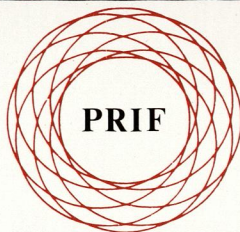


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**United Divided. The European  
at the NPT Extension Conference.**

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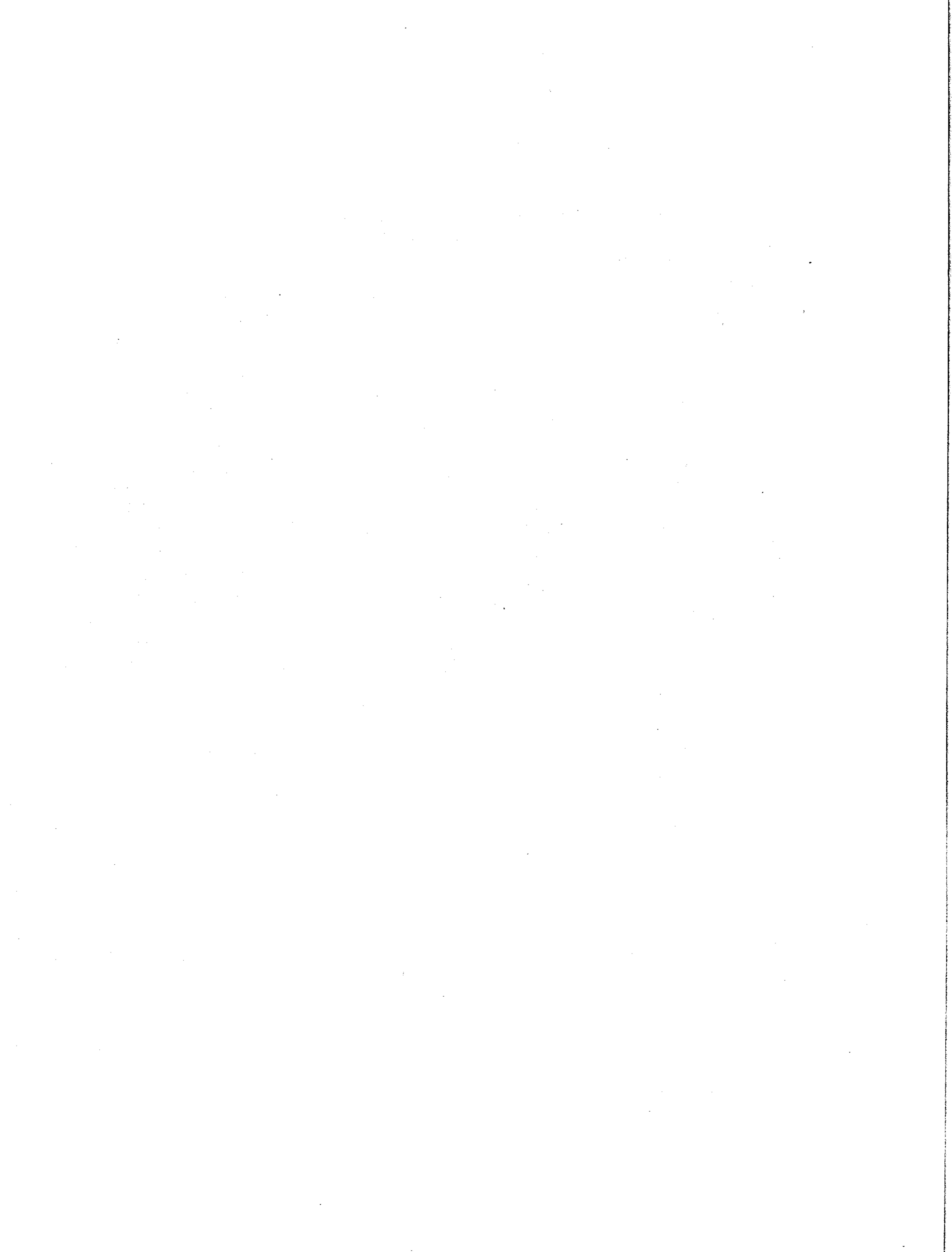
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## Summary

The 1995 Review and Extension Conference of the Nuclear Nonproliferation Treaty ended with a decision to extend the Treaty indefinitely. To the surprise of many, this decision was taken without a divisive vote; one reason why this was possible was that the decision was a package: together with indefinite extension, the Conference adopted a resolution to strengthen the process to review the Treaty, and Principles and Objectives that will serve as standards for these reviews. Among the factors that helped the Conference to achieve this success were the diplomatic skills of the Conference Presidency, the constructive role played by moderate nonaligned states, particularly South Africa, and the powerful diplomatic campaign conducted by the United States, other Western countries, and, last but not least, the European Union and its member states.

The diplomatic preparation of the Extension Decision was, so far, the strongest expression of European unity in the field of nonproliferation. The campaign took the form of a "Joint Action", the most powerful instrument of the Common Foreign and Security Policy available under the Maastricht Treaty. This Joint Action was implemented and completed with great commitment and consequence. In contrast, the preparation of the review part of the Conference was less intense, and major cracks in European unity appeared during the debates on the review, most visibly (and unexpectedly) in the issue of disarmament. It was somewhat more surprising that no agreement was achieved as well on Art. III, safeguards and export controls. This bifurcated experience shows the great potential of the Common and Security Policy, but it also reveals the hard work that must be done in order to bring this potential to full fruition.



## Introduction

This study focusses on the activities undertaken by the European Union and its member states with regard to the 1995 Review and Extension Conference of the Nuclear Nonproliferation Treaty (NPT), in an attempt to answer four related questions:

1. What was the contribution of the European Union to the successful outcome of the Review and Extension Conference of the Nonproliferation Treaty?
2. Did the Europeans achieve the best possible results, or did their performance fall short of possibilities?
3. What does this experience tell us about the Common Foreign and Security Policy (CFSP), the ambition of the fifteen member states to pool their resources in order to achieve more influence in world politics?
4. What should the Europeans do to improve their nonproliferation policy?

There is a double rationale behind these questions:

- The conviction that nonproliferation is a core concern of a CSFP, that CSFP is an indispensable part of European integration, and that without maintaining and enhancing European integration, welfare, security, and, eventually, peace, will be lost on the "Old Continent".
- The expectation that, with declining US leadership in multilateral international regimes, a European contribution is becoming all the more essential to steering the nonproliferation regime through the troubled waters ahead - because the indefinite extension of the NPT is not the end of the story, but rather a new chapter in a very long book.

To understand the intricacies of European nonproliferation policy, it is necessary to look briefly into the complex, bifurcated legal and institutional structure of the Union. This structure is partly based on the Rome Treaties, i.e. Community Law, which gives the European Commission a prominent and active role; and it partly relies on intergovernmental decision-making with which the European Commission is associated as a relatively weak partner of the larger member states.

In the field of nonproliferation, the European Commission has the authority under Community law

- to safeguard all peaceful nuclear activities of the member states, nuclear and non-nuclear weapon states alike;
- to conduct material accountancy for the non-nuclear weapon states;

- to negotiate for the members of the European Atomic Energy Community (EURATOM) framework agreements with states non-members of the EU on the peaceful uses of nuclear energy.

Moreover, EURATOM nominally owns all fissile materials in civilian uses, and is regularly informed about the trade in, and movements of, these materials. All this is covered by the Rome Treaties of 1958.

The foreign policy/security aspect of nonproliferation, though, is being conducted, since the Maastricht Treaty came into force, under the auspices of the Common Foreign and Security Policy (CFSP), an intergovernmental process. The Commission is fully associated with this process, but it does not possess the same executive authority as for the areas dealt with in the Rome Treaties. Foreign policy and security issues have traditionally been guarded with zeal by certain member states, and the evolution took a long time to reach the present, more formalized and institutionalized Maastricht stage: in the Rome Treaties, the whole area was excluded. From 1970 on, informal coordination took place in the extralegal, intergovernmental framework of the European Policy Cooperation (EPC); in the Single European Act of 1976, EPC was, for the first time, formalized before the Maastricht Treaty reached a higher degree of institutionalization in 1993. Nonproliferation policy has necessarily evolved stepwise within this larger political-institutional framework.<sup>1</sup>

The study starts with an analysis of the evolution of nonproliferation policy by the six, then twelve member states - and the Commission - of the European Community through the four NPT review conferences. It then describes their performance in the preparatory stage of the extension, and during the Extension Conference itself. Naturally, in analysing the European contribution, the study reports also on the proceedings and outcomes of the Conference. It concludes with a balance of the positive and negative aspects of this performance, and some recommendations for improvement.

Apart from documentary material, the authors can draw on first-hand experience. David Fischer was involved, for the International Atomic Energy Agency (IAEA), in the negotiation process of the NPT and the ensuing safeguards agreements, including, in particular, the one between the IAEA, EURATOM, and the non-nuclear member states of the European Community. He participated in all Review Conferences, in the first two as representative of the IAEA, in the third as observer for the Center for European Policy Studies (CEPS, Brussels), and the fourth as representative of the Peace Research Institute Frankfurt (PRIF). In the Extension Conference he started as PRIF representative, before he became an advisor to the delegation of Kyrgyzstan. Harald Müller observed as representative of the CEPS the third and as PRIF observer the fourth review conferences. During the Extension Conference, he served as a member of the German delegation. Nothing in this report, however, is meant to represent the views of either the Kyrgyz or the German government.

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<sup>1</sup> European Commission, Memorandum on the activities of the European Atomic Energy Community relevant to the objectives of Articles III and IV of the Treaty on the Non-Proliferation of nuclear weapons. Document prepared by the Commission of the European Communities for the 1995 NPT Review and Extension Conference, Brussels, 1995, part II.

## SECTION 1: ORIGINS OF AND PORTENTS FOR THE 1995 CONFERENCE: THE FOUR NPT REVIEW CONFERENCES

When the NPT was negotiated in the years 1966 to 1968, it was clear that two EC founding member states, the Federal Republic of Germany, and, to a lesser degree, Italy, were prime targets of this Treaty. All non-nuclear weapon states members of the European Community shared an interest in limiting the discrimination engendered by the NPT; they were instrumental in inserting clauses to this effect such as Art. IV, the inalienable right to develop peaceful nuclear uses, Art. VI, the obligation to enter in good faith negotiations on nuclear disarmament, the quinquennial reviews (see below), and the 25-year duration. The detailed rules of the safeguards system were also essentially influenced by these countries, with a view to focussing on material flow analysis and to achieving a verification system that would be a minimum burden for their nuclear industries. It was on this basis that they - and all future NNWS accessions to the European Community - became parties to the NPT. The only nuclear weapon state in the EC at that time, France, decided not to join the Treaty.<sup>2</sup> When the NPT came into force on 5 March 1970, no EC member state was an original member; the five non-nuclear weapon states members had all signed, but not ratified the Treaty.

### THE FIRST REVIEW CONFERENCE; 5 TO 30 MAY 1975, PALAIS DES NATIONS, GENEVA

The 1975 Conference, following shortly after the ominous Indian nuclear explosion in 1974, did not demonstrate an impressive solidarity of parties to the NPT in the light of the Indian proliferation challenge. To the contrary, the pattern of a dispute between the nonaligned demand for stronger disarmament measures, notably a Comprehensive Test Ban Treaty (CTBT) and for enhanced aid for developing countries in the civilian uses of nuclear industry, on the one hand, and the nuclear weapon states and northern nuclear suppliers, on the other hand, was already fully developed. When the Conference ran into a stalemate over a Mexican proposal for a protocol to the Treaty laying down a fixed time-table for nuclear disarmament - a proposal as vigorously supported by the nonaligned as it was opposed by the nuclear weapon states - it was only due to the forceful personality of the Conference's president, Mrs. Inga Thorsson from Sweden, that a final declaration was adopted.<sup>3</sup>

#### *The Role of Western Europe*

From 1970-75 the question that would determine the fate of the NPT was whether the leading industrialized non-nuclear-weapon states (NNWS) would join it, in particular

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<sup>2</sup> cf. George Bunn, *Arms Control by Committee. Managing Negotiations with the Russians*, Stanford, Stanford University Press, 1992, chapters 4 and 5.

<sup>3</sup> SIPRI Yearbook 1976, Stockholm, Almqvist and Wiksell International 1976, pp. 6-11, 363-91, and 403-13.

whether the Federal Republic of Germany and Japan would accept its constraints on their nuclear freedom of action. Each had ambitious nuclear energy programmes that included plans for enriching uranium and for reprocessing spent nuclear fuel, i.e. activities that would (reprocessing) or could (enrichment) result in producing fissile material usable in nuclear weapons. Moreover, memories of the Second World War were still quite fresh and contributed to suspicion about German and Japanese aspirations. In particular, the cardinal aim of the Soviet Union's foreign policy was to ensure that Germany did not acquire nuclear weapons,<sup>4</sup> but the Soviet Union did not stand alone in this regard.

On 2 May 1975, three days before the first Review Conference was due to open, this vital issue was settled - all five NNWS that were then members of the European Communities deposited their instruments of ratification of the Treaty. The leading non-nuclear-weapon states of Europe had thus, by international treaty, formally renounced nuclear weapons and agreed to accept the safeguards of the International Atomic Energy Agency (IAEA) in Vienna (as well as those of EURATOM which they had accepted in 1957) on all their nuclear activities.<sup>5</sup> But apart from their simultaneous ratification of the NPT the West Europeans still had little in common in their attitude to the Treaty and to the international regime of which it was the keystone.

In Germany, powerful forces had been deeply suspicious of the NPT. When the Federal Republic signed the Treaty in 1969 they had succeeded in securing a declaration by the Brandt/Scheel coalition which set down a formidable list of understandings - in effect, conditions for ratification. One of the principal conditions was that the IAEA and EURATOM, the nuclear arm of the European Commission, must conclude a "safeguards" or "verification" agreement which must not derogate from the rights of EURATOM since to do so would derogate from the authority of the EC itself. The IAEA-EURATOM agreement was negotiated in 1971-72 and approved by the EC Council of Ministers in 1973. The opponents of the NPT were still able to delay the Bundestag's approval of the Treaty until 1974. The depth of concern about the implications of the NPT for the Federal Republic was evident in the votes of the right of centre parties (the CSU and CDU). 111 voted in favour of approval, 90 against.<sup>6</sup>

In the upper echelons of the Italian Foreign Ministry and the Atomic Energy Commission aversion to the Treaty was also marked but, though powerful, the opponents were a small

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<sup>4</sup> Oleg Grinevsky, "The Outlook for Nonproliferation: An Attempt to Look Beyond 1995", *International Affairs*, Moscow, No. 10, 1994, p. 9. Mr. Grinevsky is currently Russian Ambassador to Sweden. He was formerly the representative of the USSR at the CFE negotiations in Vienna.

<sup>5</sup> Partly under Soviet pressure all the Warsaw Pact NNWS (Bulgaria, Czechoslovakia, the GDR, Hungary, Poland, Romania) had ratified the NPT before it entered into force. (Byelorussia - now Belarus -, and Ukraine did not ratify until after the dissolution of the Soviet Union - if they had ratified the Treaty while they were still in the USSR there might have been significant problems about their status as non-nuclear weapon states). Sweden ratified in January 1975, Spain only in November 1987 when it had decided to join the EC.

<sup>6</sup> Matthias Küntzel, "Auf leisen Sohlen zur Bombe? Bonner Begehrlichkeiten und der Atomwaffenverzicht", in: Udo Schelb (ed.) *Reaktoren und Raketen: Von der zivilen zur militärischen Atomenergie?* Köln (Pahl-Rugenstein) 1987, pp. 206-208.

minority within Italy's political, diplomatic, and scientific leadership. The Italian Parliament approved the NPT early in 1975, just in time to enable Italy and the other EC NNWS to take part in the first Review Conference.<sup>7</sup>

Perhaps because France was still smarting from the determined effort that the US had made from the end of the Second World War until 1964 to block French efforts to join the nuclear-weapon club, France remained quite aloof from the Treaty. Many French officials tended to regard it as a joint Anglo-Saxon-Soviet attempt to deny nations their sovereign right to arm themselves as best they might, and hence probably be doomed to failure. Nonetheless, France declared that it would behave like a state adhering to the Treaty and would follow a policy of strengthening appropriate safeguards.<sup>8</sup>

Britain, as one of the three depositary governments, had a significant interest in securing the Treaty's success. But as a Western NWS, Britain had to share and bear with the US the brunt of criticism by the neutral and non-aligned nations that the NWS were ignoring their obligation under Article VI of the NPT to reverse the nuclear arms race.

Belgium, as the host of the EEC, and of the EUROCHEMIC reprocessing plant, was the knight errant for EURATOM. And as an important player in the nuclear industry (through Belgonucléaire), Belgium tended to share some German concerns about US policy and misgivings about the role of the IAEA and about US pressure (chiefly in reaction to the Indian test of 1974 - see below) for stricter controls on nuclear exports. Of the five EEC NNWS<sup>9</sup>, only the Netherlands seemed unreservedly committed to the success of the Treaty. During the early 1970s, some Dutch diplomats, irked by the slowness of the German and Italian ratification processes, threatened to act alone and deposit the Dutch instrument of ratification.

With the interests and positions of individual West European states diverging so widely there could be no hope of common European initiatives at the Conference. In any case, without France, which did not even take advantage of the rule permitting it to send an observer to the Conference, it would have been procedurally and substantively difficult to reach agreement on any common European position. Although the European Commission was also entitled to send an observer delegation representing the European Community to the conference, it too preferred to stay away.

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<sup>7</sup> Cesare Merlini, "A Concise History of Nuclear Italy", *International Spectator*, July-September 1988, pp. 143-166.

<sup>8</sup> Jozef Goldblat, *Agreements for Arms Control: A criterial survey*, for SIPRI, London (Taylor and Francis) 1982, p. 339.

<sup>9</sup> Belgium, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands.

## BETWEEN THE FIRST AND THE SECOND REVIEWS: EUROPEAN DEVELOPMENTS

Between 1975 and 1980, at least two significant events happened that affected the attitudes of the member states of the European Union. First, the leading suppliers had joined forces in the Nuclear Suppliers' Group (NSG) to agree on common principles that would guide their export policies (London Guidelines); for the first time, France participated in a nonproliferation-related endeavour. Second, the Europeans found themselves a main target - and victim - of the nonproliferation policies of President Carter and the US Congress, most significantly in the form of the Nuclear Nonproliferation Act of 1978. This policy tried to exert an influence on fuel-cycle policies worldwide, a move strongly opposed by the European countries; some feared for their plans to recycle plutonium, but all EC member states were concerned that the integrity of the Rome Treaties - a self-determined and free civilian nuclear market in the Community - was challenged. As a consequence, a need for closer coordination was perceived. But in 1980 this perceived requirement had not yet found a suitable form of realization.<sup>10</sup>

### THE SECOND REVIEW CONFERENCE: 11 AUGUST TO 7 SEPTEMBER 1980, PALAIS DES NATIONS, GENEVA

The opaque workings of the NSG had exacerbated nonaligned fears that this was a group aimed at preventing the transfer of crucial technology to the Third World. As a consequence, the Second Review Conference witnessed heated discussions in its Main Committee (MC) II about export controls; in the end, it was possible to reach a compromise formulation that would have become part of a final declaration. But this time, the controversy over a CTBT blocked any chance of achieving agreement in MC I. The - unratified - SALT II Treaty was far too little to satisfy the nonaligned expectations for bold disarmament measures. The proposal by a majority for the prompt installation of a negotiating working group on a CTBT in the Conference on Disarmament (CD) in Geneva met stiff opposition from Britain and the US, and the nonaligned request for a target date (1981) for the conclusion of these negotiations ran into objections from the Soviet Union as well as from the two Western NWS. The Conference thus ended without a final declaration.

Once again France and the European Commission declined to send observers to the conference. Britain was in step with the US in resisting pressure for the early conclusion of a CTBT. Italy, Belgium, and the FRG seemed to be more interested in resisting pressure from the US to follow Carter's anti-plutonium policies and to make full-scope safeguards the basis of their nuclear export policy than in taking any positive initiatives at the conference. And as noted below, it was the Australian chairman of Main Committee II who was able to play the most constructive role at the conference. For the first time, the

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<sup>10</sup> Julien Goens, *The Opportunities and Limits of European Co-operation in the Area of Non-Proliferation*, in Harald Müller (ed.), *European Non-Proliferation Policy. Prospects and Problems*, Oxford (Clarendon Press) 1987, 31-70.

Netherlands, Ireland, and Denmark joined forces with a group of likeminded countries - Australia, New Zealand, Canada, Norway, Sweden, Finland, and Austria to work informally towards the Conference's success. This was done mainly by working out and submitting proposed language for the report of MC II on Articles III, IV, and V. This group, which defined itself somewhere between the NWS and the nonaligned, was ironically called "white angels" because of their tireless commitment to strengthen the NPT without much concern for the vested interests of national nuclear industries, and was later rebaptized "G-10" and, after Hungary's accession, G-11; it would stay active throughout future NPT review conferences, including the 1995 one.<sup>11</sup>

## **EUROPEAN DEVELOPMENTS BETWEEN THE SECOND AND THE THIRD REVIEW**

In 1981, the EPC agreed to establish a working group on nuclear nonproliferation. The growing threat of nuclear proliferation in the Third World gave the issue greater urgency. The pressure on European fuel cycle plans exerted by the Carter administration and the US Nuclear Nonproliferation Act of 1978 proved the value of a common EC position. And there was an intricate Euro-legal issue: the Commission had made a request to become, together with the member states, a signatory to the International Convention for the Physical Protection of Nuclear Materials. It also claimed authority, under that Convention, over all transboundary movements of fissile material. France objected on the grounds that the Convention addressed security and thus fell under the exemption of security issues from the Rome Treaties. The European Court's opinion coincided with the Commission's, but it was inopportune to pursue such a matter against the will of a larger member state. The issue overlapped with the difficulties emerging from adoption of the London Guidelines to which some, but not all, member states adhered, by parts of the Community: in both cases the danger arose that intra-Community obstacles to the commercial exchange of nuclear material would develop.

The new working group was asked to solve the internal transfer problem and to develop a statement on nonproliferation policy. This intergovernmental solution accommodated French concerns.<sup>12</sup>

As a first result, the group prepared a joint statement to the U.N. General Assembly on the occasion of the IAEA Secretary General's annual report in 1983. The statement reaffirmed the common interest on nonproliferation and the high value placed by the Ten in international safeguards.<sup>13</sup> In fall 1984 the Council adopted the Working Group's proposed joint "Declaration of common policy on the consequences of the adoption of the London Guidelines by the ten member states of the Community". This statement affirmed that member states "support the objective of the non-proliferation of nuclear weapons". It set up

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<sup>11</sup> SIPRI Yearbook 1981, London (Taylor and Francis) 1981, pp. 297-372.

<sup>12</sup> Goens, *op.cit.*

<sup>13</sup> *ibid.*, p. 38

rules for intra-Community transfers of sensitive materials, equipment, and technology and for their retransfer by member states to non-members. Notification among the member states of such transfers was made obligatory. It was also agreed that for the intra-Community transfer of separated Plutonium and highly enriched Uranium, permits by the transferring state were required, and that such permits were contingent on a statement of plausible intended civilian use of the material. Shortly afterwards, member states not yet adhering to the London Guidelines informed the IAEA Secretariat of their decision to adopt the Guidelines as principles for national export policy.<sup>14</sup>

Otherwise, progress was slow, demonstrated by the failure of a Dutch suggestion for a more detailed common guideline for nonproliferation policy. While a (fairly general) document was prepared, France would not accept its publication in 1985, for fear that it would be seen as related to the NPT, whose third review conference was held that summer.

### THE THIRD REVIEW CONFERENCE, 27 AUGUST TO 21 SEPTEMBER 1985

The Third Review achieved a spectacular success in drawing up a consensus final declaration, although it came on the heels of the darkest phase in East-West relations since the NPT entered into force, involving a total absence of any arms control successes in the preceding five years and the outright refusal of the US as well as the United Kingdom to even consider negotiations on a test ban. Only the January meeting between foreign ministers Shultz and Gromyko, pledging the renewal of arms control, mitigated this bleak record. Nevertheless, a lot of goodwill and skillful conference management, notably by the President, Ambassador Shaker of Egypt, and the chairman of MC I, Ambassador Jayantha Dhanapala of Sri Lanka, produced a substantial final declaration.<sup>15</sup>

#### *The Role of Western Europe*

In a conference dominated by divisions of opinion on a CTBT, by the repercussions of the 1981 destruction of a large Iraqi research reactor by Israel's air force, and by hopes that the new era of US-Soviet relations would lead to progress in nuclear disarmament, it was clear that, despite the establishment of EPC's non-proliferation working group, Western Europe and its concerns would still play a marginal role. France and the European Commission were once again conspicuous by their absence from the Conference. Only the Netherlands (as in 1980) sent their Foreign Minister (but as in 1980 the UK sent the Minister of State at the Foreign and Commonwealth Office for the two opening days). No representative of an EC country served as chairman of any committee or played a leading role during the Conference.

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<sup>14</sup> Reprinted in Johan J. Holst et al., *Blocking the Spread of Nuclear Weapons. American and European Perspectives*, Washington, Council on Foreign Relations 1986, Appendix E.

<sup>15</sup> cf. David Fischer/Harald Müller, *Non-Proliferation Beyond the 1985 Review*, Brussels, CEPS Paper, 1985.

There was no organized coordination among the participating EC member states. On major issues, the EC members remained divided.<sup>16</sup> On the Test Ban, the UK was isolated, as the rest of the EC supported - with varying degree of emphasis - the call for early negotiations on such a Treaty. On full-scope safeguards, Germany and Belgium led the fight against writing this principle into the final document, while Ireland, Denmark, and the Netherlands participated in the "Group of Ten" initiative to make full scope safeguards the only legitimate nuclear export prerequisite.

## EUROPEAN DEVELOPMENTS BETWEEN THE THIRD AND THE FOURTH REVIEW

Between 1985 and 1990, European collaboration in nonproliferation intensified. The working group met more frequently, at least twice per presidency. Bilateral consultations became common. Telex communications on the intra-EC telecommunication network (COREU) concerning nonproliferation communications multiplied.<sup>17</sup>

This enhanced collaboration resulted in a joint statement before the United Nations Conference on the Peaceful Uses of Nuclear Energy (PUNE) in April 1987. The Europeans made it clear in their joint statement that they supported a linkage between a commitment to assure supply and verifiable guarantees of non-proliferation by the recipients; their unity on this point was unwavering throughout the conference.<sup>18</sup>

Motivated by increasing cooperation, the Netherlands proposed a "Troika approach" towards threshold countries, that is, a demarche by representatives of the present, the previous and the next presidency, speaking together for all member states. However, the major member states favoured their bilateral ties with the threshold countries - most of them quite important members of the developing world - over a Community approach. Nonetheless, the information exchange on threshold countries and bilateral relations with them were intensified within the Working Group.

In a specific issue concerning a threshold state, the European Council imposed an embargo in 1986 on all new major nuclear supplies by Community countries to South Africa. Similarly, in 1987, then President Zia Ul-Haq of Pakistan met a "denial" front in his attempts to solicit European offers for nuclear power plants for his country.<sup>19</sup>

During the negotiations on the Spanish accession, the Netherlands, Ireland, and Denmark tried to hold Spanish membership hostage to NPT accession. France, however, argued that

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<sup>16</sup> *ibid.*

<sup>17</sup> Julien Goens, Current Events Related to Non-Proliferation in the EEC, in Harald Müller (ed.), *A Survey of European Nuclear Policy, 1985-1987*, London, Macmillan 1989, 11-20, esp. p. 18.

<sup>18</sup> *ibid.*, p. 17/18.

<sup>19</sup> Harald Müller, Introduction: A Summary of Western European Non-Proliferation Policy from 1985 to 1987, in Müller (ed.), (note 15), 1-10, esp. p. 6.

the Rome Treaties were neutral as to the nonproliferation status of member states. The Commission, with the support of the majority of member states, convinced the Spanish delegation of the advantages of NPT membership, because Spain could also accede to the joint IAEA-EURATOM safeguard agreement with EC NNWS. The alternative would have been a cumbersome special rule for Spain that might have impeded its access to fuel supply. Finally, in 1987, Madrid deposited its instruments of NPT accession.<sup>20</sup>

In the years preceding the Fourth Review Conference the delegations to the nonproliferation working group of the EPC had gradually succeeded in ensuring that Western Europe would speak with a single and usually very positive and constructive voice on most of the nuclear issues of nuclear policy arising at meetings of the IAEA's governing organs and at the UN General Assembly. Europe's spokesman at these meetings would be the representative of the country currently providing the president of the EC. Much of this progress had been due to the evolution of French thinking on non-proliferation issues. A further step towards a more common policy was taken when, in 1989, the French Presidency, on behalf of the Twelve, presented the first joint EPC statement to an IAEA General Conference. It contained a well-balanced account of the EC countries' deep interest in nonproliferation, their appreciation of IAEA safeguards, their support for the further development of nuclear energy and their willingness to foster, in particular, international collaboration to deal with nuclear energy's safety problems. The statement went further than that on PUNE in that it put more political emphasis on the goal of nonproliferation and even mentioned the NPT favourably, without committing the non-member (that is, France) to its terms. Hardly a year later, the Council issued its first comprehensive statement on nuclear nonproliferation during its summit meeting in Dublin, Ireland, just before the Fourth NPT Review Conference started. The statement again emphasized the security aspect of Europe's interest in nonproliferation and the unanimity of this interest, and went on to emphasize the importance of the nonproliferation regime and the prominent role the NPT was playing within it. That the French had even agreed to express the support of the Twelve for a successful review conference showed an unprecedented degree of unity on an issue that had been so divisive for twenty years (it also pointed to an evolution in French policy which would come to fruition in 1992<sup>21</sup>). Nuclear energy promotion was balanced, as in the IAEA statement, by a stronger emphasis on safety issues.<sup>22</sup> The Irish presidency also managed to achieve consensus on forming an "EPC Caucus" during the Review Conference, which France would attend as an observer.

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<sup>20</sup> Katlyn Saba, *Spain and the Nonproliferation Treaty*, in Müller, ed. (note 15), pp. 111-130.

<sup>21</sup> cf. Harald Müller, *Falling Into Line? France and the NPT*. PPNN Occasional Paper Six. The Centre for International Policy Studies, Department of Politics, University of Southampton, England, on behalf of the Programme for Promoting Nuclear Non-Proliferation, May 1990.

<sup>22</sup> The declaration has been reprinted in PPNN Newsbrief 10, Summer 1990, p. 12.

## THE FOURTH REVIEW CONFERENCE, 20 AUGUST TO 14 SEPTEMBER 1990

During the fourth Review Conference, the Test Ban question once again proved to be the stumbling block. Mexico, leading a group of nonaligned countries, and the United States could not agree on mutually satisfactory language. The Middle East was likewise a difficult matter for negotiations; the Arab states wanted to see a clear condemnation of Israel's nuclear policy and a forceful invitation to Israel to join the NPT. The clouds of the coming Gulf War and the rising suspicions that Iraq had violated its obligations also hung over the Conference, but they had a rather sobering effect; the conferees agreed on measures to strengthen IAEA safeguards, including the revival of "special inspections", and agreed finally on full-scope safeguards as the precondition of all new nuclear supply contracts. Alas, the prescriptive power of these agreements was lost when consensus on the final declaration failed on the Test Ban issue.<sup>23</sup>

In a noteworthy development France as well as Byelorussia and Ukraine - for the first time - sent observers to an NPT Review Conference. For the first time, too, the European Commission applied for and was granted observer agency status.<sup>24</sup>

A striking new element at the fourth conference was the emergence of a somewhat more coordinated European position. Although France would not go along with a statement by the (then) Twelve at the Review Conference itself, France's observer delegation was large, active and effective.

The most significant sign of unity was the uniform reference by speakers from all EC countries, during the General Debate, to the Dublin Declaration; it was thus clear that whatever national position was expressed, there was a common basis on which all EC member states relied.

A visible signal of Germany's intense interest in effective nonproliferation was the presence in Geneva of Hans Dietrich Genscher, the only Foreign Minister of a major power to attend the meeting. And the evolution of German nuclear export policy was clear in the message that Genscher brought to the Conference. Henceforth, Germany would require full-scope safeguards as a condition of all nuclear supplies and all existing nuclear contracts must be adapted to this new policy within five years. Within two years German insistence on full-scope safeguards was to become the central policy of the Nuclear Suppliers' Group despite some initial resistance by Belgium, Switzerland, and, somewhat incomprehensibly, the UK, which had long ceased to be an exporter of significant nuclear plants.

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<sup>23</sup> However, much of the content of MC II and III reports were later revived in the IAEA (IAEA, GC(XXXIV)/INF/291, 19 Sept. 1990) and provided a solid basis for the reforms of IAEA safeguards in the years ahead.

<sup>24</sup> An extensive account of this Conference is given in Harald Müller/David Fischer/Wolfgang Kötter, *Nuclear Proliferation and Global Order*, Oxford, Oxford University Press (for SIPRI) 1994, chapters 4-6.

However, in the final analysis the performance of the Twelve as a group during the Conference was still a disappointment.<sup>25</sup> As in 1985, the EC countries were divided on the Comprehensive Test Ban, on the emphasis on nuclear safety, on the extension of safeguards in nuclear weapon states, and on the question of full-scope safeguards.

The EC caucus met, but worked more on the preparation of the coming IAEA General Conference than for the success of the Review Conference. Greater unity in principle had not neutralized divisions on the issues, and better coordination had not yet resulted in enhanced diplomatic effectiveness.

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<sup>25</sup> For the following, see David Fischer/Harald Müller, *A Treaty in Trouble. Europe and the NPT after the Fourth Review Conference*, Frankfurt, PRIF Reports No. 17, 1991.

## SECTION 2: SETTING THE STAGE FOR THE 1995 CONFERENCE

### The Evolution of European Nonproliferation Policy

The Gulf War made proliferation a visible threat to global and European security. As a consequence result, Germany unilaterally strengthened its highly criticized export control system,<sup>26</sup> and France finally decided to join the NPT after a protracted policy review.<sup>27</sup>

High-level attention to matters of proliferation in France and Germany gave desk officers a strong incentive to develop new initiatives. As a consequence, the Franco-German proposal for European security cooperation in April 1991 gave nonproliferation a prominent place (as did the Commission's paper on the same subject). This proposal was later incorporated in documentation accompanying the adoption of the Maastricht Treaty.

The Council meeting in Luxembourg in June 1991 issued another statement on proliferation - including nuclear, chemical, biological and conventional arms proliferation - that went beyond the generalities of the Dublin Declaration. The Community countries called on all states to join the NPT - a first consequence of the French decision to accede. The statement summarized the work done in various EPC working groups, including the one on nuclear nonproliferation, in the field of export policy by formulating a list of criteria to be taken into account when export decisions were made (see below). The Council declared its intention to base harmonization of national export policies under the condition of Political Union on these criteria.<sup>28</sup>

In summer 1991, first France and then Britain and Belgium turned to full-scope safeguards export policy. Shortly afterwards, following clarifications from Rome and Madrid, this became a Community position. On the basis of a draft by the Twelve, the Suppliers' Group finally issued a statement on full-scope safeguards at its meeting in Warsaw, in April 1992. As had been the case in The Hague a year earlier, the Commission participated in this meeting together with all member states.<sup>29</sup>

A further sign of heightened attention was the final (long overdue) joint ratification of the Physical Protection Convention by the twelve member states and the Commission.

In spring 1992, the EPC prepared an unprecedented joint initiative for strengthening IAEA safeguards that was submitted to the IAEA Board of Governors in June 1992. Following a

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<sup>26</sup> cf. Harald Müller/Matthias Dembinski/Alexander Kelle/Annette Schaper, *From Black Sheep to White Angel? The New German Export Control Policy*, Frankfurt, PRIF Report 32, 1994.

<sup>27</sup> Présidence de la République, *Plan de Maîtrise des Armements et de Désarmement*, Paris, le 3 Juin 1991.

<sup>28</sup> *Atlantic News*, No. 2336, July 2, 1991, p. 2.

<sup>29</sup> Informal Meeting of States adhering to the Nuclear Supplier Guidelines, Press Statement, The Hague, March 7, 1992.

British-Dutch initiative during the 1990 NPT review conference, the Twelve for the first time went beyond general statements on nonproliferation in an international organization and made more detailed policy proposals. Their proposal included a provision for special inspections based on paragraphs 73 and 77 of the safeguards document INFCIRC/153, and a plea to rearrange safeguards so as to put more efforts into the "suspect" countries rather than those countries with large civilian fuel cycles. The EC also helped to persuade the IAEA Board of Governors to establish an universal system for the reporting of nuclear transfers (in addition to the reports already required by the IAEA's standard NPT safeguards agreements) on a voluntary basis. In summer 1992, they informed the IAEA Secretariat that all member states would implement "universal reporting" through EURATOM.

As mentioned, the Maastricht Treaty singled out nonproliferation as a central area of CFSP. Even before the treaty entered into force, this focus led to the inclusion of nonproliferation issues as a routine item at summit meetings. This included the endorsement of indefinite extension of the NPT; appeals to the successor states of the Soviet Union; a strong statement on North Korea calling for the revocation of withdrawal from the NPT and full compliance with the safeguards agreement. In 1992, the Twelve submitted a joint working paper to the CD, discussing, *inter alia*, possible approaches to the nuclear testing issue (though in very cautious and general terms). Among the more consequential activities of the twelve was the intense discussion, on the basis of a German suggestion, of a nonproliferation initiative within the UN Security Council. European input contributed to the landmark statement by the Council on January 31, 1992, declaring the proliferation of weapons of mass destruction "a threat to international peace and security."

In 1994, the Twelve and the Commission succeeded after protracted bargaining in setting up a system for the control of dual-use items that was based both on Community law and on intergovernmental procedure (Joint Action). With the regulation that entered finally into force in July 1995, a gaping hole in the Union's nonproliferation policy has been closed.

Concerning the inheritance of Soviet nuclear weapons by Ukraine, the European Union pursued a policy of its own which complemented American arms control efforts. While the USA concentrated entirely on the nuclear question and sought to influence the Ukrainian decision with the help of security guarantees and direct financial contributions, the EU pursued a strategy whose political objective was the maintenance of an independent, economically and politically stable Ukraine as a buffer between Western Europe and Russia. In the framework of this strategy, the nuclear question was only part of the problem.<sup>30</sup> The Union worked out a package dealing with the whole spectrum of economic and political relations with Ukraine. The cooperation agreement brings Ukraine as close to the Union as is possible without promising membership. Ukraine's desire to be treated as an independent state was respected. The original intention, only to negotiate or sign such an agreement once Kiev had acceded to the Nonproliferation Treaty, was abandoned. Instead, the agreement was signed with all due ceremony but its implementation deferred until such

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<sup>30</sup> Europe No. 6339, 19.10.194, pp. 11-12.

time as Ukraine completed the binding renunciation of nuclear weapons. Ukrainian politicians were able to see very clearly how advantageous this renunciation would be.<sup>31</sup>

## PROCEDURAL MATTERS TO BE SETTLED BEFORE THE CONFERENCE OPENED

Under Article X.2 the Conference had only three choices:

- o extend the treaty indefinitely,
- o extend it for an additional fixed period,
- o extend it for additional fixed periods.

The last choice would involve two further choices - a limited or an indefinite number of fixed periods. Extending the Treaty for additional fixed periods would only make sense if the parties could terminate the Treaty at the end of any of those periods. Otherwise extension for an unlimited number of fixed periods would be the same as indefinite extension, in other words extension for x periods of y years would be the same as a single extension of xy years.

Could the Conference decide on a single extension of x years and hold another extension conference at the end of that period? This course was favoured by one or two delegations, notably Venezuela. However, the Treaty only provides for a single extension conference and the interpretation of the majority of the delegations was that holding a second extension conference would require a prior amendment of the Treaty, pursuant to Articles VIII.1 and 2. The requirements for the approval and ratification of an amendment are exceptionally difficult to fulfil and make any substantive amendment virtually impossible. In the absence of such an amendment the Treaty would automatically terminate at the end of the single fixed extension.<sup>32</sup>

Article X of the Treaty states that the extension decision "shall be taken by a majority of the Parties to the Treaty". Thus a consensus on this vital decision was not required by the Treaty.

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<sup>31</sup> Europe No. No. 6339, 19.10.1994, pp. 11-12, No. 6374, 9.12.1994, p. 4.

<sup>32</sup> The issues before the conference, both procedural and substantive, have been fully analysed in a number of publications by the Programme for Promoting Nuclear Non-Proliferation. For instance, for procedural issues, see George Bunn, Charles van Doren and David Fischer, Options and Opportunities: The NPT Extension Conference of 1995, PPNN Study Two, for substantive issues, see John Simpson and Darryl Howlett, The Future of Nuclear Non-Proliferation: Issues at the Review and Extension Conference of the NPT, PPNN Study Six, and Harald Müller and Lewis A. Dunn, Nuclear Export Controls and Supply Side Constraints: Options for Reform, PPNN Study Four. Ben Sanders, The Process of Extending the Treaty: Preparations for the Conference, PPNN Paper Number C/16/2, October 1994, Jozef Goldblat, The Review of the Treaty - Security Questions "Nuclear Disarmament (Article VI)", PPNN Paper Number CG16/5.

When the time came for the Conference to take the decision there were 178 parties, thus 90 or more would constitute a majority. However, the Preparatory Committee foresaw that within the four weeks allotted for the Conference it might be difficult to obtain the support of a majority of the parties for any particular extension decision, especially if the Conference were poorly attended. Hence the rules of procedure of the Conference provided that the Conference "may be closed only when the decision required by paragraph 2 of Article X of the Treaty has been reached". This formulation implied that if no decision could be reached by 12 May 1995, the date set for the closing of the conference, it might be necessary to recess its sessions for a predefined period or even indefinitely. During such a recess the Treaty would continue to be in force.

Proposals had been made that the conference should reach an early decision on the extension and only then proceed to the review of the Treaty. One argument for this course was that such a crucial decision should be taken while foreign ministers were still present so that they could, if necessary, negotiate a compromise decision without reference back to capitals. Another argument was that the conference should know how long the Treaty would be prolonged before it made recommendations (as all previous review conferences had done) about the future implementation of the Treaty. However, the prevailing opinion was that the natural order of events would be to review before extending.

### *European Preparations for the Review and Extension Conference*<sup>33</sup>

The Maastricht Treaty codified Common Foreign and Security Policy as one of the "pillars" of the European Union. Section J of the Treaty contained an Article, J3, that provided for a new form of common activities: Joint Action. A Joint Action is an activity, or a set of activities, with the goal of achieving a jointly defined goal. It is worked out and decided under a general guideline of the European Council (Heads of State and Government) by the Council (most likely by the General Affairs Council, composed of the Foreign Ministers). It may employ a variety of instruments; states are bound by the course agreed and must not pursue contradictory goals in their national policies.

In fall 1993, under the Belgian presidency, the CFSP Committee on Security suggested a Joint Action on nonproliferation. The matter was referred to the working group on nonproliferation, now rebaptized Committee on Nuclear Affairs (CONUC). A German proposal for a Joint Action to prepare the 1995 conference encountered resistance. Questions about the cost of such a Joint Action probably served to conceal the concern of some member states about undue diplomatic constraints, and a fear on the part of the two nuclear weapon states that they could be pressured to take positions not compatible with their national defence postures. When the Greek presidency started, the best that could be agreed on was work on a joint declaration. However, new Greek and German initiatives

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<sup>33</sup> This section is based on Harald Müller (ed.), *European Non-Proliferation Policy*, Brussels (European Interuniversity Press) 1993, pp. 17-18 and on Martin Butcher, *The European Union, the NPT and Nuclear Proliferation*, Briefing Notes, March 23, 1995, Centre for European Security and Disarmament, Brussels.

finally led to agreement on guidelines for a common preparation of the 1995 Conference in form of a Joint Action.

At the 1994 Corfu meeting, the European Council agreed on this guideline. The key passage of the "joint action" stated that:

"The Council of the European Union,

Has decided as follows:

#### Article 1

The objective of this joint action which is the subject of this decision shall be to strengthen the international non-proliferation system by promoting the universality of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and by extending it indefinitely and unconditionally".<sup>34</sup>

Immediately after the summit, CONUC met in special session to work out details under the German presidency. The result was communicated to the meeting of political directors and shortly afterwards adopted by the Council of Ministers on July 18/19. According to this plan, this Joint Action would consist of

- An appeal to all parties to participate in the last two Prepcoms
- A campaign to convince bystanders to join the Treaty, a particularly useful move in the case of Algeria,
- A call on all parties to participate in the 1995 conference, and
- An effort to convince all parties that indefinite extension was the best choice available.

It would be conducted by Troika demarches and by additional diplomatic efforts by each member state.

In order to appreciate the value of this effort, we must recall that indefinite extension was not embraced with unmitigated enthusiasm in all EU member states. In Italy, Belgium, Germany, Ireland, and maybe in other countries, there was a discussion - in government, in parliament, in the NGO community - as to whether or not giving the Treaty unlimited duration would deprive the non-nuclear weapon states of leverage needed to maintain good-faith efforts by their nuclear-armed counterparts to put their treaty obligations into practice. Some of the states that had acceded to the EU in 1995, notably Sweden, held longstanding positions that bordered on conditionality, i.e. a very strong demand that disarmament steps be taken by the nuclear weapon states in order to justify indefinite extension.

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<sup>34</sup> Europe, Nr. 6277, 20 July 1994, p. 6.

The first demarche, reaching about 90 countries that had not so far or only once participated in the Prepcom process, had already been delivered before the third Prepcom. The Greek ambassador in the respective capital would join the German one (as current president) and the French representative (as the next president) in appealing to the host government to participate in the Prepcom, and to explain why the Europeans preferred indefinite and unconditional extension as the optimal outcome.

The campaign was conducted in a different style from the reportedly occasionally very heavy-handed approach of US diplomacy in support of indefinite extension. The Europeans, as reported to the authors, restricted themselves to exposing the full range of their arguments favouring an unlimited extension of the Treaty, and drawing attention to conditions which would make it impossible to reach this decision and weaken the NPT. While they made clear that they had a strong interest in the matter - something that was surely not lost on countries interested in good relations with the largest group of donors of foreign aid - they consciously refrained from pressurizing or arm-twisting their interlocutors. They also tended to dismiss the apparently prevailing US strategy to achieve the objective "50% plus 1" votes for indefinite extension as too small a majority on which to base such a fateful decision, even though, by the letter of the Treaty, it would have been sufficient. Rather, they strove to convince as many countries as possible in order to base the extension decision on near, if not complete, consensus.

At the third meeting of the Preparatory Committee (of the Review and Extension Conference) and at the autumn session of the UN General Assembly the representatives of Germany made further statements on behalf of the EU. At the Preparatory Committee the German delegate (Dr. Wolfgang Hoffmann) welcomed the substantial progress made in the negotiation of a CTBT, stated that the EU was working hard to launch negotiations on a cut-off convention, hoped for progress on security assurances, welcomed the START Treaties and proclaimed that "the continuation of the process of nuclear disarmament remains of utmost importance for the European Union". At the UN General Assembly the EU memorandum accompanying Foreign Minister Kinkel's statement declared that "The European Union is in favour of a complete, universal, and internationally verifiable test ban treaty".<sup>35</sup>

The most significant European contribution to the preparatory stage of the Review and Extension Conference was an analysis, prepared by the United Kingdom and submitted on behalf of the Fifteen to the Third Prepcom, on the legal issues surrounding the extension decision. The paper argued that a one-shot extension followed by another extension conference, then an option seriously considered by a couple of nonaligned countries and promoted by Venezuela, amounted to a substantial change of the language of the Treaty and could be accepted only as a unanimous interpretation by all the parties; it could not be

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<sup>35</sup> Statement on behalf of the European Union by the Head of Delegation of the Federal Republic of Germany, Ambassador Dr. Wolfgang Hoffmann, to the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Third Session, Geneva, 12 September 1994.

pushed through by a majority vote.<sup>36</sup> The significance of this paper was that it set a standard for the further legal discussion - notably a South African contribution during the Fourth Prepcom session - and strengthened the hands of those who - like the President of the forthcoming extension conference, Ambassador Dhanapala - thought a vote undesirable in the first place.

The first demarche and the result of the Prepcom were evaluated by the Presidency, and, based on this assessment, a second effort was prepared for November. This time, the approach was differentiated: non-participants were called upon to take part in the last Prepcom and the Conference itself; non-members of the NPT (with particular emphasis on Ukraine, Algeria, Argentina, and Chile) were invited to accede; known opponents of indefinite extension were approached to convince them of the virtues of the European stance. As a consequence of a Council decision in October, this time the doyen of the diplomats of the six Central European states associated with the EU - Poland, Hungary, the Czech Republic, Slovakia, Bulgaria, and Romania, accompanied the Troika on these demarches as a demonstration of the support lent by these countries to the Union's initiative. During this period, close coordination and mutual support were achieved through German-Canadian contacts with similar demarches conducted jointly by Canada and Japan. The briefs for the European demarches were all prepared and agreed jointly, so that all would not only aim at the same objective, but also follow the same line of argument. The selection of countries to be approached was also jointly agreed.

The French presidency continued to press in the same direction: a joint statement for the fourth Prepcom was prepared. Repeated demarches were conducted by the Troika, most notably in the Middle East. The Presidency addressed several international conferences on behalf of the Union, for example the meeting of OPANAL, the Latin American organization for the peaceful uses of nuclear energy, to argue for indefinite extension. President Mitterrand wrote personally to a number of heads of state and government, explaining the Union's position on the extension question.

In parallel to the Presidency's activities, in the last three months before the Conference, member states were mandated to complete the diplomatic campaign by individual efforts, each using the joint briefs in its activities.

The consequence and efficiency with which the campaign was fought by all bears witness to the power of Joint Action as a policy instrument, and it was conducted with a sensible division of labor, assigning approaches to particular countries to member states with the most "special relationship" to the party concerned. France, for example, made enormous efforts to talk to each francophone African state with a view to convincing its leadership of the merits of indefinite extension. Spain sent missions to its Latin American partners, using the traditionally excellent relations. Spanish-Argentinian and Spanish-Peruvian talks proved to be particularly successful. Germany undertook to visit some of the more difficult places like Mexico City, Caracas, Djakarta, and Tehran, in addition to Santiago, Buenos Aires, and Colombo. The NPT subject was on the brief of each higher German diplomat going

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<sup>36</sup> NPT/CONF.1995/PC.III/14.

abroad (as well as of high officials receiving foreign guests in Bonn), and even the Minister of Defense and the Federal President did not hesitate to take part in the campaign on their foreign travels. These contacts were also valuable during the Conference itself, when high-level German talks with Indonesian and Iranian representatives proved very useful in enhancing the possibility of a positive outcome.

The fact that at the outset of the Conference a considerable number of nonaligned parties, notably from Africa and Latin America, raised their voice for indefinite extension, and more did so in the course of the "cosponsorship" campaign, was at least partially a result of the robust and uniform effort of this Joint Action.

## **SECTION 3: THE REVIEW AND EXTENSION CONFERENCE, UNITED NATIONS, NEW YORK 17 APRIL TO 12 MAY 1995**

### **THE CURTAIN RISES**

As 17 April 1995 approached it was clear that the prospects of consensus on the extension decision were fading. Three groups were emerging: a large number of parties seeking a permanent NPT, a relatively small hard-core of leading nonaligned countries, opposed to unlimited and unconditional extension, and the Arab states, firmly refusing to renounce nuclear weapons for all time while the Israeli arsenal remained unscathed. The first two groups focused initially on a crucial procedural question - how could the extension decision be taken in such a way as to favour one's own group, or, if that was not feasible, how could it be taken in such a way as to favour neither. The Preparatory Committee had been able to reach agreement on all the rules of procedure except the one dealing with this issue, which was to be settled in a rule to be numbered 28.3.<sup>37</sup> The Preparatory Committee had bequeathed the matter to consultations to be held on 14 and 15 April.

During these consultations progress was made. It was agreed that there would be a single list of all proposals for extension. There would be a succession of ballots, during each ballot each delegation would make a single choice from the list, and the proposal receiving the least votes would be eliminated. Ballotting would continue until one of the proposals received the support of a majority of the states party to the NPT. The question left undecided was whether the ballots should be open, as those in favour of a permanent NPT proposed, or secret, as the leading nonaligned countries wished. This preference reflected the fear of the nonaligned that if the ballots were open, those states that had not voted for an indefinite extension would be put under very strong pressure to change their vote at the next round.

After the conference opened, the President appointed an informal group of seven delegations to resolve the issue, but by the end of the first week there was still no prospect of agreement. A compromise proposal by the President that ballotting be secret but that the results of the final ballot should be subject to a "confirmatory" open vote was rejected by both sides. As a consequence, the rules of procedure were applied only provisionally. Any vote would have opened the Pandora box of procedural controversy; hence, in order to avoid this risk, the industrialized countries, notably the nuclear-weapon states were inclined to support the president's quest for a consensus decision.

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<sup>37</sup> Rule 28 Adoption of decisions 3. The extension.

## HIGHLIGHTS OF THE GENERAL DEBATE

Immediately upon his election as President of the Conference, Ambassador Jayantha Dhanapala of Sri Lanka opened the General Debate. His statement stressed the importance of reaching a consensus on the extension of the Treaty.

After introductory speeches by the representative of the host country, Secretary of State Warren Christopher, by UN Secretary General Dr. Boutros Boutros-Ghali and IAEA Director General Dr. Hans Blix, the EU opened the discussion among the States Party to the NPT. On behalf of the EU and its six associated states (the Czech Republic and Slovakia, Bulgaria, Hungary, Poland, and Romania) M. Juppé, the French Foreign Minister, called for the indefinite and unconditional extension of the NPT. He also stressed the progress made in curbing the spread of nuclear weapons, which had confounded the gloomy predictions of the early 1960s, South Africa and the African Nuclear-Weapon-Free Zone, Argentina, Brazil, and Chile and the Tlatelolco Treaty, the strengthening of IAEA safeguards, the "unprecedented disarmament accords" ending the nuclear arms race, and progress towards a CTBT. The EU welcomed the launching of negotiations on a cut-off convention and Security Council Resolution 984 on security assurances. He reaffirmed the EU's commitment "to pursue negotiations on effective measures relating to nuclear disarmament".<sup>38</sup>

M. Juppé's address was followed by an impressive demonstration of EU solidarity in which the foreign ministers of Ireland, Germany, Italy, Portugal, the Netherlands, the UK, Spain, Belgium, Denmark, the Swedish permanent under-secretary for foreign affairs, and the ambassadors of Austria and Greece took part as well as foreign ministers or deputy foreign ministers of the six associated states. All endorsed the call for the indefinite and unconditional extension of the Treaty, but there were differences of emphasis. Most of the representatives of EU NNWS put greater emphasis than M. Juppé, or Mr. Hurd of the UK, on the need for vigorous and early nuclear disarmament and the total elimination of nuclear weapons; however, the British foreign minister indicated a willingness to join nuclear disarmament negotiations once the arsenals of the U.S. and Russia were numbered "in the hundreds". But neither the British nor the French Foreign Minister mentioned the *elimination* of nuclear weapons, even as the "eventual goal". The emphasis on disarmament was especially strong in the Irish, German, Austrian, and Swedish statements. Ireland called for the complete abolition of nuclear weapons and for concrete steps to be taken to that end. Sweden said that all nuclear weapons must be eliminated and that it was reasonable to demand a specific time schedule for nuclear disarmament on the lines of the START treaties. Sweden also singled out South Africa as a model for the threshold states, especially Israel. Germany stressed that the Conference was not a routine diplomatic event; at stake was the future of mankind. Germany also made the point that its renunciation of nuclear weapons in no way put Germany at a disadvantage.

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<sup>38</sup> Statement by H.E. M. Alain Juppé, Minister of Foreign Affairs of the French Republic on Behalf of the European Union, New York, 18 April 1995; the following analyses of statements during the General Debate are all based on the the written submissions to the Conference.

Ireland, Italy, and Sweden also stressed the need for strict standards of nuclear safety and care in waste management (reflecting domestic concerns such as fears that waste from the British Sellafield reprocessing plant might contaminate the Irish Sea). Neither France nor Britain mentioned either nuclear safety or waste management, putting more weight on the peaceful uses of nuclear energy.

Ireland voiced concern about growing stockpiles of plutonium and HEU resulting from disarmament as well as civilian operations, and the need to place fissile material under IAEA safeguards; Germany reaffirmed the need for an international plutonium regime and requested that fissile material emerging from the dismantling of nuclear warheads should not be recycled into new nuclear weapons.

France, reflecting national policy, stressed the contribution that nuclear energy could make in many countries and the confidence compliance with the NPT could generate; EU NNWS placed more emphasis on the non-power applications of nuclear energy, such as in medicine, agriculture, material research, etc..

There was little new in the statements of either the US or Russia, though Vice-President Gore and Foreign Minister Kozyrev put the case for indefinite extension forcefully and succinctly. Both listed the steps their countries had taken to reduce their nuclear arsenals and to stop producing fissile material for nuclear weapons, and stressed the importance of the Treaty in ensuring that this process continued. Mr. Kozyrev vigorously defended the Treaty against its critics; largely because of its existence the break-up of the USSR had not spawned any new NWS. He emphasized that Russia was committed to the final goal of the complete elimination of nuclear weapons. Mr. Gore was less explicit about the US commitment in this regard.

As the General Debate continued it became clear that support for any option other than indefinite extension was limited to a relatively small group of nonaligned countries and to the Arab states, but even the hard-core nonaligned seemed at first unable to agree on an alternative extension formula. Nigeria proposed a relatively short extension, but with the proviso that the Treaty should not lapse at the end of that period. Nonetheless, most nonaligned states recalled the customary list of actions they sought from the NWS: a clear timetable for nuclear disarmament and the prompt negotiation of a treaty for this purpose, prompt conclusion of a CTBT, legally binding and unqualified security assurances, a cut-off convention (dealing with existing stocks of fissile material as well as putting an end to production), and more nuclear assistance without discrimination. The sharpest criticism of the NWS came from Indonesia, Malaysia, and some anglophone African states (Sudan, Tanzania, Zimbabwe, Zambia). Contrary to expectations, the statement by Iran was relatively restrained except on the issue of nuclear supplies; "secretive groupings with restrictive membership" should be replaced by "a body representing all parties [which] must conduct its work in a transparent manner".<sup>39</sup>

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<sup>39</sup> NPT/CONF.1995/SR.8 para 18.

A statement by South Africa on the third day marked a turning point in the course of the conference and delineated the framework of a possible compromise: the Treaty should become permanent but the review process should acquire sharper teeth. South Africa proposed an indefinite extension, without conditions, and openly arrived at, but coupled with a number of measures to monitor compliance more effectively than during the past 25 years. The parties should adopt a series of principles for non-proliferation and disarmament that would define their general obligations and goals. These principles would not be amendments to the NPT or conditions for its extension; they would be renewed at each review conference to ensure that they corresponded to changing international circumstances. A committee should meet at fixed intervals during the five year periods between review conferences to establish such principles and provide impetus to the review process. This intersessional machinery might also study and direct the review conferences' attention to particular problems or issues.

The President promptly took up the South African proposal and related suggestions by Mexico and Sri Lanka and placed them before his consultation group. The South African proposals thus became a key part of the package that emerged at the end of the conference. They were quickly seized on by the US and also by the gap between North and South. EU countries, in their consultations, pledged their support for the "South African Strategy". The EU members participating in the President's consultation group acted accordingly; Germany, for example, submitted a draft on the "enhanced review process" as a basis for discussions.

A meeting of non-aligned states was due to take place at Bandung in Indonesia on 24 April and the hard-core nonaligned saw in this an opportunity to seek endorsement of the proposal for the 25-year "rolling" extension of the Treaty and of the idea that voting on the extension decision should be secret. The failure of the nonaligned movement to prepare the extension conference with a similar effort as the industrialized countries and, in particular, to agree on a compromise extension proposal, now came back on the nonaligned leader, Indonesia, with a revenge. Due to opposition from francophone Benin and other nonaligned states favouring indefinite extension, the Bandung meeting was unable to reach a substantial agreement. Instead, the Bandung meeting simply recommended that the nonaligned should support an extension proposal in accordance with Article X.2 of the Treaty - as if the NPT Conference had any other choice! However, the Bandung meeting did agree that the nonaligned should press for the disarmament and related objectives already mentioned.<sup>40</sup>

## THE WORK OF THE MAIN COMMITTEES

### *Main Committee I - Disarmament, Security Assurances*

Main Committee I, under the chairmanship of Ambassador Ayewah of Nigeria, made little progress in reaching agreement on the text of its report. This was partly due to the

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<sup>40</sup> International Herald Tribune, April 28, 1995, p. 4; Arms Control Reporter, 5-95, 602.B.280.

somewhat didactic and occasionally partisan manner in which the chair conducted the committee's proceedings, but also to the difficult and contentious issues - in particular disarmament and security assurances to non-nuclear weapon states - with which the committee had to deal, and the wide gulf that separated the proponents of indefinite extension, and in particular the NWS, from the nonaligned in general and especially from a relatively small but outspoken group of a dozen or so developing countries. The representatives of the NWS, especially the smaller nuclear powers, tended to extol too vividly their sometimes modest achievements in the field of disarmament and security assurances. On the other side the representatives of the dozen nonaligned seemed unwilling to concede that anything very significant had been achieved.

The NWS maintained that the nuclear arms race was over, and that the security assurances given in Security Council Resolution 984 were fully satisfactory. They pressed for negotiations on a cut-off to begin forthwith and they undertook to support the conclusion of a CTBT without delay.<sup>41</sup> They stressed that they had reaffirmed their commitment under Article VI to pursue in good faith negotiations on nuclear disarmament which remained their "ultimate goal". The dozen or so outspoken nonaligned contended that, since nuclear weapons were still being produced, the nuclear arms race had not ended but merely abated, they belittled the progress so far made in reducing nuclear arms and pressed for deeper cuts and for France and the UK to become involved in the negotiations. They perceived references to nuclear disarmament as an "ultimate goal" merely as a recipe for indefinite delay. They suggested that the stationing of nuclear weapons in NATO NNWS and US-UK cooperation in nuclear weapons production were breaches of Articles I and II of the NPT.<sup>42</sup> The first charge was strongly contested by NATO NNWS, (Belgium, Germany, Italy, and the Netherlands) as well as by the US and the UK, and the second by the US and the UK.

The Chairman established a Working Group with Ambassador Starr of Australia as chairman, which unlike its parent was able to reach agreement on the issue before it - security assurances - but only after MC I had formally completed its work; because of the failure of the Conference to agree on a final document, however, this consensus was lost.

The extent of the gap between the parties is reflected in the Committee's report. Of the 23 paragraphs dealing with Articles I and II of the Treaty (obligations of the NWS and of the NNWS) sixteen had to be placed entirely or partly in square brackets, indicating that no consensus had been reached. In the 75 paragraphs dealing with Article VI (cessation of the

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<sup>41</sup> This paragraph is chiefly based on an article by Rebecca Johnson, "Committee I on Disarmament", *Disarmament Times*, published under the auspices of the NGO Committee on Disarmament, New York, 18 May 1995, p. 4.

<sup>42</sup> The attack concerned, on the one hand, the allegation that the United States had handed over warhead-related technology to Britain against the language of Art. I. This was strongly denied by both Britain and the United States as factually wrong. On the other hand, it was stated that the arrangement to hand over U.S. nuclear warheads to non-nuclear weapon states owning the aircraft to carry them in time of war was a violation of Art. I and II. NATO countries denied this by emphasizing that control was in the hands of the United States, and that these arrangements had existed when the Treaty was negotiated and were not questioned then or in NPT Review Conferences' final declarations as violations of the Treaty.

nuclear arms race, nuclear disarmament, a CTBT, a cut-off and general and complete disarmament) only two were wholly devoid of square brackets. Eight out of the nine paragraphs under the heading "Conclusions" were similarly bracketed.<sup>43</sup>

### *Main Committee II - Safeguards, Export Controls, Nuclear Weapon Free Zones*

Under the able chairmanship of Ambassador Erdős of Hungary, Main Committee II made good progress. To speed up the preparation of the Committee's report, the Chairman established working groups on Nuclear Weapon Free Zones and on Export Controls. The "Group of Eleven" (Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway, and Sweden) provided most of the material on which the Committee's report was eventually based.<sup>44</sup>

There was little difficulty on the issue of *IAEA safeguards*, which were recognized in the Committee's report as playing "an indispensable role in ensuring the implementation of the Treaty".<sup>45</sup> The report emphasized the importance of access to the Security Council by the Director General of the IAEA and the vital role of the Security Council in upholding compliance by taking appropriate measures in the case of any violations notified to it by IAEA.<sup>46</sup> The Committee recommended that the Conference should endorse "the general direction of Programme 93+2 for a strengthened and cost-effective safeguards system" and should invite "all parties to implement measures approved or to be approved by the IAEA Board of Governors". The Conference was asked to reaffirm that the IAEA should "take full advantage of its rights including the use of special inspections". The Committee also endorsed the IAEA's responsibility to verify the completeness as well as the correctness of states' declarations, i.e. to verify the absence of clandestine activities.<sup>47</sup>

On *state systems of accounting and control* MC. II welcomed the "New Partnership approach" between the IAEA and EURATOM and the agreement between Argentina, Brazil, IAEA, and the Argentina/Brazil Agency for Accounting and Control (ABAAC).<sup>48</sup>

On the *financing of safeguards* the Committee proposed that the IAEA be requested to continue to identify all the resources need to carry out its safeguards responsibilities and that all states be strongly urged to provide such resources and to find a lasting safeguards financing formula.<sup>49</sup>

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43 NPT/CONF.1995/MC I/1.

44 NPT/CONF.1995/MC II/WP.2-9.

45 NPT/CONF.1995/MC.II/1 para. 2.

46 *ibid.* para. 3.

47 *ibid.* paras. 18, 19, 15.

48 *ibid.* paras. 29 and 30.

49 *ibid.* para. 27.

On *safeguards in nuclear-weapon states* the Committee proposed that the Conference should welcome and support the steps taken by the NWS to ensure the transparency and irreversibility of nuclear arms reductions including the offer to place excess fissile materials under IAEA safeguards. It should also call for further progress in separating peaceful and military nuclear facilities;<sup>50</sup> this was the only occasion on which nuclear weapon states would accept the term "transparency", which had apparently become a dirty word since the German Foreign Minister's December 1993 proposal for a nuclear arms register;<sup>51</sup> in the "Principles and Objectives" (see below), attempts to insert the word failed.

On *IAEA inspectors* the Conference was asked to call upon states to remove remaining restrictions by promptly responding to designation proposals, relaxing visa requirements, accepting all inspectors approved by the Board, and permitting inspectors to use independent means of communication.<sup>52</sup>

The Conference was asked, *inter alia*, to note the paramount importance of effective *physical protection*, to express grave concern at instances of illicit trafficking since 1990, and to note the need for strengthened international cooperation.<sup>53</sup>

On *plutonium and highly enriched uranium* the Conference was asked to welcome the considerable work undertaken to ensure the continuing effectiveness of safeguards on the production, separation, handling, and storage of fissile materials, to call for greater transparency in the management of such materials, to note the existence of large civil stocks of separated plutonium and to recommend that all such stocks be brought under safeguards "as soon as is practicable"; this formula reflected primarily Russia's problems of separating civil from military plutonium, but was also supported by other nuclear weapon states. Options for the management of plutonium, including deposit with the IAEA, should continue to be studied.<sup>54</sup>

The main issues that divided the Committee were the policies followed by the NSG and the *de facto* Western nuclear export embargo against Iran, the establishment of a zone free of weapons of mass destruction in the Middle East, and what the Committee should say about Iraqi and North Korean violations of their safeguards agreements.

The North Korean drafting problem was solved when North Korea left the Conference.<sup>55</sup> At the last moment, the Chairman of the Drafting Committee also informed the conference that a compromise had been reached with Iraq on the language to be used in describing the

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50 *ibid.* paras. 25 and 26.

51 Harald Müller, *Transparency in Nuclear Arms: Toward a Nuclear Weapons Register*, in *Arms Control Today*, Vol. 24, No. 8, October 1994, S. 3-7.

52 *ibid.* paras. 23 and 24.

53 *ibid.* paras. 34-35.

54 *ibid.* para. 32.

55 NPT/CONF.1995/30.

actions taken by the Security Council and the IAEA to eliminate Iraq's nuclear programmes and to implement a long term monitoring plan.

On export controls, the Committee rebuffed an attempt by Iran - directed chiefly against the US - to make the IAEA the sole arbiter of whether a NNWS was complying with Articles II and III of the NPT, and to make observance of the terms of IAEA safeguards agreements the only proof of such compliance.<sup>56</sup> The Iranian intention was transparent; individual parties such as the US should not be entitled to form their own judgements about the intentions or actions of other states parties and to stop nuclear exports to the state concerned. In moves to block the Iranian proposals it was pointed out that neither the NPT in Article III.2 nor the standard NPT safeguards agreements assigned to the IAEA the responsibility for verifying compliance with the export controls specified in that Article; the responsibility fell on the exporting state. It was also emphasized during the debate that Iraq was in breach of its safeguards agreement for many years before the IAEA found that a breach had occurred. In such circumstances the non-proliferation regime was materially helped if states parties took individual actions to prevent the supply of sensitive or un-safeguarded nuclear hardware.

The non-aligned countries had submitted a working paper proposing that the Conference should establish a committee on export controls.<sup>57</sup> This provided the basis for criticism of the restricted membership and allegedly secretive methods of the work of the Zangger Committee and especially the NSG, and proposals that guidelines on export controls should be drawn up by all parties openly and transparently in the form of "mutually agreed arrangements". The charge was led by Iran but also vigorously supported by Indonesia and Malaysia. Attempts by the G-11 to recommend that all states follow the guidelines of the Zangger Committee and to secure a favourable reference to the NSG promptly ran into opposition.

As the meetings progressed Iran gradually diluted its approach and in consultations led by the Canadian delegation agreement was reached on 12 May on a compromise text. The G-11 and other exporters had apparently been persuaded to agree to less categorical recommendations than in 1990 about adoption of the Zangger trigger list, and merely to note the fact that a number of parties "cooperate in an informal group known as the Nuclear Suppliers' Group [and] have agreed on guidelines for the export of nuclear-related items". However, this agreement was reached almost a week after the report of Main Committee II had been submitted to the Drafting Committee and it was therefore not reflected in that report.

Despite some reservations on the part of China, the Conference was asked to affirm that "new supply arrangements should require as a necessary precondition" a commitment not to acquire nuclear explosives "and acceptance of full-scope safeguards", and urged "those

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<sup>56</sup> NPT/CONF.1995/MC.II/1 para 21.

<sup>57</sup> NPT/CONF.1995/MC.II/WP18.

suppliers which have not done so to require such conditions without delay".<sup>58</sup> In its final statement to the Conference, though, the Chinese delegate recalled the guiding principles of Chinese nuclear export policy that do not contain full-scope safeguards.

The Arab states and Iran were divided amongst themselves on the subject of creating a nuclear weapon free zone or a zone free of weapons of mass destruction in the Middle East. The US was also concerned to avoid any direct criticism of Israel and not to call upon Israel to join the NPT without delay. A working group chaired by the representative of Jordan was unable to reach a consensus on the recommendation to be made. The Chairman of the Drafting Committee reported on the last day of the conference that acceptable language had been found, but there were reports that the question of naming Israel was still contentious.

The Committee asked the Conference to take note of Kyrgyzstan's interest in creating a nuclear weapon free zone in Central Asia. In contrast, Belarus ran into trouble with a proposal that the Conference should take note of the opinion of a number of European states that had recently joined the NPT as non-nuclear weapon states, that "these developments have been conducive to creating a nuclear-weapon-free zone in Central Europe". The implications of such a zone for existing or future security structures would affect Poland, Hungary, Romania, and the Czech Republic as well as Russia. In the end, neutral language was found, noting the opinion of Belarus that these developments might be conducive to creating a nuclear-weapon-free zone in an undefined region.

An attempt by Australia and New Zealand to press France, the US, and the UK to ratify the relevant Protocols of the Rarotonga Treaty (which establishes a nuclear weapon free zone in the South Pacific) was toned down: the NWS concerned were merely called on to give early consideration to the matter.

The Committee's draft report included commendations of the full entry into force of the Tlatelolco Treaty (nuclear weapon free zone in Latin America), the progress being made towards the completion of an African nuclear-weapon-free zone, endorsement of the proposed South East Asian Zone and a call upon all states in South Asia to cooperate as a matter of priority in establishing a nuclear-weapon-free zone in that region.

### *Main Committee III - Peaceful Uses of Nuclear Energy*

MC III, which dealt with peaceful uses of nuclear energy under the chairmanship of Ambassador Jap Ramaker (Netherlands), was by far the least controversial. The Committee worked on the basis of five papers by the G-11 on Articles IV and V, the Art. V paper being co-sponsored by a number of nonaligned and Eastern countries.<sup>59</sup> A Chinese paper, endorsing peaceful nuclear uses and cooperation in general, was less influential.<sup>60</sup> A

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<sup>58</sup> Report of the Working Group on Article III - Export; Controls to the Drafting Committee, Rev.4/Corr. 1 of 10 May 1995.

<sup>59</sup> NPT/CONF.1995/MC.III, WP.1, 3, 4, 6.

<sup>60</sup> NPT/CONF.1995/MC.III, WP.2.

nonaligned working paper complained about insufficient assistance and emphasized the needs of developing countries for more.<sup>61</sup>

Apart from this little controversy, there were minor skirmishes about nuclear safety, waste treatment, and sea transport which cut squarely across the various groupings and were all resolved with little effort. The main issue was, as in MC II, the Iranian complaint about being excluded from the fruits of peaceful nuclear technology, and the ensuing attack on export controls that was duly refused by the exporters. This debate reached its high point when the South African delegate noted drily that his country, nonaligned and developing, had recently joined both the Zangger Committee and the NSG.<sup>62</sup>

The Committee report reemphasized member states' right to participate in peaceful uses and international cooperation and to have their individual decisions and choices for fuel cycle policies respected (a Japanese concern, *inter alia*). Remarkably, the report regretted past aid to non-parties and welcomed steps to terminate such aid; it also expressed concern about such continuing cooperation, aiming clearly at China and, possibly, Russia (concerning its Indian connection). It called for preferential treatment of member states, particularly developing countries.<sup>63</sup>

The report dealt at great length with nuclear safety, safe transport by sea, waste treatment, and liability, calling, in particular, for early accession to the Convention on Nuclear Safety and to the amended London Convention, which prohibits radioactive dumping.<sup>64</sup>

The report gave the IAEA much credit for its technical assistance programme, regretted the recent decline in contributions to the Technical Cooperation Fund and called for more predictability and reliability of funding.<sup>65</sup>

The Committee noticed the need for safety in the dismantling of nuclear weapons and the cleaning-up of radioactive pollution resulting from past nuclear weapons activities.<sup>66</sup>

On peaceful nuclear explosions, the report was justifiably unenthusiastic; it emphasized the lack of any tangible benefits, the environmental concerns connected to such explosions, and the fact that no country had any active programme in this field.<sup>67</sup>

Finally, the Committee named all non-parties and called on these countries to accede. Pakistan, India, and Israel were requested to put their nuclear facilities under safeguards.

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<sup>61</sup> NPT/CONF.1995/MC.III, WP.5.

<sup>62</sup> cf. NPT/CONF/MC.III/SR.2.

<sup>63</sup> NPT/CONF.1995/MC.III/1, part I

<sup>64</sup> *Ibid.*, part II.

<sup>65</sup> *Ibid.*, part III.

<sup>66</sup> *Ibid.*, part IV.

<sup>67</sup> *Ibid.*, part V. It should be recalled that, in the CTBT negotiations, China still insists on exempting peaceful nuclear explosions from the envisaged prohibition of all nuclear tests.

Remarkably, the Conference's President was asked to convey these requests to the outsiders and to report back to parties about their reply.<sup>68</sup>

The only bracketed paragraph contained Iranian language; it expressed "regrets" about undue restrictions on nuclear transfers to developing countries and called for their removal.<sup>69</sup> This paragraph, though, was removed during the final discussions on export controls on May 12.

### *EU Cohesion*

In MC I, the EU countries showed a great degree of solidarity as far as Art. I and II were concerned. Following a suggestion by Austria, the French presidency circulated, at the end of the first week, a draft for a joint working paper on Articles I, II, and VI. Eventually, an EU working paper was agreed only on Articles I and II.<sup>70</sup> The statement confirmed the fulfillment of these articles by the EU member states and all other parties, with two exceptions, and contained critical remarks on the breach of Art. II obligations by these two, namely Iraq and North Korea. In other words, the paper contained a strong confirmation that the EU countries themselves had complied with their obligations under Art. I and II. This solidarity was not trivial. As late as 1985, neutral Sweden had criticized the deployment of nuclear weapons in non-nuclear weapon states. This time, Sweden was ready to express solidarity with the member states participating in these NATO arrangements that came under fire from the nonaligned. (Later on, though, Ireland joined forces with Algeria, Gabon, and Ukraine to help to find compromise language out of the Art. I and II stalemate that had developed in MC I.<sup>71</sup>)

However, EU members were not capable to agree on joint language concerning Art. VI. In the eyes of Sweden, the Presidency's proposal on this article was lacking forward-looking elements on disarmament. After proposals submitted by Sweden were not adopted, Sweden decided not to support the French draft. While observers had believed that the other neutral states were prepared to join a compromise, Ireland and Austria ended up by siding with Sweden in refusing the language that was supported by the rest and that was more acceptable to the two nuclear-armed EU member states. Consequently, eleven EU member states submitted a joint paper on Art. VI, while Sweden, Ireland, and Austria, each individually, forwarded papers of their own.<sup>72</sup> The Swedish paper contained a preference for a target date of 1995 for concluding a CTBT, Sweden also called for the continuation of the testing moratorium (a position certainly supported by all other EU NNWS, but not palatable to France) and for the inclusion of existing stockpiles in cut-off negotiations, which, once again, ran into French and British objections. Finally, Sweden demanded "a specific time schedule for the implementation of their disarmament measures". While

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<sup>68</sup> Ibid., part VI.

<sup>69</sup> Ibid., part III, para 11.

<sup>70</sup> NPT/CONF.1995/MC.I/CRP.6.

<sup>71</sup> NPT/CONF.1995/MC.I/CRP.27.

<sup>72</sup> NPT/CONF.1995/MC.I/CRP.10, 13, 14 and 19 respectively.

Sweden meant to say that as the nuclear weapon states agreed on disarmament measures, or undertook such measures unilaterally, they should specify the time-frame in which these measures would be implemented, e.g. in the START II Treaty. However, the request was misread as the equivalent of the nonaligned "time-bound plan for nuclear disarmament", or at least a first step towards such a plan, and was thus particularly resented by the nuclear weapon states.<sup>73</sup>

The Article VI disagreement demonstrates a deep-seated problem for EU policy in nonproliferation and disarmament issues. For the more disarmament-minded member states, showing a national profile might be of such high value that they may insist on positions that are hardly capable of commanding consensus and show little realism. For Sweden in particular, a long-standing strong commitment to neutrality and nuclear disarmament has proved difficult to reconcile, at least in the short period available since the country joined the Union, with the minimum solidarity that the Union requests from both nuclear and non-nuclear weapon states for the upholding of essential shared interests. Austria was in a similar position. Ireland is a long-standing, but also neutral member; for Ireland, a higher profile on Art. VI might have been seen as useful in the light of some public misgivings over support for indefinite and unconditional extension of the NPT. Art. VI controversies among the EU members continued well into the Drafting Committee and the final presidential consultations. The limits of EU unity had been reached.

What weighs even more heavily is the fact that the Fifteen could not even forge operational joint positions on Article III. The Presidency delivered a joint statement on Art. IV in MC. III; this was the result of a thorough preparation having started after the last Preparatory Committee Session in January 1995, including discussions at CONUC and fine-tuning of the language via COREU communication. The paper included a summary record of the European contribution to peaceful nuclear cooperation and a gallant and intelligent defence of export controls<sup>74</sup>. This document was a clear success of careful preparation and a proof of commonality among the member states. However, this was not followed up by working papers, as the Fifteen constrained themselves - with the small reservations expressed in their paper - to support the various G-11 initiatives. Nothing was accomplished on Art. III. This is a most striking failure, since the EU members have an impressive record in presenting effective joint positions on these issues in international fora such as the Nuclear Suppliers' Group or the IAEA; and it is all the more staggering as the main dividing issue of the past, full-scope safeguards as a condition of nuclear supply, was no longer a bone of contention. At the root of the European difficulty in speaking with one voice on these articles was the decision of six member states, Austria, Denmark, Finland, Ireland, the Netherlands, and Sweden, to follow a tradition established in 1980 during the second NPT Review Conference, and to join forces with five non-EU states, Australia, Canada, New Zealand, Norway, and Hungary, to prepare far in advance joint positions on these articles. This group submitted as many as nine working papers in MC.II, and 3 to MC.III; preparation for this work had started back in 1993, well before Sweden, Finland, and Austria acceded to the EU. Some of the delegations of EU member states participating in this G-11 group,

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<sup>73</sup> NPT/CONF.1995/MC.I/SR.6, p. 2.

<sup>74</sup> NPT/CONF.1995/MC.III/SR.2, pp. 6/7.

having already committed themselves to a set of papers formally submitted to the Conference, found it difficult to support Union language on the same issues that would deviate from the wording of the G-11 documents, while others appeared prepared to append a second signature. On these grounds, a last-ditch effort by the Presidency to submit EU papers to Main Committees II and III failed. The only common document containing proposed language for the final declaration, that was signed by all fifteen EU member states in MC. III, was a working paper largely supportive of IAEA safeguards; this paper was also subscribed to by all G-11 countries, an impressive array of nonaligned delegations, Japan, Argentina and four of the five associated states (Bulgaria was missing). EU unity, in other words, had only become possible in the framework of a wider coalition.<sup>75</sup>

A particularly surreal episode happened during the consultations in the Drafting Committee on export controls. These discussions ranged the request of the nonaligned for transparency, dialogue, involvement and their sharp criticism of present export control systems against the defense of these groups by their members, and the desire of the industrialized countries to keep these instruments effective. In the final sessions, Germany tried hard to submit proposals to bridge the gap, and to find common language between North and South, while France fought gallantly in defense of principled positions. Both could offer good arguments for their approach, yet the spectacle of two closely-related leading EU members debating heatedly on language on the floor was not proof of a well-coordinated CFSP. In the end, the controversy was bridged easily in the corridors. But why was this open fight necessary in the first place?

This is not to say that forging common positions on Art. III and IV issues would have been an easy task. The Union is divided between strongly anti-nuclear (e.g. Austria, Ireland) and strongly pro-nuclear (France, U.K., Belgium) states. Some are plutonium recyclers, while others abhor the civilian use of weapons-capable material. This was revealed in a controversy that opposed G-11 requests for a revival of the ideas of international plutonium storage to calls for transparency and - as requested by Germany and Belgium - safeguards on demilitarized Pu stocks in nuclear weapon states. Germany and Belgium, civilian plutonium recyclers, were not exactly keen to add to the safeguards burdens that are already placed on their industry; rather, their goal was to put nuclear weapon states on the same level. The revival of International Plutonium Storage schemes - supported by the G-11 and Italy - was contemptuously rejected as a "dinosaur". The EU had not clarified this point in advance; the G-11 participants were not involved in any Pu utilization, but four member states (Britain, France, Belgium, and Germany), as well as the Commission were involved in the informal Vienna talks on international plutonium management. What is more, the Community operates a virtual international plutonium management scheme under the 1984 Council decision anyway.

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<sup>75</sup> NPT/CONF.1995/MC.II/WP.15 and Add.1.

A second point where divergences among the Fifteen were tangible was the degree of support for the IAEA safeguards improvement program "93 plus 2".<sup>76</sup> The G-11 demanded unswerving and unreserved support for the whole program. Other member states, most notably Germany, Belgium, and the U.K., were only prepared to voice their general support, while reserving final judgement on the questions of enhanced access, comprehensive information, and legal authority. While they shared a concern about placing undue burdens on innocent industries, some were concerned that there might even be a constitutional question in the sense of "unwarranted search" if facilities not at all directly related to the subject matter of the Treaty could be subject to surprise inspections.

Again, given previous joint activities of the IAEA, one would have supposed that a joint exploration of these issues could have produced a substantial consensus among EU member states, but no such effort was undertaken. Discussions at the IAEA Board of Governors, the latest in February, had given advance warning that differences of opinion existed, and focussed work could have narrowed, if not eliminated, the difference.

Finally, there was the issue of HEU as fuel in new civilian facilities, an issue on which Germany found herself isolated. Germany is the only country that pursues presently such a project which was even discussed controversially within the Federal Government during the eighties. A proposal by the G-11<sup>77</sup> that "no new civilian reactors requiring highly enriched uranium be constructed" therefore ran into German opposition. The offending words were replaced by a recommendation that "States planning new civilian reactors avoid or minimize use of HEU to the extent that this is feasible, taking into account technical, scientific and economic factors".<sup>78</sup> Maybe a focussed discussion under EU auspices well in advance of the Conference could have swayed Germany away from this deviation from a fifteen-year old worldwide trend to give up utilizing this material for civilian purposes. Unfortunately, once again, no such discussion took place.

## THE DRAFTING COMMITTEE AND THE FINAL PLENARY MEETINGS

During the first week the President had informed the Conference that the last date for submitting proposals under Article X.2 of the Treaty, i.e. for its extension, would be Friday 5 May.

At a plenary meeting that afternoon the Chairmen of Main Committees II and III submitted their Committees' reports. The President then reported that three extension proposals had been submitted. Canada, supported by 104 sponsors (a number which subsequently grew to 111) introduced the majority draft which proposed that "the Conference decides that the

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<sup>76</sup> For a brief overview of this program for safeguards improvement, consult Lothar Wedekind/James A. Larrymore, International symposium on safeguards: mirror of the times, in IAEA Bulletin, Vol. 36, No. 3, 1994, 9-12.

<sup>77</sup> NPT/CONF.1995/MC.II/WP 8

<sup>78</sup> NPT/CONF.1995/MC.II/1 para. 36

Treaty shall continue in force indefinitely".<sup>79</sup> Indonesia, supported by 10 other nonaligned states, introduced its proposal for twenty-five year "rolling" extensions of the treaty to follow each other automatically unless a review and extension conference at the end of any twenty-five year period decided to terminate the Treaty.<sup>80</sup> The third proposal,<sup>81</sup> introduced by Mexico, also called for an indefinite extension but included ten other recommendations and decisions, many of which reflected the customary demands of the nonaligned countries (e.g. a CTBT not later than 1996, suspension of all tests, early conclusion of a cut-off treaty, etc.) or which were covered by the South African proposals. When Mexico withdrew its proposal later on, the position of the opponents of indefinite extension was further weakened.

The Canadian proposal was co-sponsored by all EU states, who had joined the campaign to attract more signatures from the beginning. The six EU-associated states and almost all other Europeans (Albania, the Baltic states, Croatia, Iceland, Liechtenstein, Malta, Monaco, Norway, Switzerland, Slovenia, Turkey, and the former Yugoslav Republic of Macedonia) cosigned it as well. It was also supported by Japan, Australia, New Zealand, and, of course, the US, and all CIS states. Some 52 developing countries (20 nonaligned countries in Latin America and the Caribbean and also ex-nonaligned Argentina; 18 nonaligned in Africa, including South Africa) signed up to it, but not China or any Arab state.

The 11-NAM draft was sponsored by Indonesia, Iran, Jordan, Malaysia, Mali, Myanmar, Nigeria, North Korea, Papua New Guinea, Thailand, and Zimbabwe, interestingly the only Arab state here was Jordan.

The names of more than 50 states taking part in the Conference did *not* appear on any draft resolution. The consultations by the Canadian delegation suggested that the great majority of these states would have supported the Canadian draft if it had been put to the vote.

On Monday 8 May, at another plenary meeting, Main Committee I submitted its heavily bracketed report. The President announced that, in accordance with the Rules of Procedure relating to the circulation of proposals in all UN working languages, decisions on the three extension proposals would be deferred for 48 hours while every effort was made to secure general agreement. On Tuesday 9 May the President circulated a three-component package that would enable the Conference to extend the Treaty indefinitely without taking a vote. The package consisted of:

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79 NPT/CONF.1995/L.2.

80 NPT/CONF.1995/L.3.

81 NPT/CONF.1995/L.1 Rev. 1.

- o a set of guidelines for assessing the implementation of and compliance with the Treaty ("Principles and Objectives for Nuclear Non-Proliferation and Disarmament") based originally on the South African proposals,<sup>82</sup>
- o a draft decision on "Strengthening the Review Process for the Treaty" (i.e. a meeting of the Preparatory Committee of each five-yearly Review Conference *in every year except* in the year immediately following the previous Review Conference). The Preparatory Committee would be empowered to address major political issues and not merely, as in the past, purely procedural, organizational and administrative matters. This was also based originally on the South African proposals.<sup>83</sup>
- o a resolution drafted and put forward by the President in which the conference "decides that, as a majority exists among States party to the Treaty for its indefinite extension in accordance with its Article X.2, the Treaty shall continue in force indefinitely".<sup>84</sup>

On the morning of Wednesday 10 May the President announced that agreement had been reached on the three-component package. In the meantime, however, thirteen Arab states had submitted a draft resolution expressing deep concern at the continued existence of unsafeguarded Israeli nuclear facilities and calling on Israel to accede to the NPT without delay.<sup>85</sup> This draft resolution would be put to a vote on the afternoon of 10 May and the decision on the package would be taken the next day.

By the afternoon of 10 May, however, the Conference President took charge to avoid the imminent collision between the Arab states and the US. The result was a draft resolution that was clearly aimed at Israel but did not mention Israel by name and was therefore acceptable to the US (the draft noted "with concern the continued existence in the Middle East of unsafeguarded nuclear facilities" - the sole such facility being the Dimona reactor in Israel). This was intended to persuade the Arab states not to press their draft to a vote. It achieved its purpose and secured the acquiescence of the Arab states when the President proposed his package. Because the Arab states were reluctant to table forward a resolution also calling on the remaining Arab states in the region to join the NPT, and in order to give the resolution more weight and to oblige three members of the Security Council to support the objectives of the resolution actively after the Conference, it were the three depository states (Russia, the UK, and the US) that submitted it to the Plenary.

A move hardly noticed outside closed conference rooms, but of possible import for the future of European policy, was the readiness to intervene in the last-minute struggle about the Middle East resolution. This effort was initiated by the Presidency, and would have been conducted by the Troika; it had the unswerving support of all member states. In the end, it proved unnecessary during the Conference, as the US and Egypt hammered out their

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82 NPT/CONF.1995/L.5.

83 NPT/CONF.1995/L.4.

84 NPT/CONF.1995/L.6.

85 NPT/CONF.1995/L.7.

compromise by themselves, but it augurs well for an enhanced role of the Union in the Middle East peace and arms control process, most particularly if and when the "zone free of weapons of mass destruction", endorsed in principle by all participating parties, moves from a lofty long-term goal to become the object of real talks.

On the morning of Thursday 11 May the President stated that since the package he had put forward commanded the general support of the Conference, it would not be necessary to vote on the package. No delegation objected to this statement and the package was so adopted, without a vote. It was significant that the package was presented as a whole. The close connection between its three elements, also made explicit through the mutual recognition in each document of the other two, was the key to secure unanimity of the decision. The NPT had thus become permanent.

The rules of procedure were then waived to permit a decision on the three-depository-states' resolution which was adopted by consensus.

Thus, after the President's package had been adopted on Thursday 11 May 1995, all that remained was to try to reach consensus on a Final Declaration. The outstanding differences would have to be settled in the Drafting Committee or in consultations between delegations.

During the last week of the Conference the Drafting Committee, chaired by Ambassador Strulak of Poland, had taken over from Ambassador Ayewah the task of trying to reach consensus on the draft report of Main Committee I. But, despite Chairman Strulak's attempts to find bridging language in a series of draft texts, the Committee made little headway. The gap between the hard-core nonaligned and most of the "North", especially the Western NWS, still remained unbridgeable.

On Friday morning the Drafting Committee resumed work on the report of Main Committee I. The President himself then took over the chair of the Drafting Committee and made a determined effort to eliminate the ubiquitous square brackets. At first he seemed to be succeeding, but it soon became obvious that there was no hope of a consensus in the few remaining hours. The NWS, in particular the UK, objected to some of the President's suggestions, but the main obstruction came from the representative of Nigeria (the Chairman of the now defunct Main Committee I) who rejected almost every proposal put to him. There were speculations that the more hard-core nonaligned, having lost the fight against indefinite extension, were determined to deny their "adversaries" the satisfaction of reaching agreement on a Final Declaration.

By the evening of Friday 12 May, the Conference's last day, consensus had been reached on every issue dealt with by MC. III and almost every issue dealt with by MC.II. But too many brackets remained in the report of MC I.

Rather than repeat the debacles of the 1980 and 1990 Review Conferences, when last-minute attempts at consensus dragged on in vain all night and in 1980 until the Saturday, the President wisely decided to bring the proceedings to a relatively early close shortly after midnight on 12 May.

After the remarkable successes of the previous day this was somewhat of an anticlimax. But attempts are being made to salvage the many valuable elements of consensus reached in Main Committees II and III and in the Drafting Committee and their working groups, by bringing their reports and other relevant documents to the attention of the United Nations General Assembly and of the IAEA, where they can provide the basis for further action. But these attempts cannot restore the prescriptive power of a final document, that represents the authoritative interpretation of the NPT and the ensuing obligations and rights by its membership. For example, the nuclear weapon states refuse to negotiate on security assurances on the basis of the consensus achieved late in the Conference, on the grounds that this was not sanctioned by a final declaration.

## SECTION 4: SOME CONCLUSIONS

The 1995 NPT Conference was certainly a success for American and European diplomacy. The industrialized nations set out to remedy the mistake of the 1960s when the Treaty was given an assured life of only twenty-five years, and to make it permanent, like most other treaties on arms control and disarmament. And they succeeded, with the support of an overwhelming majority of the parties, and without a formal vote.

The result, however, was also a resounding victory for a moderate nonaligned line, represented most prominently by South Africa. The content of the "Principles and Objectives", now an authoritative interpretation of the rights and duties of States Party, as well as the enhanced review, reflect long-standing nonaligned demands. They have finally been accepted by the nuclear weapon states and the other industrialized states, in a politically binding document. Credit must also be given to the Arab states, notably Egypt, for eventually settling for the possible, namely a substantial resolution on the Middle East. In contrast to the moderates, the representatives of a radical, dogmatic position, such as Nigeria, were never able to draft a promising counterstrategy to the "Northern" diplomatic initiative.

The end of the Cold War in 1989 and subsequent progress in nuclear disarmament, the imminence of a CTBT and possibly of a cut-off convention, and even the somewhat inadequate security assurances given in Security Council Resolution 984 also played a major role in ensuring the success of the conference. Had the conference taken place in 1990 when future arms reductions were less certain and without the participation of China and France, the outcome might have been very different.

Canada, Australia, and, in particular, South Africa greatly helped to steer the Conference towards a successful conclusion. South Africa, a new leader on the African continent, put forward the organizing principles that should ensure closer future compliance with the Treaty, especially by the nuclear-weapon states: the concept of defining and strengthening the criteria and processes for reviewing the Treaty, without detracting from its permanence or setting impractical conditions. This balancing initiative enabled undecided parties to decide in favour of indefinite extension and also served as a counterweight to the strong opposition to indefinite extension on the part of another African country, Nigeria. Canada vigorously mobilized support for the indefinite extension and helped to secure a consensus on the contentious issue of export controls (a consensus unfortunately not confirmed by the Conference because of its failure to agree on a Final Declaration), while Australia helped to find compromises on another contentious issue, that of security assurances, and played a helpful role in resolving differences in Main Committees II and III.

A great deal of the credit for the success of the Conference must, however, go to a single person, the Conference's President, Ambassador Jayantha Dhanapala. Before and throughout the conference he played the crucial bridge-building role, seeking compromises on the main issues, and insisting that the conference should come as close as possible to a consensus decision. It was his patience, skill, and ingenuity that put together the package that enabled the Conference to decide without a vote to make the Treaty permanent. He

was, it appears, the architect of the depositary-state resolution that avoided a last-minute clash on the issue of Israel and the Middle East. It was no fault of his that the Conference was unable to salvage a consensus out of the shambles of Main Committee I and that it thus came to a close without a Final Declaration, a document whose importance had in any case been largely eclipsed by the adoption of the presidential package.

## UNFINISHED BUSINESS

The "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" give a clear indication of the tasks that lie ahead, now that the issue of the Treaty's duration has been settled. Even more important, they have begun to serve as a point of reference in the diplomacy of member states, e.g. in the IAEA, in the CD and in the United Nations. The "Principles and Objectives" are the most authoritative joint interpretation of the meaning of the NPT and the rights and obligations of its parties; the close connection with the extension decision gives the "Principles and Objectives" considerably more weight than past final declarations of NPT review conferences.

### *Universality*

This is the first objective mentioned. On 12 May the Treaty had 178 parties, only eight less than the membership of the UN itself. On the last day the President reported that Chile had now completed the constitutional steps needed for accession. Vanuatu and the United Arab Emirates joined later. Of the remaining holdouts, one, Brazil is a party to the Tlatelolco Treaty and the ABACC agreement and has placed its entire nuclear fuel cycle under IAEA as well as bilateral safeguards. Only three others, India, Israel and Pakistan, have significant nuclear facilities, including, in each case, unsafeguarded plants capable of making nuclear weapon material. These three (and to a lesser extent Brazil) are thus increasingly isolated. This, together with the fact that the Treaty is now permanent and that the Conference has again called for the application of full-scope safeguards in all NNWS will surely augment the pressure on them to accede. Complaints that the Treaty discriminates against nuclear "have-nots" must sound increasingly hollow; if they are valid, why did 28 "have-not" countries join the Treaty between the 1990 and 1995 conferences? The obligation to work for universality should affect the relations of the US with Israel, of Russia with India, and of both the US and China with Pakistan.

### *Nonproliferation*

The "Principles" call for the Treaty to be implemented "in all its aspects" to prevent nuclear proliferation which "would seriously increase the danger of nuclear war". This is not only a signal to the three threshold states, it is also an admonition to any party that might be tempted to follow in the steps of Iraq or North Korea.

### *Nuclear disarmament*

In the Principles the NWS "reaffirm their commitment to pursue in good faith negotiations on effective measures relating to nuclear disarmament". The Principles call for "The determined pursuit by the nuclear-weapon states of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons".

Under Disarmament, the Principles specifically call for the completion of negotiations "on a universal and internationally and effectively verifiable CTBT no later than 1996".

The call is for "the immediate commencement and early conclusion of negotiations on a non-discriminatory and universally applicable" cut-off convention.

### *Nuclear Weapon Free Zones*

Especially in regions of tension such as the Middle East, such zones should be encouraged as a matter of priority. The NWS are called upon "to respect and support the relevant protocols".

### *Security Assurances*

The Principles note Security Council Resolution 984 and the declaration by the NWS that further steps should be taken. "These steps could take the form of an internationally legally binding instrument", an option hitherto refused by the NWS. This admittance that Resolution 984 has not brought the issue to its end is an important success for the non-nuclear weapon states who have sought binding assurances for long as a quid pro quo for their commitment not to acquire nuclear weaponry.

### *Safeguards*

The Principles go into considerable detail on this subject taking over many of the recommendations of Main Committee II, e.g. that States Party that "have concerns regarding non-compliance" by other parties "should direct such concerns to the Agency", that decisions adopted by the IAEA Board of Governors to strengthen safeguards should be supported and implemented, that the IAEA's ability to detect undeclared activities should be increased, that full-scope safeguards should be a condition of new supplies, and that nuclear material transferred from military use should be placed under Agency safeguards as soon as is practicable.

### *Peaceful uses*

After reiterating Article IV of the Treaty, the Principles call for preferential treatment for NNWS party to the Treaty, for dialogue and transparency in export controls, for the highest standards of safety and physical protection and for adequate financial and human resources for the IAEA. The Principles also note that attacks on peaceful nuclear facilities raise serious concerns regarding the application of international law.

By taking over some of the recommendations of the Main Committees II and III, the Principles serve as a partial substitute for a Final Declaration. The recommendations on universality, non-proliferation and nuclear disarmament are reasonably comprehensive and fill the gap left by the lack of consensus on these issues in Main Committee I. The Principles are not legally binding conditions for the extension of the Treaty, but, as President Dhanapala pointed out, they are politically binding. In practice their political force might be greater than that of watered down legal conditions of the type that would have emerged from protracted negotiations if a conditional extension had been feasible. And the process of review, in which the NWS in particular will be held accountable almost every year for the way in which they are implementing the Treaty, could have much more bite than a conditional extension coupled with a quinquennial Review Conference.

### *European Performance and the Common Foreign and Security Policy*

The European Union and its member states played a significant role in preparing and conducting the NPT Review and Extension Conference in April/May 1995. In this, they did better than during any NPT Review Conference in the past. Yet they could have done more, as deep divergences prevented a focussed contribution to solving the many substantive issues before the Conference.

#### *1. What was the contribution of the European Union to the successful outcome of the Review and Extension conference of the Nonproliferation Treaty?*

The EU's main contribution to the great success of the 1995 Conference was the efficient and protracted diplomatic campaign the member states waged to convince other parties to accept the indefinite extension option. The fact that a considerable number of nonaligned parties, notably from Africa and Latin America, raised their voice for indefinite extension during the General Debate, and more did so in the course of the "cosponsorship" campaign, was at least partially a result of the robust and uniform effort of this Joint Action. And it was the delegate of Benin from francophone Africa, where Paris undertook considerable diplomatic efforts, who took the lead in preventing the non-aligned meeting in Bandung from endorsing the position of the hard-core nonaligned states.

The contribution of the Union to convincing a sizable number of Third World countries that indefinite extension was the best option available has been greatly underestimated in the public discussion. The diplomatic campaign in advance of the Conference was intense, focussed and well conducted. It continued during the Conference through various contacts between European and other delegations; the example of the German-Iranian talks is telling, but it was not the only one.

The clear direction defined by the Joint Action helped the European delegation participating in the "presidentials" never to lose track of the final objective; this might have made reaching compromise easier in some cases. Also, the paper submitted to the third Prepcom on the legal analysis of the extension options was an important and frequently underrated contribution, as it set the standard against which alternative interpretations had to fight an

uphill struggle. It certainly strengthened the hand of those, including the Conference President, who wished to avoid a decisive vote.

This common approach extended into the Conference with joint statements delivered by the Presidency at the outset, immediately after the extension decision, and at the end of the Conference. These statements reflected the common ground the Fifteen had found, particularly the full support for indefinite extension, and the reasons why this support was given. As the associated states permitted the Presidency to speak in their name as well, the EU's position had the support of a powerful group of countries.

The regular, intense caucussing of the Union during the Conference also made a contribution. Heads of delegations and Commission representatives met twice a week, while specialized subcommittees would meet in the interim, trying to work out common positions on the outstanding issues. This caucussing was of some added value to those delegations that did not participate in some of the other important consultations, for example the Presidential meetings that hammered out the extension compromise, even though these delegations sometimes had misgivings about being "excluded". Nevertheless, the continuous process of communication throughout the Conference with a view to ironing out divergences on substantive issues was, even though not successful on many of these issues, a clear and appreciable procedural step.

2. *Did the Europeans achieve the best possible results, or did their performance fall short of what was possible?*

As our analysis has revealed, the European performance showed major shortcomings. Worse, most of this might have been avoidable with more goodwill and more intense preparation. As for the extension decision, it was obvious that during the presidential consultations, participating European countries consulted among themselves and took largely consensual positions, but their position rested not on a coordinated EU platform. This was mitigated by two factors: the jointly defined goal of achieving indefinite extension, and an observable desire to avoid head-on confrontations among the European partners (most visibly between the Germans and the French, who were working very closely together). In this latter regard, the "commonality" showed more in style than in substance. There were no true EU consultations aimed at guiding the negotiations of the few states represented in the presidentials; the EU meetings that took place were more informations than consultations, and even this information was not sufficient in the eyes of some of the "excluded" parties.

By and large, the Union as a whole had very limited influence on the substantial debate of the Conference. To the contrary, on a couple of important issues the fifteen appeared divided and did not manage to bridge their differences. In a way, the successful Joint Action rebounded on them with a vengeance: the focus on the extension issue and the great toll the diplomatic campaign took on the limited time and resources of the handful of diplomats in each capital charged with this policy field prevented any concise preparation on substance, even under two fairly potent presidencies. As a consequence, the Fifteen entered the Conference with their national positions only - with the exception of the Art. IV paper -, and it was only during the course of the Conference that the Presidency tried to

forge, ad hoc, a consensus on the outstanding issues. In the heat of the struggle, the delegations, distracted by so many other duties and activities, did not manage to agree on many substantial issues in advance of the Conference.

But genuine differences of substance also played a significant role in diluting the EU's efficiency and unity. First, the gap between the two European nuclear weapon states that defend their special status with vigour and zeal, and the strong quest for nuclear disarmament led by Sweden but supported by other EU NNWS, is a serious and deep rift. Part of this may be due to the initial difficulties of mutual adaptation between old and new member states. But to the degree it reflects a genuine cleavage, it will impede CFSP in many respects in the future if not dealt with. In the last instance, this divergence reflects the lack of a common understanding of the role of nuclear weapons in the post-Cold War world and of whether complete nuclear disarmament is or is not a valuable goal. It also reflects the past practice by the nuclear weapon states, France and the United Kingdom, to treat their nuclear weapons as a matter of exclusively national discretion and as a virtual taboo in an European context.

Second, the preference of the six EU G-11 members for joining forces with extra-European countries rather than working out intra-European positions - resting in a very positive, fifteen-year old and successful tradition - must also be taken seriously. This assessment has nothing to do with any disagreement on substance. If anything, the G-11 positions on many issues attract the sympathy of the authors; in addition, the G-11 have played a crucial and constructive role in NPT review conferences since 1980. But the Maastricht Treaty makes it a duty of all members to strive for Common Positions for major international events. This duty was all the more appealing, in our case, as the Heads of State and Government had decided to make preparation for 1995 a Joint Action (JA). That six countries nevertheless continued with the G-11 exercise rather than to initiate efforts to bridge gaps together with their fellow European partners stretches the Maastricht Treaty to its limits. While it is true that G-11 preparatory work started way back in 1992 or 1993, even then the goals of CFSP were well known, as the Maastricht text was already in the ratification stage. And the JA should have caused a major reconsideration. One may excuse the new members for not having thought through the implications in the first, certainly confusing months of their membership. Yet three of the six have been Community countries for decades, and here the failure to consider in time is more surprising.

1995 was also the first time that the Commission was able to submit a paper to a NPT Conference.<sup>86</sup> This paper was explicitly written as a contribution to the Joint Action, and was coordinated by DGIa and contained contributions from DGI, DG17, the Euratom Supply Agency and the Euratom Safeguards Directorate. It outlined the activities of Euratom in the field of nonproliferation, the merits of a regional approach for nuclear confidence-building, and the advantages of having a legal instrument of unlimited duration. This document was made available to delegations but, in a snag indicative of the envy with

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<sup>86</sup> European Commission, Memorandum on the activities of the European Atomic Energy Community relevant to the objectives of Articles III and IV of the Treaty on the Non-Proliferation of nuclear weapons. Document prepared by the Commission of the European Communities for the 1995 NPT Review and Extension Conference, Brussels, 1995.

which certain member states watch the Commission's status as a body "fully associated" with CFSP, the Commission was not permitted to submit it as an official Conference document. The Commission attended as an observer, not - as would have been possible by mutual agreement - as part of the presidential delegation. As a consequence, it was only possible for the Commission to participate in the closed meetings of the Main Committees, their working groups and the Drafting Committee thanks to the tolerant negligence of the respective chairmen, and the Commission was excluded from the important consultative meetings of the "Western Group" and from the crucial consultations in which the Conference President shaped the solution that was finally approved. Thus the Commission's association was less than full as far as the continuation of CFSP into the Conference was concerned, and the Union missed the opportunity to make at least one more common substantial contribution to MCs II and III.

With too few notable joint positions on substance, the EU - as a whole - remained without influence on the most important activity, the presidential consultations, and also in the review process (though it should be noted that it was the only grouping that had five member states participating in the Presidentials). It must also be mentioned that, individually, European countries made significant contributions to the proceedings of the Conference. The Dutch delegation served as the Bureau for Ambassador Ramaker, the able chairman of MC. III who made a great contribution to the language of the final document. The role of Finland and its Ambassador Patokallio as chairman of the consulting group on the rules, as speaker for the NSG, and as vice-chairman of the Drafting Committee has also been greatly underreported in journalistic and other accounts of the Conference. The UK chaired the Western Group efficiently, as did France for the EU Caucus. Germany, as others, was frequently talking to the Western nuclear weapon states and Russia, trying to find the best compromise possible in the Presidentials with the nonaligned, and to insert a NNWS perspective in the overall Conference strategy of these important NWS. Germany also submitted a paper on the "review mechanism" that served, together with the South African work, as an early basis for consultations. The European members of the G-11 - notwithstanding the criticism elaborated above - contributed much to the language in the reports of MCs II and III, some of which found its way into the "Principles". And the U.K., France, Germany, the Netherlands, and Finland all contributed their part to the success of the Presidential consultation. This again points to the great potential of the Europeans in the nonproliferation regime, but these were national rather than Union achievements.

Two additional questions must be answered. Would a coherent position on the review have been possible? And would it have been desirable or should the diversity of diplomatic approaches of fifteen different countries be preserved as the more valuable asset for the nonproliferation regime?

As to the first question, the successes of the Presidency's ad hoc attempts to work out papers on Art. I and II and to present a statement on Art. IV are indications of what would have been possible with adequate advance preparations. In fact, the only aspect where compromising national positions would have run into serious difficulties under all circumstances is certainly Art. VI. Particularly the brief time available for the most recent

accessions to find the right balance between national positions and Union solidarity might have prevented commonality under all circumstances. On the other hand, it might have been possible to develop a common approach based on the lowest common denominator on nuclear disarmament (very much in the sense of the language found in the "Principles and Objectives"), and to leave the individual countries at liberty to go beyond this in additional national positions.

As to the second question, we should not forget that the Union presents a good nonproliferation microcosm with nuclear and non-nuclear weapon states, allied and neutral countries, nuclear exporters and non-exporters, nuclear energy producers and antinuclearists. If this group of countries can agree on points of substance, this may well serve as a basis of consensus in the Conference at large. In this sense, efforts at shaping common positions can have a salutary effect on the regime as a whole.

In addition, European unity and integration is in any case a laudable objective connected to preserving peace on a continent so often plagued by war in the past. Attempts at coordinating foreign policy were introduced as a consequence of the experience that integration without this important political aspect lacked a vital dimension. For this reason, strengthening the joint approach is laudable not only because it helps the cause of nonproliferation, but also because it is a high-value objective in its own right.

3. *What does this experience tell us about the Common Foreign and Security Policy (CFSP), the ambition of the fifteen member states to pool their resources in order to achieve more influence in world politics?*

CFSP has been much criticized, but we give a largely positive answer to this question. There is considerable common ground despite the above-mentioned structural and ideological divisions, on which it is possible to conduct a solid body of common policy. The Joint Action was an outstanding success, in that it combined the efforts of member states towards a common goal, provoked activities that would otherwise most likely not have been undertaken, and made a discernible, significant contribution to the successful extension outcome. Contrary to many abstract assessments, the power of JA does not rest in its provision for majority voting over procedures. This possibility was never invoked. Its strength lies, first, in the way it gives common direction - and permanent process control - to the otherwise diverse diplomatic activities of member states, in much the same way as a laser beam directs all particles in a single direction. The contrast between the successful preparation of the extension, and the disappointing performance concerning the review, are very telling in this regard.

The second significant aspect here is the strategic dimension of JA. In our case, it extended through three presidencies; including the first preparatory stage, even through four. The first proposal was made during the Belgian Presidency. The decision to undertake the JA was prepared and taken at the Corfu summit, under the Greek Presidency. The substance of the JA was worked out and initial action taken during the Presidency of Germany, and the JA was brought to its conclusion under the French Presidency. The ad-hocism of six-months presidencies, one of the most serious handicaps of the European institutional system, can certainly be overcome by using the instrument of JA more extensively.

Taken together, these findings refute the most pessimistic diagnoses of CFSP that are so much en vogue in journalistic and even academic writings. Of course, the EU does not work or act like a nation-state. It consists of fifteen countries that preserve their own identity at the same time as they develop a joint identity through the process of their continuing cooperation. When they work hard to develop a joint position, looking for commonalities and compromises, and then use the instruments at hand with determination and precision, as in preparing the extension decision, they can develop and conduct a foreign policy that is a common cause indeed. If they do not clarify their disputes well in advance and do not employ the instruments provided by the Maastricht Treaty, commonality will not emerge spontaneously. This is what happened with the review phase of the Conference.

4. *What should the Europeans do to improve their nonproliferation policy?*

After the experiences of the Extension Conference, Europeans should take up the "unfinished business" described above. The following aspects should be at the center of European efforts (it goes without saying that past activities, such as preparing common positions for the IAEA Board of Governors and General Conference sessions should continue unabated):

a) *Attempts to reduce the gaps that threaten European unity:*

- Regular consultations and discussions on issues of nuclear weapons and nuclear disarmament. It will not be possible to completely eliminate the differences of opinion and interest between Europe's nuclear and non-nuclear weapon states. But it should be possible to broaden the basis of commonality and reduce the area of disagreement by shaping viable compromises. What is called for are much closer and more frequent consultations between the delegations at the CD, where European countries are present as members or observers, and similar consultations between the disarmament offices in the capitals that prepare the instructions for CD delegations.
- Concise and precise preparations for the positions of the EU during the preparatory stage for the next Review Conference. In particular, the CSFP CONUC group should be charged with working out position papers at least on Articles III and IV, if possible on the other articles, too, well in advance of the conference, possibly as early as 1997, and with updating them regularly, if appropriate, as the review conference approaches. This necessitates clarification of the status of EU member countries' membership in the G-11. The continuation of such membership would not be excluded, but a priority would have to be given to EU efforts to achieve common positions.

b) *Shaping nonproliferation policy for those regions that are of immediate security interest to Europe, namely Africa, the Middle East, and the former Soviet Union:*

- On Africa, the EU should pursue a policy of vigorous support for the emerging African nuclear weapon free zone. This should include an early declaration that all EU members support this zone and encourage regional powers to become original parties; that the respective protocols will be signed by those EU members in a position to do

so; that security assurances will be given to member states of the zone; and that a (modest) technical and financial aid as well as technical cooperation in the civilian uses of nuclear energy will be made available to the organization that will come into existence together with the zone.

- For the Middle East, a stronger involvement of Europe in the arms control process is warranted. This would include a diplomatic campaign for early negotiations on a Middle East zone free of weapons of mass destruction, support for developing concepts of how such a zone would be verified, based on European experiences, participation in whatever security guarantees might be developed for the states party to such a zone, and a focussed export control policy to prevent potential proliferators in the region acquiring the equipment, materials and technology needed to develop weapons of mass destruction.
- In the former Soviet Union, efforts by member states and the Commission to help mitigate the four proliferation dangers arising from the superpower's decay need to be enhanced and far better coordinated. These tasks include
  - assistance in the guarding and dismantling of nuclear weapons and the safe and secure disposal of the fissile material from these weapons
  - assistance in ensuring physical security and providing effective material accountancy in the civilian as well as the military nuclear sector
  - assistance in building and maintaining robust and efficient export control systems
  - assistance in employing nuclear experts with a view to preventing any motivation to move to proliferating countries.

In all these areas, efforts are under way. They are still too small-scale and too badly coordinated to reach optimum effectiveness.

- c) *Working for the implementation of the "Objectives and Principles". Apart from the principles and objectives dealing with disarmament matters, there are at least three important areas of work:*
- Striving for universality of the NPT. EU members should continue with attempts to convince bystanders to join the NPT. Besides the most important "hard cases", there are states where success should be possible, such as Djibouti, or Brazil. Continuation of this effort would amount, in fact, to a continuation of the 1994 Joint Action; universality, it is recalled, was one of the objectives the Joint Action was to pursue.
  - Directing civilian nuclear aid towards Treaty members from the developing world. EU should underwrite "footnote a" projects in the IAEA only for NPT members (and parties to commensurate international instruments, such as the Treaty of Tlatelolco). The same principle should apply in bilateral and Commission aid in the nuclear sector.

- Preparing and conducting a dialogue on export controls, and providing more transparency.

To give European nonproliferation policy a more long-term, strategic orientation, each presidency should initiate at least one, ideally more Joint Actions. As discussed above, the time-overlap Joint Actions create between presidencies obviates one of the most obvious disadvantages of Union organization. This most powerful instrument of CFSP should thus be used extensively.

European performance at the 1995 NPT Review and Extension Conference was marked by both success and failure, and displayed both division and unity. It proved that a Common Foreign and Security Policy is well within reach, but that hard work is needed to achieve and implement it. Europeans must strive hard to overcome the obvious shortcomings, and to build on the great successes of their recent nonproliferation policy. The game is not over with the indefinite extension of the NPT. Nuclear proliferation remains a problem, as does the stability of the nonproliferation regime. European efforts are needed to help solve these problems.

## List of Abbreviations

<b>ABACC:</b>	Argentina/Brazil Agency for Accounting and Control
<b>CD:</b>	Conference on Disarmament
<b>CFSP:</b>	Common Foreign and Security Policy
<b>CONUC:</b>	CFSP Committee on Nuclear Affairs
<b>COREU:</b>	Communication system linking the governments of the EU
<b>CTBT:</b>	Comprehensive Test Ban Treaty
<b>EC:</b>	European Communities
<b>EPC:</b>	European Policy Cooperation
<b>EU:</b>	European Union
<b>EURATOM:</b>	European Atomic Energy Community
<b>G-10:</b>	Group of 10 (Australia, Austria, Canada, Danmark, Finland, Ireland, Netherlands, New Zealand, Norway, Sweden)
<b>G-11:</b>	Same, plus Hungary
<b>IAEA:</b>	International Atomic Energy Agency
<b>JA:</b>	Joint Action
<b>MC:</b>	Main Committee
<b>NNWS:</b>	Non-nuclear-weapon states
<b>NPT:</b>	Nuclear Nonproliferation Treaty
<b>NSG:</b>	Nuclear Suppliers' Group
<b>NWS:</b>	Nuclear-weapon states
<b>PUNE:</b>	United Nations Conference on the International Cooperation in the Peaceful Uses of Nuclear Energy
<b>SALT:</b>	Strategic Arms Limitation Treaty