

Viewpoint

The 2000 NPT Review Conference

TARIQ RAUF

Tariq Rauf is Director of the International Organizations and Nonproliferation Project of the Center for Nonproliferation Studies at the Monterey Institute of International Studies. He has been a member of Canada's delegation to NPT review meetings since 1990. This viewpoint expresses the author's personal views and does not necessarily represent the views of any organization with which he is associated.

The Sixth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)—the first important multilateral arms control review forum of the new millennium—will be held at UN headquarters from April 24 through May 19, 2000. This is the first Review Conference since the historic 1995 NPT Review and Extension Conference (NPTREC). This conference, on May 11, 1995, agreed without a vote to an inter-linked package of decisions and a resolution, as part of which the Treaty was extended indefinitely. During the five years following that positive outcome, expectations have been steadily lowered regarding the upcoming 2000 review of the operation and implementation of the Treaty.

Many developments have contributed to these lowered expectations. There have been fractious debates on the lack of progress in nuclear disarmament at the Preparatory Committee (PrepCom) sessions for the 2000 NPT Review Conference, in the Conference on Disarmament (CD), and at the First Committee of the UN General Assembly. Other unfavorable omens include setbacks to the ratification and entry-into-force process of the Comprehensive Nuclear-Test-Ban Treaty (CTBT),

discord in US-Russia and US-China relations, US missile defense plans, perceived nuclear weapon state (NWS) obstructionism regarding the implementation of the strengthened review process agreed to as one of the 1995 extension decisions, and unresolved questions about the NPT compliance of Iraq and the Democratic People's Republic of Korea (DPRK).

In light of these and other negative developments, apparently fearing failure, on November 2, 1999, South Africa withdrew from the presidency of the 2000 Review Conference—an unprecedented move, as never before had a *country* bailed out as conference president. On December 8, 1999, the Preparatory Committee for the 2000 Review Conference met in a brief “resumed session” and accepted the nomination of Ambassador Abdallah Baali of Algeria as the president-designate to replace Ambassador Jacob Selebi of South Africa. Ambassador Baali's efforts at consultation and building common ground have fortunately removed some of the pessimism regarding the 2000 Review Conference.

The aim of this viewpoint is to offer perspectives on the conduct of the next—the sixth—Review Conference

of the Parties to the NPT, which is the first under the strengthened review process agreed to in 1995. It will be crucial to ensure a full and balanced review of compliance with all of the provisions of the Treaty, as well as of the implementation of the decisions and resolution of the 1995 NPTREC. This paper begins with an analysis of Decisions 1 and 2 of the NPTREC, comments on the enhanced review process for the Treaty in light of these decisions, and offers perspectives on both procedural and substantive aspects of the work of the Review Conference.

THE NPT AND THE 1995 EXTENSION DECISION

The NPT, signed on July 1, 1968, remains 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 agreement in history. Today, only four states remain non-parties: Cuba, India, Israel, and Pakistan. The NPT remains the only global, legally binding instrument committing the NWS to nuclear disarmament and all states to pursue a treaty on general and complete disarmament.

The NPT always was and still remains a three-part bargain: nuclear nonproliferation, nuclear disarmament, and cooperation in the peaceful uses of nuclear energy under safeguards. The Treaty itself does not refer to any pre-conditions for either nuclear nonproliferation or for nuclear disarmament. Each of these goals can be pursued either separately or in tandem with each other. Responding to the Indian and Pakistani nuclear detonations in May 1998, Canadian Foreign Minister Lloyd Axworthy stressed that:

The nuclear nonproliferation regime is based on, and anchored in, international law and norms, as well as incorporated into international mechanisms. The NPT is fundamental, but the broader regime is a complex system of multilateral and bilateral agreements, arrangements, and mechanisms intended to promote and achieve a world without nuclear weapons, sooner rather than later. This was valid during the Cold War and remains valid today. At the same time, the regime is intended to provide a framework to enable the world to make effective use of nuclear capability for peaceful purposes.¹

The 2000 Review Conference will be shaped by the 1995 decisions and associated resolution, as well as the record of achievements or lack thereof in nuclear nonproliferation and nuclear disarmament during the period 1995-2000. Decision 1, on “Strengthening the Review Process for the Treaty,”² elaborated a framework for an enhanced, more substantive Treaty review process. This framework was intended to facilitate a full and balanced review of the implementation of the NPT and to forward recommendations on future steps to the quinquennial NPT Review Conferences. Decision 2, on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,”³ established 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,”⁴ emphasized the two preceding decisions, thereby clearly linking them to the indefinite continuation in force of the Treaty. In addition, a resolution on the Middle East⁵ was also adopted; it endorsed the on-going peace process, stressed the importance of the Treaty’s universality in the region, and called for the establishment in the region of an effectively verifiable zone free of nuclear and other weapons of mass destruction and their delivery systems.

In the five years that have elapsed since the indefinite extension, deep differences have emerged over the meaning and significance of the NPTREC decisions and resolution. These have already cast a cloud over the new Treaty review process, even before it is put to the test at a Review Conference. These negative developments were amply evident, in particular, at the last two sessions of the PrepCom in 1998 and 1999, which were unable to reach any consensus on substantive recommendations to the Review Conference (as called for at the 1995 NPTREC).

On the eve of the 2000 NPT Review Conference, the Treaty is under threat on several fronts that require bold and concerted action. George Santayana warned that those who do not remember history are condemned to repeat it. A brief summary of the outcomes of the 1995 NPTREC may therefore be in order.

Decision 1: Strengthening the Review Process for the Treaty

The original concept of a “strengthened review process” in the context of the extension decision was first elaborated in a Canadian “non-paper” in early 1995.⁶

Some of the motivations for this non-paper are worth recalling. First, it was clear that many NPT states had concluded that the 1995 NPTREC would provide the last meaningful opportunity to review the implementation of the Treaty and to seriously underscore its goals such as the complete elimination of nuclear weapons. Second, it was obvious that at least a narrow majority—but a legal majority nevertheless—favored a limited extension (which was an option under Article X.2). They believed a limited extension would provide continuing leverage to force the pace of nuclear disarmament. Third, it was evident that the existing Review Conference structure had not served the NPT membership well. But instead of setting up an entirely new structure that ran the risk of increasing polarization, it was important to retain the attractive features of the review process and to build upon these to endow the process with greater foresight and a stronger basis for measuring compliance. This translated into an initiative giving political substance to enhanced reviews and another initiative providing continued advances in nuclear disarmament and reinforcement of the Treaty. Thus, the two tightly linked initiatives could give sufficient reassurance to states for them to be able to support indefinite extension “plus,” rather than only a limited extension.

The key element of the strengthened⁷ review process was that the Preparatory Committee for subsequent NPT Review Conferences was specifically mandated to consider principles, objectives, and ways to promote the full implementation of the Treaty, as well as its universality. The final paragraph of Decision 1 specified that Review Conferences, in considering the implementation of the Treaty, could look both back at the period under review as well as make recommendations for further progress and on the necessary means for its achievement. The “intent” of the drafters was to transform future reviews into a qualitatively strengthened process that would increase all states parties’ accountability for the Treaty’s implementation, and encompass the full scope of the nuclear disarmament and nuclear nonproliferation agenda. In the 1997, 1998, and 1999 PrepCom sessions these issues became a source of controversy and conflict as competing interpretations of Decision 1 emerged.

Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament

Decision 2 set out, under seven headings comprising 20 operative paragraphs, a set of targets for bringing

about the full implementation of the Treaty. One of the key issues to be resolved at the 2000 Review Conference is whether the principles and objectives outlined in Decision 2 represented fixed targets or indicative targets that could be updated periodically, so that as certain objectives were achieved (e.g., a CTBT) other objectives take their place (e.g., multilateral nuclear arms reductions or general and complete disarmament). During the 1998 and 1999 sessions of the PrepCom, it became clear that the prevailing view was not to try to revise the existing 1995 NPTREC decisions and resolution in 2000, but instead to consider new formulations that could be adopted. For example, at the 1997 PrepCom, Canada submitted views on a “rolling document” for the strengthened review process,⁸ at the 1998 PrepCom, the Non-Aligned Movement (NAM) submitted a working paper organized in an article-by-article format,⁹ and at the 1999 session, Canada and the NAM separately submitted their respective versions of a draft 2000 principles and objectives.¹⁰

Decision 3: Extension of the NPT

During the general debate at the 1995 NPTREC, where more than 110 states parties took the floor, some 80 countries backed indefinite extension, with only 10 states (including seven Arab countries) opposed. Seven other states supported alternative proposals, and the rest were uncommitted. In the second and third weeks of the 1995 NPTREC, a proposal by Canada to extend the Treaty indefinitely gathered 103 (and eventually 111) co-sponsors.¹¹ Given that a clear majority supported indefinite extension of the Treaty, the president of the Conference worked on that basis to extend this majority to encompass all of the states parties present at the conference. As negotiations on the “principles and objectives” and on the “strengthened review process” neared agreement, the president, Ambassador Jayantha Dhanapala, was able (after intensive debate) to devise language on indefinite extension that was acceptable to all parties. This draft resolution “reaffirmed” the decisions on the “principles” and “strengthened review.” It then proceeded to note that, since a quorum existed in accordance with Article X.2, the NPTREC had decided that “as a majority exists among States party to the Treaty for its indefinite extension, in accordance with article X.2, the Treaty shall continue in force indefinitely.”¹² The extension decision was thus directly linked to the two separate decisions on an enhanced review process and on principles and objec-

tives for nonproliferation. The Conference adopted the extension decision under the terms of NPT Article X.2, which made it legally binding on all NPT states parties.

The Resolution on the Middle East

The fourth and final item adopted by the NPTREC, on May 11, 1995, was a resolution on the Middle East. As the president was finalizing the extension package, a resolution on the Middle East co-sponsored by 14 Arab states was put forward. This resolution highlighted Israel's refusal to join the NPT, its unsafeguarded nuclear facilities, and the consequent threat to regional security. The United States refused to accept any explicit singling out of Israel on the grounds that doing so might end up damaging the existing Middle East peace process. Stalemate on this issue brought the NPTREC to the brink of collapse. After prolonged discussions, agreement was finally reached on a compromise text of the resolution. In an unexpected move, the United States sought and received the support of the two other NPT depositaries—the United Kingdom and the Russian Federation—as co-sponsors. The result was that the Resolution on the Middle East received additional weight by being co-sponsored by all three depositaries of the NPT.¹³

The Resolution on the Middle East comprised eight preambular and six operative paragraphs. The operative paragraphs endorsed the aims and objectives of the Middle East peace process and efforts to create a nuclear-weapon-free zone (NWFZ) and a zone free of other weapons of mass destruction. They also called upon all remaining states not party to the NPT to accede to it, and noted with concern the existence of unsafeguarded nuclear facilities in the region. This resolution had the result of singling out the Middle East among other regions of proliferation concern, such as South Asia and Northeast Asia. It constituted the “price” that was paid to ensure that the 14 Arab states, which had supported a “rolling” rather than indefinite extension, compromised and agreed not to stand in the way of the adoption of the extension package without a vote.

SUBSTANTIVE ISSUES AT THE 2000 REVIEW CONFERENCE

The 1995 Decision 2 on “Principles and Objectives” set out seven key items and established a set of parameters to evaluate the implementation and operation of the Treaty. The seven items were universality, security

assurances, nonproliferation, nuclear disarmament, safeguards, peaceful uses of atomic energy, and NWFZs. This section highlights key substantive issues that are likely to arise at the 2000 Conference in relation to each item. (The order has been changed below to reflect the order of the articles of the NPT, and security assurances appear at the end of this section as this item is not formally in the Treaty.)

Nonproliferation (NPT Articles I and II)

Several issues are likely to receive consideration:

- An underlying issue will be different priorities for developed and developing countries. For the North, now that the Cold War is over and a number of arms reduction and confidence-building agreements are in the process of being implemented, the threat to security emanates not from the former East bloc but from the countries of the South that are believed to possess capabilities for nuclear and other weapons of mass destruction. For the South, the principal interest is in seeing not just the United States and Russia, but also Britain, China, and France, halt further development of and reduce their nuclear arms, with total elimination to follow.
- Another controversial question might be allegations of Western nuclear assistance to Israel's nuclear weapon program—especially from the United States and Norway. Reportedly, Israel, in exchange for not overtly declaring its nuclear weapon capabilities, secured US agreement to halt its “visits” to the Dimona nuclear facility.¹⁴ Also, heavy water exports from Norway to Israel have never been fully accounted for or properly safeguarded.
- Continuing difficulties in assuring the compliance with the NPT of Iraq and the DPRK will certainly be a problem for the Conference. Both countries continue to resist providing access to international inspectors to investigate their compliance.
- The question of “stationed” nuclear forces has also come up at previous Review Conferences. Presently, some 150 non-strategic US nuclear weapons are deployed (or could be deployed) in seven North Atlantic Treaty Organization (NATO) countries: Belgium, Germany, Greece, Italy, The Netherlands, Turkey, and the United Kingdom. Some NAM countries have claimed that NATO nuclear exercises involving participation of non-nuclear NPT states are counter to the NPT's nonproliferation obligations as these ac-

tivities could involve indirect control of nuclear weapons by NPT NNWS.

In the past, Western states have refused to entertain any discussion on issues relating to NATO nuclear activities and to Israel's nuclear capability and assistance to it, and instead have preferred to focus on the non-compliant activities of Iraq and the DPRK. How these politically charged issues will be addressed at the 2000 Review Conference remains to be seen.

Strengthened IAEA Safeguards (NPT Article III) and Export Controls

Decision 2 devoted five paragraphs to safeguards, the most on any one issue, thus highlighting the importance that states parties placed on compliance. Safeguards are a technical means to the political goal of verifying that NPT NNWS are in compliance with their obligations under the Treaty. Export controls have also become an indispensable part of the regime, and derive from Article III.2. Following the discovery of Iraq's clandestine nuclear weapons program and the rise of questions about North Korea's nuclear activities, safeguards have been strengthened through a greatly enhanced flow of information, the reaffirmation of the International Atomic Energy Agency's (IAEA's) right to conduct "any time, any place" special inspections, and the use of new verification techniques (such as environmental monitoring and use of intelligence data). The IAEA now has in place an enhanced safeguards regime under its Additional Protocol (INFCIRC/540); 46 Protocols with individual states parties have been approved, 45 have been signed, and seven are in force. However, 52 NPT NNWS still have to conclude NPT safeguards agreements (INFCIRC/153),¹⁵ but these are countries without any nuclear activities.

According to the IAEA Annual Report for 1998, 222 safeguards agreements were in force with 138 states (and with Taiwan). NPT-related safeguards agreements were in force with 126 states. The Agency was safeguarding an amount of nuclear material sufficient to make 103,883 nuclear weapons, at 897 facilities involving 1,085 locations that contain nuclear material. This safeguards effort was financed by approximately \$82 million annually from the regular safeguards budget and some \$20 million a year in additional contributions by member states. Thus, for a paltry \$100 million per year, the IAEA was safeguarding over 100,000 bomb-equivalents of nuclear material in 138 states. It is difficult to believe that states

are serious about preventing further proliferation, when they provide only \$100 million a year for Agency safeguards but at the same time have no hesitation in spending tens of billions of dollars on military programs. States need to be persuaded that the value of a "safeguards dollar" greatly outweighs that of a "counterproliferation dollar" when it comes to preventing proliferation.

The Review Conference could call for an increase in the IAEA's budget as well as endorse the Agency's primary role in the verification of NNWS compliance with the NPT. It could also support an enhanced role for the IAEA in verifying nuclear disarmament by the NWS as well as by India, Israel, and Pakistan, but the additional costs of safeguards activities in the NWS and the other three "proliferator" countries must be borne by these eight states.

The international nonproliferation regime also has emphasized multilateral control over nuclear technology transfer. National policies and export control instruments have been developed to supplement nonproliferation norms, and the 1995 NPTREC endorsed the application of export controls as a condition of supply as well as requiring full-scope safeguards by the recipient. The Zangger Committee, set up on March 11, 1971, had the task of establishing a list of items whose export would trigger safeguards, and of defining procedures and conditions for permitting nuclear exports. This "trigger list" has been updated and revised eight times, most recently in June 1999. The Zangger Committee is recognized as the "faithful interpreter" of Article III.2 of the NPT.

The Nuclear Suppliers Group (NSG) or the London Club was set up in the aftermath of India's "peaceful nuclear explosion" in 1974. Its original membership included France, which at that time was not a party to the NPT. The NSG's mandate was broader than that of the Zangger Committee, in that the NSG included controls on dual-use items and technologies. In October 1995, new unified guidelines set out fundamental principles for safeguards and export controls. These included a nonproliferation principle, i.e. that regardless of the nuclear status of a recipient country, an export license should be denied unless a supplier is satisfied that the transfer involved will not contribute to nuclear proliferation.

In practice, though, export controls remain controversial, with developing states claiming discrimination. The

1995 principles and objectives called for greater transparency in export controls. In response, the NSG initiated a transparency program, which involved the preparation of a background paper published by the IAEA in its INFCIRC series as number 539 on September 15, 1997. In addition, two international seminars have been held on the role of nuclear export controls: one at the IAEA in Vienna in October 1997 and a second at the United Nations in New York in April 1999.

A new area of proliferation concern has been that of “intangible technology transfer.” This involves the transfer of information or knowledge by: (1) intangible electronic means (the Internet, fax, or telephone); (2) the export of services, for example consultancy services in dual-use fuels in a country of proliferation concern; (3) permanent migration of scientific expertise; and (4) education and training institutions, or industry.¹⁶ In this regard, many nuclear suppliers have developed “catch-all” controls to stop intangible exports not specifically listed or identified when there is evidence that such exports could assist proliferation activities.

Cooperation in Peaceful Uses of Atomic Energy (NPT Article IV)

A controversial issue waiting in the wings is the favorable treatment of the DPRK, which is in breach of its safeguards agreements, as compared to the treatment of others in good standing. This refers to the nearly \$6 billion package offered to the DPRK, including the supply of light water reactors, in return for allowing IAEA inspections of its nuclear facilities. To date, the IAEA has yet to conduct such inspections in North Korea—while Iran, where IAEA safeguards are applied without problems, is facing a US-led blockade banning transfers of nuclear and dual-use items.

Peaceful Nuclear Explosions (NPT Article V)

The NPT was drafted and negotiated in the mid-to-late-1960s, a time when “peaceful nuclear explosions” (PNEs) were envisaged as being useful for a variety of purposes. While the first NPT Review Conference in 1975 included seven paragraphs endorsing and discussing Article V issues in its agreed “Final Declaration,” the third Review Conference in 1985 in its agreed “Final Declaration” contained only three paragraphs on Article V. The last paragraph noted that “...the potential benefits of the peaceful applications of nuclear explosions have not been demonstrated and that no requests

for services related to the peaceful applications of nuclear explosions have been received by the IAEA since the Second NPT Review Conference.” At the sessions of the Preparatory Committee for the 2000 Review Conference, several states party expressed the view that the provisions of Article V should be viewed as no longer applicable in light of the signing of the CTBT. This development needs to be recognized and recorded as part of the review of the Treaty in 2000.

Nuclear Disarmament (NPT Article VI)

Nuclear disarmament has been the make-or-break issue at all previous NPT Review Conferences. In addition to disagreements between NWS and NNWS over the pace and extent of nuclear arms reductions, states parties have feuded over the commitments in Article VI regarding nuclear disarmament and general and complete disarmament. Frustrated by the NWS’s attempt to create a variety of linkages, a position paper on Article VI was submitted at the 1999 PrepCom by Canada.¹⁷ This paper presented a legal opinion that Article VI recorded two undertakings by states party: “...to pursue negotiations in good faith [1] on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament...” and (2) “...on a treaty on general and complete disarmament under strict and effective international control.” It argued that these were two distinct undertakings, with the first *not* being conditional on achievement of the second. Furthermore, the paper quoted a US negotiator of the NPT as having stated on January 18, 1968, that Article VI constituted a “solid affirmation of the responsibility of nuclear-weapon states to strive for effective measures regarding cessation of the nuclear arms race and disarmament. *Moreover, the article does not make the negotiation of those measures conditional upon their inclusion within the framework of a treaty on general and complete disarmament*” (emphasis added).¹⁸ This debate undoubtedly will be renewed at the Review Conference and the credibility of the NWS will descend even lower if they attempt to maintain a linkage between the two distinct commitments contained in Article VI.

Paragraphs 3 to 4 of the 1995 “Principles and Objectives” related to nuclear disarmament, and reaffirmed the commitments under Article VI of the NPT. Paragraph 4 outlined a program of action in regard to the full realization and effective implementation of Article VI. It called for a CTBT to be concluded no later than 1996;

the immediate commencement and early conclusion of negotiations on a multilateral convention banning the production of fissile material for nuclear explosives; and global nuclear weapon reductions, with the goals of eventual elimination of nuclear weapons and general and complete disarmament. These elements along with selected other items are discussed below.

Comprehensive Test Ban Treaty

After nearly 50 years of debate and years of complex negotiations, a CTBT was signed at the United Nations in New York on September 24, 1996. By early 2000, 155 states had signed the treaty including the five NWS, and 51 states had ratified. Of the 44 states whose ratification was necessary for entry-into-force, 41 had signed (excluding the DPRK, India, and Pakistan) and 26 had ratified, including France and the United Kingdom.¹⁹ However, without ratification by all 44 designated states the CTBT cannot enter into force. A major blow was inflicted to the CTBT in mid-October 1999, when the US Senate decisively rejected ratification of the treaty.

The Review Conference could take into account that one of the items in the program of action has been achieved—i.e., a CTBT had been completed and signed before the end of 1996—and that barring surprises, nuclear weapon testing by the original five proliferators has halted, even though the CTBT has not yet entered into force. On the other hand, it is also likely that there will be intense debate on issues such as: the science-based stockpile stewardship (SBSS) program in the United States (and similar programs in China, France, and Russia); the efficacy of the prototype International Monitoring System; questions about sub-critical tests; and the status of national test sites. Unless serious measures are undertaken to promote the early entry-into-force of the CTBT and a legally binding norm against further testing is established, there will be pressures in some of the NWS to resume nuclear testing.

Fissile Material Cut-off Treaty

Drafters of the 1995 program of action envisioned that a multilateral fissile material cut-off treaty (FMCT) would further strengthen the legitimacy of the nonproliferation regime, add to the pressure on the “holdout” states (i.e., NPT non-signatories) to place all of their nuclear facilities under IAEA safeguards, and complement strategic arms reduction treaties by facilitating

verifiable stockpile reductions and preventing the manufacture or stockpiling of new weapon-grade fissile material. However, no substantive progress has been registered since 1995. At the CD, the NAM have linked the start of FMCT negotiations to nuclear disarmament, and China has linked it to the non-weaponization of space. This deadlock continued into the 2000 session of the CD.

The 1998 and 1999 sessions of the PrepCom each devoted one session to FMCT discussions, which repeated dissenting positions already expressed at the CD. It is unlikely that serious negotiation will have commenced on an FMCT by the opening of the 2000 NPT Conference, thus representing failure on the second item in the 1995 program of action. Perhaps, it might be best if at the Review Conference the issue of an FMCT were abandoned in lieu of an agreement among the five NWS to codify their existing moratoria on new production and to include transparency and safeguards measures. An FMCT is a relic of the Cold War arms control agenda, and it will not succeed in achieving through the backdoor what the NPT has yet to achieve—freezing the programs of the three non-NPT NWS.

Elimination of Nuclear Weapons

The third item in the program of action referred to nuclear disarmament. The NWS have not put forward any joint agenda for the phasing-out of nuclear arms. At the Cologne G-8 summit on June 20, 1999, Washington and Moscow agreed to discuss a START III framework as outlined at their March 21-22, 1997, Helsinki summit. This framework called for ceilings of 2,000-2,500 deployed strategic warheads on each side, as a way of facilitating ratification of START II by Russia.²⁰ Among the other three NWS, both France and the United Kingdom have unilaterally removed obsolete non-strategic nuclear weapons and cancelled or slowed down certain strategic modernization programs, but neither is prepared to renounce reliance on nuclear arms.²¹ China has continued to modernize its strategic nuclear forces.

Even after the Cold War, nuclear weapons remain the principal danger to global security. Recent NWS pronouncements on nuclear strategy and the loss of momentum in START and in CTBT entry-into-force will help shape the consideration of Article VI issues at the 2000 Review Conference. Four other relevant issues will be US national missile defense plans; the 1996 advisory

opinion of the International Court of Justice; the continuing stalemate at the CD; and accountability and reductions in non-strategic or tactical nuclear weapons.

US National Missile Defense Plans: Under pressure from a Republican-dominated Congress, on July 22, 1999, President Bill Clinton signed legislation stating it to be the policy of the United States to deploy a national missile defense (NMD) system “as soon as technically feasible.” All three variants of a limited NMD system under consideration would require amendment of every substantive article in the 1972 Anti-Ballistic Missile (ABM) Treaty.²² In July 2000, President Clinton is scheduled to make a decision whether to deploy an NMD system by 2005 or to defer such deployment.

These developments have already had significant negative effects on nuclear arms control diplomacy. At the CD, China has prevented the resumption of any consideration of an FMCT and has given notice that its main priority is to negotiate a treaty preventing weapons in space. Russia too has steadfastly opposed US NMD plans. At the 1999 UN General Assembly, Russia and China co-sponsored resolution 54/54A on the integrity of the ABM Treaty. Several countries also expressed concern about US NMD plans and supported the ABM Treaty at the 1999 session of the NPT PrepCom.

ICJ Advisory Opinion: On July 8, 1996, the International Court of Justice (ICJ) ruled on an advisory opinion requested by the UN General Assembly (Resolution 49/75K of December 15, 1994) on the use of nuclear weapons in armed conflict. The Court concluded that the threat or use of nuclear weapons could be legally defensible only *in extremis* where national survival was at stake. The Court unanimously found that: “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”²³

The Court’s advisory opinion did not dictate any timetable or negotiating forum for reaching this result. However, since 1997, Malaysia has sponsored resolutions at the UN General Assembly that link the ICJ advisory opinion to the need to initiate negotiations on a nuclear weapons convention. These resolutions have routinely been supported by a large majority. The 2000 Review Conference is bound to witness a heated debate on the applicability of the ICJ advisory opinion to the obligations of the NWS on nuclear disarmament.

Conference on Disarmament: Following the negotiation of the CTBT, attempts by a number of states to establish an ad hoc committee at the CD to discuss nuclear disarmament have been consistently opposed, particularly by the United States and Russia with the support of the other NWS. Frustrated by the lack of progress on nuclear disarmament, on June 9, 1998, eight states—Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa, and Sweden—issued a Joint Declaration on “A Nuclear-Weapons-Free World: The Need for a New Agenda.” This New Agenda Coalition has introduced resolutions at the 1998 and—in a version modified to take account of criticisms of the original version—1999 UN General Assemblies; both were adopted by large margins. In the absence of further progress in nuclear disarmament, the New Agenda provides a practical basis for a common framework that could be agreed to at the 2000 Review Conference.

What might be useful during the Review Conference would be a consideration of different views on Article VI, with the aim of promoting a realistic and balanced consideration of the complex and highly political issues involved in the context of NPT obligations. While actual negotiations on nuclear weapon reductions properly belong within the purview of the NWS, the NPT review process could usefully serve to provide an opportunity for a discussion on the guiding principles for future measures such as: enhanced transparency in the reduction process (i.e., reports by the NWS on the actual numbers of warheads currently deployed, in active and inactive status and dismantled); greater openness on nuclear doctrine (i.e., current status of alert forces and targeting practices); and steps already taken and contemplated for further nuclear arms reductions. Darach Mac Fhionnbhairr of Ireland struck a key note when he stated that: “The prospects for a successful outcome at the 2000 Review will depend in large measure on the ability of states parties to forge a common approach to nuclear disarmament as a priority goal coupled with a commitment to an accelerated process of reductions. It is difficult to envisage any substantive outcome to the Review without convergence on this fundamental issue.”²⁴

Sub-Strategic Nuclear Weapons: Over the past decade attention has focused on strategic nuclear weapons, given the prominence of START I and II and the denuclearization of the Soviet successor states Belarus, Kazakhstan, and Ukraine. Sub-strategic, or tactical,

nuclear weapons have been largely ignored following the successful conclusion and implementation of the 1987 Intermediate-Range Nuclear Forces (INF) Treaty and the fall 1991 Bush/Gorbachev unilateral initiatives on sub-strategic nuclear weapons. Security would be enhanced if steps were taken to codify the 1991 Bush-Gorbachev declarations and to agree on a framework comprising data exchanges (covering numbers and locations of sub-strategic nuclear warheads), monitored central storage, and warhead deactivation and dismantlement. Both the United States and the Russian Federation should be encouraged to consider the complete prohibition of this class of weapon, perhaps in the framework of START III.

Nuclear-Weapon-Free Zones (NPT Article VII)

Article VII of the NPT, as well as the 1995 NPTREC, both recognized and encouraged the establishment of NWFZs as a means of promoting nuclear nonproliferation through regional measures. Since the 1995 NPTREC two additional NWFZ agreements have been signed that establish such zones in Southeast Asia and in Africa, and Mongolia has unilaterally declared its nuclear-weapon-free status. While attempts since 1994 to set up a Southern Hemisphere NWFZ have been unsuccessful, it is clear that broad support exists for such a treaty.²⁵ Furthermore, since fall 1997, steady progress has been made on a NWFZ in Central Asia, and a draft treaty text is nearly completed. The one contentious discussion related to Article VII is likely to be on the Middle East.

Middle East Resolution

The 1999 Preparatory Committee noted in its final report a proposal by some delegations to establish a “subsidiary body” under Main Committee II “on the implementation of the resolution on the Middle East.” At all three sessions of the PrepCom, Egypt made submissions on this item,²⁶ and references have also been made in NAM working papers. US refusal to accept any compromise language on the Middle East was the catalyst that led to the collapse of the 1998 NPT PrepCom and to bitter debate at the 1999 PrepCom. Lost in the shuffle was the crucial fact that the Middle East Resolution, every word of which had been cleared by the United States with Israel before the document was adopted by the NPTREC,²⁷ served as the mechanism which made it possible for the Arab states not to stand in the way of the Treaty’s indefinite extension. Attempts to refute the ne-

gotiating record of the NPTREC outcomes or to play politics with the Middle East Resolution have already proven to be controversial and counterproductive, and unless a positive approach to this matter is adopted, this issue will plague the conduct and atmosphere of the upcoming Review Conference. Whether or not the Conference establishes a subsidiary body on this item, it will have to devote at least one session to a review of the implementation of the resolution with a view to formulating recommendations for further action.

Amendments and Review (NPT Article VIII)

Though paragraphs 1 and 2 of Article VIII provided modalities for amending the Treaty, the requirements for doing so are so complicated and involved that the Treaty is virtually unamendable. Article VIII.3 dealt with the review of the operation of the Treaty. As explained above, 1995 NPTREC Decision 1 has provided further clarity and guidance in this regard, and this development should be recognized and recorded at the 2000 Review Conference.

Signature and Ratification (NPT Article IX)

The item of interest under this Article is paragraph 3, which defines a NWS for the purposes of the NPT as “one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” Given the nuclear tests first by India and then by Pakistan in May 1998, and both states’ claim to nuclear weapon status, it would be advisable for the 2000 Review Conference to clearly and strongly reinforce the existing definition. Caution should also be expressed regarding engagement with India, Israel, or Pakistan that might result in directly or indirectly bestowing any recognition on these states as NWS even if these states are not parties to the Treaty. Any recognition of new NWS by any NPT signatory should be viewed as a material breach of the Treaty.

Withdrawal and Duration (NPT Article X)

Withdrawal from the Treaty is permissible provided extraordinary events related to the subject matter of the Treaty have jeopardized the supreme national interests of a signatory state. Thus far, the DPRK remains the only state to have ever given the requisite notice of withdrawal of 90 days (on March 12, 1993). North Korea suspended the clock after it signed a “Joint Statement” with the United States on June 11, 1993, but it never

rescinded its notice of withdrawal. Every effort should be made to obtain the cancellation of the DPRK's notice of withdrawal from the Treaty. However, given the current situation this does not seem likely to succeed.

In accordance with Article X.2 the Treaty was extended indefinitely on May 11, 1995. The permanent duration of the NPT should also be recognized and recorded in the product of the 2000 Review Conference.

Universality

At the time of the 1995 NPTREC, the NPT had attracted 178 adherents. The number of states parties now stands at 187, and only Cuba, India, Israel and Pakistan remain outside the Treaty. The May 1998 nuclear tests by India and Pakistan, and both countries' overt declarations claiming NWS status, posed a grievous challenge to the integrity of the Treaty and its associated regime. UN Security Council Resolution (UNSCR) 1172 of June 1998 rejected recognition of any new NWS and established nonproliferation benchmarks for India and Pakistan. Since May 1998, the United States has engaged in 11 bilateral rounds of negotiation with India and nine with Pakistan on security matters, including the benchmarks noted above. But at the same time, the United States has backed away from insisting on full implementation of all of the benchmarks set out in the UNSCR, giving the impression that it may indirectly accept India (and Pakistan) as NWS. These actions have caused unease about the direction of US engagement policy with India and Pakistan. Of particular concern for NPT states parties were statements made by senior US officials accepting nuclear proliferation in South Asia and backing away from the requirements of UNSCR 1172.²⁸

Given the heightened nuclear profile of three Treaty holdouts, it might be useful for NPT parties to consider a harmonized approach for encouraging the adherence of all states still remaining outside the Treaty in conjunction with the application of full-scope safeguards on all (not just new) supply arrangements. The traditional approach of selective pressure and differentiated policies toward the three holdout states has failed miserably and must be re-examined with a view to developing a common nonproliferation strategy.

Security Assurances

Since the initial attempts to conclude the NPT, security assurances to NNWS have been considered an im-

portant component of a credible global nonproliferation regime. UNSCR 255 (1968) provided positive assurances, i.e., a pledge to come to the assistance of NNWS threatened with nuclear attack. The NNWS have also sought negative assurances, i.e., pledges by the nuclear powers not to use or threaten to use nuclear arms against NPT NNWS. At the First Special Session of the UN on Disarmament in 1978, the five nuclear powers gave separate negative security assurances. Only China's assurance was comprehensive and unconditional. Since that time Egypt, Nigeria, and South Africa have worked on various drafts of negative security assurances.²⁹

Over time all five NWS made unilateral and conditional statements on negative assurances, but the NNWS wanted to harmonize these negative assurances into a legally binding document. On the eve of the 1995 NPT Conference, the NWS agreed to UNSCR 984 updating the earlier resolution, and four of the five NWS harmonized their unilateral declarations. During the 1997-1999 sessions of the PrepCom, South Africa outlined some ideas about a legally binding instrument on security assurances to be negotiated at the 2000 Review Conference. This caused some controversy and certain states argued that such a course would undermine the CD, where this issue was also being considered. Rather than seek to negotiate a legally binding instrument, the NPT conference could usefully consider a process to encourage the NWS to agree on enhanced, uniform, and multilateral security assurances to NPT parties.

FURTHER STRENGTHENING THE NPT REVIEW PROCESS

The failures of the 1999 and 1998 sessions of the NPT PrepCom to agree on recommendations dealing with substantive matters, mainly due to NWS rejection of moderately worded recommendations on nuclear disarmament and related nonproliferation priorities, have damaged the viability of the strengthened review process. What might be done to complete the preparations for the 2000 Review Conference with a view to salvaging some vestiges of a strengthened review? The only practical way forward seems to be to devise qualitatively new modalities to promote the review and implementation of the Treaty, in accordance with the NPTREC decisions and resolution. These might include, for example: redefining the consensus rule; revising the structure of the review process; refocusing the role of the depositaries; and augmenting the role of the chairs. Such views

could be expressed through a document adopted by the conference interpreting and clarifying the meaning of NPTREC Decision 1 on a “strengthened review process.”

Redefining the Consensus Rule

In the “Draft Rules of Procedure for the 2000 Review Conference,”³⁰ Rule 28 deals with the “Adoption of Decisions.” It states that “... every effort should be made to reach agreement on substantive matters by means of consensus. There should be no voting on such matters until all efforts to achieve consensus have been exhausted.” Generally speaking, “consensus” is understood to mean the absence of any objection being expressed by a participating state to the taking of the decision in question. Consensus could be redefined to mean unanimity minus “x”—i.e., with 187 states parties consensus could be deemed to have been achieved if all states present and voting agree to a common text except for a very small number (say between one and five, which desist from joining the rest). Such a modified definition of consensus is by no means unknown in other international security fora. For example, several Organization for Security and Cooperation in Europe (OSCE) mechanisms envisage the possibility of undertaking executive action without the requirement of a traditionally defined consensus.³¹ The Prague mechanism of 1992 and the Moscow mechanism are two such cases in point.

Already, in the context of the Preparatory Committee, some states parties have voiced their opinion on the merits of moving away from a strict definition of consensus. For example, in its plenary statement at the second session of the PrepCom, New Zealand stated:

There may be many areas on which we can agree now: those can be folded into the consensus recommendations before us. But we do not think that we need to necessarily be bound by consensus at this time. Rather our inclination would be, in areas where this is not achievable, to capture initiatives and proposals on the basis of them enjoying broad support and agreement. Confining ourselves to a consensus product might risk a sterile and probably meager outcome.³²

The outcomes of the 1995 NPTREC were adopted “without a vote.” With an overwhelming majority in favor of indefinite extension, dissatisfied parties desisted

from objecting formally. At the 2000 Review Conference, procedural and factual reports could be issued under the authority of the “president” while substantive or forward-looking products could be adopted “without a vote,” when, although consensus does not emerge, no one objects strongly enough to prevent acceptance of the outcomes.

Revising the Structure of the Treaty Review Process

Since 1985, NPT Review Conferences have structured the review of the Treaty into three Main Committees, which deal broadly respectively with nuclear nonproliferation and disarmament, safeguards and export controls, and cooperation in the peaceful uses of nuclear energy. This three-part structure was devised by the United States for the 1985 Review Conference, in part to provide a committee for the Eastern group to chair. The division of work between the three Main Committees tends to overlap in places and has not proven especially efficient or conducive to generating agreed reports.

A common-sense solution to revitalize the review of the Treaty would be an article-by-article approach, factoring in the relevant preambular paragraphs and NPTREC decisions (which would include items such as universality and security assurances as well). In this context, it would be useful to modify the existing Main Committee structure and to re-organize the review process to deal sequentially with the articles and related preambular paragraphs of the Treaty, but without overlap and factoring in as required the seven elements of the 1995 “principles and objectives.” Subsidiary bodies, or working groups, could be established for the purpose of deliberation and drafting assessments and recommendations for the final report on Treaty implementation. Such an approach could facilitate a structured and balanced review of the Treaty and the NPTREC outcomes, in addition to providing greater focus on those elements of the Treaty requiring further effort for full implementation.

The working papers submitted by the NAM at the three sessions of the PrepCom were all organized on an article-by-article basis, reflecting the order of articles as they appear in the Treaty. Canada took the lead in 1999 in formally calling for an article-by-article review and also filed a reservation to the decision taken at the PrepCom on the allocation of items to the Main Com-

mittees.³³ This procedural issue, unless resolved in the run-up to the Review Conference, could well become a contentious matter possibly leading to a delay in commencing the substantive review work.

Refocusing the Role of the Depositaries

The Treaty itself does not provide any special role for the depositaries, except in Article VIII.3, which has been updated by Decision 1. Jayantha Dhanapala, Under-Secretary-General for Disarmament, has proposed the formation of “a voluntary group of ‘bridge-builders’ drawn from all regional and political groups to establish links among the treaty parties and to act as a ‘fire-brigade’ to defuse controversies and seek negotiated solutions to problems as they arise.”³⁴ The Report of the Tokyo Forum recommended that to support the NPT’s core bargain, a permanent secretariat and consultative commission be created to deal with questions of compliance and to consider measures for strengthening the Treaty.³⁵ Such a group—called an “Executive Council” in Dhanapala’s proposal—could be set up at the next Review Conference. It could serve to assist the president and vice-presidents and meet informally between Review Conferences to discuss Treaty review matters.

President’s Consultations

The role of the president of an NPT Review Conference is to manage, co-ordinate, provide leadership and vision, and work to build common ground with a view to achieving as robust an outcome as possible. Traditionally, Review Conference presidents have relied on consultation with a select, but geographically and politically representative group of countries, informally referred to as “Friends of the Chair.” Such groups, which are necessarily kept small in membership, are organized to assist in identifying and building consensus.

At the 1995 NPTREC, Ambassador Dhanapala pulled together “President’s Consultations,” involving 25 of the principal players, that were instrumental in crafting the language for the package of extension decisions. At the 1997 PrepCom, Ambassador Pasi Patokallio also convened informal chairman’s consultations to which he invited some 22 states representing both a geographic and a political mix. Ambassador Eugeniusz Wyzner convened informal chairman’s consultations comprising 23 states at the 1998 PrepCom. However, this forum was supplemented by walk-ins (about 10) and failed to serve its purpose as it became divisive and argumentative.

In 1999, contrary to previous practice, Ambassador Camilo Reyes did not convene formal “Chairman’s Consultations,” but instead consulted often and widely while conducting all negotiating/deliberative sessions with all states present. In a unique and smart move, prior to the opening of the PrepCom, he apparently got key states to commit to their “bottom line” positions. In the end, despite grandstanding by some delegations, he was able to hold them to their earlier commitments and was successful in salvaging the PrepCom sufficiently to get agreement at least on a procedural report.

At the 2000 Review Conference, given its heavy workload and expectations, it would be useful for the president to convene “consultations” involving the participation of no more than 25 states—based on their track record of contributions to the intellectual and conceptual capital of NPT reviews, as well as geographic and political representation. Care should be exercised in including only those delegations that have participated in such consultations in the past and thus have some experience of this particular format, and the trap avoided of including states merely for the sake of representation of some specific region. It would be important to keep other delegations informed and engaged. To achieve this end, it would be useful for the president to hold periodic information sessions involving all states at the conference.

THE PREPARATORY PROCESS FOR THE 2000 REVIEW CONFERENCE

Three sessions of the PrepCom were convened to prepare for the Review Conference: in New York from April 7-18, 1997, chaired by Ambassador Pasi Patokallio of Finland, with the participation of 149 states parties; in Geneva from April 27 to May 8, 1998, chaired by Ambassador Eugeniusz Wyzner of Poland, with the participation of 97 states parties; and in New York from May 10-21, 1999, chaired by Ambassador Camilo Reyes of Colombia, with the participation of 158 states parties.

Ambassador Reyes provided inspired leadership, and the PrepCom was eventually able to complete its work on outstanding procedural issues but “was unable to reach agreement on any substantive recommendations to the 2000 Review Conference.”³⁶ In the effort to generate agreement on substantive recommendations, on May 14, 1999, the chairman presented a working document, a “Chairman’s Working Paper,” comprising 31 paragraphs covering eight substantive themes: universality; nonproliferation; nuclear disarmament; NWFZs; security as-

surances; safeguards; the resolution on the Middle East; and peaceful uses of nuclear energy.³⁷ While Reyes' paper managed to strike a relatively fine balance between competing views, it was immediately set upon by states parties; some thought it went too far while others thought it did not go far enough.

Based on comments received, on May 20, Ambassador Reyes presented a revised version of his paper comprising 61 paragraphs but retaining the previous structure. There was intense pressure from some delegations to retire to a small room and start "negotiations" on the substantive recommendations. However, the chair heeded sound advice and resisted this pressure. He did not permit a line-by-line "negotiation," and the paper was instead discussed paragraph by paragraph on the basis of "no objection" or "objection"—31 of the 61 paragraphs drew objections. The NWS rejected all references to nuclear disarmament save a paragraph recognizing nuclear reductions to date, and a bitter debate ensued on questions such as the Middle East and NATO nuclear "sharing" arrangements. The two versions of the "Chairman's Working Paper," therefore, do not have any official status, as these were never "negotiated" as such but only informally discussed to determine the broad range of states parties' views on their content. They will thus be a resource, among other submissions, for the Review Conference, but will not constitute a basis for the negotiation of a new forward-looking product.

PRODUCTS OR OUTCOMES OF THE REVIEW CONFERENCE

All past NPT Review Conferences have sought to reach an outcome, that is, to produce a "Final Declaration" on the review and implementation of the Treaty that also highlights additional measures that could be taken in the future to enhance the Treaty regime. The 1995 NPTREC had the additional task of producing an outcome on the future duration of the Treaty in accordance with Article X.2. Three out of the previous five Review Conferences—1980, 1990, and 1995—have failed to agree on a "Final Document."

A variety of views were expressed at the 1999 PrepCom about the possible products of the Review Conference. In general, a majority of states interpreted Decision 1 as requiring two products or outcomes: the first reviewing and assessing the implementation of the Treaty in the light of the 1995 NPTREC decisions and

resolution during the previous five years, i.e. a traditional "final document"; the second a forward-looking document providing goals and objectives for the next five-year period, i.e., a parallel to the 1995 "principles and objectives."

More specific views were elaborated on this matter by Canada and South Africa. In its plenary statement on May 10, 1999,³⁸ Canada recommended that *all* future Review Conferences should produce two primary documents on the substantive implementation of NPT obligations:

- a "backward-looking" or "Review" document that "should evaluate the results of the period (under review), including the implementation of undertaking of the states parties under the Treaty"; and
- a "forward-looking" or "Principles and Objectives" document in which states parties "identify the areas in which, and the means through which, further progress should be sought in the future."

In addition, Canada noted that each Review Conference should consider the functioning of the review process itself, and if it were deemed necessary, a third document on the further enhancement of the strengthened review process should be produced. Within this generic approach, Canada proposed that the 2000 Review Conference specifically should have three key products: a backward-looking Review document; a forward-looking "Principles and Objectives 2000" document; and a forward-looking document on the further enhancement of the Strengthened Review Process. New Zealand also supported a product involving three documents along the lines proposed by Canada.

In contrast, South Africa proposed that the Review Conference produce two documents:³⁹

- Document 1—A 2000 Principles and Objectives that should look forward and identify the areas in which, and the means through which, further progress should be sought for the full implementation of the Treaty in the future, with specific reference to the next review period; and
- Document 2—A Final Declaration that should look back over the period under review, evaluating the results of the period it is reviewing, including the implementation of the undertakings of the states parties under the Treaty.

The United States also supported a "traditional review document and a forward-looking document,"⁴⁰ as did Australia and Japan.

France and Iran, on the other hand, strongly argued in favor of a single “Final Declaration” comprising both backward- and forward-looking parts. Iran’s position reflected a desire to maintain leverage over both parts: because the NWS in particular would not want a failed 2000 Conference, they could therefore be pressured into agreeing to some new version of a principles and objectives. Other NAM countries, including Egypt, Mexico, and Nigeria, seemed persuaded by Iran’s arguments. France preferred the traditional approach of a final declaration emanating from the reports of the three Main Committees, which would include both a review aspect and recommendations-for-the-future aspect. It opposed redrafting of the 1995 principles and objectives, as well as “artificial documents, disconnected from the structure of the Conference’s debates,” and favored “a presentation of the outcomes of the Review Conference in the form of three reports stemming from the main committees...,” each with a backward- and a forward-looking aspect, and a common “chapeau” in the form of a synthesis of the three reports.⁴¹ France was alone among the European Union countries, the rest of which favored two separate documents.

Based on the views expressed by states parties in his consultations, Ambassador Reyes circulated his recommendations on the products of the 2000 Review Conference, which essentially paralleled the framework suggested by Canada but also included the possibility of producing “special declarations regarding specific outstanding circumstances that can affect the aims of the Treaty.” This paper also attracted much comment and controversy, with the NWS objecting to anything beyond two documents. Eventually a compromise was arrived at whereby the PrepCom recommended that the Review Conference, taking into account the work and reports of the Main Committees, should:

- evaluate the results of the period under review, including the implementation of the undertakings of the states parties under the Treaty;
- identify the areas in which and the means through which further progress should be sought in the future;
- address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality;
- examine the functioning of the review process itself, taking account of experience since 1995; and
- reaffirm the validity and importance of the 1995 NPTREC decisions and resolution.⁴²

In addition, the 2000 Review Conference could also consider and adopt other outcomes. Thus, the mandate of the Review Conference is quite extensive and ambitious. Whether it can be achieved, however, is another question. Should the Review Conference persist with the 1985 framework of allocation of items to Main Committees (the cluster approach), then it will have to produce reports for each of the three Main Committees in addition to the products outlined above—an unlikely achievement given past experience. However, were the Review Conference to adopt a straightforward approach whereby the various provisions of the Treaty were not artificially grouped together but considered article-by-article, then it might just be possible to achieve two or three products or outcomes.

CONCLUSION

The burden on the shoulders of Ambassador Abdallah Baali of Algeria, the president-designate of the 2000 Review Conference, will be both heavy and shifting. Picking up from the decisions of the 1999 PrepCom, Ambassador Baali reportedly had initiated intensive consultations with the NWS in their capitals, as well as with NNWS in New York, Geneva, and Vienna. In addition, reportedly, he was working toward completing the Bureau⁴³ for the 2000 Conference. As of January 2000, it was reported that Ambassador Andre Erdős (Hungary) was nominated as the Chairman of the Drafting Committee. Main Committees I and III would be chaired respectively by Ambassadors Reyes (Colombia) and Reimaa (Finland). The nominations of chairs for Main Committee II and for the Credentials Committee were pending.

The main challenge for key proponents of a strengthened review process likely will be to reconcile the high expectations and ambitious agendas of many NNWS with the conservatism and obstructionism of most of the NWS — especially the United States, which has already let it be known that it will be cautious about the creation of new precedents.⁴⁴

“We have met the enemy and he is us,” said the comic-strip sage Pogo. While the end of the Cold War has greatly reduced the traditional threat of superpower conflict, maintaining and even strengthening global nonproliferation regimes have become important new challenges. Despite its successes, the nonproliferation regime has sustained some severe blows, and it remains

the responsibility of the international community to shore up the regime. The NPT bargain comprising nuclear non-proliferation, nuclear disarmament, and cooperation in peaceful uses of nuclear energy under safeguards remains essential to the future integrity and longevity of the regime. New strategies need to be devised to engage the holdouts and to encourage behavior consistent with the regime—this would require, at a minimum, standardized responses to proliferation activities in India, Israel, and Pakistan.

It is generally recognized that nuclear nonproliferation and nuclear disarmament are inter-linked. In this context, the challenge to the NWS is to fashion a strategy to de-legitimize nuclear weapons given the logic of post-Cold War security dynamics and the possibilities opened up by a declining likelihood of major power war. A fundamental question that has not yet been adequately answered is: How important is nuclear nonproliferation, and what price in terms of nuclear disarmament are the NWS prepared to pay to realize the nonproliferation objective? The commitment of the NWS to the NPT is under question, not only because of the lack of progress in achieving further nuclear disarmament, but also in terms of their living up to other negotiated arms control treaties.

Success or failure of the Review Conference should be judged according to three criteria: (1) agreement on a procedure for factual reporting on an assessment of the implementation of the Treaty in light of the 1995 outcomes during the preceding five-year period; (2) agreement on substantive recommendations on promoting the full implementation of all aspects of the Treaty and the 1995 outcomes during the next five-year period; and (3) the development of conceptual and practical thinking building upon the new foundations laid in 1995 on the further strengthening of the NPT regime and the implementation of the Treaty's purposes and goals.⁴⁵

¹ Notes for a Statement by The Honourable Lloyd Axworthy, Minister of Foreign Affairs to the Standing Committee on Foreign Affairs and International Trade, "India's Nuclear Testing: Implications for Nuclear Disarmament and the Nuclear Non-Proliferation Regime," Department of Foreign Affairs and International Trade (Ottawa, Canada: May 26, 1998).

² 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document: Part I - Organiza-*

tion and Work of the Conference, Decision 1, "Strengthening the Review Process for the Treaty," (New York: United Nations, 1995), Annex, p. 8.

³ 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 2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament," (New York: United Nations, 1995), Annex, pp. 9-12.

⁴ 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 3, "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons," (New York: United Nations, 1995), Annex, pp. 12-13.

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*, "Resolution on the Middle East," (New York: United Nations, 1995), Annex, pp. 13-14.

⁶ Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs (Canada), A Non-Paper on Strengthening Review Conferences (Ottawa: January 1995; revised March 1995), unpublished.

⁷ The term "strengthened review process," in Decision 1, was crafted by Ambassador Adolfo Taylhardat (Venezuela), who prevailed in arguing that "enhancing implied only 'cosmetic' changes and that what was required was a process that should lead to a full implementation of the NPT, having in mind, specifically, Article VI." Personal communication dated January 6, 1997.

⁸ NPT/CONF.2000/1997/PC.I/29 (April 21, 1997).

⁹ NPT/CONF.2000/PC.II/5 (April 28, 1998) and Corr. 1 (April 30, 1998).

¹⁰ NPT/CONF.2000/PC.III/2 (May 3, 1999) and NPT/CONF.2000/PC.III/1 (April 30, 1999).

¹¹ NPT/CONF.1995/L.2.

¹² Draft resolution NPT/CONF.1995/L.6, adopted as NPT/CONF.1995/32/DEC.3 on "Extension of the Treaty on the Non-Proliferation of Nuclear Weapons."

¹³ NPT/CONF.1995/32/RES.1.

¹⁴ See Avner Cohen, *Israel and the Bomb* (New York: Columbia University Press, 1998), chs. 10-11.

¹⁵ Mohamed El Baradei, Director General, Statement to the General Conference (September 27, 1999), IAEA, <<http://www.iaea.org>>.

¹⁶ Henry Fox, "Review of Existing Export Control Regimes," presented at the United Nations Conference on Disarmament Issues, Nagasaki, Japan, November 1998, pp. 13-14.

¹⁷ NPT/CONF.2000/PC.III/10 (May 12, 1999).

¹⁸ *Ibid.*

¹⁹ See the Comprehensive Test Ban Treaty Organization website at <<http://www.ctbto.org>>.

²⁰ Alison Mitchell, "Summit Talks End With Agreements, but Not for NATO," *New York Times*, March 22, 1997, p. A6.

²¹ See, for example, *United Kingdom Strategic Defence Review*, "Modern Forces for a Modern World," United Kingdom Ministry of Defence (July 8, 1998).

²² See "Just Say 'No'," *Arms Control Today* 29 (November 1999), p. 2.

²³ 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).

²⁴ Darach Mac Fhionnbhairr, "Fulfilling Article VI Commitments on Nuclear Disarmament," Workshop on the 2000 Conference of the Strengthened NPT Review, sponsored by the Monterey Institute of International Studies, New York, November 1, 1999.

²⁵ The vote on UNGA resolution (A/54/54L) on December 1, 1999, was 157:3:4.

²⁶ NPT/CONF.2000/PC.I/5 (10 April 1997), NPT/CONF.2000/PC.II/22 (5 May 1998), NPT/CONF.2000/PC.III/12 (12 May 1999).

²⁷ Private communication with author (name and position withheld on request).

²⁸ See, for example, interview with Strobe Talbott in C. Raja Mohan, "Early Solution to Nuclear Issues Will Help: Talbott," *The Hindu*, January 14, 2000,

<www.the-hindu.com/stories/05142523.htm>; and Deputy Secretary of State Strobe Talbott, "Address at India International Center," New Delhi, India (January 30, 1999).

²⁹ At the 1999 PrepCom, South Africa submitted a draft protocol to the NPT on security assurances, NPT/CONF.2000/PC.III/9 (May 11, 1999).

³⁰ NPT/CONF.2000/PC.II/CRP.1, (May 6, 1998).

³¹ See "OSCE Decision-Making," <<http://www.osceprag.cz/info/facts/decsmake.htm>>.

³² Statement by the New Zealand Head of Delegation, HE Mr. Clive Pearson, Ambassador for Disarmament, to the Second Session of the Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Geneva, April 27, 1998, pp. 3-4.

³³ Statement by Ambassador Moher (Canada), NPT/CONF.2000/PC.III/SR.3, paragraph 44.

³⁴ Jayantha Dhanapala, "The NPT Review Process: Identifying New Ideas to Strengthen the Regime," *UNIDIR Newsletter*, No. 37, p. 10.

³⁵ *Facing Nuclear Dangers: An Action Plan for the 21st Century*, The Report of the Tokyo Forum for Nuclear Non-Proliferation and Disarmament, July 25, 1999, <<http://www.infojapan.org/policy/un/disarmament/forum/tokyo9907/key.htm>>.

³⁶ NPT/CONF.2000/1, paragraph 19, p. 6.

³⁷ NPT/CONF.2000/PC.III/29.

³⁸ Statement of Ambassador Mark J. Moher, Permanent Representative and Ambassador of Canada to the United Nations for Disarmament, to the Third Preparatory Committee for the 2000 Review Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, May 10, 1999, pp. 2-3.

³⁹ NPT/CONF.2000/PC.III/5 (May 5, 1999).

⁴⁰ NPT/CONF.2000/PC.III/6 (May 10, 1999).

⁴¹ "Intervention de S.E.M. Hubert de La Fortelle, Ambassadeur, Chef de la délégation française," New York, May 10, 1999.

⁴² NPT/CONF.2000/1 (May 21, 1999), para. 31, p. 9.

⁴³ The Bureau comprises the chairs of the three Main Committees, the Drafting Committee, and the Credentials Committee, as well as the representatives of the three depositary states and China. Its purpose is to advise the Review Conference president on both procedural and substantive matters.

⁴⁴ Statement by Mr. Wulf (United States), NPT/CONF.2000/PC.III/SR.2, para. 12, p. 4.

⁴⁵ I am grateful to Ambassador Mark Moher of Canada for enunciating these criteria.