

## Changes in the Security Environment, Regional Discord and Contention on the 1995 Agreements

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There has been little good news lately on nuclear non-proliferation and disarmament. A quick look at current events in those areas yields a long list of positive developments unachieved, and of negative occurrences we would have been better off without.

Among things long expected but not realized I count the entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT); the conclusion of a nuclear material cut-off treaty; the ratification of the second Strategic Arms Reduction Treaty between the Russian Federation and the United States (START II) and the opening of negotiations on START III; the initiation of talks on a multilateral nuclear reduction treaty; an internationally binding instrument on negative security assurances; and the replacement of the UNSCOM verification regime in Iraq with a system backed by the United Nations Security Council.

Recent negative developments include the nuclear tests of India and Pakistan and their increasingly inflexible nuclear posture; American plans to develop national missile defences and depart from the 1972 Anti-Ballistic Missile Treaty to make this possible; plans for a 'Theater High Altitude Area Defense' system which would eventually be deployed in East Asia; the Russian Federation's increased reliance on nuclear weapons, including tactical weapons; the sustained use of force, without Security Council authorization, against targets in Iraq; the use by NATO, also without United Nations sanction, of force to settle a regional conflict in the Former Republic of Yugoslavia; NATO's new nuclear doctrine and its nuclear-sharing policy.

There have been some ephemerally positive events recently, of which the consequences are not yet apparent. The South Asian tests have increased world concern about nuclear proliferation, but this has not yet led to concrete action and, as we have seen so often, worries tend to evaporate once the direct crisis is over. Concerted moves of governments in Northern and Eastern Asia have raised awareness of the risks of nuclear proliferation and increased interest in regional solutions such as the establishment of nuclear-weapon-free zones — but the same governments threaten the regional balance by their plans to deploy regional anti-missile defences. There has been progress in the creation of a Central Asian nuclear-weapon-free zone treaty, and in the acceptance of the concept of a single-state weapon-free area, as embodied by Mongolia.

It is hard to predict what impact such events may have on the 2000 Review Conference. I am not sure to what extent extraneous events influence the review process and doubt that events not directly related to nuclear disarmament or non-proliferation are invariably relevant. It is neither logical nor productive to assume that they should. The question may be one of definition: what are

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the “extraneous” events that should not directly concern the Non-Proliferation Treaty (NPT), and what events, outside the NPT framework, are of concern?

It would be useful to make such a distinction because it would allow putting aside events that might have some degree of relevance by affecting, perhaps, the general atmosphere, but need not operate as spoilers. It would also help one concentrate on the factors that are directly relevant to the operation of the Treaty.

Those factors must be sought in particular in the ambit of security. Security-related events and situations affect the way the operation of the Treaty is assessed, and are the main factors shaping the outcome of a review conference.

Past review conferences have often presented instances of secondary events being invoked to form a negative assessment of the operation of the Treaty. This is a dangerous practice that may

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harm the Treaty without curing major problems. It is pointless to complain about non-essential issues in the implementation of the Treaty as a surrogate for major problems that are currently incapable of solution. No doubt, the Treaty’s implementation has rarely measured up to the expectation of all parties, and it is unlikely ever to do so. But one must be careful not to overdo the disparagement, lest the protection

offered by the Treaty loses its credibility. A state whose security is at stake will benefit when its neighbours have formally accepted the non-proliferation norm embodied by in Treaty and the International Atomic Energy Agency (IAEA) verifies their compliance.

During the Kosovo hostilities, some analysts reasoned, on the contrary, that in situations where the integrity of a state — in this case Yugoslavia — is threatened by overwhelming force, that state will reason that the one guarantee of its national security is having nuclear weapons. But we have seen how Yugoslavia, for all its pariah situation, asked the IAEA to come and inspect its nuclear material in order to be able to show that it was in compliance with its non-nuclear pledge. One may reason that Belgrade made a virtue out of a necessity: since it could not develop a nuclear weapon while under NATO bombardment, it showed the world an innocent face. But if it had any nuclear ambitions, as was alleged, it would surely have tried to stash away as much nuclear material as possible and prevented IAEA inspectors from checking, with the excuse of the risk of air raids. It did not do so, and has thereby demonstrated its reliance on the NPT as a means of protecting its security interests.

The situation in the Democratic People’s Republic of Korea (DPRK) is somewhat comparable. The DPRK maintains tense relations with states in the region and with the United States. The IAEA’s verification has been cut back to the minimum needed to ensure that the reactor Pyongyang had used for plutonium production remains out of operation, and no irradiated fuel is reprocessed. But that minimum has already done much to diffuse a potentially lethal situation, and may help lead to an improvement in the country’s political and economic situation. Even in Iraq, we have seen how the old, inadequate verification activities of the IAEA, applied pursuant to the NPT, so complicated Saddam Hussein’s nuclear plans that he did not have the time to bring them to fruition.

These considerations cannot fail to help determine states’ attitudes to the Treaty, and thus contribute to the wish to have the review conference end with a reconfirmation of the Treaty’s validity. But these examples refer only to actions of non-nuclear-weapon states (NNWS). How about the way in which the nuclear-weapon states (NWS) live up to their obligations, and what do the NNWS think of this?

There have been many expressions of NNWS discontent with the way in which the NPT is being implemented, and especially with what they see as the failure of the NWS to meet their obligations under the Treaty. This is nothing new; it began almost as soon as the Treaty was concluded, and arises from that instrument's lack of balance. The concept of periodic reviews of the Treaty's operation was devised to help restore that balance.

Although at the time the novel concept of periodic reviews was incorporated into the Treaty it may not have been envisaged in exactly those terms,<sup>2</sup> over the years they have taken on the character of judgements on the way in which the NWS meet their obligations under Article VI and the Preamble regarding the eventual elimination of nuclear weapons from national arsenals. In this sense, the review process and the behaviour of the NWS under the Treaty have become tightly linked. The behaviour of the NWS is a major factor in the way parties view the Treaty.

The NPT does not provide any direct means of making the NWS live up to their obligations. Until 1995, states that were unhappy with the performance of the NWS could have opposed the indefinite extension. Now the only overt action remaining to states that object to the way things are going is to withdraw from the Treaty on the ground that their supreme national interests have been jeopardized. This will be difficult. Unless a decision to withdraw is taken by several states at once, for one or two states to do so might be risky as it would lead to the suspicion that they had decided to acquire a nuclear-weapon capability.<sup>3</sup> Also, by withdrawing a state loses the other advantages arising from the assumption of nuclear abstinence that graces NPT parties in good standing.

When the Review and Extension Conference of the NPT (NPTREC) was held twenty-five years after the Treaty entered into force, four earlier conferences had not been able to do what the review was created to achieve and there was considerable doubt that the majority of the participating parties would go along with an indefinite extension. The objections were overcome by the introduction of new measures designed to make the review process more effective, put teeth into the reviews, and make them into occasions where (in the words of one delegate) the feet of the NWS could be held to the fire.

There have now been three sessions of the Preparatory Committee (PrepCom) for the 2000 Review Conference, but the newly strengthened review process has not yet met the expectations of most parties. There has been little to indicate that the NWS are particularly concerned at criticism from NNWS about their failure to live up to expectations. There is an impression among a growing group of nations that after the relaxation that followed the Cold War, the NWS tend increasingly to rely on nuclear weapons as the mainstay of their national security. Many fear that this will weaken support for the NPT, which has still not brought the "levelling of the playing field" it had promised and shows no sign of doing so soon.

This prompts many to have low expectations of the outcome of next year's Review Conference. Their pessimism is predicated in part (and, I am convinced, not always with good reason) on negative political developments with various degrees of relevance to the NPT. For the most part it is due to disillusionment with the lack of effort the NWS seem to put into the reduction of their nuclear arsenals, and to disappointment with the inability of the PrepComs to come to grips with that problem. I have pointed to the link between the review process and the behaviour of the NWS under the Treaty. The less productive that behaviour, the more reliance must be placed on the review process as a means to influence it. One sees how disappointment with the meagre results the strengthened review process has so far had in this respect is being projected on to the Treaty itself. In my view, it is too early to draw conclusions from the way the process has worked so far. Some delegates have expressed the opinion that it is an obvious failure, which I believe is an unfair and hasty judgement based on a brief experience with an unfamiliar system. It is certainly premature to question the further viability of the Treaty on these grounds, as some participants have done. Coming

so soon after the indefinite extension of the Treaty, expressions of this nature are irresponsible, although the frustration that gives rise to them is understandable and must be taken seriously.

After the 1995 NPTREC many states expressed the opinion that with the indefinite extension they had *de facto*, if not *de jure*, been given the assurance that the NWS would make serious efforts to meet their obligations under Article VI of the Treaty — a political if not a legal *quid pro quo*. The President of the NPTREC, Jayantha Dhanapala, spoke of ‘permanence with accountability’. The promises have not been fulfilled. No doubt states will express deep dissatisfaction if by the 2000 Conference there is no progress in the measures the NWS were expected to take with regard to nuclear arms reduction, accessions to the CTBT, a cut-off treaty, the conclusion of a legally binding instrument on negative security assurances, etc. States will remember the presumption, five years earlier, of real progress in these areas.

But I, for one, do not believe that the absence of such progress should lead to the conclusion that the Treaty can do nothing to change matters for the better because the review process is helpless in the face of the intransigence of the major nations.

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On the basis of our limited experience I strongly believe it is too soon to call the strengthened review process a failure. It is not yet possible to say to what extent the process has or has not worked, and whether it is capable of functioning productively. That will have to be shown by the Review Conference of the year 2000, which caps the current review cycle. The most one can say now is that the newly strengthened process has not yet operated quite as expected, and that all concerned must help the Review Conference to make up for this. The extent to which it can do so will largely depend on parties’ recognition of the Treaty’s value as a factor in their national security.

In judging the way review conferences may enhance the effectiveness of the NPT, it may help to look in some detail at the purpose and nature of the review process.

The basic premise is that the NPT distinguishes between two categories of states: those who at the time the Treaty was concluded had demonstrated a nuclear-weapon capability are known as NWS; and those which accepted the obligation not to receive or make such nuclear weapons — the NNWS. The obligations of these two categories differ. The NWS undertake not to help the NNWS acquire nuclear weapons, as well as to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament. In other words, the NWS have promised to do what they can to keep the number of their kind from growing. They have also committed themselves to a process that should change them from NWS to NNWS. The Treaty neither sets a schedule for this process, nor does it provide any sanctions against non-compliance.

The NNWS parties to the Treaty, on the other hand, have committed themselves not to change their non-nuclear status. From the moment they became parties they pledged they would never acquire or produce nuclear weapons or help others to do so. In return they are promised that the NWS will eventually get rid of their weapons. They are also promised the right to develop research, production and use of nuclear energy for peaceful purposes without discrimination. Their compliance with the vow of nuclear abstinence is verified by the IAEA, pursuant to agreements they must conclude with that body. Non-compliance by NNWS triggers sanctions by the IAEA and the Security Council.

Once more stating the obvious: these rules reflect the existence of a world of nuclear haves and have-nots. But they also try to create the conditions where the haves will eventually become have-nots or, at least initially, “have less”. The Treaty assumes that most states will recognize that their security is better served by nuclear abstinence than by nuclear weapons. It could not create the means to force the NWS into non-nuclear status. This inability has led to inequality between the two categories of states and it was to alleviate this inequality and make it temporarily palatable that the concept of periodic reviews of the implementation of the Treaty was incorporated in its text.

The purpose of these periodic reviews is to:

- help off-set the imbalance in the obligations of the many who did something right away (accept safeguards to prove non-proliferation) and the few who made a long-term promise to disarm;
- present a way for parties to see how their Treaty was working and express themselves on what they found; and
- produce conclusions for further action.

Even the first NPT Review Conference in 1975 was the scene of deep differences between NNWS, who sought early progress towards nuclear disarmament, and the only three NWS then party to the Treaty, the United Kingdom, the former Soviet Union and the United States. Mainly as a result of disagreement over the nature and the pace of the measures to be expected from the NWS, the Review Conferences of 1980 and 1990 as well as the review part of the 1995 conference could not agree on final texts; the declarations adopted in 1975 and 1985 presented a low common denominator of agreement. Only with regard to technical issues, such as the application of IAEA safeguards or nuclear-weapon-free zones, did some of the conferences yield helpful suggestions for international action. Differences on issues of security and disarmament could not be papered over and none of the first four Review Conferences helped NNWS ensure that the Treaty would be implemented in the way they expected.

This was how matters stood in 1995 when parties met to decide whether the Treaty should continue in force indefinitely or should be extended “for an additional fixed period or periods”.<sup>4</sup> As stated before, many had doubts about the wisdom of an indefinite extension that would perpetuate the Treaty’s shortcomings without a guarantee that its operation would improve. After hard debate, agreement was reached on a “package” of decisions: the Treaty would be extended indefinitely; the review process would be made more effective; the implementation of the Treaty would be guided by a set of “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”; and in connection with one particularly vexatious issue (the fact that in the area of the Middle East there was one state that operated unsafeguarded nuclear facilities) a resolution was adopted calling on all countries in the area to accede to the NPT as soon as possible and join a zone free of weapons of mass destruction.

The decision on strengthening the review process made the review a virtually continuous operation between review conferences. A PrepCom session would be held in each of the three years preceding a review conference. These sessions have become intrinsic parts of the review process; they were given the task 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, making the PrepCom a venue for substantive discussion. The way the decision was formulated made clear that the procedural aspect is subordinate to the substantive work.

The PrepCom has had three sessions so far. It has adopted guidelines for the product the 2000 Conference should generate and has discussed how the Conference should meet the precept that

review conferences should evaluate the results of the period they are reviewing and identify areas where progress should be made.

The PrepCom has also formulated recommendations on procedural issues so as to enable the Conference to get underway — no mean achievement, as the strengthening decision made substantial changes in the review conferences' terms of reference and the PrepCom had to venture into largely unexplored territory. But one thing it could not do was to make "recommendations [on substance] to the Review Conference".

What effect will all this have on the outcome of the Conference? How about the predictions that the PrepCom's inability to adopt substantive recommendations to the Conference spells the same fate for the Conference?

I do not believe this conclusion is justified by events so far:

- PrepCom I succeeded in formulating comments and proposals for inclusion into a final declaration, but in the end it downgraded these results to "feed material" for consideration by the Review Conference;
- PrepCom II tried to consolidate that material but could not generate the impetus to produce a solid result, so that added little; and
- PrepCom III could not build on the previous product. Delegations seemed to think that not having agreed on substance so far there was little point in trying to do so now. But it resolved important procedural issues.

Thus, the three sessions did not produce substantive recommendations for the Review Conference. Many delegates thought this was due at least in part to inauspicious international conditions in each of the years in which a PrepCom session took place. Some of these were seen as having a potential impact on the NPT and were thought to pose a progressively worse background for each session. I have tried above to make the case that this view is not always justified. The facts are, however, that already in 1997, the first year of post-extension implementation, there were disappointments: entry into force of the CTBT, the main achievement of the period, was remote; the likelihood of early entry into force of START II and the beginning of negotiations START III was receding; there was no agreement on the start of negotiations on a convention banning the production of nuclear weapon material; prospects for a solution in the Middle East were dim. By 1998, that situation had not improved. Shortly after PrepCom II, India and Pakistan staged their nuclear tests. The Iraq situation had deteriorated to the point where the non-proliferation regime seemed virtually inoperable. In 1999, things seemed to have become even worse. Relations among the United States, China and the Russian Federation deteriorated over a range of security concerns, including the expansion of NATO's mission and American plans for national and regional anti-ballistic defence systems, seen as jeopardizing world-wide nuclear disarmament measures; the intervention in Kosovo; disagreement in the Security Council over measures to be taken regarding Iraq; concern over the DPRK's development of long-range ballistic missiles. All this was seen to result in the feeling that it might be better to leave in-depth substantive discussions to the 2000 Review Conference. At the same time, the thought took hold that the PrepCom might not be the place where compromise language on sensitive issues could be adopted: states tend to wait to enter into a compromise until they absolutely have to, i.e. in the last stage of the Review Conference itself, rather than during the run-up. This would mean that the PrepCom could discuss substantive issues but not decide on them.

This ignores what the 1995 decision says about the functions of the PrepCom, but there may be little choice. If the PrepCom cannot act as it is supposed to, this does not necessarily mean that its work has been a failure. Rather, it means that the 1995 decision should be reinterpreted in light

of practice. That would imply that the PrepCom should do what it is best equipped to do: discuss issues, compile material and prepare the ground for the review conference to forge it into useful conclusions on past performance and suggestions for future action. All this, of course, in addition to working out the procedural framework for the review conference and settling a variety of associated matters.

This will leave enough for the PrepCom to do during its three prescribed two-week sessions. The procedural aspects of the PrepCom's work may take up less time as precedents are established. However, issues such as the selection of officers for the Conference, dates and venues of meetings, the allocation to Main Committees of (new) items and so forth will always be time consuming. The PrepCom is a unique venue for precisely the work it has done over the past three years: the discussion of the substantive issues facing the Treaty and the Review Conference, even if such discussions do not result in consensus on substantive recommendations.

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The PrepCom did all it could reasonably have been expected to do. The Review Conference will have to make the best possible use of the material before it. It would be wrong to take the inability of the PrepCom to agree on substantive recommendations to the Conference as a negative omen. It leaves the Conference with much work, but it says nothing about its prospects.

The 2000 Conference will be difficult. An essential thing to remember is that it too will be working under a new mandate which it has to interpret and adapt to. In this respect, it would be wrong to expect too much too soon.

What about the undeniable fact that the PrepCom did not fulfil the mandate it was given in the strengthening decision? Can we blame circumstance and ascribe the failure to the unfavourable conditions of the moment? Should we conclude from what I have just said that the PrepCom is not able to perform as intended? Must we infer that the new procedures are not appropriate? If so, can we change them? Is it possible to change a decision that is part of a set of decisions without putting them all at risk, including the decision to extend the NPT indefinitely? Would any participant of the Conference dare call for such a move? Would the Conference be able to agree on an alternative? What should that be? Or should parties accept as unavoidable the procedure followed now: let the PrepCom try to formulate substantive recommendations and pass the resulting material on to the Conference?

I believe that in practice this is what will be done. But it must not be allowed to become a lasting issue between 'pragmatists', who accept the conclusion that the PrepCom may never be able to make substantive recommendations, and 'perfectionists', who adhere to the letter of the 1995 document and see the formulation of such recommendations as the PrepCom's principal task. We should avoid a situation where the latter group concludes that if it is impossible to make the PrepCom function as it thinks it should, the review process is a failure and the Treaty is doomed.

The technicalities of the review process are not alone in shaping the review conference. This will, as it has always done, hinge on many factors directly bearing on the implementation of the NPT. Obviously also essential are the quality of preparations for the Conference, and the readiness of delegations to find compromise solutions for difficult issues. That readiness may be influenced by the general political atmosphere but beyond that the responsible officials of the Conference should make every effort not to let the debate be led by events of secondary relevance.

NPT review conferences are complicated affairs. They deal with great problems and basic political and strategic issues. They are volatile and unpredictable: they may fail for reasons hard to

fathom or succeed against all predictions. Long experience indicates that for a positive outcome one needs thorough preparation and a willingness to compromise, and preferably a favourable political environment. Of these three factors, the first is within the reach of any party. The second factor is linked to each state's security considerations: a state will accept a compromise if it believes that a positive outcome serves its national security. The international political atmosphere of the moment may be largely extraneous to the review conference, but a positive atmosphere may enhance the chances of compromise, and an attitude of give-and-take on the part of key players may promote international *détente*.

The outcome of the 2000 Review Conference cannot be predicted. One thing is sure: baleful predictions and defeatism may help ruin that outcome because they discourage others from devoting time and enthusiasm to preparations. There are many factors involved, some of them unknown. The weightiest among them is the degree to which the NWS meet their obligation. The world's leading country obviously bears the greatest responsibility: it can cripple the Treaty by actions that detract from its credibility, and reinforce it by promoting the realization of Article VI. In my opinion, the single most important factor to determine the outcome in 2000 is the actions of the United States of America.

## Notes

- <sup>1</sup> Some of the arguments used in this article have also figured in a paper prepared for a conference held in Kyoto in August 1999 under the sponsorship of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific.
- <sup>2</sup> Article VIII.3 gives as the intention of the review as "[to assure] that the purposes of the Preamble and the provisions of the Treaty are being realized".
- <sup>3</sup> Article X confirms the right of each state party to withdraw from the Treaty "if it decides that extraordinary events, related to the subject matter of the Treaty, have jeopardized the supreme interests of the country". When the DPRK threatened to withdraw in protest over the intrusive nature of IAEA inspections, the Security Council ruled that this was not legitimate ground for withdrawal. One may doubt whether long-standing dissatisfaction with the failure of a state or group of states to meet certain Treaty obligations constitutes a valid ground for withdrawal, unless the withdrawing state can show that the failure affects its supreme (i.e. presumably national security) interests. And if it were able to do so, that very fact could lead to the conclusion that the state is intent on protecting its "supreme interest" by the development of a nuclear arsenal.
- <sup>4</sup> NPT, Article X.2.