

**Preparing for 2010: Getting the Process Right**  
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**Session III: Working within the confines of the existing strengthened review process**

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**(Views expressed are entirely my own)**

The drafters of the strengthened review process, both in 1995 and its follow up in 2000, can express little joy at the way their intentions turned out when sessions of the Preparatory Committee tried to interpret and then practically apply and execute the content in those texts.

We struggled through the 97-99 sessions in our compulsion to seek consensus and did not manage to make any substantive recommendations to the Review Conference although we were better placed from a procedural point of view going into that Conference than we were in 2004. It is questionable whether we fulfilled the intention of the drafters and succeeded in using the PrepComs as a measuring stick (or benchmarks) of our progress to live up to the principles and objectives for nuclear non-proliferation and disarmament. The sessions lacked continuity and there was some “reinventing of the wheel” at each one but there was a feeling – among many – that PrepComs served a purpose in holding “the feet of the NWS to the fire” and providing the opportunity to specifically address relevant issues in more depth, as well as to “look forward”, as decreed in para.7 of Decision 1. The 2000 Review Conference was a success and in hindsight some of it should be credited to the strengthened review process – however, difficult it was to discern it. At its least obvious all the efforts to drive at consensus over three years resulted in many of the players getting to know each other reasonably well thereby contributing to the level of trust and compromise, especially among those negotiating the 13 steps during the 2000 Review Conference. However, during the dynamics of that Conference, the perceived shortcomings of the 95 SRP were addressed by the drafters of the “improved” SRP without the advantage of knowing that all would end well.

The 2000 “improved” SRP, while reaffirming Decision 1 of 1995 also went some way in clarifying and enhancing the mandate of the Preparatory Committee. It also took away the need to seek consensus at the first two sessions and made the third session, and as appropriate, the fourth session vital in seeking a consensus report containing recommendations to the Review Conference. Furthermore, the procedural arrangements for the Review Conference should be finalized at the last session of the Preparatory Committee.

Like the 95-2000 review cycle, we struggled through the previous cycle, albeit with some semblance of continuity in 2002 and 2003 and grappled with the interpretation of how the “factual summary” would come about and also employed precedence on other issues as established by previous gentlemen’s agreements. This all came virtually to nought in

2004 with agreement only on the bare bones of procedure needed for the Review Conference to be held.

Hopefully we have learnt some lessons along the way as the unsuccessful substantive outcome of 2005 now brings the manner in which we implemented the SRP for closer scrutiny and possibly some adaptation.

The following in trying to respond to some of the guiding questions:

- The atmosphere going into the 2007 PrepCom is arguably more charged than 2005. There is an urgent need to look at the PrepCom as the first step in the context of the entire five year review cycle. Caution must therefore be exercised not to further contaminate an already charged atmosphere and focus on taking the process forward step by step at each session.
- Consensus is desirable and despite the recent experiences of cherry picking on commitments by some NWS, is essential on “forward looking” or “action implementation” in whatever format they end up being reflected at the Review Conference.

The need for consensus at Review Conferences is not featured in the Treaty text although from the first review in 1975 on, the rules of procedure have decreed that every effort should be made to reach agreement on substantive matters by means of consensus. This has only been achieved at three of the seven Review Conferences (75, 85 and 2000) albeit that positive outcomes are not dependent on consensus Final Documents. Other products like decisions, resolutions or declarations can make up constituent components and result in a successful Review Conference, for example the 1995 NPTREC.

- Nothing prevents the Committee from changing the way it operates and still remaining within the confines of the existing review process.

Although the language of the 2000 SRP clarified some aspects, it was not clear on how the factual summary was to come about. Who would produce it and by which means? This was essentially left up to interpretation and Ambassador Salander set the example by directly taking the responsibility for the summary himself and consulting with key delegations in order to reflect as faithfully as possible the debate and deliberations. Despite skilful efforts to do just that at the sessions, the text remained that of the Chairperson and delegations took the floor at the end of the sessions to underline and record their differences with the summaries. It became clear in the previous cycle that it was impossible to summarise the debate in a manner that would make each speaker feel that his or her delegation’s position had been reflected in a fair, accurate and balanced manner. What therefore is the utility of the “factual summary” exercise if interpreted in the manner it was in 2002-2004. Clearly this is any area where some re-interpretation can be done and a new path followed without contravening the “factual summary” requirement.

Despite other possible scenarios that could be envisaged, the approach of a “chairman’s summary” still appears to be the most practical and realistic way of achieving a “factual summary” in the years ahead. However, the summary could reflect in broad strokes the discussion and deliberation on the consideration of “principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality” and specific matters of substance relating to the Treaty and Decisions 1 and 2, as well as the resolution on the Middle east adopted in 1995 and the outcomes of subsequent Review Conferences, including developments affecting the operation and purpose of the Treaty. The summary need not be long nor go into detail. A “factual summary” would still be achieved and emphasis can rather be given to laying the groundwork for the Review Conference by adding a “rolling” compendium of all proposals – contained in official documents of the meeting as well as in statements (where the text has been circulated) in a summarized manner. The compendium from the first session would just be added to at the second and third sessions therefore avoiding repetition of the same proposal and updating proposals, if there have been changes. Moreover, the Chairpersons at each session should actively encourage delegations with similar proposals or with proposals on similar issues to work together with a view to merging them as possible recommendations by the end of the third session.

Turning to the third session, it was undoubtedly the intention of the drafters of the 2000 SRP that it should endeavour to seek common ground for submission to Review Conference as recommendations on substance and that it should finalise whatever outstanding procedural arrangements are required for the Review Conference. The compendium of proposals could therefore at the end of the third session be recommended to the Review Conference for further consideration. This could, if necessary, be accompanied by wording to the effect that the proposals do not enjoy consensus – unless some was found during the cycle and reflected as such – and were the product of the preparatory process and do not in any manner prejudice or take precedence to any other proposals submitted to the Review Conference.

The compendium of proposals should make it easier for the Chairman of the Main Committees at the Review Conference as they would only need to incorporate new proposals into their efforts. It should also result in more time being available to reach a consensus on “forward looking” elements.

Procedural arrangements that need to be taken during the Preparatory Process can be reflected as separate recommendations in the report at each session. These include the following:

- Nominations for Chairpersons of the PrepComs (ideally at the first session but can be staggered to agree to the next Chairperson);
- Dates and venues of the PrepComs and RevCon (first session);

- Rules of procedure for RevCon (third session, ROP not formally adopted for PrepComs but draw on previous RevCon mutatis mutandis and applied where relevant);
- RevCon President and other officers (third session);
- RevCon's secretary-general (request first, notified third session);
- Financial arrangements for the entire review cycle (requested first session when dates and venues known and decided subsequent session);
- Background documentation, if needed (third session);
- Participation (each session based on previous RevCon rules of procedure and with regard to NGOs on para. 9 of the 2000 SRP);
- Summary records (at first session for PrepComs and third for RevCon).

The third PrepCom will also need to recommend a draft agenda for the RevCon. The finalization of the agenda, in conjunction with an indicative timetable, proved among the most crippling factors at the 2005 RevCon and despite its inherent procedural nature, underlined major differences between key groups of parties on substantive policy issues. If the third PrepCom fails to finalise a draft agenda consideration could be given to calling a fourth PrepCom, as provided for in the SRP, to finalise this and also reach some understanding how the work timetable would reflect it. The PrepCom need only be a few days and even held just before the Review Conference in order to try and avoid a repeat of 2005.

- The plenary general exchange could be deleted from PrepCom sessions. This would avoid the repetition found at PrepComs as the issues at the general exchange are dealt with in greater depth in the cluster and specific time meetings. This would also save some time for more in depth discussion and save on summary records which take a long time to produce and are very costly. An issue of concern though would be the access of intergovernmental organizations and non-governmental organizations should other meetings – other than the general debate in plenary be closed to them. All meetings are open, unless decided otherwise and it is hoped that all, or as many meetings as possible, would enjoy IGO and NGO access.
- The cluster/specific time structure for the PrepComs should be retained. The experience of the preparatory process from 1995 has been one of intense jostling over this despite its incorporation in the SRP decisions and agreements. It is now established practice which has permitted part of the package of deals struck in 1995 and reaffirmed in 2000 to be exercised thereby lending credence and confidence to those deals. Attempts to detract from this would impact negatively on the few vestiges that are clung to by a clear majority of states to justify to themselves – among other considerations – that there was a bargain struck in exchange for indefinite extension. This may sound far fetched to some but it does not obviate the fact that this is regarded as trying to take away any assurances that important issues to parties, including nuclear disarmament, will be addressed in the preparatory process and at the Review Conference.