

Strengthening the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities Regime: A Path Forward

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Abstract. With entry into force of the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (CPPNM) on May 8, 2016, and the culmination of the Nuclear Security Summits (NSS), the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities (CPP), as the amended convention is now known, can play an increasingly important role in efforts to strengthen the international nuclear security architecture. The CPP significantly enhances the international legal framework for nuclear security by expanding the scope of physical protection requirements and providing a direct linkage to International Atomic Energy Agency (IAEA) nuclear security guidance through incorporation of the Fundamental Principles.¹ The CPP's entry into force requires states parties to submit reports to the IAEA under Article 14 informing the IAEA of its laws and regulations giving effect to the convention—states parties were required to do so under the original CPPNM, but the scope of the reports will need to expand to reflect the expanded scope of the convention. Reporting builds confidence in the effectiveness of states' security. In addition, entry into force of the CPP requires the IAEA, under Article 16, to convene a review conference in five years to assess the implementation and adequacy of the convention “in light of the then prevailing situation.” The review conference will provide an opportunity for states parties to assess the status of nuclear security progress and will provide a forum for dialogue on how to strengthen the global architecture and address remaining gaps in the system. Article 16 also provides for additional review conferences at periods of at least five years if requested by a majority of states parties. Regular review conferences would be an important mechanism for sustaining attention on nuclear security and ensuring continued nuclear security progress. For the CPP to fulfill its potential to play an important role in strengthening the international nuclear security architecture requires universalization and implementation of the CPP, including its reporting and review conference provisions. As a first step, states parties should agree to continue convening review conferences every five years indefinitely, without the need for a request from a majority of states parties on an ad hoc basis. In addition, for the review conference to be an effective tool for sustaining attention on nuclear security and ensuring continued nuclear security progress, states parties must carefully design the review conference process. This paper identifies key issues that states parties should consider when doing so, drawing lessons learned from review conference processes under other treaty regimes, and provides recommendations for the 2021 review conference, as well as for subsequent conferences.

Key Words: CPPNM, CPP, Convention on Physical Protection, review conference

1. Introduction

The Nuclear Security Summit (NSS) process brought high-level political attention to the threat of nuclear terrorism, leading to tangible actions that strengthened global nuclear security. With the end of the NSS process in early 2016 and many nuclear security challenges remaining, the nuclear expert and government communities have debated how to sustain momentum and progress without a follow-on process. Several experts argued that the Convention on the Physical Protection of Nuclear Materials (CPPNM), the only international

¹ “Unofficial Consolidated Text of the Convention on the Physical Protection of Nuclear Material, as amended on 8 July 2005,” Convention on the Physical Protection of Nuclear Material and Nuclear Facilities (CPP), July 8, 2005, International Atomic Energy Agency, <https://ola.iaea.org/ola/documents/ACPPNM/Unofficial-consolidated-text-English.pdf>.

treaty that specifically obligates signatories to protect nuclear materials, could provide a much needed forum for dialogue on nuclear security following the NSS process if states parties invoked Article 16, which allows a majority of states parties to call for review conferences at periods of at least five years.² Beyond the initial review conference that was required five years after entry into force of the CPPNM, Article 16 has never been invoked. At the 2016 NSS, states appeared to agree and committed to calling for regular CPPNM review conferences in the IAEA Action Plan.³ More importantly, immediately after the 2016 NSS, the Amendment to the CPPNM entered into force, triggering Article 16 of the amended treaty—known as the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities (CPP)—which requires the International Atomic Energy Agency (IAEA) to convene a review conference five years after the CPP’s entry into force, that is, in 2021.⁴

The CPP significantly enhances the international legal framework for nuclear security by expanding the scope of physical protection requirements and providing a direct linkage to IAEA nuclear security guidance through incorporation of the IAEA’s nuclear security Fundamental Principles.⁵ The CPP’s entry into force also requires states parties to submit reports under Article 14 informing the IAEA of its laws and regulations giving effect to the treaty, which can build confidence in states’ nuclear security. (States parties were required to do so under the original CPPNM, but the scope of the reports will need to expand to reflect the expanded scope of the convention.) The CPP can play an increasingly important role in efforts to strengthen the international nuclear security architecture through its review conferences if parties agree to convene them regularly. The years prior to the 2021 CPP review conference provide an opportunity for states parties to establish a regular review conference process that will sustain attention on nuclear security and promote continued progress. This paper identifies key issues that states parties should consider and proposes ways to design the review conference, drawing lessons from other review conference processes as well as the successes of the NSS process.

2. Taking Advantage of a Flexible Review Conference Provision

Article 16 of the CPP provides the broadest possible foundation to design effective review conferences due to its minimal and flexible language. The provision reads:⁶

1. A conference of States Parties shall be convened by the depositary [the IAEA] five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

² Jonathan Herbach and Samantha Pitts-Kiefer, “More Work to Do: A Pathway for Future Progress on Strengthening Nuclear Security,” *Arms Control Today*, October 2015, p.8, https://www.armscontrol.org/ACT/2015_10/Features/More-Work-to-Do-A-Pathway-for-Future-Progress-on-Strengthening-Nuclear-Security.

³ Nuclear Security Summit, Action Plan in Support of the International Atomic Energy Agency, Washington, D.C. April 1, 2016, https://static1.squarespace.com/static/568be36505f8e2af8023adf7/t/56feeb94d088e7781f9e41c/1459547833689/Action+Plan+-+IAEA_FINAL.pdf.

⁴ Unofficial Consolidated Text of the CPP, Article 16.

⁵ The Fundamental Principles are contained in the International Atomic Energy Agency’s (IAEA) Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Revision 5), IAEA Nuclear Security Series No. 13, January 2011, http://www-pub.iaea.org/MTCD/publications/PDF/Pub1481_web.pdf.

⁶ Unofficial Consolidated Text of the CPP.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 16 provides no additional guidance on the review conference process and therefore provides flexibility for parties to design a robust and effective review conference process. In particular, states parties should consider each of the following:

- Agreeing to a standing arrangement to hold review conferences every five years;
- Designing a robust and substantive intersessional process;
- Creating opportunities for national reporting and information sharing;
- Balancing consensus with ambitious conference outcomes by encouraging new commitments;
- Enabling participation by two groups of parties—those party to the CPP and the minority that have still not ratified the amendment—and encouraging universalization of the CPP;
- Building a substantive review conference agenda;
- Ensuring participation by nuclear industry and civil society; and
- Encouraging high-level participation in review conferences by heads of government and ministers.

Each of these is discussed in the following sections.

3. Designing an Effective CPP Review Conference Process

3.1 Regular Review Conferences

It is vital that nuclear security remains high on international and national agendas, that states continue to focus on making progress on nuclear security and implementing their obligations, and that states do not become complacent about the terrorist threat. Now that the NSS process has ended, regular, high-level dialogue on nuclear security is even more necessary. States parties to the original 1980 CPPNM held a review conference in 1992, five years after its entry into force as required by Article 16.⁷ However, the states parties have not called for additional review conferences. To sustain high-level attention on nuclear security, states parties to the CPP should agree at the first CPP review conference to a standing arrangement to hold additional review conferences every five years, instead of waiting for a request by a majority of parties to do so on an ad hoc basis.⁸ There are three precedents for agreeing to

⁷ The 1992 review conference was held in Vienna on September 29, 1992, and attended by representatives from 35 of the 42 states parties to the CPPNM. It produced a final document that was two pages in length and resulted in no significant decisions or agreement to host further review conferences. IAEA, 1992 Review Conference of Parties to the Convention, “Final Statement of the Review Conference of Parties to the Convention,” September 29, 1992. The conference adapted for its rules of procedure the rules of the procedure of the IAEA General Conference. Under those rules, as modified, representatives of states not parties to the convention were allowed to participate as observers in the deliberations of the conference, to address the plenary meeting, receive documents of the conference, and submit documents to participants in the conference; and decision making did not require consensus.

⁸ If the 2021 review conference adapts the IAEA General Conference rules of procedure, such a decision could take the form of a resolution or decision of the conference and consensus would not be required. IAEA, Rules of Procedure of the General Conference, as amended up to September 29, 1989, Article XI, Rules 69-70, IAEA, <https://www.iaea.org/about/policy/gc/rules-of-procedure-general-conference#item11>.

regular review conferences beyond what the treaty requires.

The Convention on Certain Conventional Weapons (CCW) provides for review conferences to review the “scope and operation” of the treaty at the request of any party.⁹ At the first CCW review conference, states parties agreed in the final declaration “that future Review Conferences should be held more frequently, with consideration to be given to holding a Review Conference every five years.”¹⁰ At the second review conference, parties once again noted their commitment to “establish a regular review mechanism” and agreed that future conferences “should continue to be held on a regular basis.”¹¹

The Biological Weapons Convention (BWC) contains a provision for a conference of the parties to be held five years after entry into force, or earlier if requested by a majority of the parties, but does not contain a provision for additional optional review conferences.¹² Even so, parties recommended at the third, fourth, and sixth review conferences that additional review conferences “should be held at least every five years.”¹³ The final declaration at the seventh review conference was stronger: “The Conference therefore decides that Review Conferences be held at least every five years.”¹⁴

Finally, the Treaty on the Nonproliferation of Nuclear Weapons (NPT) provides the closest model for the CPP because its review conference provision is almost identical to the CPP’s. The NPT provides for a conference of the parties to be held five years after entry into force of the treaty with the option for a majority of parties to call for future conferences every five years.¹⁵ However, the parties decided at the 1995 NPT review conference in a series of decisions designed to strengthen the review process “that Review Conferences should continue to be held every five years.”¹⁶ These examples make clear that there is precedent for states parties to the CPP to come to a similar agreement at the 2021 review conference.

⁹ The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects, as Amended on 21 December 2001 (CCW), October 10, 1980, Article 8(3), 1342 U.N.T.S. 137, [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/03569D9BE5D1DA6BC12571DE00661D11/\\$file/CCW+and+Protocols+I,+II+and+III+authentic+texts+ch_XXVI_2p.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/03569D9BE5D1DA6BC12571DE00661D11/$file/CCW+and+Protocols+I,+II+and+III+authentic+texts+ch_XXVI_2p.pdf).

¹⁰ 1996 Review Conference of the States Parties to the CCW, “Final Document,” CCW/CONF.I/16 (Part I), Geneva, May 3, 1996, United Nations, <http://www.un.org/Depts/ddar/ccw/ccw.htm>.

¹¹ Second Review Conference of the CCW, “Final Document,” CCW/CONF.II/2, Geneva, December 21, 2001, United Nations Office of Disarmament Affairs, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/61/IMG/G0260261.pdf?OpenElement>.

¹² Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC), Article 12, April 10, 1972, OPBW, <http://www.opbw.org/convention/documents/btwctext.pdf>.

¹³ The BWC Website, <http://www.opbw.org/>.

¹⁴ Seventh Review Conference of the States Parties to the BWC, “Final Document of the Seventh Review Conference,” BWC/CONF.VII, Geneva, January 13, 2012, United Nations, http://www.un.org/ga/search/view_doc.asp?symbol=BWC/CONF.VII/7.

¹⁵ 1968 Treaty on the Non-proliferation of Nuclear Weapons, Article VII, entered into force March 5, 1970, Article VII, 729 U.N.T.S. 161, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf>.

¹⁶ 1995 Review and Extension Conference of the Parties to the NPT, “Decision 1: Strengthening the Review Process for the Treaty,” NPT/CONF.1995/32 (Part I), Annex, New York, May 12, 1995, United Nations, <http://www.un.org/Depts/ddar/nptconf/2142.htm>.

3.2 Robust and Substantive Intersessional Process

Prior to the 2021 review conference, states parties to the CPP will need to agree how to prepare for the conference. Unlike some other treaties, such as the Convention on Nuclear Safety (CNS)¹⁷ and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention),¹⁸ which both specify that a preparatory committee must meet within a certain period of time after entry into force to prepare for the first review conference, the CPP provides no such guidance. Parties to the CPP may decide that existing and planned annual meetings of the CPPNM/CPP points of contact could serve as a preparatory committee for the first review conference. However, given the need to involve senior diplomatic and policy officials, states parties should consider creating a separate preparatory committee to prepare for the 2021 review conference.¹⁹ Or, if parties decide that the points of contact meetings should serve as the preparatory committee, delegations could be headed by senior officials.

Going forward, states parties to the CPP should agree on a robust and substantive intersessional process following the first review conference. Given that CPP review conferences cannot be held any more frequently than every five years, it is vital to maintain momentum in the intervening period to ensure continued implementation of the CPP. Holding intersessional meetings between review conferences allows for identification of emerging issues that require urgent attention, maintains an important network of senior officials responsible for nuclear security, and allows for a more ambitious agenda to secure nuclear materials. An intersessional process will also need to agree on procedural issues for the review conferences, but its primary focus should be substantive rather than procedural. Several intersessional processes from other treaty regimes provide useful models.

The NPT process has a robust and substantive intersessional process. In 1995, parties decided that the preparatory committee should meet once in each of the three years prior to the review conference, with a fourth meeting to be held as necessary the year of the review conference.²⁰ The preparatory committee is tasked with making procedural decisions regarding the review conference (e.g., agenda, rules of procedure, etc.), considering “principles, objectives, and ways to promote the full implementation of the treaty, as well as its universality, and making recommendations thereon” to the review conference.²¹ The regularity of NPT preparatory committee meetings and the emphasis on substantive deliberations ensures that parties are engaged in regular dialogue.

An even more robust model is the CCW intersessional process. Parties to the CCW have agreed to annual meetings of states party to the CCW to review the status and operation of

¹⁷ Convention on Nuclear Safety (CNS), INFCIRC/449, Article 21, adopted June 17, 1994, 1963 U.N.T.S. 293, <https://www.iaea.org/sites/default/files/infirc449.pdf>.

¹⁸ Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention), INFCIRC/546, Article 29, adopted September 5, 1997, 1963 U.N.T.S. 293, <https://www.iaea.org/sites/default/files/infirc546.pdf>.

¹⁹ Prior to the 1992 review conference, there was one preparatory commission meeting and two other meetings. A more robust process would be beneficial prior to the 2021 review conference.

²⁰ 1995 Review and Extension Conference of the Parties to the NPT, “Decision 1.”

²¹ At the 2000 Review Conference, parties agreed that the preparatory committee “should make every effort to produce a consensus report containing recommendations to the Review Conference.” 2000 Review Conference of the Parties to the NPT, “Final Document,” NPT/CONF.2000/28 (Parts I and II), Article IX, p. 20, New York, May 19, 2000, UNODA, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/pdf/finaldocs/2000%20-%20NY%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Parts%20I%20and%20II.pdf>.

the CCW and its protocols.²² In addition, a group of government experts (GGE) meets three times a year.²³ The GGE takes responsibility for preparing for and reporting to the review conference and its substantive mandate is agreed upon at the annual meetings of the states parties. Similarly, the BWC intersessional process is robust. Parties have agreed to hold annual meetings of states parties to “discuss, and promote common understanding and effective action on” specific topics relevant to implementation of the convention to be considered at the next review conference; each annual meeting of states is preceded by meetings of experts.²⁴ Each review conference identifies topics for the intersessional process to consider.²⁵ In addition to annual meetings of the states parties and the experts, a separate preparatory committee meets during the year of the review conference to make procedural decisions for the operation of the review conference.

All three models described are robust, substantive intersessional processes that go beyond merely procedural tasks. For instance, the CPP could follow the CCW or BWC models by convening representatives from the missions in Vienna of states parties to meet annually to discuss a substantive agenda. This is the recommended approach instead of using a programme committee or holding only one organizational meeting, as the CNS and Joint Convention do (the organizational meetings are mainly procedural and include deciding an agenda, establishing country groups to review mandatory country reports, inviting observers, and establishing timetables, among other procedural tasks).²⁶

3.3 Opportunities for National Reporting and Information Sharing

Information sharing on nuclear security practices provides valuable opportunities for states to learn from one another and to build confidence in the security of their nuclear materials. In addition, sharing information ensures that states are held accountable for their security and provides a useful means of tracking progress. The CPP itself notes the importance of information sharing among states parties—Article 5(4) and (5) encourage states to “cooperate and consult as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of its national system of physical

²² Second Review Conference of the States Parties to the CCW, “Final Document.” There are also separate annual meetings related to Protocol II and V to the convention. Annual conferences of the parties to Protocol II to the CCW are specified in the text of the protocol. See Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), as amended on 3 May 1996, October 10, 1980, United Nations, https://treaties.un.org/doc/Treaties/1996/05/19960503%2001-38%20AM/Ch_XXVI_02_bp.pdf. Annual conferences of the parties to Protocol V were decided upon by the parties at the first conference called under the protocol held in 2007. See First Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War to the CCW, “Final Report,” CCW/P.V/CONF/2007/1, Geneva, November 12, 2007, United Nations, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/643/98/PDF/G0764398.pdf?OpenElement>.

²³ Second Review Conference of the States Parties to the CCW, “Final Document.”

²⁴ Final Documents for the Fifth (2002), Sixth (2006), and Seventh (2011) Review Conferences of the BWC are available at <http://www.opbw.org/>.

²⁵ Final Documents for the Sixth (2006) and Seventh (2011) Review Conferences of the BWC are available at <http://www.opbw.org/>.

²⁶ Convention on Nuclear Safety Rules of Procedure and Financial Rules, Rule 11, INFCIRC/573/Rev.6, January 20, 2015, IAEA, <https://www.iaea.org/sites/default/files/infirc573r6.pdf>; Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management: Rules of Procedure and Financial Rules, Rule 11, December, 18, 1997, IAEA, https://www.iaea.org/sites/default/files/infirc602r5_0.pdf.

protection of nuclear material.”²⁷ Article 14 of the CPP requires states parties to “inform the depositary of its laws and regulations which give effect to this Convention.”²⁸ The IAEA, as depositary, “shall communicate such information periodically to all States Parties.”²⁹ As of November 10, 2016, only 20 parties have submitted Article 14 reports under the CPPNM and/or the CPP.

Reporting and information sharing is a key part of other treaty review processes. For instance, the primary purpose of the CNS and Joint Convention review conferences, as mandated by the convention text, is to review national implementation reports. Country groups are formed to facilitate this review process. Within the BWC, parties have agreed at prior review conferences to a set of confidence building measures that are to be reported to the United Nations Office for Disarmament Affairs on an annual basis, going beyond what is required by the treaty itself.³⁰ Similarly, within the CCW, parties agreed to annual reporting on steps to meet technical requirements and legislation related to the convention for the purpose of ensuring compliance with the convention and agreed to a specific reporting format.³¹ In the NPT context, states submit national implementation reports to the review conference as agreed in the 2000 Review Conference Final Declaration and again later in the 2010 Review Conference Action Plan.³² Another example of reporting is within the NSS process—participants began the practice of publicly issuing voluntary national progress reports, which provided valuable information on states’ nuclear security measures and activities.

States parties to the CPP could make submission of Article 14 reports and other more robust information sharing part of the review conference process. States that have already submitted Article 14 reports could provide updated versions. As part of their reporting on laws and regulations that give effect to the convention, states parties could also report on the regulatory arrangements and measures they are taking to implement those laws and regulations. In addition, states could authorize the IAEA to make their Article 14 reports public and could publicly share other information (while protecting sensitive information) to build confidence in their security and provide valuable information from which other states can learn. States might consider sharing information by using the Consolidated National Nuclear Security

²⁷ Unofficial Consolidated Text of the CPP.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Second Review Conference of the Parties to the BWC, “Final Document,” BWC/CONF.II/13, Geneva, September 26, 1986, United Nations, http://www.unog.ch/bwcdocuments/1986-09-2RC/BWC_CONF.II_13.pdf; Third Review Conference of the Parties to the BWC, “Final Document,” BWC/CONF.III/23, Geneva, September 17, 1991, United Nations, http://www.unog.ch/bwcdocuments/1991-09-3RC/BWC_CONF.III_23.pdf.

³¹ Third Review Conference of the High Contracting Parties to the CCW, “Final Document,” CCW/CONG.III/11(Part II), Geneva, November 17, 2006, UNODA, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/media/84E7CBDD66F28699C125729E00605345/file/CCW%2BCONF.III%2B11%2BPART%2BII%2BE.pdf>; 2007 Meeting of the State Parties to the CCW, “Report,” CCW/MSP/2007/5, Geneva, December 3, 2007, UNODA, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/647/29/PDF/G0764729.pdf?OpenElement>.

³² 2000 Review Conference of the Parties to the NPT, “Final Document,” Article VI, Para. 15(12), p. 15; 2010 Review Conference of the Parties to the NPT, “Final Document,” NPT/CONF.2010/50 (Vol. I), Action 20, New York, May 28, 2010, James Martin Center for Nonproliferation Studies, Middlebury Institute of International Studies At Monterey, http://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf.

Report, a reporting template offered by the Dutch government at the 2016 NSS.³³ Parties could also engage in peer review of national reports, modeled after the CNS.

3.4 Balanced Decision Making and Conference Outcomes

Another issue that states parties will need to consider is whether decisions in the review conferences should be made by voting or by consensus. The pros and cons of consensus have been debated, particularly in the context of some treaties or organizations where the need for consensus has stymied progress. The need to reach consensus can sometimes lead to a race to the lowest common denominator as parties which do not wish to be as ambitious as others, or object to certain measures, or simply have fundamental disagreements, can hold the final agreement hostage to their concerns. On the other hand, consensus can lead to greater buy-in to the final document and can provide some accountability for commitments to which states have previously agreed. Consensus building can also avoid leading to a breakdown of the treaty parties into majority and minority groups, which can damage the treaty regime.

Decision-making requirements are generally laid out in rules of procedure that are agreed to by the parties in preparation for the review conference. If the 2021 review conference adapts the IAEA General Conference Rules of Procedure, as was done for the 1992 CPPNM review conference, consensus would not be required.³⁴ A review of procedural rules for other treaties shows a strong desire, but not necessarily a requirement, for consensus. Many rules of procedure—the NPT, the BWC, the Joint Convention, and the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (CWC)—urge efforts to reach consensus on matters of substance, but allow for alternative “deferred” decision making if consensus cannot be reached after a cooling off period (e.g., 24 or 48 hours) at which time decisions can be made by a majority or two-thirds majority.³⁵ Yet, despite the alternative voting procedures available, as a practical and political matter, parties have operated based on consensus, with mixed results, as shown, for example, at NPT review conferences.³⁶ Other review conferences have more regularly been able to reach consensus than the NPT—likely because the subject matter before NPT review conferences is more political and sensitive than some of the other review conferences that are more technical in nature.

The NSS process introduced some different types of outcome documents not present in other treaty contexts. In addition to a consensus communiqué, which established priorities and commitments in general areas (such as encouraging peer review or further minimization of highly enriched uranium), states were encouraged to make additional individual commitments or group commitments, called “gift baskets.” This approach allowed states to go beyond what was decided in the consensus communiqué and led to significant achievements and creative ideas for how to strengthen nuclear security.

³³ Nuclear Security Summit, Consolidated National Nuclear Security Report, Washington, D.C., April 1, 2016, <https://static1.squarespace.com/static/568be36505f8e2af8023adf7/t/570511498259b5e516e16689/1459949897436/Joint+Statement+on+Consolidated+Reporting+Appendix.pdf>.

³⁴ Rules of Procedure of the General Conference, Article XI, Rules 69-70.

³⁵ Arms Trade Treaty Legal Response Network, “Survey of Rules of Procedure for Conferences of States Parties Governing International Treaties on Decision-Making,” September 12, 2014, <http://controlarms.org/en/wp-content/uploads/sites/2/2014/09/Survey-of-Decision-Making-Procedures-Rules-of-Procedure-For-CSP.pdf>.

³⁶ The NPT review conference failed to reach any type of consensus document at five of eleven review conferences (1980, 1990, 1995, 2005, and 2015). See United Nations, “Background of 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,” <http://www.un.org/en/conf/npt/2015/background.shtml>.

States parties to the CPP should take a balanced approach, striving for consensus where possible, but allowing for additional creative outcomes. Parties could agree on a high-level set of principles and priorities to guide national actions for implementing the CPP based on the specific measures outlined in the operative text, but also encourage states to announce individual or joint commitments beyond what is contained in the consensus document, perhaps venturing into areas of the preamble or reflecting a more expansive view of how to implement the treaty provisions. This approach respects the interests of all parties, provides communal priorities and principles that every state shares, but provides space for states to be creative, ambitious, and innovative, working with like-minded or similarly situated states (perhaps on a regional basis or based on shared interests or challenges), to offer up new solutions to nuclear security.

3.5 Broad Participation and Universalization

Article 16 of the CPP calls for a conference of states parties to review the implementation of “this Convention” but does not provide any clarity on whether the review conference should also include the minority of parties that have not ratified the amended text. It would be prudent and beneficial to apply an expansive approach and invite all parties, including those that have not ratified the amendment, to the 2021 review conference and subsequent conferences. The two groups of parties have overlapping obligations and one conference for all parties would provide an opportunity to encourage those states that have not yet ratified the amendment to do so as soon as possible. However, states parties will have to agree to rules of procedure that lay out the voting rights of the two sets of parties—decisions on matters that are only in the amended text should exclude parties not obligated by that text, for instance. States that are not parties to the convention could participate as observers, as allowed by the IAEA General Conference Rules of Procedure, which were adapted for the 1992 CPPNM review conference and could be used for the 2021 review conference.³⁷

There are precedents for holding review conferences of parties to a convention that has been amended or with an additional protocol and where not all parties to the original treaty are parties to the amendment or protocol. The Meeting of the Parties to the Kyoto Protocol (the MOP) is held immediately after the Conference of the Parties to the Framework Convention on Climate Change (COP) to which the Kyoto Protocol is essentially an addition, but with only a select number of parties. The text of the COP requires annual meetings of the conference of the parties.³⁸ The text of the Protocol specifies that the conference of the parties to the COP shall serve as the conference of the parties to the Protocol and that parties to the COP that are not parties to the Protocol may participate in that portion of the meeting relevant to the Protocol as observers, though they may not vote on decisions with respect to the Protocol.³⁹ This results in a joint COP/MOP. Now that the Paris Agreement has entered into force, a meeting of parties to the Paris Agreement will also occur alongside the November 2016 COP/MOP meeting.⁴⁰ This is in accordance with a provision in the Paris

³⁷ Rules of Procedure of the General Conference, Article XI, Rules 69-70.

³⁸ United Nations Framework Convention on Climate Change, FCC/INFORMAL/84/Rev.1, May 9, 1992, Article 7, 1771 U.N.T.S. 107, http://unfccc.int/files/essential_background/convention/background/application/pdf/convention_text_with_annexes_english_for_posting.pdf.

³⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 11, 1997, Article 13, 2303 U.N.T.S. 148, <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

⁴⁰ “Marrakech Climate Change Conference - November 2016,” United Nations Framework Convention on Climate Change, <http://unfccc.int/meetings/items/6240.php>.

Agreement allowing for the same meeting mechanism as in the Protocol.⁴¹ Another example is the CCW, which has five additional protocols and therefore many different sets of parties. The CCW holds one review conference at which parties to the CCW discuss the umbrella treaty and the protocols. Two of the protocols also have their own annual meetings of the parties.

3.6 A Substantive Agenda

States parties should build an agenda to ensure in-depth substantive dialogue on a variety of issues related to implementation of the convention, rather than narrowly addressing each specific provision. Article 16 states that the parties should “review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.” This provides a broad foundation for a robust and substantive agenda. Some review conferences, such as the NPT and the CCW, generally organize their agendas around a review of the specific articles of the treaty.⁴² Other review conferences have a more flexible agenda that may focus on articles of the treaty but make room to address other topics that arise during those discussions (BWC)⁴³ or have an agenda based primarily on topical discussions rather than a review of specific articles (CWC).⁴⁴ It is suggested that the CPP follow the latter model with an agenda based on topic rather than article, given that there is broad flexibility for how states implement the convention.

In addition to discussions of measures to implement specific provisions of the convention dealing with physical protection of nuclear material or nuclear facilities, or provisions related to criminalizing and punishing nuclear offenses, broader topics for plenary sessions might include: universalization of the CPP; national implementation efforts and assistance opportunities, such as IAEA peer review; strengthening reporting and information sharing; encouraging commitments to implement IAEA recommendation documents (referenced in the preamble) and Fundamental Principles (contained in the operative text), including by subscribing to the Joint Statement for Strengthening Nuclear Security Implementation (INFCIRC/869);⁴⁵ minimization of nuclear materials; or emerging trends that impact physical protection of nuclear materials, such as cyber.

There may also be other topical issues that are relevant to smaller groups of states based on their particular circumstances, such as security of plutonium or military materials (the latter is referenced in the preamble) that lend themselves to smaller committees or working groups. Those working groups could report back to the plenary session and potentially result in group commitments. Parties could also consider regional working groups, perhaps focusing on establishing or strengthening regional centers of excellence as a means to support

⁴¹ The Paris Agreement, December 12, 2015, Article 16, United Nations Framework Convention on Climate Change, http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf.

⁴² 2015 Review Conference of the Parties to the NPT, “Final Document,” NPT/CONF.2015/50 (Part I), New York May 22, 2015, United Nations, <http://www.un.org/en/conf/npt/2015/>; Fourth Review Conference of the Parties to the CCW, “Final Document,” CCW/CONF.IV/4/Add.1, Geneva, November 25, 2011, United Nations, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/652/03/PDF/G1165203.pdf?OpenElement>.

⁴³ Seventh Review Conference of the States Parties to the BWC, “Final Document of the Seventh Review Conference.”

⁴⁴ 2013 Conference of the States Parties to the CWC, “Report of the Third Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention,” RC-3/3, April 19, 2013, OPCW, https://www.opcw.org/fileadmin/OPCW/CSP/RC-3/en/rc303_e_.pdf.

⁴⁵ “Communication Received from the Netherlands Concerning the Strengthening of Nuclear Security Implementation,” INFCIRC/869, October 22, 2014, IAEA, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/infcirc869.pdf>.

implementation of the convention and to share best practices, or ways to improve information sharing and coordination on regional threats. Another way to use regional groups could be to engage in peer review of Article 14 reports as is done in the context of the CNS. Finally, the intersessional process could take up particular areas of interest or urgency in the interim.

3.7 Multi-stakeholder Engagement

Multi-stakeholder engagement is an important component of any cooperation to solve global challenges. In the case of nuclear security, participation by nuclear industry is vital given industry's role in implementing security measures. The NSS process provided opportunities for all sectors to gather alongside each other—non-governmental organization (NGO) summits and nuclear industry summits were held immediately prior to the official Summits—and enabled opportunities for industry representatives, experts, and government officials to share ideas, encourage more ambitious government action, and raise awareness of specific issues that may not have received sufficient attention at the official NSS. Many treaty regime rules of procedure allow varying levels of participation by NGOs, ranging from simply attending public sessions and receiving conference documents to addressing the plenary sessions themselves. Non-governmental organizations are also often provided opportunities to hold side events and provide materials and information in an exhibit. The CPP review conference should continue this tradition and encourage full participation by industry and experts, not only as observers in the review conference, but as participants in official briefings, roundtables, and side events.

3.8 High-Level Participation

Perhaps the most substantial achievement of the Summit process was the high-level attention given to nuclear security, which was previously considered a more technical topic. The attendance of political leadership—mainly heads of government—in the NSS process ensured that nuclear security was given high priority on both national and international agendas, and increased public awareness of the importance of keeping nuclear materials out of the hands of terrorists. Leader-level involvement meant that governments were more likely to take actions in fulfillment of commitments because officials, departments, and ministries were empowered to expend time and resources to fulfill those commitments. Governments were also more likely to take action to ensure that leaders attending the Summit could report and take credit for fulfillment of commitments. Although participating states did not intend the NSS to continue indefinitely—summit “fatigue” due to meeting every two years was a well-known complaint—it would not be burdensome for leaders or ministers to come together every five years for a CPP review conference, given the importance of nuclear security.

There are no examples of leaders attending treaty review conferences and it is also rare for ministers to do so. Review conferences are generally attended by ambassadors or other senior officials. However, heads of government do attend other annual international events—the United Nations General Assembly and the G7 and G20 summits are examples—and of course did so at the four Summits. The IAEA has also begun to organize triennial nuclear security conferences with a ministerial session, though minister-level participation has not been as strong as desired. Given the importance of nuclear security and the role of the CPP in strengthening the global system, states should consider opportunities for heads of government, or at a minimum, ministers, to participate in CPP review conferences to demonstrate their commitment to ensuring continued progress and momentum to address the threat. Leader or minister participation would be more likely if CPP review conferences were held alongside other international meetings or conferences, such as the United Nations

General Assembly or the IAEA General Conference or Nuclear Security Conference. If leaders or ministers were to participate, the review conferences could limit their participation to a single plenary session, which would need to be designed in such a way to attract ministers (e.g., providing opportunities for taking decisions and making announcements). Short in-person policy statements or written and/or video statements could be alternatives. The remainder of the conference would be attended by ambassadors or other senior officials. The form of leader-level participation is not important, only that they remain demonstrably engaged and committed to the CPP regime.

4. Conclusion

Entry into force of the CPP has provided a valuable opportunity to use the CPP to strengthen the international nuclear security architecture. The end of the NSS process has left some experts and officials concerned that nuclear security will fade from the top of international and national agendas, even as the terrorist threat evolves and increases. CPP review conferences can play a vital role as a platform for continued progress and dialogue, but only if states parties commit to a regular, high-level review process, a substantive intersessional process, and a well-designed agenda that enables broad discussions and creative options for states to make new commitments.

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APPENDIX: TREATY AND CONVENTION COMPARISONS

Treaty	Review Frequency	Agenda of Review	Intersessional Process	Intersessional Agenda	Decision Making on Substantive Matters	NGO Participation	Reporting
BWC	5 years (per agreement of parties)	Review operation of the convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including provisions concerning negotiations on chemical weapons, are being realized, taking into account any new scientific and technological developments relevant to the convention (Article XIII). Review is article-by-article but also considers other issues identified.	Annual meetings of states parties preceded by annual meetings of experts. Precom meets during the year of the review.	Meeting of the states parties to discuss and promote common understanding and effective action on topics relevant to implementation of the treaty to be considered at the next review (topics decided at previous review). Annual expert meeting prepares for meeting of the states parties including providing factual reports of their work. Prepcom makes procedural decisions for the operation of the review.	Every effort to make decisions by consensus, but deferred vote after 48 hours by two-thirds majority (per rules of procedure). In practice, parties operate by consensus. Meetings of states parties and experts operate by consensus.	Attend plenary meetings and receive conference documents; may submit written statements to conference (per rules of procedure).	Annual reporting of confidence building measures to UNODA (per agreement of parties at 2nd and 3rd reviews).
CCW	5 years (per agreement of parties)	Review the scope and operation of the convention and its protocols and consider proposals for amendments to the convention or existing protocols (Article 8). Review is on article-by-article basis.	Annual meeting of states parties; group of government experts (GGE) meets three times a year; annual meeting of states parties to Protocol II and V.	Meeting of states parties reviews the status and operation of the convention; group of government experts agenda is determined by annual meeting of states parties and takes responsibility for preparing for and reporting to the review.	Consensus	Attend public meetings and make available written contributions on matters on which they have special competence; receive conference documents; upon invitation, make oral statements on questions in which they have a special competence at plenary meetings (per rules of procedure).	Annual national reports (per third review conference and 2007 meeting of states parties).

Treaty	Review Frequency	Agenda of Review	Inter-Sessional Process	Inter-Sessional Agenda	Decision Making on Substantive Matters	NGO Participation	Reporting
CNS	3 years (Article 21)	Review country reports (Article 20).	Organizational meeting serves as prepcom (19 months prior to review). States can also call for Extraordinary Meetings.	Establish country groups; suggest topics; invite observers; timetable; decide on topical sessions.	Consensus	Rules of procedure are silent.	National reports (per treaty).
CWC	5 years (Article VIII)	Review operation of the convention, taking into account any relevant scientific and technological developments (Article VIII). Review is by topic rather than by article.	Conference of state parties meets annually; every five years its "special session" serves as the review. Convention also requires Executive Council as the executive body of the Organisation for the Prohibition of Chemical Weapons (OPCW).	Oversees activities of OPCW, both substantive and procedural, including overseeing implementation of treaty.	Decisions should be taken as far as possible by consensus, but deferred vote after 24 hours by two-thirds majority (per rules of procedure). In practice, parties operate by consensus.	Attend plenary meetings in accordance with conference rules (per rules of procedure).	None beyond declarations required under convention.
Joint Convention	3 years (Article 30)	Review country reports (Article 30)	Organizational meeting serves as prepcom (12 months prior to review). States can also call for Extraordinary Meetings.	Establish country groups; decide on topical sessions; invite observers; decide on provisional agenda.	Consensus	Rules of procedure are silent.	National reports (per treaty).
NPT	5 years (per agreement of parties)	Review operation of the treaty with a view to assuring that the purposes of the preamble and the provisions of the treaty are being realized (Article VIII). Evaluate the results of the period they are reviewing, including the implementation of undertakings of the parties, and identify the areas in which, and the means through which	Prepcom meetings 3 or 4 times, once in three preceding years and once if needed in the year of the review.	Making procedural decisions for the review, consider "principles, objectives, and ways to promote the full implementation of the treaty, as well as its universality," and reach consensus on recommendations to the	Every effort to make decisions by consensus, but deferred vote after 48 hours by two-thirds majority (per rules of procedure). In practice, parties operate by consensus.	Attend plenary meetings and receive conference documents; attend main committee meetings as observer; can submit written statements to conference (per rules of procedure).	States submit national implementation reports to the review (per 2000 Final Declaration and 2010 Action Plan).

Treaty	Review Frequency	Agenda of Review	Intersessional Process	Intersessional Agenda	Decision Making on Substantive Matters	NGO Participation	Reporting
		progress should be sought in the future (per 1995 Decision 1). Review is on article-by-article basis.		review conference.			
CPP Proposals	5 years after entry into force of amendment; can be called by majority of parties at least every five years (Article 16). Parties should agree to reviews every five years.	Review implementation of the convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation (Article 16).	Suggest annual meetings of states parties and prepcom process.	Suggest robust substantive agenda.	Suggest balanced approach of consensus documents plus optional commitments by individual states and groups of states.	Suggest maximum participation by NGOs and industry.	Suggest Article 14 reports/updates provided at review, as well as additional information sharing.