

CRS Report for Congress

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NPT Compliance: Issues and Views

Sharon Squassoni
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Summary

Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) will meet in May 2005 in New York to review implementation. Since the last review conference in 2000, the biggest issue to emerge is treaty compliance, particularly Iran's compliance. President Bush has remarked that "NPT Parties must take strong action to confront the threat of noncompliance with the NPT... We cannot allow rogue states that violate their commitments... to undermine the NPT's fundamental role in strengthening international security." However, some NPT parties are adamant that the United States and other nuclear weapon states are not complying with their own obligations, namely, to pursue nuclear disarmament. This report, which will be updated as needed, discusses different views and issues related to NPT compliance.

At the May 2005 NPT Review Conference, state parties undoubtedly will discuss treaty compliance, but the shape of that discussion is uncertain.¹ The United States has argued for almost two years that Iran's noncompliance with the NPT should be referred to the U.N. Security Council. The United States has argued that Iran is violating not just its nuclear safeguards agreement, but also its obligation under Article II of the treaty to forswear nuclear weapons.² At the same time, some of the non-nuclear weapon states have argued that the United States has not complied with Article VI of the treaty, which calls on parties to pursue negotiations in good faith on nuclear disarmament.³ Some nations may also raise questions about "compliance" with Article IV of the treaty, which calls for technology sharing for peaceful uses of nuclear energy "in conformity with articles I and II" of the treaty. The parties may discuss proposed measures to further restrict non-nuclear weapon states' access to sensitive nuclear processes like uranium

¹ See CRS Report RL32857, *The Nuclear Nonproliferation Treaty Review Conference: Issues for Congress*, by Sharon Squassoni and Carl E. Behrens.

² Nuclear safeguards is the system of inspections and reports for detecting and deterring that nuclear material is not diverted for use in nuclear weapons. For non-nuclear weapon state parties to the NPT, this is formalized in full-scope safeguards agreements based on the model agreement, Information Circular 153 (INFCIRC/153).

³ The exact language of the treaty is not used here for purposes of brevity, but the reader should refer to the treaty text, available at [<http://www.npt2005.org>].

enrichment and plutonium reprocessing, in light of Iran's undeclared enrichment program and Pakistani A.Q. Khan's black market sales of uranium enrichment technology to Iran, North Korea, and Libya.⁴ This report discusses different views of NPT compliance.

Background

The NPT entered into force in 1970, when expectations of the growth of both nuclear energy and nuclear weapons were particularly high. Under the treaty, non-nuclear weapon states agree to give up pursuit of nuclear weapons, but not their pursuit of the peaceful uses of nuclear energy. The main obligations of the non-nuclear weapon states are to forswear nuclear weapons (Article II), submit to IAEA safeguards inspections (Article III), and not supply certain nuclear-related items unless they are under safeguards (Article III). The main obligations of the nuclear weapon states are not to transfer or help non-nuclear weapon states acquire nuclear weapons (Article I), not to supply certain nuclear-related items unless they are under safeguards (Article III), to facilitate the exchange of peaceful nuclear energy technology (Article IV), and to pursue negotiations toward nuclear disarmament (Article VI).

The bifurcation of states into nuclear "haves" and "have-nots" has led, at times, to opposing views on many aspects of treaty implementation. In the area of compliance, some states would like to focus on whether the nuclear weapon states are complying with Articles IV (technical cooperation) and VI (nuclear disarmament) of the treaty. Other states would like to focus on whether the non-nuclear weapon states are complying with Articles II (obligation not to develop or receive nuclear weapons) and III (safeguards).

The NPT itself is silent on how to assess compliance, how to resolve compliance disputes, and what procedures to follow in the event of non-compliance. Specifically, there is no verification of the obligations in Articles I and II not to transfer or receive nuclear weapons.⁵ The treaty contains no language on verification other than to require states to accept nuclear safeguards (Article III). The Director General of the International Atomic Energy Agency (IAEA) reports on safeguards implementation every year, and sometimes on specific compliance issues at Board of Governors meetings. In terms of Articles IV and VI, the treaty offers no definitions or ways of assessing whether states are living up to their obligations. Nuclear weapon states, in the past, have provided information about their nuclear cooperation efforts, their contributions to the IAEA's technical cooperation program, and descriptions of their efforts toward nuclear disarmament. At the 2000 NPT Review Conference, the parties agreed to what have become known as the "13 Practical Steps" toward disarmament, but the United States has since withdrawn its support for those steps.⁶ NPT member states may seek to further clarify obligations in Articles IV and VI at the May 2005 Review Conference.

⁴ See CRS Report RS21592, *Iran's Nuclear Program: Recent Developments*, by Sharon Squassoni and CRS Report RL32745, *Pakistan's Nuclear Proliferation Activities and the Recommendations of the 9/11 Commission: U.S. Policy Constraints and Options*, by Richard P. Cronin, K. Alan Kronstadt, and Sharon Squassoni .

⁵ Mason Willrich, *Non-Proliferation Treaty: Framework for Nuclear Arms Control*, Virginia: The Michie Company, 1969, p. 100.

⁶ See J. Sherwood McGinnis, "Article VI of the NPT," May 1, 2003. McGinnis said, "We made clear last year that the United States no longer supports all 13 steps."

Compliance vs. Verification

All arms control treaties have obligations, but not all have verification measures — i.e., measures that help nations monitor activities and assess compliance with treaty obligations. The Biological Weapons Convention, on the one hand, obligates parties not to develop, produce or stockpile biological agents or toxins, but contains no verification measures, while the Chemical Weapons Convention spells out verification measures in detail. Under the Anti-Ballistic Missile Treaty, the United States and the Soviet Union relied on national technical means (e.g., satellite and overflight photography) to verify compliance. The Intermediate-Range Nuclear Forces (INF) Treaty referred to both national technical means and on-site inspections, and created a Verification Commission to resolve disputes.

As noted above, the NPT requires comprehensive nuclear safeguards for non-nuclear weapon states. The purpose of the safeguards is to verify “the fulfillment of [a state’s] obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.”⁷ Safeguards, briefly, refer to a system of inspections, reports and accounting procedures designed to detect discrepancies between what a state reports and what inspectors find.⁸ There are no publicly available guidelines for determining how serious a safeguards violation might be; there is no automatic translation from safeguards violations into NPT violations.⁹ This may help explain why the IAEA has found many discrepancies, but has not yet formally found Iran to be in noncompliance with its safeguards agreement.

Article XII of the IAEA Statute contains procedures for reporting non-compliance:

...The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient member or group of members. The Agency may also, in accordance with article XIX, suspend any non-complying member from the exercise of the privileges and rights of membership.¹⁰

A key issue for many NPT member states has been the lack of procedures for the U.N. Security Council to follow in the event of NPT noncompliance. U.S. Ambassador

⁷ Treaty on the Non-Proliferation of Nuclear Weapons, Article III.1.

⁸ Discrepancies are measured in quantities. A “significant quantity” (significant for nuclear weapons purposes) is 8kg of Plutonium-239 and 25 kg of Uranium-235.

⁹ Darryl Howlett, John Simpson, Harald Mueller, Bruno Tertrais, *Effective Non-Proliferation: The European Union and the 2005 NPT Review Conference*, Chaillot Paper No. 77, Apr. 2005, Institute for Security Studies, European Union, Paris, p. 17.

¹⁰ See [<http://f40.iaea.org/worldatom/Documents/statute.html#A1.12>] for the IAEA statute.

Jackie Wolcott Sanders offered this view of what the U.N. Security Council could do with respect to Iran in a statement to the Board of Governors in March 2005:

While the IAEA must continue to have a role in investigating Iran's past and ongoing nuclear activities and in monitoring its suspension pledge, the Security Council has the... authority to require and enforce a suspension of Iran's enrichment-related and reprocessing activities. In each of these areas, the Security Council can support and reinforce the IAEA's ability to pursue its investigations in Iran until the Agency can provide this Board with all the necessary assurances it requires.¹¹

One precedent for handling non-compliance, although not necessarily a model one, is the case of North Korea. In February 1993, the IAEA Director General requested a special inspection, which the DPRK refused. The IAEA Board of Governors concluded on April 1, 1993 that the DPRK was in non-compliance with its safeguards agreement and referred the matter to the UN Security Council. On May 11, 1993, the Council called upon the DPRK to comply with the agreement. Although North Korea announced it would withdraw from the NPT on March 12, 1993, it suspended its withdrawal in June. Ten years later, on February 12, 2003, the Board of Governors once again declared North Korea in further non-compliance with its nuclear safeguards obligations, and referred the matter to the Security Council. The Board called upon North Korea to "remedy urgently" its non-compliance, and fully cooperate with the Agency. North Korea stated it would withdraw from the NPT on January 11, 2003, and its official status is uncertain.¹²

Assessing Compliance

Articles I, II. In the Nuclear Nonproliferation Report to Congress (Section 601 report) for 2004, the U.S. Secretary of State described Iran as violating "its Safeguards Agreement with the IAEA, required under NPT Article III, and...its NPT Article II nonproliferation obligations."¹³ This U.S. position is not an "official" finding of the IAEA; the United States has used a different standard than the IAEA in assessing Iran's compliance. Some recent press reports have created confusion on the scope of IAEA responsibilities in terms of verifying the NPT. In particular, the Director General Mohamed ElBaradei has stated several times that in the case of certain states, he has no evidence of nuclear weapons programs. While those statements are certainly correct, it may erroneously lead observers to conclude that the IAEA must find evidence of a nuclear weapons program before calling a state into noncompliance. However, it is clear that in the case of North Korea, as described above, the IAEA may report when a state does not take action to resolve safeguards compliance disputes. The case of Iran differs

¹¹ Ambassador Jackie Wolcott Sanders, Special Representative of the President for the Non-Proliferation of Nuclear Weapons, Statement to IAEA Board of Governors, *Safeguards Implementation in the Islamic Republic of Iran*, Mar. 2, 2005.

¹² Fact Sheet on DPRK Nuclear Safeguards, International Atomic Energy Agency. See [http://www.iaea.org/NewsCenter/Focus/IaeaDprk/fact_sheet_may2003.shtml]. The IAEA has stated that since it "is not a party to the NPT... it is not in the position to determine the status of any State Party's membership of the Non-Proliferation Treaty."

¹³ *Report to Congress Pursuant to Section 601 of the Nuclear Non-Proliferation Act of 1978, As Amended by the Nuclear Proliferation Prevention Act of 1994 For the Year Ending December 31, 2004*. p. 8.

significantly from that of North Korea in that Iran continues to cooperate, albeit not as fully or as quickly as many would like. The case of Libya, where officials turned over documents proving it sought nuclear weapons, may be an exception, rather than the rule.¹⁴

One U.S. official has suggested that “compliance with Article II requires that non-nuclear-weapon states undertake no activities designed to develop a nuclear weapons capability” and that there should be sufficient transparency in their activities to demonstrate peaceful intent.¹⁵ It is not clear, however, who would reach a verdict of insufficient transparency or how transparency could be measured.

Article IV. In addition to stating the inalienable right of all parties to pursue peaceful uses of nuclear energy, Article IV says that

All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials, and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon states Party to the treaty, with due consideration for the needs of the developing areas of the world.

There are no standards for measuring whether NPT parties are meeting their Article IV obligations to facilitate the fullest possible exchange of equipment, materials and information. During treaty negotiations, the conventional wisdom was that the NPT would provide “a favorable basis for the spread of peaceful nuclear technology,” and the United States recognized in Article IV a “commitment to action by nuclear Powers...to contribute.”¹⁶ However, that cooperation must also be in conformity with the Articles I and II obligations not to develop, manufacture, or transfer nuclear weapons technology. While states such as Iran have argued that sanctions on cooperation with Iran violate Article IV of the treaty, U.S. and other officials have argued that Iran’s peaceful nuclear energy program is violating Article II of the treaty, and thus cooperation should be halted.

Article VI. As in the case of Article IV, there are no measures in the NPT to verify compliance with the Article VI obligation 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 and on a treaty on general and complete disarmament under strict and effective international control.” In 1967, U.S. negotiators argued that “it would not be feasible to incorporate specific obligations [toward disarmament] in the treaty itself. The differences that have prevented agreement on these measures have not yet been

¹⁴ See CRS Report RS21823, *Disarming Libya: Weapons of Mass Destruction*, by Sharon Squassoni and Andrew Feickert

¹⁵ Acting Deputy Assistant Secretary of State for Nonproliferation Mark Fitzpatrick, “Meeting Nonproliferation Challenges: UNSCR 1540 and the 2005 NPT Review Conference,” Organization of American States Committee on Hemispheric Security; Washington, DC, Mar. 17, 2005.

¹⁶ Willrich, *op. cit.*, p. 128 and 136. See U.S. Arms Control and Disarmament Agency, *Documents on Disarmament 1968*, Goldberg statement, May 31, 1968, p. 416.

resolved.”¹⁷ The 1995 and 2000 Review Conferences identified “practical” steps toward disarmament but there are still disagreements about the legal status of those steps and their implications for non-compliance.¹⁸ Assistant Secretary of State Stephen Rademaker remarked in April 2005 that “the 13 steps do not encapsulate the obligations of Article VI in the NPT. The obligations of Article VI are encapsulated in Article VI.”¹⁹ The United States has reported on Article VI implementation,²⁰ highlighting those steps it has taken to reduce the number of nuclear warheads in its deployed forces. Other states, however, complain of U.S. noncompliance because the United States continues to conduct research and development on new types of nuclear weapons and, as yet, has not accepted much deeper reductions in its nuclear forces.

Issues for Congress

In the U.S. view, “the most important challenge facing the nuclear nonproliferation treaty is the threat of noncompliance.”²¹ As President Bush stated recently that

NPT Parties must take strong action to confront the threat of noncompliance with the NPT in order to preserve and strengthen the Treaty’s nonproliferation undertakings. We cannot allow rogue states that violate their commitments and defy the international community to undermine the NPT’s fundamental role in strengthening international security. We must therefore close the loopholes that allow states to produce nuclear materials that can be used to build bombs under the cover of civilian nuclear programs.²²

The 109th Congress continues to be active in its oversight of nuclear nonproliferation programs, budgets, and policies. With respect to NPT compliance, two bills have been introduced: H.Con.Res. 133, “Non-Proliferation Treaty Enhancement Resolution of 2005,” which urges universal adoption of safeguards-strengthening measures and implementation of disarmament steps, and H.R. 665, “Omnibus Nonproliferation and Anti-Nuclear Terrorism Act of 2005,” which calls upon the President to report to Congress on the viability of measures to close what the bill’s proponents perceive as the Article IV “loophole” of peaceful nuclear energy programs to disguise military programs.

¹⁷ Willrich, *op. cit.*, p. 162.

¹⁸ Howlett, Simpson, Mueller, and Tertrais, *Effective Non-Proliferation: The European Union and the 2005 NPT Review Conference*, p. 13.

¹⁹ Wade Boese and Miles Pomper, “The U.S. Approach to the 2005 Nuclear Nonproliferation Treaty Review Conference: An ACT Interview with Assistant Secretary of State Stephen Rademaker,” Apr. 19, 2005, [http://www.armscontrol.org/interviews/20050419_Rademaker.asp].

²⁰ The United States and other states have produced reports on their actions and policies in support of Article VI, which are available at [<http://disarmament2.un.org/wmd/npt/index.html>].

²¹ *Ibid.*

²² President George W. Bush, Statement on Non-Proliferation of Nuclear Weapons Treaty, Office of the Press Secretary, Washington, DC, Mar. 7, 2005. See [<http://www.state.gov/t/np/rls/rm/43348.htm>].