

## **The Treaty on the Non-Proliferation of Nuclear Weapons and the Process for Its Enhanced Review on the Eve of the 2000 Review Conference**

by Cyril Pinel\*

According to Article VIII.3 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),<sup>1</sup> “Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depository Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.”

This Article set out the principle and essentials of the process for reviewing the operation of the NPT.

In addition to Article VIII.3, Article X.2 provided that “Twenty-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 fixed period or periods. This Decision shall be taken by a majority of the Parties to the Treaty.”

At the time foreseen by this Article – in 1995 – the NPT Review and Extension Conference was held in New York and adopted three decisions: Decision 1 about strengthening the process of reviewing the Treaty, Decision 2 concerning the principles and objectives for nuclear non-proliferation and disarmament, and Decision 3 on the extension of the Treaty, together with a resolution on the Middle East.

Decision 3 provided for the indefinite extension of the Treaty. It was unanimously welcomed by the international community as a major step forward in enhancing non-proliferation. We shall not discuss this Decision further here since it is already well known and has been widely commented upon.<sup>2</sup>

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1. The NPT was opened for signature on 1 July 1968 and came into force on 5 March 1970 (INFCIRC/140). Following the accession of Brazil in 1998, there are now only four states that have decided not to accede to the Treaty: Cuba, India, Israel and Pakistan.
2. See in particular Th. DELPECH, *L'héritage nucléaire*, Editions Complexe 1997, Chapter 3 “*La prorogation indéfinie du TNP: Une victoire éclatante et fragile*”; L. ROCKWOOD, “Non-Proliferation Treaty 1990 Review Conference: Looking Towards 1995”, *Nuclear Law Bulletin* No. 46 (December 1990); L. ROCKWOOD, “The Nuclear Non-Proliferation Treaty: A Permanent Commitment to Disarmament and Non-Proliferation”, *Nuclear Law Bulletin* No. 56 (December 1995).

Decision 2 encompasses a number of principles and objectives concerning the universality of the Treaty, non-proliferation, nuclear disarmament, nuclear-weapon-free zones, security assurances, safeguards, and the peaceful uses of nuclear energy, and was adopted with a view to improving the implementation of the Treaty's objectives. These principles and objectives are now in the process of being fulfilled.<sup>3</sup>

Decision 1 on a strengthening of the review process was used as a basis for preparing the next review conference. It was decided that a Preparatory Committee should hold a meeting in each of the three years prior to the Review Conference.

According to the new approach defined in Decision 1, the Preparatory Committee should consider matters of substance with a view to promoting the full implementation of the Treaty, as well as procedural questions.

On the eve of the 2000 Review Conference, which will be held in April-May 2000 in New York, a clear view of the work already accomplished by the Preparatory Committee is desirable.<sup>4</sup> The 2000 Review Conference is of considerable importance for the future of the nuclear non-proliferation regime, particularly in the light of the fact that after the indefinite and unconditional extension of the Treaty, the non-nuclear-weapon states urged the nuclear-weapon states to take new steps towards nuclear disarmament and, to a lesser degree, towards the development of the peaceful uses of nuclear energy. This is how these negotiations currently stand.

However in order to grasp the whole picture, it is essential to look back to the initial period of application of the Treaty during its first 25 years. We shall do this before reviewing the later period covering the years 1995-2000.

### **The period 1968-1995 or “achieving a balance”**

The point of balance of the NPT lies in its Articles II, IV and VI.

Article II encompasses the undertaking by the non-nuclear-weapon states not to acquire nuclear weapons,<sup>5</sup> which is a major undertaking for any sovereign state.

Article IV establishes the inalienable right of all the Parties to develop the peaceful uses of nuclear energy.<sup>6</sup>

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3. As an illustration we may mention the Comprehensive Test Ban Treaty (CTBT), the completion of which was foreseen in the programme of action included under item 4 of Decision 2, which was in fact adopted on 10 September 1996 in Resolution 50/245 of the United National General Assembly. However another item in the programme of action, the rapid conclusion of negotiations on a Treaty to ban the production of fissile material intended for the production of nuclear weapons or other nuclear explosive devices (SMCT), has not yet been achieved.
  4. The Preparatory Committee has held three meetings, in 1997 (New York), 1998 (Geneva) and 1999 (New York).
  5. “Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any source whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”

The non-nuclear-weapon states therefore undertook not to develop nuclear weapons. To give weight to this undertaking, the nuclear-weapon states and those possessing the technology affirmed in parallel the inalienable right of all to develop the peaceful uses of nuclear energy and confirmed that they would facilitate such a process.

To this “balance” the nuclear-weapon states added a “promise”: the undertaking to continue negotiations on disarmament. This is Article VI of the Treaty.<sup>7</sup> Two of its provisions deserve particular attention: “pursue in good faith” and “at an early date”. For most of the states that have renounced nuclear weapons, there was no doubt that the nuclear-weapon states had not kept to their undertakings in these two areas.<sup>8</sup> Nobody responded to this criticism by claiming that the nuclear-weapon states had been prevented from honouring their undertakings on these two points because Article VI links negotiations on nuclear disarmament to an overall and comprehensive disarmament treaty. Since the international situation did not allow any move towards overall and comprehensive disarmament, the nuclear-weapon states were then unable to move separately towards nuclear disarmament. This was particularly true for those states whose policy was to hold up nuclear weapons as a means of dissuasion. This analysis was certainly coherent but did not necessarily satisfy the non-nuclear-weapon states. Accordingly, it was in an atmosphere of some tension that the Review and Extension Conference was held in 1995.

In the end, this Conference was a success for non-proliferation.

In 1995, the negotiators decided that the Treaty should remain in force for an indefinite period (Decision 3).<sup>9</sup> However, this important result of the Conference was not secured without difficulty. Some satisfaction had to be given to those who, 25 years earlier, had agreed to renounce nuclear weapons and who were complaining that the cause of nuclear disarmament was not moving ahead quickly enough. Moreover they deplored the fact that the nuclear technology states were unjustifiably hindering their civilian nuclear development.

The states Party to the Treaty therefore adopted – along with Decision 3 on indefinite extension – two other Decisions<sup>10</sup> and one Resolution that together made up the compromise “package”.

According to Decision 1, the Preparatory Committee should hold a meeting, normally lasting 10 working days, in each of the three years prior to the Review Conference. These meetings would review the principles, objectives and ways and means aimed at promoting the full application of the Treaty, together with its universality, and make relevant recommendations to the Review Conference. Decision 1 also provides for the review conferences to look to the future as well as the past, to evaluate the results obtained, and to identify those areas in which more progress should be made in the

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6. “Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.”
  7. “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.”
  8. See the paper by Professor Fadhel MOUSSA at the INLA Congress in 1999: “The indefinite extension of the NPT: a fool’s contract?”.
  9. NPT/CONF.1995/DEC.3.
  10. NPT/CONF.1995/DEC.1 and 2.

future, as well as the ways and means of doing so. The Decision thus constitutes a veritable procedural guide to the conduct of the Review Conferences.

After the “procedural guide”, Decision 2 on the principles and objectives of nuclear non-proliferation and disarmament then set out the “plan of action”, identifying a number of principal stages: a Treaty placing a comprehensive ban on nuclear tests, a Treaty to ban the production of fissile material intended for the production of nuclear weapons or other nuclear explosive devices (Special Material Cut-off Treaty – SMCT),<sup>11</sup> the development of nuclear-weapon-free zones, particularly in areas of tension such as the Middle East and, finally, the reduction followed by the elimination of nuclear weapons. As we have already indicated, on the eve of the 2000 Review Conference this plan of action is not yet in place.

Against the background of this compromise it is important not to forget the Resolution on the Middle East that reaffirms in particular the necessity for all States to accede to the NPT as soon as possible and calls upon all States in the Middle East, *without exception*, to accede to the Treaty as soon as possible and to arrange for the Agency’s overall safeguards<sup>12</sup> to be applied to their nuclear installations.

The success finally achieved in 1995 was made possible by a decisive issue: the objective of extending the Treaty which, with the adoption of Decision 2 and the resolution on the Middle East, made it possible to confirm the balance of the Treaty, in accordance with the wishes of the great majority of the Parties.

In the light of the above an observer may ask what has happened today to the attitude which, in 1995, enabled the spirit of compromise to win the day over confrontation, what are the omens for the 2000 Review Conference, and what events have marked the last five years.

### **1995-2000: Maintaining equilibrium**

We shall begin by reviewing the work done by the Preparatory Committee and its achievements in the light of the “procedural guide” set out in Decision 1.

The Preparatory Committee has held three meetings, the first in New York in 1997.

This first negotiating session, which lasted 2 weeks and was attended by representatives of 149 states under the chairmanship of Ambassador Patokallio from Finland (representing the western group) raised considerable hopes.

In fact the Preparatory Committee, in its report on the first session, adopted “recommendations for the second meeting of the Preparatory Committee”.<sup>13</sup> Thus the intention was that in the second meeting “official documents and other proposals submitted by delegations during the first meeting [...] should be taken into account in the review of draft recommendations to be sent to the Review Conference, together with the working document submitted by the Chairman”. One may ask what documents and proposals were involved and what level of consensus that represented.

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11. See note 3.

12. See IAEA, INFCIRC/153 (corrected): “Structure and content of agreements between the Agency and States required in connection with the Treaty on the Non-Proliferation of Nuclear Weapons”.

13. NPT/CONF.2000/PC.32, III.

The working document prepared by the Chairman is reproduced in Annex II of the Committee's report. It is in two main parts. The first of these – the consensual part – represented the “general agreement” of the delegations on a number of points. These included for example the need to ensure universal accession to the Treaty, the reaffirmation of the need to open immediately and to conclude negotiations on a Treaty to ban the production of fissile material intended for the production of nuclear weapons or other nuclear explosive devices and aspects of the conclusion in 1997, in the IAEA framework, of the programme to strengthen safeguards.<sup>14</sup>

This compilation demonstrated the continued existence of a minimum consensus on a number of principal questions, such as the above examples.

In addition to this first, consensual, part there was a second non-consensual (or “catch-all”) part that the delegations used to express a great variety of requests and wishes. These are the “official documents and other proposals” mentioned above, covered in item III of the report “Recommendations for the second meeting of the Preparatory Committee”.

It is true that the balance between these two parts – consensual and non-consensual – was fragile, but what was important was that the Committee had been able to adopt recommendations for its second meeting, thus giving the negotiations an impetus that some people hoped would lead to the adoption of substantial elements capable of being used during the Review Conference. In other words, truly “preparatory” work.

This attitude showed the general wish to continue the dialogue in order to enrich the consensus on nuclear non-proliferation for the 2000 Conference.

This embryo consensus broke down in Geneva in 1998 at the second meeting chaired by Ambassador Wyzner (Poland – representing the group of Eastern European states) attended by representatives of 97 states.

This second meeting ended with what could cautiously be called a “partial success”. It did not prove possible to enrich and improve the document drawn up by the Chairman of the first meeting by moving aspects of the non-consensual part towards the consensual part, as some had hoped in 1997.

The enrichment process was literally “blocked” by the discussions on the Middle East question, marked by lively confrontation between the American delegation and those of the Arab countries. There is no need to describe this debate here, since its content is well known. The result was that the second meeting, unlike the first, did not adopt any recommendations for the third meeting.<sup>15</sup>

The third meeting held in 1999 under the chairmanship of Ambassador Reyes (Colombia – representing the group of non-aligned countries) improved on the second meeting by producing a few results. We shall describe them briefly here.

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14. The programme for strengthening safeguards, launched in 1993, resulted in 1997 in the adoption of a Model Protocol additional to the safeguards agreements concluded between States and the IAEA. This document is set out in INFCIRC/540 (corrected). Its objective is “to promote nuclear non-proliferation by strengthening the effectiveness and improving the efficiency of the Agency’s safeguards system” by making it possible to detect clandestine activities that might take place in Member States.
  15. Report by the Preparatory Committee on the work of its second meeting NPT/CONF.2000/PC.II/36 dated 9 June 1998.

The Committee adopted<sup>16</sup> all the procedural and organisational points (including the appointment of Ambassador Selebi of South Africa to chair the 2000 Conference, the provisional agenda for that Conference, and the allocation of subject matter to the three committees), which enabled the Review Conference to be held and in itself constituted a success. On the other hand no recommendation of substance was addressed to the Conference and this could be called a failure.

One may ask whether it is still right to apply the term “failure” to the strengthened review process decided upon in 1995.

One might be tempted to reply “yes” to this question if one considers the objective of the process, since it was in fact a question of dealing with matters of substance, in addition to procedural items, as part of this strengthened review. The Preparatory Committee did not manage to do this at its meetings held in 1997, 1998 and 1999.

To take a more optimistic point of view, the Preparatory Committee is still an arena for political dialogue between the Parties, as well as with the non-governmental organisations, which are invited to take part in certain meetings and arrange their own discussions in parallel with those of the Preparatory Committee. This kind of dialogue can make it possible, during the five years between each Review Conference, to avoid the build-up of frustration on topics as sensitive as that of nuclear disarmament.

The period 1995-2000 was marked by the determination of all the Parties to preserve the equilibrium of the Treaty, first of all during the 1995 Review Conference and then, to continue the success of that Conference, in the – uncertain – process of strengthening the review of the Treaty. The question we should like to raise in conclusion is whether this desire to preserve an equilibrium will withstand the tensions that will mark the forthcoming Review Conference where the issues will no longer be the same as in 1995, the indefinite extension of the Treaty having been achieved.

The Review Conference will be held in New York in April-May 2000, finally under the chairmanship of Ambassador Baali (Algeria).

The subjects of nuclear disarmament and the Middle East will be substantial items on the agenda.

With regard to the Middle East, the climate of discussion is likely to depend strongly on the progress made with the Wye River agreements, relaunched in September 1999 following the coming to power of Mr. Barak in Israel.

If the peace process is renewed, one may hope that the discussions between the Arab and American delegations will be less scathing than they were at the second meeting of the Preparatory Committee.

With regard to nuclear disarmament, as we have tried to show here, the Preparatory Committee reached no conclusion, and the different sides today remain fixed in their positions. Some are seeking a start to the “cut-off” negotiations and a continuation of the American/Russian disarmament process

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16. See NPT/CONF.2000/PC.III and addenda.

begun with START,<sup>17</sup> quite apart from the efforts already made (notably unilaterally in the case of France<sup>18</sup>).

Other – more radical – states are calling for the process to be speeded up with, for example, the adoption of a firm timetable involving the five nuclear weapon states; yet others are more pragmatically considering an intermediate approach, similar to that of the Tokyo Forum.<sup>19</sup>

In this area, it seems doubtful that there will be any change in the situation before next April. Progress is therefore expected to be modest.

In a highly unfavourable international situation (tests conducted by India and Pakistan, no ratification of the CTBT,<sup>20</sup> controversy about the ABM Treaty<sup>21</sup>), the problem will be to avoid any stiffening of the most active partisan positions on nuclear disarmament and to identify ways and means for continuing the dialogue.

The question of anti-missile defence systems, raised again by the United States, is liable to complicate the discussions appreciably with considerable opposition between the United States and China and the United States and Russia. The recent refusal by the US Senate to ratify the CTBT is also likely to make the negotiations more difficult.

The SMCT could – if negotiations were to begin in Geneva – form the basis of a “new nuclear compromise”, of which it would represent a first step, not only in meeting the hopes of some people for a less nuclear world but also in maintaining the strategic interests of those who continue to believe in nuclear weapons as part of their defence policy.

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17. One may wonder about the term “disarmament agreements” commonly applied to these agreements on the reduction of strategic weapons, for since they apply only to the elimination of missiles and not the dismantling of the nuclear warheads (and fissile materials) they carry, they have in fact merely brought about parity between the two major powers.
  18. In November 1992 France stopped producing plutonium for nuclear weapons; in January 1996 it conducted its last nuclear test; and in February of the same year the President of the Republic announced the final closure of the facilities producing fissile material for nuclear weapons and of the experimental centre in the Pacific. In June 1996 France shut down the production of highly enriched uranium for nuclear weapons. In June 1997 the last HADES missile (mobile, short-range ground-to-ground missile) was destroyed and 1998 saw the completion of the decommissioning of the installations at the Pacific experimental centre and the site on the plateau d’Albion (S3D ground-to-ground strategic missiles site) leaving a limited nuclear arsenal reduced to two components (submarine and airborne).
  19. “Facing nuclear dangers: an action plan for the 21st century” – The report of the Tokyo Forum for nuclear non-proliferation and disarmament – Tokyo – 25 July 1999 – Japan Institute of International Affairs – Hiroshima Peace Institute.
  20. “*Le traité d’interdiction complète des essais nucléaires est dans l’impasse*”, *Le Monde*, 8 October 1999.
  21. American-Russian Treaty on the limitation of anti-missile systems dated May 1972 that could be threatened by American plans to deploy an anti-missile defence system.

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