



2022 NPT Review Conference: Nuclear Abolition Not on the Agenda Lawyers Committee on Nuclear Policy*

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Due to a “Nyet” from Russia, states parties to the Nuclear Non-Proliferation Treaty (NPT) did not reach consensus on an outcome document for the 10th Review Conference of the treaty, held 1-26 August 2022 at the United Nations in New York City. Though the point was not plainly stated, clearly Russia could not accept provisions in the draft relating to the Zaporizhzhia nuclear power plant, one of which stresses the need to ensure control of the facility by competent Ukrainian authorities. While the [draft outcome document](#) was not adopted, it is worth examining it in some detail, both because it will serve as an important, albeit informal, reference point for future NPT discussions and because of what it reveals about the state of things in the wider world. Our focus is on issues relating to nuclear disarmament, not those relating to preventing the spread of nuclear arms and to nuclear power.

The Consequences of Another Failure to Adopt

What are the negative consequences of the failure to adopt an outcome document? Very little was lost in terms of a concrete, operational program on nuclear disarmament, as discussed below. The impact on the legitimacy of the NPT regime is somewhat imponderable, but it is certainly not positive, especially given that the last review conference, held in 2015, also failed to produce an outcome document. The real problem for the legitimacy of the NPT and for establishing a world free of nuclear weapons lies elsewhere: The five states acknowledged by the treaty to possess nuclear arms—the US, UK, France, Russia, and China—have not delivered on the disarmament obligation set out in NPT Article VI and the commitments to implement that obligation agreed at conferences in 1995, 2000, and 2010.

Indeed, the most regrettable thing about not having an agreed outcome document this time is that it would have reaffirmed the commitments made at past conferences. That reaffirmation was not a certainty going into this conference, and it will not be in the future (depending in good part at the next conference, to be held in 2026, on the nature of the US presidential administration).

The commitments include such measures as the unequivocal undertaking by the nuclear-weapon states to accomplish the elimination of their nuclear arsenals and reductions leading to that elimination. Further commitments include diminishing the role of nuclear weapons in security

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policies to minimize the risk of their use and to facilitate the process of elimination; bringing the Comprehensive Nuclear-Test-Ban Treaty into force; and negotiating a treaty ending production of fissile materials for nuclear arms. Those and some other past commitments are so closely tied to the effective implementation of the Article VI obligation as to supply criteria for assessment of compliance with the obligation, as this [article](#) explains. They therefore cannot be read out of existence. Still, their reaffirmation would have been to the good, reinforcing the foundation for new—measurable and time-bound—commitments.

Missing: A Pathway to a World Free of Nuclear Weapons

What was missing in the draft outcome document was a pathway, or pathways, to implementing Article VI and related commitments. That was not for lack of proposals from states and civil society, among them:

- The Non-Aligned Movement, a large group of Global South states, [recommended](#) that the conference “emphasize the need to start negotiations without further delay on a phased program for the complete elimination of nuclear weapons with a specified framework of time” and that the conference call for the negotiation in the Conference on Disarmament of a comprehensive convention on the prohibition and elimination of such weapons.
- The New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, and South Africa) [stressed](#) the imperative of implementation of past commitments and proposed strengthening accountability for such implementation through enhanced transparency and measurability including time frames and benchmarks for progress.
- A working group of the civil society Abolition 2000 Network for the Global Elimination of Nuclear Weapons [proposed](#) an intersessional process to examine measures necessary for nuclear abolition and a commitment to adopt no later than 2030 a framework or convention for the complete elimination of nuclear arsenals no later than 2045.

What the draft document had instead, in essence, were vague commitments of the NPT nuclear-armed states to make “every effort to further decrease the global stockpile of nuclear weapons” (para. 187.16, p. 26) and to present national reports twice in the five-year review cycle to be discussed in meetings preparing for the next review conference (para. 187.35, p. 28). The United States and Russia also committed to pursue negotiations on “a successor framework to New START before its expiration in 2026, in order to achieve deeper, irreversible and verifiable reductions in their nuclear arsenals.” (para. 187.17, p. 26)

The nuclear-armed states further committed to “risk reduction” initiatives such as engaging in dialogue “on addressing the root causes of international tensions” and making every effort to implement crisis management arrangements like crisis-proof communication lines. (para. 187.37, pp. 28-29) They additionally committed to engage in dialogue with non-nuclear weapon states concerning the latter’s “grave concerns ... regarding the expansion of nuclear forces and qualitative improvement of nuclear forces, including the development of advanced nuclear weapons and new types of delivery systems.” (para. 187.19, p. 26) Given the Article VI

obligation to *negotiate* regarding cessation of the nuclear arms race *at an early date*, this is a very weak commitment indeed.

Lacking was any commitment to multilateral negotiations, at least negotiations involving the five NPT nuclear-armed states. The first draft of the outcome document, released August 22, included a commitment of the five to “a dialogue to establish a multilateral nuclear arms control framework” (para. 152.14, p. 24), but that provision did not make it into the final draft. During the conference, China stuck to its longstanding position that it will not participate in arms control until the US and Russian nuclear arsenals are substantially reduced. Notably, given its reported plans to expand its nuclear arsenal, China successfully opposed the inclusion of a provision calling for a moratorium on production of fissile materials for nuclear weapons; it is the only one of the NPT nuclear-armed states not to have declared adherence to such a moratorium.

Many governments conveyed that they were very dissatisfied with the overall approach taken by the final draft outcome document, though they also said they had been prepared to support adoption of the document. For example, on August 26, in the closing plenary, New Zealand expressed its “deep disappointment at how little advancement was possible on nuclear disarmament, notwithstanding the overwhelming demand from non-nuclear weapon states.” New Zealand also expressed “deep disappointment” that a consensus outcome document was not possible due to Russia’s stance, explaining that “irrespective of the strengths and weaknesses of [the draft outcome], it did represent a sign of the collective cooperation so sorely needed at this time of global uncertainty and insecurity.” Also in the closing plenary, Malaysia said: “Many of us in this room had consistently emphasized the need for balance across the three pillars of the NPT [disarmament, non-proliferation, and peaceful uses of nuclear energy]. Unfortunately, the sheer refusal to take concrete, measurable and time-bound actions towards nuclear disarmament by the nuclear weapon states has been and continues to be the major impediment in striking this balance.”

Nuclear Threats and Nuclear Sharing

Concerning Russia’s occupation of the Zaporizhzhia nuclear power plant, the United States and other NPT states parties insisted on provisions such as those stressing the need to ensure control of the facility by Ukraine’s competent authorities (para. 187.50, p. 30); supporting IAEA “efforts to restore the safety and security of Ukraine’s nuclear facilities and materials, within its *internationally recognized borders*” (para. 187.95 p. 35; emphasis supplied); and considering that “attacks or threats of attack on nuclear facilities devoted to peaceful purposes have dangerous political, economic, human health, and environmental, implications and raise serious concerns regarding the application of international law, which could warrant appropriate action in accordance with the provisions of the Charter of the United Nations” (para. 100, p. 15). It is defensible that NPT member states took this approach in connection with a treaty devoted in part to the promotion of “peaceful uses of nuclear energy,” though the reference to “internationally recognized borders” in particular seems almost designed to elicit a Russian objection blocking consensus.

The draft document is silent or nearly so on other NPT-related issues raised in relation to the Russian invasion of Ukraine, namely President Putin's threat of resort to nuclear arms should other states intervene militarily to oppose the invasion, and the announcement of a nuclear-sharing arrangement between Russia and Belarus. At least part of the reason for this approach must be that condemning those developments would have raised the question of why similar practices of the United States and NATO are acceptable.

Lawyers Committee on Nuclear Policy examined the international law applicable to nuclear threats in a [paper](#) for the NPT Review Conference and, at more length, in a [working paper](#) for the first meeting of states parties to the Treaty on the Prohibition of Nuclear Weapons held in June. In brief, based on the 1996 International Court of Justice Advisory Opinion, threats to use nuclear arms, whether defensive or aggressive, are illegal because use of the arms is illegal under international humanitarian law. Such threats are also illegal when made as part of a war of aggression, as in the case of the Russian invasion of Ukraine, or otherwise in violation of the UN Charter's prohibition of non-defensive threats of force.

Nonetheless, despite the egregious Russian threats, the most that the draft document could manage on the subject of nuclear threats was a commitment of the NPT nuclear-armed states "to refrain from any inflammatory rhetoric concerning the use of nuclear weapons," (para. 187.37, p. 28) and recitations of the UN Charter's prohibition of the threat or use of force except in self-defense. (para. 128, p. 18; para. 156, p. 21) The [first draft](#) had contained a commitment to refrain from "directly and indirectly threatening the use of nuclear weapons, *inter alia*, for military coercion, intimidation and blackmail." (para. 152.32(c), p. 26) One can imagine that, with the possible exception of China, which has a declared no-first-use policy, the NPT nuclear-armed states could not see how they could successfully distinguish in various circumstances possible threats of use of nuclear arms envisaged in their doctrines, including against conventionally-armed forces, from "coercion" and "intimidation."

As set out in the LCNP NPT [paper](#), "nuclear sharing" is a peculiar arrangement, predating the NPT, between the United States and several NATO states in which pilots in those NATO states are trained and equipped with aircraft to deliver US-supplied nuclear bombs should the US president ever authorize releasing the bombs from US custody for such purpose. In June, President Putin of Russia and President Lukashenko of Belarus announced the development of what sounds like a similar arrangement. Despite the existence of the NATO practice, nuclear sharing appears incompatible with the NPT, based on the text of the treaty and on commitments made at NPT review conferences in the post-Cold War era.

During the Review Conference, China repeatedly opposed nuclear sharing, making arguments similar to those in the LCNP paper. China likely is concerned about the possible establishment of nuclear sharing arrangements in the Asia-Pacific region; in fact, there has been some recent discussion to that effect in Japan. Other states paid little attention to the issue of nuclear sharing as such in public sessions of the conference, and there is no mention of the issue in the draft final document. However, the first [draft](#) of the report of Main Committee I, which addressed

disarmament, contained a provision recognized the importance of reporting by states that are part of military alliances with NPT nuclear-armed states “on steps taken to reduce and eliminate the role of nuclear weapons in national and collective security doctrines.” (para. 23, p. 4) Such steps would certainly include ending nuclear sharing. The provision attracted strong and sustained criticism from states allied with the United States; though defended vigorously by other states, it was dropped from the committee’s report.

Additional Issues

Among the numerous other significant issues discussed during the Review Conference, we will briefly mention the following. On the positive side:

- The draft outcome document acknowledges that the Treaty on the Prohibition of Nuclear Weapons has entered into force and held its first meeting of states parties in June. (para. 127, p. 18)
- The document refers in a more than cursory manner to the catastrophic humanitarian consequences of use of nuclear arms, and it states that states parties commit to comply at all times with international humanitarian law and the UN Charter. (para. 7, p. 25; para. 124, p. 17) Because use of nuclear weapons is irreconcilable with humanitarian law, a commitment to non-use of the weapons should have been added; however, the NPT nuclear-armed states are not ready for that step.
- The document reaffirms support for implementation of the 1995 NPT resolution on establishment of a zone free of nuclear, chemical, and biological weapons in the Middle East, and acknowledges the recent process to this end set in motion by the UN General Assembly. (paras. 165, 172, pp. 22-23) However, several states from the region stated that the provisions should have been stronger and more pointed.
- The document welcomes the attention in recent years to assistance to victims of nuclear weapons use and testing and to environment remediation following such use and testing. (para. 125, p. 17)
- The document includes a commitment of states parties “to ensure the equal, full and effective participation and leadership of both women and men in the NPT implementation and review and to further integrate a gender perspective in all aspects of nuclear disarmament and non-proliferation decision-making processes.” (para. 187.41, p. 29)

On the negative side:

- No progress was made on strengthening assurances of non-use of nuclear weapons against non-nuclear weapon states, a longstanding and insistent demand of those states. For an argument that the NPT nuclear-armed states should update their unilateral assurances made in 1995 by removing conditionality, see the LCNP paper.
- A statement that the NPT nuclear-armed states should adopt no-first-use policies included in the first draft outcome document (para. 15, p. 24) is absent from the final version.
- No significant commitment was made regarding AUKUS, the arrangement under which the United States and United Kingdom are to supply Australia with submarines powered by highly-enriched uranium fuel. Rather, the final draft simply notes the importance of dialogue on the topic of naval nuclear propulsion, and states that non-nuclear weapon

states pursuing such technology should engage with the IAEA in an open and transparent manner. (para. 36, p. 6) For an argument that any such submarines should be powered by low-enriched uranium, see the LCNP [paper](#).

- The [first draft](#) of the outcome document noted that in its 1996 Advisory Opinion the International Court of Justice found that there exists an obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects under strict and effective international control. (para. 131, pp. 20-21) France objected that inclusion of the ICJ's finding is a selective reading of the opinion. The United States objected on the ground that the finding is "legally incorrect," an objection rebutted by LCNP's John Burroughs in a piece for Reaching Critical Will's [News in Review](#). The sentence regarding the finding disappeared from the [final draft](#), which simply recalls the Advisory Opinion. (para. 131, p. 18)

On balance, and even putting aside the fact that an outcome document was not adopted due to the Russian position, the 10th NPT Review Conference did very little to advance the cause of achieving a world free of nuclear weapons, a world promised by the NPT. There will need to be a change of course toward nuclear abolition if humanity is not to be condemned to living for still more decades with the very real risk of social and environmental catastrophe, even catastrophe so devastating that it renders unviable human society in its current form.