

THE CRISIS OF THE NPT: AHEAD OF THE 2010 REVIEW CONFERENCE

The Nuclear Non-Proliferation Treaty (NPT) is in crisis. At the May 2010 Review Conference, the member states will have the opportunity to strengthen the treaty through a consensually approved final document. However, the challenges arising in connection with the Iranian and North Korean nuclear programs and the discord among state parties over whether to prioritize non-proliferation or disarmament make it difficult to achieve agreement. Despite some positive indications, the obstacles to a substantial result therefore remain high.



Nuclear enrichment plant in Qom: The discovery of the Iranian installation has increased suspicion towards Tehran, 28 September 2009.

Reuters/Ho New

The Nuclear Non-Proliferation Treaty (NPT) is widely perceived as the cornerstone of the entire non-proliferation regime. Without the NPT, it would be next to impossible to build international coalitions directed against potential proliferators, as has been the case with Iran. Furthermore, transparency would be lost just when it is most needed. At this juncture, more and more countries are developing an interest in the peaceful use of nuclear energy. But without the NPT and the more than 2'000 inspections currently conducted every year by the international nuclear watchdog, the International Atomic Energy Agency (IAEA), states would be uncertain as to whether the civilian nuclear programs of their neighbors might also include military applications.

However, the NPT has been in a state of deep crisis for some time. All but three

member countries of the United Nations are parties to the NPT – making the treaty the most broadly acknowledged non-proliferation regime, with significantly more legitimacy than other agreements such as the Chemical and Biological Weapons Conventions. But there is a big flaw concerning those three countries that remain outside the NPT, namely Israel, India, Pakistan: They all possess nuclear weapons. While India and Pakistan in 1998 tested nuclear weapons, no Israeli government has so far admitted to possessing such arms. In addition, there is the special case of North Korea, which withdrew from the NPT in 2003 and conducted two nuclear tests in October 2006 and May 2009. Pyongyang's treaty withdrawal is not accepted by all NPT members because North Korea did not strictly follow all the respective rules. The fact that some nuclear weapons states remain outside the non-proliferation regime

constitutes a weakening of the treaty and is unacceptable to most non-nuclear states. In addition, Iran's nuclear program is believed by many to include a military component. If Tehran should manage to become a virtual nuclear power within the non-proliferation regime, this again would severely weaken the NPT. Moreover, the parties to the treaty are deeply divided. Numerous countries accuse the nuclear powers recognized under the NPT – the US, Russia, the UK, France, and China – of not having met their disarmament obligations sufficiently. They therefore reject efforts to subject their civilian nuclear programs to more rigorous controls in order to prevent them from being misused for military purposes.

In view of this crisis, the upcoming NPT Review Conference in May 2010 is of crucial importance. In order to adopt a final document, the concerns of the states that are primarily advocating a reinvigoration of the non-proliferation norm will need to be given just as much consideration as the apprehensions of those countries that consider the disarmament obligations of the nuclear states a matter of priority.

The Three Pillars of the NPT

The NPT entered into force in 1970 and was extended indefinitely in 1995. It rests on three pillars: Non-proliferation, disarmament, and civilian use of nuclear energy (cf. text box). First of all, the NPT distinguishes between nuclear states, which are defined as those who detonated a nuclear weapon or other nuclear explosive device prior to 1 January 1967 (the US; the Soviet Union, followed by Russia; China; France; the UK), and all other state parties to the treaty. The latter have permanently renounced

Contents of the core NPT Treaty clauses

- Art. I: Nuclear weapons states undertake not to transfer nuclear weapons or to grant any other state control over them.
- Art. II: The non-nuclear states may not receive nuclear weapons or control over the same.
- Art. III: The non-nuclear states undertake to conclude safeguard agreements with the IAEA. This is intended to prevent peaceful nuclear energy programs from being misused for military purposes.
- Art. IV: The treaty should not affect the right of all parties to develop, research, and use nuclear energy for peaceful purposes in conformity with Articles I and II. The states parties are encouraged to facilitate the fullest possible exchange of equipment, material, and information for the peaceful uses of nuclear energy.
- Art. VI: All parties to the treaty commit themselves to pursuing negotiations in good faith on effective measures to end the nuclear arms race at an early date and to nuclear disarmament, and to a treaty on general and complete disarmament under strict and effective international control.
- Art. X: Any state party can withdraw from the NPT giving three months' notice and with reference to extraordinary events jeopardizing its supreme interests.

Treaty on the Non-Proliferation of Nuclear Weapons 

nuclear weapons. This arrangement is not only in the interests of the nuclear-armed powers, but also accommodates the needs of the nuclear have-nots. For the latter, the benefit lies in the avoidance of nuclear arms races in their respective regions.

Secondly, the nuclear states have committed themselves to disarmament negotiations in good faith under Art. VI of the NPT. From the point of view of many non-nuclear states, this process should ultimately aim at the abolishment of all nuclear weapons. Thirdly, the NPT explicitly allows civilian use of nuclear energy and encourages the state parties to offer mutual support in this area. For the non-nuclear countries, however, this right is strictly bound up with the obligation to renounce any military application, and nuclear powers are prohibited from supporting them in the construction of nuclear weapons.

The 2010 Review Conference

From 3 to 28 May 2010, the next NPT Review Conference will take place in New York. These meetings, which occur every five years, serve to monitor compliance with the treaty and elaborate measures to improve its implementation. Review Conferences adopt final documents by consensus. At the last Review Conference in 2005, state parties failed in that regard mainly due to disagreements over the disarmament issue. The starting point for the upcoming round seems to be better. US President Barack Obama has obligated the US with his commitment to the vision of a world free of nuclear weapons. Against this background, it will be much easier for Washington to take on a leadership role at the Review Conference. Also, important

procedural questions were already successfully settled in 2009.

Furthermore, the UN Security Council, under the chairmanship of the US, adopted its Resolution 1887 on 24 September 2009. This document contains elements that may be included in a final statement of the NPT Review Conference. They affirm the relevance of adhering to the Treaty's provisions as well as the necessity of disarmament efforts aimed at creating a nuclear-free world.

Despite such positive indications, the 2010 conference should not be overburdened with excessive expectations. There still is a cleavage between member states particularly regarding the issue of nuclear disarmament versus improved verification. Numerous developing and threshold countries complain that the nuclear states as well as many industrialized countries are excessively focused on non-proliferation and verification issues while neglecting the problem areas of disarmament and peaceful use of nuclear power. For reasons such as these, many non-aligned states again regard Security Council Resolution 1887 as unbalanced. Another major obstacle is Iran. Unless a diplomatic resolution of the nuclear dispute is found before May 2010, it is very likely that at that time, more forceful sanctions directed against Iran will be under consideration or already agreed. Tehran might then emerge as a spoiler and prevent any final statement from being issued so as to underscore the weakness of the NPT regime. A crucial issue for the outcome of the conference will be whether well-balanced positions can be agreed upon with regard to the core problem fields.

Non-proliferation

The Western countries, led by the US, will advocate for the Review Conference to affirm compliance with the non-proliferation norm as a core part of the NPT. In addition to North Korea's nuclear weapons program, which is unlikely to be at the focus of the discussions due to Pyongyang's withdrawal from the treaty, it is the Iranian nuclear program that is giving particular reason for concern. The IAEA fears that it may include a military dimension. Due to the lack of transparency and cooperation on the part of Iran and because Tehran is not implementing the additional protocol to the IAEA safeguards agreements, the IAEA is unable to ensure that no undeclared activities are taking place or that no unreported material exists in Iran. Also, Iran is continuing unabated with its uranium enrichment activities, despite the UN Security Council's demands, and has recently even announced its intention to build ten new facilities for this purpose.

Another problem case is Syria. In 2007, the Israeli Air Force destroyed a Syrian installation that had not been declared to the IAEA and which was most likely a North Korean-designed graphite reactor nearing completion. Due to the hitherto insufficient cooperation of Syria, the IAEA cannot conclusively assess Syria's NPT compliance. The Review Conference cannot simply ignore these cases. After all, compliance with the non-proliferation norm is one of the core objectives of the treaty. Language needs to be included that articulates non-compliance concerns without discriminating against Iran, Syria, or North Korea. This certainly will be one of the most difficult tasks at the Review Conference.

Verification

Effective verification is an indispensable requirement for the efficiency of the NPT. Since the original safeguards agreements of the IAEA with the state parties have proven to be ineffective in cases such as Iraq or Libya, the IAEA Board of Governors passed a model additional protocol in the 1990s. Extended declaration obligations are to ensure that no military programs remain undiscovered. Access rights for IAEA inspectors were also considerably expanded. Their task is to verify that there are no undeclared fissile materials or undeclared activities at inspected sites.

So far, only about half of the NPT state parties have enacted this additional protocol. The EU as well as the G8 countries would

like the additional protocol to be codified as the standard for fulfillment of verification obligations in accordance with Article III of the NPT. This goal was also affirmed by Security Council Resolution 1887. However, states such as Iran, Egypt, Syria, or Brazil are opposed to this objective. Two arguments are brought forth time and again: On the one hand, these countries argue that it is not clear why they should accept more intrusive verification activities as long as the nuclear-armed states fail to meet their own disarmament obligations; on the other hand, they claim that the IAEA Additional Protocol interferes too fundamentally with national sovereign rights. Against this background, it will not be possible to codify the implementation of the Additional Protocol as the standard at the Review Conference. Nevertheless, its eminent importance for the NPT should be highlighted as clearly as possible.

Disarmament

A great deal of attention will be devoted to issues of nuclear disarmament at the Review Conference. While four out of the five nuclear powers recognized under the NPT (with the sole exception of China) have reduced their nuclear arms stockpiles after the end of the Cold War, these developments have coincided to some extent with modernization measures. Also, the remaining arsenals of nearly 30'000 nuclear weapons in these five countries are still huge. More than 90 per cent of these are held by the US and Russia.

Despite the statements of intent by Washington, concrete further steps towards disarmament are unlikely to occur before the start of the Review Conference. While the US and Russia will probably sign a follow-up treaty to the Strategic Arms Reduction Treaty (START), it will neither be ratified yet, nor will its very limited disarmament steps meet the expectations of many non-nuclear states (cf. CSS Analysis no. 53 ). The Obama administration will not submit the planned Comprehensive Nuclear-Test-Ban Treaty (CTBT) to the US Senate for ratification before May 2010. The risk of failing in the Senate, like Bill Clinton did before, is too great in view of the requirement for a two-thirds majority.

Against this background, the EU has proposed a series of disarmament goals that could be established in a final document. These include the entry into force of the CTBT as soon as possible; taking up negotiations on a treaty to ban the production

of weapons-grade fissile material (FMCT); and advances in the area of reducing Russian and US nuclear weapons, including non-strategic systems. The inclusion of such disarmament goals in a final document could help to bridge the controversial positions on disarmament among the parties to the treaty.

Civilian use

Currently, an increasing number of states are developing an interest in peaceful use of nuclear energy (CSS Analysis no. 57 ). As long as they limit themselves to light water reactors, the associated risks of diversion for military purposes remain manageable. However, a much more dangerous situation arises when capacities for uranium enrichment and nuclear reprocessing are created. Both technologies are well suited for generating highly-enriched uranium or plutonium for use in weapons.

Against this background, a broad debate has emerged on internationalizing the nuclear fuel cycle. The common denominator of the various proposals is the idea of creating economic incentives for the users of civilian nuclear energy in order to persuade them to renounce costly national enrichment or reprocessing projects. At the same time, they are to be offered guaranteed access to nuclear fuel for civilian use. Many threshold countries are very skeptical towards such proposals. They fear that their right to peaceful use of nuclear energy under Art. IV of the NPT might be curtailed. Nevertheless, the Review Conference could stress the importance of steps towards multilateralization of the fuel cycle in the final document, while emphasizing the voluntary nature of such efforts.

Withdrawal clause

Every member state of the NPT has the right under Art. X to withdraw from the treaty after three months' notice with reference to extraordinary events jeopardizing its supreme interests. This provision constitutes another serious problem. So far, only North Korea has made use of this clause. Pyongyang's announcement of withdrawal in January 2003 is not, however, accepted by all states, as it was not communicated to all member states, as stipulated, but only to the permanent members of the Security Council.

In the past, it has been suggested that countries intent on leaving the treaty should give reasons for this decision to a special NPT conference. However, many

member states reject this idea as jeopardizing their right to withdrawal. By way of a compromise, the Review Conference could state, as proposed in UNSC Resolution 1887, that countries that (may) have violated the NPT can leave the treaty, but are not absolved of responsibility for their past misconduct.

Universality

The fact that the three nuclear-armed states of India, Pakistan, and Israel remain outside of the NPT and are not subject to its disarmament obligations constitutes a burden on the nuclear non-proliferation regime. Furthermore, some Arab states and Iran point to the Middle East Resolution of 1995, with its stated goal of NPT membership as non-nuclear states for all countries in the region. This resolution was part of the decision of the member states in 1995 to extend the NPT indefinitely.

With regard to Israel, some criticize that hardly any steps have been undertaken since to make this resolution come to fruition. This issue may prove one of the main stumbling blocks for the 2010 conference, especially in view of the intransigent position of Egypt, which chairs the group of non-aligned countries at the conference. State parties could reaffirm the goal of universal membership in the NPT. However, it is unrealistic to expect that this will have any material effect on non-member states.

Outlook

If the NPT Review Conference succeeds in producing a final document in consensus that affirms nuclear non-proliferation, nuclear disarmament, and guaranteed access to peaceful use of nuclear energy as the main pillars of the non-proliferation regime, the conference will already have been a success. This would provide evidence of the interest among all parties to adhere to the NPT, despite all divergent individual viewpoints, as an indispensable element of non-proliferation policy.

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