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highlight important issues which lie at the intersection of science, technology and public policy.

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Pugwash

I S S U E B R I E F

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Nobel Peace Prize 1995*

Planning for the 2010 NPT Review Conference: *A Practitioner's Overview*

BY JAYANTHA DHANAPALA

"Once more unto the breach, dear friends, once more"

—King Henry V, Act 3, Scene I, Shakespeare

1. The Importance of 2010

It is the season. Every five years, since 1970, a multilateral treaty viewed by some as flawed and discriminatory and by many as, at best, controversial, attracts global attention.

In 1995, when the Treaty for the Non-proliferation of Nuclear Weapons (NPT) had to be extended under its unusual provisions, the NPT received heightened attention. In other years, preparations and predictions about the NPT Review Conferences are almost ritualistically the subject of discussions among nation states, scholars, the media and civil society.

After each Review Conference is over, analyses of its perceived success or failure, engage the attention of the same circles briefly, and then, all is forgotten until the eve of the next Review Conference. This rite has begun as we approach the May 2010 NPT's Eighth Review Conference. The battle cry of King Henry V may not be an entirely inappropriate quote.

Nevertheless, the opportunity to arrive at a constructive consensus among the parties of the NPT on its future is being repeated this year. So are the exhortations for a success so vital for the survival of the NPT as the lynchpin of international nuclear

non-proliferation and disarmament efforts. A consensus among the parties to the NPT is thus crucial in both the nuclear nonproliferation and nuclear disarmament discourse internationally.

There is, however, a difference this time round. The 2005 Review Conference held during the second term of US President George W. Bush was an undisguised failure which left many states disappointed and even angry. It was followed by the failure of the 60th United Nations General Assembly (UNGA) Summit to agree on the nuclear disarmament sections of the Declaration that was finally adopted without them. 2005 thus, was not only a bad year, but also signified the nadir of multilateral diplomacy in the area of nuclear disarmament and nuclear non-proliferation.

The election of the first African-American as President of the United States of America on a platform that included the reaffirmation of multilateralism and the vision of a nuclear weapon-free world has led to great expectations. These expectations can either be fulfilled (even partially) or betrayed before the Review Conference.

They can also receive a boost or a blow by the outcome of the conference. Security Council Resolution 1887 of 24 September

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2009 called on all States parties of the NPT to co-operate to ensure a successful NPT Review Conference setting “realistic and achievable goals in all of the Treaty’s three pillars”.¹ That will mean different things to different NPT parties. A mutuality of interests should determine what is “realistic and achievable” in 2010.

The ‘Thirteen Steps’ of the 2000 Review Conference’s Final Document² were ‘realistic and achievable’ to the five Nuclear Weapon States (NWS), including the US, at that time but in 2005 they were not. Goal posts cannot be shifted away from a mutuality of interests with changes of administration in individual countries.

Independent of the circumstances under which the Conference will be held in 2010, there is the question as to how the NPT can sustain another failure to adopt a Final Document by consensus. Such an agreement has been possible on four occasions – if we include the adoption of the ‘package’ of three decisions and the Resolution on the Middle East in 1995.³ Agreement was not reached in 1980, 1990 and 2005.

Perceptions of the success and failure of conferences vary in accordance with political perspectives. The mere fact that a large number of parties to the treaty assemble to debate on whether treaty obligations have been fulfilled, and to chart a course for the future is regarded by some as satisfactory.

However if a conference is to succeed the focus must not be on mere process—a trap of most multilateral conferences. It should be on substance where fundamental differences are not papered over by skilful but temporary drafting exercises which crack as time passes.

A reason why the 2010 Conference will be more important than usual is that the danger of nuclear weapon proliferation is closely linked to climate change and the irrefutable scientific evidence (notably in the four reports of the Intergovernmental Panel on Climate Change) that carbon emitting sources of energy need to be replaced.

Nuclear power has emerged as a strong preference but uneasy reactions arising from the absence of a firewall between the peaceful and non-peaceful uses of nuclear energy have to be addressed. In his statement to the sixty fourth regular session of the United Nations General Assembly on 2nd November 2009, the IAEA’s then Director General El Baradei said:

“The world seems set for a significant expansion in the use of nuclear power, with scores of countries expressing interest in introducing it as part of their energy mix. Not surprisingly, most of these are from the developing world, which urgently needs a dramatic increase in electricity supply if it is to lift its people out of poverty. Energy is the engine of development. For many countries, nuclear power, with its good performance and safety record, is a way to meet their surging demand for energy, reduce their vulnerability to fluctuations in the cost of fossil fuels and combat climate change. The IAEA has adjusted its priorities to focus more on the nuclear power programmes of what we call the ‘newcomers.’ ”⁴

The inconclusive outcome of the UN Climate Change Conference in Copenhagen December 7-18, 2009, has extended the debate on how the international community must resolve the acute problem of climate change. It therefore, has a bearing on the NPT Conference. So also do the current controversies over the DPRK, Iran and Syria and the US-Russian negotiation on replacing the START agreement that expired on December 5, 2009.

2. The Treaty in the Context of Disarmament and Arms Control

History records the invention, proliferation and use of weapons. It also records efforts to reduce arsenals and regulate the spread and use of weapons. This corresponds to humankind’s twin and contradictory propensities for war and peace. With the development of technology, weapons have become increasingly lethal and have resulted in larger numbers of civilian casualties. With widening global trade, weapons and materials for weapon manufacture have been exported and imported like any other commodity at increasing costs including opportunity costs.

According to the Stockholm International Peace Research Institute (SIPRI) world military expenditure in 2008 is estimated to have been

\$1464 billion – 2.4% of world GDP and up 45% from 1999 a decade earlier. The USA alone accounted for 41.5% of this global expenditure. Global arms transfers are estimated to have been \$ 51.1 billion in 2007. They fuelled 16 major armed conflicts in the world in 2008.⁵

The emergence in the 20th century of chemical, biological and nuclear weapons as weapons of mass destruction (WMD), as distinct from conventional weapons, marked a watershed. These weapons were shown to be vastly more destructive of human life and of material property with long-lasting ecological and genetic effects. Thus the elimination or control of WMD became the priority of the UN and the international community. The very first UN General Assembly resolution adopted on 24 January 1946 called for the “Establishment of a Commission to deal with the problems raised by the discovery of atomic energy” whose terms of reference included “the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.” The 1972 Biological and Toxin Weapons Convention with 171 parties⁶ and the 1993 Chemical Weapons Convention with 184 parties⁷ banned these two categories of WMD. The only WMD not subject to a universal ban is the nuclear weapon.

Bilateral treaties between the two largest nuclear weapon states – the US and Russia who have an estimated 95% of these weapons – and multilateral treaties banning nuclear tests (Comprehensive Nuclear Test Ban Treaty -CTBT) and the proliferation of these weapons (NPT) have sought to regulate their vertical and horizontal proliferation. It is estimated by SIPRI that today there are altogether more than 23,300 nuclear warheads in the world with USA, Russia, UK, France, China, India, Pakistan and Israel possessing 8392 deployed warheads⁸ many of which are ready to be launched within minutes.

The normative structure with regard to all weapons has two aspects. One is to seek disarmament in terms of universal bans on inhumane weapons or particular categories of weapons for humanitarian and collective security reasons. The other is to seek arms control in terms of levels of arsenals or prevention of new possessors. Disarmament requires verifiable destruction of existing weapons, cessation of production, sale, storage, transfer or acquisition.

Thus the total outlawing (as distinct from arms limitation or reduction) of biological weapons, chemical weapons, anti-personnel land mines, cluster munitions, laser weapons and other categories has been achieved globally even though the multilateral treaties negotiated for these purposes may not be universal and the verification of their observance not always reliable. General and complete disarmament has been the agreed goal of the UN. Whether disarmament results in security or whether security must precede disarmament remains a “which comes first – the chicken or the egg?” argument disputed by some members.

Chapter II, Article 2 (4) of the UN Charter specifically asks all member states to “refrain in their international relations from the threat or use of force”.⁹ At the same time Chapter VII, Article 51 refers to the “inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations”¹⁰ until the Security Council acts.

The one treaty which attempts a combination of the disarmament and arms control aspects is the NPT which is the world’s most widely subscribed to disarmament treaty. It openly accepts two categories of state parties – NWS and Non-Nuclear Weapon States (NNWS).

In terms of the disarmament approach NWS are only exhorted, as treaty parties, to negotiate the reduction and elimination of their weapons. In contrast, NNWS are totally forbidden to acquire such weapons and the IAEA is empowered to enter into arrangements with them when peaceful uses of nuclear energy are involved, and to verify that there is no diversion for non-peaceful purposes. In its 1996 Advisory Opinion the International Court of Justice stated that the NWS had a legal obligation to negotiate nuclear disarmament but this has had little impact on the NWS.

As far as arms control is concerned, NWS are permitted to retain their weapons with the restraints that apply through other bilateral and multilateral treaties. The only legal commitment by the NWS to nuclear disarmament in a multilateral treaty (apart from the preambular part of the CTBT which has not entered into force as yet) is Article VI of the NPT.

This discriminatory approach creating an apartheid system between NWS and NNWS has

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Jayantha Dhanapala and
Assistant Secretary of State
Rose Gottemoeller

been the cause of tensions within the NPT. They have been exacerbated over the 40 year history of the treaty. The existence of Israel, India and Pakistan as nuclear weapon armed countries outside the NPT (and with this proliferation alleged to have been assisted by the NWS and others within the NPT) and the recent grant of benefits to India that were hitherto confined to NNWS within the NPT, has increased the strains on the NPT.

The discovery of Iraq's clandestine nuclear weapon programme in the early 1990s; the withdrawal of the Democratic Peoples Republic of Korea (DPRK) from the NPT and its subsequent nuclear weapon tests; the acknowledgment and rectification of Libya's non-compliance; and the continuing questions and tensions over Iran's nuclear programme have seriously weakened the NPT as a non-proliferation measure.

Within the ambiguity of the NPT's normative approach regional conflicts breed insecurity for which nuclear weapons seem an answer to some. For others, nuclear weapons are a badge of great power status.

At this juncture, only a reunification of the disarmament approach and a non-proliferation approach can save the treaty. This is especially important because impending climate change is driving many countries towards nuclear energy in a "nuclear renaissance". However, the technologies of peaceful uses and non-peaceful uses can no longer be kept in sealed compartments.

The threat of nuclear terrorism is also real. In the US the op-eds in the *Wall Street Journal* in 2007¹¹ and 2008¹² by elder statesmen Shultz, Kissinger, Nunn and Perry calling for a nuclear weapon-free world and the end of nuclear deterrence theory have been echoed by similar sentiments in the UK, Italy, Norway, France, Germany, Poland, The Netherlands and Belgium.

More importantly, they were endorsed by President Obama in his campaign, in subsequent policy statements, and in his historic chairing of the UN Security Council in September 2009. The translation of those promises into action will lead the world into the only viable normative approach with regard to WMD – their total and universal elimination under strict verification.

3. Origins, Review Conferences and the Practice of Conference Diplomacy

The NPT is a unique treaty in many ways, as noted already. It seeks to combine the outright prohibition aspect of disarmament treaties with regard to NNWS in Articles I-III and the hortatory approach of the arms control treaties as far as the NWS are concerned in Article IV and VI. It thus falls between two stools.

It also contains a provision, in Article X.2, for a conference to be convened 25 years after its entry into force to decide whether it should be extended indefinitely or "for an additional fixed period or periods".

As mentioned earlier, Article VIII.3 of the Treaty also provides for Review Conferences at five yearly intervals. If diplomacy is the application of tact, skill and intelligence in the conduct of international relations among nation states, then both these Treaty provisions offer opportunities for the active exercise of diplomacy on the part of the parties to the Treaty. That is undoubtedly a shared but nevertheless asymmetrical responsibility of the NWS and the NNWS.

The NPT is, therefore, unlike other treaties which are usually for an indefinite duration and are frozen in time – except for amendment procedures that are normally difficult to implement. In this situation the internal dynamics of Treaty Conferences assume special importance while the external context including instructions from capitals continues to have their undisputed influence.

Thus, the 1995 NPT Review and Extension Conference and the Review Conferences held in five yearly intervals since 1975 merit close analysis for the interplay of diplomatic efforts by the NWS and NNWS, and the impact these had on the future course of the Treaty.

The approach of the 2010 Review Conference is an appropriate moment for the study of this diplomacy which also involves the management of these conferences.

The content of NPT diplomacy is not merely the interaction of delegations at NPT conferences and in between, but also the management of the conferences by the office-bearers elected to the various positions by the success or failure of the conferences. In this context the initiative of the James Martin Center for Non-proliferation Studies in the Monterey Institute for International Studies to collate the ‘institutional memory’ of past NPT Conferences and make them available to office-bearers and participating delegations of the 2010 Conference must be welcomed.

It will be seen that the most intractable issues do not necessarily cause conferences to implode and collapse without agreement if there is sufficient goodwill and creative diplomacy. Likewise a negative personal chemistry among leaders of key delegations and poor conference management are likely to exclude any hope of accommodation or compromise.¹³

Negotiation, Signature and Ratification

The negotiating record of the NPT – as revealed especially in Mohamed Shaker’s pioneering study¹⁴ – indicates that it was largely a product of the US and then USSR delegations who were co-Chairmen of the Eighteen Nation Disarmament Conference (ENDC) – the predecessor negotiating body of today’s Conference on Disarmament.

Prior to that in 1959, the UNGA adopted resolution 1380 (XIV) proposed by Ireland that called for NWS to refrain from providing nuclear weapons to NNWS.¹⁵ Two years later, another Irish draft resolution on the Prevention of the Wider Dissemination of Nuclear Weapons was also adopted by the Assembly. What was distinctive is that the 1959 and 1961 resolutions represent the views of the NNWS. Of these, the Irish sponsored resolution 1665 (XVI), adopted unanimously in the UNGA on 4

December 1961, can be regarded as the genesis of the NPT.

The transition from the UNGA, where voting is equitable with each member state having one vote, to the ENDC, where the co-Chairmen were in a clear position of authority and influence as superpowers in the Cold War era in a body of 18 states, was significant. The more evenly balanced interests of the NWS and the NNWS in the Irish resolution mutated to a treaty draft that was heavily weighted towards NWS interests. At the same time the co-Chairmen were aware that the treaty draft had to attract the support of a wide range of NNWS.

The main opposition came from Germany and Italy who felt they were targeted and it is their diplomacy that helped create the limited duration of the NPT to 25 years. Article VI – widely regarded as the “Disarmament” pillar of the NPT – was the result of developing countries and NNWS like Mexico whose redoubtable Ambassador Alphonse Garcia-Robles spearheaded the fight for the inclusion of this Article.

By this time the Non-Aligned Movement (NAM), which had its first summit in Belgrade in 1961 with 25 countries from all continents pledged to pursue an independent foreign policy unattached to the two blocs, was beginning to assert influence in global politics. The article was a watered down version of what Mexico and others proposed and was eventually placed, deliberately, within the context of “general and complete disarmament”. It was perhaps the best possible outcome given the strength of the NWS in the ENDC.

Garcia-Robles played a leading role in the conclusion of the 1967 Treaty of Tlatelolco which made Latin America and the Caribbean the first inhabited nuclear weapon-free zone before the conclusion of the NPT. He was later to share the 1982 Nobel Peace Prize with Ambassador Alva Myrdal of Sweden – another outstanding disarmament diplomat.

In the formulation of Article X.1, the withdrawal clause of the NPT, (now very much the centre of discussion after the DPRK left the NPT) it is clear from the negotiating record that the US introduced this but that Egypt, Burma (now Myanmar), Brazil and Nigeria had a role in the final language adopted. The focus at the time was on states exercising their sovereign

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right to withdraw on the basis of other states parties not complying with their obligations.

The NPT was signed on 1 July 1968 and entered into force in 1970. Its membership has expanded from 91 in 1975 to 190 (if we include the DPRK) in 2009. The three depositary states – the USA, Russia and the UK – have strongly encouraged other states to join, contributing to this expansion. However, it is true that assertive US diplomacy has succeeded in convincing many countries to join the NPT as NNWS. At certain stages opponents of the NPT like India have tried to counter-act this diplomacy – especially in South Asia – but without much success.

A dramatic spurt in accessions was visible prior to the 1995 Review and Extension Conference. While of course sovereign countries take such decisions in their national interest, the entry of longstanding holdouts like Argentina, Brazil and South Africa and the three former USSR states – Belarus, Ukraine and Kazakhstan – which, at the end of the Cold War, had Russian nuclear weapons on their soil, represent a diplomatic success for the depositary states.

The Review Conferences 1975-1990

Four Review Conferences were held during this period in Geneva with two of them (1975 and 1985) being able to adopt a Final Declaration by consensus and two (1980 and 1990) failing to do so. It is, as noted earlier, arguable whether the success or failure of Review Conferences can be judged by the adoption of a Final Declaration.

Firstly, although the Conference rules of procedure provide for voting, decisions are generally taken by consensus out of an increasing concern not to be divisive in vital issues of security. This empowers individual delegations or small groups of delegations to obstruct consensus and prevent the adoption of a Final Declaration. How long this practice will endure is difficult to predict. It has occasionally been broken through exasperation in some forums like in UNCTAD. Therefore, the adoption of a Final Document by consensus is in itself an undoubted success. That must however depend on the extent to which the treaty parties implement the promises and commitments that are embodied in the Final Documents.

Secondly, the adoption of a Final Declaration is regarded by some as less important than

a comprehensive discussion of how the Treaty has been implemented in all its aspects. That may appear to be an artificial rationalization of a failure in diplomacy. The fact is that the adoption of a Final Declaration is the expression of a collective political will. Failure to do so could be a symptom of a deeper political malaise or a demonstration of dissatisfaction with specific aspects of the review process such as when the Arab group of countries focuses on a demand for Israel to join the NPT as a NNWS. The adoption of a Final Declaration is also influenced by the prevailing global atmosphere. Thus a Final Declaration at a Review Conference is also undoubtedly a political barometer.

The 1975 Review Conference: The 1975 Review Conference being the first Review Conference of the NPT served as a precedent with the Non-aligned group of NNWS – functioning under the “Group of 77” title – ready to confront the three NWS in the NPT at the time – the US, USSR and UK.

Article VI was the key area of dispute and the Comprehensive Test Ban Treaty (CTBT) was a principal demand in addition to security assurances for the NNWS. The eventual adoption of a Final Declaration was less a reflection of a political agreement among the parties and more a tribute to the forceful personality of its President, Inga Thorsson of Sweden, who is said to have rammed her own draft through after the Drafting Committee failed to reach consensus on the nuclear disarmament aspects. Mexico, as spokesman of the ‘Group of 77’ made an interpretative statement of the Final Declaration, which was incorporated as a Conference document. Thus an uneasy compromise was arrived at.

The 1980 Review Conference: The 1980 Review Conference followed the remarkable success of the UNGA’s First Special Session on Disarmament (SSOD I) held in 1978 and expectations were high.

The Carter Administration in the US had been weakened considerably by the overthrow of the Shah in Iran and the subsequent student take-over of the US Embassy with its staff held in a prolonged hostage crisis. US diplomats were in no mood to be accommodating to Non-aligned demands. The relations between the US and the USSR were strained by the Soviet invasion of Afghanistan. The Non-aligned themselves were divided with tensions between Iran

and Iraq which erupted into a nasty war after the Review Conference.

The issues on which sharp divisions arose were on Article VI and the CTBT, security assurances, Article III and nuclear-sharing as being contrary to Articles I and II. After the success of SSOD I the NAM were not going to settle for anything less and so a deadlock resulted with no Final Declaration emerging.

The 1985 Review Conference: In preparation for the 1985 Review Conference, the writer chaired the Third Session of the Preparatory Committee (which decided, following negotiations ably conducted by Ambassador Rolf Ekeus of Sweden, on the current structure of three Main Committees allocating subject areas and apportioning of their Chairs to the Western, Eastern and NAM groups) and went on to chair Main Committee I of the 1985 Review Conference, which was held during the first term of US President Reagan.

Israel had attacked and destroyed Iraq's IAEA-safeguarded nuclear reactor. Despite this inclement atmosphere, NPT diplomacy reached one of its heights under the able Presidency of Ambassador Mohammed Shaker of Egypt (himself an authority on the NPT). His innovative diplomacy included assembling a representative group of advisers who helped to steer the Conference to the successful adoption of a Final Declaration. Before that however numerous hurdles had to be cleared as sharp and irreconcilable divisions arose over disarmament issues especially the CTBT.

It was evident that instructions to the US delegation were very tight and the writer conceived of a drafting exercise similar to the Shanghai Communiqué of February 28, 1972 at the end of President Nixon's historic visit to China. That communiqué had stated China's position and the US position on many controversial issues separately with no attempt to bridge the differences. Thus a draft with an overwhelming majority of delegations expressing their support for a CTBT with a few delegations holding a contrary view was finally accepted helping to break the stalemate preventing a consensus.

This formula of 'agreeing to disagree' was unusual but helped to adopt a Final Declaration. The personal diplomacy of the leader of the US delegation, Ambassador Lewis Dunn,

who painstakingly built relationships with the main office bearers of the Review Conference throughout all the sessions of the Preparatory Committee, was another ingredient in the success of the 1985 Conference. In the final hours of the Conference the hard work on the more substantive issues were almost wrecked over a non-NPT related dispute between Iran and Iraq. This was also resolved by a drafting exercise, which satisfied both parties, and in the small hours of the morning with the clock having been stopped, the Conference was successfully concluded.

The 1990 Review Conference: The 1990 Review Conference had to confront a renewed NAM demand for a CTBT, which could not be resolved through drafting tricks or innovative diplomacy. Although the Mexican delegation is accused of having "wrecked" the conference standing out resolutely against any compromise, it must also be stated that the President of the Conference and other key delegations lacked the flexibility to devise diplomatic solutions or procedural fixes.

On the other hand, this is possibly an example of the limits of NPT diplomacy when the political context is so difficult that no diplomacy could overcome the differences among delegations. The lesson to be drawn is that politics and diplomacy must go hand in hand if multilateral Conferences are to succeed. There has to be political will to adopt decisions in a Conference and creative diplomacy alone will not be enough.

The 1995 NPT Review and Extension Conference (NPTREC)

The preparation for the NPTREC and its month-long conduct presented a huge diplomatic challenge. A detailed description is provided in "Multilateral Diplomacy and the NPT – An Insider's Account"¹⁶ by the writer. The NPT depositary states, led by the USA, were clear that an indefinite extension was their goal and US diplomats worked in capitals to achieve this end.

Ambassador Thomas Graham Jr. visited many capitals and his book "Disarmament Sketches"¹⁷ describes his efforts. While Russia, UK and France supported the same objective there was no evidence of the same organized diplomatic offensive. China maintained publicly that it wanted "a smooth extension" but, with



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one eye on NAM, declined to be more explicit or active. The political atmosphere around NPTREC was made favourable by the Clinton Administration's decision to begin negotiating a CTBT in the Conference on Disarmament thus removing one of the most contentious issues in NPT Conferences.

South Africa was a key target of US diplomacy with the aura that it had acquired following Nelson Mandela's assumption of the leadership of this nation and its emergence as a non-racial democracy replacing the white minority regime of the past. More significantly, South Africa had joined the NPT as a non-nuclear weapon state after destroying its nuclear devices under International Atomic Energy Agency's (IAEA) supervision. A special link is said to have been established between US Vice-President Al Gore (who addressed the opening of the NPTREC) and South African Vice-President Thabo Mbeki on the NPTREC ensuring South Africa's support for an indefinite extension of the NPT. This was an undoubted diplomatic triumph especially as South Africa had proposed another 25-year extension during the preparatory committee stage. It proved to be crucial when the key decision was taken.

Similar diplomacy was attempted by the US with the Arab group of countries and Egypt in particular but was less successful. The then Egyptian Foreign Minister Amr Moussa remained critical of Israel's rejection of the NPT and demanded a solution to this in terms of his President's proposal of the Middle East as a weapons of mass destruction free zone.

Another critic of US NPT policy was the able Mexican diplomat Miguel Marin Bosch who was marginalized allegedly under US pressure. A series of articles in the 'Washington Post' on the eve of the NPTREC outlined US policy and its diplomatic efforts.

In marked contrast to the well-organized US diplomatic offensive the NAM countries had no similar campaign. No alternative to indefinite extension was conceptualized clearly and pursued vigorously although many delegations proposed extensions of varying length since an extension of a limited duration would have given their group the leverage it wanted. Even the critics outside the NPT, like India, made no effort to see that its wishes for a deadlocked conference were realized through an organized NAM stance.

The identification of the office-bearers of the NPTREC, principally its President, was achieved at an early stage. Two names were proposed at the very first session of the Preparatory Committee and the name of the writer was confirmed at the second session. This provided ample time for consultations to be conducted and for diplomatic strategies to be planned. In contrast the confirmation of the President-elect for the 2010 NPT Review Conference was confirmed at the third session of the Preparatory Committee in May 2009. Because of the complexity and importance of the NPTREC in comparison to normal 5 yearly Review Conferences, four sessions of the Preparatory Committee were necessary and yet there was no complete agreement on the Rules of Procedure.

The diplomatic wrangling on this was on the mode of voting if it came to voting. Was it to be by secret ballot or by open ballot? The NAM countries overwhelmingly preferred the former while the Western group preferred the latter. The importance of this decision revolved round the wording of Article X: 2 which stipulated that the extension decision be taken "by a majority of the Parties to the Treaty." This deadlock remained unresolved throughout the NPTREC and it was just as well that the adoption of the final package of three decisions and the Resolution on the Middle East was adopted without a vote.

At the opening of the Conference it was clear, as a result of the President interviewing delegations who had not openly announced their extension preference, that a majority did exist for an

indefinite extension. It was therefore left to the writer to craft a procedure that would legitimize this as well as reflect the overwhelming view that the extension should be conditioned on specific guarantees that nuclear disarmament would be achieved. To respond to that challenge the conference device of a small group, styled the “President’s Consultations”, was adopted somewhat along the lines of Ambassador Shaker’s group in the 1985 Review Conference.

The group included all the Conference office-holders, the five NWS in the NPT, the chairs of the political groups and key delegations selected by the writer. It was conceived as an ‘inner cabinet’ or a laboratory to discuss the all-important extension issue which transcended the normal business of the Main Committees. The device was not entirely undemocratic or lacking in transparency because Group leaders (and all delegations belonged to a Group except for China) were encouraged to report back to their groups regularly and seek their endorsement on the decisions being taken.

The fact that the results of these consultations were endorsed by the entire Conference proved that it was effective multilateral diplomacy rather than seeking to arrive at decisions in the plenary through an unwieldy debate. The composition of the group was undoubtedly arbitrary and that was resented by some of the delegations that were excluded, hurting the egos of their Ambassadors.

In terms of conference diplomacy however, it was the practical and effective thing to do as events turned out. It is doubtful that the same device can be adopted in future with all delegations now asserting their right to participate fully in decision-making. It was within this group that the two Decisions “Strengthening the Review Process for the Treaty” and “Principles and Objectives for Nuclear Non-proliferation and Disarmament” were drafted over a two-week process.

The writer handled the drafting of the key legal decision on the extension and the weaving of the three Decisions into a package himself and announced it to a large representative gathering. The dispute over the Rule of Procedure on whether the voting should be secret or open was unlikely to have been resolved given the strongly held positions. The writer would have had to break the deadlock with a vote and this decision,

be it by open or secret vote, would itself have been highly contentious. It was also the writer’s conviction, voiced repeatedly, that voting on a treaty as important as the NPT would expose the treaty membership as a house divided eroding the viability of the treaty. As President of the Conference the writer’s main task was to fulfill the terms of Article X.2 that the decision on the extension of the treaty had to be taken by a “majority of the parties to the treaty”. What better way to do this than by agreeing that there was a consensus that such a majority existed? The formulation thus presented by the writer was irrefutable and was met with widespread agreement. In the event the package was not unwrapped but some tinkering of the wording in Decision I was agreed upon; dropping the word “a consensus” for simply “deciding that, as a majority exists....” This satisfied the purists among the NAM members who resisted being a part of the consensus. And yet, because they could not deny that a majority did exist for an indefinite extension they agreed that the entire package would be adopted without a vote!

The contentious issue of the Middle East which, according to the wishes of the Arab Group, had proceeded on a separate track had not made any progress. The writer was approached for a solution at a very late stage of the Conference. It was both late and risky to reopen the package of three decisions that had been negotiated. This resulted in special consultations on a Resolution on the Middle East with key delegations present and agreement was finally reached. Failure to consult Iran proved almost disastrous when the Resolution came up for adoption but was resolved during a recess in the plenary on the final day.

While the Extension aspect of the Conference appeared to have been conducted successfully, the Review aspect in the key political areas handled by Main Committee I was a diplomatic failure (Main Committees II and III thanks to the efficiency of their Chairmen concluded their work on technical aspects of the NPT successfully). The writer’s last-minute intervention to rescue the process in Main Committee I did not succeed. This was not, in the final analysis, a major setback since the main outcome – a decision on the extension – had been achieved.

Review Conferences of 2000 and 2005: The two conferences of 2000 and 2005 offer a study

As President of the Conference the writer’s main task was to fulfill the terms of Article X.2 that the decision on the extension of the treaty had to be taken by a “majority of the parties to the treaty”. What better way to do this than by agreeing that there was a consensus that such a majority existed?

Politically, the lines were drawn when the Bush Administration rejected the 2000 Final Declaration and all references to it. There was thus little room for diplomacy.

in contrast not only because 2000 saw the adoption of a landmark Final Declaration with its well-known ‘Thirteen Steps’¹⁸ and 2005 ended in disarray. One conference saw constructive diplomacy working towards a positive conclusion while the other under the Bush Administration and with Ambassador John Bolton as Permanent Representative of the USA in New York was polarized from the beginning with little or no bridge-building efforts.

The run-up to the 2000 Review Conference was helped by the conclusion of the CTBT and its signature by several countries although the US Senate rejected its ratification. The Indian and Pakistani tests of 1998 were undoubted setbacks for the global objectives of nuclear non-proliferation and nuclear disarmament despite the fact that these two countries were neither bound by the NPT nor the CTBT.

The Preparatory Committee sessions were also marred by persistent efforts of the NWS to conduct ‘business as usual’ ignoring the major changes achieved in 1995 in terms of strengthening the review process. In marked contrast the Review Conference proved a success. Its President – Ambassador Baali of Algeria – proved that a background in disarmament diplomacy was not necessarily a pre-requisite as long as you had multilateral diplomatic skills. Main Committee Chairman Ambassador Camillo Reyes of Colombia and the Chairman of the subsidiary body on Article VI issues – Ambassador Pearson of New Zealand – showed great diplomatic skills in guiding their discussions to a consensus. Thus the needs of good conference management were well served.

The ‘Thirteen Steps’ and the ‘unequivocal undertaking’ of the NWS to achieve the elimination of nuclear weapons were among the successes of the 2000 Conference although subsequent events were to show how ephemeral this could be. The conference almost ran aground on a dispute between Iraq and the USA but this was eventually resolved.

The approach to the 2005 NPT Review Conference was not auspicious as the NWS began to retreat from the ‘Thirteen Steps’, the Bush Administration’s Nuclear Posture Review of 2002 envisaged the actual use of nuclear weapons and the US and her allies invaded Iraq in 2003. The DPRK and Iran continued to be regarded with concern. The Conference failed to

adopt a Final Declaration and is described by one commentator as “the biggest failure in the history of this Treaty”¹⁹ Disagreement among the parties arose along all the fault-lines and only four and a half days of the 4 week long conference were spent on substantive issues. The rest of the time was spent on procedural wrangling – surely a recipe for the failure of any conference. Whether this was by intention of those who wanted no substantive discussion or whether it was accidental is not clear.

Politically, the lines were drawn when the Bush Administration rejected the 2000 Final Declaration and all references to it. There was thus little room for diplomacy. The New Agenda Coalition (NAC), which had been so active in the 2000 Conference, was a pale shadow in 2005 perhaps because of changes in the leadership or a basic lack of cohesion. A new group emerged – The ‘NATO 7’ – comprising the Netherlands, Belgium, Italy, Spain, Norway, Lithuania and Romania but even their efforts could not rescue the conference.

The NAM were not united. Egypt seemed determined to end the Conference without sacrificing any of the gains achieved in 2000 even if it meant a failed Conference. Clearly then the 2005 Conference was doomed to fail because of the political climate. At the same time, except for a few delegations like the NATO 7, few were interested in salvaging it through diplomatic initiatives. Squabbling over procedure was no substitute for diplomacy but there was little else to do given the huge disagreements.

Commentators have pointed out that the negative outcome of the final Preparatory Committee meeting in 2004 presaged the failure of the 2005 Review Conference. By that yardstick the fact that the 2009 Preparatory Committee meeting adopted an agenda for 2010 and took other procedural decisions smoothly, despite not being able to agree on substantive recommendations for 2010, is a happy augury. At the very least the 2010 conference will not be ensnared in a procedural debate on the agenda as happened in 2005.

Features of NPT Diplomacy

A number of features in NPT diplomacy stand out as one approaches the 2010 Review Conference, especially with the Third Session of the Preparatory Committee concluding successfully

on May 15, 2009 in New York – albeit without agreeing on a set of recommendations. While the positions of delegations follow instructions from capitals, it is not surprising that some act at their own discretion within the limits of flexibility permitted by their Governments. This allows for individuals to show initiative in finding solutions to problems. It is also possible that the stances taken by individual delegations on the conference floor can be changed as a result of diplomatic demarches taken by powerful countries in capitals compelling delegations to change their positions. Given the confidentiality of diplomatic communications we will not know what pressures are exerted on NPT parties or what linkages are made as a part of the ongoing diplomatic activity in conferences.

The functioning of various groups within NPT Conferences does assist the work of the conferences and is an important element of NPT diplomacy. The groups are the Western Group – which includes Japan, Australia, NATO and the EU; the Eastern Group – which includes Russia and the former USSR states but which has, post Cold War, no political role and functions today only to agree on common candidates for NPT positions; and, finally, the NAM which decides collectively on political issues – but is sub-divided into the Asian, African and Latin American & Caribbean groups for purposes of agreeing on candidates for NPT Conference positions.

In addition the NAM have within it the Arab group which meets to discuss and decide on Middle East issues and which the NAM generally accepts. The five NWS meet among themselves during Conferences and in between. After some of these meetings joint statements are issued representing common positions.

No group exists uniting all the NNWS and it is left to temporary coalitions like the NAC to form transcontinental groupings to espouse common positions. Such groupings can be very effective and it has been an omission that more diplomatic energy has not gone into forging alliances which could serve as “bridge builders” among the treaty parties and act as a “fire brigade” to defuse controversies as well as seek negotiated solutions to problems as they arise.²⁰ Group meetings usually take place prior to the commencement of the day’s conference proceedings but can also be held at any moment to co-ordinate group positions.

The political strength of the NAM derives from its numbers and its solidarity and the other groups do not always welcome that. It provides protection for the smaller and weaker countries within it. Countries within the Western Group do not always find themselves in agreement.

As noted earlier the selection and appointment of office-bearers of Review Conferences should be done in a careful and timely manner and not left to fortuitous circumstances. Not every Chairman or President need have detailed knowledge of the NPT and its history provided he or she has the necessary diplomatic skills to strive for a consensus that strengthens the treaty.

The Secretariat of NPT Conferences is staffed by members of the UN’s Office of Disarmament Affairs and the IAEA. While they are international civil servants who are mandated to help service the needs of conferences through their experience and objective vantage point, they could often provide advice that help the outcome of the conference. In this context the ‘institutional deficit’ of the NPT must be remedied. There is no permanent body that acts as an administrative entity for the NPT. The UN staff perform the functions they do in addition to their other duties. Ireland and Canada have presented working papers on this subject and NGOs have also raised it. This infrastructure for the NPT will greatly aid the exercise of NPT diplomacy and to oppose it because of the cost seems short-sighted.

An important role for a new unit in the NPT is dispute settlement. The dispute settlement mechanism in the World Trading Organization (WTO) offers a useful model to adapt for NPT purposes. All states party to the NPT would have to agree to enforce the rules of compliance. This mutually agreed mechanism will ensure the objectivity of procedures and a genuine rule-based system. With so many charges and counter-charges on compliance this mechanism would be an excellent innovation without prejudice to any action that might be taken by the Security Council

Non-Governmental Organisations (NGOs) representing civil society are another element of NPT diplomacy that is significant. While the quality of NGOs may vary and some perform a ‘think tank’ and research role, others can be useful pressure groups. Increasingly, the NGOs play a ‘diplomatic’ role. Some have their representatives actually included in delegations. Others

organize briefing seminars for delegations which are extremely useful for young diplomats attending their first NPT conference so as to understand the past proceedings and the details of the current issues. These seminars and the briefing books made available also afford the opportunity of beginning discussions in an informal setting which could hopefully lead to consensus when the conference actually takes place.

The NPT by its very structure and content encourages the practice of diplomacy in its Conferences. It is a living treaty which despite its seemingly impossible amendment procedure adapts and changes through the Final Declarations of its Review Conferences and the NPTREC's package of decisions. It is the only multilateral treaty which commits the NWS to nuclear disarmament. Despite problems within the NPT its Conferences are well attended and attract widespread media attention. The longevity of the NPT and its near universality are a tribute to the multilateral diplomacy that has supported it.

However, diplomacy must be informed by a political will to make the NPT work. Absent that political will the NPT cannot be sustainable especially with its division into the two categories of NWS and NNWS. Barbara Crossette writing to the New York Times in her article of Sunday 14 May 1995 quoted the writer as having said – “The President of a conference is not a magician who can produce a rabbit out of a hat. The rabbit must be in the hat and must want to come out. All we can do is to coax it occasionally.” NPT diplomacy is, finally, a ‘coaxing’ process.

4. Repairing the Damage

Any human-made institution – in this instance a multilateral treaty in a visceral area of the national security of countries – must show wear and tear after several years of existence. In the case of the NPT, with the tensions and strains of the original bargain, and strong sentiments of unequal obligations between the NWS and NNWS, problems emerged early and have steadily aggravated as further commitments undertaken at successive Review Conferences were seen to be unfulfilled.

The vision of a nuclear weapon-free world was most famously dismissed by the former Prime Minister of Britain, Margaret Thatcher, as

a ‘pie in the sky’. Such was the derision which greeted the seriously argued disarmament scenario put forward by many NNWS, especially from the NAM, as well as many responsible non-governmental organizations such as Pugwash. It was therefore a refreshing change when distinguished former leaders of US Administrations combined to write – not one but two – op-eds to a conservative US journal, the Wall Street Journal, calling for precisely that ‘pie in the sky’. The need for broader support for this welcome initiative by Messrs. Shultz, Kissinger, Nunn and Perry was obvious. Not only do many of the NWS and NATO retain policies that are predicated on the first use of nuclear weapons, but some also have plans for pre-emptive strikes and the building of new weapons which could lead to a violation of the taboo on the use of nuclear weapons since Hiroshima and Nagasaki.

Moreover, these policies continue to be supported by statements coming out of the US Pentagon and by retired commanders of NATO countries who see “no realistic prospect of a nuclear free world”²¹ and recommend a grand strategy of the USA, NATO and the EU in which, “The first use of nuclear weapons must remain in the quiver of escalation as the ultimate instrument to prevent the use of weapons of mass destruction”.²² Faced with this entrenched attitude in favour of nuclear weapons and their use, broader support for nuclear disarmament leading to the elimination of the 23,300²³ nuclear weapons in the world must come essentially from the governments and peoples of the NWS, two of which, the USA and Russia – who, as stated earlier, have 95% of the weapons – have had important Presidential changes with far-reaching repercussions in their bilateral relations.

At the same time the NNWS also have a right and an obligation, in this interdependent globalized world, to take steps that will help usher in a nuclear weapon-free world. It must be clear, however, that the NNWS do not form a monolithic group. There are the NNWS who are allied to NWS and who enjoy the benefits of a security umbrella by belonging to a security pact or a security alliance with ‘nuclear sharing’ arrangements. Their independence of action is limited as is their capacity to influence the policies of NWS – unless there is a radical change resulting in a break of their links with NWS and/or NATO,

which seems unlikely in the short term.

Thus, expectations with regard to NNWS members of NATO and countries like Japan and the Republic of Korea who have security arrangements with the USA must be lower. It must also be kept in mind that five NNWS – Belgium, Germany, Italy the Netherlands and Turkey – apart from France and the UK, have an estimated 200-250 nuclear weapons deployed on their territories.²⁴ The involvement of the NNWS in Ballistic Missile Defence plans clearly linked to nuclear weapons strategy is another factor compromising these NNWS.

The opportunity of the NATO Summit in April 2008 and in 2009 on the occasion of NATO's Sixtieth Anniversary, for the role of nuclear weapons in NATO's 1999 Strategic Concept to be reviewed was missed.

We are then left with the NNWS who are members of the NAM and others who are, together, states parties of the NPT. This group of countries has consistently urged the NWS to fulfill their NPT obligations under Article VI with nuclear disarmament leading to the elimination of nuclear weapons; sought negative security assurances in a treaty format; demanded the entry into force of the CTBT and the negotiation of a non-discriminatory fissile material production ban – demands that have been encapsulated in the Thirteen Steps contained in the Final Document of the 2000 NPT Review Conference.

As noted earlier, NNWS have sometimes formed coalitions such as the NAC and the Seven Nation Initiative transcending regional groupings. They have also taken steps among themselves to establish nuclear weapon-free zones in specific geographical areas confirming their non-nuclear status but also limiting the ability of NWS to station and transport their nuclear weapons freely.

Despite some modest successes that have been achieved as a result of the pressure of the NNWS – such as the negotiation and signature of the CTBT in 1996 and the Advisory Opinion of the International Court of Justice in the same year – the NNWS have faced firm opposition in all the multilateral fora available to them. Their position has been weakened by proved instances of nuclear proliferation undertaken clandestinely by Iraq, the Democratic People's Republic of Korea (which subsequently left the NPT) and Libya and

continuing questions over the nuclear programme of Iran. In addition, the attempts by terrorist groups to acquire weapons of mass destruction (WMD) and the revelations of a black-market in nuclear materials and nuclear technology run by Pakistan's Dr. A. Q. Khan has imposed on the NNWS the need to ensure the non-proliferation credentials of NNWS while demanding that the NWS fulfill their obligations.

We have therefore reached a situation where the fulfillment of the reciprocal – albeit asymmetrical – obligations of the NWS and NNWS can together help to usher in a nuclear weapon-free world. The obligations of the NNWS can be accepted without in any way violating their rights under the UN Charter or the NPT. Support by NNWS for a rule-based world order would be the main approach. The non-proliferation regime has the NPT at its core but involves other treaties and arrangements. Strengthening the existing legal instruments underpinning the non-proliferation regime is a common task for both the NWS and NNWS.

First and foremost, there is the Comprehensive Safeguards Agreements (CSA) which all NNWS should sign with the IAEA as a firm undertaking of the norm under Article III of the NPT. Twenty four NNWS who are party to the NPT have not brought such agreements into force: ten NNWS have signed but not enforced their CSAs: six have not signed although the Board of Governors has approved their CSAs: and, eight countries have not submitted their CSAs to the Board of Governors.²⁵

In addition there is the need to sign the Additional Protocol of the IAEA negotiated after the discovery of Iraq's secret nuclear weapon development programme at the conclusion of the Gulf War. It is well established that this greatly expands the verification of the peaceful uses of nuclear energy by the IAEA under Article III of the NPT and augments the confidence of all states that there is no diversion to non-peaceful purposes. At the time of writing the Additional Protocol is in force in respect of 88 NNWS.²⁶ Considering this, other states should also sign and ratify the Additional Protocol and have it enter into force, especially in the case of those who have significant peaceful nuclear energy programmes to safeguard.

As a means of combating the problem of the proliferation of WMD and terrorist groups

We have therefore reached a situation where the fulfillment of the reciprocal – albeit asymmetrical – obligations of the NWS and NNWS can together help to usher in a nuclear weapon-free world.

acquiring WMD the UN Security Council adopted Resolution 1540 and established a mechanism for its implementation. In instances where NNWS have peaceful programmes for nuclear energy, special safeguards were expected to be in place and where necessary the UN was to assist in strengthening the capacity of NNWS in this regard. As of 1st July 2008, 147 NNWS have submitted at least one national report to the 1540 Committee, but despite the 1540 Committee's requests for further information only 95 NNWS have submitted additional reports.²⁷ The other NNWS must submit their reports in order to co-operate in this important multilateral effort to combat WMD terrorism.

The need for the physical protection of nuclear materials and nuclear facilities cannot be over-emphasized. NNWS who have not become parties to the International Convention for the Suppression of Nuclear Terrorism and the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities should do so expeditiously.

All nuclear installations are vulnerable to terrorist or criminal attacks and the November 2007 criminal trespass into the Pelindaba nuclear facility in South Africa is a case in point although the IAEA has certified that, in this instance, sensitive nuclear areas were not under threat. Nuclear weapons are of course inherently dangerous. There can be no safe hands for them – just as much as there can be no right and wrong hands for their possession. And yet the custody of these weapons by nihilistic, fanatical groups with no conventional state controls or legal procedures would certainly enhance the risks of the use of these weapons.

We also have the CTBT which has not entered into force because nine countries of the required 44 in Annex II have either not signed or ratified the Treaty. NNWS must not only maintain the pressure through Article 14 Conferences for the states concerned to sign and ratify the CTBT so as to bring it into force, but those NNWS among the nine – Iran, Egypt and Indonesia – must honour their obligation to ratify the Treaty. They must all also participate in the verification network – the International Monitoring System – which successfully detected the DPRK explosions. Thus the recent actions of Malaysia and Colombia to ratify the CTBT must be welcomed.

Among the nuclear weapon-free zone treaties that the NNWS have initiated as a pro-active measure to eliminate nuclear weapons from the geographical areas in which they are situated, the Pelindaba Treaty has now entered into force in Africa because the requisite number of ratifications – 28 – has finally been achieved. Some African countries – all NNWS – still have an obligation to ratify this important Treaty.

All the five Central Asian countries have ratified the Central Asian Nuclear Weapon-free Zone Treaty but the three Western NWS – USA, UK and France – have not signed the protocol respecting this nuclear weapon-free zone.

NNWS have an obligation as members of the Geneva-based Conference on Disarmament (CD) to ensure that this negotiating body begins to function after a stalemate that has gone on for over a decade. The adoption of a programme of work in 2009 led to expectations of work actually beginning with negotiations on a Fissile Material Cut-off Treaty (FMCT) and discussions in other areas like nuclear disarmament, negative security assurances and outer space going on in parallel. While the cause for this stalemate does not lie entirely with the NNWS, redoubled efforts by them could reactivate the CD and help make 2010 the “break-through year” that Secretary-General Ban Ki-moon had hoped 2009 would be. It is especially important that a treaty banning the production of fissile material be negotiated and NNWS must increase the pressure on NWS for this. A Treaty for Negative Security Assurances also has to be an objective of the NNWS and the value of this in guaranteeing nuclear non-proliferation is self-evident.

An insidious undermining of the legal regime underpinning nuclear disarmament and non-proliferation is the manner in which non-NPT nuclear weapon-armed states are being accorded privileges by the NWS. For example, the Indo-US nuclear co-operation agreement flies in the face of Security Council Resolution 1172. NNWS, especially those in the Nuclear Suppliers Group, failed to reject a NWS-driven move where its realpolitik trumped the principles of the nuclear disarmament and non-proliferation regime.

Peaceful Uses of Nuclear Energy

The cumulative impact of high energy prices and the environmental fears raised by scientific

findings about climate change have led to an increased demand for nuclear energy. NNWS within the NPT rightly cite Article IV of the NPT on “the inalienable right of all the parties to the treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination”.²⁸ The same article affirms the right to “participate in the fullest exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy”.²⁹ Prior to the current controversy over Iran’s nuclear programme, complaints had been registered by NNWS over the implementation of this article and the existence of extra-NPT mechanisms like the Nuclear Suppliers Group which control access to nuclear technology and nuclear materials especially when non-NPT countries were given this access freely. Some have argued that the right embedded in Article IV is not absolute and is qualified by the words “in conformity with Articles I and II”³⁰ but the determination of the extent of that conformity is often subjective and coloured by political considerations. The IAEA must be the arbiter of this.

Uranium enrichment or plutonium reprocessing facilities are being undertaken by some NNWS with more countries planning to do so. They increase the risk of disasters like Chernobyl and Three Mile Island, nuclear weapon proliferation and attacks or theft by terrorist groups despite the best safeguards. An estimated fifteen per cent of the world’s electricity comes from nuclear power with 436³¹ nuclear reactors being operational. Fifty three more reactors are under construction – nine of them in NNWS.³² A hundred and thirty are planned and 250 are proposed.³³ Thirty countries that have not had nuclear power before are among those with plans to have nuclear reactors in the future.³⁴ Proliferation resistant technology for nuclear power is still a work in progress. Proposals are also being made for the elimination of Highly Enriched Uranium (HEU) in civilian nuclear programmes and the James Martin Centre for Nonproliferation Studies at the Monterey Institute for International Studies has a Model HEU Code of Conduct developed. Until IAEA proposals for a multilateral approach to fuel assurance and supply are accepted, NNWS will encounter obstacles and the perception of double standards will be difficult to avoid accentuating the gap between the North and the South.



A moratorium on new nuclear power projects for NNWS would not be practicable unless accepted globally without discrimination. An important factor in the debate on the peaceful uses of nuclear energy is the role of the nuclear industry largely dominated by companies in the Western industrial states.

Decreased reliance on nuclear energy and the search for new types of energy must of course be encouraged both as a means of controlling carbon emissions and as a way to decrease reliance on nuclear energy. Dr. J. Craig Venter, in his Richard Dimbleby Lecture on BBC in 2008, argues that increasing CO₂ concentrations and rising populations will impose unprecedented stress on our ecology and natural resources which cannot be avoided by changes in life styles or fuel conservation. Looking to biology and genomics to create new technology he believes that “the new fields of synthetic biology, synthetic genomics and metabolic engineering.....will enable us to create new fuels to replace oil and coal.”³⁵ Thus the alternative to burning oil and coal is not necessarily the proliferation of nuclear power plants. Dr. Arjun Majumdar’s book “Nuclear-free and Carbon-free”³⁶ shows how a zero CO₂ US economy can be achieved without the use of nuclear power and without acquiring carbon credits from other countries. Brazil as a NNWS has already shown the potential of ethanol and bio-fuels are becoming increasingly popular although warnings have been issued against the widespread

Obama Presidential Science
Advisor John Holdren meets
with Jayantha Dhanapala and
Pugwash Secretary General
Paolo Cotta-Ramusino,
April 2009

replacement of agricultural land growing food with land producing bio-fuel. Developing countries among the NNWS can thus look to avoid the mistakes of the industrialized countries and explore other sources of energy to power their development efforts.

The “Good” news – Dismal as the current global situation may be, it is useful to remind ourselves that we have not arrived at the nightmare scenario envisioned by the late US President John F. Kennedy, who foresaw a situation of twenty to twenty-five nuclear armed states. The overwhelming majority of NNWS that are in the NPT genuinely believe that nuclear weapon possession is not in their security interest. However, as recent events have shown, the existence of a two-tier world of nuclear haves and have-nots cannot be sustained.

Still, there have been some positive nonproliferation developments as well. On 19th December 2003, Libya announced that it was abandoning its own programmes of developing weapons of mass destruction – a remarkable success of quiet diplomacy. A number of steps have been taken to tackle the problem of nuclear proliferation, such as the Co-operative Threat Reduction Initiative pioneered by U.S. Senators Richard Lugar and Sam Nunn, the Global Threat Reduction Initiative, the aggressive and still controversial Proliferation Security Initiative, and the Additional Protocols of the IAEA.

While these steps can contribute to security, they cannot, separately or together, stem the tide of nuclear proliferation that arises from the continuing political and military value attached to nuclear weapons as a result of the policies of the NWS. The incontrovertible fact is that nuclear disarmament and nuclear nonproliferation have a symbiotic relationship. They are mutually reinforcing. We cannot have progress in one without progress in the other. If nuclear weapons did not exist under a verifiable regime they could not proliferate.

The Weapons of Mass Destruction Commission, of which the writer was a member, said in its 2006 Report that, “So long as any state has such weapons – especially nuclear weapons – others will want them. So long as any such weapons remain in any state’s arsenal, there is a high risk that they will one day be used, by design or accident. Any such use would be catastrophic.”³⁷

What the NWS Can Do

Nuclear weapons are designed to cause terror and destruction on a vastly greater scale than any conventional weapon, killing thousands in a single attack and leaving behind ecological and genetic effects that can persist indefinitely.

President Obama’s Prague speech of 5 April 2009 stated clearly – “The existence of thousands of nuclear weapons is the most dangerous legacy of the Cold war.... One nuclear weapon exploded in one city – be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague – could kill hundreds of thousands of people. And no matter where it happens there is no end to what the consequences might be – for our global safety, our security, our society, our economy, to our ultimate survival.”³⁸

The risk that these nuclear weapons will be used—by states or terrorists, by accident or design—has actually increased in recent years. This threat, combined with the certainty of climate change, presents an ominous dual challenge to humanity. But exhorting against complacency is not a counsel to despair.

From Jared Diamond’s impressive book, “Collapse,” we draw the lesson that, throughout history, not all societies facing imminent danger have failed. With long-term planning and a willingness to reconsider core values, even societies at extreme risk are able to avert collapse.

Globalization and the information and communications technology (ICT) revolution have made our challenges more complex, but also offer us tools to assess and mitigate the problems we have created. Along with our scientific advances, our advances in governance—embodied in international institutions and international law—provide us mechanisms to coordinate the collective action that is needed to rid the world of weapons of mass destruction and take corrective action on climate change.

At least in the security field, the disastrous policies that have brought us to this point of crisis have run their course. The work of former IAEA Director-General Mohammed El-Baradei is a signal that, in politics, practical diplomacy can and does yield results. So too was the Libya case, in which diplomacy and engagement helped end a decades-long weapon program. These results were long overdue, but they point

to what can be achieved in other areas—an especially important reminder when military strikes are still contemplated as an approach to fighting proliferation, notwithstanding the lessons of Iraq.

Developments outside the NPT also would contribute to this unraveling. In May 1998 India announced the conduct of tests of nuclear devices and was followed soon after by Pakistan. Although, as stated earlier, neither country was a member of the NPT or the CTBT, these tests were clearly a setback to the prevailing nuclear nonproliferation and disarmament norms. They were widely condemned, most notably in UN Security Council Resolution 1172, and triggered limited sanctions by the United States and other Western countries.

Today, one may note the contrast between the strong language in that resolution and the terms of the U.S.-India nuclear cooperation deal—a disparity that vividly illustrates the inconsistent application of nonproliferation norms especially by the NWS.

George Perkovich has cogently argued that the “democratic bomb”³⁹ strategy—approval of nuclear weapons in the hands of countries with assuredly democratic government, and disapproval when possessed by other “regimes”—is inherently contradictory and cannot succeed; when the central problem is the weapons themselves, any distinction between “good proliferators” and “bad proliferators” cannot be sustained.

Henry Kissinger, discussing the case of Iran, wrote that “it is the fact not the provenance of further proliferation that needs to be resisted.... We should oppose nuclear proliferation even to a democratic Iran.”⁴⁰

A further contrast is the differential punishment meted out in instances of proven proliferation—despite the stringent conditions of UN Security Council Resolution 1540, which was adopted to prevent non-state actors and terrorist groups from acquiring weapons of mass destruction.

The 1540 Committee, which is comprised of all Security Council members, was tasked with monitoring member states’ compliance with Resolution 1540. Enforcement, however, has been inconsistent. Recent revelations into the workings of A. Q. Khan’s illicit trafficking network—which were well known to Western intel-

ligence agencies for some time—resulted in a mere three convictions and relatively light jail sentences. The Tinner family in Switzerland are reported to have been let off lightly and the papers connected with their case shredded. Numerous other instances of the theft, illegal trafficking, and smuggling of nuclear material have been detected in the post-9/11 atmosphere of heightened concern over international terrorism. Yet in many countries the punishment for these violators is no greater than that for corrupt businessmen or prolific Internet ‘spammers’.

As has been noted above, despite the setbacks to the NPT regime after 1995, the Review Conference of 2000 was a remarkable success due largely to the energetic efforts of a group of countries drawn from different regional groups that called themselves ‘The New Agenda Coalition.’ Their firm pressure, and the aversion of the nuclear powers to an open rupture, resulted in the adoption of a final document that contained thirteen specific and practical steps for nuclear disarmament.

These steps have become the centerpiece for those committed to the success of the NPT. Subsequent failure by nuclear weapon states to achieve them, despite commitments made at the 2000 Review Conference, has led to the further unraveling of the consensus and a mood of disillusionment. In fact, instead of implementing the promised thirteen steps, leading nuclear-armed states reversed the progress of earlier years.

Arms control agreements, such as the 1972 Anti-Ballistic Missile treaty (ABM), were abrogated. The Strategic Offensive Reductions Treaty (SORT) between the United States and the Russian Federation, while a gesture toward nuclear disarmament, was deliberately silent on issues of verification and on actual destruction of weapons. Moreover, the de-emphasis on nuclear weapons in the security doctrines of the major powers after the Cold War was replaced by a fresh salience. This was evident in the 2002 Nuclear Posture Review by the United States, and in the reversal by the Russian Federation of its policy of no first use of nuclear weapons against non-nuclear weapon states. Thus a taboo even during the Cold War was being pronounced as policy. Unless the 2002 NPR is revised there remains the prospect of nuclear escalation violating commitments made in 1995 and 2000, and ignoring principles of propor-

U.S. plans to deploy components of a missile defense system in Poland and the Czech Republic were seen as a provocation and a break from prior promises. This has now been rectified by Obama.

.....
While Obama's Prague speech of April 5, 2009 has been welcomed, action on his promises is awaited. The political difficulties he faces within the US especially in Congress are not to be under-estimated.
.....

tional response enshrined in international law and expressly affirmed in the Advisory Opinion of the International Court of Justice in 1996.

Meanwhile, concepts of deterrence have spread to South Asia and are invoked by both India and Pakistan to justify their nuclear arsenals as militarily necessary.

The United States, with its plans during the Bush-Cheney Administration, for 'bunker buster' weapons and the Reliable Replacement Warhead, reflected this new reliance on nuclear weapons as an active element of military strategy, a development that dangerously lowers the threshold for nuclear use.

In Prague on 5 April 2009, President Obama said, "We will reduce the role of nuclear weapons in our national security strategy and urge others to do the same."⁴¹ It remains to be seen what the Nuclear Posture Review of the Obama Administration will reveal on the role of nuclear weapons in the defence strategy of the US.

Russia's former President Putin, in a speech in Munich on February 10, 2007, hinted at withdrawal from the Intermediate Range Nuclear Forces Treaty (INF) and the Treaty on Conventional Armed Forces in Europe (CFE), two important achievements after the Cold War, citing threats to the security of his country.

Thus, by words and by deeds, the critical importance of a relationship between the two powers that possess the majority of nuclear weapons in the world is manifest. Although talks between the two nations are said to have gone into several rounds in order to prepare for the expiration of disarmament agreements between them in 2009 and 2012, success in these negotiations is not a foregone conclusion.

U.S. plans to deploy components of a missile defense system in Poland and the Czech Republic were seen as a provocation and a break from prior promises. This has now been rectified by Obama. Together with China's launch of an anti-satellite weapon in space, these are still ominous signs of a fresh arms race. All NWS are engaged in modernizing their weapons with China actually reported to have increased the number of its weapons.

In the United Kingdom, a Labour government won parliamentary approval for renewal of the Trident submarines at a cost of \$40 billion, up to 3 percent of its annual defense budget for thirty years. Many statements in support

of a nuclear weapon-free world have been made by the Prime Minister and others. The as yet vaguely defined plan to convert UK into a 'disarmament laboratory' and the expected announcement of the verification of a nuclear weapon ban enhances UK's image despite the decision on the Trident.

Meanwhile the Geneva-based Conference on Disarmament (CD), although adopting a programme of work at long last, remains deadlocked on commencing work. It is thus unable to move on vital issues such as the Fissile Material Cutoff Treaty, negative security assurances, and the prevention of an arms race in outer space—let alone on eliminating nuclear weapons. The failure of the Western nuclear weapon states to ratify the protocols of certain nuclear weapon-free zones is another drawback—it is to the credit of the five Central Asian states that they concluded the Central Asia Nuclear Weapon-free Zone (CANWFZ) in September 2006 in defiance of heavy pressure from the United States, the United Kingdom, and France.

While Obama's Prague speech of April 2009 has been welcomed, action on his promises is awaited. The political difficulties he faces within the US especially in Congress are not to be under-estimated. Obtaining the votes of 67 US Senators across party lines for the ratification of the new US-Russian strategic arms treaty that is still being negotiated and the CTBT may prove a challenge. Beyond this the new Nuclear Posture Review will be an acid test of Obama's plans for a nuclear weapon-free world. It must show a de-emphasis on nuclear weapons in US defence strategy if it is to be credible to the NNWS. Statements, such as that made by Air Force General Kevin Chilton of the Strategic Air Command on 11 November 2009 predicting that the US will still need nuclear weapons 40 years⁴² hence are not helpful as are other contradictions within the US Administration.

NWS are no longer averse to reporting their performance in terms of their Article VI obligations. This is an important step towards transparency and a frank exchange of information which must be at the core of a conscientious review exercise of the NPT.

Among the many steps NWS can take in 2010 – including those set out in the Thirteen Steps of the 2000 NPT Review Conference Final

Document – is the de-alerting of nuclear weapons. US weapons were subject to a Single Integrated Operational Plan (SIOP) during the Cold War. According to Norris and Kristensen the new plan is Operation Plan 8010-08, Global Deterrence and Strike, described as being “a family of plans applicable in a wider range of scenarios”⁴³ This means that strike options have been included. It is argued that even in a deterrence scenario early warnings do not distinguish between nuclear or conventional attacks. Thus a launch on warning is in fact a first use of nuclear weapons. Norris and Kristensen state that a lower level of nuclear weapons to 1000-1500 nuclear warheads would not leave latitude for flexible options and a variety of targets. It will therefore be necessary for other NWS to also reduce their nuclear weapon arsenals. De-alerting is the range of measures taken to prevent an immediate launch of nuclear weapons so that some space is created for political or diplomatic negotiations before the irrevocable launch of a nuclear weapon.

Other suggestions include the declaration of a no first use policy for all of the NWS. That will depend on the outcome of the Nuclear Posture Review in the US and the response of NWS like France and Russia. More ambitiously some have called for a Security Council resolution on declaring the use of nuclear weapons as a “crime against humanity”.⁴⁴

The removal of US nuclear weapons on the territories of 5 NATO countries would help create a good climate for the NPT Review Conference. Germany’s new Government has made this a policy objective.

5. The special cases of non-compliance among the NNWS and the Middle East issue

While setbacks to the process of nuclear disarmament have continued, there have been setbacks in the nonproliferation field as well, of which Iraq represents the central case. Iraq’s clandestine development of a nuclear weapons program was effectively destroyed after the first Gulf war under Security Council Resolutions 687 and others, and through actions implemented by the IAEA, UNSCOM, and UNMOVIC. Yet this success, painstakingly achieved through a decade of multilateral action, was not apparent. Faulty intelligence and allegations that the



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program still existed led, inter alia, to the ruinous invasion of Iraq, despite the failure to find evidence to prove these allegations. The war’s results have exposed the limitations of counter-proliferation measures. Obama’s statement “No single nations (sic) should pick and choose which nations holds nuclear weapons”⁴⁵ in his Cairo speech of 4 June 2009 offers no comfort since both NWS and NNWS must be held to their NPT obligations.

The DPRK case is more difficult to assess. When first brought to the attention of the Security Council, it was deflected to a negotiation process that ended in the Agreed Framework in 1994. That agreement was inadequately implemented, and as the Bush administration adopted a truculent attitude to the DPRK, the situation worsened until the DPRK, which had announced its withdrawal from the NPT, tested a nuclear weapon in 2006. That act of proliferation created a sense of urgency and triggered Security Council sanctions.

The Six-Nation talks convened by China finally reached an agreement, announced on February 13, 2007. However, the implementation of the agreement ran into problems and DPRK reversed its position detonating a further test. Any agreement reached in future requires regular supervision so that it does not go the way of the earlier Agreed Framework.

Finally, there is the continuing case of Iran, whose failure to provide the IAEA with required information has led to deep suspicions that its plans for nuclear power may lead to a nuclear weapons program. This has been compounded by Iran’s noncompliance with UN Security

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Council Resolution 1737, barring its enrichment of uranium. In addition to the Natanz site the revelation of another site Fordow, near Qom, has complicated the issue. There is no doubt that the problem cannot be resolved unilaterally and requires a political and diplomatic process in which all sides must cooperate and compromise. The domestic politics within Iran are widely believed to contribute to the complexity of the issue delaying a resolution. Iran's failure to report certain activities in the nuclear field to the IAEA has created acute mistrust. Its co-operation with the IAEA has not been consistent and important design information has been withheld.

The signature of Iran's Additional Protocol without ratifying it has not helped. The sanctions approach has only intensified Iranian nationalism. Persistent threats of a strike against Iranian nuclear installations and a fog of disinformation aggravate the issue. Diplomacy appears the best route especially with the advent of the Obama Administration.

However, what appeared to be a promising breakthrough with the intervention of the IAEA Director-General on October 1, 2009, has not elicited an unambiguous response from Iran. A solution could still be worked out in the months preceding the NPT Review Conference. If not the question of Iran is likely to obstruct the smooth functioning of the 2010 Review Conference either through procedural debates or through sharp disagreements on substance.

Syria is also a case that may be raised at the 2010 NPT Review Conference regarding non-compliance. The attack by Israel on a Syrian site at Dair Alzour has been shrouded in secrecy. The IAEA has conducted investigations but has alleged that Syria has not co-operated in determining the origins of the samples taken from the site which Syria insists are non-nuclear. This lack of transparency creates doubts and suspicions but it is unlikely that agreement will be reached at the Review Conference on what should be done about this.

For the Arab NPT states parties the 1995 Resolution on the Middle East remains a most important issue and the lack of agreement on this proved to be one of the key factors causing the failure of the 2005 Conference. Indeed it is argued by some that the Middle East resolution forms the fourth pillar of the NPT along with

non-proliferation, disarmament and the peaceful uses of nuclear energy.

In 2010, with the current impasse on the Middle East, the situation will be even more serious and diplomatic efforts to engage the Arab states on this issue must begin urgently. Article VII is a very useful guide. The fact that there are already a number of nuclear weapon-free zones is an encouragement to the Middle East that what was regarded as unattainable in some regions is in fact attainable.

Argentina and Brazil were once regarded as being on the brink of becoming nuclear weapon states. However, today they have signed up not only to the Treaty of Tlatelolco but also to the NPT [with a bilateral arrangement, Agencia Brasilenno-Argentina de Contabilidad y Control de Materiales Nucleares (ABACC) between them] and are regarded as countries in good standing in both those treaties. The expectation of having a zone free of weapons of mass destruction in the Middle East is thus not naïve. The 1995 resolution on the Middle East, adopted as part of the package which led to the indefinite extension of the NPT, remains a rallying point for the Arab states. Operative paragraph 5 of that said very clearly that it "calls upon all states in the Middle East to take practical steps in appropriate forums aimed at making progress towards inter alia the establishment of an effective, verifiable Middle East zone free of weapons of mass destruction (nuclear, chemical and biological) and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective".

The achievement of a zone free of weapons of mass destruction in the Middle East was an integral part of this resolution. It is indisputable that there would not have been an indefinite extension of the NPT in 1995 without the Resolution on the Middle East. It was crucial to the package that the Arab countries in the NPT were able to come on board with an indefinite extension because of this resolution. It was an agreement made in the last few hours of the conference negotiations.

Compromises had to be made by the Arab group and by the nuclear weapon states and others in order to achieve this important breakthrough. But that breakthrough was in 1995. Today in 2010, we are still far away from

achieving the important first steps that are necessary to implement Paragraph 5 of that resolution. It is clear that this issue will once again, as it did in 2000 and 2005, be a major issue at the 2010 review conference. Therefore, there needs to be a plan of action and some progress evident.

Since 1995, there have been a number of developments in the Middle East. The invasion of Iraq on the pretext that Iraq had weapons of mass destruction, only to discover that there were no weapons of mass destruction.; the controversy regarding the nuclear programme of Iran which is seen as a part of the 'greater' Middle East and; as mentioned earlier, the case of Libya.

In the background of all that there is also the precedent of the Arms Control and Regional Security (ACRS), working group – one of the five in the Madrid Peace process that continued briefly and which has now sputtered out and the Quartet with its ambitious roadmap, which appears to have led us nowhere. But there is also an incipient peace process initiated by the new President of the United States with his very able Middle East peace negotiator, Senator Mitchell, at the forefront. Therefore, there is hope yet that there will be some progress in which this issue of a zone free of weapons of mass destruction will take a very important place. What is important is that the entire global south is free today of nuclear weapons following the Pelindaba Treaty and the Central Asian nuclear weapon-free zone entering into force in March 2009. The fact that formulations regarding this issue did not meet with objections at the 2009 NPT Preparatory Committee session should encourage the Arab states.

The UN Security Council resolution 1887 that was adopted in September 2009 in New York does make a specific reference in a preambular paragraph to the importance of nuclear weapon-free zones. It talks about welcoming and supporting steps to conclude such zones and reaffirms "the conviction that the establishment of internationally recognised nuclear weapon-free zones on the basis of arrangements freely arrived at among the states of the region concerned."⁴⁶ Clearly what is disguised by that diplomatic formulation is the fact that there is one state in the Middle East region – Israel – that is not ready "to freely arrive" at a zone free of weapons of mass destruction.

At a minimum the 2010 Conference after a full debate on this issue must either appoint a special co-ordinator to explore the implementation of the 1995 Resolution on the Middle East or set up a committee which will do so and make recommendations to the next Preparatory Committee meeting for the 2015 Review Conference. This will be a practical step which will provide some momentum within the NPT to this vexed issue and may satisfy the Arab states while other processes go on outside the framework of the NPT. The Egyptians are reportedly in favour of convening an international conference in 2011 on the resolution on the Middle East. Such a conference could turn out to be a success or a failure and placing all bets on one conference may not be as wise as having a credible co-ordinator acceptable to all sides who could make progress and report to preparatory committee meetings leading up to the 2015 Review Conference.

It is a tribute to the Arab states that those who were not members of the NPT in 1995 joined the treaty soon thereafter in the hope that the Resolution on the Middle East would be implemented. Their disappointment must not be allowed to fester and sap their trust in the NPT.

The NPT must be viewed in its totality. No one aspect can be singled out for implementation without upsetting the fundamental equilibrium that exists among the nonproliferation, disarmament, and peaceful uses of nuclear energy components of the treaty.

The special cases of alleged and proven non-compliance are unlikely to be resolved within the framework of a NPT Review Conference. They will have to be negotiated within bilateral or multilateral diplomatic talks.

A new consensus?

A global consensus on disarmament, utopian and elusive as it may seem, has in fact been achieved many times in the past. On January 24, 1946, the UN General Assembly adopted its first resolution calling for the elimination of all atomic weapons and "all other major weapons adaptable to mass destruction."⁴⁷ Later, in 1978, the First Special Session of the UN General Assembly devoted to disarmament (SSOD I) agreed on a consensus Final Document that represents what is still the highest watermark of

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What is important is that the entire global south is free today of nuclear weapons following the Pelindaba Treaty and the Central Asian nuclear weapon-free zone entering into force in March 2009.
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agreement on the entire range of disarmament issues and has never been surpassed.

In 1996, with the sole exception of India, a consensus was also achieved – first in the CD and then in the UNGA – on the CTBT. A bilateral consensus that ‘nuclear war cannot be won and must never be fought’ was reached in 1986 at Reykjavik between Presidents Reagan and Gorbachev as a prelude to agreements on nuclear disarmament. To be sure, such consensus has depended on a congruent political will among the leaders of the most powerful states, which all have elements of their security establishment that are deeply invested in nuclear arms. There are signs that, given the seriousness of the challenges confronting the international community, we may be able to go back to restoring this consensus as a step toward negotiating nuclear disarmament agreements and buttressing the NPT.

As mentioned, on January 4, 2007 the *Wall Street Journal* published a remarkable op-ed piece written by George Shultz, William Perry, Henry Kissinger, and Sam Nunn—all former holders of high office in the United States, all highly influential today. They called for “reversing reliance on nuclear weapons globally”⁴⁸ and viewed the doctrine of nuclear deterrence as obsolete, increasingly hazardous, and decreasingly effective. Recalling past efforts to rid the world of nuclear weapons, they called for a rekindling of the Reagan-Gorbachev vision and the achievement of a nuclear weapon-free world as a “joint enterprise.”⁴⁹ Identifying a series of agreed and urgent steps, the four included many of the measures featured in the ‘Thirteen steps’ of the 2000 NPT Review Conference and the sixty recommendations of the WMD Commission.

The article was followed a few days later in the same newspaper by an article by former Soviet president Gorbachev endorsing the four Americans’ views and also calling for a dialogue between the nuclear weapon states and non-nuclear weapon states within the framework of the NPT on the elimination of nuclear weapons.⁵⁰

A breakthrough in reconstructing the fractured consensus must come through the political leadership of key countries. Public opinion—especially in democracies—can force policy changes through the electoral process, and civil society organizations must work relentlessly to achieve this. Four of the five nuclear weapon

states in the NPT have changed their longstanding political leadership. This provides a unique opportunity for a change of policy on nuclear weapons. First, the presidential election in France (although the nuclear issue was not among the subjects being debated in the campaign); in the United Kingdom, Prime Minister Blair stepped down to be replaced by Gordon Brown who faces elections in 2010; in 2008, both the Russian Federation and the United States had elections for a new president. This virtually simultaneous change in the political leadership of key countries provides an opportunity in the post–Cold War world to make fundamental changes that can pull the world back from the brink.

The agreement reached among the five permanent members of the Security Council – all NWS in the NPT – on Security Council Resolution 1887 is also significant even though the language was more on non-proliferation than disarmament. Steps to support and strengthen the NPT were agreed upon. The Washington Summit on Nuclear Security convened by President Obama this April is an opportunity to reach consensus on an important aspect safeguarding nuclear materials and nuclear technology.

This new setting could be perfect for pursuing Recommendation 59 of the WMD Commission,⁵¹ which urges the convening of a world summit on the disarmament, nonproliferation, and terrorist use of weapons of mass destruction. The date for such a summit should be after the 2010 Review Conference, providing thorough preparation and an opportunity for new leaders to take their seats. Such a summit would represent a historic moment for the world to prove that in this era of globalization we recognize the dangers to our global society and will take the right decisions at the right moment so that the world we live in can be a world future generations can live with.

As will be noted later civil society is also in support of this change and a growing demand for a Nuclear Weapon Convention has been embraced by the UN Secretary-General who announced a 5-point plan on nuclear disarmament on October 24, 2008.⁵²

6. Reforming the NPT

From time to time proposals have been made to strengthen the NPT without throwing the baby

out with the bathwater. Michael Spies writing in the Spring 2009 issue of “Disarmament Diplomacy”⁵³ has a comprehensive survey of the proposals made at past NPT gatherings and their present status. These seek to have new procedures adopted through decisions taken at the Review Conferences without tinkering with the NPT itself. One example is the adoption of Decision I and Decision II in the package of the 1995 NPTREC.

A major drawback of this category of reforms is that the commitments made are not legally binding and are even reversible. A change of administration in one country could lead to a change of policy as with the Bush Administration repudiating the 2000 NPT Review Conference’s Final Document. A change of atmosphere can also be caused by the announcement of new policies. That was evident at the Third Preparatory Committee meeting in May 2009 when President Obama sent a message to the meeting. Despite that, no agreement was reached among the parties. More substantive action reflecting policy change is needed to bridge the gap between the NWS and NNWS.

Proposals have varied from arriving at new bargains to other extra-NPT arrangements which will build confidence before the 2010 conference and ensure its success. It is not the intention of this writer to make a comprehensive survey of all the proposals that have been made but rather to identify and comment on a selection of them that have been made more recently. They have come from US writers and from NGOs.

Lewis A. Dunn in “Assessing the Past, Building the Future” published in *Nonproliferation Review* of July 2009 has developed a series of what he calls “metrics”⁵⁴ to assess the successes and failures of the NPT and makes proposals for the 2010 Conference for implementation before 2015 when the next Review Conference is held. Dunn writes from the perspective of a former Ambassador who led the US delegation to the 1985 Review Conference and was an advisor in the US delegation in 1995.

Thus while conceding pre-NPT collusion between US and UK, USSR and China and France, UK and Israel in nuclear weapon programmes, he sees no “comparable cases of witting assistance”⁵⁵ by the US, USSR/Russia and UK since 1968 in violating Article I and rejects

the argument that the Indo-US nuclear deal conflicts with the “not to assist” part of the Article. However, Dunn does acknowledge that greater progress on Article VI issues will strengthen international support on non-proliferation. In proposing “three separate but linked NPT Action Plans: one for nonproliferation, one for peaceful uses, and one for nuclear disarmament”⁵⁶ to be agreed upon at the 2010 NPT Review Conference, Dunn sees the components of these plans being drawn from the consensus documents already adopted in past Final Documents of NPT Review Conferences which enjoyed consensus. The significant elements, as distinct from a reaffirmation of the key articles in the NPT, in the steps Dunn recommends for adoption at the 2010 Conference to strengthen the NPR are –

- A consensus on what actions would violate the “no manufacture” prohibition in Article II
- An encouragement of universal adherence to the Additional Protocol, a consensus on making this a condition of nuclear supply and an affirmation of the IAEA Statute’s Article XII on access “at all times, to all places” (regarding Article III)
- Building support for new fuel cycle approaches (presumably as a voluntary option for NNWS regarding Article IV)
- Reaffirming the “unequivocal undertaking” made in 2000 to eliminate nuclear weapons; developing a new Action Plan including CTBT entry-into-force and developing new template of transparency actions on Article VI implementation and nuclear postures
- Affirming a Security Council role and responsibility in respect of Article X and asking the Zangger Committee to agree on procedures regarding equipment and materials supplied to countries withdrawing from the NPT.

Not all of the above will meet consensus but they are constructive proposals. Dunn fails to propose a fix to the festering grievances of the Arab countries on the non-implementation of the 1995 Resolution on the Middle East, on the majority demand of the NNWS for negative security assurances and on a number of other issues. However, the framework of three separate but inter-linked action plans is a basis to work on, if only there was also an assurance

that they will be implemented and not be overtaken by events such as a change of administration in Washington D.C. before 2015.

The next set of proposals to consider is less specific and more political. They are contained in Scott D. Sagan's "Shared responsibilities for nuclear disarmament" which was published in *Daedalus*, Fall 2009.⁵⁷ The point of departure for the article is the revival of interest in nuclear disarmament in the US following the op-eds of George Shultz *et al* and the adoption of their vision for a nuclear weapon-free world in the US Presidential Campaign and, after assuming office, by President Obama.

Sagan reminds us pertinently that the Article VI commitment of the US is actually reinforced by US law under the US Constitution. The gravamen of Sagan's argument is that there must be shared responsibilities between NWS and NNWS on nuclear disarmament issues. Applying this argument to Article IV and VI will not help exculpate the NWS and/or developed countries given the text of the Treaty and the record. In Article IV while "all parties"⁵⁸ have the "inalienable right"⁵⁹ to the peaceful uses of nuclear energy and to facilitate and participate in the "fullest possible exchange of equipment, materials and scientific and technological information,"⁶⁰ there is clear reference to parties "in a position to do so,"⁶¹ to making a contribution either alone or together with other states or international organizations towards the development of the peaceful uses of nuclear energy "especially in the territories" of NNWS in the NPT "with due consideration for the needs of the developing areas of the world."⁶²

That places the NPT in the context of the North/South relationship and the global transfer of aid and technology. It is the development part of the NPT which has been lost sight of. For a long time developing countries have complained that in the IAEA the developed countries had used their weight and influence to get more allocations for Safeguards than for Technical Cooperation even when the assistance was for non-power projects like in agriculture and medicine. The special programme of assistance for developing NNWS within the NPT – known as Footnote A projects – was always under-funded. No incentives were offered to the NNWS. The developing countries among the NNWS cannot

also be blamed for the general under-funding of the IAEA.

In Article VI, although it has been noted earlier that the primary obligation of the NWS in the Irish sponsored resolution in the UNGA was deliberately blurred when the NPT was drafted, the current wording places the disarmament obligation on "each of the parties"⁶³ to pursue negotiations on nuclear disarmament. That the NNWS have done so through collective measures in sponsoring and adopting resolutions in the UNGA and in working in other multilateral forums is indisputable.

More importantly, an objective reading must surely conclude that the NWS states, and their allies, have more capabilities, and consequently responsibilities, than the NNWS in implementing this Article. Moreover the International Court of Justice's Advisory Opinion of 1996 makes it abundantly clear that the NWS have special responsibilities and arguing for 'shared responsibilities' here does not help. Certainly the NNWS have their share of responsibilities in all aspects of the NPT – such as in signing and ratifying the CTBT and the Additional Protocol – and these have been set out above but to interpret shared responsibility as equal responsibility is mistaken. And yet focusing on what some developed NNWS countries are doing in developing verification technology is relevant.

The NPT parties have another objective to pursue within the NPT. The institutional deficit in the NPT is a weakness. This argument has been carried forward by the Sri Lanka and Canadian delegations in NPT fora and by the Middle Powers Initiative (MPI) among the NGOs. No cohesive mechanism or administrative support (apart from the under-resourced UN Office for Disarmament Affairs) exists for the NPT unlike in the case of the Organisation for the Prohibition of Chemical Weapons (OPCW) for the Chemical Weapons Convention (CWC).

IAEA functions vis-à-vis the NPT are confined to Article III and that too under the authority of its Board and the Security Council, with no authority to refer matters to the NPT parties who should have a voice in the governance of their Treaty especially with regard to compliance assessment.

The need for NNWS to demand a Secretariat or a Governing Council has grown more

urgent in the light of so many controversial issues fundamental to the NPT and its future. In between Review Conferences the NPT's governance and administrative needs could, at a minimum, be served by a body made up of office-bearers of past Review Conferences. Unfortunately, the three depositary states and the other NWS within the NPT have only favoured the status quo and have shown no inclination to accept any proposals for change. There is a grave danger that when they do propose changes that are beneficial to the NPT the NNWS will be opposed to it unless there is reciprocity. Any multilateral treaty must reflect a mutuality of interests if it is to survive and serve the interests of the international community.

A final set of proposals appeared in the Carnegie Endowment for International Peace publication of November 2009 "Restoring the NPT: Essential Steps for 2010" by Deepti Choubey.⁶⁴ Emphasizing the joint endeavour facing NWS and NNWS it calls on the US to take steps to obtain domestic and international support for nuclear disarmament and asks the NNWS to respond positively to the policies of Obama. Choubey warns against an overload of expectations of the 2010 Conference and the assumption that it is going to be a "make or break" moment for the NPT. Based on a sampling of opinions obtained from a group of diplomats – heavily weighted towards the West – Choubey makes general recommendations and recommendations specifically addressed to the US and groups of NPT states. It is doubtful that the NNWS will be satisfied with the general and generic endorsement of principles at a time when more concrete actions are expected as a long-delayed implementation of the original NPT bargain and past Review Conference declarations.

The Amendment Route

There has been considerable speculation on whether more NNWS will want to opt out of the NPT using the Article X withdrawal clause and a number of commentaries have been written as to how this can be prevented.⁶⁵ The reason for this withdrawal could either be a disguised desire to acquire nuclear weapons (as in the case of the DPRK) or as a gesture of protest. The Article is now being read in conjunction with the UN Charter and the rest of the NPT as



being a limited right to be enjoyed by Treaty parties and not an absolute one.

A more assertive role for the Security Council in considering the withdrawal of a state party will require agreement among its five permanent members. Past Preparatory Committee meetings for the Review Conference have seen statements expressing concern over the exercise of the right to withdrawal but no action has been agreed upon. The fact that the Security Council has powers in maintaining international peace and security to act when the withdrawal of a state from the NPT is reported cannot be disputed. It has not acted so far in relation to DPRK.

At the Security Council Summit meeting on 24 September 2009, presided over by President Obama, Resolution 1887 was adopted. On this specific issue of NPT withdrawal, operative paragraph 17 undertook "to address without delay"⁶⁶ any state's notice of withdrawal from the NPT and affirmed that it would remain responsible under international law for NPT violations committed while being a party. That

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Secretary General
Ban Ki-moon

It is obvious that only a unique collocation of circumstances where the NWS and NNWS agree on a set of amendments will make amendments to the NPT possible.

is a threat to countries seeking to escape any punitive action for NPT violations and obviously it refers to NNWS and not to NWS. It does not apply to NNWS who may want to leave the NPT out of disaffection.

Converting Article X into a more coercive enjoiner could be possible de facto through the Security Council when the withdrawal of a state party is reported to it. This of course may seem like imprisoning states parties cutting at the root of the sovereign right of states to join and leave treaties in accordance with their perception of their national security. It will cause deep resentment especially among the NAM.

A less drastic and contentious route of manifesting the deep frustration of the NNWS over the unequal aspects of the NPT, and in particular the favoured treatment given to the holdout states who have moved over the threshold and enjoy a favoured relationship with the Western NWS, would be to take the amendment route. This is being discussed and may be activated by the disaffected nations if the 2010 Conference ends in a failure.

Like most treaties the NPT does embody a provision for amendment in Article VIII.1 and Article VIII.2. The Vienna Convention on the Law of Treaties (VCLT) at Articles 39-41 deals with amendments to a treaty. The procedure in the NPT is self-evidently tortuous and doomed to fail if even one of the NWS does not favour it. The process may be initiated by any state-party who submits the text of the amendment or amendments to the three depositary Governments who are obliged to circulate it/them to all parties to the NPT. Thereafter one-third of the parties (i.e.⁶⁴) or more must request the depositary governments to convene a conference to consider the amendments.

If the NAM decide on this course of action there is no doubt that they will have the numbers for this course of action which the depositary governments will find impossible to obstruct in terms of the NPT. They may of course resort to diplomatic means and /or political pressure to prevent this.

However the success of any amendment or amendments adopted at the Conference – by a vote or by consensus – will be difficult in terms of Article VIII.2 which requires them to be adopted by a majority of all the parties (i.e. more than 95) “including the votes of all

nuclear weapon states party to the Treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Agency.”⁶⁷ Assuming that this hurdle is overcome a further hurdle confronts the entry into force of the amendment. Entry into force depends on the “deposit of such instruments of ratification of all nuclear-weapon states party to the Treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency.”⁶⁸

It is obvious that only a unique collocation of circumstances where the NWS and NNWS agree on a set of amendments will make amendments to the NPT possible. That can be achieved if a realistic set of amendments are crafted combining the interests of both the NWS and the NNWS and genuinely aimed at strengthening all three pillars of the NPT – non-proliferation, disarmament and the peaceful uses of nuclear energy. A mischievous amendment could also be initiated as a means of applying political pressure on the NWS leading to an actual Amendment Conference but failing thereafter to clear the hurdles required to adopt the amendment/s. Some delegations recall the attempt made in the late 1980s to convert the 1963 Partial Test Ban Treaty into a Comprehensive Nuclear Test Ban Treaty co-ordinated by the Parliamentarian for Global Action – the New York based NGO. It began with a resolution 40/80 adopted at the First Committee of the UN General Assembly in 1985 and consequent resolutions 41/46 of 1986, 42/26 of 1987,⁶⁹ 43/63 of 1988, etc that led to the actual convening of the Conference. Eventually the move was abandoned since it was overtaken by the decision on the part of all states in the CD (after a key decision of the Clinton Administration) to negotiate a CTBT.

It is argued that a similar amendment move, though doomed to fail, could lead to an acceleration of steps leading to a nuclear weapon-free world favoured by the Obama Administration. This amendment procedure thus gives the NNWS the rare leverage they lost with the indefinite extension of the NPT. Clearly the initiative must appear to be balanced and it is useful to examine what amendments could be proposed with credibility.

James Crawford and Philippe Sands, in a 1996 Background Paper for the Canberra Commission on the Elimination of Nuclear Weapons, examined the legal aspects and options for a convention prohibiting nuclear weapons. Among the options explored were the formal amendment of existing treaties and the adoption of one or more protocols to existing treaties. They write, “The general principle for the amendment of treaty is the same as for their conclusion, i.e. the principle of consent”⁷⁰ and go on to acknowledge that the NPT amendment procedure is “stringent”. However, when discussing the possibility of adopting a protocol to an existing treaty they state that “But the fact that a treaty such as the NPT is silent on the issue of protocols does not preclude their adoption....”⁷¹ And they conclude that, “There is thus no legal obstacle to adopting a protocol to the NPT. Indeed this may allow new provisions to be adopted without the initial support of all nuclear weapons state parties (or all other parties which are members of the Board of Governors of the IAEA).”

Crawford and Sands rightly note that there are no provisions for a protocol to be proposed, negotiated or adopted. This is a loophole that may be explored by disgruntled NNWS. However, it is unlikely that it will go unchallenged by the depository states and the NWS. A legal squabble could thus ensue at a NPT conference and its outcome may have to be voted upon. An interpretation by the International Court of Justice could be sought by the NNWS but again it is unlikely to be accepted by the NWS.

Assuming that the path to either amendments or a Protocol is taken with all its risks, it is interesting to discuss what specific amendments or protocols might be proposed. It is unlikely that anyone would propose a fresh definition of a NWS which would admit India, Israel, Pakistan and the DPRK as NWS into the NPT. On Article I the prohibition applying to NWS to aid NNWS to manufacture nuclear weapons could be extended to NNWS as well, since some NNWS have the capacity to provide nuclear material and technology and between and among NWS too since US assistance to UK has been alleged. Moreover NNWS would like to be assured that NWS outside the NPT are not assisted by NWS in the refinement and technical upgrading of their nuclear weapons programme.

This would apply particularly to the Arab states vis-à-vis the nuclear programme of Israel. In addition the current formulation of the Article refers to “not in any way to assist, encourage or induce any non-nuclear-weapon state to manufacture or otherwise acquire nuclear weapons...”.⁷² Many opponents of the Indo-US nuclear co-operation deal see it as a contravention of this provision in the NPT and would like it amended to be more specific. Of course it would mean shutting the stable door after the horse has bolted but it would certainly help prevent any repetition of this violation of the NPT – a step that Arab states are especially wary of in respect of Israel. The “nuclear sharing” or “geographical proliferation” of US nuclear weapons in Europe has been a persistent concern and the assertion of US control over them has not alleviated concerns on how this conforms with Article I. Specific language to prevent such “sharing” would be necessary especially since other NWS can also use this precedent in future.

No amendments to Article II appear to be necessary. On Article III, it is this writer’s view that the IAEA Safeguards Agreements mentioned in the NPT should be updated and complemented by a mention of the Additional Protocol which should also be signed by all NNWS. This will be controversial to some 97 NNWS in the NPT who have still either not signed or ratified the Additional Protocol. It is however a necessary confidence building measure for the future. India has done so with regard to her civilian nuclear power facilities despite being outside the NPT. Article II.3 can be expanded to include the fact that safeguards should be implemented in a way that does not jeopardize the national security concerns of states (in addition to the prevention of hampering their “economic or technological development” or “international co-operation in the field of peaceful nuclear activities”). This should contribute towards assuaging concerns of NNWS that IAEA inspections may be abused to probe national security areas.

Article IV is a controversial article because of Iran’s nuclear programme and the enrichment of uranium currently not prohibited by the NPT. While retaining the “inalienable right” of NNWS to have nuclear energy for peaceful purposes it is possible that an amendment to prohibit all parties from producing fissile material for explosive purposes be incorporated. This would apply to

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both NWS and NNWS anticipating the conclusion of a Fissile Material Cutoff Treaty (FMCT) in the Conference on Disarmament.

The NWS in the NPT will find this non-controversial since they have announced that they have either stopped fissile material production or have a moratorium on production. The NWS outside the NPT – who are known to have reservations about a FMCT – will not be covered by this. NNWS should have no reservations on this given their adherence to Article II because low enriched uranium can be still produced by them if they so wish and the signature of the additional Protocol now required under the amendment proposed to Article III should be a confidence building measure for all parties. In Article IV.2 the “fullest possible exchange” of nuclear commerce for peaceful purposes could be further guaranteed so that those countries not producing civilian nuclear reactor fuel could have access to international fuel banks.

Article V is by common consent a “sleeping” provision since peaceful nuclear explosions are prohibited under the CTBT. However, the USA and China among the NWS and five NNWS in the NPT have currently not ratified the CTBT. Consequently the Article will require an amendment to prohibit peaceful nuclear explosions or be deleted altogether. The amendment to Article VI could be among the most controversial and fiercely resisted by the NWS. Here the Advisory Opinion of the ICJ is relevant and must be incorporated. The burden of responsibility must clearly be upon the NWS. Some NNWS may want a date for nuclear disarmament specified but this would be unrealistic and needlessly controversial. Article VII on nuclear weapon free zones (NWFZs) and regional treaties may be amended so as to ensure that NWS sign the protocols to existing and future NWFZ treaties. Any move to prescribe a NWFZ for a particular region in the NPT would be unrealistic especially in respect of the Middle East since a key player – Israel – is not bound by the NPT.

Article VIII needs to be updated in terms of the package of decisions adopted at the 1995 NPTREC so that the indefinite duration of the Treaty and the enhanced powers of the review Conference are reflected in the Treaty itself.

Article X will be the target of states parties who want to deprive parties of this right to withdrawal and this will be fiercely resisted by

some of the NNWS. A compromise could be to agree that any benefits accruing to a state party which exercises the option of withdrawal would have to be returned to the suppliers.⁷³

As far as proposed Protocols are concerned the Mayors for Peace non-governmental organization have proposed a Hiroshima-Nagasaki Protocol spearheaded by the Mayors of the only two cities which have suffered nuclear weapon attacks. The launch of this draft protocol at the 2005 Geneva Preparatory Committee meeting of the NPT Review Conference is significant.⁷⁴ The campaign continued in May 2009 at the New York Preparatory Committee meeting and is being conducted by the dynamic Mayor of Hiroshima with delegations to key Governments in international capitals. So far no Government of a NPT party has committed support to this protocol.

At the time of writing the Mayors for Peace have adapted their proposal and now propose a draft Decision for the 2010 NPT Review Conference. This appears to have been caused by the lukewarm reaction of both states party to the NPT and other NGOs to the draft Protocol idea and the content of the draft protocol. The Obama speech of April 2009 in Prague has rendered some of the positions redundant. Others may cause complications in the achievement of the objectives the proponents share with the Obama Administration. The draft Decision being circulated proposes:

- the launch of negotiations on a convention or framework of agreements for nuclear disarmament.
- the establishment of the target date of 2015 for ceasing the acquisition of nuclear weapons and preparations for their use and of 2020 for the elimination of all nuclear weapons and their infrastructure.
- the adoption of voluntary measures by states of measures assisting the realization of the 2015 target date, ratification of the CTBT and the secure storage of fissile material.
- the co-operation in establishing institutions required for a convention or framework of agreements for nuclear disarmament and the universality of the NPT.

The success or failure of this effort by the Mayors for Peace depends on the states parties and their political decision whether to adopt

this proposal as the best strategy. If the chances of success are the criterion and not political pressure a Decision may be adopted by voting at the Review Conference. Thereafter it is moot whether the Decision could be implemented. Decisions taken in 1995 and at other Review Conferences – such as the 13 steps of the 2000 Conference – have remained unimplemented. If however, the purpose is to apply political pressure then beginning the amendment process may be a more useful route to pursue if a NPT states party or a group of state parties have the political will to do so and are ready to withstand the pressures of the NWS and their more powerful allies.

The Role of Civil Society

The role of civil society in nuclear disarmament and nuclear nonproliferation during the Cold war is now acknowledged to be significant. This has declined since the Cold War ended but there are signs that with the impetus provided to the nuclear disarmament debate by the Wall Street Journal op-ed articles by Shultz *et al* and the policies of the Obama Administration this is changing. Likeminded op-ed articles published in the newspapers of US allies such as the UK, Germany, Italy and even France have been significant. The Global Zero campaign with its celebrities and financial resources and the more mass-based campaign for a Nuclear Weapon Convention appear to be energized.

A WorldPublicOpinion.org poll of 21 nations published in December 2008 revealed that people in all 21 countries favoured an international agreement for eliminating nuclear weapons in most cases by majorities ranging from 62% to 93%. In the five NWS of the NPT the elimination of nuclear weapons according to a timeline was favoured by 77% in the US; 69% in Russia; 83% in China; 86% in France and 81% in UK. Among the non NPT NWS the figures were less impressive – 62% in India; 46% in Pakistan and 67% in Israel.⁷⁵

NNWS have enjoyed a close relationship with Non-governmental organizations (NGOs) in the disarmament community. It has been a mutually reinforcing relationship in multilateral fora and this must continue. The official statements of governmental delegations of smaller developing countries have often been better informed in the technicalities of disarmament

issues because of the work of NGOs like the Nobel Peace Prize-winning Pugwash with its scientific expertise, while the diplomacy of NNWS has helped achieve positive results in the campaigns of civil society. It is well known, for example, that the public opinion outcry in the 1950s and Pandit Nehru's influential call for a test ban led to the Partial Test Ban Treaty (PTBT) of 1963.

Both the NWS and the NNWS must therefore support the work of civil society groups which are devoted to scientific research on nuclear disarmament, nuclear non-proliferation and verification and to the advocacy of these policies. The wealthier NNWS will need to ensure financial resources to these groups since they have suffered from neglect as other causes demand the resources of foundations and governments. Mobilizing public opinion is a vital task in which NNWS must be active within their own countries and through NGOs in other countries too. Organizing public opinion polls in NNWS and peaceful demonstrations as manifestations of mass support for nuclear disarmament and nuclear non-proliferation requires collaborative effort. With democratic systems this will be a key factor in achieving policy changes in NWS. In disarmament we have already had a remarkably successful coalition forged between civil society and key governments such as Norway and Canada to bring about the 1997 Mine Ban Convention. Similar coalitions are working in the cause of a ban on Cluster Munitions and an Arms Trade Treaty. With the priority disarmament issue of nuclear disarmament this coalition between civil society and NNWS must develop into a major engine driving the cause of nuclear disarmament and nuclear non-proliferation.

Advocacy of verified reductions of nuclear forces, de-alerting of nuclear weapons and the convening of a World Summit as recommended by the Weapons of Mass Destruction Commission Report of 2006 would be key issues to focus upon. Irrespective of issue-based coalitions between civil society and the Governments of NPT states parties, it is useful for national delegations to have representatives of civil society on their delegations. In the past this has been done mainly by NNWS delegations but the US and UK have also had academics and former Ambassadors on their delegations and this precedent must be welcomed.

- ¹ United Nations, “Historic Summit Of Security Council Pledges Support For Progression Stalled Efforts To End Nuclear Weapons Proliferation Resolution 1887 (2009) Adopted With 14 Heads Of State, Government Present”, Security Council SC/9746, 24.11.2009, <<http://www.un.org/News/Press/docs/2009/sc9746.doc.htm>>, (Accessed on 24.11.2009)
- ² See Final document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, p 14-15 <<http://www.un.org/spanish/Depts/dda/2000FD.pdf>>, (accessed on 24.11.2009)
- ³ Dhanapala, Jayantha, with Rydell, R., Multilateral Diplomacy and the NPT – An Insider’s Account, Geneva, United Nations Publications, 2005, pp 47-57
- ⁴ ElBaradei, Mohamed, “Statement to the Sixty-Fourth Regular Session of the United Nations General Assembly”, UNGA, New York, USA, 2nd November 2009, <<http://www.iaea.org/NewsCenter/Statements/2009/ebsp2009n017.html>>, (accessed on 24.11.2009)
- ⁵ SIPRI, Yearbook 2009 Armaments, Disarmament, and International Security, Summary, SIPRI, 2009 pp 2,10,11, 14,15
- ⁶ BTWC, “Status of the Convention”, <<http://www.opbw.org/>>, (accessed on 24.11.2009)
- ⁷ Arms Control Association, “Chemical Weapons Convention Signatories and State Parties” <<http://www.armscontrol.org/factsheets/cwcsig>>, (Accessed on 24.11.2009)
- ⁸ SIPRI. Op. cit p16
- ⁹ United Nations, “Charter of the United Nations” <<http://www.un.org/en/documents/charter/chapter1.shtml>>, (accessed on 24.11.2009)
- ¹⁰ United Nations, “Charter of the United Nations”, <http://www.un.org/en/documents/charter/chapter7.shtml>, (accessed on 24.11.2009)
- ¹¹ Shultz, George P., Perry, William J., Kissinger Henry A., and Nunn, Sam “A World Free of Nuclear Weapons,” The Wall street Journal, 4th January 2007, p A15
- ¹² Shultz, George P., Perry, William J., Kissinger Henry A., and Nunn, Sam, “Toward a Nuclear Free World”, The Wall street Journal, 15th January 2008, p 13 <http://online.wsj.com/article/SB120036422673589947.html?mod=opinion_main_commentaries> (accessed on 24.11.2009)
- ¹³ Dhanapala, Jayantha, with Rydell, R, op. cit, p 16
- ¹⁴ Mohamed, I Shaker, The nuclear non-proliferation treaty: origin and implementation, 1959-1979, London, Oceana Publications, 1980
- ¹⁵ In the same year, UNGA resolution 1378 (XIV) put “general and complete disarmament” on its agenda, where it has been ever since.
- ¹⁶ Dhanapala, Jayantha, with Rydell, R, op. cit
- ¹⁷ Graham, Thomas Jr, Disarmament Sketches, Three Decades of Arms Control and International Law, Seattle, University of Washington Press, 2002
- ¹⁸ See Final document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, p 14-15 <<http://www.un.org/spanish/Depts/dda/2000FD.pdf>>, (accessed on 24.11.2009)
- ¹⁹ Müller, Harald, “ The 2005 NPT Review Conference: Reasons and Consequences of Failure and Options for Repair” WMDC, No 31, August 2005 <<http://www.wmdcommission.org/files/No31.pdf>>, (accessed on 27th May 2009)
- ²⁰ See also: Dhanapala, Jayantha, “The NPT Review Process: Identifying New Ideas to Strengthen the Regime”, UNIDIR Newsletter The Enhanced Review Process: Towards 2000, No 37, 1998, p 10
- ²¹ Traynor, Ian, “Pre-emptive nuclear strike a key option, Nato told”, The Guardian, 22nd January 2008, <<http://www.guardian.co.uk/world/2008/jan/22/nato.nuclear>>, (24.11.2009)
- ²² Loc.cit
- ²³ SIPRI YEARBOOK 2009, Op cit, p 16
- ²⁴ The Nuclear Information Project, “US Nuclear Weapons in Europe, new report provide unprecedented details”, <<http://www.nukestrat.com/us/afn/nato.htm>>, (24.11.2009)
- ²⁵ IAEA, Fact sheets and FAQ’s, <http://www.iaea.org/Publications/Factsheets/English/nptstatus_overview.html>, (24.11.2009)
- ²⁶ A total of 127 states including the NWS and India have signed it, See IAEA, Safeguards and Verification, <http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html> (24.11.2009)
- ²⁷ UN Security Council, S/2008/493, Report of the Committee established pursuant to Security Council resolution 1540 (2004), 30th July 2008, <<http://daccess-dds.ny.un.org/doc/UNDOC/GEN/N08/409/78/PDF/N0840978.pdf?OpenElement>>, (24.11.2009)
- ²⁸ IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <<http://www.iaea.org/Publications/Documents/Infircs/Infirc140.pdf>>
- ²⁹ Loc cit
- ³⁰ Loc.cit
- ³¹ IAEA, “Nuclear power plants information-number of reactors in operation worldwide”, <<http://www.iaea.org/cgi-bin/db.page.pl/pris.oprconst.htm>>, (accessed on 30.11.2009)
- ³² IAEA, “Nuclear power plants information-number of reactors under construction worldwide”, <<http://www.iaea.org/cgi-bin/db.page.pl/pris.opercap.htm>>, (accessed on 30.11.2009)
- ³³ World Nuclear Association, “Plans for new reactors worldwide”, September 2009, <<http://www.world-nuclear.org/info/inf17.html>>, (Accessed on 30.11.2009)
- ³⁴ World Nuclear Association, “Emerging Nuclear Energy Countries”, 26.11.2009, <<http://www.world-nuclear.org/info/inf102.html>>, (Accessed on 30.11.2009)
- ³⁵ Venter, J. Craig Dr, The Richard Dimpleby Lecture 2007: Dr J Craig Venter – A DNA-Driven World, 5.12.2007 <http://www.bbc.co.uk/press/office/pressreleases/stories/2007/12_december/05/dimpleby.shtml>, (Accessed on 24.11.2009)
- ³⁶ Makijani, Arjun, Dr, Carbon-Free and Nuclear-Free: A Roadmap for U.S. Energy Policy, <<http://www.ieer.org/carbonfree/CarbonFreeNuclearFree.pdf>> (Accessed on 24.11.2009)
- ³⁷ Weapons of Mass Destruction Commission, Weapons of Terror, Freeing the World of Nuclear, Biological, and Chemical Arms, 2006 <http://www.wmdcommission.org/files/Weapons_of_Terror.pdf>, (Accessed on 24.11.2009)
- ³⁸ The White House, Remarks By President Barack Obama, Hradcany Square, Prague, Czech Republic, 5th April 2009, <http://www.whitehouse.gov/the_press_

- office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/>, (24.11.2009)
- ³⁹ Perkovic G, "Democratic Bomb" Carnegie Endowment for International Peace, Policy Brief, Vol 49 November 2006
- ⁴⁰ Kissinger, A.H, "Diplomacy and Iran's Nuclear Weapons", The San Diego Union Tribune, February 13 2005, <http://legacy.signonsandiego.com/uniontrib/20050213/news_mz1e13kiss.html>, (accessed on 24.11.2009)
- ⁴¹ The White House, "Remarks By President Barack Obama", Hradcany Square, Prague, Czech Republic, 5th April 2009, <http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/>, (accessed on 24.11.2009)
- ⁴² Matishak, M, "Strategic Command Chief Predicts U.S. Will Need Nuclear Weapons for Next 40 Years", *Global Security Newswire*, 11 November 2009, <http://www.globalsecuritynews.org/gsn/nw_20091111_4409.php> (access date 24.11.200)
- ⁴³ Norris R.S., and Kristensen, H.M, "Nuclear Notebook: U.S. nuclear forces, 2009", *The Bulletin of the Atomic Scientist*, March/April 2009, Vol 65, no 2, pp 59-69, (<http://www.thebulletin.org/files/065002008.pdf>), (accessed 24.11.2009)
- ⁴⁴ Johnson, Rebecca, "Presentation by Dr Rebecca Johnson, Acronym Institute for Disarmament Diplomacy, European Parliament, Socialist Group Conference, 9 December 2008", *The Acronym Institute for disarmament diplomacy*, <http://www.acronym.org.uk/uk/sgep.htm>, (24.11.2009)
- ⁴⁵ The White House, "Remarks by the President on a New Beginning", Cairo University, Cairo Egypt, 4th June 2009, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/, (accessed 24.11.2009)
- ⁴⁶ United Nations, "Historic Summit Of Security Council Pledges Support For Progression Stalled Efforts To End Nuclear Weapons Proliferation Resolution 1887 (2009) Adopted with 14 Heads of State, Government Present", Security Council SC/9746, 24.11.2009, <<http://www.un.org/news/press/docs/2009/sc9746.doc.htm>>, (Accessed 24.11.200)
- ⁴⁷ United Nations, Resolution on the "Establishment Of A Commission To Deal With The Problem Raised By The Discovery Of Atomic Energy", 24th January 1946, <<http://www.un.org/documents/ga/res/1/ares1.htm>>, (accessed 24.11.2009)
- ⁴⁸ George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn, "A World Free of Nuclear Weapons," The Wall street Journal, 4th January 2007, p A15
- ⁴⁹ ibid
- ⁵⁰ Gorbachev, Mikhail, "The Nuclear Threat", The Wall Street Journal, 31 1.2007
- ⁵¹ WMDC, "Disarmament and Non Proliferation'-Presentation by Dr. Hans Blix, Chairman of the Weapons of Mass Destruction Commission, at the research institute FLASCO, Santiago de Chile, 2 November 2006. <<http://www.wmdcommission.org/files/Summary%20Asia%20Nov%2006.pdf>>, (accessed on 24.11.2009)
- ⁵² Ki-moon, Ban, "Contagious' Doctrine Of Deterrence Has Made Non-Proliferation More Difficult, Raised New Risks, Secretary-General Says In Address To East-West Institute", New York, 24th October 2008, <<http://www.un.org/News/Press/docs/2008/sgsm11881.doc.htm>> (accessed on 24.11.2009)
- ⁵³ Spies Michael, "Towards 2010 and Beyond Proposals, Positions and Prospects: Issues facing the 2010 NPT Review Conference", *Disarmament Diplomacy*, Issue No 90, Spring 2009, <<http://www.acronym.org.uk/dd/dd90/90nptms.htm>>, (accessed on 41.11.2009)
- ⁵⁴ Dunn, Lewis A., "Assessing the Past, Building the Future", *Nonproliferation Review*, Vol.16, No.2, July 2009
- ⁵⁵ ibid
- ⁵⁶ ibid
- ⁵⁷ Sagan, Scott D., "Shared responsibilities for nuclear disarmament", *Daedalus*, Vol. 138 no. 4, Fall 2009, pp157-168 <http://cisac.stanford.edu/publications/shared_responsibilities_for_nuclear_disarmament/>, (accessed on 24.11.2009)
- ⁵⁸ IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <<http://www.iaea.org/Publications/Documents/Infcirc/Others/infirc140.pdf>>
- ⁵⁹ ibid
- ⁶⁰ ibid
- ⁶¹ ibid
- ⁶² ibid
- ⁶³ ibid
- ⁶⁴ Choubey, Deepti, Restoring the NPT: Essential Steps for 2010, Carnegie Endowment for International Peace, 2009
- ⁶⁵ See for example: Bunn, G and Rhinelander J, "The Right to Withdraw from the NPT: Article X is Not Unconditional", *Disarmament Diplomacy*, Issue No.79, April/May 2005, <<http://www.acronym.org.uk/dd/dd79/79gbjr.htm>>, (accessed on 24.11.2009)
- ⁶⁶ United Nations, "Resolution 1887 (2009)", 24 September 2009, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/523/74/PDF/N0952374.pdf?OpenElement>>, (accessed on 24.22.2009)
- ⁶⁷ IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <<http://www.iaea.org/Publications/Documents/Infcirc/Others/infirc140.pdf>>
- ⁶⁸ ibid
- ⁶⁹ Tovish, Aron, "Urging entry into force: Lessons from the Partial Test Ban Treaty amendment effort", *Disarmament Forum* 2,P 39, <<http://www.unidir.ch/pdf/articles/pdf-art2492.pdf>>, (accessed on 30.11.2009)
- ⁷⁰ Crawford James, and Sands Philippe, "Legal Aspects of a Nuclear Weapons Convention", Background Papers, Canberra Commission on the Elimination of Nuclear Weapons, August 1996
- ⁷¹ Ibid p 287
- ⁷² IAEA, Information Circular, INFCIRC/140, Treaty On The Non-Proliferation Of Nuclear Weapons, <<http://www.iaea.org/Publications/Documents/Infcirc/Others/infirc140.pdf>>
- ⁷³ The writer wishes to acknowledge his debt to a private communication from Dr. Jozef Goldblat with regard to the content of the amendments.
- ⁷⁴ see website of Mayors for Peace www.2020visioncampaign.org
- ⁷⁵ World Public Opinion.Org, "Publics around the World Favor International Agreement To Eliminate All Nuclear Weapons", <http://www.worldpublicopinion.org/pipa/articles/international_security_bt/577.php?lb=btis&pnt=577&nid=&cid=>, (accessed on 24.11.2009)

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