

THE GOOD FAITH ASSUMPTION

Different Paradigmatic Approaches to Nonproliferation Issues

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There are a number of competing paradigms on nonproliferation issues, each with their own self-consistent set of axioms that have to be dealt with on their own terms. If these different approaches are not appropriately acknowledged during discussions, they can become a permanent barrier to the resolution of underlying issues. This article identifies some of the key interest groups that are involved in discussions of nuclear nonproliferation issues and seeks to delineate the paradigmatic differences between these groups. These differences in approach can give rise to the perception that one or more of the parties to any discussion are arguing in bad faith. While bad faith may be a cause of at least some of the disputes that arise on nonproliferation issues, assuming bad faith as an explanation for these differences is counter-productive; it prevents any serious discussion of the issues underlying such disputes and obstructs attempts to reach a common understanding.

KEYWORDS: Nonproliferation; disarmament; safeguards; negotiations

There is a natural tendency to assume that all of the parties to any argument or discussion are using the same set of axioms to underpin the logic of debate. This tendency rests on an unstated assumption: that in any situation, the set of facts exists as a platonic ideal that can simply be accepted by all parties.¹ The effect is to assume that the facts and the weight applied to them exist separately from any questions of history, experience, or self-interest. The world is very rarely that simple, and in most practical situations this unstated assumption will be invalid. During discussions of complex topics, the assumption of a set of facts as a platonic ideal can give rise to the perception that one or more of the discussants are arguing in bad faith, when in fact a different set of axioms simply underlie their logic.²

This form of failure in communication arises with notable regularity during discussion of issues relating to nonproliferation and safeguards. A number of competing paradigms exist for these issues, each with their own self-consistent set of axioms that have to be dealt with on their own terms.

While bad faith may cause some nonproliferation disputes, automatically assuming bad faith as the explanation for the paradigmatic differences is counterproductive; it prevents serious discussion of the issues underlying such disputes and obstructs serious attempt to reach a common understanding. If the different paradigmatic approaches to

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nonproliferation issues cannot be appropriately acknowledged in discussions, they might prevent the resolution of the underlying problems.

This article will identify some of the key interest groups involved in discussions of nuclear nonproliferation issues and will seek to identify the paradigmatic differences between these groups that create substantial divergences in their approaches to nonproliferation issues.

Two Key Groups

The states that make up the Non-Aligned Movement (NAM) are a large and diverse group. It is difficult to make general statements about the NAM member states that apply equally well to the extreme ends of the spectrum of economic development, but there are elements of the NAM worldview that tend to recur whenever nonproliferation in general or nuclear safeguards in particular are the subject of discussion. The most important point is that, in general, NAM states tend to view nonproliferation commitments as being simply one element of a larger series of bargains.

While there are a range of attitudes within the NAM states toward attempts by the broader international community to control proliferation of weapons of mass destruction and their associated delivery systems, it is relatively common for these states to see technology control regimes as “north-south” issues. NAM members frequently express various degrees of skepticism toward the need for any form of nonproliferation regime.³ (This skepticism applies not just to nuclear, but also chemical, biological, and missile-related proliferation.) Some NAM members believe that technology holders are not really interested in limiting proliferation and are instead primarily interested in limiting economic development in “southern states.”⁴

A series of Western like-minded government groupings (WLGG) can be considered as having broadly consistent positions on nuclear nonproliferation issues.⁵ These include:

- The Western European and Others Group (WEOG) is an unofficial quasi-regional grouping. While the majority of WEOG states are in Europe, the group also contains Australia, Canada, New Zealand, and the United States (Israel is included in some UN contexts).
- The Vienna Group of 10 is an informal group of strong supporters of the NPT: Australia, Austria, Canada, Denmark, Hungary, Ireland, the Netherlands, New Zealand, Norway, and Sweden.⁶
- JUSCANZ (short for members Japan, United States, Canada, Australia, and New Zealand) is an informal caucusing group that convenes during nonproliferation-related meetings.

While there is a diversity of approaches to nonproliferation issues within these various groupings of Western states, they can all be characterized as strongly supportive of nonproliferation efforts. For the purposes of this article, the key difference in the paradigmatic approaches to nonproliferation issues adopted by the WLGG and the NAM is that the WLGG states place a high intrinsic value upon nonproliferation efforts and see

them as being valuable in their own right, rather than seeing them as one element of a package or bargain.

An additional group that is of relevance to this paper is the New Agenda Coalition (NAC), which consists of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden. The NAC is strongly committed to total and complete nuclear disarmament; as it stated in 1998: "We can no longer remain complacent at the reluctance of the nuclear-weapon states and the three nuclear-weapons-capable states to take that fundamental and requisite step, namely a clear commitment to the speedy, final and total elimination of their nuclear weapons and nuclear weapons capability and we urge them to take that step now."⁷

With its focus on disarmament, there is a fundamental tension in the NAC approach to nonproliferation and safeguards. The group combines states from both the NAM and WLGG. The WLGG states within NAC strongly and unconditionally support nuclear nonproliferation efforts, while the other members of the group tend to see nonproliferation efforts in the contingent terms of the NAM—as part of a wider bargain.

Treaty on the Non-Proliferation of Nuclear Weapons

It is clear from various NAM statements during Treaty on the Non-Proliferation of Nuclear Weapons (NPT) review conferences (RevCons) and preparatory committee meetings (PrepComs), that, collectively, the NAM states tend to see the NPT as a bargain struck between the non-nuclear weapon states and the nuclear weapon states.⁸ In its various public statements, the NAM generally refers to the NPT as constituting a "grand bargain." From the NAM viewpoint, the importance of the NPT rests upon "three pillars" commonly described as nonproliferation, nuclear disarmament, and peaceful uses of nuclear energy.

From this perspective the NAM non-nuclear weapon states have voluntarily given up their right to nuclear arms, and they expect that they will receive just recompense for their sacrifice.⁹ It is common for the NAM to describe lack of progress on any one of the pillars of the NPT as calling into question the entire NPT bargain.¹⁰

In contrast, among the WLGG states, the NPT bargain is more broadly seen as one of collective security.¹¹ In the WLGG states' view, all of the NPT's non-nuclear weapon states have a common interest in avoiding the ever-widening pressures of a destructive nuclear arms race. The NPT safeguards system provides assurance to each non-nuclear weapon state that their neighbors are respecting the NPT nonproliferation bargain. Among the WLGG states, nonproliferation in general and the safeguards regime specifically are seen as having an intrinsic value to individual member states, and there is broad acceptance of the value of safeguards to the collective international community.

WLGG states see a series of direct benefits that every state receives from membership in the NPT; the first is the opportunity to demonstrate to the international community compliance with nonproliferation obligations, and the second is confidence in the verified compliance of their neighbors.¹² This is not meant to suggest that the positive WLGG view of safeguards is entirely monolithic. Within the various groupings there are a

variety of shades of opinion with respect to the underlying rationale for the existence of an international NPT safeguards system.

The WLGG states with significant involvement in nuclear trade generally support safeguards as a means of ensuring that nuclear material, equipment, and technology supplied to others will remain in exclusively peaceful uses and will not contribute to the spread of nuclear weapons. With varying degrees of enthusiasm, they each accept that the civil nuclear industry and associated nuclear trade are net positives for the world and that a credible NPT safeguards system is essential to the continued existence of that industry.¹³

Other WLGG members (notably Austria, Ireland, and New Zealand), can be described as being nuclear energy skeptics. They tend to view the existence of both civil and military nuclear industries as unfortunate historic mistakes that will eventually be corrected. They generally accept that other nations have the sovereign right to have a nuclear industry, but their preference would be to have all other states join them in eschewing nuclear power.¹⁴ In the view of the nuclear energy skeptic states, safeguards are a necessary means of limiting the proliferation risks associated with the civil nuclear industry. They often add their voices to calls to increase the funding allocated to safeguards in the International Atomic Energy Agency (IAEA) program and budget.

Among WLGG states it is seldom necessary to justify the value attached to safeguards—within the like-minded groups the value is simply accepted. The positive view of nonproliferation and safeguards informs WLGG consideration of funding for nonproliferation efforts and by this means has a real influence on all nonproliferation developments. Yet it must be recognized that there are alternative views of nonproliferation regimes, such as those held by NAM states, which have their own weight and logic and have to be dealt with on their own terms. The divergent views can not simply be ignored or wished away.

NPT Article VI

In the context of the various PrepComs and RevCons, the divergence of views on the nature of the NPT bargain makes any discussion of NPT Article VI (the clause dealing with disarmament) particularly prone to misunderstanding. The NAM tends to accuse the five nuclear weapon states of failing to fulfill their part of the NPT grand bargain and to see this failure as cutting to the heart of the rationale for safeguards.¹⁵ In this context, the NAM tends to view efforts by WLGG non-nuclear weapon states to emphasize the importance of the safeguards system independent of any progress on Article VI as either a failure of logic or an act of bad faith.

From the WLGG perspective, in which safeguards are valuable regardless of the actions of the nuclear weapon states, the NAM states are seen as holding safeguards hostage to what WLGG perceive to be unrelated concerns. It is rare for either side in these discussions to actually engage on substantive issues, in large part because they have no common perception as to which issues are substantive. From the NAC perspective, Article VI is the linchpin to the success and acceptability of the NPT.¹⁶

In the short to medium term, this tension between the divergent views of the NPT bargain may be fundamentally irresolvable because the parties to the discussions want to

achieve very different things. In the much longer term, the problem may simply fade away as global economic development brings corresponding changes in attitudes toward nonproliferation in the emerging states of the NAM (or, pessimistically, global economic collapse causes a greater fraction of WLGG states to adopt views closer to those of the NAM).

Governance of the IAEA

The IAEA has two major policy-making organs: the Board of Governors (BOG) and the annual General Conference (GC) of member states. The BOG has four major meetings a year and is made up of thirty-five governors, some representing the advanced nuclear states and others from within regional groupings.¹⁷ The IAEA maintains comprehensive records of BOG discussions that are published through a restricted-access IAEA website referred to as GovAtom.

The composition of the BOG is balanced between developed and developing states. This balance is important because many of the board's major decisions are subject to the approval of the GC. The NAM, and states sympathetic to NAM positions, constitutes a substantial majority in the GC.¹⁸ There would be little point for the WLGG in dominating discussions in the BOG and then having the important decisions fail to gain the approval of the GC. The BOG members go to considerable effort to reach decisions by consensus wherever possible; this push to maintain consensus is often referred to as "the spirit of Vienna."¹⁹

The NAM approach to the IAEA is, in many ways, analogous to its approach to discussions of the NPT. The NAM view is that membership of the IAEA constitutes a bargain that encompasses the statutory mandate of the IAEA.²⁰ In discussions in the BOG and GC, NAM delegates refer frequently to the three pillars of the IAEA statute: technical cooperation and assistance, promotion of nuclear energy and nuclear applications, and safeguards.

NAM states place a very high value upon IAEA technical cooperation activities but do not generally consider that they receive any intrinsic benefit from the existence of the safeguards system.²¹ It is common for NAM delegations to express skepticism over the importance of safeguards. In the NAM view, acquiescence to the restrictions arising from the application of safeguards remains contingent upon the receipt by NAM states of access to nuclear technology or assistance.

To the WLGG states, the IAEA statute is simply an enabling framework for a working scientific, standard setting and regulatory organization rather than a bargain struck between the member states. WLGG states value the standards-setting functions of the IAEA and the assurance derived from safeguards, but the WLGG have little attachment to the nuclear promotion or technical cooperation aspects of the IAEA mandate. To the WLGG states, questions of "statutory balance" between the functions of the IAEA are simply irrelevant.

There are many WLGG-funded international organizations involved in the provision of technical assistance to developing states; the IAEA is only one of them. One reason that WLGG states do not share the NAM states' strong attachment to the IAEA technical

cooperation function is that, in the WLGG view, decisions on the provision of aid should generally be made on the basis of applying the most appropriate solutions to any given developmental problem. The IAEA provision of technical assistance is strongly biased toward nuclear applications and nuclear techniques, and such techniques may not provide the best solution to every developmental issue, especially in the context of emerging states.

The differing views on the importance of “statutory balance” and the utility of safeguards give rise to practical problems during the setting of the IAEA program and budget. The discussions that accompany the setting of the program and budget are characterized by repeated rounds of readjustment and compromise.²² The result is never viewed as entirely satisfactory by any of the parties involved.²³

The IAEA budgeting process is complex. Some activities are funded from the regular budget, some activities are funded by extra-budgetary contributions from member states, and some activities are funded from assessed voluntary contributions to the technical cooperation fund (TCF). Due to the application of zero real growth budgets for many of the last twenty years, combined with substantial increases in the IAEA’s areas of responsibility, there are a number of core business areas for the IAEA that are listed in the program and budget as Core Activities Unfunded in the Regular Budget.²⁴

The NAM view is that the funding allocation decisions in the program and budget should reflect the importance of each element of the IAEA statutory mandate—no one element of the program should be emphasized at the expense of any of the others. The NAM strongly opposes any proposals that would result in an increase in the regular budget for the IAEA safeguards activities unmatched by increases in funding for the other elements of the statutory mandate. It is common for NAM governors to protest during their interventions in BOG sessions on the program and budget that the voluntary nature of the TCF contributions goes against the spirit of the IAEA statutory bargain. It is also common for NAM board members to call for money that is currently allocated for safeguards and verification to be reassigned to the TCF.

The NAM has actively opposed having nuclear security activities funded through the IAEA regular budget, principally because nuclear security is not a function provided for in the IAEA statute (traditionally having been seen as a sovereign responsibility of the member states).²⁵ Some NAM governors have suggested that their objections to funding nuclear security in the regular budget could be dropped if consensus could be reached on having the technical cooperation funding likewise made a matter for the regular budget.

The majority WLGG view is that growth in funding for IAEA programs should be tightly constrained, but safeguards and verification are seen as special cases that should be evaluated in terms of effectiveness and efficiency rather than any, in the WLGG view, irrelevant considerations of “statutory balance.”²⁶

The WLGG position on funding for IAEA activities is far from uniform. Some within the WLGG are willing to support substantial increases in the IAEA regular budget. Others have proposed substantial reductions to the funding of non-safeguards elements of the IAEA budget with the savings redirected to safeguards. The default negotiating positions of the three WLGG non-nuclear weapon states with the largest and most active nuclear programs (Canada, Japan, and Germany) are, preferably, “zero nominal growth,” or as a

fallback position, “zero real growth” in the IAEA regular budget.²⁷ They are only prepared to countenance discussion of budget increases in extraordinary circumstances.

It is important to emphasize that Canada, Japan, and Germany are strongly supportive of the NPT safeguards system in general, but they each have particular reservations with respect to the costs of administering safeguards in their respective jurisdictions. Canada, Japan, and Germany tend to argue that any safeguards effort should be allocated in line with real proliferation risks rather than having the effort increase monotonically with the size of the state’s nuclear program. Canada, Japan, and Germany each administer large and well-funded member state safeguards support programs to provide research and development assistance to the IAEA for the safeguards system. They also provide substantial extra-budgetary funding to the IAEA.²⁸ In discussions of the effectiveness and efficiency of safeguards, they have tended to champion efficiency even if that entails some potential reductions in effectiveness.

WLGG efforts to address NAM concerns of “statutory balance” in setting the IAEA program and budget can only be successful if they address the actual basis of those concerns. This requires recognizing the NAM view of the IAEA statute as a bargain between member states. It also requires good faith efforts by the WLGG to get the NAM to accept a change in the basis on which the bargain is struck, perhaps in the form of assistance in general, rather than technical, cooperation.

BOG Consideration of Iran Safeguards

The fundamental differences in the paradigmatic approaches of the NAM and the WLGG to safeguards obligations and the role of the IAEA have been brought into sharp relief by the BOG consideration of issues relating to the application of NPT safeguards in Iran. Mohamed ElBaradei, the IAEA director general, has been reporting on Iran safeguards issues to the BOG at most of its regular meetings since early 2003.²⁹

The NAM as a group has been broadly supportive of Iran during the process and has generally treated the various issues raised in the director general’s reports as procedural matters that can all be resolved.³⁰ The WLGG has viewed the same issues as violations of treaty obligations and has sought to report the noncompliance to the UN Security Council in accordance with the relevant provisions of the statute and Iran’s comprehensive safeguards agreement with the IAEA.³¹

As noted above, the NAM view is that the acceptance of safeguards is contingent upon receipt of a package of benefits. It is only a short step from this view to perceive it as reasonable for a state to withhold compliance with safeguards if the expected benefits of membership in the NPT and the IAEA are withheld.

The NAM view in the case of Iran is that, since nuclear technology is an inalienable right under Article IV of the NPT, Iran was justified in using secondary market sources to acquire nuclear technology if the path to acquisition was blocked by various WLGG technology control regimes.³² NAM delegations also frequently raised lack of progress on NPT Article VI by the nuclear weapon states and Israel’s purported nuclear capabilities in any discussion of Iran, with the apparent implication that it was unfair to question Iran too

closely on these issues when no similar questions were being raised about the nuclear weapon states or Israel. In broad terms, the NAM considered that all of Iran's actions were justified by the circumstances in which it found itself. Since Iran's noncompliance is seen by the NAM as both largely justified and basically procedural, the NAM states tend to see coming back into compliance as a matter of simply completing the appropriate reports and allowing the necessary inspections.³³ In the NAM view, the fact that Iran's past declarations were found to contain inaccurate or incomplete information does not lower confidence that future declarations will be both complete and accurate. NAM delegations consistently raised the following points in their BOG interventions during discussions of Iran:

- that errors in declarations by member states to the IAEA are common and such issues are usually resolved by submitting corrected paperwork;
- that Iran had been denied access to nuclear technology;
- the nuclear weapon states had made little progress on fulfilling their NPT Article VI disarmament obligations; and
- that Israel had never accepted any requirement to disarm.

In contrast, the WLGG states view safeguards obligations as contingent only upon accession to the NPT and the completion of a comprehensive safeguards agreement with the IAEA. The requirement to comply with safeguards obligations is not dependent upon any actions on the part of others or on the receipt of any benefits. The WLGG states view failure to comply with safeguards obligations as a threat to international peace and security that should be reported as such to the UN Security Council as soon as it is confirmed. In the WLGG view, the fact that Iran's past declarations were found to contain inaccurate or incomplete information creates a substantial degree of doubt that future declarations will be both complete and accurate. The WLGG states believe that Iran's actions have created a substantial confidence deficit that can only be addressed by allowing extraordinary levels of transparency and access for the IAEA. In BOG interventions, WLGG delegations would note that:

- the failure to report materials and facilities to the IAEA represented noncompliance in terms of both the statute and Iran's comprehensive safeguards agreement with the IAEA;³⁴
- Iran's declarations had been found to be both incomplete and inaccurate and many of its explanations for these problems had been found to be incorrect;
- Article XII.C of the IAEA statute and Article 19 of Iran's comprehensive safeguards agreement require that noncompliance be reported to the Security Council; and
- the deliberate evasion of export control requirements provided evidence that Iran knew the related activities were contrary to international obligations.

These differences in paradigmatic approaches to safeguards obligations made meaningful discussion of the Iran issue between NAM and WLGG delegations to the BOG frustrating for all parties. The WLGG largely considered NAM interventions on Iran disingenuous and, for the most part, irrelevant to the issue under consideration. The NAM

largely considered WLGG interventions on the same issue to be an attempt to deny Iran access to technology or an overreaction to a largely procedural issue.

These differences in approach also strongly colored NAM and WLGG delegations' responses to the presentation of new information by the IAEA Secretariat. On February 22, 2008, the IAEA's director general issued a new report on Iran.³⁵ This report was followed by a closed technical briefing for BOG delegations on February 25, 2008 by the IAEA's deputy director general for safeguards in which information was presented on the alleged weaponization studies by Iran that were the subject of the IAEA's further investigation. The WLGG delegations considered the information important indicators of the intent of Iran's noncompliance. The NAM states formally complained during the subsequent BOG meeting that it was inappropriate for this sort of accusation to be made by the deputy director general during a technical briefing (which, in the NAM view, should have confined itself to detailed technical explanations of the director general's report).

The IAEA General Conference

The IAEA GC runs each year for one week and is open to all members of the IAEA. It is also attended by a wide variety of recognized observers, such as major industrial firms, research institutes, and nongovernmental organizations. The IAEA maintains comprehensive records of certain types of GC discussions; these records are accessible through the public IAEA website. The GC provides an opportunity for the member states of the IAEA to give the IAEA Secretariat policy direction on a wide range of issues. This direction is provided in the form of a series of resolutions sponsored by various subgroups of member states.

The resolutions cover the full range of statutory responsibility of the IAEA. The sponsors of these resolutions seek the widest possible list of cosponsors and to have their resolutions accepted by consensus during the plenary sessions of the GC. The likelihood of achieving consensus on any particular resolution is highly dependent upon the degree of controversy associated with the resolution, the transparency and responsiveness of the process of negotiation, the process used to seek consensus, and the means used to bring the resolution to the plenary.

The process for the management of the GC is detailed in the "Rules of Procedure of the General Conference."³⁶ The GC meets in an initial plenary session and then convenes as a general committee. The general committee refers the management of most of the business of the GC (including the management of the resolution process) to the Committee of the Whole (COW).

Resolutions associated with long-running GC agenda items have a traditional group of original sponsors, and those sponsors seek to gain the broadest possible acceptance of the text before the text is tabled in the COW. The traditional sponsors of each resolution are generally aware of the sensitivities arising from their resolution text and they know with whom they need to discuss these issues to gain consensus. Some resolutions are negotiated to a consensus text before they are tabled in the COW. Other resolutions

require a relatively straightforward process of continuing negotiation that can be conducted in the COW; if this process of negotiation becomes unexpectedly too complex to be addressed in the COW, it will generally be referred to a separate working group. A few resolutions (such as technical cooperation and safeguards) are considered so contentious that they are always referred immediately to working groups in an effort to seek consensus.

In addition to the views of the NAM, WLGG, and NAC, there are other viewpoints that need to be considered in discussions that take place at the GC. These groupings will be defined, in context, as they arise.

Arab Group GC Resolutions

The Arab Group, which consists of the self-identified Arabic-speaking IAEA member states who choose to work collectively, holds many of the common NAM positions, but it tends to view all issues relating to nonproliferation through the perspective of a deep suspicion of Israel. The Arab Group considers establishment of a nuclear-weapon-free zone in the Middle East to be a higher priority than any improvements to the existing safeguards system, and it opposes efforts to universalize the Additional Protocol unless this proceeds in tandem with universalization of the NPT. The Arab Group considers the asymmetric safeguards obligations applying to states in the Middle East region to be an obvious injustice that should be opposed by all states.

The Arab Group sponsors one resolution and one agenda item that are negotiated separately from the COW. The first of these is a resolution entitled "Application of IAEA Safeguards in the Middle East," and the second is an agenda item entitled "Israeli Nuclear Capabilities and Threat."³⁷ There is a substantial degree of controversy associated with these items, and there is no realistic prospect of either attaining consensus in the plenary, except in the context of some form of major compromise by all parties. Extensive lobbying and debate is associated with these items, but because only a small fraction of this lobbying takes place in the GC plenary there is little in the way of a permanent historic record that can be examined by interested parties (the fact that lobbying and debate has taken place is recorded in the statements that various parties make in the plenary debate).

From 1991 to 2005, the two Arab Group agenda items were dealt with via a compromise package in which the "Application of IAEA Safeguards in the Middle East" resolution was adopted by the plenary without a vote, and the agenda item "Israeli Nuclear Capabilities and Threat" was dealt with by a presidential statement that covered largely procedural issues. In 2006, the Arab Group sought to have both of the items dealt with in the GC plenary, and WLGG states used procedural measures to adjourn debate. In 2007, the "Application of IAEA Safeguards in the Middle East" resolution was adopted in the plenary by a roll-call vote, but the result would have been a considerable disappointment to the Arab Group, as it garnered fifty-three votes in favor, two against, and forty-seven abstentions (as compared to the adoption without a vote from 1991 to 2005).

GC Resolutions and the Nuclear Energy Skeptics

As noted above, there is an influential group of nuclear energy skeptics within the WLGG (Austria, Ireland, and New Zealand). They are strong and active supporters of the safeguards system but oppose the expansion of nuclear energy at every opportunity. The nuclear energy skeptics are active in each of the Western like-minded government groupings that are considered in this article.

Nuclear energy skeptic delegations are active in the negotiation of every GC resolution that is dealt with by the COW. Because consensus is the goal for every resolution, the skeptics are able to exert a major influence on the process of negotiating resolution texts. They are particularly sensitive to any suggestion that nuclear energy has the potential to solve environmental issues such as anthropogenic climate change or uneven economic development. In order to gain consensus, any such references must balance the enthusiasm of many delegations with the skeptical views of states such as Austria, Ireland, and New Zealand. Exerting an influence on these processes requires considerable effort since the GC delegations of the nuclear energy skeptics are relatively small.

Case Study: Negotiation of the GC Safeguards Resolution

The annual resolution entitled “Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol”—the safeguards resolution—allows IAEA member states to provide policy guidance to the IAEA Secretariat on the operation of the safeguards system and also provides an opportunity for the member states to collectively endorse the measures taken by the Secretariat to improve the effectiveness and efficiency of the safeguards system. The process of negotiating the safeguards resolution represents an interesting case study for two major reasons. The first is that every major strain of thought toward the safeguards system within the international community is represented in the working group. The second is that the proceedings of the working group and the process of negotiation of the resolution text, both before and during the GC, have been very well documented since 2005 (these records have been produced by the working group itself and are in addition to those maintained by the IAEA Secretariat). Each proposal for changes to the resolution text has been documented in real-time and an updated text e-mailed to working group participants and other interested parties as each session ends.

The existence of this additional archive of messages makes the safeguards resolution process particularly transparent. In recent years the resolution has been sponsored by the presidency of the European Union, with Austria invited to take the lead for the EU. Austria is assisted in the preparation of the resolution by a core group of interested states (in recent years this group has consisted of Australia, Canada, and the United Kingdom). The core group includes a relatively wide range of levels of involvement in the safeguards system.

The group is led by one of the leading nuclear energy skeptic states, but also includes one nuclear weapon state, one non-nuclear weapon state with a substantial nuclear energy program, and one non-nuclear weapon state with involvement in only the

very earliest stages of the fuel cycle. The common thread uniting the core group is that they represent states that are very strong supporters of the safeguards system. The text of the draft resolution is distributed within the core group up to six months before the GC.

After drafting and negotiation within the core group, the draft resolution text is shared with some elements of the IAEA Secretariat (External Affairs and Policy Coordination, Office of Legal Affairs, and Division of Safeguards Concepts and Planning) and with states outside of the core group. The choice of states with which to share the text is made on the basis of past involvement in the resolution working group at the GC and often includes NAM states. After the comments from interested parties have been incorporated into the text, it goes through an EU coordination process before being finalized. In some years the EU text has been agreed in the week before the GC, but in other years agreement is not reached until the Tuesday or Wednesday of the GC. Only after the text receives final approval as an EU agreed text is it distributed to any and all interested parties and the working group convened.

The chair of the safeguards resolution working group is usually an experienced diplomat from a European state. (Recent chairs have included a Norwegian in 2006 and 2007, an Irishman in 2005, a Finn in 2004, a Czech in 2003, an Italian in 2002, and a Slovenian in 2001.) The chair is expected to act as an honest broker mediating between the disparate interests taking part in the negotiation.

The process of negotiation during the last four years has been characterized by a largely collegial approach, though the text of the resolution remains highly contentious. The working group frequently has as many as fifty members and typically includes delegations from Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Egypt, Finland, France, Germany, India, Iran, Ireland, Italy, Japan, Libya, Luxembourg, Malaysia, Netherlands, Norway, Pakistan, Russia, South Africa, Sweden, Switzerland, Syria, the United Kingdom, and the United States (Morocco, Israel, and Singapore tend to participate on an intermittent basis). The NAM participants actively engage in the discussion, frequently proposing new text or amendments to the existing text.

A series of distinct paradigmatic approaches to the safeguards resolution can be clearly identified from the various contributions that the delegations taking part in the working group have made to the resolution text.

The NAM position is not uniform, but it does have some common themes. The first is that safeguards are only one element of the IAEA's statutory mandate and that balance in the mandate must be maintained. The second is that safeguards obligations are contingent upon access to nuclear technology and technical assistance. The third is that efforts to strengthen the safeguards system should avoid disproportionate impact on developing countries.

The WLGG delegations to the working group all share the common position that the IAEA's safeguards system has an intrinsic value to the entire international community, and they all place a very high value on efforts to ensure that the safeguards system is both effective and efficient. Working from this foundational position of support for the strengthening of the safeguards system, there are two broadly different approaches within the WLGG to each year's negotiation process. The first approach is conservative: it sees the previous year's resolution text as an appropriate balance of policy guidance to the

Secretariat and positive recognition of the value of safeguards. The conservative approach to the resolution is simply to update any factual references contained within the text and approach substantive changes to the text with caution. The second approach is progressive: it seeks to continually reinforce the support for strengthened safeguards embodied in the text. The progressive approach is to offer substantive changes to major elements of the text with the expectation that each year's resolution will be stronger than the last. The balance within the WLGG between the conservative and progressive approaches changes from year to year.

Individual delegations also have identifiable positions that influence the process of negotiation.

As non-members of the NPT regime, India, Israel, and Pakistan are particularly sensitive to calls by the GC to universalize NPT obligations. The three non-NPT states each hold broadly similar positions with respect to their nonproliferation obligations and react forcefully to any suggestion that they are outside of the safeguards system.³⁸

Brazil sees a very strong distinction between the compulsory safeguards measures contained in the various comprehensive safeguards agreements and the voluntary measures arising from the Model Additional Protocol.³⁹ The Brazilian delegation resists efforts to describe the Additional Protocol as being necessary for the IAEA to derive credible assurance as to the absence of undeclared activities in member states. The Brazilian delegation is also wary of providing the IAEA with an open mandate to apply new technologies and new approaches to the application of safeguards.

South Africa seeks to engage actively in the process of negotiation in support of NAM positions. It is adamant that minority voices should be heard and accommodated during the process of negotiation. Working closely with Brazil, South Africa resists efforts to describe the newer safeguards measures as an "enhanced verification standard."

Iran takes the view that efforts to strengthen the safeguards system have proven ineffective in practice. The basis for the Iranian position is that the IAEA was given the opportunity to apply the provisions of the Additional Protocol in Iran for two years without being able to verify that there were no undeclared materials or activities in Iran. Iran objects strongly to any singling out of individual states in the text of the resolution.

Egypt believes that efforts to strengthen the safeguards system should be held in abeyance until the NPT has been adopted universally. Syria takes an extremely conservative view of the safeguards resolution text and resists any change to the text; the Egyptian and Syrian delegations frequently take strong positions on textual issues and are often isolated in their negotiating positions.

Navigating the Controversies

The current form of the safeguards resolution was established when the previous model of the resolution underwent a major rewrite during the 1997 GC. The 1997 rewrite reflected the move toward a strengthened safeguards system and the advent of the Model Additional Protocol.⁴⁰ Controversies over elements of the text recur from year to year. While there are significant elements of the resolution text that have remained unchanged

since 1997, every substantive element of text in the resolution has been subject to repeated processes of debate, negotiation, and compromise. This article will review major controversies related to the resolution.

The title of the resolution, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," has been unchanged since 1997.⁴¹ This title was originally intended to reflect the need for any additional protocols to safeguards agreements to be negotiated in accordance with the model that was agreed by the BOG in 1997. As this point is now dealt with substantively in operative paragraph 10 of the resolution, the majority of the delegations taking part in the working group would prefer to change the title to, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Implementation of the Additional Protocol" (dropping the word "Model" and replacing the word "Application" with "Implementation"), on the understanding that it is the actual additional protocols that are implemented rather than the Model Additional Protocol.

Many delegations would also accept a return to the resolution title that was used in 1996 and earlier, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System" (dropping the words "and Application of the Model Additional Protocol"), on the understanding that after ten years of application, the Additional Protocol is simply a part of the safeguards system, rather than something that stands apart.

Unmoved by either of these lines of reasoning, Syria and Egypt strongly oppose changes to the title of the resolution and are prepared to block consensus on the resolution rather than accept a change in the title. Arguments over the title of the resolution take place with various levels of vehemence from year to year, but there is no real prospect of a solution to the title issue unless Syria and Egypt are prepared to join the broader consensus.

The text of preambular paragraph (b) has been unchanged since 2003.⁴² Repeated proposals have been made to amend the text since 2003, but none have made it through the negotiation process.

The text of preambular paragraph (c) has been unchanged since 2000, but this lack of change masks a major controversy over the text.⁴³ Each year there are proposals to amend the text to include references to the Central Asian Nuclear-Weapon-Free Zone (CANWFZ). Reference to the CANWFZ is opposed by some of the nuclear weapon state delegations taking part in the working group due to reservations over the process used to negotiate the CANWFZ text.

The text of operative paragraph 3 has been unchanged since 2001.⁴⁴ While the text is open to a variety of interpretations, it can be read as a call from the GC for all states to sign the NPT. The governments of India, Israel, and Pakistan have decided not to sign the NPT, and so their delegations are unable to join consensus on such a call. Rather than block consensus on the entire resolution, India, Israel, and Pakistan have requested that the text of that paragraph of the resolution be voted on separately, and, up until 2007, the balance of the text of the safeguards resolution was adopted without a vote in the plenary.⁴⁵ Most of the delegations taking part in the working group would be prepared to

consider proposals to change the text, but Egypt, Syria, and some others strongly oppose any changes to meet the concerns of the non-NPT delegations.

The text of operative paragraph 4 was unchanged from 1997 to 2006 and was largely seen as uncontroversial during that time.⁴⁶ In 2007 Iran proposed deleting the paragraph on the grounds that the subject matter was no longer relevant. Iran found very little support for its position in the working group but was adamant that it was prepared to block consensus on the resolution overall if the text was not deleted or substantively modified. Debate on this issue within the working group was unusually heated, with many delegations drawing attention to the fact that Iran was seeking to delete or alter a paragraph that contained the phrase "in compliance with their respective international commitments" after having been found in noncompliance by the BOG. It was not possible to resolve the issues relating to the section's text in the working group, and so the discussion was carried over to the COW, where Iran was able to accept the text with the deletion of the words "and universally."

In 2007, the Egyptian delegation sought to introduce three new preambular paragraphs and one new operative paragraph into the text of the resolution.⁴⁷ Each of the proposed Egyptian additions to the text was strongly opposed by the majority of working group delegations. Preambular paragraph (c bis) was opposed because it paralleled a resolution on safeguards in the Middle East that had failed to achieve consensus. Preambular paragraphs (c ter) and (i bis) and operative paragraph (1 bis) were opposed because they sought to broaden the subject matter of the safeguards resolution to include the IAEA role in disarmament processes. Many delegations intervening in the discussion of this issue noted that they did not object to the sentiment expressed in Egypt's proposed disarmament text, but that they considered the text inappropriate for inclusion in a safeguards resolution.⁴⁸

Proposals to modify, add, or delete text are a normal part of the process of negotiating the resolution, and in most cases the working group will discuss any proposals put forward and arrive at an acceptable compromise that is able to attain consensus within the group. The Egyptian proposals did not fit into the usual pattern of negotiation (followed either by acceptance, rejection, or modification). In spite of strong opposition by the majority of the working group delegations, Egypt was extremely committed to having its proposed text included as part of the resolution. The Brazilian and South African delegations engaged actively on the issue and proposed an alternative text that dealt with the disarmament issue in a way that was considered more likely to gain consensus.⁴⁹ The Egyptian delegation rejected the compromise text, and when it was unable to convince either the working group or the COW to accept its text it insisted on bringing the entire resolution to a vote in the plenary.⁵⁰ The resolution was adopted in the plenary by roll-call vote with positive votes by eighty delegations present (including a number of Arab Group members) and abstentions from eleven Arab Group members and Iran.⁵¹

The "spirit of Vienna" and the desire to maintain consensus on resolutions gives minority positions a great deal of weight; if the minority feels that the majority has ignored its views, it can simply withhold consensus. In effect, the push for consensus gives every interested delegation the power of veto. In the 2007 safeguards resolution working group, Egyptian, Syrian, and Iranian delegations were able to prevent changes to the resolution

text that they disagreed with by simply refusing to join a consensus for change. If the majority of delegations taking part in the working group are aware that the resolution is to be voted on in any event, then the majority may perceive that there is no reason to take these minority views into account as there is no consensus to preserve. By forcing a roll-call vote on the safeguards resolution, Egypt has broken consensus and fashioned a volatile and unpredictable state of affairs for the 2008 GC. As Egypt is the champion of some minority positions in the safeguards resolution working group, it is not clear that this new state of affairs will work to Egypt's benefit.

Conclusions

In order to establish meaningful communication on issues relating to nuclear nonproliferation and the safeguards system between the two key groups identified in this paper, it is necessary for the parties to the discussion to have a common basis of understanding, a foundation upon which to build. In the case of the NAM and the WLGG, the underlying paradigmatic approaches to proliferation issues are so profoundly different that they make substantive discussion nearly impossible.

Only when all parties involved in nonproliferation issues are prepared to acknowledge the good faith behind one another's negotiating positions will progress be possible. There are no simple solutions to this dilemma, but recognizing that the various parties to the discussion have differing understandings of the problem and differing expectations and goals for any solution will provide a real opportunity to search for realistic ways forward.

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NOTES

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2. Alfred J. Ayer, *Language, Truth and Logic* (London: Penguin Books, 1936), pp. 64–66.
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5. The acronym WLGG is not normally used in any context beyond this article; it is simply a shorthand way of referring to the various the Western groups of interest to this article. It is more common to simply use the term "like-minded" to refer to these groupings, but that term would be readily misinterpreted when discussing the differences between disparate groups.
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8. Statement by Ambassador Augustine P. Mahiga, permanent representative of the United Republic of Tanzania to the United Nations, 2005 NPT RevCon, May 5, 2005.

9. Statement by Ambassador Le Luong Minh, permanent representative of Vietnam to the United Nations, 2005 NPT RevCon, May 5, 2005.
10. Statement by Abdul S. Minty, South Africa's governor to the IAEA Board of Governors, to the 2005 NPT RevCon, May 3, 2005.
11. Working paper submitted by Australia, "Perspectives on Issues Related to Cluster 2," NPT/CONF.2010/PC.I/WP.32, May 7, 2007, NPT PrepCom.
12. IAEA, "Record of the 1093th Meeting of the IAEA Board of Governors," paras. 12–31, GOV/OR.1093, June 18, 2003.
13. IAEA, "Record of the 1094th Meeting of the IAEA Board of Governors," para. 73, GOV/OR.1094, March 13, 2004.
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15. UN General Assembly, Statement by Mr. Ismail of Malaysia, fifty-eighth session, New York, A/58/PV.55, November 4, 2003.
16. IAEA, INFCIRC/565.
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18. IAEA, "Provisional Rules of Procedure of the Board of Governors," as amended up to February 23, 1989.
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23. IAEA, "Programme and Budget Committee Record of the 268th Meeting Held at Headquarters," GOV/COM.9/OR.268, Vienna, May 10, 2007.
24. IAEA, "The Agency's Draft Programme and Budget 2008–2009," Nuclear Verification: Table 17, p. 201.
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28. IAEA, "The Agency's Accounts for 2006," GOV/2007/13, April 10, 2007, p. 1.
29. IAEA Reports of the Director General: GOV/2003/40, June 6, 2003; GOV/2003/63, August 26, 2003; GOV/2003/75, November 10, 2003; GOV/2004/11, February 24, 2004; GOV/2004/34, June 1, 2004; GOV/2004/60, September 1, 2004; GOV/2004/83, November 15, 2004; GOV/2005/67, September 2, 2005; GOV/2005/87, November 18, 2005; GOV/2006/15, February 27, 2006; GOV/2006/27, April 28, 2006; GOV/2006/38, June 8, 2006; GOV/2006/53, August 31, 2006; GOV/2006/64, November 14, 2006; GOV/2007/8, February 22, 2007; GOV/2007/22, May 23, 2007; GOV/2007/48, August 30, 2007; GOV/2007/58, November 15, 2007; and GOV/2008/4, February 22, 2008.
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32. IAEA, "Communication Dated 12 September 2005 from the Permanent Mission of the Islamic Republic of Iran to the Agency," INFCIRC/657, September 15, 2005, p. 31.
33. IAEA, "Excerpt from the Record of the 1094th Meeting of the Board Of Governors," GOV/OR.1094, released May 2004, p. 4.
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40. IAEA, INFCIRC/540 (corrected).
41. IAEA, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," GC(51)/RES/15, September 2007, <www.iaea.org/About/Policy/GC/GC51/GC51Resolutions/English/gc51res-15_en.pdf>; IAEA, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," GC(39)/RES/17, September 1997.
42. IAEA GC, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," GC(51)/RES/15, part (b): "Convinced that the Agency's safeguards promote greater confidence among States, inter alia by providing assurance that States are complying with their obligations under relevant safeguards agreements, and thus contribute to strengthening their collective security" (emphasis in original).
43. IAEA GC, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," GC(51)/RES/15, part (c): "Considering the Treaty on the Non-Proliferation of Nuclear Weapons, the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, the South Pacific Nuclear Free Zone Treaty, the African Nuclear-Weapon-Free Zone Treaty and the Treaty on the Southeast Asia Nuclear-Weapon-Free Zone and the Agency's essential role in applying safeguards in accordance with the relevant articles of these treaties" (emphasis in original).
44. IAEA GC, "Strengthening the Effectiveness and Improving the Efficiency of the Safeguards System and Application of the Model Additional Protocol," GC(51)/RES/15, section 3: "Bearing in mind the importance of achieving the universal application of the Agency's safeguards system, urges all States which have yet to bring into force comprehensive safeguards agreements to do so as soon as possible" (emphasis in original).
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essential role in applying safeguards in this context"; (c ter): "Recalling that the Agency in carrying out its functions in accordance with Art III.B.1 of the Statute, shall conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation, and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies"; (i bis): "Recalling that, in its final document, the 2000 NPT Review Conference agreed on practical steps for the systematic and progressive efforts to implement Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons including arrangements by all nuclear-weapon States to place, as soon as practicable, fissile material designated by each of them as no longer required for military purposes under IAEA or other relevant international verification and arrangements for the disposition of such material for peaceful purposes, to ensure that such material remains permanently outside military programmes"; and (1 bis): "Encourages the Secretariat, in accordance with article III.B.1 of the Statute, to enhance the role of the Agency (to assist) in furthering the establishment of safeguarded worldwide disarmament in conformity with the policies of the United Nations and in conformity with any international agreements entered into pursuant to such policies."

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