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VIEWPOINT



Thinking outside the box: preserving the NPT while advancing the Middle East weapons-of-mass-destruction-free zone

Nir Hassid

ABSTRACT

Since 1995, unsuccessful efforts to promote a Middle East weapons-of-mass-destruction-free zone (MEWMDFZ) within the review process of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) have weakened the treaty regime. This viewpoint proposes establishing a designated Middle East Support Unit to work independently from and in parallel to the NPT review process. The Support Unit will contribute to both global and regional security. Globally, its work will increase the ability to reach a consensus-based final document at the 2020 NPT Review Conference, which in turn will strengthen support for the treaty. Regionally, the Support Unit can help reinvigorate dialogue on security measures and nonproliferation in the Middle East. The possibility of resuming a direct dialogue between states in the region is of utmost importance today, as growing regional instability is a source of mutual concern to the Arab states, Iran, and Israel.

KEYWORDS

Middle East; weapons-of-mass-destruction-free zone; Treaty on Non-Proliferation of Nuclear Weapons; regional security; Iran; Israel; Egypt

One of the main reasons behind the failure to produce a consensus final document at the 2015 Review Conference (RevCon) of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was disagreement over the modalities of convening a regional conference on establishing a Middle East weapons-of-mass-destruction-free-zone (MEWMDFZ).¹ Discussions on a MEWMDFZ have been dominant in the NPT framework since the 1995 NPT Review and Extension Conference adopted a resolution on the Middle East.² Although a MEWMDFZ is not the sole challenge for the NPT, it has been an arena of contention at each review conference since 1995. At times, discussions on the Middle East have detracted from efforts to review the overall operation of the NPT and its objectives, and impeded the ability to reach consensus on a final document. While agreement on convening a conference in 2012 on this issue was key to obtaining consensus at the 2010 RevCon, the conference never materialized. The continuing deadlock on establishing a MEWMDFZ has come at the expense of the process intended to strengthen the treaty, frustrating states parties and diminishing their levels of engagement. These problems increase after each review conference that concludes without a consensus final document, fostering

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¹ "Final Document, Part II: Documents issued at the Conference," 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2015/50, Article 29; Rose Gottemoeller, "Closing Remarks," 2015 Treaty on the Non-Proliferation of Nuclear Weapons Review Conference, May 22, 2015, <<https://2009-2017-usun.state.gov/remarks/6545>>.

² "Resolution on the Middle East," The Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.1995/32/RES/1, May 11, 1995.

inconsistencies in states parties' interpretations of the NPT and their obligations under it.³ As for the long term, continued instability in the NPT review process will undermine its viability, risking not only the treaty, but the nonproliferation regime in which it is embedded.

This viewpoint proposes establishing a new mechanism to address the deadlock on the MEWMDFZ—a designated Support Unit situated within the United Nations Office for Disarmament Affairs (UNODA), to work in parallel to the NPT review process.⁴ A standing Support Unit would be mandated to establish a new process aimed solely at setting guidelines and modalities to reinvigorate negotiations on a MEWMDFZ. The structure of the Support Unit will address a range of security challenges that have arisen in past regional negotiations. The structure will also address the specific Israeli demand for a direct dialogue as well as the Arab states' call for clear timelines and UN involvement. The Support Unit will assemble facilitators, administrative-secretariat support staff, and high-level representatives from Middle Eastern states and other relevant stakeholders, such as Russia, the United States, and the United Kingdom.

Separating the Middle East issue from the NPT review cycle would help to stabilize the NPT review process by allowing more fruitful work at the preparatory committees, which are responsible for laying the groundwork for the adoption of a final document at the 2020 RevCon.⁵ Separate processes would weaken the linkages between the region's nuclear proliferation challenges and other substantive issues facing the treaty. Even if a final document were not adopted at the 2020 RevCon, it would not be due to the Middle East issue, and the entire NPT review process would not be held hostage to a single topic. The major desired result of the parallel track, therefore, would be to stabilize the nonproliferation regime in general, and the NPT in particular, while allowing other pressing issues to be brought to the front of the debate, without neglecting the Middle East.

There are several advantages to establishing a UN-based designated Support Unit to work in parallel to the NPT review cycle:

- (a) It is a pragmatic action that would allow other regional states to directly negotiate with Israel, including those that actively oppose normalizing relations with Israel until the Israeli–Palestinian dispute is resolved.⁶
- (b) It will allow Israel to participate in a regional dialogue that is separate from the NPT. Israel has not signed the NPT, and does not consider itself obligated by NPT conference decisions.⁷

³ Vienna Convention on the Law of Treaties, January 27, 1980, Article 31, paragraph 3.

⁴ The suggestions in this paper are based on an extensive review of NPT review conference and preparatory committee documents since the 1995 NPT Review and Extension Conference ("1995 NPT RevCon"). The research was conducted as part of the author's dissertation, titled "From Bottom-Up to Top-Down: Non-conventional Treaty Review Cycles and Their Impact on Global Security Regimes." It is also based on Chen Kane, "Planning Ahead: A Blueprint to Negotiate and Implement a Weapon-of-Mass-Destruction-Free Zone in the Middle East," CNS Occasional Paper No. 22, April 2015, <www.nonproliferation.org/a-blueprint-to-a-middle-east-wmd-free-zone/>.

⁵ The term "review cycle" refers to all actions taken to prepare for each review conference in various UN frameworks and its institutions. The current review cycle refers to the following two preparatory committee sessions of 2018–19, and the 2020 NPT RevCon. See "Options for the Further Strengthening of the NPT's Review Process by 2015," UNODA Occasional Paper No. 22, December 2012, <www.un.org/disarmament/update/20121214/>.

⁶ Statement by Ahmed Aboul-Gheit, minister for foreign affairs of Egypt, to the 2010 NPT Review Conference, May 5, 2010, <http://www.un.org/en/conf/npt/2010/statements/pdf/egypt_en.pdf>.

⁷ According to the Israeli statement following the 2010 NPT RevCon, "As a non-signatory state of the NPT, Israel is not obligated by the decisions of this Conference, which has no authority over Israel." Statement by the Government of Israel on NPT Review Conference Middle East Resolution, Israel Ministry of Foreign Affairs, May 29, 2010, <http://www.mfa.gov.il/mfa/pressroom/2010/pages/statement_government_israel_npt_review_conference_29-may-2010.aspx>.

- (c) Focusing on the process to establish a MEWMDFZ as an independent issue—and not part of wider nuclear proliferation—will mitigate the challenges currently facing the NPT review process.⁸ If the MEWMDFZ topic ceases to be used as a bargaining chip to block or advance other issues, it will increase the possibility of advancing—or at least substantively reviewing—other issues on the 2020 RevCon agenda, including, inter alia, noncompliance, disarmament, humanitarian aspects of nuclear weapons, proliferation, peaceful uses of nuclear technologies, and more.
- (d) A parallel track would pose less risk to the NPT regime than would another failed review conference in 2020, a distinct possibility if the entire review process continues to be held hostage to a single issue.
- (e) Distinguishing the Middle East issue from the broader NPT will have specific benefits for Iran and the Arab states—the most vociferous champions of a MEWMDFZ—in particular. The co-sponsors of the 1995 Middle East resolution (the three NPT depository states—Russia, United Kingdom, and the United States) are in the best position to offer positive and negative incentives to regional players, notably Egypt and Iran, to join the endeavor and refrain from advancing the MEWMDFZ within the context of the 2020 NPT RevCon. In exchange for agreeing to address the Middle East issue outside of the NPT setting, Iran and the Arab states will be able to promote a genuine dialogue on a MEWMDFZ that includes a clear timeframe, with institutional support and international involvement. Implicitly, Iran and the Arab states will also be able to leverage their concession to subtract the MEWMDFZ issue from the NPT review process to promote their interests in other issue areas within the NPT.

In order to exploit these potential advantages to the fullest and at the earliest possible date—certainly before the 2020 RevCon—preparations for the Support Unit should begin as soon as possible, with the following immediate aims: (a) to engage the relevant states in the process; (b) to achieve the widest consensus possible among all NPT states parties to separate the MEWMDFZ from the 2020 NPT RevCon; (c) to endow the Support Unit with a timeframe that starts before the review conference and continues until the 2022 Preparatory Committee (PrepCom) of the 2025 review cycle, with an outcome report to be included in the 2025 Review Cycle.

The following section briefly reviews the evolution of the MEWMDFZ concept and how it has assumed a disproportionate role in the dynamics and outcomes of NPT review conferences since 1995. The second section considers the legal and political aspects of the NPT review process, emphasizing the challenges presented by a MEWMDFZ. The third section elaborates the proposed guidelines, structure, and

⁸ Most prominent issues under dispute in the 2015 NPT RevCon were humanitarian aspects of nuclear weapons, negative security assurances, nuclear disarmament, transparency, and others. See, inter alia: “The Vienna Conference on the Humanitarian Impact of Nuclear Weapons,” December 8–9, 2014, and the “Austrian Pledge: Input for the NPT 2015 Review Conference,” NPT/CONF.2015/WP.29, April 21, 2015; “Security Assurances against the Use or the Threat of Use of Nuclear Weapons,” NPT/CONF.2015/WP.53, March 4, 2015; “Report of Main Committee I,” NPT/CONF.2015/MC.I/1, May 18, 2015; “Transparency, Reporting and Strengthening the Review Process,” NPT/CONF.2015/WP.32, April 22 2015; “Addressing ‘Vienna Issues’: The Comprehensive Nuclear-Test-Ban Treaty, Compliance and Verification, Export Controls, Cooperation in the Peaceful Uses of Nuclear Energy, Nuclear Safety, Nuclear Security and Withdrawal from the Nuclear Non-Proliferation Treaty,” NPT/CONF.2015/WP.1, March 2, 2015; “Activities of the International Atomic Energy Agency Relevant to Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons,” NPT/CONF.2015/14, March 20, 2015; Statement by Yukiya Amano, IAEA Director General, to the 2015 NPT Review Conference, April 27, 2015, <www.un.org/en/conf/npt/2015/statements/pdf/IAEA_en.pdf>.

operation of the proposed Support Unit, as well as its benefits and potential drawbacks. Finally, this viewpoint discusses the feasibility of engaging the key players in the region—Egypt, Iran, and Israel—in the establishment and work of the Support Unit. It concludes with some practical suggestions to help obtain the support of these key states and ensure the Support Unit's success.

The evolution of the MEWMDFZ

Attempts to denuclearize the Middle East through international fora began in 1974. Supported by Egypt, Iran submitted to the United Nations General Assembly (UNGA) the first proposal to establish a Middle East nuclear-weapon-free zone, which was adopted by consensus that December and every year since.⁹ Over the ensuing four decades, the UNGA has adopted several additional resolutions to study a potential regional zone's modalities and elements. Later, after the April 1990 revelations about Iraq's WMD programs, the concept of the nuclear-weapon-free zone evolved into a weapons-of-mass-destruction (WMD)-free zone, when Egyptian President Hosni Mubarak called for the elimination of all WMD in the Middle East.¹⁰ UN Security Council (UNSC) Resolution 687, adopted in April 1991, formalized the concept of a WMD-free zone in the Middle East.¹¹

Attempts to promote negotiations on a MEWMDFZ have been made in several international and regional fora over the past twenty-five years, but nowhere else has the issue become as prominent as it has within the NPT review process, beginning with the 1995 NPT Review and Extension Conference.¹² In each succeeding five-year review cycle, negotiations over a MEWMDFZ have challenged or stymied efforts to reach consensus on a final document.¹³

⁹ UNGA Resolution 3263(XXIX), December 9, 1974. The recent UNGA Resolution, A/RES/71/27, on the establishment of a nuclear-weapon-free zone in the region of the Middle East adopted without a vote, on December 5, 2016. See also Said Mohammed Kadry, "Middle East Weapons of Mass Destruction Free Zone: Regional Security and Non-Proliferation Issues," in Vilmos Cserevny, Jozef Goldblat, and Faawzy Hussein Hamad, eds., *Building a Weapons of Mass Destruction Free Zone in the Middle East: Global Non-proliferation Regimes and Regional Experiences* (Geneva: United Nations Institute for Disarmament Research, 2004).

¹⁰ "Israeli Nuclear Capabilities and Threat," IAEA, GC/XXXII/RES/487, September 1988; UNGA Resolution A/RES/43/65, Article 8, December 7, 1988; "Technical Study on Different Modalities of Application of Safeguards in the Middle East," IAEA, GC/XXXII/887, August 29, 1989; UNSC, "Conjoined and Independent Actions," A/RES/44/108, p. 5, December 15, 1989; "Study on the Effective and Verifiable Measures Which Would Facilitate the Establishment of Nuclear Weapons Free-Zone in the Middle East," Group of Experts Document A/45/435, October 10, 1990; Letter dated 16 April 1990 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General and the UN Security Council, A/45/219, April 16, 1990.

¹¹ The UNSC "Notes that the actions to be taken by Iraq in paragraphs 8 to 13 represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons." UN Security Council Resolution 687, S/RES/687, April 3, 1991, Article 14.

¹² For example: the Arms Control and Regional Security (ACRS) talks in the "Madrid Framework" (known also as the "Madrid Peace Process," October 1991); the Euro-Mediterranean Partnership ("Barcelona Process," November 1995); the IAEA General Conference adopted a resolution, tabled by Egypt, on "Israeli Nuclear Capabilities," GC(53)/RES/17, September 18, 2009; Union for the Mediterranean (UfM), Joint Declaration of the Paris Summit for the Mediterranean, Paris, July 13, 2008, <http://ufmsecretariat.org/wp-content/uploads/2012/09/ufm_paris_declaration1.pdf>; IAEA Forum on Experience of Possible Relevance to the Creation of a Nuclear-Weapon-Free Zone in the Middle East, GOV/2012/38-GC(56)/17, Annex 2. For attempts to convene the "Helsinki Conference" of 2012, see: NPT 2010 RevCon conclusions and recommendations for follow-on actions, NPT/CONF.2010/50 (Vol. I), Part 4, pp. 27–31; "Finland Appointed as Host Government/Facilitator for 2012 Conference on Middle East Zone Free of Nuclear Weapons and all other Weapons of Mass-Destruction," SG/2180-DC/3307, October 14, 2011.

¹³ Among the four review conferences that were held after 1995, only at the 2000 and 2010 conferences did the parties conclude a final document by consensus. The states parties at the 2005 and 2015 RevCons failed to agree on a final document.

The review process and the importance of a parallel track

Understanding the treaty review process sheds light on the strategic preferences of the states parties to shape, support, promote, or block issues on the NPT agenda. For the Arab states, the Middle East issue has often been a bargaining chip within the NPT review process.

The NPT established the quinquennial review mechanism to enable states parties “to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.”¹⁴ This regular assessment allows states to address evolving realities and challenges, such as the emergence of new technologies, noncompliance, or other relevant issues. Legally, review conferences are authorized to clarify and interpret NPT clauses to improve the treaty’s implementation.¹⁵ Decisions adopted within the NPT review process are politically, not legally, binding. They are separate from the amendment procedure, as outlined in Article VIII of the treaty, whereby states parties can make specific changes to the NPT clauses regarding what is permitted or prohibited by the treaty.¹⁶

In general, states avoid changing the wording of a treaty, since this reopens an agreed-upon text to negotiation.¹⁷ Moreover, amending a treaty changes the states parties’ legal obligations. In practice, the amendment creates a new treaty, and only those that agree to the change are bound by it. The International Atomic Energy Agency’s (IAEA) Additional Protocol to the Comprehensive Safeguards Agreement is a relevant example of an agreement binding only for the states that adopt it.¹⁸

NPT states parties use review conferences to formulate agreements on the interpretation of treaty text, encapsulated by a conference final document.¹⁹ States aim for consensus on the wording of this final document, the importance of which is mainly symbolic, and which embodies an expression of unity among the states parties on the promotion of the NPT and its goals.²⁰ Though these political documents are not legally binding, they do carry legal weight concerning interpretation and required application of the treaty clauses.²¹

The wording of a final document usually reflects the “lowest common denominator” in order to satisfy all states parties.²² This practice may impede changes that could strengthen the NPT.

¹⁴ NPT, Article 8(3).

¹⁵ Esther Efrat-Smilg, “Conventions Law,” in Robbie Sabel et al., eds., *International Law*, 3rd edn. (Jerusalem: Harry and Michael Sacher Institute for Legislative Research and Comparative Law, 2016), p. 761.

¹⁶ NPT Article 8(3) defines the review conference, whereas Article 8(1–2) refers to the amendment procedures as follows (main provisions): support for the amendment by at least one-third of states parties is necessary to convene an amendment conference. At the conference, an amendment must be approved not only by majority of votes, but with the support of all five NWS.

¹⁷ “Treaty Handbook,” rev. edn., Treaty Section of the Office of Legal Affairs, UN, 2012, pp. 25–27, 71, <<http://treaties.un.org/doc/source/publications/THB/English.pdf>>; Alan Boyle and Christine Chinkin, *The Making of International Law* (Oxford: Oxford University Press, 2007), pp. 242–44; Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements*, 2nd edn. (Oslo: International Peace Research Institute [PRIO], 2002), p. 18; M.J. Bowman, “The Multilateral Treaty Amendment Process—a Case Study,” *International, and Comparative Law Quarterly*, Vol. 44, no. 3 (1995), p. 540.

¹⁸ The Vienna Convention on the Law of Treaties defines the amendment procedures as follows: “The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement.” Vienna Convention on the Law of Treaties: Amendment and Modifications of Treaties, Part IV, Article 40.4.

¹⁹ Robbie Sabel, *Procedure at International Conferences*, 2nd edn. (New York: Cambridge University Press, 2006), p. 407.

²⁰ *Ibid.*, pp. 335–46.

²¹ Vienna Convention on the Law of Treaties, Article 31.

²² Georg Nolte, ed., *Treaties and Subsequent Practice* (Oxford: Oxford University Press, 2013), pp. 341–44.

As political fora, review conferences are important in that they shape and reflect the international and regional balance of power.²³ It appears that, in the context of the NPT, review conferences are hard-pressed to cope with the challenges of the inherent dichotomy between nuclear-weapon states (NWS) and non-nuclear-weapon states (NNWS).²⁴ Frequently, review conference documentation shows frustration toward unmet NWS obligations. The NNWS' main criticism of the NWS relates to issues such as nuclear disarmament and its pace, the failure to address the needs of developing states in acquiring nuclear technologies for peaceful uses, the lack of transparency in actions taken by the NWS toward disarmament, and the humanitarian risks imposed by nuclear weapons.²⁵

The idea of creating a MEWMDFZ has developed incrementally. It has helped shape the NPT review conference outcome since 1995, and remains one of the dominant points of tension within the treaty review process. Only two of the four review conferences held since 1995 have produced final documents (2000 and 2010).²⁶ Although there were other major challenges to the "failed" conferences in 2005 and 2015, one core reason was the Middle East issue.²⁷ The significance of the Middle East has increased over time—at least in the eyes of the Arab states, as illustrated in their statements and participation in the treaty review process.²⁸

Understanding the review process sheds light on states' interests and how they have approached the MEWMDFZ issue within the NPT process.

The Arab states have traditionally utilized the coalitions dynamic within the review process to promote the Middle East issue. The Non-Aligned Movement (NAM) represents the largest coalition of states, all of them NNWS. The League of Arab States, all members of which are also NAM members, represent almost 20 percent of NAM states.²⁹ One possible explanation of the Arab states' approach to the MEWMDFZ issue is the genuine pursuit of its establishment. A second possibility might have been to use the MEWMDFZ issue as a bargaining chip to leverage other global issues—such as advancing nuclear disarmament under Article VI—that align with overall NAM interests.

²³ Carlton Stoiber, "The Evolution of NPT Review Conference Final Documents, 1975–2000," *Nonproliferation Review*, Vol. 10, No. 3 (2003), pp. 126–66; Cornelia Ulbert, Thomas Risse, and Harald Mueller, "Arguing and Bargaining in Multilateral Negotiations," Final Report to the Volkswagen Foundation, 2004, p. 3.

²⁴ "For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967." NPT, Article IX (3).

²⁵ Tom Sauer, "The Nuclear Nonproliferation Regime in Crisis," *Peace Review*, Vol. 18, No. 3 (2006), pp. 335–7.

²⁶ The final document (or "package of decisions") of the 1995 Review and Extension Conference was not brought up for a vote by states parties, rather it was approved by Conference President Ambassador Jayantha Dhanapala. Agreement was achieved only on the extension component of the conference.

²⁷ As for the 2005 NPT RevCon: "In 2005 Cairo was willing to block the NPT Review Conference from making progress on any other issue unless progress toward such a NWFZ was achieved, and may be prepared to do so again at the 2010 Review Conference in May." Pierre Goldschmidt, "Let's Start with a Nuclear-Test-Free Zone in the Middle East," Carnegie Endowment for International Peace, April 29, 2010, <<http://carnegieendowment.org/2010/04/29/let-s-start-with-nuclear-test-free-zone-in-middle-east-pub-40711#3>>. As for the 2015 NPT RevCon: "While the Middle East disarmament question was the official—and widely reported—reason why there was no outcome document at the NPT Review Conference, the disagreements straining the nuclear disarmament regime run much deeper," Cesar Jaramillo, "NPT Review Conference: No Outcome Document Better than a Weak One," *Bulletin of the Atomic Scientists*, June 3, 2015.

²⁸ See, for example, Elaine M. Grossman, "Egypt Stages NPT PrepCom Walkout over Failure to Convene Mideast WMD Summit," Global Security Newswire, <www.nti.org/gsn/article/egypt-stages-walkout-over-failure-to-convene-mideast-wmd-summit/>.

²⁹ As of February 2016, there were 120 state members in the NAM, and seventeen observers, of which twenty-two were Arab countries. Nuclear Threat Initiative (NTI), <www.nti.org/learn/treaties-and-regimes/non-aligned-movement-nam/>.

The NWS, and particularly the United States, seem to have supported the MEWMDFZ proposal only when their priority NPT issues were under threat. At the 1995 NPT Review and Extension Conference, the NWS supported the Resolution on the Middle East in order to obtain the treaty's indefinite extension.³⁰ At the 2010 RevCon, the United States was determined to avoid the failure of 2005 and succumbed to Egyptian pressure to promote a conference on an MEWMDFZ in 2012.³¹

The MEWMDFZ Support Unit: structure and operation

This section describes ways to promote the establishment of a Support Unit to advance a MEWMDFZ in parallel to the NPT review process, using the 1995 Resolution on the Middle East as its legal and political basis.³²

The work and structure of the Support Unit should be separated into two steps. The first step would address the main elements required to establish the Support Unit. The second step would be for the Support Unit to create a regional dialogue.

Operation and structure

The structure and scope of the Middle East Support Unit would take as its models existing support units, such as those established to implement the 1972 Biological and Toxin Weapons Convention and the 1997 Anti-Personnel Mine Ban Convention.³³ Like those implementation support units, the Middle East Support Unit would be housed under UNODA, which can provide it with the organizational and substantive support it needs for its broad agenda that encompasses nuclear, chemical, and biological disarmament and nonproliferation.³⁴

The structure of the Support Unit would adopt the Arab states' main demands: a clear timeframe for the process and international involvement. The structure would also address Israel's main demands: a direct dialogue mandated to consider a range of security challenges, such as those broached in past peace and confidence-building processes.³⁵

The Middle East Support Unit would require three facilitators, a secretarial-administrative support body, and representatives of each Middle Eastern state involved in the process. This structure would ensure that the process duly considered the needs and

³⁰ Tariq Rauf and Rebecca Johnson, "After the NPT's Indefinite Extension: The Future of the Global Nonproliferation Regime," *Nonproliferation Review*, Vol. 3, No. 1 (1995), p. 30.

³¹ Emily B. Landau, "2010 NPT RevCon: Final Results and Implications for Israel," INSS Insight No. 185, June 3, 2010.

³² "Resolution on the Middle East," The Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.1995/32/RES/1, May 11, 1995.

³³ Convention on the Prohibition of the Development, Production and Stockpiling of the Bacteriological (Biological), and Toxin Weapons, and on their Destruction (BWC), March 26, 1975; the Anti-Personnel Mine Implementation and Support Unit refers to the Convention of the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines, and on Their Destruction, also known as the "Ottawa Treaty," March 1, 1999.

³⁴ The BWC Implementation Support Unit operates within UNODA. See UNODA, "Implementation Support Unit," <www.un.org/disarmament/geneva/bwc/implementation-support-unit/>.

³⁵ Attempts to promote negotiations on the MEWMDFZ have been made in several international and regional fora since 1991, including the ACRS talks, the Barcelona Process, and the UfM. See above, footnote 12. November 1995); the Union for the Mediterranean (UfM), July 2008. On the Israeli approach to the ACRS, see statement by Eytan Bentsur, Director General of the Ministry of Foreign Affairs before the Conference on Disarmament, Geneva, September 4, 1997, Israel Ministry of Foreign Affairs, <<http://mfa.gov.il/MFA/MFA-Archive/1997/Pages/Israel-s%20Approach%20to%20Regional%20Security-%20Arms%20Contr.aspx>>.

interests of the Arab states, Iran, Israel, and other relevant stakeholders from the international community.

Mandate

The Support Unit would be mandated to provide bilateral and multilateral support for consultation and coordination among the states involved in the process and with other related international organizations.³⁶ The Support Unit's work would begin before the 2020 NPT RevCon and in parallel to the preparatory committee sessions. Depending on its achievements, the Support Unit's work could continue after the 2020 RevCon, but it would end prior to the start of the 2022 PrepCom. This duration allows time for the process to get underway, to evaluate its achievements, and for it to productively contribute to the 2020 NPT RevCon by allowing the review process to focus on other issues. This defined timeline also aims to obtain the Arab states' consent by addressing their demands for a framed period of dialogue, with an organized reporting mechanism to the NPT framework.

Facilitators

The nomination of three facilitators would ensure equitable consideration of states' interests.³⁷ Facilitators support the negotiation process by promoting joint, creative, problem solving, confidence- and security-building measures (CSBMs), and constructive ideas and alternative solutions in nonbinding consultations.³⁸ Facilitators would be chosen through an overlapping nomination process. Each facilitator would be identified by joint agreement between two of the three key regional players—Egypt, Iran, and Israel. In other words, facilitator #1 would be identified by Egypt and Iran; facilitator #2 would be identified by Egypt and Israel; and facilitator #3 would be identified by Iran and Israel. Dispersing the power and responsibility of nominating the facilitators may help diminish the possibility of a deadlock in the facilitators' work.

The Support Unit will also include the participation of experts from civil-society organizations, who can assist the work of the facilitators and the state representatives.³⁹

Negotiation topics

Ambassador Jaakko Laajva, facilitator of the 2012 Helsinki conference that never materialized, had proposed creating three working groups, each with a different focus: "(1) the properties of the Zone, (2) verification and compliance issues, and (3) regional security, arms control, and confidence-building measures."⁴⁰ Political gestures and constructive measures such as regional or subregional CSBMs, including military information

³⁶ Other relevant international organizations include the Organisation for the Prohibition of the Use of Chemical Weapons (OPCW), the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), and the IAEA.

³⁷ The Arab states' draft proposal at the 2015 RevCon demanded the nominating of a new facilitator for the MEWMDFZ, and a new process under the auspices of the UNSC. See NPT/CONF.2015/WP.30, April 22, 2015.

³⁸ Nonbinding consultations would facilitate a good-faith effort that could lead to a more stable agreement in the future, primarily because their decisions will not be binding or enforceable. See Cordula Reimann, "Assessing the State-of-the-Art in Conflict Transformation," in Alex Austin, Martina Fischer, Norbert Ropers, eds., *Transforming Ethnopolitical Conflict* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), pp. 41–66.

³⁹ Anthony Wanis-St. John and Darren Kew, "Civil Society and Peace Negotiations: Confronting Exclusion," *International Negotiation*, Vol. 13, No. 1 (2008), pp. 13–14.

⁴⁰ Kane, "Planning Ahead," p. 7.

exchanges, may supplement and help mitigate concerns during the dialogue.⁴¹ CSBMs may be based on the progress that was achieved during the Arms Control and Regional Security working group of the Madrid Peace Process that began in 1991.⁴² The four topics that this working group covered were: (a) maritime issues; (b) a regional communication network; (c) pre-notification and military information exchange; and (d) the establishment of regional security centers that provide arms-control training, with the aim of expanding regional expertise.⁴³

Permanent representation

Ambassadorial-level representation of the regional countries engaged in the process will help streamline the Support Unit's work. The permanent representatives' aim is to strengthen CSBMs among the regional parties by creating relationships that would help promote simultaneously different aspects of the MEWMDFZ, such as dismantlement and verifying authorities.⁴⁴ These aspects would be negotiated in multilateral, regional, and direct bilateral tracks between the relevant regional countries under UN auspices.

Decision-making procedures

Preferably, decisions will be made by consensus to ensure balance between Iranian, Israeli, and Arab interests, which will strengthen the outcome of the process.⁴⁵ The consensus method preserves each state's right to make reservations, and prevents the possibility of imposing decisions. Once an agreement is achieved, it constitutes an expression of unity among the states, which is important both legally and symbolically in that it strengthens the legitimacy of the outcome.⁴⁶

Reports

The Middle East Support Unit will report on its progress to the NPT preparatory committees and the 2020 RevCon. The outcome report will be included in the 2025 review cycle. This approach will anchor the MEWMDFZ issue within the NPT framework while separating it from the other issues reviewed under the treaty.

Secretarial-administrative unit

This designated unit will provide support for the work of the facilitation process in order to maximize its efficiency and effectiveness. The secretarial-administrative unit will be tasked with the preparation of documents and other logistic support, including coordination between states and other stakeholders (such as civil-society organizations).

⁴¹ Ariel E. Levite and Emily B. Landau, "Confidence and Security Building Measures in the Middle East," *Journal of Strategic Studies*, Vol. 20, No. 1 (1997), pp. 163–64.

⁴² Emily B. Landau, *Egypt and Israel in ACRS: Bilateral Concerns in a Regional Arms Control Process* (Tel Aviv: Jaffee Center for Strategic Studies, 2001).

⁴³ Currently, UNODA operates three UN Regional Centers for Peace and Disarmament: in Latin America and the Caribbean, Asia and the Pacific, and Africa. See <www.un.org/disarmament/disarmsec/regional-centers/>. See also Michael D. Yaffe, "Promoting Arms Control and Regional Security in the Middle East," *Disarmament Forum*, Vol. 2 (2001), pp. 20–22.

⁴⁴ For elaboration of the details and challenges of creating the MEWMDFZ, see Kane, "Planning Ahead."

⁴⁵ Emily B. Landau and Shimon Stein, "2015 NPT RevCon: WMD Conference off the Table, for Now," INSS Insight No. 705, June 3, 2015.

⁴⁶ Sabel, *Procedure at International Conferences*, pp. 335–46.

Geographic delineation

“The Middle East” refers to the Arab states, Palestine, Iran, Israel, and South Sudan.⁴⁷ An inclusive approach to delineating the region, although challenging, may contribute to a more comprehensive outcome of the process.

Establishing the Support Unit’s structure and the key principles of its work as described above will help lay the requisite conditions for a regional dialogue. Additional aspects will also determine the nature of the future MEWMDFZ and thus must be considered. These aspects include legal, technical, and institutional issues, such as the facilitation of a dispute-settlement mechanism, enforcement, withdrawal, and the compatibility of the agreement with national and international law. Addressing these additional aspects will be considered the second step of the dialogue, to be delegated to the Support Unit’s mandate, during the timeframe of its work, and according to the achievements gained in the facilitation of the first step.

Engaging key players

Persuading the key regional players—Egypt, Iran, and Israel—to support this process will be the core challenge to establishing the Support Unit. It includes the need to persuade Egypt and Iran to abstain from promoting the MEWMDFZ within the 2020 RevCon process.

Egypt

Egypt has been the leading Arab voice in promoting the MEWMDFZ. At the same time, Egypt is strongly suspected of maintaining a chemical-weapon stockpile, a source of “negative prestige” that Egypt uses, inter alia, to maintain its regional leadership.⁴⁸ In order to ensure sufficient Egyptian buy-in to the process, the co-sponsors should coordinate prior to the NPT 2020 RevCon and agree upon both positive and negative incentives (“carrots” and “sticks”). The carrots may include the unequivocal commitment of the sponsors to the process and support for other NPT issues promoted by Egypt and the Arab states, such as peaceful uses of nuclear energy, the development of regional initiatives, and technical, technological, and scientific collaboration.⁴⁹ The sticks may include the credible threat that they will not support any Middle East initiative or resolution within the NPT review framework during the Support Unit’s mandate.

Israel

Israel has opposed any UN involvement in a regional process and is in no rush to negotiate away its “nuclear capabilities” absent the attainment of broader security goals.⁵⁰ According to some claims, Israel’s security history, regional instability, and the uncertainty of the

⁴⁷ As was addressed by the IAEA Director General in 2005, and including Palestine, which is a member of the League of Arab States, as well as the emergence of the state of South Sudan in 2011. “Application of IAEA Safeguards in the Middle East,” IAEA, GOV/2005/53-GC(49)/18, August 1, 2005.

⁴⁸ Sara Kristine Eriksen and Linda Mari Holøien, “From Proliferation to Peace,” *Nonproliferation Review*, Vol. 17, No. 2 (2010), p. 284; Emily B. Landau, “Egypt’s Nuclear Dilemma,” *Strategic Assessment*, Vol. 5, No. 3 (2002), pp. 22–26.

⁴⁹ NPT preamble and Article 4.

⁵⁰ “Towards a Regional Dialogue in the Middle East: An Israeli Perspective,” NPT/CONF.2015/36, April 30, 2015.

future are still valid factors in Israeli security policy.⁵¹ Nonetheless, the official Israeli position is that any process should be regionally based and include a broad range of Middle East security challenges. The proposed Support Unit structure would address most Israeli demands, such as its combination of bilateral direct negotiations and the consensus-based decision-making procedure. Negotiations are expected to address a wide range of regional security issues that are a source of concern for each country's regional relations, and those of Israel in particular. Two incentives could be employed to persuade Israel to support and participate in the process. The first is a unified and unequivocal position among the co-sponsors that reflects their determination for Israel to accede to a process that meets most of the Israeli prerequisites for a regional dialogue, including their abstention from supporting any Middle-East-related initiative in the 2020 NPT RevCon. Secondly, a US guarantee to back Israel during the process and to abstain from supporting any initiative with potential to harm Israel in the 2020 NPT RevCon should further persuade Israel to join.

Iran

Iran must be prominently involved in any future regional arms-control arrangement. The July 2015 Joint Comprehensive Plan of Action (JCPOA) between Iran, the European Union, the UN Security Council permanent members, and Germany has opened a window of time that puts Iran's nuclear program under intrusive inspection safeguards that effectively postpone the imminence of this perceived threat. Continued US support of the JCPOA, which includes abstaining from new sanctions on Iran—as long as Iran fulfills its obligations—and refraining from provocations, may increase the efficacy of the agreement. Iran will be given the opportunity to demonstrate its peaceful intentions for nuclear technology by its participating in the regional process held under UN auspices. Furthermore, by playing a leadership role in a regional security initiative, Iran will also have the opportunity to maximize the potential of the economic growth provided directly, and indirectly, by the JCPOA.⁵²

Conclusions

It is critically important to find a creative path to both stabilize the NPT and reinvigorate the MEWMDFZ negotiations, taking into account the political constraints of the NPT review process and the demands of key players in the region. The strategic value of the NPT as a restraining factor in the Middle East, despite states' different interests and degrees of willingness to participate in the regime, is a prerequisite to discussions—and realization—of a regional MEWMDFZ.⁵³

This viewpoint proposes establishing a designated Support Unit that will operate independently of, and parallel to, the NPT review cycle, to advance the creation of an MEWMDFZ. Moving this discussion out of the NPT process would be a pragmatic step

⁵¹ Claudia Baumgart and Harald Müller. "A Nuclear Weapons-Free Zone in the Middle East: A Pie in the Sky?" *Washington Quarterly*, Vol. 28, No. 1 (2004), p. 48.

⁵² Elena Ianchovichina, Shantayanan Devarajan, and Csilla Lakatos, *Lifting Economic Sanctions on Iran: Global Effects and Strategic Responses* (Washington, DC: World Bank, 2016).

⁵³ Eitan Barak, "Israel Joining the Non-Proliferation Treaty: Time for a Re-evaluation?" *UNIDIR Disarmament Forum*, No. 4 (2005), pp. 95–99.

to promote the goal of an MEWMDFZ and increase the ability of NPT states parties to review the treaty and possibly reach consensus at the 2020 NPT RevCon. This move, in turn, could strengthen the treaty and the entire nonproliferation regime. A standing Support Unit would establish a framework as is necessary to advance the process. It would also address the Arab states' demand for UN involvement, a clear timetable, and a pragmatic approach to negotiations, as well as the Israeli demand for direct negotiations on a broad range of regional-security challenges.

The MEWMDFZ has been an integral part of the NPT review process since the 1995 resolution on the Middle East, with a direct effect on the success or failure of subsequent review conferences. The probability of initiating the Support Unit on a parallel track is subject to agreement between Egypt (representing the Arab states), Iran, and Israel, and also requires the active support of the NPT depository states of Russia, the United States, and the United Kingdom, as well as the support of the UN secretary-general. Formal consent of the other NPT states parties to abstain from promoting the MEWMDFZ in the lead-up to the 2020 NPT Review Conference will also be needed to ensure the viability of the parallel-track approach.

Failure to achieve any results in the process is not likely to risk the future NPT review process any more than the current risk that the Middle East issue is imposing. It will still keep Israel outside the NPT, and demonstrate that the co-sponsors have fulfilled their obligations following the recommendations for follow-on actions of the 2010 RevCon.

The disproportionate centrality of MEWMDFZ in the NPT review process should not be underestimated. Continuing down the current path could undermine the stability of the nuclear nonproliferation regime. Changing the traditional approach to the Middle East within the NPT by adopting a new modality might contribute not only to the stability of the Middle East, but to wider aspects of the NPT. It is imperative to take immediate steps to address the MEWMDFZ—before, rather than during, the 2020 NPT RevCon.