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THE 2005 NPT REVIEW CONFERENCE: 188 STATES IN SEARCH OF CONSENSUS

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I. Introduction

This was not a good year for theater productions on or off Broadway. By far the most costly and disappointing spectacle staged in New York this past season was the 2005 NPT Review Conference – an ill-conceived amalgam of farce and tragedy performed with little direction by an uninspired cast and with an all too predictable ending.

As a bit player in the recent drama and as a veteran of two prior Review Conference “blockbusters,” as well as six Preparatory Committee rehearsals, I see my task today as a theater critic. Since the script itself is well known, I will dwell primarily on two themes: (1) Why did the production fail? and (2) What are the implications of its failure?

II. Historical Context

In order to address these topics, it is useful to place the most recent Review Conference in historical perspective. In this regard, one should recall that of the seven review conferences held since the entry into force of the NPT, only three of them – 1975, 1985, and 2000 – produced “consensus” final declarations. Even the historic 1995 NPT Review and Extension Conference failed to generate an agreed-upon final declaration, although it yielded three very significant decisions and a resolution. One, therefore, must be cautious in the standard one uses or the criteria one adopts for evaluating the success or failure of a Review Conference, which need not correspond to the presence or absence of an agreed final declaration.

It also is useful to recall that the NPT was widely perceived to be under significant challenge prior to earlier Review Conferences, although for reasons different than those in 2005. Prior to the 2000 Review Conference, for example, expectations for a successful outcome were very low, in part because of the disastrous 1998 Prep Com and the inability of the 1999 Prep Com to reach agreement on any substantive recommendations or to agree on an agenda for the Review Conference. In 2000, however, this perception of high threat to the Treaty led most key delegations to display considerable flexibility in their positions on both procedural and substantive matters. As a consequence, in stark contrast to 2005, it was possible in 2000 to adopt an agenda at the start of the meeting and to negotiate a rich and consensus final document.

In 2000, there was great concern that the issue of national missile defense and, more specifically, Russian and Chinese reaction to the new U.S. position on the ABM treaty,

might torpedo the Review Conference. This prospect, however, was removed when the P-5 made a joint statement during the first week of the 2000 Review Conference, which effectively took the divisive ABM issue off the conference table. By contrast, in 2005 not only were the P-5 unable to put forward a statement of substance at the outset of the Review Conference, they were unable to agree on any statement before the Conference concluded.

Finally, by way of historical comparison, prior to the 2000 Review Conference there was tremendous unease in many capitals that the great promise of the 1995 package of decisions (and one resolution) had been squandered. While both nuclear weapon states (NWS) and non-nuclear weapon states (NNWS) parties continued to play lip service to the key provisions of the NPT, in practice they were very selective in implementing their obligations. The NWS emphasized horizontal nonproliferation, but shunned major steps in nuclear disarmament; the NNWS trumpeted the need for rapid nuclear disarmament, but remained too complacent regarding other major challenges. Fortunately, in 2000 a new political grouping – the New Agenda Coalition – emerged and provided a vision regarding disarmament that could be largely embraced by almost all states – both NWS and NNWS – a vision that helped to forge a consensus around the 2000 NPT Final Document. No such political grouping with a comparable vision emerged in 2005.

III. What Went Wrong?

A number of outside analysts – myself included – were very pessimistic long before the start of the 2005 NPT Review Conference about the prospects for negotiating a substantial final document. At meetings for many of the principals in New York in October 2004 and again in Annecy, France in March 2005, few senior diplomats were prepared to acknowledge that the NPT faced a crisis. President-designate Sergio Duarte, in particular, very much opposed the use of the term “crisis” to characterize the status of the NPT. Few national representatives took seriously the warning of some NGO experts that procedural issues, such as the adoption of an agenda or the designation of subsidiary bodies, could delay the work of the Review Conference beyond the first week. Indeed, at a working dinner in Geneva of one dozen of the key Review Conference representatives less than three months before the start of the Conference, many of the participants characterized the issue of subsidiary bodies as a “silly one” that did not merit much attention. Few of these individuals, however, had ever attended a prior Review Conference. Like their counterparts on most delegations to the 2005 Review Conference, they had very little institutional memory or first-hand recollection of the significance of crucial bargains that had been struck at prior conferences, crises that had been narrowly averted, and lessons – both positive and negative – that should have been learned. Indeed, by far the most experienced delegates at the 2005 Review Conference were those from the NGO community.

Although the final outcome of the 2005 Review Conference was predictable, the process by which the Conference sputtered and then collapsed generally was not anticipated. Among the principal surprises – at least to this analyst/participant – were the extent of

divisions within a number of the major political groupings and the vigor with which one state party sought to block almost every attempt at forging consensus on both procedural and substantive issues.

Many commentators have portrayed the 2005 Review Conference as a classic battle between NWS (and especially the United States) and the NNWS. Although this divide certainly was evident in many respects, as it always has been in NPT negotiations, more striking were the fissures within the Non-Aligned Movement (NAM), the New Agenda Coalition (NAC), and the P-5.

Given the large size (116 NPT members and 16 observers) and diversity of NAM, it is customary to observe considerable friction in the hammering out of NAM positions on NPT-related issues. At the 2005 Review Conference, however, these typical tendencies were magnified by personal animosities, fundamental disagreements over tactics, the absence of a shared vision about what would constitute a desirable conference outcome, and an uncompromising negotiating stance by Egypt. As a consequence, NAM's ability to promote the substantive positions it had agreed upon prior to the Review Conference was significantly diminished.

The same paralysis that impeded the promotion of NAM objectives at the Review Conference also was reflected in the stunted contribution of NAC. Although at first glance this development may appear to be linked to the overlap between three of the main protagonists in NAM – Egypt, South Africa, and Brazil* – and NAC, in fact the demise of NAC probably is more attributable to the growing gulf between its NAM and non-NAM members. Indeed, the differences within NAC over the scope of the disarmament agenda and the pace and manner with which it is pursued are now so great as to doom the persistence of that body as a political grouping. Almost certainly, NAC will cease to function, at least as it is presently constituted.

The United States and Russia (and previously the Soviet Union) historically have pursued many parallel policies at NPT Review Conferences, and often have coordinated their approaches. Although the two NWS continue to share a number of common perspectives on issues related to disarmament, nonproliferation, and peaceful nuclear energy, the coordination of their policies was not much in evidence at the 2005 Review Conference. The focus of much of the Conference on procedural issues, the reliance on the Conference President on consultation with the chairs of the main political groupings, and the absence for most practical purposes of an “Eastern Group,” effectively marginalized the role of the Russian Federation. The head of the Russian delegation, in fact, complained to the President in a plenary session of his delegation's frustration at not being actively engaged in consultations.

A low-level and, for the most part, inexperienced U.S. delegation also had the effect of diminishing joint U.S.-Russian or broader P-5 initiatives. Little effort appeared to have

* Technically, Brazil is an observer to NAM, but actively participates in its deliberations on NPT issues.

been invested in promoting common objectives in any of the main committees or subsidiary bodies. Confusion was particularly evident in Main Committee III when the United States – to the surprise of at least some of its P-5 colleagues – chose at the last moment to block the transmittal of the bracketed text of the Committee to the Plenary.

In contrast to NAM, NAC, and the P-5, the European Union (EU) generally presented a solid front at the Review Conference with a well-defined set of positions, which were actively promoted by Luxembourg on behalf of the EU. The EU perspective was especially well-developed on the subject of Article X (withdrawal), which was the focal point for discussion in the subsidiary body associated with Main Committee III. The impact of the common EU position on Conference developments, however, was diminished by the reluctance of most EU states to reiterate that position in separate national interventions. The influence of the EU – and all other political groupings – also was reduced by the absence of a clear conception of what the Conference could and should achieve and a coherent strategy for realizing that objective. Unfortunately, it was not obvious that any key player – including the President – had such a vision or strategy, with the exception of several states for which an immobilized Review Conference appears to have been a desirous outcome.

Given the pronounced intra-group, as well as between-group, differences at the 2005 Review Conference, it is doubtful that even a full four weeks of time for substantive debate would have yielded consensus on any significant issue. Nevertheless, the success of procedural brinkmanship and the absence of time for debate in the main committees and subsidiary bodies prevented much headway from being made on a number of important subjects for which considerable common ground may have existed. One such issue is preventing non-state actors from gaining access to nuclear weapons.

When the NPT was concluded in 1968, the drafters did not contemplate the danger of nuclear terrorism, and the Treaty provides no guidance on this subject. In April 2004, however, the United Nations Security Council adopted an important resolution (SCR 1540) requiring all UN member states to establish effective domestic controls to prevent non-state actors from acquiring nuclear, chemical, or biological weapons, their means of delivery, and related materials. This rare display of unanimity by the Security Council, and the subsequent acceptance of the mandate by most states, was indicative of the potential at the 2005 NPT Review Conference to make progress on the nuclear terrorism front. In fact, at least one significant initiative was launched, which gained considerable support and is likely to be pursued further outside of the context of the review process. This initiative, conceived of by Kyrgyzstan and Norway, and with useful input from Germany, Canada, Austria, Japan, Greece, the United States, and Sweden, seeks to combat the risk of nuclear terrorism by reducing the use of highly-enriched uranium (HEU) in the civilian nuclear sector.* More specifically, the initiative identifies HEU as the likely fissile material of

* See “Combating the Risk of Nuclear Terrorism by Reducing the Civilian Use of Highly Enriched Uranium,” Working Paper submitted by Iceland, Lithuania, Norway, and Sweden, 2005 Review Conference on the

choice for a non-state actor intent upon constructing a crude nuclear explosive device, and in the context of the Review Conference, sought to:

- Encourage all countries to consider, and if deemed necessary, implement additional measures to protect and control existing HEU stocks;
- Express the view that minimizing the use of and commerce in HEU for civilian purposes is desirable, as is the goal of total elimination of HEU in the civilian nuclear sector as soon as technically feasible;
- Encourage all countries to eliminate or commit to converting those civilian HEU-fueled installations under their control, for which there is a continuing need, to LEU fuels as soon as technically feasible;
- Discourage all countries from undertaking or supporting new civilian projects involving HEU fuel other than for the purpose of down-blending that fuel to LEU;
- Encourage the IAEA to establish a comprehensive global inventory of HEU in civilian use and to report to the next NPT Review Conference on the progress made in fuel conversion and in the elimination of reactors and critical assemblies internationally.

The general intent of this working paper was captured in the chair's draft report for Main Committee III. Only one state (Egypt) expressed opposition to the relevant language in the report during the Committee debate, and even that opposition appeared to be driven more by a Review Conference dispute with one of the sponsors of the initiative than with its content. Although the United States ultimately blocked the transmittal of the text of Main Committee III to the plenary – most likely due to a mistake on the part of the senior U.S. official in the Committee meeting at the time – the Review Conference afforded an opportunity to build significant support for a new approach to reducing the risk of nuclear terrorism. The coalition forged at the Review Conference on the issue of HEU elimination now has the opportunity to promote the initiative in other international fora, including the IAEA and the First Committee.

IV. The Consequences of Failure

My greatest fear prior to the start of the 2005 NPT Review Conference was that states parties would be so intent upon producing an anodyne final document that they would pretend there was no crisis confronting the NPT, would put aside the tough issues, and would adopt a path of least resistance. Such an approach ran the risk of making the NPT review process irrelevant and would have been applauded by the critics of the NPT who question the ability of a multilateral and nearly universal forum to adapt to new circumstances in a creative and timely fashion. In some respects, the actual Review Conference outcome was even more disappointing than my worst case expectation as many states parties appeared almost indifferent to the calamity. Telling in this regard was the

Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, May 20, 2005 (NPT/CONF.2005/MC III/WP.5).

apparent lack of constructive engagement in the endgame of the negotiations by very senior policy-makers – the foreign minister of Japan being the notable exception.

Should one infer from this disengagement and lack of investment by the senior political leadership of many major states in the strengthening of the review process that these states parties are content with the Conference outcome? If so, to what extent did they actively seek to obtain what they got? Also, is the outcome symptomatic of the more general dire state of nonproliferation affairs or does it reflect the rigidity of the NPT itself and its inability to adapt to new circumstances? Finally, what are likely to be the short and longer-term effects on the nonproliferation regime of the inability of states parties to reach any agreement on substantive matters at the 2005 Review Conference?

It probably is too early to answer most of these questions conclusively. At first glance, however, one can identify a number of states which appear to be content with the results of the recent Review Conference, albeit for very different reasons. They include both NPT states parties and NPT outliers. At the top of this list must be the Democratic Peoples Republic of Korea (DPRK).

As was the case in 2003 and 2004 Preparatory Committees, the only consensus that was reached regarding the DPRK was the procedural decision to entrust the country's name plate to the Secretariat, thus begging the question of whether or not the DPRK remained an NPT party. The inability of the Review Conference to acknowledge that a member state – for the first time – had withdrawn from the Treaty must have been confusing for the DPRK leadership. They could only have taken great satisfaction, however, from the fact that the Review Conference was unable to make any comment about – much less condemnation of – their nuclear weapons brinkmanship – arguably the most significant challenge to the NPT in the past five years. Although considerable informed debate took place on the issue of Article X in the subsidiary body associated with Main Committee Two, states parties remained very far apart on the wisdom of reinterpreting that article or otherwise increasing the costs of treaty withdrawal. As a consequence, it proved impossible even to transmit the bracketed chair's report on the subject of the Conference plenary.

Iran, Egypt, and the United States are the states parties which appear to have been most content with the outcome of the Review Conference. The situation is clearest with respect to Iran, which avoided any Conference language about its lack of compliance with Treaty and IAEA obligations, or new restrictions on access to peaceful nuclear technology. Indeed, the extended stalemate over procedural issues during the first three weeks of the Conference enabled the sophisticated team of Iranian diplomats on occasion to assume the role of moderate facilitators. Thanks to the bluster and incompetence of other delegations, Iran emerged from the 2005 Conference with no scars and without being tarred as the party responsible for the barren Review Conference outcome.

In contrast to the out-of-the spotlight success achieved by Iran, Egypt's "victories" were pursued on center-stage, unrelentlessly, at times single-handedly, and often abrasively, frustrating efforts by NAM and other parties to reach compromises on issues of both

procedure and substance. Although many of the individual stands taken by Egypt can be explained in terms of commitments to principle or tactical considerations, the pattern of behavior over four weeks of negotiations suggests that other factors also may have been at work. Among possible contributing determinants identified by some delegates are: (1) dissatisfaction with the benefits Egypt has derived from NPT membership; (2) Egyptian disenchantment with the lack of implementation of the 1995 NPT resolution on the Middle East; (3) maneuvering for position as its regional grouping's candidate for a seat on an expanded Security Council; (4) wariness in Cairo that Iran has embarked on a dedicated nuclear weapons program, and (5) calculations that a spoiler's role at the Review Conference would play well at home politically, especially in a more democratic political environment. Which combination of these factors account for Egypt's performance at the Review Conference may well determine the future role of the NPT in Egypt's security calculations, as well as its future adherence to the Treaty.

Senior U.S. officials indicated prior to the 2005 NPT Review Conference that they would not judge the success or failure of the Conference in terms of the presence of a final document. They also emphasized that at this particular moment in time nonproliferation was the Treaty pillar most in need of attention. Compliance with the NPT's nonproliferation provisions, they maintained, was *the* standard by which the NPT and the review process must be judged. However, as was evident at the 2004 NPT Prep Com and in the procedural battles at the 2005 Review Conference, the United States was unwilling to advance its pursuit of these objectives if it required an acknowledgment – or even the implication – that it remained bound by political commitments on disarmament undertaken at prior Review Conferences by other administrations. The powers that be in Washington who value unconstrained military flexibility over enhanced nuclear safeguards and export controls if they come with serious disarmament commitments probably are satisfied with the 2005 Review Conference outcome. For them, the inability of the unwieldy body to agree on any nonproliferation measures must reinforce their existing conviction that nonproliferation progress will only be achieved by more stream-lined “coalitions of the willing.” They are unlikely, however, to acknowledge the degree to which their own uncompromising stance on disarmament issues contributed to a self-fulfilling prophecy. Instead, they, along with other members of the P-5, are apt to take satisfaction in the diminished strength of the most ardent advocates of disarmament thanks to the demise of NAC and the disarray in NAM.*

Many NGO and academic analysts share the concern that the dismal outcome of the Review Conference may reinforce a U.S. predilection and ability to redirect nonproliferation efforts away from the NPT. As such, some have been quick to emphasize that the failure of the Review Conference does not represent a failure or deficiency of the Treaty. Although that may be correct in a narrow sense, it also is the case that the problems evident at the 2005 Review Conference reflect fundamental disagreements among states parties to the NPT about the principal security challenges of the day, their urgency, the

* This perspective is not confined to the NWS. One NNWS ally of the United States expressed the view that if nothing else, the Review Conference contributed to the weakening of NAM.

relative emphasis and resources that should be given to nuclear disarmament, nonproliferation, and peaceful nuclear use, and the need for the Treaty to adapt to new circumstances. Although the NPT is not responsible for the lack of imagination, flexibility, and political will displayed by states parties, last month in New York, its utility derives from compliance by member states with its provisions and their perception that the Treaty enhances their security interests. In the general debate at the 1995 NPT Review and Extension Conference state after state expressed the view that the Treaty served their national interests and should be extended indefinitely. Today, although most states parties continue to express that view, their conviction appears less deeply held and more conditional.

On one side of the aisle a growing body of both NWS and NNWS raise legitimate questions about the ease with which parties to the NPT can, with impunity, take advantage of Article IV and Article X to acquire nuclear technology useful for both civilian and military purposes and then announce their withdrawal from the Treaty. These states maintain that the Treaty's provisions related to peaceful use, safeguards, and withdrawal must be strengthened if the Treaty is to meet urgent, contemporary challenges. For most of these states the inability of the Review Conference to make much progress on those matters represented an important missed opportunity, but did not alter their basic faith in the Treaty or the review process. For a smaller number of countries, however, the paralysis of the recent conference may have raised deeper doubts about the feasibility of introducing timely adjustments in a body wedded to consensus decision-making and organized along out-dated and increasingly dysfunctional regional groupings.

Across the aisle a large body of countries, all NNWS, are equally frustrated by the failure of the Review Conference to address satisfactorily their perceived security concerns, which tend to deal less with nonproliferation. From their vantage point, the NPT made sense largely due to its disarmament and peaceful use provisions, aspects which they correctly regard to be of secondary concern to the NWS. Although most of these countries also are not yet inclined to jettison the NPT, they increasingly question the relevance of the Treaty to their most pressing needs. They also find disingenuous arguments that the nonproliferation dimension of the NPT should be strengthened and actions taken to condemn noncompliance in this realm, at a time when they question the commitment of the NWS to honor their nuclear disarmament and peaceful use obligations. A small number of them may not rule out withdrawal from the Treaty for symbolic purposes if their views continue to be disregarded.

The ultimate, potential, negative consequence of a failed NPT Review Conference is that inaction makes more likely a nuclear catastrophe, be it by accident, terrorist design, or state aggression. In his opening address to the Review Conference on May 2, 2005 UN Secretary General Kofi Annan sought to jolt delegates to action by raising precisely this specter. How, he asked, would the leaders of every nation represented at the Conference respond to the question: "How did it come to this? Is my conscience clear? Could I have done more to reduce the risk by strengthening the regime designed to do so?" He then

challenged the assembled delegates to rise to the challenge and undertake actions on many fronts, including:

- Strengthening the integrity of the Treaty in the face of violations and withdrawals;
- Making compliance measures move effective including, for example, universalization of the Additional Protocol and its use as the new standard for verifying compliance;
- Reducing the threat of proliferation of non-state, as well as state, actors;
- Coming “to grips with the Janus-like character of nuclear energy.”

These were unusually forceful and focused words from the most senior UN official, but they fell on too many deaf ears.

V. Conclusion

Canadian Ambassador for Disarmament Paul Meyer also used upon a theatrical metaphor in his closing remarks to the Review Conference on May 27. He observed that,

Despite the scenes these rooms have witnessed over this month, the Review Conference must not be reduced to a theatre where we play at nuclear nonproliferation or disarmament. We cannot afford merely “to suspend disbelief” in enacting the NPT review process or the curtain is soon likely to come down.*

The curtain has not yet fallen on the NPT, despite the dismal performance of its cast last month in New York. Hopefully, their sponsors in national capitals will take careful stock of the production’s poor showing, informed by the many critical reviews of those in attendance. Ideally, new investors and a more experienced cast will be found, along with a director whose vision can fulfill the potential of the script, which also must be reinterpreted if not revised. There is not much time to waste – rehearsals begin in Spring 2007, and audiences around the world will tolerate nothing less than success.

* Ambassador Paul Meyer, “Closing Remarks,” 2005 Review Conference on the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, May 27, 2005.