



## Fiftieth Anniversary of the Nuclear Non-Proliferation Treaty: Preparing for a Successful Outcome

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### Summary

*The Treaty on the Non-Proliferation of Nuclear weapons (NPT) will mark its fiftieth year in force in 2020 amidst growing fissures and disaffection between its non-nuclear weapon and nuclear weapons states parties. The year 2020 also will be the 25th anniversary of the indefinite extension of the treaty that at the time had raised hopes for achieving greater progress in nuclear disarmament, which were further elaborated in 2000 and 2010 with agreement on an “unequivocal undertaking” by the nuclear weapons states, and a “plan of action” to advance nuclear disarmament as well as a zone free of nuclear and other weapons of mass destruction in the Middle East. But over the years the com-*

*mitments to nuclear disarmament and the Middle East zone seem to have waned, nuclear modernization is underway in all nine states possessing nuclear weapons, leading to a fracturing of consensus among NPT states. The new Treaty on the Prohibition of Nuclear Weapons (NWPT) has further exacerbated differences. Though the first session of the Preparatory Committee for the 2020 NPT Review Conference, held this year in Vienna, was generally uneventful, there are concerns about the outcomes of the next two sessions, respectively in 2018 and 2019, and in 2020. This policy brief examines some of the contentious issues and suggests practical ways of working towards preserving the integrity and authority of the NPT and its review process.*

## Introduction

1. The global consensus for promoting nuclear non-proliferation, international cooperation for the peaceful uses of nuclear energy, and nuclear disarmament is approaching two milestones that will determine its future efficacy. Next year will mark 50 years since the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)<sup>1</sup> opened for signature on 1 July 1968. And, 2020 will mark the fiftieth anniversary of the entry into force of the NPT on 5 March 1970. Currently with 191 States Parties,<sup>2</sup> the NPT is the world's most widely adhered to multilateral nuclear arms control treaty.<sup>3</sup>

2. The NPT is generally regarded as having three pillars: nuclear non-proliferation, international cooperation for the peaceful uses of nuclear energy, and nuclear disarmament. The treaty does not refer to any preconditions for nuclear non-proliferation or for nuclear disarmament. Each of the three objectives of the treaty can be pursued either separately or in tandem with the others. The treaty has been an outstanding success in curtailing nuclear weapons proliferation beyond the five original proliferators: United States, Soviet Union/Russia, United Kingdom, France and China. Notably some twenty non-NWS (nuclear weapons states) that were contemplating a national nuclear weapons capability at one time or an-

other, renounced such ambitions and signed up to the NPT.<sup>4</sup>

3. South Africa unilaterally dismantled its six nuclear explosive devices and acceded to the NPT in 1991 as it transitioned to a multiracial government. Following the collapse of the Soviet Union in 1991, Soviet nuclear weapons left behind on their territory were renounced by Belarus in 1993, and by Kazakhstan and Ukraine in 1994, and all three acceded to the NPT as non-NWS. Argentina and Brazil sorted out their problems, renounced nuclear weapon interest, established a mutual nuclear verification system with the involvement of the International Atomic Energy Agency (IAEA) and acceded to the NPT. India, Israel and Pakistan unfortunately never signed the treaty, and the Democratic People's Republic of Korea (DPRK) withdrew from the NPT in 2003 and went on to test nuclear weapons starting in 2006.

## IAEA Safeguards

4. The IAEA has to date concluded comprehensive safeguards agreements with all NPT non-NWS, except for 12 such states.<sup>5</sup> Under a comprehensive safeguards agreement, the IAEA has the right and obligation to ensure that safeguards are applied on all nuclear material in the territory, jurisdiction or control of the non-NWS for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices. The Additional Protocol to safeguards agreements was established in 1997 and nearly all non-NWS with significant nuclear activities have concluded and brought into force such protocols – notable among those who have yet to do so are Argentina, Brazil and Iran. Concerns about undeclared nuclear activities have been resolved over the years in Egypt, Iran, Iraq, Libya, Romania, and South Korea. Though Iran is now 'provisionally' implementing the

<sup>1</sup> Text of the Treaty on the Non-Proliferation of Nuclear Weapons, <https://www.iaea.org/sites/default/files/publications/documents/infircs/1970/infirc140.pdf>.

<sup>2</sup> United Nations Office of Disarmament Affairs, status of the Treaty on the Non-Proliferation of Nuclear Weapons: <http://disarmament.un.org/treaties/t/npt#>, lists 191 States Parties, including Palestine, the Holy See and the Democratic People's Republic of Korea (DPRK) that gave notice of withdrawal from the NPT on 10 January 2003. As well, the IAEA annual Safeguards Implementation Report includes Taiwan (China) in its listing of implementation of NPT safeguards. Of the UN member states, this leaves just four that are not NPT parties: India, Israel, Pakistan and South Sudan.

<sup>3</sup> "The Nuclear Non-Proliferation Treaty is one of the most important multilateral accords in history. Though not perfect, it is the cornerstone of the world's nuclear non-proliferation regime." Ban Ki-moon, Address to the 2010 NPT Review Conference, 3 May 2010, United Nations Office of Disarmament Affairs, Fact Sheet: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/NPT-fact-sheet-Jul2017.pdf>.

<sup>4</sup> Roland Timerbaev, "The Nuclear Nonproliferation Treaty Has Largely Achieved Its Goals," Interviewed by Anton V. Khlopkov, *Arms Control Today*, September 2017, <https://www.armscontrol.org/act/2017-09/interviews/roland-timerbaev-nuclear-nonproliferation-treaty-largely-achieved-its-goals>.

<sup>5</sup> IAEA, Status List: Conclusion of safeguards agreements, additional protocols and small quantities protocols, <https://www.iaea.org/sites/default/files/status-sg-agreements-comprehensive.pdf>.

Additional Protocol pursuant to the July 2015 Joint Comprehensive Plan of Action (JCPOA),<sup>6</sup> additional monitoring and verification activities are being implemented by the IAEA in Iran under the JCPOA agreed between Iran and the European Union, France, Germany and the United Kingdom, plus China, Russia and the United States (EU/E3+P3).<sup>7</sup>

## Peaceful Uses of Nuclear Energy

5. The NPT recognizes the inalienable right of all States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with the non-proliferation provisions of the treaty. Nearly all states in the world benefit from peaceful nuclear applications in areas of agriculture, archaeology, climate change, electricity generation, medicine and water, among others. Twenty-three non-NWS rely on electricity generated in nuclear power plants, five non-NWS are constructing or about to build nuclear power plants, and 47 non-NWS operate research reactors or critical assemblies.<sup>8</sup>

## Nuclear Disarmament

6. Each party to the NPT undertakes 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. This obligation has been elaborated in the agreed final documents of the 1995, 2000 and 2010 review conferences. Regarding progress in nuclear disarmament by the five NWS – China, France, Russia, UK and USA – controversy and dissatisfaction is rife between the non-NWS and NWS. The NWS maintain that nuclear weapons have been

reduced by nearly 75 per cent from Cold War highs and further disarmament will occur on the basis of strategic stability and undiminished security for all on a step-by-step basis.

7. States of the Non-Aligned Movement (NAM) and several other non-NWS, in contrast, support a time-bound framework for nuclear disarmament. Today nine states – China, France, India, Israel, North Korea, Pakistan, Russia, the United Kingdom and the United States – possess approximately 4,150 operationally deployed nuclear warheads. In all, these states together possess a total of approximately 15,000 nuclear warheads (see chart).

8. The majority of the non-NWS continue to express frustration at the slow pace of disarmament and continuing reliance on nuclear weapons by the NWS, as well as by NATO member states, Australia, Japan and South Korea through extended nuclear deterrence. This dissatisfaction led 122 non-NWS to adopt the NWPT on 7 July 2017 that already has been signed by 53 and ratified by 3 states.<sup>9</sup>

## NPT Review Process

9. The NPT established a precedent in requiring periodic reviews of its implementation by States Parties. Accordingly, nine quinquennial review conferences have been convened since the treaty entered into force in 1970, between 1975 and 2015. The next review conference will be convened in 2020 which will mark the fiftieth anniversary of the entry into force of the NPT.

10. The treaty also provided for States Parties to decide on its future continuation twenty-five years after entry-into-force and stipulated the options available: to continue in force indefinitely, or for an additional fixed period or periods, and that this decision shall be taken by a majority of the parties to the treaty. The all-important Review and Extension Conference was held at United Nations headquarters in 1995 and its presidency was entrusted to Am-

<sup>6</sup> "Statement by IAEA Director General Yukiya Amano," 13 October 2017, <https://www.iaea.org/newscenter/statements/statement-by-iaea-director-general-yukiya-amano-13-october-2017>.

<sup>7</sup> European Council, Council of the European Union, "Joint Comprehensive Plan of Action and restrictive measures," <http://www.consilium.europa.eu/en/policies/sanctions/iran/jcpoa-restrictive-measures/>.

<sup>8</sup> IAEA, *Nuclear Technology Review 2017*, [https://www.iaea.org/About/Policy/GC/GC61/GC61InfDocuments/English/gc61inf-4\\_en.pdf](https://www.iaea.org/About/Policy/GC/GC61/GC61InfDocuments/English/gc61inf-4_en.pdf).

<sup>9</sup> United Nations Office for Disarmament Affairs, Treaty on the Prohibition of Nuclear Weapons, <http://disarmament.un.org/treaties/t/tpnw>.

bassador Jayantha Dhanapala of Sri Lanka.<sup>10</sup> The 179 States Parties (as of that date) decided without a vote to extend the treaty indefinitely through an interlinked, inseparable and irrevocable package of three decisions and a resolution. The legally binding decision on indefinite extension was based on the foundation provided by the decision on a strengthened review process for the treaty, the decision on principles and objectives for nuclear non-proliferation and disarmament, and a resolution on the establishment of a zone free of nuclear and other weapons of mass destruction in the region of the Middle East.

11. The 1995 Review and Extension Conference (NPTREC) Decision 1, on “Strengthening the Review Process for the Treaty”<sup>11</sup> elaborated a framework for an enhanced, more substantive treaty review process. This framework was intended to facilitate a full and balanced review of the implementation of the NPT and to forward recommendations on future steps to the quinquennial NPT review conferences. Decision 2, on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,”<sup>12</sup> established substantive guidelines and indicative targets designed to promote greater accountability regarding the full implementation of the treaty. Decision 3, on “Extension of the Treaty on the Non-Proliferation of Nuclear Weapons,”<sup>13</sup> emphasized the two preceding decisions, thereby clearly linking them to the indefinite continuation in force of the treaty. In addition, the resolution on the Middle East en-

dorsed the ongoing peace process, stressed the importance of the treaty’s universality in the region, and called for the establishment in the region of an effectively verifiable zone free of nuclear and other weapons of mass destruction and their delivery systems.<sup>14</sup> Together the three decisions and the resolution are referred to as the “extension package” to ensure “permanence with accountability.”<sup>15</sup>

12. Over the two decades that have elapsed since the indefinite extension of the treaty in 1995, deep differences have emerged between the states of the NAM and the Western group over the meaning and significance of the 1995 decisions and resolution.<sup>16</sup> These have unnecessarily cast a cloud over the strengthened review process, as more and more delegates have resorted to placing blame for their failure to agree on outcome documents on the nature of the review process rather than on the reality of their inability to negotiate compromises and on their declining understanding of the NPT review process. In essence, the failure to negotiate binding nuclear disarmament measures at NPT review conferences is blamed on perceived failings of the review process rather than on the lack of negotiating skills and political compromises.

13. The key element of the strengthened review process is that the preparatory committee (PrepCom) for subsequent NPT review conferences is specifically mandated to consider principles, objectives and ways to promote the full implementation of the treaty, as well as its universality. The final paragraph of Decision 1 specified that review conferences, in considering the implementation of the treaty, could look both back at the period under review as well as make recommendations for further progress and on the necessary means for its achievement. The “intent” of the drafters was to transform future reviews into a qualitatively

<sup>10</sup> Jayantha Dhanapala and Tariq Rauf, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons: Review conferences and the future of the NPT* (Stockholm: SIPRI, April 2017),

<https://www.sipri.org/publications/2017/other-publications/reflections-treaty-non-proliferation-nuclear-weapons>.

<sup>11</sup> 1995 NPTREC Decision 1: [https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision\\_1.pdf](https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision_1.pdf).

<sup>12</sup> 1995 NPTREC Decision 2: [https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision\\_2.pdf](https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision_2.pdf).

<sup>13</sup> 1995 NPTREC Decision 3: [https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision\\_3.pdf](https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/1995-NY-NPTReviewConference-FinalDocumentDecision_3.pdf).

<sup>14</sup> 1995 NPTREC Resolution on the Middle East:

[https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/Resolution\\_MiddleEast.pdf](https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/Resolution_MiddleEast.pdf).

<sup>15</sup> Dhanapala and Rauf, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, pp. 45–54, and Annex B.

<sup>16</sup> Paul Meyer, “The Nuclear Nonproliferation Treaty: *Fin de Regime?*” *Arms Control Today* (April 2017), <https://www.armscontrol.org/act/2017-04/features/nuclear-nonproliferation-treaty-fin-de-regime>.

strengthened process that would increase all States Parties' accountability for the treaty's implementation, and encompass the full scope of the nuclear disarmament and nuclear non-proliferation agenda.<sup>17</sup>

14. The 2000 Review Conference reaffirmed, clarified and enhanced the mandate of the PrepCom as set out in the decision from the 1995 NPT Review and Extension Conference. It specified that the first two sessions of the PrepCom (starting in 2002), as well as its following sessions, should consider: specific matters of substance relating to the implementation of the NPT and of the 1995 Review and Extension Conference decisions, as well as the Resolution on the Middle East; the outcomes of subsequent review conferences; and developments affecting the operation and purposes of the treaty.

15. According to the 2000 Review Conference Final Document, the deliberations of each of the first two sessions of the PrepCom were to be factually summarized and the results transmitted in a report to the next PrepCom session for further discussion. At its third, or as appropriate fourth session, the PrepCom, taking into account the deliberations and results of its previous sessions, was mandated to make every effort to produce a consensus report containing specific recommendations to the review conference on the implementation and universality of the treaty as well as on the implementation of the 1995 package of decisions and resolution.

16. A variety of views were expressed in the three previous review cycles (2005–15) on the products of a review conference. In general, a majority of states interpreted Decision 1 as requiring two products or outcomes: one reviewing and assessing the implementation of the treaty<sup>18</sup> in the light of the 1995 NPTREC

decisions and resolution during the previous five years, that is, a traditional “final document”; the second, a forward-looking document setting goals and objectives for the next five year period, in line with the 1995 “principles and objectives,” the 2000 “thirteen-steps” and the 2010 “actions.”

17. Thus, building on the 1995 and 2000 “strengthening of the review process,” all future review conferences should produce two primary documents on the substantive implementation of NPT and related obligations:

- a ‘backward-looking’ or ‘review’ document, which should evaluate the results of the period under review, including the implementation of the undertakings of the States Parties under the treaty and the 1995/2000/2010 outcomes; and
- a ‘forward-looking’ document identifying the areas in which, and the means through which, further progress should be sought over the next review period, 2020–25.

18. In addition, each review conference/cycle should consider the functioning of the review process itself and, if it is deemed necessary, a third document should be produced on further enhancement of the strengthened review process within the framework of the 1995–2000 guidance. This could include an “article-by-article” review rather than the traditional approach based on the three pillars of the NPT.<sup>19</sup> Within this generic approach, the 2020 Review Conference should aim to have three key products:

- a backward-looking review document;
- a forward-looking “principles and objectives 2020” document; and

<sup>17</sup> Tariq Rauf and Rebecca Johnson, “After the NPT’s Indefinite Extension: The Future of the Global Nonproliferation Regime,” *Nonproliferation Review* (Fall 1995), <https://www.nonproliferation.org/wp-content/uploads/npr/raufjo31.pdf>.

<sup>18</sup> 1995 NPTREC Decision 1, paragraph 7, states that review conferences should look forward as well as back, evaluate the results of the review period, and identify the areas and the means through which further progress can be achieved in the implementation of the NPT.

<sup>19</sup> Dhanapala and Rauf, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, pp. 220–21, and Thomas Markram, “Options for Further Strengthening of the NPT’s Review Process by 2015,” UN Office for Disarmament Affairs (UNODA) *Occasional Papers*, no. 22 (UNODA: Dec. 2012), <https://www.un.org/disarmament/publications/occasionalpapers/no-22>.



- a forward-looking document on the further enhancement of the strengthened review process while affirming the integrity and validity of the 1995/2000 review process.

## 2017 NPT PrepCom

19. The first session of the Preparatory Committee for the 2020 Review Conference of the NPT, was held on 2–12 May 2017 at the Vienna International Centre. The 2017 PrepCom was chaired by Ambassador Henk Cornelius van der Kwast, the Netherlands' Permanent Representative to the United Nations in Geneva. It has been agreed that the second session of the PrepCom, to be held in Geneva 23 April–4 May 2018, will be chaired by Ambassador Adam Bugajski, Poland's Permanent Representative to the IAEA in Vienna. The chair of the third session of the PrepCom to be held in New York in 2019 has not yet been agreed, however, reports suggest that interest has been expressed by Ambassador Teodoro Lopez Locsin, Jr., Permanent Representative of the Philippines to the United Nations (and reportedly earlier by Ambassador Desra Percaya, Director General in the Ministry of Foreign Affairs of Indonesia).<sup>20</sup> Ambassador Rafael Grossi, Permanent Representative of Argentina to the IAEA, is proposed as the president of the 2020 Review Conference.

20. Contrary to expectations and in stark contrast to the 2015 Review Conference, the 2017 NPT PrepCom session was a relatively civilized affair with no major flare-ups. As at previous PrepCom sessions, deliberations on “cluster 2” non-proliferation and safeguards and on “cluster 3” peaceful uses of nuclear energy, while witnessing differences in emphasis, were in general agreement, except of course on the matter of the Middle East. The discussions on “cluster 1” nuclear disarmament, though sharply divergent, did not get bogged down over the NWPT that was under negotiation at a conference in New York. Given these differences on nuclear disarmament and on the Middle East, as well as the lack of interactive negotiations, the chair wisely decided not to push for an

agreed report on the substantive discussions but settled for a chair's paper on “Towards 2020: reflections of the Chair of the 2017 session of the Preparatory Committee.”<sup>21</sup> The 2017 chair's “reflections” paper may be regarded as a form of a “Statement on the State of the NPT” as was first proposed by Canada at the 1998 session of the PrepCom and subsequently promoted by this author.<sup>22</sup>

21. It is regrettable that states were not prepared to devote the negotiating effort and compromise to enable the chair to achieve an agreed outcome document (factual summary) – again this is not due to any flaws or shortcomings in the strengthened review process but to states becoming incapable of showing flexibility and compromise in the interest of strengthening the integrity and authority of the NPT. Furthermore, states are submitting an increased number of lengthy working papers, reports and statements that are difficult to summarize in a factual summary of a reasonable length. The draft factual summary prepared by the chair in 2017 extended to 136 paragraphs, in 2013 it was 99 and in 2012 101 paragraphs – there is no way that such a lengthy document can be adequately reviewed and agreed by states within the time frame of a PrepCom. However, it is possible to produce tightly drafted chair's reports of a reasonable length, 17 substantive paragraphs over 8 pages, as at the 2014 PrepCom, even though states were unable to endorse it.

22. In sum, the 2017 PrepCom was not an entirely satisfactory affair and it ended on a somewhat underwhelming note. Nevertheless it set the stage for the 2018 session by taking the required procedural decisions on venue, dates, chairman, etc.

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<sup>21</sup> 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: <http://undocs.org/NPT/CONF.2020/PC.I/14>.

<sup>22</sup> Dhanapala and Rauf, *Reflections on the Treaty on the Non-Proliferation of Nuclear Weapons*, pp. 230–31.

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<sup>20</sup> Based on informal diplomatic reports.

### Asia–Pacific

23. NPT States Parties from the Asia–Pacific region generally take an active part in the review process through statements, reports and working papers. Indonesia traditionally has served as the NAM coordinator for the NPT review process, though in the 2015 cycle it was Iran. Given the political and group diversity in the region, a wide variety of positions are in evidence, ranging from support for extended nuclear deterrence to a time-bound framework for the elimination of nuclear weapons, efficacy of the role of nuclear weapons in regional and international security to negative security assurances for the States Parties to the two nuclear-weapon-free zones in the region, among others.

24. The statements at the 2017 PrepCom from the Asia–Pacific region reflected the traditional divisions on nuclear disarmament. Indonesia, Malaysia, Philippines, Singapore and Thailand, for example, reiterated their support for a time-bound framework for nuclear disarmament, concern about the humanitarian consequences of a nuclear weapon detonation, and for an international treaty prohibiting nuclear weapons, and called for security assurances in connection with the Bangkok Treaty. New Zealand promoted the views of the New Agenda Coalition on nuclear disarmament which has been a strong proponent of prohibiting nuclear weapons. Australia and Japan, members of the Non-Proliferation and Disarmament Initiative, supported further efforts on nuclear disarmament, in particular the entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and verification.

25. Countries of the region, in particular Japan and South Korea, expressed grave concern and condemnation regarding the nuclear tests carried out by the Democratic People’s Republic of Korea. Support was expressed for the implementation of the Joint Comprehensive Plan of Action regarding limitations on Iran’s nuclear program, IAEA safeguards, nuclear safety and security, nuclear applications, nuclear energy and the CTBT among other issues. China promoted a step-by-step approach to nuclear disarmament taking into account the international

security environment and for Russia and the United States to implement further reductions.

### Treaty on the Prohibition of Nuclear Weapons

26. A significant new development that inevitably will impact the remainder of the preparatory process and the 2020 NPT Review Conference is the adoption on 7 July 2017 of the NWPT<sup>23</sup> by 122 states at the United Nations General Assembly.<sup>24</sup> On the date it opened for signature, 50 states signed and 3 ratified, with the current count at 53 signatories.<sup>25</sup> The international NWPT joins the Treaty of Tlatelolco and other regional nuclear-weapon-free zone (NWFZ) treaties in prohibiting development, testing, production, manufacture, other acquisition, possession or stockpiling of nuclear weapons or other nuclear explosive devices, and extends these norms to include the use or threat of use of nuclear weapons in addition to other provisions. Though the NWPT was not a major item at the 2017 NPT PrepCom, it is likely to play a significant role in Geneva at the 2018 PrepCom and subsequently.

27. The five NWS, along with other nuclear-armed states – India, Israel and Pakistan – as well as the NATO member states (with the sole exception of the Netherlands which was instructed to attend by its Parliament) and Australia, Japan and South Korea not only boycotted the NWPT negotiating conference but have roundly criticized and condemned the treaty as a distraction, threat to the NPT and ineffectual. France, the United Kingdom and the United States declared that they had not taken part in the negotiation of the treaty and do not intend to sign, ratify or ever become party to it, and as such there will be no change in their legal obligations with respect to nuclear weapons.<sup>26</sup> At

<sup>23</sup> United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination:

<https://www.un.org/disarmament/ptnw/index.html>.

<sup>24</sup> Treaty on the Prohibition of Nuclear Weapons:

<http://disarmament.un.org/treaties/t/tpnw/text>.

<sup>25</sup> Ibid.

<sup>26</sup> Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons:

<https://usun.state.gov/remarks/7892>.

the First Committee of the General Assembly in October, both the United Kingdom and the United States criticized the NWPT as undermining the current nuclear non-proliferation regime and potentially creating a rival forum to the NPT review process.<sup>27</sup> Russia too was strongly critical but recently it seems to have softened its objections but maintains its objection to signing the treaty.<sup>28</sup> China has also been critical and stated that it too will not sign.

28. Many criticisms have been levied against the NWPT. While this policy brief is not the place for a full discussion, nonetheless some observations can be made:

1. The NWPT does not define a nuclear weapon. But then neither does the NPT nor the CTBT nor any NWFZ treaty other than Tlatelolco;
2. The NWPT does not include verification procedures. It is important to recognize that no verification procedures or mechanisms exist for nuclear warhead dismantlement despite 40 years of US-Soviet/Russia nuclear arms reduction treaties because of technical difficulties and classification concerns. However the South Africa model does provide a useful precedent for unilateral dismantlement and IAEA verification and monitoring of weapon-usable nuclear material from dismantled warheads;
3. The NWPT does not mandate the IAEA Additional Protocol (AP). The NWPT is neither a substitute for nor an alternative to the NPT. As all non-nuclear weapon possessor states, except for South Sudan, are parties to the NPT already, the underlying motivation for the negotiation of the NWPT came from the majority's dissatisfaction with the implementation of NPT Article VI on nucle-

ar disarmament by the NWS. The NPT non-NWS have renounced nuclear weapons already. The primary objective of the negotiating states was to create a legal instrument on the prohibition of nuclear weapons to fill the perceived "legal gap" in the NPT with respect to states possessing nuclear weapons. As such, the NWPT (Article III.1) calls upon non-NWS to maintain their existing safeguards obligations with the IAEA (that may or may not include the additional protocol) and leaves open the option for such states that have yet to do so to conclude additional protocols. Furthermore, the NWPT (Article III.2) calls upon the non-NWS that have not yet done so to bring into force their NPT safeguards agreements with the IAEA – according to the IAEA there are only 12 such states.<sup>29</sup> More than 20 years after the approval of the Additional Protocol by the IAEA Board of Governors, there is no agreement yet in the Board or in the IAEA General Conference to make the additional protocol mandatory. As such, it is not surprising that the negotiations on the NWPT were not able to agree to make the AP mandatory. Additional protocols are currently in force for 124 non-NWS, five NWS and one non-NPT state (India). It is not widely understood that the APs concluded by the five NWS and by India do not include the full verification provisions of the AP as is provided for in the AP itself. Thus such APs bring no additional verification benefit to buttress non-proliferation. As such the omission of a requirement for the AP in the NWPT is not necessarily a flaw.<sup>30</sup>

<sup>27</sup> Reaching Critical Will, "Statements from First Committee 2017," <http://reachingcriticalwill.org/disarmament-fora/unga/2017/statements>.

<sup>28</sup> Komersant, Interview with Mikhail Ulyanov 13 September 2017, «Себе в ущерб разоружаться никто не будет» Директор департамента МИД РФ об отказе России присоединиться к Договору о запрещении ядерного оружия, <https://www.kommersant.ru/doc/3408885>.

<sup>29</sup> IAEA, "Conclusion of safeguards agreements, additional protocols and small quantities protocols, 19 May 2017," <https://www.iaea.org/sites/default/files/status-sg-agreements-comprehensive.pdf>.

<sup>30</sup> IAEA, *Model Additional Protocol*, INFCIRC/540, "Foreword: The IAEA Board of Governors requested the Director General to negotiate additional protocols with NWS incorporating those measures provided for in the Model Protocol that each nuclear-weapon State has identified as capable of contributing to the non-proliferation and efficiency aims of the Protocol, when implemented with regard to that State, and as consistent with that State's obligations



4. The NWPT will undermine the NPT. Already some 115 non-NWS are party to NWFZ treaties that include most of the provisions of the NPT and NWFZ treaties are regarded as complementing the NPT, thus the NWPT too could be considered as supplementing the NPT.

29. It should be understood that the NPT is not self-implementing. Article III requires conclusion of an agreement with the IAEA in accordance with its safeguards system (no specific agreement is specified in the NPT and it is left to the IAEA to define the comprehensive safeguards agreement (INFCIRC/153 Corrected, and related Additional Protocol (INFCIRC/540)). Article IV requires nuclear cooperation agreements between states and/or with the IAEA. Article VII requires NWFZ treaties. Hence logic would suggest that Article VI would require an implementing instrument such as the NWPT or similar agreement.

30. It will be important that at the 2018–19 sessions of the PrepCom and at the 2020 Review Conference, the discourse on the NWPT is kept under control and the aggressive and divisive reactions of some of the NWS are not repeated. Likely the NWPT will have entered into force by 2020 and thus it would be advisable that the discussions at the review conference take due account of the NWPT with a view to achieving a consensus report and recommendations for the future implementation of the NPT and the NWPT.

## Conclusion

31. Although there are enhanced perceptions in some quarters regarding the “precarious” state of the NPT, 191 States Parties remain committed to it. Because of the NPT, 174 non-NWS have accepted full-scope IAEA safeguards. The NPT remains the only international treaty under which the five NWS feel constrained to

explain their nuclear force doctrines and report on the reduction measures that they have undertaken. In no forum other than the NPT review process, do the NWS engage on nuclear disarmament measures regardless of their inadequacy in the view of many non-NWS. The NPT also establishes a framework for international cooperation in the peaceful uses and applications of nuclear energy for human development through the technical cooperation programs of the IAEA.

32. It is clear that the NPT has come to a stage of maturity and to a plateau. Prospects for nuclear weapons renunciation by India, Israel, North Korea and Pakistan are essentially non-existent. On the nuclear disarmament side of the ledger, far-reaching reduction and stability measures agreed at the 2000 and 2010 NPT review conferences have been honoured more in the breach. The treaty has reached a position where further progress towards nuclear disarmament through the review process cannot be achieved – indeed none of the bilateral Soviet/Russia–US and unilateral reductions by France, Russia, the UK and the USA were negotiated or implemented through the NPT. Thus the inescapable conclusion is that the NPT has not succeeded in the full realization of the objectives of article VI of the treaty on nuclear disarmament, despite the best efforts of the non-NWS acting through the review process or through the 1996 Advisory Opinion of the International Court of Justice.

33. As such, a majority of non-NWS (122) have taken the step of working through the UN General Assembly to adopt a treaty on the prohibition of nuclear weapons. Though the NWS and their allies have rejected the NWPT, nonetheless they now have to deal with a new reality where they are outnumbered and outmanoeuvred. The award of the 2017 Nobel Peace Prize to the International Campaign to Abolish Nuclear Weapons (ICAN), a loose coalition of the 468 civil society organizations in 101 countries, for its work to achieve the NWPT has further isolated the NWS and their allies. On the other hand, the nuclear safeguards, nuclear security, nuclear safety and nuclear export control obligations on the non-NWS have been steadily strengthened and have become more burdensome, including through instrumental use of

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under Article I of the NPT; and further the Board requested the Director General to negotiate additional protocols with other states that are prepared to accept measures provided for in the Model Protocol in pursuance of safeguards effectiveness and efficiency objectives”:  
<https://www.iaea.org/sites/default/files/infirc540.pdf>.

the UN Security Council's adoption of non-proliferation resolutions under chapter VII of the UN Charter.<sup>31</sup> Yet the NWS and their allies in nuclear defence arrangements have relentlessly kept up the pressure for further strengthening of nuclear safeguards, nuclear security and export controls as evidenced in their efforts at the IAEA and in the Nuclear Suppliers Group.

34. Not surprisingly there is growing fatigue and frustration in the inability and powerlessness of the majority of non-NWS to move on nuclear disarmament through the review process. Consequently, many diplomats from NWS and research institute experts are flailing around attacking the efficacy of the review process, while largely ignoring the corrosive effects of worsening political relations, hardened positions, lack of flexibility, decline in negotiating skills for compromise and growing ignorance of the sophistication of the strengthened review process. NPT review conferences were never designed to be forums for either negotiating legally binding treaties or conventions on nuclear weapons, for nuclear verification measures for IAEA safeguards, or for battling over major international political controversies and differences especially relating to 'compliance' with IAEA safeguards by non-NWS.

35. As regards nuclear verification and safeguards, the appropriate forum for strengthening safeguards is the IAEA. In recognition of this, in 1995, in 2000 and again in 2010, the agreed final document emphasized *inter alia* that:

... the International Atomic Energy Agency is the competent authority responsible to verify and assure, in accordance with the Statute of the Agency and the Agency's safeguards system, compliance with its safeguards agreements with States Parties undertaken in fulfilment of their obligations under article III, paragraph 1, of the treaty, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Nothing should be done to undermine the authority of the International Atomic Energy Agency in this regard.

States Parties that have concerns regarding non-compliance with the safeguards agreements of the treaty by the States Parties should direct such concerns, along with supporting evidence and information, to the Agency to consider, investigate, draw conclusions and decide on necessary actions in accordance with its mandate.<sup>32</sup>

36. The proper place to assess and review safeguards compliance concerns is the IAEA Board of Governors where technical reports on non-compliant states are presented by the Director General, reviewed by the Board which can demand corrective actions through resolutions and can even report noncompliance to the UN Security Council for further action under chapter VII of the Charter. Other than polemics, no useful purpose can be served in getting into the details of safeguards implementation matters in review conferences. Similarly, the forum of developing and strengthening recommendations, fundamentals and guidelines for nuclear safety and nuclear security again is the IAEA.

37. Implementing Decision I of the 1995 package to strengthen the review process has been a hard struggle. Many of the other elements of the package as well as commitments made in the 2000 and 2010 Review Conferences were rejected in 2005 and 2015, respectively. All states experience changes of government either through democratic elections or through other means but the principle of state succession should apply not only in respect of treaties but also in respect of conference commitments made in consequence of NPT obligations. There can be no "exceptionalism" in this respect. Unless States Parties agree on this principle they will continue to engage in mutual recrimination over fulfilling past commitments. Decision I enjoined all "to look forward as well as backward" at review conferences but when there is no confidence that past commitments are the basis for future action, States Parties will be condemned to operate with fogged-up rear view mirrors.

38. NPT review conferences are not rituals. They are intended as honest five-yearly stock-

<sup>31</sup> For example, UN Security Council resolutions 1540 (2004) and 1887 (2009).

<sup>32</sup> 1995 NPT Review and Extension Conference, Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament, para. 9.

taking exercises in a process of rigorous accountability holding States Parties to their obligations in the past and recalibrating objectives for the future in a cumulative process. Such assured predictability in the future course of the NPT would dispel any suspense as to whether future review conferences are likely to be successes or failures and how much further the tensile strength of the NPT can be tested.

39. Speaking at an event on assessing the 1999 session of the NPT PrepCom, Mark Moher, Canada's Ambassador to the United Nations for Disarmament, aptly summarized the future of the NPT in terms of three alternative paths: the "muddle through" path; the "road to disintegration"; and that of "construction for the future."<sup>33</sup> Working for successful outcomes in the 2018–20 review cycle as outlined above would represent an investment in the strengthened review process for the treaty. Given the deteriorating international security environment, preserving and strengthening the integrity and authority of the NPT would seem to be the only viable option for construction for the future for nuclear non-proliferation, nuclear disarmament and international cooperation in peaceful uses of nuclear energy.

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<sup>33</sup> Mark Moher, "The Nuclear Disarmament Agenda and the Future of the NPT," *Nonproliferation Review* (Fall 1999), <http://www.nonproliferation.org/wp-content/uploads/npr/moher64.pdf>.

### The Author

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### APLN/CNND Policy Briefs

These express the views of the authors, and do not necessarily reflect the views of APLN members or the CNND, or other organizations with which the authors may be associated. They are published to encourage debate on topics of policy interest and relevance regarding the existence and role of nuclear weapons.

### APLN and CNND

The **Centre for Nuclear Non-Proliferation and Disarmament (CNND)** contributes to worldwide efforts to minimize the risk of nuclear-weapons use, stop their spread and ultimately achieve their complete elimination. The director of the Centre is Professor Ramesh Thakur. See further <http://cnnd.anu.edu.au>.

The **Asia Pacific Leadership Network (APLN)** comprises around ninety former senior political, diplomatic, military and other opinion leaders from fifteen countries around the region, including nuclear-weapons possessing states China, India and Pakistan. The objective of the group, founded by former Australian Foreign Minister and President Emeritus of the International Crisis Group Gareth Evans, is to inform and energize public opinion, and especially high level policy-makers, to take seriously the very real threats posed by nuclear weapons, and do everything possible to achieve a world in which they are contained, diminished and ultimately eliminated. The co-Convenors are Professors Chung-in Moon and Ramesh Thakur. The Secretariat is located at the East Asia Foundation in Seoul, Republic of Korea. See further [www.a-pln.org](http://www.a-pln.org).

### Funding Support

APLN gratefully acknowledges the generous support of the Nuclear Threat Initiative, Washington DC.

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