

# Working Paper

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## The 2015 NPT Review Conference Failure

Implications for the Nuclear Order

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## List of Abbreviations

CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
EU	European Union
INF	Intermediate-Range Nuclear Forces Treaty
JCPOA	Joint Comprehensive Plan of Action
MEWMDFZ	Middle East Weapons of Mass Destruction-free zone
NAM	Movement of non-aligned states
New START	New Strategic Arms Reduction Treaty
NGO	Non-governmental organization
NNWS	Non-nuclear weapon state
NPDI	Non-Proliferation and Disarmament Initiative
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NWS	Nuclear weapon state
UN	United Nations
UNSG	United Nations Secretary General
WMD	Weapons of mass destruction
WMDFZ	Weapons of Mass Destruction-free zone

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## Introduction

On the last day of the ninth review conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), May 22, 2015, the delegations of the United States, the United Kingdom and Canada rejected the draft final document that the conference President, Taous Feroukhi of Algeria had tabled.<sup>1</sup> The conference had failed.

This paper describes four specific reasons why this failure of the quinquennial review conference weakens the nuclear order, which is based on the NPT. It then suggests two ways how to prevent, or at least slow, a further erosion of international arrangements to prevent the spread and reduce the salience of nuclear weapons. The paper is based on the assumption that strengthening the nuclear order improves international security. Broadly speaking and drawing on William Walker's work, the nuclear order is understood here to be the interplay between the rules, norms and procedures that govern the military use of nuclear technology as well as those that regulate the peaceful use of nuclear technology.<sup>2</sup> The legally-binding NPT, with its almost universal reach, is the most important framework to embrace these two complementary and overlapping (as well as other functional and geographical) suborders. Walker points out that the nuclear order (as any other political order) can never be static, unless it runs the risk of fragmenting. This evolution is partly reflected through the adoption, by consensus, of politically-binding documents at successive review conferences. The negotiating history of the NPT, the treaty text and the outcome of review conferences make clear that regime evolution has a direction: towards a world without nuclear weapons. Thus, state parties are obliged to decrease the role of nuclear weapons, through arms control, disarmament and other unilateral, plurilateral and multilateral measures. Status quo policies or attempts to increase the role of nuclear weapons are incompatible with the nuclear non-proliferation regime's basic goals.

<sup>1</sup> See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Draft Final Document: Volume I. NPT/CONF.2015/R.3«, New York 2015, <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/documents/DraftFinalDocument.pdf>> (retrieved 6 August 2015).

<sup>2</sup> See William Walker, *A Perpetual Menace: Nuclear Weapons and International Order*, London, New York 2012.

## The Weakening of the Nuclear Order

When the representatives of the United States, Canada and the United Kingdom vetoed adoption of the draft final document at the NPT review conference, all three cited language in the draft on the way forward on the Middle East zone free of nuclear weapons and other weapons of mass destruction (or: Middle East weapons of mass destruction-free zone, MEWMDFZ) as the main reason for objecting. U.S. Under Secretary for Arms Control and International Security, Rose Gottemoeller, said that a number of Arab states, and in particular Egypt, »were not willing to let go of [...] unrealistic and unworkable conditions included in the draft text.«<sup>3</sup> She argued that »the proposed final document outlined a process that would not build the foundation of trust necessary for holding a productive conference that could reflect the concerns of all regional states.«<sup>4</sup> Thus, in contrast to the 2010 review conference, when the United States ignored Israel's opposition to language on a MEWMDFZ and compromised with Egypt, this time Washington prevented additional pressure on Israel.<sup>5</sup>

Disagreement over the MEWMDFZ pre-empted an open debate on other elements of the final document. Rose Gottemoeller stated that Washington was »prepared to endorse consensus on all the other parts of the draft final document addressing the three pillars of the Treaty – disarmament, non-proliferation and the peaceful uses of nuclear energy.«<sup>6</sup> Yet, it is not possible to ascertain whether this was a faithful statement. It is also unclear whether other delegations would have objected to the adoption of the draft final document, had the United States, Canada and the United Kingdom not prevented its adoption.<sup>7</sup>

<sup>3</sup> Rose Gottemoeller, »Remarks at the Conclusion of the 2015 Nuclear Non-proliferation Treaty Review Conference«, New York, 21 May 2015, <<http://www.state.gov/t/us/2015/242778.htm>> (retrieved 5 August 2015).

<sup>4</sup> See *ibid.*

<sup>5</sup> See Peter Crail, »NPT Parties Agree on Middle East Meeting«, *Arms Control Today* 40 (5) 2010, pp. 21–24, <[http://www.armscontrol.org/act/2010\\_06/NPTMideast](http://www.armscontrol.org/act/2010_06/NPTMideast)> (retrieved 10 August 2015).

<sup>6</sup> Gottemoeller 2015, *Remarks at the Conclusion* [see Fn.3].

<sup>7</sup> Review conference participants come to different conclusions on this point. Tariq Rauf argues that »the rejection by the USA and two of its close allies was received with imperceptible sighs of relief by those [non-nuclear weapon states, NNWS] for whom the draft Final Document was much too weak on the nuclear disarmament front and thus saved them from raising their own objections or reservations.« Tariq Rauf, »The 2015 NPT Review Conference: Setting the Record Straight«, Stockholm International Peace Research Institute, Stockholm, 15 June 2015, <<http://www.sipri.org/media/>

In contrast to the practice at some previous meetings of NPT state parties, the conference President did not offer a »Chair's Summary« to be attached to the conference report. As a result, the only written sources that remain as written records of the meeting are the review conference's procedural report, the statements from delegations, 57 working papers, a wide variety of informal papers, various drafts emerging from the main committees, subsidiary bodies and the draft final document itself.<sup>8</sup> These documents indicate a wide variety of views on a range of issues under discussion but make it difficult to identify areas of definite agreement among participants.

Some have argued that the failure of the review conference is no catastrophe for global efforts to control nuclear weapons. After all, four out of the nine NPT review conferences have not been able to adopt a final document.<sup>9</sup> Accordingly, there is a pattern that almost each successful review conference has been followed by a meeting that failed to reach consensus conclusions. As the argument goes, after the adoption of a consensus final document in 2010, failure in 2015 was to be expected.<sup>10</sup>

However, this argument ignores the deteriorating international security context in which the review conference took place in 2015. Over the last five years, several nuclear weapon possessors have increased reliance on nuclear weapons for their security and nuclear arms control had come to a standstill.<sup>11</sup> It is

newsletter/essay/june-15-NPT> (retrieved 30 June 2015). The head of the Dutch delegation to the NPT review conference, Henk Cor van der Kwast, argues that »some delegations had strong doubts as to whether they should go along [with the draft documents agreed on the three pillars of the NPT], but there was agreement.« Henk Cor van der Kwast, »The NPT: Looking Back and Looking Ahead«, *Arms Control Today* 45(6) 2015, pp. 11–14, p. 13.

The difficulties of assessing the degree of support for the draft final document stem partly from the fact that the conference President consulted the text only among a small group of countries (Austria, Australia, Brazil, Egypt, Iran, Ireland, Japan, Mexico, Netherlands, New Zealand, Peru, South Africa, Sweden, Switzerland and the five nuclear weapon states (NWS)). The lack of transparency and inclusiveness has been criticized by several conference participants and observers.

<sup>8</sup> Most of these documents can be found on the United Nations' website at <<http://www.un.org/en/conf/npt/2015/index.shtml>> (retrieved 10 August 2015) and at the review conference site of Reaching Critical Will <<http://www.reachingcriticalwill.org/disarmament-fora/npt/2015/>> (retrieved 10 August 2015).

<sup>9</sup> NPT state parties at the review conferences in 1975, 1985, 1995, 2000, 2010 agreed on final documents.

<sup>10</sup> See for example Andrey Baklitskiy, »The 2015 NPT Review Conference and the Future of the Nonproliferation Regime«, *Arms Control Today*, 45(6) 2015, pp. 15–18.

<sup>11</sup> See Oliver Meier, »Auf dem Weg der Besserung? Der Nukleare Nichtverbreitungsvertrag nach der Überprüfungs-konferenz 2010«,

also important to note that the two previous review conferences had not succeeded in adopting measures to significantly strengthen the regime. The 2005 meeting had failed completely and the 2010 review conference achieved little more than a confirmation of the nuclear status quo. The 64-point Action Plan agreed at the latter meeting contained only modest commitments towards more disarmament.<sup>12</sup> Against this background, it is problematic that NPT member states in New York were unable to collectively take stock of these developments and agree on the implications for the non-proliferation regime. Yet, it is precisely this lack of common ground that represents the second reason why the review conference's failure is cause for concern.

### Radicalizing the Nuclear Disarmament Debate

The NPT, like any multilateral accord, can only be effective if a critical mass of important countries abides by its rules and is willing to invest in the regime.<sup>13</sup> The NPT is a bargain, placing specific obligations on the parties and granting them certain rights. Unlike other multilateral treaties, these rights and obligations are distributed unevenly. Thus, the nuclear weapon states have to reduce the importance of nuclear weapons in their deterrence and defence postures. China, France, Russia, the United Kingdom and the United States are required to work towards nuclear abolition. At the same time, the non-nuclear weapon states have to forego nuclear weapons and support non-proliferation arrangements. The result is what William Walker called the »logic of restraint«, a difficult and fragile compromise between those who argue that nuclear weapons are legitimate instruments of power and those who argue that nuclear weapons need to be abolished at all costs.<sup>14</sup>

*Internationale Politikanalyse*, Friedrich Ebert Stiftung, Berlin 2010, <<http://library.fes.de/pdf-files/id/ipa/07339.pdf>> (retrieved 10 August 2015).

<sup>12</sup> See Harald Müller, »Der nukleare Nichtverbreitungsvertrag nach der Überprüfung«, *HSFK-Report*, Frankfurt/M. 2010, <<http://www.hsfk.de/fileadmin/downloads/report0310.pdf>> (retrieved 24 September 2015); Rebecca Johnson, »Assessing the 2010 NPT Review Conference«, *Bulletin of the Atomic Scientists*, 66(4) 2010, pp. 1–10, <<http://thebulletin.metapress.com/content/u046508760441844/fulltext.pdf>> (retrieved 24 September 2015).

<sup>13</sup> Viewed from this perspective, non-compliance of individual countries by itself is not reason for concern as long as it triggers a strong and unified international response, aimed at restoring compliance.

<sup>14</sup> See Walker 2012, *A Perpetual Menace* [see Fn. 2], pp. 4–6.

The outcome of the 2015 NPT review conference is problematic because it exposed the dwindling support for this logic of restraint. In New York, many state parties assumed radical positions in the debate on nuclear weapons and nuclear disarmament.

The nuclear weapon states and some of their allies argue that nuclear weapons have a continuing (and some said: growing) role to play in strengthening strategic stability and international security. Thus, the NPT nuclear weapon states in their joint statement argued that nuclear disarmament must be »based on the principle of increased and undiminished security for all.«<sup>15</sup> For China, France, Russia, the United Kingdom and the United States the incremental arms control approach must have the goal of »upholding global strategic security and stability«<sup>16</sup>, by which they mean that reductions in nuclear weapons must not result in a reduction of their security. By the same token, the nuclear weapon states downplayed existing nuclear disarmament obligations. They described the politically-binding disarmament pledges given in 2010 as mere »recommendations« and labelled the politically-binding Action Plan a »road map«, implying that the commitments contained therein are long-term goals, rather than specific obligations.<sup>17</sup> Some nuclear weapon states denied any connection between the disarmament and non-proliferation obligations, and thus the fact that the NPT links these two suborders. Russia, for example, warned that »any attempts to raise the issue of tradeoffs and linkages [...] may result in the loss of [the NPT's] effectiveness.«<sup>18</sup>

On the other end of the spectrum of views on nuclear arms control were 107 states which supported the »humanitarian pledge«, initiated by Austria. Supporters of the pledge want to close the »legal gap for the prohibition and elimination of nuclear weapons«<sup>19</sup>

<sup>15</sup> 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Statement of the People's Republic of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the 2015 Treaty on the Non-Proliferation of Nuclear Weapons Review Conference«, New York 2015, <<http://www.state.gov/t/isn/npt/statements/241381.htm>> (retrieved 10 August 2015).

<sup>16</sup> See *ibid.*

<sup>17</sup> See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Statement* [see Fn.15].

<sup>18</sup> 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Statement by Mikhail Uliyanov, Acting Head of the Delegation of the Russian Federation at the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (General Debate)«, New York 2015, pp. 3, <[http://www.un.org/en/conf/npt/2015/statements/pdf/RU\\_en.pdf](http://www.un.org/en/conf/npt/2015/statements/pdf/RU_en.pdf)> (retrieved 10 August 2015).

<sup>19</sup> United Nations, »The Vienna Conference on the Humanitarian Impact of Nuclear Weapons (8-9 December 2014) and the Austrian Pledge: Input for the

in the NPT. They believe that the nuclear weapon states are playing for time by linking nuclear disarmament steps to improvements in regional and international security. These states see the NPT through the lens of nuclear abolition, rather than nuclear deterrence. They argue that the humanitarian consequences of any nuclear weapon use make nuclear abolition a political and moral imperative. The humanitarian initiative, supported by many NGOs, dominated much of the public debate around the review conference and media reporting.

Yet, supporters of the humanitarian initiative have no joint position on the value of the step-by-step approach toward nuclear disarmament. Austria and others argued that the humanitarian initiative aims to strengthen the NPT by revitalizing nuclear arms control and disarmament. They see it, at least implicitly, as a tool to put pressure on the nuclear weapon states to pursue incremental arms control measures. Others have come to see incremental arms control as futile. These states push for a more radical approach of initiating negotiations on a nuclear weapons ban, outside of the NPT.

Though it does not explicitly say so, the humanitarian pledge is understood to pave the way for negotiations on a nuclear weapons ban. According to Austrian ambassador Alexander Kmentt, a driving force behind the humanitarian initiative, the NPT's review cycle had demonstrated that »there is a reality gap, a credibility gap, a confidence gap and a moral gap«<sup>20</sup> in the treaty. Austria pledged to help »fill the legal gap for the prohibition and elimination of nuclear weapons«<sup>21</sup> and provided an opportunity for others to commit themselves to this cause, though it is not clear whether the initiative should be read as a statement of support for talks on a treaty that would comprehensively outlaw nuclear weapons.

In itself, such different views on the role of nuclear weapons are not a problem for the nuclear order. Such different perspectives have always co-existed in the non-proliferation regime. It has been a value of the NPT to provide an opportunity to bring such compet-

*NPT 2015 Review Conference: Working Paper submitted by Austria*«, *NPT/CONF.2015/WP.29*, New York, 21 April 2015, p. 4, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N15/112/43/PDF/N1511243.pdf?OpenElement>> (retrieved 10 August 2015).

<sup>20</sup> 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »2015 NPT Review Conference Joint Closing Statement as Delivered by Austria 2015«, New York, 22 May 2015, p. 2, <<http://statements.unmeetings.org/media2/4658778/austria.pdf>> (retrieved 10 August 2015).

<sup>21</sup> See *ibid.*

ing points of view together. Thus, supporters of nuclear deterrence and abolitionists could usually agree on a set of pragmatic measures and goalposts to move closer to the goal of a world free of nuclear weapons.

In New York, the debate on such a step-by-step or building-block approach to nuclear arms control became more fundamentalist. Most nuclear weapon states and many states supporting the humanitarian initiative appear to have moved so far apart that both camps dispute the legitimacy of the other's perspective. As a consequence, the overlap between both camps, signified by agreement on next steps in nuclear disarmament, has all but disappeared.<sup>22</sup> The South African representative, for example, argued that »[t]he humanitarian perspective ... compels us to fundamentally disagree with arguments that these weapons of mass destruction are essential to the security of some, but not for others«<sup>23</sup>, thus rejecting the argument that nuclear weapons can only be reduced when international security has improved. The step-by-step approach finds itself attacked from two divergent directions, with proponents as well as opponents of nuclear weapons questioning the ability of the treaty to serve as the basis for progress on nuclear disarmament and non-proliferation.

Caught in the middle between the nuclear believers and the nuclear abolitionists was a shrinking group of non-nuclear weapon states, like Germany, that remain committed to the logic of nuclear restraint. With sympathies for both positions and allegiances in both camps, these middle powers believe that nuclear disarmament is best pursued in an incremental manner. At the same time, most of these moderate countries are convinced that the nuclear weapon states can and should do more for nuclear disarmament, even under current conditions of global and regional turmoil.

Groupings of moderate states had often successfully brokered compromises at review conferences. For example, the European Union (EU) had built bridges between opposing camps at several NPT review conferences.<sup>24</sup> The EU was not in a position to play such a

<sup>22</sup> The draft final document in paragraph 154 did contain a list of 19 follow-on actions to the 2010 Action Plan but these goals did not set ambitious new benchmarks or timelines. See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons 2015. *Draft Final Document*, [see Fn. 1].

<sup>23</sup> 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »2015 NPT Review Conference, South Africa's National Statement for the General Debate«, New York, 29 April 2015, <[http://www.un.org/en/conf/npt/2015/statements/pdf/ZA\\_en.pdf](http://www.un.org/en/conf/npt/2015/statements/pdf/ZA_en.pdf)> (retrieved 17 September 2015).

<sup>24</sup> See for example Oliver Meier, »The European Union's Policy on Non-Proliferation of Weapons of Mass Destruction«, in: Ueta Takako,

role at the ninth review conference. In 2015, EU members were unable to overcome internal divisions on how to position the Union towards the humanitarian initiative. This failure marked the first time since 1997, when the EU had created the instrument of a Common Position that member states did not agree on the major issues on the NPT agenda. Hence, the EU Council ahead of the review conference merely adopted a brief Joint Action. Remarkably (and somewhat embarrassing for the EU's ambition to foster an effective multilateralism) the document acknowledged the internal split on nuclear disarmament by noting »the ongoing discussions on the consequences of nuclear weapons, in the course of which different views are being expressed, including at an international conference organized by Austria, in which not all EU Member States participated.«<sup>25</sup>

Subsequently, the EU failed to play an important role at the review conference itself. The EU submitted three working papers but only on the non-contentious issues CTBT, safeguards implementation and nuclear safety.<sup>26</sup> Thus, the 2015 NPT review conference was a setback for the EU's aspiration to foster multilateral non-proliferation accords and constituted its worst performance at any multilateral non-proliferation conference.<sup>27</sup> The underperformance is an ironic turn

Éric Remacle (eds.): *Tokyo-Brussels Partnership. Security, Development and Knowledge-based Society*, Brussels 2008, pp. 219-229.

<sup>25</sup> Council of the European Union, *Council Conclusions on the Ninth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT): 8079/15*«, Brussels, 20 April 2015, p. 4, <<http://www.consilium.europa.eu/en/press/press-releases/2015/04/pdf/st08079-en15.pdf>> (retrieved 10 August 2015). France is the only EU member state that had not participated in the December 2014 Vienna conference on the humanitarian consequences of nuclear weapons.

<sup>26</sup> »European Union support for the Comprehensive Nuclear-Test-Ban Treaty and its verification regime: Working paper submitted by the European Union«, NPT/CONF.2015/WP.50, New York, 4 May 2015, <[http://www.un.org/en/conf/npt/2015/pdf/NPT%20CONF2015%20WP.50\\_E.pdf](http://www.un.org/en/conf/npt/2015/pdf/NPT%20CONF2015%20WP.50_E.pdf)>; »European Union safeguards contribution to the global nuclear non-proliferation regime: safeguards implementation in the European Union: Working paper submitted by the European Union«, NPT/CONF.2015/WP.55, New York, 6 May 2015, <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=NPT/CONF.2015/WP.55](http://www.un.org/en/ga/search/view_doc.asp?symbol=NPT/CONF.2015/WP.55)>; »Promotion by the European Union of the highest levels of nuclear safety: revised nuclear safety directive: Working paper submitted by the European Union«, NPT/CONF.2015/WP.56, New York, 11 May 2015, <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=NPT/CONF.2015/WP.56](http://www.un.org/en/ga/search/view_doc.asp?symbol=NPT/CONF.2015/WP.56)> (all retrieved 17 September 2015).

<sup>27</sup> See Andrea Berger, »Gangs of New York: The 2015 NPT RevCon«, European Leadership Network, London, 27 May 2015, <[http://www.europeanleadershipnetwork.org/gangs-of-new-york-the-2015-npt-revcon\\_2790.html](http://www.europeanleadershipnetwork.org/gangs-of-new-york-the-2015-npt-revcon_2790.html)> (retrieved 09 July 2015).

of events given the EU's central role in efforts to resolve the conflict over Iran's nuclear programme.<sup>28</sup>

The New Agenda Coalition, another grouping of middle powers, likewise failed to mediate at the review conference. Almost by default, the Non-Proliferation and Disarmament Initiative (NPDI) became the only group to outline the political middle ground. The NPDI, which is a group of 12 influential states from all regions of the world, tabled two working papers, one of which outlined better transparency measures.<sup>29</sup> Several key elements of this proposal made their way into the draft final document.

### Lack of Engagement and Attention

Another worrying trend displayed at the review conference was the lack of engagement by major stakeholders. Compared to other post-Cold War NPT review conferences, the 2015 review conference received the least public and political attention. This is illustrated, for example, by the number of related articles published on respective review conferences in six major international newspapers (see ).<sup>30</sup>

Addressing contentious issues is one indication for members' willingness to invest into a treaty regime because such statements and calls for action can be politically costly. In New York, many state parties were unwilling to directly tackle the tough challenges facing the NPT. The meeting's proceedings often were characterized by a lack open and direct exchange on the nuclear disarmament, the dangers of nuclear proliferation and the role of peaceful nuclear energy programmes.<sup>31</sup>

<sup>28</sup> See Oliver Meier, »European Efforts to Solve the Conflict over Iran's Nuclear Programme: How has the European Union Performed?«, EU Non-proliferation Consortium, *Nonproliferation Paper* No. 27, February 2013, <<http://www.sipri.org/research/disarmament/eu-consortium/publications/nonproliferation-paper-27>> (retrieved 10 August 2015).

<sup>29</sup> Those countries are: Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Nigeria, the Philippines, Poland, Turkey and the United Arab Emirates. Paragraph 154 (11) of the draft final document contained an elaborate proposal to improve reporting requirements of the nuclear weapon states. This language appears to reflect the input of the NPDI. *Draft Final Document*, [see Fn. 1].

<sup>30</sup> Total number of articles on the respective review conference published in *The Guardian*, *Frankfurter Allgemeine Zeitung*, *Jerusalem Post*, *Le Monde*, *New York Times* and *The Washington Post* during the six-week period from one week before the beginning of the conference until one week after the meeting's conclusion.

<sup>31</sup> According to some participants, the President's management style made these problems only worse. The President relied on small groups of states coming up with agreed language but allocated relatively little space for actual negotiation of draft text in the Main Committee. As a result, many delegations felt sidelined. See Harald

The most obvious example concerns the shallow and cursory debate on Russia's violations of security assurances given to Ukraine in 1994. Comparatively few delegations criticized Moscow for its violation of the Budapest Memorandum. As a result, the language in the 2015 draft final document's language on security guarantees is substantively the same as the language adopted in 2010.<sup>32</sup> Other important developments that were not sufficiently addressed in New York include continued violations of safeguards obligations by Iran, the implications of the 2011 nuclear accident in Fukushima on the development of civil use of nuclear energy and China's plan to supply nuclear technology to Pakistan. While all of these developments came up during the general debate and in the three main committees, debates in New York were often superficial and appeared to be driven by a wish to avoid difficult issues, rather than an effort to improve the regime. Henk Cor van der Kwast, head of the Dutch delegation at the review conference, put it diplomatically when he concluded that »[t]he idea that the current international political situation and the security and strategic elements that determine political relations were not relevant or only partly relevant for the review conference was a misjudgement.«<sup>33</sup>

Ironically, disengagement by established NPT states happened against the background of increased involvement by other actors, including from the Middle East. Thus, Israel for the first time since 1995 participated as a review conference observer. Israel also submitted a paper on the Middle East regional dialogue.<sup>34</sup> This marks a different attitude from the previous review conference, where Jerusalem criticised NPT state parties for their agreement to hold a meeting on a MEWMDZF. The State of Palestine, which had acceded to the NPT in February 2015, also participated.<sup>35</sup>

Müller, »Die gespaltene Gemeinschaft: Zur gescheiterten Überprüfung des Nuklearen Nichtverbreitungsvertrags«, *HSEK-Report*, Frankfurt/M. 2015, <[http://hsfk.de/fileadmin/downloads/report\\_0115.pdf](http://hsfk.de/fileadmin/downloads/report_0115.pdf)> (retrieved 6 October 2015).

<sup>32</sup> The draft Final Document in paragraph 154(13) refers to Action 7 in the Action Plan and urged the Conference on Disarmament to »immediately begin discussion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.« *Draft Final Document*, [see Fn. 1].

<sup>33</sup> Van der Kwast, *The NPT*, [see Fn. 7], pp. 11–12.

<sup>34</sup> See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Towards a regional dialogue in the Middle East: an Israeli Perspective: Submission by Israel to the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons«, *NPT/CONF.2015/36* 2015, New York, 30 April 2015.

<sup>35</sup> See Rauf, *The 2015 NPT Review Conference*, [see Fn. 7].



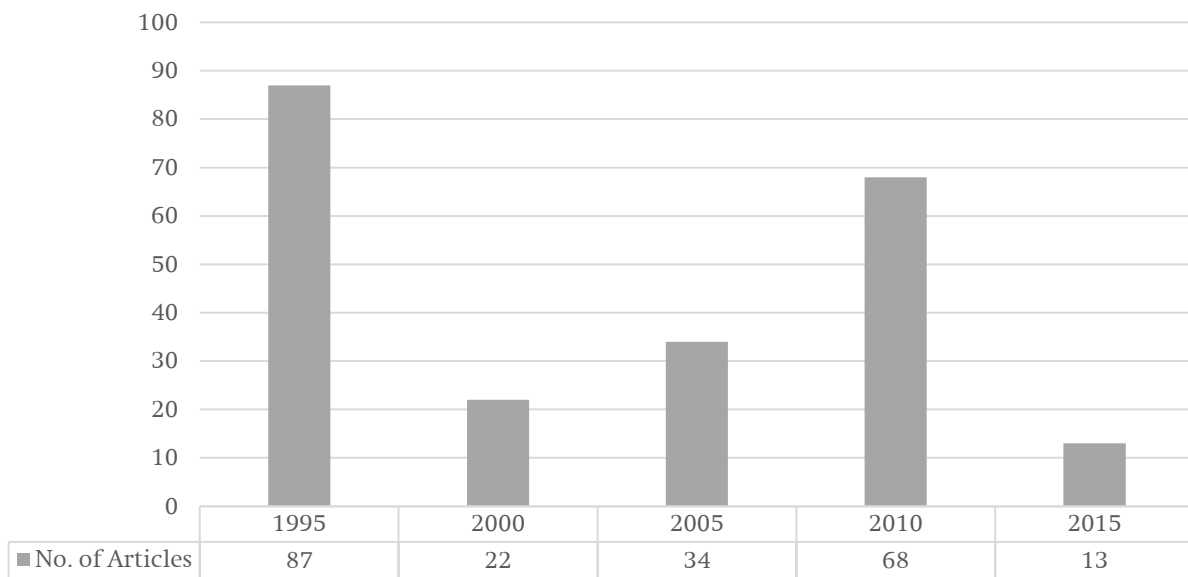


Figure 1: Number of articles on NPT review conferences in six major international newspapers from 1995 to 2015.

The trend towards lesser attention and engagement could put the NPT onto a slippery slope towards oblivion. Disengagement can lead to a vicious circle. The lack of success may trigger a reduction of political attention and bureaucratic resources being devoted to the non-proliferation regime. Such negligence, in turn, makes agreement on contentious issues less likely because of a lack of high-level guidance given to negotiators.

Without sufficient political attention, it will also become more difficult to bring states that are in non-compliance back into the regime. The case of Iran is an example of how continued engagement, periodically at high political levels, has helped to create a framework for bringing Tehran back into the non-proliferation mainstream. The less the NPT is perceived as the most important multilateral frame of reference for addressing violations of international rules, norms and procedures, the more difficult it will become to organize a sustained effort to address non-compliance concerns.

### Back to 1995 on the WMD in the Middle East

Discussions on a Middle East zone free of nuclear weapons and other weapons of mass destruction were important and contentious even before opening of the review conference in New York on April 27. This pro-

posal has a long history. In the NPT context, discussions on the establishment of such a zone had become progressively more specific and progress more obligatory. At the 1995 review and extension conference, a resolution on the Middle East was adopted, which called on regional states to take practical steps towards a zone free of WMD. Participants at the 2010 review conference adopted a proposal to convene a conference on a MEWMDFFZ by 2012 under the auspices of the three NPT depositary states (Russia, the United Kingdom and the United States). In 2011, Finnish diplomat Jaakko Laajava was designated as facilitator of the conference. After a first meeting with participation of regional states in October 2013, four other meetings followed. Israel participated in all of them.<sup>36</sup>

Yet, participants could not agree on the agenda for a possible conference. At the heart of the matter was a dispute over the linkage between regional security and nuclear disarmament. While Israel argued that nuclear arms control can only be pursued when and if regional security has improved, most other regional states saw this reference as an excuse for avoiding a

<sup>36</sup> This signifies a change of attitude after Israel in 2010 had squarely rejected any participation in the process. For a summary of the issue see Bernd Kubbig, Christian Weidlich, »A WMD/DVs Free Zone for the Middle East: Taking Stock, Moving Forward towards Cooperative Security«, Frankfurt a. M. 2015, <<http://academicpeaceorchestra.com/gui/user/downloads/A%20WMD-DVs%20Free%20Zone%20For%20The%20Middle%20East.pdf>> (retrieved 10 August 2015).

discussion of Israel's regional nuclear weapons monopoly. Egypt demonstrated the importance of the issue when it protested in 2013 against the lack of progress by walking out of a preparatory commission meeting in Geneva.<sup>37</sup>

At the 2015 NPT review conference, an Egyptian proposal triggered the debate on the MEWMDFZ. Cairo proposed to terminate the mandate agreed at the 2010 review conference and replace it with a new process, under the auspices of the UN Secretary General. The proposal came as a surprise to many, though the group of Arab states and movement of non-aligned states (NAM) substantively endorsed the proposal. Egypt and its supporters wanted a firm deadline and proposed to hold a conference on a MEWMDFZ within 180 days of the review conference.<sup>38</sup> According to the proposal, consensus among states of the region was needed neither for convening such a meeting, nor for decisions to be made. The paper made clear that regional issues would not be on the agenda by listing the topics of two working groups to be convened, on the scope and demarcation of the zone and verification measures.

From the perspective of the nuclear order, divisions among Russia, the United Kingdom and the United States made matters worse. The three states are the NPT depositary states and also co-facilitators of the conference. As such they share a responsibility as custodians of the treaty and for fostering progress on regional disarmament. Initially, London, Moscow and Washington had tabled their own proposal on the way forward with the MEWMDFZ proposal, which basically aimed to continue the previous process.<sup>39</sup> Washington then sharply criticized the Egyptian proposal as unre-

alistic and counterproductive. The United States made it strikingly clear that they would not support such an initiative. Russia was more willing to support certain elements of the Egyptian proposal. Later during the conference Moscow tabled its own proposal on the way forward with a MEWMDFZ.<sup>40</sup> It differed markedly from the joint paper that the three depositary states had submitted earlier and endorsed major elements of the Egyptian proposal.

Based on these initiatives, the conference President came up with language in the draft final document which aimed to bridge the gap between the different positions. As described above, this attempt was unsuccessful.

This failure to reach agreement means that the mandate for consultations agreed in 2010 is no longer valid. Member states would have to refer back to the rather loosely worded language on a MEWMDFZ that had been agreed in 1995, if they were to pursue a regional conference. The United States has pledged a continued commitment to the goal of holding such a conference. But Washington has also stated that the initiative for such a meeting has to come from the states in the region. Given the political context, it is far from clear which regional state would have an interest in and the capacity to champion an initiative to convene such a conference.

<sup>37</sup> Notably, other regional states at the time did not support Egypt by also leaving the meeting. See Marcus Taylor, Kelsey Davenport, »Egypt Protests Inaction on WMD Meeting«, *Arms Control Today*, June 2013, <[http://legacy.armscontrol.org/act/2013\\_06/Egypt-Protests-Inaction-on-WMD-Meeting](http://legacy.armscontrol.org/act/2013_06/Egypt-Protests-Inaction-on-WMD-Meeting)> (retrieved 17 September 2015).

<sup>38</sup> The convening of the meeting could be delayed for another 90 days if one of the parties that had agreed to participate did decide not to attend. See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Implementation of the 1995 resolution and 2010 outcome on the Middle East: Working paper submitted by Bahrain on behalf of the Arab Group«, NPT/CONF.2015/WP.30, New York, 22 April 2015.

<sup>39</sup> See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, »Progress towards the convening of a conference on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction attended by all States of the Middle East: Working paper submitted on behalf of the co-convening States (Russian Federation, United Kingdom of Great Britain and Northern Ireland and United States of America)«, NPT/CONF.2015/WP.48, New York, 4 May 2015.

<sup>40</sup> See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons 2015, »Conference on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction: Working paper submitted by the Russian Federation«, NPT/CONF.2015/WP.57, New York, 14 May 2015.

Proponent	Timing	Convenor	Rules of Procure	Agenda/Goal
Arab States	Within 180 days (+ 90 days)	UNSG	Annual meetings, no consensus necessary	WGs on scope of zone and verification; negotiation of zone treaty
Co-convenors/ depositaries (Russia, UK, US)	As soon as possible	Facilitator (J. Laajava); co-convenors	Arrangements "freely arrived at"	First step towards MEWMDFZ
Russia	Within 45 days after agenda is agreed No later than 1 March 2016	Special Representative (appointed by UNSG)	No consensus on agenda, but on substantive decisions	"define" follow-up steps leading to MEWMDFZ, continuous process
Draft Final Document	Within 45 days after agenda is agreed, no later than 1 March 2016	UNSG as convenor; appoints special representative	Consensus agreements at preparatory meetings and at conference	"define" follow-up steps leading to MEWMDFZ, "continuous process" toward treaty

Table 1: Proposals on a Middle East zone free of nuclear weapons and other weapons of mass destruction.

### Lack of Guidance on Non-Proliferation

Disagreement on strengthened non-proliferation instruments is the fourth reason why the failure of the review conference is likely to have negative repercussions for international and regional security. Many non-nuclear weapon states argue that the disarmament and non-proliferation pillars of the NPT are linked. In New York, they cited the lack of progress on nuclear disarmament as the main reason for their refusal to accept stronger non-proliferation measures. For example, non-aligned states continue to object to make the Additional Protocol the new safeguards standard. Implementation of an Additional Protocol enhances the IAEA's capacities to look for undeclared nuclear facilities.

The draft final document contains little new substance on strengthened non-proliferation instruments. The draft agreement that emerged from Main Committee II (which deals with IAEA – International Atomic Energy Agency – verification) contained 23 paragraphs on safeguards but only five had novel language compared to the final document adopted in 2010. In the end, the conference President decided to eliminate even these paragraphs from the draft final document

she tabled at the closing of the review conference, for fear of triggering disagreement.<sup>41</sup>

This continued stalemate is regrettable because in practical terms the IAEA since 2010 has made progress in strengthening the IAEA's safeguards system. Thus, the Agency has made great strides in developing a state-level approach to safeguards that would allow for a more efficient allocation of verification resources. Yet, this approach did not receive consensus support at the review conference.<sup>42</sup>

The deadlock also means that the momentum in the talks of France, Germany, the United Kingdom, the EU and China, Russia, the United States (E3/EU+3) with Iran could not be translated into agreements at the review conference. While the review conference preceded the 14 July 2015 agreement on the Joint Comprehensive Plan of Action (JCPOA), Iran in the context of the Geneva 14 November 2013 Joint Plan of Action and the Lausanne Framework Agreement of 2 April 2015 had already accepted a number of strengthened non-proliferation instruments, such as the Additional Protocol. Tehran, in principle, had also accepted the

<sup>41</sup> See Hugh Chalmers/Sonia Drobysz/Andreas Persbo, »After the NPT Review Conference: All is not lost«, *Trust & Verify*, No. 149, April-June 2015, pp. 1-4.

<sup>42</sup> In the past, Russia was one of the countries that had raised objections against the state-level approach. See Laura Rockwood, »The IAEA's State-Level Concept and the Law of Unintended Consequences«, *Arms Control Today*, 44 (7) 2014, pp. 25-30, <[https://www.armscontrol.org/act/2014\\_09/Features/The-IAEAs-State-Level-Concept-and-the-Law-of-Unintended-Consequences](https://www.armscontrol.org/act/2014_09/Features/The-IAEAs-State-Level-Concept-and-the-Law-of-Unintended-Consequences)> (retrieved 10 August 2015).

IAEA's mandate to investigate a possible military dimension of its nuclear programme.

There was also no progress on reforming the procedure for withdrawal from the NPT, as enshrined in the treaty's Article X. This issue of how to raise the hurdles for states leaving the treaty has received new attention ever since North Korea in 2003 became the first state to declare its withdrawal from the treaty. In New York, several ideas in this regard were on the table, including proposals to ensure that nuclear technology acquired during NPT membership would remain under safeguards even after withdrawal (fall-back safeguards).<sup>43</sup>

The deadlock is problematic because the need to further develop safeguards will continue to grow, particularly if states in the Middle East and elsewhere expand their peaceful nuclear programmes.

The draft document did note some new developments on nuclear non-proliferation-related issues such as

- the new U.S. International Partnership for Disarmament Verification to increase cooperation between NPT members on research related to monitoring nuclear weapons reductions,<sup>44</sup>
- the establishment of a nuclear fuel bank as a way of providing nuclear fuel assurances<sup>45</sup> and
- the linkage between cyber threats and nuclear safety, which were mentioned for the first time in a draft final document.<sup>46</sup>

It would now be up to NPT member states to follow up on these issues and related problems in contexts outside of the NPT.

<sup>43</sup> Pierre Goldschmidt, »Securing Irreversible IAEA Safeguards to Close the Next NPT Loophole«, *Arms Control Today*, 45(2) 2015, pp. 15–19, <[https://www.armscontrol.org/ACT/2015\\_03/Features/Securing-Irreversible-IAEA-Safeguards-to-Close-the-Next-NPT-Loophole](https://www.armscontrol.org/ACT/2015_03/Features/Securing-Irreversible-IAEA-Safeguards-to-Close-the-Next-NPT-Loophole)> (retrieved 20 September 2015).

<sup>44</sup> See U.S. Bureau of Arms Control, Verification, and Compliance, »The International Partnership for Nuclear Disarmament Verification«, *Fact Sheet*, Washington D.C. 2015, <<http://www.state.gov/tj/avc/rls/239557.htm>> (retrieved 10 August 2015).

<sup>45</sup> See Aabha Dixi, »IAEA and Russia Sign Transit Agreement for IAEA Fuel Bank«, International Atomic Energy Agency, Vienna 26 August 2015, <<https://www.iaea.org/newscenter/news/iaea-and-russia-sign-transit-agreement-iaea-fuel-bank>> (retrieved 10 August 2015).

<sup>46</sup> See for example also Andrew Futter, »War Games Redux? Cyber Threats, U.S.-Russian Strategic Stability and Future Nuclear Reductions«, *Deep Cuts Issue Brief #6*, Hamburg, Institute for Peace Research and Security Policy Hamburg, September 2015, <<http://www.deepcuts.org/publications/issuebriefs/210-issue-brief-6-war-games-redux>> (retrieved 20 September 2015).

## What now? Steps to Strengthen the Nuclear Order

The next five years, leading to the tenth review conference in 2020, will be an extremely challenging time for the nuclear order. The current system is coming under increased pressure from several directions. These include continued or increased modernization programmes in all nine nuclear weapon possessor states, while there is no prospect of new nuclear arms control or disarmament agreements being concluded. There is a real risk that the tensions between NATO and Russia could damage existing accords such as the Intermediate-Range Nuclear Forces Treaty (INF) or the New Strategic Arms Reduction Treaty (New START).<sup>47</sup> The opening of a new, alternative track to negotiate a nuclear weapons ban treaty could further undermine the coherence of NPT membership. In addition, more countries could engage in fuel cycle activities, putting further strains on IAEA verification.

The review conference displayed a widening rift among member states on core issues such as the best way forward with nuclear disarmament, the need for an inclusive dialogue on nuclear disarmament in the Middle East, and the intrinsic value of IAEA safeguards. Yet, the NPT remains the only multilateral framework to tackle these challenges cooperatively and coherently. So what can be done to increase political support for strengthening the NPT as the basis for collaborative and inclusive efforts to reduce the role of nuclear weapons in international security?

## A Meaningful Dialogue on the Role of Nuclear Weapons in International Security

Initiating and sustaining a meaningful dialogue on nuclear arms control and the role of nuclear weapons in international politics is a key short-term challenge. Without such a conversation, it is difficult to conceive how an international agreement on the way forward with nuclear disarmament can emerge.

It is unlikely that negotiations on nuclear weapons ban will provide a framework for such a dialogue. Nuclear weapons states have stated that they will not participate in such negotiations and supporters of the

<sup>47</sup> See Alexei Arbatov, »An Unnoticed Crisis: The End of History for Nuclear Arms Control?«, Carnegie Center Moscow, June 2015, <[http://carnegieendowment.org/files/CP\\_Arbatov2015\\_n\\_web\\_Eng.pdf](http://carnegieendowment.org/files/CP_Arbatov2015_n_web_Eng.pdf)> (retrieved 17 September 2015).

humanitarian initiative would not make such participation a precondition for beginning negotiations on a nuclear weapons ban. In case supporters of the humanitarian initiative decided to initiate negotiations on a nuclear weapons ban in the context of the UN General Assembly, or some other multilateral forum, such talks on a nuclear weapons ban could be the only nuclear arms control game in town. This would reinforce the »you are either with us or against us« approach of some nuclear weapons ban proponents.

The proponents argue that a nuclear weapons ban would lead to a new discourse that could, in the long run, reduce nuclear weapons' legitimacy. This may or may not be true for parts of Europe and the global South. But it is unlikely to be successful in those regions where nuclear weapons are held in high regards. As of October 2014, more than three billion people lived in states that possess nuclear weapons and another billion in states allies with nuclear weapon states. There is broad public and political support for possession of nuclear weapons in China, France, India, Pakistan, Russia and the United States. These countries and other major powers are unlikely to change their attitudes any time soon and support agreement on a treaty that would ban nuclear weapons. Affecting the »discourse« about nuclear weapons in regions like South Asia and in most nuclear possessor countries, will, at best, remain a long-term task.

A more pragmatic way to reduce the salience of nuclear weapons would build on an inclusive dialogue on nuclear arms control. Such a forum should bring together influential states from various regions and involve at least some nuclear weapon states. Such a conversation could reduce the risk of further rifts in the international community on the role of nuclear weapons.

Based on the proceedings at the NPT review conference, the NPDI is the cross-regional grouping of influential middle powers currently best situated to take on this task. To kick-start multilateral nuclear arms control, NPDI member states could initiate a high-level initiative and invite the P5 as well as other interested states, including NPT non-parties, to attend a series of summits between now and 2020 to discuss nuclear disarmament, arms control and non-proliferation. Such an initiative could conclude by the 75<sup>th</sup> anniversary of the Hiroshima bombings, shortly after the next NPT review conference.

To be the focal point for a nuclear arms control dialogue, the NPDI will have to live up to act more coherently. The grouping was initiated by Australia and

Japan in September 2010. Since then, changes in government in Canberra, Tokyo and in Ottawa have reduced the nuclear arms control ambitions of three key NPDI states. At the same time, Mexico turned into a driving force behind the humanitarian initiative. Thus, the political differences between important NPDI member states have grown. This makes it more difficult to agree for the group on nuclear disarmament principles. However, the broad spectrum covered within the NPDI would also increase the credibility of any joint position reached by the group.

To be sure, summitry will not suffice to create a credible nuclear arms control framework. It would have to be underpinned by talks on specific issues at the working level. The draft final document at the NPT review conference does contain some useful starting points, including the proposal to establish an Open Ended Working Group »to identify and elaborate effective measures for the full implementation of Article VI«<sup>48</sup> at the UN General Assembly. Such a group could address specific issues, such as nuclear doctrines, options for increasing transparency on nuclear weapons and fissile materials, and next steps on multilateral nuclear arms control.

### **Strengthening Multilateral Non-Proliferation Instruments**

Strengthening NPT-related non-proliferation instruments is a second key challenge in the run-up to the 2020 NPT review conference. Much will depend on whether the JCPOA agreed with Iran will be implemented smoothly and in a manner that is consistent with NPT norms, rules and procedures. Should the process be successful, this could provide a tremendous boost for the non-proliferation regime.<sup>49</sup>

Absent clear guidance from the NPT review conference, efforts to strengthen non-proliferation instruments should now focus on the IAEA and other multilateral fora and institutions. Thus, the IAEA Board of Governors and the Agency's General Conference should endorse the progress that has been made over the last five years in strengthening verification instruments. This progress includes new tools to improve the effectiveness of safeguards by using novel

<sup>48</sup> *Draft final document*, [see Fn. 1], paragraph 154(19).

<sup>49</sup> See Oliver Meier, »Crisis as Opportunity. Implications of the Nuclear Conflict with Iran for the Nuclear Non-Proliferation Regime«, *SWP Research Paper*, Stiftung Wissenschaft und Politik, Berlin, November 2014, <[http://www.swp-berlin.org/fileadmin/contents/products/research\\_papers/2014\\_RP12\\_mro.pdf](http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2014_RP12_mro.pdf)> (retrieved 10 August 2015).

technologies and new approaches to increase the efficiency of monitoring, for example by applying a state-level approach to safeguards. Some of these issues will come up in the context of implementing the JCPOA, others can be pushed independently of such verification in Iran. The IAEA should receive a clear mandate to implement such new tools and sufficient funding to do so.

Bringing the Comprehensive Nuclear-Test-Ban Treaty (CTBT) closer to entry into force and strengthening support for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) is another way to make up for the shortcomings of the NPT review conference. A case could be made that successful implementation of a JCPOA paves the way for ratification of the CTBT by Iran and Israel.

None of these steps can fix the damage that has been caused by NPT state parties' failure to adopt a forward-looking, ambitious final document at the review conference. This is a bad development for everybody, except for two groups of states: those treaty violators worried about a strong international response to nuclear proliferation and those nuclear weapon states upholding the logic of nuclear deterrence and associated double standards.

For the rest of the international community, the growing divide on nuclear disarmament, the setback on a MEWMDFZ, the failure to reach agreement on stricter controls on nuclear activities – and the lack of concern about these developments – are bad news. If we want to prevent disorder in the international order from spilling over into the nuclear world, a concerted effort to strengthen the nuclear non-proliferation is going to be required. Influential middle powers like Germany have to develop new ways and new coalitions of the willing to save the nuclear order from collapsing.