



SPECIAL REPORT

1200 17th Street NW • Washington, DC 20036 • 202.457.1700 • fax 202.429.6063

ABOUT THE REPORT

This report evaluates the eighth Nuclear Nonproliferation Treaty (NPT) review conference, which was held May 3–28, 2010, in New York, and examines the core issues debated at the conference: nuclear proliferation, nuclear disarmament, access to peaceful uses of nuclear energy, and the creation of a weapons of mass destruction–free zone in the Middle East. Although it finds that the conference was a qualified success, it warns that states parties must fulfill the commitments made there to ensure the future of the treaty. The report is informed by the author’s experiences as an active participant in and observer of the nonproliferation debates that have taken place over the past three decades.

Jayantha Dhanapala was a Jennings Randolph Senior Visiting Scholar at the United States Institute of Peace from March to June 2010. He formerly served as ambassador of Sri Lanka to the United States, as president of the 1995 NPT Review and Extension Conference, and as UN under-secretary-general for disarmament affairs from 1998 to 2003.

This report represents the author’s personal views. He wishes to thank the president and staff of the United States Institute of Peace for the experience of working there.

© 2010 by the United States Institute of Peace.
All rights reserved.

SPECIAL REPORT 258

OCTOBER 2010

CONTENTS

| | |
|-----------------------|----|
| Introduction | 2 |
| The Context | 2 |
| The Conference | 4 |
| The Debates | 7 |
| The Future of the NPT | 12 |
| Recommendations | 13 |

Jayantha Dhanapala

Evaluating the 2010 NPT Review Conference

Summary

- The 2010 Review Conference of the Parties to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) concluded on May 28, with the states parties agreeing to a final document that reiterated their commitment to nuclear disarmament. This expression of solidarity was important for reaffirming the treaty’s legitimacy in the wake of the seventh review conference in 2005, which failed to yield a final document.
- The 2010 final document was also important in the face of long-standing tensions between the five nuclear weapon states (NWS) and the 185 non-nuclear weapon states (NNWS) that are party to the treaty and nuclear weapon–related developments that had raised serious questions about the treaty’s efficacy as a nonproliferation instrument.
- With all that weighed against it, the 2010 Review Conference benefited from a number of trends and developments, including an international atmosphere conducive to multilateralism in general and nuclear disarmament in particular.
- Despite more propitious circumstances than in the past, the 2010 Review Conference opened amid great uncertainty and proceeded in three distinct phases—the plenary debate, the negotiations in the main committees, and the return to the plenary for a tense seesaw before the final denouement between pessimistic prospects of failure and optimistic expectations of success.
- Much of the discussion centered on debates between NWS and NNWS on the four main pillars of the NPT: nuclear disarmament, nuclear nonproliferation, access to peaceful uses of nuclear energy, and the creation of a weapons of mass destruction–free zone (WMDFFZ) in the Middle East.
- Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT (disarmament, nonproliferation, and access to peaceful uses of nuclear energy) remains unfulfilled. Further, the conflict in the Middle East presents an increasingly significant obstacle to the treaty’s future effectiveness.

ABOUT THE INSTITUTE

The United States Institute of Peace is an independent, nonpartisan institution established and funded by Congress.

Its goals are to help prevent and resolve violent conflicts, promote post-conflict peacebuilding, and increase conflict management tools, capacity, and intellectual capital worldwide. The Institute does this by empowering others with knowledge, skills, and resources, as well as by its direct involvement in conflict zones around the globe.

BOARD OF DIRECTORS

J. Robinson West (Chair), Chairman, PFC Energy, Washington, D.C. • **George E. Moose** (Vice Chairman), Adjunct Professor of Practice, The George Washington University, Washington, D.C. • **Anne H. Cahn**, Former Scholar in Residence, American University, Washington, D.C. • **Chester A. Crocker**, James R. Schlesinger Professor of Strategic Studies, School of Foreign Service, Georgetown University, Washington, D.C. • **Ikram U. Khan**, President, Quality Care Consultants, LLC., Las Vegas, Nev. • **Kerry Kennedy**, Human Rights Activist • **Stephen D. Krasner**, Graham H. Stuart Professor of International Relations at Stanford University • **Jeremy A. Rabkin**, Professor of Law, George Mason University, Arlington, Va. • **Judy Van Rest**, Executive Vice President, International Republican Institute, Washington, D.C. • **Nancy Zirkin**, Executive Vice President, Leadership Conference on Civil Rights

MEMBERS EX OFFICIO

Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor • **James N. Miller**, Principal Deputy Under Secretary of Defense for Policy • **Ann E. Rondeau**, Vice Admiral, U.S. Navy; President, National Defense University • **Richard H. Solomon**, President, United States Institute of Peace (nonvoting)

The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate specific policy positions.

To request permission to photocopy or reprint materials, e-mail: permissions@usip.org

- Good-faith implementation of the document's action plan will be crucial for keeping the nonproliferation regime from fraying, as will progress on the new Strategic Arms Reduction Treaty and ratification of the Comprehensive Nuclear Test Ban Treaty by the United States.
- The future course of the Six-Nation Talks on North Korea, the resolution of the questions about Iran's nuclear program, and the outcomes of the 2012 conference on a WMDfz in the Middle East will also determine the future of the NPT.

Introduction

The 2010 Review Conference on the NPT concluded on May 28, with the states parties agreeing to a final document that reiterated their commitment to nuclear disarmament. This unexpected expression of solidarity was important for reaffirming the treaty's legitimacy in the wake of the 2005 Review Conference, which failed to yield a final document, in the face of long-standing tensions between the five nuclear weapon states (NWS) and the 185 non-nuclear weapon states (NNWS) that are party to the treaty, and in the context of nuclear weapon related developments that raised serious questions about the treaty's efficacy as a nonproliferation instrument.

The NPT, which was signed in 1968 and entered into force in 1970, is the world's most widely subscribed to disarmament treaty, with 190 states party to it at present.¹ NWS are obliged, as parties to the treaty, to negotiate the reduction and elimination of their weapons and to ensure that NNWS, especially developing countries, have full access to peaceful uses of nuclear energy as an "inalienable right."² NNWS are prohibited from acquiring nuclear weapons, but they may run peaceful nuclear energy programs as long as they make safeguard arrangements with the International Atomic Energy Agency (IAEA) that ensure the programs are not employed for nonpeaceful purposes.³

After providing a brief survey of the challenges that the NPT has faced in the recent past and of key developments in the nuclear nonproliferation arena, this report offers a high-level review of the 2010 Review Conference and then examines the issues and debates surrounding the four main pillars of the NPT: nuclear disarmament, nuclear nonproliferation, the accessibility of peaceful uses of nuclear energy, and the creation of a weapons of mass destruction-free zone (WMDfz) in the Middle East. It concludes with reflections on the future of the NPT and offers recommendations to ensure that the treaty remains the cornerstone of the international nonproliferation regime.

The Context

The NPT has long been strained by allegations from the NNWS that the NWS have not reduced their nuclear arsenals sufficiently per the terms of Article 6 of the treaty, have not provided treaty-based guarantees that NNWS will not be attacked with nuclear weapons, and in general have enjoyed a monopoly of nuclear weapon possession without moving toward a nuclear weapon-free world. The treaty has been further weakened by the discovery of Iraq's clandestine nuclear weapon program in the early 1990s, the withdrawal of the Democratic People's Republic of Korea (DPRK) from the NPT and its subsequent nuclear weapon tests, the acknowledgment and rectification of Libya's noncompliance, the persisting questions about a reported Syrian nuclear reactor destroyed by Israel, and the continuing tensions over Iran's nuclear program.

In addition to the long-entrenched tensions over persistent proliferation questions about the DPRK, Iran, and Syria and the demand for new proliferation barriers ("gold standards"), such as the universalization of the IAEA additional protocol and the "multilateralization" of the fuel cycle, the review conference faced the potential for a repeat of 2005 for a number of

key reasons. The domestic U.S. debate over Iran, which included partisan posturing between the Republican right wing and the Obama administration, rumors about an imminent preemptive strike on Iran by Israel, and the threat of additional sanctions on Iran all promised another conference breakdown, as did the precedent created by the Nuclear Suppliers Group (NSG) on September 6, 2008, which, at the urging of the United States, granted India privileges hitherto reserved for NPT non-nuclearweapon states, causing fears that Israel would be the next country to be so favored. The problem of deciding how to implement the 1995 NPT resolution that called for a WMD-free zone in the Middle East also suggested that the states parties would fail to adopt a final document by consensus.

The preparatory committee meeting in May 2009—the final meeting before the 2010 Review Conference—succeeded in clearing the underbrush of procedural problems that had bedeviled the failed 2005 Review Conference. That said, the more important adoption of recommendations to be conveyed by the preparatory committee to the review conference ran aground on the tensions that had plagued the NWS and NNWS since the NPT was signed and suggested a retread of the past. This difficulty was a reminder that more political repairs were needed in advance of and during the conference and that proclaimed policy changes had to be translated into practice.

With all that weighed against it, the 2010 Review Conference did benefit from a number of trends and developments. To begin, an international atmosphere conducive to multilateralism in general and nuclear disarmament in particular had undoubtedly been created prior to the conference: First, by the groundbreaking op-eds in the *Wall Street Journal* by four U.S. elder statesmen—George Shultz, Henry Kissinger, Sam Nunn, and William Perry—that possessed a rare display of bipartisan apostasy over the Cold War sacred cows of nuclear deterrence and nuclear weapons; and second, by the elevation of this opinion to public policy by President Barack Obama in his April 2009 speech in Prague, which was both dramatically bold and pragmatically circumscribed.

While public opinion and civil society organizations applauded Obama's vision, atmosphere is a limited driver of global decision making and thus governments around the world reacted cautiously to it. Even though Obama's speech had failed to cast a spell over the international community, the nonproliferation regime made undeniable progress over the following year for a number of reasons. First, the two major NWS—the United States and Russia—which together own 95 percent of the nuclear weapons in the world, negotiated a new Strategic Arms Reduction Treaty (START) in a welcome return to seriously negotiated, verifiable, and irreversible disarmament treaties. Second, a new U.S. Nuclear Posture Review was announced, greatly reducing the likelihood of the actual use of nuclear weapons and providing security assurances for the majority of NNWS. Third, UN Security Council Resolution 1887, which resulted from the September 2009 G-20 summit presided over by President Obama, signaled a new emphasis on nuclear nonproliferation (though the resolution's disarmament component was considered by the NNWS to be slight, with the French accused as the main NWS responsible for the weak language). Fourth, the United States Institute of Peace and Elliott School of The George Washington University's conference on nuclear weapon-free zones (NWFZs) before the second conference of NWFZ countries in April 2010 led to greater focus by the international community on this less-publicized aspect of the NPT, a focus that was greatly appreciated by the countries concerned and that may have contributed to the United States' decision to submit the protocols of two of the NWFZs (Africa and the South Pacific) for ratification to the U.S. Senate. And fifth, a Nuclear Security Summit had locked in forty-seven leaders in a commitment to secure nuclear materials and facilities. Although the small print of the reported achievements led to the charge by some that the glass was half empty, even the strongest critics among the NNWS had to concede that progress on nuclear disarmament was being made.

Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT . . . remains unfulfilled.

Despite more propitious circumstances than in the past, the 2010 Review Conference opened on May 3, in New York amid great uncertainty, with 172 states parties (Palestine participated as a nonstate party observer) and 121 non-governmental organizations (NGOs) in attendance. Indeed, based on the conviction that the NPT was in crisis mode and that another failed conference would be a serious blow to this centerpiece of the global nonproliferation regime, NGOs and think tanks organized numerous international meetings and a rash of official consultations among governments in advance of the conference.

Although the ultimate adoption of a final document was an important and welcome development for the future of the NPT, the central bargain of the NPT (disarmament for nonproliferation and access to peaceful uses of nuclear energy) remains unfulfilled. Further, the conflict in the Middle East presents an increasingly significant obstacle to the treaty's future effectiveness. Indeed, the indefinite extension of the NPT in 1995 became possible only with the adoption of a resolution on the Middle East. In short, without further progress on the Middle East peace process, the nonproliferation regime may still falter in the years ahead due to unresolved concerns about the slow pace of nuclear disarmament and the problems over the implementation of Article 4 of the NPT (which provides for access to peaceful uses of nuclear energy) and the policies of the NSG—which even before the ink was dry on the 2010 NPT Review Conference Final Document deviated from agreed upon policy by continuing with the India nuclear cooperation deal and creating special conditions for the Republic of Korea (ROK)—this, while China supplies reactors to Pakistan.

The Conference

The 2010 Review Conference seems, in retrospect, to have had three phases—the plenary debate, the negotiations in the main committees, and the return to the plenary for a tense seesaw before the final denouement between pessimistic prospects of failure and optimistic expectations of success.

Plenary

U.S. secretary of state Hillary Clinton's opening remarks set a positive tone for the conference. Quoting from President Obama's message to the conference, she emphasized that the United States would do its part in seeking the peace and security of a world without nuclear weapons, that there were rights and responsibilities under the NPT, that while the majority of states observed its norms there were a "few outliers," and that it was important to "think outside the blocs." She also made references to the DPRK and Iran. Recapitulating the achievements of the Obama administration, she announced that the United States would henceforth become more transparent by declaring the exact number of nuclear weapons it possesses (the Pentagon announced that same day that the figure was 5,113),⁴ that protocols for the NWFZs in Africa and the South Pacific were being sent to the Senate for ratification and that discussions would be held regarding the Central Asian and Southeast Asian NWFZs, and that \$50 million would be given to a new IAEA Peaceful Uses Initiative for the use of nonpower related nuclear energy in developing countries, with other states contributing another \$50 million. She warned that while the United States did not seek amendments to the treaty, there should be penalties for violations of it. Her announcements were received well by the NNWS, especially those in the Nonaligned Movement (NAM).

On the eve of the conference, the NGOs at the conference had conducted a well-attended rally and were buoyed by the event's success, and their afternoon session on the first Friday was well organized and featured many statements in support of a Nuclear Weapons Conven-

tion (NWC)—a rallying point that is likely to be increasingly popular in the post-review conference phase.

Overall, this first two-week phase of the conference was smooth sailing, with mostly routine statements in the plenary debate and a general feel-good atmosphere. Not even Mahmoud Ahmadinejad's fierce critique of the NWS could disrupt this mood.

Main Committees

Although the conference had broken into the three main committees and negotiations had begun over the final document in the conference's second week, the second phase lasted in fact from May 17 to 21, when the chairpersons of the committees submitted draft reports as a basis for discussion. For the first time, subsidiary bodies had been set up in each of the committees to deal with nuclear disarmament, regional issues and nuclear weapon-free zones, and other issues, including Article 10 (the treaty withdrawal issue). The withdrawal of Iranian objections to the establishment of a subsidiary body dealing with larger institutional and treaty withdrawal issues was the first sign of Iranian cooperation during the conference. On May 17, news broke that the Brazilian-Turkish mediation over the swap of Iranian uranium for uranium enriched abroad had succeeded, adding to the buoyancy of the mood. However, the United States soon announced that it would lodge sanctions against Iran in the Security Council and a temporary gloom descended upon the delegates as they feared the impact of the news on the conference. But the fears proved unfounded, both because the actual voting in the Security Council was held off until after the review conference had ended and because the Iranian delegation showed no adverse change in its conduct.

However, the redlines that key delegations, such as the NWS, did not want crossed were clearly demarcated as delegations began to spell out their positions. By the end of the second phase (that is, the end of the third week), in accordance with the plan of the president of the conference, Libran Cabatculan, the three main committees' chairmen produced revised drafts of their reports. The first draft of the first main committee chairman was regarded as too ambitious (although the NAM states were encouraged by it). Some tensions were evident in this committee over the decision to move the action from the main committees to the plenary in the fourth week since no consensus had yet been reached. A few delegations wanted the work of the main committees to continue so that differences could be resolved there. Cabatculan compromised by allowing the main committees one more day.

Plenary Redux

On Tuesday, May 25, Cabatculan produced a draft final declaration that was based on what the main committees' chairmen had prepared but that reflected his perceptions of where consensus could be found. Prior to that, on Monday, May 24, when the plenary reconvened as scheduled in the program of work, the NWS had moved in a seemingly orchestrated manner to declare firm positions. This led to speculation among the NNWS that the NWS had met over the weekend and had decided on a "get-tough" policy. The policies of the NWS, if accepted, would have inevitably resulted in a dilution of the final conference document into a weaker document than that produced in 2000. The NAM states were clear that this would be unacceptable. At this stage the trajectory of the conference appeared to be heading toward collapse. Rumors of a possible vote were afloat despite the fact that such an action had no precedent. Decision making in NPT review conferences had been undertaken, by convention, on the basis of consensus, although Rule 28 of the rules of procedure did provide for voting if all efforts to reach consensus broke down. The pros and cons of a failed conference were pondered.

The conference saw fluctuating fortunes in the final week. The main flow of the conference proceeded in the plenary on the basis of the president's draft, but components of it, especially those relating to the 1995 resolution on the Middle East, were negotiated elsewhere, with Arab-U.S. discussions reportedly going on in Washington and a seventeen-state delegation (the five NWS and key NNWS from the NAM and Europe) huddle at the Egyptian mission in New York deciding on the final compromises. All this came to a head when Cabatculan presented another revised draft on Thursday, May 27, informing delegations that it was, in his judgment, the best possible outcome. Although the draft generally accepted the redlines laid down by the NWS, Cabatculan adopted a drafting technique of referring to some views as belonging to "numerous parties"; in one instance, he stated a "majority of states" held a particular view. This obviated the need to reach consensus and followed a practice used in the 1985 NPT Review Conference Final Document in relation to conflicting views on the Comprehensive Nuclear Test Ban Treaty (CTBT) issue. (The CTBT issue remained controversial in 1990 and caused the collapse of that conference.) No attempt was made to qualify or quantify "numerous" or "a majority," and the conference appeared ready to accept this.

There was no time for further negotiations and despite the text falling short of the optimum expectations of individual delegations, there was a growing realization that this was the last chance for an agreement. The NGO blogs were guardedly optimistic and had reconciled themselves to a weak final document. With the rumor that it was only Iran who had not signified its consent, the meeting of the plenary was postponed first from 11 a.m. on Friday, May 28, to 12 p.m., and then to 3 p.m. in the main General Assembly Hall. Despite the tension, the declaration was finally presented, with Cabatculan making a distinction between the first review part (which carried a footnote saying this part was the responsibility of the president) and the future-oriented action part. Finally, to the relief of all delegations, the conference came to a close, with varying levels of satisfaction. In an effort to prove that a balanced consideration of all three pillars of the NPT had taken place, the final document's action plan had twenty-four actions on nonproliferation, twenty-two on disarmament, and eighteen on peaceful uses of nuclear energy.

Unlike the 2000 conference, the bridge-building transcontinental group known as the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden) was not a driving force and yielded to the NAM states, which were led by the Egyptian permanent representative to the United Nations, Ambassador Maged Abdel Aziz. Cabatculan had wanted to avoid appointing a "friends of the chair" group, fearing that the exclusion of some states could prove controversial. However, he did decide, ahead of the beginning of the conference, on coordinators to conduct negotiations in the subsidiary groups. He also had Norway convene a focus group, which included key radical members of the NAM, to preempt any adverse repercussions in the final plenary session when the draft declaration came up for adoption. This proved to be a wise strategy. The conference was mainly a negotiation between the NAM states and the NWS, with the timely intervention by the focus group that had convened in the Egyptian mission and the work of coordinators such as Irish ambassador Alison Kelly.

Throughout the conference, the principle of nonproliferation, the first pillar of the NPT, and its vital link to peace and security was strongly upheld and reflected in the final declaration. There was no agreement on enforcing compliance or recourse to the Security Council.

The Debates

Nuclear Proliferation

Throughout the conference, the principle of nonproliferation, the first pillar of the NPT, and its vital link to peace and security was strongly upheld and reflected in the final declaration. There was no agreement on enforcing compliance or recourse to the Security Council. The record of proliferation among the NPT NNWS in the period being reviewed included the

case of DPRK and questions regarding Iran and Syria. The NNWS raised the NSG's decision on India following the Indo-U.S. nuclear cooperation deal, calling it a violation of Article 1 and repeating their argument that the placement of U.S. nuclear weapons on the territories of five NATO parties in Europe represented a form of proliferation. The specific issues debated were the following:

- *Compliance.* After a healthy debate at the conference, the review part of the final declaration emphasized that “concern over compliance . . . should be pursued by diplomatic means in accordance with the provisions of the Treaty and the Charter of the United Nations.” The reference to the UN Charter was added in the final draft to reflect the views of the West. This formulation effectively rules out the use of force, even though Article 42 in Chapter VII of the UN Charter provides for the collective use of force by the United Nations if the Security Council so decides.
- *DPRK.* The document “condemned with the strongest possible terms the nuclear test explosions” carried out by the DPRK, recalled the relevant UN Security Council resolutions, and concluded that the DPRK “cannot have the status of a nuclear-weapon-state.” This same wording was used in the 2000 Review Conference document to refer to India and Pakistan. China attempted to soften this language on the DPRK, which was probably one reason why this part of the document was “noted” and not adopted. In discussing Article 10 and withdrawal from the NPT—applicable both to DPRK and Iran—the final document affirmed the right to withdraw at paragraph 120, noting the “divergent views regarding its interpretation with respect to other relevant international law.” A description of a view held “by many states” was that a withdrawing party remains responsible for any violations of the NPT committed prior to withdrawal. Two following paragraphs identify “numerous states” as having specific views regarding the consequences that would follow withdrawal by such a party.

In the “action” section that was adopted, the conference “strongly” urged DPRK to fulfill its commitments under the Six-Party Talks and to return to the NPT and adhere to IAEA safeguards. Support for the Six-Party Talks and a resolution of the DPRK problem via diplomatic means was also mentioned.

- *Iran.* The final declaration did not name Iran lest this gave Iran an excuse for disrupting the conference. The emphasis on diplomatic solutions to noncompliance also helped. Paragraph 10 of the final declaration’s review section upheld the authority of the IAEA for verification of nonproliferation, via safeguards asking that concerns should be referred to that body with evidence and information for investigation. Paragraph 11 reaffirmed the importance of access to the Security Council (the NAM states added the UN General Assembly to this) by the IAEA in ensuring compliance with safeguards agreements. A general reference, aimed at Iran, in paragraph 23, spoke of “concerns expressed by numerous parties” with regard to matters of noncompliance. “Numerous parties” here no doubt referred to Western states and others critical of Iran. Paragraph 76 refers to the dangers of attacks or threats of attack on nuclear facilities “devoted to peaceful purposes” and states, as an opinion of the conference, that these threats and/or attacks raise “serious concerns on the application of international law on the use of force in such cases.” It was added that “a majority of states parties” (a reference presumably to the NAM states) suggested “a legally binding instrument be considered in this regard.”
- *Indo-U.S. nuclear cooperation.* The Indo-U.S. deal featured lightly in the discussions, and while states parties acknowledged that the deal could not be undone, they were quite firm that no more exceptions should be made. Thus, paragraph 13 recalled paragraph 12 of Decision II in the 1995 NPT Review and Extension Conference whereby new supply arrangements had to align with nonproliferation obligations and comprehensive IAEA safeguards. This statement is unlikely to deter China from providing reactors to Pakistan. In the action

part of the declaration (paragraph 35), all parties are urged “to ensure that their nuclear-related exports do not directly or indirectly assist the development of nuclear weapons or other nuclear explosive devices” and that such exports comply with the NPT and the 1995 NPT Review and Extension Conference decisions. This exhortation was intended as a warning against deals with Pakistan and Israel, but given the ease with which past conference documents were disregarded, NNWS cannot rest assured on this issue.

- *Additional protocol.* The application of the IAEA additional protocol—as a mandatory requirement for benefiting from peaceful uses of nuclear energy and the “multilateralization” of the fuel cycle—was sought by some NWS and Western states in order to place additional safeguards against proliferation and to discourage national enrichment of uranium. Many NNWS, such as Brazil, Egypt, South Africa, and Argentina, resisted this move on the grounds that it infringed on their sovereignty and represented an additional obligation heaped on NNWS in an already asymmetrical division of obligations under which the NWS were barely touched. In fact, 133 states have had their additional protocols approved by the IAEA Board of Governors, and 102 of those states are currently implementing them. This illustrates that as a voluntary measure the additional protocol has served as a confidence-building measure.

The disagreement within the conference on this was reflected in paragraph 18, where the conference notes “that numerous states were of the view” that the additional protocol was an integral part of the IAEA safeguards system and in paragraph 19, which states that “many states recognize that comprehensive safeguards agreements and additional protocols are among the integral elements of the IAEA safeguards system.” At the same time, the entire conference “notes that the additional protocol represents a significant confidence-building measure” and “encourages all states parties” to “conclude and bring into force an additional protocol.” The same disagreement is reflected elsewhere too. However, in the action plan section (Action 28) adopted by the conference, the hortatory consensual language is as follows: “The Conference encourages all states parties which have not yet done so to conclude and bring into force additional protocols as soon as possible and to implement them provisionally pending their entry into force.”

Nuclear Disarmament

The 2000 Review Conference Final Document was regarded by NAM states and supporters of nuclear disarmament, the second pillar of the NPT, as the highest benchmark so far achieved in the NPT review process by virtue of the “unequivocal undertaking” by the NWS to the total elimination of nuclear weapons through thirteen steps. This benchmark was rejected at the 2005 Review Conference, however, so the NAM states were especially wary at the start of the 2010 conference, despite the Obama administration’s commitment to the vision of a nuclear weapon-free world and the achievements registered in the months preceding the conference. The NAM working paper contained a NAM wish list, and the NGOs increasingly mobilized around a demand for an NWC, which was among the points mentioned by the UN secretary-general in his five-point plan of October 2008. The United States had accepted the goal of a nuclear weapon-free world but excluded an NWC as a means of achieving this and hedged on a time frame.

The plenary debate and the NGO session in the first week set out the battle lines. The increasing conservatism of France and Russia relative to the United States was of particular interest. The United Kingdom, which formed a new government after the conference opened, moved to the right and abandoned the prodismament policies of the Labor government, even opposing a Swiss-International Committee of the Red Cross inspired reference to international humanitarian law in the use of nuclear weapons. That reference was

finally included as a principle and objective in the context of the “catastrophic humanitarian consequences of any use of nuclear weapons.” China, except for a ritualistic reference to its no-first-use declaratory policy and some sympathy for NAM positions, maintained solidarity with the NWS.

Faced with this solid NWS phalanx, the NNWS and NAM in particular wanted to ensure that they did not retreat behind the 2000 achievement. The first draft that emerged from the main committee was too optimistic and provoked an aggressive response from the NWS. The next draft came back diluted and was watered down further in the hands of the president. What was achieved, however, was seen by most delegations as marginally better than the 2000 achievement, though the subjective nature of the text promised future battles. Specific issues addressed included the following:

- *The “unequivocal undertaking.”* In the review section of the declaration, paragraph 80 reaffirms the commitment made by the NWS in 2000 to totally eliminate their nuclear arsenals.
- *The NWC.* An NWC was not mentioned directly in the action plan but was made note of in paragraph 82 as part of the UN secretary-general’s five-point proposal “to *inter alia* consider negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments.” This marked the achievement of another NNWS objective.
- *Timelines.* The insistence by the NAM on a time-bound framework for achieving a world free of nuclear weapons was met with stubborn resistance by the NWS. In paragraph 83, it was affirmed that the final phase of nuclear disarmament should be within a legal framework, which only a “majority of states parties believe should include specified timelines.”
- *The CTBT, new START, etc.* Other features of the review section of the document included calls to bring the CTBT into force; to diminish the role of nuclear weapons in security policies (e.g., in nuclear posture reviews); to welcome the new START between the United States and Russia; to “de-alert” and “de-target” nuclear weapons; to increase the transparency of some NWS (i.e., the United States and United Kingdom) with regard to the number of nuclear weapons they have; and to recognize “the legitimate interest” of the NNWS in constraining the development and qualitative improvement of nuclear weapons.
- *Conclusions and recommendations for follow-on actions.* In this section a total of twenty-two actions were adopted. The “unequivocal undertaking” of the NWS to achieve the total elimination of nuclear weapons was reaffirmed, but unlike in earlier drafts, the word “accountability” was dropped in the final document, meaning the NWS could refuse to be held responsible for their failure to undertake meaningful “good faith” nuclear-disarmament measures. The practical steps mentioned in 2000 were reaffirmed as valid. In the face of strong Russian resistance to any mention of “tactical nuclear weapons,” the NNWS and others had to content themselves with references to “all types of nuclear weapons,” especially in Action 3. The United States and Russia committed themselves to entry into force of the new START and to continue discussions thereafter on further reductions. Action 5, over which there was considerable controversy, emerged as a weak compromise, with the NWS being called upon “to promptly engage” on a series of specific actions, such as reducing their stockpiles, dealing with all types of nuclear weapons irrespective of their location, and reporting on further disarmament measures by 2014 so that the 2015 Review Conference could take appropriate stock and consider future steps. The NNWS had wanted a firmer commitment from the NWS to these specific actions, because they knew that the weaker formulation that finally emerged could cause future problems. The exclusion of specific timelines and language that had been included in earlier drafts and that made reference to “no first use” and the “de-alerting” of nuclear weapons was a blow to the NNWS.
- *Other aspects.* The final document passed the “security assurances” issue on to the Geneva-based Conference on Disarmament (CD); strongly endorsed the CTBT with all committing

The declaration . . . reaffirms the commitment made by the NWS in 2000 to totally eliminate their nuclear arsenals.

It was affirmed that the final phase of nuclear disarmament should be within a legal framework, which only a “majority of states parties believe should include specified timelines.”

to ratify it; called a Fissile Materials Cutoff Treaty (FMCT) a desirable objective within the CD (although, because of China, no agreement was reached on a moratorium on further production of fissile material pending a FMCT); welcomed the entry into force of the NWFZs in Africa and Central Asia and asked NWS to implement their security assurances to states within NWFZs; accepted regular reporting by all (as a compromise to naming the NWS alone) parties on nuclear-disarmament obligations (although a weak formulation was inserted for NWS so that the NWS “are encouraged to agree” to a standard reporting form and predetermined intervals for the voluntary provision of information to be made available in a UN repository); and made reference to the importance of disarmament and nonproliferation education.

- *India, Israel, Pakistan.* The universality of the NPT was addressed with a call to India, Israel, and Pakistan to join unconditionally the NPT as NNWS.

Peaceful Uses of Nuclear Energy

The debate over access to the peaceful uses of nuclear energy, the third pillar of the NPT, was closely linked to the debate on nuclear nonproliferation. It was agreed that each state party had the right to define its national energy policy. Most of this discussion came within the ambit of the IAEA, for which support was expressed, and underlined the principles of Article 4. Preferential treatment to the NNWS and the special needs of developing countries were duly recognized.

The IAEA guidelines for nuclear safety and security that had been endorsed at the Washington Security Summit were highlighted without any controversy. All relevant conventions were mentioned and adherence to them encouraged. Spent fuel and radioactive waste management issues, attacks on nuclear facilities, safe nuclear-fuel transport, and development of a new generation of proliferation-resistant nuclear reactors were also subjects agreed upon.

On the use of uranium, the conference welcomed the voluntary efforts to minimize the use of highly enriched uranium (HEU) in the civilian sector and through Action 61 encouraged states to further “minimize highly enriched uranium in civilian stocks and use where technically and economically feasible.” The conference also noted, in its “review” section, Russia’s establishment of a low-enriched-uranium (LEU) reserve for use by IAEA member states and made a modest reference to the importance of discussing, under the IAEA’s aegis, the possibilities of creating nondiscriminatory “voluntary multilateral mechanisms for assurance of nuclear fuel supply, as well as possible schemes dealing with the end of the back-end of the fuel cycle.” This mention represented a limp end to the plethora of proposals that had been made in the recent past over the so-called nuclear renaissance and the consequent concern that this would facilitate nuclear weapon proliferation. The former head of the IAEA, Mohamed ElBaradei, had been at the forefront of such proposals, but the lukewarm response of major NNWS such as Brazil, South Africa, and Egypt that wanted national enrichment of uranium had deflated this move. In addition, the February 2010 research report by the Canadian Nuclear Energy Futures Project cited economic security and fuel waste problems to prove that the claims for a nuclear renaissance were overblown.⁵

Following the generous offer made by the United States in the plenary debate, Action 55 welcomed the extrabudgetary contributions pledged to the IAEA’s Peaceful Uses Initiative and encouraged others to help raise the \$100 million required over the next five years.

The Middle East

The fourth major issue at stake in the conference was how to move forward with the resolution adopted in 1995 on the establishment of a WMDfZ in the Middle East. The success

The fourth major issue at stake in the conference was how to move forward . . . on the establishment of a WMDfZ in the Middle East. The success achieved in resolving this issue . . . was without doubt the main success of this conference.

achieved in resolving this issue brought credit to Egypt and to the United States and was without doubt the main success of this conference. However, it did not compensate for the disappointment of the NNWS over the disarmament section of the final declaration.

Before the 2010 conference, it was recognized that the conference could break down if no progress was achieved in implementing the 1995 resolution. Diplomatic messages were no doubt exchanged between Cairo, Washington, and other capitals. NGOs such as Pugwash also intervened to ensure progress on this issue and held a side event for this purpose.

The subsidiary body appointed for the consideration of this issue was fortunate to have Ambassador Kelly nominated as its chair. Her assiduous consulting and deft drafting helped to achieve a consensus. Using the various proposals that had been made at previous NPT meetings and at the review conference, Ambassador Kelly built a credible proposal.

Because of the sensitivity of the subject, much of the negotiations were kept confidential. One requirement of the United States was that Israel should not be named in the final text, but the Arabs maintained that the naming of Israel as a country outside the NPT had been accepted in the 2000 document and that they could not retreat from that precedent. The United States' alleged stance was that if Israel were to be named, then so too should Iran, a stance at which the Arabs balked. The United States also maintained that it could not guarantee Israel's attendance at a WMDFZ in the Middle East conference that had been requested by Egypt.

Despite this, the first draft proposal presented by Ambassador Kelly on May 25 contained an agreement on a WMDFZ in the Middle East conference to be held in 2012, with the UN secretary-general appointing a special coordinator to consult and prepare for it and follow up on its results. Other complementary action called for in the draft included the hosting of a seminar by the European Union and background documentation from the IAEA and the Organization for the Prohibition of Chemical Weapons. The draft also referenced links to the Middle East peace process and to processes related to WMD elimination.

However, because of dissatisfaction with the first draft (presumably from the United States), Ambassador Kelly went back to consulting her subsidiary body. Her final draft was included in the president's final declaration draft presented on May 27. The main differences between the earlier draft and this newer draft were (1) that the 2012 conference would be co-convened by the UN secretary-general and the cosponsors of the 1995 resolution (the United States, the United Kingdom, and Russia) in consultation with states of the region and that it would be attended by "all states of the Middle East"; and (2) that a "facilitator" (it was reported that Israel did not like the "special coordinator" title) would be appointed by the UN secretary-general and that the cosponsors of the 1995 resolution would consult with the states in the region and prepare the conference, implement its follow-on steps, and report on those steps to the NPT 2015 Review Conference and to preparatory committee meetings.

A host government would be designated by the UN secretary-general and the cosponsors of the 1995 resolution for the 2012 conference. This compromise seemed acceptable to the Arabs. The role secured for the cosponsors of the 1995 resolution ensured that the United States would be able to influence the choice of the facilitator, since ascribing this responsibility to the UN secretary-general alone was unacceptable to Israel. No mention was made as to how the conference and the facilitator would be financed.

However, the success of an agreement on the convening of a conference seemed to be spoiled when the U.S. delegation, in its concluding statement, reiterated its support for the 1995 resolution and the WMDFZ in the Middle East but regretted that its ability to ensure a WMDFZ was jeopardized by the "singling out of Israel." Many observers saw this statement as a disingenuous one, because all the document did was recall the 2000 language, which stated that Israel's accession to the NPT was important. Further, elsewhere the 2010

document called upon India, Israel, and Pakistan to join the NPT, to which the United States made no objection.

The U.S. delegation's statement was followed the same day by one from President Obama, who, after applauding the results of the conference, said that he deplored the mentioning of Israel by name and identified Iran as the main threat to the NPT in the region. U.S. national security adviser James Jones went further and cast doubt on whether the conference would ever take place unless all countries in the region attended. This postconference resiling by the United States seemed to spoil the prospects for the future conference, but Arab reactions have been muted, presumably because this was an expected scenario.

The Future of the NPT

Most observers felt that the 2010 Review Conference was a huge success. On the institutional and procedural level, the conference reinforced and strengthened the review process. States parties agreed on the importance of having an informal and voluntary group of past and incumbent chairs available to pass on the lessons learned to future chairs. In addition, states parties committed to making funding available for one staff officer in the UN Office of Disarmament to monitor and follow nonproliferation matters on a permanent and continuous basis.

That said, an objective assessment of the conference involves honest answers to the more political questions related to the future of the regime. In this regard, the divided views attributed in the final declaration to "a majority of states parties" and to "numerous parties" cannot be sustained. While the formulation was largely neutral and referred to different groups at various points in the declaration, these divisions have to be resolved within the NPT.

Two representative opinions that spoke to the success of the conference came from the U.S. and Egyptian delegations. As the U.S. delegation's Ellen Tauscher stated, "The Final Document this Conference adopted today advances President Obama's vision. It reflects our collective commitment to uphold and strengthen this cornerstone of the international nonproliferation regime. It also demonstrates our unified resolve to strengthen the Treaty's three pillars—disarmament, nonproliferation, and peaceful uses of nuclear energy—with the inclusion of recommendations for follow-on actions. This forward-looking and balanced action plan establishes benchmarks for future progress and concrete actions."

Egyptian ambassador Maged Abdel Aziz, speaking on behalf of the NAM, conceded that while the NAM did not achieve all that it wanted, it had decided to "take advantage of the emerging goodwill." Was this a message of thanks by the NNWS in general and the NAM in particular to President Obama for what he had achieved for nuclear disarmament? The final document of the conference is regarded by Egypt as a basis for a future "deal," and the ambassador promised to pursue NAM priorities in the run-up to the 2015 Review Conference. They include the elimination of all nuclear weapons by 2025 and the beginning of negotiations for an NWC and a Negative Security Assurances treaty.

Although the relief of the NWS over the adoption of the final declaration's conclusions and recommendations and the lukewarm reaction by the NAM states and the prodisarmament NGOs has bought the NPT another five years, the tensions endemic in the central bargain remain. Good-faith implementation of the document's action plan will be crucial, as will progress on the new START, and ratification of the CTBT by the United States. The future course of the Six-Nation Talks on DPRK, the resolution of the questions over Iran's nuclear program, and the outcomes of the 2012 Middle East conference will also determine the future of the NPT. The NPT has survived another challenge, but without further action by the NWS, the nonproliferation regime may well fray.

On the institutional and procedural level, the conference reinforced and strengthened the review process.

Although the relief of the NWS over the adoption of the final declaration's conclusions and recommendations . . . has bought the NPT another five years, the tensions endemic in the central bargain remain.

Recommendations

The states parties to the NPT clearly cannot rest on the laurels of this qualified success and have equal responsibility not only to fulfill the commitments made at the 2010 Review Conference but also to reinforce the NPT as the world's most important nuclear nonproliferation and disarmament treaty. To this end, the following specific actions are needed:

- The new START must be ratified by the U.S. Senate and the Russian Duma by the end of 2010 so that the next phase in U.S.-Russian nuclear disarmament negotiations can begin.
- The process of bringing the CTBT into force must begin with urgency. This includes the initiation of the ratification process in the U.S. Senate by 2011, as well as in countries that have yet to sign or ratify the treaty.
- The Conference on Disarmament must begin negotiations on an FMCT, or the international community must find an alternative forum for doing so.
- The Six-Party Talks on DPRK must begin and reach a conclusion before the transition in that country's leadership.
- Talks with Iran should begin as soon as possible with mutual assurances.
- Agreement on steps to begin negotiations on a WMDFZ in the Middle East must begin in 2011. These steps include the appointment of a facilitator and credible preparations for the 2012 conference.
- The IAEA funding situation must improve, and assistance to developing countries for peaceful non-power-related uses of nuclear energy should be extended from the new fund.
- A campaign for greater adherence to the additional protocol should be aggressively led, and attention to nuclear-security requirements must increase.
- The use of HEU must be phased out and more encouragement should be given through tax incentives and other means for the use of LEU in nuclear power.
- The already agreed-upon steps to strengthen the institutional aspects of the NPT must be implemented.

Notes

1. The treaty stipulates the convening of a review conference every five years. In 1995, at the fifth review conference, the treaty was extended indefinitely.
2. As far as arms control is concerned, that is, control of the level of arsenals, NWS are permitted to retain their weapons with the restraints that apply through other bilateral and multilateral treaties.
3. IAEA director general Yukiya Amano, in his statement to the Eighth NPT Review Conference, mentioned that sixty countries were considering acquiring nuclear power and that ten to twenty-five of them would have their first nuclear power plant by 2030. In this regard, he stressed the importance of having the additional protocol in force as a confidence-building exercise and stated that ninety-eight countries had already become signatories to it. The additional protocol was adopted in 1997 after the discovery of Iraq's clandestine nuclear weapons program.
4. The opening statements of the other NWS—Russia, the United Kingdom, France, and China—followed predictable lines, with calls for undiminished security for all and a commitment to the NPT and the success of the conference. However, none of them followed the good example of the United States by announcing the details of their nuclear arsenals. The United Kingdom eventually did so toward the end of the conference, declaring from London that it had 225 nuclear warheads.
5. See Louise Frechette and Trevor Findlay, *The Future of Nuclear Energy to 2030: Final Report of the Nuclear Energy Futures Project* (Waterloo, Canada: Centre for International Governance Innovation, 2010).

An online edition of this and related reports can be found on our Web site (www.usip.org), together with additional information on the subject.

Other Titles in WMD, Nonproliferation, and Arms Control

- *America's Strategic Posture: The Final Report of the Congressional Commission on the Strategic Posture of the United States* (2009) by William J. Perry and James R. Schlesinger
- *In the Eyes of the Experts: Analysis and Comments on America's Strategic Posture* (2009) by Taylor A. Bolz
- *The Quest for Nuclear Disarmament in South Asia: A Reality Check* by Moeed Yusuf and Ashley Pandya (Peace Brief, August 2010)
- *Nuclear Weapon-Free Zones as a New Deterrent* by Janene Sawers (Peace Brief, April 2010)
- *Dismantling the DPRK's Nuclear Weapons Program: A Practicable, Verifiable Plan of Action* by David Albright and Corey Hinderstein (Peaceworks, January 2006)



**United States
Institute of Peace**

1200 17th Street NW
Washington, DC 20036

www.usip.org