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Issues at the 1995 NPT Conference: A PPNN Seminar for Senior Government Officials, Chilworth Manor Conference Centre, Southampton University, UK, July 9-12, 1993: Rapporteur's Substantive Report

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Summary:

Elaborates on issues discussed during the 12th conference of the PPNN including Regional issues in the Middle East, North Korea, and the former USSR or CIS countries.

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ISSUES AT THE 1995 NPT CONFERENCE

A PPNN Seminar for Senior Government Officials
Chilworth Manor Conference Centre, Southampton University, UK
July 9-12 1993

RAPPORTEUR'S SUBSTANTIVE REPORT

I. INTRODUCTION

From 17 April to 12 May 1995 a conference will be held in New York to both review the workings of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and to decide on its duration. The seminar at Southampton in July 1993 was the first of a series of similar meetings to be organised by PPNN aimed at senior officials from NPT parties who have responsibility for making their state's non-proliferation policies. Details of those who attended, the working groups, and the papers prepared for the Chilworth meeting, are contained in the attached General Report on the seminar.

This Substantive Report is intended to give a general reflection of issues addressed in the working groups and plenary discussions at the seminar. It does not claim to be a full summary of those issues or of the opinions expressed about them; rather, it is intended to highlight, for the purposes of further analysis and discussion, some of the issues raised; the main problems for 1995 that emerged from them; and some of the solutions proposed for these problems. The rapporteur, John Simpson, bears full responsibility for the content of the paper.

One significant theme running throughout the discussions that is not fully highlighted in the report which follows is the strength of support in the international community for the NPT arising from its positive record and the merits of the Treaty. In the run-up to the 1995 conference, discussion seems likely to focus upon problems with the implementation of the Treaty, and methods of reinforcing the NPT, rather than offering praise for its record of success and its strengths. It may be a mere statistical correlation, but since the NPT was signed, there have been no further declarations of overt nuclear weapon status. Would matters have been significantly different if the NPT had not been in force? And in the post-USSR era, what alternative is there to the NPT to underpin the new political and economic systems that are emerging in the world?

Indeed, one key problem for those participating in the 1995 conference that emerged from the discussions at Chilworth is how to make the maximum effort to reinforce the NPT, and improve its implementation, while avoiding the risk of inadvertently creating a situation no state may desire, such as no decision on length of extension emerging from the conference, or the Treaty being extended for a short period or periods only. This demonstrates the need for all participants to be fully briefed on the complexities surrounding the Treaty, in order to prevent an outcome desired by no one.

In the course of the seminar, eleven sets of issues were highlighted as having a significant bearing on the outcome of the 1995 conference. Some were procedural, some dealt with treaty interpretation and some with substance. They are treated sequentially below, without implying an order of importance.

II. PREPARATORY AND PROCEDURAL ISSUES

The discussions showed that significant differences of opinion remain to be resolved over several issues in this area, including:

i. The Review Process

How far back should the review process go, given that it is concerned with the implementation of the NPT, not the nature of the Treaty itself? Should it just review the previous five years activities or the twenty five years since the Treaty came into force?

ii. The Relationship Between the Review and Extension Process

Should the Review precede the Extension or vice-versa? Those who argued that the review should come first pointed to the logic inherent in first reviewing the implementation of the Treaty and then making a decision on its further duration in the light of the results of the review. Others argued that the decision on the Treaty's future duration should precede the review process as senior representatives of states with plenipotentiary powers were likely to be present at the start of the proceedings and they would have authority to make decisions at the conference; that there was a danger that time would run out and no decision would be made on extension if the decision were taken at the end of the meeting; and that parties' positions on extension will have been decided before they arrive at the Conference and the review would not alter this situation. Others argued for a clear separation of the two processes on the grounds that they are covered by different Articles of the Treaty. (ie., Articles VIII.3 and X.2).

iii. Documentation

Should the documentation cover the past five years or twenty five years, or should it be far more forward looking. A case has been made for less documentation on the grounds of expense, but developed states may need to recognise that some for some Parties the background papers are their main source for gathering information and of reference.

iv. Finance

At previous NPT review conferences, the three depositaries, the UK, US and USSR, had paid 55% of the total: now Russia had indicated it would be unable to contribute at the previous level of the USSR, and the other depositaries have called for a complete revision of the financing system. The UN system is equally unacceptable to many states. Another suggestion is that the five nuclear weapon states should now pay the 55% between them. How is a new formula to be found which is acceptable to all, as without it the conference may not be capable of being convened?

v.The decision-making processes

Should decisions be made by consensus or a vote? A consensus decision would avoid the risk that a dissenting minority could subsequently weaken the authority of the Treaty. But a vote would offer a simpler decision-making process, and might make the position more clear.

vi.The significance of procedural issues

Despite attempts to separate procedural issues from substantive ones there are inevitable links. A means may have to be found to prevent time being wasted in New York in 1995 in discussing procedure, as such a discussion runs the risk of becoming an end in itself and a means of preventing an unwanted decision.

III.TREATY INTERPRETATION ISSUES

i.The Extension Options

3 options exist are specified in Article X.2 of the NPT for its duration:

- * indefinite
- * an additional fixed period
- * additional fixed periods (ie., successive fixed periods automatically following each other unless a negative vote prevents further extension).

In addition, the term "fixed period" could be interpreted as meaning any period of time, or the 25 years mentioned in the Article. As the Treaty appears to have provision for only one Extension Conference, a decision to extend for a single fixed period is one to terminate the Treaty at the end of that period.

ii.Methods of Sustaining Leverage on the Nuclear Weapon States

Many states see NPT conferences as unique opportunities to apply pressure on the nuclear weapon states over nuclear disarmament, with the 1995 conference offering even more leverage because of the need to take the decision on the Treaty's further duration. Such leverage would continue if additional fixed periods were chosen as the extension option, with Review Conferences continuing to be convened at 5 year intervals during each periods.

One option for extending the Treaty's life at the end of an additional fixed period would be to put the onus on its supporters to show the need for its further survival, rather than for opponents to argue for an end to the Treaty. A second option is for provision to be made for the Treaty to continue automatically unless terminated by a negative vote. A degree of conditionality might be injected into this option through linked conference resolutions specifying the circumstances under which states would insist on a conference to consider the termination of the Treaty at the end of a fixed period.

What now appears to be needed is a formula to reconcile the need to preserve the NPT and the wish to have a means of leverage to accelerate the nuclear disarmament process and the achievement of a CTBT. What such a formula would consist of needs further analysis and consultation.

IV. SECURITY MATTERS

i. Articles I and II

Widespread adherence to the NPT has established a norm of non-proliferation, despite recent uncertainty about the level of commitment of some parties (e.g. Iraq and the Democratic People's Republic of Korea-DPRK) to the Treaty and their implementation of Article II of the NPT; and despite the actions by those industrialised states, including some nuclear weapon states covered by Article I, which had not prevented nuclear-weapon related exports.

A new issue for 1995 is the role of the Security Council in promoting non-proliferation and in monitoring proliferation threats. The Council might also have a role in enforcing non-proliferation, either through non-military or military means, under Chapter VII of the UN Charter. This would have to be a last resort, however, and poses significant difficulties.

The situation in Ukraine may also be an issue. Russia may be accused of violating Article I of the NPT by not doing everything in its power to prevent Ukraine obtaining control of nuclear weapons. If in 1995 Ukraine is an avowed nuclear weapon state and not party to the NPT, this could have a detrimental effect on NPT extension. It might generate widespread perceptions that as with the case of Israel, proliferation has been condoned despite the existence of the Treaty. Yet the alternatives are equally unpalatable: to recognise Ukraine as a successor NPT nuclear weapon party to the USSR or to have the Security Council take enforcement action against it on the basis that it is a threat to international peace and security. This seems to place a considerable premium on an early resolution of Ukraine's nuclear status.

ii. The balance between Articles I and II and Article VI

The fear of horizontal proliferation now appears to be increasing in importance compared to vertical proliferation. The NPT review process may therefore require the articulation of a new balance between the rights and obligations of the nuclear-weapon and non-nuclear weapon parties to the NPT. Can such a balance be achieved, is it worth seeking, and how might it be described?.

iii. Article VI and a Comprehensive Test Ban Treaty (CTBT)

Clear progress towards a CTBT appears a pre-condition for a harmonious decision on duration at the 1995 NPT Conference, though it may be counter-productive to set a deadline for the conclusion of a treaty. What is needed by 1995 is evidence of the intention of the nuclear weapon states to conclude a CTBT. The position of China is central to this, and it seems essential to avoid a position where an extension to the NPT becomes dependent on Chinese acceptance of a CTBT. China should be urged to accept a CTBT, and may feel compelled to do so, but the possibility of a CTBT without China for a limited period of time (perhaps 5 - 7 years), though undesirable, should be considered if this is necessary to sustain the NPT.

The Conference on Disarmament (CD) appears the appropriate forum for negotiations for a CTBT (possibly with suitable arrangements to ensure that non-CD members can participate in the negotiations). The possibility of a parallel negotiation process between the nuclear weapon states appears undesirable, as it might result in a five-power treaty only (which would lack the non-proliferation character of a global ban on testing): informal consultations between the nuclear weapon states might, however, complement wider negotiations in the CD.

The other alternative is to amend the Partial Test Ban Treaty (PTBT) to transform it into a CTBT. This has several advantages: key threshold states are already signatories to the PTBT; a PTBT amendment adopted by a majority of states would enter into force universally; and it would bring a CTBT into force more quickly. This option would throw the weight of negotiation onto protocols specifying verification provisions, including the definition of a nuclear explosion, and these negotiations might be as time-consuming and complex as those for a new CTBT treaty.

iv. Nuclear-Weapon-Free Zones (NWFZs)

The ratification of amendments to the Treaty of Tlatelolco, the Latin American NWFZ, by individual states is proving to be a slow process, but it seems likely that full implementation of the Treaty could be achieved by 1995. It is also possible that a treaty establishing an African NWFZ will be open for signature by then. Having both fully in force by April 1995 would provide a useful reinforcement to the NPT at that point. Will negotiations have started on other nuclear weapon free zones by that date?

v. Security Assurances

There is a willingness on the part of the Nuclear Weapon States to contemplate offering enhanced uniform, and multilateral negative security assurances of a legally binding nature to NPT parties by 1995, to replace their current unilateral assurances to specified groups of states. It seems necessary that these assurances will only apply to states that adhere to the NPT in good faith and the nuclear weapon states may wish to be able to withdraw such multilateral assurances from any NPT parties that are in breach of the Treaty (e.g. Iraq). One form of multilateral security assurance could be a no-first-use agreement. A complication of this is that the nuclear-weapon states favour an agreement linked to adherence to treaties on the non-use of other weapons of mass destruction, such as the Biological Weapon Convention (BWC) and the Chemical Weapons Convention (CWC).

Positive security assurances given by the UK, the US and the Soviet Union under Security Council Resolution 255 (1968) need to be revised, at the very minimum by associating France and China with these assurances, possibly through a further Security Council resolution. A more difficult problem is how they can be made more specific, and strengthened in their content.

V.SAFEGUARDS AND VERIFICATION OF TREATY COMPLIANCE

The fundamental question the NPT conference will need to address with regard to IAEA safeguards is whether the changes that have been made to the IAEA's safeguards system are sufficient to restore confidence in this system and the NPT in the post-Gulf and Cold War world? Many of these changes have already been implemented, and it remains an open question whether further enhancement in the following areas will be needed:

- * Full implementation of special inspections, and the use by the Agency of all sources of information, including non-safeguards sources, to implement such inspections.
- * Vigorous promotion of the concept of nuclear transparency, in order to enable the IAEA to construct a comprehensive picture of all nuclear activity within an NPT party, and thus facilitate detection of illegal nuclear activities. Universal reporting of all nuclear-related exports would serve to improve such transparency.
- * Development of the concept of environmental monitoring, to provide greater long-term assurance of compliance.
- * Continuing with the change in the IAEA's safeguards culture to make it more inquisitive, and to encourage inspectors to give careful attention to any indication of the existence of undeclared facilities and materials.
- * Reassessment of the basic 'material balance area' concept by facility or country to evaluate whether it is still sufficient to detect diversions, or needs adjustment to enable the construction of a broader safeguards picture within a country.
- * Consideration of ways to eliminate or tighten up safeguards exemptions, so that small quantities of nuclear material cannot be diverted for possible research on nuclear weapons.
- * Rationalization of the IAEA's safeguards resources and responsibilities. This raises questions such as: should there be a re-focus of safeguards resources away from industrialised countries such as Canada, Japan and the European Community? How far should the IAEA delegate its safeguards responsibilities to regional organizations such as EURATOM? Can some of the more routine safeguards functions be safely delegated to State Systems of Accountancy and Control (SSAC) while the IAEA concentrates on safeguarding more sensitive facilities?
- * Development by the IAEA of a competence in satellite monitoring. Resources required for such a capability could be prohibitive but there may be alternative ways that satellite information could be provided, such as through commercial imaging systems.
- * Assessment of whether the IAEA could learn anything from verification techniques developed for the CWC regime. The challenge inspection concept in the CWC has weaknesses, compared with the special inspection process, because such inspections need a political evaluation before they can be mounted. In the NPT, special inspections can be ordered merely on technical grounds. Moreover, the 'managed access' concept incorporated in the CWC verification protocol may not be

as stringent in practice as special inspections.

- * Assessment of how new safeguards equipment and techniques might be employed to provide greater technical effectiveness in safeguards monitoring.
- * Expanding the tasks of the IAEA into additional roles so that it has verification competence across the whole spectrum, not only of peaceful uses of nuclear energy but nuclear explosive testing, verifying a fissile material cut-off, verifying the dismantling of nuclear warheads, creating and operating an international plutonium storage system, and monitoring any future CTBT.
- * Expanding the role of the IAEA into assessments of non-nuclear energy sources in order to provide evaluations of the most suitable strategies for energy provision in developing states.

VI. PEACEFUL USES: ARTICLE IV

Criticism of the implementation of this article can be expected in 1995. This requires that three fundamental questions be addressed prior to 1995:

- * How can the satisfactory/unsatisfactory implementation of Article IV be assessed? What criteria should be used and what data?
- * How will the current disillusionment over the utility of nuclear power as an energy source affect the prospects for the Treaty in 1995?
- * How important today is the original 'nuclear bargain', contained in the NPT, in which a non-nuclear weapon state has the right to unrestricted peaceful uses of nuclear energy in return for its commitment not to develop nuclear weapons?

There is clearly a need to ensure that a balance is maintained between the regulatory role of the IAEA and its technical cooperation programmes. Although global nuclear power capacity has not expanded at the rate anticipated in the 1970s, nuclear power generation remains a significant potential energy source. In this connection, more may need to be done to promote the uses of nuclear energy in developing states prior to 1995. This includes promoting greater awareness of the IAEA's role in technical cooperation. Suggestions to accomplish this include:

- * The Agency conducting economic and environmental assessments before states decide to embark on nuclear power projects.
- * The encouragement of smaller-scale power projects for which financial resources might be found more easily.
- * Developing the non-power uses of nuclear energy. Initiatives could focus on development of peaceful uses of nuclear energy in agriculture (for example, the elimination of the screw-worm in Libya); medicine (radio-isotopes); in food preservation (long-term storage of rice in Indonesia); and environmental protection.

- * Publicising the IAEA's regional cooperation agreements in Asia, Africa and Latin America, both in the non-power and power generation areas.

VII. PEACEFUL NUCLEAR EXPLOSIONS

An initiative should be taken to eliminate any grounds for conducting peaceful nuclear explosions, even though these are allowed under Article V. A consensus now exists that this is no longer a legitimate activity, and it would be useful to express this in legal form.

VIII. EXPORT CONTROLS

The NPT has provided a stable framework for nuclear cooperation and technology transfer, but a perception has emerged that a technology denial strategy is now being applied on a North-South basis. Enhanced supplier export controls are also perceived to have raised the costs of technology transfer to non-nuclear weapon state parties to the NPT. Unless attention is devoted to the issue of technology transfer in advance of 1995, it could become divisive and threaten prospects for NPT extension. Possible initiatives to lessen potential tensions in this area include:

- * Establishing before 1995 hard statistical evidence of cases where constraints on technology transfer have actually hampered peaceful nuclear energy development within NPT parties.
- * Introducing greater transparency into the export control process through supplier countries providing statistics about their exports in exchange for recipients providing specific details of the end-uses of technology. Canada produced such statistics at the 1990 Review Conference and Germany has released basic details of its exports.
- * Initiating a dialogue between suppliers and recipients over appropriate export policies, with the aim of developing a set of global technology transfer guidelines. This might allay suspicions of technology denial and unfair treatment. Consideration might be given to whether countries from the South should also be included in the supplier groups.
- * Exploring further measures to reduce the possibilities for clandestine exports.
- * Providing further assistance to facilitate establishment of reliable export control systems in Eastern Europe and the republics of the former USSR?
- * Linking development aid more specifically to membership of the NPT. Can this be done, however, without imposing further constraints on developing states?

IX. REGIONAL ISSUES - NORTH EAST ASIA

The DPRK was the first NPT party to announce its intention to withdraw from the Treaty. There is no precedent for dealing with the complex issues raised by its action. There are at least three possible outcomes to the current situation:

- * The DPRK returns fully to the NPT, thereby avoiding unpredictable consequences which could affect the 1995 Conference.
- * The DPRK implements a full withdrawal from the NPT, with unpredictable results;
- * The DPRK seeks to delay the withdrawal process, thereby continuing the current ambiguous situation. While this outcome appears to allow the DPRK to violate its NPT obligations with impunity, it has the advantage of allowing the global community continued leverage to insist on inspections of the suspected facilities. Even if the DPRK returns fully to the NPT, two further issues will remain to be resolved:
- * Whether the DPRK will continue to allow the implementation of regular IAEA inspections.
- * Whether the DPRK will continue to refuse to allow the implementation of special inspections, in particular of the two locations suspected of containing materials relevant to confirming the validity of its declared inventory of fissile material.

Initiatives to return the DPRK to full membership of the NPT may have to involve face-saving devices in order to resume full implementation of IAEA safeguards . For example, the Security Council could request the Secretary General to send a delegation of officials from friendly countries to the DPRK. The delegation could explore political solutions as a first step towards resumption of IAEA inspections of the DPRK programme.

Given the uncertainty surrounding the North Korea position, it is probably premature to evaluate the impact of its actions upon 1995.

X.REGIONAL ISSUES - THE MIDDLE EAST

In this region, the existence of an undeclared nuclear weapon state (Israel) adversely impacts on the willingness of the Arab NPT parties to agree to an indefinite or lengthy extension of the Treaty. The Arab countries seem likely to oppose any long extension of the Treaty if Israel continues to refuse to accede to it. The new situation created by the Middle East Peace Talks gives Israel some incentive to revise its traditional position on the NPT: it offers support to those in Israel who maintain that it would be more secure with a nuclear-weapon-free zone (NWFZ) and a rigorous regime of verification, including mutual inspection.

New initiatives that might be implemented to ease Israel towards NPT accession include:

- * discussions on the creation of a NWFZ or a zone free of weapons of mass destruction (ZFWMD).
- * implementing some of the confidence building measures already examined in a UN Report of 1991, such as shutting down the Dimona reactor, within the framework of the Peace Talks.

Three other issues of significance for 1995 are:

- * The linkage that has been created between chemical and nuclear weapons in the region. Some Arab countries refuse to sign the CWC as long as Israel does not accede to the NPT.
- * The existence of rivalries which may motivate clandestine nuclear weapon programmes in the area apart from the Israeli issue. Suspicions about programmes in Iran and about a revived programme in Iraq in part originate from this source.
- * The relationship between a Middle East ZFWMD and the African NWFZ. The South African case might be regarded as a precedent for an Israeli change of policy, especially as perceived threats from the former USSR were common to both. Also, there is the question whether, given the South African precedent, the IAEA could credibly account for all the fissile material produced by the Dimona reactor.

Given the deep rooted issues surrounding the NPT extension decision in 1995, this may be the regional issue with the most disruptive effect on the Conference.

XI.REGIONAL ISSUES - THE CIS

By 1995 the break-up of the former USSR may have created a legacy of at least two nuclear weapon states. This would affect the NPT in several ways:

- * It would raise the question of the implementation of Article I by Russia;
- * It would raise issues over the implementation of Article III.2 if Russia and other NPT parties were to supply nuclear fuel to the power reactors in other CIS nuclear weapon states (e.g.Ukraine).
- * It would raise questions about the nuclear weapon state/non-nuclear weapon state distinction upon which the Treaty is based;
- * It would threaten the implementation of the START agreements, and thus the partial fulfilment of NPT Article VI obligations.

The Ukraine situation is at the heart of this problem, in particular due to the recent decision by the Ukraine Parliament to claim ownership of the nuclear warheads remaining on its territory.

It is of crucial importance that Ukraine should be prevented from gaining operational control over the warheads on its territory and that it should ratify the NPT as a non-nuclear weapon state prior to the 1995 Conference.

Three types of initiative appear necessary to achieve this:

- * economic and political assistance tied to acceptance of non-proliferation commitments;

- * provision of security assurances tied to non-proliferation commitments. At present it is unclear exactly what assurances Ukraine requires, and how and in what form they are best provided (by the NPT depository states? nuclear weapon states? the UN Security Council?)
- * development of proposals for international administration of nuclear warheads in the Ukraine, to include, if appropriate, involvement of the IAEA.

XII.CONCLUSIONS

The NPT conference of 1995 is intrinsically a more complex event than the review conferences that have preceded it. It also takes place after a period of unparalleled change in key aspects of global political relations. Traditional security, arms control, safeguards and peaceful uses issues remain central to its agenda, but two new issues seem likely to cause significant difficulties:

- * the contested nature of the extension process; and
- * the problems arising from the collapse of the former USSR, specifically the future disposition of the nuclear warheads in the Ukraine.

At the same time, the nuclear status of Israel and the DPRK also pose potential difficulties for the conference. Thus it appears that, as in 1985, it may be the unpredictable nature of regional nuclear developments that will pose the greatest threats to a smooth extension process rather than the intrinsic difficulties of extension or the more traditional security issues.

JOHN SIMPSON

August 8 1993