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Programme for Promoting Nuclear Non-Proliferation (PPNN), 'Issues at the 1995 NPT Conference: A PPNN International Briefing Seminar for Senior Diplomats: Programme Director's Report'

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PROGRAMME DIRECTOR'S SEMINAR REPORT

PROGRAMME FOR PROMOTING NUCLEAR NON-PROLIFERATION (PPNN)

ISSUES AT THE 1995 NPT CONFERENCE

A PPNN International Briefing Seminar for Senior Diplomats
Pocantico Hills Conference Centre of the Rockefeller Brothers Fund
North Tarrytown, New York
October 28-30, 1994

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INTRODUCTION

1. From 17 April to 12 May 1995 a Conference will be held in New York to review both the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and to decide on its further duration. PPNN has been organising a series of seminars to brief government officials on issues related to this NPT Conference. The Seminar at the Pocantico Hills Conference Centre of the Rockefeller Brothers Fund was the third in this series of international meetings. Details of those who attended, the working groups and the papers presented are contained in the attached General Report on the Seminar.
2. This Report is intended to give a general reflection of issues addressed in the working groups and plenary discussions at the Seminar. It does not claim to be a full summary of those issues or of the opinions expressed about them; rather, it is intended to highlight, for the purposes of further analysis and discussion, some of the issues raised; the main problems for 1995 that emerged from them; and some of the solutions to resolve these issues. ***It should be noted that this is not a report adopted by the Seminar participants: it is merely intended as an aide memoir for their private use. Above all, it exclusively represents the views of PPNN's Programme Director, John Simpson, who bears full responsibility for its contents.***
3. One significant issue that may not emerge fully from this report is the common interest of the states parties in keeping the Treaty in existence for the foreseeable future. Both nuclear-weapon and non-nuclear-weapon states have mutual interests in ensuring that no additional states acquire nuclear weapons; providing the means to make sure that this is so; and sustaining an agreed framework within which international nuclear commerce can take place. The existence of these common interests is often obscured by arguments that one or another group of states is more dependent upon the benefits from the Treaty than the other, and thus should make more concessions to sustain it.
4. The central issue in 1995 will not be whether the Treaty is worthy of extension: almost all parties accept that it has to be extended unless and until another Treaty with similar membership can be negotiated to replace it. Rather, it is the need to strike an acceptable balance between the long-term stability and security offered by an indefinite or prolonged extension of the Treaty and two other concerns:
 - i. the desire of a significant majority of the parties to maximise their leverage over the nuclear-weapon states and their close allies for the purposes of achieving total nuclear disarmament, enhanced security assurances and assistance in developing peaceful nuclear programmes; and

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- ii. the belief articulated by many parties that to accept an indefinite extension of the NPT logically implies acquiesce to the permanent possession of nuclear weapons by the five nuclear-weapon states, given the lack of a mandatory commitment to nuclear disarmament in the current Treaty.

5. Arising from these concerns is the question of how the processes of reviewing and extending the Treaty can be used to obtain commitments from the nuclear-weapon states on specific issues, without risking the long-term stability of the nuclear non-proliferation regime. The linkage, if any, between the extension decision and specific issues is probably the area of greatest uncertainty confronting the 1995 Conference.

6. The danger is not that the NPT will expire through lack of interest, obsolescence or because it is no longer useful: it is that the Treaty will terminate, after a short period of extension, as a result of miscalculations or bad judgements - or negative intent on the part of a small minority of parties - during the diplomatic bargaining that will inevitably occur in the latter stages of the Conference. To guard against an outcome desired by no-one there is thus a need for participants to be fully briefed on all the complexities surrounding the Treaty.

7. In the course of the Seminar both substantive and procedural issues were addressed. While many substantive problems will be raised in the course of the review of the Treaty, five distinct substantive issues can confidently be expected to dominate the discussions in 1995, as well as two procedural ones. These are listed below in no particular order of significance.

SUBSTANTIVE ISSUES*i. Regional Concerns*

8. NPT conferences present states parties with a forum for articulating the nuclear aspects of their inter-state disputes. At past review conferences, two regional disputes were a source of difficulty in the drafting of a consensus Final Declaration: Africa/South Africa and Middle East/Israel. The former dispute no longer exists, but the latter remains. Despite progress in the peace process, some Arab states are likely to advocate wording in the 1995 Final Declaration condemning Israel's refusal to accede to the NPT. In the past, the US has been opposed to such wording, while other states have argued that it should be incorporated in a section encompassing all states with significant unsafeguarded facilities, such as India and Pakistan. Arab states will also find it difficult to agree to a long extension of the NPT in the absence of Israel's accession to this Treaty.

9. The break-up of the former USSR has not resulted in the challenges to the non-proliferation regime from transfer and inheritance that it was once believed to pose. Only Ukraine and Tajikistan remain outside of the NPT, and Ukraine seems likely to accede before the end of 1994. The key issue raised by current concerns is the need for all states to have both an effective internal accounting and physical protection system for nuclear materials. Given the problems that the break-up posed for non-proliferation, the NPT has a very good record as a framework within which these and similar problems could, and have been, resolved. It has also provided a valuable source of stability for Europe as the legacies of the Cold War have been liquidated.

*PROGRAMME DIRECTOR'S SEMINAR REPORT**ii. Disarmament*

10. The context of the 1995 NPT conference is different from that in 1990. Large quantities of US and former-USSR nuclear devices have been dismantled annually since 1991, and the US and the Russian Federation are committed by the START agreements to reduce the numbers of their strategic warheads to approximately 3,000 each by the early years of the next century. It should be possible to incorporate this commitment into the 1995 Final Declaration. The central issue now under discussion is the future military and political role of nuclear weapons, and whether in the first instance the numbers of nuclear devices can be brought down to levels of 1-300 per state; how the other three nuclear-weapon states can be brought into this dismantling process; where the nuclear disarmament process goes from there; and whether some residual nuclear-weapon capability under international control may be necessary to deal with states which choose to break the non-nuclear rule.

11. The Group of Non-aligned and Other States circulated a formal document at the 3rd PrepCom "covering various aspects which are of paramount importance...to the 1995 NPT Review and Extension Conference". This included statements that "The NWS's should reaffirm their commitment to the complete elimination of nuclear weapons " and that "A time-bound framework and a target date for the total elimination..... of nuclear weapons will create a strong political thrust towards international efforts to prevent proliferation of nuclear weapons". Pressure may therefore be placed on the nuclear-weapon states to reconfirm, for instance in a UN Security Council Resolution, their commitment in Article VI of the NPT to negotiate complete nuclear disarmament. Its absence may generate friction at the 1995 NPT Conference, especially if some states seek to link the length of extension of the Treaty to further progress in nuclear disarmament.

12. The scope of Article VI extends beyond nuclear weapons into all forms of disarmament and arms control, and covers actions by all states. This means that in considering the implementation of this Article account should also be taken of agreements in areas such as Conventional Forces in Europe and Chemical Weapons, and of the involvement of parties other than the nuclear-weapon states.

13. Attempts to adopt Final Declarations at the NPT review conferences of 1980 and 1990 foundered in part on the lack of progress towards a Comprehensive Test Ban Treaty (CTBT). Although negotiations are in progress in Geneva on a CTBT, there remains a desire by some parties to link completion of this Treaty to the NPT extension process. Negotiations on a CTBT have now reached a moment of truth, where states have to come to grips productively with the key issues in the negotiation. If they are seen to be doing this, and all the nuclear-weapon states have made a commitment to complete this Treaty by 1996, this may make it easier to adopt wording on this matter in the Final Declaration than it has been in the past.

iii. Security Assurances

14. Positive and negative security assurances were demanded of the nuclear weapon-states when the NPT was negotiated, as a counterbalance to the non-nuclear-weapon states giving up their right to acquire nuclear weapons. At the 1990 Review Conference, Egypt argued for a revision of UN Security Council Resolution 255 to provide enhanced positive security assurances, while Nigeria proposed a treaty under which the nuclear-weapon states would offer a common, legally-binding, negative security assurance to replace their existing unilateral statements. In addition, China is currently advocating a no-use and no-first-use treaty.

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15. Discussions have been taking place in the Conference on Disarmament on meeting these demands, but many states remain unconvinced that a Treaty, Convention or Protocol would be the best way of handling them. It has been claimed that a new UN Security Council resolution at the end of January, 1995, adopted at Heads of State level, would have an equivalent force of law; could be drafted to commit all five nuclear-weapon states to enhanced negative and positive assurances; and would mandate a legal rule for all time which cannot be the subject of a Security Council veto. However, it is uncertain whether this resolution will actually emerge and, if it does, whether it will satisfy those states which have a long-standing interest in this issue, in particular given their demands that the nuclear-weapon states should overtly abandon their Security Council veto over the implementation of such a resolution.

16. In the area of negative security assurances, many states now enjoy unconditional assurances through their membership of NWFZ's. It is unclear to many states why these assurances cannot now be extended to all non-nuclear-weapon states on a global basis. A commitment by all five nuclear-weapon states in the review section of the Final Declaration from the 1995 NPT Conference to negotiate such a Negative Security Assurance Treaty within three years might serve to greatly reduce friction on this issue. A similar commitment was discussed during the 1990 NPT Conference, and there seemed a good possibility that agreement would have been reached on this had the conference produced a Final Declaration.

iv. IAEA Safeguards

17. The adequacy of IAEA safeguards, and methods of enhancing their ability to uncover the activities of clandestine proliferators, seems likely to be discussed at the 1995 Conference, given the disclosures about Iraq's nuclear-weapon programme. It may also be in the interest of the IAEA if its proposals for a "1993 + 2" enhanced safeguards system were raised by national delegations, and were endorsed by all parties in any Final Declaration of the Conference. This subject is unlikely to generate major controversy, in contrast to the issues relating to Treaty compliance and enforcement raised by the Iraq and DPRK cases. Some states may want to include a condemnation of Iraq and the DPRK in the Final Declaration for their actions in relation to their IAEA safeguards commitments, which those two states would find it hard to accept, making consensus wording on these matters difficult to achieve. At the same time, it may lead to the international community's responses to alleged breaches of non-proliferation agreements becoming a subject for discussion at the Conference.

18. The need for new measures to deal with plutonium may also become an issue, given the amounts being released from dismantled weapons, the plans for recycling material produced in civil fuel and the emerging question of the risks arising from the smuggling of plutonium across state boundaries by non-state groups.

19. A further issue that may emerge under this heading is the attacks on Iraqi safeguarded facilities during the Persian Gulf War. This general question of attacks on nuclear facilities is a sensitive one in the Middle-East region, and at the 3rd PrepCom Iraq signalled its intention to raise it at the 1995 Conference. Iraq may also attempt to use the forum to open a debate on removing the constraints imposed on its nuclear activities by the UN Security Council, and also the more general sanctions imposed upon it, which may be due for renewal while the NPT Conference is in session.

*PROGRAMME DIRECTOR'S SEMINAR REPORT**v. Peaceful Uses and Export Controls*

20. Several specific developments seem likely to make the right to fully develop nuclear energy by NPT non-nuclear-weapon state parties a particularly significant issue in 1995.

21. Iran wishes to complete the power reactors at Bushehr which were under construction by German firms prior to the outbreak of the Iraq-Iran war. Iran perceives that US pressure has stopped the German government agreeing to this. Given its statements at the 3rd PrepCom and at the General Conference of the IAEA, Iran seems likely to either seek to obtain a commitment from Germany and the United States on the completion of its reactors, or to have a condemnation of the US for its perceived pressure upon Germany, written into the 1995 Final Declaration.

22. The agreement between the US and the DPRK for the supply of reactors of the type Iran seeks to have completed, in return for an eventual acceptance by the DPRK of the full application of NPT/IAEA safeguards, is likely to give rise to at least two points of contention. One is the logical contradiction between the alleged US refusal to allow Iran, an NPT party which has not yet been found to be in non-compliance with its IAEA safeguards commitments, to complete its power reactors and the willingness of the US to assist and finance the construction of such reactors in the DPRK, an NPT party allegedly in breach of its IAEA safeguards requirements. The second is the willingness of the US and other advanced industrial states to provide \$4 billion to build the DPRK reactors, in comparison with their unwillingness to provide similar sums to any other developing state which wishes to construct a power reactor.

23. The existence of export restrictions on nuclear items, such as the guidelines adopted and published by the Nuclear Suppliers Group (NSG), has always been regarded by some developing states as a departure from Article IV of the NPT. The decision to extend the NSG export guidelines to dual-use equipment in 1992 has served to fuel resentment arising from the existence of these restrictions. It has also reinforced suspicions that these guidelines constrain industrial progress in developing states, especially as some items appear to be traded freely among advanced industrialised states but not with developing ones. Iran will undoubtedly seek to gain support for its specific national aims by relating them to these concerns. However, statistics produced by representatives of supplier states suggest that items specified in these guidelines form a very small part of trade with the developing world, and even in the case of those items which fall within the guidelines, very few are refused an export licence [in one case cited, out of an annual total of 20,000 export licence applications only 300 were refused, of which only 4 were for nuclear items, and these were destined for non-NPT countries]. This suggests that a formal dialogue between members of the NSG and other NPT parties to explain the nature of the guidelines and the manner in which they operate, perhaps in the context of the NPT conference itself, might serve to ameliorate many of these concerns.

24. Leaders of nuclear industries in the three or four developing states interested in nuclear power recognise that an indefinite extension of the NPT would assist them in persuading the advanced industrialised states and international financial organisations to aid them in constructing power reactors and other nuclear energy facilities in their states. A short extension would have the opposite effect.

*PROGRAMME DIRECTOR'S SEMINAR REPORT***PROCEDURAL ISSUES**

25. There is no precedent for handling the decision on the further duration of the NPT mandated to the 1995 Conference by Article X.2 of the Treaty. As a consequence, many uncertainties persist, especially in areas such as the options for the NPT's further duration and the procedures for taking the duration decision. It would clearly assist the Conference if these and other procedural issues could be clarified at the 4th PrepCom in January 1995, and not left for resolution in April.

i. Duration Options

26. Article X.2 only specifies three options. Two of these are simple and uncontroversial: a single fixed period, at the end of which the Treaty would terminate, and an indefinite period. The only issue surrounding the single fixed period is whether its length should be the original 25 years, or some shorter period.

27. The third option is more complicated - extension for a series of fixed periods. The problems arise from the fact that the Treaty does not specifically state how a decision is to be taken to move from one period to another, or what that decision is to be - to extend the treaty; to terminate it; to extend it automatically unless specific actions are taken to prevent this? Although some believe that the wording of Article X.2. specifically excludes the possibility of further extension conferences after 1995, others disagree.

28. This in turn raises legal questions about whether amendments to the Treaty would be required to legitimise some variants of this third option - but not others. A contested view exists that the options specified in the Treaty are sufficiently imprecise that extension decisions which go beyond a narrow interpretation of the Treaty would be legal, provided they were accepted by a majority of the parties. Three further options have been proposed that probably fall into this category: - the linking of extensions for further periods to specific actions by the nuclear-weapon states; the re-run of Article X.2. [Venezuela option]; and taking no decision on duration until specific disarmament agreements have been concluded [the recess option]. Moving away from a narrow interpretation of the Treaty in this way, however, seems certain to generate significant legal and other uncertainties, especially for the United States where Senate approval might be demanded for it.

ii. Decision Issues

29. A basic question underlying the duration decision is whether the review process and the extension decision are, or should be, linked, and if so in what way. Some have argued that the two activities are quite distinct, and as a consequence the extension decision could be taken in the first week of the Conference before the detailed review process has started. Others have pointed to the logic of taking an extension decision only after reviewing the implementation of the Treaty. Yet others have asserted that if there is no Final Declaration containing the review of the implementation of the NPT, it would be impossible to take any decision on the extension of the Treaty.

30. Many accept that because of their different nature, review and extension activities should not and cannot be linked in a single document, though they are and should be linked politically. Whether extension or review should be decided upon first, and whether agreement on one should be conditional upon agreement on the other, then become significant in the

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context of attempts to reinforce the political linkage. Others believe that much of the leverage over the nuclear-weapon states that they perceive arises from the 1995 Conference would be lost if the extension decision and the review process were formally separate.

31. The draft Rules of Procedure of the 1995 Conference discussed at the 3rd PrepCom state that a recess is only possible after at least one of the options has been voted upon, and has failed to receive the support of a majority of the parties to the Treaty. During such a recess, the Treaty would remain in full effect for all parties. However, the recess would have to be of a finite, relatively short duration, as otherwise it would equate to a decision on an indefinite or long extension.

32. One set of issues that remains unresolved is whether more than one resolution on the Treaty's further duration can be placed before the Conference and voted upon. If this was permitted, how would the order of voting on the resolutions be decided upon; should all resolutions be voted upon, or would the first resolution to receive the support of the majority of the parties be automatically adopted; and if all resolutions were voted upon, what criteria should be used to determine the resolution to be adopted if more than one received the support of a majority of the parties?

33. One possible solution to these issues would be to adopt a voting procedure using some type of Run-Off or Single Transferrable Vote system. Under such a system, several rounds of voting would take place, starting with all options/resolutions put forward being voted upon, and the one receiving least support being eliminated before the next round. An alternative solution would be to leave the matter to be handled by the President, who with assistance from his "Friends" might assess which option had the most support, and could then arrange for a vote to be taken on this option.

34. The disadvantage of voting on the duration options is perceived to be that it may result in a significant minority of states either voting against the option chosen by the majority, or abstaining. Many see such visible opposition as weakening both the Treaty and the regime. The advantage of voting, assuming a majority of states parties supported a specific option, is that it would produce a legally unchallengeable and clear result.

35. A consensus, rather than a voted, decision may minimise apparent opposition to the NPT. It also offers political leverage to those states critical of the Treaty's past implementation. A consensus decision on extension in 1995 would probably mean that this would have to be contained, together with the review, in the Final Declaration of the Conference, and thus trade-offs might have to be made by all parties between critical language in the review, and perhaps promises of future action, and support for the extension option chosen. The political, legal and procedural implications of such a relationship between the review and extension process remain opaque, however.

SOME CONCLUSIONS

36. The "mood" of the 1995 Conference will be of considerable significance in determining its outcome. A spirit of co-operation in pursuit of the common goal of sustaining the non-proliferation regime, coupled with an acceptance of the legitimate desire of some states to use the conference to achieve specific national objectives, will greatly enhance the chances of reaching the necessary compromises on key issues.

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37. The nature and focus of nuclear proliferation threats have altered over the last four years, and with them the security value of the NPT to specific states. While some states, such as those in Southern Africa, may now regard the threat from nuclear proliferation as low, others, such as the Arab states and the Russian Federation, continue to regard it as high. This will influence the weight a state places on the significance of the NPT, as against other issues, and the length of its future duration.

38. One new issue that has emerged over this period is how to handle parties to the NPT which are alleged to be in breach of their legal commitments. Two distinct strategies appear to be available to the international community to manage this: to enforce compliance through sanctions, including in extreme cases the use of force authorised by the UN Security Council; or by dialogue, consultations and positive inducements to conform. The danger of the latter course is that it may be seen to reward and encourage such non-conformist behaviour.

39. The debate on nuclear disarmament in 1995 is likely to be a very animated one, and offers the first opportunity for a real dialogue on the issue at an NPT conference. While the nuclear-weapon-states have to recognise the political aspirations of the non-nuclear-weapon states for moving to a nuclear-free-world, and their desire to participate in the planning of such a transition, equally the non-nuclear-weapon states need to give due recognition to the quantitative reductions in nuclear arsenals which have been undertaken unilaterally by the nuclear-weapon states since 1991; their commitments to future reductions; and the need to think through in detail how nuclear disarmament might proceed. Such recognition and flexibility would greatly facilitate adoption of the disarmament sections of the 1995 Final Declaration, especially if it were linked to a restatement of existing commitments by the nuclear-weapon states. It would not be productive to try and turn the 1995 Conference into a global referendum on the past disarmament performance of the nuclear-weapon states, as this might have a negative effect on any move to accelerate that performance.

40. As the issues confronting the Conference are explored at greater length, the political and procedural mechanics of how the substance of the review of the implementation of the NPT and the extension decision will be linked to each other, if at all, remain elusive. Even if a consensus could be achieved on both an extension option and a review document, it might still be necessary to hold a roll-call vote as part of the consensus process, if only to establish clearly that a majority of the parties were present before a decision was taken. If a consensus decision on extension proved impossible to engineer, the voting system contained in the Rules of Procedure would be implemented. As yet, however, no agreement exists on what this system should be, though one proposal is to hold a sequence of votes on a steadily reducing number of extension options. The result from this voting system might then be incorporated into a consensus Final Declaration, if this appeared feasible and desirable.

41. It remains uncertain whether the issues in 1995 can be settled in their own terms, or whether the countries involved may need to move beyond the boundaries of the current debate to resolve them. One option here could be to use a mixture of economic and political sticks and carrots to persuade individual state parties to vote for a particular option. Another could be to alter the format of the current debate by offering, for example, to create a forum for more frequent international exchanges on non-proliferation and the NPT in return for acceptance of a long or indefinite extension of the Treaty.