yet fully in force. Some discussion on how this might be achieved can thus be expected to occur in the 1999 PrepCom.

Four other NWFZ proposals are also at various stages of development. One concerns Mongolia, which is seeking to declare a single state NWFZ, and sponsored a resolution to that effect at the 1998 UN General Assembly.⁴¹ A second is for an NWFZ in Central Asia, where the text of a treaty is in the process of being drafted.⁴² The third concerns an NWFZ in the Middle East,⁴³ whose aims were mentioned in the context of a zone free of weapons of mass destruction in the Resolution on the Middle East adopted at the NPTREC in 1995. In addition, several states put forward a resolution on a Southern Hemisphere NWFZ at the UN General Assembly in 1998.⁴⁴ In all these cases, some attempt to encourage development of these zones can be expected to emerge from the discussions in 1999.

Security Assurances

Security assurances are regarded by many NPT NNWS parties as interim measures for their security

pending the complete nuclear disarmament of the NWS. Their provision is seen by many NNWS states as part of the “bargain” inherent in the NPT. Two types of security assurances have been discussed in this context, negative and positive. The former involves the NWS providing assurances that they will not use nuclear weapons against an NNWS in any circumstances; the latter that they will come to the aid of any state that is threatened with nuclear weapons, or upon which nuclear weapons are used. Two further issues have impinged on this debate: whether the assurances should be given to NPT parties only, and whether they should be in the form of a “legally binding instrument,” as against a unilateral declaration.

In 1998, an ad hoc committee was formed in the CD to discuss the issue of nuclear security assurances, but there have been perceptions that some NPT parties would also like to see a “legally binding instrument” providing security assurances negotiated within an NPT forum and applying to those parties alone. At the same time, the United States, which provides conditional negative security assurances to NPT NNWS parties (the conditions being that they should not attack the United States, its territories, its troops, its allies, or a state towards which it has a security commitment in association or in alliance with an NWS) has indicated an unwillingness to go beyond such a unilateral commitment except in the case of states that are party to an NWFZ treaty. The potential number of NPT parties in this position now numbers more than 100.

One issue which has been seen to be closely associated with security assurances is that of no-first-use agreements. This idea has been strongly advocated by China, on the basis that such an agreement would provide negative security assurances to NNWS, as well as generating greater stability in relationships among the NWS.

The issue of security assurances has been on the agenda of NPT meetings since 1975, and it is unclear under current circumstances how significant it remains for NNWS. However, it seems likely that both negative and positive nuclear security assurances will remain on the agenda of the 1999 PrepCom, arguments will continue to be advanced for the negotiation of no-first-use agreements, and actions will be taken to encourage movement towards a negotiation which transforms the existing unilateral declarations into a multilateral legally binding instrument.

Safeguards

The negotiation of an INFCIRC/153 agreement with the IAEA for the implementation of safeguards on all the fissile material within a state is mandatory for all NPT NNWS. However, many states have no nuclear materials under their jurisdiction, and have not negotiated such an agreement. Thus one standard item of business at NPT meetings is to encourage them to do so for the sake of universal compliance with the Treaty.

Until 1990, few raised questions about the adequacy of the existing safeguards regime, but in that year the invasion of Kuwait by Iraq, an NPT party, led to the revelation of the existence of the latter’s clandestine nuclear weapon program. As a consequence, a process of strengthening the IAEA safeguards system was implemented, culminating in what was known as the 93+2 programme. This involved items that could be implemented using existing authority contained in the INFCIRC/153 agreement, as well as others that could not. To cover the latter, an “Additional Protocol” was negotiated to add to existing INFCIRC/153 agreements. States have now started to ratify this new agreement—INFCIRC/540 (corrected)—and the IAEA has started to implement it, but one consequence is that two IAEA safeguards systems are emerging, one applicable to those states that have signed the Additional Protocol and the second to those that have not. Thus it can be expected that at the 1999 PrepCom session efforts will be made to encourage all parties to ratify the Additional Protocol, so as to create a unified system once more.

Three other issues are usually addressed under this heading: conditions of supplying nuclear items to non-parties, the disposition of fissile material from weapons, and physical protection of nuclear material. One issue in relation to the first of these that is likely to be raised in the 1999 PrepCom session is whether any supply of nuclear material, or equipment to produce it, from an NPT party to a non-NPT state should be conditional upon the latter accepting IAEA safeguards over all fissile materials within its jurisdiction, as against solely the items in question. This is essentially an argument about the export policies of China and Russia, with the latter taking the position that sales to India are “grandfathered” by earlier agreements. A new issue that is arising is whether such safeguards should also include acceptance of the Additional Protocol.

Negotiations have been taking place for some time between several advanced industrial states on transparency of plutonium stocks, and between Russia, the IAEA, and the US on methods of placing fissile material surplus to weapon requirements under some type of international safeguards or supervision. Agreement has been reached between nine states on plutonium management guidelines, and in November 1998 the IAEA published data on holdings of certain types of civilian plutonium in these states.⁴⁵ In addition, all the NWS have agreed to implement appropriate elements of the Additional Protocol. Encouragement of these developments can be anticipated in 1999.

Furthermore both in the context of the IAEA and the NPT review, an effort is underway to promote the implementation in all states possessing fissile material of criteria on the physical protection of nuclear material (as set forth in INFCIRC/225/Rev.3) as well as of strengthening these controls. There is also a need to sustain standards of physical security and safety within nuclear plants, to prevent nuclear smuggling and deter attacks on nuclear facilities. In addition, an effort is being made to prevent nuclear terrorism. These issues are also likely to surface at the 1999 PrepCom.

Peaceful Uses of Nuclear Energy

Other issues that may emerge in 1999 relate to the tension between the exercise of the "inalienable right" of all the parties to the Treaty to use nuclear energy for peaceful purposes, enshrined in Article IV of the Treaty, and the duty of exporting states not to assist nuclear proliferators, and thus to exercise close control over their exports. This arises in particular over the case of Iran, an NPT party in good standing, where the United States has been attempting to constrain other states from exporting nuclear equipment to it. It also centers upon the alleged lack of information available to states outside the Nuclear Suppliers Group (NSG) on the guidelines used by its members in implementing their national export controls, and the need for greater transparency over these guidelines. In this context, the NSG is planning to hold its second international seminar on the role of nuclear export controls in nuclear nonproliferation just prior to the April 1999 PrepCom.

CONCLUSIONS

The failure to agree on anything other than a formal report from the 1998 PrepCom session means that no

recommendations are available for participants in the 1999 session concerning its agenda or schedule of activities. This makes prior consultations on these matters among the parties, and vigorous leadership from the chairman of the session, essential elements in ensuring that time is not lost at the start of the meeting debating and attempting to reach an understanding on them. If this has not been achieved by the time the session commences, it will offer a discouraging precedent for achieving agreement on the procedural and substantive issues that will need to be addressed during the session.

The issues that will need to be decided in these preliminary discussions are whether there should be a plenary session; whether there should be cluster debates; whether time should be allocated for discussion of specific issues; and how the production of recommendations to the Review Conference should be scheduled. Although the shortage of time suggests that the session should focus on the last of these tasks, it is probably inevitable that more open-ended discussions will take place, if only to offer the nuclear-weapon states an opportunity to account for their actions over the last year in the area of nuclear disarmament. Provision for some type of plenary session therefore appears necessary, whether in the form of an open-ended discussion or a more structured one involving clusters and specific topics. It will also be necessary to create the maximum opportunity for negotiating the text of recommendations to the Review Conference, either in a chairman's consultative group or in a number of working groups tasked with handling specific sets of issues. The precise format in which these two sets of activities are to be undertaken may be less significant than making sure that they take place, and in particular making sure that adequate time is allocated to negotiating texts on the recommendations from the PrepCom to the Review Conference. If the session fails to produce such recommendations, and thus any agreed product, it will be interpreted by many parties as proof that the strengthened review process has failed to materialize, and thus that part of the decisions agreed in 1995 in association with the indefinite extension of the Treaty has not been implemented.

Two types of recommendations should emerge from the PrepCom session to the Review Conference: procedural and substantive. The four main procedural decisions that need to be taken are the nomination of a President for the 2000 Review Conference; the drafting of a provisional agenda for the conference; agreement

on its rules of procedure; and the commissioning of background documentation for parties attending it. Rapid and early progress on these matters at the PrepCom session would enhance the prospects for an agreed product from the substantive discussions.

The central issue in relation to the substantive recommendations that may emerge from the PrepCom session is how they will relate to the activities of the Review Conference itself. A short document developed at the 1997 PrepCom containing possible agreed recommendations (Annex II, Para. 3), and a longer one containing a collation of individual state proposals (Annex II, Para. 4), formed the focus of the drafting work of the two previous PrepCom sessions. While the purpose of these documents was never formally clarified, there was some expectation that the possible agreed recommendations should form the basis for a 2000 version of a forward-looking, 1995-type Principles and Objectives document, and that the collation of proposals could contribute to any evaluative Final Declaration produced in 2000. These expectations implied that in 2000 the Review Conference would attempt to produce agreed versions of both types of document. In practice, it remains unclear whether all the parties remain committed to these objectives, but on the assumption they will seek to produce both documents, rather than concentrate as in 1995 on agreeing on the forward-looking one, the PrepCom session will need to organize itself to undertake two tasks: to produce recommendations for specific objectives the parties might seek to achieve by 2005, and to remove overlaps from and streamline the collation of proposals accumulated from the two previous sessions. These tasks might be allocated to two different negotiating groups.

While the task of streamlining the proposals from previous sessions is likely to be time consuming, but in the main largely a mechanical editing operation, discussions on the content of the forward-looking document are likely to be more controversial. They will almost certainly focus on several specific issues. One will be universality of the Treaty, with its associated questions of implementation of the 1995 Resolution on the Middle East, and the consequences of the South Asian nuclear tests and possible responses to them over the next five years. A second is specific allegations of noncompliance with the Treaty, and whether revised mechanisms can be agreed to handle such allegations. A third is progress toward nuclear disarmament, and in particular the impact of the South Asian tests upon this and the

need for a new agenda for disarmament. More specific issues include whether a time target should be set for completion of an FMCT and what options should be considered for the next incremental step to take once this treaty has been agreed. A fourth issue is whether a target should be set for additional NWFZs, and a fifth whether a negotiating timetable might be proposed for a Treaty on Security Assurances. Finally, there is the issue of how to handle the tension between the desire to implement effective national export controls in order to prevent states inadvertently assisting nuclear proliferators, and the concerns of many NNWS that this will deny them access to a valuable and necessary energy source. Moreover, what may be crucial is not only how debates evolve over individual issues, but also how those individual debates interact with each other.

All the indicators are that the 1999 NPT PrepCom session will be very problematic in its outcome. Many issues will have to be resolved in an orderly manner if it is to move forward and produce useful substantive recommendations for the 2000 Review Conference. Prior consultations and discussions may be essential to facilitate such an outcome, as will a willingness to limit negotiation and recommendations to those objectives that will be directly relevant to discussions at that Review Conference. Yet despite the difficulties inherent in achieving such a result, the alternative of not having any agreed product emerge from the session will lead the NPT regime into unknown waters, as many may conclude that the strengthening of the review process has failed, and that at least one of the decisions adopted in 1995 has not been implemented. April 1999 will therefore truly be a testing time for the NPT.

¹ While these dates were provisionally agreed at the 1997 PrepCom and subsequently confirmed at the 1998 PrepCom, a proposal is under consideration to shift the PrepCom to May 3-14 (or April 26-May 7 in the event the UN Disarmament Commission is cut back to two weeks). While the dates were still subject to finalization at the time of writing in late January, this issue does not have any material bearing on the issues and questions discussed here.

² See, "Worthwhile NPT Review outcomes in the lead-up to the 2000 NPT Review Conference," *Peace and Disarmament News* (August 1998), p. 90.

³ Ben Sanders is probably the first analyst to make this observation. See Ben Sanders, "NPT Review Conferences and the 1995 Extension Conference: Working Towards Consensus," in Tariq Rauf, ed., *Extending the NPT: Perpetuating the Global Norm*, Aurora Papers 27 (Canadian Centre for Global Security, 1995), pp.43-44.

⁴ "The Treaty on the Non-Proliferation of Nuclear Weapons," *Treaty Series*, Vol. 729 (United Nations, New York).

⁵ 1995 Review and Extension Conference of the Parties to the Treaty on the

Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organization and Work of the Conference*, Decision 1, "Strengthening the Review Process for the Treaty," (United Nations, New York: 1995), Annex, p. 8.

⁶ *Ibid.*, Decision 2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament," Annex, pp. 9-12.

⁷ *Ibid.*, Decision 3, "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons," Annex, pp. 12-13.

⁸ *Ibid.*, "Resolution on the Middle East," Annex, pp. 13-14.

⁹ Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs (Canada), *A Non-Paper on Strengthening Review Conferences* (Ottawa, March 1995).

¹⁰ See, Jayantha Dhanapala (Under-Secretary General for Disarmament Affairs, United Nations), "The NPT Regime: External and Internal Challenges," statement at *The Seventh Carnegie International Non-Proliferation Conference*, Washington, DC, January 11, 1999, <<http://www.ceip.org/programs/npp/dhanapala.htm>>.

¹¹ NPT/CONF.1995/32 (Part I), Decision 1, paragraph 4.

¹² See, for example, NPT/CONF.2000/PC.I/SR.2, the statements by the Netherlands (on behalf of the European Union), China, Canada, South Africa, and Japan at the 1997 session, pp. 2-16; and NPT/CONF.2000/PC.II/SR.1 (April 30, 1998), the statement by South Africa, and NPT/CONF.2000/PC.II/SR.3 (May 4, 1998), statement by Mexico, Sri Lanka, and Egypt.

¹³ NPT/CONF.2000/PC.I/32 (18 April 1997), p. 3.

¹⁴ NPT/CONF.1995/1 (February 1, 1995), *Final Report of the Preparatory Committee for the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, Annex V: "Proposed Allocation of Items to the Main Committees of the Conference."

¹⁵ NPT/CONF.2000/PC.II/34 (May 8, 1998), "Proposals for inclusion in the Report of the Preparatory Committee at its second session—Submitted by Canada."

¹⁶ NPT/CONF.2000/PC.II/CRP.2 (May 7, 1998), "III. Substantive Issues" (paragraph 21), p. 9.

¹⁷ NPT/CONF.2000/PC.II/36 (9 June 1998), *Report of the Preparatory Committee on its second session*, <<http://www.un.org/Depts/dda/WMD/PCII36.htm>>.

¹⁸ Refer to the *Indicative Timetable* of the second session of the PrepCom, NPT/CONF.2000/PC.II/INF.2 (April 28, 1998).

¹⁹ NPT/CONF.2000/PC.II/35 (9 June 1998), *Chairman's Working Paper*, <<http://www.un.org/Depts/dda/WMD/PCII35.htm>>.

²⁰ Summary of Statement by The Honorable Lawrence Scheinman (Assistant Director for Nonproliferation and Regional Arms Control, US Arms Control and Disarmament Agency), Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, First Session, Summary Record of the 3rd Meeting, New York, April 8, 1998, p. 9 (paragraph 41).

²¹ Summary of Statement by Ambassador Sha Zukang (China), Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, First Session, Summary Record of the 2nd Meeting, April 8, 1998, NPT/CONF.2000/PC.I/SR.2, p. 8 (paragraphs 34-35).

²² *Ibid.*, p. 10 (paragraph 44).

²³ *Ibid.*, p. 24 (paragraph 123).

²⁴ Dhanapala, "The NPT Regime."

²⁵ NPT/CONF.1995/32/DEC.1, paragraph 7, May 11, 1995.

²⁶ NPT/CONF.2000/PC.1/32, p. 12; and NPT/CONF.2000/PC.II/35, p. 1.

²⁷ Article IX:3 of the Treaty states that "For the purposes of this Treaty, a nuclear weapon state is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967."

²⁸ See, US Deputy Secretary of State Strobe Talbott, Address at The Brookings Institution, Washington, DC, November 12, 1998, "US Diplomacy in South Asia: A Progress Report," <http://www.state.gov/www/policy_remarks/1998/981112_talbott_southasia.html>. In his talk, Talbott refers to the "irreversibility" in the foreseeable future of the nuclear weapon programs of India and Pakistan.

²⁹ Under this article non-nuclear weapon states party to the Treaty commit themselves "not to manufacture or otherwise acquire nuclear weapons or other nuclear devices."

³⁰ In this context, however, it might be appropriate to point out that the difficulty of effectively monitoring or verifying the destruction of weapons programs under non-negotiated and non-cooperative circumstances, as in the case of Iraq, and where in addition the inspecting agency might have compromised its neutrality, does not say much about the usefulness of verification and monitoring conducted as part of negotiated arms control agreements that facilitate cooperative monitoring, as in the case of the NPT.

³¹ International Court of Justice, "Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion by the General Assembly of the United Nations)," *Communiqué* No. 96/23 (July 8, 1996).

³² Harald Müller and Makarim Wibisono, *Approaches to Nuclear Disarmament: Two Views*, PPNN Issue Review No. 12, April 1998.

³³ NPTREC.1995, Document 2, paragraph 4.

³⁴ Comprehensive Test Ban Treaty, Article XIV.1.

³⁵ Conference on Disarmament, CD/1299.

³⁶ Text available on-line at <www.basicint.org/8nation.html>.

³⁷ The eight are Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa, and Sweden.

³⁸ NPT/CONF.2000/PC.I/2, Statement by the delegations of France, China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America on nuclear nonproliferation and disarmament at the Preparatory Committee for the Review Conference; and NPT/CONF.2000/PC.II/8, Letter dated April 29, 1998, from the Head of the Delegation of the United Kingdom of Great Britain and Northern Ireland addressed to the Chairman of the Preparatory Committee, transmitting a statement by the delegations of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

³⁹ *Special Defense Department Briefing with Defense Secretary William Cohen. Also Participating: Joint Chiefs of Staff Chairman Gen. Hugh Shelton and BMDO Director Gen. Lester Lyles*, US Department of Defense, January 20, 1999; *National Security Staff Briefing on Defense and Arms Control by Robert Bell (Special Assistant to the President for National Defense and Arms Control)*, The White House, January 21, 1999; and Steven Lee Myers, "US Asking Russia to ease the pact on missile defense—threatens to end Treaty....," *The New York Times*, January 21, 1999, p. A1.

⁴⁰ See, Bill Gertz, "Russia, China denounce US plans for missile defense," *The Washington Times*, January 22, 1999, p. 5; David Hoffman, "Russia says START II is Imperilled: US Missile System Plan Could End Hopes for Ratification," *The Washington Post*, January 22, 1999, p. 5.

⁴¹ A/RES/53/77D, adopted by consensus, on "Mongolia's International Security and Nuclear-Weapon-Free Status."

⁴² A/RES/53/77A, adopted by consensus, on "Establishment of a Nuclear-Weapon-Free Zone in Central Asia."

⁴³ A/RES/53/74, adopted by consensus, on "Establishment of a Nuclear-Weapon-Free Zone in the Region of the Middle East."

⁴⁴ A/RES/53/77Q, adopted by 154:3:10, on "Nuclear-Weapon-Free Southern Hemisphere and Adjacent Areas."

⁴⁵ The nine states are Belgium, China, France, Germany, Japan, Russia, Switzerland, United Kingdom, and United States. See IAEA, *Communication Received From Certain Member States Concerning Their Policies Regarding the Management of Plutonium*, INFCIRC/549 (March 16, 1998).