



NPT Review Conference 2010
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The following proposed language for the 2010 NPT Review Conference addresses four key issue areas: a strengthened safeguards and compliance system, acknowledging the role that illicit trade plays in nuclear proliferation while improving existing means to detect and prevent such trade, the need to prevent summary withdrawal from the Treaty under Article X, in particular in cases where a state has recently been found in noncompliance with its IAEA safeguards or NPT obligations, and the importance of a verifiable fissile material cut-off treaty.

I – Strengthened Safeguards and Compliance – implementation of the Additional Protocol

States agree that the International Atomic Energy Agency's ability to carry out its mandate under the NPT to promote the peaceful use of nuclear energy is a critical part of the mechanism underpinning the NPT.

As of December 2009, 94 countries have signed and ratified an additional protocol to their safeguards agreement, while the Protocol has been signed by 137 countries. Among states with significant nuclear activities, approximately 90 percent have ratified the Additional Protocol or received IAEA Board approval of its protocol. This reflects the broad, though still not universal acceptance of the IAEA's strengthened safeguards system.

- Without safeguards agreements, the IAEA cannot provide any assurance about a State's nuclear activities, and without an Additional Protocol, the IAEA cannot provide credible assurance regarding the absence of undeclared nuclear material or activities.(Articles II and III).
- Among states with significant nuclear activities, approximately 90 percent have ratified the Additional Protocol or received IAEA Board approval of its protocol. This reflects the broad, though still not universal acceptance of the IAEA's strengthened safeguards system.(Article III)
- States agree to make ratification of the Additional Protocol a goal which they will attempt to achieve before the 2015 NPT Review Conference, if they do not already have an additional protocol in force.(Article III)
- In order to promote the broadest possible adherence to the Additional Protocol, states support calls to make adherence to the Protocol a condition of supply of nuclear supply. (Articles III, VI and V)

- At the same time, it is important to emphasize that strengthening the safeguards system should not entail any decrease in the resources available for technical assistance and co-operation and should be compatible with the IAEA's function of encouraging and assisting the development and practical application of atomic energy for peaceful uses and with adequate technology transfer.¹(Articles VI and V)

II – Detecting and Preventing Violations of the NPT: Strengthening efforts against illicit nuclear trade

The unfortunate reality is that countries that seek nuclear weapons or build unsafeguarded nuclear facilities rely heavily on illicit or secret nuclear trade to advance their objectives. Of the nuclear programs that currently produce highly enriched uranium or plutonium for nuclear weapons programs, all of them either now or have in the past depended critically on illicit nuclear trade.

The international community's ability to detect and stop this trade remains limited. Too often, major successes in thwarting nuclear proliferation have depended on the last line of defense—military attacks, intelligence operations, and cargo seizures. As important as these measures are, it is risky to depend on the last line of defense to prevent proliferation. International peace and security should rest on the first lines of defense, including approaches institutionalized in the Nuclear Non-Proliferation Treaty, domestic and international trade controls, corporate vigilance, and international inspections. Yet these approaches all failed to detect, let alone stop, the construction of a nuclear reactor in Syria, the Khan network, and Pakistan's nuclear experts' assistance to al Qaeda. Six years after Khan's network was broken up, these established arrangements are not performing much better at catching, prosecuting, or deterring smugglers.

As is widely recognized, nuclear export controls are a legitimate, necessary and desirable means of implementing obligations of all States parties under Article III of the Treaty, in order not to contribute to a nuclear explosive activity, unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism.²

Strengthening controls against illicit nuclear trade:

- The conference recognizes the importance of all states pursuing an effective and universal system of trade regulation consistent with the further development and expansion of nuclear power production.³(Article IV)
- The conference recognizes that transnational nuclear smuggling contributes to global nuclear proliferation and increases the chances that non-state terrorist groups could use these same markets to acquire nuclear material and technology for making nuclear weapons.⁴(Articles 1 and II)
- The conference views that nuclear export controls are a legitimate, necessary and desirable means of implementing obligations of all States parties under article III of the Treaty, in order not to contribute to a nuclear explosive activity, unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism, and facilitate peaceful nuclear commerce.⁵(Article III)

¹ Adapted from IAEA Resolution of October 8, 2008, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol."

² Vienna Group of Ten, Working Paper submitted during May 2009 PrepCom.

³ Institute for Science and International Security, language prepared for 2000 NPT Review conference.

⁴ David Albright, Paul Brannan, and Andrea Scheel Stricker, "Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan," *The Washington Quarterly*, forthcoming.

⁵ Vienna Group of Ten, Working Paper submitted during May 2009 PrepCom.

- The conference recognizes that stringent national and international controls over nuclear materials, equipment, and technologies in place to prevent nuclear proliferation are similar to those that would be required both to achieve and verify eventual nuclear disarmament.(Article VI)
- States agree, in accordance with United Nation Security Council resolutions 1540 and 1887, to secure sensitive materials and to standardize controls over and control access to intangible transfers of nuclear weapons-related technology, know-how, and information.⁶(Articles I, II and III)
- States recognize that the problem of transshipment and diversion in countries without export controls or with weak export controls persists, and States recognize that it may be necessary to impose additional trade controls on sensitive exports heading to countries of diversion concern to fulfill their obligations under the Article III of the NPT.⁷(Article III)
- States agree, in accordance with United Nation Security Council resolutions 1540 and 1887, to prevent proliferation financing by implementing modern financial controls and reporting requirements on banks, and those States in a position to do so will work to enhance international partnerships and capacity building in this regard.⁸(Article III)
- States agree, in accordance with United Nation Security Council resolutions 1540 and 1887, to institute all appropriate national measures in accordance with their national authorities and legislation, and consistent with international law, to strengthen and implement export controls, to prevent proliferation shipments and use of their countries for transshipment or diversion, and to prevent the exploitation of their territories by entities and individuals engaged in illicit trade.⁹(Article III)

Better detection and prosecution of illicit nuclear trade:

- The conference urges that states agree to improve their national capabilities to detect, deter, and disrupt illicit trafficking in nuclear materials, equipment, and technology throughout their territories in accordance with United Nations Security Council resolutions 1540 and 1887, and those States in a position to do so will work to enhance international partnerships and capacity building in this regard.¹⁰(Article III)
- States reaffirm that cooperation among governments and with the IAEA are critical to detecting and thwarting illicit nuclear trading schemes.¹¹(Article III)
- States recognize that the strengthening of the IAEA’s mandate in investigating illicit procurement networks would allow for earlier detection and prevention of nuclear trafficking and thus serve as a vital part of the IAEA’s safeguards mission aimed at the early detection of undeclared nuclear facilities and materials.¹² To that end, the IAEA’s outreach to domestic companies via state authorities helps strengthen the IAEA’s ability to track illicit trade networks and inform member states earlier about the existence of undeclared nuclear activities.¹³(Article III)

⁶ UNSCR 1887 (2009); “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

⁷ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

⁸ UNSCR 1887 (2009); “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

⁹ UNSCR 1887 (2009); “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹⁰ UNSCR 1887 (2009).

¹¹ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹² “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹³ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

- States recognize that fulfillment of the IAEA’s Additional Protocol in all countries will allow the IAEA to investigate potential instances of illicit nuclear procurement.¹⁴(Article III)
- The conference calls on states to agree to extend the annexes of their Additional Protocols (those implemented and yet to be implemented) to include information on dual-use items, and recognizes that failure to include information on procurements of dual-use items impacts adversely the IAEA’s ability to find indicators of possibly undeclared nuclear activities for further investigation. The conference calls on states to likewise report to the IAEA export denials, recognizing that information on unsuccessful procurement efforts could be important for alerting the IAEA to the possible interest of a state in pursuing clandestine nuclear activities.¹⁵ (Article III)
- States recognize that cooperation between governments and industry in identifying nuclear trafficking schemes needs improvement in many countries. States agree to assist, wherever possible, the efforts of domestic companies and industries targeted by illicit trade in identifying early and regularly attempts by procurement networks to purchase goods from them illicitly.¹⁶(Article III)
- The conference calls for the exploration at the U.N. Security Council of the establishment of trafficking in nuclear weapons, nuclear explosive materials, and the most serious crimes of transferring the wherewithal to make nuclear weapons as an internationally-recognized crime against humanity, with offenses prosecutable at an international forum.¹⁷ The transfer of the capability to develop, produce, or trade nuclear weapons also deserves international censure, because acquisition of nuclear weapons severely threatens international security and the detonation of a single nuclear weapon can kill tens or even hundreds of thousands of innocent people. (Articles I and II)

III - Withdrawal from NPT – establishing processes for withdrawal while maintaining obligations

States undertake, as outlined in UNSCR 1887, to address the issue of a State’s notice of withdrawal from the NPT pursuant to Article X of the Treaty by identifying modalities under which NPT States Parties could collectively respond to notification of withdrawal.¹⁸

Preventing withdrawal without consultation:

- The conference recommends the establishment of a requirement for a state contemplating to withdraw from the NPT to submit to all NPT States Parties prior to the notification of withdrawal in accordance with Article X written information setting out the concerns that have led it to contemplate withdrawing from the Treaty.¹⁹ (Article X)
- The conference adopts that States establish a requirement for a state contemplating withdrawal from the NPT to conduct prior consultations with NPT-state parties before exercising its right in accordance with Article X.²⁰(Article X)

¹⁴ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹⁵ John Carlson, “IAEA Safeguards Additional Protocol,” International Commission on Nuclear Non-Proliferation and Disarmament, January 20, 2009.

¹⁶ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹⁷ “Detecting and Disrupting Illicit Nuclear Trade After A.Q. Khan.”

¹⁸ UNSCR 1887 (2009).

¹⁹ German PrepCom 2004 working paper.

²⁰ German PrepCom 2004 working paper.

Maintaining States' NPT responsibilities:

- The conference recognizes that in accordance with Article III obligations that non-NWS parties are committed as a NPT State Parties to prevent diversion of peaceful nuclear material to nuclear weapons or other nuclear explosive devices while a party to the Treaty.²¹(Articles II and III)
- The conference calls on States to agree that they should not be free to use for non-peaceful purposes nuclear materials, facilities, and direct-use and dual-use equipment, materials, and technology they acquire under the NPT, and should not be free of commitments under the NPT to do so just because they have withdrawn.²²(Articles II, III and X)
- The conference calls on States to agree that the comprehensive safeguards commitment, including the peaceful use obligation, or the application of safeguards to all existing nuclear material and facilities, continues independently of the NPT following withdrawal.²³ (Articles II, III and X)
- The conference calls on States to agree to make a requirement of sensitive or major nuclear transfers a clause forbidding the use of transferred nuclear materials, facilities, equipment or technologies in case of a withdrawal. The same clause will also apply for materials or NSG trigger list items produced from, or with the help of, materials, equipment, facilities or technologies originally transferred.²⁴ (Articles II, V and X)
- The conference calls on States to agree to require as a condition of nuclear supply that safeguards apply in perpetuity to all such material and facilities supplied, and should recipient states terminate withdraw from its IAEA safeguards agreement, or be found by the IAEA Board of Governors to be in non-compliance with such agreement, the supplier state would have a right to require the return of nuclear material and equipment provided prior to such termination, non-compliance or withdrawal, such as the return of the equipment frozen or dismantled under international verification, as well as return of any special nuclear material produced through the use of such materials or equipment.²⁵(Articles II, V and X)
- The conference affirms that a State remains responsible under international law for violations of the NPT committed prior to its withdrawal, as described in United Nations Security Council Resolution 1887²⁶. If a state had been found by the IAEA to be in non-compliance with its safeguards agreement, it is still obliged to remedy the relevant safeguards breaches following withdrawal;²⁷(Articles II and X)
- States recognize that their commitments under nuclear weapon free zone treaties or regional treaties may still apply following their withdrawal from the NPT;²⁸(Articles VII and X)
- The conference call on states to agree to amend existing comprehensive safeguards agreements or to sign an amending protocol to existing comprehensive safeguards agreements to reflect the perpetuity of safeguards should they decide to withdraw from the NPT;²⁹(Articles II and X)

²¹ NPT Article III.

²² John Carlson, "Withdrawal from the NPT: Consequences for IAEA Safeguards," International Commission on Nuclear Non-Proliferation and Disarmament, June 5, 2009.

²³ "Withdrawal from the NPT."

²⁴ French PrepCom 2004 working paper.

²⁵ UNSCR 1887 (2009); French PrepCom 2004 working paper.

²⁶ UNSCR 1887 (2009).

²⁷ "Withdrawal from the NPT."

²⁸ "Withdrawal from the NPT."

²⁹ "Withdrawal from the NPT."

IV- Fissile Material Cutoff Treaty (FMCT) – fissile material security

A multilateral, verifiable FMCT both advances broader progress toward disarmament and reinforces the NPT's nonproliferation undertakings, two of the NPT's three pillars.

The Conference on Disarmament is called upon to negotiate without delay a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.

A FMCT would build confidence in the peaceful nature of nuclear energy and facilitate its wider use.

- Nuclear weapons states are urged to take further steps to increase transparency of activities related to military stockpiles of fissile materials.(Article VI)
- States are urged to discuss a disposition strategy that would largely eliminate excess stocks of highly enriched uranium (HEU) and plutonium over the next 20-30 years, and that would curtail the unnecessary production of new stocks of HEU and separated plutonium.(Article VI)
- States are urged to declare the forms in which fissile materials are held and their quantity.(Articles III and VI)
- States are urged to provide information about the status and location of facilities involved in HEU production and plutonium separation.(Articles III and VI)
- Nuclear weapon states are urged to declare the amount of fissile material dedicated to military (weapon or naval) use, and the amount declared excess to defense needs.(Article VI)
- Nuclear weapon states are urged to increase the amount of military fissile material declared excess and place this material irreversibly under international safeguards.(Article VI)