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*PROGRAMME FOR PROMOTING  
NUCLEAR NON-PROLIFERATION*

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*Putting the Final Document into Practice*  
*Possible Ways to Implement the Results*  
*of the 2000 Review Conference*

**A PPNN STUDY**

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The Programme for Promoting Nuclear Non-Proliferation was initiated in 1987 as a means of helping to strengthen the nuclear non-proliferation regime by an international network for collecting and disseminating information on the various aspects of this regime. This study is part of the outreach effort which constitutes a major element of the Programme.

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## Introduction

### Prologue

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is generally regarded as the cornerstone of the international nuclear non-proliferation regime. It was signed in 1968 and came into force in 1970. Among other things, it sets out the international norms and commitments underlying that regime. The Treaty contains a balanced series of undertakings by both nuclear-weapon states (NWS) and non-nuclear weapon states (NNWS). The NWS agree not to assist others to acquire nuclear weapons and to engage in good faith in a negotiated process of nuclear disarmament. The NNWS commit themselves not to acquire nuclear weapons, and to accept the implementation of the safeguards system of the International Atomic Energy Agency (IAEA) in their territory, in order to provide the assurance that they are not engaged in nuclear proliferation. The Treaty also confirms that all states have the 'inalienable right' to use nuclear energy for peaceful purposes.

One institutional element of the Treaty is a mandate for a review of its operation five years after its entry into force, with the option of repeating this after further five-year periods. In addition, after 25 years, a conference was to be held to decide on the duration of the Treaty. Until the end of the Cold War, around 1991, progress on nuclear disarmament had fallen short of expectations, yet the number of States parties to the Treaty had increased. At the five-yearly Review Conferences many states expressed dissatisfaction with the lack of progress. This was the principal reason why only the Review Conferences of 1975 and 1985 were able to produce a consensus Final Declaration. When the NPT Review and Extension Conference (NPTREC) commenced in 1995, the five NWS had become parties to the Treaty, and the number of non-parties was approaching single figures. At the same time, the parties had to confront two unresolved issues: i.e. evidence that at least two states had been engaged in non-declared nuclear activities, and the emergence of non-parties to the Treaty with the capability to make nuclear explosive devices. Although the NPTREC was not able to reach consensus on a Final Declaration it did agree to give the NPT an indefinite duration, and in parallel agreed to three other decision documents, one on *Strengthening the Review Process for the Treaty*, one on *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*, and a *Resolution on the Middle East*.

The effect of these three decisions was to institute a revised review process, with annual meetings of the Preparatory Committee (PrepCom) for a Review Conference in the three years preceding it. In 1997–99 these sessions were tasked, among other things, with making substantive recommendations to the 2000 Conference, including creating a programme of action for disarmament. They also focused attention on the alleged nuclear-weapon programme of one of the non-parties, Israel. However, no recommendations to the 2000 Conference emerged from this process and, as a consequence, there were low expectations that a consensus Final Declaration or Document would emerge.

It was therefore a great achievement that the 2000 NPT Review Conference was, nevertheless, able to end with the adoption by consensus of such a Final Document. This contained a 'Plan of Action' that sought to promote and enhance the implementation of the Treaty. As a political text, underwritten by more than a hundred delegations, parts of the Final Document were inevitably formulated in general and vague terms, and many of its prescriptions lacked specificity.

Consequently, as written, the 'Plan of Action' would be difficult to implement.

In the period since the Review Conference, the international political and strategic environment has changed drastically, as have the assumptions regarding the practical implementation of various aspects of this 'Plan of Action'. For example, the US has refused to ratify the Comprehensive Test Ban Treaty (CTBT), has given notice of its decision to withdraw from the Anti-Ballistic Missile (ABM) Treaty, has stated its intention to retain a large reserve arsenal of deactivated nuclear warheads, and has expressed its skepticism towards formal arms control and disarmament treaties. Furthermore, the Middle East security situation has deteriorated, and the potential access to nuclear materials and weapons by non-state actors has become a more salient issue in international security following the events of 11 September 2001 in the US.

### The Study

It was in this evolving context that, in early 2001, the Programme for Promoting Nuclear Non-Proliferation (PPNN) embarked on a study to determine what should and could be done to give the greatest possible practical effect to the 2000 NPT Final Document. Its aims were to analyse and clarify the text of the 'Plan of Action' contained in the Final Document of the 2000 NPT Review Conference; elucidate the commitments made by states parties as reflected in that Document; define the new realities that would govern the implementation of those commitments and investigate possible approaches and strategies through which they might be met; identify the means by which this might be done, including some of the institutional aspects involved; and bring the results of this work to the attention of delegations attending the 2002 session of the PrepCom for the 2005 NPT Review Conference.

To ensure that the product of this work would reflect the full geo-political spectrum and be as authoritative as possible, PPNN created a Working Group of 12 prominent experts in the field, from a range of states, who brought to its deliberations their individual insights and direct experience in the areas under discussion. The Working Group, the names of whose members are annexed to this Introduction, made written and oral contributions to discussions on the drafts of three working papers on what were judged to be the key elements of the 2000 'Plan of Action', which had been prepared by PPNN's staff. While these contributions have been taken into account in preparing this final version of the study, not all members necessarily agree with all aspects of the analysis contained therein. This analysis remains the sole responsibility of PPNN's staff.

The study on the key commitments made in the 2000 NPT Final Document that has emerged from this work is divided into three parts. Part I covers the areas of Nuclear Disarmament and the '13 Steps' towards it. Part II deals with Nuclear Non-Proliferation, including proliferation to non-state actors. Part III is concerned with Universality of the NPT. In each of these three elements of the study, areas of potential action have been analysed using a common framework, based upon five subheadings: negotiating history; interpretations; levels of fulfilment; political realities; and recommendations. For ease of reference, the commitments in the Final Document have been numbered consecutively, starting with the '13 steps'.

### *Negotiating history*

Under this heading, an overview is given of the discussions at the Review Conference of 2000 that produced the key provisions contained in the Final Document. In Part I of the study, the negotiating history is presented for each subsection. A similar arrangement is used for Part III, while in Part II the negotiating history is given more generally for each principal section. To the extent relevant, and where such information was available, the material presented under this heading indicates the origins of the proposal under discussion; what positions were adopted by states involved in the negotiations; what changes were made in the various texts proposed in order to reach consensus; and what elements were omitted.

### *Interpretations*

As indicated earlier, in some areas of the Final Document consensus was reached only by adopting language which could be interpreted in more than one way. In respect of such areas, analyses are offered of possible ambiguities in the language as adopted, and the various interpretations which governments are understood, or might be expected, to attach to the subparagraph in question, are highlighted.

### *Levels of fulfilment*

The subsections bearing this heading offer five benchmarks, which could be used to measure the levels of fulfilment of key proposals contained in the 2000 Final Document. They range from 'complete fulfilment' through 'positive trends', 'no movement', and 'outright non-fulfilment', to 'other actions'. Recognising that states will have different approaches to the precepts contained in the Final Document, these benchmarks have been formulated in a flexible manner to leave room for a variety of possible forms of 'fulfilment'.

In Part III, on Universality, the discussion of 'levels of fulfilment' was judged to be inappropriate in the case of action by states non-parties to the NPT, since those states are under no formal obligation to act upon proposals made at an NPT Review Conference.

### *Political realities*

It is one of the principal purposes of the study to determine how the action elements in the Final Document can be realised under current political circumstances. As a result, the study has, on occasion, reached conclusions that are at variance with one of those agreed in 2000, especially with regard to paragraph 15 and the '13 steps'. This was unavoidable given the changes that have taken place over the last two years. These conclusions should not be interpreted as raising doubts, however, about the continued validity and relevance of the NPT and the regime of which it is the cornerstone. Over the years the Treaty regime has been shown to have a degree of flexibility which enables it to cope with drastic changes in the conditions under which it operates, as seen between 1988 and 1995. As a consequence, the recommendations made in the study have been formulated with an eye both to the current political realities and the absolute necessity of sustaining the NPT.

### *Recommendations*

The drafters of this study have sought to make a wide range of practical suggestions for actions that might promote or facilitate implementation of the commitments called for in the Final Document. Where appropriate, this includes recommendations for the implementation of the 'Other actions' discussed in the section under 'Levels of fulfilment.'

The recommendations have been formulated in a way that should provide flexibility in the way they are implemented.

## **Epilogue**

In producing this action-oriented Final Document, an NPT Review Conference has once again shown itself to be a unique forum for the discussion of issues of global importance. Nevertheless, the drafters of the study feel obliged to draw attention to the fact that the Review Conference has not been able to deal satisfactorily or effectively with two areas of major concern. The first is the issue of universality and the position of the three nuclear-capable hold-out states *vis-à-vis* the NPT. The second is the question of how to address effectively allegations of non-compliance with the Treaty and the regime in general, and the inability of the international community to deal with this problem. The Treaty and its regime have been faced with similar inherently intractable problems before, and this will no doubt continue to be the case. One current example of the latter type of problem is the refusal of Iraq to submit to the regime and thereby enable the international community to determine whether, and to what extent, it is complying with the relevant legal and political instruments. But the existence of such problems does not result from a flaw in the Treaty itself: it arises from the inability of the international community to find a solution that will satisfy all and the unwillingness of some states to abide by their existing commitments.

## **Acknowledgements**

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## Part I: Nuclear Disarmament and the ‘13 Steps’

This part of the study seeks to achieve two goals. First, to provide a comprehensive analysis of the origins and meanings of the so-called ‘13 steps’ that became paragraph 15 of the part of the Final Document of the 2000 NPT Review Conference that dealt with Article VI and related issues. Secondly, to highlight the problems associated with the implementation of these steps, and to make recommendations for future action based on this analysis.

Frequent reference is made in this part of the study to the 9 May and 15 May texts. The 9 May text (NPT/CONF.2000/MC.I/SB.I/CRP.7) was a chairman’s working paper that brought together for the first time the range of issues being addressed as part of the ‘forward look’ at disarmament activities. The 15 May text (NPT/CONF.2000/CRP.2) was an amended version of this working paper, which included all

the changes that had been negotiated in the intervening six days both in direct but informal negotiations outside the conference between the New Agenda Coalition (NAC)<sup>1</sup> and the NWS, and later in more formal ones within it.

### The ‘13 Steps’

The ‘13 steps,’ which are listed below, were prefaced by the following text: ‘The Conference agrees on the following practical steps for the systematic and progressive efforts to implement article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraphs 3 and 4 (c) of the 1995 Decision on ‘Principles and Objectives for Nuclear Non-Proliferation and Disarmament.’

### 1. The CTBT

‘The importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve early entry into force of the CTBT.’

[Article VI etc., paragraph 15, sub-paragraph 1]

#### *Negotiating history*

This text originated in a NATO-5<sup>2</sup> proposal (NPT/CONF.2000/MC.I/WP.7). During discussions on 10 May, Italy proposed to insert the words ‘not later than 2005’ into the paragraph, but this was rejected. ‘And in accordance with constitutional processes’ was added in the draft of 15 May by the US, while ‘without delay and without conditions’ was aimed *inter alia* at India and Pakistan.

#### *Interpretations*

While constitutional processes may differ from state to state, there is little ambiguity attached to this statement. It calls for urgent ratification of the CTBT by all states, without conditions of any kind. The reason why a number of states sought the inclusion of the phrase ‘without conditions’ was that, in certain cases, conditions attached to ratification may be inconsistent with the objectives of the Treaty.

#### *Levels of fulfilment*

- Complete fulfilment – ratification of the CTBT, without conditions, by all 44 states needed for entry into force of the Treaty.
- Positive steps — signature of the CTBT and/or the start of ratification procedures by those states among the 44 that have yet to do so.
- No movement – the absence of positive statements indicating the intention to take the steps mentioned above. Statements that no final decision on the matter has been taken.
- Outright non-fulfilment – a statement of intention to withdraw from the Treaty, or not to ratify it.
- Other actions – moves to complete the International Monitoring System (IMS) and other elements of the CTBT verification system. Continuation of the testing moratorium.

#### *Political realities*

Among the NWS, France, Russia, and the UK have signed and ratified the CTBT without conditions. China has submitted the Treaty for ratification to the Peoples’ Congress. The US is the only country to have brought the ratification of the CTBT to a vote in its legislature and where its ratification has been refused.

The preparatory work for the CTBT Organization (CTBTO) has been under political and financial pressure. The US administration has made it clear on a number of occasions that it does not intend to ratify the CTBT and has doubts about the value of the Treaty. It has adjusted its financial contribution to the budget of the CTBTO to enable it to continue to fund the work of the IMS and the International Data Centre (IDC), but not that of developing its on-site inspection capabilities.

Three of the states needed for entry into force have yet to sign the Treaty. One, an NPT party, is the DPRK. The other two, India and Pakistan, are non-parties to the Treaty.

#### *Recommendations*

- The IMS and the IDC should be completed.
- Those non-signatories and non-parties to the CTBT which are in a position to carry out nuclear explosive tests should be encouraged to maintain testing moratoria.
- The international community should continue promoting the ratification and entry into force of the CTBT. Such efforts could include putting pressure first on states that hold out the likelihood that they might eventually join the Treaty, and later concentrating on states that have indicated no willingness to do so.
- Pressure should be kept up on the US to ratify the Treaty, or at least not to slide backwards.

## 2. A Moratorium

'A moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty.' [Article VI etc., paragraph 15, sub-paragraph 2]

### *Negotiating history*

This text originated from similar formulations in working papers submitted by Canada (NPT/CONF.2000/MC.I/WP.4), Japan, and Australia (NPT/CONF.2000/MC.I/SB.1/WP.1).

### *Interpretations*

This was a relatively uncontroversial commitment, gaining wide political consensus. It calls for a moratorium on the nuclear testing activities that are banned by the CTBT.

### *Levels of fulfilment*

- Complete fulfilment – all states in a position to carry out nuclear explosive tests abide by the moratorium, pending entry into force of the CTBT.
- Positive steps – states publicly declare their intention to adhere to the moratorium for the time being.

- No movement – N/A.
- Outright non-fulfilment – states resume nuclear-weapons-test explosions.
- Other actions – test sites are dismantled.

### *Political realities*

A testing moratorium is in place. However, as part of its Nuclear Posture Review, the US is reviewing the steps that would be necessary to reduce the lead-time for the resumption of nuclear testing.

### *Recommendations*

- The testing moratorium should continue, pending entry into force of the CTBT.
- All states in a position to carry out nuclear explosive tests should publicly confirm their intention to refrain from doing so.

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## 3. Fissile Material

'The necessity of negotiations in the CD on a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices in accordance with the statement of the Special Coordinator in 1995 and the mandate contained therein, taking into consideration both nuclear disarmament and nuclear non-proliferation objectives. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate commencement of negotiations on such a treaty with a view to their conclusion within five years.'

[Article VI etc., paragraph 15, sub-paragraph 3]

### *Negotiating history*

This text originated in a NAC proposal (NPT/CONF.2000/MC.I/WP.3) and the NWS joint statement. During discussions over the 9 May draft document, a number of delegations wanted to start this paragraph with the 'immediate commencement' rather than 'the necessity'. The NAC proposal included a call for a moratorium on fissile material production for nuclear weapon purposes. The compromise that was eventually agreed linked the commencement of negotiations on a 'fissile material cut-off treaty' (FMCT) to agreement on a balanced programme of work in the Conference on Disarmament (CD).

In the draft document of 15 May, the phrase 'with a view to their conclusion by 2005,' (which originated in a working paper submitted by Japan and Australia [NPT/CONF.2000/MC.I/SB.1/WP.1]) became 'with a view to their conclusion within five years,' and was moved to the end of the paragraph, in substitution of the phrase 'and early conclusion.'

### *Interpretations*

This provision calls for the 'commencement of negotiations of such a treaty with a view to their conclusion within five years.' This weakened the original time commitment considerably, changing it from a clear deadline of 2005, to a much more flexible deadline, calling for negotiations on an FMCT to be completed five years after their commencement, whenever that may be.

### *Levels of fulfilment*

- Complete fulfilment – states commence negotiations towards an FMCT in the CD.
- Positive steps – states take steps to facilitate the commencement of negotiations toward an FMCT in the CD, for example, by agreeing on a programme of work.
- No movement – the deadlock continues. Absence of a pertinent decision in the CD.
- Outright non-fulfilment – states make no effort to begin negotiating a treaty, state their intention not to engage in negotiations, or obstruct them. Fissile material production for military purposes is resumed, or continued.
- Other actions – states explore alternative options for negotiating an FMCT. Production moratoria by India, Israel and Pakistan.

### *Political realities*

The Final Document backtracks from the 1995 Principles and Objectives on this issue. The Principles and Objectives did not link the start of negotiations to any other activity. This text implicitly accepts that they are linked to other issues, such as outer space, through the emphasis on agreeing on a programme of work in the CD. This raises questions over what should be done when backtracking happens between one Review Conference and the next (i.e. a lesser undertaking is adopted in a Final Document than was accepted previously) and how to rebuild momentum when this occurs.

Prospects for positive steps towards an FMCT are not good. At its 2000 and 2001 sessions, the CD was unable to

agree on a programme of work. The result has been a stalemate, partly due to the linkages that persist between the FMCT, nuclear disarmament, and the outer space issue, and partly due to the refusal of India, Israel, and Pakistan to accept production moratoria. In addition, US plans to deploy a nation-wide missile defence system may reduce chances of progress. China has already indicated that it is moved to attach ever more importance to discussions on the issue of demilitarisation of outer space, while the US is less likely than ever before to agree to hold such discussions.

#### *Recommendations*

- The NWS should maintain fissile material production moratoria and consider establishing a voluntary transparency and accountability regime.
- There should be technical and scientific seminars on the margins of the CD to discuss scope, definitions, transparency, accountability, and verification of an FMCT.
- Efforts should continue in the CD to break the deadlock over the establishment of an *ad hoc* committee on an FMCT with a negotiating mandate.
- A group of experts should be established to examine possible verification measures in the context of an FMCT.

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## 4. Nuclear Disarmament & the CD

‘The necessity of establishing in the Conference on Disarmament an appropriate subsidiary body with a mandate to deal with nuclear disarmament. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate establishment of such a body.’

[Article VI etc., paragraph 15, sub-paragraph 4]

#### *Negotiating history*

This text originated in a NAC proposal (NPT/CONF.2000/MC.I/WP.3). In the draft of 15 May, the phrase ‘The immediate establishment’ was replaced with ‘The necessity of establishing.’ The second sentence, on the CD’s programme of work, was added later.

#### *Interpretations*

This is formulated so as to take account of the lack of agreement on negotiating multilaterally in the CD on nuclear disarmament while yet sustaining consensus and covering a wide range of possibilities for action. While nothing is excluded, it is left to the CD to negotiate a mandate for such a body. Although this is the first time the NWS have agreed to an *ad hoc* working group on nuclear disarmament, the reference to a ‘programme of work’ is seen by many as holding movement in this area hostage to agreement at the CD on other proposed subsidiary bodies.

#### *Levels of fulfilment*

- Complete fulfilment – a subsidiary body is established in the CD to deal with nuclear disarmament.
- Positive steps – key states make statements in favour of establishing such a body and commencing steps towards this end.
- No movement – N/A.
- Outright non-fulfilment – states oppose/obstruct the establishment of a body to deal with nuclear disarmament in the CD.
- Other actions – an *ad hoc* body is established outside the CD to deal with nuclear disarmament, and reports to the CD on its findings.

#### *Political realities*

The CD has yet to agree on its work programme and, without this, there can be no progress in establishing a body at the CD to deal with nuclear disarmament.

The NWS are opposed to the establishment of an *ad hoc* committee on nuclear disarmament with a mandate that calls for that body to negotiate on matters deemed to require bilateral negotiations. The US has been opposed to such negotiations since discussions started in 1997. China is wedded to the linkage between negotiations over FMCT, Prevention of an Arms Race in Outer Space (PAROS) and the *ad hoc* committee on nuclear disarmament. Russia is strongly opposed to a time-bound framework on nuclear disarmament.

#### *Recommendations*

- The parties should be prepared to agree to the establishment of a subsidiary body, with or without explicit reference to negotiations. This would formalise substantive exchanges and dialogue between nuclear and non-nuclear-weapon states.
- Beyond this, and more generally, the following steps would be appropriate:
  - a discussion by an *ad hoc* group of steps towards systematic and progressive elimination of nuclear weapons;
  - dialogue between the NWS and the NNWS towards the implementation of this commitment;
  - technical and political seminars in the margins of the CD to address issues of scope, definitions, verification and negotiating approaches pending agreement on a programme of work; and
  - the development of *ad hoc* exchanges between the NWS and the NNWS as a means, *inter alia*, to establish a precedent that the latter have a legitimate interest and right to question the former on nuclear disarmament matters.

## 5. Irreversibility

'The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.' [Article VI etc., paragraph 15, sub-paragraph 5]

### *Negotiating history*

This was originally an EU proposal, taken from its common position (NPT/CONF.2000/MC.I/WP.5). During negotiations over the 9 May draft document, Australia, France, Germany, Japan, the UK and the US wanted to use 'guide' as the pertinent verb, while several non-aligned states preferred to retain the existing verb 'to apply,' being the stronger term. In the draft of 15 May, the wording of this paragraph was changed from 'being applied to all nuclear disarmament and nuclear arms control measures' to the present formulation.

### *Interpretations*

This is an unambiguous commitment to a general principle. Its degree of fulfilment depends on the specific measure with which it is connected. It creates a political commitment that nuclear disarmament and related measures, once made, must not be reversed unless they are replaced by measures that are at least equivalent, or that go even further. The problem, however, lies in how to interpret it when applied to specific disarmament actions.

In practice, irreversibility is best achieved by disarmament steps that are difficult and costly to reverse. The closure and dismantling of plutonium (Pu) production reactors or of a test site or the destruction of missiles and silos are examples. Also, legally binding commitments are politically more costly to reverse than those which lack a legal basis. The principle applies to unilateral, bilateral and multilateral disarmament measures, whether negotiated or not.

### *Levels of fulfilment*

- Complete fulfilment – states take further disarmament steps that are difficult and costly to reverse, such as the closure and dismantling of Pu production reactors or of test sites, or the destruction of missiles and silos.

- Positive trends – states reaffirm that existing nuclear disarmament steps are irreversible.
- No movement – states do not indicate whether or not they consider existing and future nuclear disarmament steps to be irreversible.
- Outright non-fulfilment – states reverse existing disarmament measures. States adopt unilateral disarmament actions, which do not include provisions intended to make them more difficult to reverse.
- Other actions – states engage in further research (technical studies) on how to make disarmament steps more difficult and costly to reverse.

### *Political realities*

Under the Bush Administration, there is some question as to whether the US may regard all agreements and treaties in the area of arms control and disarmament as open to change, and even replacement, if circumstances dictate. If this policy was to be adopted, it could undermine the mutual reassurance and predictability that other states consider such treaties to provide.

### *Recommendations*

- States should continue to stress the overall benefits of irreversibility – in the form of agreements and their implementation – as part of the arms control process.
- Discussions should be encouraged between NWS and NNWS on the implementation of irreversible disarmament steps, in the NPT context and in any CD *ad hoc* group.
- There should be further research into the relationship between irreversibility, transparency and verification, including an assessment of the different actions that would be technically difficult or costly to reverse.

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## 6. An Unequivocal Undertaking

'An unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under Article VI.'  
[Article VI etc., paragraph 15, sub-paragraph 6]

### *Negotiating history*

This originated from a NAC proposal (NPT/CONF.2000/MC.I/WP.3), which called upon 'the five nuclear weapon States to make an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals and, in the course of the forthcoming Review period 2000–05, to engage in an accelerated process of negotiations and to take steps leading to nuclear disarmament to which all States Parties are committed under Article VI'. The call for an accelerated process of negotiations was dropped in the course of the negotiations, as some of the NWS argued that measures recently taken did not require an accelerated process on their part for the period 2000–05. In addition, in the prevailing state of bilateral relations, Russia and the US were unwilling to commit themselves to an accelerated process.

### *Interpretations*

This reference to an 'unequivocal undertaking' represents the strongest reaffirmation so far of the commitment to the global elimination of nuclear weapons. This gives diplomatic weight to the 1996 International Court of Justice (ICJ) advisory opinion, which interpreted Article VI in the light of other legal obligations, de-linking nuclear disarmament from general and complete disarmament and making explicit that the Article VI obligation on negotiations in good faith implies bringing negotiations to a conclusion.

### *Levels of fulfilment*

- Complete fulfilment – engagement of the NWS in a process towards the total elimination of nuclear weapons, complemented by unilateral disarmament measures.

- Positive steps – reaffirmation of steps to proceed with the actions outlined above.
- No movement – failure of the NWS to engage in disarmament measures.
- Outright non-fulfilment – any actions that intentionally obstruct disarmament negotiations or undermine existing arms control and disarmament treaties. Steps that increase the numbers, operational status or overall role of nuclear weapons, both strategic and non-strategic.
- Other actions – discussion of Malaysia’s proposal in 2000 to consider the elements required for a nuclear weapon convention.

*Political realities*

Following the Conference, officials in some NWS were quick to deny that the Final Document’s reference to ‘unequivocal

commitment’ represented a significant shift in their approaches to global nuclear disarmament. Their message appeared to be that, although a ‘principle’ had been agreed, the lack of a timetable meant that this commitment was unlikely to be translated into concrete measures for the foreseeable future. Moreover, holding the NWS to their commitment to the principle of the total elimination of their nuclear arsenals may be a challenge in itself, given the international political tensions between China, Russia and the US over missile defences and the weaponisation of space.

*Recommendation*

- In order to have productive discussions on ways to give effect to this commitment, debate about the exact meaning of ‘unequivocal undertaking’ should be avoided.

## 7. START & the ABM Treaty

‘The early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the Treaty on the Limitation of Anti-Ballistic Missile Systems as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions.’ [Article VI etc., paragraph 15, sub-paragraph 7]

*Negotiating history*

Taken from the NWS statement, this derives from the 1999 Cologne Summit Communiqué issued by Russia and the US, which was restated at the Review Conference. The paragraph remained unchanged during the discussions over the 9 May and 15 May drafts. As such, for the purposes of the Conference, the ABM issue was removed as a debating point, although it remained in the background in the discussions over other proposals.

*Interpretations*

The reference to ‘preserving and strengthening’ the ABM Treaty as ‘a cornerstone of strategic stability’ is not consistent with abrogation of that Treaty.

*Levels of fulfilment*

- Complete fulfilment – entry into force of START II and conclusion of START III whilst preserving and strengthening the ABM Treaty.
- Positive steps – any actions that promote entry into force of START II and the conclusion of START III in the context of preserving the ABM Treaty.
- No movement – no attempt to ensure entry into force of START II or negotiations on START III.
- Outright non-fulfilment – actions that obstruct entry into force of START II and prevent negotiations on START III, or that undermine the ABM Treaty (particularly unilateral withdrawal/abrogation), and are not compensated for by positive developments.
- Other actions – agreement on a new strategic framework between the US and Russia, which would include irreversible and verifiable reductions of nuclear weapons. This could act as a counter balance to the negative actions listed under outright non-fulfilment.

*Political realities*

On 13 December 2001, the US announced its intention to unilaterally withdraw from the ABM Treaty, thereby rendering the Treaty, and this element of the ‘13 steps’, defunct. Before the announcement was made, Bush also made clear on a number of occasions that he was not interested in pursuing the START process any further, and that he preferred to pursue unilateral parallel reductions of strategic forces without any formal treaty.

These announcements raised fears of a serious breakdown in US-Russian relations, and a possible reverse in the bilateral nuclear reductions process. However, the Russian response to the US withdrawal has so far been milder than expected, especially when compared to Moscow’s statements on this issue throughout 2000 and most of 2001. Following US withdrawal, Putin described the US decision as ‘a mistake,’ and called for the early development of a new framework for a strategic relationship between the two countries.

The question now is what form this framework might take. The two leaders have discussed reductions in strategic nuclear forces that go beyond START I levels, but nothing has been confirmed and, significantly, they appear to disagree over the question of whether warheads should be removed from launchers, kept in reserve, or destroyed. Questions also remain over how parallel unilateral cuts would be verified, and whether they would be the subject of a written agreement. (See also ‘Political realities’ of 9a, below).

*Recommendations*

- Russia and the US should pursue efforts to conclude a new, verifiable treaty covering nuclear reductions, and to reach a compromise over the ABM issue.
- Radical reductions in the nuclear arsenals of Russia and the US should be a central part of any new strategic framework.

## 8. The Trilateral Initiative

'The completion and implementation of the Trilateral Initiative between the United States of America, the Russian Federation, and the International Atomic Energy Agency.'  
[Article VI etc., paragraph 15, sub-paragraph 8]

### *Negotiating history*

The Trilateral Initiative was launched to address a desire to apply verification measures to fissile material that is surplus to military requirements without revealing sensitive nuclear-weapon information. The original proposal referred to all the NWS, but this was amended at UK and French insistence because, in their case, such material is subject to Euratom safeguards. South Africa wished to add a reference to irreversibility to the amended paragraph, but this was rejected.

### *Interpretations*

The language of this proposal is unlikely to be open to different interpretations. It refers to the verification regime being created by the IAEA, Russia and the US, under the joint initiative they launched in 1996. The intention is to verify the storage and disposition of excess plutonium (Pu) and highly enriched uranium (HEU) from nuclear weapons in Russia and the US, some of which may be in forms that contain nuclear weapon design information, without risk that this should get into the wrong hands. This would create the first IAEA verification (as distinct from traditional safeguards) regime designed for disarmament purposes. The initiative is intended to promote international confidence that fissile material made subject to IAEA verification by either of the two states will remain irreversibly removed from their nuclear weapons programmes. It is also hoped that the regime will eventually establish a precedent for verifying excess material stocks in all states possessing nuclear weapons.

### *Levels of fulfilment*

- Complete fulfilment – Russia and the US complete and implement the Trilateral Initiative.
- Positive steps – Russia and the US continue their efforts to ensure the early conclusion and implementation of the initiative.
- No movement – N/A.
- Outright non-fulfilment – any actions intended to prevent completion and implementation.
- Other actions – bilateral arrangements with the IAEA by Russia and the US for verification of excess Pu and HEU, including the development of verification technology involving the IAEA.

### *Political realities*

There may be problems ahead that could undermine the implementation of the initiative. First, Washington is unwilling to fund the exercise. Second, Russia and the US disagree on the scope of the verification measures, and the nature and the quantities of the material subject to verification.

### *Recommendations*

- Russia and the US should move rapidly to complete and implement the Trilateral Initiative through an agreement, or agreements, with the IAEA.
- Pending conclusion of the agreement, both countries should continue to remove excess Pu from their dedicated military stockpiles.

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## 9. International Stability and Undiminished Security

'Steps by all the nuclear weapon States leading to nuclear disarmament in a way that promotes international stability, and based on the principle of undiminished security for all.'  
[Article VI etc., paragraph 15, 'chapeau' to sub-paragraph 9]

### *Negotiating history*

In the initial negotiations on the six undertakings eventually brought together under paragraph 9, Russia sought to have each of them prefaced by a reference to the maintenance and upholding of 'strategic stability.' Those negotiating the text settled upon the universally accepted term 'international stability' found in the Final Declaration of the First UN Special Session on Disarmament. This was coupled with another traditional formulation, 'the principle of undiminished security for all.' The final organisation of the six elements in a single paragraph under a heading, proposed by the UK, was chosen over the repetitive rehearsal of the same principle in six different paragraphs.

The call in this heading to 'all the nuclear weapon states' originated in a NAC document (NPT/CONF.2000/MC.I/WP.3) which divided the programme of nuclear disarmament into three complementary elements, to be pursued in parallel by the NWS and the NNWS, separately and together. This programme included:

- action at the bilateral level between Russia and the US;

- action by all the NWS acting unilaterally or collectively; and
- action at the multilateral level.

The intention was to provide for action by all the NWS and in so doing to highlight the undertakings of the lesser ones in the nuclear disarmament process.

### *Interpretations*

The language is a 'chapeau', or 'heading', for the specific steps that follow. The NAC proposals covered by this heading were acceptable to the NWS as it gave them the flexibility to take account of their national security concerns (i.e. their own interpretation of the principles of international stability and undiminished security) in implementing these disarmament measures. These concerns included the abrogation of the ABM Treaty.

The language talks about steps by 'all the nuclear weapon States'. Rather than implying a collective effort on their part in each of the steps that are listed, it seems likely that this was inserted to highlight the existence of an obligation on the part

of China, France and the UK to engage in some or all of these steps as the disarmament process proceeds. It also highlights the importance of all the NWS ensuring that their actions do not generate insecurity in other countries.

#### *Levels of fulfilment*

Levels of fulfilment are only relevant to the specific steps that follow this heading.

#### *Political realities*

This heading provided the framework for reaching a consensus on the need to implement six important steps (listed below) towards nuclear disarmament. Its language reflects the reality that the security concerns of the NWS will need to be met if the process of nuclear disarmament is to proceed. In this context, it is understood that, for Russia, the phrase ‘undiminished security’ served as a warning against

the possibility of a US unilateral deployment of national missile defences.

#### *Recommendations*

- There should be active engagement, especially among the NWS, to generate an international situation conducive to the implementation of nuclear disarmament measures.
- Debate should be encouraged within and among governments, the UN, NGOs and think tanks on the concepts of ‘international/strategic stability’ and ‘undiminished security’. Discussion is needed on how these concepts should be defined in the context of the development of missile defences, missile proliferation, and the weaponisation of space. In addition, new thinking is required about the role of nuclear weapons and concepts of deterrence; the proliferation of nuclear weapons; and the future of arms control and disarmament agreements and regimes.

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## 9a. Unilateral Reductions

‘— Further efforts by the nuclear-weapon States to reduce their nuclear arsenals unilaterally.’  
[Article VI etc., paragraph 15, sub-paragraph 9, first item]

#### *Negotiating history*

This wording originated from a US proposal, and remained untouched in the 9 and 15 May drafts, although in the latter it was conditioned by the language of the heading.

#### *Interpretations*

It should be noted that although this was intended to be an unambiguous statement applying to all five NWS, it is qualified to some extent by the heading (see discussion under 9 above). Also, it calls on the NWS to make ‘further efforts’ at unilateral reductions, rather than calling directly for such reductions. There are several practical questions surrounding the phrase ‘to reduce their nuclear arsenals’. The reference to nuclear arsenals appears to relate to nuclear warheads, rather than delivery systems, while a reduction appears to go beyond removing warheads from deployment.

#### *Levels of fulfilment*

- Complete fulfilment – further unilateral cuts in strategic and/or tactical arsenals by all NWS.
- Positive steps – unilateral cuts in nuclear arsenals by some NWS; announcement of the intention to undertake unilateral cuts by some NWS.
- No movement – no further unilateral cuts in nuclear arsenals.
- Outright non-fulfilment - increases in numbers of nuclear weapons. Modernisation of nuclear weapons.
- Other actions – N/A.

#### *Political realities*

France and the UK believe that for now they have gone far enough with their unilateral cuts. China remains opposed to unilateral measures and shows no signs in changing its position. Russia and the US made significant reductions in their nuclear arsenals on a unilateral basis in the early 1990s, and have also made reductions in advance of their START Treaty commitments. However, although President Bush stated at the Crawford Summit that the US was contemplating reducing its deployed strategic nuclear arsenal to between 1700 and 2300 warheads, the Nuclear Posture Review has indicated that existing nuclear weapons systems will be retained in a de-activated or de-alerted mode, rather than be destroyed. Russia does not regard these ‘hedge’ forces as contributing to a ‘reduction in nuclear arsenals.’

#### *Recommendations*

- There should be further reductions in nuclear arsenals and in military stocks of fissile material.
- To build confidence and reassurance, unilateral reductions could be accompanied by qualitative and quantitative information on the nature and size of the cuts, and by voluntary transparency measures offering the possibility of later international inspection. Such reductions could also take place within the implementation framework provided by pre-existing treaties, and could be open to later legal codification.

## 9b. Transparency

- ‘— Increased transparency by the nuclear-weapon States with regard to the (sic) nuclear weapon capabilities and the implementation [by the nuclear-weapon States] of agreements pursuant to Article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament.’  
[Article VI etc., paragraph 15, sub-paragraph 9, second item]

### *Negotiating history*

This was derived from an EU proposal (NPT/CONF.2000/MC.I/SB.I/WP.2). Its initial language did not include reference to agreements or voluntary measures, and focused solely on transparency of nuclear arsenals and fissile materials.

During negotiations over the 9 May draft, it became clear that there existed widely different perspectives on transparency among the States parties. China, for example, preferred a less specific interpretation, not including numbers of warheads. The NAC wanted transparency to apply to nuclear arsenals and materials. The NATO-5 wanted materials left out, but favoured transparency over numbers of weapons. France was in favour of opening facilities to inspection and the transparent implementation of agreements, but wanted to stop short of providing details of numbers of weapons. As a consequence, China asked to have this paragraph deleted but later withdrew its objection. Russia wanted to characterise transparency as a voluntary confidence building measure, and did so by using language in the EU common position on ‘transparency as a voluntary measure’. As a consequence, in the 15 May draft, the phrase: ‘[States] with regard to their nuclear arsenals and fissile material inventories as a confidence building measure supporting [progress]’ was changed to the current formulation. Although China accepted this formulation, its representative argued in his statement after the Final Document had been adopted that ‘transparency and confidence-building measures’ would not be feasible without unconditional no-first-use and negative security assurance agreements, and the termination of nuclear-sharing alliances.

### *Interpretations*

In the interest of consensus, the language on transparency adopted by the Conference was kept non-specific, allowing for a broad interpretation that would not threaten the national security interests of the NWS. The result was that states emerged with different perspectives of what had been agreed.

### *Levels of fulfilment*

- Complete fulfilment – increased transparency by all the NWS over nuclear weapon holdings and activities.
- Positive steps – continuation of existing transparency measures (as these would increase information on relevant matters).
- No movement – N/A.
- Outright non-fulfilment – the cessation of existing transparency measures.
- Other actions – transparency only in the context of the implementation of agreements.

### *Political realities*

Although some NWS are concerned about the impact of greater transparency upon their national security, there has been a steady rise in support for such measures within the international community, including among some NATO

member states. The wording of this paragraph represents an attempt to balance the two considerations.

At the same time, September 11 has introduced a new factor into this equation, namely the need to safeguard information that could be of value to terrorists. START I, for example, contained very precise information on the locations of specific facilities. A further new factor is that any attempt to reach an accommodation over missile defences between the US and other NWS will necessitate increased transparency over the capabilities of both offensive and defensive systems, especially if some type of offence/defence trade-off is to be attempted.

In practice, China, France and the UK, the NWS with relatively small nuclear arsenals, relied heavily in their past national security policies upon secrecy about the size and capabilities of those arsenals. Transparency may have greater security consequences for these states than for Russia and the US.

In 1995, the NWS began providing varying levels of data regarding their national implementation of Article VI to the review process of the NPT. This reporting has not been standardised, may be incomplete, and is not subject to verification, but it does signal a positive development towards greater transparency (see also 12, below).

Given that at the 2000 NPT Review Conference states argued for a wide variety of definitions of this principle, it will be difficult to reach a consensus on a package of specific transparency steps. But the Final Document does indicate that a consensus exists on the need for actions to implement the principle, even if different nuclear weapon states do so in different ways.

### *Recommendations*

- The NWS should provide annual declarations on the following to increase transparency and build confidence:
  - their total current numbers of nuclear warheads and delivery systems;
  - their current projected level of arsenals at the next NPT Review Conference;
  - the numbers and yield of their nuclear warheads and delivery systems eliminated under Article VI;
  - their plans for the development and deployment of missile defences, and indications of the nature, location and scope of such defences;
  - their fissile material inventories and plans to place excess fissile materials under international inspection; and
  - their plans for the elimination of nuclear weapons and delivery vehicles.
- The above information could be submitted to a register, perhaps maintained by the UN.
- The NWS should open testing sites and other nuclear-weapon-related facilities to international inspection.

### 9c. Non-Strategic Nuclear Weapons

‘— The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reductions and disarmament process.’  
[Article VI etc., paragraph 15, sub-paragraph 9, third item]

#### *Negotiating history*

This is the first time that the Final Document of an NPT Review Conference has referred to non-strategic weapons in the context of Article VI. The text had several origins: concerns expressed by Finland and Kyrgyzstan at the 1997 PrepCom session; a NAC formulation in 1998; and in 2000 the EU working paper presented to MC.I (NPT/CONF.2000/MC.I/WP.5); the NATO-5 working paper (NPT/CONF.2000/MC.I/WP.7); and a short working paper submitted by Finland (NPT/CONF.2000/MC.I/SB.I/WP.3).

During discussions of the 9 May draft, Russia wished to insert a phrase limiting reductions in non-strategic nuclear weapons to unilateral measures in the context of strategic stability, while others wished to keep the text of the 9 May draft or add a reference to the alternatives of bilateral or multilateral measures.

In the 15 May draft, the 9 May text was altered from ‘in a transparent and irreversible manner leading to their total elimination as an integral part of the nuclear arms reduction and disarmament process and in the context of strategic stability,’ to ‘based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process.’ The latter has to be read in conjunction with the introductory lines in paragraph 9.

#### *Interpretations*

Traditionally, the term ‘non-strategic nuclear weapons’ applies to the nuclear weapons not covered by the US-Russian START and Intermediate-range Nuclear Forces (INF) treaties. The text also contains two other phrases which are rather more opaque: ‘based on’ and ‘and as an integral part.’ ‘[B]ased on’ may be read as intending to imply that actions are mainly expected to take the form of unilateral measures, but they could possibly be bi- or multilateral. ‘As an integral part of’ appears to imply an imperative to not only take unilateral actions on these weapons, but also to include them in both informal and formal negotiations and agreements. It should also be noted that although it is qualified to some extent by the heading, the commitment is a direct call for action.

Problems of defining ‘non-strategic nuclear weapons’ may occur in the case of China, France and the UK, the NWS not party to the START and INF treaties. France, for example, regards its air-launched missiles as strategic, while the UK has stated that its strategic missiles may also have a non-strategic role.

#### *Levels of fulfilment*

- Complete fulfilment – further unilateral and bilateral reductions in non-strategic nuclear weapons.
- Positive steps – dialogue on further reduction and transparency measures; implementation of the 1991–92

Russia–US presidential nuclear initiatives through an arrangement that provides assurance that the initiatives have been fulfilled.

- No movement – no dialogue; no moves towards discussions on this issue.
- Outright non-fulfilment – re-deployment or deployment of non-strategic nuclear weapons.
- Other actions – negotiations on a global treaty aimed at the reduction or elimination of non-strategic nuclear weapons, as an integral part of the nuclear arms reduction and disarmament process.

#### *Political realities*

The 1991–92 Russia–US presidential nuclear initiatives in this area had no verification mechanism attached to them. This class of weapons, currently only covered by an informal arms control regime, is not subject to transparency, accountability or verification, and thus there is no authoritative information in the public domain on total numbers of weapons in this category (see also 9b, above).

#### *Recommendations*

The Russia and the US should:

- implement the 1991–92 Russia–US presidential nuclear initiatives;
- consolidate and codify the 1991–92 Russia–US presidential nuclear initiatives in a form that provides a degree of transparency that would ensure irreversibility or at least assurance of implementation;
- consider further steps to reduce non-strategic weapons in Europe, either in isolation or as part of an overall negotiated elimination of all non-strategic nuclear weapons;
- draw up inventories of holdings of non-strategic nuclear weapons as part of this process;
- make a commitment not to increase numbers of deployed weapons;
- consider reductions in such weapons in the context of future negotiated agreements; and
- increase dialogue on such matters.

The NATO countries and Russia should:

- introduce a data exchange on deployment, storage and numbers of such weapons in Europe; and
- take steps to increase the transparency and accountability regarding the non-strategic nuclear weapons deployed on their territory.

All NWS should:

- be encouraged to introduce additional transparency measures on their nuclear non-strategic nuclear weapons; and
- be urged to start a discourse on constraining the total numbers of their weapons.

## 9d. Operational Status

‘— Concrete and agreed measures to further reduce the operational status of nuclear weapons systems.’  
[Article VI etc., paragraph 15, sub-paragraph 9, fourth item]

### *Negotiating history*

This had its origins in paragraph 5 of the NAC-sponsored 1998 UN General Assembly (UNGA) resolution (A/RES/53/77Y). At the start of the second week of the Conference, the NWS announced the de-targeting of their strategic systems in their joint statement. The NAC wished them to go beyond this by removing warheads, in order to reduce levels of alertness (NPT/CONF.2000/MC.I/WP.3). Also of relevance were proposals that had been discussed in the START III context between Russia and the US.

During talks over the draft of 9 May, Russia wanted the paragraph on operational status to be deleted. China wanted no reference to specific measures and sought the addition of references to withdrawing systems to the territory of the possessor-state and eliminating nuclear sharing. Egypt, Ireland, Mexico, and South Africa proposed to have the paragraph commit the NWS to the early withdrawal of all nuclear forces from active deployment in order to maintain strategic stability while nuclear weapons were eliminated. The US tried to limit the commitment to the removal of nuclear warheads from delivery systems slated for elimination. In addition, the UK and the US sought to condition withdrawal of nuclear forces from deployment by references to strategic stability.

As a result of these disagreements, this paragraph was completely changed and shortened in the 15 May draft. ‘Measures to de-alert and de-activate nuclear weapons systems, the removal of nuclear warheads from delivery vehicles and the withdrawal of nuclear forces from active deployment for the maintenance and promotion of strategic stability,’ became ‘Concrete and agreed measures to further reduce the operational status of nuclear weapons systems.’

### *Interpretations*

The phrase ‘concrete and agreed measures’ appears to have been inserted to serve two different purposes. On the one hand, some states intended that the measures should be specific, and thus transparent and hard to reverse. On the other hand, the text reflects the reality that the nuclear powers will need to work out such measures between themselves and to be convinced that such steps are consistent with strategic stability. The use of the phrase ‘reduce the operational status’ overcame the reluctance of some NWS to agree to specific measures in the original text, as it leaves flexibility as to the actions that can be taken in this context.

### *Levels of fulfilment*

A number of meaningful benchmarks for measuring fulfilment stand out, which are linked to a range of specific options for action. The following general benchmarks provide starting points for discussion of this complex issue.

- Complete fulfilment – some mix of measures to de-target, de-alert, de-mate or de-activate nuclear weapons systems, possibly combined with transparency measures for providing confidence in their implementation.
- Positive steps – individual measures to de-target, de-alert, de-mate or de-activate nuclear weapons systems.
- No movement – no changes in the operational status of nuclear weapons.

- Outright non-fulfilment – actions to reverse steps already taken towards reducing the operational status of nuclear weapons. Any actions that increase operational status.
- Other actions – N/A.

### *Political realities*

None of the NWS currently engages in a comprehensive and directed policy of de-alerting. In practice, however, a significant percentage of their nuclear forces are no longer on alert. In their joint statements, all the NWS stated that they no longer ‘target each other’, though the existence of rapid re-targeting capabilities makes this largely a symbolic step. At the same time, de-alerting remains a controversial subject in the US, though the Nuclear Posture Review suggests that this may be changing. Arguments persist that de-alerting could generate instabilities, rather than greater stability. For their part, Russian planners may feel under pressure to retain a prompt launch-on-warning posture, due to the deterioration of early warning systems, greater reliance on inter-continental ballistic missiles (ICBMs) and the US administration’s plans to deploy missile defences. Nevertheless, some actions by the NWS could be regarded as involving a positive policy of de-alerting, such as the announced UK reduced level of alert on its single nuclear system. However, this is based on changes in operational procedures that can easily be reversed.

### *Recommendations*

- The NWS collectively should be encouraged to take the following steps in order to implement this paragraph:
  - de-activate warheads from all systems that they are planning to dismantle or eliminate, unilaterally or through agreement;
  - keep only a minimum number of nuclear weapons on high alert status;
  - develop transparency measures for changes in operational status; and
  - initiate joint discussions of possible changes to reduce the operational status of their nuclear-weapons systems, with a remit to report their conclusions to the 2005 NPT Review Conference and/or the CD.
- Furthermore, Russia and the US should be encouraged to undertake the following steps:
  - establish a high-level Joint Commission to identify specific actions to reduce the operational status of their nuclear forces, with a commitment to the implementation of such recommendations;
  - initiate an initial limited duration ‘experiment’ with the de-alerting or de-activation of some systems, both to test how to do so and to include possible transparency measures;
  - cease day-to-day planning for nuclear warfare with each other;
  - remove one leg of their nuclear triad; and
  - retire the technical mechanisms to launch a nuclear strike immediately (i.e., the so-called ‘footballs’) entailing their constant presence near the heads of state of Russia and the US.

## 9e. A Diminishing Role for Nuclear Weapons

‘— A diminishing role for nuclear weapons in security policies to minimise the risk that these weapons might ever be used and to facilitate the process of their total elimination.’  
[Article VI etc., paragraph 15, sub-paragraph 9, fifth item]

### *Negotiating history*

This originated in the 1998 and 1999 NAC resolutions in the UNGA, and a Canadian proposal at the Conference (NPT/CONF.2000/MC.I/WP.4).

During discussions of the 9 May draft, several amendments were proposed to this paragraph, such as changing the language from ‘minimise’ to ‘preclude,’ and adding ‘threats to use’ to ‘use.’ In addition, France wanted it deleted on the grounds that national security policies were national responsibilities, not issues for the Review Conference to address, while Russia expressed substantial reservations over it.

In the 15 May draft, the existence of the heading (see 9, above) meant that ‘[weapons] ever be used, to facilitate the process of elimination, to enhance strategic stability and to contribute to international confidence and security,’ could be shortened to ‘[weapons] will ever be used and to facilitate the process of their total elimination.’

### *Interpretations*

A ‘diminishing role’ could be interpreted as a process of reducing the significance of nuclear weapons in defence policies. This makes arriving at consensus on the benchmarks for measuring whether or not states are fulfilling this commitment extremely difficult. For example, actions that would demonstrate that you were moving to such a diminishing role might include: movement over postures and doctrine, such as no-first use declarations, or abandonment of deterrence doctrines; reductions in weapon numbers; and reductions in preparedness.

### *Levels of fulfilment*

In the light of the above, there are a wide range of alternative benchmarks, which might include:

- Complete fulfilment - a decision by the NWS not to include the possession and use of nuclear weapons in their strategic plans. A shift in doctrine from deterrence to reassurance.<sup>3</sup> Changes in the operational status of nuclear weapons. Declarations on no-first use backed up by appropriate changes in strategic doctrine and the configuration and alert status of nuclear forces. A no-first use posture. Steps to move inter-state relationships in a non-adversarial direction.
- Positive steps – the indication by NWS of the steps they are taking to pursue a diminishing role for nuclear weapons. Commitments not to develop and deploy new nuclear warheads. Efforts by the NWS to rethink their strategic doctrines, to consider alternatives to nuclear deterrence, and to seek to move beyond this concept. The diminution of the role of nuclear weapons as a result of their replacement by existing and/or new conventional weapons.
- No movement – no change in the role of nuclear weapons in security policies and no attempt to rethink nuclear doctrine.

- Outright non-fulfilment – steps by the NWS to increase the overall role of nuclear weapons in their security policies, or place a more visible emphasis on the importance of nuclear weapons in dealing with a wide range of threats. The announcement of new nuclear doctrine that makes this clear.
- Other actions – bilateral and multilateral discussions of respective nuclear doctrines among the NWS.

### *Political realities*

Political realities make it difficult to expect rapid steps towards fulfilment of this recommendation. Many security analysts and defence planners in the NATO, Russia and the US remain committed to the concept of nuclear deterrence. This is confirmed by their current defence postures, in which the logic of deterrence still figures prominently, even if characterised as being of ‘last resort’.

### *Recommendations*

- NATO’s report entitled *NATO’s Role in the Future: Options for CSBMs, Verification, Non-Proliferation, Arms Control and Disarmament* which was made public in December 2000, outlined a number of useful confidence- and security-building measures (CSBMs) that could lead to a dialogue between NATO and Russia over nuclear doctrines. These included data exchanges on the following:
  - the alert status of nuclear forces;
  - nuclear safety issues; and
  - Russian and US non-strategic nuclear forces.
- In addition to the NATO proposals, the following measures could be promoted:
  - Russia and the US could be encouraged to make clear their commitment to put in place a non-adversarial relationship in which deterrence would no longer be a central concept;
  - Russia and the US could take concrete steps to lessen operational reliance on nuclear weapons, such as standing down weapons earmarked for dismantlement under START II;
  - all the NWS could reassess their nuclear doctrines, and reappraise the costs and benefits of adopting a no-first use policy and the advantages of de-alerting;
  - by seeking the universal application of the Chemical Weapons Convention (CWC) and Biological and Toxin Weapons Convention (BWC) and rigorously pursuing their compliance and enforcement, the perceived need for nuclear deterrence in the context of threats from other weapons of mass destruction (WMD) would be reduced; and
  - a study could be initiated by experts from the NWS, to identify the steps through which a diminished role of nuclear weapons might be facilitated.

## 9f. The Process of Total Elimination of Nuclear Weapons

‘— The engagement as soon as appropriate of all the nuclear-weapon states in the process leading to the total elimination of their nuclear weapons.’  
[Article VI etc., paragraph 15, sub-paragraph 9, sixth item]

### *Negotiating history*

This has its origins in a long-standing NAM<sup>4</sup> proposal calling for the NWS to engage in plurilateral negotiations on the total elimination of nuclear weapons. The immediate stimulus was that it followed on from a proposal on START (i.e., bilateral disarmament negotiations) in the NAC working paper (NPT/CONF.2000/MC.I/WP.3), and was intended to be the next stage in nuclear disarmament.

In the 15 May draft, ‘The integration at an early and appropriate stage of all the nuclear-weapon States in the process [leading]’ found in an earlier text became ‘The engagement as soon as appropriate [leading].’

### *Interpretations*

This commitment is aimed at binding the three NWS with the smallest arsenals into the elimination process. The phrase ‘as soon as appropriate’ appears to refer to the stage at which all NWS would become involved in the elimination process. One interpretation is that this implies some threshold number of Russian and US nuclear weapons at which China, France and the UK would join the reductions process. Another interpretation is that they should become involved when serious negotiations start on total elimination, and that this should be the stimulus for their action, not any specific threshold.

In practice, this appears to be less a stand-alone commitment and more an indicator of how the process of total elimination might proceed, and the wish that the three smaller NWS should be part of it. Also, a commitment to engage in ‘the process leading to’ implies actual negotiations on total elimination, not just undefined steps leading to that goal.

### *Levels of fulfilment*

This paragraph is seen not so much as calling for a specific action but as saying that all NWS should participate in the elimination of nuclear weapons. It does not directly refer to the process of elimination, and would seem to leave a range of possible actions.

- Complete fulfilment – integration of all of the NWS into the nuclear disarmament process, leading to actual

agreements among them on steps towards the total elimination of nuclear weapons.

- Positive steps – dialogue among some NWS on how to bring all five NWS into the nuclear disarmament process, as well as possible dialogue on what the process leading to total elimination might entail in areas such as ways and means of elimination, transparency and verification.
- No movement – no clear indication of intention to engage in discussions among the NWS on how to integrate all of them into the nuclear disarmament process.
- Outright non-fulfilment – rejection by one or more of the NWS of their possible participation in the nuclear disarmament process, or increases in the size or effectiveness of a nuclear arsenal.
- Other actions – bilateral or trilateral agreements between China, France and the UK, running parallel to START. Consideration of other issues, such as enhanced transparency and verification of the size of NWS nuclear arsenals.

### *Political realities*

Since this paragraph was agreed upon, in 2000, there have been significant changes in the relationship between the NWS, not least the announcement by the US that it intends to abrogate the ABM Treaty. Prior to this, China, France and the UK had a range of nuanced positions indicating that their future participation in a plurilateral elimination process was dependent on further Russian and the US reductions. However, movement in the traditional Russian-US bilateral reductions process is now challenged by the US decision on the ABM Treaty and by disagreement over the form any such agreement should take. How this commitment would be implemented in the new situation where the future strategic framework is unknown remains unclear. Unless and until it is in place, it is widely seen as unlikely that China, France and the UK will be prepared to engage in discussions on an elimination process.

### *Recommendation*

- The NWS should consider a variety of bilateral and multi-lateral CSBMs, including dialogue and data exchanges.

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## 10. Surplus Material

‘Arrangements by all nuclear weapon States to place, as soon as practicable, fissile material designated by each of them as no longer required for military purposes under IAEA or other relevant international verification and arrangements for the disposition of such material for peaceful purposes, to ensure that such material remains permanently outside military programmes.’  
[Article VI etc., paragraph 15, sub-paragraph 10]

### *Negotiating history*

This paragraph originated from language submitted by some NAC members and others to MC.II (NPT/CONF.2000/MC.II/WP.1) and also by NAC members to MC.I (NPT/CONF.2000/MC.I/WP.3). This made a call to place ‘nuclear fissile material transferred from military use...under appro-

priate IAEA verification arrangements in the framework of ... voluntary safeguards’. It was emphasised that the transfers should be irreversible. This text underwent significant modification in the course of the Conference. The reference to voluntary safeguards was withdrawn as this implied reversibility. The text was later modified by insertion

of the phrase ‘as soon as practicable’, by changing ‘safeguards’ to ‘verification,’ and by removing all references to irreversibility.

#### *Interpretations*

This applies to the NWS only, not the nuclear-capable states outside the Treaty. Each state can decide what it would designate as surplus to requirements. However, once arrangements are made for the disposition of weapons grade fissile material, the principle of irreversibility applies, given that the paragraph calls for states to ‘ensure that such material remains permanently outside of military programmes.’

#### *Levels of fulfilment*

It is difficult to establish what actions would constitute outright non-fulfilment of this provision.

- Complete fulfilment – unilateral steps by the NWS to arrange for the transfer of stocks of excess material from their military stockpiles and efforts to involve the IAEA or other relevant international verification instruments in verifying that excess quantities do not return to military use.
- Positive steps – announcement of measures for the disposition of stocks of excess material.
- No movement – none of the above.
- Outright non-fulfilment – statement of an intention not to accept this recommendation. Reversal of previous

decisions to designate weapons grade material for peaceful purposes and movement of materials back into military programmes.

- Other actions – N/A.

#### *Political realities*

China and France have not designated any of their stocks of fissile material as surplus to military requirements. Russia and the US are engaged in negotiations with the IAEA on creating a regime, which would be the precursor to placing all their surplus fissile material in military stocks under Agency safeguards.

#### *Recommendations*

- A debate over how and where surplus materials should be stored should be instigated, keeping the principle of irreversibility in mind.
- Further studies of how to dispose of excess weapons plutonium in a way that is both safe, and renders it out of reach for future military uses, should be undertaken.
- Financial and technical assistance to implement this process should be provided to those states that require it, but only after they have offered up the material and agreement has been reached as to how and where it is secured.

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## **11. General and Complete Disarmament**

‘Reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control.’

[Article VI etc., paragraph 15, sub-paragraph 11]

#### *Negotiating history*

This was introduced as a new subparagraph into the 15 May draft. Its origins may have lain in a French proposal for alternative wording for subparagraph 6, which read ‘An unequivocal undertaking by the nuclear-weapon States to the ultimate goal of eliminating nuclear weapons consistent with Article VI of the NPT.’ For some states, subparagraph 6 was only acceptable because of this text.

#### *Interpretations*

General and complete disarmament has traditionally been understood as the reduction of national armed forces to a level consistent with national security needs, and the provision of armed forces to the UN. The concept of general and complete disarmament dates back to 1954, when France and the UK put forward a plan for nuclear arms reductions leading to a total prohibition on all weapons of mass destruction. Central to the debates of that period was the relationship between conventional and nuclear forces, and the relationship between them in the nuclear reductions process. In Article VI of the NPT, the call was made for both nuclear disarmament and general and complete disarmament. This has given rise to long and inconclusive debates at NPT Conferences over whether nuclear disarmament is conditional upon general and

complete disarmament, or whether it should be treated as a separate issue and implemented in isolation.

The appearance of this subheading as a separate commitment appeared to achieve some clarification of this issue by separating nuclear disarmament steps in the text from conventional disarmament actions. This is significant, given that the linkage has been used by the NWS to justify their retention of nuclear weapons until general and complete disarmament has been achieved.

#### *Levels of fulfilment*

This is a reaffirmation of a principle. The question of levels of fulfilment does not apply.

#### *Political realities*

The idea that nuclear disarmament and general and complete disarmament are interdependent is one which has been widely supported since the disarmament debates of the 1950s. It is therefore not surprising that this interrelationship was present in the text of the NPT.

#### *Recommendation*

Again, as this is a reaffirmation of a principle, the question of recommendations does not apply.

## 12. Reporting

‘Regular reports, within the framework of the strengthened review process for the Non-Proliferation Treaty, by all States parties on the implementation of Article VI and paragraph 4 (c) of the Decision on ‘Principles and Objectives for Nuclear Non-Proliferation and Disarmament’, and recalling the advisory opinion of the International Court of Justice on 8 July 1996.’  
[Article VI etc., paragraph 15, sub-paragraph 12]

### *Negotiating history*

This provision originated in a proposal from the NAM (NPT/CONF.2000/18). It caused disagreements principally between a group of eight mainly NAC states, which supported annual reports, and the NWS (with the exception of China) and Japan, which favoured just ‘reporting’. In addition, Ghana, Iran and Malaysia wished to see a reference to the obligations affirmed by the ICJ decision of 1996 in this paragraph. The text was amended in two respects from the 9 May version. The first part of the sentence was changed from ‘Annual reports within the framework of the review process of the Treaty on the Non-Proliferation of Nuclear Weapons,’ to ‘Regular reports, within the framework of the strengthened review process for the Non-Proliferation Treaty.’ Secondly, ‘and recalling the advisory opinion of the International Court of Justice of 8 July 1996’, was added to the end of the sentence.

### *Interpretations*

This text refers to reports by states on their progress towards the fulfilment of Article VI. This provision was reinforced by the advisory opinion of the ICJ in July 1996.

The reports are to be mandatory, although there are questions as to the intended content of such reports, and whether they are to be made by all states parties, or just the NWS. The original text was amended from requiring ‘annual reports’ because, under the strengthened review process, there would be only four meetings every five years. This amendment makes it clear that the intention was that the report should be made to both PrepComs and Review Conferences. Although there is no specific mention of any commitment by the NWS to report on their implementation of the ‘practical steps’ contained in the Final Document of the

2000 NPT Review Conference, such reports could be interpreted as an elucidation of paragraph 4 (c) of the 1995 Principles and Objectives.

### *Levels of fulfilment*

- Complete fulfilment – regular updates by all states on the actions they have taken towards fulfilment of Article VI of the NPT and paragraph 4 (c) of the 1995 Principles and Objectives.
- Positive steps – regular updates on some, but not all, of the commitments contained in the two documents listed above.
- No movement – N/A.
- Outright non-fulfilment – refusal to provide a report, or the provision of an inaccurate report that makes false claims.
- Other actions – N/A.

### *Political realities*

The NWS have all voluntarily provided reports on their compliance with article VI to NPT review meetings since 1997. However, these reports have not been uniform in format.

Although reporting now appears to be mandatory, it is probable that the NWS will seek to report on positive movement, but not on areas where progress is lacking. They may therefore be reluctant to systematically address all of the commitments in the Final Document, and thus expose themselves to allegations of non-fulfilment.

### *Recommendation*

- A UN experts’ study on the form and content of the reports, with a possible annex on ways and means by which their accuracy and relevance could be checked, may be helpful.

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## 13. Verification Capabilities

‘The further development of the verification capabilities that will be required to provide assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a nuclear-weapon-free world.’

[Article VI etc., paragraph 15, sub-paragraph 13]

### *Negotiating history*

This was a UK formulation to support its unilateral initiative in this area (NPT/CONF.2000/MC.I/WP.6). It originated in an earlier NAC proposal. During negotiations in the subsidiary body over the 9 May draft, Austria, Ireland, and South Africa sought to have the IAEA develop the relevant verification capabilities, and Ireland wished to see it linked to the elimination of nuclear weapons and the maintenance of a nuclear-weapon-free world (NFWF). China reserved its position.

The text changed considerably in the 15 May draft. The words ‘nationally, bilaterally, multilaterally, and through the relevant international organisations,’ which had originally

been the third and fourth words of the subparagraph, were deleted. Also, what originally read ‘the confidence and assurance of compliance with nuclear disarmament obligations’ was expanded to read ‘assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a nuclear-weapon-free world.’

### *Interpretations*

This provision relates to current and future verification requirements, i.e. verification to ensure compliance with existing arms control treaties, and developments in verification techniques that will facilitate ‘the achievement and maintenance of a nuclear-weapon-free world.’ The reference

to the latter makes this a radical provision, looking ahead to the verification of the end game of nuclear disarmament.

#### *Levels of fulfilment*

- Complete fulfilment – the further development of verification capabilities, which provide assurance of compliance with a) existing arms control and disarmament agreements, and b) the achievement and maintenance of a NFWF.
- Positive steps – positive steps to develop further verification capabilities relating to existing arms control and disarmament agreements.
- No movement – N/A.
- Outright non-fulfilment - no positive developments in verification measures for either a) or b) above. Any actions that undermine verification efforts.
- Other actions – N/A.

#### *Political realities*

The activities of the IAEA are hampered by a limited budget, which could undermine its efforts to verify compliance with existing treaties, and its ability to develop verification procedures to provide assurance of compliance with future agreements. However, the UK has continued to sustain its unilateral technical programme in this area.

Progress in the area is vital in order to boost confidence in unilateral, bilateral and multilateral disarmament measures and agreements.

#### *Recommendation*

- UN or CD experts' studies could contribute to research into the technological and the administrative/procedural aspects of verification.

## Part II: Nuclear Non-Proliferation

This part covers five key issues: safeguards; export controls; compliance; security assurances and NWFZs; and physical protection. The approach is similar to that of Part I on 'Nuclear Disarmament and the 13 Steps', with the exception

that a general negotiating history is provided at the beginning of each section, rather than a specific negotiating history for each paragraph cited.

### 14. Safeguards

#### *Negotiating history*

IAEA safeguards were discussed in Main Committee II (MC.II) of the 2000 NPT Review Conference. Strong support for the implementation and strengthening of Agency safeguards is reflected in the large number of proposals relating to this issue contained in the Final Document. Although the safeguards issue was less controversial than some others discussed in MC.II, there were still disagreements between various states parties over the signing and bringing into force of the 1997 additional protocol (known as the 'INFCIRC/540' protocol after the information circular in which it was first published), and whether its ratification by a state should be a condition of supply.

There was disappointment amongst some states parties over the sluggish pace at which states have signed and/or ratified the additional protocol. In their statement on the subject, the NWS urged all NNWS to sign the additional protocol and stated that they were in the process of seeking ratification of their own agreements. The NAM working paper (NPT/CONF.2000/18), while endorsing the IAEA safeguards regime and supporting full-scope safeguards as a necessary pre-condition for new supply arrangements, made no mention of the additional protocol.

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#### 14a. Voluntary-offer Safeguards

'The Conference stresses that comprehensive safeguards and additional protocols should be universally applied once the complete elimination of nuclear weapons has been achieved. In the meantime, the Conference calls for the wider application of safeguards to civil nuclear facilities in the nuclear-weapon States under the relevant voluntary-offer safeguards agreements in the most economic way possible, taking into account the availability of IAEA resources.' [Article III etc., paragraph 12]

#### *Interpretations*

The reference to nuclear-weapon states in this paragraph relates to the five, legally recognised NWS only. It cannot include India, Israel and Pakistan since they are not parties to the NPT. If they were it would be as NNWS as only those states that 'exploded...a nuclear device prior to 1 January 1967' are deemed to be NWS.

The paragraph might be read as implying that the NWS are under no obligation to accept the application of safeguards on their facilities until complete elimination has taken place. This, however, was not the intention of the paragraph, which should be interpreted as a call to the NWS that have not yet done so to place all civil nuclear installations under voluntary-offer safeguards. It also alludes to the fact that the Agency's resources are extremely limited.

#### *Levels of fulfilment*

- Complete fulfilment – all representative civil nuclear installations are placed under voluntary-offer safeguards by NWS that have not yet done so, and the Agency is provided with the necessary funds.
- Positive steps – the list of facilities to which the IAEA is given access is extended and/or additional contributions are made to the Agency's budget for this purpose.
- No movement – no additional facilities are added to the list.
- Outright non-fulfilment – facilities are withdrawn from the list. Access to listed facilities is refused.
- Other actions – installations are closed.

#### *Political realities*

The placement of civil nuclear installations and materials in the NWS under IAEA safeguards is complicated by financial considerations. The resources needed to put all civil nuclear facilities in China, Russia and the US under IAEA safeguards may be comparable to the entire current annual budget of the IAEA Department of Safeguards. (Civil nuclear facilities and material in France and the UK are already under Euratom safeguards). China, Russia and the US have presented lists of installations for possible application of Agency safeguards. However, the prospects for action in this area are not promising as the IAEA is reported to lack even the resources needed to apply the required safeguards measures, including round-the-clock inspection, at Japan's new spent-fuel reprocessing facility.

Many states believe the NWS should pay for applying safeguards to their civil nuclear installations. However, if it should be decided that the costs of implementing voluntary safeguards offers were to be funded entirely by the NWS themselves, France and the UK might be expected to object, as they are already paying for the application of IAEA safeguards to their civil facilities via Euratom safeguards.

#### *Recommendations*

- All NWS should submit to international safeguards a representative sample of their nuclear facilities.
- Means should be found to fund the safeguarding of the above.

## 14b. Safeguards: Effectiveness & Efficiency

'The Conference reaffirms that IAEA safeguards should be assessed and evaluated regularly. Decisions adopted by IAEA Board of Governors aimed at further strengthening the effectiveness and improving the efficiency of IAEA safeguards should be supported and implemented.' [Article III etc., paragraph 16]

### *Interpretations*

This proposal originates from paragraph 11 of the 1995 Principles and Objectives. It can be divided into three parts. First, it reaffirms the need to adapt the application of Agency safeguards as circumstances dictate, and calls for regular assessment and evaluation. Second, the reference to 'further strengthening the effectiveness and improving the efficiency of IAEA safeguards' implies that the IAEA safeguards system should be further developed and applied in as streamlined a fashion as possible, without impairing their ability to achieve the necessary level of confidence. Third, the phrase '...IAEA safeguards should be supported and implemented' would seem to be a call to states under Agency safeguards to facilitate their application, including the nomination procedures for safeguards inspectors. It also appears to be requesting that states in a position to do so, should contribute to the development of safeguards implementation techniques.

The appropriate body to assess and evaluate both the safeguards system and the way the Agency's Secretariat applies it is the Board of Governors. This has empowered a special body, the Standing Advisory Group on Safeguards Implementation (SAGSI), to make appropriate assessments and evaluations.<sup>5</sup> SAGSI meets regularly and reports to the Director General.

### *Levels of fulfilment*

- Complete fulfilment – the IAEA regularly assesses and evaluates safeguards, to ensure that the effectiveness and efficiency of safeguards with regard to particularly complicated plants, such as bulk-material-handling facilities, is improved. States facilitate the application of safeguards, and states in a position to do so, contribute to the development of safeguards implementation techniques.
- Positive steps – the effectiveness and efficiency of the safeguards application methods are increased on specific installations in individual states.
- No movement – N/A.
- Outright non-fulfilment – the IAEA fails to regularly assess and evaluate safeguards and fails to apply them in the most efficient and effective way possible. States prevent or hamper the application of safeguards.
- Other actions – N/A.

### *Political realities*

During 2000, the IAEA Secretariat took steps intended to strengthen the effectiveness and improve the efficiency of the safeguards system in six areas:

- agency access to, and evaluation of, substantially more information than previously available to the Agency about states' nuclear and nuclear-related activities;
- increased safeguards access to locations in a state;
- advances in safeguards technology and verification procedures;
- increased cooperation with state and regional systems of accounting and control of nuclear material;
- safeguards training; and
- integrated safeguards.

Although some progress in these areas has been possible despite economic constraints, the Agency remains concerned about the continuing inadequacy of the regular budget, and about its enforced reliance on extra-budgetary resources for the development of safeguards.

At the national level, the majority of states that have not signed a standard IAEA safeguards agreement for NPT state parties (known as an 'INFCIRC/153' agreement after the information circular in which it was first published) do not have significant nuclear activities, and therefore do not feel that this is a priority, despite the fact that a simplified model safeguards agreement has been devised for them, greatly facilitating the procedures involved.<sup>6</sup> The additional protocol to the standard safeguards agreement has been generally well received, but, to date, has only 61 signatories and 24 contracting parties.

### *Recommendations*

- States should encourage other states to adopt the additional protocol.
- States that have yet to adopt an INFCIRC/153 comprehensive safeguards agreement could adopt the additional protocol at the same time as concluding this agreement.
- Small, joint delegations from, for example, Australia, Japan, and the EU, could visit the states in question to urge their governments to conclude safeguards agreements and, on request, assist them with this process.
- The Agency should accelerate the development and implementation of integrated safeguards to lower the cost of safeguarding specific types of installation, without reducing its quality.
- Seminars or workshops should be organised to exchange experiences of concluding safeguards agreements. The aim would be to encourage additional states to conclude such agreements, and to dispel concerns about their application.

## 14c. The IAEA & Financial Constraints

'The Conference notes the considerable increase in the Agency's safeguards responsibilities since 1995. It further notes the financial constraints under which the IAEA safeguards system is functioning and calls upon all States parties, noting their common but differentiated responsibilities, to continue their political, technical and financial support of IAEA in order to ensure that the Agency is able to meet its safeguards responsibilities.' [Article III etc., paragraph 30]

### *Interpretations*

This paragraph has a number of ambiguities. It would seem to call for an increase in the Agency's regular budget (i.e. departing from the 'zero-growth' policy) but might also be taken to mean that states which can afford to do so should make greater contributions to the Agency's technical assistance activities. As there has been a political understanding that the safeguards and technical assistance budgets should be of a similar magnitude, this could have the effect of indirectly adding to the funds available for safeguards. In mentioning 'technical' support, it seems to hint that states should continue to make extra-budgetary funds available for safeguards development. The mention of political support is open to various interpretations. These may include: support for safeguards in the Board of Governors and the General Conference; full cooperation in accrediting inspectors; assisting the application of safeguards; nominating competent nationals for service as safeguards inspectors; and accepting more stringent safeguards measures if these can be shown to lead to greater effectiveness.

### *Levels of fulfilment*

- Complete fulfilment – states pay their contributions to the regular and operational budgets and, those that can afford to do so, make greater contributions to the Agency's technical assistance and safeguards development activities.
- Positive steps – states pay their contributions to the regular and operational budgets.
- No movement – N/A.
- Outright non-fulfilment – states default on their regular budget payments and/or fail to make their assessed contributions to the operational budget.
- Other actions – N/A.

### *Political realities*

The IAEA is facing mounting financial pressures, as acknowledged in this paragraph. The likelihood is that this trend will continue as the strengthened safeguards system is implemented and safeguards responsibilities are increasing. Among the consequences of the shortage are:

- the inability to carry out a portion of mandatory inspections;
- growing dependency on extra-budgetary contributions to make up for shortfalls in the regular safeguards budget;
- difficulties in implementing the additional protocol and outstanding comprehensive safeguards agreements as the costs outstrip the resources available; and
- continuation of the Agency's established zero-growth policy.

The political and technical constraints on the IAEA's safeguards system should also be noted. Some countries may find safeguards overly burdensome, whilst others tend to consider them ineffective. The application of Agency safeguards is also said to be hampered by a shortage of qualified inspectors, as those best equipped to fill such positions may be attracted to better-paid jobs and longer-term career prospects in industry. Considerations such as the burden of international removals, children's schooling, and the problem of employed spouses having to give up their jobs also play a part.

### *Recommendations*

- The rationalisation of safeguards approaches and techniques to keep the cost of safeguards application as low as possible without affecting its efficacy.
- The introduction of integrated safeguards should be accelerated as this may reduce current costs and thus put less pressure on IAEA resources.

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## 14d. The Additional Protocol

'The Conference welcomes the fact that since May 1997, the IAEA Board of Governors has approved additional protocols to comprehensive safeguards agreements with 43 States and that 12 of those additional protocols are currently being implemented. The Conference encourages all States parties, in particular those States parties with substantial nuclear programmes, to conclude additional protocols as soon as possible and to bring them into force or provisionally apply them as soon as possible.' [Article III etc., paragraph 45]

### *Interpretations*

This is a call to all states to bring into force, or provisionally apply, the additional protocol as soon as possible, especially NNWS with substantial nuclear programmes.

### *Levels of fulfilment*

- Complete fulfilment – entry into force/provisional application of the additional protocol by all NNWS with substantial nuclear programmes.
- Positive steps – entry into force/provisional application of the additional protocol by NNWS that do not have substantial nuclear programmes, and signature of the additional

protocol by some NNWS with substantial nuclear programmes.

- No movement – no new signatures or implementation of the additional protocol.
- Outright non-fulfilment – statements by NPT parties that they have no plans to sign or implement the additional protocol.
- Other actions – signature and entry into force of an additional protocol with the IAEA by non-parties.

### *Political realities*

The additional protocol was conceived to reinforce the standard safeguards agreement contained in INFCIRC/153,

by enabling the Agency to take all necessary steps to ensure that the state's declarations are complete and correct. However, some states seem to see the additional protocol as imposing a further burden, including a potential infringement of their sovereignty, and therefore hesitate to accede to it.

#### *Recommendations*

- States that have not yet done so should sign and/or ratify the additional protocol.
- States that are in the position to do so should offer assistance to these states in concluding and implementing the additional protocol.

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### 14e. Safeguards Assistance

'The Conference recommends that the Director General of IAEA and the IAEA member States consider ways and means, which could include a possible plan of action, to promote and facilitate the conclusion and entry into force of such safeguards agreements and additional protocols, including, for example, specific measures to assist States with less experience in nuclear activities to implement legal requirements.'

[Article III etc., paragraph 47]

#### *Interpretations*

Experience has shown that some states have difficulty in approving safeguards agreements, bringing them into force and drafting and adopting the appropriate legislation that should make their implementation possible. This may result in a situation where, without any ill will on the part of the state, the Agency finds itself unable to apply safeguards. Given the necessary funds, to cover such items as travel, the Secretariat should be able to assist states in this respect, at relatively modest expense.

#### *Levels of fulfilment*

- Complete fulfilment – the Director General and the IAEA member states consider ways and means, including a possible plan of action, to promote and facilitate the conclusion and entry into force of safeguards and additional protocols.
- Positive steps – the Director General or the IAEA member states consider ways and means to promote and facilitate the above.
- No movement – N/A.
- Outright non-fulfilment – no attempt is made by the Director General or the IAEA member states to consider ways and means to promote and facilitate the above.
- Other actions – a study on this issue by an NGO or private consultant. An effort by a nuclear-weapon-free zone (NWFZ) secretariat — OPANAL, the South Pacific Forum, ABACC, etc. — to help states approve safeguards agreements and bring them into force.

#### *Political realities*

This potentially useful suggestion merits follow-up but, given the current workload upon the Secretariat and the shortage of necessary funds, extra-budgetary funds might have to be sought to ensure follow-up. It should be noted that the Board of Governors cannot make new funds or staff available without a mandate from the General Conference.

#### *Recommendations*

- The Director General should prepare proposals for ways and means, including a plan of action, to 'promote and facilitate the conclusion and entry into force of such safeguards agreements and additional protocols.'
- The Board should adopt a plan of action on this issue.
- Elements of a plan of action might include a pledging conference to encourage states to sign and implement the additional protocol.
- A plan of action might also include the identification and effective publicising by the IAEA of the incentives for states to sign and ratify the protocol. Examples might be:
  - preferential treatment in areas such as technical assistance;
  - help in drafting and adopting the necessary legislation;
  - assistance in upgrading the infrastructure of national nuclear material accountancy and control; and
  - Agency help in arranging assistance with delicate operations, which states lack the means of handling themselves, such as the removal, reprocessing and/or storage of irradiated fuel and highly radioactive waste.

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### 14f. The Civil Plutonium Management Guidelines & Highly Enriched Uranium

'The Conference encourages all States that separate, hold, process or use separated plutonium in their civil nuclear activities to adopt policies similar to those which have been adopted by the participants in the Plutonium Management Guidelines (INFCIRC/549). Furthermore, the Conference encourages the States concerned to consider similar policies for the management of highly enriched uranium used for civil purposes.' [Article III etc., paragraph 55]

#### *Interpretations*

The Plutonium Management Guidelines (PMG) were adopted in December 1997 by a group of nine states (Belgium, China, France, Germany, Japan, the Russian Federation, Switzerland, the UK and the US).

The language in this paragraph is such as to leave room for the proposal to be implemented by individual states or groups of states, including regional organizations and the IAEA itself. While the first part of the paragraph does not appear to be restricted to NPT parties as it refers to 'all States',

the second part, which deals with the management of highly enriched uranium (HEU), is addressed to 'the States concerned', thus implying a more restricted focus.

#### *Levels of fulfilment*

- Complete fulfilment – implementation of the PMG by all states that use Pu in their civil nuclear activities. Active consideration of a similar arrangement for the management of HEU.
- Positive steps – implementation of the PMG by additional states.
- No movement – no implementation of the PMG in additional states. No discussions of a similar arrangement for HEU.
- Outright non-fulfilment – actions by the original adherents to the PMG to undermine the guidelines, such as a refusal to implement them.
- Other actions – reviews of national policies for management of Pu and HEU in civil nuclear activities.

#### *Political realities*

Although the PMG are applied by all NWS, and other states such as India, Israel and Pakistan are also being encouraged to do so, the process is voluntary, the aim being to establish a transparency regime based on adherents' goodwill.<sup>7</sup>

Pu and HEU are dealt with together in this paragraph although, in practice, they pose different problems and for this reason are usually dealt with separately. Nevertheless, in their communication to the IAEA concerning this issue in December 1997, seven of the nine states that adhere to the PMG stated that they are in favour of adopting similar guidelines for the management of HEU. China and Russia did not express an opinion either way. Consultations on the question of extending the PMG to civil HEU were held during

2000. More recently, however, the group has taken the decision not to address the HEU issue for the present.

#### *Recommendations*

- The PMG should be strengthened. Steps to achieve this might include:<sup>8</sup>
  - an obligation on adherents to submit their declarations in a timely manner;
  - greater emphasis on submitting complete declarations;
  - releasing declarations to the public simultaneously with submissions to the IAEA (this already takes place in the UK); and
  - providing separate declarations on military plutonium, as appropriate.
- Additional states should be encouraged to accept the guidelines. This might include discussions with:
  - the Netherlands, Sweden and Italy;
  - states that were part of the former USSR who have jurisdiction over stocks of Pu;
  - the DPRK; and
  - India, Israel and Pakistan.
- Steps should be taken to progress discussions on HEU. These might include:
  - An NGO study elucidating the benefits of adopting a similar informal transparency arrangement for HEU and discussion of the political hurdles and practical considerations involved; and
  - the distribution of US findings about the advantages of stopping the use of HEU in research reactors.
- Relevant states should be encouraged to:
  - change the fuel of reactors currently using HEU into low enriched uranium (LEU); and
  - assist states to make this change in all relevant technical and other ways.

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## 15. Safeguards & Export Controls

### *Negotiating history*

Export controls were dealt with in both MC.II and MC.III, but primarily in the former. They proved to be among the most controversial issues of the 2000 NPT Review Conference, which is reflected in the number of paragraphs related to these issues that had to be deleted from the draft Final Document before a consensus could be reached.

Underlying the debate on export controls was the perception by some NAM states, most visibly Egypt, Iran and Malaysia, that inclusion of a reference in the Final Document to the Zangger Committee, but more particularly to the Nuclear Suppliers Group (NSG), would have begun a process of giving these bodies formal status. These states feared that this would have negative consequences within the non-proliferation regime and for the 2005 NPT Review Conference and its PrepCom. This issue was seen to have legal and political implications. The legal aspect related to the interpretation by states parties of what actions were consistent or inconsistent with the rights and obligations set out in the Treaty. The political side focused on those countries that felt subject to unfair discrimination from the NSG.

These issues crystallised in disagreements over making direct references to the role of the NSG in the Final Document.<sup>9</sup> The G-10 wanted the Conference to recognise the role of the Zangger Committee and existing national export control mechanisms in the prevention of nuclear

proliferation.<sup>10</sup> In conjunction with the EU, they acknowledged that greater transparency regarding export controls, called for in the 1995 Principles and Objectives, was still needed, and that further efforts and dialogue were required to this end.<sup>11</sup> Egypt, Iran and others complained, however, that as long as not all states could participate in the decision-making process of the Zangger Committee and the NSG, they could not feel confident that their concerns were being taken into account. Iran, in particular, argued that 'unilaterally enforced export controls' generated by the NSG guidelines, hampered developing countries' access to nuclear materials, equipment and technology for peaceful purposes and argued in favour of multilateral negotiations on effective transfer guidelines. Pending these negotiations, Iran argued that the NSG should take practical steps to practice greater transparency in its proceedings and decision-making processes and should allow all interested states parties to take part in its deliberations.

Disagreements over the transparency issue were still unresolved at midday on the final Friday of the Conference. Iran, Egypt and the G-10 refused to surrender their positions. MC.II was therefore reconvened on Saturday afternoon after the disagreements in relation to Iraq had been resolved (see the 'Negotiating history' of 16c, below). At this meeting, Iran suggested that the disputed paragraphs be deleted in order to achieve consensus. Although the G-10 and the EU were

unhappy at losing their language on the NSG, Zangger and their efforts at transparency, they came under intense pressure to agree so that a Final Document could be adopted. Eventually, they submitted, on the understanding that, in the absence of new language in 2000, the language in the 1995 Principles and Objectives would remain operative.

The issue of full-scope safeguards as a condition of nuclear supply to non-NPT parties was also controversial. During the Conference, China opposed a paragraph reaffirming the 1995 Principles and Objectives decision to require this.<sup>12</sup> The omission of a paragraph from the Final

Document, which had been listed among the 1995 Principles and Objectives, was considered by many to represent a backward step for the non-proliferation regime. In addition, in one of their working papers, the G-10 proposed that the next Review Conference should consider interpreting the demand for full-scope safeguards as a condition of supply as meaning that recipients should also have accepted the additional protocol. This was also omitted in the Final Document, which thus contained no reference to this matter.

The key paragraphs that were finally deleted from the 12 May draft were numbers 24, 40, 41, 42, 61, 68, 70, and 72.<sup>13</sup>

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## 15a. Technical Assistance

‘The Conference, recalling the obligations of all States parties under articles I, II, and III of the Treaty, calls upon all States parties not to cooperate or give assistance in the nuclear or nuclear-related field to States not party to the Treaty in a manner which assists them in manufacturing nuclear weapons or other nuclear explosive devices.’ [Article III etc., paragraph 34]

### *Interpretations*

This is a reminder to states parties not to give assistance to non-parties that could conceivably be of use in a nuclear-weapons programme. Although they are not named, this relates to the transfer of materials and technology to India, Israel and Pakistan. Interpretations may differ over how ‘assistance’ and ‘nuclear-related field’ should be defined in this context, as certain technology is neither nuclear, nor obviously dual-use and yet may assist a state in developing nuclear weapons. The question, therefore, is where to draw the line between legitimate and illegitimate assistance. Some states interpret this paragraph to mean that *any* nuclear assistance to a suspect non-party is tantamount to the provision of assistance to a nuclear weapons programme, despite the fact that this interpretation conflicts with article IV on the peaceful uses of nuclear energy.

### *Levels of fulfilment*

- Complete fulfilment – states parties refrain from providing any nuclear weapon-related assistance to non-parties.
- Positive steps – states parties review their cooperation and assistance practices in an effort to ensure that they do not assist the nuclear weapons programmes of non-parties.
- No movement – N/A.
- Outright non-fulfilment – states parties assist non-parties with their nuclear weapons programmes.
- Other actions – third parties put pressure on states to comply with this obligation and, if this does not help, take appropriate punitive measures. The exporting state requires, as a condition of supply, safeguards only on the facility, or facilities, involved.

### *Political realities*

A number of states parties to the NPT are alleged to have ignored their Treaty obligations and supplied non-parties to the Treaty with technologies and materials that could assist in the development of their nuclear weapons programmes. Two – and possibly three – non-parties to the Treaty are said to have benefited from assistance from some NWS.

Although such activities are denounced by the international community, this appears to have limited effects. Exports that may help nuclear programmes appear to be continuing. A core problem in this context is how far the definition of assistance should be stretched, and whether a clear dividing line can be drawn between civil and military activities.

The lifting of the sanctions imposed on India and Pakistan by Canada, Japan and the US following their 1998 tests may well complicate matters further, and could be seen in a negative light where non-proliferation is concerned. These actions make it easier for such states to assist India and Pakistan’s nuclear activities, and might also set a precedent for other NNWS that seek to pursue a nuclear-weapons programme. In doing so, it could seriously undermine the nuclear non-proliferation regime.

### *Recommendations*

- States should not provide weapon-related assistance to non-parties to the Treaty.
- Attempts should be made to clarify the degree to which specific activities should be regarded as assistance to nuclear-weapons programmes.

## 15b. Export Controls

‘The Conference recognizes that national rules and regulations of States parties are necessary to ensure that the States parties are able to give effect to their commitments with respect to the transfer of nuclear and nuclear-related dual-use items to all States taking into account articles I, II, and III of the Treaty, and, for States parties, also fully respecting article IV. In this context, the Conference urges States parties that have not yet done so to establish and implement appropriate national rules and regulations.’  
[Article III etc., paragraph 51]

### *Interpretations*

This is an appeal for all states parties to operate national export controls, and to do so in accordance with their NPT commitments. However, there are differing interpretations of what these commitments are, as it is difficult to draw a clear line between the obligations contained in article I<sup>14</sup> and those found in article IV.<sup>15</sup>

### *Levels of fulfilment*

- Complete fulfilment – states in a position to engage in nuclear exports impose controls in a manner consistent with their other NPT obligations. All states ensure that they are not used as transit points, including those states that are not in a position to export.
- Positive steps – specific states, particularly those that could be used as transit points, introduce export controls.
- No movement – N/A.
- Outright non-fulfilment – specific states abandon export controls.
- Other actions – states assist other states in introducing national export control legislation. States share information on export requests that might be nuclear-weapon-related and transit of potentially weapon-related items.

### *Political realities*

At the 2000 NPT Review Conference, while the non-aligned states were prepared to recognise that national export controls are necessary to implement NPT commitments, they were not

prepared to recognise the right of states to work together to draw up common guidelines for such controls if these resulted in restrictive export policies. However, the need for effective export controls has become more urgent because developments in a range of areas have resulted in:

- the distinction between military and commercial products becoming less clear;
- sophisticated sensitive technologies becoming more readily available;
- many states regarding short-term economic benefits of supply as outweighing longer-term security concerns;
- the pace of high technology business having increased enormously and the information revolution and the internationalisation of scientific knowledge having accelerated the diffusion of advanced technologies; and
- barriers to the flow of goods, investment, labour and services having diminished substantially in Europe, the Americas and Asia.

### *Recommendations*

- States should assist each other in introducing and implementing national export control legislation.
- States should share information on suspect nuclear-weapon-related export requests.
- Efforts to clarify the specific materials and facilities that would be of assistance to nuclear weapons programmes should continue.

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## 15c. Transparency

‘The Conference requests that any supplier arrangement should be transparent and should continue to take appropriate measures to ensure that the export guidelines formulated by them do not hamper the development of nuclear energy for peaceful uses by States parties, in conformity with articles I, II, III, and IV of the Treaty.’ [Article III etc., paragraph 53]

### *Interpretations*

This paragraph originates from a 1995 commitment to promote transparency in export control arrangements. Paragraph 17 of the Principles and Objectives stated that: ‘Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.’ This language has been weakened in the Final Document, by changing the original phrase ‘should be promoted’ to ‘requests that’. Moreover, it is not clear who should take the ‘appropriate measures’ called for in the proposal or what they should be or who the ‘them’ are – the NSG or individual states. It also mixes up the issue of transparency with peaceful uses, making the question of fulfilment difficult to assess. In the interests of clarity, only the first part of the paragraph is dealt with here. Discussion of the peaceful uses issue is included in the section above.

### *Levels of fulfilment*

None are offered, for reasons discussed in ‘Political realities’.

### *Political realities*

Underlying this paragraph are the conflicting positions of the developing states and the NSG:

- From the perspective of the NSG, this request is being fulfilled by the holding of international seminars on the role of export controls in nuclear non-proliferation, of which one was held in Vienna, in 1997, and another in 1999, in New York. These events are organised by the NSG, and are designed specifically to contribute to transparency, as called for in paragraph 17 of the Principles and Objectives. (See deleted paragraph number 42 from the draft of 12 May, footnote 13).
- From Iran’s perspective, and a number of other members of the non-aligned, complete fulfilment of this proposal would mean the participation of developing countries in the NSG, or its abolition.

At present, both sides in the argument show few signs that they are willing to compromise.

### *Recommendations*

- At least two international seminars should be held before 2005 on the functioning of the NSG.

- Bilateral consultations might be held with critics of NSG activities, with a view to understanding their objections, and taking them into account to the extent possible.
- The NSG web site could be upgraded to make it interactive, thus allowing for electronic dialogues.

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## 16. Compliance

### *Negotiating history*

Compliance was discussed primarily in SB.2 of MC.II, along with regional issues, despite the fact that many would have preferred the issue to be dealt with in relation to safeguards. It should be noted that the rules of procedure for NPT Review Conferences make any discussion of compliance difficult because a state against which allegations of non-compliance have been made retains the right to block any consensus language on the issue. It should also be noted that the DPRK was not present at the Review Conference, but Iraq was, and this had a significant impact on how the Conference treated the two cases.

Whether non-compliance is solely concerned with article III and IAEA safeguards, or is also relevant to other articles of the Treaty has been a long-standing subject of debate in the NPT context. Many states, therefore, while wishing to address article III non-compliance rigorously, may have been constrained by concerns that this would generate an acrimonious debate on these matters in the context of other articles.

Within this general context, the key issues addressed by the Conference were how to handle allegations of non-compliance and what measures should be taken against non-compliant parties. In practice, the DPRK case generated few difficulties for the reason cited above, but the opposite was the case with Iraq. The problems it posed were how to characterise Iraq's status with regard to compliance with the Treaty, and whether it was legitimate to discuss the implementation of UN Security Council resolutions in the context of an NPT Review Conference. Iraq wanted the Conference to focus exclusively on the way it had implemented its obligations under the NPT over the last five years, and not on issues relating to WMD and the implementation of UN resolutions. The IAEA, it argued, had specifically reported that there was no evidence of diversion of materials in Iraq's nuclear facilities and, consequently,

there were no allegations of non-compliance to answer. Accepting this line of argument, Russia and a number of Arab states questioned whether Iraq could still be said to be non-compliant if the IAEA had not reported it to be so since 1995. In addition, China argued that there was no evidence of present non-compliance, and that the Iraqi file should be closed. The US, on the other hand, was determined to discuss Iraq's failure to comply with Security Council resolution 687. In response, Iraq accused the US of failing to comply with its own NPT commitments, citing a US-Israeli agreement on some aspects of peaceful uses of nuclear energy, dated 22 February 2000. But the US argued that Israel's non-adherence to the NPT was not relevant in the context of the discussion of Iraq's non-compliance and that the Conference could not ignore Iraq's continued non-compliance with Security Council resolution 687.

These divergent positions gave rise to an acrimonious dispute. Paragraph 9 of the 11 May draft (NPT/CONF.2000/MC.II/CRP.13/Rev.1)<sup>16</sup> was deleted in an attempt to reach agreement, but this still left negotiations deadlocked over paragraph 10. However, following the diplomatic efforts of various delegations and intervention from senior officials in the US Administration, a consensus was eventually achieved. The US agreed to a form of wording that Iraq was also prepared to accept, noting the recent IAEA inspections and recognising that since the 'cessation of IAEA inspections in Iraq on 16 December 1998,' the IAEA 'has not been in a position to provide any assurance of Iraq's compliance under UN Security Council resolution 687.' At the same time, the Conference re-affirmed 'the importance of Iraq's full continuous cooperation with IAEA and compliance with its obligations.' This left opaque whether the sentence referred to the future alone, or both the past and the future. When the Final Document was adopted, Iraq registered its formal reservations, arguing that it had fully complied with the NPT.

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### 16a. The Security Council

'The Conference emphasizes the importance of access to the Security Council and the General Assembly by IAEA, including its Director General, in accordance with article XII.C. of the statute of IAEA and paragraph 19 of INFCIRC/153 (Corrected), and the role of the Security Council and the General Assembly, in accordance with the Charter of the United Nations, in upholding compliance with IAEA safeguards agreements and ensuring compliance with safeguards obligations by taking appropriate measures in the case of any violations notified to it by IAEA.' [Article III etc., paragraph 9]

### *Interpretations*

This paragraph makes it clear that the Director General may brief the General Assembly on possible violations of an IAEA safeguards agreement but only the UN Security Council can take binding action on such a matter. However, what is meant by 'appropriate measures' remains opaque.

### *Levels of fulfilment*

- Complete fulfilment – agreement among members of the Security Council and General Assembly as to what constitutes 'appropriate measures.' Appropriate action by the Security Council against states parties found guilty of violating their Treaty obligations.

- Positive steps – discussion takes place in the Security Council and General Assembly of what constitutes ‘appropriate measures.’
- No movement – no attempt is made to reach consensus over what constitutes appropriate measures.
- Outright non-fulfilment – N/A.
- Other actions – time is set aside in NPT Review Conferences to discuss measures that could be taken in cases of non-compliance.

#### *Political realities*

The Security Council is the only body that can act on the IAEA’s findings. Even if there is agreement in the IAEA over the validity of an allegation, this does not mean that the issue will be dealt with effectively by the Security Council, which may disagree over what constitutes appropriate action. The divisions that existed within the Security Council over how to deal with Iraqi and DPRK non-compliance illustrates this problem.

It is unclear how the non-proliferation review process can strengthen non-compliance procedures. Although there is support among many states for amending the consensus

rule to make it easier to take punitive measures against states found guilty of non-compliance, some states are likely to oppose such change. Any attempt to seriously address the issue may therefore increase tensions amongst NPT parties, and undermine the review process. The issue therefore presents the international community with a ‘Catch 22’: unless voting procedures are changed, the NPT may be increasingly regarded as impotent, but the very act of tackling such a thorny problem could threaten the consensus which underpins the Treaty and the regime.

#### *Recommendations*

- Consideration should be given to permanent members of the Security Council not exercising their veto in cases involving non-compliance with a safeguards agreement. As stated over 50 years ago in the Baruch Plan: ‘There must be no veto to protect those who violate their solemn agreements not to develop or use atomic energy for destructive purposes.’ (Baruch Plan, 14 June 1946).
- Time might be set aside at the 2005 NPT Review Conference to discuss the compliance issue.

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## **16b. The Non-proliferation Regime and Non-compliance**

‘The Conference reaffirms that the IAEA is the competent authority responsible for verifying and assuring, in accordance with the statute of IAEA and the IAEA safeguards system, compliance with its safeguards agreements with States parties undertaken in fulfilment of their obligations under article III, paragraph 1, of the Treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. It is the conviction of the Conference that nothing should be done to undermine the authority of the IAEA in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by States parties should direct such concerns, along with supporting evidence and information, to IAEA to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.’

[Article III etc., paragraph 7]

#### *Interpretations*

This paragraph originated from an Iranian proposal in 1995, which attempted to criticise the US for making its own judgements on Iran’s nuclear activities, instead of presenting its concerns and evidence to the IAEA. It confirms the authority of the IAEA to verify compliance, and urges states parties that suspect others of non-compliance to present evidence of such activities to the IAEA. The paragraph stresses that once allegations of non-compliance have been independently verified by the IAEA, it is up to that body, and not the states parties themselves, to ‘draw conclusions and decide on necessary actions in accordance with its mandate.’ The word ‘should’ is used twice in relation to these obligations, rather than ‘are urged’ or ‘are recommended.’ This constitutes relatively strong language against the use of unilateral economic, political or military actions.

#### *Levels of fulfilment*

- Complete fulfilment – all states present their evidence of non-compliance to the IAEA.
- Positive steps – some states present their evidence of non-compliance to the IAEA.
- No movement – N/A.
- Outright non-fulfilment – states take unilateral action against states suspected of non-compliance and fail to submit evidence to the IAEA.

- Other actions – states present their concerns and evidence to the state concerned so that it can voluntarily submit to an investigation by the IAEA or another body nominated or convoked by the states concerned. States may also make their allegations to the IAEA direct, to the Secretariat of an NWFZ, or to that of another regional institution.

#### *Political realities*

Confidence in compliance mechanisms must be strong, providing a high degree of assurance that any violation will be dealt with firmly and effectively. This involves both detecting cases of non-compliance and having mechanisms to deal with them. In the latter context, there is no specific body within the IAEA dedicated to discussing the validity of allegations of non-compliance. The Statute gives no guidance in this matter, and SAGSI is not equipped to deal with it.

Although IAEA safeguards appear to be the mechanism through which NPT members deal with issues of non-compliance, in practice, the Agency has until recently been reluctant to deal with questions of weaponisation, as against diversion or clandestine production of nuclear materials. This is now changing with the introduction of the integrated safeguards system.

#### *Recommendation*

- A subsidiary body might be created within the Board of Governors. This body would be concerned with all issues

of diversion and non-declared activities, and would determine the validity of allegations. It would probably have to work by consensus. Both the state making the

allegations and the accused state should be able to attend and speak at its meetings, but should not be allowed to vote. Its findings could be reported to the Board.

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## 16c. Iraq

'Bearing in mind the importance of full compliance with the Non-Proliferation Treaty, the Conference notes the statement of 24 April 2000 by the IAEA Director General that, since the cessation of IAEA inspections in Iraq on 16 December 1998, the Agency has not been in a position to provide any assurance of Iraq's compliance with its obligations under Security Council Resolution 687 (1991). The Conference further notes that IAEA carried out an inspection in January 2000 pursuant to Iraq's safeguards agreement with IAEA during which the inspectors were able to verify the presence of nuclear material subject to safeguards (low enriched, natural and depleted uranium). The Conference reaffirms the importance of Iraq's full continuous cooperation with IAEA and compliance with its obligations.' [The Middle East, particularly implementation of the 1995 Resolution on the Middle East, paragraph 10]

### *Interpretations*

This paragraph leaves unclear whether it refers to Iraq's obligations under the UN Security Council resolution 687 or Iraq's IAEA safeguards agreement. This ambiguity was intentional, drafted to bridge the gap between the divergent positions of Iraq and the US, as described in the negotiating history.

Unlike the deleted paragraph 9 (see footnote 16), which referred specifically to the two 'regrettable' cases of non-compliance, this paragraph makes no direct reference to instances of non-compliance. It states that the IAEA has not been able to verify Iraq's compliance with its obligations under Security Council resolution 687, but it uses objective language to report this problem. The last line of the paragraph, which refers to '...the importance of Iraq's full continuous cooperation with IAEA and compliance with its obligations,' represents a device to reach agreement between the opposing positions of Iraq and the US. Iraq could interpret this last sentence as meaning that it had complied with its NPT obligations over the last five years, whereas the US could interpret it as a call to Iraq to comply with all its obligations in future.

### *Levels of fulfilment*

Levels of fulfilment relating to UN Security Council resolution 687 and the IAEA comprehensive safeguards agreement pursuant to the NPT, are outlined below.

- Complete fulfilment – Iraq complies with its IAEA obligations under Security Council resolution 687. Iraq cooperates fully with the IAEA pursuant to that resolution, and ratifies the additional protocol.
- Positive steps – Iraq complies with some of its IAEA obligations under Security Council resolution 687, e.g. by admitting inspectors into areas not necessarily covered by IAEA comprehensive safeguards inspections.

- No movement – Iraq continues to cooperate with the IAEA in terms of its safeguards agreement, but refuses to fulfil its relevant obligations under Security Council resolution 687.
- Outright non-fulfilment – Iraq refuses to cooperate with the Security Council in relation to its relevant obligations. Iraq refuses to allow IAEA inspections, pursuant to its safeguards agreement.
- Other actions – the international community finds a way out of the deadlock, perhaps reviewing Security Council resolution 687.

### *Political realities*

Concern over Iraq's activities remains, and is compounded by Iraq's refusal to allow the IAEA's Iraq Action Team to enter the country. Although further annual inspections under Iraq's INFCIRC/153 agreement with the IAEA have taken place, the long-term monitoring system for nuclear sites under Security Council resolution 687, known as the Ongoing Monitoring and Verification (OMV) system, has yet to be implemented.

Differences remain within the Security Council on how to react to Iraq's non-compliance with Security Council resolution 687. In these circumstances, the possibility of states taking direct action cannot be ruled out. This is an example of the situation referred to in the Epilogue (see page 4).

### *Recommendations*

- States parties should make a major effort to restore UN inspections in Iraq.
- An assessment of incentives that could be used to encourage Iraq to fulfil its obligations under Security Council resolution 687 should be undertaken.
- Steps should be actively pursued to persuade Iraq to accept the additional protocol.

## 16d. The DPRK

'The Conference looks forward to the fulfilment by the Democratic People's Republic of Korea of its stated intention to come into full compliance with its Treaty safeguards agreement with IAEA, which remains binding and in force. The Conference emphasizes the importance of the Democratic People's Republic of Korea preserving and making available to IAEA all information needed to verify its initial declaration.'  
[Article III etc., paragraph 15]

### *Interpretations*

This was a G-10 proposal from NPT/CONF.2000/MC.II/WP.3. The 'Treaty safeguards agreement' referred to here is the standard safeguards agreement pursuant to the NPT. This agreement remains binding and in force. When the IAEA first started to implement it, it discovered evidence that the DPRK had extracted more plutonium than it had declared. Since then, the DPRK has removed the irradiated fuel from its 5-megawatt (MW) research reactor, without allowing the Agency to obtain the information required to determine how it had been operated and the amount of plutonium that should have accumulated. These matters remain unresolved, hence the call to preserve and make available all information.

The IAEA has not been able to apply its full safeguards system in the DPRK. It has only been able, by resident inspection, to verify that the nuclear fuel removed from the 5-MW reactor remains in storage and that the chemical reprocessing facility is not operating.<sup>17</sup> Under the terms of the 1994 Agreed Framework it is a precondition for the supply of major components of the light-water reactors (LWRs) that the DPRK should again return to full compliance with its IAEA safeguards agreement.

### *Levels of fulfilment*

- Complete fulfilment – the DPRK returns to full compliance with the Agency's safeguards agreement and makes available the information needed to verify its initial declaration.
- Positive steps – swift progress takes place under the Agreed Framework.
- No movement – delays continue in implementing the Agreed Framework.
- Outright non-fulfilment – the DPRK fails to make available any additional information to assist the IAEA in

its verification objectives, and ceases to allow IAEA inspections. The Agreed Framework collapses.

- Other actions – the 1992 ROK/DPRK Joint Nuclear Control Commission is revived.<sup>18</sup>

### *Political realities*

The IAEA is still unable to verify the correctness and completeness of the DPRK's initial declaration. In November 2000, the Agency explained in more detail its generic requirements for the verification procedure, and was permitted by the DPRK to identify some of the documents that needed to be preserved for this purpose. However, the DPRK remains in non-compliance with its safeguards agreement and the Agency has been able to implement only some of the required safeguards measures.

Limitations on the activities of the IAEA have been compounded by delays in implementing the Agreed Framework. The completion of the LWR project may only be possible by 2008, despite the US' original pledge of 2003. This has led the DPRK to talk of scrapping the Framework Agreement and abandoning its nuclear freeze.

### *Recommendations*

- Work on the construction of LWRs should proceed as rapidly as possible.
- Steps to promote good relations between the DPRK and the ROK should be continued.
- Talks between the DPRK and the US should be resumed, without the imposition of unreasonable preconditions by either side.
- Neighbouring states, including the Republic of Korea, China, and Russia, should urge the DPRK to allow the IAEA to give full effect to the safeguards agreement concluded pursuant to the NPT.

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## 17. Security Assurances & NWFZs

### *Negotiating history*

The issue of negative security assurances (NSAs) was discussed in MC.I, alongside nuclear disarmament. A chairman's working paper, containing paragraphs on these issues, was first submitted on 4 May, and following revisions on 9 May, was incorporated in the draft report of MC.I. This was submitted to the plenary meeting on 11 May.

During discussions, the non-aligned and the NAC raised concerns that the NWS were not taking their NSA commitments seriously. As a result, Egypt renewed its demand that NSAs be made legally binding. The NWS, with the exception of China, responded by arguing that the NSAs had already been significantly strengthened under the various protocols of the NWFZs, and that no further action was needed. In contrast to previous Conferences, the NATO-5 appeared to publicly support the non-aligned's position, and proposed language to bridge the differences between the NWS and the non-aligned. However, the issue did not command the

attention that many observers believed it would. No recommendations for immediate action were made on this issue and it was remitted for further discussion to the PrepCom for the 2005 NPT Review Conference.

China argued for the inclusion in the Final Document of NSAs by the NWS, and for the conclusion of an international convention on this subject. In order to reach agreement, however, these proposals were dropped.

NWFZs were discussed in MC.II. Many states referred to the importance of this issue in their working papers and statements, including Belarus, China, the EU, Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

Many delegations, including China and the US, expressed their support for the establishment of a NWFZ in Central Asia, which Japan noted would be the first in the northern hemisphere. Five Central Asian countries submitted a working paper asking the Conference to recognise and

welcome the steps that they have taken towards a draft treaty and expressing their firm commitment to conclude the process.

A Belarus proposal for a nuclear-weapon-free 'space' in Central and Eastern Europe, however, generated little support. This issue remained unresolved until the end of negotiations. Belarus wanted the Final Document to make a specific reference to its proposal, but this was opposed by 15

countries from the region and the EU. Belarus refused to compromise until the last minute, when it settled for a paragraph based on UN Disarmament Commission (UNDC) language, which noted and welcomed all initiatives to promote new NWFZs.

The importance of signing and ratifying the existing NWFZ treaties was stressed, including the protocols relevant to the NWS.

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## 17a. Security Assurances & the NWS

'...The Conference agrees that legally binding security assurances by the five nuclear-weapon States to the non-nuclear-weapon States parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) strengthen the nuclear non-proliferation regime. The Conference calls on the Preparatory Committee to make recommendations to the 2005 Review Conference on this issue.'  
[Article VII etc., paragraph 2]

### *Interpretations*

This paragraph represented a compromise between the positions of the non-aligned and the NWS on the issue of legally binding NSAs, and originated from a NATO-5 proposal to bridge the gap between the two positions. The non-aligned wanted NSAs not only in the current context of NWFZs and Security Council resolutions, but also through a legally binding convention. This would also offer commitments to NNWS that were not parties to a NWFZ. With the exception of China, the NWS resisted this initiative.

### *Levels of fulfilment*

- Complete fulfilment – the PrepCom makes recommendations on the issue of legally binding security assurances to the 2005 NPT Review Conference.
- Positive steps – no recommendations on this issue are made, but discussions take place within the PrepCom on a legally binding document on NSAs.
- No movement – N/A.
- Outright non-fulfilment – this issue is not discussed at the PrepCom.
- Other actions – additional NWFZs are created.

### *Political realities*

The subject of NSAs has long been a cause of controversy between the non-aligned and a number of NWS. It figured prominently in the run-up to the 2000 Review Conference and became even more important in the eyes of many states party to the NPT who believed that some of the NWS were wavering in their commitments on assurances. A number of US and NATO proclamations regarding nuclear doctrine appeared to undermine the long-standing commitments that

the NWS reaffirmed in 1995 – i.e., that nuclear weapons would not be used (or threatened to be used in the case of the NWFZ Treaties) against NPT NNWS. For example, when signing protocol I to the Pelindaba Treaty, President Clinton preserved the US option to retaliate with nuclear weapons against an attack involving chemical or biological weapons.<sup>19</sup> This position was reaffirmed by US Defence Secretary Cohen the following year, when he rejected a German proposal that NATO adopt a policy of no-first-use of nuclear weapons in future conflicts. In the case of NATO, its NWS parties (France, the UK and the US) retain the option to use nuclear weapons first in future conflicts as part of NATO's deterrence posture. In its new military doctrine, NATO has also reaffirmed its right to use nuclear weapons in retaliation against a chemical or biological attack. This posture conflicts with the NWS' commitments to the NNWS, as reaffirmed in 1995.

The incentives for the NWS to strengthen their NSAs may have diminished significantly following the terrorist attacks on the US and associated fears of WMD use. Some have argued that a failure to strengthen these pledges could have long-term negative consequences and weaken the NPT regime.

### *Recommendations*

- Possible draft treaties on security assurances should be discussed in the PrepCom to the 2005 NPT Review Conference (two such drafts already exist, drawn up by Myanmar in 1998 [NPT/CONF.2000/PC.II/18] and South Africa in 2000 [NPT/CONF.2000/PC.III/9]).
- Discussions should be restarted amongst the NWS over the possibility of agreeing universal security assurances.

## 17b. Existing NWFZs

'The Conference stresses the importance of signature and ratification of the treaties of Tlatelolco, Rarotonga, Bangkok and Pelindaba by all regional States, as well as the signature and ratification by the nuclear-weapon States that have not yet done so of the relevant protocols to those treaties, recognizing that security assurances are available to States parties to those treaties. In this context, the Conference also takes note of the statement of the five nuclear-weapon States that the internal processes are under way to secure the few lacking ratifications to the treaties of Rarotonga and Pelindaba, and that consultations with the Parties to the Treaty of Bangkok have been accelerated, paving the way for adherence by the five nuclear-weapon States to the protocol to that Treaty.' [Article VII etc., paragraph 11]

### *Interpretations*

This is an unambiguous call to the states in the regions concerned to sign and ratify the relevant NWFZ treaties and to the NWS to sign and ratify the protocols to them.

### *Levels of fulfilment*

- Complete fulfilment – signature and ratification of the Treaty of Tlatelolco by Cuba. Signature and ratification of the treaties of Bangkok and Pelindaba by all states in the respective regions that have not yet done so. Signature and ratification of the protocol to the Treaty of Pelindaba by Spain, and ratification of it by Russia and the US. Ratification of the protocols to the Treaty of Rarotonga by the US. Accelerated negotiations to facilitate signature and ratification of the protocol to the Treaty of Bangkok by the NWS.
- Positive steps – some of the ratifications listed above take place, and progress is made towards reaching agreement over the Treaty of Bangkok.
- No movement – N/A.
- Outright non-fulfilment – no steps are taken towards ratification of additional NWFZ treaties. Negotiations over the protocol to the Treaty of Bangkok stall. States walk out/abrogate any one of the NWFZ treaties.
- Other actions – the Treaty of Bangkok is amended to facilitate acceptance of the protocol by the NWS.

### *Political realities*

The Treaty of Tlatelolco has been signed and ratified by all states within the zone, with the exception of Cuba, which has stated that it will only agree to sign if the US withdraws from its military base at Guantanamo Bay.

The Treaty of Pelindaba requires 28 states to deposit their instruments of ratification before it can enter into force. So far 50 have signed, but only 11 states have ratified. With regard to the protocols, all the NWS have signed, but Russia and the US have yet to ratify. Spain has yet to sign or ratify protocol III. The Arab signatories to the Treaty are said to believe that, if they ratified it, their negotiating position with Israel over the creation of a NWFZ in the Middle East would be jeopardised.

The Treaty of Rarotonga entered into force on 11 December 1986. The relevant protocols have been signed by all the NWS, and ratified by all except the US, which controls territory within the zone (Jarvis Island and American Samoa).

The Treaty of Bangkok entered into force on 15 December 1995. None of the NWS have signed the Treaty's only protocol, which calls on them not to use, or threaten to use, nuclear weapons in the zone. China has resolved all its outstanding issues on the Treaty and the protocol with Association of South-East Asian Nations (ASEAN), and has agreed to sign the protocol as soon as the other NWS do so. However, the other NWS disagree with the Treaty's provisions on the transit of foreign ships and aircraft, and on defining its boundaries using exclusive economic zones and continental shelves. At the 1997 PrepCom the NWS announced their interest in adopting the protocol, but since then little progress has been made. One of the major sticking points is the US' contention that it was not adequately consulted during negotiations, and that the protocol goes beyond the universal NSAs that the US gave in 1995. France, Russia and the UK are demanding clarification of how the Treaty would be implemented, as it requires the NWS to give security assurances in respect of a large sea area, not just the territories in the region. This would have major strategic implications. A further objection is that the protocol gives NSAs to countries within the zone, whether or not they are (still) parties to it. Although Indonesia, which asserts control over three sea-lanes within the zone, is willing to modify the protocol in order to make it acceptable to all the NWS, Malaysia is opposed to a modification. The situation is further complicated by the Philippines, which has ratified the Treaty, but is accused of breaking its Treaty obligations by signing an agreement with the US, which, critics charge, does not bar entry of US nuclear weapons to its territory.

### *Recommendations*

- Cuba and the US should create the conditions that would make it possible for Cuba to ratify the Treaty of Tlatelolco. States parties, particularly Russia, should encourage Cuba to do so.
- All signatories should ratify the Treaty of Pelindaba as soon as possible so it can enter into force and Spain should sign and ratify protocol III.
- The US should be encouraged to ratify the Treaty of Rarotonga.
- The states concerned should accelerate negotiations over possible changes to the text of the Treaty of Bangkok and its protocol, or agree on interpretations, with a view to resolving outstanding issues as soon as possible.

### 17c. A NWFZ in the Middle East

'The Conference welcomes the consensus reached in the General Assembly since the thirty-fifth session, that its establishment of a nuclear-weapon-free zone in the Middle East would greatly enhance international peace and security. The Conference urges all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East in accordance with the relevant resolutions of the General Assembly, and as a means of promoting this objective, invites the countries concerned to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons, and pending the establishment of the zone, to agree to place all their nuclear activities under IAEA safeguards.' [Article VII etc., paragraph 12]

#### *Interpretations*

This is an unambiguous endorsement of the long-standing goal of establishing a NWFZ in the Middle East (MENWFZ). While there are different interpretations among the states of the region as to what constitutes 'practical and urgent steps,' for now, two benchmarks are clearly outlined for states in the region to achieve: adherence to the NPT, and the placement of all nuclear activities under IAEA safeguards.

#### *Levels of fulfilment*

- Complete fulfilment – NPT parties in the region take steps to place all nuclear activities under IAEA safeguards with a view to creating a MENWFZ.
- Positive steps – NPT parties in the region take steps to place additional nuclear activities under IAEA safeguards.
- No movement – N/A.
- Outright non-fulfilment – no steps are taken to work towards the establishment of a MENWFZ.
- Other actions – the creation of a zone free of all WMD, not just nuclear weapons.

#### *Political realities*

Since 1980, the UNGA has supported annual resolutions calling for the creation of a MENWFZ. All states in the region have supported this consensus, including Israel. However, although Israel has always argued in favour of a MENWFZ, it refuses to put its nuclear facilities under IAEA safeguards

first. Nine Arab states parties to the NPT have yet to conclude the appropriate safeguards agreements with the IAEA.

Many obstacles must be overcome before a NWFZ can be created in the Middle East. To be effective, the zone would have to include the 22 member states of the Arab League, as well as Iran and Israel, and stretch from Algeria in North Africa to Iran in the Persian Gulf.<sup>20</sup> This is a particularly daunting challenge because a) it involves the difficult and interrelated tasks of rolling back existing nuclear-weapons programmes, and freezing the non-nuclear status of other regional actors, and b) it involves a region plagued by a long history of intense political conflicts which remain unresolved. Without peace in the region and settlement of the problems between Israel and Palestine, there is no chance for universal adherence to the NPT or a MENWFZ.

#### *Recommendations*

- States in the region should support efforts by Israel and the Palestinian Authority to reach a peaceful settlement.
- There should be further discussion of relevant issues, such as the boundaries of the MENWFZ.
- The respective preconditions for the creation of the zone should be identified.
- Possible forums should be selected for discussions of a MENWFZ.
- The UN General Assembly could call for another UN expert study on the possibilities of the creation of a MENWFZ.

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### 17d. A NWFZ in Central Asia

'The Conference regards the establishment of additional nuclear-weapon-free zones as a matter of priority, and in this respect supports the intention and commitment of the five Central Asian States to establish a nuclear-weapon-free zone in their region, welcomes the practical steps they have taken towards implementation of their initiative and notes with satisfaction the substantial progress they have made in drawing up and agreeing on a draft treaty on the establishment of a nuclear-weapon-free zone in Central Asia.' [Article VII etc., paragraph 14]

#### *Interpretations*

This paragraph articulates the Conference's unreserved support for a NWFZ in Central Asia.

#### *Levels of fulfilment*

- Complete fulfilment – conclusion and entry into force of the Central Asian NWFZ treaty or its provisional application by those states that have already ratified.
- Positive steps – further moves to establish a NWFZ in Central Asia.
- No movement – N/A.
- Outright non-fulfilment – negotiations on this issue collapse.
- Other actions – NWS indicate their preparedness in principle to subscribe to the NSA protocol.

#### *Political realities*

In the past, there has been broad support for the establishment of a Central Asian NWFZ. Each year, except 2001, the UNGA has passed a resolution in favour of the zone. In 2001 there was no resolution because Turkmenistan refused to be a cosponsor. It is unclear how the recent intensification of military conflict in the region will affect progress towards the completion of the zone. It may increase Russian determination to retain maximum flexibility regarding nuclear-weapon deployments; or it may increase the perceived urgency on the part of the Central Asian states to establish the NWFZ.

#### *Recommendations*

- All countries concerned should participate in the Expert Group deliberations.

- The Secretary General should be encouraged to use his good offices to facilitate the conclusion of negotiations.
- The NWS should indicate their preparedness in principle to subscribe to the NSA protocol.
- The 2002 PrepCom could recommend that the 2005 NPT Review Conference set a deadline for the completion of negotiations.

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## 17e. Additional NWFZs

'The Conference, taking note of all initiatives by States parties, believes that the international Community should continue to promote the establishment of new nuclear-weapon-free zones in accordance with the relevant guidelines of the United Nations Disarmament Commission and in that spirit welcomes the efforts and proposals that have been advanced by the States parties since 1995 in various regions of the world.'

[Article VII etc., paragraph 15]

### *Interpretations*

This paragraph acted as a safety net in order to enable Belarus to claim that its proposal for a nuclear-weapon-free space in Central and Eastern Europe had been considered by the Conference. It represents an endorsement of all efforts to create NWFZs as a positive step towards regional security and the eventual goal of a NFW. This includes the Belarus proposal, and Mongolia's efforts to become a nuclear-weapon-free space, the MENWFZ and the proposals that have been made for NWFZs in South, Central, and North-East Asia.

### *Levels of fulfilment*

- Complete fulfilment – the establishment of new NWFZs in Central Asia, the Middle East, South Asia, and North-East Asia, based on arrangements freely arrived at by the states in the regions concerned.
- Positive steps – NPT parties show greater willingness to engage in constructive negotiations on new NWFZs.
- No movement – N/A.
- Outright non-fulfilment – NPT parties refuse to engage in negotiations over the creation of new NWFZs, and undermine new proposals.
- Other actions – negotiations take place over WMD-free zones, to include nuclear, biological and chemical weapons.

### *Political realities*

A NWFZ in Central and Eastern Europe might include the three Baltic states (Estonia, Latvia and Lithuania), the four Visegrad states (the Czech Republic, Poland, Slovakia, and Hungary), three ex-Soviet Republics (Belarus, Moldova, and Ukraine), Romania and Bulgaria. This would create a zone across Europe stretching from the Black Sea to the Baltic Sea.

The problems with this particular proposal centre on NATO and its enlargement. Most of the countries that would make up the zone have either joined NATO as part of the enlargement plans agreed in 1997 (the Czech Republic, Poland, and Hungary), or have expressed a desire to join NATO. NATO itself is opposed to the creation of a NWFZ in Central and Eastern Europe. Although it has stated that it has 'no plans, no intentions, and no reasons' to deploy nuclear weapons on these territories, it is unwilling to accept a binding international commitment.

Proposals for NWFZs in South and North-East Asia also face serious obstacles. With regard to a NWFZ in North-East Asia (NEANWFZ), China and the US have stated their opposition to the proposed zone, Japan and the ROK appear to have serious reservations about it, and the position of the DPRK is unclear. With regard to the establishment of a NWFZ in South Asia (SANWFZ), India and Pakistan have both argued that such a zone cannot be created without first improving the general context of their bilateral relations, including settlement of the Kashmir dispute.

Finally, Mongolia appears to have politically recognised, but not legally binding, nuclear-weapon-free status (NWFS). The NWS regard this as a purely domestic matter. Many outstanding legal and practical issues remain if Mongolia's is to acquire its desired legal status.

### *Recommendations*

- NATO should, as soon as possible, permit any member state that wishes to do so to become part of a NWFZ.
- The international community should continue to promote the establishment of a NEANWFZ and a SANWFZ.
- There should be further discussions on whether current commitments on Mongolia's nuclear-weapon-free status are legally binding.

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## 18. Physical Protection Issues

### *Negotiating history*

There can be little doubt that, had the 2000 NPT Review Conference been held after the terrorist attacks of September 11, it would have devoted more attention in its deliberations to the issues of physical protection of nuclear materials and nuclear terrorism. What little discussion there was of the latter took place in MC.II, where a paragraph in the draft report on the Draft Convention on Nuclear Terrorism was deleted late in the proceedings due to a lack of consensus.<sup>21</sup> Similarly, in

MC.III, physical security was of limited significance in its debates compared with issues such as the right to access to peaceful uses of nuclear energy for economic development, the utility of nuclear power, and the dangers of the maritime transportation of radioactive materials and waste. As a consequence, while the Convention on the Physical Protection of Nuclear Material played a role in the discussions on maritime transport, the issue of the security of nuclear material in national facilities received much less attention.

Linked to the issue of terrorist use of nuclear materials is the possibility of terrorist attacks on nuclear facilities. Since September 11, there have been mounting concerns over the potential for terrorist attacks on power reactors, fuel and waste storage sites, and reprocessing plants. There are reports that the aircraft which crashed in Pennsylvania on September 11 might have been meant to destroy the Three Mile Island nuclear power plant in that state. The 2000 NPT Review

Conference addressed this issue indirectly but, given the level of international concern that has arisen since September 11, it seems probable that these issues will be the focus of considerable attention during the 2005 NPT Review Conference process, as well as in other international forums. This section therefore addresses the paragraphs of the Final Document related to such developments.

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## 18a. The Convention on the Physical Protection of Nuclear Material

'The Conference urges all States that have not yet done so to adhere to the Convention on the Physical Protection of Nuclear Material on the earliest possible date and to apply, as appropriate, the recommendations on the physical protection of nuclear material and facilities contained in IAEA document INFCIRC/225/Rev.4 (Corrected) and in other relevant guidelines. It welcomes the ongoing informal discussions among legal and technical experts, under the aegis of IAEA, to discuss whether there is a need to revise the Convention on the Physical Protection of Nuclear Material.' [Article III etc., paragraph 56]

### *Interpretations*

The Convention on the Physical Protection of Nuclear Material applies to nuclear material used for peaceful purposes while in international transport. It therefore does not apply to such nuclear material in other circumstances, or to nuclear material committed to military purposes. Although extensions to its scope into these areas have been proposed, little progress has been made since 1980, due to arguments over the cost of implementing physical protection measures, the need and priority to be assigned to negotiating such extensions, and concerns that international oversight of such matters would infringe national sovereignty and security. This provision recommends that discussions over amending the Convention continue, and in the meantime, urges states to implement the guidelines set out in INFCIRC/225, which are broader in scope than those set out in the Convention.

### *Levels of fulfilment*

- Complete fulfilment – all states that have not yet done so become parties to the Convention on the Physical Protection of Nuclear Material.<sup>22</sup> All states apply the recommendations on the physical protection of nuclear material and facilities contained in IAEA document INFCIRC/225/Rev.4.
- Positive steps – some additional states become party to the Convention. Some states apply the recommendations contained in INFCIRC/225.
- No movement – none of the current non-parties become party to the Convention. No additional states apply the recommendations contained in INFCIRC/225.
- Outright non-fulfilment – contracting parties do not comply with their obligations under the Convention or withdraw from it altogether. Non-signatories state that they have no intention of becoming party to this Convention. States do not apply the recommendations contained in INFCIRC/225.
- Other actions – the Convention on the Physical Protection of Nuclear Material is amended. A Convention on Nuclear Terrorism is adopted.

### *Political realities*

Several different options have been advanced to strengthen physical protection measures, although no international consensus exists over which should be pursued. Although the Draft Convention on Nuclear Terrorism covers the use and storage of nuclear material as well as its transport, and

includes non-safeguarded material, it falls short of the standards set out in INFCIRC/225, and contains no measures to monitor compliance. Some states argue, therefore, that the Draft Convention does not go far enough, while others argue over how the term 'terrorism' should be defined. Opinion is also divided over whether and how to amend the Convention on Physical Protection. The US has called for a Review Conference to discuss the issue of extending its scope to incorporate nuclear material in domestic peaceful use, transport, and storage<sup>23</sup>. Some international support for this proposal has been forthcoming, but other states have argued that any amendments should also cover nuclear material intended for military uses. Still others argued that they could not afford to implement the standards set by the current Convention, and that the cost of implementing an amended Convention would be prohibitive.

States may now be more willing to reach a compromise on these issues following the events of September 11. Heightened fears over the theft of nuclear materials, and the possible sabotage of nuclear materials and facilities by non-state actors, has led to pressure for action, and has resulted in such threats gaining prominence in international forums. For example, a special session of the IAEA Board of Governors met on 30 November 2001 to examine ways to prevent nuclear terrorism.<sup>24</sup> In its subsequent report, *Protection Against Nuclear Terrorism*, the IAEA Secretariat outlined the financial and political commitment that states will have to make to ensure that the Agency's existing nuclear security guidelines are strengthened, expanded and implemented. According to the report, the estimated cost will be \$30–50 million per year.

Alongside this new sense of urgency, there is also mounting concern that transparent physical protection methods may unintentionally assist the operations of terrorist groups, by making relevant information available to them.

### *Recommendations*

- Efforts should be made to raise awareness amongst governments and private entities involved in the transport, storage and use of radioactive material of:
  - newly heightened terrorist threats;
  - the need to set a common high standard of physical protection; and
  - the need to promote international cooperation for this purpose, by acts such as helping states that cannot afford the cost of providing enhanced protection, and

through the exchange of information on appropriate measures of protection, cooperation among security authorities, and the coordination of activities to regulate the safety and security of nuclear materials in transit.

- The implications of the physical protection issue should be discussed at the PrepCom to the 2005 NPT Review Conference.
- Issues of physical protection should continue to be addressed by the IAEA, including the utility of a protocol expanding the scope of the existing Convention on the Physical Protection of Nuclear Material.
- States should be encouraged to make voluntary financial contributions to the IAEA's nuclear security programme.

- States with nuclear facilities that are particularly vulnerable to nuclear terrorism, but which lack the necessary funds to implement urgent security measures, should be given appropriate assistance if they so request.
- All non-parties, who have not yet done so, should sign the Convention on the Physical Protection of Nuclear Material.
- States should explore ways of moving forward the Draft Convention on Nuclear Terrorism.
- The NWS should maintain and upgrade the physical protection of nuclear materials committed to military use even though the Convention is not applicable to such materials.

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## 18b. Spent Fuel and Radioactive Waste

'The Conference notes that a major issue in the debate over the use of nuclear technologies is the safety of the management of spent fuel and of radioactive waste. The Conference notes the conclusion of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management and encourages States that have not yet taken the necessary steps to become party to the Convention, to do so. The Conference expresses the hope that this Convention will enter into force at the earliest possible date. The Conference underlines the importance of managing fuel and radioactive waste that were excluded from this Convention because they were within military or defence programmes in accordance with the objectives stated in this Convention.' [Spent fuel and radioactive waste, paragraph 13]

### *Interpretations*

This is a request for all states to become party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention) and for the Convention to enter into force as soon as possible. The last sentence underlines the need for similar standards to be applied to spent fuel and radioactive waste generated by military programmes. Such materials are only covered by the Joint Convention when they are transferred permanently to, and managed within, exclusively civilian programmes. The Conference therefore urges states to apply voluntarily the safety measures set out in the Joint Convention to spent fuel and radioactive waste from their military programmes.

### *Levels of fulfilment*

- Complete fulfilment – all states that have not yet done so become party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. States apply the safety standards contained in the Joint Convention to spent fuel and radioactive waste from their military programmes.
- Positive steps – some states take the steps described above.
- No movement – no additional states become party to the Joint Convention.
- Outright non-fulfilment – contracting parties do not comply with their obligations under the Joint Convention or withdraw from it.
- Other actions – states implement more stringent safety standards for spent fuel storage and waste disposal than those prescribed in the Joint Convention.

### *Political realities*

The Joint Convention was the first legal instrument to directly address the safety of spent fuel and radioactive waste on a global scale.<sup>25</sup> However, although its entry into force on 18 June 2001 is regarded as a major contribution to the nuclear non-proliferation regime, the September 11 terrorist attacks and subsequent fears over nuclear terrorism have led some experts to question whether its provisions are stringent enough.<sup>26</sup> This is based on new threat assessments, focusing on the capabilities of non-state actors and the types of weapons that they might realistically deploy. According to some analysts, terrorists may be more likely to target radioactive waste and spent fuel dumps because, unlike reactors, they may be considered soft targets. This particularly applies to those above-ground structures and cooling pools, which were not built to withstand the same explosive forces as reactor containment vessels.<sup>27</sup>

### *Recommendations*

- States that have not yet become party to the Joint Convention should take steps to do so.
- Contracting parties should comply with their obligations under the Joint Convention.
- States should apply the safety obligations contained in the Joint Convention to spent fuel and radioactive waste excluded from the Convention.
- The Joint Convention should be reviewed in the light of the revised threat assessments arising from the events of September 11.<sup>28</sup>

## 18c. The Convention on Nuclear Safety

'The Conference welcomes the entry into force of the Convention on Nuclear Safety, and encourages all States, in particular those operating, constructing or planning nuclear power reactors that have not yet taken the necessary steps to become party to the Convention, to do so. It would also welcome a voluntary application of the related provisions of the Convention to other relevant nuclear installations dedicated to the peaceful uses of nuclear energy. The Conference also expresses its satisfaction with the outcome of the first review meeting under the Convention on Nuclear Safety, and looks forward to the report from the next review meeting, in particular with respect to those areas where the first review meeting found that there was room for safety improvements.' [Nuclear and radiation safety, paragraph 4]

### *Interpretations*

This Convention focuses on nuclear power reactors and associated installations on the same site. The paragraph encourages all states, especially those operating, constructing or planning nuclear power reactors, to become party to the Convention on Nuclear Safety, thus covering some of the gaps in relation to terrorist threats contained in other conventions.<sup>29</sup> It also requests that contracting parties voluntarily apply the relevant provisions to 'related' nuclear installations not covered by the Convention, such as research reactors and civil reprocessing and enrichment plants. This is significant as, under the terms of the Convention, a nuclear installation is defined as 'any land-based civil nuclear power plant under its jurisdiction including such storage, handling and treatment facilities for radioactive materials as are *on the same site* and are *directly related to the operation of the nuclear power plant*' (emphasis added). According to this definition, a power reactor ceases to be a nuclear installation when 'all nuclear fuel elements have been removed permanently from the reactor core'. The Convention also excludes radioactive material being stored or processed at a different site.

### *Levels of fulfilment*

- Complete fulfilment – the appropriate states sign and ratify the Convention on Nuclear Safety. All contracting parties voluntarily apply the provisions of the Convention to nuclear installations not covered by the Convention.
- Positive steps – some of the appropriate states sign/ratify the Convention or state their intention to do so in the near future. Some contracting parties voluntarily apply the provisions of the Convention to civil nuclear installations not covered by the Convention.
- No movement – no new signatures or ratifications take place. No additional voluntary applications are made.
- Outright non-fulfilment – contracting parties fail to implement their nuclear safety obligations or withdraw from the Convention. Non-parties refuse to sign or ratify it.
- Other actions – India and/or Israel ratify the Convention. Contracting parties voluntarily apply its safety measures to military installations.

### *Political realities*

The Convention on Nuclear Safety was adopted in Vienna on 17 June 1994, and entered into force on 24 October 1996. It is designed to ensure fulfilment on the basis of the common interest of the parties to achieve higher levels of safety, rather

than through inspections and sanctions.<sup>30</sup> As a result, it relies on the willingness of parties to the Convention to provide honest, accurate self-assessments of their nuclear safety record.

The first review meeting took place on 12–23 April 1999 in Vienna, and provided a unique worldwide overview of 45 national nuclear safety programmes. The summary report noted that, while the available information suggested that there have been significant safety improvements, the quality of submissions varied significantly, and the following points required urgent attention:

- a number of states have still to implement significant safety improvements;
- nuclear safety activities in many contracting parties are hampered by severe financial constraints;
- the technology imported by some states to assist their nuclear safety programmes may be incompatible with existing systems;
- a number of nuclear power plants, designed to earlier safety standards and incapable of upgrading to new standards, should be shut down as soon as practically possible, taking into account the energy context as well as the social, environmental and economic impact;
- there are serious safety issues in several countries linked to the stagnation or shrinking of their nuclear programmes;
- in some cases, the containments at existing nuclear power plants do not meet current standards; and
- the independence of some regulatory bodies is in doubt.

The Convention on Nuclear Safety was drafted in the aftermath of, and in response to, the Chernobyl accident. This instrument was created to deal with the radiological risks generated by the nuclear facility itself, as distinct from external threats.

### *Recommendations*

- All states with nuclear installations should sign the Convention and implement the recommended safety measures.
- All states should, as appropriate, voluntarily apply the safety measures to nuclear installations not covered by the Convention.
- When the Review Meeting scheduled for 2002 addresses the issue of nuclear safety, it could also discuss the threat and consequences of terrorist attacks.

## 18d. The Illicit Trafficking of Nuclear Materials

'Expressing concern about the illicit trafficking of nuclear and other radioactive materials, the Conference urges all States to introduce and enforce appropriate measures and legislation to protect and ensure the security of such material. The Conference welcomes the activities in the fields of prevention, detection and response being undertaken by IAEA in support of efforts against illicit trafficking. The Conference acknowledges the Agency's efforts to assist member States in strengthening the regulatory control in the applications of radioactive materials, including its ongoing work on a registry of sealed sources. It also welcomes the Agency's activities undertaken to provide for the enhanced exchange of information among its member States, including the continued maintenance of the illicit trafficking database. The Conference recognizes the importance of enhancing cooperation and coordination among States and among international organizations in preventing, detecting, and responding to the illegal use of nuclear and other radioactive material.' [Article III etc., paragraph 43]

### *Interpretations*

This paragraph describes some of the activities that the IAEA has been engaged in to help prevent the illicit trafficking of nuclear materials, and welcomes the continuation of such efforts. It also stresses the point that governments and international organisations have an important role to play in the prevention and detection of nuclear smuggling, and that their contributions will be dependent on effective cooperation between diverse groups. However, there is no mention of what particular kinds of cooperation would be most desirable.

### *Levels of fulfilment*

- Complete fulfilment – all states introduce and enforce appropriate internal measures to protect nuclear material and to combat nuclear smuggling.
- Positive steps – some states introduce and enforce appropriate measures to protect nuclear material and to combat nuclear smuggling.
- No movement – states fail to take additional steps to ensure the above.
- Outright non-fulfilment – states do not introduce and enforce appropriate measures to ensure the above, or deliberately sabotage such efforts.
- Other actions – existing conventions are amended to include more stringent measures to prevent smuggling. A separate convention to prevent the illicit trafficking of relevant materials is discussed.

### *Political realities*

Despite the specific recommendations set out in the Convention on Physical Protection, the Joint Convention, and the Convention on Nuclear Safety, there have been 13 confirmed cases of nuclear smuggling since 1991, and many

more unconfirmed incidents. Concerns over this situation have intensified since the events of September 11, with reports in the media concerning the acquisition of nuclear and radioactive materials by terrorists capable of producing 'dirty bombs' (i.e., radiological weapons) and rudimentary nuclear devices.<sup>31</sup> The question of how to prevent the illicit trafficking of nuclear materials has thus become very topical.

The subject is quite complicated and deals with a range of issues, from the materials involved and the facilities where they originate to the individuals or groups that might acquire them. The issue calls for cooperation among the many authorities involved within a state, as well as between states and/or international organisations.

### *Recommendations*

- States should introduce and enforce appropriate measures and legislation to protect fissile material.
- States should allocate resources sufficient to safeguard nuclear and other radioactive material.
- States should share intelligence information regarding illicit nuclear trafficking incidents. When considering such possibilities, they should take into account the need to prevent such information from being misused.
- There should be enhanced cooperation between the IAEA, governments, and organisations such as Interpol, to prevent the illicit trafficking of nuclear and other radioactive materials.
- The IAEA should reinforce all its activities related to the prevention of illicit trafficking, for instance, by establishing electronic communication means with national and international bodies involved in the collection of information on clandestine trafficking in nuclear materials.

## Part III: Universality and the NPT

This part of the study follows a similar structure and approach to Part I, except that the discussion of ‘Levels of fulfilment’ is omitted from sections that deal exclusively with non-parties to the Treaty. The latter are under no obligation to act upon proposals made by NPT parties, although this by no means lessens the desirability that they should do so.

During the Conference, universality was discussed in Main Committee I (MC.I) and Main Committee II (MC.II), and also, in the context of regional matters, in Subsidiary Body 2 (SB.2) of MC.II. Inevitably, therefore, there is a certain amount of repetition on the subject of universality in these three different elements of the Final Document. MC.I

and MC.II took similar approaches to the universality issue, addressing it in the wider context of the Treaty and the non-proliferation regime (i.e. articles I, II and IX and the first and third preambular paragraphs) and in the context of article VII. This resulted in both Committees adopting very similar language.

SB.2 of MC.II took a somewhat different approach. Its proposals are to be found in the section of the Final Document entitled: *The Middle East, particularly implementation of the 1995 Resolution on the Middle East, and South Asia and other regional issues.*

### 19. The Resolution on the Middle East

‘The Conference reaffirms the importance of the Resolution on the Middle East adopted by the 1995 Review and Extension Conference and recognises that the resolution remains valid until the goals and objectives are achieved. The Resolution, which was co-sponsored by the depository States....is an essential element of the outcome of the 1995 Conference and of the basis on which the Treaty on the Non-Proliferation of Nuclear Weapons was indefinitely extended without a vote in 1995.’ [The Middle East, particularly implementation of the 1995 Resolution on the Middle East, paragraph 1]

#### *Negotiating history*

This paragraph in the Final Document was not so much about the substance of the resolution and its fulfilment, as about the question of whether the 1995 resolution was still operative in 2000 and beyond.<sup>32</sup> After the resolution on the Middle East had been adopted in 1995, differences arose between the US and the Arab states, led by Egypt, over its future validity and relevance. Egypt kept up the diplomatic pressure for its fulfilment, particularly Israel’s accession to the Treaty and placement of all its nuclear facilities under IAEA full-scope safeguards. It used the PrepCom as a forum for voicing its concerns over the lack of progress towards fulfilment of the 1995 resolution, and urged that a subsidiary body be created to address the issue in depth at the 2000 NPT Review Conference,<sup>33</sup> and give this issue a status distinct from the other issues before the Conference.

A precondition for the 2000 NPT Review Conference achieving a consensus on the Final Document was the success of the President in obtaining agreement on a balanced mandate for SB.2. This permitted the debate on the Middle East to cover the implementation of the 1995 Middle East resolution, and Israel’s non-adherence to the NPT, in which context Egypt and the group of Arab states were determined to name Israel as the only state in the region not to have acceded to the Treaty, as well as meeting US insistence that Iraqi non-compliance with UN resolutions on the destruction of its WMD arsenal should be addressed in parallel.<sup>34</sup> The US also argued that the problems of the Middle East exceeded the capacity of the NPT and should therefore be dealt with in alternative international forums.

#### *Interpretations*

The language on this issue, which was only agreed to at the end of the Conference, represented a compromise between the positions of the Arab states and the US. Although it does not explicitly urge states in the region to take the steps outlined in the 1995 resolution, it does emphasise the continued validity and relevance of its goals and objectives. The Conference’s reaffirmation of the resolution thus carries the issue of its implementation into future Review Conferences.

#### *Levels of fulfilment*

- Complete fulfilment – states parties take steps to achieve all the goals and objectives of the 1995 Resolution on the Middle East.
- Positive steps – states parties state their intention to resolve the outstanding issues of the resolution.
- No movement – N/A.
- Outright non-fulfilment – states parties take steps that undermine the 1995 resolution or the prospects for achieving its goals.
- Other actions – a subsidiary body is set up to discuss the implementation of the resolution at the 2005 NPT Review Conference, and special time is allocated for discussion of the issue at the PrepCom. The UNGA calls for another UN expert study on the possibilities of the creation of a MENWFZ.

#### *Political realities*

Israeli officials have long argued that, given the country’s strategic position, they cannot renounce the option to make nuclear weapons through accession to the NPT or any other means. This is in direct opposition to the views held by the other states in the region that nuclear disarmament is an essential goal in its own right and that comprehensive peace and security cannot be achieved until Israel renounces its nuclear option and accedes to the Treaty. These dichotomies are reflected in the 1995 resolution, which, while focusing upon the existence of unsafeguarded nuclear facilities in the region, also contained calls for a Middle East zone free of all WMD and their delivery systems. The latter has been the subject of annual UNGA resolutions.

Given this context, it has been clear for some time that the goal of universal adherence to the Treaty in the Middle East is unlikely to be achieved without very significant extra-regional pressure and assistance. The US role in relation to Israel is key in this regard.

#### *Recommendations*

- States should increase efforts to ensure the adherence and compliance of regional countries to international non-proliferation measures.

- States should redouble their efforts to achieve the goals and objectives of the Resolution on the Middle East.
- Israel and the Palestinian Authority should intensify their efforts to find a political settlement.

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## 20. Israel & Universality

‘The Conference recalls that in paragraph 4 of the 1995 Resolution on the Middle East the Conference ‘calls upon all States in the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible...’ The Conference notes, in this connection, that the report of the United Nations Secretariat on the implementation of the 1995 Resolution on the Middle East (NPT/CONF.2000/7) states that several States have acceded to the Treaty on the Non-Proliferation of Nuclear Weapons. The Conference welcomes the accession of these States and reaffirms the importance of Israel’s accession to the Non-Proliferation Treaty .... in realising the goal of universal adherence to the Treaty in the Middle East.’ [The Middle East, particularly implementation of the 1995 Resolution on the Middle East, paragraph 3]

### *Negotiating history*

This paragraph was the result of intense negotiations conducted in SB.2. It assesses progress towards fulfilling the goal of universality of the NPT in the Middle East – as contained in the 1995 Resolution – in the light of the accessions to the Treaty since 1995. One important difference between the language in 1995 and that in 2000, was that whereas in 1995 all states in the Middle East were called upon to accede to the Treaty, in 2000, Israel alone was mentioned as, by then, it was the only state that had not acceded. However, by ‘reaffirming’ the importance of Israel’s accession, the Conference avoided appearing to propose a new departure. In this way, it enabled a compromise to be reached between the demands of the Arab states that the Review Conference should call upon Israel to accede to the Treaty and the US reluctance to accept this development.

See also the ‘The Resolution on the Middle East’ in the Negotiating history of the section above.

### *Interpretations*

This is the first occasion in which Israel’s non-adherence to the Treaty has been singled out in accepted NPT Review Conference language. The first part of the paragraph quotes the language adopted in the 1995 Resolution on the Middle

East, which calls upon ‘all States...without exception’ to accede to the NPT, but does not refer to Israel by name. The second part of the paragraph goes further by welcoming the 1997 accession of the remaining Arab states in the region and, in the same sentence, reaffirming the importance that Israel take the same action. This reinforces the point that Israel is now the only state in the Middle East that is not party to the NPT.<sup>35</sup> There is no ambiguity here, or in the call for Israel to accede to the Treaty to realise ‘the goal of universal adherence to the Treaty in the Middle East.’

### *Political realities*

See ‘Political realities’ sub-section of 19, above.

### *Recommendations*

- Efforts should be made to promote regional peace and security and regional arms control and disarmament arrangements.
- Israel should accept IAEA safeguards on all its unsafeguarded nuclear facilities.
- States parties, particularly the US, should engage in a dialogue with Israel concerning specific steps it could take towards acceptance of full-scope safeguards and eventual accession to the NPT.

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## 21. The Nuclear-Weapon Status of India and Pakistan

‘With respect to the nuclear explosions carried out by India and then by Pakistan in May 1998, ...India and Pakistan do not have the status of nuclear-weapon States.’ [South Asia and other regional issues, para. 12]

‘The Conference deplores the nuclear test explosions carried out by India and then by Pakistan in 1998. The Conference declares that such actions do not in any way confer a nuclear-weapon State status or any special status whatsoever.’ [Articles I and II and first to third preambular paragraphs, paragraph 9]

### *Negotiating history*

During discussions over the non-adherence of India and Pakistan to the NPT, there was some disagreement over whether and how to express international concern over the nuclear tests that both states conducted in May 1998, and their consequences for the nuclear non-proliferation regime. This was resolved through an agreement to reiterate the points made in the NWS statement, which emphasised that the nuclear tests did not confer nuclear-weapon state status as

defined by the Treaty and called upon India and Pakistan to implement UN Security Council resolution 1172. This resolution set out the benchmarks under which the US and others could agree to lift sanctions incrementally in response to progress in its implementation by India and Pakistan.

### *Interpretations*

This is an unambiguous statement, making it clear to the governments of India and Pakistan, as well as to all parties to

the NPT, that the tests of 1998 do not confer on them nuclear-weapon state status. This point was also made very clearly in the discussions relating to the second and third preambular paragraphs, which went further in emphasising that the tests ‘do not in any way confer a nuclear-weapon State status or any special status whatsoever’. In stressing this point, the Conference was urging NPT parties to abide by their Treaty obligations and not to reward India and Pakistan with any special status. One practical aspect of this, however, is the question of whether it remains legitimate to offer them civil nuclear technical assistance or exports. Some argue that all technical assistance should be denied to their civil nuclear programmes, while others regard this as limited to those nuclear activities which are in contravention of the NSG Guidelines as interpreted by its members (i.e. their nuclear weapon activities).<sup>36</sup>

#### *Political realities*

Following the 1998 nuclear tests, political and military leaders in India and Pakistan stated that the explosions provided them with a new status on the world stage. Both countries sought international recognition of this status. They urged governments to accept that, even if they could not be officially recognised as NWS under the terms of the NPT, they should be given *de facto* recognition.

A number of states, including the US, imposed sanctions on India and Pakistan following the tests. These punitive measures were accompanied by offers of conditional inducements: the US agreed to lift sanctions incrementally in response to progress by India and Pakistan in implementing UN Security Council resolution 1172. Benchmarks for

progress included: restraints on their nuclear weapons and material programmes, especially non-deployment of nuclear weapons and an end to missile testing; accession to the CTBT; participation in international negotiations for an FMCT; and stronger export controls on nuclear materials and technology.

More recently, following the terrorist attacks of 11 September 2001, President Bush announced the lifting of all remaining sanctions imposed on India and Pakistan in the wake of the 1998 nuclear tests. Japan followed suit. This action could be interpreted by India and Pakistan as acquiescing to their self-declared nuclear status, and indirectly conferring on India and Pakistan the special nuclear status that the 2000 NPT Review Conference was so anxious to deny. The full consequences of this action have yet to emerge, but it could be argued to make it even less probable than hitherto that India and Pakistan will accede to the NPT as NNWS, and may offer encouragement for other would-be proliferators to withdraw from the Treaty.

#### *Recommendations*

- States parties should continue to deny India and Pakistan nuclear-weapon state status and should continue to follow, in regard to these two states, existing export restrictions as applicable to NNWS.
- States should explore and implement additional bilateral and/or regional non-proliferation and confidence-building measures.
- India and Pakistan should be encouraged to join existing treaties, such as the CTBT, and to participate actively and positively in other nuclear-related negotiations, such as the proposed FMCT.

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## 22. India/Pakistan and Universality

‘The Conference urges India and Pakistan to accede to the Non-Proliferation Treaty as non-nuclear-weapon States ...’ [South Asia and other regional issues, paragraph 13].

#### *Negotiating history*

There was little controversy over the proposal urging India and Pakistan to accede to the NPT, or further proposals calling on both states to implement the steps set out in UN Security Council resolution 1172, which also included this action.

#### *Interpretations*

This paragraph can only be interpreted as an unambiguous call to India and Pakistan to abandon their nuclear-weapon programmes and accede to the NPT as NNWS.

#### *Political realities*

International concerns persist over the potential regional and global consequences of the self-declared nuclear-weapon status of India and Pakistan, and the induction of nuclear weapons into their armed forces. Especially after tension increased, following the terrorist attack on the Indian parliament in December 2001, fears of a catastrophic nuclear exchange between the two states, with grave consequences for South Asian security and global peace, have grown apace.

Since 1998 there has been a slow process of engagement with India and Pakistan by key members of the international community. This has become more visible and comprehensive since the events of 11 September 2001. This raises the question of how the non-proliferation regime should now deal with the universality issue, given that there now seems to exist some tacit acceptance, if not actual legitimisation, of the continued existence of the nuclear-weapons programmes of India and Pakistan.

#### *Recommendations*

- At the PrepCom for the 2005 Review Conference, parties should formulate, for eventual adoption at the Conference, a joint approach to deal with the universality issue in relation to India and Pakistan, which reflects the recognition that these states cannot, by definition, be considered or treated as NWS.
- States parties should make no attempt to amend the NPT to enable India and Pakistan to accede as NWS.
- India and Pakistan should be encouraged to take steps that allow them to accede to the NPT as NNWS.

## 23. Cuba and the NPT

'The Conference urges all States not yet party to the Treaty, namely Cuba, India, Israel, and Pakistan, to accede to the Treaty as non-nuclear-weapon States, promptly and without condition, particularly those States that operate unsafeguarded nuclear facilities.' [Article I, paragraph 8]

### *Negotiating history*

Discussions on the universality issue focused primarily on the non-adherence of India, Israel and Pakistan, rather than on Cuba. (See 'Negotiating history', sections 19 and 21, above.)

### *Interpretations*

This is a call to all the states that remain outside the NPT, including Cuba, to accede to the Treaty, as NNWS. It thus calls on Cuba to accede to the Treaty 'promptly and without condition,' but in the same sentence stresses the particular need for states 'that operate unsafeguarded nuclear facilities' to accede. The former encourages Cuba to drop the conditions that it currently places on its accession to the Treaty (i.e. total, verifiable disarmament by all states, including the NWS). The

latter highlights the fact that Cuba is not regarded as a potential nuclear-weapon state, as its nuclear facilities are already under IAEA safeguards.

### *Political realities*

Cuba does not have a nuclear-weapon programme and has signed, though not ratified, the Treaty of Tlatelolco. However, it does not consider universality of the NPT to be possible, arguing that it is discriminatory 'giving immense privileges to a small number of countries.'<sup>37</sup>

### *Recommendations*

- Cuba should accede to the NPT as a non-nuclear-weapon state.

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## 24. Universality and Regional Security

'The Conference undertakes to make determined efforts towards the achievement of the goal of universality of the Treaty. These efforts should include the enhancement of regional security, particularly in areas of tension such as in the Middle East and South Asia.' [Article IX, paragraph 4]

### *Negotiating history*

Many states felt that, although regional tensions in the Middle East and South Asia undermined the chances for achieving universality of the NPT, they were too complex and far-reaching for the NPT Review process to deal with effectively. They also considered general questions regarding the political and security concerns of both regions, and the controversies relating to them, as going beyond the specific remit of the NPT. The language adopted recognised the links between regional security concerns and the willingness of specific states to accede to the NPT, but the actions to be taken remained couched in vague and general language.

### *Interpretations*

Interpretations may differ as to what should constitute the 'determined efforts' towards the goal of universality that the states party to the Treaty are called upon to make in this paragraph. Its second part goes some way to explain what is expected, namely taking actions to enhance the general security of the two regions which contain non-parties. However, individual parties are left to decide what kinds of measures would constitute fulfilment of this commitment.

### *Levels of fulfilment*

- Complete fulfilment – the PrepCom to the 2005 NPT Review Conference debates the universality issue, agreeing on concrete steps to enhance regional security in the Middle East and South Asia, and to encourage Cuba to accede to the Treaty.

- Positive steps – agreement is reached on some, if not all, of the above.
- No movement – the PrepCom debates the issue, but no concrete measures are agreed.
- Outright non-fulfilment – the PrepCom does not discuss the issue of universality or regional security in the two regions, and no concrete steps are taken to seek universality.
- Other actions – N/A.

### *Political realities*

Along with the issue of non-compliance, universality has become one of the most challenging issues confronting the NPT, and the review process. The problems involved in bringing the remaining states – particularly India, Israel and Pakistan – into the Treaty are so complex that it is difficult to see how the goal of universality can be achieved in the near future. To date, despite the recommendations of NPT Review Conferences, there has been little progress in this area. In addition, regional tensions have been escalating (see 'Political realities' of 19 and 21–23, above), and recent actions by some NPT parties may be argued to have undermined prospects for achieving universality.

### *Recommendations*

- The PrepCom to the 2005 NPT Review Conference should debate the universality issue and agree to concrete steps to enhance regional security in the Middle East and South Asia, and to encourage Cuba to accede to the Treaty.

## 25. Steps to be Taken by the President of the 2000 NPT Review Conference in Relation to Universality

'The Conference requests the President of the Conference to convey formally the views of States parties on this issue to all non-parties and to report their responses to the parties. Such efforts should contribute to enhancing the universality of the Treaty and the Adherence of non-parties to it.' [Article IX, paragraph 10]

### *Negotiating history*

This is a redrafted and more limited version of a paragraph found in a Conference paper submitted to MC.I by eight Western European states on 9 May<sup>38</sup> (NPT/CONF.2000/MC.I/CRP.15).

### *Interpretations*

The paragraph mandates Ambassador Baali to convey the views of states parties on universality to non-parties, and report on any responses, presumably at sessions of the PrepCom and/or the Conference.

### *Levels of fulfilment*

- Complete fulfilment – Ambassador Baali contacts the four non-parties, and reports their reactions to the 2002 Prepcom session.
- Positive steps – Ambassador Baali contacts the four non-parties but receives no reaction from them.

- No movement – N/A.
- Outright non-fulfilment – Ambassador Baali takes no action and/or no reports are provided to the PrepCom.
- Other actions – N/A.

### *Political realities*

Given the situation concerning all four states, it is unlikely that any positive and constructive responses will be forthcoming from them.

### *Recommendations*

- The chairperson of the first session of the PrepCom should ask Ambassador Baali if he has contacted the states in question and, if so, what answers he has received.
- The chairperson of the PrepCom sessions should report the outcomes of any discussion on universality to the non-parties.

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## 26. Reporting on State Actions to Promote Universality of the NPT in the Middle East

'The Conference requests all States parties, particularly the nuclear-weapon States, the States of the Middle East and other interested States, to report through the United Nations Secretariat to the President of the 2005 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons, as well as to the Chairperson of the Preparatory Committee meetings to be held in advance of that Conference, on the steps that they have taken to promote the achievement of... the realization of the goals and objectives of the 1995 Resolution on the Middle East. It requests that the Secretariat prepare a compilation of those reports in preparation for consideration of these matters at the Preparatory Committee meetings and the 2005 Review Conference.' [The Middle East, particularly implementation of the 1995 Resolution on the Middle East, paragraph 7]

### *Negotiating history*

Egypt wanted strong language to emerge from the 2000 NPT Review Conference to ensure that the 1995 Resolution on the Middle East was implemented. In one of several papers and statements on the subject, it proposed follow-up work for the period 2000–05, either by appointing a special representative/envoy or convening a conference to address the issue; or having the three depository states pursue discussions with Israel regarding accession to the NPT. These proposals were opposed by the US, France and others, who did not want the Conference to establish precedents for inter-sessional work, and were concerned about embroiling it in problems that were beyond its scope. However, despite these reservations, language was eventually agreed calling for individual states to address the universality issue and to offer their views on how they were doing this to the President of the 2005 NPT Review Conference and to the Chairpersons of its PrepCom sessions.

### *Interpretations*

This is a call to all NPT parties, especially the NWS and states in the Middle East, to report on the steps they have taken to promote the implementation of the 1995 resolution, and thus universality of the Treaty. Unlike the language on reporting included in the '13 steps' (see 12, above), this paragraph

provides a general outline of the reporting procedure and guidance on the content of the reports, although not their format.

The reference to 'other interested States' was included in response to a Canadian request, in order to allow for a more distinct role for states such as Australia, Canada and Japan in pursuing the goal of universality. (These states have taken an active interest in the region, but are neither NWSs nor states of the region. Canada, in its capacity as Chairman of SB.2, was facilitating the negotiations between Egypt and the US). The language was not specifically aimed at including Israel in the reporting process.

### *Levels of fulfilment*

- Complete fulfilment – all NWS and states in the Middle East draft reports on the steps they have taken to promote the implementation of the resolution, including universality, and present these to the UN Secretariat for transmission to the Chairpersons of the PrepCom and the President of the 2005 NPT Review Conference.
- Positive steps – some states parties take the steps described above.
- No movement – N/A.

- Outright non-fulfilment – no NPT parties provide the requested reports and no compilation is provided by the UN Secretariat to the PrepCom and the Conference.
- Other actions – Israel reports to the UN Secretariat on the steps it has taken to promote a MENWFZ.

#### *Political realities*

It remains unclear how this process might further universality of the NPT in the Middle East, other than highlighting the issue.

#### *Recommendations*

- The NWS and states parties in the Middle East should draft reports on the steps they have taken to promote universality of the NPT in the region, and present these to the UN Secretariat.
- The UN Secretariat should provide a framework for the reports and collate and present them to the Chairpersons of the PrepCom and President of the 2005 Review Conference.
- Israel should also be asked to provide the UN Secretariat with a report on the steps that it has taken in this area.

## References and Notes

1. The New Agenda Coalition consists of a group of states (Brazil, Egypt, Ireland, Mexico, New Zealand, Slovenia, South Africa and Sweden) calling for the speedy, final and total elimination of nuclear weapons.

2. The NATO-5 are Belgium, Germany, Italy, the Netherlands and Norway.

3. It should be noted that, although such a shift in doctrine may be necessary for nuclear disarmament to proceed beyond a certain point, this shift could be problematic and therefore requires extreme caution. It is possible that deterrence could be replaced by a new doctrine that leads to greater instability. The wholesale rejection of deterrence doctrine as 'a relic of the Cold War' may not be a positive step, especially if it is used to legitimise new forms of arms racing.

4. The NAM is a movement of 115 states 'representing the interests and priorities of developing countries'.

5. Members of this group are appointed on the basis of their personal expertise by the Director General of the IAEA, in consultation with governments, to advise him on effectiveness and cost-efficiency in the implementation of IAEA safeguards. SAGSI has provided much of the inspiration for the current program to strengthen IAEA safeguards and continues to review developments. A key topic for SAGSI is the development of integrated safeguards, that is, the optimal combination of comprehensive safeguards and strengthened safeguards measures under the Additional Protocol. SAGSI has reviewed the IAEA Secretariat's work plan for integrated safeguards and advised the Secretariat on various aspects of it. SAGSI examines major safeguards matters, such as integrated safeguards, the ongoing development of safeguards concepts and approaches, safeguards parameters, evaluation methodologies, and quality systems. During 2001 there was a thorough review of the role of 'timeliness' (e.g. frequency of inspections) in integrated safeguards. Other subjects addressed by SAGSI have included the role of containment and surveillance measures, and the categorisation of nuclear material for safeguards purposes.

6. 51 NPT parties have yet to conclude an INFCIRC/153 safeguards agreement with the IAEA. These include, in Europe: Andorra, Georgia, Kyrgyzstan, Moldova, Tajikistan, The Former Yugoslav Republic of Macedonia, and Turkmenistan. In Africa: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Equatorial Guinea, Eritrea, Gabon, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mozambique, Niger, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Togo, Uganda, Seychelles, Tanzania. In Asia and the Asia/Pacific: Laos, Marshall Islands, Micronesia, Palau, and Vanuatu. In Latin America and the Caribbean: Haiti. In the Middle East: Bahrain, Djibouti, Kuwait, Mauritania, Oman, Qatar, Saudi Arabia, United Arab Emirates, and Yemen.

7. In addition to the NWS, Belgium, Germany, Japan, and Switzerland were involved in drawing up the guidelines.

8. The guidelines include a provision for review in 'not less than five years' after their publication by the IAEA, or not sooner than 2003.

9. The difference between the Zangger Committee and the NSG is spelt out in two of the deleted paragraphs: numbers 41 and 70

respectively. The Zangger Committee does not set rules for exports, but has the job of interpreting article II (2) so as to determine what items should 'trigger' safeguards.

10. These are a group of states whose representatives to the IAEA in Vienna have traditionally provided language on these issues. They are: Australia, Austria, Canada, Denmark, Hungary, Ireland, The Netherlands, New Zealand, Norway and Sweden.

11. Paragraph 12 states that: 'New supply arrangements for the transfer of source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to non-nuclear-weapon states should require, as a necessary precondition, acceptance of IAEA full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.'

12. China had expressed reservations about this paragraph in 1995, arguing that since the NPT refers to safeguards and not full-scope safeguards, the Treaty text overrides the language of the 1995 Principles and Objectives.

13. The text of the deleted paragraphs on export controls and full-scope safeguards was as follows:

Paragraph 24: 'The Conference recalls the commitment of the nuclear-weapon States in article I of the Treaty not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices, directly or indirectly. The Conference calls on the nuclear-weapon States to commit themselves not to enter into any kind of nuclear technical cooperation with States not party to the NPT.'

Paragraph 40: 'The Conference encourages the States parties, within their national rules and regulations, to ensure that the transfer of certain items to States parties to the Treaty will only be used for peaceful purposes according to Articles I, II, III, and IV of the Treaty.'

Paragraph 41: 'The Conference notes that a number of States parties engaged in the supply of nuclear material and equipment have met regularly as an informal group known as the Zangger Committee, in order to co-ordinate their implementation of Article III, paragraph 2 of the Treaty. To this end, these States have adopted certain understandings, including a list of items triggering IAEA safeguards, for their export to non-nuclear-weapon States not parties to the Treaty, as set forth in IAEA document INFCIRC/209 as amended.'

Paragraph 42: 'The Conference notes the two International Seminars on the role of Export Controls in Nuclear Non-Proliferation, held in 1997 in Vienna and 1999 in New York, organised by the Nuclear Suppliers Group, as designed to contribute to transparency as called for in paragraph 17 of decision 2 (Principles and Objectives for nuclear non-proliferation and disarmament) adopted by the 1995 NPT Review and Extension Conference.'

Paragraph 61: 'The Conference encourages States parties to consider establishing an INFCIRC/153 safeguards agreement coupled with an additional protocol as constituting the IAEA full-scope safeguards referred to in paragraph 12 of Decision 2 of the 1995 NPT Review Conference.'

Paragraph 68: 'The Conference invites all States to adopt the understandings of the Zangger Committee in connection with any nuclear co-operation with non-nuclear-weapon States not parties to the Treaty.'

Paragraph 70: 'The Conference notes that a number of States parties also co-operate on a voluntary basis through guidelines for their nuclear-related exports, as set forth in IAEA document INFCIRC/254 as amended.'

Paragraph 72: 'The Conference invites coordination of national policies among all interested States parties to the extent possible, including through the IAEA, in a manner that would contribute to the non-proliferation objectives of the NPT and facilitate transparency and participation of all interested States parties in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy, in conformity with Articles I, II, III, and IV of the Treaty.'

14. Article I, paragraph 3 states that '...the nuclear-weapon States reaffirm their commitment not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices directly, or indirectly, and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.' Article I, paragraph 4 repeats this undertaking in relation to the NNWS.

15. Article IV, paragraph 3 states that 'The Conference reaffirms the undertaking by all parties to the Treaty to facilitate, and have the right to participate in, the fullest possible exchange of equipment, material, and scientific and technological information for the peaceful uses of nuclear energy among States parties to the Treaty. The Conference notes the contribution that such uses can make to progress in general and to helping to overcome the technological and economic disparities between developed and developing countries.'

16. The text of the paragraph deleted from NPT/CONF.2000/MC.II/CRP.13/Rev.1 was as follows:

Paragraph 9: 'The Conference notes with satisfaction that, since the last Review Conference, with the two regrettable exceptions caused by non-compliance with their safeguards agreements by two States parties, the IAEA has continued to provide States parties with assurance that nuclear material that had been declared and placed under safeguards had not been diverted for any military purpose or for purposes unknown, or that facilities, equipment, non-nuclear material and other items placed under safeguards had not been misused.' (This was a G-10 proposal from NPT/CONF.2000/MC.II/WP.2).

17. The *Annual Report of the IAEA* for the year 2000 states that: 'The Agency has been able to monitor the freeze on the DPRK's graphite moderated reactors and related facilities, as requested by the UN Security Council and as foreseen in the Agreed Framework of October 1994 between the US and the DPRK.' (*Annual Report of the IAEA*, 2000, p.97)

18. This was a parallel regional inspection regime, set up to carry out bilateral inspections between the ROK and the DPRK.

19. The doctrine holds that, if a state is attacked by another state in violation of international law, the state attacked is freed from all international commitments with regard to the attacking state, and therefore has the right to respond with whatever weapons it may choose, including nuclear weapons. However, the response must be proportionate and necessary to stop any further attack, raising questions as to whether a nuclear attack would ever be justified by this doctrine.

20. A number of Arab states in North Africa have already signed up to the Pelindaba Treaty.

21. Discussions on this 20-article draft convention were initiated in 1996 by the Russian Federation. It covers the use or threat to use nuclear related items to kill or injure persons, damage property or the environment, or to compel persons, states or international organisations to do or refrain from doing any act. This includes the unauthorised receipt of nuclear materials belonging to a state party through fraud, theft, or forcible seizure. Important elements of the Draft Convention were drawn from the 1980 Convention on the Physical Protection of Nuclear Material covering sea transportation of nuclear materials. The draft is under consideration by the Legal Committee of the UNGA, which in December 1996 created an Ad Hoc Committee to discuss it. On 17-27 February 1998 a detailed review of alternative modalities to address the problem took place,

including a new convention or a protocol to either the 1980 Convention on the Physical Protection of Nuclear Material or the 1997 Convention on the Suppression of Terrorist Bombings. This review concluded that a new convention was required and that it should complement existing international treaties, but the Legal Committee is still unable to reach a consensus view on how to move forward with this matter. The draft paragraph on the Convention stated: 'The Conferences (sic) stresses the need for rapid conclusion of the Convention on the Suppression of Acts of Nuclear Terrorism', NPT/Conf.2000/MC.II/CRP.13/Rev.1, 11 May 2000, para.49.

22. Among non-parties to this are the DPRK, Iran, and Iraq. Israel has signed but not ratified, and Pakistan acceded in October 2000.

23. When the Convention on Physical Protection was being negotiated in 1979, the US wanted the standards in the Convention to apply to all national facilities as well as transport, but under pressure from others agreed that establishing physical protection standards for international transport should have first priority.

24. Before this meeting, Director General Mohammed El Baradei stated that, although the risk of terrorism had been recognised in the past, increased precautions were now essential because terrorist use of nuclear materials 'seems far more likely in the wake of September 11.' *Washington Post*, 2 November 2001.

25. The obligations of the contracting parties are largely based on the IAEA safety fundamentals document 'The Principles of Radioactive Waste Management,' and include, in particular, obligations to:

- establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste;
- ensure that individuals, society and the environment are adequately protected against radiological and other hazards by appropriate siting, design and construction of facilities, and by making provisions for ensuring the safety of facilities during operation and after their closure;
- abide by the IAEA Code of Practice on the International Trans-boundary Movement of Radioactive Waste; and
- take appropriate steps to ensure that disused sealed sources are managed safely.

The Joint Convention includes transparency measures, which provide for states to provide national reports on how they are implementing each obligation of the Convention. Specific information must be provided to the Agency by states parties, including details on each state's spent fuel and radioactive waste management policies and practices.

26. The US Union of Concerned Scientists has been stressing this point. *Reuters* (San Francisco) 4 November 2001.

27. US cooling pools are designed to withstand earthquakes, tornadoes, and other natural calamities, but were not built specifically to withstand acts of sabotage such as the impact of a jetliner. These pools, initially intended as temporary facilities, now hold considerably more spent fuel than a nuclear reactor. It has been argued that if a pool was hit, and the water boiled or drained away, the discarded fuel would overheat, melt or catch fire, threatening to release a radioactive cloud.

28. Article 29 of the Convention requires that the Preparatory Meeting of Contracting Parties should fix a date for the first review meeting, which, under the terms of the Convention, should not be later than 30 months after the date of entry into force.

29. The states in question that have not signed the Treaty include: the DPRK, Iraq and Iran. Algeria, Cuba, Egypt, Ghana, Iceland, Indonesia, India, Israel, Jordan, Kazakhstan, Monaco, Morocco, Nicaragua, Nigeria, Philippines, Sudan, Syria, Tunisia, and Uruguay, have signed but not ratified or deposited instruments of ratification. Of these, India, Israel and Kazakhstan are of particular concern, as each has at least one nuclear installation that has achieved criticality in a reactor core. Pakistan ratified the Convention on 29 December 1997.

30. The Convention establishes a legal obligation on the part of the parties to apply certain general safety principles to the construction, operation and regulation of civilian nuclear power plants under their jurisdiction. The aim is to reach and maintain high standards of nuclear power station safety worldwide, to create and uphold precautions against dangers from nuclear power plants, and to prevent/contain accidents from radioactive fallout. One of the Convention's primary safety principles is that each party should establish a nuclear regulatory organisation that is effectively

separated from the regulated industry and from government organisations that promote nuclear power. Each party's nuclear safety programme is to include such elements as radiation protection, quality assurance, emergency preparedness, and nuclear facility siting, design and construction, and operation. Parties to the Convention agree to submit periodic reports on the steps they are taking to implement the obligations of the Convention. At the 1999 Review, only three parties to the Convention, namely Bangladesh, Mali and the Republic of Moldova, failed to comply with the basic obligations of the Convention to submit a National Report and attend the meeting. Singapore submitted a National Report but did not attend the meeting.

31. The al Qaeda terrorist network is known to have attempted to acquire weapons-grade HEU. It is not known whether these efforts have been successful, but it does seem to have managed to get hold of some LEU. Officials also suspect that the group may have obtained spent fuel and other radioactive material, which could be used in a so-called 'dirty bomb' or radiological weapon.

32. The 1995 Resolution on the Middle East, co-sponsored by the depositary states, was the political condition placed by a number of Arab states and several members of the Non-Aligned Movement (NAM), on their consent to the indefinite extension of the NPT in 1995. It calls, *inter alia*, for all States in the region to accede to the NPT.

33. See NPT/CONF.2000/PC.I/32, pp. 53-55; NPT/CONF.2000/PC.II/32 p.15; and NPT/CONF.2000/PC.III/12.

34. See page 28 for a more detailed discussion of this debate.

35. Following the 1995 Resolution on the Middle East, three of the four remaining non-NPT states in the region (Djibouti, Oman,

and the United Arab Emirates) acceded to the NPT, leaving Israel isolated.

36. Article III, paragraph 3, implies that, in principle, nuclear exports to non-parties for peaceful purposes are legitimate and therefore any blanket ban on such exports would contradict the Treaty.

37. Cuba's position was set-out very clearly at the Moscow International Non-Proliferation Conference on 7 October 2000, by Dr, Fidel Castro Diaz-Balart of Cuba's Higher Institute of Science and Technology. He stated that 'Cuba agreed to sign the Treaty of Tlateloco and the additional protocol as a gesture of goodwill and transparency,' but 'Only when the idea of "prohibition" – which is broader in scope than "non-proliferation" – is understood and accepted by all, can a universal regime for the prohibition of nuclear weapons and the creation of common goals and objectives be fulfilled.' 'Cuba's Nuclear Straddle,' *Proliferation Brief*, Vol. 3, Number 31, 25 October 2000. Available at: <http://www.ceip.org/files/nonprolif/templates/articles.asp?NewsID=538>.

38. 'Proposed language submitted by Belgium, Denmark, Germany, Italy, Luxembourg, Norway, Spain, Switzerland, The Netherlands for Paragraph II 4 of the MC.I chairman's working paper on 'Universality', NPT/CONF.2000/MC.I/CRP.15, 9 May 2000. This asked '...The President and the chairmen of the next Preparatory Committees' sessions to informally consult with all States not yet party of the Treaty and to report to the respective Preparatory Committees' sessions and the next Review Conference. During these informal consultations, the President and the chairmen should submit to these states all agreed documents of the previous Conference or session'.

## Abbreviations and Acronyms

ABM Treaty	Anti-Ballistic Missile Treaty	NNWS	Non-Nuclear Weapon States
ASEAN	Association of South-East Asian Nations	NPT	Treaty on the Non-Proliferation of Nuclear Weapons
CD	Conference on Disarmament	NRC	Nuclear Regulatory Commission
CRP	Conference Room Paper	NSA	Negative Security Assurance
CSBM	Confidence and Security-Building Measure	NSG	Nuclear Suppliers Group
CTBT	Comprehensive Test Ban Treaty	NWFW	Nuclear Weapon Free World
CWC	Chemical Weapons Convention	NWFZ	Nuclear Weapon Free Zone
FMCT	Fissile Material Cut-off Treaty	NWS	Nuclear Weapon States
HEU	Highly Enriched Uranium	P&Os	1995 Principles and Objectives for Nuclear Non-Proliferation and Disarmament
IAEA	International Atomic Energy Agency	PAROS	Prevention of an Arms Race in Outer Space
ICBM	Inter-Continental Ballistic Missile	PMG	Plutonium Management Guidelines
ICJ	International Court of Justice	PrepCom	Preparatory Committee
IDC	International Data Centre	Pu	Plutonium
IMS	International Monitoring System	SAGSI	Standing Advisory Group on Safeguards Implementation
INFCIRC	Information Circular	SB	Subsidiary Body
LEU	Low Enriched Uranium	UNDC	UN Disarmament Committee
LWR	Light Water Reactor	UNGA	UN General Assembly
MC	Main Committee	WMD	Weapons of Mass Destruction
MENWFZ	Nuclear Weapon Free Zone in the Middle East	WP	Working Paper
NAC	New Agenda Coalition		
NAM	Non-Aligned Movement		
NGO	Non-Governmental Organization		

## Contents

<b>Introduction</b>	3	15a. Technical Assistance	26
<b>Working Group Members</b>	5	15b. Export Controls	27
		15c. Transparency	27
<b>Part I: Nuclear Disarmament and the ‘13 Steps’</b>		16. Compliance	28
1. The CTBT	6	16a. The Security Council	28
2. A Moratorium	7	16b. The Non-proliferation Regime and Non-compliance	29
3. Fissile Material	7	16c. Iraq	30
4. Nuclear Disarmament & the CD	8	16d. The DPRK	31
5. Irreversibility	9	17. Security Assurances & NWFZs	31
6. An Unequivocal Undertaking	9	17a. Security Assurances & the NWS	32
7. START & the ABM Treaty	10	17b. Existing NWFZs	33
8. The Trilateral Initiative	11	17c. A NWFZ in the Middle East	34
9. International Stability and Undiminished Security	11	17d. A NWFZ in Central Asia	34
9a. Unilateral Reductions	12	17e. Additional NWFZs	35
9b. Transparency	13	18. Physical Protection Issues	35
9c. Non-Strategic Nuclear Weapons	14	18a. The Convention on the Physical Protection of Nuclear Material	36
9d. Operational Status	15	18b. Spent Fuel and Radioactive Waste	37
9e. A Diminishing Role for Nuclear Weapons	16	18c. The Convention on Nuclear Safety	38
9f. The Process of Total Elimination of Nuclear Weapons	17	18d. The Illicit Trafficking of Nuclear Materials	39
10. Surplus Material	17		
11. General and Complete Disarmament	18	<b>Part III: Universality and the NPT</b>	
12. Reporting	19	19. The Resolution on the Middle East	40
13. Verification Capabilities	19	20. Israel & Universality	41
		21. The Nuclear-Weapon Status of India and Pakistan	41
<b>Part II: Nuclear Non-Proliferation</b>		22. India/Pakistan and Universality	42
14. Safeguards	21	23. Cuba and the NPT	43
14a. Voluntary-offer Safeguards	21	24. Universality and Regional Security	43
14b. Safeguards: Effectiveness & Efficiency	22	25. Steps to be Taken by the President of the 2000 NPT Review Conference in Relation to Universality	44
14c. The IAEA & Financial Constraints	23	26. Reporting on State Actions to Promote Universality of the NPT in the Middle East	44
14d. The Additional Protocol	23		
14e. Safeguards Assistance	24	<b>References and Notes</b>	45
14f. The Civil Plutonium Management Guidelines & Highly Enriched Uranium	24	<b>Abbreviations and Acronyms</b>	47
15. Safeguards & Export Controls	25		

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*Possible Ways to Implement the Results*  
*of the 2000 Review Conference*