



**Civil Society and Nuclear  
Non-Proliferation**  
How do States Respond?

**Claudia Kissling**

ASHGATE e-BOOK

CIVIL SOCIETY AND NUCLEAR  
NON-PROLIFERATION

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# Civil Society and Nuclear Non-Proliferation

How do States Respond?

CLAUDIA KISSLING  
*University of Bremen, Germany*

ASHGATE

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# Foreword

This original study by Claudia Kissling of the University of Bremen fits our series on non-state actors for two reasons. First, she demonstrates the working of the international policy cycle following from the framing and passing of an international treaty. In this case the implementation and monitoring facets of an international agreement are discussed by a close analysis of the 7th Review Conference of the parties to the 1968 *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT), which took place at the United Nations in 2005. Hence, the author deals with topical developments and sheds light on politically difficult relations, not the least because of the strengthened security controls since 11 September 2001. The outcome of the NPT Review Conference was limited, as no substantial agreement could be reached. The author discusses this process and its outcome in a much nuanced way and makes the reader understand what is going on at such a diplomatic and political event with its own formal and informal arrangements. Secondly, the volume discusses the role of non-governmental or civil society organizations participating in this review process. To many this may not be an obvious relationship, as security normally is regarded as a matter of ‘high politics,’ rather than one of governments and non-governmental organizations. However, the growing numbers of nuclear weapons and their carriers during the 1950s were accompanied by scientists publicly expressing their great anxiety about the consequences of nuclear weapons and their wish of effective control. In 1955 Bertrand Russell and Albert Einstein published their famous manifesto, which in 1957 was followed by the first Pugwash Conference taking place in Canada and stimulating public debate. The Cuban Missile Crisis of 1962 confirmed the fact that the world could be ‘on the brink’ of the use of these destructive weapons. The non-fatal outcome of this crisis helped to create various international agreements preventing the use of nuclear weapons, among them the 1968 Non-Proliferation Treaty. Because an institutionalized access of non-governmental organizations to the NPT process and its negotiating forums had been in existence since 1994, the author selected the non-proliferation regime for her research on the contribution of non-governmental organizations to regime building and its democratic quality. Through process tracing as well as content and argumentation analysis the reader learns about the ways in which governments are carefully protecting their interests in this regime, whereas at the same time the intensive lobbying on the part of non-governmental organizations is leaving some mark on the negotiations. Although the author’s hypotheses are answered in the negative, her skilful exposé shows that it was correct to address the role of non-governmental organizations in the non-proliferation monitoring process. We have a better understanding of the existing

institutional structure, with state interests on one hand and more critical inputs on the other reminding governments of the serious threat of nuclear weapons.

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Claudia Kissling,  
2008

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# List of Abbreviations

ABM	Anti-Ballistic Missile
APM	Anti-Personal Mines
BWC	Biological Weapons Convention
CANWFZ	Central Asian Nuclear-Weapon-Free Zone
CARICOM	Caribbean Community
CD	Conference on Disarmament
CND	Campaign for Nuclear Disarmament
CSO	Civil society organization
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CWC	Chemical Weapons Convention
D-4	Four <i>de facto</i> States with nuclear weapons
DCAF	Democratic Control of Armed Forces
DDA	Department for Disarmament Affairs
DPI	Department of Public Information
DPRK	Democratic People's Republic of Korea
ECOSOC	Economic and Social Council
ENDC	Conference of the Eighteen-Nation Committee on Disarmament
FMCT	Fissile Material Cut-Off Treaty
GA	General Assembly
GRACE	Global Resource and Action Centre on the Environment
GTRI	Global Threat Reduction Initiative
IAEA	International Atomic Energy Agency
IALANA	International Association of Lawyers Against Nuclear Arms
ICBL	International Campaign to Ban Landmines
ICJ	International Court of Justice
INES	International Nuclear Event Scale
INESAP	International Network of Engineers and Scientists Against Proliferation
INF Treaty	Intermediate Range Nuclear Forces Treaty
INFCE	International Nuclear Fuel Cycle Evaluation
ISEA	International Sustainable Energy Agency
LCNP	Lawyers' Committee on Nuclear Policy
MEADS	Medium Extended Air Defense System
MNA	Multilateral Nuclear Approaches
MPI	Middle Powers Initiative
NAC	New Agenda Coalition
NAM	Non-Aligned Movement

NGO	Non-governmental organization
NNPA	Nuclear Non-Proliferation Act
NNWS	Non-nuclear-weapon State(s)
NPR	Nuclear Posture Review
NPT	Nuclear Non-Proliferation Treaty
NSA	Negative security assurance
NSG	Nuclear Suppliers Group
NWC	Nuclear Weapons Convention
NWFZ	Nuclear-weapon-free zone
NWS	Nuclear-weapon State(s)
OPANAL	Organismo para la Proscripción de las Armas Nucleares en la América Latina y el Caribe
OPCW	Organisation for the Prohibition of Chemical Weapons
P-5	Five permanent members of the UN Security Council
PrepCom	Preparatory Committee
PRIF	Peace Research Institute Frankfurt
PSI	Proliferation Security Initiative
RCW	Reaching Critical Will
RevCon	Review Conference
RoP	Rules of Procedure
SALT	Strategic Arms Limitation Talks
SC	Security Council
SORT	Strategic Offensive Reductions Treaty
START	Strategic Arms Reduction Treaty
TC	Technical Co-operation
UN	United Nations
UNTS	United Nations Treaties Series
WEOG	Western Group and Others
WILPF	Women's International League for Peace and Freedom
WMD	Weapons of Mass Destruction
WMDC	The Weapons of Mass Destruction Commission
WSSD	World Summit on Sustainable Development

*We would like to pay tribute to civil society and individuals, who in their own way reminded us delegates, incessantly throughout the past four weeks, not just what this Conference was all about, but more importantly, about our moral obligation to rid mankind of the threat of nuclear weapons.*

*Sierra Leone, Concluding Statement,  
NPT Review Conference, 27 May 2005*



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# Introduction

Since the end of the Cold War, globalization has brought new actors to the political arena. One of those, which have attracted considerable attention in academic research, is civil society or NGOs. However, there are research areas which have devoted a lot of energy to studies on NGO participation in global governance, such as human rights, environment or development (for example, Weiss and Gordenker 1996). Others, such as disarmament and the corresponding NGO commitment, have featured less prominently on the scholarly agenda even though civil society's dedication to peace and arms control has been old and is still continuing, partly in an intensified manner (see Disarmament Forum 1/2002). The present book therefore intends to fill a gap by addressing the topic of civil society participation in the nuclear non-proliferation regime. The nuclear non-proliferation regime qualifies well for this objective since it features, given its characteristics as a treaty regime in the international security field, notable legal avenues for civil society participation. In this way, it takes on a twofold perspective. On the one hand, the empirical question whether civil society can contribute to the evolution of regimes in the security field is addressed, especially when it comes to security cooperation. By this means, it constitutes an examination of classical and postmodern, especially constructivist, security theories under the new security conditions prevailing since September 11, 2001. On the other hand, it is questioned whether civil society can, under certain conditions, contribute to the democratic quality of international decision-making. Here, the empirical findings are used in order to test normative political theories on the legitimacy and democracy of global institutions and regimes. For this purpose, the empirical results are structured alongside certain criteria, namely, access, transparency, inclusion and responsiveness. Methodologically, the study has recourse to a mix of qualitative techniques ranging from process tracing and participant observation to content analysis and some elements of argumentation theory.

The chapters of the book are organized as follows. After the introduction, Part I follows which first elaborates on the different theoretical approaches in IR security studies. Political theorizing in the security field is evaluated with regard to its argumentative strengths and weaknesses in relation to security cooperation, such as the non-proliferation regime. The book, as an enquiry of civil society participation in the 7th Nuclear Non-Proliferation Treaty (NPT) review process, is then situated, within the area of security studies, as a Critical Theory approach which uses, for epistemological purposes, a constructivist line, but touches also on classical analyzes of power and interest. Two hypotheses are posed in this context: (1) Civil society can contribute to the evolution of regimes even in the security field; and (2) if certain conditions (access, transparency, inclusion, responsiveness of governments to stakeholders' claims) for civil society participation are fulfilled, civil

society contribution can then contribute to the democratic quality of international decision-making. In order to test these hypotheses, Part II offers an overview, first of the disarmament debate and its legal regulations since World War II (Chapter 1) and second of content, deficiencies and *status quo* of the NPT (Chapter 2), as the framework necessary for understanding the following empirical analysis. Part III then conducts an in-depth empirical exploration of the process leading up to and comprising the 2005 NPT Review Conference (RevCon). It first investigates the course of the 7th NPT review process as such (Chapter 3) and then evaluates civil society participation in it (Chapter 4), before then analysing in detail the four criteria for democratic deliberation (Chapter 5). Access of civil society to the NPT process and its negotiation fora, transparency of information and the inclusion of all voices possibly affected by the policy decisions to be taken function as preconditions here which are necessary in order to see genuine and democratic deliberation taking place. Responsiveness of governments to civil society concerns, however, is decisive with regard to an actual contribution to the emergence of transnational democracy and the legitimacy of international rule-making. The latter section constitutes the main part of the book since it consists of a mix of content and argumentation analysis of 665 documents of the 7th review process coupled with process tracing in order to trace the argumentative input of CSOs to the NPT review process. To make the research manageable, I selected three topics and issue areas for coding and analysis: (1) general and complete disarmament and a Nuclear Weapons Convention; (2) reporting and (3) transition from nuclear to renewable energy. Finally, the conclusion summarizes the results. Whereas the implementation of access rights, but also the arrangements for participation themselves, as well as the transparency of information remained insufficient during the last NPT review process, the inclusion of all stakeholders, potentially affected by a decision, was even completely disregarded. Moreover, the examination of the fourth criterion, namely, responsiveness, clearly demonstrated a large lack of interaction between governmental and civil society representatives, of justification of State positions with regard to CSO arguments and of adoption or refutation of CSO positions on the agenda, in speeches and in the conference results in all three issue areas. Therefore, CSO contribution could not add to the democratic quality of international decision-making during the 7th NPT review process. However, this was also due to the existence of an ‘intergovernmental core of decision-making,’ that is a phase in the policy cycle which governments eagerly protect, and the result of a preponderance of bargaining over deliberation among governments themselves, a situation we seem to encounter whenever high-level strategic interests are at stake and power relationships are tremendously unequal. Therefore, also the other hypothesis, namely, civil society’s contribution to the evolution of regimes in the security field, has to be answered rather in the negative. Nevertheless, intensive lobbying on the part of CSOs left some mark on the negotiations. This gives some reason to argue that civil society can render such a contribution if it replaces deliberative input by classical lobbying whenever it has to act within a participation- and deliberation-unfriendly setting.

PART I  
A Study of Deliberative Democracy  
in the Security Field

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## Chapter 1

# Security Theories in Review

In a world of globalization, we are facing the prospect of intensified economic, technical, resource-related, cultural and religious competition heightened by increased protectionist security considerations. Regardless of whether we define security in the classical inter-state sense or rather in terms of societal, human or global security, at the latest since September 11, 2001, security issues, after a short recess, have come to the forefront of world politics again. It is a difficult question whether, under conditions of intensified activities to safeguard a State, a societal group or some individual human beings from potential existential outside threats, security cooperation, that is the collaboration between opponents, is still practicable. Academic approaches towards this question significantly differ according to the focus the respective author takes and the underlying theory of the study. Classical realist approaches classify the anarchical world order as a self-help world in which States have to balance the power of other States in order to avoid hegemonic power, State behavior rests on States' preferences, and in which permanent peace as well as the in relative terms risky security cooperation, apart from alliances, are unlikely to occur (Morgenthau 1948, 8–10). Neo-realists, such as Waltz (1979) or Frankel (1993), shift the focus from power to the structure of the international system, its hegemonic uni-, bi- or its multipolarity, but basically succumb to the same premises and conclusions (see for example, Thayer 1991). Yet, security cooperation, thorny as it may be, nevertheless persists, a fact which is difficult to reconcile with pure assumptions of self-help as the principle guiding line of all States. Therefore, cooperative regimes in the security field have induced realists to overstretch their postulations by incorporating idealist or even constructivist positions (Müller 2002, 371–4). The nuclear non-proliferation regime is a special *pars pro toto* whose tenant persistence, crises and flaws notwithstanding, led realist approaches to insert, for example, some neoinstitutionalist regime theoretical arguments (see Davis 1993). Neoinstitutionalism, while sharing with realism its basic rational choice presumptions of self-interested action in a world of anarchy, attenuates realist conclusions by maintaining that cooperation is possible if it is in the common interest of all parties (see Dhanapala and Rydell 2005, 101–113). Whereas institutionalism still has a hard time to explain the emergence of security collaboration in the first place, it does a good deal in elucidating regime robustness and stabilization actions once cooperation has been established and institutionalized (see for the nuclear non-proliferation regime for example, Riecke 2002). Liberalism takes domestic structures in general, or the democratic constitution of a society in specific, as its starting point. Especially in this second variant, it can hardly account for security cooperation, such as the non-proliferation regime, since it lacks an explanation of why non-democracies can be motivated to join a security regime or why democracies target the rogue non-democratic systems across the lines as partners.

Moreover, the theoretic schism into broadly speaking two different state categories with their very own assumptions leads to the postulation that research and investment into armaments and arms technology in both camps are doomed to be held in high esteem which makes arms control and disarmament virtuously impossible (Müller 2002, 378–9). By contrast, constructivism provides for much better accounts for security cooperation. Pointing towards the role of ideas, norms, culture and practices, including regimes themselves, in shaping interests and structures, it is well suited to explain, but to a lesser extent to predict, the emergence, stability and change of security regimes alike (see Krause and Latham 1998; Hubbard 2004). Constructivism shares its interest in epistemic communities, non-governmental organizations and individuals partly with postmodernism. Postmodern theory, however, exclusively focuses on discourses and their deconstruction (see on non-proliferation Mutimer 2000), problematizes prediction as such and takes societal groups only as carriers of ever possible alternative discourses, rather than as actors and contributors to the shaping of policy frames and outcomes. Nevertheless, the role of communities, groups and individuals as political actors is also addressed in numerous other studies and articles on nuclear weapons which use an empirical, or a political or activist (Streich 1990; Hall 2005; Zapf 2005), rather than a theoretical approach.

The study at hand examines civil society participation in the 7th Nuclear Non-Proliferation Treaty (NPT) review process. Civil society organizations (CSOs) have become increasingly active in international security and disarmament matters, a fact which makes such an inquiry worthwhile as such. Thus, three disarmament-related NGOs have received Nobel Peace Prizes in recent years.<sup>1</sup> Since 1994, they have been officially allowed to participate in the NPT review processes. Moreover, the 7th review process constitutes the first one which took place after September 11, namely, between 2002 and 2005. It thus constitutes a good means to test classical and postmodern security theories under new conditions. Therefore, the hypotheses, which form the starting point of this analysis, are the following:

1. Civil society can contribute to the evolution of regimes even in the security field.
2. If certain conditions (access, transparency, inclusion, responsiveness of governments to stakeholders' claims) for civil society participation are fulfilled, then civil society contribution can contribute to the democratic quality of international decision-making.

In order to test these two hypotheses, I use a normative political theory approach built on a Habermasian view of deliberative democracy, but transferred to the area of international relations, as its background. In international relations theory terms, this inquiry therefore can be framed as a Critical Theory approach. However, contrary to other mere normative approaches, I test the hypotheses empirically, mainly by reference to a certain set of criteria which are outlined below. Epistemologically, this

---

1 The International Physicians for the Prevention of Nuclear War in 1985, the Pugwash Conferences on Science and World Affairs in 1995 and the International Campaign to Ban Landmines in 1997.

study follows a constructivist line, whereas methodologically, it uses constructivist and postmodern methods ranging from process tracing and participant observation to content analysis and some elements of argumentation theory. Yet, language is not used for deconstruction of power and hegemony, but for analyzing input. By this methodology, the study tries to answer the two hypotheses posed and at the same time to identify concurrence of normative values and empirical findings.



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## Chapter 2

# Legitimacy and Democracy in the Security Field?

Much of the research during the last years in the field of international relations has concentrated on a restructuring of international politics. This happens against the background of a perceived lack of efficiency, legitimacy and democracy of policy-making within international organizations whose legitimation is only indirectly drawn from (elected) national governments, whereas an increasing capacity of those organizations to take binding decisions and to adjudicate can be observed. However, the ideal of democracy calls for self-government of citizens as its constitutive element. Given the absence of any full-fledged parliamentary oversight of decision-making at the global level, it is not surprising that proposals how to overcome the legitimacy and democracy deficit of international organizations recently have taken on a notable normative turn (Steffek and Nanz 2007). Thus, authors such as Habermas (1998), Höffe (2002) or Patomäki and Teivainen (2004) have elaborated on normative solutions to the international legitimacy problem. Proposed options range from the parliamentarization of global politics (Falk and Strauss 2001; Kissling 2006), the institutional anchorage within political decision-making of a value-based mechanism of transparency and accountability (Held and Koenig-Archibugi 2005) to an expanded and built-in use of deliberative procedures (Schmalz-Bruns 2000). The deliberative model of democracy thereby has recourse to an enlarged input into and an increased scrutiny of political rule-making by lately emerging new actors, namely, international parliamentary institutions (Blichner 2000) and civil society (Dryzek 2000).

This study is based on a deliberative and participatory model of democracy which mainly draws on Habermasian discourse ethics (Habermas 1992). It starts out from the assumption that deliberation<sup>1</sup> can constitute a tool for new actors to contribute to regime building, but can especially enhance the legitimacy<sup>2</sup> and democratic quality<sup>3</sup> of decision-making beyond the State (Nanz and Steffek 2005). Given the non-existence of a global parliament, I use the participatory model of democracy,

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1 We refer to deliberation as a discussion in which statements are based on arguing and reasoning, on a process of learning and on the malleability of proposals and outcomes, that is on the openness of the whole process towards changes.

2 Throughout this study, we use the term 'legitimacy' in its normative sense, meaning that we depart from normative criteria in order to measure legitimacy, whereas the empirical meaning of legitimacy hinges upon the consent of those ruled-over. For a clarification of the terms, see Steffek (2003).

3 Democratic quality is defined as the capacity to bring about free, informed and inclusive deliberation; see Nanz and Steffek (2005, 372).

which takes the democratic potential of wide-range participation and inclusion of all stakeholders affected by a decision, and in a functional way also the efficiency potential of the problem-solving (epistemic) capacity of civil society, as a starting point for investigation.<sup>4</sup> However, the study departs from the classical participatory model insofar as it does not expect direct involvement of every single citizen at the global level. Instead, it uses organized civil society, that is civil society organizations (CSOs),<sup>5</sup> as a proxy, or rather, as Nanz and Steffek phrased it, as a “transmission belt” between deliberative processes within international organizations and emerging transnational public spheres’ (2004, 323; see also Steffek and Nanz 2007, 7, figure 1). On the one hand, this role enables CSOs to ‘give voice to citizens’ concerns and channel them into the deliberative process of international organizations’ and on the other hand, to ‘make the internal decision-making processes of international organizations more transparent to the wider public’ (ibid.) (see also Dhanapala and Rydell 2005, 136–7). As the former Secretary-General of the United Nations, Boutros Boutros-Ghali, expressed it in 1994, ‘[n]on-governmental organizations are a basic form of popular representation in the present-day world. Their participation in international organizations is, in a way, a guarantee of the political legitimacy of those international organizations’ (Boutros-Ghali 1995, 345). In contrast to other, merely normative approaches, however, this study tackles the question whether civil society can empirically contribute to regime building and whether the assumption of enhanced democratic quality through deliberation can hold the empirical test of real-world settings. Empirical studies of this kind, that is studies which scrutinize normative postulations about deliberation, are very rare at the global level.<sup>6</sup> Therefore, a combined normative-empirical investigation constitutes a long-needed and worthwhile task.

In order to empirically test the prospects for regime building and democratization of civil society participation in international policy-making, the study resorts to existing mechanisms of collaboration between international organizations and civil society organizations (see also Steffek et al. 2007). The nuclear non-proliferation regime was selected since it features, as a treaty regime in the field of international security, at first glance noteworthy opportunities for civil society participation. Institutionalized access of civil society organizations has been in existence since

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4 See also CSO Recommendation 5 at the Third PrepCom, 27 April 2004, <http://disarmament.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, last accessed on 29 September 2006.

5 CSOs are understood to be non-governmental, non-profit organizations that have a clearly stated purpose, legal personality (in national law) and pursue their goals in non-violent ways; see Nanz and Steffek (2005, 382, note 4). This definition excludes business as such, but includes business associations and academic non-profit institutions and in this way delineates CSOs from mere non-governmental organizations (NGOs). For a well-founded suggestion to substitute the term ‘NGO’ by ‘CSO’ because of the functional connotation of the first term of being excluded, marginalized or exploited by governments, see Götz (2006).

6 For an example at the national level, see Steiner, Bächtiger, Spöndli and Steenbergen (2004). However, whereas Steiner et al. concentrate on the quality of deliberation as such, we focus on measuring its democratic quality and also incorporate the institutional arrangements which enable civil society to participate in the deliberation in our research design.

1994 and external transparency is, compared to other security organizations, such as NATO, relatively high. Given the secretive nature of the international security field, which is often justified by the argument of reduced efficiency through publicity, one would have expected a rather low level of outreach towards civil society. However, first research had demonstrated that this is not the case. Moreover, in the NPT case, it was possible to rely on a broad range of data, which cover any official document during the whole NPT review process, most of the statements delivered as well as lots of CSO material, over a sufficient period in time. This should enable one to draw conclusions about the question whether the at first glance promising preconditions for participatory arrangements also lead to genuine regime building contributions and to democratizing and legitimizing effects in the end.

The democratic potential of these avenues for civil society involvement, that is their ability to bring about free, informed and inclusive deliberation, are tested empirically by reference to a catalog of four normatively-informed criteria (Nanz and Steffek 2005). These criteria, which help to operationalize the concept of democratic quality of a decision-making process, and to some extent also the concept of regime building contributions, are (1) access to deliberation, (2) transparency and access to information, (3) responsiveness to stakeholder concerns and (4) inclusion of all voices. Access means that stakeholder arguments can enter the deliberative settings of political decision-making. In order to secure that this entry is not conceded arbitrarily, access of CSOs to those international deliberative fora is expected to be institutionalized. Transparency signifies that complete information about the problem at stake, different options and their costs and benefits are made available to CSOs. This enables them to participate fully informed in a debate. At the same time, it allows them to transmit information to a wider transnational public sphere which exercises public scrutiny. Responsiveness is necessary in order to guarantee that stakeholder concerns are reflected adequately in deliberation and can thus affect the policy-making process. A deliberative process is responsive to stakeholder concerns when proposals are justified either with a view to the common good of the constituency and/or in response to specific concerns voiced by other participants (Nanz and Steffek 2005, 376). Justification thus is a first sub-indicator for responsiveness. However, justification, understood as a process of giving reasons, should consist of a true critical reflection which should comprise the malleability or potential modification of policy proposals. This amounts to the willingness to adapt one's own position, which, as an internal personal process, is hard to detect directly. Therefore, the study resorts to an observable adjustment of actors' positions as a second sub-indicator for responsiveness. Adjustment can take place either as an adjustment of the agenda or a partial or full adoption of stakeholder positions throughout a decision-making process.<sup>7</sup> Inclusion refers to

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7 (State) actors might, after reasonable appreciation of the concerns voiced, also come to the conclusion that CSO proposals can be refuted and thus should be discarded. However, it is unlikely that throughout the whole negotiation process all arguments of civil society will be refuted by all (State) actors; see Nanz and Steffek (2005, 383, note 8). Moreover, refutation, when voiced explicitly, can be accounted for through the sub-criterion of justification; see below.

the necessity to feed all arguments of those stakeholders possibly affected by a policy decision into the decision-making process. Since one would have to make extensive use of counterfactual reasoning in determining what relevant concerns and arguments are not included in the political process, the study utilizes institutional mechanisms for empowering the most disadvantaged stakeholders to participate in deliberation (travel subsidies/training courses or seminars for disadvantaged stakeholders/consultation missions) as a substitute instead. In this approach, criteria (1) (access), (2) (transparency) and (4) (inclusion) constitute preconditions which would be necessary in order to see genuine and democratic deliberation to take place. Responsiveness to civil society concerns (criterion (3)), however, would be decisive with regard to an actual contribution to the emergence of transnational democracy and the legitimacy of international rule-making as well as to regime building by civil society in the non-proliferation field. Taken together, these four criteria allow one to measure the democratic quality of a deliberative process as well as the regime building strength of civil society through empirical research.

In methodological terms, the study has recourse to a mix of qualitative techniques often used in postmodern, but some also in constructivist studies. With regard to criteria (1), (2) and (4), the qualitative assessment of documents, information material and literature is informed by legal and political analysis, partly supplemented by direct participant observation, and facilitated by a list of possible sub-criteria worthwhile to be examined, such as for example the accreditation procedure, admission to meetings, speaking and voting rights, rights of submission and consultation, classification and distribution of documents, sponsoring of participation, outreach of meetings, and so on. For responsiveness (criterion (3)), however, the study applies a mix of content<sup>8</sup> and argumentation<sup>9</sup> analysis of documents coupled with process tracing. The unit of analysis for all criteria is a deliberative policy-making process that takes place in an international organization or regime, here the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, from the first step of agenda setting to the final decision (Nanz and Steffek 2005, 372). Criterion (3) requires a specific sub-unit of analysis, namely negotiation documents. In the case of the 7th NPT review process, those documents encompassed the Working Papers, Decisions and Information Documents of every session, the (Draft) Reports of the Preparatory Committee's (PrepCom) sessions as well as the (Draft) Final Report of the PrepCom, the Documents of the Main Committees and of the Drafting Committee as well as the Final Document of the RevCon, and the statements of governments, as far as available, as well as those of CSOs.<sup>10</sup> The purpose of this

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8 For the differentiation between content and discourse analysis, see Hardy, Harley and Phillips (2004).

9 See Toulmin (1958) and Eemeren, Grootendorst and Kruijer (1987).

10 The minutes of the NPT RevCon are only summary minutes, which are not suitable for argumentation analysis since the reasoning underlying an argument can hardly be reconstructed. Hence, deliberations have to be reconstructed indirectly through recourse to the aforementioned documents; see Nanz and Steffek (2005, 380). With regard to the 7th NPT review process, however, many documents typical for governmental policy-making, such as motions, could not be used given the stalemate of governmental positions at an early stage of the process.

collection is to analyze these documents with a view to trace the argumentative input of CSO to the NPT review process. An argument is defined as a speech act that consists of two parts: a premise (justifying statement or reason) and a conclusion (or opinion, see Eemeren et al. 1987, 8). First, CSO arguments are coded, starting from their conclusion, with reference to their source at a certain point in time T0 (First PrepCom session 2002). Then, changes of these CSO arguments are accounted for at points in time T1 (Second PrepCom session 2003), T2 (Third PrepCom session 2004) and T3 (RevCon session 2005). This argumentative input of CSOs is then juxtaposed to governmental arguments, starting from their conclusion, at the predefined moments in time T0, T1, T2 and T3. With regard to those governmental arguments, the study explores the questions whether (a) governments justify their conclusions with reference to CSO arguments (premise and/or conclusion),<sup>11</sup> whether (b1) CSO arguments (premise and/or conclusion) are adopted by governments as part of their official positions and whether (b2) some of these arguments are put on the agenda of the policy-making process. The significance of mapping arguments at different points in time lies in its ability to account for variation over time. A total of 665 documents of the 7th review process had to be scanned, coded and evaluated. In order to make the research manageable, I selected three topics and issue areas for coding and analysis: (1) general and complete disarmament and a Nuclear Weapons Convention; (2) reporting and (3) transition from nuclear to renewable energy.<sup>12</sup>

However, this 2002–2005 NPT review process caused some specific challenges. First, some governments tried to go much behind the Final Document of the 2000 RevCon. This is the reason why the latter Document is taken here as a yardstick against which all proposals and changes of CSOs as well as of governments have to be measured. Moreover, the whole review process was characterized by the inability of governments to come up with joint policy proposals such as a substantive draft final document and by the failure to take any substantive decision at the end. This study therefore relies on the different governmental proposals in order to measure the inclusion of civil society concerns into the policy-making process. To some extent this has even an advantage since justifications of State positions usually are not found in a policy document such as a final document or decision, whereas they are much more common in speeches and statements. On the other hand, civil society at the NPT review processes is that well organized that CSOs elaborate and decide about their statements in a joint consultation process. This means that even though statements are delivered on behalf of a certain CSO, they have been prepared, discussed, agreed upon and allocated for delivering through an open common CSO process beforehand. Hence, one can use single CSO presentations as a sound account of a general CSO argumentative input.<sup>13</sup>

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11 This may also include a refutation of a premise and/or a conclusion.

12 For details, especially the selection criteria, refer to pp. 77–8.

13 This does not mean, however, that all CSOs agree 100 per cent with every single argument used; see NGO statement of 27 April 2004, <http://disarmament2.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, last accessed on 21 September 2006. Instead, their consultation procedure can be equated to governmental consensus decisions, where nobody blocks the decision by voting against it.

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## PART II

# The NPT and its Historical Embedding



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## Chapter 3

# The NPT Regime and its Anchoring within the Disarmament Debate

Every gun that is made,  
every warship launched,  
every rocket fired, signifies in the final sense,  
a theft from those who hunger and are not fed,  
those who are cold and are not clothed.

US President Dwight D. Eisenhower,  
Chance for Peace Speech,  
16 April 1953<sup>1</sup>

Within the vast array of disarmament efforts, since the end of World War II nuclear disarmament has taken a prominent stand. This was surely generated by increasing concern with regard to nuclear weapons after their use in Hiroshima and Nagasaki by the US in 1945. The very first resolution adopted by the UN General Assembly dealt with the problems raised by the discovery of nuclear energy, set up a commission with reporting duties to the Security Council and charged it with making specific proposals, *inter alia*, for the elimination from national armaments of atomic weapons.<sup>2</sup> Soon after, the then Soviet Union (1949), the United Kingdom (1952), France (1960) and China (1964) joined the first nuclear weapon power. Since then, a large number of the bi- or multilateral treaty regimes adopted since World War II have fallen in the field of limitation of nuclear weapons' development, manufacture, acquirement and use, some even aspire partial or full disarmament. Thus, the bilateral peace treaties with Italy, Hungary, Bulgaria, Romania and Finland (1947) and with Austria (Staatsvertrag, 1955) after World War II forbid the possession, manufacture and testing of nuclear weapons by those States. The Federal Republic of Germany declared its renouncement of the manufacture of nuclear weapons in the so-called Paris treaties with Western Powers.

The multilateral regime was framed by the UN engagement for disarmament. Art. 11 (1) of the UN Charter foresees that the General Assembly may consider principles governing disarmament and the regulations of armaments and may make recommendations with regard to such principles to the Members or to the Security Council or both. The Security Council, on the other hand, is, according to Art. 26 of the Charter, responsible for formulating plans to be submitted to the Members of the

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1 Available online at <http://www.eisenhower.utexas.edu/chance.htm>, last accessed on 26 June 2006.

2 GA res. I (1) of 24 January 1946.

United Nations for the establishment of a system for the regulation of armaments. However, the Iron Curtain very quickly forestalled any progress of the issue. Nevertheless, following the first H-bomb explosion by the US on 1 November 1952 and US President Eisenhower's proposal in his 'Atoms for Peace' speech at the United Nations General Assembly on 8 December 1953 (Eisenhower 1953), in 1957, the International Atomic Energy Agency (IAEA) was founded in order to promote the peaceful use of nuclear energy.<sup>3</sup> In 1960, besides the First Committee of the General Assembly (today: Disarmament & International Security Committee) and the United Nations Disarmament Commission, created in 1952 under the Security Council, but since 1978 working under the General Assembly, a body functioning outside the UN, but under its auspices, was set up in Geneva. The so-called Ten-Nation Committee on Disarmament, between 1962 and 1968 the Eighteen-Nation Committee on Disarmament and between 1969 and 1978 the Conference of the Committee on Disarmament, over the years developed into the Conference on Disarmament (CD). The CD was established in 1979, as a result of the first Special Session on Disarmament of the United Nations General Assembly in 1978,<sup>4</sup> as the single multilateral disarmament negotiating forum of the international community. However, as the NATO 'double-track' decision of 1979 showed, progress on disarmament was not easily to be achieved.

Since attempts to set up an all-embracing program for disarmament within the UN had failed that soon, an approach was taken which favored the regulation of some sub-areas of disarmament, such as nuclear, biological and conventional weapons regimes. In the nuclear field, this was amazingly successful, even in the course of, or because of, the nuclear arms race. In 1961, the UN General Assembly declared that the use of nuclear weapons would be a direct violation of the UN Charter and a crime against mankind and civilization.<sup>5</sup> In 1963, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (Partial Test-Ban Treaty) was adopted.<sup>6</sup> The end of the East-West confrontation made it possible to adopt the CD-negotiated Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 1996, which, however, is not yet in force.<sup>7</sup> At approximately the same time, in 1995 and 1996, France and China carried out nuclear weapons tests, followed by India and Pakistan in 1998. The first treaty meant to address the nuclear disarmament problem, however, the CD negotiated Treaty on the Non-Proliferation of Nuclear Weapons (NPT), was already adopted in 1968.<sup>8</sup> Yet, it only codified the *status quo*, seen as a progress at that time, of five nuclear weapon States (China, France, Great Britain, the Soviet Union and the US), fixed the prohibition for non-nuclear-weapon States parties to acquire nuclear weapons in exchange for the possibility

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3 See <http://www.iaea.org/>.

4 Since then, the UN General Assembly has organized two other special sessions on disarmament (1982 and 1988).

5 GA declaration A/Res. 1653 (XVI) of 24 November 1961.

6 5 August 1963, *UNTS*, Vol. 480, p. 43 ff.

7 24 September 1996, *ILM*, Vol. 35, 1996, p. 1443 ff.

8 1 July 1968, *UNTS*, Vol. 729, p. 161 ff. See *Atomwaffensperrvertrag* (1969). See also The Hague Code of Conduct against the Proliferation of Ballistic Missiles of 26 November 2002.

to obtain the benefits of the use of nuclear energy for peaceful purposes and set a vague obligation for the Parties to the Treaty to undertake 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. Since the latter treaty has never been adopted, it was reserved to a treaty on non-nuclear weapons, namely, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,<sup>9</sup> to address the question of multilateral disarmament in the proper sense with regard to weapons of mass destruction (WMD) for the first time. Since the plans for the establishment of a global system for the regulation of armaments (Art. 26 of the UN Charter) had also never been worked out, to this day nuclear disarmament could only be agreed upon bilaterally in a peace-meal fashion.<sup>10</sup> However, the negotiations of super powers were regularly observed and accompanied by initiatives of other governments.<sup>11</sup> Moreover, for the first time, by the UN Security Council Resolution 687 (1991) of 3 April 1991, the UN and the IAEA assumed supervisory power over the demolition of WMD of a State (Iraq). On 8 July 1996, the International Court of Justice (ICJ) adopted an Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, for which it for the first time accepted broad informal citizens' evidence of nearly 3.7 million individual Declarations of Public Conscience (Granoff 2000, 1429; Grief 1997, 684).<sup>12</sup> The legal body then unanimously ruled that there is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons and that States have an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament

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9 10 April 1972, *UNTS*, Vol. 1015, p. 163 ff.

10 See the SALT agreements between the US and the USSR of 1972 (SALT I, among them the Anti-Ballistic Missile (ABM) Treaty) and 1979 (SALT II, not ratified by the US), which, however, were only concerned with a limitation of armaments, and some other US-USSR treaties, such as those on the danger of an unintended outbreak of nuclear war of 1971, on the prevention of nuclear war of 1973, the Threshold Test Ban Treaty on the limitation of underground nuclear weapon tests of 1974, the Peaceful Nuclear Explosions Treaty on underground nuclear explosions for peaceful purposes of 1976, the latter two, however, only entering into force in 1990. Disarmament in the proper sense was only addressed from 1987 onwards in the Intermediate Range Nuclear Forces Treaty of 1987 (INF Treaty), the START agreements of 1991 (START I) and 1993 (START II, ratified by Russia with conditions relating to the ABM only in 2000, but never deposited). The US plan of a Missile Defense System led to its withdrawal from SALT I (ABM) at the end of 2001. Instead, the US and Russia signed a Strategic Offensive Reductions Treaty (SORT) in May 2002. Another Missile Defense System, the Medium Extended Air Defense System (MEADS) is planned by the US, Germany and Italy.

11 See for example the Six-Nation Initiative for Disarmament and especially their Delhi Declaration of 28 January 1985; see Frangonikolopoulos (1994).

12 These Declarations were inspired by the century-old Martens Clause, which basically provides for the application of humanitarian law custom, principles of humanity and the dictates of public conscience to inhabitants and belligerents in all cases not covered by humanitarian treaty law; Grief (1997, 684).

in all its aspects under strict and effective international control.<sup>13</sup> In recent years, a boom in UN and other studies on security issues and nuclear weapons can be denoted.<sup>14</sup>

Since 1980, the nuclear weapons' treaty regimes have been supplemented by five IAEA conventions on nuclear safety, which tackle the issue of peaceful use of nuclear energy,<sup>15</sup> of utmost importance, not only since the 1981 Israeli attack and destruction of an Iraqi nuclear reactor in Baghdad as well as the Chernobyl incident of 1986 have shown the vulnerability of nuclear power plants. Moreover, on 13 April 2005, the UN General Assembly adopted an International Convention for the Suppression of Acts of Nuclear Terrorism.<sup>16</sup> Finally, some success could be achieved in the establishment of nuclear-weapon-free zones (NWFZ).<sup>17</sup> Thus, the Antarctic Treaty of 1959,<sup>18</sup> which prohibits any measures of a military nature, the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean of 1967 (Treaty of Tlatelolco),<sup>19</sup> later the South Pacific Nuclear Free Zone Treaty of 6 August 1985 (Treaty of Rarotonga)<sup>20</sup> and in 1995 and 1996 the Treaty on the Southeast Asia Nuclear Weapon-Free Zone (Bangkok Treaty)<sup>21</sup> and the African Nuclear-Weapon-Free-Zone Treaty (Pelindaba Treaty),<sup>22</sup> which is not yet in force, all set up nuclear-weapon-free zones in specific regions on earth. The last four regional treaties require

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13 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, *I.C.J. Reports* 1996, <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>, 35 pp. For a summary of the prelude leading up to the judgment as well as of the sentence itself, see Granoff (2000, 1427–33).

14 See Canberra Commission on the Elimination of Nuclear Weapons (1996); United Nations (2002); United Nations (2004); United Nations Advisory Board on Disarmament Matters (2004); IAEA Expert Group on Multilateral Approaches to the Nuclear Fuel Cycle (2005); United Nations (2005) and The Weapons of Mass Destruction Commission (2006).

15 See <http://www-ns.iaea.org/conventions/>. See also the Principles relevant to the Use of Nuclear Power Sources in Outer Space of the UN General Assembly of 14 December 1992; UN-Res. 47/68.

16 14 September 2005, <http://www.un.org/News/Press/docs/2005/ga10340.doc.htm>.

17 In accordance with UN Res. 3472 B (XXX) of 11 December 1975, a nuclear-free zone is any zone, recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby the statute of total absence of nuclear weapons, including the procedure for the delimitation of the zone, is defined and an international system of verification and control is established to guarantee compliance with the obligations deriving from that statute; nuclear-weapon States should accept some principal obligations; see Haßenpflug (2000). The UN Disarmament Commission adopted principles and guidelines for the establishment of nuclear-weapon-free zones in 1999. We do not include national nuclear-free zones here, such as those established by Austria (1999) and Mongolia (2000), or similar ones which go even beyond the obligations of a regional NWFZ treaty, such as the ones set up by New Zealand in 1987 and by the Philippines in its Constitution of 1987.

18 1 December 1959, *UNTS*, Vol. 402, p. 71 ff.

19 14 February 1967, *UNTS*, Vol. 634, p. 326 ff.

20 6 August 1985, *IAEA-Doc. INFC/RC/331 + Add.1*.

21 15 December 1995, *ILM*, 1996, p. 635 ff.

22 11 April 1996, *ILM*, 1996, p. 698 ff.

States parties to conclude comprehensive safeguards agreements with the IAEA. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 1967,<sup>23</sup> which was complemented by the Agreement Governing the Activities of States on the Moon and other Celestial Bodies of 1979,<sup>24</sup> and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof<sup>25</sup> set up denuclearized zones in space and at the Sea. Plans for further such zones were not successful so far.<sup>26</sup> Expanding regional nuclear-weapon-free zones to all-embracing demilitarized zones or even peace zones, which should, besides denuclearization and demilitarization, also include political and economic cooperation and essentially can be traced back to considerations of the Non-Aligned Movement (NAM) of a peace zone in the Indian Ocean, failed likewise, apart from the Antarctic Treaty noted above.<sup>27</sup>

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23 27 January 1967, *UNTS*, Vol. 610, p. 205 ff.

24 18 December 1979, *ILM*, Vol. 18, 1979, p. 1434 ff.

25 11 February 1971, *ILM*, Vol. 10, 1971, p. 145 ff.

26 Throughout the years, there were discussions to set up nuclear-weapon-free zones in Central and North Europe (in Scandinavia or the Baltic Sea), in the Balkans, the Mediterranean Sea, South Asia, recommended by the General Assembly in UN Res. 36/99 of 9 December 1981, the Korean Peninsula, which was supported by a joint declaration of both Koreas on 31 December 1991, the Middle East, repeatedly recommended by the UN General Assembly since 1974 (UN Res. 3263 (XXIX) of 9 December 1974), or Central Asia. The latter has resulted in the Almaty Declaration of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan of 28 February 1997 (see also UN Res. 52/38 S of 9 December 1997 and following Resolutions) and a draft Treaty on the Central Asian Nuclear-Weapon-Free Zone (CANWFZ) adopted on 8 February 2005 and signed on 8 September 2006. UN Res. 51/45 of 10 December 1996 and the Resolutions of following years indirectly called for a nuclear-weapon-free zone for the whole Southern Hemisphere by expending the Treaties of Tlatelolco, Rarotonga, Bangkok and Pelindaba.

27 The UN General Assembly recommended a Treaty on the prohibition of deployment of all kinds of arms in space, which, however, was never negotiated. Peace zones were discussed for the Mediterranean Sea, South East Asia, the Southern Pacific (see UN Res. 41/11 of 27 October 1986) and the Indian Ocean (see UN Res. 2832 (XXVI) of 16 December 1971 and UN Res. 2992 (XXVII) of 15 December 1972 which set up an Ad hoc Committee – yet, the for the year 1981 recommended UN Conference on the Indian Ocean did not take place).

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## Chapter 4

# What's the NPT all About?

### The Substance of the Treaty

After years of negotiation at the Conference of the Eighteen-Nation Committee on Disarmament (ENDC) and seven weeks of discussion in the UN General Assembly<sup>1</sup> (Shaker 1976, 1–125), the Treaty on the Non-Proliferation of Nuclear Weapons was opened for signature on 1 July 1968. It entered into force on 5 March 1970. It is a framework treaty, which, together with its resulting agreements, behaviors and arrangements, is usually referred to as the nuclear non-proliferation regime. Until 1980, two thirds of the States had ratified the Treaty (Prill 1980, 74). Today, the Treaty accounts for almost worldwide adherence: 187 of 192 States plus the Holy See and Taiwan are parties to the Treaty,<sup>2</sup> France and China having only joined the regime in 1992 and Cuba being one of the last in November 2002. The only non-parties are the Cook Islands, Israel, India and Pakistan. The latter three States all dispose of nuclear weapons today,<sup>3</sup> even though Israel has never officially confirmed nor denied it to this day.<sup>4</sup> Another candidate for possession of nuclear weapons, namely, North Korea, left the treaty regime in 2003, which is allowed under Art. X of the NPT if extraordinary events have jeopardized the supreme interests of its country,<sup>5</sup> and announced to be in possession of nuclear weapons, which meanwhile

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1 From 26 April to 12 June 1968. The General Assembly adopted the NPT on 12 June 1968; see UN Res. A/Res. 2373 (XXII). Some trace back the first initiative on a non-proliferation treaty to an Irish move in 1958 which led to a UNGA resolution in 1961; Johnson (2004, 11). See also Annex 1.

2 The question of whether this qualifies the Treaty to be an expression of customary international law will be left open here, since the dispute over the interpretation of some rules of the Treaty and recent developments in nuclear armament makes such a finding difficult.

3 If they would like to accede to the treaty, they would have to abolish their nuclear weapons, as Belarus, Kazakhstan, South Africa and the Ukraine did; Nassauer (2005).

4 Yet, the Israeli Prime Minister Ehud Olmert, in a December 2006 interview's slip of the tongue, accidentally admitted Israel's nuclear weapon status by saying that Iran would aspire 'to have a nuclear weapon as America, France, Israel and Russia'; see [http://en.wikipedia.org/wiki/Israel\\_and\\_weapons\\_of\\_mass\\_destruction](http://en.wikipedia.org/wiki/Israel_and_weapons_of_mass_destruction), last accessed on 14 June 2007.

5 Notice has to be given to all other Parties and to the Security Council, which North Korea omitted pretending that it had done so with regard to its first 1993 withdrawal, which was only suspended one day before it was due to take effect. Given this formal error, some parties to the NPT consider the Democratic People's Republic of Korea still to be a member and it is still listed as such on the treaty's web site; see <http://disarmament2.un.org/TreatyStatus.nsf>. With reference to the suspension of its earlier withdrawal, North Korea also claimed immediate coming into force of its withdrawal. The general view, however, is that North Korea's withdrawal came into effect and that it did so on 10 April 2003 when its three-month



has proved to be true. The treaty itself defines in Art. IX nuclear weapon States as those which have manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967. Thus, China, France, Russia, the United Kingdom of Great Britain and Northern Ireland and the United States of America, the five permanent members and veto powers of the UN Security Council (the P-5), qualify for the term of Nuclear Weapon State, whereas the four non-parties which possessed nuclear weapons only after that date, do not, even though they are *de facto* States with nuclear weapons (the D-4).

In the following, the basic contents of the NPT are summarized. Even though different classifications have been drawn throughout the years with regard to the basic principles or pillars on which the Treaty is based,<sup>6</sup> the operation of the Treaty regime in practice, observable at the five-yearly RevCons in the arrangement of subject matters for the Main Committees as well as during the PrepCom's cluster meetings, has moved from a partition into two subject areas (military and civilian aspects of the Treaty, until 1985) to a three-fold clustering of issues in order to accommodate the Eastern European Group's wishes to be considered in the distribution of Conference posts (Dhanapala and Rydell 2005, 63–4): (1) disarmament and non-proliferation, including negative security assurances (NSAs); (2) safeguards and NWFZ; and (3) peaceful uses of nuclear energy.<sup>7</sup> The first cluster basically concerns the military aspect of the Treaty, the second and third clusters refer to the civilian part of the NPT.

The military aspect of the Treaty first encompasses the NPT's primary goal, which is armament control in the form of prohibition of proliferation of nuclear weapons. For this purpose, it sets up two categories of States, the nuclear-weapon States (NWS) and the non-nuclear-weapon States (NNWS). Whereas the first are denied any transfer of nuclear weapons or other nuclear explosive devices or control over them as well as any assistance, encouragement or inducement of NNWS to manufacture or otherwise acquire those devices or control over them (Art. I), the NNWS are prohibited from receiving those services and from manufacturing or otherwise acquiring those weapons and devices (Art. II). The indisputable discriminatory feature inherent in these clauses, consisting of those States in position and those in disposition of nuclear weapons, is to some extent balanced by a close-to obligation of the NWS to disarm completely. Three preambular paragraphs and especially Art. VI directly

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notice of withdrawal expired; see Center for Nonproliferation Studies (2005b, 2). North Korea also left the IAEA in 1994, but its Safeguards Agreement remained in force, although verification since became extremely difficult.

6 Thus, Shaker (1976) speaks of five basic principles: (a) the principle of non-proliferation, (b) the principle of peaceful use of nuclear energy, (c) the principle of arms control and disarmament, (d) the principle of international safeguards and (e) the principle of nuclear-weapon-free zones.

7 Outside the somewhat artificial conference arrangements, NPT affairs are often re-clustered into a similar three-pillar scheme of 1) non-proliferation, 2) nuclear energy, or peaceful uses, and 3) disarmament; see ElBaradei (2004, 3); Sanders (2004, 43); Center for Nonproliferation Studies (2005a, 9), but see also State statements at Conferences, such as, for example, Canada's statement on cluster 2 issues of 29 April 2004 or the Chairman's Working Paper No. 27 at the Third PrepCom.

deal with that topic. Art. VI provides for the Parties to the Treaty to undertake '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.' However, it remains controversial what exactly 'pursuance of negotiations in good faith' means and whether an obligation to conclude negotiations would relate to and be conditioned by general and complete disarmament. Those who argue in favor of conditioning of negotiations often refer to the Preamble of the NPT which states,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.<sup>8</sup>

However, in its groundbreaking Advisory Opinion, the ICJ confirmed civil society voices by stating that States also have an obligation to bring to a conclusion negotiations leading to nuclear disarmament. At the 1999 NPT PrepCom, Canada presented a legal opinion which stated that Art. VI included two separate undertakings, one on nuclear disarmament and another on general and complete disarmament.<sup>9</sup> At the 2000 RevCon, the New Agenda Coalition (NAC)<sup>10</sup> then succeeded in reaching agreement on each obligation being distinct and not conditional to achievement of the other, which was reflected in the 2000 Final Document (McCoy 2005b, 20–21). Concerning the military aspect, a last clause, namely, Art. VII, spells out that nuclear-weapon-free zones remain unaffected. This has the effect of allowing for disarmament measures through NWFZ.

The civilian part of the NPT is mainly covered by the alienable right of all Parties to develop research, production and use of nuclear energy for peaceful purposes and to participate in an exchange of equipment and information to that purpose contained in Art. IV. This is complemented by an undertaking of all Parties to 'facilitate' such an exchange and of Parties to the Treaty in a position to do so to 'co-operate in contributing' to the further development of the peaceful use of nuclear energy. However, an obligation cannot be deduced from that wording. Moreover, this Article introduces a third category of States, those 'in a position to do so,' that is technologically advanced countries, which later joined into the Nuclear Suppliers Group (NSG). In addition, in order to avoid diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices, NNWS (and only them!)

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8 For another interpretation of this preambular paragraph, arguing that it would refer to a Treaty on general and complete disarmament as a special type of treaty encompassing also a Nuclear Weapons Convention, see CSO statement 4 of 11 May 2005 during the 2005 RevCon, <http://www.un.org/events/npt2005/statements/npt1Ingo-cabasso.pdf>, last accessed on 7 October 2006.

9 NPT/CONF.2000/PC.III/10 of 12 May 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/137/98/IMG/N9913798.pdf?OpenElement>, last accessed on 8 January 2007.

10 A cross-continental and cross-camp coalition of States with the aim to achieve nuclear disarmament; see p. 33, note 34, and pp. 134–5.

undertake to accept safeguards through an agreement with the IAEA (Sanders 2004). This means that each source or special fissionable or related material can only be provided to NNWS subject to those safeguards (Art. III). The ‘comprehensive safeguards’ system set up by the IAEA in April 1971 in execution of this Article is often termed INFCIRC/153, after the number of the IAEA document containing the model agreement between the IAEA and NPT NNWS.<sup>11</sup> In September 1974, the IAEA first published the so-called (non-binding) ‘Zangger List’ of the informal Zangger Committee, which contained a ‘trigger list’ of items and materials supplied to NNWS parties to the NPT subject to IAEA safeguards, with updates following on a regular basis.<sup>12</sup> With regard to the peaceful application of nuclear explosions, such as those which were used for channel or port construction or for the tapping of commodities, Art. V of the NPT foresees that potential benefits arising from them should be made available to NNWS, which are not allowed to possess nuclear explosive devices in accordance with Art. II of the NPT, through an appropriate international body or, if so desired by the NNWS, through bilateral agreements. Yet, the wording ‘[e]ach Party to the Treaty undertakes to take appropriate measures to ensure [...]’ likewise does not testify to an obligation on the part of the servicing State. Moreover, NWS are not banned from the peaceful use of nuclear explosions.<sup>13</sup> However, throughout the 1970s, especially when India carried out its ‘peaceful’ nuclear explosion on 18 May 1974, the conviction arose that this problem was closely linked to that of a comprehensive (test) ban prohibiting peaceful and military explosions alike, since a distinction is hardly feasible. The CTBT adopted in 1996 in fact prohibits any nuclear weapon test explosion or any other nuclear explosion (Art. 1).<sup>14</sup> However, the CTBT is still not in force.

The NPT foresees five-yearly Review Conferences, the first obligatory, the following ones if a majority of the Parties to the Treaty request so (Art. VIII (3)). The first Review Conference took place in 1975, followed by one every fifth year until the last in 2005. The results of the Conferences are usually reflected in a (merely technical) Final Document. Additionally, in 1975 and 1985, a (substantial) Final Declaration could be attached to the Final Document, whereas all other RevCons foundered on that issue (Dhanapala and Rydell 2005, 1–2). However, at the 1995 RevCon, the first Conference which involved all five NWS, three decisions and one resolution could be adopted instead. First, in accordance with Art. X (2) of the NPT, the 1995 Review and Extension Conference of the Parties to the NPT decided on 11 May 1995 that the Treaty should continue in force indefinitely, 25 years after its entry into force.<sup>15</sup> Although in Art. X the Treaty provides that the extension would be determined by a majority vote, the parties felt that the issues at

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11 For the Model Additional Protocol to Safeguards Agreements, see p. 30.

12 In November 1990, the updates were consolidated into one document; see INFCIRC/209/Rev.1.

13 The US, for example, indeed continued to use peaceful nuclear explosions until it terminated its program in 1977.

14 See p. 33.

15 See Extension of the Treaty on the Non-Proliferation of Nuclear Weapons, Dec. 3 NPT/CONF.1995/32 (Part I), see Annex 4, <http://disarmament2.un.org/wmd/npt/1995dec3.htm>, last accessed on 12 June 2006.

stake were of such importance that this would make a consensus decision necessary. Such a, legally binding, decision, however, was only possible as part of a package deal which included three other, purely politically binding, commitments, namely, a Decision on Strengthening the Review Process for the Treaty,<sup>16</sup> a Decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament,<sup>17</sup> and a Resolution on the Middle East, calling for the establishment of a WMD-free zone in the Middle East,<sup>18</sup> at the expense of a Final Declaration reviewing the operation of the Treaty (Dhanapala and Rydell 2005, 41–74). The package deal came to be known as ‘indefinite extension-plus’ or ‘permanence with accountability’ (Dhanapala and Rydell 2005, 57). In 2000, the 1995 results were supplemented by the so-called 13 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,’ which were included in the 2000 Final Document (see Box 4.1 overleaf and Annex 6).<sup>19</sup>

The NPT has no Secretariat, but instead is served by the UN Department for Disarmament Affairs (DDA), which is hired by the parties to the Treaty on the occasion of meetings and conferences. In terms of provisions for implementation, it is therefore considered to be the weakest of the treaties on WMD (The Weapons of Mass Destruction Commission 2006, 63). The three depository governments, Russia, the United Kingdom and the United States of America, only convene the Review

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16 Dec. 1, NPT/CONF.1995/32 (Part 1), see Annex 2, <http://disarmament2.un.org/wmd/npt/1995dec1.htm>, last accessed on 12 June 2006. The Decision provided for continued five-year RevCons, each now preceded by three – possibly four – sessions of a PrepCom of 10 working days each. The present structure of three Main Committees should continue, which could now, however, set up subsidiary bodies for specific issues. The review process should consider ‘principles, objectives and ways’ for the implementation and the universality of the Treaty, including those mentioned in Decision 2 and it should ‘look forward as well as back.’ The Decision was largely based on Canadian and South African suggestions.

17 Dec. 2, NPT/CONF.1995/32 (Part I), see Annex 3, <http://disarmament2.un.org/wmd/npt/1995dec2.htm>, last accessed on 12 June 2006. These principles and objectives encompassed universality, non-proliferation, nuclear disarmament, including calls for the completion of a CTBT and negotiations on a universal Fissile Material Cut-Off Treaty (FMCT), nuclear-weapon-free zones, including in the Middle East, security assurances, safeguards, including a plea for acceptance of IAEA’s full-scope safeguards, and peaceful uses of nuclear energy, which tied the latter to Art. I, II and III commitments.

18 NPT/CONF.1995/32 (Part I), see Annex 5, <http://disarmament2.un.org/wmd/npt/1995RESME.htm>, last accessed on 12 June 2006. The Resolution was co-sponsored by the three depository States – Russia, the UK and the US – to secure the concurrence of the Arab States to indefinite extension. See also a variety of UN GA resolutions since 1974, the last being UN GA res. 60/52 of 8 December 2005.

19 NPT/CONF.2000/28 (Parts I and II), pp. 14–15, <http://disarmament2.un.org/wmd/npt/2000FD.pdf>, last accessed on 12 June 2006. Some argue that these 13 steps, in light of the rules of treaty interpretation set forth in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, constitute an authoritative, legally binding interpretation of the NPT; Lawyers’ Committee on Nuclear Policy, Weiss, Burroughs and Spies (2005).

**Box 4.1 13 Practical steps**

1. Early entry into force of the CTBT.
2. Moratorium on nuclear-weapon-test or any other nuclear explosions pending entry into force of the CTBT.
3. Negotiations on a non-discriminatory, multilateral and internationally and effectively verifiable FMCT\* in the CD.
4. Establishment of a subsidiary body on nuclear disarmament in the CD.
5. Irreversibility of nuclear disarmament, arms control and reduction measures.
6. Unequivocal undertaking by the NWS to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament.
7. Early entry into force and full implementation of START II and the conclusion of START III; preservation and strengthening of the ABM Treaty.
8. Completion and implementation of the Trilateral Initiative between the US, Russia and the IAEA.
9. Steps by the NWS leading to nuclear disarmament:
  - unilateral reduction of their nuclear arsenals
  - increased transparency
  - further reduction of non-strategic nuclear weapons
  - further reduction of operational status of nuclear weapons systems
  - diminishing role for nuclear weapons in security policies and
  - engagement in the process leading to the total elimination of their nuclear weapons.
10. Arrangements by NWS to place fissile material designated 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.
11. Reaffirmation that ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control.
12. Regular reports, within the framework of the strengthened review process for the NPT, by all States parties on the implementation of their disarmament obligations contained in Art. VI of the NPT and par. 4 (c) of the 1995 Principles and Objectives Decision.
13. Further development of the verification capabilities.

\* Fissile Material Cut-Off Treaty.

Conferences, whereas the IAEA is merely in charge of the safeguard agreements. The recent WMDC report has therefore recommended to set up a standing secretariat (The Weapons of Mass Destruction Commission 2006, 66/188, rec. 4). Much more important than the paucity of administrative implementation provisions, however,

are the NPT deficiencies in cases of non-cooperation. Unlike the Chemical Weapons Convention (CWC) or the CTBT, the NPT does not have a built-in mechanism for non-compliance (Center for Nonproliferation Studies 2005b, 1). The only penalty mechanism in existence is not directly linked to the respect of Treaty rules *per se*, but to the IAEA safeguards agreements in conformity with Art. III of the NPT: In case of non-compliance with the rules of IAEA safeguards, the IAEA Board is to call upon the State concerned and should report the non-compliance to the UN Security Council and the General Assembly which can react according to their means. Finally, another problem lies in the provision for amendments. In accordance with Art. VIII (1) of the NPT, requests for amendments have to originate from one-third or more of the Parties to the Treaty. Then, however, the Depositary Governments, the three NWS Russia, the UK and the US, shall convene a conference, which at the moment seems to be difficult to obtain under the prevailing political conditions.

### **The Asymmetric Regime of the Treaty**

The first observations one can make is that, from the outset, the rules relating to the military aspect set up an unequal or even discriminatory military regime which is only balanced out softly. On the other hand, the rules touching upon the civilian aspect start out from the old customary international rule of sovereign equality, but do not lead to *de facto* equality in the end and thus introduce inequality through the cracks of the door. The contradictions underlying the two aspects regulated by the Treaty, or the bias towards inequality in the application of both sets of rules, are expatiated in more detail below. They generated an inherent tension of the NPT, which to this day constitutes its Achilles Heel by dividing States parties during each Review Conference into two groups for each aspect: when it comes to the military aspect of the NPT, the NWS and the NNWS confront each other almost irreconcilably. With regard to the civil aspect, the NSG members on the one hand are opposed to those being dependent on their deliveries on the other.

Moreover, the NPT only prohibits nuclear explosive devices and as such deals with them under the military aspect. Thus, sensitive material (enriched uranium and plutonium) or technologies (plants for enrichment or fuel reprocessing), useable for both nuclear weapons and nuclear energy purposes, are not banned, nor is research into, production of, manufacture and trade in sensitive material prohibited. Yet, large scale sensitive equipment and material transfer, the increased dissemination of knowledge of nuclear fission, augmented training activities as well as the escalation in the number of reprocessing facilities ('plutonium economy') led to growing fears about horizontal proliferation and sub-national theft. Over the years, this became even more worrying due to the qualitative leap in enrichment technology, which made differentiation between uranium enrichment above and below 20 per cent U235 more difficult, and the quantitatively growing stockpiles of plutonium (Wilmshurst 1990, 17). The Indian 'peaceful' nuclear explosion of 1974 and the treaties of the NPT-State

Federal Republic of Germany<sup>20</sup> with Brazil and of France with Pakistan on sensitive material in the mid-1970s hereby nurtured the debate, as the alleged illegal cross-border transportation of canisters with nuclear wastes between the Federal Republic of Germany and Belgium in 1987 ostensibly foreseen for Pakistan and Libya did. As a result, the distinction between the military and the civilian aspect of the Treaty became blurred. In addition, the IAEA's task to search for diversion was for a long time hindered by its inability to scrutinize and control undeclared material, plants and activities. This only changed after the discovery of Iraq's clandestine nuclear-weapon program in 1991 and the following approval, by the IAEA Board of Governors, of the Model Additional Protocol to Safeguards Agreements<sup>21</sup> ('integrated safeguards') in 1997, which conferred the legal authority to implement further strengthening measures on the IAEA.<sup>22</sup> Three times in its history, the IAEA discovered undeclared nuclear(-weapon) programs and declared a State to be in violation of its safeguard agreements, in 1991 in Iraq, in 1993 in the Democratic People's Republic of Korea (DPRK) and in 2003 in Iran. A fourth country, namely, Libya, was discovered to have, to that date unsuccessfully, tried to acquire a uranium-enrichment capacity in 2003. At that time, a Libya-bound freighter, the *BBC China*, within the framework of the US-led Proliferation Security Initiative (PSI) was forced into port in Taranto, Italy and was found to have loaded equipment to enrich uranium. Libya renounced its nuclear-weapon and WMD program soon after and in March 2004, the IAEA Board of Governors resolved for the fourth time on non-compliance of a country with its NPT safeguards agreement. In the following, some issues are highlighted which caused heightened tension throughout the years given the imperial-like imbalance of the NPT regime.

### *Inequality in Military Affairs*

(a) *Dependence on voluntary disarmament* Since the Treaty lacks any clear-cut obligation and timeframe to disarm, it is not surprising that a treaty on general and complete disarmament under strict and effective international control was never negotiated. During the NPT Review Conferences, this regularly caused an outcry of the NAM, which felt especially betrayed by the NWS policy. The cessation of the nuclear arms race (vertical non-proliferation) likewise only proceeded in small steps.<sup>23</sup> Nuclear disarmament took only place bilaterally and was often offset by

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20 Two years later, in 1977, the Federal Republic of Germany announced an embargo on plants and technologies for fuel reprocessing.

21 INFCIRC/540(Corr.).

22 They are implemented through the requirement of an expanded declaration, broader rights of access for the Agency, including admission to any suspect location and (surprise) inspection visits at short notice (two hours), by enabling the IAEA to use the most advanced technologies (environmental sampling, remote monitoring techniques) and by streamlined administrative procedures of States for IAEA inspectors (automatic visa renewal/easier communication with IAEA headquarters). As of 30 December 2006, 78 States have ratified an Additional Protocol with the IAEA; [http://www.iaea.org/OurWork/SV/Safeguards/sg\\_protocol.html](http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html), last accessed on 11 January 2007.

23 See p. 19, note 10.

nuclear armament of another kind. Negotiations on multilateral treaties, such as a Fissile Material Cut-Off Treaty (FMCT) or the CTBT,<sup>24</sup> either were never started or took decades to get off the ground. In the early years of the Treaty regime, some States, such as Denmark, Iceland, Japan, Norway, Spain and Sweden, therefore attempted to enforce the disarmament obligation on NWS by prohibiting foreign ships or aircraft in general from entering their territories with nuclear weapons aboard. However, this prohibition was seldom enforced (Goldblat 1990, 7–8). As a result, the Treaty has perpetuated NWS possession of nuclear weapons and established a dangerous relationship between the nuclear-weapon haves and have-nots.

*(b) Dearth of security assurances* Contrary to the requests of NNWS, the NPT in the end neither contained any express renouncement of NWS to use nuclear force (negative security assurance (NSA)) nor any undertaking of NWS to assist NNWS in case of a threat to use or an actual use of nuclear weapons (positive security assurance). The only concession, which was possible, was a reference in the preamble to the UN Charter's prohibition to use force and, as a kind of substitute to security assurances, a Security Council Resolution which recognized the pledge of the United Kingdom, the United States and the USSR to immediately take action in the Security Council in case of a threat of or an actual nuclear aggression.<sup>25</sup> For the NNWS and especially the NAM countries, this positive security assurance was at least insufficient in the sense that this would not secure them from nuclear aggression by one of the NWS themselves, disposing of veto power in the Security Council, and that in most cases reaction would be too late, whereas self-defense would not be possible (Prill 1980, 25–7). Thus, many non-aligned States expressed the need for negative security assurances by the NWS in form of a multilateral, legally binding agreement. Since then, the NWS have made and updated unilateral, non-binding NSA declarations outside of the non-proliferation regime, conditioning, however, the granting of NSA to NNWS parties to the NPT to certain criteria.<sup>26</sup> During the preparatory process leading up to the 1995 NPT Review and Extension Conference, the Security Council, at the very eve of the Conference unanimously confirmed its statement of 1968 and recognized that the NWS will bring such a situation immediately to the attention of the Council and seek Council action. Beside this positive assurance, this time the resolution also encompassed NSA to NNWS

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24 See below.

25 SC Res. 255 (1968) of 19 July 1968. The Resolution also referred to the right of self-defense in accordance with Art. 51 of the UN Charter. France, which remained outside the NPT treaty regime until 1992, abstained, whereas at that time China's seat in the Security Council was held by Taiwan.

26 Such as the declarations delivered by the United Kingdom, the US and the USSR at the 10th Special Session of the General Assembly, the first on disarmament, in 1978. Apart from a Chinese declaration, the declarations did not unconditionally renounce the use of nuclear weapons; see Prill (1980, 28–30). France provided NNWS with an updated, similarly conditional, commitment at the next UN GA Special Session on Disarmament in 1982; see Center for Nonproliferation Studies (2005a, 14).



parties to the NPT.<sup>27</sup> Yet, again it only acknowledged separate NWS statements, declared before a CD Conference, and the assurances remained conditional (apart from the Chinese one), unilateral and not binding.<sup>28</sup> To this day, legally binding NSA are only contained in Protocols to regional NWFZ treaties.<sup>29</sup> Yet, just one of these Protocols, namely, Protocol II to the Treaty of Tlatelolco, was ratified by all five NPT nuclear powers,<sup>30</sup> even though those NWS, which have signed, but not ratified the Protocol, in accordance with customary law codified in Art. 18 of the Vienna Convention on the Law of Treaties<sup>31</sup> might be bound not to act in a manner that would ‘defeat the object and purpose’ of the NPT (Spector and Ohlde 2005, 14, 15). Nevertheless, the situation remains unsatisfactory for NNWS. Therefore, the 1995 Principles and Objectives for Nuclear Non-Proliferation and Disarmament called for an international, legally binding instrument on security assurances.<sup>32</sup> The 2000 RevCon Final Document spelled out that legally binding security assurances would strengthen the NPT regime and called for recommendations on this issue to the 2005 RevCon.<sup>33</sup> This was taken up during the PrepCom process of the 2005 RevCon by

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27 See SC Res. 984 (1995) of 11 April 1995. Similar unilateral declarations targeted to single States were provided by NWS to Belarus, Kazakhstan and the Ukraine in 1994/1995 in the context of transferral of USSR manufactured nuclear weapons to the Russian Federation; see Center for Nonproliferation Studies (2005a, 14).

28 In addition, the United Kingdom and the United States issued qualifying statements following the adoption of the resolution. Moreover, the US repeatedly made it clear that it does not rule out using nuclear weapons against countries that attack it or its allies with any (other) WMD, such as biological or chemical weapons (doctrine of belligerent reprisal). Thus, the 2002 US Nuclear Posture Review explicitly confirmed that the US is prepared to use nuclear weapons against non-nuclear weapon States and even named seven States (China, Iran, Iraq, Libya, North Korea, Russia and Syria) as potential targets; see Wareham (2005, 440). Finally, all NWS, apart from China, reserve the right to use nuclear weapons against NNWS which attack them in alliance or in association with an NPT NWS; Spector and Ohlde (2005, 14, 18).

29 Art. 3 of Protocol II to the Treaty of Tlatelolco, Art. 1 of Protocol II to the Treaty of Rarotonga, Art. 2 of Protocol I to the Treaty of Bangkok and Art. 1 of Protocol I to the Treaty of Pelindaba. The current draft of the Central Asian NWFZ treaty covers the subject in Protocol I.

30 With regard to the Treaty of Rarotonga, all NWS but the US have ratified the Protocol, the US having signed under the Clinton administration, but not having submitted the instrument to the Senate for ratification. None of the NPT NWS, however, have signed or ratified the Protocol to the Treaty of Bangkok due to concerns over the broad definition of the NWFZ, which also includes exclusive economic zones and continental shelf areas. In the case of the Treaty of Pelindaba, which is not yet in force, all NPT NWS have signed the Protocol, but only China, France and the UK have ratified it. However, Russia and the US are not known to have substantive objections to doing so; Spector and Ohlde (2005, 15). The draft Protocol to the CANWFZ still meets substantive reservations by the NWZ.

31 Ratified by China, Russia and the UK and signed by the US.

32 See Dec. 2, par. 8, NPT/CONF.1995/32 (Part I), see Annex 3, par. 8, <http://disarmament2.un.org/wmd/npt/1995dec2.htm>, last accessed on 12 June 2006.

33 UN Doc. NPT/CONF.2000/28, p. 15, par. 2, <http://disarmament2.un.org/wmd/npt/2000FD.pdf>, last accessed on 20 July 2006.

the NNWS, whose NSA promoting community meanwhile is made up not only of the NAM, but also of the New Agenda Coalition (NAC)<sup>34</sup> and a number of other NNWS, such as Norway and Ukraine. Thus, during the Second PrepCom the New Agenda Coalition submitted a Working Paper, to which it attached a draft document to be used as a draft Protocol or agreement, which contains both positive and negative security assurances. The NAM pleaded for a separate subsidiary body on NSA at the 2005 RevCon. However, France, the United Kingdom and the United States remain opposed to legally binding assurances on a worldwide scale. On the other hand, China and Russia, with reservations, seem to back the claims of the majority of NNWS for broader, treaty-based guarantees. The latest call for the provision of legally binding negative security assurances to NNWS by NWS, both, parties and non-parties to the NPT, but separately, was uttered by the recent WMDC report (The Weapons of Mass Destruction Commission 2006, 73/189, rec. 7).

(c) *Comprehensive test ban* Through Art. II of the NPT, NNWS are banned from possessing and by this also indirectly from using nuclear explosive devices for peaceful purposes and from testing any nuclear devices whether for military or civilian purposes. However, the NPT, which in its preamble referred to the determination of the Parties to the 1963 Partial Test-Ban Treaty to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time, in fact left the possibility open for NWS to conduct peaceful nuclear explosions and to test their nuclear arsenal for military or civilian purposes underground. Some limitations could be achieved through bilateral agreements, which, however, only entered into force in 1990,<sup>35</sup> and through self-restriction.<sup>36</sup> Yet, a comprehensive nuclear-test-ban treaty, the CTBT,<sup>37</sup> prohibiting any nuclear weapon test explosion or any other nuclear explosion whatsoever, was only adopted in September 1996. Nevertheless, the CTBT is still not in force and a couple of States whose ratification is required for the Treaty to enter into force, prominently among them some NPT and Non-NPT NWS as well as States suspect of possessing nuclear weapons, have not yet signed or ratified the Treaty.<sup>38</sup>

(d) *De facto military control by the IAEA* The IAEA was originally set up to further the use of nuclear energy for peaceful purposes. Likewise, this was the original intention of the NPT. Over time, however, the IAEA was more and more pushed to take on the role of a control agency for the diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices, which caused some

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34 Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden. The NAC was launched in June 1998 after the failure of the Second PrepCom leading to the 2000 RevCon and the nuclear test explosions conducted by India and Pakistan. Its principal aim is to persuade NWS to move towards disarmament. See also pp. 200 f.

35 See p. 19, note 10.

36 See p. 26, note 13.

37 See p. 18, note 7.

38 Thus, China, Iran, Israel and the US have signed, but not ratified the Treaty and India, North Korea and Pakistan have not even signed the Treaty. In the US, the Senate has refused to ratify the Treaty in 1999.

protests especially on the part of the NAM. Moreover, its safeguards system does not touch upon a control of NWS, even though they accepted undertakings with regard to the non-proliferation of nuclear weapons and explosive devices (see Art. III and I of the NPT).<sup>39</sup> This led technologically advanced export-oriented States to demur that they would have economic disadvantages through IAEA control. As a result, China (since 1989), France (since 1981), Russia (USSR, since 1985), the United Kingdom (since 1978) and the US (since 1980) opened at least their civilian nuclear plants to IAEA control. Interest in the topic has since decreased.

### *Inequality in Civilian Affairs*

(a) *No 'free access' to nuclear energy* The 'social element' of facilitation of exchange in the area of nuclear energy for peaceful purposes was often confronted with a request of NNWS to 'free access' to material, equipment and information. However, the NPT does not contain any obligation to this end on the part of the NWS. They may support NNWS (see Art. III (2) and IV (2) of the Treaty), but do not have to.

(b) *Sensitive material or plants* NWS may support NNWS, as well as non-parties to the Treaty (see Art. IV (2) of the NPT). This also includes sensitive material or plants, which are not forbidden by the Treaty. However, increasing proliferation concerns<sup>40</sup> led the main supplier States, especially the US,<sup>41</sup> to profoundly change their attitude soon after the adoption of the Treaty from advocating a liberal system of sovereign use of nuclear energy to applying embargoes on sensitive material, harsh control mechanisms and severe export conditions (Prill 1980, 83 ff.). After a meeting in 1974 in London, the so-called 'London Suppliers Club,' later renamed the Nuclear Suppliers Group (NSG), was founded by the US and six other countries (Canada, the Federal Republic of Germany, France, Japan, the UK and the USSR). Building on earlier deliberations of the Zanger Committee, the Group came up with a set of guidelines for nuclear transfers to NNWS for peaceful purposes,<sup>42</sup> which contained an export trigger list and common criteria for technology transfer, such as the requirement of a license for listed plants and their components before a state would permit export. The measures brought about protest and suspicions of non-

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39 Interestingly enough, the original wording of the US draft NPT treaty of 17 August 1965 had foreseen indiscriminate – though permissive – safeguards on peaceful nuclear activities for all States; see Kramish (1967, esp. 2).

40 See pp. 29–30.

41 In 1978, the US Congress adopted the Nuclear Non-Proliferation Act (NNPA), which did not place emphasis on international mechanisms, but rather on unilateral anti-proliferation measures.

42 The guidelines were published in February 1978 as IAEA information circular INFCIRC/254. The States could, however, not agree on which kind of IAEA safeguards would have to be accepted by NNWS as a precondition for export. The guidelines were amended in April 1992 to include dual-use items and comprehensive IAEA safeguards as a condition for supply also to non-NPT parties and were published by the IAEA in July 1992 as INFCIRC/254/Rev.1/Pts. 1 and 2.

aligned States not represented in the Group. The addressees of restricting measures often claimed that the embargoes flowing from these activities would hamper the nuclear energy exchange laid down in the Treaty.<sup>43</sup> A solution to overcome the supply problem would be Multilateral Nuclear Approaches (MNA) for sensitive fuel cycle activities and an international system for guaranteeing fuel supply. In fact, the IAEA as well as the UN since the mid-1970s have studied the possibility to set up such arrangements, however, up to now without any tangible result.<sup>44</sup>

*(c) No all-embracing safeguards for NNWS not parties to the NPT* Through Art. III of the NPT, NNWS parties to the Treaty had to accept all-embracing safeguards by the IAEA. However, this does not apply to non-parties to the NPT. Nevertheless, safeguards of the non-NPT order might cover them. Yet, these safeguards often only apply to imported items, to a specific item of nuclear equipment and/or to a specific quantity of nuclear material and first have to be accepted by the respective non-party to the NPT.

### The NPT under Stress

Despite the fact that prospects for disarmament seemed to be high after the end of the Cold War in an era of increased globalization, recent developments provoke the question how long States will continue to feel bound by the Treaty. It might be right that the NPT and its strong non-proliferation regime helped to dramatically slow down the rate of proliferation predicted by President Kennedy in 1963 of 15 to 25 nuclear weapon States by the 1970s<sup>45</sup> and could reverse the ambition of some threshold States to 'go nuclear,' especially at the beginning of the 1990s. Thus, Argentina, Australia, Brazil, Germany, Italy, Japan, Nigeria, South Korea, Sweden, Switzerland, Taiwan and recently also Libya have completely renounced nuclear weapons. Others, such as Belarus, Kazakhstan, South Africa and the Ukraine, even abolished their nuclear arsenals. As a result, the nuclear-weapon States have remained in the single digits. However, India, Israel and Pakistan as non-official NWS still are not party to the Treaty. Moreover, the number of nuclear weapons in possession of the official NPT NWS amounts to some 30,000 by last count (ElBaradei 2004, 4). Following the realist paradigm, the US government at present emphasizes coalitions of the willing

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43 See a declaration of developing countries of 1985. Up to 1990, five cases had been reported in which developing countries parties to the NPT were imposed transfer restrictions; Müller (1990, 19–20).

44 Even though all studies, expert groups and committees, concerned first with reprocessing activities, then with enrichment and meanwhile also with repositories for spent fuel and nuclear waste, concluded that most of the proposed arrangements were technically feasible and economically attractive; for an overview of the different past activities and proposals, see IAEA Expert Group on Multilateral Approaches to the Nuclear Fuel Cycle (2005, 24–6). For the latest proposal contained in the aforementioned document, see p. 42, note 4.

45 Press Conference, 21 March 1963, *Public Papers of the Presidents of the United States: John F. Kennedy, 1963*, Washington, DC, United States Government Printing Office, 1964, p. 280.

and military counter-proliferation, rather than legal approaches. As a consequence, another State, North Korea, has recently left the Treaty regime, consciously risking pariah status thereby. Through its nuclear-weapon test on 9 October 2006, it even convinced the last procrastinator to be in a position to use nuclear weapons. Other States already regret the deals they made in 1995 when agreeing on indefinite extension of the NPT. Today, States such as Algeria, Brazil, Egypt, Iran, Japan, Saudi-Arabia, South Korea, Syria, Taiwan and Turkey are deemed to be willing to go nuclear (Kötter 2005); after the failure of the 2005 RevCon there may be others to follow. Müller (2005, 32) predicts Kennedy's potential of 20 nuclear States, many of them in regions of crises, for the year 2020. Moreover, the ongoing conflict between the US and Iran about the latter's alleged nuclear-weapon program testifies to the urgency of the matter. The latest developments in this regard, a Civilian Nuclear Agreement between the US and India concluded in March 2006, go with an explicit acknowledgement of a state's acquirement of nuclear weapons outside the NPT and with an implicit invitation to opt out of the multilateral system and thus further weaken the Treaty. The Agreement trades US nuclear technology and fuel against the placement of 14 (instead of only four as to this date) among 22 Indian nuclear facilities, divided into a military and a civilian component, under IAEA safeguards.<sup>46</sup> Since then, Iran's chief negotiator on nuclear matters has already insinuated his country's possible withdrawal from the NPT.<sup>47</sup> Nevertheless, with regard to the military aspect, that is the norms on prohibition of proliferation of nuclear weapons (Art. I and II), State members withdrawing from the Treaty might continue to be bound through customary law (Bring 1990).

Altogether, however, the changed global security environment, spawned by September 11, the apparent desire of terrorists to acquire nuclear weapons, the emergence of a nuclear black market and more and more countries acquiring technology to produce fissile material, further accentuates the inequality which is at the basis of the Treaty system and which essentially is an expression of might. Some commentators therefore refer to the P-5 and the D-3(4) outside the Treaty regime as free riders on the non-proliferation regime (Johnson 2005, 21). This, in turn, contributes to the fact that no further progress is possible which would overcome inequality and might even lead to the erosion and collapse of the whole Treaty regime. The High-level Panel on Threats, Challenges and Change of the UN Secretary General phrased it in the following terms: '[T]he nuclear non-proliferation regime is now at risk because of lack of compliance with existing commitments, withdrawal or threats of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons to escape those commitments, a changing international security

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46 The US Ambassador to the UN, John Bolton, justified this with the argument that India had acquired its nuclear bombs 'in a legitimate way.' France seems to work on a similar agreement with India; see *taz*, 3 March 2006, pp. 1 and 2. The US attitude significantly departs from its former policy still pronounced during the 2005 RevCon when it stated that '[t]he Conference should reinforce the goal of universal NPT adherence and reaffirm that India, Israel and Pakistan may join the NPT only as non-nuclear-weapon States'; 'Nuclear Non-Proliferation Treaty,' US brochure, p. 10. Russia, in contrast, has a longer-standing nuclear cooperation policy with regard to India.

47 See *taz*, 6 March 2006, p. 3.

environment and the diffusion of technology. We are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation.<sup>48</sup> The President of the 2005 NPT Conference, Ambassador Sergio de Queiroz Duarte, expressed it in slightly less pessimistic, but still worrying words after the failure of the Conference: 'At stake, as I see it, is confidence in the ability of the NPT to face old as well as new challenges to the regime it instituted...The result (or lack thereof) of the 2005 Review Conference indicates that the international community has reached a crossroads with regard to nuclear disarmament and proliferation' (Queiroz Duarte 2005, 1, 4).

The question is whether the NPT is simply under stress, as some suggest, or really in crisis which would suggest that it has outlived its usefulness. As Müller (2005, 33) puts it: politics is no destiny, but a chance to change. In any case, against the danger of an imminent demise of the Treaty, it might be worth considering the old Indian proposal uttered at the Third United Nations Special Session on Disarmament of 1988 which had called for the 1995 NPT Conference to replace the NPT Treaty with a new one creating a comprehensive system of international peace and security in which all States participate on an equal footing and which would lead to the elimination of nuclear weapons by 2010 (Srinivasan 2003; Davydov 1990). To this day, China, India and Pakistan still publicly plead for a Nuclear Weapons Convention designed to full disarmament (Küpker 2005, 7). Or it would be wise, as some suggest,<sup>49</sup> to consider broader security approaches, such as the concept of human security, also focusing on the human person, for security issues or for nuclear weapons and disarmament in specific (Tyson 2004, 61, 64–5). Human security equally acknowledges freedom from fear and freedom from want or human security as well as human development.<sup>50</sup> It could be applied alongside an integrated approach based on disarmament and non-proliferation alike, which so to speak would create a new triad replacing as such the devastating triad of existing national security concepts of the nuclear-weapon States. We will see which concept civil society picked up before and during the 2005 NPT Review Conference.

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48 United Nations (2004, 40, par. 111), UN-Doc. A/59/565 of 29 November 2004. Müller (2005, II) views the two regional nuclear crises (Iran and North Korea), the profound differences between States parties and the devaluation of the Treaty by some parties as enormous dangers, possibly leading to the complete erosion of the Treaty through creeping proliferation, motivated by security and status considerations, in up to 20 States. The recent WMDC Study pronounced less sombre forecasts; The Weapons of Mass Destruction Commission (2006, 63).

49 See the statement of Colombia during the First PrepCom session's General Debate on 8 April 2002; <http://www.basicint.org/nuclear/NPT/2002prepcom/colombia.htm>, last accessed on 19 September 2006.

50 See the Human Security Network of some like-minded governments at <http://www.humansecuritynetwork.org/>, last accessed on 9 June 2006.

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PART III  
The 7th NPT Review Process



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## Chapter 5

# Overview and Course of the Review Process

The 7th Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons was held from 2 to 27 May 2005 at the United Nations Headquarters in New York. Taking place 60 years after the US atomic bombings of Hiroshima and Nagasaki, it was ‘widely regarded as one of the most crucial reviews in the Treaty’s 35-year-long history.’<sup>1</sup> 153 of the then 189 (States) Parties participated. The Conference was prepared in three Preparatory Committee sessions: from 8 to 19 April 2002 in New York, attended by 140 of the then 187 (States) Parties, Cuba participating as an observer, from 28 April to 9 May 2003 in Geneva with 106 (States) Parties in attendance and from 26 April to 7 May 2004 in New York, counting a total of 123 (States) Parties registered. The chairmanship at meetings was distributed equally among the, admittedly largely outdated, three regional groups, the Western Group and Others (WEOG), the Eastern European Group and the Non-Aligned Movement (NAM).<sup>2</sup> At the First PrepCom session, Mr. Henrik Salander (Sweden) from the WEOG was elected to serve as Chairman of the first session, whereas it was decided that Mr. László Molnár (Hungary) from the Eastern European Group would be Chairman of the second session. The NAM was assigned the chairmanship of the Third PrepCom, which then was held by Mr. Sudjadnan Parnohadiningrat (Indonesia), and, this being accepted practice, of the Review Conference. The President-elect of the RevCon was Ambassador Sérgio de Queiroz Duarte of Brazil; the Main Committees were chaired by the Chairmen of the PrepComs in reverse order, Mr. Salander being replaced by Ms. Elisabet Borsiin Bonnier (Sweden).<sup>3</sup>

The NPT RevCon’s purpose is the strengthening of the Treaty through an assessment of the implementation of the Treaty’s articles and an identification of shortcomings and of improvements for the future. However, the preparatory process took place in a heated climate of international politics framed by a series of events: first, September 11, 2001 and the following US retaliation in Afghanistan,

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1 RCW, *News in Review*, No. 1, 2 May 2005, p. 1.

2 This distribution is in existence since the formerly two pillars of the NPT were rearranged in order to provide the Eastern European Group with a post in the Main Committees in 1985; see Dhanapala and Rydell (2005, 63–4). Beside these official groups, there are the cross-group NAC (see p. 33, note 34) and the EU, alongside occasional appearances of other groupings, such as the G-10 (see p. 47, note 33) and the NATO-7 (Belgium, Italy, Lithuania, the Netherlands, Norway, Romania and Spain).

3 The Drafting Committee was chaired by Mr. Doru Romulus Costea (Romania) and the Credentials Committee by Mr. Philip Richard O. Owade (Kenya).

the Russian 2000 National Security Concept including first-use of nuclear weapons and thereby reversing a long-standing Russian policy, and the US withdrawal from the ABM Treaty at the end of 2001. Then, the January 2002 US Nuclear Posture Review (NPR), which advocated research into non-strategic low-yield nuclear weapons and reaffirmed nuclear weapons as part of a new defense triad, alongside with reductions of deployed strategic nuclear weapons, the US National Security Strategy of September 2002, allowing for pre-emptive strikes, and the US National Security Strategy to Combat Weapons of Mass Destruction of December 2002 which affirms a first-use nuclear option. In the following, the US invasion of Iraq, at least partially justified by Iraq's alleged weapons of mass destruction, of 2003, the discovery of the private Pakistani A.Q. Khan clandestine intercontinental network illicitly selling sensitive nuclear technology, including uranium-enrichment devices and, in the case of Libya, even designs for nuclear bombs for more than 15 years in early 2004 (Clary 2004), and the US proposal of February 2004 to stall any proliferation of sensitive fuel cycle technologies (enrichment or reprocessing).<sup>4</sup> In addition, North Korea's decision to withdraw from the NPT in 2003, having expelled IAEA inspectors in December 2002, its public announcement to possess nuclear weapons and its cancelling of the Six-Nation-Talks<sup>5</sup> on 10 February 2005 and its test of a short-range missile at the week-end before the start of the RevCon. Finally, the quarrel about Iran's nuclear program and its threat to restart enrichment of uranium and to reprocess fuel rods in order to extract plutonium shortly before and during the RevCon. And last but not least the massive radioactive spill of 83,000 litres at the UK's Sellafield reprocessing plant, qualified as INES: 3-case by the IAEA, discovered on 19 April 2005, but reported only weeks later, to have leaked out since August 2004. The continuing failure of NWS to implement their nuclear disarmament obligations,<sup>6</sup> including the refusal of some States to sign and/or ratify the CTBT, contributed to the debate.<sup>7</sup>

This divided the participating States in those concerned over the NWS foundering to comply with their disarmament obligations, mostly the Non-Aligned States led by

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4 On the other hand, in 2004 the US announced that it no longer supports the previously-agreed upon Shannon Mandate as a basis for negotiations of a Fissile Material Cut-Off Treaty. Therefore, an expert group of the IAEA in 2005 came to the conclusion that Multilateral Nuclear Approaches (MNA) for sensitive fuel cycle activities and an international system for guaranteeing fuel supply could only be set up on a voluntary basis at present. It took the view that a verifiable FMCT would be a precondition for binding multilateral obligations; see IAEA Expert Group on Multilateral Approaches to the Nuclear Fuel Cycle (2005).

5 China, Japan, North Korea, Russia, South Korea and the US.

6 During the preparatory process of the RevCon, France and the US even refused to simply discuss the proposal of NNWS to set up a systematic reporting system with regard to the disarmament obligation resulting from Art. VI of the Treaty.

7 Müller (2005, 3–6) identifies six developments which led to a severe crisis of the NPT: (1) the status of India and Pakistan, as well as of Israel, (2) the Israeli-Palestinian conflict and the standstill with regard to a nuclear-weapon-free or a weapons-of-mass-destruction-free zone in the Near and Middle East according to the respective 1995 RevCon resolution, (3) North Korea, (4) Iran, (5) the US proposal to stall any proliferation of sensitive fuel cycle technologies and (6) the continuing failure of NWS to implement their nuclear disarmament obligations.

Malaysia, and those concerned with the failure of some NNWS to fulfil their non-proliferation obligations, mainly the NWS. Whereas the first vigorously requested the full implementation of the 2000 Final Document which contained 13 practical steps for systematic and progressive efforts to implement Art. VI of the NPT and paragraphs 3 and 4(c) of the 1995 Decision, the latter praised their fulfillment of Treaty obligations and were even partly loath to reference previous Final Documents. The consequence was that the Non-Aligned States refused to negotiate on any strengthening of the non-proliferation regime (verification/export controls/condemnation of those in breach of the Treaty/institutional reforms), but rather insisted on their right to peaceful use of nuclear energy resulting from Art. IV of the Treaty. An intermediary position was taken by the New Agenda Coalition, which wanted to see previous results confirmed without going any step further out of fear to jeopardize the whole Treaty system. The EU, under the leadership of Germany, similarly took a medium position through the adoption of a common position shortly before the Conference, by which it also managed to consider the 13 steps as a starting point for further discussions, rallying even France behind that proposal.<sup>8</sup>

During all three PrepCom sessions, equal time was allotted for the consideration of the three clusters (1) disarmament and non-proliferation, (2) safeguards and NWFZ and (3) nuclear energy for peaceful purposes, as well as for three specific blocs of issues, namely, (1) disarmament, together with the 1995 and 2000 agreements, (2) regional issues, including the Middle East and the 1995 and 2000 conclusions thereupon, and (3) safety and security of peaceful nuclear programs.<sup>9</sup> At the Third PrepCom, additional time was allocated for discussions on security assurances under cluster 1 and on the 1995 Middle East resolution under regional issues. In accordance with the decision taken at the 2000 RevCon, confirming as such a 1995 decision, the first two PrepComs had to ‘consider principles, objectives and ways in order to promote the full implementation of the Treaty as well as its universality.’<sup>10</sup> Thus, discussions on substance, observed first at PrepCom sessions in the mid-1990s, were supposed to take precedence over procedural questions and precise textual discussions. The content-related results were then framed in form of non-negotiated, and thus not agreed upon,<sup>11</sup> factual summaries, which happened to be summaries of

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8 Council Common Position relating to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, EU Doc. 2005/329/PESC of 25 April 2005, [http://www.eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_106/l\\_10620050427en00320035.pdf](http://www.eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_106/l_10620050427en00320035.pdf), last accessed on 4 June 2006. The EU also proposed to advance the proposals of the expert group on MNA (see p. 42, note 4) and to strengthen verification through adoption of the Additional IAEA Protocol as a binding standard.

9 The 2000 Final Document provided for each session of the forthcoming Preparatory Committee to consider specific matters of substance relating to the implementation of the Treaty and Decisions 1 and 2 as well as the Resolution on the Middle East adopted in 1995 and the outcomes of subsequent Review Conferences, including developments affecting the operation and purpose of the Treaty; Part I, Improving the effectiveness of the strengthened review process for the Treaty, p. 20, par. 5 of the 2000 Final Document.

10 *Ibid.*

11 During the Second PrepCom, the Chairman at least invited delegations to offer specific text proposals and consulted with key delegations on specific paragraphs, which

the Chairman, attached to the Committee's procedural report. The Third PrepCom, however, was expected to decide upon exact wordings as recommendations to the 7th RevCon,<sup>12</sup> including on legally binding security assurances,<sup>13</sup> as well as on procedural arrangements.<sup>14</sup> Yet, already during the First PrepCom session, it became apparent that the whole review process could stumble across procedural questions, veiling as such serious political discrepancies, and was at the brink of folding altogether shortly after it had unfolded. Since delegates, disagreeing on the issue of reporting (the 12th of the 13 practical steps of 2000), could not agree on a program of work during the first of the two weeks, the NPT PrepCom was threatened to be indefinitely postponed.<sup>15</sup> Only in the very last minute, a compromise could be found.<sup>16</sup> During the Second PrepCom, skilful manoeuvring of the Chairman, László Molnár from Hungary, helped to sidestep the procedural minefield also lurking at that session. Thus, he avoided a procedural debate about North Korea's withdrawal by deciding to temporarily retain Korea's nameplate in his custody, to leave it in the Conference room, but not to display it among the States parties (Preez and Schroeder 2003, 1).<sup>17</sup> Nevertheless, situations of unproductiveness occurred.<sup>18</sup>

At the Third PrepCom, delegates were unable to reach agreement on the agenda,<sup>19</sup> on NGO participation, background documents, on how to deal with negative security assurances and whether to establish subsidiary bodies to the Main Committees, as well as various other substantive issues under discussion, such as recommendations to the RevCon.<sup>20</sup> They were only able to endorse the candidacy of the President-Elect for the RevCon as well as of other office bearers of the Conference, the draft Rules of Procedure (RoP)<sup>21</sup> and the dates and the financing of the Conference. Hence,

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makes some commentators to consider the result as 'to some extent negotiated'; see Center for Nonproliferation Studies (2005b, 9).

12 See Part I, Improving the effectiveness of the strengthened review process for the Treaty, p. 20, par. 7 of the 2000 Final Document.

13 See p. 32 and p. 32, note 33.

14 See Part I, Improving the effectiveness of the strengthened review process for the Treaty, p. 20, par. 8 of the 2000 Final Document.

15 RCW, *News in Review*, No. 5, 12 April 2002, p. 1.

16 RCW, *News in Review*, No. 6, 15 April 2002, p. 1.

17 This was repeated at the following session of the PrepCom as well as at the RevCon.

18 See RCW, *News in Review*, No. 7, 6 May 2003, p. 1, with regard to the discussion on regional issues during the Second PrepCom.

19 For the reasons, see below. The agenda could also not be agreed upon in the run-up to the 2000 RevCon. In contrast to the 2005 Conference, however, States parties were able to approve the agenda shortly before the Conference started.

20 This had also happened at the PrepCom session in 1999, but then the 2000 RevCon managed to produce a forward-looking Final Document, even though not without serious obstacles to overcome; see Johnson (2000).

21 However, also in this regard disagreement existed. Some NNWS, headed by Mexico, wanted to give a similar privileged status to international and NWFZ organizations (CTBTO/OPANAL) as to the UN and the IAEA; see RCW, *News in Review*, No. 10, 7 May 2004, p. 1. The US, being adamantly against CTBTO participation and having had prevented an oral statement of CTBTO during the Second PrepCom, managed to keep such a rule out of the RoP.

States parties gave their implicit or explicit permission to the Chairman once again to prepare a Chairman's summary to be affixed as an appendix to the final report. During the last day's discussion, however, it became visible that even this hard-won compromise would not materialize given the prevailing unhappiness for different reasons of almost every State, and especially the US,<sup>22</sup> with the summary. What happened then was a demotion of the Chairman's summary to a simple working paper not attached to the PrepCom Report and lacking any more than private authority. This being one of the few decisions taken during one of the 'most tense, frustrating and least interactive PrepComs' ever, there was not even a public decision-making meeting scheduled after the decision had been adopted.<sup>23</sup> At the end of that PrepCom, NGOs rightly predicted that 'perhaps the preservation of the 13 practical steps is the best outcome for which we may hope'<sup>24</sup> for the RevCon.

During the RevCon itself, three quarters of the time devoted to debate were characterized by quarrels about procedural questions, some of which are summarized below, whereas only three and a half days were used for substantive negotiations (Müller 2005, I, 2).<sup>25</sup> The agenda could only be agreed upon on 12 May 2005, well into the second week of the RevCon's work which began on 2 May. The main point of contention was whether, and if, then how, to reference the Final Documents of past RevCons which the US steadfastly refused to include at all (paragraph 16 of the agenda).<sup>26</sup> This mainly concerned the decisions and resolutions of 1995 and the consensus 2000 Final Document with its 13 practical steps, more precisely its references to CTBT entry into force and a verifiable ban on fissile materials production. The issue was then dropped in the agenda itself which only referred to the 'Review of the operation of the Treaty.'<sup>27</sup> An additional statement made by the President, likewise only adopted after tough battles, Egypt taking on the role of a scapegoat in this case,<sup>28</sup> then said that '[i]t is understood that the review will be conducted in the light of the decisions and the resolution of previous Conferences, and allow for discussion of any issue raised by States parties.'<sup>29</sup> Since this Presidential

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22 See NPT/CONF.2005/PC.III/WP.28 of 7 May 2004.

23 See RCW, *News in Review*, No. 11, Final Edition, May 2004, p. 1. The Final Report was only published two weeks after the PrepCom had ended.

24 RCW, *News in Review*, No. 10, 7 May 2004, p. 6.

25 For a normal course of a RevCon, see Müller (2005, 2).

26 This time, France passed over the US behavior in silence. It had argued earlier that each Review Conference's decisions should be considered in isolation; Preez (2005, 9).

27 See NPT/CONF.2005/30 of 11 May 2005; <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/66/PDF/N0534166.pdf?OpenElement>, last accessed on 19 June 2006.

28 Egypt wished to have an explicit mention of the term 'outcomes,' which would also have referred to the 2000 Final Document. Shortly before the Conference, it had refused to agree to a belated US acceptance of a compromise agenda having emerged from the Third PrepCom which listed all previous RevCons with agreed outcomes, wishing to focus on 1995 and 2000 instead. Now being confronted with a draft agenda without any dates, it perhaps wanted compensation for its blunder.

29 See NPT/CONF.2005/31 of 12 May 2005; <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/72/PDF/N0534172.pdf?OpenElement>, last accessed on 19 June 2006. The question how to refer to this President's statement and to the related NAM and Western Group

Statement was referred to in the agenda by an asterisk, it triggered off quite some, were it not for such a serious issue, funny reactions of civil society representatives who tried to use pictures of Asterix as a symbol instead, but were soon prohibited to do so within the UN complex.<sup>30</sup> After a suspension of the Conference of a few days had finally led to the adoption of the agenda, the UN Secretary-General Kofi Annan on 13 May 2005 urged governments to recognize that ‘what is happening indicates the urgency for the (States parties) to really take this conference seriously and try and strengthen the NPT.’<sup>31</sup>

However, the battle continued with regard to the establishment of the Main Committees, which were supposed to do the substantial work which was then handed over to the Drafting Committee crafting the outcome documents.<sup>32</sup> Main Committee I was supposed to broadly deal with non-proliferation and disarmament as well as security assurances, Main Committee II with safeguards and NWFZ and Main Committee III with the peaceful use of nuclear energy. However, issues in question were whether to set up subsidiary bodies of the Main Committees, if so, which, and whether the decision to set them up should be left to the Committees. The NAM being opposed to the latter, negotiations started to take place behind closed doors between the Chairman, the three Chairs of the Main Committees and the coordinators of the three regional groups (the WEGO, the Eastern European Group and the NAM). As a consequence, the Conference was again suspended for almost another week. The NAM championed for a separate subsidiary body on the Middle East (separate from one on regional issues), but then capitulated and agreed to combine those two issues. Nevertheless, it still insisted on separate subsidiary bodies on NSAs and on nuclear disarmament, as well as some other issues. The WEOG in turn pleaded for the 2000 RevCon arrangement, which principally consisted of two subsidiary bodies, one on regional issues and another one on nuclear disarmament. The NAM again gave in, but maintained its viewpoint that NSAs should be then broached during discussions on nuclear disarmament. At that point Australia insisted on being given plenary time

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statements in the Final Document caused another few hours of discussion in the Drafting Committee during the last week; see RCW, *News in Review*, No. 19, 26 May 2005, p. 1, and No. 20, 27 May 2005, p. 1. Due to UK pressure holding the position of WEOG coordinator since 1975 and to the disgust of the NAM and several WEOG delegations, the linkage, understood by the NAM to be agreed upon earlier, to the NAM statement (NPT/CONF.2005.32 of 12 May 2005) explicitly referring to the 1995 and 2000 decisions and resolutions was dropped as a consequence and only a short note was included on the two groups having submitted statements in the context of the agenda. In return, the Presidential Statement literally remained in the text and was not abbreviated to simply refer to a document’s number and the paragraph referring to the Committee reports, controversial because of a preponderance of disarmament issues given the lack of agreement on other matters, also remained; see Johnson (2005, 9, 12–13); Müller (2005, 17–19).

30 See below.

31 RCW, *News in Review*, No. 11, 16 May 2005, p. 1.

32 Besides the three Main Committees and the Drafting Committee, there was also a Credentials Committee, in charge of confirming the credentials of governmental delegates, as well as a General Committee, composed of Conference officials and responsible for the Conference management.

to introduce working papers, which President Duarte finally accepted. He opened the plenary and thus, during 17 and 18 May, Australia (on behalf of the G-10<sup>33</sup>), Canada, China, Egypt, the European Union, Japan, Malaysia and others all spoke about their respective working papers. Now, in contrast to the negotiations with the regional groups, where an opponent did not directly have to vindicate its behavior, but only through the Chairman of his group, consensus-blockers saw themselves obliged to take the floor if this procedure continued. Therefore, Iran and the US were keen again on convening the Committees and thus a compromise could finally be found.<sup>34</sup> Three subsidiary bodies were established, one under Main Committee I dealing with nuclear disarmament and security assurances and headed by New Zealand, another one under Main Committee II examining 'regional issues, including with respect to the Middle East and implementation of the 1995 Middle East resolution' and chaired by Spain, and a third under Main Committee III addressing agenda item 16 (e) entitled 'Other provisions of the Treaty' including article X (withdrawal) and lead by Chile. In addition, it was decided that Main Committee I should address disarmament and nonproliferation education and Main Committee II proposals to strengthen the review process. A last wrangling was terminated when the NAM's rejection of a NATO member (the Netherlands) to chair Subsidiary Body I was accepted and the chair was replaced by a member of the NAC (New Zealand). Only on 19 May, work in the Committees started, two weeks after their preliminary scheduling and well into the third of the four weeks allotted for the Conference, and only lasted to 24 May.<sup>35</sup> It first had to undergo a General Debate in the Main Committees again. As if it were not enough, procedural debate also continued in the Committees. In connection with the adoption of the decision on subsidiary bodies, the President had made the following declaration: 'It is understood that each of the three Main Committees will allocate within themselves time to their subsidiary bodies in a balanced manner based on the proportional ratio applied in the last Review Conference.'<sup>36</sup> When Egypt sought to confirm in Main Committee II that one of the two meetings of Subsidiary Body II be devoted to the Middle East, the US and Australia objected.

After all this concentration on procedural haggling, which only imperfectly concealed differences in substance, it is no surprise that substantive results did not enter the Final Document. When the Drafting Committee met on Wednesday during the fourth week of the RevCon, no single substantive agreement could have been reached in any of the bodies set up. Among the Main Committees, ironically the first Committee on disarmament was the only one which transmitted a report to the President, who, however, decided not to send the intensely bracketed text to the Drafting Committee (Johnson 2005, 2–3, 11). It was also the only Committee

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33 Australia, Austria, Canada, Denmark, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden.

34 See RCW, *News in Review*, No. 12, 17 May 2005, pp. 1 and 6, and No. 13, 18 May 2005, pp. 1 and 6.

35 The Credentials Committee convened on 23 May, the General Committee had no meeting at all.

36 Par. 21 of NPT/CONF.2005/57 (Part I), <http://daccessdds.un.org/doc/UNDOC/GEN/N05/390/07/PDF/N0539007.pdf?OpenElement>, last accessed on 20 June 2006.



which could agree on affixing the Chairman's Working Paper of Main Committee I as well as the Working Paper of the Chairman of Subsidiary Body I to its report even though these pieces did not reflect consensus of the members and contained a certain language difficult to accept for the WEOG. By this, it turned out to be the only one which managed to bring about some half-way, though not-agreed upon, substantial results. The reports of Committee II and III did not come close to these diplomatic heights since not even consensus on the inclusion of the Chairs' draft papers, prepared to speed up the procedure, could be reached, due to resistance of Iran (Committee II) and a mutual blockage by Egypt and the US (Committee III). Hence, Committee I emerged 'by default as the diplomatic victor of this Conference – a diplomatic theory of relativity' as CSOs termed it cynically.<sup>37</sup> The Drafting Committee concluded its debates on 26 May, with final plenary meetings on 26 and 27 May. As a result, the Final Document only reflected technical matters and neither a Chairman's summary nor a Chair's Working Paper or even a simple statement of the President was feasible.

The outcome of the 2005 RevCon was a clear disaster. It was not the first time that no substantial agreement could be reached at a Review Conference,<sup>38</sup> but this time much more was at stake given the present fragility of the international non-proliferation system. We should not forget that in diplomatic terms, procedural debates, the haggling around words and no-decisions are code, a code which can always be traced back to substance. The content analysis of discussions which follows in subsequent chapters will clearly reveal this. The no-declaration outcome declaredly was the preferred option of many States to a watered-down document weakening or even replacing some or all of the commitments undertaken previously. However, given the lack of positive moves forward, major issues and challenges remained unaddressed and might well contribute to the whole regime crumbling over non-action or a lack of firm action in the upcoming years. It was likewise not the first time that political preconditions had led to a heightened climate not propitious for compromise and consensus decisions prior to the Conference. Thus, neither in 1995 nor in 2000, political circumstances as well as the course of the PrepComs had hinted at auspicious results (Dhanapala and Rydell 2005; Johnson 2000). Yet, unlike its 1995 and 2000 forerunners, the 7th RevCon, planned or unplanned, neither displayed diplomatic skills nor provoked an omnipresent fear of failure, which could have prevented the Conference from a more than serious deadlock and its consecutive breakdown. Therefore, Johnson (2005) blamed all main groups, be they the P-5, the EU, the NAM, the NAC and even the Brazilian President, for a dismal failure to display leadership and a blatant paucity of political will to come to terms (see also Müller 2005, 19 ff.). The P-5, unlike in 1995 and 2000, were unable to agree on a joint declaration this time, principally due to US refusal to endorse the CTBT. The EU was seen without any convincing strategy to move its ideas forward<sup>39</sup> and the NAM was considered to be as divided and directionless as during previous RevCons. The NAC was judged to have fallen apart soon after its 2000 successes of having brokered the 13 practical steps (see also

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37 RCW, *News in Review*, No. 19, 26 May 2005, p. 1.

38 See pp. 26–7.

39 For a much more positive view, see Müller (2005, 26–7).

Müller 2005, 27). And finally, the Brazilian President's conduct was considered to be too relaxed and not outcome oriented, especially in comparison to the enormous traveling and commuting he had conducted in the year leading to the Conference. CSOs attributed the main blame, however, to the US, Iran and Egypt,<sup>40</sup> the first two having pursued purely narrow self-interests in their eyes, whereas the latter was estimated to have had more constructive though in parts less clear (Müller 2005, 28) and inept regime building motivations (Johnson 2005, 15). With regard to the US, which threw in a stumbling stone, consisting of a reverse political positioning with regard to some issues formerly agreed upon, and then kept a relatively low profile letting others to stumble over the stone, civil society nevertheless acknowledged that '[t]he US didn't always stand quite so alone, nor was it always so hostile to the priorities and concerns of others. To completely reject, ignore or renege on promises made in the context of multilateralism is a new strategy for the global superpower, one which even some US officials view, as former Ambassador Robert Grey has, as "a radical departure from past American practice".'<sup>41</sup> This statement has to be seen in a larger context, which perceives the US having broken its word on many of its agreements concluded before. The Nuclear Age Peace Foundation circumscribed these attributions with the following words:

Despite the pledges to do otherwise, the United States, under the Bush administration, has undermined not only the 13 Practical Steps, but the whole of the non-proliferation and disarmament regimes by:

- failing to ratify the Comprehensive Test Ban Treaty
- opposing a verifiable fissile material cut-off treaty
- substituting the SORT treaty for the START treaties<sup>42</sup>
- scrapping the Anti-Ballistic Missile Treaty, opening the door for deployment of missile defenses and placing weapons in outer space
- keeping nuclear weapons at the centre of its security policies
- funding and conducting research to create new nuclear weapons and developing new capabilities for existing warheads and
- demonstrating no political will toward the elimination of its nuclear arsenal. (Krieger and Ong 2005, 4).

Altogether, the winners were the opponents of the regime. At the end of this dismal disaster, many States, including Algeria, Australia, Brazil, Canada, Chile, Japan, New Zealand, Norway and Switzerland, expressed their deepest regret and disappointment

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40 See RCW, *News in Review*, No. 21, Final Edition, June 2005, p. 1, and Johnson (2005).

41 RCW, *News in Review*, No. 16, 23 May 2005, p. 6.

42 The 2002 SORT treaty or Moscow Treaty does not make disarmament irreversible. It only reduces the number of strategic nuclear weapons on deployment status, which means that it keeps taken-off weapons in storage rather than destroying them. Moreover, there is no timetable, nor is there a verification mechanism for the action taken. Launch-on-warning remains, the treaty terminates in 2012 and withdrawal is easy with a three-month notice, the disposal of the Russian weapons and the subject of tactical weapons were not addressed and both sides continue to develop – or to 'modernize' – nuclear weapons.

about the failure of the Conference. Malaysia, on behalf of the NAM, thanked civil society and non-governmental organizations for sharing their contributions with States parties as well as insightful studies, comments and proposals. Sierra Leone acknowledged the distinctive contribution of civil society and the ‘voice of the people’ and considered those to be among the highlights of the 2005 Review Conference. Last, Iran managed to have the final say and used this opportunity to outrageously blame the US, leaving behind a stupefied and panicking American delegation unable to gather any last-minute support among its Western allies (Johnson 2005, 13). Let us now see how the high esteem some governments showed for civil society and their contributions at the end of the Conference all came about.

## Chapter 6

# Civil Society at the NPT Review Process

Civil society participation at the NPT review process reached high levels. At the 2005 NPT RevCon, nearly 1.800 individual CSO representatives registered,<sup>1</sup> ten times as much as in 1994 and since, besides hundreds of unregistered concerned people who traveled to New York precisely to be present during the event in order to make their voices heard.<sup>2</sup> Attributed to units (governments, CSOs, international organizations), CSOs attained around 42 per cent of attendance figures (see Table 6.1). Compared to the 2000 RevCon, in which 141 CSOs took part,<sup>3</sup> their participation dropped around 15.6 per cent and compared to the 1995 Review and Extension Conference, which saw the participation of 195 CSOs, it fell around 39 per cent.

**Table 6.1 Participation at the NPT review process (2002–2005)**

Institution	First PrepCom		Second PrepCom		Third PrepCom		RevCon	
Governments*	140	66.67 %	106	71.62 %	123	62.44 %	154	54.23 %
CSOs	62	29.52 %	37	25.00 %	69	35.02 %	119	41.90 %
International Organizations**	8	3.81 %	5	3.38 %	5	2.54 %	11	3.87 %
Total	210	100.00 %	148	100.00 %	197	100.00 %	284	100.00 %

\* Including governmental (State) observers.

\*\* The International Committee of the Red Cross was counted amongst them, as were inter-parliamentary assemblies, such as the NATO Parliamentary Assembly; NPT/CONF.2005/PC.1/21 of 19 April 2002, NPT/CONF.2005/1 of 20 May 2004 and NPT/CONF.2005/57 (Part I). At the RevCon, the United Nations and the IAEA participated in a special quality. Those international organizations which submitted their views in writing to the RevCon are not counted here.

Source: <http://disarmament2.un.org/wmd/npt/>, last accessed on 6 June 2006; own calculations.

1 RCW, *News in Review*, No. 1, 2 May 2005, p. 1.

2 Thus, 1000 Japanese came to New York, only 200 of which registered for the actual Conference.

3 See <http://disarmament2.un.org/wmd/npt/nptrevngolist.html>, last accessed on 6 June 2006.

At the Secretariat level, the United Nations provided two contact points for CSOs: on the one hand, the permanent NGO Focal Point in the Department for Disarmament Affairs and on the other hand, the NGO Liaison and Coordination within the Secretariat of the Conference which only served during the actual RevCon and was staffed with two people. The UN solicited CSOs to designate an NGO coordinator in order to receive the official documents (100 copies per document) allotted to CSOs, to hand in the list of CSO speakers and for other tasks. This task was assumed by Reaching Critical Will, a project of the Women's International League for Peace and Freedom (WILPF), an NGO working in the field of nuclear weapons and located opposite to the UN building in New York. As during previous conferences related to the NPT, WILPF helped the CSO community with regard to all organizational matters, such as getting accredited or preparing events, but also efficiently coordinated the whole official CSO input in form of NGO presentations through an extensive multi-layered process. In the run-up to the PrepCom or RevCon sessions, interested CSO representatives were asked to work in subgroups with regard to sub-items and to prepare drafts for presentations. A last coordination then took place during the respective session where decisions about content as well as about presenters were taken.

Then, CSO representatives were given the opportunity to present their views in a coordinated way during a three-hour presentation. In addition, some few special meetings of State with CSO representatives were unofficially organized, such as the one-hour meeting with the Mayors for Peace and others on 4 May 2005 in the General Assembly hall, during which the CSOs were allowed to present their campaign 'Abolition Now!'.<sup>4</sup> However, CSOs also gathered for their own meetings. Beside numerous CSO meetings, inside and outside the UN building, they managed, for example, to organize a mass demonstration of approximately 45,000 people on 1 May, shortly before the Conference started, who marched through Manhattan to end up in Central Park.<sup>5</sup>

The CSO community represented at the NPT review process ranged from strong activist associations and popular grass-roots movements to specialist scientific and academic policy-analysis institutes.<sup>6</sup> It is hard to detect if some of them were closely linked to governments.<sup>7</sup> However, all were working in the area of disarmament and arms control or at least in the larger fields of peace, environment, health and justice. There was none which could be seen as openly propagating the further development of nuclear weapons, even though some (scientific) institutions were less reluctant to promote nuclear energy and prudent nuclear arms reductions instead of their abolition. Nevertheless, there was no industrial association campaigning for the

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4 For a more elaborate account, see below.

5 RCW, *News in Review*, No. 2, 3 May 2005, p. 1.

6 A distinction is sometimes hard to draw. Therefore, we dispense with a strict classification here. For an example of the first category, see the Japan Congress against A- and H-Bombs (GENSUIKIN), for an example of the latter, see the Center for Nonproliferation Studies at the Monterey Institute of International Studies.

7 An obvious link to policy makers, even though not to the actual French government, had Les Verts, Commission Paix et Désarmement, which participated in the First PrepCom.

atomic industry. Thus, the old dichotomy between those promulgating disarmament in order to achieve peace and those striving for armament for the same goal could not be detected among civil society representatives at the 7th NPT review process. The general thrust of CSO commitment was aptly phrased by Rhianna Tyson of Reaching Critical Will (RCW) in the following way: ‘A critical function of NGOs is to re-humanize the effects of nuclear weapons for delegations in order to move the deliberations from a dry, rationalist debate to one of conscious commitment to progress towards genuine disarmament.’<sup>8</sup> The concern of most NGOs thus was disarmament, whereas some insisted on a balanced approach between disarmament and non-proliferation, a few even openly supporting Art. IV and the peaceful use of nuclear energy.

During the review process, the most visible CSOs were the two large network CSOs of the Mayors for Peace with more than 1,500 member cities<sup>9</sup> and of the Middle Powers Initiative (MPI),<sup>10</sup> a coalition of eight international advocacy groups founded in 1998 which work closely with middle power governments united in the New Agenda Coalition,<sup>11</sup> but also with a number of NATO States<sup>12</sup> and other like-minded countries. The Mayors for Peace’s 2020 Vision campaign envisages a world free of nuclear weapons until 2020 and a Nuclear Weapons Convention designed to this purpose until the year 2010.<sup>13</sup> The MPI largely draws on the Anti-Personal Mines (APM) ban process where a remarkable partnership between NGOs, committed middle power governments and international organizations could be achieved. As a consequence, it takes on a so to speak middle position compared to strong anti-nuclear movements, supporting Art. IV and the free use of nuclear energy for peaceful purposes, as long as Art. I and II commitments are respected. One of the most cited CSO campaigns was that of Abolition 2000, which had been started in 1995 and had set up an eleven-point program for nuclear disarmament calling for a treaty to eliminate nuclear weapons within a time bound framework. Over 2,000 organizations in more than 90 countries are meanwhile enrolled in this global network campaign.<sup>14</sup> Since the 2003 Annual Meeting during the NPT Second PrepCom session in Geneva, Abolition 2000 has launched a new initiative to cooperate in its ‘Abolition Now!’ Campaign with the Mayors for Peace.<sup>15</sup> Finally, the

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8 RCW, *News in Review*, No. 4, 1 May 2003, p. 1.

9 As of the end of 2006; see <http://www.mayorsforpeace.org/english/outlines/members.html>, last accessed on 11 January 2007.

10 <http://www.gsinststitute.org/mpil/>, last accessed on 7 June 2006.

11 See p. 33, note 34.

12 Especially the eight NATO States which had voted for the New Agenda Resolution in 2004; see p. 134.

13 Meanwhile, the Mayors for Peace received express political support through three resolutions of the European Parliament, of 24 February 2004, of 10 March 2005 and of 17 November 2005.

14 <http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1315003/k.BCFA/Home.htm>, last accessed on 11 January 2007. The secretariat is housed at Global Resource and Action Centre on the Environment (GRACE) in New York.

15 <http://www.abolitionnow.org/site/c.lmK0JcNSJrF/b.1315007/k.BDFA/Home.htm>, last accessed on 11 January 2007.

youth, participating in the process for the first time<sup>16</sup> and in large numbers, attracted quite some attention.<sup>17</sup> Especially the International Law Campaign received some interest with its memorial for international law consisting of over 55,000 signed little wooden blocks and at that date taking up a length of more than 200m, which it placed in Central Park during the 1 May demonstration and afterwards on the Dag Hammarskjöld Plaza in front of the UN.

Looking at the representativeness of the participating CSOs, however, one can have some doubts whether they can channel all existing arguments and concerns of civil society into the debate of the NPT review process. All-side inclusion is not only the task of governments. CSOs themselves have to secure widespread representation of issues. They can do so by encouraging NGOs from different regions and policy fields to participate and include them in their conference community. Whereas with regard to business associations of the atomic industry, their exclusion might not be that worrying given their strong lobbying power towards governments at the national level, more concerns are allowed when it comes to weaker groups such as organizations from developing countries. A short look into the list of participating organizations at the 2005 RevCon reveals that of the 119 CSOs listed,<sup>18</sup> only three can definitely be traced back having their headquarters in a developing country.<sup>19</sup> This does not mean that all the other organizations do not represent issues and arguments articulated in other regions of the world. In some cases, CSOs with headquarters in the first world also have member organizations or a branch office in the developing world.<sup>20</sup> Finally, nuclear disarmament might not be an issue which attracts utmost and primary attention in the developing world, where problems such as poverty reduction may stand first. Thus, inclusion of CSOs from developing countries might also be structurally impossible. Nevertheless, civil society itself is a matter into which further research should be invested in the future (see Nanz and Steffek 2006).<sup>21</sup>

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16 The first ever Youth Caucus during an NPT review process was held during the First PrepCom in 2002; see RCW, *News in Review*, No. 7, 16 April 2002, p. 3, and No. 9, 18 April 2002, pp. 1–2.

17 For a report of the large German group at the RevCon, see NPT Youth Action (2005a) or NPT Youth Action (2005b).

18 See <http://www.un.org/events/npt2005/NPT-CONF2005-INF2-List%20of%20NGOs.pdf>, last accessed on 7 June 2006. Some of the CSOs are registered at the national level as legally independent organizations, but can be qualified as one and the same organization at the working level (for example, the Friedens- und Begegnungsstätte Mutlangen e.V. and the Friedenswerkstatt Mutlangen e.V.).

19 Namely, the Afro-Asian Peoples' Solidarity Organization (Egypt), the Egyptian Council for Foreign Affairs and the Solidarity for Peace and Reunification of Korea (South Korea).

20 See for example, the Soka Gakkai International, which has centers on many continents; see [http://www.sgi.org/about/around\\_the\\_world/directory/directory.html](http://www.sgi.org/about/around_the_world/directory/directory.html), last accessed on 1 January 2008.

21 With regard to the representation of women, indigenous people or other disadvantaged groups, no absolute figures are available. However, it can be assumed that here, a fair balance exists within civil society; see pp. 72–3.

## Chapter 7

# The Democratic Quality of Decision-Making During the 7th Review Process

### The Preconditions for Democratic Deliberation

Democracy can only occur if the public has access to the negotiation record and the commitments made by their governments.

Reaching Critical Will, *News in Review*,  
No. 6, 3 May 2004, p. 1

#### *Access*

In order to enable stakeholders to voice their concerns, they need institutionalized, that is regular, access to a deliberative policy-making process. With regard to the NPT review process, CSOs have struggled hard for some sort of officially recognized role (Atwood 2002, 8). The Second PrepCom session preparing for the 1995 RevCon in January 1994 agreed to allow NGO representatives to observe open PrepCom meetings for the first time, starting with the Third PrepCom which took place in September 1994 (Dhanapala and Rydell 2005, 23). Since then, CSOs indeed can be accredited to the five-yearly Review Conferences and to their Preparatory Committees, which gives them the possibility to register for those meetings, to receive a badge, then to enter the UN Headquarters in New York (or in Geneva), to participate in the public meetings of the session and to speak during a time frame allocated to them. However, given the intergovernmental nature of the whole process, the secretive features of arms negotiations and the special attention allotted to security issues at the moment, CSOs also face restrictions with regard to access.

First, the accreditation procedure itself does not set many obstacles. Especially, it does not ask for UN ECOSOC or DPI accreditation, nor does it apply the numerous criteria the ECOSOC accreditation procedure employs,<sup>1</sup> even though some of the

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1 Thus, ECOSOC res. 1996/31 of 25 July 1996 asks for a special concern with matters falling in ECOSOC's competence, support of the UN and work in conformity with the spirit, purposes and principles of the UN Charter, the consultation of States with regard to national organizations, a recognized standing or representative character of a CSO, a headquarters, an executive officer, a democratically adopted constitution, a representative body as well as an executive organ, the authorization of representatives, a representative structure, mechanisms of accountability, effective control by members through democratic and transparent decision-making processes, in case of members designated by governmental authorities no interference with the free expression of view of the organization, funding through membership contributions



information is requested<sup>2</sup> as part of the written application for attendance, which has to be handed in at least two weeks in advance.<sup>3</sup> Ground passes for the United Nations Headquarters in New York (or in Geneva), mostly associated with ECOSOC or DPI accreditation, or ECOSOC or DPI accreditation do help in so far that simple registration suffices and no previous accreditation is necessary. No fee is attached to the accreditation procedure. On the basis of the information handed in by CSOs, the NPT Secretariat prepares a list of NGOs soliciting accreditation to the Conference for presentation to the States parties to the NPT for their approval at the first meeting of the PrepComs or the RevCon.<sup>4</sup> Thus, governments still have the final say about the accreditation. Before preparing the list, the Secretariat sometimes inquires further into the legitimacy of some NGOs, but no instance is known in which inclusion in the list or accreditation of an NGO was actually refused.<sup>5</sup> The NPT Secretariat notifies NGOs by e-mail whether their documentation was received in a correct way and whether the name of their organization will be included in the list for submission to States parties.<sup>6</sup> This notification, however, usually takes time (often up to four weeks) which has an impact on visa requests when a positive answer is only received shortly before a session starts.<sup>7</sup> Altogether, however, at the secretarial stage transparency of the process is fairly secured. Yet, accreditation is carried out each time anew, which takes away some of the advantages attributed to a regularization of participation, namely, to ensure that those CSOs accredited are allowed to contribute to decision-making in a continuous manner. On the other hand, renewed application amounts to a regular re-examination in the end and those CSOs which apply for accreditation are apparently not denied approval. In addition, at the 2005 RevCon, a positive development could be observed, namely, that the Secretariat after quite some battle agreed to abolish the age restriction of 18 years as minimum age for accreditation to

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and revelation of and explanation for other finances from other sources, and an official national registration as a non-profit organization for at least two years.

2 NGO representatives are requested to submit a written application including the following information: (1) A letter written on an organizational letterhead requesting attendance at the Preparatory Committees or the Review Conference. This letter should include the composition of the delegation and an overview of past interactions between the organization and the United Nations in relation to disarmament and non-proliferation issues in particular. These interactions may include conferences attended, co-sponsorship of events, consultative status with the Economic and Social Council, affiliation with the Department of Public Information-DPI, and so on. (2) A mission statement or summary of work. The whole information should be sent by fax to the NGO Focal Point in the Department for Disarmament Affairs or to the Secretariat of the Conference, NGO Liaison and Coordination; see 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/aide.doc>, last accessed on 6 June 2005, p. 2.

3 Accreditation for the PrepCom sessions is roughly the same as for the RevCon.

4 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, see note 156, see note 2.

5 Information by Susi Snyder, WILPF, 2 July 2007.

6 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, see note 2.

7 Information by Susi Snyder, WILPF, 2 July 2007.

that Conference, given the group of youth planning to participate in and to speak at the Conference. Yet, for security reasons, names of the CSO delegations once submitted cannot be revised later. This means that accreditation is not by organization, but by organization *and* names. For every session, the Secretariat prepares an official information document on the participating NGOs and also includes the names of individuals in the official list of all Conference participants.

Once accredited, CSO representatives have to register upon their arrival in New York (or Geneva).<sup>8</sup> Those carrying valid UN Headquarters identification badges or ground passes can do that immediately at the NPT Review Conference Registration Counter.<sup>9</sup> Thus, ground passes offer benefits at least for registration. Others have to run through a cumbersome procedure, starting first with a presentation with valid photo identification (passport or driver's license) at the Registration Counter and then proceeding to the issuing of a badge, which in New York is located in another building. Here, at the beginning of a Conference, queues often line up and waiting periods at times as long as two hours are common.

Having gone through the whole process of accreditation and registration, CSO representatives can enter the UN Headquarters, through the visitor's entrance, during the respective session with their badge. However, this does not mean that free access is provided to all meetings. In general, NGOs are 'allowed to attend meetings, other than those designated as closed,'<sup>10</sup> which essentially concerns the General Debate, CSO statements and occasionally organizational matters during plenary meetings and the General Debates in the Main Committees during the RevCon.<sup>11</sup> This leaves substantial debates, for example those of cluster and special bloc meetings during the PrepComs, those following the General Debates in the Main Committees and those of their subsidiary bodies during the RevCon, as well as the debates on final decisions, usually to be taken at public meetings again, mostly out of reach of CSOs. During the First PrepCom, however, a precedent setting exception occurred when CSOs, following a letter of request to the Chair of the session, were allowed to partake at the beginning of a closed cluster three plenary meeting in order to listen to an IAEA presentation. Following this presentation, CSOs were asked to leave for the remainder

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8 Apparently, some Mayors for Peace from developing countries were refused the necessary visa when traveling to the 2005 RevCon; see Küpker (2005, 6). However, this failure to respect international law cannot be attributed to the UN as the Conference organizer, but rather to the US.

9 See 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations; see note p. 56, note 2.

10 Third PrepCom recommendation which was adopted by the Conference; see par. 29 of UN Doc. NPT/CONF.2005/1 of 20 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement>, last accessed on 6 June 2006. With regard to the PrepCom sessions, see par. 9 (b) (II) of the Report of the PrepCom on its first session, UN Doc. NPT/CONF.2005/PC.I/21 of 19 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement>, last accessed on 21 September 2006.

11 Rule 43 of the Rules of Procedure (RoP) states that '[t]he plenary meetings of the Conference and the meetings of the Main Committees shall be held in public unless the body concerned decides otherwise'; see p. 59, note 25.

of the closed session.<sup>12</sup> On the fifth working day of the Third PrepCom, South Africa, supported by Canada, Chile, Germany and Mexico, successfully raised a point of order to open the cluster debates of the NPT, which had been closed since 1997, to NGOs and to public scrutiny.<sup>13</sup> From the point of view of NGOs, this corresponded to a correct interpretation of Rule 44 (4) of the RoP which had been applied before 1997 in that way.<sup>14</sup> At the end of that PrepCom, however, after a heated debate in closed session, a decision was taken that the NGO attendance which marked that PrepCom would ‘not constitute a precedent.’<sup>15</sup> A corresponding paragraph in the Draft Final Report of the Third PrepCom, referring to the Committee’s decision to open up cluster meetings on a case-by-case basis and to allow NGOs to receive copies of statements, while this would not constitute a precedent,<sup>16</sup> even was dropped in the Final Report,<sup>17</sup> after the NAM had proposed to make that practice a common feature to be applied during the 2005 RevCon.<sup>18</sup> It remains to be seen how this will develop in the future.<sup>19</sup>

Altogether, closed meetings easily outweigh open meetings. During the Second PrepCom, for example, CSOs were excluded from all but two of the ten days of official meetings.<sup>20</sup> Open meetings, moreover, often do not allow for direct contact of CSOs with State representatives, for example when the meetings take place in the General Assembly Hall,<sup>21</sup> where CSO representatives are banned to the secluded balcony on the fourth floor of the room.<sup>22</sup> Moreover, at the opening session of the 2005 RevCon, access cards to the public balcony were restricted to one per CSO given the limited number of 280 seats available, while the second floor gallery was almost empty. The remaining CSO representatives could listen to the opening

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12 RCW, *News in Review*, No. 8, 17 April 2002, p. 1.

13 RCW, *News in Review*, No. 6, 3 May 2004, p. 1. NGOs could attend and receive documents.

14 See 2nd NGO statement delivered on 11 May 2005 by Alexandra Sundberg, WILPF, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/Transparency2.pdf>, p. 3, last accessed on 7 August 2006.

15 RCW, *News in Review*, No. 11, Final Edition, May 2004, p. 1.

16 See par. 13 of UN Doc. NPT/CONF.2005/PC.III/CRP.4 of 5 May 2004, <http://disarmament2.un.org/wmd/npt/2005/PC.III-CRP4-E.pdf>, last accessed on 21 September 2006.

17 See missing par. after par. 12 (c) of UN Doc. NPT/CONF.2005/1 of 20 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement>, last accessed on 17 January 2007.

18 See UN Doc. NPT/CONF.2005/PC.III/WP.29 of 18 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/355/84/PDF/N0435584.pdf?OpenElement>, last accessed on 21 September 2006.

19 In 2007, during the First PrepCom session of the new review process, all meetings were opened up to NGO attendance.

20 RCW, *News in Review*, No. 10, 9 May 2003, p. 2.

21 As it was the case at the 2005 RevCon during the first week and the last day of the Conference. During the second week, the delegates moved to Conference Room IV, where also the CSO presentations were delivered.

22 With regard to the PrepCom sessions, it had been decided that NGOs are ‘to be seated in the public gallery’; see par. 9 (b) (II) of the Report of the PrepCom on its first session, UN Doc. NPT/CONF.2005/PC.I/21 of 19 April 2002, see p. 57, note 10.

speeches of Kofi Annan and ElBaradei in the separate CSO room, the smallest meeting room available in the UN basement, where, however, the video coverage did not work for a good time span and capacity was limited to 42 seats.<sup>23</sup> Last but not least, as within other intergovernmental fora, all the more for negotiations in the security field, governmental decisions are prepared and sorted out in face-to-face talks behind the scenes which are closed to anyone else and about which CSOs mostly do not learn anything even if they prick up their ears or hassle a like-minded, participating or non-participating, delegate. Regular features of this kind at NPT Conferences are the so-called informal 'President's Consultations,' sometimes supported by a group of 'Friends of the President' and/or by key figures, such as office bearers, representatives of regional groups, the depositary States and some heads of delegations, but so are meetings of other groupings or individual countries, which all exclude civil society and other States representatives alike.

Another example of restriction of an unlimited access to the building as such was the prohibition, enunciated towards CSOs, to distribute sunflowers to the delegates on the last Conference day as a symbol against nuclear weapons. Sunflowers were indeed first confiscated (as if they were too dangerous...) and declared illegal in the whole UN building, until prolonged negotiations with the UN Security Service saw a breakthrough and led to the permission for three people to hand out the dangerous flowers at the end of the day (NPT Youth Action 2005b, 23).<sup>24</sup> In the same, but rather funny and ridiculous vein, Greenpeace shirts with an imprint of Asterix and the inscription 'The Mighty Asterix, I am here to stay!' were forbidden at the 2005 RevCon Conference spot. They obviously reminded delegates too much of their quarrel about an asterisk (footnote) to the agenda (Schlupp-Hauck 2005d).

On the other hand, some governmental delegations incorporated CSO representatives in their official delegations which allowed CSOs to circumvent formal and actual access restrictions applied to them. This conforms to a recommendation contained in the UN Study on Disarmament and Non-Proliferation Education (United Nations 2002, 17, rec. 8) which invited member States to include parliamentarians and/or non-governmental advisors in delegations to UN disarmament-related meetings. In accordance with Rule 1 of the Conference Rules of Procedure (RoP),<sup>25</sup> States parties could decide which representatives, alternate representatives and advisers to include in their delegations to the Conference. Alternate representatives and advisers could also be designated by the head of delegation to act as a representative. Mostly, delegations throughout the whole review process consisted of governmental representatives from different departments (foreign affairs, defense, energy, and so on) and representatives from State founded institutes in the field of

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23 This room was equipped with a photocopying machine and paper. However, rental charges are also attached.

24 See also RCW, *News in Review*, No. 21, Final Edition, June 2005, pp. 11 and 14. In addition, the youth distributed during the whole four-week Conference 30,000 small bags with sunflower seeds which symbolized the 30,000 nuclear weapons to be abolished. This, luckily, was not prohibited.

25 See <http://www.un.org/events/npt2005/rules%20adopted.html>, last accessed on 9 June 2006.

nuclear weapons and energy. However, some official State delegations also included one to four independent political researchers (the Czech Republic, Germany, Japan, Kyrgyzstan, the Netherlands, New Zealand, the Republic of Korea and the United Kingdom), Germany even adding one scientific researcher to its delegation. Some even incorporated one to two representatives of activist CSOs in their NPT group (Bangladesh,<sup>26</sup> Canada, the Holy See,<sup>27</sup> Ireland and New Zealand). Others also integrated two to four parliamentarians without governmental positions (Germany, Indonesia, Ireland, the Netherlands and Sweden).

Beside access to certain places and meetings, CSOs were delegated during each session of the review process one official, three-hour sitting to deliver presentations on topics of their choosing to governments. This procedure had been tested for the first time at the 1997 PrepCom and since then conducted in an *ad hoc* manner until formalized in the 2000 Final Document with regard to the upcoming 7th review process.<sup>28</sup> This time, their presentation sitting was contained as part of the official plenary session in the official agenda<sup>29</sup> and timetable for the first time and was then stated in the Final Report of PrepCom sessions and the Review Conference. NGO statements were delivered during the first week of the PrepComs and during the second week of the RevCon, towards the end of the open plenary meetings respectively. CSOs could select their speakers themselves, but were asked to coordinate their speeches.<sup>30</sup> Reaching Critical Will took on this task by organizing the brainstorming, debate and final selection of ideas over conference calls, meetings, e-mail listserves and web-based information, supplemented by a separate strategizing e-discussion. Then, several NGOs volunteered to comprise each presentation's drafting committee, headed up by one convenor who was responsible for writing the drafts. Each of the drafts was submitted to the group at large, whereby every NGO was invited to comment, critique and edit. At last, the drafts were finalized by deciding about order, length and precise content of the statements and the presenters were chosen from a wide group of experts at a meeting in person during the actual PrepComs or the RevCon.<sup>31</sup> At the 2005 RevCon, NGO presentations followed a three-section

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26 Bangladesh once included a Mayor for Peace (of Dhaka) into its delegation and made him the Alternate Head of delegation.

27 The Holy See several times incorporated Douglas Roche, the leading figure of the Middle Powers Initiative, in its delegation.

28 Decision of the 2000 RevCon; see UN Doc. NPT/CONF.2000/28, p. 20, par. 9, <http://disarmament2.un.org/wmd/npt/2000FD.pdf>, last accessed on 9 June 2006, par. 9 (b) (II) of UN Doc. NPT/CONF.2005/PC.I/21 of 19 April 2002 and par. 29 of UN Doc. NPT/CONF.2005/1 of 20 May 2004, see p. 57, note 10.

29 At the PrepCom sessions, CSOs obtained a separate agenda item ('5. Statements by non-governmental organizations'), whereas at the RevCon, CSO statements were treated under agenda item 15 (General Debate).

30 See 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, see p. 56, note 2.

31 At the First PrepCom session, 14 NGO presentations were delivered, at the Second PrepCom 11, at the Third PrepCom session 13 and at the RevCon 17. Since at the RevCon the long presentations took off 2.5 hours of the 3 hours allocated, Müller (2005, 30) heavily criticized this procedure as not giving any time for debate with delegates. This was also condemned and

division, starting with an expert analysis, followed by a series of plans and ending with voices of the people (Hibakusha, youth, indigenous). An innovation of the RevCon statements was the inclusion of a slot for a riveting speech of the youth,<sup>32</sup> which participated in the Conference in large numbers, but had already contributed to the PrepComs. However, in contrast to views and comments of specialized agencies and international and regional intergovernmental organizations (including the Red Cross!),<sup>33</sup> CSO statements were not circulated as official conference documents, nor were they recorded in the summary records of the Conference. Moreover, apart from this fixed allocated time frame, there was no free interaction of CSOs with State delegates through speaking rights during the debate. However, it rightfully has to be mentioned that interactivity, meaning a discussion without pre-prepared statements, was not a common feature of governmental debates either, since it was only introduced as an ‘inter-dialogue experiment’ at the Second PrepCom session and subsequently was dropped again.<sup>34</sup>

Apart from the official presentations accorded to CSOs, some sort of unofficial speaking rights were granted to them at specific consultation meetings of governments with CSOs. However, these were only arranged during the RevCon, for just a few selected CSOs and their campaigns and simply in an unofficial setting. Thus, Abolition 2000 and the Mayors for Peace were allowed to present the ‘Abolition Now!’ campaign to governments at the RevCon during a non-official lunch-time meeting of one-and-a-half hour held in the General Assembly Hall on 4 May 2005. At this gathering, the Mayors of Hiroshima and Nagasaki, Mayor Akiba and Mayor Itoh, presented more than eight million signatures to President Duarte calling for the complete elimination of nuclear weapons.<sup>35</sup> The presentation was topped off by a speech of the artist Yoko Ono, survivor of the Tokyo fire bombings during World War II. One day afterwards, the Hibakusha (atomic survivors) were given the opportunity to address diplomats during another unofficial one-and-a-half-hour lunch-time meeting, this time in Conference room 4. Both meetings were announced on the official NPT RevCon web site.<sup>36</sup>

In addition, it could be observed that some sort of ‘briefing culture’ slowly evolved throughout the review process. Thus, at the Second PrepCom, at the end of the first week, Chairman László Molnár (Hungary) took the time to brief NGOs at their morning caucus about reoccurring themes and points of contention among governments that had emerged during the first week.<sup>37</sup> His successor at the Third PrepCom, Chairman Sudjadnan Parnohadiningrat (Indonesia), seized this precedent and gave two briefings

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acknowledged by NGO representatives at their evaluation meeting, which took place on 23 May 2005; report on file with author.

32 See <http://www.un.org/events/npt2005/Statements/nptngo-Wasley.pdf>, last accessed on 9 June 2006.

33 See Rule 44 (3) of the RoP; see p. 59, note 25.

34 RCW, *News in Review*, No. 6, 5 May 2003, p. 1, and No. 10, 7 May 2004, p. 1.

35 RCW, *News in Review*, No. 4, 5 May 2005, p. 1.

36 Beside a link to the NGO calendar of events, which was published on the RCW web site; see <http://www.un.org/events/npt2005/ngoevents.html>, last accessed on 5 July 2006.

37 RCW, *News in Review*, No. 6, 5 May 2003, p. 1. Briefings also happened to take place occasionally during previous review processes, so in 1995; see Dhanapala and Rydell (2005, 46).

to NGOs at the end of the two weeks of the Third PrepCom respectively. He was joined by the subsequent Chairman of the 2005 RevCon, Ambassador Sérgio de Queiroz Duarte (Brazil), who, already during the Third PrepCom, met NGOs for a briefing session. Interestingly enough, these initiatives were taken up by a few governments, on invitation of the CSO community, during the Third PrepCom, including some known not to be on best terms with CSOs. Accordingly, the US and in the following order Mexico, Canada, the NGO representative of the Canadian delegation and France all followed the invitation to update CSOs in morning briefings. At the RevCon, governmental briefings first took on a slightly accelerated pace, disproportional to the speed of results emerging from the haggling about footnotes and suchlike, and were given by New Zealand and in the following order by Canada, China, Mexico, France, United Kingdom, Japan, Iran and Italy, to drop to a zero level during the fourth week when President Duarte and Russia, the failure of the 7th RevCon in sight, declined to follow the NGO invitation. These briefing meetings were complemented by governmental information sessions on specific technical and political topics, such as those held by the UK on verification during the Third PrepCom and the RevCon and by Russia during the RevCon on its practical steps taken in the field of nuclear disarmament. Other get-togethers were organized by more or less governmental-close organizations and sponsored by Permanent Missions to the UN, such as the workshops of the WMDC, sponsored by Finland and New Zealand respectively, and the meeting of the Democratic Control of Armed Forces (DCAF) and the Peace Research Institute Frankfurt (PRIF), which was sponsored by Germany.<sup>38</sup> Japan even hosted a reception for civil society during the RevCon.

CSOs in turn took the initiative, during the first two PrepComs, to offer open discussions with governmental representatives, such as a one-and-a-half-hour NGO-Delegate roundtable during the First PrepCom and a two-hour NGO feedback session with plenary during the Second PrepCom shortly after the NGO presentations had been delivered in plenary.<sup>39</sup> Besides, numerous NGO roundtables, panels, information meetings and similar events addressed to the public at large, including governmental delegates, filled the weekly CSO calendar of events. Some governments, such as Canada,<sup>40</sup> and office bearers, such as the Chairmen Ambassador Salander from Sweden<sup>41</sup> during the First and László Molnár from Hungary<sup>42</sup> during the Second PrepCom, were praised by CSOs for their continuous interest in NGO meetings. Yet, it has to be mentioned that some NGOs did not always adhere completely to the principle of openness and transparency with regard to their own meetings. Thus, the Middle Powers Initiative has the habit of organizing closed meetings with governments of middle power countries

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38 Most of these information sessions were published on the official NPT web site; see <http://www.un.org/events/npt2005/otherevents.html>, last accessed on 20 June 2006.

39 See RCW, *News in Review*, No. 4, 11 April 2002, p. 3, and RCW, *News in Review*, No. 1, 28 April 2003, p. 4.

40 CSOs at the First PrepCom positively recorded that one member of the Canadian delegation was present at every single NGO event; see RCW, *News in Review*, No. 10, 19 April 2002, p. 2.

41 NGOs thanked him for facilitating NGO access and for participating in NGO events in the run-up to the conference; *News in Review*, Final, 26 April 2002, p. 3.

42 NGOs thanked him for meeting with them in the months leading up to the PrepCom; RCW, *News in Review*, No. 10, 9 May 2003, p. 1.

and selected NGO representatives from time to time. Nevertheless, a short report on those meetings in form of a press release is not unusual.<sup>43</sup> Other meetings of the MPI were public and then featured high level diplomatic representation of those countries involved and interested.<sup>44</sup> For NGO briefings and side events, however, conference room space at the UN Headquarters was extremely limited which led many NGOs to change to available capacities outside the UN area.

Of course, CSOs were neither permitted to put topics on the official agenda nor were they authorized to vote.<sup>45</sup> Though, CSOs were allowed to make written material available to the participants of the Conference at their own expense.<sup>46</sup> In practice, this meant that documentation, apart from laying it out in the separate and remote CSO room, could be displayed on two tables in the foyer, outside and far away from the conference room. Prior to placing their documents on the tables, CSOs had to send a copy of each of the materials to the Secretariat.<sup>47</sup> Also here, CSO documentation was not part of the official conference documents. Finally, there was also no official reporting system in place, which would have allowed CSOs to officially provide information on parties' compliance with the NPT and to comment on State compliance reports.

Nevertheless, compared to civil society participation in preceding years, CSOs stated that at the beginning of the 7th review process, some progress could be achieved with regard to civil society admission. From the outset, NGOs had more access to meetings and there was more and more frequent mentioning in many official statements of the valuable role of civil society or the public in being the deliverer as well as the beneficiary of education on disarmament and non-proliferation in general and in contributing to the strengthening and implementation of the NPT, outside and within the review processes, including through their participation and statements at NPT meetings, more specifically.<sup>48</sup> The Mayors for Peace Initiative was, as the only

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43 See, for example, for a report on a meeting held before the Second PrepCom on 25 April 2003, <http://www.middlepowers.org/mpi/archives/000175.shtml#000175>, last accessed on 16 June 2006.

44 Such as the meeting which took place at the beginning of the 2005 RevCon on 2 May 2005 during lunch time.

45 Nanz and Steffek (2005, 375) are sceptical about voting rights for CSOs. However, most CSOs do not want to acquire more than consultative functions.

46 See par. 9 (b) (II) of UN Doc. NPT/CONF.2005/PC.I/21 of 19 April 2002 and par. 29 of UN Doc. NPT/CONF.2005/1 of 20 May 2004, see p. 57, note 10.

47 See 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, see p. 56, note 2.

48 See during the First PrepCom, a Working Paper of Japan and the statements of Canada and Mexico in the General Debate and during the Second PrepCom, the Opening Statement by the Chairman, Ambassador Lázló Molnár, the Keynote Address of the UN-Under-Secretary-General for Disarmament Affairs, Jayantha Dhanapala, Working Papers of Egypt and others, and of Japan, the statements in the General Debate of Japan, the NAC and Nepal, and par. 30 of the Chairman's factual summary. During the Third PrepCom, see the Opening Statement by the Chairman, Ambassador Sudjandnan Parnokadiningrat, Working Papers of Egypt and others, and of Japan, the statements in the General Debate of the Holy See, Japan, Mexico, Peru and the NAC, supported by Brazil and South Africa (also in the cluster I debate), the statements in the cluster I debate of China, Japan, and also to some extent the UK by referring to NGO statements,



NGO project, even explicitly mentioned by name by Japan at the Third PrepCom and the RevCon in Working Papers and by Argentina and Bangladesh in their statements during the General Debate of the Review Conference.<sup>49</sup> In this way, a debate slowly took off about the development of schemes how to enhance civil society role at NPT meetings, triggered off by concrete proposals made by governments.<sup>50</sup> Those seem to have led, over time, to a lessening of tensions around the debate about civil society participation.<sup>51</sup> First, when an NGO proposal at the First PrepCom was delivered to further develop exchanges, for example, by including an NGO presentation of their analysis of their own governments' progress since the previous meeting into the Conference timetable.<sup>52</sup> Canada at the same time raised its voice to call for enhanced civil society participation.<sup>53</sup> A more sophisticated Canadian proposal followed at the Second PrepCom. Canada, which had already tried to stir up and had led the debate during earlier RevCons, hereby proactively sought to explore and to encourage discussion of ways and means of enhancing the consultative participation of non-governmental organizations. In a Working Paper distributed at the session,<sup>54</sup> it listed the additional

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and the Chairman's Working Paper. For the RevCon, refer to the statement of the Chair of the Third PrepCom, Working Papers of Canada, Egypt and others, Japan, and to some extent also Iran by referring to NGO proposals, repeated in Main Committee I, the statements in the General Debate of Bangladesh, Bolivia, Canada, Japan, Sweden and Ukraine, the statements in Main Committee I of Canada, Japan, New Zealand, the Chairman's Working Paper of Main Committee I and the Committee's Report, the statements in Main Committee II and III of Canada and the closing statements of Canada, Iran, Japan, Malaysia, supported by Algeria and Sierra Leone.

49 In addition, a Mexican Working Paper during the RevCon attached an NGO report of a Civil Society Forum organized by, *inter alia*, the Mayors for Peace; see NPT/CONF.2005/WP.46 of 18 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/58/PDF/N0534958.pdf?OpenElement>, last accessed on 17 January 2007.

50 RCW, *News in Review*, Final, 26 April 2002, pp. 1–2.

51 RCW, *News in Review*, No. 6, 5 May 2003, p. 1.

52 See a presentation by the Campaign for Nuclear Disarmament on 10 April 2002, <http://www.reachingcriticalwill.org/legal/npt/NGOpres02/10.pdf>, last accessed on 21 September 2006. NGOs also continuously proposed broader civil society participation outside the NPT review process, that is through citizen inspections and verification, or education and involvement in monitoring in non-nuclear weapon States, which, however, never were taken up; see NGO statements of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/programprom.html> and <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/Abolish2005.htm>, and of 27 April 2004, <http://disarmament2.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, all last accessed on 21 September 2006.

53 Statement of 9 April 2002; see <http://www.basicint.org/nuclear/NPT/2002prepcom/canada.htm>, last accessed on 7 August 2006. The statement on enhanced participation of NGOs was fully supported by Belgium, Germany, Mexico (which promised to develop its own proposal), the Netherlands, New Zealand, Norway and South Africa; France wanted to continue its interactions with NGOs, but did not elaborate on what context; Sierra Leone called for more informal interaction, but thought that perhaps the existing rules did not need to be altered; and the US was against any change to rules; RCW, *News in Review*, No. 10, 19 April 2002, pp. 1–2/Final, 26 April 2002, p. 2.

54 NGO participation in the NPT review process, Working Paper submitted by Canada, NPT/CONF.2005/PC.II/WP.16 of 6 May 2003. See also the Canadian statement in the General Debate and par. 43 of the Final Report of the Second PrepCom, UN Doc. NPT/CONF.2005/

elements of participation most frequently proposed by CSOs as including (1) more open meetings, (2) access with appropriate seating areas to enable direct interaction with official delegations and (3) opportunities to intervene directly in the debates.<sup>55</sup> Canada then suggested to perpetuate existing formal procedures and, as new elements, to introduce (1) NGO interventions in plenary and cluster sessions, possibly confined to selected agenda items and a limited number of NGO representatives speaking on behalf of larger groupings, (2) more open sessions and meetings, (3) access to and suitable seating arrangements within the corresponding meeting rooms, (4) the distribution of written NGO statements to delegations in the numbers and languages received by the Secretariat, (5) further substantive interaction of States parties/the Secretariat with NGOs, for example, through joint sponsorship of consultations on particular agenda items or issues, dialogues, panel discussions or briefings, during or between sessions, (6) NGO advisers in national delegations and (7) accreditation of all NGOs that wish to participate and whose work is relevant to NPT issues, with the understanding that those NGOs then have a responsibility to work together and with the Secretariat to ensure effective and constructive NGO participation within agreed parameters.<sup>56</sup>

Experience with the dynamics of international fora teaches one that once started, such a process is hard to repel completely (see for the WTO, Steffek and Ehling 2007). Consequently, several delegations, including Canada, Chile, Cuba and Mexico, called for increased participation of NGOs in future PrepComs and Review Conferences after the NGOs had delivered their presentations during the Second PrepCom.<sup>57</sup> This was followed by further calls at the Third PrepCom.<sup>58</sup> The Third PrepCom partly corresponded to this demand by opening up cluster meetings to NGOs. This surely was also due to the fact that the chairmanship was held by the NAM, which is traditionally more prone to nuclear disarmament and thus more in line with principal civil society demands. Nevertheless, NGOs felt that a clear message was still in need. Recommendation 5 of their presentations urged the meeting to recommend to the 2005 Review Conference that NGO participants be granted increased access to the proceedings, including fewer closed sessions allowing NGO observers to attend cluster discussions, and timely access to documentation. This would significantly enhance transparency, called for in the 13 steps, and would have the secondary effect of allowing States to benefit from the considerable expertise within civil society.<sup>59</sup> However, as noted previously, no corresponding decision was taken.

Moreover, the prosperous and ameliorating atmosphere for NGO-State collaboration at the PrepComs entirely changed during the Review Conference. Here, CSOs felt induced to send an Open Letter to the Conference Secretariat and

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PC.II/50 of 13 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement>, last accessed on 21 September 2006.

55 *Ibid.*, p. 11.

56 *Ibid.*, p. 12–13.

57 RCW, *News in Review*, No. 4, 1 May 2003, p. 1.

58 See the statements of Canada, the NAC, supported by Brazil, Mexico and South Africa (also in the cluster 1 debate) in the General Debate, Kenya in the cluster 1 debate, New Zealand and the Chairman's Working Paper.

59 See statement of 27 April 2004, <http://disarmament2.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, p. 46, last accessed on 7 August 2006.

to States parties (see Box 7.1) in order to be assigned a larger meeting room or an additional space to display literature, as well as physical proximity and informative access to the delegates during the meetings.<sup>60</sup>

### **Box 7.1 Open Letter to the Conference Secretariat and States Parties**

To: Mr. Jerzy Zaleski  
Secretary General of the 2005 NPT Conference  
S-3140A

Dear Mr. Zaleski,

I am writing on behalf of the NGOs who attend the Abolition Caucus which meets daily each morning during this Non-Proliferation Treaty Conference to exchange information, plan, and strategize for civil society participation at this 2005 Non-Proliferation Treaty Review Conference. More than 150 NGOs have attended our morning meetings since the conference began. We are appalled at the ill-treatment we have received in this 60th Anniversary year of the bombing of Hiroshima and Nagasaki. Because of the critical world environment for progress on curbing nuclear proliferation and eliminating nuclear weapons as promised by the Non-Proliferation Treaty, an unprecedented number of NGOs registered for this year's conference, 1,752 – magnitudes larger than has been witnessed in any past year. Yet for the first time in the ten years I have been attending these meetings, we were assigned the smallest available meeting room in the UN basement, Conference Room E, with no room to display our literature and constant threats by UN Security to close down our panels and presentations if people tried to sit on the floor because we have exceeded the limit of 42 people for that room. People are turned away each day.

Committed activists have collectively spent tens of thousands of dollars to travel to New York to make their case known to the delegates for nuclear abolition and to present them with expert information carefully prepared to educate the world's governments about practical and meaningful solutions to the nuclear scourge and to help in analyzing the implications of the security policies of the various State actors. Yet we have had virtually no access to the delegates during the opening debate. We are not permitted near the General Assembly Hall where we could meet the delegates and give out our literature and no facility was made available in reach of the delegates where our literature could be placed. There is no access to hard copies of the public documents such as speeches of the delegations which we have always had in the past.

Registration for the conference itself involved extremely long waiting times, as long as two hours at times, which resulted in many NGOs missing the opening session of the NPT. Relegated to the fourth floor balcony, high above the proceedings below, we were limited to one ticket per delegation, while a whole gallery on the second floor of the Assembly Hall remained empty of visitors. We were told to get tickets not only for the morning session, but to come back and get tickets for the afternoon

<sup>60</sup> Dhanapala and Rydell (2005, 98) report on similar complaints on access to delegations already during the Second PrepCom.

session as well. As a result many NGOs no longer attended the public sessions, which in turn created the wrong impression of lack of interest. This situation was created by the way access was restricted.

We urge you to correct these disgraceful conditions to the extent possible by assigning a larger room to the NGOs for their use, or an additional space to display our literature, leaving one room free for the many informative panels that are still to come while allowing access to each other's literature during the times the panel room is in use. We would also like access to the delegates during the meetings, including a literature display table and physical proximity to permit us to engage with them in discussion. We are available to discuss these issues further.

Thank you for your prompt attention to this matter.

Sincerely,

Alice Slater  
Global Resource Action Center for the Environment

*Source:* RCW, *News in Review*, No. 9, 12 May 2005, 2.

In addition, the second NGO statement, delivered by WILPF on 11 May 2005, demanded that all meetings not designated to negotiations should be held in open session, NGOs to be provided with appropriate seating as well as additional opportunities to intervene and for increased government-NGO dialogue, including through informal interaction, and these practices to be codified in the Final Document of the RevCon.<sup>61</sup> NGO recommendation 14 summarized strengthened civil society recommendations on NGO participation. It was urged that all States further enable non-governmental organizations greater access to the NPT review process by allowing NGOs to participate in all NPT plenary and cluster sessions and to deliver oral and written statements. NGOs should be provided with appropriate seating within the conference hall. In addition to the one session designated for NGO presentations to the delegates, additional opportunities to intervene within the thematic discussions should be provided. Government-NGO dialogue should be encouraged and implemented into the official process. And finally, these practices should be codified in the Final Document of this Review Conference, affirming the value of NGO participation to the health of the Treaty.<sup>62</sup> This was taken up by another Canadian Working Paper, which proposed that 'The Conference...encourages the further development of rules of procedure and practice, in consultation with representatives of non-governmental organizations, to facilitate and optimize such participation...The Conference agrees that open meetings and appropriate seating arrangements for representatives of non-

61 See <http://www.un.org/events/npt2005/statements/npt11ngo-sudberg.pdf>, last accessed on 21 September 2006.

62 See <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, p. 6, last accessed on 30 June 2006.

governmental organizations within the meeting rooms are important means of facilitating effective participation. The Conference agrees to extend the provision for representatives of nongovernmental organizations to address sessions including meetings of the Committees and subsidiary bodies.<sup>63</sup> The Netherlands were much less progressive when they recommended in a Working Paper that ‘[t]he States Parties participating in the Conference:...7. Agreed that the role of civil society should be enhanced in the Preparatory Committee and the Review Conference. Accordingly, duly accredited non-governmental organizations would attend all public meetings of the Preparatory Committee and the Review Conference and upon request receive documents, as specified in the Rules of Procedure, and opportunities would be provided for them to address these meetings,’<sup>64</sup> this not adding anything to the existing procedure. However, the unfortunate situation in which NGOs found themselves might have been the reason that the typical governmental candidates increased their statements in support of enhanced civil society participation.<sup>65</sup> An especially strong and meaningful formulation in favor of CSO participation was used by Mexico: ‘México seguirá esforzándose por asegurar su plena participación en estos trabajos sobre bases democráticas que reconozcan la complementariedad de sus esfuerzos con los de los Estados Partes. El Tratado nos pertenece a todos.’<sup>66</sup> However, it did not repeat its 2000 proposal to grant NGOs observer status. The NGO Abolition Caucus, sent out on 25 May 2005 in an e-mail action alert, then urged NGOs to send letters to governments to support Working Paper 39, calling for improvements to the NPT regime, including access of NGOs to all forms of meetings held by NPT States, together with access to all documents and a right to make presentations at all meetings.<sup>67</sup> However, in the procedural turmoil which marked the 7th RevCon governments preferred to completely leave out the issue of civil society participation and to reserve it as a point of discussion to be taken up in the next PrepCom meeting in 2007. The topic was not even mentioned in any draft of the Main Committees or subsidiary bodies. Finally, a more specific call, uttered by indigenous peoples during the

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63 UN Doc. NPT/CONF.2005/WP.39 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/13/PDF/N0534713.pdf?OpenElement>, p. 2, last accessed on 7 August 2006. A Working Paper of the NAM, supported in statements in the General Debate by Jamaica and the Philippines, called on the Review Conference to support the recommendation of the third session of the PrepCom regarding the participation of non-governmental organizations. It is unclear, however, if this refers to the procedure already in practice, recommended by the Third PrepCom for the 2005 RevCon, or the opening up of cluster (committee) meetings; UN Doc. NPT/CONF.2005/WP.17 of 2 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/329/62/PDF/N0532962.pdf?OpenElement>, last accessed on 21 September 2006.

64 UN Doc. NPT/CONF.2005/WP.51 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/74/PDF/N0535074.pdf?OpenElement>, last accessed on 21 September 2006.

65 See the statements in the General Debate by Canada and Mexico and in Main Committee II and III by Canada. See also the concluding statement by New Zealand.

66 Statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03mexico-spanish.pdf>, last accessed on 21 September 2006.

67 On file with author.

First and Second PrepCom sessions,<sup>68</sup> for collaboration through direct input of a delegation of indigenous peoples on crucial matters or, as an initial step, through open-ended discussions on how to proceed or through an Indigenous Committee with official regular reporting duties to the NPT process was never taken up in any governmental working paper, statement or document.

To sum up, formal avenues for CSO participation in the NPT review process remain limited with many restrictions attached. Compared to other international organizations and regimes, formal access of NGOs still is at the lower end of the spectrum, a typical feature of disarmament fora (Carroll 2002, 21). Moreover, they still have not been made a permanent feature of the NPT review process, which amounts to CSO access and participation to be decided by governments at every review process anew. In addition, even though there were formal rules this time, actual compliance of governments with those rules left something to be desired. CSOs tried hard, not always successfully, to entice governments to keep their word. This is in stark contrast to other UN Conferences where CSOs could even achieve significantly more rights through bargaining than those provided for in the official rules (see Dany 2006, 10). Altogether, in practical terms, CSOs continue at best to be pushed to the margins of discussions, but at worst to be relegated to the hallways.

Given the failure with regard to any improvements in formal and actual participative arrangements during this review process and the blatant fiasco of the substantive (non-)result of the 2005 RevCon, CSOs are observed to revert increasingly, or to continue to revert, to traditional advocacy work or informal lobbying.<sup>69</sup> As in the case of the WTO (Steffek and Ehling 2007), mechanisms of participation remain too detached from intergovernmental negotiation processes, which induces CSOs to turn towards the public for the shaming of governments or educational advertising. In this vein, during the last days of the RevCon, CSOs immediately started to debate on how to continue their lobbying activities and worked out some new proposals, which they promptly brought to the public during a press briefing. Thus, the Mayors for Peace wanted to start negotiations with NNWS outside the UN. An occasion, it was stated, would be to approach the 108 nuclear-weapon-free States which in 2005 had met for the first time at a Conference in Mexico City (Küpker 2005). Moreover, Alyn Ware of the International Association of Lawyers Against Nuclear Arms (IALANA) suggested approaching the ICJ for a second decision (in order to enforce implementation of the first decision). Alice Slater of Abolition 2000 argued for the establishment of a fund for renewable energies as an alternative to nuclear energy (Schlupp-Hauck 2005c). The youth started to set up a European Network for a European nuclear-weapon-free zone (Kramer 2005). And finally, Ex-US Defense Minister McNamara requested North Korea and Iran as well as NWS which illegally adhere to their arsenals of nuclear weapons to be brought before the Security Council (Schlupp-Hauck 2005a).

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68 See statements of 10 April 2002, <http://www.reachingcriticalwill.org/legal/npt/NGOpres02/4.pdf>, and of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/indigenous.html>, last accessed on 21 September 2006.

69 See already the CSO account after the Second PrepCom session; RCW, *News in Review*, No. 11, 23 May 2003, pp. 2, 3 and 5.

*Transparency*

Transparency comprises the complete disposal to CSOs of information about a problem, the different options to solve it and the costs and benefits involved. This is vital in order to enable them to fulfil their function as intermediary between an international organization and the wider public sphere, that is to participate fully informed in the debate at the intergovernmental level and to channel the information back into the public arena. Undoubtedly, access for CSOs to the decision-making cycle of the NPT review process as such already touches upon transparency.<sup>70</sup> Wherever meetings are closed to the public, at least some information will not permeate towards civil society delegates who are then dependent on friendly governmental delegates for information. Nevertheless, a close-to-absolute course of action with regard to transparency of political decision-making can also be obtained by a stringent public policy of issuing verbatim records, video clips, official and unofficial documents, statements made, press releases and the decisions taken, and so on.

First of all, it has to be said that the NPT review process displayed a remarkably open policy with regard to the release of official documents. Most of them were available through the official web sites<sup>71</sup> on short notice.<sup>72</sup> The parallel NGO web site of Reaching Critical Will added only few other official documents, mostly non-papers or governmental statements, published them only slightly sooner and was by the way even much less user-friendly than its governmental counterpart. NGO presentations, on the other hand, even though not part of the official documentation, were available through the governmental web site as well. Moreover, in accordance with Rule 44 (4) of the RoP of the 2005 Review Conference and par. 29 of a decision of the Third PrepCom, representatives of NGOs who attended the meetings of the plenary or of the Main Committees were even entitled upon request to receive the documents of the Conference.<sup>73</sup> In practice, this meant that a set of 100 copies of official documents was made available to NGOs. The documents, as well as one set of statements by States parties made during the plenary meetings, were transmitted upon their issuance to a representative designated by the NGOs as their focal point for that purpose.<sup>74</sup> This task was taken over by WILPF/RCW.

However, in the Open Letter sent to the Conference Secretariat and States parties at the end of the second week of the 2005 RevCon, NGOs complained that they had no (direct/general/prompt) access to hard copies of the public documents such as

70 See the NGO Recommendation, p. 65.

71 For the PrepComs, see <http://disarmament2.un.org/wmd/npt/2005/index-PC3%20rev.html>, and for the RevCon, <http://www.un.org/events/npt2005/>, both last accessed on 17 January 2007.

72 Thus, during the RevCon, the agenda, the RoP, the program of work, the statements, the actual official documents and the press releases were displayed on the official web site. For the PrepComs, statements were not published on the governmental web site.

73 For the PrepCom sessions, see par. 9 (b) (II) of the Report of the PrepCom on its first session, UN Doc. NPT/CONF.2005/PC.I/21 of 19 April 2002; see p. 57, note 10.

74 See 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Aide Memoire for Non-Governmental Organizations, see p. 56, note 2.

speeches of the delegations, which they have always had in the past.<sup>75</sup> Their second statement as well as Recommendation 14, delivered during the same week as part of the NGO speeches, therefore referred to, *inter alia*, the necessity of NGOs being provided with access to all documentation during open sessions.<sup>76</sup> In this sense, it was in a similar line as an earlier statement made at the Third PrepCom in form of Recommendation 5, which also insisted on timely access to documentation.<sup>77</sup> This shrinking of formerly accorded rights to receive documentation apparently did not happen for the first time, since the Canadian Working Paper on NGO participation presented at the Second PrepCom mentioned that the additional elements of participation most frequently proposed by NGOs included more timely and systematic access to conference documents.<sup>78</sup> For that reason, Canada pleaded for timely NGO access to all official documentation at the same time as it is distributed to delegations.<sup>79</sup> With regard to the public policy of the Conference, however, it has to be stated that there was no visible attempt to overcome the lack of transparency of closed meetings by issuing verbatim records, video clips or any other sort of disclosure of the debates taken place, apart from press releases.

Having said this, one has to draw another distinction. With regard to the quality of the documents, one also has to differentiate between background documents and policy documents of a decision-making process. The first contain information on an issue or problem, whereas the second can be termed as giving information on political options, proposals and decisions. Both sorts of documents generally can emanate from the Secretariat or from State representatives. In the case of the NPT, however, they mostly originate from governmental representatives, given the non-permanent nature of the Secretariat (served by DDA) and the secretive features of security policies, which instigate governments to remain themselves at the helm. Hence, most of the official documents of the 7th review process stemmed from State representatives, the rest from some intergovernmental organizations, such as the statements or Working Papers submitted by the CTBTO, the IAEA, the OPCW and the UN or the Information Documents for and the minutes of the different sessions of the review process prepared by the UN DDA or the NPT temporary Secretariat.<sup>80</sup>

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75 See Box 7.1, p. 66. Criticism about access to documents reportedly was also uttered by CSOs during the Second PrepCom; see Dhanapala and Rydell (2005, 98).

76 See <http://www.un.org/events/npt2005/statements/npt1Ingo-sudberg.pdf> and <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, p. 6, last accessed on 30 June 2006.

77 See <http://disarmament.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, p. 46, last accessed on 30 June 2006.

78 NGO participation in the NPT review process, Working Paper No. 16 submitted by Canada, see p. 64, note 54.

79 *Ibid.*, p. 12.

80 In contrast, during the 5th and 6th review processes leading up to the 1995 and 2000 Conferences, the UN Secretariat and other international organizations also prepared a number of background documents on various NPT articles, IAEA safeguards, NWFZ, the CTBT and the implementation of the 1995 Resolution on the Middle East; see Johnson (2000, 2); Dhanapala and Rydell (2005, 22). This time, agreement on the preparation of background documents was not possible at the Third PrepCom.



The official State documents related to both forms of documents, national reports and Information Documents for example being classifiable as background documents, whereas the numerous working papers, statements as well as the final results of the PrepComs and the RevCon and the official records can be categorized as policy documents. Official documents of both types were largely accessible. However, the official minutes only consisted of summary and no verbatim records and were just available online for the First and the Second PrepCom. Moreover, there was also a bundle of papers which can be termed unofficial (so-called non-papers or drafts) and which was written during the drafting process in the run-up of the decision on a Final Document of the RevCon or on any other final document (such as reports of sessions). All those papers were strictly closed to CSO access. However, WILPF was in a strategically good position to receive them from friendly governments and indeed was able to secure some of them.<sup>81</sup>

### *Inclusion*

As noted earlier,<sup>82</sup> inclusion signifies the need for incorporating all possible arguments related to a decision-making process through the inclusion of all stakeholders possibly affected by this process and its resulting outcome. Thus, the argument goes that the best informed decision-making process can also adopt the best possible result in the end which suits best the sum of all stakeholders. This would make a policy-making process legitimate and would testify to its high democratic quality. However, by arguing this way, inclusion is also intrinsically linked to justice and fairness. Yet, in order to avoid counterfactual reasoning, this study relies on institutional and thus mere procedural empowerment mechanisms which contribute to enabling the most disadvantaged stakeholders to participate in the deliberate policy-making process. For the NPT review processes, the most disadvantaged stakeholders in the first instance include CSO representatives from developing countries and ill or disabled persons, especially the atomic survivors (the Hibakusha) suffering from the long-term consequences of the two nuclear attacks on Hiroshima and Nagasaki in 1945, but also women, indigenous peoples and others. They might all be disadvantaged by a paucity of personnel or (extraordinary) financial resources and should ideally receive some special empowerment tools. The results of an analysis of the composition of civil society as portrayed earlier<sup>83</sup> reveal that at the 2005 RevCon, of the 119 CSOs registered, only three had their headquarters in a developing country, the others in Europe and North America. It is correct that the developing civil society community might feel represented by CSOs from developed countries, especially in the case of branch offices in the South. However, an effort should be made by governments to directly involve CSOs from outside Europe and North America in the discussion process leading up to a final decision at the end of an NPT review process. The line

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81 See for example <http://www.reachingcriticalwill.org/legal/npt/RevCon05/nonpapers/index.html> or <http://www.reachingcriticalwill.org/legal/npt/RevCon05/draftreportofdraftingcommittee.pdf>, both last accessed on 30 June 2006.

82 See pp. 11–12.

83 See p. 54.

of reasoning that CSOs from the South do not dedicate their main forces towards nuclear matters, given the Cold War focus on Europe as the main crisis center and today's large attention towards poverty reduction in those regions, and thus do not have to be included, goes completely wrong. Since they are not less affected by the uses of nuclear power, be it for peaceful or non-peaceful purposes. Nuclear energy for peaceful purposes is also used in the South. The concern with nuclear-weapon facilities is demonstrated by the struggle of the Non-Aligned Movement for NWFZ and disarmament, which has a, possibly different, effect on its civil society alike. Last but not least, a concentration on some issues, such as poverty or HIV/AIDS, might precisely be an expression of structural imbalance which does not allow CSOs from the developing world to invest manpower and financial resources into other, equally important, issues. In any case, this argument should not be used in order to continue to justify some sort of North centrism.

With regard to the participation of diseased or disabled people, no figures are available. However, the aging Hibakusha appeared in droves at the 2005 RevCon, even without registering, simply to be strongly present on the spot. Given its dismal history, official and unofficial (civil society) Japan is still willing to dispense large funds for anti-atomic mobilizing and obviously has the means to do so at its disposal. With regard to women and other potentially marginalized groups (indigenous people, and so on) participation, likewise no absolute figures are available. Concerning women, gender of CSO representatives (contrary to governmental delegates) is only indicated in the participants' lists of the PrepComs and is in some cases blurred by the indication of titles. Figures for the Second PrepCom, being the only one with clear gender referrals, show a rate of 65 women out of 151 participants, thus a fairly balanced ratio of 43 to 57 per cent.

Certainly, as urged earlier on, fair and empowering representation within civil society is the community's own prime responsibility. In this regard, it should be mentioned that WILPF provided information about affordable accommodation regardless of the means available to a requesting person. This included addresses of some NY-based disarmament activists who were offering home-stays and a list of affordable housing in New York. However, in the context of legitimizing inclusion of potentially disadvantaged stakeholders into a governmental decision-making process, it is first of all the member States and their international administering organ which have to secure the inclusion of the voices needed for legitimation. Indeed, the UN Department of Public Information provided, as a counterpart to civil society efforts, also some sort of hospitality information. However, no effort on the part of governments or the DDA could be detected in order to overcome barriers which especially representatives from the South had to face, but possibly also people suffering from diseases which could put an additional strain on their traveling expenditure. Those obstacles were even aggravated by the fact that meetings only took place in New York and Geneva, places far to travel to and hard to afford especially for representatives from the South, but also from Japan. However, no travel subsidies were granted to resource-poor or resource-needing delegates, information seminars or consultation meetings in different regions did not take place, nor was there any other empowering tool in place. Therefore, the NGOs present at the RevCon suggested as part of their second statement as

well as Recommendation 14 that NGOs from underrepresented regions should be financially and logistically supported by the Conference Secretariat and/or States parties.<sup>84</sup> The only government which clearly recognized this striking lack of means to overcome participatory inequality among civil society was Canada. In its Working Paper on NGO participation submitted during the Second PrepCom, it proposed that States parties and the UN DDA could explore, in cooperation with engaged NGOs, ways and means by which NGOs from developing country States parties, especially from Nuclear Weapon Free Zones, could better participate in the NPT review process.<sup>85</sup>

## **Responsiveness**

The above evaluation of the criteria access, transparency and inclusion has revealed that the preconditions for a process of genuine and democratic deliberation indeed were not fully met during the 7th NPT review process. We now turn to an examination of the last remaining criterion, namely, responsiveness, in order to see how it fares under not fully satisfactory circumstances. Responsiveness circumscribes a course of deliberation which ensures that an adequate reflection of stakeholder concerns actually takes place and hereby opens the governmental decision-making process to a possible impact of CSOs. It consists of two sub-indicators: The first is labelled justification, that is State arguments, which revert to the common good and/or to specific civil society arguments (premises and/or conclusions) in order to justify one's position. Justification can contain an analysis of the situation or the definition of the problem, but it can also refer to the aspired policy goal. The second sub-indicator is the adjustment of a State's position or of the agenda. Methodologically, the present chapter predominantly relies on content and argumentation analysis and on process tracing.<sup>86</sup>

Before the analysis starts, a convincing case selection has to be made. Box 7.2 opposite illustrates a variety of suggestions made by governments as well as NGOs throughout the 7th review process with regard to some of the main issue areas in discussion, which served as a starting point for my choice:

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84 See <http://www.un.org/events/npt2005/statements/npt11ngo-sudberg.pdf> and <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, p. 6, last accessed on 30 June 2006.

85 NGO participation in the NPT review process, Working Paper No. 16 submitted by Canada, see p. 64, note 54.

86 For details with regard to the methodology used and the different single steps followed, see pp. 12–13. It should be added that the CSO presentations sometimes affixed recommendations at the end, which in some cases included additional statements, in other cases they gave some sort of summary of the proposals made in single presentations earlier. We have decided to include all presentations and recommendations in our analysis at an equal footing.

## **Box 7.2 Major proposals at the 2005 RevCon**

### **Major Proposals to Strengthen the Nuclear Non-Proliferation**

In light of the numerous strategic, political and institutional challenges facing the NPT and the broader nuclear non-proliferation system, a number of constructive ideas and proposals were advanced by governments and non-governmental organizations. Below is a quick summary of the key issues discussed at the 2005 RevCon.

#### **Verification**

- Making the IAEA Additional Protocol the standard in verification (in the context of Article III).
- Making the IAEA Additional Protocol a mandatory condition of supply for receipt of nuclear technology.
- Universalization of the Additional Protocol.

#### **Nuclear Fuel Cycle**

- Nuclear Supplier Group countries to agree to sell nuclear technology and equipment for uranium enrichment and plutonium processing only to States already possessing such facilities.
- States in violation of their NPT safeguards agreements should have their rights to nuclear energy technology revoked.
- Continued running of civilian nuclear plants should be allowed with nuclear fuel imports only from countries with fulfilled safeguards obligations.
- Five-year moratorium on building new uranium enrichment and plutonium-separation facilities while assessing other solutions to the fuel cycle dilemma.

#### **Export Controls and Interdiction**

- Universalizing global nuclear export control systems.
- The IAEA to define minimum standards for nuclear export controls; teams of nuclear export experts should be sent to countries requesting or perceived as needing export control assistance to report to IAEA and recommend improvements.
- Strengthening the Proliferation Security Initiative (PSI) by expanding its scope from interdicting shipments of nuclear, biological and chemical weapons and related material to actual law enforcement, using, for example, Interpol to catch proliferators and deter their activities.

#### **Disarmament**

- Articulated time frame by the nuclear-weapon States for complete elimination of their nuclear arsenals.
- Tactical nuclear weapons reductions should be formalized into a legally binding framework and certain types of non-strategic nuclear weapons should be prohibited.
- Accelerating implementation of the practical steps agreed upon in 2000.
- Establishing a subsidiary body in the CD to deal with nuclear disarmament.
- Implementing the principles of irreversibility and transparency for all disarmament measures.

- Reducing further the operational status of nuclear weapons with a view toward a global stand down of nuclear forces by 2010.

### **Fissile Material**

- Begin negotiations on a non-discriminatory, multilateral and internationally effectively Fissile Material Cut-off Treaty (or a treaty addressing also existing stockpiles of fissile material) in the Conference on Disarmament.
- Creation of a global inventory of fissile material usable in nuclear weapons together with a comprehensive database of research reactors and an assessment of materials and sites vulnerable to theft, sabotage or terrorist attacks.

### **Nuclear Testing**

- Urgent calls for the entry-into-force of the CTBT, linking a prohibition of nuclear testing to successful disarmament measures.

### **Negative Security Assurances**

- Commencing negotiations on legally binding NSAs in the CD.
- Commencing negotiations on legally binding NSAs within the context of the NPT.

### **Nuclear Weapon-free Zones**

- Urgent and concerted efforts to promote a NWFZ or WMD Free Zone in the Middle East.
- Efforts to promote ratification of the Pelindaba Treaty by the nine remaining hold-out States.
- Efforts to promote ratification of the Southeast Asia NWFZ by the Nuclear Weapon States.
- Conclusion of safeguards agreements by Middle Eastern States which have not yet done so (Bahrain, Oman, Qatar, Saudi Arabia).
- Consolidation of existing NWFZs in the Southern Hemisphere.

### **Missile Defense**

- Commencement of negotiations on a treaty Preventing an Arms Race in Outer Space.

### **NPT Withdrawal**

- States contemplating withdrawal to submit written information on why it may withdraw;
- Mandatory consultations with NPT States Parties before withdrawing.
- Developing list of criteria defining 'extraordinary event' that led to withdrawal.
- Asserting that withdrawal cannot be exercised when a State is judged to be in non-compliance.
- Nuclear transfers to include stipulation for repatriation if the recipient State withdraws.
- Shutting down nuclear facilities in States that withdraw.

- Holding withdrawing States accountable for breaches of non-compliance committed while still party to the NPT.
- Automatic Security Council review when a State withdraws.
- Automatic IAEA verification of compliance when a State withdraws.
- Automatic General Meeting of States parties when a State withdraws.

### **Reporting**

- Clarifying what ‘regular reporting’ – agreed to in 2000 – implies, how often, how particular, what issues to report on and so on.

### **NGO Participation**

- Make the NGO oral statements a permanent feature of the review process as well as invite NGO interventions in the plenary and cluster sessions.
- More sessions during the NPT should be open to NGOs.
- Joint sponsorship among the Secretariat, States Parties and NGOs of consultations, dialogues, panels and briefings.
- Formalizing existing practices, such as NGO access to official documentation, granting NGOs proper seating in the conference hall, designating NGO meeting rooms at all Review and Preparatory Committee Conferences.

### **Universality**

- India, Israel and Pakistan to join the NPT as non-nuclear weapon States as early as possible and place their nuclear facilities under IAEA safeguards.
- Prohibit the transfer of nuclear equipment or technology to hold-out States.
- Make clear that India and Pakistan do not receive new special status whatsoever.
- Encouraging the hold out States to adopt the same standards with respect to nuclear exports, nuclear security, nuclear testing and the role of nuclear weapons in foreign policy.
- Informal bilateral or unilateral declarations by the hold-out States to support the principles of the NPT.

*Source:* Reaching Critical Will/Arms Control Association, fact sheet distributed at the 7th RevCon, slightly adapted.

The case selection was guided by the following principles and considerations: First, I was looking for issue areas or issues, which were of considerable significance to CSOs, but at the same time provided me with clear-cut and precise proposals making them suitable for the tracing of CSO conclusions. Second, preference was given to those civil society considerations which emerged early in the deliberation process and demonstrated consistent repetition. This would give enough points in time to follow up developments and possible changes on both sides in order to make the analysis reliable. Third, I was interested in an equal distribution of topics among the three main pillars of the NPT, as perceived and acted upon by governments throughout the review processes. Thus, one issue should fall under (1) disarmament

and non-proliferation, another one under (2) safeguards and NWFZ and a third one under (3) peaceful use of nuclear energy. This third selection criterion was extremely difficult to meet since CSOs following the NPT review processes traditionally are firmly rooted in the peace movement and as a consequence for the most part favor proposals on disarmament and non-proliferation over safeguards and peaceful uses. Finally, I intended to draw a balance between long-discussed and customarily highly controversial issue areas which cause considerable friction among governments, others, which came up in recent review processes and whose discussion is to some extent established, but gives leeway for inventive proposals, and finally those issues which are relatively new and draw on especially creative CSO proposals. My selection then included the following topics and issue areas:

1. General and complete disarmament through a Nuclear Weapons Convention;
2. Reporting; and
3. Transition from nuclear to renewable energy.

General and complete disarmament through a Nuclear Weapons Convention, falling under the first cluster, has been a cherished goal of many civil society organizations since the mid-1990s. By April 1997, NGOs had worked out a Model Nuclear Weapons Convention, which was taken up and submitted to the UN by Costa Rica in October of the same year. However, the fulfillment of Art. VI obligations is highly controversial among governments. The issue of reporting, dealt with at the RevCon under the 2nd pillar, is a proposal which came up during the 6th review process and was integrated into the 2000 13 steps. Thus, during the 7th review process governments and CSOs alike paid attention to the question how to structure reports and implement the proposal. Finally, the issue of renewable energy, an innovative proposal falling under cluster 3, is relatively new and was developed and sophisticated by NGOs throughout the 7th review process.

### *A Nuclear Weapons Convention?*

Since the mid-1990s, CSOs have pleaded for the drafting, signing and ratification of a Nuclear Weapons Convention (NWC) in order to achieve complete nuclear disarmament as requested by Art. VI of the NPT. The idea was first introduced in an INESAP study (Liebert 1995) presenting the results of its Study Group 'Beyond the NPT' (Krieger 2005). A public NGO meeting shortly thereafter during the 5th RevCon on 25/26 April 1995, together with other streams of influence, then triggered the formation of the Abolition 2000 network which called for 'negotiations on a nuclear weapons abolition convention that requires the phased elimination of all nuclear weapons within a time bound framework, with provisions for effective verification and enforcement'<sup>87</sup> in its Founding Statement of 1995 (Archer 2005; Scheffran et al. 2005). Shortly after the delivery of the Advisory Opinion of the International Court of Justice on 8 July 1996 and a subsequent resolution of the UN General

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<sup>87</sup> [http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316717/k.8870/The\\_Abolition\\_2000\\_Statement\\_English.htm](http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316717/k.8870/The_Abolition_2000_Statement_English.htm), last accessed on 12 October 2006.

Assembly calling for an immediate commencement of multilateral negotiations on an NWC,<sup>88</sup> an international consortium of lawyers, scientists and disarmament experts, coordinated by the Lawyers' Committee on Nuclear Policy, drafted a Model Nuclear Weapons Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Use of Nuclear Weapons and on Their Elimination (Wareham 2005, 443; Datan et al. 1999). This Model Convention is designed as a framework approach to the elimination of nuclear weapons, is meant to serve as a blue print for drafting an NWC and should encourage governments to finally start nuclear disarmament negotiations. It is at the same time civil society's active and committed contribution to progress towards the fulfillment of Art. VI obligations. The draft conceives five phases for the elimination of nuclear weapons, sets up an Agency, consisting of a Conference of States Parties, an Executive Council and a Technical Secretariat, to implement the Convention, obliges States to establish national authorities for implementation and provides for graduated responses for non-compliance. Information is gathered through an International Monitoring System and made available through a Registry. Citizens have a responsibility to report on any violations of the Convention to the Agency and whistle-blowers are granted protection through the Convention. On the other hand, the Model Convention also provides criminal responsibility for individual persons. By that way, the draft provides for rights and obligations of States as well as of individuals. Finally, it also arranges for review sessions at intervals of five years. The model envisages an unlimited duration; withdrawal and reservations to the Articles of the Convention are not permitted.

A revised version of the Model Convention was taken up by Costa Rica and submitted to the UN General Assembly, which released and circulated it as an official document in 1997.<sup>89</sup> During the 6th review process, Malaysia joined Costa Rica in a common proposal on the issue.<sup>90</sup> Discussion also continued outside the NPT review processes and beyond CSO circles. The UN General Assembly resolutions introduced by the New Agenda Coalition repeatedly called for 'a universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing set of instruments' in order to reach a nuclear-weapon-free world.<sup>91</sup> The Non-Aligned Movement Summits joined the call by referring to a 'phased programme for the complete elimination of nuclear weapons with a specified framework of time, including a Nuclear Weapons Convention.'<sup>92</sup> Most recently, the Mayors for Peace have used the model NWC in their 2020 Vision Campaign. In 2004, Mohamed ElBaradei, the Director General of the International Atomic Energy Agency, proposed to adopt a protocol to the present NPT which would set up a

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88 UN GA res. 51/45 M of 10 December 1996. See also UN GA res. 51/45 O and 51/46 D of 10 December 1996 and subsequent resolutions, the last being UN GA res. 61/83 of 6 December 2006.

89 UN Doc. A/C.1/52/7 of 17 November 1997.

90 NPT/CONF.2000/MC.I/SB.I/WP.4.

91 See p. 134, note 279.

92 See for example NAM, Summit, Final Document, Kuala Lumpur, 25 February 2003, OP 74, <http://www.un.int/malaysia/NAM/finaldoc.html>, last accessed on 8 October 2006. See also numerous NAM introduced UN GA resolutions, the last being UN GA res. 61/78 of 6 December 2006.



concrete program for verified, irreversible nuclear disarmament, completed by a timetable. This new framework should then be regarded as a ‘peremptory norm’ of international law, that is it should be enduring and permanent (ElBaradei 2004, 7).

It is true that not all CSOs intransigently rally behind the proposal of a Nuclear Weapons Convention. As with regard to the involvement of CSOs in any other global issue, also in terms of nuclear disarmament they often differ among themselves on the strategy to be used or on the desirability of a certain policy action (Atwood 2002, 8).<sup>93</sup> Hence, some CSOs do not favor an NWC, the maximum solution, but rather a step-by-step approach with regard to nuclear disarmament (Schlupp-Hauck 2005b). Rebecca Johnson (2000a, 78) even describes this as the ‘bitter chasm’ that opened between nuclear weapons ‘arms controllers’ and ‘abolitionists’ in the 1990s. Or, as Tyson (2004, 60) phrases it, ‘[t]he 1995 indefinite extension decision has...left a legacy of division within the core group of activists, analysts and nuclear watchdogs. It articulated a spectrum of advocacy wherein, at one end, internationally focused activists talk of nuclear abolition and a future Nuclear Weapons Convention, while at another end, nationally focused analysts concentrate on more limited arms control measures, such as nuclear de-alerting.’ At the same time, she calls on NGOs to build linkages in order to be successful (Tyson 2004, 65). Perhaps, fears of a rift among civil society are premature. For, the proposal of a Nuclear Weapons Convention at each step of the 7th review process entered the CSO recommendations which had undergone an elaborate procedure before being adopted jointly as some kind of consensus decision. The least which can be said is that there seems to be a sufficient majority within civil society in favor of such a proposal. Yet, it might also be true, as some observed,<sup>94</sup> that given the political developments since 2001 there were much less nuanced arguments for arms control versus nuclear abolition during this process compared to the previous review process.

*(a) The Nuclear Weapons Convention proposal as offered during the First Phase of the 7th review process* How then did CSOs phrase their arguments? And did governments listen to them and how did they respond? First of all, the proposal to draft an NWC had not entered the governmental 2000 Final Document, not even the 13 practical steps, anyway a step-by-step approach, as the name implies. The only ‘close to’ reference can be found in Part I under ‘Article VI and eighth to twelfth preambular paragraphs,’ par. 3:

3. The Conference takes note of the proposal made by the Secretary-General of the United Nations that the convening of a major international conference that would help to identify ways of eliminating nuclear dangers be considered at the Millennium Summit.<sup>95</sup>

The UN Millennium Declaration, the result of the UN Summit, however, only kept this option open without taken any decision about its implementation:

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93 See also Reaching Critical Will, *News in Review*, No. 13, 18 May 2005, p. 1.

94 See Alice Slater of GRACE and Abolition 2000 in RCW, *News in Review*, No. 11, 23 May 2003, p. 2.

95 NPT/CONF.2000/28 (Parts I and II), <http://disarmament.un.org/wmd/npt/2000FD.pdf>, last accessed on 29 September 2006, p. 13.

We resolve therefore: ‘...[t]o strive for the elimination of weapons of mass destruction, particularly nuclear weapons, and to keep all options open for achieving this aim, including the possibility of convening an international conference to identify ways of eliminating nuclear dangers.’<sup>96</sup>

Since this proposal of UN Secretary-General Kofi Annan does not explicitly refer to the goal of a Nuclear Weapons Convention, but may only include such an objective if agreed so and among others, in the following analysis CSO or governmental references to such a Conference are only included if and when they explicitly bring up an NWC in this context.

Nevertheless, during the First PrepCom in 2002, CSOs reintroduced the concept of an NWC. The clearest statement was their recommendation 6 which offered a concrete recommendation, not covered in the preceding CSO presentations, by alluding to, *inter alia*, not only an NWC as such, but also further ideas developed by CSOs in this regard:

6) Use the goal of a Nuclear Weapons Convention to further nuclear disarmament now.

...

A model Nuclear Weapons Convention was released in April 1997 as a tool to encourage debate on the political, legal, and technical requirements for complete nuclear disarmament. This debate has been followed through the Nuclear Weapons Convention Monitor, the latest issue of which contains a summary of the discussion that took place in January of this year during a Track II roundtable in Ottawa on the legal and technical aspects of complete nuclear disarmament. We encourage governments to explore the ideas presented there as a way to think past the current situation, which is characterised by acute failure of imagination.<sup>97</sup>

The other CSO statements preceding this recommendation noted the cherished NWC only in the margin or, in other words, as a given goal whose inclusion among their arguments would be natural and would constitute one of their building blocks.<sup>98</sup> These so-called presupposing quotations as well as governmental references of this kind are not included in the following analysis.

During the First PrepCom, it was already visible, however, that the arguments of CSOs, contrary to most governmental statements, throughout the whole review process were fleshed out by clear and thoroughly elaborated premises. Thus, in the above-mentioned example, the conclusion to use the goal of an NWC was substantiated by the importance ‘to maintain the knowledge, expertise, and training relevant to disarmament...and to continue to develop and voice arguments in support of co-operative...approaches to security, with a view to the goal of complete nuclear

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96 OP 9 of UN Res. 55/2 of 8 September 2000.

97 Statement 14 of 10 April 2002, [http://www.reachingcriticalwill.org/legal/npt/NGO\\_pres02/14.pdf](http://www.reachingcriticalwill.org/legal/npt/NGO_pres02/14.pdf), last accessed on 29 September 2006, pp. 51–2.

98 See CSO statements 2 and 10, or, with regard to the Conference proposal of Kofi Annan, statement 8.

disarmament despite current obstacles,<sup>99</sup> that is a motivating appeal addressed to the CSO community rather than to governments.

Some governmental statements, on the other hand, also depicted the goal of an NWC in a clear-cut manner during the First PrepCom. The most outspoken was the statement of Indonesia on behalf of the NAM, later published as a Working Paper. Here, the NAM clearly depicted language from the Abolition 2000 founding statement, but phrased it in a way which made the NWC one element of many others, rather than the framework for the whole nuclear disarmament process. Moreover, the Movement combined its call for an NWC with the demand to set up a negotiating framework, either as an overall nuclear disarmament framework within the Conference on Disarmament (Ad Hoc Committee on Nuclear Disarmament) and/or as a more specific NWC negotiating forum at an international conference, as proposed by the UN Secretary-General. The Geneva Conference on Disarmament has confronted a stalemate since the negotiations on the CTBT were concluded in 1996. No agreement could since be reached on what to negotiate next, that is on a work program, and no decision has been taken, even though meetings take place once a week. The split is between China and Russia, which want to discuss disarmament in space, on the one hand and Britain, France and the US on the other, which favor the FMCT to be negotiated first and foremost. The mandate for the CD to negotiate a FMCT was already agreed upon by the UN General Assembly in 1994 and refined by the Special Coordinator in 1995, whereas the 2000 NPT RevCon as part of the 13 practical steps urged the CD also to immediately set up an appropriate subsidiary body with a mandate to deal with nuclear disarmament. As a side note: NGO access at the CD is even more limited than at the NPT review sessions (Rissanen 2002, 32).

The Indonesian (NAM) speech then maintained:

We continue to believe in the need for negotiations on a phased programme for the complete elimination of nuclear weapons with a specified framework of time, including a Nuclear Weapons Convention, and in this regard reiterate our call for the establishment as soon as possible and as the highest priority of an Ad Hoc Committee on Nuclear Disarmament.<sup>100</sup>

And:

We again call for an international conference, at the earliest possible date, with the objective of arriving at an agreement on a phased programme for the complete elimination of nuclear weapons with a specified framework of time to eliminate all nuclear weapons, to prohibit their development, production, acquisition, testing, stockpiling, transfer, use or threat of use, and to provide for their destruction.<sup>101</sup>

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99 See Statement 14 of 10 April 2002, see p. 81, note 97.

100 Statement of 8 April 2002, [http://www.basicint.org/nuclear/NPT/2002prepcom/Indonesia\\_NAM.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/Indonesia_NAM.htm), and NPT/CONF.2005/PC.I/WP.2 of 10 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/323/19/IMG/N0232319.pdf?OpenElement>, last accessed on 1 October 2006.

101 Ibid.

This was underlined by the ICJ decision of 1996, a concern of NAM States about the lack of progress in the achievement towards the realization of the United Nations Millennium Declaration and about the progressive erosion of multilateralism respectively and the need for a fair balance between the mutual obligations of the Treaty. Numerous NAM States, such as Chile, Columbia, Ecuador, Jamaica, Malaysia, Mongolia, Morocco and Nigeria, in their statements made reference to the NAM statement in total. A few, such as Bangladesh and the Philippines, beside the general reference even openly referred to an NWC:

BD: Some other developments that continue be a source of concern are as follows:

...

- Failure of the Conference on Disarmament to establish an Ad Hoc Committee on nuclear disarmament to negotiate a phased programme for complete elimination of nuclear weapons within a definite time frame, including a Nuclear Weapons Convention;<sup>102</sup>

PH: Negotiations for a treaty on general and complete disarmament under strict and effective control should also be pursued. Towards this end, my delegation fully supports the call of the Non-Aligned Movement in urging Nuclear Weapon States (NWS) to convene negotiations...on a phased program for the complete elimination of nuclear weapons within a specified framework of time' including a convention on nuclear weapons...<sup>103</sup>

In addition, China joined the NWC supporters, substantiating its call for an NWC by the threat of nuclear weapons to mankind and the enhancement of world peace and security such a convention would bring about:

The above-mentioned measures having been taken, a treaty on the complete prohibition and thorough destruction of nuclear weapons should be concluded through negotiations, thus realizing a world free of nuclear weapons.<sup>104</sup>

Finally, the NAC managed to circumscribe the goal of an NWC by the following wording:

A nuclear-weapon-free world will ultimately require the underpinning of a universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing sets of instruments.<sup>105</sup>

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102 Statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Bangladesh.htm>, last accessed on 1 October 2006.

103 <http://www.basicint.org/nuclear/NPT/2002prepcom/Philippines.htm>, last accessed on 1 October 2006.

104 NPT/CONF.2005/PC.I/WP.6 of 12 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/330/26/PDF/N0233026.pdf?OpenElement>, last accessed on 1 October 2006. See also Chinas statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/china.htm>, last accessed on 1 October 2006.

105 NPT/CONF.2005/PC.I/9 of 5 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/317/80/IMG/N0231780.pdf?OpenElement>, last accessed on 1 October 2006. See

The reasons given incorporated the need for multilateralism in the maintenance and enhancement of international peace, stability and security, the integrity and sustainability of the nuclear non-proliferation regime, progress in nuclear arms reductions being a fundamental pre-requisite for promoting non-proliferation and the binding force of each article of the Treaty.

However, a few governments also responded negatively to the call of an NWC. They did so by refuting and discarding the conclusion of CSOs by dint of different premises which either partly or totally discarded the CSO arguments (premises) in favor of separate obligations for governments in Art. VI NPT with regard to nuclear disarmament and to a treaty on general and complete disarmament and then arguing in favor of a step-by-step approach. Thus, Germany, in a Working Paper during the First PrepCom, argued in favor of a gradual approach through arms control measures, without taking refuge to a linkage of nuclear disarmament and a treaty on general and complete disarmament, but rather to an embedding of nuclear disarmament in other arms control measures, and by this explicitly discarded CSO requests for an NWC, without, yet, referring to civil society as such:

There is general agreement on the final goal of the process of nuclear disarmament: the total elimination of nuclear weapons...[T]he goal is clear; the question is how to achieve it.

...

Article VI of the NPT places nuclear disarmament in the broader context of general and complete disarmament under strict and effective international control. This must not be misinterpreted as a linkage of nuclear disarmament to the achievement of general and complete disarmament. However, it must be seen as a reflection of the obvious fact that nuclear disarmament is not an end in itself but that it is to enhance overall security and stability. Nuclear disarmament must not increase the risk of large-scale conventional wars nor the reevaluation of other weapons of mass destruction. It has to be made sure that the functions that are today attributed to nuclear weapons becomes dispensable. This relates in particular to their role in deterring being attacked by superior conventional forces or with other weapons of mass destruction. Thus the attainment of a nuclear-weapon-free world must be accompanied by the pursuance of other effective arms control agreements at a global and in particular also at a regional level. The building of confidence and the establishment of a stable and verifiable balance of conventional forces at the lowest possible levels is of key importance for regional security.

...

The above considerations clearly militate against sweeping demands for the immediate conclusion of a Nuclear Weapons Convention and a fixed timetable for the abolition of nuclear weapons. Instead they underline the need for an incremental approach, which – gradually and inexorably – leads to the achievement of the goal of the total elimination of nuclear weapons. They must not be taken as a pretext to shun further progress on nuclear disarmament. On the contrary, they demonstrate the need to redouble our efforts.<sup>106</sup>

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also the statement of Egypt on behalf of the NAC in the cluster 1 debate, [http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Egypt\\_NAC.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Egypt_NAC.htm), last accessed on 1 October 2006.

<sup>106</sup> NPT/CONF.2005/PC.I/WP.4 of 11 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/328/28/PDF/N0232828.pdf?OpenElement>, last accessed on 2 October

France was less plain, but made it clear that it perceived general and complete disarmament as a precondition for any nuclear disarmament beyond the level already achieved:

There is, we must realize, not one single path, but there is a general direction to which these concrete measures point... [The objective of general and complete disarmament] is in fact inseparable from nuclear disarmament. Far from constituting an obstacle to achieving a world without nuclear weapons, the prospect of general and complete disarmament must underpin the nuclear disarmament process to ensure that the latter is carried out in compliance with the principle of undiminished security for all.<sup>107</sup>

*(b) Special feature: the US policy, a bone of contention* Beside explicit premises, CSOs coupled the goal of an NWC throughout the whole review process with frequent mentioning of the NWS, above all the US, not having implemented their disarmament obligations in accordance with Art. VI of the NPT. In this, they were recurrently joined by many governments, especially from the group of the NAM. Thus, already at the beginning of the First PrepCom, many States and CSOs expressed deep concern over the security doctrines of Nuclear Weapon States which continued to reaffirm the absolute and central role of nuclear weapons in their current defense policies<sup>108</sup> and in this context repeatedly referred to the US Nuclear Posture Review. In the following, NWS showed continued procrastination to implement their Art. VI obligations. During the Third PrepCom, complaints about non-implementation of Art. VI commitments, especially with regard to the 13 practical steps of 2000 whose prioritization the US and France vigorously tried to avoid, therefore increased. Consequently, at the Review Conference numerous governments, such as Brazil, Canada, Germany, Ireland, the NAM, the Netherlands and New Zealand, confirmed the 13 steps as benchmarks, while Luxemburg, speaking on behalf of the EU, in a compromise with France only mentioned the Final Document, not the 13 steps. Since the accusations on non-implementation by the US figured prominently in many statements throughout the process, a digression featuring the US policy towards disarmament, without which the complete failure of the 7th review process and the aggressiveness in the tone of the debate can hardly be understood properly, may be allowed.

The US's main focus, which other NWS such as France joined, during the review process was noncompliance with non-proliferation as well as counter-proliferation, rather than disarmament. In this regard, North Korea and Iran were the repeated target of proliferation accusations, but also the risk of terrorists obtaining nuclear weapons was stated. Frequently, the US was joined by closed allies, such as Australia, Poland, Slovakia and South Korea, in its biased approach focusing merely on non-proliferation. At the same time, the US increasingly relied on self-selected coalitions

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2006. See also Germany's statement during the cluster 1 debate on 11 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Germany2.htm>, last accessed on 2 October 2002.

107 Statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/france.htm>, last accessed on 2 October 2006. See also France's statement in the cluster 1 debate on 11 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/C1-France.pdf>, last accessed on 2 October 2006.

108 See RCW, *News in Review*, No. 2, 9 April 2002, p. 1. See also CSO statements 6, 7, 11 and 12 and NGO recommendation 5 in statement 14 of 2002.

of the willing outside any treaty system, such as the Proliferation Security Initiative (PSI), the Global Threat Reduction Initiative (GTRI) or the G8 Partnership. The PSI, announced by President George W. Bush on 31 May 2003, interdicts shipments of WMD and related goods to terrorists and countries of proliferation concern. It gained much legitimacy through the interception of the Libyan freighter in 2003<sup>109</sup> and the adoption of a Security Council resolution in 2004 on non-proliferation of WMD<sup>110</sup> which, in the context of the so-called ‘fight against terrorism,’ expanded the PSI by setting obligations for States to secure that WMD did not get into the hands of non-State actors and set up a Committee of the Security Council and a reporting mechanism for States. The GTRI was announced by United States Secretary of Energy Spencer Abraham at a meeting with IAEA senior officials at the IAEA headquarters in Vienna on 26 May 2004. The initiative aims at minimizing as quickly as possible the amount of nuclear material available that could be used for nuclear weapons. It also seeks to put into place mechanisms to ensure that nuclear and radiological materials and related equipment, wherever they may be in the world, are not used for malicious purposes. Both initiatives made CSOs to be worried because they remain divorced from any disarmament objective (Tyson 2004, 62). The G8 Partnership finally is meant to secure and eliminate existing nuclear, chemical, biological and radiological materials.

The US counter-proliferation approach reflects a shift from respect for concluded agreements and multilateralism towards unilateralism, or, in the context of the NPT, ‘from norm-based non-proliferation to [not regulated] counter-proliferation’ (Johnson 2005, 24). This was further testified by the US decision against sending the Secretary of State, Condoleezza Rice, to the 2005 Review Conference, thus leaving arguments mostly to midlevel and less flexible diplomats. The US was apparently convinced that the Treaty, in the words of Ms. Rice, was ‘fraying’<sup>111</sup> and that the US should turn to other fora, such as the G8 and the Nuclear Suppliers Group, whose sessions are, by the way, closed. An American NGO judged this new policy in the following way: ‘In the United States, nuclear weapons modernization is integrally linked to a move away from a policy emphasizing diplomatic efforts to restrain nuclear weapons proliferation, and towards a counterproliferation policy mainly based on the threat of overwhelming force,’ which ‘runs counter to the principles underlying the NPT.’<sup>112</sup> Müller (2005, 23) called the US policy to be opportune and instrumental, rather than rule- or value-based, an attitude which he considered to be in violence of the treaty (31). Against this background, the following US statement addressed against proliferators and contained in a document of the Third PrepCom appears rather odd to readers:

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109 See p. 30.

110 UN SC res. 1540 of 28 April 2004, follow-up resolution UN SC res. 1673 of 27 April 2006.

111 ‘Conference on Nuclear Arms Offers No New Action,’ AP, 27 May 2005, 8:22 p.m.

112 ‘War is Peace, Arms Racing is Disarmament, The Non-Proliferation Treaty and the U.S. Quest for Global Military Dominance,’ Western States Legal Foundation, Special Report, May 2005, p. 5.

A bedrock principle of international law is the maxim *pacta sunt servanda* (agreements must be respected). This is the core of compliance policy: agreements, the law demands, must be kept. To insist upon anything less would debase the currency of international discourse and make it impossible to realize the contributions that arms control, nonproliferation, and disarmament agreements can make to international peace and security. A world in which countries can ignore their commitments is a world more dangerous for all of us. The pretense of arms control, however, is even more dangerous, for it can provide a false sense of security that constrains only the honest. If an agreement is worth having – and the United States believes that the NPT is such an agreement – it is necessarily worth enforcing.<sup>113</sup>

On the disarmament agenda field, the US during the 7th review process fought every reference to the outcomes of the 1995 and 2000 NPT RevCons. Moreover, the large part of its statements only dealt with disarmament issues as a sideline. The statement of the then Under Secretary of State for Arms Control and International Security, Mr. John R. Bolton, during the Third PrepCom is characteristic in this regard. He asserted that '[w]e cannot divert attention from the violations we face by focusing on Article VI issues that do not exist.'<sup>114</sup> At the same time, the US, besides France the only country to do so, produced and distributed dozens of glossy brochures to defend its positions and to prove its disarmament commitments at the RevCon,<sup>115</sup> in which it missed out, however, numerous issues such as the CTBT rejection by the US Senate or the 2000 consensus commitments. Yet, here as well, the focus was diverted from disarmament to non-proliferation. One booklet related to the US objectives during the 2005 Conference almost exclusively spotlighted the issue of proliferation and Iran's and North Korea's failure to comply with Treaty obligations.<sup>116</sup>

*(c) An NWC: new emphasis during the Second PrepCom* CSO commitment towards an NWC took a new upsurge in the following. CSOs started their daily reporting on the Second PrepCom in the *News in Review* with the title 'NPT 2003 – It's Time to Walk the Talk.'<sup>117</sup> In the introduction to the CSO presentations, WILPF associated the proposal to hold an international conference to eliminate nuclear dangers to the negotiation of an NWC:

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113 See NPT/CONF.2005/PC.III/46 of 7 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/13/PDF/N0434413.pdf?OpenElement>, last accessed on 18 October 2006.

114 Statement of the US during the General Debate of the Third PrepCom on 27 April 2004; <http://www.reachingcriticalwill.org/legal/npt/prepcom04/usa27.pdf>, last accessed on 19 September 2006.

115 'The United States takes all of its treaty obligations, including those in Article VI, seriously and is in full compliance with this article'; 'The Commitment of the United States of America to Article VI of the Treaty on the Nonproliferation of Nuclear Weapons,' Brochure, p. 3. Critics reproached the double standard rhetoric of these brochures.

116 '2005 NPT Review Conference, U.S. Objectives,' Brochure.

117 RCW, *News in Review*, No. 1, 28 April 2003, p. 1.



We urge you to enroll your governments to support Secretary General Kofi Annan's Millennium Conference call, issued just before the 2000 NPT Review Conference, to hold a special global conference to eliminate nuclear dangers.

...

Most importantly, the negotiation of a treaty to eliminate nuclear weapons can be placed on the special conference agenda.<sup>118</sup>

This time, more substantiated reasons were given. Thus, WILPF referred to the 'crisis the world finds itself in,' but more importantly to the fact that '[t]he world's people have been begging to be rid of these genocidal, ecocidal, and suicidal nuclear weapons for more than fifty years.'<sup>119</sup> Statement no. 10 of the Mayors for Peace then devoted a whole speech to the urgent and total abolition of nuclear weapons and the goal of an NWC. The most expressive and telling paragraphs follow below:

Therefore, on behalf of the human family, we demand a complete and total ban on all nuclear weapons everywhere. We demand that all nuclear weapons be taken off of hair-trigger alert immediately and all nuclear weapons deployed on foreign territory be withdrawn. We demand that no more time be wasted postponing or extending the timeline for nuclear disarmament. It is high time for all recognized nuclear-weapon states to join in a multilateral process of nuclear disarmament. We further demand that *de facto* nuclear-weapon states terminate their programs and join the NPT as non-nuclear states.

We demand that all nuclear weapons be dismantled and destroyed and the radioactive material disposed of as quickly and as safely as possible, with concomitant dismantling of all dedicated delivery systems, production facilities, test sites, and research laboratories. We demand that all nations throw their doors unconditionally open to UN inspectors mandated to, ensure that all nuclear weapons and all programs to make such weapons are accounted for and dismantled. All states should declare all relevant activities and make their own satellites and other national technical means available to those inspectors. Citizen verification should be supported by domestic laws requiring publication of relevant information and granting of full legal protection to whistle-blowers.

To summarize, we demand here and now that, when the States Parties review the NPT in 2005, you take that opportunity to pass by majority vote, regardless of any nations that may oppose it, a call for the immediate de-alerting of all nuclear weapons, for unequivocal action toward dismantling and destroying all nuclear weapons in accordance with a clearly stipulated timetable, and for negotiations on a universal Nuclear Weapons Convention establishing a verifiable and irreversible regime for the complete elimination of nuclear weapons.<sup>120</sup>

Mayor Akiba of Hiroshima, who delivered the statement, gave numerous reasons for the CSO demand. The following citation may serve as a summary of his premises:

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118 Statement of 30 April 2003, [http://www.reachingcriticalwill.org/legal/npt/NGO\\_pres2003/Intro.htm](http://www.reachingcriticalwill.org/legal/npt/NGO_pres2003/Intro.htm), last accessed on 2 October 2006.

119 Ibid.

120 Statement of 30 April 2003, [http://www.reachingcriticalwill.org/legal/npt/NGO\\_pres2003/Abolish2005.htm](http://www.reachingcriticalwill.org/legal/npt/NGO_pres2003/Abolish2005.htm), last accessed on 2 October 2006.

We stand today on the brink of hyper-proliferation and perhaps of repeating the third actual use of nuclear weapons. As the mayor of Hiroshima, I can assure you that the path we are walking leads to unspeakable violence and misery for us all. And as the mayor of Hiroshima, I am well aware that we must do more than talk about this danger.<sup>121</sup>

He added that civil society refuses 'to live in a world of continually recycled fear and hatred' and 'to cooperate in [its] own annihilation' and that therefore, 'we are fighting the idea that a small group of powerful men should have the capacity to launch Armageddon' and 'we are fighting the idea that we should spend trillions of dollars on military overkill while billions of us live in dire, life-threatening poverty.'<sup>122</sup> He finally informed governments about the new campaign to abolish nuclear weapons of the cities of Hiroshima and Nagasaki, supported by the World Conference of Mayors for Peace. Finally, statement no. 11 of the Egyptian Council for Foreign Affairs mentioned the text of a Treaty banning weapons of mass destruction in the Middle East drafted by the League of Arab States.<sup>123</sup>

Was there any reference to these statements in governmental papers and documents? China, in a Working Paper repeated its account of the First Phase almost word for word.<sup>124</sup> Cuba, for the first time participating as a member State, seemed to propose the replacement of the NPT by a similar, but more equal, balanced and comprehensive treaty emphasizing also the disarmament aspect:

As a State party to the NPT, Cuba still continues to maintain that the isolated application of the principle of non-proliferation is insufficient to eliminate nuclear weapons. Only the application of a systematic approach, which would also include the components of disarmament, verification, assistance and cooperation, will be able to guarantee the total elimination of nuclear weapons. Cuba is prepared to launch immediate negotiations on a multilateral convention which applies this approach and believes that the Conference on Disarmament, as the sole multilateral negotiating forum in the area of disarmament, is the proper framework for such an undertaking.<sup>125</sup>

Cuba was less than China concerned with peace, but rather focused on power and security aspects, that is on overcoming the built-in flaws of the NPT, its selective, unequal and discriminatory nature. The NPT, according to Cuba, had created a privileged 'club of nuclear-weapon-States' which first had failed to attain the ultimate objective of the total elimination of nuclear weapons and second, did not even allow the national security of non-nuclear-weapon States committed to NPT

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121 Ibid.

122 Ibid.

123 Statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/Egypt.html>, last accessed on 2 October 2006.

124 NPT/CONF.2005/PC.II/WP.3 of 28 April 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/04/PDF/G0361104.pdf?OpenElement>, last accessed on 3 October 2006.

125 NPT/CONF.2005/PC.II/WP.10 of 1 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/66/PDF/G0361266.pdf?OpenElement>, last accessed on 3 October 2006. See also Cuba's statement in the General Debate of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/29April/cuba.htm>, last accessed on 3 October 2006.

provisions being guaranteed, as the US threats had shown. Cuba further used legal reasoning by arguing that Art. VI obliged nuclear-weapon States to embark on nuclear disarmament and that the privilege should not be granted in perpetuity.

Malaysia, representing this time the NAM, likewise reiterated the NAM statements of 2002 almost literally, thus indicating a continuation of position.<sup>126</sup> Some States, including Algeria, Indonesia, Myanmar, South Africa and Thailand, explicitly endorsed the NAM statement in the General Debate without a specific reference, while Bangladesh once again in addition made reference to an NWC, making use of the same wording as during the First PrepCom.<sup>127</sup> It was the time of repetition: Also the NAC replicated its statement of 2002 exactly.<sup>128</sup>

Russia then very wisely formulated its view by taking refuge to the NAC's compromise position of 'ultimately' requiring an NWC and leaving it open if the committed treaty would be an NWC or one on general disarmament:

Our country not only declares its commitment – as the ultimate goal – to the complete elimination of nuclear weapons and to the conclusion of a treaty on comprehensive and complete disarmament under strict and effective international control but also takes steps in the sphere of nuclear disarmament.<sup>129</sup>

Switzerland remained unclear whether it adhered to a step-by-step or rather a one-in-all approach:

The best way to counter the risk of nuclear proliferation lies in the negotiation and adoption of universal and non-discriminatory instruments of nuclear disarmament with the aim of eliminating under international supervision all nuclear weapons.<sup>130</sup>

However, there were other advocates of an incremental approach which seemed to foster this camp during the Second PrepCom. Thus, Germany pointed to its contributions to the first session in this regard, while at the same time proposing a radiological weapons convention.<sup>131</sup> Norway joined Germany's call for a balanced,

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126 See its statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/malaysia.htm>, last accessed on 3 October 2006. The statement was later published as a Working Paper; see NPT/CONF.2005/PC.II/WP.19 of 8 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/05/PDF/G0361505.pdf?OpenElement>, last accessed on 3 October 2006.

127 See statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/BANG.pdf>, last accessed on 3 October 2006.

128 See NPT/CONF.2005/PC.II/16 of 29 April 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/52/PDF/G0361152.pdf?OpenElement>, last accessed on 3 October 2006.

129 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/RUSSIA.pdf>, last accessed on 3 October 2006.

130 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/swiss.pdf>, last accessed on 3 October 2006.

131 See statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/GERMANY.pdf>, last accessed on 3 October 2006.

step-by-step approach.<sup>132</sup> In the end, the Final Report of the Second PrepCom integrated the step-by-step method into the Chairman's factual summary:

It was also noted that the goal of nuclear disarmament could best be achieved through a series of balanced, incremental and reinforcing steps.<sup>133</sup>

*(d) An NWC: continuity and change during the Third PrepCom* During the Third PrepCom, the tone of CSO presentations became clearer, sharper and more pushing. The twelfth CSO statement, which summarized civil society recommendations, under Recommendation 1 dealt with disarmament. Here, CSOs cleverly used the growing support among governments for incremental steps to fit it into the framework of an NWC, the proposal to convene an international conference and the time frame of the Mayors for Peace campaign for a world free of nuclear weapons until 2020. Their idea of an NWC indeed had always and quite naturally incorporated different stages, which also was the approach of the 13 practical steps. In their view, the only innovation, not dependent on an NWC as such, should be the introduction of time-bondage of steps in order to measure progress. CSOs also made clear that the proposal of the NAM on a phased program for the complete elimination of nuclear weapons in fact was not different from the calls for 'incremental steps.' They finally linked the Convention to the establishment of an International Nuclear Disarmament Organization, already contained in the Model NWC under the term. Altogether, the CSO recommendations of 2004 demonstrated a fine-tuned reading of earlier governmental proposals:

A clear timeframe for the total abolition of all nuclear weapons should be established – no later than 2020, and negotiations should commence as of the 2005 NPT Review on a phased program of incremental steps leading to the complete elimination of nuclear weapons within that timeframe. A specific course of milestones to reach in verification technology, in storage capability, in disposal plans, and in other aspects of dismantling and destroying existing nuclear arsenals would serve as a plan of action by which to measure progress. While attempts were made to do this with the 13 Steps of the 2000 Final Document, time bound targets were not attached to any of the goals and incessant backsliding has been the result. We recommend that the United Nations convene a Summit meeting on nuclear disarmament and non-proliferation as a prelude to the opening of negotiations on a Model Nuclear Weapons Convention. A deadline of no later than the 2010 NPT Review should be set for completion of those negotiations and submission of the Convention for signature and ratification. Within this framework, an International Nuclear Disarmament Organization should be created, with the authority and resources to facilitate the elimination of all nuclear weapons from the world's arsenals by no later than 2020 and to monitor this nuclear-free status for the foreseeable future.<sup>134</sup>

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132 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/norway.htm>, last accessed on 3 October 2006.

133 NPT/CONF.2005/PC.II/50 of 13 May 2003, Annex II, par. 11, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement>, last accessed on 3 October 2006.

134 Statement of 27 April 2004, <http://disarmament.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, last accessed on 4 October 2006. The conclusions contained in

CSOs introduced this conclusion by a rebuff of allegation of them being biased towards disarmament demands and by making the legal obligations entered by States very plain:

We have heard from policy makers in the Nuclear Weapon States that the NGOs put too much emphasis on nuclear disarmament at the expense of reining in proliferation. We unconditionally reject this assessment and demand that the Nuclear Weapon States stop trying to change the subject. Disarmament is the foundation of all non-proliferation efforts and of the Treaty itself, and we urge the Non-Nuclear Weapon States Parties to the NPT to join us in holding the Nuclear Weapon States accountable to their obligations. Governments should allocate financial and personnel resources in their own countries to implement their disarmament commitments under the Treaty. New Zealand, for example, has a disarmament minister and we encourage all states to create similar high-level positions. At the same time, the non-nuclear weapon states must refrain from threats of their own – either explicit or covert – to break out of the NPT. This is a tall order. Nonetheless, you are all under contract, as it were, and we expect delivery.<sup>135</sup>

This premise used by CSOs was by far the only one. As the tone of the above statement suggests, also other reasons given for their requests were expressed in a way which showed the impatience of civil society with and their disappointment about the dormancy of their governments. Some of their records were most appalling and shocking. The clearest declaration was contained in statement 7 where CSOs first and foremost demonstrated the human catastrophe that would result from the use of even a single nuclear weapon and the health and environmental impacts of the production and testing of nuclear weapons by citing examples and incidents happened. They honored Hibakusha, downwinders, nuclear industry workers and communities in the Global South as victims and stated that we would all be victims of the present threat of extinction. They deplored the nuclear double standard conferring political status to weapons which the NPT had in fact stigmatized and stated that it was long past time for the NWS to concede that the fundamental problem with nuclear weapons would be the existence of the weapons themselves, not the intentions of their owners. They then professed that the acquisition of nuclear weapons by NNWS and non-state actors would become a self-fulfilling prophecy since those were no longer willing to accept the prevailing nuclear apartheid. They further declared that nuclear weapons are in a class of their own and that they cannot be equated with the threat posed by chemical and biological weapons. Finally, they maintained that ‘nuclear weapons are instruments of genocide unlike any other. They are weapons not just of mass destruction, but of ultimate destruction.’<sup>136</sup>

How then did governments respond to this grim appeal? By and large, the usual suspects took the floor on the issue of an NWC. Thus, China submitted a Working Paper on the issue of nuclear disarmament and reduction of the danger of nuclear war by which it seemed to pre-schedule the adoption of an NWC which it had always

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Recommendation 1 were further elaborated on in CSO statements 3, 7, 9 and 11.

135 Ibid.

136 Ibid. See also statement 9.

seen as the last in a long chain of policy options. It demanded that the following element should be incorporated into the recommendations of the 2005 RevCon:

States Parties should commit to a complete prohibition and thorough destruction of nuclear weapons at an early date and the conclusion of an international legal instrument thereupon, thus establishing a world free of nuclear weapons.<sup>137</sup>

In the cluster 1 debate, China made clear what an NWC should look like, namely, it should be similar to the comprehensive bans on chemical and biological weapons:

China actively promotes the international efforts for nuclear disarmament. It stands for the complete prohibition and thorough destruction of nuclear weapons and the conclusion of an international legal instrument for this purpose, in a manner similar to the comprehensive bans on chemical and biological weapons.<sup>138</sup>

For the first time, another NWS, namely, the United Kingdom, seemed to join the Chinese call for an NWC, even though less unequivocal and pointing towards a distant future for its realization:

We want to see a universal, verifiable instrument that guarantees a world free from nuclear danger, and so provides the security that all of us here today are looking for. The NPT offers the best hope of achieving that goal.<sup>139</sup>

This should be seen in the context of another UK statement made in the cluster 1 debate, conditioning the start of negotiations of an NWC by further US and Russian nuclear disarmament steps:

We have consistently stated that when we are satisfied that sufficient progress has been made – for example in further deep cuts in their nuclear forces by the US and Russia – to allow us to include the UK's nuclear weapons in any multilateral negotiations, without endangering our security interests, we will do so.<sup>140</sup>

Cuba further exposed its approach towards proliferation by taking position against the US led Proliferation Security Initiative. The PSI also made CSOs worry because they feared a further bias of state action towards non-proliferation (and towards non-State actors, instead of States alike) and the danger of annihilating the delicate balance between the two goals of the NPT by failing to reaffirm the intrinsic link

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137 NPT/CONF.2005/PC.III/WP.4 of 22 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/320/80/PDF/N0432080.pdf?OpenElement>, last accessed on 4 October 2006.

138 <http://www.reachingcriticalwill.org/legal/npt/prepcom04/chinaDis.pdf>, last accessed on 4 October 2006.

139 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/uk26.pdf>, last accessed on 4 October 2006.

140 Statement of 3 May 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/ukCLdis.pdf>, last accessed on 4 October 2006.

between disarmament and non-proliferation.<sup>141</sup> In a Working Paper, Cuba denounced the PSI as being against international law and a threat to multilateralism:

The possibility of terrorist attacks with weapons of mass destruction cannot be eliminated by means of a selective approach like the one promoted by the PSI, which is limited to combating horizontal proliferation, while ignoring vertical proliferation (the qualitative enhancement of nuclear weapons by States that possess them) and disarmament (the total elimination of weapons of mass destruction).

Cuba reaffirms that the principle of non-proliferation is insufficient to eliminate nuclear weapons, especially when it involves a selective approach, focused only on horizontal proliferation.

The total prohibition and elimination of weapons of mass destruction, including nuclear weapons, is the only guarantee that such weapons would not fall into the hands of terrorists. In that context, States which possess nuclear weapons are required, under the Treaty provisions and together with the other States parties to that Treaty, to negotiate for nuclear disarmament.

As stated in the Working Paper submitted by Cuba at the second session of the Preparatory Committee (NPT/CONF.2005/PC.II/WP.10), only a systematic approach, which would include the components of disarmament, verification, assistance and cooperation, will be able to guarantee the total elimination of nuclear weapons. Cuba is prepared to launch immediate negotiations on a multilateral convention which applies this approach and believes that the Conference on Disarmament, as the sole multilateral negotiating forum in the area of disarmament, is the proper framework for such an undertaking.<sup>142</sup>

Malaysia, on behalf of the NAM, unimaginatively delivered exact repetitions of the NAM statements of the preceding PrepCom sessions in the General Debate, and partly also in the cluster 1 discussion, this time substantiating the NAM calls for an NWC also by considering the total elimination of nuclear weapons to be the only absolute guarantee against the use or threat of use of nuclear weapons.<sup>143</sup> Some NAM States, such as Cuba, Ecuador, Indonesia, Mongolia, Myanmar, Nepal, Nigeria, South Africa, Tunisia, the United Arab Emirates, Venezuela and Vietnam referred to the Malaysian General Debate statement in total in their speeches during the General Debate, some others, such as Cuba, Kenya and South Africa, linked up to this statement in the cluster 1 discussion. A few of those States added some substantive points to their general references to the NAM statements and proposals.

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141 RCW, *News in Review*, No. 1, 26 April 2004, p. 1.

142 NPT/CONF.2005/PC.III/WP.20 of 30 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/333/63/PDF/N0433363.pdf?OpenElement>, last accessed on 4 October 2006.

143 See statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysianam26.pdf>, last accessed on 4 October 2006. The statement was later published as a Working Paper; see NPT/CONF.2005/PC.III/WP.24 of 4 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/343/81/PDF/N0434381.pdf?OpenElement>, last accessed on 4 October 2006. For the cluster 1 statement of 30 April 2004, see <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysiaCL1.pdf>, last accessed on 4 October 2006.

Thus, South Africa requested the contribution of the NAM to be included in the preparation of the outcome of and the recommendations on the PrepCom's work on substantive issues.<sup>144</sup> Nepal phrased the call for an international conference by adding 'an agreed timeline' to the proposal, without, however, mentioning the NWC:

It is a matter of serious concern for my delegation that the commitments made by world leaders at the Millennium Summit to eliminate the weapons of mass destruction, in particular, nuclear weapons have not been sincerely pursued. We support the call made at that time by our Heads of State and Heads of Government to convene, at the earliest, an international conference to consider ways and means to eliminate all nuclear weapons within an agreed timeline.<sup>145</sup>

Finally, Iran, without mentioning the NAM, literally included a NAM proposal in its statement:

We continue to believe in the need for negotiations on a phased program for the complete elimination of nuclear weapons within a specified time limit, including a Nuclear Weapons Convention, and in this regard reiterate our call for the establishment as the highest priority and as soon as possible of an Ad Hoc Committee on Nuclear Disarmament in the Conference on Disarmament.<sup>146</sup>

The NAC, in an official document submitted to the PrepCom containing 'substantive recommendations,' once again literally replicated its earlier formulation.<sup>147</sup> South Africa requested the contribution of the NAC to be included in the preparation of the outcome of and the recommendations on the PrepCom's work on substantive issues. It also submitted a progressive interpretation of the term 'unequivocal undertaking' of the NWS in the 2000 Final Document which considered the elimination of nuclear weapons as the next step on the way to general and complete disarmament, by this refuting both, China's 'ultimate' objective approach and France's linkage of the two issues:

In looking forward, all of the States Parties determined [in 2000, remark of the author] that there was an unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament. They also together determined that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control. These agreements between all States Parties clearly laid down the broad parameters in which the specific 'means' must now be accomplished. No longer did the possibility exist of a situation – as some had previously attempted to argue – where nuclear disarmament is part of some 'ultimate' objective. It was made clear that, as in the case of the other weapons

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144 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/safrica26.pdf>, last accessed on 4 October 2006.

145 Statement of 28 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/nepal28.pdf>, last accessed on 4 October 2006.

146 Statement made in the cluster 1 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/iranCL1.pdf>, last accessed on 4 October 2006.

147 NPT/CONF.2005/PC.III/11 of 26 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/324/43/PDF/N0432443.pdf?OpenElement>, last accessed on 7 October 2006.



of mass destruction (chemical and biological), the elimination of nuclear weapons is a milestone that must be reached on the way to the ultimate objective of the disarmament process, namely, general and complete disarmament. The agreed commitment by all the States Parties to nuclear disarmament had become 'unequivocal'.<sup>148</sup>

While there were definitely more references to an NWC during the Third PrepCom than before, also the other camp of those arguing against an NWC seemed to increase. First, France reiterated its conviction that nuclear disarmament and general and complete disarmament were intrinsically linked and emphasized a step-by-step approach:

In 1995, when the Treaty was extended indefinitely, an action programme with three objectives was adopted, namely: a comprehensive nuclear test ban; the cessation of the production of fissile material for use in nuclear weapons; and the determination to move forward systematically and progressively in cutting nuclear weapons as a whole within the framework of general and complete disarmament.<sup>149</sup>

France was joined by Russia in this matter:

In our view, general and complete nuclear disarmament is a goal to which we should move in a phased manner, on the basis of a comprehensive approach and without putting forward unrealistic goals or targets. Nuclear disarmament, including non-strategic nuclear arms reductions, may not be pursued in isolation from other types of weapons or outside of the overall political situation in the world and Europe, in particular, the present situation with international stability and evolution of the existing military – political alliances and their enlargement, etc.<sup>150</sup>

And:

While we note the progress made in the nuclear disarmament and, accordingly, in the fulfillment of the obligations under Article VI of the Treaty, the Russian side believes that complete elimination of nuclear arms can only be achieved through a gradual, phased movement towards the ultimate objective on the basis of a comprehensive approach and with the participation of all nuclear powers and, certainly, in conditions of sustained strategic stability.<sup>151</sup>

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148 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/safrica26.pdf>, last accessed on 4 October 2006.

149 Statement of 27 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/france27.pdf>, last accessed on 4 October 2006.

150 Statement of 27 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/russia27.pdf>, last accessed on 4 October 2006.

151 Statement made in the cluster 2 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/RussiaCL1.pdf>, last accessed on 4 October 2006.

Germany, besides reiterating its proposal of a radiological weapons convention,<sup>152</sup> once more made reference to its earlier ‘incremental approach’ statements.<sup>153</sup> Such an approach was also preferred by Morocco and the United Arab Emirates, the latter linking it to a time frame:

MA: L’objectif global de la lutte contre le terrorisme doit être d’empêcher des acteurs non étatiques d’acquérir des armes nucléaires, des matières radioactives et des vecteurs. Bien entendu, la mesure la plus souhaitable pour éviter de telles dérives serait une élimination complète des armes nucléaires. Il s’agit là d’un objectif souhaitable, même s’il n’est pas réalisable dans un délai prévisible. Des étapes intermédiaires sont donc nécessaires. Celles-ci ont été clairement identifiées dans « les 13 étapes » définies par la Conférence d’examen du TNP en 2000.<sup>154</sup>

AE: Therefore, our major priority should be to enhance our deliberations in this meeting by focusing on six main axes, which contribute towards making gradual scientific progress towards nuclear disarmament.

1. Demanding the nuclear-weapons possessing countries to immediately, fully and openly implement all the pledges they made during the NPT Review Conferences in 1995 and 2000, including the engagement in sincere and effective negotiations on a step by step program that ensures implementing these pledges according to a time frame for the thirteen functional steps agreed on during the 2000 Review Conference, which aim to complete and irreversible elimination of all their existing nuclear stocks, technology, productive capacities, and launching systems, according to article 6 of the Treaty and paragraphs 3 and 4 of 1995 Review Conference resolution on the principles and goals of nuclear non-proliferation and disarmament...<sup>155</sup>

The Chairman’s summary, anyway abased to a simple Working Paper, did not enumerate any of the issues debated and mentioned in the context of an NWC nor did it mention an NWC as such. It only referred to the proposal of a radiological weapons convention.<sup>156</sup>

*(e) The Review Conference: hardened positions* The call of CSOs for an NWC became even more persistent during the Review Conference. As before, they summarized their recommendations, this time in the last statement as well as in an Appendix to their statements. Using the legal argument of inseparability of non-proliferation and disarmament in the NPT and the untenability of different

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152 NPT/CONF.2005/PC.III/WP.16 of 29 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/27/PDF/N0433127.pdf?OpenElement>, last accessed on 4 October 2006.

153 Statement of 30 April 2004 in the cluster 1 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/germanyCL1.pdf>, last accessed on 4 October 2006.

154 Statement of 27 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/marocco27.pdf>, last accessed on 4 October 2006.

155 Statement of 27 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/emirates27.pdf>, last accessed on 4 October 2006.

156 NPT/CONF.2005/PC.III/WP.27 of 10 May 2004, par. 25, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/47/PDF/N0434447.pdf?OpenElement>, last accessed on 4 October 2006.

time constraints for both, CSOs now devised an even more far-reaching concept of an abolition framework reaching beyond disarmament (positive obligation) by prohibiting nuclear weapons (negative obligation) and also including non-proliferation, by this stealing some NWS' thunder of pointing foremost but exclusively towards non-proliferation (McCoy 2005a, 16–17). Besides its equal emphasis on disarmament and non-proliferation, an abolition framework would be a gradual approach which also de-legitimizes nuclear weapons regardless of who possesses them or tries to acquire them. This concept was first publicly presented by the New Zealand Minister of Disarmament in a speech on 26 January 2005 (Ware 2005). By this framework line, CSOs also picked up NAC and NAM arguments and submitted the existing draft NWC as an abolition model worth of consideration, outlining its step-by-step approach and its completion of the NPT:

#### *4. Start negotiating abolition*

We believe that an abolition framework is the only way forward. Abolition goes further than the simple physical destruction of the weapons – which is disarmament – and also encompasses non-proliferation. A Nuclear Weapons Convention would regulate the phasing out of all aspects of the nuclear weapons complex from the development and testing to deployment and use or threat of use. Verifiably. It would also provide the legal basis for the universal criminalization of nuclear weapons activities, thus helping to prevent breakout. Such a Convention has been written and is possible. It does not replace a step-by-step approach; it *is* a step-by-step approach. It does not compete with the NPT; it *completes* the NPT, which foreshadows such a Convention in its Article VI. Without the commencement of negotiations on a Convention we can never achieve the goals of the NPT. Whether to do this should no longer be an issue. There has to be a negotiated agreement on HOW to abolish nuclear weapons safely and forever; on HOW to deal with breakout or non-compliance; and on HOW to verify a nuclear weapon-free world.

The goal of abolishing nuclear weapons may seem unrealistic to you now, given the difficulties you are facing in these negotiations. But it is equally unrealistic to believe that we can go on like we are for any length of time without the NPT collapsing. It is vital that you save it by making mature decisions about the future of this world and courageously stepping forward to meet this challenge. My generation should not have to deal with this problem because your generation has failed to do so.<sup>157</sup>

Recommendations 2 (Honor the commitment to total nuclear disarmament and to good faith negotiations) and 3 (Establish and respect timelines for disarmament that are expeditious, feasible, and achievable) of Appendix 1, ranging immediately after Recommendation 1 to ensure a successful outcome to the 2005 RevCon, further elaborated on this issue. Using the usual legal references to an obligation of NWS to disarm in accordance with Art. VI of the NPT, to the 1995 and 2000 decisions and documents and to the ICJ Advisory Opinion, they did so by mentioning the

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<sup>157</sup> Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/npt1Ingo-fellmer.pdf>, last accessed on 7 October 2006.

Hibakusha<sup>158</sup> and Youth<sup>159</sup> statements and the time bound framework of the '2020 Vision' of the Mayors for Peace who called for negotiations on a verifiable nuclear weapons ban to begin in 2005 and be completed by 2010 and for the actual elimination of the weapons to take place by 2020, not without losing the 'incremental' approach out of sight.<sup>160</sup> The call for an NWC emerged more often in single CSO statements, too.<sup>161</sup> Moreover, statement 4 refuted the French, and US, argument of a legal, rather than practical, linkage between nuclear, and general and complete disarmament by arguing that a Treaty on general and complete disarmament would be a type of treaty, encompassing the Biological Weapons Convention (BWC) and the CWC as well as an NWC, and thus 'a treaty on the prohibition and elimination of nuclear weapons would be a treaty that would represent progress towards the achievement of general and complete disarmament.'<sup>162</sup> Beside their legal reasoning, CSOs this time gave substantive and summarized grounds about the uselessness of nuclear weapons and the need for their abolition in their introductory statement 'Abolition Is the Only Way':

This opening statement is a collective product of all NGOs participating in this Conference. It sets out, simply, our reasons why we believe that nuclear weapons in today's world are of no use at all, to anyone, for any reason. Later you will hear our main recommendations. We urge you to consider these reasons and recommendations in your deliberations about the future of the NPT.

*A. Why Nuclear Weapons are Obsolete*

*1. The finger is still on that button*

The Cold War is over. Yet thousands of nuclear weapons remain on hair trigger alert in the US and Russia. These could go off by accident, as a result of human error, or through unauthorised use, killing millions.

*2. On offer: Nuclear weapons for everyone*

Israel, India, Pakistan, North Korea. That makes nine nuclear weapon states, despite the NPT. Who will be the next nuclear weapon state? If the NPT falls apart, will we be forced

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158 Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/npt11ngo-konish.pdf>, last accessed on 7 October 2006.

159 Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/nptngo-Wasley.pdf>, last accessed on 7 October 2006. The statement was a blatant appeal on the responsibility of governments for the future – the Youth's future! – and on the moral and democratic values they had subscribed to.

160 <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, last accessed on 7 October 2006.

161 Apart from the above-mentioned Hibakusha and Youth statements, see statements 3, <http://www.un.org/events/npt2005/statements/npt11ngo-ellsberg.pdf>, and 4 of 11 May 2005 <http://www.un.org/events/npt2005/statements/npt11ngo-cabasso.pdf>, all last accessed on 7 October 2006.

162 Ibid. It was further argued that the ICJ in its Advisory Opinion combined the two clauses of the article in such a way and that the 2000 commitments separated the elimination of nuclear arsenals from the 'ultimate objective' of 'general and complete disarmament,' and that this would further substantiate the argument.

to live in a world with dozens of countries armed with nuclear weapons and no controls? Already nuclear technology is being sold on the black market.

### *3. A smoker cannot forbid others to smoke*

No state wants other states to get hold of nuclear weapons. Neither do we. Mohammed El-Baradei, Director-General of the IAEA, said: 'As long as you continue to have countries dangling a cigarette from their mouth, you cannot tell everybody not to smoke with a high degree of credibility.' And yet the nuclear weapon states are modernising their own arsenals. The US is even planning new types of nuclear weapons. The Nuclear Posture Review and one budget request after another make this undeniable. New and existing nuclear weapons (for example, Mininukes and Bunker Busters) might be used in 'preventive' warfighting against hardened underground targets. The suggestion that the collateral damage could thereby be minimised, reduces the threshold for the use of such weapons. Expert studies have shown that, however small, these weapons would still produce high levels of fallout and remain weapons of mass destruction that kill and contaminate with radiation. Moreover, our information indicates that the nuclear earth penetrator would not be have a small yield at all.

### *4. Nuclear weapons don't stop people from dying*

The big threats that our world is facing today cannot be averted through possession of nuclear weapons. Mass destruction takes place daily without any bombs going off at all.

There can be no military protection for the victims of respiratory diseases, diarrhoea, malaria, hepatitis, measles and AIDS. Or of environmental degradation, starvation, poverty, or climate change. Or civil war, using small arms and machetes. These are the real killers. Security against these threats cannot be provided by nuclear weapons. What we need is clean water, nutrition, health, education and a safe place to live. The tsunami in South Asia showed us that spending money on a tsunami warning system could have saved many lives. So why are we spending billions on missile defence and nuclear weapons instead of investing in technology to promote human security? On the other hand, every single disarmament measure is a step towards confidence and trust-building and frees more resources for real security measures.

### *5. You are the nuclear target*

If you point nuclear weapons at anyone, then they are pointed at you. The possession of nuclear weapons is an invitation for others to acquire them and threaten you with them.

### *6. After the fact: There is no medical aid*

Once the worst has happened – whether an all-out nuclear war caused by accident or a 'limited' nuclear war – health services will break down. The number of burns alone would overwhelm the most well-equipped burns unit. Assuming there are any burns units. Or people to staff them. Radiation sickness will follow. Many people will die a terrible death without any medical relief at all. In a 'conventional' war or a major disaster, such as the December tsunami, health services are barely able to cope and often break down. In a nuclear war there would be no chance at all.

### *7. Nuclear weapons cannot deter terrorists*

A suicide bomber or an attacker armed with a carpet knife who is prepared to give his life for his cause cannot be deterred by any kind of threat, including a nuclear threat. On the contrary, the very existence of nuclear weapons and fissile materials from which to make them leaves the world more vulnerable to attack from non-state actors. Radioactive

materials – whether legally or illicitly acquired – can be used either for making a nuclear weapon or for use in a radiological weapon.<sup>163</sup>

CSO arguments altogether showed high deliberation maturity when listening to, using or rebuffing governmental arguments, giving reasons and carefully rephrasing their own argumental input in order to grip different concerns without letting clarity in their point of view drop.

As regards governmental reactions, it first has to be stated that China<sup>164</sup> repeated its earlier statement of the Third PrepCom, as did Iran<sup>165</sup> and the UK:

The UK believes that we have made significant progress towards the goals of Article VI, but we also continue to encourage mutual, balanced and verifiable reductions in the numbers of nuclear weapons world-wide. We would like to see a world free from the dangers of nuclear weapons and we have consistently stated that when we are satisfied that sufficient progress has been made – for example in further deep cuts in their nuclear forces by the US and Russia – to allow us to include the UK's nuclear weapons in any multilateral negotiations, without endangering our security interests, we will do so.<sup>166</sup>

Cuba<sup>167</sup> similarly reiterated its positions, but complemented it by attributing a verification role to the IAEA in the framework of an NWC:

12. The International Atomic Energy Agency (IAEA) has an essential part to play in the application of the verification principle. Through the implementation of the safeguards system, the Agency's task is to ensure that nuclear energy can be used only for peaceful purposes by the non-nuclear-weapon States parties. Cuba fully supports the Agency's role in verifying compliance with the worldwide safeguards regime provided for in the Treaty.

13. That regime, however, needs to be strengthened, since it is still limited to that aspect of non-proliferation known as 'horizontal,' and does not include areas such as the development of new nuclear weapons and related devices, excess fissile material in the possession of the nuclear Powers which is not destined for military uses, and the

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163 Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/npt11ngo-hall.pdf>, last accessed on 7 October 2006.

164 See NPT/CONF.2005/WP.2 of 26 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/46/PDF/N0532346.pdf?OpenElement>, last accessed on 7 October 2006. See also its statement in Main Committee I of 19 May 2005, <http://www.china-un.org/eng/xw/t196528.htm>, last accessed on 7 October 2006.

165 See NPT/CONF.2005/WP.47 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/50/PDF/N0535050.pdf?OpenElement>, last accessed on 7 October 2006. See also its statement in Main Committee I of 19 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Iran.pdf>, last accessed on 7 October 2006.

166 Statement on 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/UK.pdf>, last accessed on 7 October 2006.

167 See NPT/CONF.2005/WP.24 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/333/41/PDF/N0533341.pdf?OpenElement>, NPT/CONF.2005/WP.26 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/333/17/PDF/N0533317.pdf?OpenElement>, and Cuba's statement in the General Debate of 5 May 2005, <http://www.un.org/events/npt2005/statements/npt05cuba.pdf>, last accessed on 8 October 2006.

final use of such material. It should also include verification of measures to eliminate or reduce nuclear weapons which have been agreed upon in bilateral treaties and unilateral decisions. Of course, IAEA should also have an essential role in verifying compliance with any multilateral treaty designed to achieve the total elimination of nuclear weapons.<sup>168</sup>

The NAM<sup>169</sup> likewise repeated its positions in Working Papers, which were supported in speeches by Jamaica and the Philippines in the General Debate and by Bangladesh in Main Committee I. However, the NAM did not mention an international conference this time and, in submitting draft recommendations for the Review Conference modelled on the NPT format, rather formulated a more stringent call for an Ad hoc Committee on nuclear disarmament in the CD, 'taking into account all proposals that have been submitted by members of the Group of 21 and the five ambassadors.'<sup>170</sup> Moreover, it proposed to introduce reporting obligations on the implementation of the ICJ Advisory Opinion:

The States parties, in particular the nuclear-weapon States, shall inform the Secretary-General of the United Nations of the efforts and measures they have taken on the implementation of the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and to bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.<sup>171</sup>

The Group added a few new premise arguments, such as the slow pace of progress towards nuclear disarmament, the threat posed by the continued existence of nuclear weapons, the need for the prevention of dangers of nuclear war and for the strengthening of international peace and security. Apart from this, the Group diplomatically remained silent in all statements in the General Debate as well as in Committee meetings on its perhaps too progressive position of an NWC. Instead, Bangladesh was more proactive and repeated its call for a phased program for complete elimination of nuclear weapons with a specified timeframe in Main Committee I.<sup>172</sup> In the General Debate, Bangladesh even explicitly supported the Mayors for Peace program,<sup>173</sup> as did Argentina.<sup>174</sup> Venezuela then joined the calls for an NWC by using the premise of the will of the people, as did Brazil, which argued

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168 NPT/CONF.2005/WP.24 of 4 May 2005; *ibid*.

169 NPT/CONF.2005/WP. 8 of 26 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/10/PDF/N0532310.pdf?OpenElement>, and NPT/CONF.2005/WP.18 of 2 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/329/76/PDF/N0532976.pdf?OpenElement>, both last accessed on 8 October 2006.

170 NPT/CONF.2005/WP. 8 of 26 April 2005, par. 34, *ibid*.

171 NPT/CONF.2005/WP. 8 of 26 April 2005, par. 33, *ibid*.

172 Statement of 20 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Bangladesh20.pdf>, last accessed on 8 October 2006.

173 Statement of 5 May 2005, <http://www.un.org/events/npt2005/statements/npt05bangladesh.pdf>, last accessed on 8 October 2006.

174 Statement of 2 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt02argentinae.pdf>, last accessed on 8 October 2006.

with disarmament and non-proliferation as being mutually reinforcing processes requiring progress on both fronts:

VE: Venezuela hace un llamado a los Estados poseedores de armas nucleares para que eliminen sus arsenales nucleares, y los exhortamos al cumplimiento de la recomendación de la Opinión Consultiva de la Corte Internacional de Justicia en 1996, de llevar a cabo negociaciones de buena fe, para concluir un Tratado encaminado al Desarme Nuclear en todos sus aspectos, en concordancia con el Artículo VI del Tratado. Consideramos que las medidas que hasta ahora se han adoptado son insuficientes. Debe darse cumplimiento a las trece medidas prácticas del Artículo VI, del TNP, reiteradas en el Documento Final de la Conferencia de Examen del 2000.<sup>175</sup>

BR: The Conference should seek a commitment by Nuclear-Weapon States not to use nuclear weapons, as a first step, in a process that should lead to the negotiation of a convention to ban their production and use, following the examples of biological and chemical weapons conventions.<sup>176</sup>

Also the African Group became more active this time. Thus, Nigeria submitted a Working Paper to Main Committee I which explicitly referred to an NWC, basing its call on peace and security as well as on development considerations:

The Conference is convinced that effective disarmament and arms control, particularly in the nuclear field, are essential for the prevention of nuclear war and the strengthening of international peace and security as well as for economic and social advancement. States Parties, therefore, agree that the most effective means of achieving nuclear disarmament should be the commencement of multilateral negotiations leading to an early conclusion of a convention prohibiting the development, production, deployment, stockpiling, transfer, threat or use of nuclear weapons and on their total elimination. The Conference affirms that nuclear weapons are not necessary for national or international security.<sup>177</sup>

It was joined by Kenya which said in its statement in the General Debate:

The need to negotiate and conclude an international Convention for the total elimination of nuclear weapons cannot be over-emphasized. [...] The African Group has advocated the commencement of multilateral negotiations leading to the conclusion of a Convention prohibiting the development, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and on their total elimination. It is the conviction of my delegation that this is the only solution to the nuclear weapons threat.<sup>178</sup>

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175 Statement of 4 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt04venezuela-spanish.pdf>, last accessed on 8 October 2006.

176 Statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Brazil.pdf>, last accessed on 8 October 2006.

177 NPT/CONF.2005/MC.I/WP.2 of 20 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/351/42/PDF/N0535142.pdf?OpenElement>, last accessed on 8 October 2006.

178 Statement of 10 May 2005, <http://www.un.org/events/npt2005/statements/npt10kenya.pdf>, last accessed on 8 October 2006.



The United Arab Emirates assessed the standstill in the process towards an NWC and made the following proposals:

[W]e invite the international community through this important gathering to give priority to the following procedures: [...]

4. Issuing recommendations aiming at strengthening the mandate of the Disarmament Conference to enable it to establish specialized committees and international arrangements for addressing challenges which prevent the international community from reaching an agreement on a phase program aiming at total destruction of nuclear weapons, and prohibiting the production, development, acquisition, stockpiling, transport, and use of these weapons or threat to use them.<sup>179</sup>

However, the most powerful statement was contained in a Working Paper jointly submitted by Malaysia and Costa Rica as well as Bolivia, the Democratic Republic of Timor-Leste, Nicaragua and Yemen. It was introduced by Costa Rica in the General Debate and supported by Mexico in Main Committee I. The Paper, entitled 'Follow-up to the Advisory Opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*: Legal, technical and political elements required for the establishment and maintenance of a nuclear weapon-free world,' built on a Working Paper introduced by Malaysia and Costa Rica in 2000<sup>180</sup> and this time could already rally more States behind the proposal. It recommended that States parties agree to give further consideration to the legal, technical and political elements required for a Nuclear Weapons Convention or a framework of instruments and that they agree to commence multilateral negotiations leading to the conclusion of a Nuclear Weapons Convention and invite those States that have not acceded to the Treaty on the Non-Proliferation of Nuclear Weapons to join in such negotiations. They called this non-discriminatory approach 'incremental-comprehensive,' combining thus the two extreme but not successful positions and incorporating, but slightly changing the CSO abolition approach. Their approach was meant to develop a program for action, encompassing and extending the practical steps of 2000, with a clear end goal and defined elements to fulfil, but with no time limit (see also Scheffran et al. 2005, 6–7). This should result in 'negotiations leading to the conclusion of a Nuclear Weapons Convention or a framework of instruments for the complete abolition and elimination of nuclear weapons,' starting with the completion of disarmament steps in areas where agreement can be reached within a short to medium timeframe and resolving more difficult issues requiring more complex arrangements through continuing negotiations and in subsequent steps.<sup>181</sup> By this, the submitting States integrated the NAC two-way proposal of either an instrument or a framework set of instruments and managed also to satisfy different CSO positions through a compromise proposal (Schlupp-Hauck 2005b). Some CSO representatives referred to this pragmatic proposal as being 'the most realistic

179 Statement of 20 May 2005 in Man Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/UAE20.pdf>, last accessed on 8 October 2006.

180 See p. 79, note 89.

181 NPT/CONF.2005/WP.41 of 18 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/17/PDF/N0534817.pdf?OpenElement>, last accessed on 8 October 2006.

approach to making progress towards universality of NPT norms' (Ware 2005, 32). Nevertheless, amidst the turmoil of heated discussions about intransigent positions during the 2005 RevCon, the Working Paper fell on deaf ears: It was neither discussed in depth, nor publicly supported by many governments. Therefore, in an e-mail action alert sent out on 25 May 2005, the CSO Abolition Caucus urged NGOs to send letters to governments to support Working Paper 41 which called for further consideration of the legal, technical and political elements required for a Nuclear Weapons Convention.<sup>182</sup>

However, other States did not seem to have agreed that the time had come for an NWC. During the RevCon, this view was predominantly found in Main Committee I, not in the General Debate. The most stringent ones once again were some NWS linking nuclear to general and complete disarmament. Thus, Russia alluded to 'sustained strategic stability' as a precondition for nuclear disarmament:

In this connection, we believe that complete elimination of nuclear arms can only be achieved through a gradual, phased movement towards the ultimate objective on the basis of a comprehensive approach and with the participation of all nuclear powers and, certainly, in conditions of sustained strategic stability.<sup>183</sup>

This time, Russia was joined by the US with a similar argument, while France remained silent:

Mr. Chairman, the United States believes that many States Parties have made little effort to meet their non-nuclear obligations under Article VI: that is, to pursue negotiations in good faith on general and complete disarmament. In fact, this component of Article VI often is overlooked entirely, even though the text and negotiating history of the NPT support the expectation that efforts toward complete nuclear disarmament would be linked with efforts toward general and complete disarmament. As Article VI states, the full undertaking envisions a 'Treaty on general and complete disarmament under strict and effective international control.'

Clearly, over time, the international community has moved away from pursuing this element of Article VI implementation in a literal sense. While this is not the time for a specific summary of United States achievements in the field of non-nuclear arms reductions, Mr. Chairman, we take this opportunity to state for the record that our efforts in this area, particularly in the field of chemical and biological weapons control, are extensive. In short, there is a clear relationship between the nuclear and non-nuclear aspects of Article VI, even though the language in the Treaty contains no suggestion whatsoever that nuclear disarmament must be achieved before general and complete disarmament can be achieved.<sup>184</sup>

In the end, the NWS positions were not that different, the ones subscribing to the 'yes, but first...' and the others adhering to the 'no, because first...' view. Other

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182 On file with author.

183 Statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Russia.pdf>, last accessed on 7 October 2006.

184 Statement of 20 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/USA20.pdf>, last accessed on 7 October 2006.

States continued to praise a step-by-step approach without having listened to or agreeing with the CSO argument that this could and naturally would be the content of an NWC. Germany at least seemed to acknowledge that some decision about what an incremental approach means would have to be taken, at the same time pleading against any timeframe:

Secondly, the Conference should acknowledge that the complete elimination of nuclear weapons cannot be achieved in one leap and should endorse the concept of a step-by-step approach as already enshrined in the 13 Practical Steps of the 2000 Final document. We need a common agreement of the concept of an incremental approach, which – gradually and inexorably – leads to the achievement of the goal of total elimination of Nuclear weapons.

And:

It is irrelevant to discuss when we will be able to attain a nuclear weapon-free world. We must instead devote all our efforts to continued and steady progress in this direction and there should be no room for doubts that we are moving irreversibly forward.<sup>185</sup>

Others, such as Austria,<sup>186</sup> Belarus<sup>187</sup> and Belgium,<sup>188</sup> simply talked about a gradual approach without any reference to the CSO argument of an NWC. The NAC statement, endorsed by Mexico, New Zealand, re-circulating the statement, South Africa and Sweden in Main Committee I or its subsidiary body without further content-related reference, now realized that the New Agenda's 'ultimate' compromise approach, here linked to progress within the CD, had not met with reciprocity: 'The New Agenda has continued to call for the CD to address nuclear disarmament. We have remained flexible as to how those discussions would take place and what would be the end result. However, our flexibility has not been reciprocated.'<sup>189</sup>

*(f) Results* At this stage, a conclusion has to be drawn of whether (a) governments justify their conclusions with reference to CSO arguments, whether (b1) CSO arguments are adopted by governments as part of their official positions and whether (b2) some of these arguments are put on the agenda of the policy-making process.

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185 Statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Germany.pdf>, last accessed on 7 October 2006. Germany afterwards – and very lately – resubmitted its Working Paper of the First PrepCom; see NPT/CONF.2005/WP.52 of 23 May 2005, <http://www.un.org/events/npt2005/npt-conf2005-wp52e.pdf>, last accessed on 7 October 2006.

186 Statement of 4 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt04austria.pdf>, last accessed on 7 October 2006.

187 Statement of 10 May 2005, <http://www.un.org/events/npt2005/statements/npt10belarus.pdf>, last accessed on 7 October 2006.

188 Statement of 4 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt04belgium-french.pdf>, last accessed on 7 October 2006.

189 Statement of 18 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/GDstatements/NZ-NAC.pdf>, last accessed on 7 October 2006.

First, one can tell that CSOs showed a remarkable adaptability of their arguments during the review process without losing their end goal, an NWC, out of sight. Whereas during the First PrepCom, they only referred to an NWC *per se*, during the Second PrepCom, they already integrated the NAM call for an international conference in order to adopt such a treaty and picked up some precise elements from the original Model NWC, such as the legal protection to whistle-blowers in domestic laws. During the Third PrepCom, they carefully adapted their NWC proposal by clarifying that incremental steps, building on the 13 steps, were in fact part of it, whereas what would be new would be the time-bondage, not included in the 13 practical steps. They also made clear that the call for ‘incremental steps’ in fact was nothing else than the NAM’s call for a phased program for the complete elimination of nuclear weapons. The mentioning of a Summit meeting as a starting point was supplemented by the introduction of the concept of an International Nuclear Disarmament Organization, as already contained in the Model NWC. However, the tone of their intervention had changed, as was also visible during the RevCon. Here, CSOs even introduced a more sophisticated model of an abolition framework, the term of which they had already used before, yet without attributing the same meaning to it. For the sake of honesty, it has to be said that this model was first presented by New Zealand a few months earlier. CSOs thus reacted quickly and integrated NAM, NAC and NWS arguments into the proposal. Altogether, they mentioned their NWC proposal also more frequently, thus putting more pressure on governments. Finally, they responded to the ‘linkage’ argument of nuclear disarmament on the one hand and general and complete disarmament on the other of some NWS by a very interesting legal reasoning. Thus, in sum CSOs more and more refined their proposal, integrated State arguments and presented an increasingly sophisticated, though not reduced or compromised, NWC model.

And governments? How did they react? First, governments used less premises than CSOs. In addition, they rarely explicitly justified their position with reference to CSO premises, even though they often used the same premises, such as the imbalance of the NPT, the relevance of all treaty obligations, the atrocities caused by the use of nuclear weapons or the fading security and the danger of the NPT falling apart. An explicit justification of a conclusion with regard to a CSO conclusion could only be detected in two cases: in the two references to the Mayors for Peace campaign. Even when Germany rejected an NWC and opposed it with its ‘incremental’ approach, this was not done so by way of explicitly refuting a CSO position.

However, some governments seemed to have listened and adopted the CSO conclusion of an NWC, even though slightly changing its content. During the First PrepCom, the proposal prominently figured in the NAM, NAC and the Chinese statements. The NAM partly adopted the Abolition 2000 phrasing, yet considering an NWC as one element among others. The NAC took on a compromise position by referring to the NWC as an ultimate, not immediate goal, in which it was joined by China. The ‘ultimate’ approach, together with the ‘incremental’ approach, then sparked off a debate among governments about a step-by-step tactic towards nuclear disarmament which culminated in many statements in favor of such an approach from the Second PrepCom onwards until the RevCon. During the Second PrepCom, it even found its way into the Chairman’s factual summary. CSOs reacted to this

discussion only at the Third PrepCom, trying to show that their proposal indeed encompassed such a step-by-step approach. As we will see, the combination of NWC and step-by-step approach was then well included in the Malaysian et al. Working Paper during the RevCon. An NWC was also supported by Cuba, then a new member of the NPT, during the Second PrepCom. At the Third PrepCom, references in favor of an NWC increased, as did, however, references against. The UK pronounced a conditioned agreement to an NWC, which was, however, not that far from the disagreement of other NWS by referring to a distant future and the necessity of significant disarmament steps by the US and Russia first. France repeated its 'linkage' argument of the First PrepCom, by this caused a further discussion and reaped an interesting rejoinder of South Africa arguing that the next step would be nuclear disarmament according to the 13 practical steps of 2000. The debate continued throughout the RevCon, where CSOs used another legal anti-linkage argument, whereas France, this time silent, was now supported by the 'linkage' users US and Russia.

Apart from this 'step-by-step' debate, the arguments for and against an NWC continued to increase during the RevCon where more States participated. However, the discussion was mostly left to the closed meetings, namely, the Main Committee I meetings, and some actors, such as France on the one hand and the NAM on the other hand, remained conspicuously restrained about their positions. Nevertheless, those conclusions were pronounced in a more stringent fashion, as it was in the case of the NAM, which added a reporting obligation on implementation of the ICJ decision, or the NAC, complaining about their compromise position being misused for other purposes, or Cuba, proposing an IAEA function as part of an NWC, or Bangladesh and Argentina, explicitly mentioning the Mayors for Peace campaign. The most innovative paper, however, was the Malaysian et al. Working Paper No. 41. It was a compromise paper *per se* by using a mix of an 'incremental-comprehensive' approach, the CSO abolition proposal, however, without the time setting, but having reference to their suggestion uttered at the First PrepCom of encouraging a debate on the political, legal and technical requirements for complete nuclear disarmament, and included the NAM NWC-one-element-among-others as well as the NAC two-way (one instrument or framework) approaches. The drafting of the Paper had been preceded by intense discussions, also with CSO representatives. On the other hand, and contrary to the CSO argumentation, governmental arguments stood out by constant repetition. Apart from the slight increase in stringency during the RevCon statements and the outstanding Malaysian et al. approach, throughout the whole review process, positions remained totally static and no changes or adaptations, neither to arguments of CSOs nor to those of other State delegations, could be detected. The only exception was a slight change in the Chinese position during the Third PrepCom. Often, conclusions even were repeated word by word.

Finally, the goal of a Nuclear Weapons Convention never at any stage entered the agenda of the PrepCom sessions or the RevCon. As we have seen previously,<sup>190</sup> even the establishment of subsidiary bodies, including one on disarmament, already caused lots of heated discussions. The NNWS, especially the NAM, supported a

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190 See pp. 46–7.

subsidiary body of Main Committee I on disarmament, whereas the US opposed it. Agreement could not be reached during the Third PrepCom and a compromise was only found well into the RevCon, even though CSOs already at the Third PrepCom spoke of a majority, a ‘near critical mass of political will,’ being in favor of disarmament.<sup>191</sup> However, at no stage was there the question of expressly tasking such a subsidiary body on disarmament with processing an NWC. We will now look at the issue of reporting and see whether governments were more responsive to CSO claims in this regard.

### *What Should Reporting Look Like?*

The issue of reporting, contrary to the debate on an NWC or on renewable energy,<sup>192</sup> was favored and pushed by many States which viewed it as a contribution to transparency and accountability and thus as a confidence-building measure. ‘Permanence with accountability’ had been the compromise which in 1995 had made the indefinite extension of the NPT possible.<sup>193</sup> Decision 1 of the 1995 Review Conference therefore had stipulated:

7. The Conference further agreed that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.<sup>194</sup>

With regard to nuclear disarmament, par. 4 (c) of Decision 2 said:

4. The achievement of the following measures is important in the full realization and effective implementation of article VI, including the programme of action as reflected below:

...

(c) The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.<sup>195</sup>

The 2000 Final Document then further elaborated on the issue of reporting and requested States to regularly report on the implementation of Art. VI and par. 4 (c)

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191 RCW, *News in Review*, No. 7, 4 May 2004, p. 1.

192 See pp. 145 ff.

193 See p. 27.

194 NPT/CONF.1995/32(Part I), Annex, <http://disarmament2.un.org/wmd/npt/1995dec1.htm>, last accessed on 12 June 2006.

195 NPT/CONF.1995/32(Part I), Annex, <http://disarmament2.un.org/wmd/npt/1995dec2.htm>, last accessed on 12 June 2006.

of the 1995 Decision on Principles and Objectives, a requirement mandated by step 12 of the 13 practical steps agreed upon in 2000:

15. 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’:

...

12. 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 1995 Decision on ‘Principles and Objectives for Nuclear Non-Proliferation and Disarmament,’ and recalling the advisory opinion of the International Court of Justice of 8 July 1996.<sup>196</sup>

The requirement to report is voluntary, not mandatory, since Final Documents are not legally binding. Moreover, neither the purpose, the format, the scope or the content of a report, nor the time frame or framework are specified in the Final Document. Thus, States interpreted for example the question of regularity either as an annual reporting mechanism or as one to be fulfilled once every single review process, especially for the Review Conferences. The following Tables 7.1 and 7.2 enumerate the reports handed in during the three PrepComs, as recorded at the beginning of the RevCon:

**Table 7.1 Reports submitted**

67	Formal reports submitted to date
39	States submitted at least one formal report
11	Formal reports submitted in 2002
28	Formal reports submitted in 2003
28	Formal reports submitted in 2004
22	States submitted more than one report
6	States submitted reports all three years
20	States reported in 2003 for the first time
8	States reported in 2004 for the first time
3	States reported only once in 2002

Source: *NPT Reporting Trends*, Project Ploughshares, May 2005.

<sup>196</sup> It should be added that step 9 (b) called for ‘[i]ncreased transparency by the nuclear weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament’; for both see NPT/CONF.2000/28 (Parts I and II), <http://disarmament.un.org/wmd/npt/2000FD.pdf>, last accessed on 30 October 2006, p. 15.

**Table 7.2 Sources of reports**

6	New Agenda Coalition States reported (Brazil, Ireland, Mexico, New Zealand, South Africa, Sweden)
9	Non-Aligned States reported (Indonesia, Iran, Malaysia, Mongolia, Morocco, Peru, South Africa, Sri Lanka, Thailand)
16	NATO States reported (Belgium, Bulgaria, Canada, Czech Republic, Germany, Greece, Hungary, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain)
16	EU States reported (Austria, Belgium, Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden)
24	CTBT Annex B States reported (Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Finland, Germany, Greece, Hungary, Indonesia, Iran, Mexico, Netherlands, Norway, Peru, Poland, Republic of Korea, Romania, Slovakia, South Africa, Spain, Sweden, Ukraine)
0	Nuclear Weapon States formally reported

*Source: NPT Reporting Trends, Project Ploughshares, May 2005.*

With regard to the format, most States reported on the ‘implementation of Art. VI and par. 4 (c) of the 1995 Decision on Principles and Objectives,’ whereas some also informed about implementation of the 13 practical steps of 2000, for example Argentina, Belgium, Brazil, Guatemala, New Zealand, Norway, South Africa and Spain. Others again, such as Austria, Brazil, Canada, Croatia, Indonesia, Lithuania, Luxembourg, Mongolia, New Zealand, Poland, Russia and Slovakia, even covered the entire NPT obligations, reporting article by article. During the PrepComs the level of detail in reports increased over time (Estabrooks 2005a, 4–5). The NWS did not report formally until the RevCon, where China and Russia submitted official reports. However, all NWS informally provided information of the kind requested for reports each year at PrepCom sessions in statements during the General Debate, in cluster sessions and/or special time meetings (Applegarth and Tyson 2005, 33). Some also distributed Working Papers or unofficial information papers and booklets on their disarmament obligations (Estabrooks 2005a, 2–3). Yet, the UK was the only NWS to report on the number and operational status of its weapons, whereas the US and Russia only informed about deployed weapons and China and France remained very vague (Estabrooks 2005b, 23).

The reports handed in by States were not evaluated by the UN Secretariat. Instead, in 2002 CSOs, coordinated by WILPF, started to produce an annual ‘NGO



Shadow Report: Accountability is Democracy, Transparency is Security,<sup>197</sup> which was meant to be a model for State reporting under step 12 of the 13 practical steps. It offered a comprehensive, standardized set of guidelines for State reports on both military and civilian nuclear holdings. In addition to listing all measures taken by each NWS under its Article VI obligations, it also listed the nuclear holdings in each of the 44 States enumerated in Annex II of the CTBT, that is those States which have nuclear power reactors and/or research reactors. Later versions of the Shadow Report included a chapter on NWS compliance with all 13 steps.<sup>198</sup> Moreover, the NGO Project Ploughshares published the report on ‘NPT Reporting Trends’ (Estabrooks 2005a).

In addition, the 2000 Final Document also introduced a more specific reporting requirement of States, especially NWS and the States of the Middle East region, namely, to report during the 7th review process on the steps taken to promote a NWFZ in the Middle East:

7. 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 such a zone and 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.<sup>199</sup>

Here, it was clear that reports had to be presented during each session. As requested, the UN Secretariat submitted a compilation of all reports handed in to the RevCon so far, without, however, evaluating its content.<sup>200</sup>

This chapter concentrates on the two reporting requirements included in the 2000 Final Document and mentioned above. Those isolated reports of some States not specifically required for in Final Documents or treaties, such as the UK reports on verification during the 7th review process, Mongolia’s reports on its nuclear-weapon-free status, Japan’s reports on its efforts in disarmament and non-proliferation education and similar information, are excluded. Moreover, during the 7th review process, other ideas about new reporting requirements, besides existing ones such as the afore-mentioned two or the reports to and of the IAEA, emerged. Thus, during the Second PrepCom CSOs in their indigenous presentation requested formal reporting procedures of States on the issues of uranium mining, testing, experimenting, rehabilitation and toxic waste storage affecting indigenous communities. They also

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197 From 2005 onwards, it was entitled ‘Model Nuclear Inventory: Accountability is Democracy, Transparency is Security.’

198 For the 2005 chapter, see <http://www.reachingcriticalwill.org/about/pubs/Inventory/NWSCompliance.pdf>, last accessed on 1 November 2006.

199 NPT/CONF.2000/28 (Parts I and II), <http://disarmament.un.org/wmd/npt/2000FD.pdf>, last accessed on 30 October 2006, p. 18.

200 NPT/CONF.2005/15 of 29 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/17/IMG/N0533217.pdf?OpenElement>, last accessed on 1 November 2006.

asked for the establishment of a holistic Indigenous Committee which would report to the NPT process officially and regularly on State actions to address the issue of disadvantage arising from findings of such reporting. During the First PrepCom, Germany proposed that Russia and the US should report on the implementation of the 1991/92 Presidential Nuclear Initiatives, that is of the unilateral US and Russian commitments to reduce non-strategic nuclear weapons. At the RevCon, Japan called for voluntary information sharing on disarmament and non-proliferation education, a request which entered the Chairman's Working Paper annexed to the Report of Main Committee I. And finally, in the same Chairman's Working Paper submitted to Main Committee I of the RevCon, the availability of an exchange of information among States parties on measures related to the implementation and enforcement of their obligations under Art. I and II entered the wording which then consequently could also be found in the Committee's report. These requests are excluded in the analysis, simply because, when speaking of reporting requirements, what is referred to usually is on the one hand step 12 of the 13 practical steps and the Middle East reporting requirement on the other.<sup>201</sup>

*(a) First PrepCom: reporting as a stumbling stone?* As noted above, the 2000 Final Document constituted the starting point of a voluntary reporting requirement. Therefore, this half-way obligation at least in some way or the other, implicitly or explicitly, should have been part of the agenda of following review sessions. Indeed, even though not expressly mentioned, at the First PrepCom and at the following PrepCom sessions it could be subsumed under agenda item 6 which reads as follows:

6. Preparatory work for the review of the operation of the Treaty in accordance with article VIII, paragraph 3, of the Treaty, in particular, consideration of principles, objectives and ways to promote the full implementation of the Treaty, as well as its universality, including specific matters of substance related to the implementation of the Treaty and Decisions 1 and 2, as well as the resolution on the Middle East adopted in 1995, and the outcome of the 2000 Review Conference, including developments affecting the operation and purpose of the Treaty.<sup>202</sup>

However, as alluded to previously,<sup>203</sup> in the following, the question arose whether or not to include the issue of reporting on the indicative timetable and in the special blocs of issues which almost caused the indefinite postponement of the First PrepCom. The matter was whether reporting was a substantial (favored by the NAC and Canada), rather than a procedural (position of France and the US) issue which would mean that it would not have to be postponed to later sessions as it was the case for procedural matters. A paper of the NAC then facilitated a compromise

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201 An exception constitutes the additional reporting requirement on implementation of the ICJ decision proposed by the NAM during the RevCon, since it is closely linked to the step 12 reporting obligation.

202 NPT/CONF.2005/PC.I/21 of 19 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement>, last accessed on 2 November 2006.

203 See p. 44.

about including the term ‘agreements, conclusions and commitments,’ referring to the disarmament part of the 2000 Final Document, into the first of the three special blocs of the PrepCom, an addition which also encompassed the issue of reporting (Applegarth and Tyson 2005, 32). The Report of the First PrepCom then stated:

15. The Committee considered the following three specific blocs of issues:

- a) Implementation of 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,’ as well as the agreements, conclusions and commitments listed under the section entitled ‘Article VI and eighth to twelfth preambular paragraphs’ contained in the Final Document of the 2000 NPT Review Conference;
- b) Regional issues, including with respect to the Middle East and the implementation of the 1995 Middle East resolution and the commitments, conclusions and follow-up submissions to the United Nations Secretary-General, the President of the 2005 Review Conference and the Chairpersons of the Preparatory Committee meetings, in accordance with the relevant subparagraphs listed under the section entitled ‘Regional issues: The Middle East, particularly implementation of the 1995 Resolution on the Middle East,’ contained in the Final Document of the 2000 Review Conference; and
- c) Safety and security of peaceful nuclear programmes.<sup>204</sup>

During the First PrepCom, 11 States submitted formal reports on Art. VI. From the NWS, France and Russia delivered speeches in the cluster 1 session which they expressly captioned or designated as an Article VI report. The UK gave a similar oral report without denominating it as such and the US presented an information paper. With regard to the Middle East, 18 formal reports were handed in, including China, the UK and the US from the group of the NWS, the latter first calling its report a ‘submission.’ The UK, in a statement given in the discussion on regional issues, emphasized that the written report, taken together with the UK oral interventions in this regard, would constitute its comprehensive report on the Middle East.<sup>205</sup> France, likewise in the discussion on regional issues, called its oral presentation a Middle East report.

CSOs gave a detailed account of their ideas about reporting in a single statement delivered by the Campaign for Nuclear Disarmament (CND). Arguing for the moral and human imperative to implement the NPT, that ‘[t]he way forward is clearly set out but what is lacking is accountability,’<sup>206</sup> they called for regular reporting, combined with markers and a time frame, and proposed reports on the 13 steps as well as on each Treaty Article. Reporting should look like as follows:

This paper to the 2002 NPT Preparatory Committee sets out the Non Governmental Organisations position on the *purpose, mandate, scope* and *venue* for effective reporting.

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204 NPT/CONF.2005/PC.I/21 of 19 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement>, last accessed on 2 November 2006.

205 Statement of 15 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Reg-Britain.htm>, last accessed on 8 November 2006.

206 Statement of 10 April 2002, <http://www.reachingcriticalwill.org/legal/npt/NGO/pres02/10.pdf>, last accessed on 7 November 2006.

*The purpose of reporting* must be more than a ceremonial exercise and therefore States parties must commit themselves to produce reports that serve a real function, providing regular, systematic and detailed information to the other States parties with the goal of improving the functioning of the Treaty's strengthened review process.

The reports would give formal verification of Treaty compliance and improve transparency and confidence building. They would help guide and focus the work of the PrepComs and Review Conferences and encourage further progress in nuclear disarmament. The actual process of compiling and assessing information would raise the political salience of the NPT and help states to focus on what is needed to live up to their commitments under the Treaty.

The creation of a common shared database would be beneficial. A standardised format should be adopted to facilitate the analysis of global trends and country-by-country comparisons. It should include a statement of the intervals at which reports should be made and a framework for achieving the goals.

#### *Mandate of Reporting*

For the strengthened NPT review process to be effective and with regard to the mandate assigned to the PrepComs in 1995 and in 2000, implying a need for up to date information on the state of implementation of the Treaty to be available at each session, reports should be submitted to the PrepComs as well as the Review Conferences.

The mandate calls for all States parties to the NPT to provide reports. The Middle East reporting provision specifically calls on all States parties to report.

*The Middle East Mandate* is set out clearly in the 2000 Final Document and calls on all States parties to report on the steps they have taken to promote the achievement of an effectively verifiable Middle East zone free of nuclear weapons as well as other weapons of mass destruction.

*The Practical Step 12 Mandate* is less clear and calls for regular reports within the framework of the strengthened review process for the Non-Proliferation Treaty by all States parties and is in three parts.

The first is on the implementation of Article VI of the NPT which reads '*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.*'

The distinct areas to be reported on are:

- Effective measures relating to cessation of the nuclear arms race
- Effective measures relating to (complete) nuclear disarmament
- A treaty on general and complete disarmament

The *second part* is paragraph 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation which calls for:

*The determined pursuit by the nuclear-weapons States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.*

This is clearly reportable in two areas one on the pursuit of the nuclear-weapons States and the second on the pursuit of all states to achieve general and complete disarmament.

*The third part* recalls the Advisory opinion of the International Court of Justice (ICJ)1996 which serves to strengthen the resolve and commitment of all States signatories to the NPT in reminding them of their obligations to ‘achieve a precise result – nuclear disarmament in all its aspects.’

The 2000 Final Document specified thirteen practical steps to achieve the goals above and progress towards implementation of these steps should be included in the report.

*The scope of reporting* of the review process must encompass, and have the ability to assess, implementation of all elements of the Treaty. Therefore reporting should include all nine topics.

The question of whether there should be two reports or that the reports on the Middle East and Practical Step 12 form one single report needs to be resolved by the States parties.

*The content of reporting* would be expected to incorporate two general kinds of information:

- a.) Statements of policy, descriptions of implementation-related activities, and updates on the progress of treaty negotiations and implementation.
- b.) Declarations concerning concrete data, such as data on nuclear weapons holdings, delivery vehicles holdings, special fissionable materials stocks and nuclear technology exports.

The fact that much of this is already available would not remove the value of having it formally reported by States parties in the NPT forum.

The greater level of detail likely to be provided by some states should encourage openness in all States.

Therefore, those States willing to supply additional information should be accommodated and encouraged.

*The format for NPT reporting* should be standardised for all States parties and would need to be worked out by those States willing to take a lead. There are several international reporting models already in existence but the criteria must be that it is simple, clear and easy to use.

It could be broken down into topics related to each of the Treaty articles and into time periods, providing a backwards-looking component and a forwards-looking component, projecting planned future developments.

However the most important consideration is in getting the process effectively underway with flexibility to add subsequent items from future Review Conferences. To aid transparency the reports should be available as official conference documents. The UN Department for Disarmament Affairs (DDA) would be the most appropriate institution to receive and compile reports submitted by States, having the experience of servicing other international bodies on arms controls. This is consistent with the 2000 Final document request.

However this has serious resource implications and States parties need to address how to finance additional work for the DDA in compiling and translating documentation.

It will be vital to the reporting process that committed States parties take a lead in initiating and fostering effective NPT reporting and that they involve a significant number of States parties early in designing the format and in establishing the requirements of participation. The excellent work done by Canada already could be used as a base to build on.

The organisation 'Reaching Critical Will' has produced an NGO Shadow Report outlining the possible structure of a standardised report which may prove useful in showing how vital information can be centralised simply.

Non-Governmental Organisations (NGO) have an important role in calling their own government's attention to their reporting commitment well in advance and in highlighting any findings missing from their own governments reports.

NGOs welcomed the opportunity to make formal presentations to States parties in plenary session. We would urge consideration of how these exchanges could be further developed for future PrepComms and Review Conferences.

For example, NGOs could present their analysis of their own governments progress since the previous meeting. CND has been doing this for a number of years and believe it to be a valuable exercise although I realise my own Government may not agree.<sup>207</sup>

State reaction in statements and documents to the reporting requirements was manifold. The most progressive was surely the Canadian Working Paper on Reporting by States parties. Here, Canada promoted a decision about the outstanding issues of reporting at the 2005 RevCon. Using the argument of 'permanence with accountability' and of reinforcing the strengthened review process, it favored reporting by all States and at every session, a standard, but simple reporting format, perhaps differentiated reporting formats for NWS, NNWS possessing nuclear reactors and other NNWS, and reports on all NPT articles, as its own report, containing specific information relating to concrete actions. The main paragraphs of the Working Paper follow:

Although the reporting requirement pursuant to the Middle East resolution stipulates that reports should be submitted to both Preparatory Committees and the Review Conference itself, the requirement pursuant to article VI is silent on the question of timing, beyond indicating that reports should be 'regular.' Canada would favour reporting to each of the Preparatory Committees and to the Review Conference, with an opportunity provided in each of these settings for States parties to review and comment upon each others' reports.

Although there is no obligation to report on the Treaty in its entirety, Canada would favour comprehensive reporting covering all aspects of the Treaty. In its national report this year Canada has elected to report on all articles of the Treaty.

In the necessary discussion of format, Canada supports a loosely-defined and relatively simple common approach that balances the need for adequate and meaningful content with the desirability of keeping the procedure simple enough to facilitate compliance.<sup>208</sup>

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207 Ibid.

208 NPT/CONF.2005/PC.I/WP.3 of 9 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/325/63/PDF/N0232563.pdf?OpenElement>, last accessed on 7 November 2006. See also Canada's statement in the General Debate of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/canada.htm>, last accessed on 7 November 2006.

On behalf of the NAM, Indonesia, supported *in toto* by Bangladesh, Chile, Colombia, Ecuador, Jamaica, Malaysia, Mongolia, Morocco and Nigeria, saw the reporting obligation as a means and an imperative to reflect a debated topic of some importance, namely, nuclear disarmament, in an accountable manner and asked for reports to each session which should cover the 13 steps, addressing policies as well as concrete action:

To this end, the Prepcom should substantially focus on nuclear disarmament so as to ensure that there is a proper accounting in the reports by the States of their progress in achieving nuclear disarmament. In this regard, we wish to recall that the Final Document of the 2000 Review Conference called for regular reports within the framework of the NPT strengthened review process by all States Parties on the implementation of Article VI and paragraph 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament.' The NAM States Parties to the NPT expect that the States Parties, in particular the Nuclear Weapon States, should submit reports to each PrepCom session including this one. We expect that the reports on Article VI should cover issues and principles addressed by the 13 steps and should include specific and complete information on each of these steps. These reports should also address, *inter alia*, current policies and intentions, as well as developments in these areas.

The NAM States Parties to the NPT also believe that the PrepCom should also substantially focus on the Middle East, and further recalls that the Final Document of the 2000 Review Conference called on all States Parties to the Treaty, 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 the Conference, on the steps that they have taken to promote the achievement of such zone and the realization of the goals and objectives of the 1995 resolution on the Middle East. The NAM States Parties to the NPT expect that all States Parties to the Treaty, in particular the Nuclear Weapon States, should submit reports in this regard as agreed in the 2000 Final Document.<sup>209</sup>

Moreover, at the end of the PrepCom, the NAM expressed its concerns regarding the lack of interaction on reports and substantive proposals and called for substantive interaction beyond the formal statements of States parties.<sup>210</sup> The NAC, represented by Egypt, besides insisting on reporting being part of the indicative timetable,<sup>211</sup> joined the NAM language on the reporting obligation:

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209 Statement of 8 April 2002, [http://www.basicint.org/nuclear/NPT/2002prepcom/Indonesia\\_NAM.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/Indonesia_NAM.htm), last accessed on 8 November 2006. The statement was later published as a Working Paper; see NPT/CONF.2005/PC.I/WP.2 of 10 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/323/19/IMG/N0232319.pdf?OpenElement>, last accessed on 8 November 2006. See also the statement made in the debate on regional issues on 15 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Reg-Indonesia.htm>, last accessed on 8 November 2006.

210 See NPT/CONF.2005/PC.I/WP.14 of 22 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/347/75/PDF/N0234775.pdf?OpenElement>, last accessed on 8 November 2006.

211 NPT/CONF.2005/PC.I/WP.10 of 16 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/336/36/PDF/N0233636.pdf?OpenElement>, last accessed on 7 November 2006.

42. The Preparatory Committee should substantively focus on nuclear disarmament so as to ensure that there is a proper accounting in the reports by States of their progress in achieving nuclear disarmament. Accountability will be assessed in the consideration of these reports that the States parties agreed to submit.

43. The Preparatory Committee should consider regular reports to be submitted by all States parties on the implementation of article VI and paragraph 4 (c) of the 1995 Decision. The strengthened review process envisioned in the 2000 NPT Final Document concerning the implementation of the Treaty and Decisions 1&2 as well as the Resolution on the Middle East adopted in 1995 should be fully implemented.

44. These reports should be submitted to each session of the Preparatory Committee. The reports on article VI should cover issues and principles addressed by the thirteen steps and include specific and complete information on each of these steps (*inter alia*, the number and specifications of warheads and delivery systems in service and number and specifications of reductions, de-alerting measures, existing holdings of fissile materials as well as reduction and control of such materials, achievements in the areas of irreversibility, transparency and verifiability). These reports should address current policies and intentions, as well as developments in these areas.<sup>212</sup>

Similar statements in the NAC speeches, likewise delivered by Egypt,<sup>213</sup> were supported by Chile, New Zealand, also referring to the above-mentioned document, and Mexico<sup>214</sup> *in toto*. In its statement, Egypt itself, as Malaysia,<sup>215</sup> focused on demands that the NWS should hand in their reports, especially on the Middle East, and called for consideration of the submitted reports by the First PrepCom session.<sup>216</sup> New Zealand, in a statement in the special time on nuclear disarmament, favored article-by-article reports, supplemented by information on the implementation of the 13 practical steps, thus a combined approach. It asked for an opportunity for States parties to review and comment on each others reports, called, as Norway,<sup>217</sup>

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212 NPT/CONF.2005/PC.I/9 of 5 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/317/80/IMG/N0231780.pdf?OpenElement>, last accessed on 7 November 2006. See also NPT/CONF.2005/PC.I/WP.1 of 9 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/321/24/IMG/N0232124.pdf?OpenElement>, last accessed on 7 November 2006.

213 See the statements in the General Debate on 8 April 2002, [http://www.basicint.org/nuclear/NPT/2002prepcom/Egypt\\_NAC.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/Egypt_NAC.htm), in the special time on nuclear disarmament on 10 April, <http://www.basicint.org/nuclear/NPT/2002prepcom/c1-egypt.htm>, and in the cluster 1 debate, [http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Egypt\\_NAC.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Egypt_NAC.htm), all last accessed on 7 November 2006.

214 See for more detailed comments on the issue Mexico's statement of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Mexico.htm>, last accessed on 8 November 2006.

215 See statement in the debate on regional issues of 15 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Reg-Malaysia.htm>, last accessed on 8 November 2006.

216 Statement of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/egypt.htm>, last accessed on 7 November 2006.

217 See statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/norway.htm>, last accessed on 7 November 2006.



for obligatory, rather than optional reporting and more shape or form to the reports. Finally, like to Japan,<sup>218</sup> more concreteness was an issue to New Zealand.<sup>219</sup>

A few other remarks are worthwhile. Morocco brought in a new element by complaining about the meagre results when counting the submitted reports.<sup>220</sup> Myanmar, not having handed in a report itself, called for all States submitting reports on Art. VI and on the 13 practical steps.<sup>221</sup> The EU, additionally backed by Finland and Sweden, could only agree on the sentence that '[r]egular reporting, in the framework of the strengthened review process, by all States parties will further promote international stability.'<sup>222</sup> Of the NWS, only France and the UK reacted to the debate on whether to report and how reporting should look like. France simply reaffirmed its commitment to the reporting requirement with regard to the Middle East.<sup>223</sup> The UK rebuffed calls for more precise arrangements on reporting:

Last week, we heard suggestions for further definitions of the format and frequency of reporting. We continue to believe it is for states parties to make these kinds of decisions. No one format is likely to be appropriate for all states parties or even for all nuclear weapon states. The information that it will be appropriate to report will vary considerably between states and perhaps within states over time.<sup>224</sup>

On 18 April 2002, at the end of the First PrepCom, Canada, in order to stimulate the debate, proposed to host informal consultations on the scope, frequency and format of national reports to the Conference some time before the next PrepCom. It announced that it would keep those consultations open to all States parties and that it would include the results into a Working Paper to the next PrepCom session. Austria, Germany, Ghana, Indonesia, Iran, Italy, Japan, Mexico, the Netherlands, Norway, the Republic of Korea, Switzerland and Thailand were in favor of those consultations, whereas Belgium and Egypt, the latter on behalf of the New Agenda Coalition, supported the idea 'in principle,' Egypt promising a formal response later. The UK wanted to further reflect on the proposal and France and the US were

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218 See NPT/CONF.2005/PC.I/WP.7 of 12 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/330/39/PDF/N0233039.pdf?OpenElement>, last accessed on 7 November 2006.

219 See statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/C1-NewZealand.htm>, last accessed on 7 November 2006.

220 Statement of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Morocco.pdf>, last accessed on 8 November 2006.

221 Statement of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/Myanmar.htm>, last accessed on 8 November 2006.

222 NPT/CONF.2005/PC.I/16 of 17 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/337/14/PDF/N0233714.pdf?OpenElement>, statement of 8 April 2002 in the General Debate, [http://www.basicint.org/nuclear/NPT/2002prepcom/spain\\_eu.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/spain_eu.htm), and statement of 12 April 2002 in the cluster 1 debate, <http://www.basicint.org/nuclear/NPT/2002prepcom/C1-Spain&EU.htm>, all last accessed on 8 November 2006.

223 See its statement of 15 April 2002 in the debate on regional issues, <http://www.basicint.org/nuclear/NPT/2002prepcom/Reg-France.pdf>, last accessed on 8 November 2006.

224 Statement of 15 April 2002 in the debate on regional issues, <http://www.basicint.org/nuclear/NPT/2002prepcom/Reg-Britain.htm>, last accessed on 8 November 2006.

opposed to it.<sup>225</sup> The NAC response was then incorporated into a Working Paper which suggested a more formalized process through setting up an inter-sessional subsidiary body of the PrepCom to work on reporting obligations:

Third, regular reports submitted under the substantive undertaking for all States parties, as agreed to at the 2000 Review Conference, would complement a structured debate and interaction. We have already presented a Working Paper on the article VI reporting obligation. Further elaboration is needed in this area. In this light, we support the proposal made by the Canadian delegation calling for an open-ended process over the next year to elaborate on reporting obligations. We believe that such an objective and process would be better served by a more structured approach that could take the form of a subsidiary body of the Preparatory Committee that would work in the inter-sessional period in an attempt to make sure that the work of this body forms a part of the strengthened review process. The subsidiary body would submit its findings and recommendations to the next session of the Preparatory Committee. The provision for the establishment of subsidiary bodies within the context of the Treaty's strengthened review process was provided for in the 1995 decisions.<sup>226</sup>

Since the NAC proposal had been handed in too late, a formal decision on a subsidiary body was not taken any more. The Chairman's factual summary contained the following paragraphs instead:

2. States parties stressed their commitment to the effective implementation of the objectives of the Treaty, the decisions and the resolution of the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference, adopted by consensus.

...

8. The importance of increased transparency with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament was stressed. It was emphasized that accountability and transparency of nuclear disarmament measures by all States parties remained the main criteria with which to evaluate the Treaty's operation.

9. States parties remained committed to implementing article VI of the Treaty and paragraphs 3 and 4 (c) of the 1995 Decision on 'Principles and objectives of nuclear non-proliferation and disarmament' and the Final Document of the 2000 Review Conference. Disappointment was expressed in the progress made in implementing the practical steps for the systematic and progressive efforts to implement article VI of the Treaty and paragraphs 3 and 4 (c) of the 1995 Decision on 'Principles and objectives for nuclear non-proliferation and disarmament,' as agreed at the 2000 Review Conference. It was also noted that the goal of nuclear disarmament could best be achieved through a series of balanced, incremental and reinforcing steps.

10. The nuclear-weapon States informed the States parties of their respective measures taken in accordance with article VI of the Treaty, for example, reductions of nuclear

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225 See RCW, *News in Review*, No. 10, 19 April 2002, p. 1.

226 NPT/CONF.2005/PC.I/WP.13 of 22 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/347/69/PDF/N0234769.pdf?OpenElement>, last accessed on 8 November 2006.

weapons arsenals, reduced reliance on nuclear weapons, and that new nuclear weapons were not being developed.

...

20. States parties recalled that regular reports should be submitted by all States parties on the implementation of article VI as outlined in paragraph 15, subparagraph 12, of the 2000 Final Document. It was stressed that such reporting would promote increased confidence in the overall non-proliferation regime through transparency. Views with regard to the scope and format of such reporting differed. Some States parties suggested that such reports should be submitted, particularly by the nuclear-weapon States, at each session of the Preparatory Committee, and should include detailed and comprehensive information, e.g., in a standardized format. Several States parties expressed interest in open-ended informal consultations on reporting to prepare proposals for consideration for subsequent sessions of the Preparatory Committee. Other States parties advocated that the specifics of reporting, the format and frequency of reports, should be left to the determination of individual States parties.

21. States parties recalled the 2000 Final Document and the request that all States parties, particularly the nuclear-weapon States, the States of the Middle East and other interested States, should report through the United Nations Secretariat to the President of the 2005 Review Conference, as well as to the Chairperson of the Preparatory Committee meetings to be held in advance of that Conference, on the steps that they had taken to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 resolution on the Middle East.<sup>227</sup>

*(b) Second PrepCom: emphasis on increasing reporting* Since the agenda for the PrepCom sessions had been decided during the First PrepCom, the issue of reporting again fell under agenda item 6.<sup>228</sup> This time without any wrangling, the same formulation of the special blocs of issues as at the First PrepCom could be adopted for the indicative timetable.<sup>229</sup> 28 States submitted formal reports on Art. VI to the Second PrepCom and 17 on the Middle East, among the latter also the NWS China, France, the UK and the US. The UK, however, first handed in its Middle East report as a Working Paper, before it was reclassified as a normal PrepCom session document.<sup>230</sup> Hence, more States submitted reports, relative to 2002. However, the NWS continued their practice of not issuing formal written reports on the implementation of Art. VI, but again delivered some oral statements, informal papers and booklets describing their disarmament activities.

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<sup>227</sup> NPT/CONF.2005/PC.I/21 of 19 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement>, last accessed on 8 November 2006.

<sup>228</sup> See NPT/CONF.2005/PC.II/50 of 13 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement>, last accessed on 2 November 2006.

<sup>229</sup> NPT/CONF.2005/PC.II/INF.2 of 25 April 2003; *ibid*.

<sup>230</sup> See NPT/CONF.2005/PC.II/WP.8/Corr.1 of 13 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/616/54/PDF/G0361654.pdf?OpenElement>, last accessed on 2 November 2006.

During the Second PrepCom, CSOs did not deal with the topic of reporting in an intense manner. However, they proposed a new set of questions to be answered by reports and also included Israel as a potential presenter of reports:

In this presentation, the establishment of a number of specific steps or programmes both in the non-nuclear weapon states and in the nuclear weapon states involving progress reports to the Preparatory Committees and Review Conferences of the NPT is proposed. In this presentation, these proposals have been put forward in form of a set of questions to the States Parties.

...

Israel may wish to make its voluntary contributions answering questions submitted to them, and provide progress reports (like the other member states of the NPT) to the NPT Preparatory Committees and Review Conferences.

...

In order to encourage thought and discussion on these subjects, the following questions are posed to both nuclear and non-nuclear weapon states.

1. How would they promote nuclear non-proliferation issues in their own countries? And how much funding would they be willing to allocate for such a programme?
2. In order to encourage transparency, openness, and wider participation would these countries (especially the ones in the Middle East), open their nuclear research and power production facilities to the public inside their own countries and international non-governmental institutions from outside?
3. Would these countries make use of the expertise available from other countries, such as international non-governmental organizations to promote wider participation?
4. In the case of Iran, would they be organising visits to the Bushehr nuclear power plant, Natanz uranium enrichment facility, and other nuclear research facilities for the benefit of the people from within the country, and international non-governmental organizations from outside the country?
5. Also in the case of Iran, I would like to pose a further question in relation to the ratification of the Comprehensive Test Ban Treaty, which Iran signed in September 1996. In order to encourage other member states to do the same, would Iran be ratifying the Comprehensive Test Ban Treaty as soon as possible?<sup>231</sup>

From the documents available, none commented on the question whether or not to include those questions into future reports. However, this time Canada handed in another Working Paper which in fact was an evaluation of the informal, open-ended consultations it had undertaken during the year between the First and the Second PrepCom in form of written and oral discussions and through a meeting in New York with interested delegations not present in Geneva. Canada also exhaustively used studies and consultations with several NGOs (Dhanapala and Rydell 2005, 136). For example, a roundtable discussion was organized together with two Canadian NGOs in order to evaluate trends in state reporting and recommend future steps

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231 Statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/programprom.html>, last accessed on 9 November 2006.

to reinforce a 'culture of accountability' for the NPT (Applegarth and Tyson 2005, 33).<sup>232</sup> The Working Paper then gave a summary of views expressed in the fields of destination of reports, timing (each PrepCom), content (reports on 13 steps, on all articles or simple interventions/categories/perhaps differential reporting by different categories of States), form (NWS resisted rigid forms, others were in favor of standardized categories of questions) and handling (more productive use of reports). It stated that there was generally a strong interest in reporting, but some reluctance, mainly on the part of the NWS, to engage in a discussion on how to report. Canada's argument was that the potential of reports could be fulfilled through more extensive participation in submitting reports by all States (conclusion) as a transparency and confidence-building measure (premise) and through more active use being made of reports by delegations (conclusion) in order to create greater interactivity and a 'culture of reporting' (premise). Both would help to develop scope and format.<sup>233</sup> In the following, Canada's 'initiative to promote a "culture of voluntary reporting"' was expressly supported by Thailand.<sup>234</sup>

In a speech later published as a Working Paper, the NAM almost literally repeated its statement made at the previous PrepCom.<sup>235</sup> Its statement was endorsed in its totality by Algeria, Bangladesh, Indonesia, Myanmar, South Africa and Thailand in the General Debate. Indonesia once again insisted on the reporting obligation of all States and of the NWS to submit comprehensive information on all aspects of nuclear weapons in order to instil confidence in the non-proliferation regime among NNWS 'who have long fulfilled their part of the bargain.'<sup>236</sup> The NAC likewise repeated its earlier position word by word.<sup>237</sup> In addition, three different proposals on interaction in the context of reporting were made. New Zealand, on behalf of the NAC and supported by Algeria, Brazil, Chile and South Africa, declared that it would use the reports in order to stimulate a more interactive discussion.<sup>238</sup> South Africa identified the lack of interaction as applying also to the consideration of the reports themselves and not only to the substantive contributions and proposals that were being made

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232 See Report on the Roundtable on Reporting by States party to the NPT, Ottawa, 19–20 June 2003, <http://www.ploughshares.ca/libraries/Abolish/CNANWRoundtableReport2003.pdf>, last accessed on 9 November 2006.

233 NPT/CONF.2005/PC.II/WP.2 of 24 April 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/332/95/PDF/N0333295.pdf?OpenElement>, last accessed on 9 November 2006.

234 See statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/29thailand.pdf>, last accessed on 9 November 2006.

235 See statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/malaysia.htm>, and NPT/CONF.2005/PC.II/WP.19 of 8 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/05/PDF/G0361505.pdf?OpenElement>, both last accessed on 9 November 2006.

236 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/Indonesia.htm>, last accessed on 9 November 2006.

237 NPT/CONF.2005/PC.II/16 of 29 April 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/52/PDF/G0361152.pdf?OpenElement>, last accessed on 9 November 2006.

238 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003statements/2003statements/newzealand.htm>, last accessed on 9 November 2006.

and emphasized the particular importance of the reports in gauging progress.<sup>239</sup> The Republic of Korea proposed to hold a constructive discussion on the issue of national reporting and looked forward to an interactive dialogue on the subject, that is how to frame reporting.<sup>240</sup> Similarly, Japan called for specific methods of reporting to be continuously discussed, in particular to ensure regular NWS reporting.<sup>241</sup> A more precise suggestion was offered by Belgium, the Netherlands and Norway in a joint Working Paper:

### III. Accountability and Transparency

5. We confirm the importance of measures aimed at increasing accountability and transparency with regard to nuclear arsenals. In addition to the transparency measures already agreed to in the 2000 Final Document, we urge the nuclear-weapon States to commit themselves to provide periodically the aggregated number of warheads, delivery systems and stocks of fissile materials for explosive purposes in their possession. The nuclear-weapon States should provide this information in the form of regular reports under step 12 (Article VI, paragraph 15) of the 2000 Final Document.

6. To enhance regular reporting by all States Parties on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament,' we emphasize the necessity for States Parties to report to each session of the Preparatory Committee and to the Review Conference.<sup>242</sup>

In addition, Norway repeated its call for obligatory reporting.<sup>243</sup> Switzerland welcomed the many reports prepared as a solid precedent with a driving effect contributing to greater transparency.<sup>244</sup> Finally, a more general support to reporting combined with a call on States was expressed by the Holy See<sup>245</sup> and Poland.<sup>246</sup>

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239 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/2003statements/southafrica.htm>, and NPT/CONF.2005/PC.II/WP.9 of 1 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/17/PDF/G0361217.pdf?OpenElement>, both last accessed on 9 November 2006.

240 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/28KOREA.pdf>, last accessed on 9 November 2006.

241 NPT/CONF.2005/PC.II/WP.15 of 6 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/75/PDF/G0361375.pdf?OpenElement>, last accessed on 9 November 2006. See also its statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/JAPAN.pdf>, last accessed on 9 November 2006.

242 NPT/CONF.2005/PC.II/WP.17 of 6 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/614/07/PDF/G0361407.pdf?OpenElement>, last accessed on 9 November 2006.

243 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/norway.htm>, last accessed on 9 November 2006.

244 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/swiss.pdf>, last accessed on 9 November 2006.

245 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/HOLY.pdf>, last accessed on 9 November 2006.

246 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/POLAND.pdf>, last accessed on 9 November 2006.

Resulting from the above, the NWS did not step in the discussion about reporting, apart from delivering their own, mostly oral, reports. Thus, this time, they did also not express which kind of formats of reports they would prefer. In its factual summary, the Chairman then summarized the discussion as follows, also mirroring an enhanced interaction:

12. The nuclear-weapon States reiterated their commitment to nuclear disarmament and informed other States parties of their respective measures taken in accordance with article VI of the Treaty, for example...

...

21. Many States parties recalled that regular reports should be submitted by all States parties on the implementation of article VI as outlined in paragraph 15, subparagraph 12, of the 2000 Final Document. It was stressed that such reporting would promote increased confidence in the overall Nuclear Non-Proliferation Treaty regime through transparency. It was also expressed that such transparency provided valuable means to address and respond to compliance concerns. States parties recognized the value of reports and used them in substantive deliberation, in line with their wish for enhanced interaction.

22. States parties recalled the 2000 Final Document and the request that all States parties, particularly the nuclear-weapon States, the States of the Middle East and other interested States should report to the Secretary-General of the United Nations, to the President of the 2005 Review Conference, as well as the Chairpersons of the Preparatory Committee meetings to be held in advance of that Conference, on the steps that they had taken to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East.<sup>247</sup>

*(c) Third PrepCom: reporting squeezed between State interests* As at the Second PrepCom, the agenda remained the same for the Third PrepCom, as did the formulation of the special blocs of issues in the indicative timetable. However, this time additional time was allocated for discussions on the 1995 Middle East resolution under regional issues. Altogether, 28 States submitted formal reports on Art. VI. 14 States handed in reports on the Middle East, among the latter the NWS China, France, the UK and the US, even though the US only classified it as a ‘document’.<sup>248</sup>

Building on their presentation 4,<sup>249</sup> this time CSOs presented calls for more reports, as a prerequisite for negotiations of a standardized reporting format, in two Recommendations, namely, in Recommendations 3 and 6, arguing for the confidence-building effects of reports:

*Recommendation 3: Implement and Strengthen the NPT in a Non-Discriminatory Manner That Demands Accountability*

<sup>247</sup> NPT/CONF.2005/PC.II/50 of 13 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement>, last accessed on 10 November 2006.

<sup>248</sup> See NPT/CONF.2005/PC.III/40 of 5 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/338/59/PDF/N0433859.pdf?OpenElement>, last accessed on 2 November 2006.

<sup>249</sup> Statement of 27 April 2004, <http://disarmament2.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, last accessed on 13 November 2006.

States Parties to the NPT – particularly the nuclear weapon states but also non-nuclear states that are the focus of breakout concerns – must be held to a higher standard of reporting on their Treaty compliance than presently exists. Substantive reporting should be viewed as part of the infrastructure of monitoring, verification, and enforcement of the NPT and its disarmament and non-proliferation goals.

In particular:

A) Step 12 of the 13 Steps obliges all states to provide regular reports on implementation of Article VI and paragraph 4 (c) of the 1995 Decision on ‘Principles and Objectives for Nuclear Non-Proliferation and Disarmament.’ The number of States submitting these reports must increase, as must the quality and frequency of reporting, so that they can fulfill their potential as an important transparency tool.<sup>250</sup>

*Recommendation 6: Strengthen Member State Reporting*

In the 2000 Review Conference Final Document, states agreed to submit regular reports on their progress toward disarmament. We note that there have been more reports submitted at each of the three PrepComs since 2000, and urge states to continue strengthening this important transparency tool. While a standardized reporting mechanism might increase ease of reporting, and the NGO Shadow Report prepared by Reaching Critical Will provides one such model, we would encourage increased participation before negotiations of a standard format. Substantive statements on the part of the nuclear weapon states about nuclear holdings and fissile material stocks, operational status and doctrine, would be an important confidence building measure and encourage others to report as well. Translation and distribution of these reports will be an important contribution to the institutional memory of the NPT...<sup>251</sup>

In addition, a Belgian Senator, in the CSO statement 11 delivered by the Mayors for Peace, complained about double standards and the non-implementation of reporting requirements:

Among these [13] steps were calls for greater transparency by the nuclear weapon states, who are also required to report on their compliance with Article VI; yet none of the weapon states has so far delivered any adequate or meaningful report on their current stocks of nuclear weapons, facilities and fissile materials

These disarmament and transparency obligations must be treated as just as binding as the commitments made by Iraq, North Korea and Libya. It is extremely hypocritical that certain nuclear powers that call for UN weapons inspections in Iraq, North Korea and Libya should themselves be unwilling to disclose information about their own stocks, even to elected members of parliament. We are particularly concerned about the complete lack of transparency and democratic control regarding US nuclear weapons in Europe. Though the NATO states concerned argue that the nuclear sharing agreements under which these weapons are deployed do not breach the letter of Articles I and Article II of the 1968 Nuclear Nonproliferation Treaty (NPT), which outlaw the transfer of nuclear weapons from a nuclear weapon state to a non-nuclear weapon state, we are very concerned that these NATO deployments are in violation of the spirit and intentions of the Treaty, as

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250 Ibid.

251 Ibid.



understood by the vast majority of its states parties. If we want all states to abide by the norms and obligations of the NPT in spirit as well as in letter, then we must do so too.<sup>252</sup>

This time, Ecuador picked up the battle about reports being procedural or substantive and decided in favor of the latter:

Coincidimos con otras delegaciones que esta reunión Preparatoria no puede limitarse a tratar solamente asuntos de procedimientos, sino que además, debe incluir temas sustantivos relacionados con la ejecución del Tratado de No Proliferación, en especial consideramos necesario que los Estados con capacidad nuclear informen sobre los progresos alcanzados en el desmantelamiento y la total eliminación de sus arsenales nucleares, en cumplimiento de las obligaciones derivadas del artículo VI del Tratado, así como de los compromisos asumidos en las Conferencias de 1995 y 2000.<sup>253</sup>

Once again, Canada handed in a, though shorter, Working Paper based on the earlier ones and on a review of reporting during the first two PrepComs. The buzzwords or premises used in favor of reporting encompassed the following: contribution to permanence with accountability, promotion of a culture of transparency, ownership, demonstration of commitment, measure of progress and compliance, fostering of implementation, strengthening of confidence-building, provision of information and contribution to a strengthened review process. Canada again pleaded for a decision on reporting in 2005 and saw reporting as a valuable input to an annual 'NPT Implementation Report,' to be submitted to an eventual annual meeting of States parties which it proposed in another context, also under the heading 'permanence with accountability.'<sup>254</sup> Besides calls for more reports, it argued in favor of standardization. According to Canada, the review of reporting had shown four approaches to date: (1) general overview; (2) 13 steps; (3) Article-by-Article; (4) specific activities. Canada now proposed comprehensive reporting which should build on (3), presented in two variants (see below), but including (2). It used premises such as the attraction of broader participation, the response to civil society interest, flexibility and better comparability, without being burdensome, for arguing in favor of comprehensive reports:

#### Scope

5. Remaining faithful to Step 12 from the 2000 Review Conference as the basis and genesis of reporting, it may be desirable to complement this, moving towards a comprehensive report that also addresses the implementation of the Treaty as a whole, given the inter-relationships among all elements of the Treaty. This would provide the potential to contribute even more effectively to sustaining permanence with accountability, to supporting the overall implementation of the NPT, and to building towards a decision by the 2005 Review Conference. Such an approach would also reflect views expressed at recent Preparatory Committees about the need for a holistic approach to the Treaty. The

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252 Ibid.

253 Statement of 28 April 2004 in the General Debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/ecuador28.pdf>, last accessed on 14 November 2006.

254 See statement in the General Debate of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/canada26.pdf>, last accessed on 13 November 2006.

13 Steps continue to be valid, and need to be addressed and advanced, including through reporting.

6. The existing basis of reporting could thus be supplemented. This could be done by also:

- encompassing all *articles* of the NPT; or
- using the *topics* in the 1995 Principles and Objectives decision on non-proliferation and disarmament: universality; non-proliferation; nuclear disarmament; NWFZs; security assurances; safeguards; peaceful uses.

7. Such an approach would recognize the interdependence among the provisions of the NPT. It would enable States Parties to provide concrete information about progress in meeting all the objectives of the Treaty. A more comprehensive report should attract broader participation among States Parties (as it would address non-proliferation and peaceful uses, as well as nuclear disarmament). Finally, it would respond to broad civil society and public interest in the Treaty and its implementation.

#### *Format*

8. Each of the two approaches suggested above has the advantage of providing a template that is flexible and has the potential to contribute to better comparability, without being overly burdensome.

9. Information in reports should be specific, not declaratory. For example, specific information can include legislative and regulatory activity; description of policy changes or other actions; diplomatic activity. Declaratory information is more appropriate for national statements or interventions on issues and articles or topics of particular interest or concern to a State Party, and for views on NPT implementation in general.

10. Given their special status, the NWS are encouraged to provide information that also includes: the transfer or acquisition of nuclear materials; holdings of fissile material; reductions; dismantlements; de-alerting and deployment steps; nuclear facilities; holdings and production of nuclear weapons (including the numbers, types and yields of warheads, numbers and types of delivery vehicles); operational status of weapons held; nuclear weapons doctrine and policies.<sup>255</sup>

This was supported by a strong statement of Canada in the cluster 1 meeting which added that the value of reports had been widely recognized, that it would convey a sense of participatory democracy and that it should become a permanent feature, with a broadened and advanced scope.<sup>256</sup> Germany showed support for Canada and its call for standardization:

The immediate implementation of the following steps would provide new impetus to nuclear disarmament:

...

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<sup>255</sup> NPT/CONF.2005/PC.III/WP.2 of 5 April 2004, <http://daccessdds.un.org/doc/UND/OC/GEN/N04/301/65/PDF/N0430165.pdf?OpenElement>, last accessed on 13 November 2006.

<sup>256</sup> <http://www.reachingcriticalwill.org/legal/npt/prepcom04/canadaCL1.pdf>, last accessed on 13 November 2006.

3. An understanding on the basic requirements for reporting would have a positive impact on the review process by in particular enhancing confidence in the nuclear weapon states' commitment to accountability and transparency. We particularly welcome the useful work done by Canada on this issue. We hope that on that basis it will be possible to adopt a decision at the 2005 Review Conference which provides guidelines regarding the scope and format of reporting in fulfilment of the requirement set forth in 2000.<sup>257</sup>

The NAM, in a statement later published as a Working Paper, once again repeated its previous statements word-by-word.<sup>258</sup> In the General Debate, Cuba, Ecuador, Indonesia, Mongolia, Myanmar, Nepal, Nigeria, South Africa, including in the cluster 1 debate, Tunisia, the United Arab Emirates, Venezuela and Vietnam and in the debate on regional issues Iran fully associated themselves with the NAM statement. In a statement in the General Debate, which was supported *in toto* by Brazil and South Africa, the latter also in the cluster 1 debate, Mexico, on behalf of the NAC, emphasized the great importance the NAC was attaching to reporting<sup>259</sup> and further elaborated on this during the special time on disarmament, likewise supported by Brazil and South Africa, where it essentially repeated earlier NAC pronouncements:

22. We stress the importance of regular reporting in promoting confidence in the NPT, and consider that regular reports by all States Parties on the implementation of article VI and paragraph 4 (c) of the 1995 decision be presented to each session of the Preparatory Committee and to the Review Conference. These reports should address policies, intentions and developments, and should cover issues and principles addressed by the practical steps and include specific and complete information on each of these steps.<sup>260</sup>

In addition, the NAC, building *inter alia* on Working Paper 9 of the First PrepCom and Document 16 of the Second PrepCom and expressly supported by South Africa, presented a paper with substantive inputs to be considered by the Preparatory Committee as recommendations to the 2005 Review Conference:

31. *To agree* that nuclear-weapon States take further action towards increasing their transparency and accountability with regard to their nuclear weapons arsenals and their implementation of disarmament measures and in this context to recall the obligation to report as agreed in step 12.

37. *To stress* the importance of regular reporting in promoting confidence in the Treaty on the Non-Proliferation of Nuclear Weapons.

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257 Statement of 30 April 2004 in the cluster 1 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/germanyCL1.pdf>, last accessed on 14 November 2006.

258 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysianam26.pdf>, last accessed on 13 November 2006, and NPT/CONF.2005/PC.III/WP.24 of 4 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/343/81/PDF/N0434381.pdf?OpenElement>, last accessed on 13 November 2006.

259 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/mexiconac26.pdf>, last accessed on 13 November 2006.

260 Statement of 30 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/mexico30.pdf>, last accessed on 13 November 2006.

38. To agree that regular reports by all States Parties on the implementation of article VI and paragraph 4 (c) of the 1995 decision be presented to each session of the Preparatory Committee and to the Review Conference and to address policies, intentions and developments. These reports should cover issues and principles addressed by the thirteen steps and include specific and complete information on each of these steps.<sup>261</sup>

A recommendation on reporting, 'thereby operationalising Step 12,' like the one suggested by the NAC, was also proposed by the NAC members New Zealand and Mexico during the special time on disarmament in a joint statement on the role of reporting. Using reporting as a compliance measure, as a mechanism disarmament and non-proliferation treaties have benefited from, as a means of building confidence and trust, transparency and accountability and of increasing the dialogue between States, they called for reports by all States.<sup>262</sup> Moreover, New Zealand separately announced that it would support proposals to improve reporting<sup>263</sup> and demanded NWS to systematically submit information in reports on the record.<sup>264</sup> In addition, South Africa strongly commended recommendations of the Third PrepCom to the RevCon on reporting.<sup>265</sup>

Japan considered the increase in reports to the Second PrepCom to be encouraging and hoped that this trend would be maintained. It again called for continuous discussion on specific methods of reporting and looked forward to all States parties putting forward reports.<sup>266</sup> Belgium, the Netherlands and Norway literally repeated their statement delivered at the Second PrepCom.<sup>267</sup> Norway this time considered reporting to be obligatory and reminded all States, particularly NWS, of their obligation.<sup>268</sup> The League of Arab States called for reports on the Middle East.<sup>269</sup>

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261 NPT/CONF.2005/PC.III/11 of 26 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/324/43/PDF/N0432443.pdf?OpenElement>, last accessed on 13 November 2006.

262 Statement of 3 May 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/nzealand3.pdf>, last accessed on 13 November 2006.

263 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/nzealand26.pdf>, last accessed on 13 November 2006.

264 Statement in the cluster 1 debate on 3 May 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/NewZealandCL1.pdf>, last accessed on 13 November 2006.

265 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/safrica26.pdf>, last accessed on 13 November 2006.

266 NPT/CONF.2005/PC.III/WP.11 of 28 April 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/329/04/PDF/N0432904.pdf?OpenElement>, last accessed on 13 November 2006. See also its statement during the special time on disarmament on 3 May 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/Japan3.pdf>, last accessed on 13 November 2006.

267 NPT/CONF.2005/PC.III/WP.25 of 4 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/338/53/PDF/N0433853.pdf?OpenElement>, last accessed on 14 November 2006.

268 Statement of 27 April 2004 in the General Debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/norway27.pdf>, last accessed on 14 November 2006.

269 NPT/CONF.2005/PC.III/WP.12 of 28 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/330/11/PDF/N0433011.pdf?OpenElement>, last accessed on 13 November 2006. See also Iran's statement on regional issues, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/germanyCL1.pdf>, last accessed on 14 November 2006.

Then, the wrangling about the Chairman's summary and the Final Document of the PrepCom began. The Chairman's summary of the debate included the following paragraphs:

34. States parties recalled that the 2000 Review Conference agreed that regular reports should be submitted by all States parties on the implementation of article VI. It was stressed that such reporting promotes transparency and accountability, provides a way for all States parties to demonstrate their commitment to the Treaty, serves to measure progress and compliance, builds confidence and strengthens a sense of participation in implementing the Treaty.

...

50. States parties recalled that the 2000 Final Document request all States parties, particularly the nuclear-weapon States, the States of the Middle East and other interested States, should report to the United Nations Secretary-General, the President of the 2005 Review Conference and the Chairpersons of the Preparatory Committee meetings to be held in advance of that Conference on the steps that they had taken to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 resolution on the Middle East.

...

53. Recognizing the value of reporting in the context of the Treaty and given the interrelated and mutually reinforcing obligations and rights of States parties, a proposal was made that the 2005 Review Conference adopt a distinct decision on reporting on the implementation of the Treaty as a whole.<sup>270</sup>

The US rejected the summary on, *inter alia*, the following grounds, which led to the publication of the Chairman's summary as a simple working paper:

We do not support a mechanism to promote implementation of the 1995 resolution on the Middle East. The Middle East is a serious issue. Unfortunately, the Summary does not take account of the complicated set of issues, the noncompliance obstacles, or the peace efforts that have been undertaken.<sup>271</sup>

At the same time, the draft final report of the PrepCom contained the following controversial paragraphs with regard to documents to be prepared by the UN Secretariat:

[Background documentation]

...

38. [Specifically, the Secretariat of the United Nations is requested to prepare documents on the following topics to reflect developments related to the implementation of the Treaty and the outcomes of the 1995 NPT Review and Extension Conference and the

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270 NPT/CONF.2005/PC.III/WP.27 of 10 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/47/PDF/N0434447.pdf?OpenElement>, last accessed on 14 November 2006.

271 NPT/CONF.2005/PC.III/WP.28 of 10 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/35/PDF/N0434435.pdf?OpenElement>, last accessed on 14 November 2006.

2000 Review Conference, with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized]:

...

(f) [Implementation of the resolution on the Middle East adopted by the 1995 NPT Review and Extension Conference, reflecting developments since 2000 with a view to realizing the objectives of the resolution.]<sup>272</sup>

The Non-Aligned States submitted the following amendment which would have included the reports on the Middle East:

Amendment of par. 38 (f) line 2 of the Draft Final Report, as follows:

‘...and Extension Conference and recommendations on the Middle East adopted by the 2000 NPT Review Conference, reflecting...’<sup>273</sup>

In the Final Document, the paragraphs on background documentation were deleted<sup>274</sup> and instead included in another Chairman’s Working Paper under outstanding paragraphs from the draft final report of the Committee which were transmitted to the Review Conference.<sup>275</sup>

Another controversial paragraph of the draft final report stipulated:

[V. Recommendations]

42. [In accordance with the 1995 decision on strengthening the review process for the Treaty and the Final Document of the 2000 Review Conference, and taking into account the deliberations and results of its previous sessions, the Committee agreed at its third session to recommend to the 2005 Review Conference to consider the establishment of subsidiary bodies to take up issues of the Main Committees of the Conference.]<sup>276</sup>

The Non-Aligned States *inter alia* proposed:

Replacement of par. 42 of the Draft Final Report with the following:

In accordance with the ‘2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part I’ (NPT/CONF.2000/28) and the decision on ‘Strengthening the Review Process for the Treaty’ (NPT/CONF.1995/32/DEC.1), and taking into account the deliberations and results of its previous sessions, the Preparatory Committee agreed to recommend:

• ...

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272 NPT/CONF.2005/PC.III/CRP.4 of 5 May 2004, <http://disarmament.un.org/wmd/npt/2005/PC.III-CRP4-E.pdf>, last accessed on 14 November 2006.

273 NPT/CONF.2005/PC.III/WP.29 of 18 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/355/84/PDF/N0435584.pdf?OpenElement>, last accessed on 14 November 2006.

274 See NPT/CONF.2005/1 of 20 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement>, last accessed on 14 November 2006.

275 NPT/CONF.2005/PC.III/WP.30 of 21 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/362/72/PDF/N0436272.pdf?OpenElement>, last accessed on 14 November 2006.

276 NPT/CONF.2005/PC.III/CRP.4 of 5 May 2004; see note 272.

- That the Review Conference consider the further strengthening or enhancement of the regular reports provided for in accordance with the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document.
- ...<sup>277</sup>

In the end, the Final Document did not contain any recommendations to the RevCon.<sup>278</sup> Instead, the Chairman's Working Paper mentioned the NAM proposal under outstanding paragraphs from the draft final report of the Committee which were transmitted to the Review Conference.<sup>279</sup>

*(d) Special feature: Canada and the NAC, specifically civil society friendly* The most civil society friendly governments during the 7th NPT review process, besides the NAM with regard to disarmament, were Canada and the NAC. Canada, as a state striving for a nuclear-weapon-free world, and the NAC, a cross regional grouping formed to advance the cause of nuclear disarmament, were both especially close to principal civil society demands for disarmament, but also when it came to reporting issues. Canada's main concerns during the 7th RevCon are summed up in Box 7.3 below.

### **Box 7.3 Canada's agenda**

#### **Main Objectives of Canada during the 2005 NPT RevCon**

- Systematic reporting.
- Overcoming institutional deficits of the NPT regime (Annual General Conferences; bureau which can convene emergency sessions).
- Bars to withdrawal.
- Enhanced civil society participation.
- Establishment of a subsidiary body on regional issues at the 2005 RevCon.

The NAC on its part had sponsored a resolution in the First Committee of the General Assembly which was then adopted by the General Assembly as UN res. 59/75 of 3 December 2004.<sup>280</sup> This resolution on 'Accelerating the implementation of nuclear disarmament commitments' shortly outlined the NAC 2005 agenda, including during the 2005 NPT RevCon. The main points of its objectives are summarized in Box 7.4 opposite.

<sup>277</sup> NPT/CONF.2005/PC.III/WP.29 of 18 May 2004; see p. 133, note 273.

<sup>278</sup> NPT/CONF.2005/1 of 20 May 2004; see p. 133, note 274.

<sup>279</sup> NPT/CONF.2005/PC.III/WP.30 of 21 May 2004, see p. 133, note 275.

<sup>280</sup> The resolution was adopted 151-6-24 in the General Assembly. France, Israel, Latvia, Palau, the UK and the US were the only countries with a no-vote. China voted in favor, Russia abstained. Preceding first NAC resolution: UN res. 53/77 Y of 4 December 1998; ensuing last resolution: UN res. 61/65 of 6 December 2006.

#### Box 7.4 NAC agenda

##### Main Objectives of the New Agenda Coalition during the 2005 NPT RevCon

- Universal adherence to the NPT.
- Early entry into force of the CTBT.
- Acceleration of the implementation of the practical steps for systematic and progressive efforts to achieve nuclear disarmament agreed upon at the 2000 NPT RevCon.
- Further steps of NWS to reduce non-strategic nuclear arsenals and not to develop new types of nuclear weapons.
- Resumption in the CD of negotiations on a non-discriminatory, multilateral, internationally and effectively verifiable FMCT and the completion and implementation of arrangements by all NWS to place fissile material no longer required for military purposes under international verification.
- Establishment of a subsidiary body in the CD to deal with nuclear disarmament.
- Further development of adequate and efficient verification capabilities.
- Conclusion of multilaterally negotiated legally binding (negative) security assurances for all non-nuclear weapon States parties, either in form of a separate agreement or of a protocol to the NPT.
- Establishment of a subsidiary body on nuclear disarmament at the 2005 RevCon.

*(e) RevCon: reporting, still a difficult issue* At the Third PrepCom, a discussion how to phrase the agenda of the RevCon had emerged, more precisely its item 16.<sup>281</sup> At the RevCon itself, the battle continued. The contentious issue was if and how to refer to the Final Documents of past RevCons, including the 2000 Final Document,<sup>282</sup> and thus also to the reporting issue. The adopted agenda under item 16 then only referred to the ‘Review of the operation of the Treaty,’<sup>283</sup> whereas a Presidential Statement stated that ‘[i]t is understood that the review will be conducted in the light of the decisions and the resolution of previous Conferences, and allow for discussion of any issue raised by States Parties.’<sup>284</sup> An ensuing decision on the allocation of agenda items to the Main Committees of the Conference decided that ‘institutional

281 See NPT/CONF.2005/PC.III/WP.30 of 21 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/362/72/PDF/N0436272.pdf?OpenElement>, last accessed on 2 November 2006.

282 See p. 45.

283 See NPT/CONF.2005/30 of 11 May 2005; <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/66/PDF/N0534166.pdf?OpenElement>, last accessed on 2 November 2006.

284 See NPT/CONF.2005/31 of 12 May 2005; <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/72/PDF/N0534172.pdf?OpenElement>, last accessed on 2 November 2006. See also the NAM statement in NPT/CONF.2005/32 of 12 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/342/71/PDF/N0534271.pdf?OpenElement>, last accessed on 2 November 2006. The clash about the agenda continued in the discussions on the Final Document; see pp. 45–6, note 29.



issues' would be dealt with under agenda item 17 in Main Committee II.<sup>285</sup> This vague reference to the reporting requirements, depending on whether reporting was classified as a procedural and institutional or a substantive and disarmament related issue, resulted in comments on reporting emerging in all three Main Committees. Whereas statements with regard to reporting on disarmament were dealt with in Main Committee I, those on institutional issues ended up in Main Committee II, which also had a subsidiary body on 'regional issues, including with respect to the Middle East and implementation of the 1995 Middle East resolution.' Finally, also Main Committee III had to handle reporting issues.

At the RevCon, 35 States handed in formal reports on Art. VI, among them for the first time two NWS, namely, China and Russia. The US declared that '[t]he United States values these opportunities to volunteer information on its policies, activities, and achievements contributing to the universal implementation of all substantive articles of the Treaty, including Article VI,<sup>286</sup> thus acknowledging comprehensive reporting, but in a voluntary and oral way. 10 reports on the Middle East were submitted by States, among them China and the US from the group of the NWS.

CSOs this time used the Appendix recommendations to make it clear that they (re)favored the Canadian proposals of annual comprehensive reports by all States, including a mandate for negotiating standardization:

On behalf of world civil society, we, the representatives of the Non-Governmental Organizations participating in the seventh NPT Review Conference, call upon our governments to work relentlessly toward achieving the following minimum outcomes on a realistic, but strict timetable.

...

*Recommendation 14*

*Commit to accounting, transparency and reporting in order to advance the goal of full compliance with the substantive provisions of the Treaty*

All states must issue specific annual progress reports concerning the implementation of their obligations under the NPT. Such reports are confidence-building measures and part of a more comprehensive regime of monitoring, verification, and enforcement of both disarmament and non-proliferation efforts. We support the Canadian and IAEA proposals to provide the NPT with a governance capacity, including negotiation of formal mechanisms for assessing compliance.<sup>287</sup>

This recommendation built on statement 2 on transparency:

At this seventh Review Conference, all States parties and non-governmental organizations are primarily concerned with one aspect of the Treaty: compliance. Whether prioritizing

<sup>285</sup> See NPT/CONF.2005/DEC.1 of 18 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/97/PDF/N0534997.pdf?OpenElement>, last accessed on 2 November 2006.

<sup>286</sup> Statement of 20 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/USA20.pdf>, last accessed on 15 November 2006.

<sup>287</sup> Statement of 11 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, last accessed on 15 November 2006.

compliance to Article VI, I, II or IV, in order to strengthen the Treaty – as you are mandated here to do – we must seek ways to build confidence in universal compliance to the Treaty.

Without doubt, the best way to build confidence is to strengthen and enhance transparency measures within the NPT process. This is a responsibility of States parties under the Practical Steps; we believe that some of the easiest, most effective methods to strengthen transparency can be found through reporting and increased access by and participation of civil society in the review process.

We'll start first with the issue of reporting.

All states have a responsibility to build transparency in the Treaty through their obligations under the 13 Steps, but even more importantly, they have an interest in contributing to the transparent flow of information, testifying to demonstrable steps taken to further the goals of the Treaty.

Critics have complained that reports offer little substance, in that they duplicate general statements. In fact, experience has shown the opposite; reports that have been submitted provided substantive and reasonably detailed information, contributing to increased transparency and demonstrating States' serious undertaking of their obligations to the NPT.

...

To strengthen the reporting practice and its capacity to enhance transparency, we call for:

- All states parties to submit reports, in that as more states take part, transparency within the Treaty framework will only increase;
- States parties to carry forward the commitment made in 2000, and endorse the reporting requirement at this Review Conference;
- States parties to submit reports which are substantive and which detail measurable steps taken to implement the Treaty, rather than declaratory statements;
- The NWS and [CTBT] Annex II States in particular to submit formal reports, insofar as participation in this practice grows, so will transparency;
- NWS, in particular, to report on national holdings of warheads – both within national borders and without, delivery vehicles and fissile materials; operational status of nuclear weapons; disarmament initiatives and reductions strategies; strategic doctrine; and security assurances.<sup>288</sup>

Canada picked up the language and submitted the following passages as part of two Working Papers, one on nuclear disarmament and the other one on achieving permanence with accountability:

*Reporting (Step 12):* If progress on nuclear disarmament is to be credible and credited, it should be properly documented. In our view, all States parties to the Treaty have a responsibility to account for how they are implementing the Treaty, and we welcome those who are doing so. We would like to see this Conference adopt a decision that would make annual reporting to Treaty sessions a requirement for all members. Given the interrelationship of the Treaty provisions, we would favour reports covering implementation of all aspects of the Treaty. This would represent a modest, but significant, act of participatory democracy by Treaty members and accountability before the Treaty

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<sup>288</sup> Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/npt11Ingo-sudberg.pdf>, last accessed on 15 November 2006.

community. We welcome the information on implementation provided by nuclear-weapon States in their statements and applaud Russia and China for conveying this in the form of a report to the Conference. We urge the other nuclear-weapon States to re-package their implementation statements as an official report to this Conference. Reports ensure an official record of the accomplishments of States in carrying out their Treaty commitments and give all a basis for factual comparison in the future. We urge acceptance of this proposal and have provided draft decision language in Working Paper 39, in the section on reporting:<sup>289</sup>

### *Reporting*

The Conference recalls the decision of the 2000 Review Conference on regular reports and recognizes the value of reporting for building confidence in the Treaty regime by promoting transparency and accountability, and providing States parties a way to demonstrate their active commitment to and participation in the implementation of the Treaty.

The Conference reaffirms the importance of reporting and States parties agree to provide reports on an annual basis on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament, and recalling the Advisory Opinion of the International Court of Justice of 8 July 1996. Recognizing the interrelationship of the provisions of the Treaty, the Conference encourages States parties to include in their reports implementation actions on all articles of the Treaty.<sup>290</sup>

The NAM decided to change its wording in its Working Papers, called for a strengthened reporting mechanism this time, a proposal which it had tried to include in the Recommendations of the PrepCom to the RevCon the year before, and added a request for reports on the implementation of the ICJ decision:

3. The Group of Non-Aligned States parties to the Treaty furthermore calls on the Review Conference to:

...

b) The further strengthening or enhancement of the regular reporting mechanism provided for in accordance with the Final document of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons;<sup>291</sup>

33. The States parties, in particular the nuclear-weapon States, shall inform the Secretary-General of the United Nations of the efforts and measures they have taken on the implementation of the unanimous conclusion of the International Court of Justice that there

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<sup>289</sup> NPT/CONF.2005/WP.38 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/05/PDF/N0534705.pdf?OpenElement>, last accessed on 15 November 2006.

<sup>290</sup> NPT/CONF.2005/WP.39 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/13/PDF/N0534713.pdf?OpenElement>, last accessed on 15 November 2006. See also Canada's statement on 2 May 2005, <http://www.un.org/events/npt2005/statements/nptcanada-english.pdf>, last accessed on 15 November 2006, and further statements in plenary and in Main Committees I, II and III.

<sup>291</sup> NPT/CONF.2005/WP.17 of 2 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/329/62/PDF/N0532962.pdf?OpenElement>, last accessed on 15 November 2006.

exists an obligation to pursue in good faith and to bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.<sup>292</sup>

Jamaica and the Philippines supported the NAM Working Papers altogether in the General Debate. Yet, the above-mentioned excerpt remained the only referral to reporting by the NAM during the RevCon. The Movement did not mention the issue in its statements at all. The NAC was also cautious and only took a stand in the middle of the Conference when the plenary discussion was reopened.<sup>293</sup>

Full acknowledgement for the progress that the nuclear-weapon States assert they are making towards nuclear disarmament requires greater transparency. A first step towards transparency is the regular submission of Article VI reports in accordance with step 12 as agreed at the 2000 Review Conference. We acknowledge that it might not be possible to achieve full transparency. However, that does not mean that enhanced transparency could not be developed collectively or within the framework of the NPT.<sup>294</sup>

It then introduced a Working Paper with recommendations to Main Committee I in which it presented the following paragraph figuring already in its recommendations for the RevCon submitted to the Third PrepCom:

12. To agree that the nuclear-weapon States take further action towards increasing their transparency and accountability with regard to their nuclear weapon arsenals and their implementation of disarmament measures and in this context to recall the obligation to report as agreed in step 12.<sup>295</sup>

The statement made in plenary and the Working Paper were re-circulated by New Zealand and supported by Mexico, South Africa and Sweden in Main Committee I.<sup>296</sup> In addition, Mexico tried to push the issue at the Committee session:

Nos parece que la medida práctica adoptada en 2000 que se refiere a la presentación de informes constituye la base sobre la cual podemos empezar a lograr un entendimiento común acerca del significado del cumplimiento.

Estimamos que la presentación de informes por escrito con relación al cumplimiento e implementación de los acuerdos alcanzados aumentaría de manera significativa la transparencia, reduciendo las preocupaciones derivadas de la falta de cumplimiento. En este sentido, México ha presentado ya, de conformidad con la medida práctica 12 del Documento Final de 2000 su informe nacional.<sup>297</sup>

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292 NPT/CONF.2005/WP.8 of 26 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/10/PDF/N0532310.pdf?OpenElement>, last accessed on 15 November 2006.

293 See pp. 46–7.

294 Statement on 18 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/GDstatements/NZ-NAC.pdf>, last accessed on 15 November 2006.

295 NPT/CONF.2005/WP.27 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/333/11/PDF/N0533311.pdf?OpenElement>, last accessed on 15 November 2006.

296 See New Zealand's statement on behalf of the NAC in Main Committee I on 19 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/New%20Zealand.pdf>, last accessed on 15 November 2006.

297 Statement of 20 May 2005.

Brazil was even more precise:

7th – The Conference should reiterate the need for comprehensive, systematic and regular reports, to be submitted as official documents of the Conference, by the Nuclear-Weapon States on their implementation of article VI.<sup>298</sup>

Japan repeated its call of the Third PrepCom for continuous discussion on specific reporting methods.<sup>299</sup> Similarly, the United Arab Emirates asked for ‘a constant review of the NPT and of the standard reporting mechanism.’<sup>300</sup> Belgium, the Netherlands and Norway likewise reiterated their statement in a joint Working Paper, but this time were joined by Lithuania, Poland, Spain and Turkey.<sup>301</sup> Lithuania, having handed in a report on all articles of the NPT, reiterated the call for regular reporting of all States in its own speech in the General Debate,<sup>302</sup> whereas Poland, with a similar report, encouraged other States to follow the article-by-article approach.<sup>303</sup> Norway, still the only one to do so, repeated its statement on obligatory reporting.<sup>304</sup> Argentina picked up the term coined earlier by Canada and spoke of a ‘consolidation of a culture of presentation of Reports and of transparency’ as a contribution to strengthening the commitment to disarmament.<sup>305</sup> Croatia<sup>306</sup> and Spain<sup>307</sup> simply showed their support for reporting.

Qatar, on behalf of the League of Arab States, called for reports containing information about nuclear trade with Israel to the next review process and its RevCon

298 Statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Brazil.pdf>, last accessed on 16 November 2006.

299 NPT/CONF.2005/WP.22 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/56/PDF/N0533256.pdf?OpenElement>. See also its statement in Main Committee I on 19 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Japan19.pdf>, both last accessed on 15 November 2006.

300 Statement of 20 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/UAE20.pdf>, last accessed on 16 November 2006.

301 NPT/CONF.2005/WP.35 of 11 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/89/PDF/N0534189.pdf?OpenElement>, last accessed on 15 November 2006.

302 Statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03lithuania.pdf>, last accessed on 16 November 2006.

303 Statement of 3 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt03poland.pdf>, last accessed on 16 November 2006.

304 Statement of 10 and 18 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt10norway.pdf>, last accessed on 15 November 2006. See also a Working Paper submitted by Norway, NPT/CONF.2005/WP.23 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/37/PDF/N0533237.pdf?OpenElement>, last accessed on 15 November.

305 Statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Argentina.pdf>, last accessed on 16 November 2006.

306 Statement of 4 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt04croatia.pdf>, last accessed on 16 November 2006.

307 Statement of 4 May 2005 in the General Debate, <http://www.un.org/events/npt2005/statements/npt04spain-spanish.pdf>, last accessed on 16 November 2006.

in 2010.<sup>308</sup> It was joined by Egypt, which, in a Working Paper to Main Committee II, in addition evoked the requirement to submit Middle East reports of the 2000 Final Document and requested similar requirements for the next review process.<sup>309</sup> Cuba, in its statement on ‘Transparency, verification and irreversibility: essential principles in the process of nuclear disarmament,’ pointed towards the special responsibility of NWS and made a suggestion for decision-making:

16. No por gusto una de los ‘trece medidas prácticas’ para la aplicación del artículo VI del Tratado, acordadas durante la Conferencia de Examen del año 2000, es precisamente el llamado a la presentación de informes periódicos que reflejen cómo los Estados partes en el Tratado han cumplido sus obligaciones en virtud de dicho artículo. Ello significa una importante medida de transparencia en el proceso de desarme nuclear.

17. En este caso, los Estados partes poseedores de armas nucleares tienen una responsabilidad primordial y una magnífica oportunidad para dar a conocer lo que han hecho en materia de desarme nuclear y si las medidas adoptadas en este ámbito observan los principios de verificación, transparencia e irreversibilidad. La información que proporcionen las potencias nucleares debería incluir datos precisos sobre la composición y cantidad de sus arsenales nucleares, y acerca de los avances concretos que se experimenten en la eliminación de los mismos, así como otras medidas que marchen en esa dirección. Ello representaría un paso de verdadero valor y confianza para el resto de los Estados partes, y una medida efectiva de transparencia que evidenciaría la honestidad y veracidad con que cumplen las obligaciones adquiridas en el marco del Tratado.

...

*Algunas propuestas concretas*

23. Sin pretender enunciar una lista exhaustiva, Cuba considera que algunas acciones o pasos concretos para avanzar en la aplicación de los principios de verificación, transparencia e irreversibilidad en el proceso de desarme nuclear, pueden ser los siguientes:

...

g) Todos los Estados partes en el Tratado sobre la no proliferación de las armas nucleares deben presentar informes periódicos que reflejen el cumplimiento de sus compromisos y obligaciones en virtud de dicho Tratado y de otros acuerdos internacionales en la esfera del desarme nuclear. En particular los Estados partes poseedores de arsenales nucleares deberían declarar los mismos y los avances concretos que se vayan obteniendo en su eliminación.<sup>310</sup>

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308 NPT/CONF.2005/WP.40 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/23/PDF/N0534723.pdf?OpenElement>, and statement in the reopened plenary on 18 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/GDstatements/Quatarenglish.pdf>, both last accessed on 15 November 2006.

309 NPT/CONF.2005/WP.36 of 12 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/343/39/PDF/N0534339.pdf?OpenElement>, last accessed on 16 November 2006.

310 NPT/CONF.2005/WP.24 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/333/44/PDF/N0533344.pdf?OpenElement>, and its statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/Iran.pdf>, both last accessed on 16 November 2006.

Iran, while acknowledging the statements of NWS in Main Committee I as reports,<sup>311</sup> was in favor of expanding their reports to include information on the 13 practical steps.<sup>312</sup> The Republic of Korea, likewise using the argument of transparency and accountability, joined the call for regular reports, but accepted the wish of NWS to keep them flexible:

#### Reporting

17. The Republic of Korea attaches importance to transparency and accountability of nuclear-weapon States in fulfilling their disarmament obligations. Increased transparency and accountability will be conducive to reducing controversy surrounding the process of nuclear disarmament. In this regard, the Republic of Korea encourages nuclear-weapon States to report progress on disarmament to the international community on a regular basis. Nuclear-weapon States are also encouraged to report on their nuclear arsenals and inventories of fissile materials for weapons purposes. However, with regard to the modality of reporting, the Republic of Korea, on a practical aspect, takes note of the view that reporting can be flexible in its scope, format and framework.<sup>313</sup>

The only reaction of NWS with regard to the argument of transparency and accountability was the half-way answer, restricting transparency to civilian nuclear materials, given by France in Main Committee III:

For Governments and populations to be aware of the challenges and the means made available, the greatest transparency is required. As far as my country is concerned, it is determined to pursue the efforts for transparency already undertaken, in particular in safety related issues. When it comes to nuclear materials, France is a member of the group of countries that have signed the guidelines adopted for the management of civilian plutonium and as such it publishes a yearly status report on its civilian inventory. My country is equally convinced that the management of highly enriched uranium stocks would benefit from similar guidelines.

France invites all those States that possess such material to adhere to this step that seeks to reinforce transparency and accountability.<sup>314</sup>

After this lively debate on reporting, the Chairman's Working Paper of Main Committee I, annexed to the Report of the Committee, nevertheless hinted an agreement on an annual reporting requirement:

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311 Statement of 20 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/iran20.pdf>, last accessed on 16 November 2006.

312 NPT/CONF.2005/WP.47 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/50/PDF/N0535050.pdf?OpenElement>, last accessed on 16 November 2006.

313 NPT/CONF.2005/WP.42 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/23/PDF/N0534823.pdf?OpenElement>, last accessed on 16 November 2006. See also its statement of 19 May 2005 in Main Committee I, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCI/SKorea.pdf>, last accessed on 16 November 2006.

314 Statement of 19 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/France.pdf>, last accessed on 16 November 2006.

12. Reaffirming the importance of reporting, the Conference welcomes the reports and information submitted to the Conference and agrees to provide reports on implementation of article VI on an annual basis.<sup>315</sup>

Following this, on 25 May 2005 the Abolition Caucus dispatched an e-mail action alert in which it asked NGOs to lobby their governments to support Canada's Working Paper 39, calling for, *inter alia*, annual reporting by all states.<sup>316</sup> However, governments finally left the issue to be taken up at the next PrepCom meeting in 2007, together with all the other substantive issues, when it was decided that the Final Document would not contain any substantive statement.

*(f) Results* Once again, it has to be concluded whether (a) governments justify their conclusions with reference to CSO arguments, whether (b1) CSO arguments are adopted by governments as part of their official positions and whether (b2) some of these arguments are put as an item on the agenda of the policy-making process.

First of all, it has to be stated that CSOs much less tried to dominate the discussion on reporting as compared to their favorite NWC issue. They were also less stringent in adapting their own position to the governmental debate. Since the issue of reporting had to be and was taken up by governments from the outset, the debate seems to have been much more exclusively in their hands than with regard to the discussion on an NWC where to some extent even a mutual exchange took place. Thus, at the First PrepCom, as stated by the Center for Nonproliferation Studies (2005a, 24), the NAC and Canada regarded reporting to a common format at every NPT PrepCom session or Review Conference as a core NWS commitment and thus considered it to be a substantive, rather than purely procedural, issue, which had to be dealt with from the beginning. Some, as Canada and New Zealand, also favored from the outset a comprehensive reporting format, which was highly welcomed by CSOs,<sup>317</sup> whereas the NAM and the NAC argued in favor of reports on the 13 practical steps. Canada then combined these two approaches at the Third PrepCom. The NWS, which rarely officially commented on the proposals on reporting in oral or written statements, saw the reporting requirement being much looser without a standard format and without fixed obligations in time. This friction continued during the Second PrepCom (Center for Nonproliferation Studies 2005a, 26) and beyond.

From this seemingly separate civil society-government debate, it is difficult to draw conclusions as to whether States justified their positions with regard to CSO arguments (premise and/or conclusion). The least one can say is that they never did it explicitly. This leads one to argue that many States may have justified their arguments with regard to Canadian and other progressive governmental points of view which were prominent in the debate, rather than to CSO positions. In fact, in some cases, they even did this explicitly. A similar careful appraisal is indicated with regard to the question of whether CSO arguments (premise and/or conclusion) were adopted by governments as part of their official positions. At the Third PrepCom,

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315 NPT/CONF.2005/MC.I/1 of 25 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/359/89/PDF/N0535989.pdf?OpenElement>, last accessed on 16 November 2006.

316 On file with author.

317 See RCW, *News in Review*, No. 6, 15 April 2002, p. 1.



for example, CSOs for a short time retracted their support for standardization as long as States would not increase their reports, whereas Canada (and the NAM and the NAC) continued to promote a standardized format. Other States did not only continue to comment on the latter proposal, but also maintained the position of either comprehensive or 13 step reports. Other proposals exclusively suggested by CSOs, such as the involvement of NGOs in reporting about governments' progress, were never commented on nor taken up. This advises to argue that Canadian, NAM or NAC positions were referred to and/or adopted, rather than CSO proposals.

In fact, CSO claims and the ideas uttered by Canada or others proposed by the NAM and the NAC were very similar. Thus, CSOs and those States alike used the premises of transparency and accountability. Canada and CSOs both were empathic on comprehensive reports by all States at every session by way of a standardized, but simple format. At the Third PrepCom, Canada even further elaborated on CSO and others' proposals of actual data to be reported on, which was in turn taken up by CSOs during the RevCon. The NAM, the NAC and CSOs all argued for detailed reporting on the 13 steps and on current policies as well as developments to each PrepCom session, the NAC even proposing some examples for information submission which were also proposed by CSOs. Belgium et al. started from the Second PrepCom onwards to ask for detailed information on the aggregated number of warheads, delivery systems and stocks of fissile materials for explosive purposes of NWS which likewise approximately corresponded to CSO requests delivered at the First PrepCom. Thus, those States might have picked up CSO arguments and conclusions, even though it is not possible to clearly state who influenced whom. As for the debate on an NWC, however, they did so from the very beginning and mainly kept their positions, sometimes repeating them word by word, throughout the review process, even though some States, such as Canada, were more flexible and their arguments and conclusions could gain more ground among other States. As for the NWC debate, references to reporting increased during the Third PrepCom and at the RevCon, where again the NAM, but this time also the NAC, remained comparatively restrained. Likewise, the NAM became more stringent with regard to those limited positions uttered. Yet, an eventual exchange with CSOs does not seem to have been considered in the heated climate.

With regard to the agenda, the picture is even clearer. Reporting, as an issue decided upon by governments during the previous RevCon, had to be part of the agenda of the 7th review process. However, as the discussion during the First PrepCom demonstrated, even this could not be taken for granted. The rift between States found its follow-up during the Third PrepCom when the discussion on the summary of the Third PrepCom, on background papers for and recommendations to the RevCon and on the RevCon's agenda came to grief, *inter alia* because of the question whether to include the issue of reporting. With regard to the RevCon's agenda, only a hard-won compromise decided the issue at the RevCon itself. Arguments uttered by CSOs during the 7th review process, yet, did at no stage find their way on the agenda, just as little as did new governmental arguments. We will now analyze the third and last issue, namely, renewable energy, in order to judge the governments' responsiveness in a more conclusive way.

*Inventive Proposals on Renewable Energy*

Beside the bias of the NPT towards nuclear non-proliferation at the expense of nuclear disarmament, another conflict between internal goals is inherent in the Treaty. There is a clash between the right of NNWS to the peaceful use of nuclear energy (Art. IV) on the one hand and the renunciation of NNWS to manufacture nuclear weapons (Art. II) on the other, and between the ‘fullest possible exchange of equipment, materials and scientific and technological information’ (Art. IV) and the obligation of NWS ‘not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons’ (Art. I) (Dhanapala and Rydell 2005, 125–7). This conflict mainly concerns nuclear energy, more precisely, sensitive nuclear materials which can be used for either power production or nuclear weapons manufacturing.<sup>318</sup> Generally speaking, there is a division between NNWS insisting on their right to peacefully use nuclear energy and denying the export control mechanisms, such as the Zangger Committee and the Nuclear Suppliers Group, any legitimacy and NWS and the main supplier States insisting on the prohibition part of the NPT and on controlling activities.

One solution to resolve this dispute in the future might be provided by Multilateral Nuclear Approaches (MNA) for sensitive fuel cycle activities, including an international guarantee for fuel supply.<sup>319</sup> However, as Dhanapala and Rydell (2005, 126) wisely formulated, ‘[i]f mere restrictions will not be sufficient to eliminate the risk of misuse of these materials, the world may well have to decide to ban such uses altogether.’ Therefore, CSOs elaborated a second solution which combines the NPT antagonism in the nuclear energy field with the non-proliferation-disarmament rift. They first and foremost point to the dreadful, either accidental or common use, detriments of both nuclear weapons as well as nuclear energy production in the fields of health and environment as well as to its consequences with regard to the dispossession of indigenous people and nuclear weapons proliferation (WILPF 2006b; WILPF 2006a). Whereas for nuclear weapons, abolition is the road to be followed, with regard to nuclear energy, CSOs promote alternative energy sources. This relatively new shift in civil society positioning was certainly stimulated by the Chernobyl nuclear power accident in 1986, many reports about nuclear power devastation, especially from indigenous peoples, and the debate on environmental degradation of the 1990s. It was first introduced in the Optional Protocol Concerning Energy Assistance to the Model Nuclear Weapons Convention<sup>320</sup> which proposed to set up a program of energy assistance for States parties choosing not to develop nuclear energy or to phase out existing nuclear energy programs and to establish a voluntary fund for the development and use of non-nuclear, sustainable energy sources. NGOs introduced the concept of alternative energy during the 6th review process.<sup>321</sup> They also staged a Nuclear Truth Commission to disclose knowledge and personal

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318 See pp. 34–5.

319 See p. 35.

320 See pp.78–9 and p. 79, note 89. See also the Preamble of the Model NWC.

321 See for example the presentation on Article IV and Alternative Energy Sources by Alice Slater, Esq., Global Resource Action Resource Center for the Environment, 3 May 2000,

experience of the collective nuclear legacy of humankind during the 6th RevCon on 1 May 2000. Inspired by the South African Truth and Reconciliation Commission, this public forum was open to former military personnel, nuclear scientists and workers, and representatives from downwind and indigenous communities to give testimony on their nuclear stories. In order to mirror the enduring threat of radioactive materials to the future, the Commission also incorporated a panel of listeners from the future (WILPF 2000). In 2001, in the follow-up to the RevCon, the non-governmental organization Global Resource Action Center for the Environment (GRACE), as the Convener of the Abolition 2000 Working Group for Sustainable Energy, worked out a Model Statute for an International Sustainable Energy Agency as an alternative to the IAEA.<sup>322</sup> It was meant to be enacted during the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, in August/September 2002, but apparently was blocked by corporate and national interests.<sup>323</sup> Since then, it has been presented at various NPT PrepCom and RevCon sessions as well as at the World Social Forum. Its main objective would be to accelerate and enlarge the contribution worldwide of technologies for sustainable energy for climate and environmental protection, equitable access to industrial and energy development, global security and industrial innovation (Art. II of the Model Statute).

Certainly, the question of peaceful use of nuclear energy is also an issue which divides CSOs (WILPF 2006b, 1). On the one hand there is the arms control camp, which sees Art. IV and the right to peaceful use of nuclear energy as the 'carrot' that has curbed the proliferation of nuclear weapons. Nuclear abolitionists, on the other hand, consider Art. IV to be at the origin of deadly practices and environmental destruction, and also to be the root for nuclear proliferation.<sup>324</sup> This rift is demonstrated, for example, by a discussion of the German NPT Youth Action with the Italian Ambassador during the 7th RevCon on the subject of a fund for renewable energy as an alternative to nuclear energy. Afterwards, a French NGO representative heavily questioned the usefulness of such an approach (Schlupp-Hauck 2005b). The discussion continues, as the recent Abolition 2000 decision to actively lobby for a Sustainable Energy Agency shows (Küpker and Schlupp-Hauck 2006). Nevertheless, proposals of alternative energy concepts increasingly found their way into the jointly scripted civil society statements during the 7th NPT review process. However, one has to pay careful attention to how, when and where these proposals were presented.

*(a) Renewable energy at the start of the 7th review process* The issue of transition from nuclear to renewable energy from a substantial viewpoint was part of cluster three (peaceful use of nuclear energy) during the 7th review process. The 2000 RevCon Final Document had not mentioned the proposal at all. However, governments had

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<http://www.reachingcriticalwill.org/legal/npt/NGOpres00/31.pdf>, last accessed on 23 October 2006.

322 See <http://www.abolition2000.org/atf/cf/%7B23F7F2AE-CC10-4D6F-9BF8-09CF86F1AB46%7D/ISEA.pdf>, last accessed on 24 October 2006.

323 See [http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316427/k.4E9B/Sustainable\\_Energy\\_Working\\_Group.htm](http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316427/k.4E9B/Sustainable_Energy_Working_Group.htm), last accessed on 24 October 2006.

324 See also RCW, *News in Review*, No. 8, 7 May 2003, p. 1.

been concerned with consequences of nuclear energy for the environment, one argument of CSOs against its use. Yet, their argument had gone the other way round, namely, that nuclear energy were the guarantor of sustainable development:

8. The Conference recognizes the importance of the concept of sustainable development as a guiding principle for the peaceful use of nuclear energy. The Conference endorses the role of IAEA in assisting member States, upon request, in formulating projects that meet the objective of protecting the global environment by applying sustainable development approaches. The Conference recommends that IAEA continue taking this objective into account when planning its future activities. It further notes that IAEA regularly reports to the General Assembly on progress made in these fields.<sup>325</sup>

And:

2. The Conference recognizes the benefits of the peaceful applications of nuclear energy and nuclear techniques in the fields referred to in articles II and III of the statute of IAEA, and their contribution to achieving sustainable development in developing countries and for generally improving the well-being and the quality of life of the peoples of the world.<sup>326</sup>

This corresponds to an almost world-wide approach of governments since the age of climate change. The argument is that, in order to reduce the release of CO<sub>2</sub> in the atmosphere, one would have to increase the use of nuclear, and perhaps also some renewable, energy sources (see Barré 2003).

On the other hand, CSOs argue that this argumentation is not comprehensive and the viewpoint is one-sided. At the First PrepCom, their interventions pointed to the health and genetic consequences and the long-lasting environmental damage caused by nuclear weapons and their tests and by nuclear energy, ranging from leaks from nuclear power plants working properly to accidents or terrorist attacks, alike. Moreover, there would be no suitable place to dispose of either present or future nuclear waste in a manner that would protect future generations. They also blamed governments not to have adequately informed nor educated their citizenry about possible health outcomes even in the areas of known high fallout.<sup>327</sup> Indigenous people even went further and supplemented the above premises with the powerful argument of ‘genocide’ and ‘omnicide,’ which in fact denoted beside the environmental and health consequences also attacks on indigenous people, the misuse of their lands, the destruction of their cultures, ‘environmental racism,’ the non-peacefulness of nuclear weapons and nuclear technology, and nuclear colonialism. They then stated that ‘there can never be real security when security is based on a narrow, anti-environmental, and therefore, unsustainable model of peace and security.’<sup>328</sup> Moreover, they added

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325 NPT/CONF.2000/28 (Parts I and II), <http://disarmament.un.org/wmd/npt/2000FD.pdf>, last accessed on 20 October 2006, p. 9.

326 Ibid., p. 11.

327 Statement of 10 April 2002, <http://www.reachingcriticalwill.org/legal/npt/NGOPres02/13.pdf>, last accessed on 20 October 2006.

328 Statement of 10 April 2002, <http://www.reachingcriticalwill.org/legal/npt/NGOPres02/4.pdf>, last accessed on 20 October 2006.

a reference to the Declaration of Salzburg<sup>329</sup> and the concurrently adopted Statement of Indigenous Participants<sup>330</sup> of 18 September 1992, which had introduced the term of ‘ecological sustainability’ and had called for the use of safe, renewable, but also sustainable and enhancing resources and for assistance to the development of alternative energy programs in countries which utilized nuclear power. Building on their experience from the 2000 RevCon, CSOs then introduced a UN-sponsored Global Truth Commission in order to clarify these issues and, basing themselves on the work of GRACE/Abolition 2000, a Global Sustainable Energy Agency in order to replace fossil fuel and nuclear resources by sustainable sources of energy. Yet, it was put forward in a single presentation and not in the additional recommendations, perhaps because the proposal was not backed by all NGOs:

#### A UN-Sponsored Global Truth Commission

A wide-ranging public discourse is needed within every nuclear-weapon state about the health and environmental harm that they have inflicted upon their own people. A global debate is needed about harm outside the borders of those states. Much of that harm was knowingly inflicted.

It is time for the United Nations General Assembly to establish an independent and open Truth Commission on the ravages that have been inflicted upon the world by nuclear weapons production and testing. That commission should not only examine the nature and extent of that harm, and whether and how deliberately it was inflicted; it should recommend ways in which the world’s people can hold nuclear weapons establishments accountable. It should also examine whether and to what extent the security arguments that have been claimed for nuclear weapons have been constructed with the aim of keeping people ignorant and fearful so that the weapons bureaucracies might perpetuate themselves. Such an examination would be of some considerable relevance today, given that nuclear weapons establishments are still refusing to meet their nuclear disarmament commitments under the Nuclear Non-Proliferation Treaty and that people are still getting ill and dying from the harm that nuclear weapons establishments have inflicted upon them.

#### A Global Sustainable Energy Agency

Parties to the NPT should replace their dependence on nuclear power and with a commitment to the use of sustainable sources of energy.

Sustainable energies, in their production or consumption, have minimal adverse impacts on human health, and the health functioning of vital ecosystems, including the global environment. The supply of fossil fuel and nuclear resources are inherently exhaustible. Sustainable energies represent an inexhaustible potential, and can be supplied continuously to future generations on earth.

Parties should create a Global Sustainable Energy Agency to help achieve these goals.<sup>331</sup>

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329 <http://www.nuclear-free.com/english/salzburg.htm>, last accessed on 20 October 2006.

330 <http://www.nuclear-free.com/english/indig.htm>, last accessed on 20 October 2006.

331 Statement of 10 April 2002, [http://www.reachingcriticalwill.org/legal/npt/NGO\\_pres02/13.pdf](http://www.reachingcriticalwill.org/legal/npt/NGO_pres02/13.pdf), last accessed on 20 October 2006.

How then did governments react to these statements? In fact, reaction was implicit rather than explicit and, beside a constant insistence of many NNWS on their right to peaceful use of nuclear energy, can be divided into two approaches, both alluding to CSO premises, but in the first case not sharing them and in both not arriving at the same conclusion. The first included those States, which justified nuclear energy, contrary to CSO arguments, with its sustainable development effects and mentioned it in the same line as other nuclear technologies, as promoted by the IAEA Technical Co-operation (TC) Programme. Among them were China,<sup>332</sup> the EU,<sup>333</sup> France,<sup>334</sup> but also the IAEA:

The IAEA continues to play an important role within the operating framework of its three pillars as a catalyst for sustainable development and as a cornerstone for nuclear safety and nuclear nonproliferation. The Agency's programme of activities focuses on building and maintaining a global nuclear safety regime; verifying commitments to the non-proliferation of nuclear weapons and ensuring the security of nuclear material and facilities; and bringing about the development and transfer of peaceful nuclear technologies.<sup>335</sup>

And:

One highlight of the TC Programme last year included the launching of the PanAfrican Tsetse and Trypanosomosis Eradication Campaign (PATTEC) in Ouagadougou, Burkina Faso in October. This reflected a partnership between the IAEA and the Organisation for African Unity and represented an important milestone in the progress of applying the sterile insect technique to the area wide eradication of the tsetse in Africa. This example also illustrates that nuclear science and technology has important contributions to make to sustainable development – in agriculture, food safety, public health, industrial techniques, water resources and electricity generation – and the Agency intends to contribute actively to the World Summit on Sustainable Development in Johannesburg in August.<sup>336</sup>

France was the only State within this group which explicitly referred to the CSO conclusion of renewable energy as a further option, giving it so to speak a chance, but not an exclusive one:

France, like other countries, has chosen to make use of nuclear energy in order to secure its energy supplies, to contribute to the reduction of emissions of greenhouse gases, and to stabilise the cost of electricity for its national economy in a context of sustainable

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332 NPT/CONF.2005/PC.I/WP.8 of 15 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/333/47/PDF/N0233347.pdf?OpenElement>, last accessed on 20 October 2006.

333 See statement of 18 April in the cluster 3 debate, [http://www.basicint.org/nuclear/NPT/2002prepcom/C3-Spain\\_EU.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/C3-Spain_EU.htm), last accessed on 20 October 2006.

334 See statement of 15 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/C3-France.htm>, last accessed on 20 October 2006.

335 Statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/iaea.htm>, last accessed on 20 October 2006.

336 Statement of 18 April 2002 in the cluster 3 debate, <http://www.basicint.org/nuclear/NPT/2002prepcom/c3-iaea.htm>, last accessed on 20 October 2006.

development. To date, over 75 per cent of its electrical power is supplied by an installed base of 58 reactors. Although it considers it necessary to pursue actively a policy of diversification of resources, notably through the use of renewable forms of energy, the French government has reaffirmed its choice of nuclear energy as the principal source of its national electricity supply.<sup>337</sup>

The second group was compounded of those States which indeed were concerned with some environmental risks of nuclear energy, without, however, drawing the same conclusions as CSOs. While acknowledging the above-mentioned interpretation of the positive effects of nuclear energy, they pointed to sustainable development being a common good of all and to the risk of maritime transport of nuclear materials. The transshipment of radioactive materials had already been an issue during the 6th review process, which had endorsed the IAEA regulations for the safe transport of radioactive materials in its 2000 Final Document.<sup>338</sup> In a move to protect the fragile ecology of their marine space from pollution and trans-boundary implications caused by an accident, small island developing States and other coastal States, such as Jamaica,<sup>339</sup> New Zealand,<sup>340</sup> Norway<sup>341</sup> and Nauru on behalf of the Pacific Islands Forum Group,<sup>342</sup> now requested the highest possible safety standards for transportation, effective emergency response, liability and compensation, and prior information and consultation. By addressing these safety challenges, they, however, indirectly confirmed CSO premises of nuclear environmental dangers, without expressly acknowledging it or even without realizing it. Some nuclear material transporting States, such as the UK<sup>343</sup> and Spain on behalf of the EU,<sup>344</sup> responded to these concerns, mainly by referring to their own initiatives or them being a party to relevant international Conventions and Regulations.

Thus, neither the sustainable development of nuclear energy proponents, nor those States concerned with nuclear risks actively propagated the transition from nuclear to renewable energy. The Chairman's factual summary then only gave an account of the transportation concerns of States and the positive consequences of the IAEA TC Programme for, *inter alia*, the environment and development, without using the term 'sustainable development' *expressis verbis*:

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337 Statement of 15 April 2002 in the cluster 3 debate, <http://www.basicint.org/nuclear/NPT/2002prepcom/C3-France.htm>, last accessed on 20 October 2006.

338 NPT/CONF.2000/28 (Parts I and II), <http://disarmament.un.org/wmd/npt/2000FD.pdf>, p. 10, last accessed on 20 October 2006.

339 See statement of 9 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/jamaica.htm>, last accessed on 20 October 2006.

340 See statement of 8 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/NewZealand.htm>, last accessed on 20 October 2006.

341 See statement of 16 April 2002 in the cluster 2 debate, <http://www.basicint.org/nuclear/NPT/2002prepcom/C2-Norway.htm>, last accessed on 20 October 2006.

342 See statement of 8 April 2002, [http://www.basicint.org/nuclear/NPT/2002prepcom/Nauru\\_PacIslands.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/Nauru_PacIslands.htm), last accessed on 20 October 2006.

343 See statement of 17 April 2002, <http://www.basicint.org/nuclear/NPT/2002prepcom/C3-Britain-2.htm>, last accessed on 20 October 2006.

344 See statement of 18 April in the cluster 3 debate, [http://www.basicint.org/nuclear/NPT/2002prepcom/C3-Spain\\_EU.htm](http://www.basicint.org/nuclear/NPT/2002prepcom/C3-Spain_EU.htm), last accessed on 20 October 2006.

34. The importance of strengthening nuclear safety, radiation protection, the safety of radioactive waste management and the safe transport of radioactive materials was stressed. The efforts of IAEA in the promotion of safety in all its aspects were welcomed. States parties that had not yet acceded to the Convention on Nuclear Safety, as well as the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, were encouraged to do so.

35. States parties emphasized that transportation of radioactive material, including maritime transportation, should be carried out in a safe and secure manner in strict conformity with international standards established by the relevant international organizations, such as IAEA and the International Maritime Organization. Some States parties called for effective liability arrangements, prior notification and consultation. Some States parties noted the conclusions on safety in IAEA General Conference resolution GC(45)RES/10. The holding of an IAEA conference on safe transport of radioactive materials in July 2003 was welcomed by many.

36. States parties reiterated their strong support for article IV of the Treaty, which provided a framework for cooperation and confidence for the peaceful uses of nuclear energy. In that context, States parties expressed wide support for the technical cooperation activities of IAEA. It was underlined that technical cooperation played an important role in further developing the application of nuclear energy for peaceful purposes, including human health, pest eradication, food and agriculture, and the environment. The importance of aligning technical cooperation programmes with development goals and the needs of the country concerned was emphasized. Several States parties stressed the importance of providing the Agency with adequate resources for those activities.<sup>345</sup>

*(b) Alternative energy sources promotion at the Second PrepCom* During the Second PrepCom, CSOs simply alluded to their proposal of a Sustainable Energy Agency submitted to the First PrepCom in the Introduction to their presentations, this time, however, linking the NPT propagated assistance with regard to nuclear energy to the issue of proliferation, and substantiating this argument with CTBT provisions:

In fact, it must be faced that the means for proliferation are built into the NPT, most notably through Article IV, a provision by which Non Nuclear Weapons States are promised assistance with nuclear power technology and materials that can be converted wholesale into the capability necessary for the development of nuclear weapons, simply by withdrawing from the Treaty. The CTBT's entry-into-force provision, which requires all states with nuclear reactors to ratify the Treaty, implicitly acknowledges that nuclear power capabilities enable countries to develop nuclear weapons.

Many NGOs believe that the NPT tradeoff to provide nuclear power to Non Nuclear Weapons States must be addressed by setting up a procedure for members of the NPT to phase out their commitment to nuclear energy with an obligation to support the establishment of an International Sustainable Energy Agency to promote the use of safe, clean, sources of energy that do not provide the means and materials to make nuclear weapons.<sup>346</sup>

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345 NPT/CONF.2005/PC.I/21 of 19 April 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement>, last accessed on 20 October 2006.

346 Statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/Intro.htm>, last accessed on 24 October 2006.



In Reaching Critical Will's daily newsletter, Rhianna Thyson added that an International Sustainable Energy Agency (ISEA) could be coupled with the suggestion of the New Agenda Coalition of negative security assurances to replace the 'carrot' of the NPT.<sup>347</sup> Greenpeace demonstrated the usefulness and effectiveness of the CSO proposal and powered a balloon by using hot air, 'the energy produced by the act of talking – however unproductive these talks may prove to be,' that floated around the city of Geneva at the beginning of the second week of the PrepCom.<sup>348</sup> Other CSO statements gave thorough accounts of the devastating health, environmental and displacing consequences of nuclear weapons<sup>349</sup> or of all nuclear activities, including effects on indigenous life, lands and culture,<sup>350</sup> without referring to renewable energy once again. The indigenous presentation in addition also recommended this time to set up reporting duties for States on the consequences of nuclear activities:

As was recognized in the Indigenous Peoples Presentation last year and at the 2000 NPT Review Conference, we continue to recommend with slight clarifications:

...

2) That NPT States Parties become directly informed on the issues of uranium mining, testing, experimenting, rehabilitation, and toxic waste storage affecting Indigenous communities through the establishment of relevant and formal reporting procedures and the provision of adequate resources to the task of a timely, independent parallel compilation of relevant information and findings;

3) That there is a commitment to the establishment of a holistic Indigenous Committee which reports to the NPT process officially and regularly on various States actions to address the issue of disadvantage arising from findings of such reporting relevant to Indigenous communities.<sup>351</sup>

Apart from the usual insistence of NNWS on the right to peacefully use nuclear energy, State reaction was meagre this time. Once again, France mentioned nuclear energy as a sustainable energy source, without explicitly referring to renewable energy, but only to its diversified energy policy:

La France a résolument choisi cette voie pour elle même, convaincue qu'elle est de l'importance de l'énergie nucléaire dans une politique énergétique diversifiée, et comme contribution essentielle au développement durable, du fait de l'absence d'émission de CO<sub>2</sub> par cette énergie. Elle participe aussi activement à des programmes internationaux qui visent à définir – déjà – les réacteurs de la seconde moitié du 21<sup>ème</sup> siècle, intrinsèquement plus sûrs, plus économiques, et potentiellement moins proliférants.<sup>352</sup>

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347 RCW, *News in Review*, No. 8, 7 May 2003, p. 1.

348 RCW, *News in Review*, No. 8, 7 May 2003, pp. 1–2.

349 See statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/IPPNW.htm>, last accessed on 24 October 2006.

350 See statement of 30 April 2003, <http://www.reachingcriticalwill.org/legal/npt/NGOpres2003/indigenous.html>, last accessed on 24 October 2006.

351 Ibid.

352 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/franceFR.pdf>, last accessed on 24 October 2006.

This time, France was supported by Japan:

The steady use of nuclear energy for peaceful purposes is vital, not only to secure a stable energy supply, but also to preserve the global environment.<sup>353</sup>

And Indonesia combined its support with a call for technical cooperation:

As nuclear power is projected to expand in Asia to support over-all economic growth, enhanced technical cooperation to facilitate sustainable development of the developing countries has become imperative.<sup>354</sup>

On the other hand, once again there were those States which complained about the negative environmental impacts of nuclear transports. Chile exhorted an environmental-friendly use of nuclear energy:

Por último, el derecho inalienable de usar la energía atómica con fines pacíficos que asiste a todos los miembros de la comunidad internacional ha de ser ejercido con singular respeto por el medio ambiente y la seguridad nuclear. Por ello, seguiremos instando a una regulación multilateral del transporte marítimo de desechos radioactivos y el combustible nuclear gastado que garantice efectivamente la seguridad y los derechos de los Estados ribereños, particularmente en el caso de siniestros.<sup>355</sup>

In a statement delivered on behalf of the NAM and later published as a Working Paper, Malaysia called upon States to take appropriate measures to prevent any dumping of nuclear or radioactive wastes that would infringe upon the sovereignty of States.<sup>356</sup> In this, it was supported by Algeria, Bangladesh, Indonesia, Myanmar, South Africa and Thailand, which in the General Debate associated themselves with the NAM statement in total.

A few States and international organizations reacted to these complaints. Thus, the IAEA reported on the finalization of amendments to its Regulations for the Safe Transport of Radioactive Material and on a Conference on the safety of transport of radioactive material.<sup>357</sup> In this context, Japan assured States of transparency of its nuclear activities and the safety of its nuclear activities and facilities.<sup>358</sup> Waste

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353 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/JAPAN.pdf>, last accessed on 24 October 2003.

354 Statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/2003statements/Indonesia.htm>, last accessed on 24 October 2006.

355 Statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/29CHILE.pdf>, last accessed on 24 October 2006.

356 See statement of 28 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/2003statements/malaysia.htm>, and NPT/CONF.2005/PC.II/WP.19 of 8 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/05/PDF/G0361505.pdf?OpenElement>, both last accessed on 24 October 2006.

357 See statement of 29 April 2003, <http://www.reachingcriticalwill.org/legal/npt/2003/statements/IAEA.pdf>, last accessed on 24 October 2006.

358 See NPT/CONF.2005/PC.II/WP.15 of 6 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/75/PDF/G0361375.pdf?OpenElement>, last accessed on 24 October.

management and transport of radioactive materials was then also the only issue which found its way into the Chairman's factual summary of the Second PrepCom:

38. The importance of strengthening nuclear safety, radiation protection, the safety of radioactive waste management and the safe transport of radioactive materials was stressed. The need for maintaining the highest standards of safety at civilian nuclear installations through national measures and international cooperation was also emphasized. The efforts of IAEA in the promotion of safety in all its aspects were welcomed. States parties that had not yet acceded to the Convention on Nuclear Safety as well as the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management were encouraged to do so.

39. States parties emphasized that all transport of nuclear and radioactive material, including maritime transport, should be carried out in a safe and secure manner in strict conformity with international standards established by the relevant international organizations, such as IAEA and the International Maritime Organization. Some States parties called for effective liability arrangements, prior notification and consultation. States carrying out international transport stated that those transports were carried out in a safe and secure manner and in strict conformity with all relevant international standards. States parties welcomed the conclusions on safety contained in IAEA General Conference resolution GC(46)RES/9. States parties commended and looked forward to the International Conference on the Safety of Transport of Radioactive Material, to be organized by IAEA in July 2003, which would facilitate mutual understanding on transport safety among participants.

40. States parties attached importance to United Nations General Assembly resolution 56/24 L of 29 November 2001 on the prohibition of the dumping of radioactive wastes and called upon States to take appropriate measures to prevent any dumping of nuclear or radioactive wastes that would be in breach of established international law. Support was also expressed for the effective implementation of the Code of Practice on the International Transboundary Movement of Radioactive Waste of IAEA as a means of enhancing the protection of all States from the dumping of radioactive wastes on their territories.<sup>359</sup>

*(c) Special feature: the NAM's permanent positions* The Non-Aligned Movement has in many ways been a natural ally of civil society throughout review processes whenever it came to disarmament issues. Here, civil society positions seem to be very close to those propagated by the NAM. However, as soon as it comes to the peaceful use of nuclear energy, NAM States insist on their inalienable right to a peaceful use and struggle against any barriers laid into their way, mainly with the argument of proliferation risks, be it export controls or, in their view, too stringent IAEA safeguard arrangements. The perspective taken then is one of balancing of power with regard to the NWS, rather than one of listening to new arguments stemming from civil society. Box 7.5 opposite summarizes the main claims of the NAM, which have not substantially changed throughout the years, especially throughout the 7th review process.

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<sup>359</sup> NPT/CONF.2005/PC.II/50 of 13 May 2003, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement>, last accessed on 24 October 2006.

## **Box 7.5 NAM demands**

### **Main Requests of the NAM during the 7th Review Process:**

#### a. Disarmament

- Implementation of the 13 Practical Steps, including reporting on disarmament and Middle East.
- Universal adherence to the NPT.
- Universal, unconditional and legally-binding instrument on security assurances.
- Nuclear-weapon-free zone in the Middle East.
- Establishment at the 2005 RevCon of subsidiary bodies to Main Committee I on disarmament and on negative security assurances and to Main Committee II on the Middle East.
- FMCT.
- Entry into force of the CTBT.
- Negotiations on a phased programme for the complete elimination of nuclear weapons with a specified framework of time, including a Nuclear Weapons Convention, and establishment of an Ad Hoc Committee on Nuclear Disarmament in the CD and/or organization of an international conference with that objective.

b. Inalienable right to engage in research, production and use of nuclear energy for peaceful purposes.

*(d) Renewable energy debate at the Third PrepCom: a lost chance?* At the Third PrepCom, CSOs for the first time introduced their proposal on renewable energy to their recommendations, more precisely, to Recommendation 2, directly after the suggestion to disarm. Beside a renewal of the suggestion to set up an International Sustainable Energy Fund (Agency), CSOs now also requested a moratorium on the building of new nuclear reactors:

#### *Recommendation 2: No New Nuclear Reactors*

We urge a moratorium on the building of new nuclear reactors as old ones are closed down. Funds from Export Credit Agencies and government subsidies for new nuclear power plants should be transferred to an International Sustainable Energy Fund.<sup>360</sup>

These demands were more substantiated in presentations 6 and 9, sharply arguing again with both, the dreadful consequences of nuclear weapons and nuclear energy and its proliferation effects and citing the Model Statute of Abolition 2000.<sup>361</sup>

The reaction of States was, beside a continued insistence by many NNWS on their inalienable right to develop and pursue peaceful uses of nuclear energy, once

360 Statement of 27 April 2004, <http://disarmament2.un.org/wmd/npt/2005/NGO%20presentations%202004.pdf>, last accessed on 24 October 2006.

361 Ibid.

again twofold. There were those insisting on the sustainable development benefits of nuclear energy, prominent among them the IAEA, which, beside its usual self-presentation as the custodian of sustainable development, passed the buck to public misperceptions of risk:

The urgent need for sustained human development clearly requires increases in the supply of energy in the coming decades. In recent years nuclear power has supplied about 16 per cent of world electricity production, and it remains the only energy source that can provide electricity on a large scale with comparatively minimal impact on the environment. However, medium-term projections for the future of nuclear power remain cautious. Energy decisions, however, cannot be made on a 'one-size-fits-all' basis. Each country and region faces a different set of variables when choosing its energy strategy. Despite engineering analyzes showing that public health risks from nuclear power are among the lowest of any energy technology, public perceptions of risk in many countries continue to be influenced by the memory of Chernobyl and Three Mile Island. How countries balance the risk of a nuclear accident against other factors – such as climate change, air pollution, mining accidents, or dependency on foreign fuel supplies – are complex matters that require further consideration.<sup>362</sup>

The work of the IAEA and its TC Programme with regard to sustainable development was also supported by Indonesia,<sup>363</sup> Malaysia on behalf of the NAM<sup>364</sup> and the US.<sup>365</sup> Iran, while backing the IAEA and the Malaysian statement, made use of the sustainable development argument in its own favor:

Non-Proliferation control arrangements should be transparent and open to participation by all States, and should ensure that they do not impose restrictions on access to material, equipment and technology for peaceful purposes required by developing countries for their sustainable development.<sup>366</sup>

France reinforced its position towards nuclear energy as a contribution to secure world energy needs,<sup>367</sup> to reduce emissions of greenhouse gases and to stabilise the cost of electricity, as well as its support for research in this field.<sup>368</sup> However, it also

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362 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/iaea26.pdf>, last accessed on 25 October 2006.

363 See statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/indonesiaCL2.pdf>, last accessed on 25 October 2006.

364 See statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysiaCL3.pdf>, last accessed on 25 October 2006.

365 See statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/usCL3.pdf>, last accessed on 25 October 2006.

366 Statement of 29/30 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/IranCL3.pdf>, last accessed on 25 October 2006.

367 See NPT/CONF.2005/PC.III/WP.22 of 4 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/337/21/PDF/N0433721.pdf?OpenElement>, last accessed on 25 October 2006.

368 See statement of 27 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/france27.pdf>, and statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/france29.pdf>.

referred to a large internal public consultation with diversified and sophisticated outcomes as a justification of its approach:

The French authorities organized an extensive public debate on energy in March-May 2003 with a view to framing broad energy policy directions for France over the next thirty years. Via a host of meetings and events, this debate served to involve all of the parties concerned in the Government's thinking and to forge a consensus on the principles that ought to guide national energy policy. These principles are: competitiveness, independence, respect for the environment, the right to energy, and international coordination. These exchanges of views confirmed the need for a diversified array of energies, with nuclear power retaining an acknowledged place among them. This debate formed part of the discussions leading up to a framework law to be laid before the spring session of the French Parliament. This law will set broad national policy guidelines and priorities, paving the way for the necessary decisions, especially in the nuclear sphere, as transparently as possible.<sup>369</sup>

Japan also basically confirmed its standpoint<sup>370</sup> and, as France, also supported research to extend the scope of the use of nuclear energy to new areas such as hydrogen production.<sup>371</sup> South Africa referred to the benefits of nuclear energy in the African context:

The benefits of the peaceful application of nuclear energy is of particular relevance and importance to Africa given the urgent need for sustainable and accelerated economic growth on the Continent.<sup>372</sup>

Beside the NAM, also another ally of civil society in disarmament matters, namely, Canada, joined the nuclear energy supporter group:

Canada has long recognized the benefits to be derived from the exploitation of the peaceful uses of nuclear energy. Canada's own domestic nuclear energy programme stretches back over five decades. There are currently 22 nuclear power reactors in Canada which are operated by both public utilities and private companies. Nuclear energy meets approximately 16 per cent of Canada's total energy needs. Nuclear power remains an important component of my country's current and future national energy strategy.

Canada remains committed to sharing the benefits of the peaceful uses of nuclear energy with others. Canada has concluded full nuclear cooperation agreements with 37 other States in the world. CANDU power reactors are currently in operation or under construction in several other States. Canada is the world's largest producer and exporter of uranium and medical isotopes. We believe nuclear power will continue to garner broad support in many

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[www.reachingcriticalwill.org/legal/npt/prepcom04/franceCL3.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom04/franceCL3.pdf), both last accessed on 25 October 2006.

369 Statement of 29 April 2004 in the cluster 3 debate, *ibid*.

370 See NPT/CONF.2005/PC.III/WP.11 of 28 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/329/04/PDF/N0432904.pdf?OpenElement>, and statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/JapanCL3.pdf>, both last accessed on 25 October 2006.

371 See NPT/CONF.2005/PC.III/WP.11, *ibid*.

372 Statement of 29 April 2004 in the cluster 2 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/southafricaCL3.pdf>, last accessed on 25 October 2006.

States around the world as a safe, sustainable source of energy. We are encouraged that renewed interest is being demonstrated in the nuclear option as an effective means of addressing global greenhouse emissions. We are also actively engaged in Canada and in other States, in applying our nuclear expertise in agriculture and medicine and in industry, waste management, national nuclear regulatory affairs, and fundamental and applied research, and beyond.<sup>373</sup>

On the other hand, States continued to complain about the danger of environmental damages mainly through the transportation of radioactive materials. The Commonwealth of the Bahamas, on behalf of the Caribbean Community (CARICOM), called for a regulatory framework to promote State responsibility with respect to disclosure, prior informed consent, liability and compensation in the event of accidents and referred to their own right to sustainable development.<sup>374</sup> Similar claims were uttered by Ecuador,<sup>375</sup> whereas Australia pointed to the Pacific Islands Forum members' position<sup>376</sup> and South Africa to the need to minimise inherent dangers of such a transport.<sup>377</sup> Malaysia, on behalf of the NAM, repeated its call for appropriate measures to prevent any dumping of nuclear or radioactive wastes that would infringe upon the sovereignty of States.<sup>378</sup> Cuba, Ecuador, Indonesia, Mongolia, Myanmar, Nepal, Nigeria, South Africa, Tunisia, the United Arab Emirates, Venezuela and Vietnam endorsed its statement once again *in toto* in the General Debate, whereas Nigeria also referred to the request as such.<sup>379</sup> Finally, the Kyrgyz Republic extended the scope of environmental consequences also to include past and present nuclear weapons programs:

Attention also must be given to mitigating the environmental consequences of past and present nuclear weapons programs. As noted in the Final Document of the 2000 NPT Review Conference, which received consensus support, there have been exceptional instances in which serious environmental consequences have resulted from uranium mining and associated nuclear fuel-cycle activities in the production of nuclear weapons.

This often overlooked environmental problem caused by nuclear weapons production and borne by the Kyrgyz Republic and other states, is another reason why we attach such

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373 Statement of 29/30 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/canadaCL3.pdf>, last accessed on 25 October 2006.

374 See statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/bahamas26.pdf>, last accessed on 25 October 2006.

375 See statement of 28 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/ecuador28.pdf>, last accessed on 25 October 2006.

376 See statement of 29 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/australiaCL3.pdf>, last accessed on 25 October 2006.

377 See statement during the special time on safety, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/southafricasafety.pdf>, last accessed on 25 October 2006.

378 See statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/malaysianam26.pdf>, and NPT/CONF.2005/PC.III/WP.24 of 4 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/343/81/PDF/N0434381.pdf?OpenElement>, both last accessed on 25 October 2006.

379 See statement of 28 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/nigeria28.pdf>, last accessed on 25 October 2006.

great importance to the work of this Preparatory Committee. We would like to reiterate the call made at the 2000 NPT Review Conference for all Governments and international organizations that have expertise in the field of cleanup and disposal of radioactive contaminants to consider giving appropriate assistance as may be requested for remedial purposes in these affected areas.<sup>380</sup>

Several States and international organizations responded to the environmental risks identified by their colleagues. Thus, the IAEA gave a demonstration of its own activities in the field of transport of radioactive material:

Safety of transport of radioactive material in all forms, domestically within States and internationally between States, and by all modes of transport – road, rail, water and air – is vital to the peaceful uses of these materials. The Agency, as part of its statutory mandate, has worked for decades with its Member States and other relevant international organizations to foster the development and application of sound safety standards for the transport of radioactive material. The Agency organized an *International Conference on the Safety of Transport of Radioactive Material* was held in Vienna in July 2003. The Conference addressed many technical topics, compliance with the Agency's Transport Regulations, as well as issues of liability and communications relating to nuclear transports that contribute to maintaining the good record for transport safety.<sup>381</sup>

In this regard, Serbia and Montenegro mentioned the initiative of the IAEA, Russia and the US to safely transport enriched fresh nuclear fuel from Serbia and Montenegro back to the Russian Federation, as the country of origin, for enrichment-level reduction.<sup>382</sup> Japan, giving the same assurances about transparency and safety as during the Second PrepCom, praised its own regulation as a blueprint for further improvements:

Japan wishes to point out that its current regulations provide a good basis for an effective regulatory process and a historically excellent safety record, and that such a record can best be maintained by continuing efforts to improve the regulatory and operational practices, and ensure full compliance with relevant standards and the strict implementation of guidelines.<sup>383</sup>

France this time reacted at length to the worries some States had shown with regard to the safe transport of nuclear materials:

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380 Statement of 28 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/kyrgyz28.html>, last accessed on 25 October 2006.

381 Statement of 26 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/iaea26.pdf>, last accessed on 25 October 2006.

382 See statement of 28 April 2004, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/serbiamontenegro28.pdf>, last accessed on 25 October 2006.

383 NPT/CONF.2005/PC.III/WP.11 of 28 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/329/04/PDF/N0432904.pdf?OpenElement>. See also its statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/JapanCL3.pdf>, both last accessed on 25 October 2006.



The French delegation will express its views on the security and safety of peaceful applications of nuclear energy in the course of the debate specifically devoted to these issues. I would like therefore to confine myself here to the issue of sea transport, which several delegations have raised. The strictest possible safety measures must apply to the transportation of nuclear and radioactive materials. With a record of safe transport going back more than thirty years, France played an active part in the work of the International Conference on the Safety of Transport of Radioactive Material which took place in Vienna, last year. This Conference highlighted the high level of safety and maturity achieved in these activities. It confirmed the desirability of international action and the need for continued cooperation and dialogue in order to be able to go on providing the highest possible level of safety and move forward together in improving it still further.

For its part, France is working to provide the highest level of safety possible for all modes of transport, without exception, and regardless of the materials transported. Our legislation is strictly in conformity with international regulations. In a spirit of progress and transparency, France has asked the IAEA to conduct a TRANSAS evaluation mission. This took place at the beginning of April and involved the French nuclear safety authority and government agencies concerned by the different forms of nuclear materials transport. In the case of international transport, moreover, France and its partners have been engaged in a dialogue over many years aimed at achieving greater transparency, and at providing those countries that express the need with the desired assurances together with certain types of information they may require. Our action in this regard must nevertheless respect the basic demands of security and must not run counter to the law of the sea.<sup>384</sup>

Russia was shorter, assured States of the attention it paid to reliable safety transport of radioactive materials, but also limited its readiness to strengthen the existing legal regime:

We are in favor of strengthening the internationally accepted regime regulating radioactive materials transport. We believe, however, that this should not erect unjustified barriers that are often incompatible with the universally recognized rules of international law.<sup>385</sup>

Cuba submitted the Havana Declaration of OPANAL<sup>386</sup> of 6 November 2003, which stated OPANAL's commitment to strengthening and supplementing

current international laws in the field of security and liability measures that are applicable to the transporting of radioactive material and hazardous wastes that will contribute to preventing the radioactive contamination of the marine environment in the Treaty's Zone of Application.<sup>387</sup>

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384 Statement of 29 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/franceCL3.pdf>, last accessed on 25 October 2006.

385 Statement of 29/30 April 2004 in the cluster 3 debate, <http://www.reachingcriticalwill.org/legal/npt/prepcom04/RussiaCL3.pdf>, last accessed on 25 October 2006.

386 Organismo para la Proscripción de las Armas Nucleares en la América Latina y el Caribe.

387 NPT/CONF.2005/PC.III/17 of 28 April 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/327/73/PDF/N0432773.pdf?OpenElement>, last accessed on 25 October 2006.

Thus, the debate among governments, while well centring on environmental risks, and promises, of nuclear energy, never came to the conclusion of abolition of nuclear energy altogether, but rather of keeping the risk in check. Therefore, the Chairman's summary, this time a simple working paper, only reflected this debate, without referring to the CSO proposals:

26. States parties stressed the importance of strengthening nuclear safety, radiation protection, the safety of radioactive waste management and the safe transport of radioactive materials. The need for maintaining the highest standards of safety at civilian nuclear installations through national measures and international cooperation was also emphasized. States parties welcomed the efforts of IAEA in the promotion of safety in all its aspects. States parties that had not yet acceded to the Convention on Nuclear Safety, as well as the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, were encouraged to do so.

27. States parties emphasized that all transport of nuclear and radioactive material, including maritime transport, should be carried out in a safe and secure manner, in strict conformity with international standards established by the relevant international organizations, such as IAEA and the International Maritime Organization. Some States parties called for effective liability arrangements, prior notification and consultation. States carrying out international transport stated that those transports are carried out in a safe and secure manner and in strict conformity with all relevant international standards. States parties welcomed the conclusions on safety contained in IAEA General Conference resolution GC(47)/RES/7. States parties welcomed the adoption by the IAEA Board of Governors and General Conference of the revised Code of Conduct on the Safety and Security of Radioactive Sources in September 2003. States parties also welcomed the outcome the International Conference on the Safety of Transport of Radioactive Material organized by IAEA in July 2003 and the IAEA Plan of Action on the Safe Transport of Radioactive Material.

28. States parties attached importance to General Assembly resolution 58/40 on the prohibition of the dumping of radioactive wastes, and called upon States to take appropriate measures to prevent any dumping of nuclear or radioactive wastes that would be in breach of established international law. States parties also expressed support for the effective implementation of the Code of Practice on the International Transboundary Movement of Radioactive Waste of IAEA as a means of enhancing the protection of all States from the dumping of radioactive wastes on their territories.<sup>388</sup>

*(e) The Review Conference: renewable debate renewed?* During the RevCon in 2005, CSOs repeated their proposal of an International Agency for Renewable Energy with renewed vigour. In their second Recommendation, they used this argument at the end of a line ranging from multilateral control of the fuel cycle, a moratorium on uranium enrichment and plutonium separation to questioning the very role of the IAEA and proposing such an Agency instead:

2. Transition from nuclear energy to renewables

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388 NPT/CONF.2005/PC.III/WP.27 of 10 May 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/47/PDF/N0434447.pdf?OpenElement>, last accessed on 25 October 2006.

There is an inherent flaw in the treaty and it is to be found in Article IV. The Acheson-Lilienthal Committee saw this as far back as 1946. Free trade in nuclear technology and materials and abuse of the system go hand in hand. Safeguarding only works up to a point. It is impossible to account for all of the material in, for instance, a reprocessing plant like Sellafield, Le Hague or Rokkasho. Some of that material may have already been diverted for military use.

But the cat is now out of the bag. The only way to get it under control is to put all enrichment and reprocessing facilities under multilateral control. In the meantime we support recommendations for a complete moratorium on the enrichment of uranium and separation of plutonium. Moreover, the IAEA should not be promoting the use of nuclear energy. The nuclear industry does that quite well enough by themselves, to the detriment of everyone. The IAEA should be controlling nuclear energy, putting restrictions on it, not pushing it. The IAEA's conflict of interests is reflected in the fact that so many countries believe the possession of a nuclear programme is a sign of development or even a status symbol.

Truly developed countries, on the contrary, are investing in cleaner and renewable sources of energy. Global energy security, not a slavish dependence on the most dangerous energy source on Earth, is the goal for which we should strive. That is why we need an International Agency for Renewable Energy that assists countries in building up an energy supply that does not rely on nuclear energy or fossil fuels. To address the challenge nuclear weapons pose to human survival requires us to also address these challenges posed by nuclear energy.<sup>389</sup>

This was supplemented by an earlier statement, which in addition called for a supplementary protocol to the NPT, thus picking up the idea from the protocol elaborated in the context of the NWC:

A supplementary protocol to the NPT is needed, which would permit the signatory States to fulfil their obligations stated in Article IV of the NPT by supplying technical aid in form of Renewable Energy Technologies. The supplementary protocol should be the basis for an International Renewable Energy Agency that can act as a counterbalance to the institutionalized advocates for nuclear energy. The main provision of the supplementary protocol to Art IV should be: 'The present Treaty permits the parties to the Nuclear Non Proliferation Treaty to replace the assistance in the peaceful use of nuclear energy provided for in article IV with assistance in promoting the use of clean, sustainable, renewable energy.'<sup>390</sup>

The conclusion was underlined by the premise of medical and ecological consequences of nuclear power throughout the whole statement, substantiating CSOs' argument that '[c]ontrary to the current propoganda line, nuclear power is not green and it is certainly not clean.'<sup>391</sup> The public safety and environmental risks of plutonium fuel

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389 Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/npt1Ingo-fellmer.pdf>, last accessed on 26 October 2006.

390 Statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/nptngocaldicott.pdf>, last accessed on 26 October 2006.

391 Ibid.

were further elaborated on in another statement.<sup>392</sup> Recommendation 12 of Appendix I then summarized the two main suggestions:

On behalf of world civil society, we, the representatives of the Non-Governmental Organizations participating in the seventh NPT Review Conference, call upon our governments to work relentlessly toward achieving the following minimum outcomes on a realistic, but strict timetable.

[...]

*Recommendation 12*

*Adopt a supplementary protocol to promote energy security and energy independence through clean, sustainable, renewable energy sources as an alternative to nuclear energy.*

We strongly support a global action plan to reduce reliance on – and eventually replace – nuclear power with sustainable, non-toxic, renewable sources of energy, and the establishment of an international sustainable energy agency, which would assist countries in building up an energy supply that does not rely on nuclear energy or fossil fuels. Nations have an inalienable right to energy security – a right that has been distorted by Article IV into a purported inalienable right to nuclear energy technology. A supplementary protocol to Article IV would not only facilitate the transition to sustainable, renewable energy sources, it would take an important step toward correcting this conceptual flaw embodied in the Treaty.<sup>393</sup>

Beside the usual insistence of many NNWS on their right to peaceful uses of nuclear energy, this time, at least one of the four countries which meanwhile had decided to phase out their operating nuclear reactors, Belgium, Germany, Spain and Sweden, indirectly reacted to CSO claims. Thus, Germany, while standing by its own decision, yet made it clear that it would not question the right to peaceful use of nuclear energy as stated in Art. IV of the NPT:

[W]e must ensure that civilian nuclear energy is not misused for military purposes. There can be no doubt that anyone who masters the fuel cycle also has the option of developing a nuclear weapons programme. This is one of the most central challenges that we must jointly tackle at this conference.

Let me make one thing perfectly clear: I am by no means questioning the right to use nuclear energy for civilian purposes. In this regard, every country must make its own decision based on its contractual obligations. Germany, for its part, opted for a phase-out of nuclear power. That being said, we must together develop a response to a very real proliferation risk that affects the entire international community and that can arise from the closing of the fuel cycle.<sup>394</sup>

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392 See statement of 11 May 2005, <http://www.un.org/events/npt2005/statements/nptngo-Zeller.pdf>, last accessed on 27 October 2006.

393 Statement of 11 May 2005, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/recommendations.pdf>, last accessed on 26 October 2006.

394 Statement of 2 May 2005, <http://www.un.org/events/npt2005/statements/npt02germany.pdf>, last accessed on 26 October 2006.

As Müller (2005, 16) stated, State opponents to nuclear energy were not disposed to globally reject the use of nuclear energy, but only to mitigate an all-too enthusiastic language in its favor. France then basically repeated its diversified energy supply argument of earlier review sessions, referring also to an increasing role given to renewable energies.<sup>395</sup> Apart from this, it likewise recognized the right to nuclear energy for peaceful purposes, reasoning by its sustainable development potential and thus once again refuting CSO premises.<sup>396</sup> In the sustainable development argument, it was joined by the IAEA,<sup>397</sup> Argentina,<sup>398</sup> Bangladesh,<sup>399</sup> Brazil,<sup>400</sup> Canada,<sup>401</sup> China,<sup>402</sup> the Czech Republic,<sup>403</sup> the Group of Non-Aligned Movement States,<sup>404</sup> Iran,<sup>405</sup> the Republic of Korea<sup>406</sup> and Russia.<sup>407</sup> The major contribution of the IAEA in the sustainable development context through its TC Programme was especially

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395 See statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/France.pdf>, last accessed on 26 October 2006.

396 See statement of 5 May 2005, <http://www.un.org/events/npt2005/statements/npt05france-french.pdf>, and statement of 20 May 2005 in Main Committee II, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCII/france20.pdf>, both last accessed on 26 October 2006. See also *ibid.*

397 See statement of 2 May 2005, <http://www.un.org/events/npt2005/statements/npt02iaea.pdf>, and statement of 20 May in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/IAEA.pdf>, both last accessed on 26 October 2006.

398 See statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Argentina19.pdf>, last accessed on 26 October 2006.

399 See statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Bangladesh23.pdf>, last accessed on 26 October 2006.

400 See statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/brazil23.pdf>. See also statement of 4 May 2005, <http://www.un.org/events/npt2005/statements/npt04brazil.pdf>, both last accessed on 26 October 2006.

401 See statement of 19 May 2005 in Main Committee III, [http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Canada%20\(en%20&%20fr\).pdf](http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Canada%20(en%20&%20fr).pdf), last accessed on 26 October 2006.

402 See statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03china.pdf>, last accessed on 26 October 2006.

403 See statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Czech23.pdf>, last accessed on 26 October 2006.

404 See NPT/CONF.2005/WP.8 of 26 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/10/PDF/N0532310.pdf?OpenElement>, last accessed on 26 October 2006.

405 See statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03iran.pdf>, NPT/CONF.2005/WP.50 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/68/PDF/N0535068.pdf?OpenElement>, and statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/iran%2019.pdf>, all last accessed on 26 October 2006.

406 See statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03korea.pdf>, and NPT/CONF.2005/WP.42 of 17 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/23/PDF/N0534823.pdf?OpenElement>, and statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/ROK23.pdf>, all last accessed on 26 October 2006.

407 See statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/russia23.pdf>, last accessed on 26 October 2006.

emphasized by Belarus,<sup>408</sup> Indonesia,<sup>409</sup> Japan,<sup>410</sup> the NAM,<sup>411</sup> with support of Jamaica and the Philippines in the General Debate and Bangladesh, Iran, Malaysia and Morocco in Main Committee III and Poland.<sup>412</sup> The sustainable development argument of nuclear power was only refuted by two States, namely, Austria and New Zealand:

AT: My country has a very clear position *vis-à-vis* the utilization of nuclear power. The Austrian government holds the view that nuclear power does not contribute to sustainable development and therefore cannot play a key role for future energy policies. This position, at the same time, must not be misunderstood in the context of Article IV, in particular because of the wide framework this article offers.

The NPT is a well-crafted legal instrument with different balances, one between Articles III and VI, and the other, which is relevant here in this Main Committee, between Articles III and IV. As NNWS parties to the NPT have firmly committed themselves not to acquire any capabilities in nuclear weapons and submitted all their peaceful nuclear activities under international verification by the IAEA, we have to understand the other half of the coin to be equally important, namely the readiness to facilitate co-operation among States parties in the peaceful uses of nuclear energy. The NPT is directed towards providing a framework of confidence within which the exchange of technology can take place.<sup>413</sup>

NZ: New Zealand has not chosen to use nuclear energy itself for power generation, though we do utilise some industrial and particularly medical nuclear applications. This is because we continue to have concerns over the lack of compatibility of nuclear power with sustainable development, due especially to problems over nuclear waste disposal, as well as safety and the risk of proliferation. But we recognise other states' right to make their own decisions in this regard.<sup>414</sup>

This in turn leads to the complaints of other States about environmental dangers of radioactive materials. The Bahamas, on behalf of CARICOM and supported by the Dominican Republic, Jamaica and Venezuela, repeated its earlier call with regard to

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408 See statement of 10 May 2005, <http://www.un.org/events/npt2005/statements/npt10belarus.pdf>, last accessed on 26 October 2006.

409 See statement of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03indonesia-english.pdf>, last accessed on 26 October 2006.

410 See statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Japan.pdf>, last accessed on 26 October 2006.

411 See NPT/CONF.2005/WP.20 of 2 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/329/70/PDF/N0532970.pdf?OpenElement>, and statement of Malaysia of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Malaysia-NAM.pdf>, last accessed on 26 October 2006.

412 See statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Poland23.pdf>, last accessed on 26 October 2006.

413 Statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Austria23.pdf>, last accessed on 26 October 2006.

414 Statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/nz%2019.pdf>, last accessed on 26 October 2006.

transportation in the General Debate.<sup>415</sup> This time, it also submitted a proposal for inclusion into the Final Document in Main Committee III:

Accordingly, the countries of the Caribbean have drafted a proposal for consideration by this Committee for inclusion in the outcome of this Conference, which would address some of our concerns, and be a useful input into this process of dialogue. This proposal has been circulated as Conference Room paper...

Under this proposal, the Conference would recognize the dangers posed to coastal populations and en route states by the transportation of irradiated nuclear fuel, plutonium and high-level nuclear waste, would acknowledge the concerns of small island developing states and other coastal states in this regard, and would reaffirm the need for the transportation of radioactive materials to be conducted in compliance with relevant international standards of nuclear safety and security and environmental protection. The Conference would also reiterate its call to all States shipping radioactive materials to provide assurances to potentially affected States that their national regulations take into account the IAEA's recently amended Transport Regulations, and to provide relevant information relating to shipments of such materials, while taking account of the need for physical protection and safety of these shipments. Finally, the Conference would reaffirm the need for the further development and strengthening of international regulatory regimes to enhance safety, disclosure, liability, security and compensation in relation to such transport, and would suggest principles to underpin this regime.<sup>416</sup>

Similar calls were formulated by Mauritius.<sup>417</sup> Samoa, on behalf of the Pacific Islands Forum Group and supported by the Marshall Islands, reiterated earlier claims for prevention, response, liability and compensation, uttering its concerns about the human, environmental and economic risks posed by the shipment of radioactive materials.<sup>418</sup> It was joined by New Zealand<sup>419</sup> and Chile which affirmed:

Nuestro punto de partida es la inexistencia del 'riesgo cero' en la industria nuclear, incluido el transporte marítimo del material nuclear.<sup>420</sup>

Support for a global regime of nuclear transport came from Argentina.<sup>421</sup> Furthermore, more specific concerns with regard to the dumping of nuclear waste were again

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415 See statement of 4 May 2005, <http://www.un.org/events/npt2005/statements/npt04bahamas.pdf>, last accessed on 27 October 2006.

416 Statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Bahamas23.pdf>, last accessed on 27 October 2006.

417 See statement of 5 May 2005, <http://www.un.org/events/npt2005/statements/npt05mauritius.pdf>, last accessed on 27 October 2006.

418 See statement of 4 May 2005, <http://www.un.org/events/npt2005/statements/npt04samoa.pdf>, last accessed on 27 October 2006.

419 See statement of 19 May in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/nz%2019.pdf>, last accessed on 27 October 2006.

420 Statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Chile23.pdf>, last accessed on 27 October 2006.

421 See statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Argentina19.pdf>, last accessed on 27 October 2006.

formulated by the NAM,<sup>422</sup> whose Working Paper was supported *in toto* by Jamaica and the Philippines, and Kenya,<sup>423</sup> Senegal<sup>424</sup> as well as Nigeria in a Working Paper of Main Committee III.<sup>425</sup> Finally in a Working Paper of Main Committee III, some States, namely, the five Central Asian States, called for mitigating the environmental consequences of past and present nuclear weapons programs and for assistance,<sup>426</sup> whereas the Marshall Islands severely criticized the US, the former UN trustee, for its past nuclear weapons testing program on their territories and the visible results, such as illness, forced relocation, environmental degradation and profound disturbances of social, cultural, economic and political systems, and called for compensation:

My delegation calls on the United Nations to address the damage in its Trust Territory of the Pacific Islands (TTPI) from when the UN administrator detonated nuclear weapons. The termination of the trust territory relationship that my country once had with this austere body was based on the former administrator's reports that the damages and injuries from the testing program were minor, and limited in scope. We now know from declassified documents that this is not the case, and we urge this Conference to recommend to our former administrator that it fully address all damages and injuries resulting from the 67 atmospheric atomic and thermonuclear weapons detonated on our islands. My delegation will push strongly for the inclusion of such language in the final report of this Conference.

The Marshall Islands welcomes the call by the Pacific Islands Forum leaders in 2004 for the United States to live up to its full obligations to provide fair and adequate compensation, including the full and final restoration of affected areas to economic productivity, and to ensure the safe resettlement of displaced populations. In addition, we also urge the nations that tested nuclear weapons in French Polynesia and Kiribati to take full responsibility for the impacts of their activities on the local people and our region's environment.<sup>427</sup>

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422 See NPT/CONF.2005/WP.8 of 26 April 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/10/PDF/N0532310.pdf?OpenElement>, last accessed on 27 October 2006.

423 See statement of 10 May 2005, <http://www.un.org/events/npt2005/statements/npt10kenya.pdf>, last accessed on 27 October 2006.

424 See statement of 6 May 2005, <http://www.un.org/events/npt2005/statements/npt06senegal.pdf>, last accessed on 27 October 2006.

425 See NPT/CONF.2005/MC.III/WP.2 of 20 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/351/48/PDF/N0535148.pdf?OpenElement>, last accessed on 27 October 2006.

426 See NPT/CONF.2005/MC.III/WP.3 of 20 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/352/57/PDF/N0535257.pdf?OpenElement>, last accessed on 27 October 2006. See also the statement of the Kyrgyz Republic of 3 May 2005, <http://www.un.org/events/npt2005/statements/npt03kyrgyz.pdf>, and a Working Paper of the five States in Main Committee II, NPT/CONF.2005/MC.II/WP.3 of 23 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/356/47/PDF/N0535647.pdf?OpenElement>, both last accessed on 27 October 2006.

427 Statement of 5 May 2005, <http://www.un.org/events/npt2005/statements/npt05marshall%20islands.pdf>, last accessed on 27 October 2006. For the relevant suggestion of the Marshall Islands of assistance and compensation to be included in the Final Document, see NPT/CONF.2005/MC.III/WP.4 of 20 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/352/63/PDF/N0535263.pdf?OpenElement>, last accessed on 27 October 2006.



The US, without referring to these accusations and requests, itself managed to allude to the dangerous risks of nuclear weapons and nuclear energy:

Parties have long recognized that peaceful uses of nuclear energy must be safe and secure. The terrible Chernobyl accident in 1986 and the horrors of September 11, 2001 made that realization more acute. Collectively, the world knows that a significant accident or successful terrorist attack in one country could threaten the viability of peaceful nuclear uses worldwide and carry devastating economic, environmental, and health effects.<sup>428</sup>

Apart from frequent referrals to existing conventions, to their implementation and once also their strengthening (Norway<sup>429</sup>), to IAEA mechanisms and to continuing international cooperation and research on safety, a few States directly responded to the shipment concerns. Thus, Russia ensured transportation security and once again proposed a slight, but limited strengthening of the regime:

Russia has elaborated and put in place a sophisticated national legislative and normative framework for handling radioactive materials which allows to reliably ensure the transportation security and meets all IAEA requirements.

We are in favor of strengthening the regime governing such materials transportation, adopted by the international community. However, we consider that it should not result in artificial barriers which are often incompatible with universally recognized norms of international law.<sup>430</sup>

Japan, as before, assured other States of transparency and safety of nuclear activities and facilities, proposing this time also an informal discussion on communications between shipping States and relevant coastal States.<sup>431</sup> This road was also followed by the UK, mentioning IAEA debates on this matter. But before doing that, the UK tried to refute CSO incriminations with regard to the Sellafield incident:

12. Madam Chair, a recent leak at the THORP reprocessing plant in Sellafield was widely reported in the media. States Party may be interested to know that the leak was contained in the safety vessel designed for the purpose and that there have been no releases to the environment, or harm to personnel and that the plant is in a safe quiescent state. On discovering the problem the operator, British Nuclear Group Sellafield Limited, set up a plant incident control centre and the regulator, the Nuclear Installations Inspectorate, has been kept well informed of the developing situation and to date is satisfied with the way the operator has dealt with the event. Plans are being developed by the operator to rectify the situation.

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428 Statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/US.pdf>, last accessed on 27 October 2006.

429 See NPT/CONF.2005/WP.23 of 4 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/37/PDF/N0533237.pdf?OpenElement>, last accessed on 27 October 2006.

430 Statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/russia23.pdf>, last accessed on 27 October 2006.

431 See NPT/CONF.2005/WP.22 of 19 May 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/56/PDF/N0533256.pdf?OpenElement>, and statement of 19 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/Japan.pdf>, both last accessed on 27 October.

13. Let me stress that the United Kingdom has a flexible goal-setting regulatory regime that demands and achieves high standards of nuclear safety from its nuclear operators. At the recent third review meeting of the Convention on Nuclear Safety, the United Kingdom demonstrated this by submitting its safety standards and practices to peer review. The United Kingdom hopes many more States will become party to the Convention on Nuclear Safety. The United Kingdom will continue to contribute to the international development of safety standards.

...

*Safety of Transport of Nuclear Material*

16. Madam Chair, a number of States Party have commented on questions relating to the transport, particularly the maritime transport, of nuclear material. I would just like to underline that the United Kingdom, as a State which engages in nuclear maritime transport, has taken steps to ensure that the safety and security conditions under which this activity takes place, are stringent – and that when the safety standards were voluntarily submitted to examination by outside experts in 2003 (I am referring to an IAEA TransSAS mission) they were found to be satisfactory. These standards have been, and will continue to be, kept under constant review. I would also like to stress that the safety record of this industry, over a period in excess of 30 years, has been impressive. Finally, may I recall that, since the last RevCon, transport of nuclear material has been the subject of extensive discussion in the IAEA (at a specialised Conference and at General Conferences). These discussions have been marked by a spirit of constructive engagement and have resulted in considerable meeting of minds. The UK welcomes this and will, for its part, approach future discussions in a similar spirit.<sup>432</sup>

*(f) Results* One last time it has to be concluded whether (a) governments justify their conclusions with reference to CSO arguments, whether (b1) CSO arguments are adopted by governments as part of their official positions and whether (b2) some of these arguments are put as an item on the agenda of the policy-making process.

In the debate on nuclear energy, one can say that CSOs had to ground and strengthen their arguments unilaterally. An explicit justification of State positions with regard to CSO arguments did not take place, nor did States adopt CSO proposals. Overall, during the whole review process, State positions did not change significantly. Most NNWS insisted on their right to peaceful uses, whereas those States in favor of renewable energies neither conceded an exclusive role to them (France) nor questioned the right of others to peacefully use nuclear energy (Austria, Germany and New Zealand), the latter position only being postulated at the RevCon. A vast majority of States and the IAEA based their argument on the sustainable development effects of nuclear energy. Only Austria and New Zealand questioned this viewpoint and instead argued that the NPT legally set up the right to peaceful uses as a bargain, which made them support nuclear energy for this reason and not for the reason of sustainability. However, in no case States using the argument of sustainable development or refuting it clearly did so in a move to justify their conclusion with reference to the CSO premise of non-sustainability of nuclear energy. France came

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432 Statement of 23 May 2005 in Main Committee III, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/MCIII/UK23.pdf>, last accessed on 27 October 2006.

closest to a reaction to CSO demands when it substantiated its diversified energy position by large public consultations within France during the Third PrepCom.

On the other hand, many States indirectly joined the CSO premise of environmental risk of nuclear energy, mainly in the context of maritime transport and dumping of nuclear materials, from the Third PrepCom onwards also with regard to past and present nuclear weapons programs. Some shipping States, among them France, again, responded to the transportation complaints in a wish to acknowledge fears and to assure States of safety arrangements or, later in the review process, also to find compromises on a deliberative basis. Thus, the risk of nuclear energy as such was recognized, even though a reaction to the nuclear weapons grievances never occurred. Nevertheless, in no case and at no stage did this lead to the CSO conclusions of a Sustainable Energy Agency and a Global Truth Commission or any other CSO suggestion being adopted by a government, not even by those favoring alternative energies. In addition, as a result, none of them did ever enter the agenda of the NPT review process.

#### *Discussion of Results for Responsiveness*

If we now try to evaluate the results for responsiveness of governments towards CSO concerns in all three policy fields, we come to disillusioning results. Only in one policy area, namely, with regard to the NWC debate, two governments explicitly justified their position with regard to CSO approaches. Nevertheless, it can be assumed that at least some States seem to have listened to CSO arguments, when they implicitly referred to them. A chance for CSO arguments to be used during the 7th NPT review process apparently was especially high at and after the Third PrepCom when State positions for the RevCon were framed and sharply declined during the RevCon when a heated climate destroyed any chance of finding a compromise between States. In addition, besides governments justifying their conclusions and premises by implicit references to CSO utterances, there were also some States, especially France, which repeatedly came to other conclusions as CSOs, but did so by implicitly refuting their arguments or only partly supporting them.

With regard to an adjustment of governments' positions, only in two issue areas, namely, the one dealing with an NWC and to some extent also the one treating reporting, a partial adjustment of governmental positions could be determined. However, only some 'civil-society-friendly' governments adopted CSO arguments and they mainly did so, with a few exceptions, at the beginning of the policy-making process. Once framed, a governmental position was rarely changed. If this was due to intransigence towards CSO arguments or to their refutation or whether this had to do with hardened positions between States during this review process, remains unclear. In any case, it points to an underdeveloped culture of debating. Moreover, it is questionable if one can speak of an adjustment in real terms when referring to an adoption at the beginning of a policy process. For, who tells us that this is due to CSO influence, rather than to a correspondence to States' own interests? Even if one argues that at least the argument as such has won, regardless of its origin, there is no guarantee that without a real debating culture this would work again when interests of States and CSOs differ. In the case of reporting, for example, a careful observation

suggests that an adoption of CSO positions was less due to CSO influence rather than to the fact that some States favored and pursued the issue anyway. Contrary to the case of reporting, however, when adopting the proposal of an NWC, States indeed might have been significantly guided by CSO influence. Since the issue of an NWC is of high priority to CSOs, they also put much more pressure on States and showed a remarkable adaptability to their arguments in the process. CSOs came much closer to what could be phrased ‘real debating partners’ on that issue compared to other items. However, if this is right, then issues such as negotiating power and interest or classic lobbying, which was not examined in this study where oral discussions and background lobbying were not captured systematically, become much more important again, at least under not fully satisfactory democratizing circumstances, such as those provided by the NPT review processes. Then, one would also speak of arguing, rather than deliberating. Yet, in no case did CSOs dispose of so much negotiating power that they could bring their influence to bear with regard to agenda-setting.

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# Conclusion

At a first glance, the participation of CSOs at the NPT review processes seemed to be promising. Formal opportunities for CSO access and the seemingly transparent policy process led one to assume prosperous loopholes for civil society participation within a conservative policy field to this day, namely, the international security area. However, a closer examination of actual participation processes revealed that the implementation of access rights, but also the arrangements themselves, did not fully live up to expectations. To mention just a few, informal negotiations still occupy a large portion of the decision-making process during an NPT review process. Yet, as Nanz and Steffek (2005, 380) rightly argue, informal negotiations are always undemocratic since they exclude not only CSO actors, but often also the majority of the other member States. Another hampering effect results from strengthened security controls since September 11, 2001, which also had onerous consequences for NGOs participating in the NPT review processes (Dhanapala and Rydell 2005, 137), and at this RevCon even culminated in some ridiculous prohibitions, such as those of sunflowers and t-shirts. Hence, much remains to be desired with regard to CSO access to the non-proliferation process. Commentators of the 7th NPT review process stated this in various ways. As Carroll (2002, 15) declared, ‘numerous fora provide a much greater degree of access and possibilities for NGO influence than is usual in the field of disarmament.’ And ‘[a]t best, disarmament fora have lagged behind in recognizing these dynamics [of increasing NGO involvement], let alone in implementing changes in long-held practices’ (ibid., 17). CSOs themselves commented the state of affairs in the following way: ‘NGOs which focus on disarmament and non-proliferation issues have less access to and participation in international meetings as compared to those focused on other issues, such as human rights, disabilities or humanitarian affairs...’<sup>1</sup> The same, even though to a lesser extent, can be said about the criterion of transparency which still remains improvable. Still worse, the third criterion for measuring the democratic potential of participatory arrangements, namely, the inclusion of all stakeholders potentially affected by a decision, was completely disregarded. Altogether, the institutional participatory arrangements for CSOs were not sufficient to guarantee inclusive and informed face-to-face discussions. They rather reflected a hierarchical (power) relationship which left the decision about whether or not to deliberate to the mercy of governments.

Since the preconditions for free, informed and inclusive deliberation were already absent, the question arises whether under these conditions, genuine

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<sup>1</sup> CSO statement 1 of 11 May 2005 during the 2005 RevCon, <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/Transparency2.pdf>, last accessed on 27 November 2006.

democratizing and legitimizing effects can still be attained. The investigation into the fourth criterion, namely, responsiveness, in any case clearly demonstrated a large lack of interaction with CSOs, of justification of State positions with regard to CSO arguments and of adoption or refutation of CSO positions in the agenda, in speeches and in the conference results. As an NGO representative stated: 'The work put into the conference by the NGO world was based on the assumption that we could in some way influence the negotiating process. Clearly we did not, or if one wants to be charitable, there were stronger forces at work that neutralised any positive influence we may have had.'<sup>2</sup>

If one puts aside the less than satisfying preconditions for a deliberative setting as such, there are, however, additional reasons which made it difficult for NGOs to come in and to be listened to. First, as stated earlier, CSO positions had the best chance to be adopted at the beginning of the policy process or during and shortly after the Third PrepCom when States formulated and reshaped their negotiating positions. During the RevCon, where actual decision-making should have taken place, CSO influence was rolled back to almost zero. This leads one to draw two conclusions. One is that an adoption of CSO statements at the beginning of a policy cycle by so-called 'like-minded' States does not necessarily reflect a CSO input, but rather a State's own interest. There is no guarantee that an equal exchange of arguments took place by which at the end the best argument carries the day. Thus, a causal relationship between CSO input and State positions could not be discovered. Ergo, the least one can say is that there is not enough evidence for a true deliberative setting (similarly Dany 2006, 42–3). Second, CSOs seem to be pushed aside the more the policy progress reaches the point of concrete decision-making (*ibid.*, 43–4). This is what we have labelled elsewhere an 'intergovernmental core of decision-making' (Steffek and Kissling 2006). The term denominates a phase in the policy cycle which governments eagerly protect against CSO influence and public scrutiny. It characterizes all those processes of negotiation in which a political decision is imminent and state representatives (and not bureaucrats or experts) are the driving force. As demonstrated in the NPT case, incentives for liaising with CSOs are low in this phase and if non-state actors are present, this can only be due to a massive push on the part of civil society (*ibid.*, 146). This is in fact what happened with regard to all three issue areas examined under the criterion of responsiveness. In the case of an NWC, CSO statements indeed to some extent entered some governmental positions during the RevCon. However, this was only caused by intensive lobbying on the part of civil society. The protection of an intergovernmental core of decision-making, which is hard to penetrate and forestalls any deliberative setting, even seems to escalate when it comes to decision-making in the security field. Commentators state that 'disarmament and security policy systems remain among the least penetrated by NGOs. However "globalized" the world has become, governments continue to jealously guard their prerogatives when it comes to decision-making about weapons and weapons reduction' (Atwood 2002, 6). Cathleen Fisher (1999, 67) writes: 'When core national security interests are involved, policymakers generally expect to retain tight control over decisions and...publics have been largely content to let them do

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2 Karel Koster of PENN; RCW, *News in Review*, No. 21, Final Edition, June 2005, p. 13.

so.’ As the Canadian Working Paper rightfully recapitulated, in some cases there is an aversion on the part of governments to public scrutiny, in other cases, there is concern that already complex and difficult negotiations will only become more so with the introduction of a whole new sector of actors. In this context, some worry about the challenges of managing diverse public views and expectations and others worry that NGOs are not themselves sufficiently accountable to the constituencies they claim to represent.<sup>3</sup> Nevertheless, as the global debate on security issues moves from traditional approaches such as national security and arms control to broader concepts of human security, awareness should grow for a broader inclusion of the addressees of human security, namely, human beings. This does not preclude efforts of the addressees themselves, such as CSOs, to further improve their capability to include marginalized groups and to critically assess and to enhance their own accountability.<sup>4</sup>

However, in the case of the NPT, the lack of interaction cannot only be attributed to inadequate preconditions for civil society involvement and its exclusion from an intergovernmental core of decision-making in the field of security. The hardening of many State positions and the tenacity with which they were held lets one assume that even among themselves, several States were reluctant to open up to true deliberation and preferred classical bargaining with no intention to adapt their positioning instead. Improvements in finding compromises of course hinge on concessions made by governments. Therefore, the President of the 2005 NPT Conference, Ambassador Duarte, attributed the whole failure of the Conference to the intransigence of States parties: ‘There is no possibility of success if each group or party clings to its own narrow perceptions. One cannot expect to reinvent the wheel at each turn of world events’ (Queiroz Duarte 2005, 6). Yet, if governments are not able to deliberate among themselves, how then should they do so in their contacts with CSOs? The fundamental question arises whether in global security politics, whenever high-level strategic interests are at stake and power relationships are tremendously unequal, we encounter a situation where deliberation and truth-seeking arguing (Risse 2000) does not take place any more. In the case of the NPT RevCon, some actors, most prominently the US, indeed had fixed interests and preferences, resorted to strategic bargaining directed towards utility maximization and used rhetoric as justification, meaning that they were not prepared to change their own beliefs. This blocked any consensus and not even a compromise leaving much wording open to interpretation, something which Steffek (2005) would call incomplete agreements, was possible. Nevertheless, some other players, such as Germany, were devoted to deliberative consensus-seeking, even though without

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3 NGO participation in the NPT review process, Working Paper submitted by Canada, see pp. 64–5, note 54.

4 For a recent attempt of NGOs to enhance their reputation in this field, read the International Non Governmental Organisations Accountability Charter; [http://www.amnesty.org/resources/downloads/INGO\\_Accountability\\_Charter.pdf](http://www.amnesty.org/resources/downloads/INGO_Accountability_Charter.pdf), last accessed on 14 June 2006, and ‘NGOs lead by example: World’s international NGOs endorse accountability charter’; in: news amnesty, 6 June 2006, <http://news.amnesty.org/index/ENGPOL306062006>, last accessed on 14 June 2006.



success. On the other hand, even rhetoric ‘presupposes, in order to be successful, that at least one person in the audience is prepared to be convinced by the better argument’ (Risse 2000, 8–9) and demonstrates thus elements of deliberation, even though one-sided and not comparable to true arguing. In any case, this half bargaining, half deliberative setting among governments also affected their interaction with CSOs. There were those who were prepared to discuss and argue and others who were not, and the former constituted the only openings where CSOs could come into play.

Given these more than meagre results for CSO input, one has to conclude that the legitimizing and democratic quality of decision-making during the 7th review process was very low. The second hypothesis drawn up at the beginning of this analysis thus has to be answered in the following way: The conditions for civil society participation in form of the four criteria chosen (access, transparency, inclusion and responsiveness of governments to stakeholders’ claims) were not satisfactorily fulfilled. Therefore, CSO contribution could not add to the democratic quality of international decision-making at the 7th NPT review process. In addition, the first hypothesis, namely, civil society’s contribution to the evolution of regimes even in the security field, has likewise to be answered in the negative. Especially the intergovernmental core of decision-making and the preponderance of bargaining over deliberation during this review process made it difficult for CSOs as the less powerful actors to play a part in a significant way. Whether this was (also) due to the aggravated security climate since September 11, 2001, or whether this is a general feature of security affairs cannot ultimately be answered since this study left out a comparison of different review processes before and after 2001. Nevertheless, intensive lobbying on the part of CSOs left some mark on the negotiations, which gives some reason to argue that civil society can contribute to the evolution of a regime if it replaces deliberative input by classical lobbying wherever it has to act within a participation- and deliberation-unfriendly setting.

Indeed, civil society very soon started to revert to global action outside the NPT process and to national activities which all can be classified as classical advocacy work or lobbying.<sup>5</sup> The President of the 2005 NPT Conference himself, Ambassador Duarte, indirectly directed civil society away from diplomatic NPT channels towards other paths, namely, national and lobbyist avenues, by advocating that ‘[p]ublic opinion, including concerned civil society organizations, should concentrate their work on those who are entrusted with taking decisions, rather than apply pressure on agents who operate under strict instructions’ (Queiroz Duarte 2005, 5). In doing so, CSOs do not have to go back to zero since, even though no outcome resulted from the 2005 Conference, the 2000 obligations still remain in force. CSOs might also learn from the only case in which the general practice of NGO exclusion was breached, namely, the APM process (Atwood 2002, 9, 10–12). According to analyzes, this worked because a culture of close consultation and cooperation among like-minded governments, international organizations and NGOs led to the NGOs’ umbrella network, the International Campaign to Ban Landmines (ICBL), to be seated at the table of formal State meetings as an Observer delegation, with speaking, though no

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5 See p. 69.

voting rights.<sup>6</sup> Apart from this partnership approach, Atwood (2002, 11, 13) argues that the diversity of NGOs, more precisely the participation of humanitarian actors, made all the difference in the APM case and that the further involvement of other types of NGOs, human rights, development, humanitarian, in arms control and disarmament processes would shift the ways in which issues are defined. The NPT process, which is largely driven by traditional peace and disarmament organizations, surely could benefit from a more far-reaching inclusion of non-state actors. CSOs, on the other hand, by involving a broader array of civil society, could prove on their part to implement a more comprehensive concept of security: a model of true human security.

However, the above-mentioned APM model still implicates a deep structural weakness. As during the APM process, in most governmental negotiating settings, NGOs at the utmost reach the negotiating table as observers, meaning that they are excluded from all final decision-making. In most cases, CSOs themselves do not want to acquire another role and refuse to be part of the group of global decision-makers. They want to give civil society input and to convey their expert opinions. However, this position as consultants relegates them to a second-class actor within the hierarchy of those involved in the negotiating process. As other studies (for example, Dany 2006) have revealed, State interests and power relationships still prevail in intergovernmental fora. These kinds of relationships preclude any full-fledged deliberative setting involving CSOs as long as the institutional structure has no supranational coercive elements meant to moderate power imbalances and to instigate a process of mutual learning. Undoubtedly, this is valid in particular in the security area. In short, CSOs do not have to be listened to as long as they do not have a say in the final decision-making. Thus, as Dany (2006, 44) rightfully argues, even favorable conditions for CSO participation, which were not reached during the NPT process, do not necessarily provide a cure for the democratic deficit in international governance. They have to be complemented, not substituted, *inter alia* by true representative models which give civil society a stake in the decision-making. During the Second PrepCom, CSOs reminded delegates that civil society was their constituencies and their funders.<sup>7</sup> This is not how governments at the global level perceive their task. Thus, we need models which institutionalize representation and equal negotiating power of civil society alike at the global level, providing as such an environment prosperous of true deliberation through curbing isolated and society-distant (security) interests. What this could look like is open to debate. However, there are already numerous ideas and proposals (see Kissling 2005). One convincing proposal which argues in favor of a Parliamentary Assembly at the United Nations is developed by Bummel (Committee for a Democratic U.N. (ed.) 2005). The discussion has to continue: The floor is open to a lively debate on best models how to overcome the democracy deficit at the global level.

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6 See NGO participation in the NPT review process, Working Paper submitted by Canada, see pp. 64–5, note 54.

7 See RCW, *News in Review*, No. 9, 8 May 2003, p. 1.

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# Annexes

## **Annex 1 – The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)**

The States concluding this Treaty, hereinafter referred to as the Parties to the Treaty,

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the cooperation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapons tests in the atmosphere, in outer space and under water in its

Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

#### *Article I*

Each nuclear-weapon State Party to the Treaty undertakes 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 II*

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor 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.

#### *Article III*

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source

or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.
3. The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of the Treaty.
4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this Article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

#### *Article IV*

1. 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.
2. 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. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

#### *Article V*

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and

through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

#### *Article VI*

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.

#### *Article VII*

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

#### *Article VIII*

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.
2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.
3. 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 Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

#### *Article IX*

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.
2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.
3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.
4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.
6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

#### *Article X*

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a Statement of the extraordinary events it regards as having jeopardized its supreme interests.
2. 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.



*Article XI*

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.

DONE in triplicate, at the cities of London, Moscow and Washington, the first day of July, one thousand nine hundred and sixty-eight.

**Annex 2 – NPT/CONF.1995/32 (Part 1)***Decision 1 – Strengthening the Review Process for the Treaty*

1. The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons examined the implementation of Article VIII, paragraph 3, of the Treaty and agreed to strengthen the review process for the operation of the Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.
2. The States party to the Treaty participating in the Conference decided, in accordance with Article VIII, paragraph 3, that Review Conferences should continue to be held every five years and that, accordingly, the next Review Conference should be held in the year 2000.
3. The Conference decided that, beginning in 1997, the Preparatory Committee should hold, normally for a duration of 10 working days, a meeting in each of the three years prior to the Review Conference. If necessary, a fourth preparatory meeting may be held in the year of the Conference.
4. The purpose of the Preparatory Committee meetings would be to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conference. These include those identified in the decision on principles and objectives for nuclear non-proliferation and disarmament, adopted on 11 May 1995. These meetings should also make the procedural preparations for the next Review Conference.
5. The Conference also concluded that the present structure of three Main Committees should continue and the question of an overlap of issues being discussed in more than one Committee should be resolved in the General Committee, which would coordinate the work of the Committees so that the substantive responsibility for the preparation of the report with respect to each specific issue is undertaken in only one Committee.
6. It was also agreed that subsidiary bodies could be established within the respective Main Committees for specific issues relevant to the Treaty, so as to provide for a focused consideration of such issues. The establishment of such subsidiary bodies would be recommended by the Preparatory Committee for each Review Conference in relation to the specific objectives of the Review Conference.
7. The Conference further agreed that Review Conferences should look forward as well as back. They should evaluate the results of the period they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and the means through which, further progress should be sought in the future. Review Conferences should also address specifically what might be done to strengthen the implementation of the Treaty and to achieve its universality.

**Annex 3 – NPT/CONF.1995/32 (Part I)***Decision 2 – Principles and Objectives for Nuclear Non-Proliferation and Disarmament*

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the preamble and Articles of the Treaty on the Non-Proliferation of Nuclear Weapons,

Welcoming the end of the cold war, the ensuing easing of international tension and the strengthening of trust between States,

Desiring a set of principles and objectives in accordance with which nuclear non-proliferation, nuclear disarmament and international cooperation in the peaceful uses of nuclear energy should be vigorously pursued and progress, achievements and shortcomings evaluated periodically within the review process provided for in Article VIII, paragraph 3, of the Treaty, the enhancement and strengthening of which is welcomed,

Reiterating the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

The Conference affirms the need to continue to move with determination towards the full realization and effective implementation of the provisions of the Treaty, and accordingly adopts the following principles and objectives:

*Universality*

1. Universal adherence to the Treaty on the Non-Proliferation of Nuclear Weapons is an urgent priority. All States not yet party to the Treaty are called upon to accede to the Treaty at the earliest date, particularly those States that operate unsafeguarded nuclear facilities. Every effort should be made by all States parties to achieve this objective.

*Non-Proliferation*

2. The proliferation of nuclear weapons would seriously increase the danger of nuclear war. The Treaty on the Non-Proliferation of Nuclear Weapons has a vital role to play in preventing the proliferation of nuclear weapons. Every effort should be made to implement the Treaty in all its aspects to prevent the proliferation of nuclear weapons and other nuclear explosive devices, without hampering the peaceful uses of nuclear energy by States parties to the Treaty.

*Nuclear Disarmament*

3. Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. The undertakings with regard to nuclear disarmament as set out in the Treaty on the Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear-weapon States reaffirm their commitment, as Stated in Article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.
4. The achievement of the following measures is important in the full realization and effective implementation of Article VI, including the programme of action as reflected below:
  - a. The completion by the Conference on Disarmament of the negotiations on a universal and internationally and effectively verifiable Comprehensive Nuclear-Test-Ban Treaty no later than 1996. Pending the entry into force of a Comprehensive Test-Ban Treaty, the nuclear-weapon States should exercise utmost restraint;
  - b. The immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices, in accordance with the Statement of the Special Coordinator of the Conference on Disarmament and the mandate contained therein;
  - c. The determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control.

*Nuclear-weapon-free Zones*

5. The conviction that the establishment of internationally recognized nuclear-weapon-free zones, on the basis of arrangements freely arrived at among the States of the region concerned, enhances global and regional peace and security is reaffirmed.
6. The development of nuclear-weapon-free zones, especially in regions of tension, such as in the Middle East, as well as the establishment of zones free of all weapons of mass destruction, should be encouraged as a matter of priority, taking into account the specific characteristics of each region. The establishment of additional nuclear-weapon-free zones by the time of the Review Conference in the year 2000 would be welcome.
7. The cooperation of all the nuclear-weapon States and their respect and support for the relevant protocols is necessary for the maximum effectiveness of such nuclear-weapon-free zones and the relevant protocols.

*Security Assurances*

8. Noting United Nations Security Council resolution 984 (1995), which was adopted unanimously on 11 April 1995, as well as the declarations of the nuclear-weapon States concerning both negative and positive security assurances, further steps should be considered to assure non-nuclear-weapon States party to the Treaty against the use or threat of use of nuclear weapons. These steps could take the form of an internationally legally binding instrument.

*Safeguards*

9. The International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the statute of the Agency and the Agency's 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. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard. States parties that have concerns regarding non-compliance with the safeguards agreements of the Treaty by the States parties should direct such concerns, along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.
10. All States parties required by Article III of the Treaty to sign and bring into force comprehensive safeguards agreements and which have not yet done so should do so without delay.
11. International Atomic Energy Agency safeguards should be regularly assessed and evaluated. Decisions adopted by its Board of Governors aimed at further strengthening the effectiveness of Agency safeguards should be supported and implemented and the Agency's capability to detect undeclared nuclear activities should be increased. Also, States not party to the Treaty on the Non-Proliferation of Nuclear Weapons should be urged to enter into comprehensive safeguards agreements with the Agency.
12. 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 the Agency's full-scope safeguards and internationally legally binding commitments not to acquire nuclear weapons or other nuclear explosive devices.
13. Nuclear fissile material transferred from military use to peaceful nuclear activities should, as soon as practicable, be placed under Agency safeguards in the framework of the voluntary safeguards agreements in place with the nuclear-weapon States. Safeguards should be universally applied once the complete elimination of nuclear weapons has been achieved.

*Peaceful Uses of Nuclear Energy*

14. Particular importance should be attached to ensuring the exercise of 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, II as well as III of the Treaty.
15. Undertakings to facilitate participation in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy should be fully implemented.
16. In all activities designed to promote the peaceful uses of nuclear energy, preferential treatment should be given to the non-nuclear-weapon States party to the Treaty, taking the needs of developing countries particularly into account.
17. Transparency in nuclear-related export controls should be promoted within the framework of dialogue and cooperation among all interested States party to the Treaty.
18. All States should, through rigorous national measures and international cooperation, maintain the highest practicable levels of nuclear safety, including in waste management, and observe standards and guidelines in nuclear materials accounting, physical protection and transport of nuclear materials.
19. Every effort should be made to ensure that the International Atomic Energy Agency has the financial and human resources necessary to meet effectively its responsibilities in the areas of technical cooperation, safeguards and nuclear safety. The Agency should also be encouraged to intensify its efforts aimed at finding ways and means for funding technical assistance through predictable and assured resources.
20. Attacks or threats of attack on nuclear facilities devoted to peaceful purposes jeopardize nuclear safety and raise serious concerns regarding the application of international law on the use of force in such cases, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations.

The Conference requests that the President of the Conference bring the present decision, the decision on strengthening the review process for the Treaty and the decision on the extension of the Treaty on the Non-Proliferation of Nuclear Weapons, to the attention of the heads of State or Government of all States and seek their full cooperation on these documents and in the furtherance of the goals of the Treaty.

**Annex 4 – NPT/CONF.1995/32 (Part I)***Decision 3 – Extension of the Treaty on the Non-Proliferation of Nuclear Weapons*

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Having convened in New York from 17 April to 12 May 1995, in accordance with Article VIII, paragraph 3, and Article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons,

Having reviewed the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,

Having reaffirmed Article VIII, paragraph 3, of the Treaty and the need for its continued implementation in a strengthened manner and, to this end, emphasizing the decision on strengthening the review process for the Treaty and the decision on principles and objectives for nuclear non-proliferation and disarmament, also adopted by the Conference,

Having established that the Conference is quorate in accordance with Article X, paragraph 2, of the Treaty,

Decides that, as a majority exists among States party to the Treaty for its indefinite extension, in accordance with Article X, paragraph 2, the Treaty shall continue in force indefinitely.

**Annex 5 – NPT/CONF.1995/32 (Part I)***Resolution on the Middle East*

The Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

Reaffirming the purpose and provisions of the Treaty on the Non-Proliferation of Nuclear Weapons,

Recognizing that, pursuant to Article VII of the Treaty, the establishment of nuclear-weapon-free zones contributes to strengthening the international non-proliferation regime,

Recalling that the Security Council, in its Statement of 31 January 1992,<sup>a/</sup> affirmed that the proliferation of nuclear and all other weapons of mass destruction constituted a threat to international peace and security,

Recalling also General Assembly resolutions adopted by consensus supporting the establishment of a nuclear-weapon-free zone in the Middle East, the latest of which is resolution 49/71 of 15 December 1994,

Recalling further the relevant resolutions adopted by the General Conference of the International Atomic Energy Agency concerning the application of Agency safeguards in the Middle East, the latest of which is GC(XXXVIII)/RES/21 of 23 September 1994, and noting the danger of nuclear proliferation, especially in areas of tension,

Bearing in mind Security Council resolution 687 (1991) and in particular paragraph 14 thereof,

Noting Security Council resolution 984 (1995) and paragraph 8 of the decision on principles and objectives for nuclear non-proliferation and disarmament adopted by the Conference on 11 May 1995,

Bearing in mind the other decisions adopted by the Conference on 11 May 1995,

1. Endorses the aims and objectives of the Middle East peace process and recognizes that efforts in this regard, as well as other efforts, contribute to, inter alia, a Middle East zone free of nuclear weapons as well as other weapons of mass destruction;
2. Notes with satisfaction that, in its report (NPT/CONF.1995/MC.III/1), Main Committee III of the Conference recommended that the Conference ‘call on those remaining States not parties to the Treaty to accede to it, thereby accepting an international legally binding commitment not to acquire nuclear weapons or nuclear explosive devices and to accept International Atomic Energy Agency safeguards on all their nuclear activities’;
3. Notes with concern the continued existence in the Middle East of unsafeguarded nuclear facilities, and reaffirms in this connection the recommendation contained in section VI, paragraph 3, of the report of Main Committee III urging those non-parties to the Treaty on the Non-Proliferation of Nuclear Weapons that operate



unsafeguarded nuclear facilities to accept full- scope International Atomic Energy Agency safeguards;

4. Reaffirms the importance of the early realization of universal adherence to the Treaty, and calls upon all States of the Middle East that have not yet done so, without exception, to accede to the Treaty as soon as possible and to place their nuclear facilities under full-scope International Atomic Energy Agency safeguards;
5. Calls upon all States in the Middle East to take practical steps in appropriate forums aimed at making progress towards, inter alia, the establishment of an effectively verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective;
6. Calls upon all States party to the Treaty on the Non-Proliferation of Nuclear Weapons, and in particular the nuclear-weapon States, to extend their cooperation and to exert their utmost efforts with a view to ensuring the early establishment by regional parties of a Middle East zone free of nuclear and all other weapons of mass destruction and their delivery systems.

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**Annex 6 – NPT/CONF.2000/28 (Part I)***13 Practical Steps*

Review of the operation of the Treaty, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference

Improving the effectiveness of the strengthened review process for the Treaty

...

Article VI and eighth to twelfth preambular paragraphs

...

15. 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 importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty.
  2. A moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty.
  3. The necessity of negotiations in the Conference on Disarmament on a nondiscriminatory, 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.
  4. 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.
  5. The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.
  6. 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.
  7. 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.

8. The completion and implementation of the Trilateral Initiative between the United States of America, the Russian Federation and the International Atomic Energy Agency.
9. 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:
  - Further efforts by the nuclear-weapon States to reduce their nuclear arsenals unilaterally;
  - Increased transparency by the nuclear weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to Article VI and as a voluntary confidence-building measure to support further progress on nuclear disarmament;
  - The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process;
  - Concrete agreed measures to further reduce the operational status of nuclear weapons systems;
  - A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination;
  - The engagement as soon as appropriate of all the nuclear-weapon States in the process leading to the total elimination of their nuclear weapons.
10. 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.
11. Reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control.
12. 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 1995 Decision on 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament,' and recalling the advisory opinion of the International Court of Justice of 8 July 1996.
13. 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.

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