



July 15, 2010

After the 2010 NPT Review Conference: Advancing the Non-Proliferation Pillar

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Adoption of a consensus [final document](#) action plan at the 2010 Nuclear Non-Proliferation Treaty (NPT) Review Conference on May 28 was a significant achievement for the parties to the NPT. It is a particular achievement for the United States, which fought hard for consensus against great odds. Success was even more important because the last review conference in 2005 ended in acrimony and without a final document. The document demonstrates and reinforces international commitment to the global nonproliferation and disarmament agenda. The parties to the NPT have agreed to implement a set of specific actions that cover a wide variety of areas in support of the three pillars of the NPT: nonproliferation, disarmament, and the peaceful uses of nuclear energy. These actions are measurable and will provide accountability at the next review conference.

The unfortunate news is that the document does not substantially strengthen the nonproliferation pillar of the Treaty, the more urgent priority with regard to the three pillars in preventing the proliferation of nuclear weapons. The conference was unsuccessful in significantly advancing support for universal application of the Model Additional Protocol, dealing with noncompliant states such as Iran, addressing withdrawal while a state is noncompliant, and preventing illicit nuclear trade in the wherewithal to make nuclear weapons.

The final document consists of two main sections. The review portion of the conference document was not agreed upon by consensus, and thus is considered only the conference president's review of what transpired. The lists of actions to be taken were agreed upon by consensus. However, previous lists of actions, particularly those from the 1995 and 2000 conferences were largely not acted upon. After this review conference, states and groups will need to identify ways to advance the items in the action plan and issues that did not have consensus but are discussed in the president's review portion of the document.

This report looks at ways to further the nonproliferation initiatives that are in the action plan and important nonproliferation issues left out of the action plan. For earlier ISIS analysis and recommendations, see [ISIS's priorities](#) at the review conference.

1. Universalization of the Additional Protocol

The action plan “encourages” states to conclude and bring into force the Additional Protocol or to implement it provisionally pending entry into force. Due to opposition from the Non-Aligned Movement (NAM), the conference abandoned earlier language accepting the Additional Protocol as an integral part of the IAEA’s safeguards system. Without universalizing the Additional Protocol, however (as demonstrated by failures of detecting undeclared activities in Syria, Iran, and Libya), the IAEA is unable to ensure the absence of undeclared nuclear activities and remains inhibited in carrying out its critical verification responsibilities under the NPT.

Faced with the inadequate steps in the action plan, the IAEA should continue efforts to gain Additional Protocol ratification by a larger number of countries. To support this goal, IAEA Director General should make a statement before the General Conference this September affirming the critical importance of universal adherence to the Additional Protocol as central to the IAEA’s safeguards mission, noting that without the Additional Protocol in force in a country, the IAEA is unable to provide assurances of the absence of undeclared nuclear materials and facilities. Once the IAEA has secured nearly universal adherence, the Board of Governors should pass a resolution that the Additional Protocol is a non-voluntary, integral part of a minimal safeguards package, and call upon hold out states to bring the Additional Protocol into force within a specified amount of time. The United Nations Security Council should also address this issue, passing a resolution declaring that the Additional Protocol is essential for the verification of the NPT and international security.

The action plan does note that the Additional Protocol should be applied universally once nuclear weapons are eliminated. Yet, the absence of universal adherence to the Additional Protocol today will stymie future efforts to eliminate these weapons if more states are found to have proliferated. The UN General Assembly should underline that achieving universal adherence to the Additional Protocol in the short term is a necessary component of achieving global nuclear weapons elimination.

2. The Additional Protocol as a condition of supply

An earlier draft of the action plan included language calling on states to consider whether a recipient state has brought into force the Additional Protocol in nuclear export decisions. This version was changed in the final action plan to encouraging states to consider whether recipients have brought into force IAEA safeguards obligations. By failing to reference explicitly nuclear transfers without the Additional Protocol in force, the conference effectively maintains the weak status quo verification mechanism of the Treaty. The Nuclear Suppliers Group (NSG) should adapt the adherence to the Additional Protocol as a condition for nuclear supply. In parallel, the UN Security Council should pass a resolution making the Additional Protocol a condition of nuclear supply.

3. Limiting the spread of reprocessing and enrichment technologies

Absent from the document is any acknowledgement that the spread of enrichment and reprocessing technologies could lead to greater nuclear proliferation, especially in regions of tension. Reprocessing and enrichment capabilities, for example, are not necessary in the Middle East and Northeast Asia for nuclear power to thrive at least during the next several decades, yet they would significantly increase the risk of proliferation.

Countries in the Middle East introducing nuclear power for the first time should follow the example of the United Arab Emirates by announcing unilaterally that they will forgo the development of indigenous reprocessing and enrichment technologies as a way to promote regional confidence about the peaceful nature of nuclear programs. The NSG should use the UAE as a model for criteria for new nuclear supply in the Middle East. The NSG should agree that a receiving country must have the Additional Protocol in force, unilaterally agree to forgo the development of reprocessing and enrichment capabilities, and arrange for take-back of spent fuel. The G-8 usefully reiterated its 2009 commitment to apply criteria based export guidelines for enrichment and reprocessing technologies during its June meeting. The NSG should continue to strive to establish these criteria and overcome the objections of a small number of states.

The action plan also notes that states should discuss multilateral approaches to the nuclear fuel cycle and the creation of “mechanisms for assurance of nuclear fuel supply.” It does not mention multilateral fuel bank initiatives for which the IAEA and several sponsoring countries and groups have announced substantial monetary support, or their role in preventing proliferation by obviating the need for indigenous reprocessing and enrichment capabilities. NAM members reportedly blocked language that could be interpreted as curtailing the rights of non-nuclear weapon states to develop and access the full fuel cycle.

The IAEA Board of Governors, the NSG, and the UN Security Council should resolve to further the development of multilateral fuel cycle initiatives that would provide guaranteed access to nuclear fuel for civilian purposes or offer back-up fuel supplies in case a state were to lose access to foreign fuel supplies due to a political disruption. The NSG and new multilateral fuel banks should also secure corresponding spent fuel take-back arrangements with countries receiving nuclear fuel.

4. Preventing illicit nuclear trade

The action plan urges states to ensure that nuclear related exports do not directly or indirectly assist in the development of nuclear weapons or nuclear explosives. It also encourages states to use multilateral understandings and guidelines to develop national export controls. It fails to mention the relevant guidance that should be used, such as NSG guidelines (reference to the NSG in the final document was impossible due to anger over its 2007 supply exemption for India), Zangger Committee guidelines, or the relevant UN Security Council resolutions 1540, 1673, and 1810. The conference replaced reference to the latter with “international legal obligations.” The UN Security Council should pass a new, strengthened resolution calling on countries to set up national export controls within a specific timeframe, noting specific guidance for states, and establishing a strengthened review mechanism to increase country compliance.

The action plan usefully calls on states to improve national capabilities to detect, deter, and disrupt illicit trafficking in nuclear materials throughout their territories, but fails to specify relevant guidance for doing so and the equal need to stop smuggling of direct and dual-use items, technologies, and know-how for nuclear programs. The UN Security Council must address the problem of all of these types of illicit trade and their supply to covert nuclear weapons programs in contravention of Article III of the NPT. It should adopt a new resolution that calls upon states that have not done so to implement within a given timeframe penalties and measures to disrupt and prevent transshipment on their territories any trade in nuclear materials, direct and dual-use items, technologies, and know-how that could assist a covert nuclear weapons program.

5. Addressing states' withdrawal from the NPT while in noncompliance

The president's review portion of the conference document addresses Article X of the NPT, but action on this article is not specified in the forward looking action plan. The review portion of the text notes that "many States underscore under international law a withdrawing party is still responsible for violations of the NPT committed prior to its withdrawal" and that "such withdrawal would not affect any right, obligation or legal situation between the withdrawing State and each of the other States parties created through the execution of the treaty prior to withdrawal, including those related to the required IAEA safeguards." Because several states disagreed with including language on retroactive Treaty obligations under Article X, notably Iran, this language did not appear in the action steps though the United States had made inclusion of stronger language on withdrawal one of its key priorities.

The review text indicates that numerous states reaffirm the responsibility of the UN Security Council in addressing issues of withdrawal from the NPT. The president's review section also notes that numerous states acknowledge that "nuclear supplying States can consider incorporating dismantling and/or return clauses in the event of withdrawal, in arrangements or contracts concluded with other State parties..." The NSG should move to make mandatory the use of dismantling and return clauses in contracts for nuclear exports by any state in order to address the event of withdrawal and that IAEA safeguards apply in perpetuity to nuclear equipment and materials acquired while a party to the NPT. The UN Security Council should note that a state's withdrawal while noncompliant is not legitimate under Article X of the NPT and that a state in non-compliance with its obligations under the NPT is subject to further Security Council action.

6. Convening a conference on the Middle East

Whether or not the final document will advance progress on a Middle East nuclear weapons free zone (MENWFZ) remains in question. One key reason is the document's call to Israel to join the NPT, which has led to its early refusal¹ to attend the 2012 conference to discuss the MENWFZ, also called for in the document. The final document provides for the appointment of a facilitator who would undertake preparations with the states of the region for convening the 2012 conference. The UN Secretary-General should direct this individual to negotiate, as a first order of business, the participation of all regional governments.

7. Progress on fissile material cutoff treaty

The action plan dropped language from an earlier draft calling on the United Nations General Assembly to address during its fall session the issue of overcoming the procedural consensus barrier to beginning negotiations on a FMCT at the Conference on Disarmament (CD), should negotiations continue to be held up this summer by Pakistan's lone refusal to agree on a program of work. However, the conference maintained language inviting the UN Secretary-General to convene a high-level meeting this fall to support the work of the CD. This invitation would allow the Secretary-General to urge the General Assembly to reach agreement during its fall session that the CD should abandon procedural consensus rules, successfully paving the way for the start of negotiations on a

¹ The Israeli government said in a statement, "Given the distorted nature of this resolution, we will not be able to take part in its implementation." See: "Israel Rejects Middle East Nuclear Talks Plan," BBC News, May 29, 2010.

FMCT. As an alternative, the General Assembly, which operates not by consensus but by a more obtainable two-thirds majority vote, should move to take up the issue of the FMCT as it did with the Comprehensive Test Ban Treaty in 1996 when treaty negotiations became deadlocked at the CD.

In an earlier draft action plan, the conference called for recognition that a global moratorium on fissile material production for nuclear weapons or explosives pending entry into force of a FMCT should be upheld, and states should formally declare a halt to further production for such purposes. However, China reportedly disagreed with this commitment and blocked its inclusion. Pending entry into force of a FMCT, the UN General Assembly should call on the nuclear weapon states to maintain their voluntary moratoria on fissile material production for nuclear weapons and encourage India, Pakistan, Israel, and North Korea to declare their own moratoria.

The action plan “encourages” states to commit to declare all fissile material stocks no longer required for military purposes and to place them under International Atomic Energy Agency (IAEA) safeguards to ensure that they remain permanently outside military programs. It also calls for the worldwide dismantlement or conversion to peaceful uses any facilities used in fissile material production. However, the action plan does not have language stating that the nuclear weapon states should declare their military fissile material stocks in total, a critical way to provide a baseline accounting measure for future entry into force of a FMCT and subsequent disarmament steps.

The UN General Assembly should encourage nuclear weapon states to declare their military fissile material stocks in total. The UN General Assembly should reiterate the conference’s calls on nuclear weapon states to declare their excess military fissile material stocks in total and place them permanently under IAEA safeguard, and to dismantle or convert fissile material production facilities.

Conclusion

The actions outlined above would strengthen the nonproliferation pillar of the NPT. The review conference is just one venue to strengthen the Non-Proliferation Treaty. The next steps involve taking initiatives from the conference and implementing them elsewhere. Doing so will help improve the Treaty and prepare the way for a successful NPT review conference in 2015 that is well positioned to build upon accomplishments.