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Assessing “Rights” Under the Nuclear Non-Proliferation Treaty

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The Nuclear Non-Proliferation Treaty (NPT) contains a provision granting the right to all parties to the treaty to develop, research, produce, and use nuclear energy. This provision is found in Article IV of the NPT. The presence of this provision quite properly raises questions about whether the central purpose of the NPT, which is to stop the spread of nuclear weapons beyond the five nuclear powers acknowledged by the treaty (China, France, Great Britain, Russia, and the United States), is undermined.

Those who see the NPT as fatally flawed argue that the exercise of this right by a non-weapons state allows it to produce nuclear weapons with little or no chance that outside observers will be given timely warning that the state in question is actually pursuing a weapons capability. Indeed, some will go so far as to argue that the NPT's right regarding nuclear energy is an effective cover for a prohibited nuclear weapons program and requires international assistance to the state in question in ways that promote proliferation activities.

Nonproliferation vs. Right to Nuclear Energy

In my view, there is a natural tension in the NPT between its central purpose of nonproliferation, and most particularly those provisions found in Articles I and II, and the right to nuclear energy found in Article IV. Further, I would concede that certain interpretations of the NPT effectively undermine its central purpose of nonproliferation. On the other hand, I do

Talking Points

- International treaties are neither self-executing nor self-enforcing. As essentially voluntary arrangements, they require the good-faith efforts of the participating states to make them work.
- Because these limitations pertain to the NPT, as they do to every other treaty, U.S. nuclear nonproliferation policy must go beyond the NPT to include other diplomatic and military options.
- The existence of these other options, however, does not necessarily diminish the value of the NPT or require steps inconsistent with the terms of the NPT. The NPT is a treaty that continues to serve U.S. interests.
- U.S. policy should therefore seek to preserve the treaty and work against the forces that would seek to dilute it or render it irrelevant.

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not regard the language of the NPT as inherently contradictory. I arrive at the latter conclusion for two fundamental reasons, although other lesser reasons exist.

Reason No. 1: Article IV is a qualified right.

The first reason is that the right to nuclear energy granted by Article IV is a qualified right. Its exercise is permitted only in the context of “conformity with Articles I and II,” which, as I mentioned earlier, are the provisions in the NPT that bar nuclear weapons proliferation. I believe that the clear reading of the NPT compels the conclusion that a non-weapons state’s right to nuclear energy is subordinate to its obligation not to seek a weapons capability. In short, the nonproliferation purpose of the NPT takes precedence over the right to nuclear energy.

Reason No. 2: Nuclear energy is not an entitlement.

The second reason the language of the NPT is not inherently contradictory is that the right to nuclear energy is not an entitlement. The mere fact that a non-weapons state under the NPT appears to be acting in conformity with its nonproliferation provisions does not impose an obligation on other participating states or the International Atomic Energy Agency (IAEA) to provide any and all material and technological assistance to that state. The NPT allows both would-be supplier states and the IAEA broad discretion regarding what kind of assistance they will provide to a non-weapons state.

Unfortunately, the accumulation of past actions regarding the furnishing of material and technological assistance to non-weapons states reveals movement in the direction of treating such assistance as an entitlement. This slippage, however, is not the result of an inherent problem with the NPT, and the slippage can be reversed through the responsible exercise of discretion in furnishing the assistance the treaty permits.

For example, during a February 11, 2004, speech at the National Defense University, President Bush announced that the U.S. supports a policy of refusing to sell “enrichment and reprocessing equipment and technologies to any state that does not already possess full-scale, functioning enrichment and reprocessing plants.” The policy announced by Pres-

ident Bush does not violate the rights of non-weapons states under Article IV of the NPT, which reflects the discretion the NPT affords to supplier states.

The Cases of North Korea, Iran, and India

Let us examine the meaning of the rights afforded to non-weapons states by Article IV of the NPT in three of the most pressing cases of nuclear proliferation today. These cases are North Korea, Iran, and India. Specifically, it is necessary to assess the extent to which the proliferation problems raised by these cases reflect inherent flaws in the NPT and the rights it affords to non-weapons states under Article IV.

North Korea

Article IV’s language is a minor contributing factor in the rise of the nuclear proliferation threat posed by North Korea. Yes, North Korea has asserted its right to nuclear power under Article IV. Claiming this right, however, has not allowed North Korea to obtain much international assistance for its nuclear power program since it expelled IAEA inspectors and withdrew from the NPT in late 2002 and early 2003.

The primary factor contributing to nuclear proliferation in the case of North Korea is that North Korea has decided to circumvent the NPT and the international nonproliferation regime in its entirety. Specific provisions within the NPT, therefore, are really tangential factors in the problems posed by North Korea. The primary issue regarding North Korea is how the U.S. and other nations respond to North Korea’s open circumvention of the NPT and the international nuclear nonproliferation regime.

Iran

Iran is a more disturbing case regarding the negative implications of the language of Article IV for both the international nuclear nonproliferation regime and the integrity of the NPT.

Iran has asserted its rights to nuclear power while ostensibly remaining within the NPT and continues to obtain significant outside assistance for its nuclear program. This comes at a time when there is mounting evidence that Iran is pursuing a clandestine nuclear weapons program, which resulted in an IAEA decision on February 4 to sub-

mit a report on Iran to the United Nations Security Council. Iran is putting itself in position to use international assistance to bring itself to the edge of a weapons capability, which could allow it to break out of the NPT and obtain weapons with few additional steps.

Ensuring the integrity of the NPT, however, is still possible in the case of Iran. Doing so requires two things.

First, it requires that other participating states understand that they effectively have been warned about what Iran is doing and that they use what time remains to respond to the Iranian program.

Second, it requires that supplier states exercise self-restraint in terms of what assistance they provide Iran in the face of Iranian claims that the NPT entitles it to the assistance it seeks.

India

Paradoxically, India may raise the most pressing questions regarding the internal weakness of the NPT. This is the case despite the fact that India has never been a party to the NPT.

On the surface, it appears that the proliferation problems posed by India are similar to those posed by North Korea and are more a matter of circumventing the treaty regime as a whole and less the result of internal weaknesses. In reality, the emerging U.S. policy toward India may transform the existing tension between Articles I and II of the NPT on the one hand and Article IV on the other into a contradiction.

The problem stems from the fact that the Bush Administration is seeking “to achieve full civil nuclear energy cooperation with India.” Given India’s nonparticipation in the NPT, as well as its nuclear weapons capability, the Bush Administration’s policy regarding India runs the risk of turning Article IV’s qualified right to nuclear energy into an innate right.

Further, the Bush Administration’s policy regarding India risks exacerbating the slippage toward treating nuclear energy assistance as an entitlement because it has made its commitment to full cooperation up front. This leaves no room for discretion regarding what types of nuclear energy assistance

the U.S., and by extension other supplier states, may provide to India.

Toward a Two-Track Policy on *De Facto* Nuclear Powers

Post–Cold War regional tensions in places like East Asia, the Middle East, and South Asia have made it increasingly clear that the U.S. needs to open a second track in its overall nuclear nonproliferation policy. The first track constitutes the existing global nuclear nonproliferation regime defined by the NPT. The second track needs to focus on addressing regional security imbalances that motivate non-weapons states to seek nuclear weapons. The trick is to fashion policies and programs in the second track that will encourage non-weapons states under the treaty that nevertheless seek to possess nuclear weapons, which I refer to as *de facto* nuclear weapons states, to join or rejoin the NPT, as well as encourage other non-weapons states now within the regime to stay there.

A core assumption of this two-track approach is that U.S. policy will seek to preserve the right to nuclear energy under Article IV of the NPT as a qualified right of non-weapons states and not let it become, by interpretation and practice, an innate right. The second key assumption is that the U.S. and other supplier states will take advantage of the broad discretion the NPT affords them and act with self-restraint regarding the kinds of nuclear energy assistance they will furnish to non-weapons states under particular circumstances.

While the second track of this two-track policy can involve a variety of security and energy cooperation measures, a clear line must be drawn against allowing the second track to eliminate the possibility that *de facto* nuclear powers will either join or return to the first track. First and foremost, this means refraining from conferring *de jure* nuclear weapons status on any states beyond the existing five powers—for example, by amending the NPT to admit additional states as weapons states to the treaty.

Conclusion

International treaties are neither self-executing nor self-enforcing. As essentially voluntary arrange-

ments, they require the good-faith efforts of the participating states to make them work. These limitations pertain to the NPT, as they do to every other treaty. This is why U.S. nuclear nonproliferation policy must go beyond the NPT to include other diplomatic and military options.

The existence of these other options, however, does not necessarily diminish the value of the NPT or require steps inconsistent with the terms of the NPT. The NPT is a treaty that continues to serve U.S. interests. As a result, U.S. policy should seek to preserve the treaty and work

against the forces that would seek to dilute it or render it irrelevant.

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