



ACHIEVING SUCCESS AT THE 2010 NUCLEAR NON-PROLIFERATION TREATY REVIEW CONFERENCE

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The upcoming 2010 Review Conference of the Nuclear Non-Proliferation Treaty (NPT) is an important opportunity for long overdue strengthening of the treaty. A successful conference would add legitimacy to the treaty at a time when its effectiveness is in doubt because of Iran's and North Korea's nuclear programs. It would also build momentum for several efforts to reduce the risk posed by nuclear weapons and make nuclear proliferation more difficult to accomplish. But the conference faces challenges. To obtain success, the Obama administration will be tested.

Tough Challenges to the NPT

The NPT faces several profound proliferation challenges. These challenges require immediate action and a fundamental strengthening of the treaty.

Iran, an NPT signatory, continues to enrich uranium in violation of IAEA and UN Security Council resolutions. Few doubt anymore that the Iranian regime is on a trajectory to decide whether it will build nuclear weapons within the next few years. If Iran builds nuclear weapons, proliferation is expected to accelerate among its neighbors, placing the value of the NPT in serious doubt and leading others to cheat or withdraw from the treaty.

North Korea's 2003 announcement to withdraw from the treaty followed multiple violations of its NPT commitments. The withdrawal itself was first accompanied by North Korea's pledge to pursue only peaceful activities, then it constructed a small nuclear arsenal. North Korea has shown that there is a fundamental flaw in the NPT—methods to enforce compliance are few, and the withdrawal article is easily abused.

Syria's purchase of a secret nuclear reactor from North Korea reminds the international community again of the weakness of IAEA inspections absent the Additional Protocol and the unreliability of national intelligence agencies to consistently detect secret nuclear facilities early in their construction. Although Israel's bombing of the reactor in 2007, soon before it would have gone into operation, is widely seen as a harsh criticism of the existing non-proliferation regime, the use of military force offers only short-term success in setting back nuclear ambitions. There is no assurance that Syria will not try again. Moreover, bombing is more of a desperate act of last resort and does not contribute to establishing a system in which confidence can exist that countries are not violating their NPT commitments.

The A.Q. Khan network's proliferation to Iran, Libya, and North Korea highlighted the ease with which sensitive nuclear technology spreads largely undetected and the threats posed by illicit nuclear trade. Currently, Iranian and North Korean smuggling networks actively seek, often illegally, nuclear dual-use equipment for their nuclear programs from suppliers in many countries. Their smuggling operations indicate an intended or actual violation of the NPT and UN Security Council resolutions.

At the same time, many non-nuclear weapon states (NNWS) are frustrated by the lack of progress on key nuclear disarmament steps. Article VI of the treaty requires the Nuclear Weapon States (NWS) to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." NPT Review Conferences and their preparatory committee meetings have historically provided a platform for non-nuclear weapon states (NNWS) and the Non-Aligned Movement (NAM) in particular to air their grievances at the lack of progress by nuclear weapon states toward disarmament. This conference is unlikely to be different in that respect. Many states remain frustrated with the nuclear weapon states for failing to press harder for disarmament during the past two decades, notwithstanding President Obama's much-lauded 2009 speech in Prague and agreement to a follow-on START treaty. Moreover, other nuclear weapon states, such as France and China, have not embraced President Obama's vision of a world free of nuclear weapons. Pakistan and India, both nonparties to the NPT, are increasing their stocks of nuclear explosive materials for weapons and the number and sophistication of their weapons.

Nonetheless, President Obama has raised hopes about nuclear disarmament among many NNWS. The Obama administration will be helped in achieving a successful outcome at the Review Conference by its commitment to disarmament and its recent success with the new START treaty and the Nuclear Security Summit. However, several states in the NAM have stated that U.S. willingness to make progress on Article VI does not mean that concessions can be expected on efforts to strengthen the non-proliferation aspects of the treaty.

A Conference Document

The primary focus of a review conference has traditionally been to produce a final consensus document that takes stock of the treaty and advances policies and proposals relevant to the broad interests of the treaty. The conference debates all three interconnected pillars of the NPT—disarmament, non-proliferation, and the peaceful use of nuclear energy. If a document emerges, it would add legitimacy to the NPT and strengthen non-proliferation efforts in other international bodies, including the UN Security Council, the IAEA, the Nuclear Suppliers Group, and the Conference on Disarmament. However, since a document is achieved by consensus, it is never guaranteed. The 2005 conference could not achieve a document, and the lack of success there has raised the stakes of this upcoming Review Conference. Even so, we should be realistic about what the United States can achieve in a gathering of almost 200 nations where consensus is required for a final document.

Many countries, including moderate elements in the Non-Aligned Movement, have an interest in achieving a consensus this time, despite reports of wide differences over the language in the disarmament and the non-proliferation pillars. Several states are expected to strive for a "balanced" outcome in a final document, and like at earlier successful conferences, some states may play useful bridging roles. However, because of the goal of the NAM to achieve stronger disarmament commitments and its intention to focus on perceived inaction on disarmament by the nuclear weapon states over the last two decades, the United States is already at a disadvantage on harvesting benefits from its Article VI accomplishments and obtaining support for its non-proliferation strengthening initiatives.

Strengthening the Non-Proliferation Pillar

The United States' priority should be strengthening the non-proliferation pillar. Despite its central importance, nuclear disarmament among the acknowledged NWS is unlikely to decide the fate of the NPT during the next decade, particularly if the Obama administration continues with its step-by-step approach toward a world free

of nuclear weapons. Congress can strengthen the U.S. commitment to disarmament by ratifying the new START Treaty and the Comprehensive Test Ban Treaty (CTBT). Moreover, while the peaceful uses pillar is controversial, often pitting supplier states against developing countries on the sensitive question of plutonium separation and uranium enrichment facilities, that pillar is unlikely to derail the NPT, especially in light of agreements to increase access to nuclear power and establish international fuel banks. During the next decade, the treaty's fate rests on whether Iran obtains nuclear weapons, North Korea moves away from nuclear weapons possession, illicit nuclear trade abates, IAEA verification improves, and non-compliant countries suffer meaningful consequences for violating their treaty commitments. Those challenges require a significant strengthening of the non-proliferation pillar of the NPT.

Opposition to strengthening this pillar will be intense from several countries in the NAM and elsewhere. Iran is expected to wage many fights to stop key language from being included in the document. It is already attempting to disrupt U.S. and Western efforts to insert strong language on the withdrawal issue. Some countries may even lend support to Iran as a way to weaken the treaty in anticipation of exploring their own options in case the future sees Iran with a nuclear arsenal.

Key Goals

The Review Conference will address many difficult issues. The following are a few that should be key goals.

Making withdrawal more difficult. A priority is obtaining agreement on rules that can dissuade a country from withdrawing from the NPT, in particular a country that is non-compliant with its obligations under the NPT. U.S. officials have summarized this issue by stating that a country “can’t leave its sins behind,” as North Korea has attempted to do and Iran may try to do in the coming years. The parties of the NPT should recognize withdrawal while non-compliant as a significant problem and address this issue directly. UN Security Council resolution 1887 established an agreement among states to “[identify] modalities under which NPT States Parties could collectively respond to notification of withdrawal.” The Review Conference should confirm the role of the Security Council in addressing withdrawal, at least in the presence of non-compliance. Another approach is to call upon nuclear suppliers to attach conditions that require the return of items if the recipient withdraws from the NPT when it is non-compliant. Countries should also agree as a condition of supply that in the event of withdrawal safeguards apply in perpetuity on any nuclear equipment, facilities, and materials obtained while a party to the NPT.

Strengthening IAEA safeguards. All states should ratify the Additional Protocol, an advanced safeguards agreement that gives the IAEA tools to detect undeclared nuclear facilities and materials. Although it currently appears highly unlikely that the conference will endorse requiring the Additional Protocol as a condition of nuclear supply, the United States should seek to build support for this initiative and obtain agreement among NPT parties that this goal should be achieved by the next review conference in 2015.

Finding better ways to thwart illicit nuclear trade by certain states aimed at creating the wherewithal to make nuclear weapons. The unfortunate reality is that countries that seek nuclear weapons or build unsafeguarded nuclear facilities rely heavily on illicit nuclear trade to advance their objectives. The international community's ability to detect and stop this trade remains limited. Countries like Iran protest that they are being denied their “rights” under the NPT and actively seek to break other countries' laws prohibiting the sale of items that would contribute to nuclear proliferation. Iran and North Korea currently seek “dual-use” goods for their nuclear programs in violation of UN Security Council resolutions. **The Conference needs to recognize the danger posed by illicit nuclear trade as a fundamental threat to the Article II non-**

proliferation pillar of the NPT.¹ It needs to affirm 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 nuclear explosive activity, unsafeguarded nuclear fuel cycle activity, or acts of nuclear terrorism. Another key goal is obtaining support for UN Security Council resolutions 1540 and 1887, which aim for the institution in all countries of appropriate national measures 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. Moreover, the conference should recognize that the further development and expansion of nuclear energy requires the pursuit of an effective and universal system of trade regulation. Countries like Iran should not be allowed at the conference to draw a false parallel between preventing proliferation through illicit trade and restricting access to peaceful nuclear energy.

Achieving multilateral, long-term action on disarmament. Many countries have voiced their opinion that the nuclear weapon states need to make new commitments on nuclear disarmament. Several countries, including those in the NAM and others outside it, have advocated for nuclear weapon states to agree to time-bound disarmament commitments. One method to incorporate time commitments is to include language to achieve treaties on key parts of nuclear disarmament by fixed dates. Although these dates are not mandatory, they would serve to prioritize concrete steps toward disarmament, such as the CTBT, a Fissile Material Cutoff Treaty, and a follow-on to the new START Treaty. At the very least, countries should strengthen the language agreed to in disarmament commitments laid out in the 13 Practical Steps from the 2000 Review Conference. Several countries have indicated support for this measure.

Making progress on implementing a Middle East Nuclear/WMD Free Zone. For many review conferences, a complex issue has been Israel's nuclear arsenal and demands for progress on a Middle East WMD free zone. Many non-nuclear weapon states will remind participants that indefinite extension was achieved in 1995 through a compromise that led to the Middle East WMD free zone resolution. Egypt is advocating an international conference on this issue under the UN Secretary General that would report back to the next Review Conference. Russia has proposed a coordinator dedicated to work on this issue. These proposals have merit and can represent practical political steps to support a Middle East WMD free zone and include Israel in a useful way. But a conference should recognize that Israel will not give up its weapons until pressing regional security issues are settled, particularly Iran's nuclear program.

The Review Conference is expected to face other complicated issues. Some of these challenges are outside the power of the conference to solve, but they could undermine its success and should be anticipated as potential spoilers.

Issues to Watch and Manage

The timing of an Iran sanctions resolution: The P5 plus One are currently considering a draft sanctions resolution on Iran. Many countries believe that having a successful Review Conference requires addressing the Iran nuclear issue, but they also believe that Iran has the potential to play spoiler at the conference in retaliation for a new round of Security Council sanctions and could urge others to refrain from reaching consensus on substantive issues. Diplomats have cautioned that adoption of a new sanctions resolution before or during the conference would complicate the Review Conference and could preclude agreement on a final document.

¹ In particular, under Article II, NNWS commit “not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”

Negative ramifications of the U.S.-India agreement at the conference: Several countries have expressed their frustration with the U.S.-India nuclear cooperation agreement. They argue it has undermined the universality of the NPT and ironically opened the door to more proliferation because of its rewarding of a non-member of the NPT. Those who sacrificed nuclear technologies or gave up nuclear weapons programs are particularly concerned and believe that they should have more say in non-member countries receiving exemptions for access to nuclear technology. Any agreement with Israel or Pakistan on nuclear cooperation would serve to further solidify their views.

Some countries have threatened that this agreement will affect their actions at the Review Conference, regardless of the fact that the new U.S. administration was not responsible for the agreement's passage. They in essence will use their frustration with the U.S.-India agreement to justify refusing to accept non-proliferation constraints, such as the Additional Protocol. The United States will need to defend this choice of *realpolitik* over principle and wrestle with the more fundamental issue of rewarding adequately those who fulfill their NPT obligations or sacrifice nuclear capabilities for the sake of non-proliferation.

U.S. Faces a Tough Conference

With the widely divergent views among parties to the NPT, it will be difficult to achieve a final conference document with hard-hitting language that addresses all the three pillars. The United States may need to do more outreach at a senior level to achieve a successful outcome.

To increase the chances of an effective outcome, the Obama administration should take several steps.

Before the conference, the administration should quietly address the Middle East WMD issue, perhaps lending support to Egypt's initiative to hold a conference on the WMD Free Zone resolution. At its highest levels, the Obama administration should work behind the scenes to ensure that Middle Eastern countries, particularly Egypt, are convinced that the United States takes seriously the establishment of a Middle East free of nuclear weapons and other WMDs, while conveying that the United States will remain a strong supporter of Israel.

Top U.S. officials, including the President himself, should attend the conference. The Secretary of State in particular should participate, either at its beginning or near its end. An address or visit by President Obama would dramatically raise the visibility of the conference and make it easier to achieve compromises favorable to the United States. High level participation would reflect continued U.S. leadership of the nuclear disarmament and non-proliferation agenda. The negotiations are expected to be tough and drawn-out; the President should be ready to call on other leaders, many of whom he met at the Nuclear Security Summit, to convince them of the need to make strong commitments.

The Obama administration seeks to stop nuclear proliferation, reduce the risk posed by nuclear weapons in the hands of states and terrorists, and find ways to eventually eliminate all nuclear weapons. The NPT Review Conference is an important opportunity to further these goals. Succeeding at this conference will require more from the United States.