

## **2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons**

**New York, 27 April - 22 May 2015**

### **AN INFORMAL REPORT**

**Dr. Odette Jankowitsch – Prevor, representing INLA<sup>1</sup> Introduction and Background**

The NPT is an unusual Treaty. In 1961 the UNGA approved a Resolution sponsored by Ireland calling on all States to conclude an agreement that would ban the further acquisition and transfer of nuclear weapons. In 1965 the UN Geneva Disarmament Conference began consideration of a draft nuclear nonproliferation treaty. July 1, 1968 the NPT was opened for signature. It entered in force 5.March 1970 with 43 States Parties including 3 of the 5 nuclear weapon states: the Soviet Union, the United Kingdom and the United States. (The NPT defines a “nuclear weapon State” (Article IX paragraph 3) as a State that manufactured and exploded a nuclear weapon or other nuclear device prior to January 1967. These States are: China, France, the UK and the US. All other States parties are “non-nuclear weapon States” under the Treaty. {India, Israel and Pakistan have not adhered to the NPT. The DRK announced its withdrawal from the NPT}.From 43 Parties in 1970 the NPT has grown to 189 States Parties in 2015.

Article VIII para 3 of the NPT provides that after entry into force of the Treaty, at intervals of five years, the Parties convene with “the objective of reviewing the operation of the Treaty”. The 1995 Review Conference agreed to extend the Treaty indefinitely.

Review Conferences succeeded - in general - to accomplish their review task. The first Review Conference that ended in stalemate was in 2005. Failure was possible. Thereafter, the 2010 Review Conference became a strong re-confirmation of the continued validity of the Treaty and of its regular review process. It concluded with the consensus adoption of a comprehensive Final Document. {That Document incorporated a thorough account of the deliberations including both “agreed” text (i.e. conclusions and recommendations for follow-up actions”) and “non-opposed” text.

---

<sup>1</sup> *INLA: The International Nuclear Law Association – a NGO- was accredited to the NPT Rev Conference by the INLA Secretariat upon approval by its Secretary General . Following the accreditation of INLA that had not previously been accredited- the author of this report ,a member of the INLA, submitted a request for personal accreditation and attended the last week of the Review Conference up to its closure after its failure to adopt by consensus the ‘Draft Final Document’.*

## **The 2015 Review Conference<sup>2</sup>: final meeting, Friday, 22 May 2015**

The Review Conference convened on its last day at the hour announced for the purpose of adopting by consensus the Draft Final Document that had been distributed to the States Parties only. Adoption by consensus implied that there was no more room for discussion on any individual matter contained in that Document: the entire 'Draft Final Document' had to be agreed as such. To the surprise of a majority of Participants - and most if not all NGO observers- the Head of the delegation of the United States declared that though her Government was committed to the 'humanitarian pledge', supported the Treaty, which remained a cornerstone of non-proliferation, peaceful uses and disarmament, her Government was not able to join the consensus on the Draft Final Document in view of her Government's disagreement with the content of Paragraphs 164 –171 of the Draft Final Documents ("*The Middle East, particularly implementation of the 1995 Resolution on the Middle East*"). She referred in this context inter alia to the "*arbitrary (–i.e. early) - dates, and unrealistic and unworkable conditions for the negotiations*" ... as well as to the content of paragraph 164 - "*[T]he 1995 Resolution remains valid until its goals and objectives are achieved*", including tasking the UN Secretary General with convening no later than 1 March 2016 an international conference on a zone free of nuclear weapons (and of all other weapons of mass destruction) in the Middle East. "*the mandate of 2010 had expired*".

The United Kingdom and Canada - reiterating their support of the 'three pillars' of the Treaty stressing the importance of the Treaty -joined the US in refusing consensus adoption of the Draft Final Document and expressing similar reservations as those of the US.

The absence of consensus on the Draft Final Document thus concluded the 2015 NPT Review Conference – as had been the case of the 2005 Review Conference – invalidating thereby that Document in its entirety. A large number of Delegations expressed disappointment and deep regret at this failure, an 'avoidable stalemate'. A strictly formal conclusion was read by the President of the Conference, Ambassador Taous Feroukhi (Algeria).

## **Overview and summary of the essential content of the Draft Final Document**

---

<sup>2</sup> *Draft Final Document: Volume I "Review of the operation of the Treaty, as provided for in its article VIII (3), taking into account the decisions and the resolutions adopted by the 1995 NPT Review and Extension Conference, the Final Document of the 2000 Review Conference and the conclusions and recommendations for follow-on actions of the 2010 Review Conference."* Source: NPT/Conf.2015/R3, Restricted. 21 May 2015. English only

The Draft Final Document is not amenable to summarizing its content: It is structured on the sequential order of the ten Articles of the NPT (I-X) with specific references to relevant preambular paragraphs of the Treaty added and set out in 184 paragraphs, covering separately and in detail, all issues and subject matters pertaining to the “*operation*” of the Treaty.

For the purpose of this Report it may, however, be worthwhile to attempt providing a systematic coverage of the subjects contained in the Draft Final Document, most being of relevance to the work of INLA. The Document covers and fully reflects the content of the relevant IAEA Conventions, programs and publications on nuclear safety, security, nuclear liability in addition to the NPT specific safeguards and non-proliferation related matters. The references made to the IAEA’ work in the context of the NPT Review Conference certainly enhances the general knowledge of and understanding for the IAEA’s international nuclear law making, without however adding new dimensions. The Document does however not contain references to the work of the OECD/NEA not of EURATOM.

In very clear terms the Draft Final Document repeatedly refers to the need for assistance to the development and growth of civil nuclear power including in the developing countries that may need support for this purpose.

A further major issue in this Review Conference was the inclusion in the Draft Final Document- (of reference to the humanitarian impact of Nuclear Weapons notably to the “Humanitarian Pledge’ established after three earlier conferences on the issue, at the 2014 Vienna Conference on “The Humanitarian Impact of Nuclear Weapons”, . ( note: see below reference to Article VI and eight to twelfth preambular paragraphs NPT) **Articles I and II** (*and first to third preambular paragraphs NPT*)

Provide comprehensive reference to the NPT regime of nuclear non-proliferation and disarmament and its function in promoting international peace and security. Paragraph 2. refers to a specific non-proliferation issue, namely, nuclear transfers: “ *The Conference notes that the nuclear-weapon States reaffirm their commitment not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices, or control... and not in any way assist, encourage or induce any non-nuclear-weapon State to manufacture or otherwise acquire ... in accordance with Article I of the Treaty.*” Paragraph 3 notes the commitment of the non-nuclear weapon States not to receive the transfer of nuclear weapons and other nuclear explosive devices..”

➤ **Article III** (*and fourth and fifth preambular paragraphs NPT*) in their relationship to Articles VI (*and sixth and seventh preambular paragraphs*).

This Article covers in over 40 paragraphs the non-proliferation/ safeguards related work of the IAEA :

✓ **Safeguards**-(paras 10- 38)

Reaffirm the role of the IAEA; expressing concern with cases of non-compliance. *“Response to such concerns with any obligation under the Treaty should be pursued by diplomatic means...”* Recalls the importance of IAEA safeguard and of the Additional Protocol (INFCIRC /540). Para 22 : *“The Conference bears in mind that it is the sovereign decision of any State to conclude an Additional Protocol , but once in force or applied provisionally, the Additional Protocol is a legal obligation for that State”*. The Conference also recognizes the role of the UN Security Council and the GA in upholding compliance with IAEA safeguards agreements.

✓ **Nuclear security** (paras 39-47)

The Conference recognizes [...]that “... the responsibility for nuclear security within a State rests with that State.” “Developing nuclear energy including nuclear power must be accompanied by appropriate and effective levels of nuclear security consistent with a State’s national legislation and international obligations”. Reference is made to IAEA Nuclear Security Series publications, Advisory Service, IPPAS missions and International Physical Protection Advisory Service missions. The Conference calls upon States to adhere to the Nuclear Terrorism Convention and to ratify the Amendment to the CPPNM and “recognizes the central role of the IAEA in developing comprehensive nuclear security guidance documents ...”

✓ **Export controls** (para 48-55):

The Conference recognizes that national rules and regulations of States parties are necessary to ensure that the States parties are able to give effect to their commitments with respect to the transfer of *nuclear and nuclear -related dual-use items* to all States taking into account articles I,II and III NPT ...” The Conference stresses the importance and primary responsibility of States to combat trafficking in nuclear and radioactive materials.. The Conference urges all Parties to ensure that their nuclear-related exports do not directly or indirectly assist in the development of nuclear weapons... and that such exports are in full conformity with the purpose and objectives of the NPT (Art. I, II and III), and decisions taken at the 1995 NPT Rev. Conf. with reference to the relevant obligations of the States parties. Need for national rules and regulations... and for States parties to make use of multilaterally negotiated and agreed guidelines and understandings in developing their own national export controls” **Article IV** (and the sixth and seventh preambular paragraphs, NPT):

(Paragraphs 56 -60) *“The Conference reaffirms that nothing in the Treaty shall be interpreted as affecting the inalienable right of all Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination ...”* Paragraph 58: *“The Conference urges that in all activities designed to promote the peaceful uses of nuclear energy, preferential treatment given to the non-nuclear*

*weapons States parties to the Treaty, taking the needs of developing countries, in particular, into account”.*

✓ **Peaceful uses of nuclear energy: nuclear energy and technical cooperation:**

(Paragraphs 61- 83 ) cover in detail the relevant activities, notably Technical cooperation programs of the IAEA (Further reference added to *“transparency and inclusiveness in export control policies which should ensure and facilitate... the access by developing States parties to nuclear material, equipment and technology for peaceful purposes”.* ...” *Each State has the right to define its national energy policy”.* The Conference *“welcomes the IAEA Renovation of the Nuclear Applications Laboratories”.* Reference to IAEA Conferences on Nuclear Power 2011-in cooperation with the OECD/NEA, and to the 2013 Conference on Nuclear Power in Africa.”

✓ **Multilateral approaches to the nuclear fuel cycle:**

(Paragraphs 84-85) Specific references to the establishment 2010 of a reserve of low-enriched uranium (LEU) in the Russian Federation for use of IAEA Member States as well as the establishment of an IAEA owned and operated LEU Bank to be hosted by Kazakhstan .

✓ **Nuclear safety and security.**

Covers in detail (paragraphs 86– 113 )- all nuclear safety and security related activities undertaken by the IAEA e.g. ‘Action Plan on Nuclear Safety; relevant IAEA Codes of Conduct, also Vienna Declaration on Nuclear Safety, studies and publications in the aftermath of the accident at the Fukushima Daiichi Nuclear Power Station .

On Nuclear security: *“Responsibility within a State rests with the State”.*..; Importance of physical protection of all nuclear material and facilities. Ref. to IAEA Nuclear Security Series Publications and relevant programs (INSServ, IPPAS missions) ; 2013 IAEA Conference on Nuclear Security’ welcomes recent accessions to the CPPNMand calls on all parties to the Convention to ratify the Amendment to that Convention so that it can enter into force. The Conference notes the attention given to “problems of safety and contamination related to the discontinuation of nuclear operations formerly associated with former nuclear weapons programmes ... and all aspects of remediation including where appropriate and technically and economically feasible , safe resettlement of any displaced human populations..”

✓ **Safe transport of radioactive materials:**

(Paragraphs 114-117) *“The Conference recognizes that, “historically, the safety record of civilian transport ... has been excellent! Reference to the relevant IAEA Safety Standards ”(Reference is made to*

a “Tabletop Exercise” conducted within the framework of the Dialogue between Coastal and Shipping States in June 2015”

✓ **Armed attacks against nuclear installations devoted to peaceful purposes**

(Paragraph 118) reference to IAEA GC, 2009 Document GC(53)/DEC/13. *“on prohibition of attacks or threat of attacks on nuclear facilities devoted to peaceful purposes, jeopardize nuclear safety.. and could raise serious issues pertaining to international law. .. Nuclear liability:*

(Paragraphs 119-121)“The Conference welcomes the entry into force of the Convention on Supplementary Compensation for Nuclear Damage on 15 April 2015”. All other nuclear liability Conventions are mentioned (i.e the Paris, Vienna, Brussels Conventions and the Joint Protocol *“that can provide the basis for establishing a worldwide nuclear liability regime based on the principles of nuclear liability law.”*

➤ **Article V (NPT)**

*“The provisions of this Article with regard to “the peaceful applications of any nuclear explosion are to be interpreted in the light of the Comprehensive Nuclear Test-Ban Treaty”*

➤ **Article VI** (and eight to twelfth preambular paragraphs NPT )

*“ Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict international control”(NP TArt.VI) .*

Paragraphs 123 -154: (Paragraph 125: *“ The Conference reaffirms the need for the nuclear-weapon States to comply with their nuclear disarmament obligations under he Treaty.. Paragraph 127: “The Conference reaffirms that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control”. Paragraph 128: Notes the meetings of the nuclear-weapon States held in Paris 2011; Washington 2012; Geneva 2013; Beijing 2014 and London 2015. Reference is made to reduction of stockpiles of nuclear weapons notably by China, France, UK and recalls the above quoted NPT commitment.*

Paragraph 133:*“The Conference recognizes the indefinite extension of the Treaty at the 1995 Review and Extension Conference. did not imply the indefinite possession of nuclear weapons by the nuclear-weapon States”“*

Paragraph 135 *“The Conference reiterates its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons”*. Paragraph 138 notes *“the various joint statements that*

addressed humanitarian dimensions of nuclear weapons incl. by Austria on behalf of 159 States parties and of Australia on behalf of 26 further States; Reference is also made to the Statement of Japan on behalf of 76 States parties on disarmament and non-proliferation education and, on behalf of the NAM, at the Vienna Conference on the humanitarian impact of nuclear weapons). The conference welcomes “the increased interaction with civil society and non-governmental organizations”. Para 154 lists 19 items based on the 1995 Review and Extension Conference, inter alia Decision on “Principles and objectives for nuclear non-proliferation and disarmament”, as well as practical steps agreed by consensus in the Final Document of the 2000 Review Conference, as well as conclusions and recommendations for follow-on action notably on the part of the nuclear-weapon States- as agreed by the 2010 Review Conference - and further ‘benchmarks and timelines’ included in the 2015 Document. On the question of entry into force of the CTBT ,the Document calls upon the [8] remaining States listed in Annex 2 of the CTBT to sign and ratify the Treaty.

➤ **Article VII and the security of non-nuclear -weapon States.**

(Paragraph: 155-172)The Draft Final Document expresses support for the establishment of further internationally recognized nuclear-weapon-free zones, and welcomes the contributions towards attaining the objectives of nuclear disarmament an nuclear non-proliferation by the (5) regional Nuclear Weapon-Free Zones -as well as the Antarctic Treaty and the NWFZ of Mongolia. The Conference calls on the nuclear-weapon States to bring into effect the security assurances provided by the nuclear-weapon-free zone treaties & their protocols.

✓ **South Asia and other regional issues.**

(Paragraphs 160- 163) “The Conference strongly deplores the nuclear tests conducted by the Democratic People’s Republic of Korea.” Also recalls that the DPRK cannot have the status of a nuclear-weapon State in accordance with the Treaty.

✓ ***The Middle East, particularly implementation of the 1995 Resolution on the Middle East { States of the region are defined as the members of the League of Arab States, the Islamic Republic of Iran and Israel}***

(Paragraphs 164-172): Reference to the Resolution on the ME adopted by the 1995 Review &Extension Conference and re-affirmation of its goals and objective by the 2000 and 2010 Review Conferences. “*The 1995 Resolution . remains valid until its goals and objectives are achieved*”. The Conference “*deeply regrets that “the [ME] conference” did not take place in 2012 and reaffirms that it is necessary to redouble the efforts aimed at holding the conference at an early date*”. Para 169 :“ *The Review Conference notes the overwhelming support expressed by the States parties to convene a conference on the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction*” . The Conference shall define follow-up steps leading to the establishment of a Middle East zone free of nuclear weapons and all other weapons of mass destruction”

The Document lists (under para 169) eleven specific actions (to be) agreed by the Review Conference for the preparation of the Middle East Conference. *Inter alia*: “(i.)The Conference shall take as its terms of reference the 1995 Resolution.” “(ii).The Review Conference entrusts the Secretary General of the United Nations to convene the conference no later than 1 March 2016 “(iv)The UN SG , the co-sponsors of the 1995 Resolution and all other States parties ensure that the conference will not be postponed.” “(viii)’ In order to facilitate the process, the Review Conference requests the Secretary General of the United Nations by 1 July 2015 to appoint a special representative”.

➤ **Article VIII** (paragraphs 173 – 176)

Concerns the “Review process and its efficiency, effectiveness, coordination and continuity in the review cycle ...”. “further recognizes the importance of enhanced engagement with civil society, academia and experts...”

**Article IX** (paragraphs 177 -180(Paragraph 177): *The Conference welcomes the accession to the Treaty by the State of Palestine in 2015 without prejudice to the positions of States parties...” “bringing the total number of States parties to 191.”*

(Paragraph 178) Recalls the importance of achieving universality of the Treaty; ... “calls upon India, Israel and Pakistan to accede to it without further delay and without any conditions as non-nuclear-weapon States” ;(Para 179) “Encourages South Sudan to accede as soon as possible to the treaty”

➤ **Article X**

(Paragraphs 181-184 )

*Paragraph a 181:The Conference reaffirms that each State party, in exercising its national sovereignty, has the right to withdraw from the Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized its supreme interests.*

*“Paragraph 182: The Conference affirms States parties’ commitment not to reinterpret any provision of the Treaty.*

---