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Working Paper

The Nonproliferation Regime under Siege

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The nuclear nonproliferation regime was challenged in 1998 by nuclear-weapon tests in India and Pakistan, by medium-range missile tests in those countries and in Iran and North Korea, by Iraq's defiance of UN Security Council resolutions requiring it to complete its disclosure of efforts to acquire weapons of mass destruction, and by the combination of "loose nukes" and economic collapse in Russia. Additional threats to the regime's vitality came in 1999 from the erosion of American relations with both China and Russia that resulted from NATO's 1999 bombing of Yugoslavia—with additional harm to relations with China resulting from U.S. accusations of Chinese nuclear espionage and Taiwan's announcement that it was a state separate from China despite its earlier acceptance of a U.S.-Chinese "one China" agreement. Major threats to the regime also came from the continued stalemate on arms-control treaties in the Russian Duma and the U.S. Senate, from a change in U.S. policy to favor building a national defense against missile attack, and from a Russian decision to develop a new generation of small tactical nuclear weapons for defense against conventional attack.

This paper will discuss the effect some of these developments had on the 1999 Preparatory Committee (PrepCom) meeting of Non-Proliferation Treaty (NPT) parties to prepare for review of the NPT in 2000, and speculate about their likely future effect on the regime.

A. The Threats to the Nonproliferation Regime

Effective implementation of the nuclear nonproliferation regime depends in important part upon the working relations of China and Russia with the United States as well as with Britain, France, and several other industrialized countries. Britain, Russia, and the United States are the depositary governments for the NPT, which created the norm against nuclear

proliferation and is the foundation of the regime.[1] As depositary governments, they take responsibility for calling formal and informal meetings of the parties to take action to implement the treaty, and they make recommendations for such action.[2] The Five and several others—Australia, Belgium, Canada, Germany, Japan, and South Africa, for example—are some of the most important suppliers of nuclear and rocket materials and technologies for peaceful programs—and sometimes for programs that turn out not to be so peaceful. Their cooperation is essential for prescribing and implementing international nuclear and missile export-control standards defining what may or may not be exported.[3] Without their cooperation, the rules designed to limit the spread of materials and technologies for making nuclear weapons and missiles to carry them have much less chance of being implemented effectively. Recent events that damage the working relationships important for cooperation are clearly threatening to the NPT regime.

The NPT, moreover, is based upon a promise that the inequality in rights to possess nuclear weapons between nuclear-weapon and non-nuclear-weapon parties will be temporary. The five NPT-permitted nuclear-weapon states are obligated by the treaty "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. . ."[4] When such negotiations are stalled or threatened with reversal, the non-nuclear-weapon NPT parties—particularly those not protected by the "umbrella" of nuclear deterrence provided by a military alliance such as NATO—inevitably complain that the Five have failed to live up to this commitment.[5]

An example is the recently formed "New Agenda Coalition" supported by many nonaligned NPT parties including Latin American, European, and Pacific friends of the United States—from Brazil and Mexico to Ireland, Sweden, and Switzerland to New Zealand and the Philippines. At the 1999 NPT PrepCom, forty-four non-nuclear-weapon supporters of the coalition made the following statement:

> The NPT non-nuclear weapon States have entered into an obligation to forego the nuclear weapons option. That decision was made in the context of the corresponding legally binding commitments of the nuclear weapons States to eliminate their nuclear arsenals. This fundamental and virtually universal bargain struck by the NPT is not being pursued. . . . A world order whereby one group of five States can indefinitely retain nuclear weapons while more than one hundred and eighty States refrain from acquiring them in conformity with the same treaty is not acceptable.[6]

The Five have heard this argument before from the Non-Aligned Movement (NAM), which includes some 110 mostly developing countries that are parties to the NPT, including some New Agenda Coalition members. On a few occasions, NAM members who accuse the Five of breach of the NPT commitment to pursue nuclear disarmament negotiations have argued that the breach is so important that it justifies their own withdrawal from the NPT or their violation of their reciprocal commitment not to acquire nuclear weapons.[7] The New Agenda Coalition made no such threat. But hearing the coalition's argument from Western Europeans such as Ireland, Sweden, and Switzerland as well as Mexico and Brazil should give us pause. Over the long run, they are telling us, continued progress in nuclear arms reductions by the Five is essential to holding the NPT together. Negotiation of such reductions is another reason why the working relations between the United States (as well as Britain and France) and China and Russia are important to the nonproliferation regime.

For almost a decade, Russia and the United States have pointed with pride to the START negotiations, which have reduced their long-range, nuclear-weapon-carrying missiles and aircraft.[8] START, they have said, was the best reflection of their compliance with their NPT obligations to negotiate in good faith toward nuclear disarmament. START negotiations were bilateral, and they made major progress in the years immediately after the Cold War ended. But the latest START treaty, START II, though signed in 1993, has still not gone into force because the Russian legislature's lower body, the State Duma, has repeatedly delayed its vote on the treaty. This delay was in part because of anger at the United States for pushing hard to enlarge NATO in Russia's direction by including three former Soviet allies, the Czech Republic, Hungary, and Poland; it was in part because of U.S. plans to build missile defense systems, perceived by Duma members as an attempt to render Russian missiles ineffective to deter a missile attack by the United States.[9]

Then, in late December 1998, the Duma refused to take a scheduled vote on START II in large part because of American and British bombing of Iraqi anti-aircraft facilities without any new authority to do so from the UN Security Council.[10] When the Duma was again scheduled to vote on START II in March 1999, NATO's bombing of Yugoslavia began—again, without any new authorizing decision by the UN Security Council.[11] When that happened, the Duma put START II aside again, perhaps until after the Duma election in December of 1999.[12] The chairman of the Duma's International Affairs Committee explained that, as a result of the bombing, "There is no trust in the United States."[13]

Presidents Clinton and Yeltsin announced later that their two governments continued to seek ratification of START II and to support the ABM Treaty. They called for new U.S.-Russian discussions on START III as well as the ABM Treaty.[14] The U.S. side seeks quick agreement on START II ratification, on new amendments to the ABM Treaty to permit a thin national missile defense against possible North Korean or Iranian missiles, and on a revision of the U.S.-Russian agreed outline for a START III treaty, a revision that better suits Russian needs. The Americans hope they will get amendments to the ABM Treaty and ratification of START II in exchange for their concessions on START III. However, with a new Russian prime minister, widespread distrust of the United States, and Duma elections scheduled for late 1999 and Russian presidential elections for 2000, Russian delay seems likely.[15]

Even if the Duma does eventually approve START II, that treaty must come back to the U.S. Senate for approval of an amendment extending its completion date by several years.[16] But the Duma plans to condition its approval of START II (including this amendment) on a continuation of the existing ABM Treaty—which many conservative Republican senators wish to kill in order to remove a possible barrier to their plan for U.S. national missile defense.[17] They seem to put no more faith in agreements with Russians than nationalistic Duma members put in agreements with Americans.[18] If they can rally thirty-four senators to prevent ratification of an American-Russian agreement saying that Russia succeeded to the primary responsibility of the Soviet Union under the ABM Treaty, they will then declare the ABM Treaty dead—at least, as they see it.[19] And the Duma's approval of START II would then be nullified because the Duma's condition to be attached to its START II approval would require continuation of the ABM Treaty if Russia is to continue to be bound by START II. Though signed in 1993, START II may not come into force unless and until the composition of the Duma and the Senate are changed significantly by elections scheduled for 1999 and 2000.

Despite this frustration of *bilateral* U.S.-Russian nuclear reduction negotiations, when non-nuclear-weapon NPT parties propose *multilateral* talks instead, Russia and the United

States, joined by Britain and France, reject the idea.[20] Instead, the Americans and Russians point to their continuing reductions pursuant to START I and their unilateral steps to bring their nonstrategic nuclear warheads home from foreign deployments and dismantle them pursuant to 1991–92 declarations by President Bush, General Secretary Gorbachev, and President Yeltsin.[21] In similar fashion, Britain and France point to their unilateral reductions of long-range nuclear missiles and warheads.[22]

These steps appear substantial, but there has been almost no verification of the unilateral ones. Those making the reductions did not offer to permit monitoring of them by the non-nuclear-weapon NPT parties who were demanding them. There has been bilateral verification for the destruction of missiles pursuant to START I and another treaty, but not for the dismantlement of the warheads on the missiles. As a result, the substantial treaty and non-treaty reductions of nuclear weapons made by Russia, France, the United Kingdom, and the United States are often ignored by non-nuclear-weapon states.

Moreover, recent decisions by the Russian Security Council suggest that Russia intends to give much greater emphasis to nuclear weapons for defense against conventional threats, and intends to design and produce a new generation of small nuclear weapons for this purpose. The decisions were apparently motivated by NATO's expansion toward Russia and Russia's economic collapse, which produced deterioration of its conventional forces.[23] After NATO's bombing of Yugoslavia began without authority from the UN Security Council, Russia and China both suggested that if the UN Charter was no longer protection from aggression by NATO or the United States, then they and other potential targets of U.S. attack would have to be better prepared with nuclear weapons to deter such attacks themselves and to defend themselves against them.[24] This sounds like a renewal of the nuclear arms race. Moreover, statements such as these suggest that the good working relations usually necessary for successful negotiation of arms reductions may now be absent. It will be hard indeed to convince non-nuclear-weapon NPT parties that the nuclear-weapon states are now negotiating "in good faith" to halt the nuclear arms race and to achieve new steps toward nuclear disarmament—as the NPT requires.

On the American side, another threat to nuclear disarmament negotiations comes from a recent statute announcing a new U.S. policy to deploy a national missile defense, assuming that a missile defense of some sort will become technologically feasible.[25] While the statute also suggests that the effect of such a decision on negotiations to cut nuclear weapons may be considered before a national missile defense is built, that qualifying language has been lost on the Chinese and Russians. Their response has been to suggest that they might have to enlarge their stocks of long-range missiles in order to have enough to penetrate a U.S. ballistic missile defense umbrella to respond to a U.S. attack. The Chinese said, in addition, that U.S. missile defense plans, including U.S. discussions of theater missile defenses for Japan and Taiwan, might cause China to withdraw its support for negotiation of a treaty to halt the production of fissile materials for nuclear weapons.[26] This suggests a perceived Chinese need to add to their nuclear stockpile rather than reducing it. Thus, U.S. ballistic missile defense decisions and the bombing of Yugoslavia may cause both China and Russia to renew nuclear and missile arms races with the United States. Neither has said it would resume nuclear testing, but neither has ratified the Comprehensive Test Ban Treaty (CTBT).

All five NPT nuclear-weapon states have signed the CTBT. But, of the five, only France and the United Kingdom have ratified.[27] After the NPT was signed in 1968, this was the first item placed on the agenda of the international disarmament conference in Geneva in response to the then new NPT obligation to negotiate in good faith to halt the nuclear arms

race.[28] But it took until 1996 to complete the negotiations. Now U.S. ratification is held up by the refusal of the Senate majority leader and the chairman of the Senate Foreign Relations Committee to permit a vote on the treaty.[29] Neither the Russian Duma nor the Chinese National Congress has begun consideration of the CTBT.[30] The treaty cannot go into effect without ratification by all of the Five as well as thirty-nine non-nuclear-weapon states, almost all of which have signed it and many of which have ratified.[31]

The charge of the congressional Cox Committee report that China stole American nuclear-weapon secrets has added to American and Chinese suspicions of each other.[32] It has also focused more attention on the utility of nuclear testing to "prove out" new weapons designs as well as the utility of the CTBT to prevent this from happening—and thereby to inhibit development of new weapons by Chinese and American weapons laboratories, and by others.[33] The defeat of the CTBT now would be perceived by most of the world as a major failure of the NPT's promise to them that, if they gave up their right to acquire or test nuclear weapons by joining the NPT, the five NPT countries that have nuclear weapons would negotiate in good faith to achieve a CTBT and eventually to give up their nuclear weapons.

It is too soon to say how much the erosion of American-Chinese-Russian cooperation will weaken implementation of the NPT or produce withdrawals from it by non-nuclear-weapon parties claiming violations by Russia and the United States of their obligation to negotiate "in good faith" to halt the nuclear arms race and move toward nuclear disarmament. But the debates at a recent PrepCom of NPT parties to prepare for a review of the NPT in 2000 show the difficulties.

B. The 1999 NPT PrepCom

The meeting of NPT parties was the third session of the preparatory committee ("PrepCom") of which all NPT parties are members. Its job was to prepare for review of the NPT by the parties in 2000. It was attended by 107 of the NPT's 187 parties.[34]

Many of the arguments summarized above were made in considerable detail at the PrepCom. Indeed, NATO bombing of Yugoslavia was going on during the PrepCom, and the American bombing of the Chinese embassy in Belgrade occurred just before the PrepCom started. The PrepCom stopped for a moment of silence to honor the Chinese killed by American bombs. Moreover, as the Chinese and Russian delegates saw it, NATO's bombing of Yugoslavia without UN Security Council authorization implied a threat that NATO or the United States could one day do the same not only to them but to any other enemy despite the UN Charter's prohibition "on the threat or use of force against the territorial integrity" of another state. Those perceived as "rogue states" by NATO or the United States would therefore have greater incentives to acquire nuclear weapons, perceived by many as "equalizers" of military power.[35]

Also of importance, judging by the time devoted to them in debates at the PrepCom, were the Indian and Pakistani tests. These were condemned by a great many delegates.[36] But the criticism of the Indian and Pakistani tests was not pressed as urgently as Egypt and the Arab League pressed criticism of Israel's pursuit of nuclear weapons without testing. As at the 1998 PrepCom, Egypt sought repeatedly to condemn Israel's failure to join the NPT or a Middle Eastern nuclear-weapon-free zone.[37] Little discussed in formal debate was the risk of illicit trafficking in Russian fissile materials—"loose nukes"—resulting from the loss of the

strong Soviet system of control combined with inadequate funds to pay the salaries of nuclear scientists and weapons custodians and for the alarm systems and protective enclosures needed to prevent theft or sabotage. While to many Americans this appeared to pose a major threat, and cooperation to deal with it by Russia and the United States appeared to present a continuing success story, they were hardly mentioned except by the United States.[38]

In the end, the PrepCom accomplished more than many expected but much less than advocates of a strengthened review process thought they had been promised when the NPT was extended indefinitely by its parties in 1995. Part of the *quid pro quo* in 1995 was agreement to hold, almost annually, PrepCom sessions at which substantive, not just procedural, matters would be recommended. As agreed in 1995, the purpose of these meetings was 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."[39]

This subject was debated at the 1997, 1998, and 1999 sessions of the PrepCom. But there was no agreement at any of them on substantive recommendations for "principles, objectives and ways" to achieve the goals of "full implementation" and "universality." In attempts to achieve such recommendations, each session's chairman drafted a "chairman's working paper" suggesting future objectives such as strengthening IAEA safeguards; getting India, Pakistan, and Israel to join the NPT; and achieving a cutoff in the production of fissile material for nuclear weapons as well as nuclear reductions. The papers said less about specific methods for achieving nuclear disarmament because consensus was the rule and there were objections from one or more of the Five to such proposals unless they had already been agreed in principle at previous meetings.[40]

In 1997 and 1998, the chairmen's papers were based on the statements and proposals of delegates and on negotiations among some delegates with the chair, bilaterally or in groups of less than all the participants. In 1997, this produced a chairman's paper reflecting considerable agreement on many objectives other than nuclear disarmament. The paper remained, however, a "chairman's working paper" with less status than the PrepCom's procedural recommendations for the 2000 Review Conference. In 1998, there was greater controversy. At issue were the failure of steps toward nuclear disarmament and Israel's noncompliance with the Middle East resolution agreed upon at the 1995 NPT Extension Conference.[41] That resolution called upon all states in the Middle East with nuclear facilities to place the facilities under IAEA safeguards, to join the NPT, and to pursue negotiations toward a Middle Eastern zone free of weapons of mass destruction.[42] As a result of the sharp disagreements about what should be said about Israel's compliance with this resolution as well as about nuclear disarmament, the chair's paper was given even less status in 1998 than in 1997.

In 1999, after circulating successive papers based upon the parties' 1999 statements and papers, the new chairman adopted a new procedure. He listened to criticisms of his first draft paper made at informal meetings and in statements during PrepCom meetings. Then, in a PrepCom meeting at which all parties in attendance could participate, he went through his second draft paragraph by paragraph asking if there were objections to each paragraph. When there were, he sometimes permitted brief attempts to negotiate minor changes to remove objections to particular paragraphs. Usually, however, when negotiated agreement on a disputed subject seemed unlikely in the short time available, he recorded only objections—thus dropping the paragraphs to which there was objection. That method would have cut out about half of his sixty-one paragraphs. Those to which there were objections included all or almost all the proposals relating to nuclear disarmament, to the 1995 Middle

East resolution, and to negative security assurances (promises by the nuclear-weapon parties not to use nuclear weapons on non-nuclear-weapon parties).[43]

This left a paper that was generally satisfactory to the nuclear-weapon parties and unsatisfactory to most of the non-nuclear-weapon parties not aligned with a nuclear-weapon state. Indeed, the result was probably unsatisfactory to a majority of the NPT's parties because it was criticized by leaders of the Non-Aligned Movement, the Arab League, and the New Agenda Coalition.[44] There had not been sufficient time, however, for these leaders to find out how all members of their groups felt about a chairman's paper reflecting only those paragraphs to which there was no objection.

In the end, the version of the chairman's paper with only the "no objection" paragraphs was not attached to the final report. Instead, his two earlier papers are both there with the statement that there was no agreement on them at the PrepCom. They will be available to the Review Conference but they will probably not be given more status than the 1997 or 1998 chairmen's papers or the many proposals from delegations which are also attached to the final report. As a result, the final report covering the three PrepCom sessions contains no agreed substantive recommendations on NPT-related objectives.[45]

Given the status of START II and the CTBT in the Russian Duma and the U.S. Senate, given NATO's bombing of Yugoslavia and the Chinese embassy just before the PrepCom started, given the return of the United States to the goal of a national missile defense despite the prohibition of the ABM Treaty, given the Russian Security Council's decision to develop a new generation of small nuclear weapons, and given nuclear-weapon and missile testing by India and Pakistan after the 1998 session of the PrepCom, many feared that this session would be a total failure. But, in the end, the NPT parties tried hard to give it some success.

After condemning the Indian and Pakistani testing, NATO's bombing, and the American return to national missile defense, the Chinese and Russian delegates worked with the chair, with the nonaligned, and even with NATO members to produce the procedural agreements necessary for the success of the 2000 Review Conference. The U.S. delegation appeared better prepared after the almost total failure of the 1998 session and seemed to have more flexibility in their 1999 instructions than in 1998. The Egyptians and the Arab League, after repeatedly demanding implementation of the Middle East resolution and rejecting various compromises on substance, finally accepted agreements on procedure.

The architects of 1995's strengthened review process, Canada and South Africa, tried hard to make that process produce substantive results. But those who had opposed indefinite extension of the NPT in 1995, Egypt and a few other Arab League and nonaligned parties, helped the nuclear-weapon parties prevent the strengthened process from producing substantive recommendations in 1999 by repeatedly preventing consensus on what seemed to many to be reasonable partial agreements.[46] For example, the 1999 chairman had put several recommendations in his paper from the New Agenda Coalition. These included a proposal for the nuclear-weapon states to reduce their reliance upon non-strategic nuclear weapons.[47] This was opposed by Russia, probably because of the Russian Security Council decision on development of a new generation of small weapons. Then, after the paper had been stripped of this and many other proposals relating to nuclear disarmament as well as most of those relating to negative security assurances and the Middle East, Egypt and some other nonaligned parties refused to have the "no-objection" version of the chairman's paper even included in the conference documents attached to the final report. It did not contain provisions on Israel that Egypt wanted but it did reflect consensus recommendations on NPT subjects such as ratification and entry into force of the CTBT, negotiation of a fissile material

cutoff treaty, and strengthening IAEA safeguards and standards for physical protection of nuclear material.

In the end, however, all the different groups came together on useful procedural recommendations for the 2000 Review Conference. Probably the most important purpose of the 1999 session of the PrepCom was to complete procedural preparations for the 2000 Review Conference. Those had not been completed by the PrepCom sessions in 1997 and 1998. The 1999 session agreed upon recommendations for

1. Rules of procedure, an agenda, allocation of substantive subjects to particular Conference committees, and allocation of costs for the Conference to NPT parties;

2. Reports ("documentation") needed for the Conference from the UN and International Atomic Energy Agency (IAEA) staffs concerning the last five years' implementation of both the NPT and the decisions made in 1995 when it was extended, including the Middle East resolution;

3. The important subjects to be covered by the Review Conference's report, including:

   —an evaluation of the past implementation of their NPT undertakings by the parties over the 1995–2000 period,

   —an identification of what should be done to achieve "further progress" toward achieving NPT goals including "universality" (getting Israel, India, and Pakistan to join), strengthened export controls and IAEA safeguards, and steps toward "nuclear disarmament",

   —an examination of the "functioning of the review process itself, taking account of experience since 1995."[48]

C. What Do the 1999 PrepCom Decisions Imply for the Future?

The NPT was negotiated during the Cold War in large part because of the common interests of the Soviet Union and the United States in preventing additional countries from acquiring nuclear weapons after China's first test in 1964.[49] It has been joined by all states of nuclear significance except India, Israel, and Pakistan because supporting nonproliferation was in the interests of countries without nuclear weapons as well as those having them.[50] But how long it can be held together in light of all the problems described above remains to be seen.

Does the experience of the 1999 PrepCom augur well for at least a limited success at the 2000 Review Conference? A limited success would be, for example, agreement on a report evaluating the implementation of the NPT during the 1995–2000 period, a report without substantive recommendations for the future. Despite a host of problems and hostilities, the parties agreed in 1999 on the procedural decisions necessary for the 2000 Review Conference to be held. But will the common interests of the Five in holding the NPT together be sufficient to produce restraint on their competition and to make possible the steps that may be necessary to gain the acceptance of the non-nuclear-weapon NPT parties to a limited 2000 NPT report?

Before the April–May 2000 Review Conference, the chances appear slim for

—Chinese and Russian acceptance of U.S. plans for its own national missile defense or for a missile defense for Taiwan;

—ratification of START II and ABM Treaty amendments by the Russian Duma and the U.S. Senate, and agreement by the two countries on plans for START III;

—ratification of the CTBT by China, Russia, and the United States and restraint by China and Russia as well as the United States on development of such new nuclear weapons as the new generation of tactical ones planned by Russia;

—agreement by India and Pakistan to the CTBT and other limits on their nuclear arms race urged by the Five and by others;

—agreement by the United States to the demands of Israel's neighbors that the NPT parties call upon Israel to give up its nuclear weapons and join either the NPT or a Middle Eastern agreement for a zone free of weapons of mass destruction;

—agreement by the United States and other NATO countries not to use military force without prior authority from the United Nations Security Council or General Assembly.

Even if most of these issues will not be resolved before the 2000 Conference, will there be some improvement in relations of the United States with China and Russia? The contribution of Russia's former prime minister Chernomyrdin to the negotiation of the Kosovo peace accords, and the NATO effort to give Russia a meaningful role in their implementation, have helped improve Russia's relations with NATO and the United States. But a new generation of Russians who looked upon Americans as friends at the end of the Cold War may now look upon us as enemies.[51] With elections for Duma members at the end of 1999 and for a new Russian president in 2000, those Russians who now see us as enemies may well vote for nationalistic, anti-American candidates—thereby worsening the chances of Duma approval of START II, ABM Treaty amendments, or other arms treaties.

In China, anti-Americanism appears even stronger than in Russia, and a bitter dispute over an American missile defense for Taiwan may lie ahead. In addition, China's representatives suggest, China may no longer support negotiation of a treaty to stop the production of fissile material for nuclear weapons because it needs more weapons to counter American missile defenses.[52] China's ratification of the CTBT may be in doubt if the U.S. Senate continues to stall on its approval, or if, because of American missile defense plans, China perceives the need to test new designs for nuclear weapons.[53] China's cooperation in implementing standards for export control of nuclear and missile materials, equipment, and technologies may lag again.

In addition to contributing to failure of the 2000 NPT Conference, continued Chinese and Russian hostility toward the United States and NATO could seriously damage the cooperation that has helped

—limit exports of nuclear and missile material and technology since the end of the Cold War;

—ensure implementation of the NPT norm against acquisition of nuclear weapons;

—negotiate the multilateral Chemical Weapons Convention and CTBT as well as the bilateral START treaties;

—produce nonadversarial American, Russian, and Chinese positions concerning disputes between India and Pakistan, and between North and South Korea, as well as efforts to prevent North Korea from making nuclear weapons and missiles to carry them.

In addition to the threats already described, danger to the 2000 Conference and to the nonproliferation regime may come from non-nuclear-weapon states in the Middle East frustrated by the regime's inability to deal with Israel's nuclear capability and quite prepared to use failure of the nuclear-weapon states to negotiate "in good faith" toward nuclear disarmament as additional justification for withdrawing from the NPT. What happens in the Middle East peace process under the new Israeli prime minister may make a big difference to Egypt and Syria, though perhaps not to Iraq or Libya. All four opposed the indefinite extension of the NPT in 1995.[54] All four have been critical of the failure of the NPT regime to get Israel to give up its nuclear weapons. But Israel has said it would agree to nuclear negotiations only when the Middle East peace process is successful.[55] Progress in that peace process would obviously be helpful in preventing withdrawal from the NPT by some or all of these four.

For all these reasons, the prospects appear gloomy both for the 2000 NPT Review Conference and for holding the NPT consensus together over the long term after it is over.

Notes

[1] Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968, Art. IX , par. 2.

[2] The NPT defines a nuclear-weapon state as "one which has manufactured and exploded a nuclear weapon or other nuclear-explosive device prior to January 1, 1967." Ibid., Art. IX, par. 3. The only states that have done this are the Five: China, France, Russia, the United Kingdom, and the United States. All other states are non-nuclear-weapon states as far as the NPT is concerned. All such non-nuclear-weapon states that have joined the NPT are prohibited by it from acquiring nuclear weapons. Ibid., Art. II. The only states that have not joined the NPT are Cuba, India, Israel, and Pakistan. Cuba has signed the treaty providing for a nuclear-weapon-free zone in Latin America and has, in any event, no operating nuclear reactors.

[3] They are all involved (except for China in the case of the Nuclear Suppliers' Group) in the implementation of the following international standards for export controls relating to nuclear weapon and missile production: Nuclear Suppliers' Group, Guidelines for Nuclear Transfers and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, reproduced in International Atomic Energy Agency (IAEA) Information Circular INFIRC/254/ Rev.2/Parts 1 and 2, June 1996; Zangger Committee, list of materials and equipment that should trigger safeguards pursuant to Art. III of NPT, "Communications Received from Members Regarding the Export of Nuclear Material and of Certain Categories of Equipment and other Material," INFCIRC/209/Rev.1/Add.3, April 1994; Missile Technology Control Regime (MTCR), Guidelines for Sensitive Missile-Relevant Transfers, January 7, 1993.

[4] NPT, Art. VI.

[5] See, e.g., letter dated April 27, 1999 from the chairman of the Working Group on Disarmament of the Movement of Non-Aligned Countries addressed to the chairman [of the NPT 1999 Session of the PrepCom], NPT/CONF.2000/PC.III/1. The Non-Aligned Movement (NAM) includes at least 110 of the 187 parties to the NPT. They are all, or almost all, developing countries. India, Indonesia, and South Africa are leaders of the NAM. This paper proposes that the PrepCom report note "that, despite conclusion of limited agreements [including the SALT, ABM Treaty, INF and START agreements, and the Comprehensive Test Ban Treaty], the provisions of Article VI [and the related preambular provisions of the NPT calling for nuclear treaties] have not been fulfilled since the Treaty came into force. In this regard, the States Parties stress the need to take effective measures towards nuclear disarmament, thus reaffirming their role in achieving this objective." Individual country statements from members of the Non-Aligned Movement are often much sharper in their criticism of the lack of progress toward nuclear disarmament.

[6] New Agenda Coalition Working Paper, May 17, 1999, NPT/CONF.2000/PC.III/25, p. 3.

[7] Article X , par.1 of the NPT gives each party "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." No state has yet withdrawn from the NPT on the ground that its supreme interests have been threatened by the failure of a nuclear-weapon state to fulfill its duty to negotiate in good faith to achieve nuclear disarmament. The withdrawal test is a high one. However, it is not hard to imagine the argument that might be made by a non-nuclear-weapon NPT party threatened with nuclear weapons by a nuclear-weapon party. In addition, a rule of international law provides that a material breach by one

party to a multilateral treaty like the NPT entitles "any party other than the defaulting state to invoke the breach as a ground for suspending the operation of the agreement in whole or in part with respect to itself, if the agreement is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the agreement." American Law Institute, *Restatement of the Law Third; The Foreign Relations Law of the United States* (St. Paul, Minn.: ALI Publishers, 1986), Sect. 335 (2). To many non-nuclear-weapon NPT parties, a basic goal of the NPT is to eliminate the discrimination in the right to have nuclear weapons between the nuclear-weapon states and the non-nuclear-weapon states. Continued frustration of that goal after almost thirty years of the NPT's life could radically change the position of all non-nuclear-weapon states with respect to further performance of the NPT. On the other hand, the NPT probably continues to be in the interest of its non-nuclear-weapon state members despite the failure to accomplish larger nuclear reductions in thirty years.

[8] See, e.g., Statement of Russian Amb. Berdennikov of May 10, 1999 to the NPT PrepCom, pp. 5–8; Bureau of Nonproliferation, U.S. Department of State, "Fact Sheet: U.S. Commitment to NPT Article VI," May 3, 1999.

[9] See George Bunn and John B. Rhinelander, "The Duma-Senate Logjam on Arms Control: What Can be Done?" *Nonproliferation Review* (Fall 1997), pp. 72–74, 85.

[10] News Review, "Start Vote Delayed over Iraq," *Disarmament Diplomacy* (December 1998–January 1999), p. 51; "Key Russian Parliamentarian Suggests New Nuclear Legislation before START II Ratification," *Disarmament Diplomacy* (February 1999), p. 47.

[11] Art. 2 (4) of the UN Charter prohibits "the threat or use of force against the territorial integrity or political independence of any state…." One exception to this is when an "enforcement action" is authorized by the UN Security Council is authorized by the UN Security Council under Chapter VII of the Charter. The other is when a state or group of states is attacked and uses force in self defense against an "armed attack." Art. 51. NATO was not attacked by Yugoslavia. The Charter permits the formation of regional security organizations such as NATO but prohibits them from taking any "enforcement action" without the authorization of the Security Council. Art. 53. NATO's bombing could be viewed as an enforcement action without authorization of the Council. An excellent discussion of these and other conceivable options to legally justify NATO's bombing appears in Leonard Meeker, "The NATO Bombing of Yugoslavia in Relation to International Law," Memorandum of May 1, 1999 for Lawyers Alliance for World Security.

[12] News Review and Editor's note, "Duma and President Agree on START II Ratification Terms and Timetable," *Disarmament Diplomacy* (March 1999), p. 53.; News Review, "Russia Stresses Nuclear Weapons as START II Languishes," *Disarmament Diplomacy* (May 1999), p. 58.

[13] Ibid., p. 58.

[14] See "Joint Statement between the United States and the Russian Federation concerning Strategic Offensive and Defensive Arms and Further Strengthening of Stability," The White House, Office of Press Secretary, Cologne, Germany, June 20, 1999.

[15] On a June 1999 trip to Moscow to meet with arms control experts, the author heard many statements about the effect the bombing had had on Russian attitudes toward the United States. One such statement was something like this: "America's over seventy days of bombing Yugoslavia did more than over seventy years of communist propaganda to convince the

younger generation here that America is hostile to us and not to be trusted." How much this sort of reaction will affect the December 1999 election of Duma members is difficult to predict.

[16] See Bunn and Rhinelander, "The Duma-Senate Logjam on Arms Control," pp. 73–74.

[17] See News Review, "Duma and President Agree on START II Ratification Terms and Timetable," p. 53; Bunn and Rhinelander, "The Duma-Senate Logjam on Arms Control," pp. 73–74.

[18] Ibid., p. 72.

[19] See, e.g., the letter of September 25, 1998 to President Clinton from eight conservative Republican senators including Majority Leader Trent Lott and Foreign Relations Committee chairman Jesse Helms. After lengthy argument, it concludes "that the ABM Treaty did not survive the dissolution of the Soviet Union. Accordingly, it is our position that the ABM Treaty has lapsed and is of no force and effect unless the Senate approves the MOU [the Memorandum of Agreement on succession by Russia as well as Belarus, Kazakhstan, and Ukraine], or some similar agreement, to revive the treaty." For a contrary view on the international law of succession in this case, see G. Bunn and J.B. Rhinelander, "The Arms Control Obligations of the Former Soviet Union," *Virginia Journal of International Law* (Winter 1993), p. 323.

[20] Non-Aligned Movement NPT parties have proposed creation of an ad hoc committee of all sixty members of the Geneva Conference on Disarmament to negotiate on "a phased programme of nuclear disarmament." They have also proposed creation of a "subsidiary body" for the 2000 NPT Review Conference in New York "to deliberate on the practical steps for systematic and progressive efforts to eliminate nuclear weapons." See "Letter dated 27 April 1999 from the Chairman of the Working Group on Disarmament of the Movement of Non-Aligned Countries Addressed to the Chairman of the Preparatory Committee," NPT/CONF.2000/PC.III/1, pars. 27, 31. These proposals have been opposed by all the nuclear-weapon states but China. A more moderate New Agenda Coalition resolution adopted by the General Assembly calls upon the nuclear-weapon states "to undertake the necessary steps towards the seamless integration of all five nuclear-weapon States into the process leading to the total elimination of nuclear weapons." UN General Assembly Res.53/77 Y, December 4, 1998. This was opposed by the same nuclear-weapon states. The language was repeated by the New Agenda Coalition at the 1999 NPT PrepCom. See New Agenda Coalition Working Paper, May 17, 1999, NPT CONF.2000/PC.III/25, pp. 3–4. The chairman of the 1999 PrepCom repeated the New Agenda proposal in his recommendations to the PrepCom. "Chairman's Revised Working Paper," par. 22 (b), *Disarmament Diplomacy* (May 1999), p. 21. But there was objection. "One or the other of the nuclear-weapon states objected to almost all the paragraphs [of the chairman's recommendations] on nuclear disarmament." Rebecca Johnson, "NPT Report: The NPT Third PrepCom: What Happened and How?" Ibid., p. 12.

[21] See, e.g., Statement of May 10, 1999 by Russian Amb. Berdennikov to the NPT PrepCom, pp. 5–7; Bureau of Nonproliferation, U.S. Department of State, "Fact Sheet: U.S. Commitment to NPT Article VI," May 3, 1999.

[22] See, e.g., Statement of French Amb. De la Forte, May 12, 1999, to the NPT PrepCom, pp. 3–4.

[23] Andrei Piontkovsky, "Season of Discontent: Kremlin Keen on Limited Atomic War," *Mos-*

cow Times, May 27, 1999, reproduced in RANSAC Nuclear News, May 28, 1999; "Yeltsin Signs Decree on Tactical Nuclear Weapons," *Arms Control Today* (April/May 1999), p. 47; " Nuclear Policies and Related Developments in Nuclear-Weapon States," *Programme for Promoting Nuclear Non-Proliferation NewsBrief* no. 46 (2nd quarter 1999), p. 12; "Security Council Meeting: What is under the Veil of Secrecy?" PIR Center Arms Control Letter for June 1999, pp. 4–5: After analyzing various reports on the Russian Security Council meeting including the brief announcement of it by Vladimir Putin, the secretary of the council, this letter states that his reference to "tactical nuclear weapons" implied "a new generation of nuclear munitions of low yield and super-low yield….developing a new generation of nuclear munitions, including the whole cycle of development, testing and production."

[24] Statement of Chinese Amb. Sha of May 10, 1999 to PrepCom; Statements of Sha to PrepCom and to meeting of nongovernmental organizations at PrepCom on May 12, 1999; Statement of Russian Amb. Berdennikov of May 10 and 12 to PrepCom.; Anne Penketh, "Kosovo, U.S. missile plan, could delay nuclear pact: China," Agence France-Presse International news wire, May 11, 1999.

[25] See, e.g., Eric Schmitt, "Missile Defenses Leave Fantasy Behind," *New York Times,* Week in Review, March 21, 1999, p. 1 (national ed.); Elizabeth Becker, "Congress Passes Antimissile Defense Policy," *New York Times,* May 21, 1999, p. A-7 (national ed.).

[26] Statements of Chinese Amb. Sha to NPT PrepCom on May 10 and 13, 1999 and to Second China-U.S. Conference on Arms Control, Disarmament and Nonproliferation at Monterey, Calif., April 28, 1999; Statements of Russian Amb. Berdennikov to NPT PrepCom on May 10, 1999.

[27] See Daryl G. Kimball, "Holding the CTBT Hostage in the Senate: The 'Stealth' Strategy of Helms and Lott," *Arms Control Today* (June/July 1998), p. 3.

[28] Report to the UN General Assembly and the UN Disarmament Commission, Eighteen Nation Disarmament Committee Doc. 236, August 28, 1968.

[29] See Kimball, "Holding the CTBT Hostage"; G. Bunn, "The Status of Norms against Testing," *Nonproliferation Review* (Winter 1999), p. 20.

[30] As long as China, Russia, and the United States refrain from declaring that they no longer support the CTBT and will not ratify it, they are bound by its norm against testing. Ibid.

[31] See CTBT, Art. XIV. As of June 1, 1999, twenty-six of the forty-four had ratified. See Daryl Kimball, "The Test Ban Treaty on the Eve of the Article XIV Conference on Entry into Force," *Disarmament Diplomacy* 37 (May 1999), p. 2. In order to participate in a conference of CTBT ratifiers scheduled for early October 1999, more are expected to ratify before the conference.

[32] Select Committee of the U.S. House of Representatives, *U.S. National Security and Military/Commercial Concerns with the Peoples' Republic of China* (May 1999).

[33] See Daryl Kimball, "The Test Ban Treaty on the Eve of the Article XIV Conference on Entry into Force," *Disarmament Diplomacy* 37 (May 1999), pp. 2, 5.

[34] The "List of Participants" dated May 14, 1999 and prepared by the secretariat includes 107 states parties. NPT/CONF.2000/PC.III/Misc.1. For a report on the conference, see Rebecca Johnson, "The NPT Third PrepCom: What Happened and How?" *Disarmament Diplomacy* 37 (May 1997), p. 8.

[35] See Statements by Chinese Amb. Sha on May 10, 12, and 13, 1999; Statements by Russian

Amb. Berdennikov on May 10 and 12, 1999; Rebecca Johnson, "The NPT Third PrepCom," at p. 16.

[36] Both of the chairman's two working papers summarizing positions of delegates contained paragraphs condemning the tests by India and Pakistan. See appendices to Rebecca Johnson, "The NPT Third PrepCom": Chairman's Working Paper, May 14, 1999, par. 8, p. 18, and Chairman's Working Paper, May 20, 1999, par. 16, p. 21.

[37] See Rebecca Johnson, "The NPT Third PrepCom," pp. 9, 11, 12, 14.

[38] See Statement of U.S. Representative Wulf, May 12, 1999, and its attachment, Bureau of Nonproliferation, U.S. Department of State, "Fact Sheet: U.S. Commitment to the Treaty on the Non-Proliferation of Nuclear Weapons," May, 3, 1999, pp. 6–9.

[39] Decision 1 of the 1995 NPT Review Conference, par.4, NPT/CONF.1995/32/DEC.1.

[40] The 1997 chairman's working paper urged early entry into force of the CTBT, negotiation of a Fissile Material Cut-off Treaty, and "systematic and progressive efforts to reduce nuclear weapons globally" but without specific references on how to do that. See Rebecca Johnson, *Reviewing the Non-Proliferation Treaty: Preparing for the Future*, Acronym No. 10 (April 1998), pp. 11–12. The 1998 chairman's working paper had similar statements from past agreed positions. In addition it contained a paragraph which recognized "the progress in nuclear weapons reductions by the nuclear-weapon States, including those made unilaterally and bilaterally under the START process…" See Rebecca Johnson, *Reviewing the Non-Proliferation Treaty: Problems and Processes*, Acronym No. 12 (September 1998), pp. 85–86.

[41] Ibid., pp. 5, 9.

[42] Resolution on the Middle East. NPT/CONF.1995/32/RES.1.

[43] See Rebecca Johnson, "The NPT Third PrepCom," pp. 12–13.

[44] Ibid.

[45] See Final Report of the Preparatory Committee for the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/PC.III/WP.1.

[46] In the Middle East and its immediate neighborhood, the opponents of indefinite extension in 1995 included Egypt, Iraq, Lebanon, Libya, and Syria. See the statements of their representatives on May 11, 1995 after the decision.

[47] Working paper of May 17, 1999 submitted by forty-four states led by Brazil in support of New Agenda Coalition proposals, NPT/CONF.2000/PC.III/25, p. 4.

[48] Final Report of the Preparatory Committee for the 2000 Review Conference, NPT/CONF.2000/PC.III/WP.1.

[49] See, e.g., G. Bunn, *Arms Control by Committee*, chaps. 4 and 5.

[50] The NPT has 187 parties. The UN Charter has 185.

[51] See note 15 above.

[52] See, e.g., Sha Zukang, "Can BMD Really Enhance Security?" Paper presented to Second China-U.S. Conference on Arms Control, April 28, 1999, Monterey, Calif.

[53] Chinese president Jiang Zemin promised on March 26, 1999 that the CTBT would be submitted to the Chinese National Congress "very soon." A Chinese representative later suggested that the bombing of Yugoslavia and U.S. plans for a national missile defense could delay ratification by *other* countries. Anne Penketh, "Kosovo, U.S. missile plan, could delay

nuclear pact: China," Agence France-Presse International news wire, May 11, 1999.

[54] Each made statements to this effect at the 1995 NPT Extension and Review Conference on May 11, 1995 just after the decision to extend indefinitely had been taken. The NPT authorized extension by a majority vote. NPT Art. X.2. But a poll taken by the Canadian delegation showed a large majority for indefinite extension. As a result, no vote was taken. After the decision, those in opposition to indefinite extension were permitted to express their opposition for the record.

[55] See Avner Cohen, *Israel and the Bomb* (New York: Columbia University Press, 1999), pp. 346, 432, n. 7.

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