This article deals with the decisions on strengthening the process of reviewing the Nuclear Non-Proliferation Treaty (NPT), specifically, how these decisions influence the treaty and the robustness of the nonproliferation regime, with the regime constituting one of the NPT’s key elements, and the NPT being a critical norm within the context of the regime. Strengthening the NPT refers to all the measures and joint decisions in the framework of the Review Conferences that make it possible to deal more effectively with the individual and collective needs of the NPT member states concerning the challenges of nonproliferation. These measures are intended to strengthen the regime; among the most important are incentives for transparency, through sharing of information; reciprocity, through issuing regular and reliable reports; and enhanced cooperation, via structural adaptation of the NPT’s operating mechanisms and implementation of decisions made in its framework.

The 45 years that the NPT has been in force reflect the depth of differences in concepts and interests among its member states with respect to the core objectives outlined in the NPT (preventing nuclear proliferation, nuclear disarmament, and the use of nuclear energy for peaceful purposes). This article looks at the general and procedural aspects used in the process of reviewing the NPT, and the various proposals raised to overcome the review challenges that result primarily from technical and political obstacles. The technical level includes proposals of a procedural and structural nature, in an attempt to bolster cooperation among the NPT member states and render the various mechanisms operating in its framework more effective.
The political aspect includes an outline of the common goals, the reciprocal relations between the member states for the sake of reinforcing the NPT, and above all, the issue of compliance and interpretation of the NPT clauses. An examination of the proposals over the years to strengthen the review process shows that the attempts to make it more effective have not led to progress in achieving the goals of the NPT, due to the economic, legal, and normative constraints perpetuating the technical and political obstacles. In other words, the reforms that sought to improve the review process and make it more effective – particularly in the framework of the Review Conferences – have been of little significance in strengthening the NPT. This refers to the review cycle – all actions taken in the various international forums to prepare the next Review Conference in the framework of the UN and its institutions, and includes the Preparatory Committees and the Review Conferences themselves. The barriers from the legal aspect have persisted, and the ability to implement normative changes over time that can be anchored in the framework of the NPT, so that they will define binding action or expected behavior, remains limited. In the economic aspect, not increasing the budget framework for the NPT mechanism makes it impossible to finance the administrative support units essential for regular and optimal activity during the review process periods. Furthermore, the results of this procedure have not reduced the member countries’ political and diplomatic maneuvering room, nor have they increased their level of commitment to meet the stated goals, while being called to account for their actions or avoidance of taking action to progress toward the goals.

Background

The Review Conferences mechanism (also known as follow-up conferences) was first defined in the NPT framework so the member countries would assess the need for changes in the NPT in view of evolving situations, thereby overcoming lacunae in the NPT. In the legal aspect, these conferences are authorized to make decisions about the proper interpretation of NPT clauses, and accept changes or amendments in order to improve operations. However, a review of the NPT is different from an amendment procedure: an NPT review refers to the process of assessment and adaptation carried out by the NPT member states, while the amendment procedure refers to making specific changes in the NPT clauses and what is permitted by the treaty; it appears that there is a certain reluctance to change the wording or rules of the NPT, since the amendment procedure is difficult to execute.
For this reason, in the prevailing international situation, the member states use the Review Conferences to formulate agreements on various issues by reaching understandings and agreement on the interpretation given to the NPT clauses — reflected in the writing of the Final Act document for the Review Conference, which usually includes the member states’ final declaration. The aim is to achieve consensus on the wording of the final declaration, whose importance is mainly symbolic, and which constitutes an expression of unity and unanimity among the member countries on the promotion of the NPT and its goals. These declarations have no legal validity in themselves, but they have legal weight, mainly with respect to the authority to interpret the NPT clauses. The wording of the final document usually appeals to the broadest common denominator in order to satisfy all the NPT member states, which detracts from the ability to institute changes that make any substantive difference and will strengthen the NPT.

In general, the Review Conferences are political in essence, despite the importance of their legal dimension, which makes them important in shaping the balance of power in the international arena. It appears that in the context of the NPT, the Review Conferences are hard pressed to cope with the multidimensional challenges in the nuclear sphere, mainly because of the dichotomy between nuclear weapons states (NWS) and non-nuclear weapons states (NNWS) inherent in the NPT. Of the nine Review Conferences that were held at five-year intervals between 1975 and 2015, at only four of them was a final consensus document formulated for the Conference (the final document for the 1995 Review and Extension Conference was not brought up for a vote by the member countries; it was approved by Conference President Ambassador Jayantha Dhanapala). This contrasts with the corresponding Review Conferences for other non-conventional weapons, which have formulated a final document, despite the special challenges: the seven conferences for the Biological and Toxin Weapons Convention (BTWC), held in 1980-2011, and the three Review Conferences for the Chemical Weapons Convention (CWC), held in 2003-2013 (two of which also included a political declaratory document committing the member countries to the convention). The clear limitations of the NPT Review Conference in reaching and advancing joint decisions significantly undermine the ability of this mechanism to resolve disputes and foster consensus in the nuclear sphere.
The clear limitations of the NPT Review Conference in reaching and advancing joint decisions significantly undermine the ability of this mechanism to resolve disputes and foster consensus in the nuclear sphere. For example, one of the NPT’s main challenges during the review period pertains to the question of nuclear disarmament (NPT Article 6), for which the nuclear weapons states are responsible. However, these states have not acted with the necessary diligence and transparency to implement this provision, even though at the same time the non-nuclear weapons states are subject to inspection and verification by the International Atomic Energy Agency (IAEA) Department of Safeguards.

Strengthening the Review Process
The need to bolster the review process arose in the framework of the Review Conference decisions over the past 20 years, beginning with the 1995 Review and Extension Conference. The decisions made on the subject included a more pragmatic approach during this period, in an attempt to bring about a sustainable and more responsive review of developments. At the 1995 Review and Extension Conference, a decision document for strengthening the review process was accepted for the first time, mainly by arranging the activity of the Preparatory Committee – a procedure followed to this day. The idea underlying the decision is designed to adapt the Preparatory Committees’ activity to the Review Conferences’ three main committees, so that they will make progress on the principles, goals, and implementation of provisions of the NPT, and promote its universality. The decision also included giving the Review Conferences a dual mandate: to draw up recommendations for the future, to be assessed during the following review period, and to conduct a retroactive assessment of how decisions were implemented during the preceding review period.

In the final document, which was approved by consensus at the 2000 Review Conference, it was agreed that subsidiary bodies would be formed as needed to supplement the Conferences’ work. It was agreed that the work of the Preparatory Committee heads would also include consultations with representatives of the national delegations to the Conferences; the inclusion of non-governmental organizations in the discussions; the preparation of reports, summaries, and recommendations; and work streamlining processes. The Preparatory Committees began to operate based on these decisions. According to this format, discussions and decisions about procedural matters and ways of strengthening the NPT take place at the
first two meetings. At the last meeting before the Review Conference, concrete discussions are conducted about the NPT’s challenges, with the aim of formulating a consensus document that will include the Conference’s recommendations and the agenda for the discussions ahead of the Review Conference.

At the 2010 Review Conference, it was agreed to encourage the participation and aid of former Review Conference presidents and committee heads for the purpose of enabling them to provide concrete assistance. It was also decided to appoint a staff officer to act independently in the framework of the UN Office for Disarmament Affairs (UNODA) and coordinate meetings between the NPT members.²⁴

At the Review Conference that took place in April-May 2015, the only attention paid to strengthening the review process was a working paper submitted by the Japanese government,²⁵ based on a working paper submitted to the Preparatory Committee in 2012 with the participation of Australia and other countries.²⁶ According to the Japanese document, strengthening the review process to date included a reference to procedural matters, such as shortening the meeting times and establishing a (technical) administrative support mechanism. At the same time, these topics are not as substantive as the need to enhance the principle of transparency, which supports the verification and irreversibility mechanisms: verification cannot be accomplished without transparency, and countries will be unsure that the goals are being irreversibly achieved (referring to nuclear disarmament). Japan therefore proposed beginning with a reporting obligation that would provide a clear picture of the status of the military nuclear devices of nuclear weapons states according to a “standard reporting format.” On the basis of this format, it will be possible to obtain concrete quantitative information about nuclear disarmament activity and high quality information concerning measures taken to reduce the dependence on nuclear devices in the framework of the security and military apparatuses, in doctrine and in policy.

Overall, it appears that the working documents submitted over the years by the member states as recommendations for strengthening the review process dealt mainly with maintaining the existing structures (in other words, the Review Conferences and Preparatory Committees), while providing alternatives for streamlining work in those frameworks.
recommendations for strengthening the review process dealt mainly with maintaining the existing structures (in other words, the Review Conferences and Preparatory Committees), while providing alternatives for streamlining work in those frameworks. In this way, the proposals avoid the need to amend the NPT and alter the areas of responsibility and reciprocal relations between the NPT agencies and the UN Security Council and the International Atomic Energy Agency.

Problems Arising from Strengthening the Review Process

The review process documents obtained by the Review Conferences and states over the years, including working documents submitted and summaries of discussions and decisions, show that the same technical-political obstacles surveyed above are contained in three main economic, legal-normative, and political dimensions resulting from the significant strengthening of the NPT review process.

In the economic aspect, the proposals made for promoting a special secretarial-administrative support mechanism for the NPT that will operate continuously in its framework were not accepted because of budgetary reasons, including the costs of operations and employment of personnel, even though other weapons control conventions exist in which there is a successful model of support units (such as the Ottawa Anti-Personnel Mine Ban Convention and the Biological Weapons Convention) supporting inter-office work, coordination between countries and organizations in civilian society, the preparation of documents and analyses, logical support, and so on. The absence of a support mechanism for the NPT makes it difficult to pool the relevant operations for the regular functioning of all the operating entities (states, international institutions) and interested parties (non-governmental organizations) in the NPT framework.

In the legal-normative aspect, the proposals for strengthening the review process that have been accepted and implemented do not at all bridge the discriminatory inequality between the nuclear weapons states and the other countries. The process thus perpetuates a double standard for claims that the nuclear weapons states are not fulfilling their obligations under the NPT versus claims about the other
states fulfilling their obligations. This occurred at the 1995 Review and Extension Conference, in which it was decided to extend the validity of the NPT with no time limitation. In effect, this perpetuated the differences in status in the NPT framework.\(^{30}\)

In this aspect, and in the broader context of strengthening the review process, three additional possibilities have been raised over the years – including, in an attempt to evade amendment of the NPT, by promoting three new multilateral conventions to be included in a regime for preventing nuclear weapons proliferation.

The first began in the framework of the fourth NPT Review Conference in September 1990, which took place in the shadow of a proposal by a number of countries for amendments in the Partial Nuclear Test Ban Treaty (PTBT) that would turn it into a Comprehensive Nuclear Test Ban Treaty (CTBT).\(^{31}\) The UN General Assembly ratified the treaty on September 10, 1996, but it did not go into effect, because eight of the 44 countries possessing nuclear technology (including the United States and Israel), whose membership constitutes a prior condition for its validity, did not ratify it.

The second refers to the 1993 UN General Assembly resolution for the enactment of the Fissile Material Cut-Off Treaty (FMCT), which passed unanimously, with the Conference on Disarmament responsible for drawing it up.\(^{32}\) As of now, however, it has not yet been put into a convention, mainly due to objections by some of the nuclear weapons states.

The third refers to the draft Nuclear Weapons Convention presented by Malaysia and Costa Rica at the NPT Review Conference in April 2000.\(^{33}\) While the participating countries reached no agreement on accepting the draft convention, a decision was reached by consensus at the Conference on “13 Practical Steps” toward disarmament as an alternative to the convention.\(^{34}\) In 2007, after seven years in which no significant progress on the matter took place, Malaysia and Costa Rica submitted a revised draft convention that included a comprehensive ban on developing, testing, producing, transferring, storing, using, and threatening to use nuclear weapons. This draft was submitted to the NPT Preparatory Committee in Vienna\(^{35}\) and to the UN General Assembly,\(^{36}\) but it too has thus far failed to result in any convention.

In the political aspect, the political-diplomatic room for maneuver of the member countries has not become smaller, and has not contributed to advancement of NPT goals. In the question of interpreting the NPT articles, mainly in the context of the issue of nuclear disarmament, there
is a bone of contention that arose already when the draft convention was formulated. On the one hand, the nuclear weapons states assert that they have made systematic progress in fulfilling their commitments, as reflected in the drastic reduction in their nuclear weapons stockpiles and other arms control arrangements, such as the reduction in strategic weapons by the United States and Russia (in the framework of the New START Treaty). On the other hand, complaints have been raised that the nuclear weapons states are dragging their feet in order to keep their stores of nuclear weapons and upgrade the quality of the remaining stores, which poses a challenge to the entire nonproliferation regime. This dispute reflects the problems involved in the absence of transparency in reporting by the nuclear weapons states, as pointed out by the Japanese government in the 2015 NPT Review Conference.

The issue of eliminating weapons of mass destruction from the Middle East constitutes another prominent example of a political measure that began in 1974 at the initiative of Iran and Egypt. It was never put into effect, although it was eventually anchored as a binding decision at the 1995 Review and Extension Conference. Concerning this issue, which led to the failure of the 2015 Review Conference, the United States asserted that Egypt and the Arab League countries, mainly Egypt, were making cynical and manipulative use of the Conference as a platform for themselves to promote narrow political interests, while their insistence on settling this issue did not allow maneuvering room and flexibility and was unrealistic. Furthermore, flexibility and maneuvering room are what enable mainly the nuclear weapons states to promote or obstruct initiatives inconsistent with their interests – such as the US anxiety about turning the PTBT into a CTBT at the 1990 Review Conference, and thwarting the Middle East disarmament initiative at the 2015 Review Conference.

**Conclusion**

Despite expectations that the NPT review process will be strengthened by organizing the activity of the Preparatory Committees, the process has yielded only partial success in matters pertaining to administrative and procedural organizations of the Review Conferences. While establishing support
agencies for the Conferences and organizing the Preparatory Committee’s activity constitute reinforcement for more effective activity at the Review Conferences, recommendations such as establishing a special support agency for the NPT (not based on UNODA), issuing reports, and disclosing all of the Conferences’ discussions for public scrutiny have proven unsuccessful. Prolonged disputes between the nuclear weapons states and the other NPT members prevent any possibility of formulating significant recommendations discussion at the Review Conferences.

As for promoting a Comprehensive Nuclear Test Ban Treaty, a draft Fissile Material Cut-Off Treaty, and a Nuclear Weapons Convention, it appears that as long as these initiatives do not ripen into binding treaties in their formulation or enter into force (EIF), they weaken the NPT review process, because they do not help bridge the various interests, and even highlight conflicting interests. The legal foundation for cooperation in the NPT framework is the member states’ agreement to accept restrictions in the expectation of reciprocity with respect to the participation and behavior of other countries binding themselves to the NPT. It appears that in the past 20 years, normative weakness is increasing, whether within the NPT – such as the handling of North Korea and Iran – or outside it, in weighing the possibilities of acquiring nuclear capability, such as in Turkey, Egypt, and Saudi Arabia, which are liable to lead to a breach of the nonproliferation regime. Whatever the reasons, normative weakness that has not been offset within the framework of strengthening the review process reflects the weakness of the NPT in coping with states that challenge it, and in overcoming the antagonism between the NPT member states.

Notes
5 NPT Article 8(3), INFCIRC/140, April 22, 1970.


9 Ibid at chapter 16 (“Consensus”), pp. 335-46.


14 NPT, Article 9.


16 See https://www.opcw.org/documents-reports/conference-states-parties.


21 *SUPRA* note 19, Article 3.

22 NPT/CONF.III/64/I, Article 15(a).


26 NPT/CONF.2015/PC.1/WP.12.

27 *SUPRA* Note 20.
30 SUPRA Note 19.
32 Prohibition of the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices, A/RES/48/75.
33 NPT/CONF.2005/WP.
35 NPT/CONF.2010/PC.I/WP.17.
36 UN DOC. A/62/650.
37 Conference of the Eighteen-Nation Committee on Disarmament (United Nations), United Nations, verbatim records of the Eighteen-Nation Disarmament Committee, ENDC/PV.331, Paragraph 19.
38 “Myths and Facts Regarding the Nuclear Non-Proliferation Treaty and Regime,” U.S Department of State Fact Sheet, Bureau of International Security and Nonproliferation, April 14, 2015.
40 UN DOC. A/RES/3263, 9 December 1974.