

THE NEW NPT REVIEW CYCLE (2016-2020): PERSPECTIVES AND CHALLENGES¹

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The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was opened for signature on July 1, 1968 and entered into force on March 5, 1970. Therefore year 2018 marks the 50th anniversary of the Treaty's opening for signature. The NPT has 191 States Parties, which is an absolute record for an international legal instrument in the area of nuclear non-proliferation and arms control.³ Only India, Pakistan, Israel and the South Sudan have not signed the Treaty. In 2003, the DPRK announced its withdrawal from the NPT, but its status with regard to the Treaty is yet to be agreed upon by the States Parties.

Since 1975 it has become an established practice, based on Article VIII, Paragraph 3 of the NPT, to convene a conference every five years to review the operation of the Treaty "with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized". Nine such conferences in total have been held so far, including the notable 1995 Conference – where, in accordance with Article X, Paragraph 2, and the procedure stipulated therein, a crucial decision was adopted that the Treaty shall continue in force indefinitely. At the 1975, 1985, 2000 and 2010 Conferences, Final documents were agreed by consensus; they contained – in addition to the reviews of the Treaty operation – a list of recommendations on how to strengthen it. The 1980, 1990, 1995⁴, 2005 and 2015 Conferences failed to produce such documents. But the outcome of these Conferences did not cause any harm to the operation of the Treaty. In fact, the decision of the 1995 RevCon on the principles and goals of nuclear nonproliferation and disarmament is broadly acknowledged as the basis for all subsequent RevCon documents on these issues; it also benefits from its brevity and intelligibility for a broader audience.

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³ The list of the States Parties to the Treaty is available at the website of the United Nations Office for Disarmament Affairs (UNODA). See: <http://disarmament.un.org/treaties/t/npt> (Retrieved on September 4, 2017).

⁴ The 1995 NPT Review and Extension Conference, in addition to approving the extension of the Treaty (Decision 3), also passed the decision to strengthen the Review process (Decision 1), the decision on the principles and goals of nuclear nonproliferation and disarmament (Decision 2), and a separate resolution on the Middle East.

The 2010 NPT Review Conference resulted in the adoption by general consent of a final document consisting of two parts. The first part provided an analysis of the implementation of all Treaty articles (that section was adopted with the provision that it reflected the Conference President's view). The second part incorporated the agreed conclusions and recommendations (the so-called Plan of Action) with 64 practical steps aimed at strengthening the Treaty based on a balance between its three pillars: nuclear disarmament, nuclear non-proliferation, and peaceful uses of nuclear energy.⁵ The second part included a section on the implementation of the resolution on the establishment of a Zone free of nuclear weapons and all other weapons of mass destruction, and their means of delivery (WMDFZ) in the Middle East, which was adopted by the 1995 NPT Review and Extension Conference, and called for a convocation of a Middle East WMDFZ Conference in 2012.

At the 2015 NPT Review Conference, the consensus for the adoption of the final document was blocked by the U.S., U.K. and Canadian delegations. They deemed it unacceptable not to include in the Middle East section a clause giving the three co-sponsors of the 1995 Resolution the right to veto the WMDFZ Conference (such a clause would have allowed them to block the Conference, if necessary).⁶ But it cannot be ruled out that many of the draft 2015 RevCon Final Document provisions already agreed back at that time at the working level will be used by some delegations to enhance their position during the current NPT Review Cycle.

On May 2–12, 2017, The First Session of the Preparatory Committee (the First PrepCom) for the 2020 NPT Review Conference was held in Vienna, kicking off the new NPT Review Cycle.

In general, that event went off smoothly, mainly thanks to the efforts of the session's Chairman⁷, who organized the work very competently and decided not to aim to produce a final document, focusing on delivering only his own summary instead. The important thing is that all the participants confirmed their commitment to the NPT and to the fulfillment of their obligations under the Treaty.

The discussion outlined a range of issues that are likely to be critical to the preparatory process for the 2020 RevCon and to the Conference itself.

This paper analyzes the prospects for the current NPT Review Cycle and looks at the potential challenges the 2020 RevCon may have to face.

I. Nonproliferation

1. The nuclear issue on the Korean Peninsula

Unless the situation on the Korean Peninsula degenerates into a full-blown armed conflict, the issue is unlikely to become a stumbling block for the 2020 RevCon.

⁵ The text of the Final Document of the 2010 NPT Review Conference is available on the UNODA website at: <http://www.un.org/en/conf/npt/2010/> (Retrieved on September 4, 2017).

⁶ The co-sponsors of the 1995 resolution are the UK, Russia, and the United States.

⁷ Ambassador Henk Cor Van der Kwast, Chairman of the First Session of the Preparatory Committee of the 2020 NPT Review Conference, a Dutch diplomat who was Permanent Representative of the Netherlands to the Conference on Disarmament in Geneva and Disarmament Ambassador at large at the time.

Diplomatic efforts are now urgently required to curb rising tensions on the Korean Peninsula on the basis of acknowledging that any military solution would be unacceptable. The factors contributing to the tensions on the Peninsula include not only the DPRK missile and nuclear programs, but also the growing military activity of certain regional and especially non-regional powers in Northeast Asia. It is obvious that Pyongyang will not relinquish its nuclear weapons as long as it perceives a direct threat to its own security. That is why the “double freeze” proposal by China and Russia deserves a serious consideration.⁸

Taking into account that the DPRK does not participate in the NPT Review process, it is possible to draft a provision on the Korean Peninsula at the 2020 RevCon based, for example, on consensus documents adopted earlier at the UN or the IAEA. The only question is whether the situation in 2020 will actually allow the main powers to work towards drafting a document that would be acceptable to all parties.

2. *The Iranian nuclear program*

The Joint Comprehensive Plan of Action (JCPOA) on resolving the situation with the Iranian nuclear program is widely recognized as an important practical achievement that contributes to strengthening the NPT. Now that the measures stipulated by JCPOA continue to be implemented in Iran under IAEA supervision and the Agency confirms the overall fulfillment by Iran of its obligations, the greater concern from the NPT point of view is the ongoing (and protracted) U.S. review of its policy on Iran and on the JCPOA itself. There is a lot of uncertainty as to the eventual results of that review. A positive development in this context is the fact that many delegations reaffirmed the importance of the Plan at the First PrepCom in May 2017 and tried to send a consolidated signal on the need for all parties to uphold and respect that agreement.

To strengthen the NPT and the nuclear non-proliferation regime that is based on and emanates from the Treaty, it would be important to keep the JCPOA for a long term as an example of successful diplomacy that has proven the possibility of resolving complex problems through negotiations on the basis of the NPT.

Taking into account the JCPOA and the consensus decisions made at the UN and the IAEA Board of Governors, it is also entirely possible to draft a provision on the Iranian nuclear program at the 2020 RevCon that would be acceptable to all, including the Iranian delegation. However, a lot will depend on whether the agreement on the Iranian nuclear issue still remains in force by 2020 given the U.S. statements on the need to revise the agreement and the Iranian threats to withdraw from it because of the toughening of the U.S. sanctions policy against that country.⁹

⁸ The text of the July 4, 2017 Joint Statement by the Foreign Ministry of the Russian Federation and the Foreign Ministry of the People’s Republic of China on problems facing the Korean peninsula is available at the Russian Foreign Ministry website at: http://www.mid.ru/ru/maps/kp/-/asset_publisher/VJy7Ig5QaAII/content/id/2807662?p_p_id=101_INSTANCE_VJy7Ig5QaAII&_101_INSTANCE_VJy7Ig5QaAII_languageId=en_GB (Retrieved on September 4, 2017).

⁹ See, for example: ‘Iran could quit nuclear deal in 'hours' if new U.S. sanctions imposed: Rouhani. Reuters. 2017, August 15. <https://in.reuters.com/article/iran-nuclear-rouhani/iran-could-quit-nuclear-deal-in-hours-if-new-u-s-sanctions-imposed-rouhani-idINKCN1AV0LU> (Retrieved on September 4, 2017).

3. *Middle East WMD-free zone*

This problem is one of the central on the Review process agenda and, as was the case at the 2015 RevCon, may have a decisive impact on the outcome of the next Review Conference. The discussion at the First PrepCom has demonstrated that in general, the situation with convening the Conference on the establishment of a WMD-free zone in the Middle East is on a stand still. Unless some tangible progress is made, this problem will escalate and continue to poison the entire NPT debate.

Preparations for the Middle East WMDFZ Conference, including agreeing all organizational modalities and substantive aspects, should begin as soon as possible. A special effort should be made to reach an agreement on such organizational modalities of the Conference as the draft agenda and rules of procedure and on a final document that would identify further steps towards establishing the WMDFZ.

To help align the positions of the parties involved, Russia has proposed, *inter alia*, the following approaches at the First PrepCom:

- The participants should agree to dedicate one session of the Conference to discussing several specific aspects of regional security. The list of those aspects should be agreed upon in advance by the regional states. It is also important to integrate regional security issues with the broader context of the Middle East WMDFZ;
- Since appointing a new facilitator seems problematic, the UN Secretariat could serve as a “collective facilitator”.
- We should work to make sure that the WMDFZ Conference takes place before the 2020 NPT Review Conference, preferably no later than two years from now.¹⁰ Preparations should therefore begin as soon as possible.
- Preparations for the Conference should be conducted in the form of preparatory meetings, which should preferably be attended by all States of the region without exception. These meetings should be held on a regular basis, and as frequently as required. The first such meeting could be held in the very near future. Possible venues are Geneva and/or Glion, which hosted similar meetings during the previous NPT Review cycle. One or two preparatory meetings could also be held in Moscow, should the regional states be interested.
- All substantive decisions taken as part of the preparatory process and at the Conference itself should be consensus-based; any progress or alignment of positions should be recorded.

It remains to be seen whether a constructive discussion on convening the Middle East WMDFZ Conference can be launched with the help of these proposals. Unfortunately, a repeat of the 2015 RevCon situation in 2020 cannot be ruled out.

4. *Other nuclear-weapon-free zones*

Establishing nuclear-weapon-free zones (NWFZs) is an important instrument of enhancing regional and international security and strengthening the nuclear nonproliferation regime. Apart from the bans set forth in Article II of the NPT, such zones also impose on its participants another obligation not to permit stationing in

¹⁰ By mid-2019.

their own territory of any nuclear weapons controlled by one of the nuclear-weapon states. This obligation clearly stems from Article VII of the NPT.

The geographical expansion of such zones is also important for addressing the issue of legally binding negative security assurances for non-nuclear-weapon states.

Issues related to NWFZs other than the one in the Middle East are not expected to pose major problems for the 2020 RevCon.

5. *The IAEA safeguards system*

The reform of the IAEA NPT-based safeguards system within the Agency and the relevant discussion during the First PrepCom demonstrate that the majority of the NPT States Parties are aware of the need to ensure strict monitoring of compliance by States with their non-proliferation obligations, which requires an effective IAEA safeguards system. However, there is still no consensus regarding the best way of doing it. Whereas a number of States continue to advocate the adoption of the state-level concept of safeguards application, others fear that it may undermine support for the safeguards by compromising their impartiality and opening up the possibility of them being misused for political purposes that have little to do with the interests of strengthening the nuclear nonproliferation regime.

At the same time, the IAEA General Conference has already developed a considerable body of consensus material that can be used for the purposes of reaching an agreement at the 2020 RevCon without undermining positions of various parties.

Moreover, it would be important to reach a consensus at the 2020 RevCon on the need for the universalization of the Additional Protocol to the Safeguards Agreements, which – alongside the Agreements themselves – should become a globally recognized standard for verifying the states' compliance with their non-proliferation obligations. While recognizing that signing the Additional Protocol with the Agency remains a strictly voluntary decision to be made by the NPT States Parties, the 2020 RevCon could urge the countries that have not yet done so to conclude the Additional Protocol to the Comprehensive Safeguards Agreement with the IAEA as soon as possible.¹¹

6. *Export control regimes*

In the context of the implementation of Article III of the NPT, an important role is played by the international export control regimes, namely the Zangger Committee (ZC) and the Nuclear Suppliers Group (NSG). These regimes have proven in practice that it is feasible to effectively counter nuclear proliferation risks on a non-discriminatory basis and without prejudice to the international cooperation on peaceful uses of nuclear energy. The relevance of the NSG and its objectives is also confirmed by the interest of a number of states in joining that export control regime. Participation in the NSG of all major suppliers of nuclear and dual-use products that are controlled by the Group would contribute to strengthening the nuclear export control regime, provided that the states in question pledge to comply with the NSG Guidelines and to promote the nuclear weapons non-proliferation cause.

¹¹ As of May 18, 2017, 146 countries had signed the Additional Protocol, of which 129 had entered it into force. See: <https://www.iaea.org/topics/additional-protocol/status> (Retrieved on September 4, 2017).

However, in all appearances, it would seem to be premature to set up a goal of reaching a consensus on that issue at the 2020 RevCon due to a considerable variation of approaches preferred by the NPT States Parties regarding the issue of possible participation in the NSG of countries that are not Parties to the Treaty. For the purposes of the Final document of the 2020 RevCon the parties could use – perhaps after some modification – the relevant clauses of the Final document that wasn't adopted by the 2015 Conference, e.g. *Action 35*.

II. Peaceful Uses of Nuclear Energy

Access to the benefits of peaceful uses of nuclear energy and non-energy applications of nuclear technology is an inalienable right of all the States Parties to the NPT, as stipulated in Article IV, i.e. without discrimination and in conformity with Articles I and II of that Treaty.

In the framework of the RevCon discussion on peaceful uses, apart from the information presented by the main holders of nuclear technologies on their relevant efforts, including international cooperation, attention is usually focused on such areas of concern as:

- the role and place of nuclear energy in the energy balance and its impact on the environment;
- new nuclear energy technologies, including closed nuclear fuel cycle technologies and the work of the IAEA International Project on Innovative Nuclear Reactors and Fuel Cycles (INPRO);
- nuclear safety and nuclear security;
- creating the nuclear infrastructure and the legal framework required for peaceful uses;
- spent nuclear fuel management, including cooperative approaches, and safe disposal of radioactive waste;
- assured supply of LEU for nuclear fuel;
- liability for nuclear damage;
- non-energy applications of nuclear technology in medicine (including cancer treatment), agriculture, industry, etc.

In the framework of the review process, the NPT States Parties have an opportunity to discuss and come up with a unifying agenda based on the continued high interest in the introduction and development of energy and non-energy peaceful uses.¹²

III. Disarmament Issues

These issues are addressed in paragraphs 8, 9, 10 and 11 of the Preamble and in Article VI of the NPT.

¹² As of September 1, 2017, there were 448 nuclear power reactors in operation in 30 countries, with another 57 under construction. See the IAEA website: <https://www.iaea.org/pris/> (Retrieved on September 4, 2017). According to the World Nuclear Association, more than 45 states are seriously considering the possibility of launching a nuclear energy program. <http://www.world-nuclear.org/information-library/country-profiles/others/emerging-nuclear-energy-countries.aspx> (Retrieved on September 4, 2017).

In the Preamble of the Treaty, the States Parties declare “their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament” (para. 8), urge the cooperation of all States in the attainment of that objective (para. 9), and recall the determination expressed by the Parties to the 1963 Partial Test Ban Treaty “to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end” (para. 10). In addition, para. 11 declares their desire to further the easing of international tensions and build trust in order to “facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament”.

Article VI contains the commitment of each of the Parties to the NPT (including the non-nuclear-weapon states) “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control”.

Therefore, the cessation of the nuclear arms race is mentioned in the Treaty as a measure of the highest priority. In fact, the Treaty even outlines a time parameter – albeit not a concrete one – for the adoption of that measure: “at the earliest possible date” in the Preamble, and “at an early date” in Article VI. It is not specified which measures are meant by “the cessation of the nuclear arms race” – but as such cessation should, under the spirit of the Treaty, come prior both to *nuclear disarmament* and to *general and complete disarmament*, one can assume that the aim mentioned in para. 10 of the Preamble to discontinue all test explosions of nuclear weapons is viewed in the Treaty as a component of “measures relating to cessation of the nuclear arms race at an early date”.

1. *Comprehensive Nuclear-Test-Ban Treaty (CTBT)*

The measure of the highest priority mentioned in the Non-Proliferation Treaty – “to achieve the discontinuance of all test explosions of nuclear weapons for all time” – became a reality more than 20 years ago: on September 24, 1996, the CTBT was opened for signature. It was described by U.S. President Bill Clinton, who signed it, as “the biggest prize in arms control”. An effective moratorium on nuclear testing had been established by the NPT nuclear-weapon states even before the signing of the CTBT, and it remains in effect to this day. Nuclear tests have been conducted since the introduction of that moratorium only by India, Pakistan, and DPRK.

The CTBT has already been signed by 183 States, and ratified by 166.¹³ The importance of the early entry into force of the CTBT was reaffirmed on numerous occasions at various international fora. In 2016, to mark the 20th anniversary since the opening of the CTBT for signature, the UN Security Council adopted Resolution 2310, and the P5 issued a separate statement in support of the Treaty. In the statement of April 11, 2016 Russian President Vladimir Putin stressed the need to work towards the Treaty’s early entry into force. However, despite international efforts, that goal is

¹³ See CTBTO Preparatory Commission website: <https://www.ctbto.org/the-treaty/status-of-signature-and-ratification/> (Retrieved on September 4, 2017).

yet to be achieved. The lack of progress in the position of the eight states whose ratification is required for the CTBT entry into force is a matter of legitimate concern. Resolution 2310 calls upon these eight countries – including the United States, which in this context plays a special role – to become Parties to the CTBT as soon as possible, thus finally enabling the Treaty to enter into force. That would be a major step toward fulfilling their obligations under Article VI of the NPT and strengthening the Treaty itself.

The provisions of UNSC Resolution 2310 could serve as a basis for a compromise on that issue at the 2020 RevCon.

2. Negotiations on the cessation of the nuclear arms race, nuclear disarmament, and a treaty on general and complete disarmament.

Few would claim that following the introduction of a moratorium on nuclear testing, the signing of the CTBT, and significant reductions of the U.S. and Russian nuclear arsenals, the cessation of the arms race mentioned in Article VI of the NPT has not been achieved. As for the negotiations on nuclear disarmament, they have been held on numerous occasions, and have resulted in a whole set of effective measures agreed on a bilateral basis between the United States and Russia. As a result, over the past thirty years of their implementation at least 80 per cent of the path towards a world free of nuclear weapons has been covered.

The agreements reached between the nuclear-weapon states on de-targeting their weapons, which now have “zero” target assignments, have been an important step towards building confidence and “de-alerting” of nuclear forces.

Apart from the steps to reduce and limit strategic offensive arms taken as part of bilateral agreements with the United States, the USSR and, later on, the Russian Federation have also adopted a number of other important unilateral measures. In particular, they have reduced their tactical nuclear weapon arsenals to a quarter of their former size. Besides, all the tactical nuclear weapons in Russia have been moved into the undeployed category. They are located exclusively within the Russian national territory, and are held at centralized storage bases with a high-level security regime in place. This is an extremely important measure for “de-alerting” of nuclear forces and preventing accidental or unauthorized use of nuclear weapons.

It may be possible to come up with a universally acceptable provision at the 2020 RevCon based on the approaches developed at the 2010 Conference – i.e. mentioning the phased nature of nuclear arms reductions to maintain global strategic stability, and equal security for all. It may also prove feasible to draw up an agreed clause in support of extending the New START Treaty between Russia and the United States. But any proposals on further reductions are unlikely to succeed in view of the divergence of views on the strategic missile defense and on the role of other nuclear powers (especially those allied to Washington) in further nuclear arms reductions and limitations.

Moving on to the subject of sub-strategic nuclear weapons, it may still be possible to draft a clause in support of keeping the existing INF treaty between Russia and the United States in effect for an indefinite term. On tactical nuclear weapons, such an opportunity may yet arise, should the recent German statements on the desirability of

pulling U.S. tactical nuclear weapons out of Germany lead to any further developments.

On security and confidence-building measures, it would be useful to finally acknowledge the important role of the existing agreements on de-targeting nuclear weapons.

Regarding the issue of a treaty on general and complete disarmament under strict and effective international control, as mentioned in Preamble Paragraph 11 and Article VI of the NPT, it has to be kept in mind that following the suspension of efforts to develop a comprehensive program of disarmament led by Amb. Alfonso García Robles (Mexico)¹⁴ in the 1980s, there has been no activity on the issue notwithstanding the fact that the NPT puts the ultimate resolution of the nuclear disarmament issue within the framework of such a treaty.

3. *Nuclear weapons ban treaty*

The term “prohibition of nuclear weapons” is absent from the NPT. The measures leading towards the nuclear disarmament are presented in it as a phased process. It also mentions ending the production of nuclear weapons, destroying all its stockpiles, and eliminating nuclear weapons and delivery means from the national arsenals as components of a treaty on a general and complete disarmament under strict and effective international control.

The draft of the Treaty on the Prohibition of Nuclear Weapons (TPNW) approved by the UN General Assembly on July 7, 2017, was developed by representatives of states that do not possess nuclear weapons during two short sessions in New York on March 27–31 and June 15 – July 7, 2017. It represents a certain revision of the nuclear disarmament process vision contained in the NPT. Clearly, a treaty on general and complete disarmament would be a far more comprehensive measure than the TPNW ; it would stipulate the elimination of not only nuclear but also other weapons, including conventional, taking into account the existing imbalances and concerns on both the global and regional levels.

The TPNW is a new element for the NPT review process, especially in view of the Article 12 commitment by the TPNW States Parties to “encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty”. It is therefore safe to assume that the states that have already signed the TPNW will try to get such provisions reflected in the 2020 RevCon Final Document. Mindful of the results of the vote on the TPNW draft at the UN General Assembly on July 7, such attempts could make it very difficult to achieve a consensus.

One could imagine that a compromise may be achieved by making a purely factual mention of the signing of the TPNW by some of the NPT States Parties, and of that Treaty’s status as of the time of the 2020 RevCon. Any opinions on the merits of such Treaty (or lack thereof), or any calls for other parties to sign it are unlikely to become part of a document acceptable to all.

¹⁴ Nobel Peace Prize winner.

Conclusions and perspectives for the 2020 RevCon

Despite the widespread international recognition of the great significance and indispensability of the NPT, and of the need to strengthen the Treaty as a unique bedrock of the nuclear nonproliferation regime, the NPT is going through some difficult times due to constantly emerging challenges in various fields.

These challenges include:

- the Korean Peninsula nuclear issue;
- preservation and successful implementation of the JCPOA on Iran's nuclear program;
- convening the Middle East WMDFZ Conference;
- the Treaty on the Prohibition of Nuclear Weapons issue.

The first two of these challenges are outside the scope of the practical preparations for the 2020 RevCon, and depend on decisions that are more likely to be within the remit of the UN Security Council rather than of the PrepCom or the 2020 RevCon. But the negotiators engaged in preparing the 2020 RevCon can play an important role in addressing the latter two matters.

In any case, given the current international situation, one should probably move on from the old approach whereby RevCons were judged a success or a failure on the basis of whether they have yielded a Final Document. In other words, should the 2020 RevCon end without such a document, but also without inflicting any damage to the operation of the NPT, such an outcome could also be considered satisfactory. This certainly does not mean that one should stop working towards aligning the positions of different delegations at the PrepCom and at the 2020 RevCon itself. Another acceptable outcome of the 2020 Conference would be for it to adopt – in addition to the review of the NPT operation – a brief document similar to the decision on the principles and goals taken at the 1995 RevCon.