

The NPT Review Process: The Need for a More Productive Approach

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The current review process of the nuclear Nonproliferation Treaty (NPT) is unsatisfactory. It produces high drama and intense diplomatic activity, but rarely contributes to the strengthening of the NPT regime. Most NPT parties are frustrated with it. It is time to consider a better way.

Although the next NPT review conference is not until 2020, it is not too soon to discuss ways to remedy some of the shortcomings of the process, given that the treaty itself sets few rules on how such periodic reviews should be conducted. Article VIII.3 of the NPT provides that “[f]ive years after the entry into force of this Treaty, a conference of the Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized.” It goes on to say that, at intervals of five years, a majority of the parties can decide to convene further conferences.

That is all the guidance the treaty provides. It does not mandate how the parties should review the operation of the treaty or specify what, if any, written outcome the conference participants should seek to produce. Yet, from the very first review conference in 1975 and at every review conference since, delegates have sought to produce a consensus final document—a document that comprehensively assessed the past record of implementation and recommended means of strengthening the treaty and the broader nonproliferation regime for the future.

From the outset, review conferences were contentious affairs. The parties strongly supported the treaty’s three central goals—promoting nuclear disarmament, preventing nuclear proliferation, and facilitating the peaceful uses of nuclear energy—but they differed on priorities and the means of advancing those goals. At most review conferences, consensus was possible on many, even most, of the issues, but sharp differences often surfaced on other issues.

As a result, a comprehensive, consensus final document did not prove achievable at four of the nine review conferences held to date: 1980, 1990, 2005, and 2015. At the 1995 review conference, referenced as the review and extension conference because of its treaty-mandated role of deciding whether the NPT would continue beyond its initial 25-year duration, the parties could not reach consensus on a comprehensive document reviewing the treaty, but were able to agree on a package of decisions looking toward the future, including the historic decision to extend the treaty indefinitely.¹

In the public mind and even in the minds of the governments involved, a review conference resulting in a consensus final document was a success; one without such a result was a failure. Nevertheless, such a “success” was often not really a success, and such a “failure” was often not really a failure.

“Successes” and “Failures”

Consensus final documents sometimes have contained important initiatives that strengthened the nonproliferation regime. The 1985 review conference’s consensus final document, for example, gave impetus to efforts, which culminated in a 1992 decision by the Nuclear Suppliers Group (NSG), to

make full-scope International Atomic Energy Agency (IAEA) safeguards on all nuclear activities a condition of nuclear supply to non-nuclear-weapon states not party to the NPT.² Yet, consensus was achieved too often not by forging genuine substantive compromises but by finding clever diplomatic formulations that papered over unresolved differences. Thus, the 2000 review conference's consensus document brought together supporters and opponents of eliminating nuclear weapons with the unobjectionable but nearly tautological formulation that "the total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons."

Moreover, "consensus" could be misleading. Delegations frequently had objections to provisions included in a consensus text, but decided not to bear the onus of blocking consensus, knowing full well that such provisions could later be ignored, as they frequently were, with impunity. The cost of consensus has often been a watered-down document with little prospect of having a real-world impact after the four-week conference concluded.

On the other hand, the absence of a final consensus document has not meant that tangible progress was not made at a review conference. Recommendations put forward and widely supported at review conferences in which no final document was reached have later become significant elements of the global nonproliferation regime. Anticipating the later development of the IAEA Model Additional Protocol, a proposal at the "failed" 1990 review conference invited the agency to consider new safeguards approaches, including randomized inspections. Following the 1986 Chernobyl disaster, the 1990 conference was the first review conference to focus heavily on nuclear safety and make it a component of the broader nonproliferation regime, which eventually included the 1994 Convention on Nuclear Safety.

It is not the review conferences themselves that operationalize and implement the recommendations they make but specialized international bodies such as the IAEA and its board of governors, the NSG, the 1540 Committee, and the Conference on Disarmament as well as national executive and other policymaking authorities. The likelihood of these specialized entities putting review conference recommendations into practice has little to do with whether they were contained in a consensus document. Indeed, much progress in the evolution of the nonproliferation regime, including the widespread adoption of the Additional Protocol, has been made in the absence of consensus among NPT parties.

The Costs of Consensus

Not only is the value of producing a consensus final document overrated, but the costs of trying to achieve such an outcome are great. With nothing agreed unless everything is agreed, the energy of the review conference inevitably gets absorbed in trying to negotiate acceptable language on a small number of the most divisive issues. This has meant countless hours of closed-door, often futile wordsmithing at the expense of what the review conference should be doing: assessing the implementation of the NPT, discussing the impact of current international and technological developments on the nonproliferation regime, and debating proposals for reinforcing and improving it.

It is not just the requirement for consensus that is the problem. It is also the practice of trying to produce a comprehensive document covering every conceivable issue. Obviously, that compounds the difficulty of achieving a consensus; it also results in very lengthy documents, on the order of 20 or more single-spaced pages with upward of 200 paragraphs.³ Invariably, consensus formulations from previous review conference documents are incorporated, usually verbatim and without an appreciation of the particular contexts in which those formulations were adopted.

Therefore, when a review conference "succeeds," it produces a mind-numbing document that is utterly unintelligible to the public or even to government officials outside the nonproliferation community. It takes a real insider to figure out what is new and important. The media are at the mercy of the spin they receive from governmental briefers. It is no wonder news reporters have fallen into the habit of simply writing that a conference succeeded when it produced a document and failed when it did not.

A Different Kind of Report

NPT parties should try something new in 2020, the 50th anniversary of the treaty. They should decide not to make their goal the achievement of a comprehensive, consensus final document.

The 2020 review conference should still produce a report, but it should be a different kind of report. As in previous review conferences, the first portion of the report should assess the record of NPT implementation to date. Much of it will be factual and uncontroversial and will be expressed as the common view of the parties. Where differences exist on the implementation record, they should be acknowledged and clearly stated.

The report should also accurately summarize discussions in the preparatory committee meetings and the review conference itself on current international and technological developments that affect the health of the global nonproliferation regime.

A key portion of the report should be forward looking, covering recommendations for strengthening the NPT and the nonproliferation regime in general. Review conference deliberations, including arguments for and against these recommendations, would be summarized in the report. Individual recommendations and proposals enjoying consensus support among the parties would be given pride of place in the report. Those not achieving consensus would be addressed in the report in a separate section.

Specific recommendations and proposals, whether or not they enjoy consensus, would be appended to the report, together with lists of parties that supported them. There would be no resolutions and no voting, but the lists of parties favoring particular recommendations would indicate how much support they received.

The report would provide a highly informative record of review conference deliberations, but it would not try, as earlier final documents did, to cover every issue. The report and its appendixes would be available to parties as they sought, in the wake of the review conference, to follow up on their recommendations in various international bodies and with national governments. The report would provide a broad menu of concrete approaches on which to draw.

Unlike in the case of a comprehensive, consensus final document, the recommendations in the report would not need to be watered down to gain a consensus or simply omitted because they did not achieve a consensus. Regardless of how much support they attracted, they could find their way into the report, and they could be expressed as their sponsors preferred. Of course, the recommendations and proposals contained in the report would not in all cases be undiluted, original offerings. The originators of the ideas may well decide to modify them in order to achieve wider support, but they would not be driven to water down or otherwise modify their recommendations by the requirement for consensus.

Freeing Up Time

A major benefit of making such a report the key written product of the review conference is that it would free up most of the review conference's time for doing what review conferences are supposed to do. Time could be allocated not just to reviewing the past record of implementation but also to discussing current international developments (e.g., the implementation of the Joint Comprehensive Plan of Action with Iran, the implications of North Korea's nuclear and missile programs) and current technological developments (e.g., 3-D printing, laser isotope enrichment, new verification technologies) that bear on nonproliferation. Time could also be allocated to structured discussions of specific recommendations for strengthening the regime.

In previous review conferences, a number of delegations have objected to the critical work of the conference being conducted in closed-door meetings with only a small number of governments represented, the results of which are not widely known or clearly understood before delegations are asked to join what may be a very murky consensus. By eliminating the requirement for consensus, this approach avoids the need for exclusive, secretive, eleventh-hour negotiations and enables the process to be more inclusive and transparent.

Likely Resistance

Although many NPT parties are dissatisfied with the current review process, there are several reasons why any effort to modify it is likely to encounter resistance.

Some governments will be reluctant to abandon the “nothing is agreed until everything is agreed” approach because they think it gives them leverage to achieve the review conference results they desire. For example, a number of non-nuclear-weapon states believe that the requirement for consensus helps them hold the nuclear-weapon states’ “feet to the fire” on nuclear disarmament. They assume that the nuclear-weapon states will make concessions and undertake commitments on nuclear disarmament that they would not otherwise make in order to have a consensus final document.

Such an assumption is not realistic and is not borne out by the record on nuclear disarmament issues or other matters that have been contentious at review conferences. The nuclear-weapon states or other groups of NPT parties would like to see a successful review conference, but they have not compromised and will not compromise what they regard as their national security or other core interests for the sake of a consensus conference outcome. It might be different if the failure to achieve a consensus final document were seen as highly damaging to their interests, but review conferences have “failed” half the time, and the sky has not fallen.

Review conferences have sometimes produced results on nuclear disarmament or other issues that met the insistent and sometimes long-standing demands of a large number of parties. Yet, such outcomes were not the product of intense pressures brought to bear by the requirement for consensus. Rather, they were produced because the parties urged to make concessions, usually the nuclear-weapon states, had come to the conclusion independent of review conference dynamics and supported by a propitious alignment of international or domestic developments that their national interests were compatible with the demands put forward by other parties. Holding their feet to the fire was not necessary.

If an effort to hold someone’s feet to the fire fails and the result is no final document, then the delegation seeking to exert leverage has achieved very little. Its proposal has not been given a boost by incorporation in a formal written outcome, and the delegation may even be blamed for holding the review conference hostage. The approach suggested here allows that delegation or group of delegations to include their proposal in the review conference’s report even if it cannot gain a consensus. In addition, by listing supporters, it allows them publicly to demonstrate wide approval, an outcome much more supportive of their initiative than a futile attempt to get everyone on board.

Another reason why some governments may be reluctant to abandon the all-or-nothing approach is that they may prefer no conference document at all to one that includes proposals they strongly oppose, even if it were made clear that those proposals did not enjoy a consensus. With the current requirement for consensus, governments are able to block any references to proposals they find objectionable. Under the approach recommended here, they would have to live with references in the conference document to proposals that make them uncomfortable. For example, some nuclear-weapon states might not wish to see a proposal to outlaw nuclear weapons addressed in the final report, especially if it were included with a large list of supporters.

It is not clear why recording such nonconsensus proposals in the conference report should be viewed as problematic. After all, such proposals and support for them exist. Simply noting them in the report would hardly increase the likelihood of their success, nor would denying them inclusion in any report by insisting that they achieve a consensus make them go away. Indeed, allowing them to be included in the report as nonconsensus proposals would reduce the pressure governments might feel to go along with such proposals in a consensus recommendation.

A closely related argument against modifying the current approach along the lines suggested here is that it would undermine the principle of consensus decision-making on important national security matters. Yet, the suggested approach does not involve the adoption of proposals that lack consensus; it simply permits the recording of such proposals and makes clear that they do not enjoy consensus support. It is unlike decision-making in international bodies where voting is permitted,

such as the UN General Assembly, where proposals can be officially adopted without a consensus. No such status would apply to review conference proposals simply recorded in the nonconsensus section of a review conference report.

A more fundamental reason for supporting the status quo—one that governments may not care to admit—is that achieving a positive conference outcome may not be their highest priority. For some, damage limitation—avoiding findings and recommendations they oppose—may be more important than achieving an outcome with findings and recommendations they favor. For others, scoring political points against rivals or showcasing national initiatives may be more important than a positive conference outcome. For such governments, the failure to produce a conference final document—a “failed” review conference—is easily tolerable.

Inertia will also be an impediment to abandoning the all-or-nothing approach. All previous review conferences have tried to produce comprehensive, final documents. The path of least resistance for 2020 is simply to try again. After all, diplomats tend to be creatures of habit, and delegates who have attended previous review conferences are accustomed to operating in the customary way.

Moreover, it can be argued that reforms to strengthen the review process have already been undertaken, especially at the 1995 and 2000 review conferences, and that modest additional changes can remedy remaining deficiencies. A number of ideas currently under consideration regarding the efficient use of review conference time, the establishment of working bodies, the objectives of intersessional work, the selection of chairpersons, and so on could well improve the process. Yet, these modest reforms do not address the basic problem: the requirement that any conference outcome be adopted by consensus.

Time for a Change

For a variety of reasons, NPT parties may be reluctant to alter course in 2020, but no one can persuasively argue that the current approach is serving the interests of the parties or of the NPT regime. Review conferences have largely become wasted opportunities. Instead of carefully examining the operation of the treaty, assessing international and technological developments that affect nonproliferation objectives, and identifying, debating, and seeking common ground on practical proposals for strengthening the nonproliferation regime, review conferences have become high-energy diplomatic showdowns, with finger pointing, political gamesmanship, and desperate 11th-hour negotiations, but only rarely with concrete results that advance the goals of the NPT.

The NPT does not mandate how review conferences will be conducted. The parties can decide at any point to try something new. It is time that they did.

ENDNOTES

1. “1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,” n.d., <http://www.un.org/Depts/ddar/nptconf/162.htm>.
2. “Full-Scope IAEA Safeguards as a Global Norm,” n.d., <http://www.nci.org/06nci/04/Full-Scope%20IAEA%20Safeguards.htm>.
3. See 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, “Final Document, Volume I, Part I,” NPT/Conf.2010/50 (Vol. I), 2010.

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