

## **Robust Debate but No Agreement at the 2015 NPT Review Conference**

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Late on May 22, 2015, the last day of the five-year Nuclear Non-Proliferation Treaty (NPT) Review Conference, the diplomats and civil society representatives assembled at United Nations Headquarters in New York City learned that there would be no agreed outcome. The US, UK, and Canada stated that they could not accept the provisions, contained in the draft Final Document,<sup>1</sup> on convening of a conference to advance a zone free of Weapons of Mass Destruction in the Middle East.

Under the agreement, if states in the regions could not agree on an agenda, the conference would nonetheless be convened by the UN Secretary-General by 1 March 2016. Thus it could have taken place without Israel's consent or participation. The US position has consistently been that it cannot allow the possibility of such a development, on the theory that it would isolate Israel and subject it to unwarranted criticism. The 2010 NPT Review Conference committed to the holding of a conference on a WMD Free zone in the Middle East in 2012. This had been resisted by Israel, which insisted that regional security issues must be addressed along with WMD issues, and no such conference was held between the 2010 and 2015 Review Conferences. The US went so far in its closing statement as delivered as to say that the 2010 commitment regarding a Middle East conference has "effectively expired".<sup>2</sup>

Based on closing statements, notably from the Non-Aligned Movement and members of the Permanent Five, it appears there would have been consensus by all states parties present on a Final Document if there had been agreement on the Middle East portion. However, it must also be said that most non-nuclear weapon states took a very critical view of the draft outcome, for good reason, as explained below.

Review Conferences are held every five years, to examine implementation of treaty obligations over the preceding period, and to map collaborative actions to be taken in the next period to advance treaty objectives. The conferences address a range of issues related to non-proliferation pursuant to Articles I, II, and III; peaceful uses of nuclear energy pursuant to Article IV; and disarmament pursuant to Article VI. Among the myriad issues addressed are promoting safety and security in operating nuclear reactors and facilities; safe maritime transport of radioactive materials; furthering universality of the treaty, as there are a handful of states not party to the treaty; and, conditions and

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<sup>1</sup> <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/documents/DraftFinalDocument.pdf>

<sup>2</sup> <http://webtv.un.org/meetings-events/watch/15th-meeting-2015-review-conference-of-the-parties-to-the-treaty-on-the-non-proliferation-of-nuclear-weapons/4252393462001>

procedures with respect to withdrawal from the treaty, as only North Korea has done. Final Documents by practice are adopted by consensus.

The problem with NPT Review Conference commitments on disarmament made over the last 20 years is not so much that they have not been strong enough. After all, they include, among others, an unequivocal undertaking to accomplish the total elimination of nuclear arsenals; diminishing the role of nuclear weapons in security policies; and rapid reduction of the global stockpile of nuclear weapons. Rather the problem is that the commitments have not been implemented by the NPT nuclear weapon states.

Coming into the 2015 Review Conference, many non-nuclear weapon states were focused on mechanisms and processes to ensure implementation, as well as timelines for completion. The Non-Aligned Movement proposed a standing body to monitor compliance, and the immediate commencement of negotiations on a convention to prohibit and eliminate nuclear weapons. Neither were acceptable to the nuclear weapon states. However, there would have been some at least modest gains if the draft Final Document had been adopted.

Quite detailed reporting by the nuclear weapon states was “encouraged” by the draft. And a provision “recommended” that the General Assembly establish an open-ended working group to “identify and elaborate” effective disarmament measures, including a stand-alone or framework agreement for the achievement and maintenance of a world free of nuclear weapons. However, the provision also recommended that the working group proceed by consensus, which would have given nuclear weapon states the ability to block progress.

Another important push, led by Austria, was for the Final Document to reflect the results of the three conferences on the humanitarian impacts of nuclear weapons held since 2013 in Oslo, Nayarit, Mexico, and Vienna. While preferred language was considerably watered down, the humanitarian initiative figured prominently in the draft Final Document. Notably, the first point of the forward looking plan declared that in light of the consequences of nuclear explosions, “it is in the interest of humanity and the security of all peoples that nuclear weapons never be used again”. Austria and other states had strongly urged the addition of the phrase “in any circumstance,” reflecting the language of the prohibition in the Chemical Weapons Convention. This was resisted by the nuclear weapons states. Nonetheless, as a matter of common understanding, as the Marshall Islands indicated in its closing statement, “never” is quite clear.

In general, debate in the Review Conference revealed deep divisions over whether the nuclear weapon states have met their commitments to dealert, reduce and eliminate their arsenals and whether modernization of nuclear arsenals is compatible with achieving disarmament. The nuclear weapon states largely succeeded in keeping provisions on these issues out of the draft Final Document.

Thus a reference in an earlier draft to the “slow pace” of implementation of disarmament commitments was struck. Also struck was a call for the cessation of qualitative improvement of nuclear arsenals designed to support new military missions

or provide new military capabilities. A provision emphasizing the need for a phased removal of all nuclear weapons from high alert levels was greatly diluted to encouragement of consideration of further practical measures to reduce the operational status of nuclear weapons. Additionally cut was a restatement of the 2010 affirmation of the need for compliance with international law, including international humanitarian law.

In a closing statement on behalf of 49 states, Austrian Ambassador Alexander Kmentt well captured the widespread frustration with the positions of the nuclear weapon states, stating: “The exchange of views that we have witnessed during this review cycle demonstrates that there is a wide divide that presents itself in many fundamental aspects of what nuclear disarmament should mean. There is a reality gap, a credibility gap, a confidence gap and a moral gap.”<sup>3</sup>

Another compelling statement was made earlier in the conference by Ambassador Abdul Minty of South Africa, the only state to have relinquished its nuclear arsenal and a key player in the 1995 Review and Extension Conference. He stated: “When South Africa put forward the proposal for the indefinite extension of the NPT, we did not think that that twenty years on, we would remain in the very same place as far as nuclear disarmament was concerned. ... The question is when will we ever get nuclear disarmament? It is certainly the most neglected pillar of the Treaty where we urgently need forward movement. The NPT is not like a menu at a restaurant where NWS [nuclear weapon states] can decide what it is that they are going to eat.”<sup>4</sup>

If the nuclear weapon states displayed a business as usual attitude, the approach of non-nuclear weapon states was characterized by a sense of urgency, illustrated by the fact that by the end of the Conference over 100 states had signed the “Humanitarian Pledge” put forward by Austria. It commits signatories to efforts to “stigmatize, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks”.

The failure of the US, on the one hand, and Egypt and the Arab states, on the other, to reach a compromise regarding the modalities of convening a conference on a Middle East zone free of WMD shows that, at this particular Review Conference, neither side highly valued a consensus Final Document.

From the US point of view, the main function of a Final Document would have been to reaffirm and carry forward previous Review Conference commitments on non-proliferation and disarmament. However, those commitments generally remain valid whether or not they are reaffirmed. Moreover, there were no new commitments on non-proliferation or nuclear security of importance to the US. Thus enhanced powers, as through the Additional Protocol, of the IAEA to monitor compliance with safeguards agreements were only encouraged, as in the past, and no new restrictions or

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<sup>3</sup> [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/22May\\_Austria.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/22May_Austria.pdf)

<sup>4</sup> [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/13May\\_SouthAfrica.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/13May_SouthAfrica.pdf)

understandings were agreed regarding withdrawal. The lack of such new commitments is due to the resistance of some non-nuclear weapon states to taking them on absent serious progress on disarmament. The agreement with Iran now under negotiation was not mentioned, no doubt due to a desire not to complicate the negotiations. In short, though the US would have preferred a consensus outcome to underline the continuing importance and bindingness of the NPT, there was nothing in the draft Final Document that the US was strongly motivated to preserve.

From the point of view of Egypt and the Arab states, and of the many non-nuclear weapon states in the Non-Aligned Movement and the New Agenda Coalition, the draft Final Document was definitely a mixed bag, as explained earlier. Some indeed were relieved that the disagreement over the Middle East portion relieved them of the decision as to whether to block consensus because the disarmament commitments, and the assessment of implementation over the past five years, were not satisfactory.

NPT Review Conferences have failed in the past to produce consensus outcomes, in 1980, 1990, and 2005, without irreparably damaging the non-proliferation and disarmament regime. The consequences of the failure this time around are hard to assess. It may be a real blow to progress in the Middle East. This is unfortunate in view of the opportunity presented by the emerging agreement on Iran's nuclear program, which has elements that can be applied region-wide (for example, no reprocessing of plutonium).

On the other hand, due to the positions of nuclear weapon states, the disarmament provisions in the draft Final Document did not advance much beyond previous Final Documents, and an agreed outcome could have been used as a shield by the nuclear weapon states against the charge that they are failing to comply with Article VI. The lack of an outcome may serve to spur further determined action by non-nuclear weapon states, in the General Assembly, where for example an open-ended working group could still be established, and outside of the UN and NPT frameworks as well. LCNP's international body, the International Association of Lawyers Against Nuclear Arms, recommends that non-nuclear weapon states indeed take action, preferably in the General Assembly.<sup>5</sup>

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<sup>5</sup> <http://lcnpp.org/pubs/nuclear-disarmament-the-road-ahead-2015.pdf>