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Options for Enhancing the NPT review process document

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Summary:

Outlines up to date options for enhancing the NPT review process in light of previous PPNN Conferences.

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OPTIONS FOR ENHANCING THE NPT REVIEW PROCESS

I. HISTORICAL BACKGROUND

1. When the NPT was negotiated in 1967-8, some Western European states did not wish to commit themselves indefinitely to non-nuclear weapon status. They were concerned that when the US and USSR reached a situation of mutual assured destruction, the US would no longer be prepared to extend its deterrent shield over Western Europe and/or the United States might one day withdraw from NATO. They therefore sought an alternative path if withdrawing from the Treaty to the one contained in Article X.1 of giving three months notice that "extraordinary events, related to the subject matter of this Treaty, have jeopardised the supreme interests of its country." The arrangement they sought was an unconditional right of individual review of the operation of the Treaty and, if necessary, withdrawal from it after a set period of years [i.e. a right similar to a current proposal made by the United States in the context of the CTBT], with the Treaty itself being of indefinite duration.

2. This pressure was instrumental in producing the wording of Article VIII.3 and X.2 of the NPT. Article VIII.3 was inserted to offer states an opportunity to review collectively the operation of the Treaty, and thus to give notice if this was threatening a state's security interests and undermining its confidence in the utility of the Treaty. Article X.2 implied that the Treaty might be of indefinite duration, but offered the possibility that after 25 years the parties could, in the light of experience with its implementation, agree to a lesser duration.

3. The wording of Article VIII.3 of the NPT provided for a mandatory review conference five years after the entry into force of the Treaty, with the option of convening further conferences at subsequent five year intervals. Holding such conferences every five years has become an accepted element of the Treaty regime, and no state has challenged the assumption that they would continue to be convened at such intervals whatever period of extension is decided upon in 1995.

4. The first NPT review conference in 1975 confronted unique challenges, as a review conference of this type had never been organised before. It therefore set several precedents for the organisation of such review conferences which have not subsequently been challenged. These included:

- * the holding of several meetings of an open-ended preparatory committee (PrepCom) at intervals of 5-9 months before the conference. These were confined to procedural and organisational matters originally and excluded non-governmental organisations, but both of these positions have now been partially abandoned;
- * the conference being tasked with drawing up a written document formally reviewing the implementation of every article of the Treaty and its preamble;

- * the conference lasting four weeks, with roughly equal time being allocated to formal presentations of state positions and concerns, and to the negotiation of the written Final Declaration;
- * the aim of the conference being to agree the wording of the Final Declaration by consensus, with a vote being taken on it as a last resort. In practice, this has meant that individual state parties have a veto on the Final Declaration;
- * resolutions being tabled as forms of leverage in negotiations over the text of the review, rather than a primary means of voicing concern over the operations of the Treaty by being voted upon.

II. CURRENT ISSUES

5. Three distinct issues are now emerging over the NPT review conference process which might be developed further in the context of the 1995 conference:

- * the desirability of changing the existing format for such conferences, and how this might be achieved;
- * the utility of broadening the debate in 1995 on the extension of the Treaty to cover reform of the review process;
- * the need for the NPT to develop executive and secretariat mechanisms similar to those in the CWC and proposed for the CTBT.

6. Significant dissatisfaction appears to exist with the current procedures for NPT review conferences. The Depositaries and their allies often voice the thought that they are overlong, unnecessarily costly and have the potential to be very negative and non-constructive in their approach to the subject, especially given the history of past battles over a CTBT. The Non-Aligned Movement appear to be frustrated at their inability to focus down on the specific issues they regard as central to the review, such as a CTBT and future nuclear disarmament strategy.

7. The existing format, particularly the emphasis on consensus, can be argued to have been useful to the depositary states in the past to constrain overt criticism of their disarmament performance in the Final Declarations and to prevent the East-West conflict impinging upon the discussions. However, now that they are in a less defensive and constrained position on these matters, it hinders their ability to address current and future non-proliferation problems, such as non-compliant actions [e.g. Iraq and the DPRK], or to mobilise overwhelming support for new methods of reinforcing the non-proliferation regime. A useful comparison in this respect is the format of the IAEA's General Conferences, where the meetings last for one week only, the general debate involves many more speeches per day and resolutions are both tabled and

voted upon.

8. To date, discussions on the extension of the NPT have focused on the arguments for and against an indefinite extension of the Treaty [i.e. the Article X.2 problem], and little attention has been paid to the possibilities of changing the review process [i.e. the Article VIII.3 issues], both in its own right and in the context of it forming part of a package of commitments and actions that could generate a near-consensus behind a specific extension option. Given that one of the arguments within the Non-Aligned Movement is that an indefinite extension decision would imply a loss of some of their political leverage, a revised review procedure appears to be an area where some compensation might be offered for this perceived loss.

9. Were the text of the NPT to be negotiated afresh in 1995, the precedent of the CWC suggests it would probably contain detailed provisions for dealing with alleged cases of non-compliance with the key provisions of the Treaty. These might involve the creation of executive and secretariat mechanisms, accountable to Treaty parties on a regular basis and financed by them. These structures would be interposed between on the one hand the Director-General and Board of Governors of the IAEA, and on the other the UN Security Council. The IAEA would be the agent of this "Non-Proliferation Executive", and provide safeguards services to it, in the way that is proposed for one variant of the CTBT arrangements. It may therefore be worth examining whether such a mechanism is worth proposing at the 1995 conference, either separately or as part of a reform of the review procedures, and whether amendments to the Treaty under Article VIII.1 & 2 would be necessary before it could be introduced.

III. OPTIONS FOR CHANGING THE REVIEW PROCESS

i. The Preparatory Process

10. The meetings of the Preparatory Committee (PrepCom) for each Review Conference were initially concerned solely with procedural matters, such as agreeing the dates and venue for the conference, the agenda, the financial arrangements for it, the committee structure, the secretariat arrangements and which individuals would hold the key conference posts of President, Committee Chairman, etc. They are normally initiated by the Depositary States through a UN General Assembly resolution about 30 months before the Conference, and 3-4 meetings of the PrepCom may be held, each taking up a working week [in short, the review process occupies some 8 working weeks over a 2-3 year period.]

11. In the run-up to the 1990 NPT Conference, some time was set aside at a PrepCom meeting for substantive statements, and this innovation was repeated and extended in the September 1994 PrepCom meeting, when the first part of the meeting was

taken up with short, plenary statements by the heads of national delegations. In addition, accredited observers were allowed to attend this meeting, on the same basis as they had been allowed to attend past Review Conferences.

12. By default, a situation has therefore been created where the clean dividing line between PrepCom and Conference activities has been broken down, and substantive questions have been addressed in the PrepComs. This in turn appears to open the door to the possibility of, for example, holding four PrepComs dealing with substantive and procedural questions, each of a weeks duration, at yearly intervals between Review Conferences.

ii. Plenary Statements

13. The initial plenary statements by heads of delegations have at past Review Conferences proceeded at the very leisurely rate of 6-10 per day. Given the increased membership of the NPT of approximately 170 states, this level of activity threatens to make this element of the review process inordinately long. A case could therefore be made out for imposing time limits on speeches, instituting evening sessions and attempting to restrict the duration of this element of these Conferences.

iii. The Final Declaration

14. A consensus Final Declaration appears to have been regarded as significant and necessary because it gave the impression of solid and widespread support for the NPT regime. However, there was a significant increase between the detailed content of the 1975 Final Declaration and that agreed in 1985. At the same time, the Declaration has tended to be dominated by the need for states holding minority positions to agree the document, and thus has had to exclude rigorous consideration of contentious issues. Its format of reviewing the operation of each of the elements of the Treaty and its Preamble has also precluded it from addressing non-proliferation issues that may fall outside this structure.

15. An alternative arrangement for the Review Conferences would be to regard the national plenary statements as the core of the review process, and then move to a consideration of resolutions on aspects of the review tabled by national delegations. This would make the process similar to that in the UNGA First Committee and in the IAEA General Conference. It might focus the review process on areas of disagreement, rather than agreement, but would have the virtue of enabling contentious issues to be tackled head-on, rather than sidelined as is the case at the moment.

16. An option midway between the two above would build on the precedent of the 1985 Final Declaration (consensus but including a difference of view using the formula "Some said... others said"). This option would ***aim for a document which reflected as***

fully and accurately as possible the results of the review, including not only areas of agreement but also of disagreement, with provision for paragraph voting in relation to the latter. By footnote, the results of the vote would be indicated including which states were for and against.

iv. Follow-up Actions

17. The current review process contains no follow-up procedures, other than the consideration by the IAEA General Conference of issues raised in the review. This in turn means that NPT issues tend not to be discussed in international forums between Review Conferences, other than at PrepComs. In part this is because significant non-NPT parties are present in the two more obvious forums for such debates, the UN General Assembly and the IAEA General Conference. *Spreading the PrepComs more evenly throughout the period, perhaps on an annual basis, would enable NPT issues to be addressed in a more timely manner.*

IV. POLITICAL LEVERAGE AND OBJECTIONS TO INDEFINITE EXTENSION OF THE NPT AT THE 1995 CONFERENCE

18. Two key arguments have been advanced by Non-Aligned States against extending the NPT indefinitely in 1995. One is the logical incompatibility of giving an indefinite duration to a treaty which on the one hand recognises the continued existence of the five nuclear weapon states, while on the other contains an implied commitment within it that those five will implement total nuclear disarmament. This in turn would make the Treaty obsolete in its current form. The second is that the need to take an extension decision at the 1995 conference has been perceived to have given the non-aligned states enhanced leverage over the nuclear-weapon parties, and it is believed that this can only be sustained by continuing to hold the issue of the duration of the Treaty open.

19. All states will have available to them at the 1995 Conference two forms of political leverage: that flowing from the public debate on the issues, which one could term "forum leverage", and that arising from the desire of some states to adopt a specific extension option, which one could describe as "decision leverage". One issue that arises is *whether the two forms of leverage are capable of being traded for one another, and "forum leverage" offered as a substitute for "decision leverage", as a means of persuading states to agree to vote for an indefinite extension.*

20. If such a substitution, which has been described as a form of "conditional" indefinite extension, does seem feasible and desirable, one method of operationalising it would be to *offer to implement one of more of the changes to the format in the NPT review process outlined in Section III above in return for an indefinite extension of the Treaty.*

21. One crucial issue in relation to these proposals is whether they could be implemented without the need to amend the NPT, as the procedure for this is generally seen to be so uncertain in its outcome as to make such a move inadvisable. As none of the arrangements involved are contained within its text, there is no obvious reason why this should be a problem.

V. THE DEVELOPMENT OF EXECUTIVE AND SECRETARIAT MECHANISMS FOR THE NPT

22. The NPT and its linked regime has a somewhat curious structure (or non-structure). Its verification arm is the IAEA, whose Board of Governors contains states which are non-parties to the Treaty, and in some cases overtly hostile to it. Its executive arm is the UN Security Council, where similar qualifications apply, but which is only referred to in the NPT text itself in the context of withdrawals from the Treaty. The NPT has no organisation of its own, other than its five-yearly review conferences, which can only act under current circumstances by consensus, and which are nominally organised by the three depositary states.

23. This structure means that several vital tasks are not performed at all by the Treaty:

- * the circulation of information on proliferation and non-proliferation among its parties;
- * the convening of working groups, and the initiation of other study activities, to formulate proposals for responding to new needs and adapting existing structures to new circumstances;
- * the independent evaluation of information on breaches of non-proliferation commitments which has originated in the IAEA and other bodies;
- * the integration of the nuclear supplier trading guidelines into the non-proliferation regime;
- * the initiation of activities designed to return a non-compliant state to compliance;
- * frequent consultation with Treaty members.

24. One method of addressing these concerns would be for the parties to create and finance an independent secretariat for the Treaty [not part of the UN Security Council structure], supervised by an elected Executive Committee, the two comprising the "Non-Proliferation Executive". The annual reports of this secretariat could be used as the basis for debate at NPT annual conferences, which might be held in association

with PrepCom meetings to save money. These conferences would also offer a forum for additional annual "forum" leverage over the nuclear weapon states on disarmament, however.

25. A crucial issue in relation to such proposals is whether they could be implemented without the need to amend the NPT, as the procedure for this is generally seen as so uncertain in its outcome as to make such a move inadvisable. While the proposals contained in Sections III and IV do not seem to demand any amendments to the Treaty, as the arrangements being changed are not contained within it, the new arrangements outlined in this section might be argued to constitute a significant amendment to the Treaty needing specific legal authorization, even though they are not excluded in the Treaty text.

VI. CONCLUSIONS

26. The proposals outlined above fall into two categories: evolutionary changes and revolutionary ones. Those contained in sections III and IV might be proposed as part of the 1995 NPT conference negotiations, if the benefits in terms of smoothing the path to an indefinite extension of the Treaty and the ability to address non-proliferation problems directly were seen to outweigh the loss of protection from criticism over nuclear disarmament matters that they might entail.

27. The formulation of specific proposals for significant changes to NPT arrangements, such as those outlined in Section V, will need to be carefully worked through and elaborated before they are presented to NPT parties at the 1995 Conference. It may, therefore, already be too late to complete this task, and the subsequent process of consultations, before the start of the NPT Conference in April. However, what could be proposed, possibly in parallel with studies of the mechanics and modalities of nuclear disarmament, might be a study of such matters as a follow-on to the 1995 conference.

John Simpson

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