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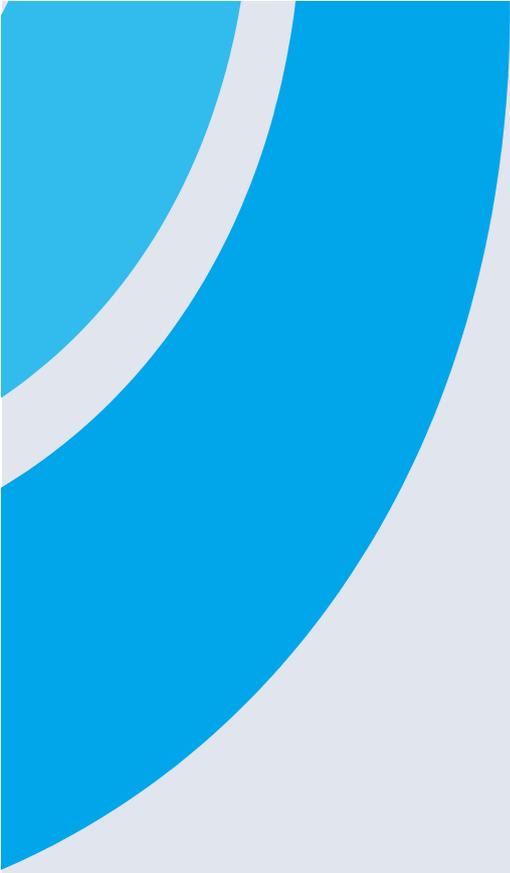
EXAMINING NPT REVIEW
CONFERENCE COMMITMENTS

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CONTENT

INTRODUCTION	1
THE 1995 NPT 'EXTENSION PACKAGE'	3
THE 2000 FINAL DECLARATION	5
THE 2010 'ACTION PLAN'	7
IMPLEMENTATION OF PREVIOUS COMMITMENTS AND THE 2020 REVIEW CONFERENCE	9
The collapse of bilateral nuclear arms control	9
Multiplying initiatives on nuclear disarmament	10
Perceptions and reality	11
TPNW	11
Middle East	12
STRENGTHENED REVIEW PROCESS	15
NPT REVIEW PROCESS AND THE MEANING OF CONSENSUS	17
Consensus in 2020?	17
POSSIBLE OUTCOME(S) IN 2020	19
CONCLUSION	23

LIST OF ACRONYMS AND ABBREVIATIONS

ABM Treaty	Treaty on the Limitation of Anti-Ballistic Missile Systems
CTBT	Comprehensive Nuclear-Test-Ban Treaty
FMCT	fissile material cut-off treaty
IAEA	International Atomic Energy Agency
NNWS	NPT non-nuclear-weapon State
NWS	NPT nuclear-weapon State
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
TPNW	Treaty on the Prohibition of Nuclear Weapons
WMD	weapons of mass destruction

ABOUT THE AUTHOR



TARIQ RAUF has attended all NPT meetings since 1987 as a delegate, including as Senior Advisor to the Chair of Main Committee I (nuclear disarmament) in 2015 and to the Chair of the 2014 PrepCom, Alternate Head of the IAEA NPT Delegation, and Non-Proliferation Expert with Canada's delegation. He played a key role at the 1995 and 2000 NPT extension conferences on the strengthened review process, and in 2005 in bringing the first session of the PrepCom to Vienna. He was Head of Verification and Security Policy at the International Atomic Energy Agency.

INTRODUCTION

The international nuclear arms control community will mark the fiftieth anniversary of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on 5 March 2020. Yet, the more significant anniversary will fall on 11 May—the date in 1995 when the NPT was rendered of indefinite duration.

Few would have thought that a quarter century later the commitments on nuclear disarmament made in connection with indefinite extension in 1995 would be called into question and the slate swept clean of follow-on commitments agreed in 2000 and 2010 in the framework of the Treaty's quinquennial review conferences. Fortunately, the commitments made regarding peaceful uses of nuclear energy, safeguards, security and safety remain in place as generally these have not been too controversial and have been implemented to a significant degree.

By all accounts the NPT has been a phenomenal success in its principal objective of preventing further proliferation of States with nuclear weapons—only one NPT non-nuclear-weapon (NNWS) State has broken out to acquire nuclear weapons.¹ India, Israel and Pakistan never signed the Treaty, remain outliers as each went on to develop, test and deploy nuclear weapons. South Sudan, established in 2011, has yet to accede to the NPT. Four out of the five nuclear-weapon-free zones came about under the NPT.² Belarus, Kazakhstan and Ukraine acceded to the Treaty as NNWS after renouncing Soviet nuclear weapons left behind in their territories.³ Argentina and Brazil gave up military nuclear programmes, established a mutual nuclear verification system with the International Atomic Energy Agency (IAEA) and joined the NPT.⁴ South Africa unilaterally dismantled its handful of nuclear weapons and acceded to the Treaty.⁵

The five nuclear-weapon States (NWS) party to the NPT hold themselves accountable for their nuclear weapon policies only under the NPT review process and in no other forum. It must be recognized that the Russian Federation and the United States each have reduced their respective nuclear weapon arsenals by more than 80% over their Cold War heights, yet they still hold some 90% of the nearly 14,000 nuclear weapons in existence today.⁶ The United States remains the only NWS with land-based nuclear weapons deployed outside its territory—about 180 in five NATO NNWS. France and the United Kingdom have capped their arsenals (with France being the only NWS to have destroyed its nuclear test site and production facilities for weapons-grade nuclear materials). All five NWS have signed the Comprehensive Nuclear-Test-

¹ The Democratic People's Republic of Korea served notice on 10 January 2003 that it was withdrawing from the NPT as provided for in article X.1 of the Treaty; it went on to test nuclear weapons starting in October 2006.

² The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (1967) pre-dates the NPT, post-NPT nuclear-weapon-free zone treaties are: South Pacific Nuclear Free Zone Treaty (1985), Treaty on the Southeast Asia Nuclear Weapon-Free Zone (1995), African Nuclear Weapon Free Zone Treaty (1996), and Treaty on a Nuclear-Weapon-Free Zone in Central Asia (2006).

³ Arms Control Association, "The Lisbon Protocol At a Glance", July 2017, <https://www.armscontrol.org/node/3289>.

⁴ The Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials was established on 18 July 1991, following the signing of the Agreement between Argentina and Brazil for the Exclusively Peaceful Use of Nuclear Energy (Bilateral Agreement) which entered into force in December 1991, <https://www.abacc.org.br/en/the-abacc/about>.

⁵ See Noel Stott, Amelia du Rand and Jean du Preez, "The Treaty of Pelindaba: Beyond Entry-into-Force of the African Nuclear-Weapon-Free Zone Treaty", March 2010, <https://oldsite.issafrica.org/uploads/Handbooks-2008-PelindabaGuideENG.PDF>.

⁶ Federation of American Scientists, "Status of World Nuclear Forces", <https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/>.

Ban Treaty (CTBT) albeit China and the United States are hold outs as regards ratification and holding up entry-into-force.⁷

In this era where the foundations of Cold War nuclear arms control are being cast aside in favour of unilateral renunciation of negotiated treaties, undermining of bilateral and multilateral diplomacy and breakdown of habits of civilized dialogue, the NPT stands as one of the last stalwarts of an international legal order that holds the five NWS accountable for disarmament and 186 NNWS accountable for the non-diversion of their nuclear activities from peaceful to weapons purposes through safeguards (verification) implemented by the IAEA.

Dark clouds hover over the prospects of an agreed substantive review this year of the implementation of the NPT during 2015-2020, and an agreed set of measures to be implemented during 2020-2025, to promote the full implementation of the Treaty across its three pillars (nuclear disarmament, nuclear non-proliferation, and peaceful uses).

The present international environment is not conducive to rallying States behind a common position on nuclear disarmament. In addition, many delegates taking part in the NPT review process are not up to speed on the modalities of the strengthened review process for the Treaty agreed in 1995 and clarified in 2000. They unfairly blame the review process for their inability to make the required political compromises to achieve consensus outcomes at quinquennial review conferences and their preparatory committees.⁸

This paper discusses the commitments undertaken by States Parties in the consensually agreed outcomes of the 1995, 2000 and 2010 NPT review conferences, especially as they relate to nuclear disarmament pursuant to article VI of the Treaty, and makes recommendations for their follow-up at the 2020 NPT Review Conference. It also will touch upon possible ways in which States Parties could produce an agreed outcome and in what format, as well on the practice of seeking “consensus” on the outcome documents as required under rule 28.1 of the Rules of Procedure.⁹

⁷ Along with NPT NNWS Egypt and the Islamic Republic of Iran; the Democratic People’s Republic of Korea, India and Pakistan have yet to sign, and Israel has not ratified.

⁸ 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part I, Decision 1, ‘Strengthening the Review Process for the Treaty’, NPT/CONF.1995/32 (Part I), 1995, p. 8; and 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, ‘Improving the Effectiveness of the Strengthened Review Process for the Treaty’, NPT/CONF.2000/28 (Parts I and II), 2000, p. 29.

⁹ Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final report of the Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2020/1, 20 May 2019, ‘Draft Rules of Procedure’, annex III, p. 33.

THE 1995 NPT 'EXTENSION PACKAGE'

In accordance with article X.2, 174¹⁰ States Parties present decided without a vote on 11 May 1995 to extend the Treaty indefinitely based on an interlinked and indivisible 'package' of three decisions and a resolution.¹¹ This package comprised the decisions on strengthening the review process for the Treaty, principles and objectives for nuclear-non-proliferation and disarmament, extension of the Treaty, and a resolution on the Middle East.

The principles and objectives contained recommendations and actions for nuclear non-proliferation and disarmament, including the negotiation of a CTBT no later than 1996, immediate commencement and early conclusion of a fissile material cut-off treaty (FMCT), and determined pursuit by the NWS of systematic and progressive efforts to reduce nuclear weapons globally with the ultimate goal of eliminating those weapons. Other elements of the principles and objectives included the strengthening of IAEA safeguards, that new nuclear supply arrangements should require as a necessary precondition acceptance of IAEA full-scope safeguards and internationally legally binding nuclear non-proliferation obligations, and facilitating cooperation in peaceful uses of nuclear energy.¹²

The resolution called for the establishment of a zone free of nuclear weapons and other weapons of mass destruction (WMD) in the Middle East.¹³

In strengthening the review process, the preparatory committee was mandated to consider both procedural and substantive matters over 10 working days (as opposed to five working days). Focused discussions could be carried out in subsidiary bodies of each of the three main committees at review conferences. Future review conferences were mandated to: (1) look forward as well as back; (2) evaluate the implementation of the NPT during the period under review; (3) identify the areas in which, and the means through which, further progress should be sought in the future; and (4) also address specifically what might be done to strengthen future implementation and achieve its universality.¹⁴ These provisions were reaffirmed in 2000.

¹⁰ The author, member of Canada's delegation, on instructions had collected written support for indefinite extension from 111 States Parties thus forcing the hand of the President to seek an extension decision without a vote on the basis of the extension package.

¹¹ Tariq Rauf and Rebecca Johnson, "After the NPT's Indefinite Extension: The Future of the Global Nonproliferation Regime", *The Nonproliferation Review*, Fall 1995, pp. 28-41.

¹² Decision 2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament", NPT/CONF.1995/32 (Part I).

¹³ Resolution on the Middle East, NPT/CONF.1995/32 (Part I), annex, https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/Resolution_MiddleEast.pdf.

¹⁴ Decision 1, "Strengthening the Review Process for the Treaty", NPT/CONF.1995/32 (Part I), p. 8, paras. 3-7.

THE 2000 FINAL DECLARATION

At the 2000 review conference, 157 States present agreed by consensus for the first and only time on a fully negotiated 150-plus paragraph final document. This was an unexpected success given the lack of progress in the intervening five-year cycle on the 1995 nuclear disarmament commitments as well as on implementation of strengthened review process modalities.¹⁵

The 2000 final document was remarkable not only for its comprehensive review of the implementation of the Treaty during 1995-2000, but for its so-called 13 'practical steps' for the systematic and progressive efforts to implement article VI, including an unequivocal undertaking by the NWS to accomplish the total elimination of their nuclear arsenals.¹⁶ In so doing, it was understood that nuclear disarmament was not necessarily conditional on 'general and complete disarmament', as there is no reference in the "practical steps linking nuclear disarmament with general and complete disarmament"¹⁷ or to article VI in this context.

In their joint statement at the 2015 review conference, the five NWS "affirm[ed] the shared goal of nuclear disarmament and general and complete disarmament ... as referenced in the preamble and provided for in Article VI of the NPT", and thus they renounced the above understanding from 2000 and made nuclear disarmament conditional on general and complete disarmament.¹⁸

Among the "practical steps" were:

1. early entry-into-force of the CTBT;
2. immediate start of negotiations in the Conference on Disarmament on an FMCT and the conclusion of a treaty within five years;
3. early entry-into-force of START II and conclusion of START III as soon as possible while preserving and strengthening the Treaty on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty) as a cornerstone of strategic stability and as a basis for further reductions in strategic offensive systems;
4. further reduction of non-strategic nuclear weapons;
5. placing excess military nuclear materials under IAEA monitoring; and
6. engagement as soon as appropriate of all the NWS in a process leading to the total elimination of nuclear weapons.

¹⁵ Tariq Rauf, "PrepCom Opinion: Farewell to the NPT's Strengthened Review Process?", *Disarmament Diplomacy*, no. 26, May 1998; "Interview: Ambassador Abdallah Baali on the 2000 NPT Review Conference", *The Nonproliferation Review*, Winter 2000, pp. 1-9; and "An Unequivocal Success? Implications of the NPT Review Conference", *Arms Control Today*, July/August 2000.

¹⁶ John Burroughs, "Disarmament Agenda Agreed at 2000 NPT Review Conference", *Report for the Abolition 2000*, Global Network to Eliminate Nuclear Weapons, 7 July 2000, <http://www.lcnp.org/disarmament/npt/A2000NPT.htm>; and Ambassador Norman A. Wulf, "Observations From the 2000 NPT Review Conference", *Arms Control Today*, November 2000.

¹⁷ Step 11 states: "Reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control".

¹⁸ See, "Statement by the People's Republic of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America to the 2015 Treaty on the Non-Proliferation of Nuclear Weapons Review Conference", 30 April 2015, para. 5, <https://www.un.org/en/conf/npt/2015/statements.shtml>.

In addition, in 2000, while reaffirming the 1995 strengthened review process it was agreed that each session of the preparatory committee should prepare a summary report and that the final session should make every effort to produce a consensus report with recommendations to the review conference.

THE 2010 'ACTION PLAN'

The 2010 review conference was unable to agree on a final document on the review of the Treaty but it did produce a menu of 64 “conclusions and recommendations for follow-on actions” that were not fully negotiated but were distilled by the conference president from the reports of the three main committees.¹⁹

In the 2010 ‘action plan’, ‘the ‘unequivocal undertaking’ to accomplish the total elimination of nuclear weapons was reaffirmed. For the first time in a review conference States Parties expressed deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons, even though this is referenced in the preamble of the NPT.²⁰ It also reaffirmed the need for all States to comply with international humanitarian law. In the action plan, the 13 practical steps from 2000 were reduced to seven ‘concrete’ steps that promote international stability, peace and undiminished and increased security. These included:

7. rapidly move to an overall reduction in the global stockpile of all types of nuclear weapons;
8. consider the legitimate interests of the NNWS in further reducing the operational status of nuclear weapons; and
9. reduce the risk of accidental use of nuclear weapons.

Given the failure of the 2015 review conference,²¹ the 2010 ‘actions’ are considered by some as the latest valid guidance agreed by States Parties. It must be stated, however, that item 16 of the agenda for the review conference calls for a review not only of the Treaty but also of the agreed outcomes of 1995, 2000 and 2010 that still remain valid and to be implemented.

¹⁹ See Jayantha Dhanapala, “Evaluating the 2010 NPT Review Conference”, in Tariq Rauf and Jayantha Dhanapala, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, SIPRI, 2017, pp. 181–198; and Sharon Squassoni, “Grading Progress on 13 Steps Toward Disarmament”, policy brief, Carnegie Endowment for International Peace, 2009, https://carnegieendowment.org/files/13_steps.pdf.

²⁰ Preambular paragraph 2 of the NPT refers to “the devastation that would be visited upon all mankind by a nuclear war ... and to take measures to safeguard the security of peoples”.

²¹ For an insightful account see, William C. Potter, “The Unfulfilled Promise of the 2015 NPT Review Conference”, *Survival*, vol. 58, no. 1, 2016, pp. 151–178; and for another view, Tariq Rauf, “The 2015 NPT Review Conference: Setting the Record Straight”, SIPRI, 24 June 2015, <https://www.sipri.org/node/384>.

IMPLEMENTATION OF PREVIOUS COMMITMENTS AND THE 2020 REVIEW CONFERENCE

The record of practical implementation of the 1995, 2000 and 2010 agreed commitments on nuclear disarmament remains poor. Given space constraints it is not possible to provide a detailed assessment; however, it must be recognized that: (a) the ABM treaty, placing ex-weapons fissile material under IAEA verification, diminishing the role of nuclear weapons, further reductions globally of nuclear weapons, reductions in non-strategic nuclear weapons (including the INF treaty²²), all have been abandoned, and the future of New START remains at risk; (b) the entry-into-force of the CTBT is held up by four NPT States Parties,²³ and negotiations on an FMCT have yet to start; and (c) the agreement that all new nuclear supply arrangements must require full-scope IAEA safeguards as a condition of supply has been disregarded, as India—a non-NPT State—has been provided nuclear fuel cycle items in violation of this agreement.

The 1995 resolution on the Middle East still remains to be implemented and indeed has been, along with nuclear disarmament, one of the most contentious issues for review cycles including in 2005 and most recently in 2015.

Regardless of the current security environment, pursuant to the NPT framework, a critical step for the 2020 review conference is to reaffirm agreed outcomes on nuclear disarmament from the 1995, 2000 and 2010 NPT review conferences. While some of these may have been overtaken by events or abandoned as summarized above, the remaining agreed steps/measures still continue to be relevant and should be on the table to be implemented during the next review cycle. A number of these key elements are discussed below.

The collapse of bilateral nuclear arms control

This year's review conference will take place in an environment where the era of traditional nuclear arms control is said to be over.²⁴ With a new administration in the United States in 2017, marked changes became evident in US views on the role and use of nuclear weapons, including on sensitive NPT topics such as nuclear disarmament and the Middle East. In response, the Russian Federation too revised its nuclear weapons doctrine. Both NWS are engaged in comprehensive modernization of their nuclear weapons systems including strategic nuclear delivery vehicles based on novel technologies, and in their published defence strategy or doctrine have lowered the threshold for the use of nuclear weapons.

At the 2018 NPT preparatory committee session in Geneva, the United States surprised many parties by announcing that:

if we continue to focus on numerical reductions and the immediate abolition of nuclear weapons, without addressing the real underlying

²² The 1987 US-USSR Treaty on Intermediate- and Shorter-Range Nuclear Forces (INF) was abandoned by the United States on 2 August 2019 citing Russian non-compliance; the Russian Federation too did likewise and countercharged the United States with violations.

²³ China, Egypt, the Islamic Republic of Iran and the United States have yet to ratify (the United States rejected ratification in October 1999 and since then there has been insufficient support for it in the US Senate); China says it will ratify when the United States does; and Egypt and the Islamic Republic of Iran have linked their ratifications to Israel's renunciation of nuclear weapons.

²⁴ Daniel R. DePetris, "RIP: The Era of Arms Control is Over", *The National Interest*, 22 October 2019.

security concerns ... we will advance neither the cause of disarmament nor the cause of enhanced collective international security ... All NPT Parties bear responsibility for working together to improve the geopolitical environment and create the conditions for nuclear disarmament ...²⁵

In essence, the United States proposed that *all* NPT States Parties, not just the NWS, bear equal responsibility for working together to improve the geopolitical environment and thus creating the conditions for nuclear disarmament. In other words, the responsibility for enabling nuclear disarmament by the NWS was made conditional on NNWS actions. Furthermore, the approach was based on starting with a blank slate on nuclear disarmament and stepping away from past commitments under the NPT review process.

In 2019, the United States held two selective meetings on creating the 'environment' for nuclear disarmament and set up three sub-working groups with a two-year programme of work.²⁶

Multiplying initiatives on nuclear disarmament

States Parties, in their discussions on nuclear disarmament in the NPT review process, do not really focus on the previously agreed outcomes but instead advance several competing approaches that now are hopelessly stalemated. The Non-Aligned Movement NPT States advocate a three-phase time bound 'plan of action';²⁷ in contrast the Western States stand by a 'step-by-step' approach²⁸ which has been slightly modified by a cross-cutting group called the Non-Proliferation and Disarmament Initiative²⁹ that calls for 'building blocks'³⁰; while another such group, the New Agenda Coalition supports a 'taking forward nuclear disarmament' approach;³¹ Sweden has proposed 'stepping stones';³² a number of NNWS have developed the 'humanitarian consequences of nuclear weapons'³³ approach that led to the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW); and the United States advanced the concept of 'creating the environment for nuclear disarmament'.³⁴ These different approaches have clashed during the 2015-2019 NPT discussions and

²⁵ Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, "Creating the Conditions for Nuclear Disarmament (CCND)", NPT/CONF.2020/PC.II/WP.30, 18 April 2018.

²⁶ See Shannon Bugos, "U.S. Hosts Nuclear Disarmament Working Group", *Arms Control Today*, September 2019; and "CEND Establishes Two-Year Work Program", *Arms Control Today*, January/February 2020.

²⁷ NPT/CONF.2020/PC.III/WP.10, 21 March 2019, paragraphs 4-8.

²⁸ Ambassador Matthew Rycroft, "A Step-by-Step Approach to Global Nuclear Disarmament Is What We Need to Build Trust and Confidence", 27 March 2017, <https://www.gov.uk/government/speeches/a-step-by-step-approach-to-global-nuclear-disarmament-is-what-we-need-to-build-trust-and-confidence>.

²⁹ Ambassador John Quinn, "Key points: building blocks presentation", 1 September 2015, https://www.baselpeaceoffice.org/sites/default/files/imce/FrameworkForum/disarmament_-_presentation_ambassador_john_quinn_on_1_september_2015.pdf; the NPDI set up in 2010 involves ten countries: Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the United Arab Emirates.

³⁰ "Building Blocks for a World without Nuclear Weapons", A/AC.281/WP4, 27 June 2013.

³¹ NPT/CONF.2020/PC.III/WP.35, 26 April 2019, paragraphs 16-17.

³² NPT/CONF.2020/PC.III/WP.33, 25 April 2019, pp. 2-6.

³³ NPT/CONF.2020/PC.III/WP.44, 26 April 2019, paragraphs 12-13.

³⁴ NPT/CONF.2020/PC.III/WP.43, 26 April 2019.

competing views are bound to be manifest at the 2020 NPT review conference, thus making a compromise outcome practically impossible.

Perceptions and reality

Given the lack of implementation of the benchmarks for disarmament agreed in 1995, 2000 and 2010, there is a growing perception among pro-disarmament NNWS of an unhelpful repetitive pattern of behaviour by the NWS and their allies.³⁵ They believe that these pro-deterrence States obstruct the NPT review process through unnecessary opposition to disarmament proposals and backtracking on previous agreed commitments; and systematically reject advancing negotiations through participation in multilateral forums such as the Conference on Disarmament and open-ended working groups on the grounds that these undermine the NPT. Instead, they set up selective alternative forums (such as the US working groups mentioned above) and different institutional frameworks such as the International Partnership for Nuclear Disarmament Verification.³⁶ In the author's opinion, the evidence seems quite persuasive that this obstructionist attitude by the NWS and their allies indeed is the case.

On the other hand, a useful bridge-building exercise has been the recommendations of a group of experts from NNWS and NWS, sponsored by Japan, that could provide elements for developing common ground at the review conference on advancing nuclear disarmament.³⁷

TPNW

In recent years dissatisfaction with progress on nuclear disarmament among some States led to the convening of three international conferences on the humanitarian impact of nuclear weapons (Oslo 2013, Nayarit and Vienna 2014), and two General Assembly mandated "Open Ended Working Groups on Taking Forward Nuclear Disarmament Negotiations" in 2014³⁸ and 2016³⁹. These led to General Assembly mandated negotiations on a TPNW⁴⁰ supported by 122 States. The TPNW opened for signature on 20 September 2017, and it now has been signed by 80 States, with 35 out of 50 required ratifications for entry-into-force.

The TPNW has become a source of deep controversy in the NPT review process and the NWS and allies are sounding warnings that the Treaty should not be allowed to trample or hijack the 2020 review conference. TPNW supporters

³⁵ I am grateful to Rebecca D. Gibbons for this categorization which she made at the ISODARCO 2020 course in Andalo, Italy on 13 January 2020.

³⁶ The International Partnership for Nuclear Disarmament Verification website states that the it is composed of 25 States with and without nuclear weapons that are identifying challenges associated with nuclear disarmament verification and developing potential procedures and technologies to address those challenges; <https://www.ipndv.org/>.

³⁷ See, Group of Eminent Persons for Substantive Advancement of Nuclear Disarmament, "Building Bridges to Effective Nuclear Disarmament," NPT/CONF.2020/PC.II/WP.37, 20 April 2018; and "The Kyoto Appeal," NPT/CONF.2020/PC.III/WP.29, 23 April 2019.

³⁸ See United Nations, "Taking Forward Multilateral Nuclear Disarmament Negotiations in 2014", [https://www.unog.ch/80256EE600585943/\(httpPages\)/26EE896FB45E01E7C1257BAC00348663?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/26EE896FB45E01E7C1257BAC00348663?OpenDocument).

³⁹ See United Nations, "Taking Forward Multilateral Nuclear Disarmament Negotiations in 2016", [https://www.unog.ch/80256EE600585943/\(httpPages\)/31F1B64B14E116B2C1257F63003F5453?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/31F1B64B14E116B2C1257F63003F5453?OpenDocument).

⁴⁰ Rebecca D. Gibbons, "The Nuclear Ban Treaty: How Did We Get Here, What Does it Mean for the United States?", *War on the Rocks*, 14 July 2017, <https://warontherocks.com/2017/07/the-nuclear-ban-treaty-how-did-we-get-here-what-does-it-mean-for-the-united-states/>.

insist that their opponents are using the TPNW to distract from other issues. The TPNW is rejected by the NWS and their allies on the grounds that it is incompatible with the NPT, does not lead to the elimination of a single nuclear weapon, does not include verification, and has created an unnecessary distraction. But these States now seemingly are resigned that the TPNW will enter into force and they then will have an uphill task to continue to justify reliance on nuclear weapons.

It is clear that the NPT is not self-implementing. Article III on safeguards requires conclusion of a comprehensive safeguards agreement with the IAEA; article VI on nuclear disarmament is fulfilled by treaties such as the CTBT, FMCT, TPNW and others; article IV on nuclear cooperation requires technical cooperation and supply arrangements through the IAEA; and article VII requires nuclear-weapon-free zone treaties.⁴¹ Thus, it is evident that there is no inherent incompatibility between the TPNW and the NPT.

Middle East

The decision on indefinite extension in 1995 could not be agreed without a vote on the basis of the resolution on the Middle East that secured the support of the Arab States of the region and the Islamic Republic of Iran. In 2000, the conference called upon Israel by name to accede to the NPT as a NNWS. And, the 2010 review conference called for a conference to be convened in 2012 on establishing a zone free of WMD in the Middle East. In the event no such conference was held, but a multilateral consultation was set up 2012–2014 attended by nearly all States of the region and Israel. No agreement could be reached on modalities and scope which then led to the collapse of the 2015 review conference.

In 2018, the General Assembly First Committee adopted decided by vote (103 yes; 3 no; 71 abstentions) to call on the Secretary-General to convene a conference on the establishment of a Middle East zone free of WMD.⁴² The conference was held in New York on 18–22 November 2019 and adopted a political declaration setting up an annual conference process to achieve such a zone.⁴³

Many delegates and experts have an optimistic view that the November conference has taken the heat off the 2020 NPT review conference regarding this matter. On the other hand, the practical reality is that the Middle East zone issue now is even more complex and needs to be considered at three levels: (1) General Assembly resolutions and the November 2019 Conference process; (2) NPT 1995 Resolution at the review process; and (3) application of

⁴¹ See *ibid.*, and Tariq Rauf, "Fiftieth Anniversary of the Nuclear Non-Proliferation Treaty: Preparing for a Successful Outcome," *Policy Brief 48*, Asia Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament, November 2017.

⁴² See, Tariq Rauf, "Weapons of Mass Destruction Free Middle East", *IPPMediaRoom*, 23 November 2019, <https://www.ippmedia.com/en/features/weapons-mass-destruction-free-one-middle-east-part-two>.

⁴³ General Assembly, "Report of the Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and Other Weapons of Mass Destruction on the Work of its First Session", A/CONF.236/6, 28 November 2019.

safeguards in the Middle East, and Israeli Nuclear Capabilities, at the IAEA. These are not mutually exclusive.

The General Assembly annual conference on the Middle East WMD-free zone, regardless of its merits, is not a substitute or alternative for NPT review of implementation of the 1995 Resolution—despite assertions to the contrary. Assessment of its implementation can be done only within the NPT process and not in the framework of the IAEA or the General Assembly processes which have separate tracks. This means that any outcome of NPT review conferences depends on assessing implementation of the resolution and that cannot be disassociated from the NPT outcome document.

STRENGTHENED REVIEW PROCESS

The NPT review structure is enshrined in Decision 1 of the 1995 NPT review and extension conference and reaffirmed in NPT 2000 final document, as noted above. The alleged ‘problems’ of the strengthened review process, of perceptions of lack of continuity and failure to agree on factual summaries and recommendations, are due to the inability and resistance of States Parties to faithfully implement Decision 1 and to develop common ground on contentious matters. This is because of: lack of adequate preparations; loss of continuity of knowledge and practice; entrenched group positions; inflexibility and absence of compromise in the higher interest of the Treaty; politicization; lengthy repetitive statements; inability to engage in results-oriented interactive discussions and negotiations; lack of transparency; backroom deals; resistance and pressure from the NWS and their allies; and increasing hostility in discourse, and disrespect and non-compliance with consensually agreed outcomes.

One key challenge is for the restoration of focus, civility and respect in diplomatic discourse by the NWS and their allies on implementation of nuclear disarmament commitments.⁴⁴ As such, condemning supporters of nuclear disarmament and the NPT *acqui* as “dim bulbs”, and their views as a “mixture of stupidity and insanity”, clearly cannot contribute to generating a conducive atmosphere for finding common ground.⁴⁵

There is, however, one glimmer of hope. Starting at the 2017 preparatory committee session, the chair took up this author’s longstanding suggestion to issue a ‘State of the NPT’ report on the authority of the chair if consensus could not be obtained.⁴⁶ Thus, Ambassador Henk Cor van der Kwast, issued under his authority a short paper, “Towards 2020: reflections of the Chair of the 2017 session of the Preparatory Committee”.⁴⁷ This was greatly appreciated by delegations and the 2018 and 2019 chairs also issued such papers with a view to capturing areas of convergence that could be built upon at the review conference.⁴⁸ This is a useful innovation that should be continued, rather than promoting other problematic notions such as revising elements of 1995 Decision 1, or setting up an NPT point-of-contact at the Office of Disarmament Affairs, or converting the mandated quinquennial review conference into a shorter annual event.

Looking to the future of the strengthened review process, the time has come to move the NPT review conference from New York to Vienna. Two of the three

⁴⁴ While the five NWS maintain unity in general in the NPT review process and sign on to common P5 statements on nuclear disarmament, it must be noted that, of the five, China is the least combative or rejectionist in its attitude.

⁴⁵ See, Christopher Ashley Ford, “The Politics of Arms Control: Getting Beyond Post-Cold War Pathologies and Finding Security in a Competitive Environment,” London 11 February 2020, <https://www.state.gov/the-psychopolitics-of-arms-control/>.

⁴⁶ See, Tariq Rauf, “Preparing for the 2017 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process”, https://www.nonproliferation.org/wp-content/uploads/2017/04/NPT2017_25FEB_RAUF_PrepCom.pdf.

⁴⁷ Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, “Towards 2020: Reflections of the Chair of the 2017 Session of the Preparatory Committee”, NPT/CONF.2020/PC.I/14, 15 May 2017.

⁴⁸ Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, “Chair’s Reflections on the State of the NPT”, NPT/CONF.2020/PC.II/12, 4 May 2018; and “Reflections of the Chair of the 2019 session of the Preparatory Committee”, NPT/CONF.2020/PC.III/14, 13 May 2019.

pillars of the NPT, non-proliferation and peaceful uses of nuclear energy, always have been located in the work of the IAEA. A part of the nuclear disarmament pillar now also resides in Vienna in the work of the CTBT organization (CTBTO), and another part in Geneva in the work of the Conference on Disarmament. No pillar of the NPT is present in New York. Thus, at the forthcoming review conference, States parties could decide to convene the 2025 and future NPT conferences in Vienna or to alternate them between Vienna and Geneva.⁴⁹ Both European locations have adequate conference and other facilities to successfully host meetings of NPT States parties.

⁴⁹ NPT review conferences were held in Geneva from 1975 to 1990 and moved to New York in 1995 in order to facilitate agreement on indefinite extension of the Treaty. The first session of the preparatory committee was moved to Vienna starting in 2007 to coincide with the 50th anniversary of the IAEA.

NPT REVIEW PROCESS AND THE MEANING OF CONSENSUS

It is sometimes said that “There is no consensus on the meaning of ‘consensus’”.⁵⁰ Most, if not all, international treaty conferences follow the procedure of working towards achieving agreement through consensus, in effect with no publicly expressed opposition to the adoption of outcome document(s). Consensus does not necessarily imply unanimous agreement. The objective of reaching consensus is a procedure to secure broad-based support and acceptance of multilateral treaties, agreements and outcomes at international conferences and forums.

The rules of procedure of NPT review conferences, adopted as far back as 1975, call for every effort to be made to reach agreement on substantive matters by means of consensus, but the rules do not elaborate what specifically is meant by the term ‘consensus’. However, practically, NPT review process practice suggests an understanding that consensus is achieved in the absence of any objection(s) being voiced.

Consensus in 2020?

Jayantha Dhanapala, president of the 1995 conference, has noted that a “distinguishing characteristic of the NPT review process is the extent to which it is volitional—when a Final Declaration emerges from a Review Conference, it emerges because the States parties wanted it to emerge. Similarly, when a Review Conference is unable to reach the consensus needed to produce such a declaration, this too is a ‘willed’ outcome”.⁵¹

The NPT review process in this sense serves as a barometer for gauging the overall health and vitality of the treaty regime that in many instances takes the brunt of the criticism and frustration of States Parties unable to prevail on substantive matters, such as nuclear disarmament and the Middle East WMD-free zone.

The NPT review process, as enshrined in 1995–2000, is one that is living and adaptable even in difficult times and capable of achieving consensus should States Parties wish to do so, as they did in 2000. States Parties would be ill-advised to abandon the practice of seeking consensus, contrary to what some experts are advising, and strive to develop common ground in the broader interest of the NPT which all States consistently affirm is the cornerstone of the nuclear governance regime.

⁵⁰ Dapo Akande, “What is the Meaning of ‘Consensus’ in International Decision Making?”, 8 April 2013; <https://www.ejiltalk.org/negotiations-on-arms-trade-treaty-fail-to-adopt-treaty-by-consensus-what-is-the-meaning-of-consensus-in-international-decision-making/>.

⁵¹ See Jayantha Dhanapala, “Evaluating the 2010 NPT Review Conference”, in Tariq Rauf and Jayantha Dhanapala, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, SIPRI, 2017, pp. 19-20.

POSSIBLE OUTCOME(S) IN 2020

Article VIII.3 of the NPT mandated review conferences to assure that the Treaty is being implemented and this was further elaborated in the strengthened review process of 1995 and 2000, as already noted.

Given this mandate, it would be reasonable to expect that a consensus outcome document is a requirement for each review conference. Furthermore, such an outcome document would need to cover the four elements emanating from 1995 Decision 1, as previously noted. As such, possible outcomes from the 2020 review conference could be envisaged as follows:

1. Final Document (complete): a traditional final document fully negotiated and adopted by consensus, with two parts—a backward-looking assessment and review of the implementation of the Treaty and the 1995, 2000 and 2010 outcomes during the 2015-2020 time period; and a forward-looking part with recommendations for implementation during the 2020-2025 period. A concise document, along the lines of the 1995 principles and objectives or the 2014 preparatory committee chair's paper,⁵² may have better prospects of being negotiated by all States present, rather than through backroom deals, and then being adopted by consensus. This modality would be in keeping with the mandate pursuant to 1995 Decision 1, and would demonstrate the commitment of States Parties to the NPT and its review process.
2. Final Document (partial version A): only a forward-looking part agreed by consensus, and the backward-looking review or assessment part appended on the authority of the conference president (as in 1995 and 2000). A less desirable option but better than nothing.
3. Final Document (partial version B): a document that has an assessment part and a forward-looking part that contains both agreed text and text on which agreement has not been reached, along with an appendix containing all proposals submitted to the review conference. Such an outcome document would lack both authority and credibility.

Alternative possible outcomes could include:

1. High-Level or Ministerial Declaration on the NPT: Given the present precarious international security environment and the importance of the fiftieth anniversary of the entry-into-force of the Treaty, there are suggestions that the 2020 review conference include a high-level segment featuring Heads of State/Government and foreign ministers. The conference then could issue a high-level or ministerial declaration or statement affirming the continuing fundamental importance and cornerstone role of the Treaty and of its full implementation, perhaps with some other elements pertaining to the three pillars of the Treaty, as well as universality, security assurances and regional issues. Such a

⁵² Though the 2014 Preparatory Committee chair's paper was not adopted, many delegations commended the paper for its format and relative brevity compared to traditional lengthy papers of 100 or more paragraphs; see NPT/CONF.2015/PC.III/WP.46, 8 May 2014.

declaration or statement would require the endorsement of the conference in order to have authority and credibility. This declaration or statement could be issued during the first couple of days, while efforts continue to strive for an agreed final document. Such a declaration or statement alone would not meet the requirements of the strengthened review process and could be damaging to the authority and credibility of the NPT if there is no agreed final document.

2. Resolution on the fiftieth anniversary of the NPT: absent a high-level or ministerial declaration, an alternative could be a resolution affirming the continuing fundamental importance and role of the Treaty and of its full implementation, with other elements as noted above. Again, to be credible such a resolution would have to be acceptable to all States Parties. Such a resolution does not necessarily preclude working to achieve an agreed final document, but on its own it would have the same disadvantages as a ministerial/high-level statement alone.
3. Conference President's Statement on the fiftieth anniversary of the NPT: as above, but such a statement could be one that has been negotiated with the support of States Parties and then circulated, much along the lines of Security Council presidential statements. Alternatively, the Conference President, Deputy Foreign Minister of Argentina Gustavo Zlauvinen,⁵³ possibly could issue such a statement under his own authority but this could be controversial and would lack the authority of having the conference's blessing.
4. "Factual" Statement on the State of the NPT 2020: reflecting the agreed and divergent views of States Parties, to be issued either with the endorsement of the conference or alternatively on the authority of the president. Again, an unsatisfactory outcome.
5. Compilation (Compendium) of the Reports of the Main Committees (and subsidiary bodies): another possible outcome document could be a compilation or compendium of the reports of the three main committees and their respective subsidiary bodies, whether agreed in each main committee or not. Such an outcome document also would be unsatisfactory and lack both authority and credibility.

It may be recalled that in 1995 as part of the effort to achieve the indefinite extension of the Treaty, there was a general understanding that the strengthened review process must be 'product-oriented' and structured to facilitate the attainment of the objectives of: (a) permanence with accountability; (b) a qualitatively strengthened on-going review process that both evaluates and is forward-looking; and (c) pragmatism and dynamism on an evolving basis. The continuing survival of the NPT and other similar multilateral arms control treaty regimes depends on the support and consent

⁵³ On 24 January 2020, the Office for Disarmament Affairs issued a notification to the effect that Ambassador Gustavo Zlauvinen was confirmed as President-designate.

of States Parties. The important NPT outcomes of 1995, 2000 and 2010 to a large extent depended on interest-based approaches that eventually led to the achievement of consensus outcomes, and this should remain the overriding objective this year; an inhospitable environment notwithstanding.⁵⁴

Thus, it is an indisputable requirement that the 2020 review conference strives to produce an agreed outcome document that, at a minimum, lays out actions and benchmarks to be completed during the 2020–2025 period, including those outstanding from 1995, 2000 and 2010.

⁵⁴ Steven Miller et. al., *Nuclear Collisions: Discord, Reform & the Nuclear Nonproliferation Regime*, American Academy of Arts and Sciences, April 2012.

CONCLUSION

The discussion above has touched upon the agreed outcomes of the NPT conferences in 1995, 2000 and 2010 and the commitments thereof that have been abandoned or remain unfulfilled, and the requirements of the strengthened review process including the practice of consensus for reaching agreement on outcomes, and the requirement of an agreed final document.

Unfulfilled promises include, for example, continuing with nuclear arms control including extending New START and further reductions in nuclear weapons; engagement by all NWS on nuclear disarmament and risk reduction; recognition of the humanitarian consequences of nuclear weapons and avoidance of any nuclear war; entry-into-force of the CTBT; negotiation of an FMCT; placing excess military nuclear materials under IAEA monitoring; negative security assurances, and implementing the WMD-free zone resolution on the Middle East.

Recent attempts to characterize failure to advance nuclear disarmament as due to a hostile international security environment requiring actions by all States, not just the NWS, are indicative of not honouring past agreed commitments and the widely accepted principle of *pacta sunt servanda*. It may be recalled that the security environment need not be an excuse for stagnation in nuclear disarmament as most of the major agreements were reached during the height of the Cold War—such as the NPT itself, as well as treaties on ABM, SALT I and II,⁵⁵ PTBT,⁵⁶ TTBT and PNET,⁵⁷ INF, and START I and II—when the central strategic relationship between the United States and the USSR was fraught with political and regional conflicts, as well as lack of trust.

The NPT is a stabilizing force, checking the proliferation of States with nuclear weapons through implementing IAEA safeguards, establishing the framework for reducing and eventually eliminating nuclear weapons, and facilitating peaceful uses of nuclear energy. This places a special responsibility on the NWS and their allies to make the necessary compromises with pro-disarmament NNWS and to find common ground at the forthcoming NPT review conference. There is no alternative to the NPT; if its associated framework cannot be preserved and strengthened the world will continue to teeter at 100 seconds to midnight on the Doomsday Clock with increasing dangers of nuclear war whether by accident or by design.

⁵⁵ Strategic Arms Limitation Talks (SALT) I of 1 July 1972 and SALT II of 18 June 1979, <https://www.armscontrol.org/treaties>.

⁵⁶ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty) of 10 October 1963, http://disarmament.un.org/treaties/t/test_ban#.

⁵⁷ Threshold Test Ban Treaty (TTBT) of 3 July 1974, and Peaceful Nuclear Explosions Treaty (PNET) of 26 May 1976, <https://www.armscontrol.org/treaties>.



IS PAST PROLOGUE?

The Non-Proliferation Treaty (NPT) commemorates its fiftieth anniversary in force at a time when the Doomsday Clock has been set to 100 seconds. The nuclear arms control architecture has been undermined and an environment is being created for a renewed nuclear arms race. What is needed is for diplomats to find the required political compromises to build on common ground. Only through this cooperation can we strengthen the authority and integrity of the NPT and re-engage constructive progress toward nuclear disarmament and risk reduction.



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