

Israel and the CTBT

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Statements by the Obama administration that it hopes to ratify the Comprehensive Nuclear Test Ban Treaty (CTBT), together with discussion of the CTBT at the NPT Review Conference this past May, invite a reexamination of Israel's stance on the treaty, its considerations regarding ratification, and its interests vis-à-vis the treaty. Israel signed the CTBT in September 1996 when it was first opened for signature, but it has yet to ratify the treaty.

A presidential decision alone does not allow the United States to ratify the treaty. Rather, ratification must be approved by a two thirds majority of the Senate, a level of support that President Clinton was unable to muster. President Obama is determined to promote the treaty's ratification, part of his broader agenda of nuclear disarmament and increased cooperation with multilateral arrangements. His strong track record in matters connected to internal political affairs in Washington augurs well for this endeavor. However, the Senate – whose political composition has changed since the Clinton era – will soon debate an agreement between the United States and Russia on limiting nuclear warheads, an agreement that will require serious efforts by the administration for ratification approval. The increasingly critical atmosphere in the Republican party regarding the administration's policy has made it difficult to garner Republican support for ratification (the support of a number of Republican members of Congress is essential for the required majority). Coupled with the foreseeable changes that will occur in the Senate as a result of the midterm elections in November, there is no guaranteed improvement in the prospects of enlisting the majority required for ratification.

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Although the Obama administration is thus unlikely to achieve the goal, any future ratification of the treaty by the Senate will create a new dynamic regarding the treaty that will obligate Israel to examine its policy anew. This article analyzes Israel's main considerations on ratification of the treaty; the validity of those concerns; if these concerns have materialized; and if there are other important political or strategic considerations that justify further examination.

The Road to Ratification

Israel signed the CTBT and figures among the 44 "Annex 2 states" whose joining the treaty (including ratification) is a prerequisite for the treaty entering into force.¹ On the basic level, Israel's joining the treaty does not contradict Israel's overall policy in the nuclear field. Signing the CTBT was even presented as one of the central components of Israel's updated policy on weapons control, a policy that involves cooperation with multilateral agreements while at the same time protecting Israel's security interests. This is undoubtedly the most important step to consider when examining the application of this policy as it plays out in the nuclear realm.

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Israel's willingness in principle to join the treaty was apparent in the positive approach it demonstrated in the framework of various activities conducted by the CTBT organization's preparatory committee, which is working to bring the treaty into force. Its active cooperation in formulating the procedures for on-site inspection, which are supposed to organize the manner of inspection in the event of a complaint as to a violation of the treaty, was especially noteworthy. Israel has also established two auxiliary seismic monitoring stations (in Eilat and in Meron) in the framework of the treaty's monitoring system. In addition, Israel has publicly expressed support for the treaty at every opportunity, even during the

years of the Bush administration, when it was clear that the United States did not intend to ratify the treaty.

In the many statements issued at the various frameworks concerning the CTBT (the IAEA Conference, the UN General Assembly's First Committee, the conference for ratifying states, and others), Israel clarified its three main considerations regarding ratification of the treaty: completion of the inspection system, including rules governing the "on-site inspections" that prevent their misuse by other states; Israel's right to an equal status in the framework of the treaty's institutions that determine policy; and regional concerns, for example, Israel's declaration at the September 2009 conference to promote the CTBT's entry into force.²

Completion of the Inspection System

Completion of the International Monitoring System (IMS), the system of receiving and analyzing signals recorded by the International Data Centers (IDC), and the formulation of inspection processes – especially those relating to on-site inspection – are necessary in order to prevent the misuse of the treaty's surveillance system to expose sensitive security information or to create political pressure. Israel is a small country brimming with sensitive security facilities. Any investigation of claims that Israel has breached the treaty may potentially lead the inspectors to areas where these facilities are located. Requests to limit the inspectors may potentially lead to ungrounded accusations against Israel.

The circumstances created by regional politics heighten the chances of the treaty's misuse to expose critical information or to humiliate Israel. The automatic enlistment of the Arab world, the Muslim population, and at times the countries of the Non-Aligned Movement (NAM) to support all means of isolating Israel is another reason for concern. The "special treatment" that Israel receives in any international framework, from the human rights conference in Geneva to the NPT Review Conference, the universal jurisdiction laws used in different countries primarily against Israelis, and other examples all suggest that a number of clauses in the treaty could well be misused for the sole purpose of harming Israel.

To assuage the fear that the inspection mechanisms could be misused, it is often claimed that to date there has never been any implementation of invasive mechanisms such as IAEA special inspections (in the event of suspected breach of the NPT). The IAEA's decision to send a special inspection to North Korea was never carried out because of North Korea's refusal to allow the delegation entry into its territory. Similarly,

the Organisation for the Prohibition of Chemical Weapons (OPCW) was never called on to undertake challenge inspections to verify whether the Chemical Weapons Convention was breached. This is despite the fact that over the years there were various indications that these treaties were breached by member countries.

The problem is that this argument not only fails to allay the fears of discriminatory misuse of these mechanisms against Israel; it actually reinforces them. The international community's avoidance of invasive monitoring mechanisms, such as the IAEA's special inspection or the OPCW challenge inspection, stems primarily from geopolitical considerations. It is eminently likely that these considerations would not prevent – and might even encourage – states to act against Israel, the regional and international circumstances being such that the vast majority is automatically anti-Israel in nearly every multilateral framework.

Israel's involvement in the formulation of the on-site inspection procedures, the demand for their completion, and the insistence that the supervision will focus solely on what lies within the treaty's purview are intended to ensure that the procedures would not be misused to the detriment of Israel's security interests on the basis of false accusations.

The Right to Equal Status

According to the rules of the treaty (article 2, section C, paragraphs 28 and 29), the CTBTO's executive council is appointed by dividing up into regional (geographic) frameworks that elect their own representatives, who are then presented for approval by the member states. According to the regional division determined by the treaty (Appendix 1), Israel lies in the Middle East and South Asia region (MESA). This regional group, however, is currently non-operational due to Iran's refusal to participate in any group that includes Israel. As such, Israel's right to equal opportunity is hindered by the organization responsible for implementation of the treaty.

Regional Considerations

There are those who tend to interpret regional concerns as related primarily to Iran's and Egypt's figuring among the 44 "Annex 2 states." This is a significant consideration indeed.³ Despite the fact that within the framework of the NPT the testing of nuclear explosive devices by any

of the countries in the region is in any case prohibited, it appears that from a “legal” standpoint, joining the CTBT would indicate a slightly deeper commitment (commitment to the CTBT continues even in the event that a country leaves the NPT) as well embodying significance in terms of its public message.

The 2010 NPT Review Conference emphasized a country’s right according to article 10 of the treaty to leave the NPT with a three-month notice if exceptional circumstances arose to justify the move. The attempts by the United States and the West, in light of North Korea’s behavior and the likelihood of a similar move by Iran, to make it more difficult for countries to leave the treaty (by levying a clearer international price tag or more significant commitments upon the state that decides to leave as well as on other states that supplied them with equipment and materials), were not successful. Theoretically, then, any country can announce that it is leaving the treaty and perform nuclear testing a mere three months later. The danger inherent in this possibility is also relevant for the countries that are not among the 44, such as Libya and Syria, countries that have attempted to attain military nuclear capability in the past. Joining the CTBT would render such a process illegal, although it is unclear what the weight of such a decision will be in the event that a country in the Middle East makes such a dramatic move as leaving the NPT.

It seems, though, that the regional considerations are broader and more complex. Traditionally Israel attaches supreme importance to the ramifications of its decisions in the area of weapons and security control on regional stability, on Israeli deterrence, and on the manner in which Israel is perceived by its surrounding countries.

The current mindset (certainly in Israel and in other countries of the region) is that Iran is close to attaining military nuclear capabilities, and the likelihood that neighboring countries will follow suit seems relevant to the decision to ratify, even if

Iran decides to join the CTBT. Violations by Iran and Syria of their nuclear commitments (and in the past by Iraq and Libya as well), paired with the international community’s difficulty in responding adequately to these

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violations, is also relevant. Are the mechanisms of the CTBT capable of dealing with the suspicion that the treaty may be violated by a country that has the automatic support of its Middle Eastern neighbors, while the international community and even the UN Security Council find it difficult to deal with these same countries' violations of the NPT?

The regional atmosphere is also a significant factor in Israel's decision. Israel's deterrence policy was intended to balance out the enormous asymmetry in terms of physical size, population, resources, and motivation of Israel's enemies to change the situation. Israel signed the CTBT amid a feeling of regional optimism: Israeli-Palestinian negotiations, the advent of Israeli representatives in Arab countries, and hopes of regional normalization. Twelve years later, cries to wipe Israel off the map enjoy broad popular support in the neighboring countries; the stability of the moderate regimes is in danger; the Iran-Syria-Hizbollah-Hamas axis is arming itself and is expanding its membership, even enjoying Turkey's support; and tens of thousands of missiles and rockets are aimed at Israel. All of these factors dramatically change Israel's perceived level of threat.

Evaluating the Considerations

On the basic level, the considerations underlying Israel's deliberations on ratification of the CTBT appear valid today.

It appears that while in recent years there has been progress toward completing the verification system and on-site inspection exercises were even carried out, critical gaps remain that must be bridged. Among them is agreement on the set of procedures to be used in guiding on-site inspections; the purchasing of proper equipment; training the inspectors; and operating the monitoring stations in the key areas, primarily in the Middle East (Egypt, Iran, and Saudi Arabia, for example), in accordance with the requirements of the treaty's verification protocols. Article 4 (section A, paragraph 1) of the treaty details the verification system for implementation of the treaty and states that "at entry into force of this Treaty, the verification regime shall be capable of meeting the verification requirements of this Treaty."

The question of Israel's equal status is seemingly a matter of principle rather than an actual issue. The equal status of the member states of a multilateral treaty, however, is a most basic component of the laws of

treaties. This equality is a right that in its absence, there is little likelihood that states would join the treaties when there are direct implications for their national security. The fact is that the international community – based on political/national considerations – is in practice allowing Iran to determine whether a certain article of the treaty should be exercised. This translates into an acceptance of discrimination against Israel. In light of the extreme hostility expressed by Iran and other states in Israel’s region, the possibility for discrimination in other articles of the treaty as well, including the misuse of the treaty against Israel, is impossible to ignore.

Israel is highly sensitive to the excessive tolerance displayed by multilateral frameworks to blatant discrimination against Israel. Israel is the sole country that is mentioned by name at the UN General Assembly’s First Committee every year, even though India, Pakistan, and North Korea have conducted nuclear testing. Another example is the initiative to grant the PLO observer status in the CTBT preparatory committee, against the treaty’s procedural rules (the rules determine that observer status will be granted to relevant countries for the purpose of the treaty and/or countries that possess monitoring facilities in their territories). Once again, this is a matter of principle that seemingly does not materially harm Israel. The ease, however, with which the members of the CTBT are willing to ignore or are willing to change the procedural rules for the special political needs of the Middle East or Israel’s interests may be cause for concern.

Regional considerations seem more valid today than ever before. How will Israel’s ratification of the treaty influence the decision of other countries in the area? Will it encourage them to join? Will it strengthen their tendency to make any progress conditional on Israel signing the NPT? Will it be considered a confidence building measure or alternatively encourage additional pressure to be brought upon Israel? Nuclear technology, including that relating to nuclear weapons, has been introduced into the Middle East at alarming rates. Israel has likely calculated that signing the treaty would not diminish its deterrence. Does this stand true in the reality of a Middle East saturated with nuclear technology? Perhaps the entry of nuclear technology into the Middle

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East is reason for Israel's initiative for regional ratification, in order to minimize its threats.

The outcome of the NPT Review Conference (the closing document dated May 28, 2010) is a good example of the relevance of Israel's considerations. The main objective of the conference is to examine the difficulties and challenges in everything related to the treaty's implementation by the member states. Since the review conference's closing declaration in 2000 (no closing declaration was adopted in 2005), three Middle Eastern states were found to have seriously violated their obligations (Libya, Iran, and Syria); there has been a suspicious development and popularization of nuclear military technology (including "private entities" such as the A. Q. Khan network) under the auspices of nuclear technology for peaceful purposes; North Korea has performed a nuclear test; and the countries of the Non-Aligned Movement have serious claims against the nuclear states that are not implementing their obligations in the area of nuclear disarmament.

In all of these issues, the member states had difficulty agreeing on a binding plan of action. In the final document, they were unable to overcome the opposition of the NAM to accept upon themselves additional obligations related to preventing proliferation (the Additional Protocol as a verification standard of surveillance of the IAEA; limits on the development of sensitive elements in the fuel cycle; and toughening the conditions for withdrawing from the treaty), and the objection of the nuclear states to commit to new concrete steps or to timetables on the issue of disarmament. The Middle East states, headed by Egypt and Iran, opposed any mention of breach of the treaty by Iran and Syria, or even any mention of the Security Council decisions on this issue. Though some of these states likely feel threatened as a result of the nuclear policy of Iran, this was not expressed in the talks or in the final document.

On at least one issue, the member states succeeded in reaching an agreement regarding concrete steps, including a timetable: practical steps for the advancement of a nuclear weapons-free zone (NWFZ) and any other weapons of mass destruction-free zone in the Middle East. From the different reports regarding the evolution of the talks at the conference, it seems that the concrete steps initiated by Egypt were meant to isolate and pressure Israel, and that they were presented to the Americans as a condition for their agreement to a final document of the

survey committee. However, what looks like an attempt to force Israel – by means of the conference decisions dealing with the implementation of the sections of the NPT treaty by the members – to enter into negotiations regarding the WMDFZ in the Middle East does not fit the internationally accepted rules for advancement of NWFZ in other areas in the world. A 1999 report adopted by the UNDC⁴ deals with guidelines for setting up a NWFZ, emphasizing the great weight that must be placed on dialogue, understanding, and agreement between all of the states in the relevant area in the effort to advance the NWFZ.

The state parties to the NPT understood that the review conference cannot make practical decisions to advance regional measures, especially when not all of the states in the area are members of the treaty, and therefore the concluding document settles for a statement of objectives regarding North Korea, India, and Pakistan. But these guidelines – the sensitivity to regional complexity, and to the interests and rights of states when these interests are related to their national security – do not figure in the review conference’s final document when it discusses Israel and the Middle East. It can be assumed that the stance of many countries that accepted this approach is connected to political factors and broader geo-strategic interests.

The outcome of the review conference illustrates the relevance of Israel’s considerations with regard to ratification of the CTBT, both in the multilateral context (fear of discriminatory treatment and of sections of the treaty being taken advantage of) as well as in the regional context.

Additional Considerations

President Obama’s policy regarding weapons control and disarmament puts the issue of nuclear disarmament and multilateral cooperation to deal with nuclear threats at the top of the international agenda. The final document of the review conference includes demands for practical steps and for application of decisions that were made in the past, including advancement of the implementation of the CTBT; opening negotiations on nuclear issues under the framework of the convention for disarmament in Geneva, with an emphasis on the treaty to forbid the production of fissile material (FMCT); and a WMDFZ in the Middle East.

If Israel’s most important ally ratifies the CTBT and is followed by additional states among the nine “Annex 2 states” that have not yet ratified

the treaty but whose ratification is essential for its implementation, international attention will turn to Israel and increase the expectations for measures on Israel's part. Israel's complex relationship with the current American administration, in addition to the administration's firm commitment to Israel's security needs, warrants careful consideration regarding where it is possible to increase cooperation with the American agenda in a way that will also advance Israel's interests, and how to prevent pressure and a situation of international isolation.

Conclusion

The obstacles to Israel's ratification of the CTBT are significant, and the developments of the past year are not sufficient reason to detract from their importance. America's participation in the treaty does not answer Israel's concerns, and therefore the approach that suggests that American ratification should automatically result in Israel's ratification must not be accepted. At the same time, additional considerations oblige Israel to put effort into formulating joint understandings with the United States that will address some of the concerns and allow for the advancement of the relevant Israeli interests. Within the framework of understandings such as these, Israeli ratification of the CTBT could be a significant element.

Notes

- 1 The 44 "Annex 2 states" are states that participated in the negotiations of the CTBT from 1994-96 and possessed nuclear power reactors or research reactors at that time. Entry of the CTBT into force is contingent on their signature and ratification.
- 2 Statement by Ambassador David Daniely, "Conference on Facilitating the Entry into Force of the Comprehensive Nuclear Test Ban Treaty," September 24, 2009.
- 3 Liviu Horovitz and Robert Golan-Vilella, "Boosting the CTBT's Prospect in the Middle East," *Bulletin of the Atomic Scientists* 66, no. 2 (March/April 2010): 9-16.
- 4 United Nation Report of the Disarmament Commission, General Assembly Official Records, Fifty-fourth session, Supplement No. 42 (A/54/42).