

132
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THE NUCLEAR DEAL WITH IRAN, THE NPT REVIEW DEADLOCK AND THE UKRAINIAN CRISIS

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Seventy years after the bombing of Hiroshima and Nagasaki and forty-five years since the entry into force of the Non-Proliferation Treaty (NPT), nuclear weapons continue to pose a serious threat to global security. The conflict in eastern Ukraine not only brought nuclear rhetoric back to our attention but more importantly thwarted negotiations between the US and Russia on further reductions of their nuclear arsenals. The lack of substantive progress on nuclear disarmament and a failure to compromise among the NPT states parties on the issues such as a zone free of weapons of mass destruction (WMD) in the Middle East are weakening the balance established by the NPT between the commitments of the non-nuclear-weapon states (NNWS) and the nuclear-weapon states (NWS). As the negotiations of the P5+1 and Iran were reaching their conclusion, this year's NPT review conference ended in fiasco and revealed that the confidence of the non-nuclear-weapon states in the NPT seems to be eroding.

In the field of arms control, 2015 will certainly be remembered as the year of the nuclear agreement with Iran – a major breakthrough in international non-proliferation efforts. The comprehensive nuclear agreement that Iran and the P5+1 finalised on July 14 aims to verifiably block Iran's pathways to nuclear

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Even though the current situation in the Middle East would most probably make any negotiation process obsolete now, in the long term, lack of agreement regarding the establishment of a WMD-free zone might have serious implications for the NPT regime at large.

The Ukrainian crisis simply underlines how strongly the global nuclear order is affected and shaped by the general state of US-Russia relations.

The 2015 review conference further exposed the growing divide between the states supporting a step-by-step approach to disarmament and the states that reject this approach as lacking any timetable and benchmarks for the disarmament process.

weapons and thereby prevent spread of nuclear weapons in the Middle East. But only the coming months and years will show whether the implementation of the deal fulfils the high expectations placed on it or confirms the doubts of the deal's opponents. Despite the great progress made this year in the non-proliferation field, the agreement with Iran needs to be seen in the broader perspective of the entire NPT regime, which is widely regarded as the cornerstone of global nuclear governance but seems to be losing its eminence due to growing divides about the ways the treaty is implemented.

The NPT regime was established 45 years ago and since then every fifth year the states parties to the treaty have reviewed its implementation.

The so-called NPT Review Conferences provide an important forum for discussions on effective measures that should help to move forward in areas such as nuclear non-proliferation, nuclear disarmament, and peaceful uses of nuclear energy. This year's conference, held in New York in April and May, regrettably failed to produce a final outcome document. The disagreement over the process for convening a conference on a zone free of WMD in the Middle East made reaching a final consensus impossible. Though even more significant is the fact that the four-week-long meeting exposed what is essentially a polarised divide between the positions of the NNWS and NWS (and their advocates) regarding the ways of achieving further progress on nuclear disarmament. In effect, due to this division, the conference was unable to produce an updated plan of action on disarmament that builds on the commitments made at the previous conference in 2010.

Lack of substantive progress on nuclear disarmament

The Ukrainian crisis as such did not play a direct role in the nuclear negotiations' failure. However, since the US and Russia remain the holders of the world's largest nuclear arsenals, the progress made by these two states on nuclear arms reduction is essential to the success or failure of the NPT. The current downturn in US-Russia relations could easily upset the delicate balance of the commitments established by the

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treaty. The NPT contains within it a sense of balance between the responsibilities and obligations of two categories of states parties as defined by the treaty: non-nuclear-weapon states and nuclear-weapon-states (among them China, France, Russia, the UK and the US). The balance of commitments is built around three sets of considerations: commitment not to develop nuclear weapons by the NNWS and acceptance of International Atomic Energy Agency (IAEA) safeguards (verification); nuclear disarmament by the NWS; and the right to peaceful uses of nuclear energy by all states parties.

At present, almost all the states in the world are party to the NPT. Three nuclear-weapon states – India, Israel and Pakistan – have declined to sign the treaty on the grounds that it is fundamentally discriminatory since it places limitations on states that do not have nuclear weapons without establishing mechanisms of control for weapons development by declared nuclear-weapon states. These states would only be able to accede to the treaty as NNWS, since the treaty restricts NWS status to nations that “*manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967*”. For India, Israel and Pakistan, all known to possess or suspected of having nuclear weapons, joining the treaty as NNWS would require the dismantling of their nuclear weapons and placing their nuclear materials under international safeguards. South Africa followed this path to accession in 1991. Other exceptions to NPT adherence include a new state

- South Sudan - which has not acceded to the treaty yet and North Korea, which withdrew from the treaty in April 2003. This year, Palestine became the NPT's 190th state party.¹

As the major holders of nuclear weapons, over the past 45 years the US and Russia have used a series of bilateral agreements and other measures to limit and reduce their substantial arsenals of nuclear warheads, strategic missiles and bombers. Most recently, in April 2009, US President Barack Obama pledged America's commitment “*to seek the peace and security of a world without nuclear weapons*” and proposed concrete steps to move the process forward. Among his main objectives were negotiation of a New Strategic Arms Reduction Treaty (New START) with Russia, pursuit of US ratification of the Comprehensive Nuclear-Test-Ban Treaty, negotiation of a new treaty banning the production of fissile (weapons-grade) materials and, most importantly, strengthening of the NPT regime as a basis for cooperation among the NWS and the NNWS parties to the treaty.

Some of these proposals have been successfully implemented. Most significantly, a year after the Prague speech, Barack Obama and his Russian counterpart at the time, Dmitry Medvedev, signed a new nuclear arms reduction treaty, New START. The treaty aims to reduce by half the number of strategic nuclear weapons and launchers that the US and Russia deployed at the time of signing and to establish a special system of on-site verifications. The objective of the cuts: 1,550 strategic nuclear warheads deployed on 700 strategic delivery systems, and limiting deployed and non-deployed launchers to 800 should be achieved by 2018.

Today, Russia has some 1,780 and the United States some 1,900 nuclear warheads that can be delivered on several hundred strategic atomic bombers and missiles – far more than are necessary to deter a nuclear attack. These two arsenals account for around 90% of the total number of nuclear weapons worldwide. While Russia and the US continue to implement New START, consultations on follow-on measures had reached a dead end even before cooperation was suspended due to Russia's annexation of Crimea in the spring 2014. In June 2013, Barack Obama announced that New START-imposed limits on the US arsenal could be reduced by a further third, but that potential new cuts would be linked to Russia's reciprocation. John Kerry, the US Secretary of State, reiterated the proposal in his speech at the NPT Review Conference this year, yet, to date, Russia's president, Vladimir Putin, has rejected the offer, citing differences over missile defence and threats posed by other nuclear-armed states. In this context, any potential escalation of the conflict in eastern Ukraine might further set back the nuclear cuts agenda. Some members of the US Congress have already threatened to halt funding for implementation of New START to send a mes-

1. RAUF, Tariq. *The 2015 NPT Review Conference: A Guide to Procedural Matters*. SIPRI, 12 March 2015. <http://www.sipri.org/research/disarmament/nuclear/npt-review-2015/npt-2015-review-conference-paper>

sage to Moscow. For their part, Russian officials have hinted that Russia could revise its commitments to New START in response to ‘unfriendly’ US actions.

In any case, even in the current crisis situation, the signature of New START back in 2010 should be considered part of Obama’s commitment to strengthening the NPT. Fairly good relations between the US and Russia at the time resulted in fruitful deliberations at the previous NPT Review Conference. The meeting concluded with the adoption by consensus of “Conclusions and recommendations for follow-on actions”, known as the 2010 Action Plan. The conclusions and recommendations contain 64 goals across three pillars of the NPT: nuclear disarmament, non-proliferation and peaceful uses of energy, as well as an endorsement of a set of practical steps regarding implementation of the 1995 resolution on the establishment of a zone free of nuclear weapons and all other WMD in the Middle East. The 2010 Action Plan was expected to serve as the basis for review of the 2015 NPT meeting.²

A WMD-free zone in the Middle East

As mentioned earlier, the direct failure of this year’s conference lies in the lack of compromise on the negotiation process over the establishment of a WMD-free zone in the Middle East. In general, the NPT embodied the right of any group of states to conclude regional nuclear-weapon-free zones treaties to ensure the total absence of nuclear weapons in their respective territories. However, the Middle East zone is of particular significance, since the successful adoption in 1995 of the resolution on the establishment of a zone free of WMD in the Middle East was the main element of a package that permitted the indefinite extension of the NPT. Based on the 1995 Resolution, the 2010 final document mandated the NPT depository states to convene, together with the UN Secretary-General, a conference on establishing the Middle East zone, to be attended by all states in the region. Though depositories and the UN Secretary-General did appoint a facilitator for the implementation of the 1995 Middle East Resolution and a host country for the conference, they were unable to convene a conference in 2012. The proposed zone would cover the 27 Arab League countries, Iran and Israel. All of the countries except Israel are parties to the NPT and participated in the review conference. Israel attends the review conferences as an observer.

The 2015 draft document, which emerged after intense negotiations, set new deadlines for holding the Middle East zone conference, the appointment of a special representative, and consultations to establish an agenda. The draft final document called for the UN Secretary-General to convene a

conference by March 1, 2016, aimed at launching a continuous process of negotiating and concluding a legally binding treaty that establishes a WMD-free zone in the Middle East. In the final hours of the review conference, the US, Canada and the UK blocked consensus on the draft as a whole, citing unrealistic and unworkable conditions included in the text. Egypt, which played a leading role in the formulation of the draft, and the rest of the Arab Group were prepared to accept what was presented in the final document. In the closing remarks, Iran, speaking on behalf of the Non-Aligned Movement, accused the US of blocking consensus “to safeguard the interests of a particular non-party of the Treaty”, referring to Israel.³ Many observers considered it odd that agreement was prevented on behalf of a state that is not party to the NPT and is widely believed to be the only in the region that possesses nuclear weapons. Even though the current situation in the Middle East, with ongoing crises in Syria and Iraq, would most probably make any negotiation process obsolete at this point, in the long term, lack of agreement regarding the process leading to the establishment of a WMD-free zone might have serious implications for the NPT regime at large.

The humanitarian impact of nuclear weapons

Apart from the Middle East’s regional issues, a growing divergence of views on what constitutes an appropriate pace of im-

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plementation of the 2010 Action Plan, particularly in the disarmament section (regarding implementation of Article VI of the treaty), resulted in a serious confrontation between the NNWS and NWS. On the one hand, the nuclear-weapon states have taken a very long-term view of the plan and insisted that the pursuit of disarmament must be step by step, which requires time and the right security conditions. For now, they argued, their security requires nuclear weapons. On the other hand, slow progress on disarmament has fed discontent among the non-nuclear-weapon states and stimulated the search for ways to push for more ambitious measures.

Over the past three years the NNWS have started to take the initiative, which has led to the convening of three conferences on the humanitarian impact of nuclear weapons (Oslo, Norway 2013; Nayarit, Mexico 2014; Vienna, Austria 2014) and a high-level meeting of the UN General Assembly on nuclear disarmament. As a result of these initiatives, three-quarters of all states taking part in the 2015 review conference (some 160 governments) argued that the catastrophic humanitarian

2. For a detailed account of implementation of the conclusions and recommendations for follow-on actions adopted at the 2010 NPT Review Conference, see: MUKHATZHANOVA, Gaukhar. 2014 Monitoring Report. James Martin Center for Nonproliferation Studies (CNS). http://www.nonproliferation.org/wp-content/uploads/2014/04/CNS-Monitoring-Report_2014_web.pdf

3. DAVENPORT, Kelsey. “Mideast Zone Plan Stymies NPT Meeting”. Arms Control Association, June 2015. https://www.armscontrol.org/ACT/2015_06/News/Mideast-Zone-Plan-Stymies-NPT-Meeting

consequences of the use of nuclear weapons underscores the need to act with greater urgency to eliminate their dangers.

At the last Conference on the Humanitarian Impact of Nuclear Weapons held in Vienna, the Austrian government made a pledge calling on “all states parties to the NPT to renew their commitments to Article VI and to this end, to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons”. This initiative, known as the Austrian Pledge, focused on the problem of the legal gap and gained significance at the NPT meeting as it was supported by the total of 107 governments. According to the Austrian Pledge, the key legal gap that needs to be filled is the explicit prohibition of nuclear weapons and the establishment of a framework for their elimination. The other weapons of mass destruction – biological and chemical weapons – are prohibited and subject to elimination processes through international legal instruments.

The supporters of the Austrian initiative argued that the legal gap regarding prohibition and elimination arises from various deficits in the regulation of activities involving nuclear weapons, as currently codified. This includes: “legal deficits regarding development, production, testing, transfer, acquisition, transit, stockpiling, threat of use or use of nuclear weapons, as well as assistance, financing, encouragement, or inducement of these activities. The current international legal regulation of nuclear weapons is fragmentary, with several instruments covering only

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certain areas of activities. The legal gap also arises because the rules in the existing instruments on nuclear weapons apply to different states in different ways”.⁴ Thus the states supporting the “legal gap” claim that what is needed is a comprehensive instrument that prohibits all activities involving nuclear weapons in all circumstances for all state parties. Some NNWS want to begin negotiations on a ban on nuclear weapon possession and use. Other states believe that even though this kind of negotiation may be well-intentioned, a ban treaty involving only NNWS will not do much, if anything, to stop nuclear competition or move key states to engage in multilateral disarmament talks.

The nuclear-weapon states have reacted negatively to all these developments and did not participate in the humanitarian impact conferences (except the delegations from the UK and the US which took part in the last conference in Vienna). The 2015 review conference further exposed the growing divide between the states supporting a step-by-step approach to disarmament and the states that reject this approach as lacking any timetable and benchmarks for the disarmament process.

While the humanitarian initiative has provoked mainly negative reactions from the nuclear-weapon states, the review conference has shown that such initiatives can help to revive the debate and have a significant impact on the discussions. At this stage, however, it is difficult to imagine how a bridge between the two sides can be built without more substantive progress on disarmament and constructive conversation on the humanitarian dimension.

Another particularly important area where progress has been lacking from the point of view of the NNWS is the reduction of the role of nuclear weapons in military and security concepts, which should provide the overall context for the implementation of other concrete steps. The new American presidential nuclear weapons employment guidance did not change US doctrine, though it did direct the Department of Defense to look into ways to reduce the role of nuclear weapons in military planning. In the meantime, Russia and the US are modernising their arsenals, and China, India and Pakistan are pursuing new ballistic missiles, cruise missiles and sea-based nuclear delivery systems, projecting continuous reliance on nuclear weapons for decades to come. In general, the nuclear-armed states are reluctant to engage in talks on nuclear restraint without deeper cuts in US and Russian stockpiles. The worrisome sign is thus that instead of reducing their arsenals, all possessors of nuclear-weapons are trapped in dynamic technological nuclear arms competition.

The impact of the Ukrainian crisis

Adding to the overall picture, the Ukrainian crisis has sent a negative message

to those states, like, for instance, North Korea, that might consider giving up their nuclear weapons in the future under a political agreement guaranteeing their security in exchange for disarmament. We should remember that twenty years ago Ukraine gave up its nuclear weapons in exchange for security guarantees from Russia and the other NPT nuclear-weapon states. After the collapse of the Soviet Union, Ukraine inherited thousands of nuclear missiles, although the control systems remained in Russia. The Budapest Memorandum, signed on the December 5th 1994, marked the end of negotiations between the successor states of the Soviet Union and leading Western nuclear powers. Ukraine had a special place in the talks since at that point Kiev possessed the third-largest arsenal of nuclear weapons in the world. The West put pressure on Leonid Kravchuk, then the president of Ukraine, to give up the nuclear weapons since the missiles were supposedly aimed at the United States. As compensation, Kiev received financial assistance from the US, cheap energy supplies from Russia, and security guarantees that were enshrined in the Budapest Memorandum.

The memorandum was originally signed by three nuclear powers, Russia, the US and the UK; China and France gave individual assurances in separate documents. The security guarantees were related to Ukraine’s accession to the NPT. In other words, it was a political agreement to respect the sovereignty and territorial integrity of Ukraine in exchange

4. *Filling the Legal Gap: the Prohibition of Nuclear Weapons*. Article 36 and Reaching Critical Will, April 2014. <http://www.reachingcriticalwill.org/images/documents/Publications/filling-the-legal-gap.pdf>

for nuclear disarmament. Admittedly, these guarantees were only a formality since no sanctions mechanism had been established at the time. The annexation of Crimea in 2014 and the ongoing Russian military involvement in the crisis in the separatist republics of Luhansk and Donetsk constitute not only a breach of Russian obligations to Ukraine under the Budapest Memorandum but also a violation of international law principles regarding territorial integrity and sovereignty of a nation state. While the US, the EU and G8 responded by imposing sanctions on Russia, the broken security guarantees by a nuclear-weapon state and a signatory of the memorandum set a bad precedent for future negotiations of a similar kind.

The renewed confrontation between the West and Russia over the situation in eastern Ukraine also has a significant nuclear rhetoric dimension. Russian foreign ministry officials stated recently that Russia has the right to deploy nuclear weapons anywhere on its national territory and this includes the option of stationing them on the Crimean Peninsula or in Kaliningrad. In the US, on the other hand, some voices want to accelerate costly nuclear force modernisation plans and explore new types of nuclear weapons. Other US officials call for the possible deployment of US tactical nuclear weapons in NATO states on Russia's border. Conversely, as arms control experts suggest, rather than protecting Ukraine or NATO, these radical steps would further undermine strategic stability and international security. Given the potential for a direct conflict between Russia and NATO, neither side should use nuclear weapons to send political messages or lower the threshold for nuclear weapon use. Moscow's actions in Ukraine require a unified response involving diplomacy, sanctions and NATO's conventional deterrence. But the new Russian challenge cannot be resolved with nuclear weapons or the build-up of US nuclear capabilities.⁵

From the global security perspective, the Ukrainian crisis has sent yet another important message or rather a reminder Moscow still has all the destructive potential of a superpower. This consideration plays an important role not only in the context of nuclear conflict scenarios, but also in the multilateral forums of nuclear arms control, disarmament and non-proliferation. Without Russian cooperation, efforts to hold the precarious global nuclear order together are extremely difficult to manage. The Ukrainian crisis simply underlines how strongly the global nuclear order is affected and shaped by the general state of US-Russia relations.

The direct failure of the 2015 conference lies in the lack of compromise on the negotiation process over the establishment of a WMD-free zone in the Middle East.

5. KIMBALL, Daryl G. Russia and the Big Chill. Arms Control Association, March 2015. https://www.armscontrol.org/ACT/2015_03/Focus/Russia-and-the-Big-Chill