Securing A Safer Future: The 10th NPT Review Conference and the Potential of a Middle East WMD-Free Zone Hadeel Abu Ktaish

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Introduction

Creating a Weapons of Mass Destruction-Free Zone (WMDFZ)¹ in the Middle East has been a key international priority for decades. Resurfacing at the United Nations and Non-Proliferation Treaty (NPT) Review Conferences, the process of establishing a WMDFZ has undergone a tumultuous series of events among proposed zone members and NPT member states. Though the zone issue has long enjoyed broad regional and international support,² it remains an unfulfilled obligation of the NPT's indefinite extension in 1995. States in the region and NPT member states have blamed one another for the elusive progress on the zone, disagreeing on the terms and sequence of events that would lead to its concretization. These issues are complicated by disagreement on the relationship between this WMDFZ proposal and the NPT, as well as a larger lack of impetus for reaching a consensus due to discrepancies in states' desired approaches and outcomes. Nonetheless, ongoing dialogue and steps taken since 2018 have revived momentum and brought us closer to a zone than ever before.

On the global level, a Middle East WMDFZ would be the first of its kind to extend beyond addressing nuclear weapons, like the nuclear-weapon-free-zone treaties, and would prohibit nuclear, biological, and chemical weapons. The zone would strengthen existing international law related to the disarmament and prohibition of WMD. Lawyers Committee on Nuclear Policy (LCNP) takes the position that the use or threat of use of nuclear weapons is illegal under international law, and there is a universally binding obligation to pursue and conclude negotiations on nuclear disarmament.³ The implementation of a WMDFZ in the Middle East would be one step toward this end.

A legally binding treaty establishing a WMDFZ in the Middle East would build on existing treaty law regarding nuclear, chemical, and biological weapons by acting as an umbrella treaty for these three pillars in the region. It could also provide momentum for regional states to join existing conventions, particularly the Biological Weapons Convention (BWC), Chemical Weapons Convention (CWC), Nuclear Non-Proliferation Treaty (NPT), and the Treaty on the Prohibition of Nuclear Weapons (TPNW). A zone would align with obligations under NPT

¹ For the purposes of this paper, WMD refers to nuclear, chemical, and biological weapons.

² "<u>WMD-Free Middle East Proposal at a Glance</u>," *Arms Control Association*, last reviewed December 2018.

³ "<u>Nuclear Threats and Nuclear Sharing Versus the Non-Proliferation Regime</u>," Lawyers Committee on Nuclear Policy, statement delivered by Ariana Smith, August 5, 2022.

Article VI for states to negotiate in good faith and pursue disarmament.⁴ In addition, it could provide innovative solutions for verification mechanisms that no regional organizations or treaties address at present.⁵ A treaty on this matter would strengthen norms against WMD development, possession, and use under customary international law.⁶ Moreover, a WMDFZ has the potential to ease decades of conflict, insecurity, and distrust in the Middle East.⁷

Civil society involvement in the zone creation process has played an important role in promoting diplomatic discussions and has resulted in a draft treaty text proposed as a legal instrument for a zone. The Middle East Treaty Organization (METO), a civil society coalition of experts and activists seeking to create a WMDFZ, created an evolving draft treaty to be a reference point for government officials and civil society to negotiate a regional legal framework for a zone.⁸ An umbrella treaty such as the one drafted by METO could have positive geopolitical implications, namely in providing momentum for states to join all major WMD conventions in functioning as the first regional treaty to address "viable and innovative regional compliance solutions."⁹

METO's draft treaty envisions the creation of a regional intergovernmental organization that would function to implement the treaty effectively. This is critical given there is no current regional institutional framework, such as ASEAN for the Southeast Asian Nuclear-Weapon-Free Zone Treaty (SEANWFZ) and the African Union under the African Nuclear-Weapon-Free Zone Treaty (ANWFZ).¹⁰ A treaty enforcement mechanism in the form of a regional body could collaborate with organizations such as the International Atomic Energy Agency (IAEA) and the Chemical Weapons Convention (CWC), as well as build upon them by instituting a verification mechanism for biological weapons, which does not exist anywhere. In doing so, an umbrella mechanism for nuclear, chemical, and biological weapons, while presenting deeply complex challenges, could strengthen the global verification regime.

Brief overview of the WMDFZ process

¹⁰ Id., 19.

⁴ <u>Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (Text of the Treaty)</u>, United Nations Office for Disarmament Affairs.

⁵ Sharon Dolev and Leonardo Bandarrat, "<u>Towards an Achievable WMDFZ Treaty for the Middle East: Insights</u> from Civil Society," *Journal for Peace and Nuclear Disarmament*, June 22, 2022, 18.

⁶ David P. Fiddler, "<u>Weapons of Mass Destruction and International Law</u>," American Society of International Law, February 11, 2003.

⁷ Tomisha Bino, "<u>The Pursuit of a WMD-Free Zone in the Middle East: A New Approach</u>," Chatham House, The Royal Institute of International Affairs, 15.

⁸ Draft Treaty, Middle East Treaty Organization (METO).

⁹ Dolev, Bandarrat, 18.

Among several proposals to establish zones free of nuclear weapons during the Cold War, the Soviet Union proposed a nuclear weapon- and missile-free zone in the Middle East in 1958.¹¹ In 1974, Egypt and Iran submitted a formal proposal for a Middle East NWFZ through a resolution to the United Nations General Assembly (UNGA).¹² This set a precedent for Egypt's later leadership in the zone creation process, and Egypt continues to promote implementation efforts today.

A key element of the negotiations that led to the indefinite extension of the NPT in 1995 was the decision to adopt a resolution calling for "the establishment of an effective verifiable Middle East zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems."¹³ This resolution provided a legal framework that would guide future negotiations for the zone and was crucial to the extension of the NPT.¹⁴ Since the adoption of the 1995 resolution, the fate of the zone has been inextricably linked to the NPT review process, most recently during the 10th Review Conference (RevCon), held from August 1-26, 2022.

After reaffirming the 1995 resolution in 2000, states parties to the NPT took practical steps toward implementing it during the 2010 NPT RevCon.¹⁵ They called for convening a conference in 2012 to negotiate a zone with an appointed host government and facilitator. The 2012 conference, however, was postponed due to a lack of consensus on the conditions for a conference, and no dates for rescheduling were given.¹⁶ With this setback, informal multilateral consultations were held outside of UN auspices in Geneva and Glion, Switzerland in 2013 and 2014 in which Israel and Iran participated. This was especially important for Israeli officials, who did not want to be seen as partaking in processes on UN premises.¹⁷ Ultimately, these talks were abandoned out of frustration from the lack of agreement on concrete steps to create a WMDFZ.

Progress remained stagnant and frustration grew throughout the 2015 NPT RevCon. The United States, United Kingdom, and Canada blocked a final outcome document, with the United States citing "unworkable conditions" and "arbitrary deadline[s]" in Egypt's proposal "to convene a future meeting to negotiate a Middle Eastern WMD-free-zone treaty."¹⁸ It was not until 2018 that the zone issue gained and sustained impetus when the UN General Assembly mandated a zone

¹¹ "<u>1958 Soviet Proposal for the creation of a Middle East Nuclear Weapons Free Zone</u>," United Nations Institute for Disarmament Research (UNIDIR).

¹² "Establishment of a nuclear-weapon-free zone in the region of the Middle East," United Nations Digital Library, 1975.

¹³ "<u>Resolution on the Middle East</u>," United Nations: Office for Disarmament Affairs, September 17, 2008, 2.

¹⁴ Dolev, Bandarrat, 19.

¹⁵ *Id.*, 12.

¹⁶ "WMD-Free Middle East Proposal at a Glance."

¹⁷ Bino, "The Pursuit of a WMD-Free Zone in the Middle East: A New Approach," 5.

¹⁸ Mary Ann Hurtado and Julia Masterson, "<u>Work Continues on Middle Eastern WMD-Free Zone</u>," *Arms Control Association*, January/February 2022.

consultation process, as explained in the next section. This year's 10th NPT RevCon also concluded without consensus on a substantive outcome document.

2018 to Today: Staying Stagnant or Building Momentum?

The 10th Review Conference of the NPT, which concluded August 26 this year, saw continued dialogue on the standstill issue of creating a zone with participation from civil society and intergovernmental organizations. In the first few weeks of the conference, state representatives, intergovernmental organizations (IGOs), and civil society groups speaking in side events expressed a qualified optimism towards and urgency for progress on the zone issue.¹⁹ The Egyptian representative speaking at a side event hosted by the METO and the Government of Ireland drew positivity from the progress made in the twice-held November conferences since 2018, stating that we are seeing a transition from ideas to actual implementation. He also emphasized that states must maintain dialogue to preserve this momentum.²⁰ The vigor of the first 2019 November conference substantially accrued from the UNGA's decision in 2018, brought forward by Egypt, to annually convene "until a legally binding treaty creating such a zone is established."²¹ The participation of 22 member states of the Arab League, Iran, four nuclear weapon states (China, France, Russia, and the U.K.), IGOs, and civil society groups in the first November conference in 2019 resulted in the adoption of a political declaration that reaffirmed the intention of states to establish a zone.²² The declaration stipulates states' "intent and solemn commitment to pursue" a legally binding treaty on the basis of a freely arrived consensus by states in the region.²³ It also set the precedent for the "realization of this longstanding goal" by establishing dates for future sessions to occur on the third Monday of November of each year for five days.²⁴²⁵ This achievement occurred despite Israel and the United States' lack of participation in the conference. It was an expression of participants' political will and commitment to regional confidence-building towards disarmament.

The second session in 2021 ended on a more productive note than the 2019 session. Headed by Kuwait, the session concluded in a consensus report that established Rules of Procedure, thematic areas of discussion, and created a mechanism for intersessional efforts to maintain

¹⁹ "<u>NPT News in Review: Vol.17 No.4</u>," Reaching Critical Will, August 10, 2022, 6.

²⁰ "<u>Achieving the Possible: A Middle East WMDFZ Draft Treaty, a Regional Organization and the Need for an Inclusive Process</u>," UNHQ 10th NPT Review Conference Side Event, hosted by the Government of Ireland and METO, August 9, 2022.

²¹ "Convening a Conference on the Establishment of a Middle East zone free of nuclear weapons and other weapons of mass destruction," United Nations Office for Disarmament Affairs, 2018.

²² "<u>Conference on nuclear- and WMD-free zone in the Middle East adopts political declaration</u>," Reaching Critical Will, 2019.

²³ "Political declaration adopted at the first session of the Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and Other Weapons of Mass Destruction," United Nations, 2019.

²⁴ Ibid.

²⁵ "Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and Other Weapons of Mass Destruction: First Session," United Nations General Assembly (UNGA), November 22, 2019.

progress.²⁶ The Rules of Procedure provide guidelines to more effectively streamline conference procession,²⁷ and the intersessional meetings are to "continue deliberations" between annual sessions.²⁸ Until a treaty is arrived at by consensus, these annual meetings will continue to take place. It is also critical that these processes are preserved as independent of the NPT framework to enable participation by Israel, a non-party to the NPT.²⁹ Ultimately, the workable outcomes of these two conferences have reduced some of the friction created throughout this decades-long process. The third conference is set to take place from November 14 to 18 this year at the UN Headquarters in New York, with Lebanon taking up the presidency.³⁰

The Zone Issue at the 10th NPT RevCon

During the first week of the 10th NPT Review Conference, the Arab Group reaffirmed that a WMDFZ is a collective responsibility under the NPT. Numerous regional organizations and countries expressed support for its establishment.³¹ While lamenting the NPT-mandated, unrealized 2012 conference, the Arab Group welcomed the UNGA-mandated November conferences held in 2019 and 2021. Expectedly, the U.S. and Israel's lack of participation in both conferences was spotlighted. Palestine, in particular, noted that those "who decide to exclude themselves cannot blame others for their so-called exclusion," alluding to the U.S. and Israel's past expressions of feeling singled out in the zone process.³² States noted Israel's nuclear weapons as a threat to the region and called on Israel to join the NPT and to allow for IAEA safeguards.

The NPT's Main Committee II (MCII), which focuses on non-proliferation, convened a general exchange in the second week of the RevCon. Almost all parties' statements touched on the issue of a Middle East WMDFZ.³³ Lebanon said that it was looking forward to building on Jordan and Kuwait's efforts in the past by leading the upcoming November 2022 conference. The League of Arab States highlighted the double standard towards Israel on the part of select NPT states parties and called for states to place pressure on Israel to accede to the NPT; the League and Qatar both highlighted the three co-sponsors'—Russia, the U.S., and U.K.—responsibilities

²⁶ Ibid.

²⁷ "Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and Other Weapons of Mass Destruction: Second Session," UNGA, December 3, 2021.

²⁸ *Ibid*.

²⁹ Sharon Dolev, Emad Kiyaei, and Tony Robinson, "<u>One step closer" to eliminating WMD from the Middle East</u>," Reaching Critical Will, December 9, 2021.

³⁰ "Conference on the Establishment of a Middle East Zone Free of Nuclear Weapons and Other Weapons of Mass Destruction," United Nations Office for Disarmament Affairs, 2019.

³¹ "<u>NPT News in Review: Vol.17 No.2</u>," Reaching Critical Will, August 4, 2022, 16.

³² Ibid.

³³ "<u>NPT News in Review: Vol.17, No.4</u>," Reaching Critical Will, August 10, 2022, 6.

towards the 1995 resolution as well.³⁴ During exchanges in thematic meeting Cluster 5 on NWFZs, much emphasis was placed on the WMDFZ issue.³⁵

Midway through the conference, MCII released a draft report that recalled and reaffirmed the 1995 Middle East resolution.³⁶ Countries including Algeria, Egypt, Germany, Ireland, Malaysia, and Thailand pointed out that the language on a NWFZ in the Middle East "could be stronger and action-oriented."³⁷ MCII, in addition to MCI and MCIII, was not able to reach consensus. In the third week, reactions to the Chair of Subsidiary Body's (SB2) report, which placed focus on the Middle East issue at this conference, were a mix of criticism and praise. Iran claimed the language in the report was the weakest the Middle East issue has seen.³⁸ Iraq, in a similar strand, said it did not see the language as fulfilling its aspirations or addressing its concerns. For example, it had called for the report to reduce tension by urging Israel's accession to the NPT and calling for it to allow IAEA supervision over its facilities. In contrast, the U.S., Jordan, and Saudi Arabia supported the proposal, and though it wished for a stronger text, Egypt expressed acceptance of it.

The RevCon's draft outcome document this year was ultimately not adopted due to Russia's blocking consensus. The language regarding a Middle East WMDFZ in the document is plain; it reaffirms the 1995 resolution and acknowledges the UNGA-mandated process, but lacks substantive action for NPT states parties.³⁹⁴⁰ During the final plenary meeting on August 26, 2022, the Arab group said it desired a stronger commitment than what was outlined in the draft, with Syria describing the language as "weak," and Iran arguing the text disregards the issues of Israel's accession to the NPT and placement of its nuclear facilities under IAEA safeguards, as adopted in 2000 and 2010 RevCons. Egypt underscored that the 1995 resolution is linked to the NPT's indefinite extension and that Israel remains the only Middle East state that refuses to accede to the NPT. Though Russia prevented consensus and the outcome of this long-awaited RevCon was disappointing overall, many states sincerely engaged in trying to advance the zone issue. It is this good faith that will perhaps invigorate multilateral work on the issue at the third conference in November 2022, which could prove to be a useful forum in contrast to the recent NPT RevCon.

Complexities That Chronicle Middle East WMDFZ History

³⁴ "<u>NPT News in Review Vol.17, No.5</u>," Reaching Critical Will, August 13, 2022, 18.

³⁵ *Id.*, 21.

³⁶ "<u>Draft report of Main Committee II</u>," Reaching Critical Will, August 14, 2022.

³⁷ "<u>NPT News in Review: Vol.17 No.6</u>," Reaching Critical Will, August 16, 2022, 16.

³⁸ "<u>NPT News in Review: Vol.17 No.9</u>," Reaching Critical Will, August 22, 2022, 10.

³⁹ "Draft Final Document," NPT/CONF.2020/CRP.1/Rev.2, August 25, 2022.

⁴⁰ "<u>NPT News in Review: Vol.17 No.10</u>," Reaching Critical Will, 10.

The history of the zone issue has been marked by a series of negative patterns. Multiple unsuccessful negotiations have resulted in compounded frustration, finger-pointing, and increasingly hardened positions.⁴¹ Some experts have blamed the zone process itself as having resulted in the failure to adopt a consensus final document during the 2015 NPT RevCon.⁴² Although others have challenged this argument, it has inevitably contributed to the view that there is a lack of political will and even a presence of ill will surrounding disarmament in the Middle East.⁴³ However, positive developments such as Syria's accession to the CWC in 2013, the dismantling of its chemical weapons program, and the reinstatement of the Joint Comprehensive Plan of Action (JCPOA) negotiations point to the prospect of progress on ridding the region of WMD capabilities.⁴⁴⁴⁵ Critically, these examples of state cooperation on WMD issues help to assuage Israel's long-standing claim that the negotiations for a zone have singled out Israel.

A main challenge to the zone's progress is the discrepancies between two of the most prominent parties' interests and desired outcomes: Egypt, as representing the interests of Arab states, and Israel.⁴⁶ Most Middle Eastern states are party to or have signed most international WMD non-proliferation treaties, including the CWC, BWC, NPT, Comprehensive Test-Ban Treaty (CTBT), TPNW, and the ANWFZ.⁴⁷ Broadly, the Arab states have cooperated more on the multilateral negotiation process than Israel has, and their desire lies in closing the gap in regional WMD capabilities by disarming Israel of its nuclear program.⁴⁸ Israel desires recognition from its neighbors, and theWMDFZ process creates a diplomatic opening for such normalization to occur. It claims that its interest in a zone lies in sequencing peace first then working on disarmament at a later stage.⁴⁹

Israel, in maintaining its interest in establishing a zone, desires both a regional security framework and to facilitate normalization of its relations with states in the region. The fact that Israel is the only state in the region not party to the NPT means it is not bound by the NPT

⁴¹ Bino, "The Pursuit of a WMD-Free Zone in the Middle East: A New Approach," 10.

⁴² Tomisha Bino, "<u>The Middle Eastern WMD-Free Zone and the NPT</u>," *Arms Control Association*, July/August 2022.

⁴³ "<u>METO's Statement at the NPT Review Conference 2022</u>," Reaching Critical Will, 2022.

⁴⁴ "<u>Timeline of Syrian Chemical Weapons Activity, 2012-2022</u>," *Arms Control Association*, last reviewed May 2021.

⁴⁵ "<u>US says 'encouraged' by Iranian response to nuclear deal proposal</u>," *Al Jazeera*, August 22, 2022.

⁴⁶ Bino, "<u>The Pursuit of a WMD-Free Zone in the Middle East: A New Approach</u>," 3, see "Figure 1: Different perceptions of processes and desired outcomes."

⁴⁷ Egypt has ratified the NPT and Israel is not a signatory to it. More on treaty status per country <u>here</u>, last updated April 2, 2021.

⁴⁸ Bino, "The Pursuit of a WMD-Free Zone in the Middle East: A New Approach," 2.

⁴⁹ Id., 14.

process or its decisions, and has no legal obligation to attend these negotiations.⁵⁰ This remains a roadblock to progress on the issue.⁵¹ Its cooperation, or lack thereof, in formal or informal negotiations is legitimized by the fact that its views on the WMDFZ issue run parallel to those of the U.S., an NPT state party and co-sponsor of the 1995 resolution. Israel called the 2018 UNGA decision to convene annually on the issue "another platform to single out Israel," while the U.S. claimed it was "divisive."⁵² These claims, however, cannot be made in good faith when the risk of a nuclear incident in the region remains high in sight of Israel's nuclear opacity, specifically that its nuclear facilities are not subjected to comprehensive safeguards and inspections.⁵³ So long as Israel views its nuclear capabilities as a necessary safeguard, its participation in this ongoing process remains fragile.

With regards to the Arab states' position, at Egypt's leadership, the interest in a WMDFZ lies chiefly in disarming Israel's nuclear program and in eliminating the gap in WMD capabilities among states in the region.⁵⁴ The United States' double standard treatment of Israel, by allowing Israel to covertly develop its nuclear program despite the United States' own interest in nuclear non-proliferation, has exacerbated Arab states' mistrust in this regard.⁵⁵ Despite its central involvement in the zone process, Egypt has not signed the CWC or IAEA's Additional Protocol, nor has it ratified the BWC, the CTBT, or the ANWFZ.⁵⁶ Egypt conditions its ratification on Israel's accession to the NPT. Syria has also conditioned its accession to the CWC on these grounds, though was left no option but to join the Convention after the 2013 Ghouta chemical attack. Evidence of chlorine and mustard gas use in Syria after its accession remains a serious challenge to the WMDFZ process, as does possible proliferation in the region.

Israel's status as the sole nuclear state in the region and the perceived need to keep pace with Iran's capabilities are two factors driving nuclear proliferation in the region, based on the false belief that nuclear weapons enhance regime security.⁵⁷ Saudi Arabia's construction of nuclear

⁵⁰ Israel's counterproliferation policy is a threat to regional non-proliferation. The "Begin Doctrine," as it is called, allows the Israeli government to take military action to prevent other countries from developing or acquiring nuclear weapons. Such policy is responsible for its sabotage of other states' nuclear facilities, such as in the bombing of Iraq's Osirak reactor in 1981 and Syria's Al Kibar reactor in 2007, and is believed to have been responsible for carrying out the cyber attacks on Iran's Natanz uranium enrichment facility in 2010 and 2021. After the 1981 Iraq incident, a government statement stated: "On no account shall we permit an enemy to develop weapons of mass destruction against the people of Israel. We shall defend the citizens of Israel in good time and with all the means at our disposal." Emad Kiyaei, Tony Robinson, and Sharon Dolev, "Weapons Of Mass Destruction: Non-Proliferation And Regional Cooperation In The Middle East," *The Brown Journal of World Affairs*, Fall/Winter 2020, 73.

⁵¹ Dolev, Bandarrat, 10.

⁵² Bino, "The Middle Eastern WMD-Free Zone and the NPT."

⁵³ Dolev, Bandarrat, 9.

⁵⁴ *Id.*, 2.

⁵⁵ Id.,14.

⁵⁶ Id., 7.

⁵⁷ Emad Kiyaei, Tony Robinson, and Sharon Dolev, "<u>Weapons Of Mass Destruction: Non-Proliferation And</u> <u>Regional Cooperation In The Middle East</u>," *The Brown Journal of World Affairs*, Fall/Winter 2020, 75

reactors combined with its refusal to add the Additional Protocol to its safeguards agreement with the IAEA is a serious proliferation risk.⁵⁸ No state brought up these issues in zone discussions during the 10th NPT RevCon, whereas many continued to point out Israel's lack of accession to the NPT as a major roadblock to progress on the issue.

Conclusion: What Lies Ahead

Efforts towards a WMDFZ in the Middle East have been drawn out for decades. Its materialization requires good faith and a strong political will, elements which the zone negotiation process has often lacked. Arab and Iranian stakeholders in the zone have become increasingly frustrated with perceived double standard treatment of Israel by the U.S., U.K., and Canada in this process. Some states even condition their accession to certain non-proliferation treaties on Israel's accession to the NPT. Israel's potential engagement in this zone process is conditioned by its security-first-disarmament-later framework and on regional countries' recognizing it as a state. Its status as the sole nuclear armed state in the Middle East with its nuclear facilities not subject to inspections and safeguards constitutes a serious threat to regional security and the non-proliferation regime. Regardless of Israel's non-membership in the NPT and its lack of participation in the UNGA-mandated regional process, negotiations can still move forward at this upcoming November conference. The UN mandated procedures have so far proved effective; the sincere engagement of states and their revived good faith is a testament to the progress made in pursuit of a zone.

Divisions arising from Russia's illegal invasion of Ukraine and accompanying nuclear threats resulted in the inability of this year's NPT RevCon to adopt a consensus outcome document at this critical time. The success of a WMDFZ in the Middle East holds the potential to inspire similar ambitions across the world and could strengthen the global non-proliferation regime. It is undoubtedly the case that the effectiveness of global non-proliferation and disarmament is inextricably tied with that of the Middle East. Through confidence building, good faith, and determined political will, the Middle East can be steered away from a potential nuclear arms race and instead towards a humanitarian and legally based regional security system that benefits all.

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⁵⁸ "<u>New Saudi Reactors: Proliferation Concerns</u>," Lawyers Committee on Nuclear Policy, August 8, 2022.