

The current nonproliferation debate in the light of bilateral nuclear deals

by Philipp Bleckmann, March 2010

Despite ongoing skepticism in certain circles, the year 2009 raised hopes for substantial progress on the nuclear non-proliferation and disarmament agenda. Facilitated by a clearly more supportive U.S. stance on these topics, the 2009 PrepCom conference did succeed in producing a promising, albeit not euphoric vision for a successful outcome of the 2010 Nuclear Non-Proliferation Treaty (NPT) Review conference. Although member states were not able to agree upon any substantive recommendations yet, the established framework is widely expected to prevent this year's conference from another major failure similar to the 2005 version.

Taking into account this and President Obama's much cited speech in Prague in April 2009 in which he declared the ultimate goal of a nuclear weapon-free world, the outlook for 2010 with its many path breaking events seemed more positive than ever. In September 2009, the U.S. underlined its new, progressive and multilateral approach by pushing through Resolution 1887 in the UN Security Council. Obama, being the first U.S. president to serve as Chairman of the Security Council, called for stricter rules that make it more difficult for states to turn peaceful nuclear programs into weapon projects.

At the same time, the U.S. domestic position on the future role of nuclear weapons, on non-proliferation and on disarmament is highly contentious. Think tanks, politicians and scientists on both the right and the left have trouble agreeing on even basic terms. Opinion leaders in the debate have been Henry Kissinger, George Shultz, William Perry and Sam Nunn who in past years repeatedly envisioned the idea of a nuclear free world that was also brought up again on this year's Munich Security Conference. Despite this vision, they do agree on the need for the U.S. to maintain a safe, secure and reliable arsenal of nuclear weapons for the foreseeable future. This relationship between nuclear deterrence and nuclear disarmament is one of the most important questions the Obama Administration will have to address in its Nuclear Posture Review, which was due in March 2011 but has still not been published.

Alongside the much expected Strategic Arms Reduction Treaty (START) follow-up agreement, the NPT and Comprehensive Test Ban Treaty (CTBT) seem to be the most urgent problems waiting to be solved, and prospects are positive. Debate on the START agreement, for instance, often appears to be merely a matter of form and technicalities and mainly revolves around the specific numbers of missiles to be abolished, while the general necessity and benefits of a further reduction for both Russia and the U.S. is not in question and will likely serve as a good example of joint disarmament efforts.

Nevertheless, the U.S. most recently took a strategic turn in handling their non-weaponized use of nuclear energy that, widely unnoticed by the public, was described by some as putting the non-proliferation treaty in serious danger and as contradicting the above-mentioned trend: bilateral contracts on nuclear cooperation. These so-called 123 agreements, named after the relevant section in the U.S. Atomic Energy Act, allow trade in nuclear energy between the U.S. and third party states. Currently, there are more than 25 of these agreements with only few of them causing unease in the past. The two most recent ones, however, deals with India and with the United Arab Emirates (UAE), differ significantly in terms of the treaty and potential implications and shall consequently be analyzed more closely.

U.S. Nuclear Agreement with the United Arab Emirates

The treaty with the UAE is not comparable to previous agreements in so far as it obliges the UAE not to deal with the sensitive aspects of the nuclear fuel cycle on a national basis, but to receive these materials exclusively from international sources. Both the enrichment and

reprocessing process which can provide fissile material for nuclear weapons are not to be handled by the UAE. Thus, they can use their nuclear power solely for peaceful purposes. In this regard, the treaty goes beyond the rules required by the NPT and the Nuclear Suppliers Group (NSG). The UAE, according to their 2008 Policy White Paper, signed an Additional Protocol to their cooperation with the International Atomic Energy Agency (IAEA) granting that body the rights to conduct short-notice inspections, install remote monitoring equipment and gather nearly unlimited information. In case the UAE should violate one of these rules, the U.S. would have the right to immediately withdraw from the contract and retrieve all of the nuclear material and equipment from the UAE.

The agreement was met with general consent, a Congressional initiative to make the rules even stricter, for instance, only found a handful of supporters. It is widely accepted as a role model for future nuclear cooperation, despite a number of serious concerns. While the opponents' reference to the poor human rights record in the UAE does not stand in direct relation to the nuclear deal, the UAE's close relationship to Iran and questionable export controls are indeed reason for skepticism. Lax export rules, for example, have been constantly criticized since 2004, when A.Q. Kahn used the port of Dubai as a distribution center for his nuclear network. With the help of false end-user certificates, he was able to transship the majority of his equipment through Dubai. While there seems to be a certain effort on the side of the UAE to close these loopholes, Dubai is still suspected to be serving as a shipping point for sensitive military-grade electronics to Iran. Free Trade Zones in Dubai that are under less strict control have been used to circumvent U.S. export controls by setting up fake companies and concealing transport routes.

Moreover, the necessity for the UAE to develop nuclear capacities is still a matter of debate. The UAE's energy production relies almost exclusively on fossil energy sources (65% natural gas, 35% oil) and is indeed in need of a more diverse mix. Given that the UAE owns the world's 7th largest oil and 6th largest natural gas reserves, however, the immediate imperative of nuclear energy in opposition to the long term development of renewable energy does not appear to be completely convincing.

Although the problems remain by and large unresolved, it is likely that the U.S. - UAE Agreement will only be the first of many similar deals to come. Before leaving office, President Bush signed a Memorandum of Understanding with Bahrain, Jordan and Saudi-Arabia, intended to serve as first steps towards nuclear cooperation. Some argue that if the Middle East is striving for nuclear energy, it will be best to do this under international and in particular U.S. auspices. Against the backdrop of Bahrain's political instability, Saudi-Arabia's involvement in the Pakistani nuclear program and Jordan's refusal to forgo domestic enrichment, this view is highly questionable.

U.S. - India nuclear deal

The deal on nuclear cooperation between the U.S. and India has received much international attention and is considered even more contentious. Initiated in 2005 by former President Bush and Indian Prime Minister Singh, it lifted a 30-year moratorium on nuclear trade with India when Congress gave its consent in 2008.

The agreement enables India to purchase U.S. nuclear technology and material, for example components allowing them to enrich uranium or reprocess plutonium. India, for its part, agrees to allow IAEA inspectors to access its civilian nuclear program including the more intrusive Additional Protocol rules, to continue its moratorium on nuclear weapon testing and to work on a Fissile Material Cutoff Treaty. The deal was celebrated as a new milestone in the history of U.S.-Indian relations, but U.S. prospects seem to be merely economical and strategic, e.g. in view of a closer cooperation against China.

The list of arguments provided by the deals' supporters is short: They value the Indian commitment to IAEA inspections as a very important step forward, especially since it also includes facilities that have never been inspected before. Furthermore, they see the agreement as an appreciation of India's good record on nonproliferation and very high export standards. On the downside, arguments appear to weigh more heavily, partly due to the nature of the contract. The U.S. missed the opportunity to include a restriction on the numbers of nuclear weapons built and there is no cap on fissile material production. One potential consequence is that India could now use its scarce domestic uranium supplies for its nuclear weapons program and buy additional foreign material for energy production, allowing a substantial increase in the production of nuclear weapons. This cannot be in U.S. interests and causes understandable concerns in Pakistan which does not profit from a similar deal.

The concrete fear of increased production of nuclear weapons is the biggest difference between the usual 123 Agreements and the deal with India: India is already a nuclear power and does not exclusively use its nuclear production for peaceful purposes. The situation is exacerbated by the fact that India is not a member of the NPT. In selling them nuclear materials the deal could potentially violate Article 1 of the treaty that says:

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Since there is no clear barrier between the Indian civil and military nuclear programs, U.S. materials could also be used in weapons production. In this regard, the deal is a possible threat to and devaluation of the NPT for which the U.S. has to take most of, but not all of the blame. The NSG, consisting of 46 member states with the task of controlling the global trade in nuclear devices, had the ability to prevent the deal. Its decisions are binding and are taken by consensus. However, despite serious concerns by some European and Oceanian countries, the U.S. successfully launched a diplomatic campaign to achieve support for the deal. The message is alarming: Not only does the U.S. weigh its own strategic advantage higher than the global nonproliferation agenda and international security concerns, the deal also sends a dangerous signal to the international community. Following the rationale of the Indian deal, states could be tempted to not sign the NPT, but still hope to obtain sensitive nuclear materials if they maintain a close relationship to the U.S.

Equally worrisome is the potential impact on the CTBT. George Perkovich from the Carnegie Endowment for International Peace is convinced that the U.S. - India deal furthers the possibility for India to be less, instead of more likely, to join the CTBT. Now that it has already gained access to international nuclear material without any major concessions, it might not see additional incentives for subordination in the Treaty anymore.

Conclusion and prospects

There is a strong possibility of adverse effects on two of the three important milestones of 2010: While the U.S. - Russian START will not be directly affected, the U.S. - India deal has, at the very least, not enhanced chances of a global signing of the CTBT, and likely even weakened this prospect. The most obvious consequence is a devaluation of the NPT. In the wake of the 2010 Review Conference, it will be difficult for the Obama Administration that supported the India deal to convince the other member states of their commitment and their willingness to value the global nonproliferation idea higher than their own strategic interests.

Compared to this problem, the U.S. - UAE agreement is less contentious. While the notion of a nuclearized Middle East is definitely a reason for concern and the U.S. and the NSG have to make sure they have not opened Pandora's Box, the deal itself, with its strict regulations, conforms to the legal agreements made in the NPT: Every member state is permitted to acquire components for the peaceful use of nuclear power.

As both deals raise completely different issues with their own sets of problems, policy recommendations differ significantly as well. With regard to the UAE deal and the prospect of an increased number of Middle Eastern states using nuclear power, all that the NPT and NSG member states are able to do is to advocate strict rules and full-scale inspection rights. So long as there are serious doubts as in the UAE's dubious export controls, nuclear devices must not be delivered. If these difficulties are solved, under the existing framework of rules there is no legal reason to deny these states the purchase of nuclear material.

In the case of the India deal, we are faced with another initial situation: the existing legal framework did provide a chance to obstruct the deal. Due to India's status as a nuclear power, the U.S. needed the NSG's consent for the nuclear trade agreement. Without the consent, it would have been a violation of international law. Following this rationale, future options for the international community seem obvious: If they aim at serious nonproliferation and disarmament efforts and wish to buttress this agenda, the only way is to resist the USA and, to be fair, other states attempting to engage in trade with nuclear devices, e.g. France. Two days after the U.S. - India deal, the government in Paris signed a contract with New Delhi too and has since then also been a major actor in the Middle East.

Apparently, a number of states did not approve of the U.S. deal. Yet, since it was mostly smaller and less powerful states, they were afraid of economic penalties by the big players

India and USA. According to some reports, they hoped for a signal by one of the more influential actors like Germany: Had they denied their permission, a lot of other states would have followed. Unfortunately, Germany also regarded good economic and political relations with the big nuclear powers as more valuable than commitment to the nonproliferation idea. As a united front against U.S. strategic interests is highly unlikely, the biggest hope for non-proliferation activists is a change in U.S. strategy itself. Only if the Obama Administration signs the CTBT and supports the NPT without additional exceptions will the prospects for the coming years be as positive as anticipated in 2009.

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