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The Preparations for the 1995 NPT Conference

SPEAKING NOTES

This seminar will discuss what we expect to happen at the conference of 1995, where the Non-Proliferation Treaty is to be reviewed and extended. I want to talk briefly about *how* that is to be done, and what must happen - and what is now in fact happening - *before* that is done. It is not my plan to discuss issues that will play a part at the conference. Others will deal with them, and most of our session will be taken up by them. I want to speak in general terms about the *procedural aspects of the preparation for the Conference*. Still, where procedure is so closely linked with substance, the two are hard to keep apart.

Forgive me if I underline the obvious, by repeating *why* we are here now, and will meet in 1995. Article X, 2 of the NPT says that "[t]wenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional period or periods. This decision shall be taken by a majority of the Parties to the Treaty".

In 1992, the General Assembly adopted a resolution in which it took note of "the decision of the parties" to the NPT to form a Preparatory Committee for a Conference "to *review* the operation of the Treaty and to *decide on its extension*, as called for in article X, paragraph 2, and also as provided for in article VIII, paragraph 3,...". That was an important decision, with *far-reaching procedural and substantive consequences*. It means that, in discussing the preparations for the 1995 Conference here, we are concerned not only with an "extension conference" or, as we have been four times in the past, with a "review conference", but we must prepare for a *conference that will review the operation of the Treaty and will also decide on its future*.

That sounds simpler than it is. The decision to combine the two aspects raised *at least two questions of principle*. The first one was, *how far back do you go in reviewing the Treaty?* The discussions during the first two sessions of the Preparatory Committee have shown that this question is open to debate. There are parties which feel that the review, at this twenty-five year milestone, must go back all the way to the beginning. They want to recall what was expected of the Treaty when it was adopted, and be able to compare that expectation with today's reality. Others say that we have had such reviews for every five years after the Treaty entered into force, so why repeat them all? They find it enough to review the implementation of the last five years, since the Review Conference of 1990, which after all was based on previous reviews. This latter approach is reflected in the decision of the PrepCom to ask the Secretariat to prepare background papers on developments going back as far as the 1990 Review Conference only, but if this is necessary to make those papers understandable, to explain also briefly what went before. In other words, those papers are to be able to stand by themselves - to present a rounded whole.

A second question is whether we should *review first and then extend*, or *extend first and then review*. I believe that in the view of the majority of the parties, there is a *logical sequence* in which you first

review what happened in the past, then draw your conclusion as to the usefulness of the Treaty, and *then* decide on its extension. Others think it will be easier to agree on extension than to formulate the conclusions from a review - so, they say, make sure you do the most important thing first, then use the rest of the time available to have a substantive review of the Treaty's implementation. The former answer that contention by saying that the extension *IS* the conclusion from the review. At which point the former ask how we can demand a *consensus* review - for at past review conferences it was understood that the final product should be a declaration adopted by consensus - when the decision on extension shall be taken by a majority of the parties, that is: in principle, *by vote*?

That is, indeed, a puzzling problem. It's one of the questions that arises from the fact that we are dealing with a *situation without precedent*. There are many other questions of this kind, which pose novel problems for the parties and the conference secretariat. Some have already been dealt with. For instance, in contrast to what happened before, the PrepCom has decided to allow observers from non-party states to sit in on its deliberations. It also permits representatives from non-governmental organisations to do so, from the public gallery. In a way, this reflects the great public importance of the PrepCom's deliberations.

There have been four review conferences: in 1975, 1980, 1985 and 1990. Each was important in that it gave parties an opportunity to express their views on the way the Treaty was being implemented. Their conclusions (or the lack of consensus on a single set of conclusions, as in 1980 and in 1990) had a less immediate effect on the existence of the Treaty than the conclusions of 1995 will have. On those earlier occasions, unhappiness about past performance triggered a *warning*, but the sole decision before the conference was whether to adopt by consensus a final declaration reflecting the conference's views on the way the Treaty was being, and should be, implemented. The choice was between a final declaration and none. *In 1995 the choice is to all intents and purposes between the long survival of the Treaty or its early death*. The moment of truth has come. Given the enormously weighty task of the conference, it is more important than ever before, that *it should be extremely well prepared*.

We have already seen, in the work of the PrepCom, that the absence of precedent makes for unknowns in relatively small as well as in important aspects. A relatively small aspect, for instance, is how to select the Chairs of the four sessions of the PrepCom, where formerly there were three. A bigger unknown is how to share the costs in light of the fact that one of the depositories feels no longer able to contribute the high proportion which its constitutional predecessor paid. A still more important issue is that of the mode of decision taking. On past occasions, the rule was that every attempt should be made to decide by consensus. At the first PrepCom session, a number of delegations expressed the wish to make voting possible. The matter has now been decided again along the previous lines, but with a clear possibility also for a vote.

Both the PrepCom and the secretariat *have to improvise*. *Creative improvisation demands give and take*, among the members of the PrepCom and between the PrepCom and the secretariat. The first session presented little evidence of a willingness to do so. In that respect, the second session was much more fruitful. Indeed, it is essential that *all concerned - even those who disagree with each other on substance - should help each other* to find solutions in this still largely unexplored area of procedure. They must *make the best possible use of the experience gained in preparing for the four review conferences*.

Above all, they should *consult with each other and discuss possible approaches* to new problems as and when those are identified.

The preparations take place not only in formal sessions of the PrepCom. They are *made on four levels*: in the PrepCom; in the Secretariat; and by the parties to the Treaty, first of all the Depositary States, then the various regional groups, and, last but not least, by each state individually. And, last but not least, *within* each state, governments need to study the options on which they will have to instruct their representatives, and the latter must prepare for their participation in the Conference.

In the past, the PrepCom began by adopting *its own rules of procedure* and making recommendations for *the way the conference would conduct its business*. It proposed what *committees* should be set up - an issue that has always been settled both on substantive grounds, i.e. what items each committee should deal with, and on geo-political considerations, viz. what part of the world should be represented in the person of the Chair.

On the basis of the proposals the PrepCom decides to make to the Conference, about the way in which it should operate, and in light of the decisions about its own working methods, the Secretariat must *consider how much money it needs*, and prepares a budget for the conference and the preparatory process. *Review conferences are not United Nations events*; they are called and run by the parties to the legal instrument of which the operation is being reviewed. That also means that *the parties pay all expenses*. That applies also to the 1995 Conference.

An important task for the PrepCom has always been to *determine what background papers the conference will need* when considering the implementation of any given operational article of the Treaty. Such papers are helpful especially to states which lack the means and the people to keep their authorities currently briefed on the issues that play a role at the review conferences, and on the background to those issues. Depending on the subjects, the PrepCom mandates the conference Secretariat, the IAEA or various regional agencies, as well as the Depositary Governments, to prepare a series of background papers. It discusses and reviews them. And it then asks for corrections and revisions. As stated before, the question how far back the papers should go into the history of the Treaty, which is in a way related to one's approach to the entire extension process has been settled. It now depends on the quality of the papers that are presented to the next session of the PrepCom, in September, if those present will consider them adequate for their purpose. Not all delegations need those background papers, and the view on their value varies. Big and rich countries may have their own excellent archives and research staff and can largely dispense with specially prepared background documents. But the majority of parties do not have such means of information and education, and to them having authoritative background papers prepared by an independent source is an important help. The fact that such documents are expensive to prepare, mainly because they must be translated and printed in all the languages of the conference: Arabic, Chinese, English, French, Russian and Spanish, complicates the process, but this cannot be avoided.

The decision-making process (to repeat: the decision whether the Treaty shall continue in force indefinitely or for a fixed period or periods, which "shall be taken by a majority of the Parties to the Treaty") will have to be applied with the greatest care. Its operation in a conference of this kind, its effects on the Treaty's further viability and its consequences for the parties are all unknown. The traditional requirement of consensus in the review conferences tended to lead to a go/no-go situation where the final declaration

was either adopted or rejected. Theoretically, a single dissenting view might have acted as a veto. In practice, of course, the dissent that caused the review conferences of 1980 and 1990 to end without a final declaration was shared by *a number of* participating delegations. Yet, in 1985, there was a moment when it seemed that the conflict between just two delegations and the refusal of one of them to accept the language worked out, would bring down the hard-fought consensus among all the rest.

In principle, a majority decision on extension should be easier to bring about. But dissent by an important minority could detract from the further value of the Treaty, even though the majority decision would bind all parties, including a dissenting minority. Still, a Treaty that so closely connected with matters of national security and economics needs the support of the great majority of the international community. *The decision on extension also binds those who did not attend.* The absentees, too, would find it easier to abide by the decision if it obviously reflects the will of the entire conference. That makes it very desirable for the decision on extension, like the adoption of a final declaration at a "normal" review conference, to be *adopted by consensus*.

In my opinion - speaking neither for any government nor for the Secretariat which I serve as adviser - the decision on extension should be approached more or less in the way the final declaration at the end of a review conference is handled, with the difference that there should be **two levels** of consensus: on the final declaration, which should express support for the Treaty and high expectations of its future value, and on the conclusions to be drawn from that, in the form of a decision to extend, as well as the length and nature of that extension.

Article X not only speaks of a "majority" as a requirement for the decision about extension: it has to be a majority "of the Parties to the Treaty". That is a very important consideration in the preparations for the conference.

Previous review conferences were attended by relatively few members. In 1975, the NPT had 96 parties; the review conference was attended by 58 of them. In 1980 the Treaty had 114 parties; the review conference was attended by 75. In 1985 the number of attendees was 86, while the number of parties to the Treaty had grown to 130. And in 1990, only 84 out of 142 parties attended.

Such a low attendance ratio could cause problems. At present, the number of parties stands at 163, which means that a vote must be taken with at least 82 delegations in favour. If the attendance in 1995 is as modest as it was at the last review conference, it would take virtual unanimity to get a valid decision. This makes it extremely important that as many parties as possible be encouraged to participate; it also underlines the desirability of adopting the decision on extension by consensus. In that respect, the turnout at the PrepCom of last May, which was attended by representatives of 128 parties, is very encouraging; the January session was attended by 114. Clearly, it helped that the meeting was held at New York, and it is a positive point that the decision was taken to have the Conference itself there as well.

To get many delegations to attend also takes careful preparation, especially on the part of the Depositary States. But all states interested in the NPT should encourage others to come, and help them understand the issues involved. A wider attendance might be promoted by a concerted effort of the most active supporters of the Treaty, to brief personnel of countries that are not normally at the forefront of international discussion, about the Treaty and the extension process. Non-governmental organizations may also have a role in this regard; again, speaking exclusively in my personal capacity, I believe that it may

contribute to the quality of the discussions. that such organisations are now allowed to observe the deliberations in the PrepCom and to brief delegates.

Perhaps the most positive and important factor in the preparation of the 1995 Conference so far has been the endorsement by the PrepCom of Ambassador Jayantha Dhanapala of Sri Lanka as the one candidate for President of the Conference. In my view - but I am not objective in this matter, as Dhanapala is both an old personal friend and a prominent member of my organisation's Core Group - one could not have made a better choice. We have seen in the past, how immensely important the position and the person of the President is for the Conference. *Ambassador Dhanapala needs and deserves the support of all delegates* to enable him to make the Conference a success.

Much is happening in the realm of nuclear non-proliferation. Some current developments are very positive indeed: the inexorable move to a comprehensive test-ban, the far-reaching steps by the super-powers in reducing their nuclear arsenals, the growing number of countries that join the NPT or, and this is as important, that have taken steps to join other elements of the non-proliferation regime in this part of the world, the improvement of the safeguards system - those are all highly positive phenomena. There are also negative developments: the situation in North Korea is one; the persistence of Israel, India and Pakistan in their attitude to non-proliferation is another. The time has come for every government interested in the Treaty to *take a new look at the issues* that will play a role at the conference and *prepare the positions it will adopt*. Those already determined to promote a long extension should start as soon as possible to make their preparations on all the different levels referred to, and work with other countries to prepare the ground.

But in the last instance, *perfect procedures and well-prepared debates cannot guarantee the success of the conference*. The PrepCom can smooth the way. The secretariat can help the PrepCom do so and can ensure that the mechanics of the conference operate without a hitch. *But procedural preparations alone cannot guarantee the success of the conference*. Only the *recognition of substantive achievement* can guarantee the success of the conference. If the majority of the parties to the NPT conclude that the Treaty serves their interest, *and only then*, will there be a decision in favor of a lengthy extension. *The best preparation lies in substantive achievement*, and that remains the responsibility of the parties.