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THE GLOBAL FORUM

The 2015 Review Conference for the Treaty on the Non-Proliferation of Nuclear Weapons: A Review or a Requiem?



Jayantha Dhanapala

THE YEAR 2015 WILL BE A MEMORABLE YEAR IN THE HISTORY OF THE TREATY on the Non-Proliferation of Nuclear Weapons (NPT). It will be forty-five years since this unique treaty—with 189 states parties, the most widely subscribed to a multilateral disarmament treaty—entered into force and twenty years after its historic indefinite extension and reinforcement in 1995. For me, it will mark a thirty-year association with the NPT since I chaired the Third Preparatory Committee Meeting of the Third NPT Review Conference in 1985 and Main Committee I of that Review Conference. Ten years later, I presided over the NPT Review and Extension Conference. Countless words have been written in exegesis of the final packages of the Three Decisions and the Resolution on the Middle East adopted in 1995, all of which will no doubt be regurgitated as we approach the 2015 NPT Review Conference.

On 12 May 1995, in my closing statement as president of the historic NPT Review and Extension Conference that extended the treaty for an indefinite duration, I stated: “The permanence of the Treaty does not represent a permanence of unbalanced obligations, nor does it represent the permanence of nuclear apartheid between nuclear haves and have-nots. What it does represent is our collective dedication to the permanence of an international legal barrier against nuclear proliferation so that we can forge ahead in our tasks towards a nuclear weapon-free world.”

Since then, despite the emergence of India and Pakistan as nuclear weapons-armed states and the unprincipled concessions made through the US-India nuclear cooperation deal, the continued outlier status of Israel with its undeclared nuclear weapons possession, and the withdrawal of North Korea from the NPT and its outrageous nuclear weapons testing, the nuclear nonproliferation norm has held firm for the 184 non-nuclear weapons states in the NPT—especially after the 24 November 2013 interim agreement over Iran’s nuclear program. Article VI—the disarmament article of the NPT—remains unimplemented despite the 1996 Advisory Opinion of the International Court of Justice (ICJ).

The “Thirteen Steps” agreed on at the 2000 NPT Review Conference and the 2010 Review Conference’s sixty-four-point Action Programme, together with the agreement on the Middle East Weapons of Mass Destruction Free Zone (MEWMDZFZ) proposal and the conceptual breakthrough on recognizing the humanitarian consequences of the use of nuclear weapons, augured well for the strengthened review process. However, the report cards meticulously maintained by civil society on actual achievements, the return to Cold War mind-sets by the United States and Russia, and the negative record of all the nuclear weapons states have converted the goal of a nuclear weapons-free world into a mirage. Unless the Ninth NPT Review Conference reverses these ominous trends, it is doomed to fail and imperils the future of the NPT.

Taking Stock

Some stocktaking is relevant. In 1995, we had five nuclear weapons states and one was outside of the NPT. Today, we have nine nuclear weapons-armed states—four of them outside the NPT. One of them (India) is being given special privileges by the entire Nuclear Suppliers Group in violation of Article I of the treaty and paragraph 12 of Decision II in the 1995 package. Another (Pakistan) has received two power reactors from China, a nuclear weapons state within the NPT.

In 1970, when the NPT entered into force, we had a total of 38,153 nuclear warheads. Today we have 16,300—just 21,853 fewer—with over 4,000 on deployed status and the promise by the two main nuclear weapons states to reduce their deployed arsenals by 30 percent to 1,550 each within seven years of the new START (the Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms) entering into force. Another NPT nuclear weapons state, the United Kingdom, is on the verge of renewing its Trident nuclear weapons program.

In 1995, we had the certain prospect of negotiating a Comprehensive (Nuclear) Test Ban Treaty (CTBT), which was finally achieved but its entry into force is blocked today by two NPT nuclear weapons states (China and the United States) and six others (Egypt, India, Iran, Israel, North Korea, and Pakistan). A fissile material cut-off treaty (FMCT) that was also envisaged in Decision II of the 1995 package was first obstructed by a NPT nuclear weapons state and is now blocked by one outside of the NPT because existing stockpiles are not addressed in the negotiating mandate. A sanctimonious wail is raised by the West that the Geneva-based Conference on Disarmament is dysfunctional, forgetting that it is the West that has blocked negotiations on nuclear disarmament and the prevention of an arms race in outer space in that body for years.

Implementing Decision I of the 1995 package to strengthen the review process has been a struggle. On other elements of the package as well, com-

mitments made at the 2000 Review Conference were rejected in 2005. All states experience changes of government either through democratic elections or through other means, but the principle of state succession not only should apply to treaties but also to conference commitments made in consequence of treaty 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 rear view mirrors only.¹

Review conferences are not rituals. They are intended to be honest quinquennial stocktaking 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. That assured predictability in the future course of this treaty will dispel any suspense as to whether review conferences would be successes or failures and how much further the tensile strength of the NPT will be tested.

A Middle East Weapons of Mass Destruction Free Zone

As this Ninth NPT Review Conference (scheduled for the spring of 2015 in New York) approaches, it is necessary to be reminded especially of the critical role of the proposal for convening a conference on a MEWMDFZ. It is the failure of negotiations on implementing the 1995 Resolution on the Middle East that led to the collapse of the NPT Review Conference of 2005. This issue will pose the greatest threat in 2015, even though the Arab countries are in disarray and Egypt's forceful leadership role in 2010 will be reduced after the Arab Spring of Tahir Square was blighted by the army.

The apparent failure of Finland, the designated host nation for the 2012 conference with Ambassador Jaakko Laajava as facilitator, to make substantial progress beyond a series of "consultations" has already led the Egyptian delegation to walk out of the Second Session of the Preparatory Committee for the 2015 NPT Review Conference held in Geneva last year. At the Third Session, held in New York from 28 April to 9 May 2014, bland statements from the UN Secretary-General and the facilitator reflected a continuing lack of progress. A report from the Stockholm International Peace Research Institute (SIPRI) observer at the meeting refers to the recommendations contained in the Chairman's Summary produced on his own initiative and with no endorsement by the meeting. This is a weak outcome and there is no gainsaying the fact that, absent any significant progress on this issue, we are likely to have a failed NPT Review Conference in 2015, with serious consequences for the viability of this unique international legal

norm that is also the sole multilateral instrument committing all the nuclear weapons power signatories to nuclear disarmament.

It is now widely acknowledged that the 1995 package of decisions to extend the NPT indefinitely, with a strengthened Review Process and the adoption of Principles and Objectives for Nuclear Non-Proliferation and Disarmament, would not have succeeded without the all-important Resolution on the Middle East. This resolution, which was negotiated and added to the package in the final stages, brought all the Arab countries on board and, post-1995, resulted in all of the Middle East joining the NPT with the sole exception of Israel. Operative paragraph 5 of that resolution said clearly that it "calls upon all states in the Middle East to take practical steps in appropriate forums aimed at making progress towards inter alia the establishment of an effective, verifiable Middle East zone free of weapons of mass destruction (nuclear, chemical and biological) and their delivery systems, and to refrain from taking any measures that preclude the achievement of this objective."

The 2000 NPT Review Conference that followed merely stated that the Resolution on the Middle East is "valid until its goals and objectives are achieved." Worse was to follow. With the neoconservative policies pursued in the United States by the George W. Bush administration, it was no surprise that the 2005 Review Conference ended with no Final Document, adding to the frustration of the non-nuclear weapons states in general and the Arab countries among them in particular.

In 2010 it was clear that the Arab countries (all of them states parties to the NPT) led by Egypt were going to demand some forward movement on the MEWMDFZ at the Review Conference held in New York. The conference finally endorsed five practical steps to make progress toward the goal of establishing a MEWMDFZ, which included convening a regional conference to discuss the issue in 2012 and appointing a facilitator. The steps were set out as follows: the United Nations Secretary-General and the cosponsors of the 1995 resolution, in consultation with the states of the region, will

- Convene a conference in 2012, on the establishment of a Middle East Zone free of nuclear weapons and all other weapons of mass destruction;
- Appoint a facilitator, with a mandate to support implementation of the 1995 Resolution by conducting consultations with the States of the region in that regard and undertaking preparations for the convening of the 2012 Conference; to assist in implementation of follow-on steps agreed by the participating regional States at the 2012 Conference and to report to the 2015 Review Conference and its Preparatory Committee meetings;
- Designate a host Government for the 2012 Conference;
- Take additional steps aimed at supporting the implementation of the 1995 Resolution, including that IAEA [International Atomic Energy Agency], the Organization for the Prohibition of Chemical Weapons and other relevant

international organizations be requested to prepare background documentation for the 2012 Conference regarding modalities for a zone free of nuclear weapons and other weapons of mass destruction and their delivery systems, taking into account work previously undertaken and experience gained;

- Take consideration of all offers aimed at supporting the implementation of the 1995 Resolution, including the offer of the European Union to host a follow-on seminar to that organized in June 2008.

As mentioned above, Finland was eventually appointed host country for the conference and Ambassador Laajava as the facilitator.

At the end of 2012, when the conference promised in the Final Declaration of the NPT Review Conference was supposed to be held, there was an announcement (curiously, by the United States alone) that the conference had been postponed. The Pugwash Conferences on Sciences and World Affairs said in its statement at the time: "The indefinite postponement of the Helsinki conference would be a very serious setback for all those who are hoping to create a better and more peaceful environment in the Middle East and a de facto reward for all those who have worked to undermine this laudable objective."

This unilateral announcement also represents a serious blow to the credibility of the NPT since the nondiscriminatory objective of the conference was contained in the Resolution on the Middle East as an indispensable part of the conclusions of the 1995 Review and Extension Conference, without which there would have been no indefinite extension of the NPT. Fifteen years later its inclusion in the Final Document of the NPT Review Conference of 2010 revived the confidence of all the parties to the NPT on the relevance of this vital bulwark against the proliferation of weapons of mass destruction, especially nuclear weapons.

In recent months the facilitator has convened two rounds of informal consultations among the parties in Switzerland, but no details have emerged about progress. There is little prospect of any forward movement on a MEWMDfZ between now and 2015 given the political stalemate in that region. The US secretary of state has had difficulty in moving his initiative forward, and with the problems in Syria, Egypt, and Iraq, there seems to be no conducive climate for any progress. The adverse impact that this will have on the NPT Review Conference of 2015 remains to be seen.

The UN Secretary-General's objective view is clear from this excerpt from his 2014 Annual Report on the Work of the Organization:

The elimination of nuclear weapons and other weapons of mass destruction remains a high priority. Ahead of the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, however, there has been only limited progress by the nuclear-weapon States, and strong concern voiced over continuing efforts by those States to modernize their nuclear arsenals and related infrastructure. I remain fully committed to convening a

conference on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction, which is of utmost importance for the integrity of the Treaty. Nuclear-free zones contribute greatly to strengthening nuclear disarmament and non-proliferation regimes and to enhancing regional and international security.

Reviving the Stalled Nuclear Disarmament Agenda

The continued modernization of nuclear weapons arsenals and their delivery systems (costing the United States alone some \$355 billion over the next decade), the limited reductions achieved by the new START Treaty, the troubling ambiguities over the use of nuclear weapons and negative security assurances in the US Nuclear Posture Review, and the persistence of nuclear deterrence in the doctrines of nuclear weapons states show that little progress has been achieved. Whether it is the pressures of domestic politics and well-entrenched interest groups or a perceived inferiority in conventional weapons, it does not seem as if nuclear weapons states are ready to eliminate all of their weapons even in a phased program. Even disarmament commissions (like the Gareth Evans/Yoriko Kawaguchi International Commission on Nuclear Non-Proliferation and Disarmament) and some coalitions for nuclear abolition (like the well-funded Global Zero) have set their target dates far into the distant future, building artificial base camps in the so-called step-by-step process on the way to the total elimination of nuclear weapons. The focus on North Korea and Iran—and on nuclear terrorism and nuclear security—also serve as red herrings to distract attention from the inherent dangers of nuclear weapons themselves. It has been stated and restated that, if there were no nuclear weapons under a verifiable nuclear disarmament regime, there could be no proliferation or nuclear terrorism. How do we exercise our responsibility to protect the goal of a nuclear weapons-free world beyond the hand-wringing exercises in condemning the humanitarian consequences of the use of nuclear weapons?

The Marshall Islands has courageously taken the nine nuclear weapons-armed nations to the ICJ and the cases will be heard next year. For the NPT nuclear weapons states (the United States, the United Kingdom, France, Russia, and China), the claims are made under both the NPT and customary international law. For the four states possessing nuclear arsenals outside the NPT (India, Pakistan, Israel, and North Korea), the claims are made under customary international law only. The customary obligations are based on widespread and representative participation of states in the NPT and the long history of UN resolutions on nuclear disarmament, and also reflect the incompatibility of use of nuclear weapons with international law.

The relief requested is a declaratory judgment of breach of obligations relating to nuclear disarmament and an order to take, within one year of the

judgment, all steps necessary to comply with those obligations, including the pursuit (by starting fresh, if necessary) of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control. This is a welcome first opportunity after the 1996 ICJ Advisory Opinion to confirm and clarify the status under international law of the legality of the possession and use of nuclear weapons.

However, the only credible path forward appears to be the proposal for a Nuclear Weapons Convention, mentioned in the UN Secretary-General's five-point plan, on which negotiations must begin immediately. In the NPT there is already one international compact, which was an agreement between nuclear weapons states and non-nuclear weapons states for a transitional period when the former would join the latter in a nuclear weapons-free world. That has not happened for well-nigh forty-five years. The hedging in the statements setting a nuclear weapons-free world as an objective undermines the determination to reach that goal.

We do need a radical change. In the same manner as we have outlawed biological and chemical weapons among weapons of mass destruction, and antipersonnel landmines and cluster weapons as inhumane conventional weapons, we need to begin the process of outlawing nuclear weapons. When the Nobel Committee awarded Pugwash the Nobel Peace Prize in 1995, it recognized the Pugwash "desire to see all nuclear arms destroyed and, ultimately, in a vision of other solutions to international disputes than war." It is time to convert aspiration to reality. ☉

Notes

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1. "1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons," New York, 1995, NPT/CONF.1995/32 (Part I), page 8, www.un.org/disarmament/WMD/Nuclear/pdf/finaldocs/1995%20-%20NY%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Part%20I.pdf.