

APPENDIX IX-G

SANCTIONS

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Final Report

THE ROLE OF SANCTIONS IN
NON-PROLIFERATION STRATEGY

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THE ROLE OF SANCTIONS IN NON-PROLIFERATION STRATEGY

Introduction

In addition to seeking to reduce the pressures for acquiring nuclear weapons, non-proliferation strategy may seek to increase constraints upon prospective proliferators. This report examines one possible means for doing so: the imposition of sanctions for safeguards agreement violations and other proliferatory activities. Beginning with a brief review of the current status of sanctions, it then discusses the purposes possibly served by sanctions; specific triggering activities and the broader contextual situation of a decision to impose sanctions; potential risks and consequences of sanctions; and components of a sanctions strategy, including enumeration of specific sanctions. It concludes with an overall evaluation of sanctions' potential role within non-proliferation policy.

The Current Situation

The threat of sanctions as a means of enforcing legal obligations already is included within American Agreements for [Nuclear] Cooperation with various countries; the International Atomic Energy Agency Statute; the Foreign Assistance Act as recently amended by the International Assistance and Arms Export Control Act of 1976; and former President Ford's October 28, 1976, statement on nuclear policy. These provide a starting point for the remaining discussion and the relevant aspects of each should be noted briefly.

First, American Agreements for Cooperation provide that in the event of non-compliance with the Agreement's provisions--e.g., those

guaranteeing non-military uses of the material, equipment, and devices transferred--the United States has the right "...to suspend or terminate this Agreement and to require the return of any materials, equipment, and devices [transferred under it]."

Second, Article XII (c) of the IAEA Statute provides that

The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient member or group of members. The Agency may also, in accordance with article XIX, suspend any non-complying member from the exercise of the privileges and rights of membership.

Third, Sec. 669 of the Foreign Assistance Act of 1961, as amended in 1976, would preclude provision of economic assistance, military Or security supporting assistance or grant military education and training, or military credits or [commercial] guarantees to any country which

(A) delivers nuclear reprocessing or enrichment equipment, materials, or technology to any other country; or

(B) receives such equipment, materials or technology from any other country; unless before such delivery--

(i) the supplying country and receiving country have reached agreement to place all such equipment, materials, and technology, upon delivery, under multilateral auspices and management when available; and

(ii) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(Within this section, however, provision also is made for Presidential waiver with subsequent Congressional oversight under certain conditions.)

Finally, possible proliferation sanctions, extending beyond termination of nuclear assistance, also were alluded to within former President Ford's October 28th nuclear policy statement. He warned:

--I serve notice today that the United States will, at a minimum, respond to violation by any nation of any safeguards agreement to which we are a party with an immediate cutoff of our supply of nuclear fuel and cooperation to that nation.

We would consider further steps, not necessarily confined to the area of nuclear cooperation, against the violator nation. Nor will our actions be limited to violations of agreements in which we are directly involved. In the event of material violation of any safeguards agreement, particularly agreements with the IAEA, we will initiate immediate consultations with all interested nations to determine appropriate action.

Universal recognition of the total unacceptability of the abrogation or violation of any nonproliferation agreements is one of the most important steps which can be taken to prevent further proliferation. We invite all concerned governments to affirm publicly that they will regard nuclear wrongdoing as an intolerable violation of acceptable norms of international behavior, which would set in motion strong and immediate counter-measures.

That is, varied references to potential proliferation sanctions already exist within key non-proliferation agreements and policy statements. Further future explicit development of sanctions strategy, should it occur, would be able to build upon these prior initiatives. Whether to move further in that direction depends partly upon the importance of those purposes that might be served by threatening or actually imposing sanctions.

Purposes of Sanctions

One obvious purpose of threatening to impose or imposing sanctions would be to influence directly the policies of the specific prospective proliferator itself. The threat of sanctions, for example, could be used to convince a country that had begun clandestinely to reprocess small quantities of diverted material to cease doing so. Or, their credible threat might help to deter such clandestine violations in the first place. Broadly put, the threat and prospect of sanctions could reinforce perceived proliferation constraints, increasing the likelihood that prospective proliferators would continue to conclude that the costs of "going nuclear" outweighed the benefits.

A second purpose of imposing sanctions would be to influence onlookers' perceptions of the constraints upon and costs of "going nuclear." In the absence of an effective response to the first safeguards agreement violation, for example, other potential proliferators could revise upward, perhaps significantly, estimates of their "freedom of action." But a strong response probably would make such onlookers think again about the costs of "going nuclear." Though not often noted, this "demonstration effect" may be as important a reason for carrying out the threat to impose sanctions as the more direct effect on the particular proliferators.

A third purpose of invoking sanctions, now specifically for a safeguards agreement violation, would be to diminish erosion of the safeguards system's effectiveness. If unopposed, a safeguards violation could seriously weaken IAEA organizational morale. The inspectors might

take their responsibilities less seriously and no longer be as ready to risk questioning ambiguous activities. Further, without the prospect of support from the major powers, the Board of Governors also might be less willing to find instances of non-compliance even were evidence forwarded to it by the Inspector General.

Finally, in conjunction with other non-proliferation measures, a readiness to threaten and, if necessary, impose sanctions would enhance broader efforts to create an anti-nuclear global climate. By imposing sanctions, the United States and other countries would demonstrate the seriousness of their opposition to widespread nuclear proliferation and their willingness to support that goal by action if needed. Conversely, failure to react strongly to a safeguards violation or other future dramatic proliferation events probably would engender and/or reinforce a belief that widespread proliferation was inevitable. Not only would growth of proliferation momentum hinder efforts to control nuclear exports--why sacrifice commercial advantage to a lost cause?, many suppliers might ask--but it also would augment diffuse pressures for acquiring nuclear weapons--better to "go nuclear" now before potential opponents do, many countries might rationalize.

Thus, readiness to utilize sanctions could serve a variety of non-proliferation purposes. Before turning to a discussion of the possible risks and consequences of threatening or imposing sanctions, however, both the types of activities which might trigger sanctions and the implications for sanctions strategy of the context within which particular activities occurred warrant attention.

Triggering Activities and Contextual Complications

Table 1 on the following page enumerates a range of possible events which might trigger sanctions. These include different types of safeguards agreement violations; violations of Agreements for Cooperation; withdrawal from the NPT; nuclear gray marketeering; and movement, though not in violation of any legal obligation, towards a nuclear weapon capability.

However, the specific context within which any of these events occurred could influence the feasibility and/or desirability of invoking sanctions. Consider the following questions whose answers might vary importantly from one situation to the next: Was there any ambiguity concerning either what actions had been taken by the specific country or whether its actions violated any pre-existing legal obligations? If a violation had occurred, were there any extenuating circumstances? Or was the country a special case, one where the imposition of sanctions appeared impolitic or otherwise inappropriate? Would imposing sanctions entail a serious risk of triggering a counter-reaction, and of what magnitude, by the sanctioned country or otherwise endanger important foreign policy interests? Would other countries support an American response, or would they stand aside, or even rally to the support of the sanctioned party? Or, to take a final illustration, would American domestic public opinion and political forces support or merely accept the imposition of sanctions, or perhaps so oppose them and/or so qualify their application in the specific case as to vitiate their impact?

Table 1POSSIBLE TRIGGERING ACTIVITIES

1. SAFEGUARDS AGREEMENT VIOLATION OR VIOLATION OF AGREEMENT FOR COOPERATION
 - A. DIVERSION OF MATERIAL
 - B. SEPARATION OF PLUTONIUM
 - C. FABRICATION OF A NUCLEAR DEVICE OR ITS CRITICAL COMPONENTS
 - D. TESTING OF A NUCLEAR DEVICE
 - E. REPLICATION OF TECHNOLOGY
 - F. EXPORT OF REPLICATED TECHNOLOGY
 - G. DENIAL OF INSPECTION ACCESS
 - H. TAMPERING WITH INSPECTION EQUIPMENT
2. WITHDRAWAL FROM NPT
- 3* GRAY MARKETEEING
 - A. TRANSFER OF MATERIALS OR TECHNOLOGY
 - B, JOINT PRODUCTION
 - C. TRANSFER OF HUMAN RESOURCES
4. MOVEMENT TO NUCLEAR WEAPON CAPABILITY (WITHOUT LEGAL VIOLATIONS)
 - A. CREATION OF INDIGENOUS OPTION
 - B, COVERT PREPARATIONS FOR TESTING
 - C. TESTING OF NUCLEAR WEAPON (QUA PNE?)

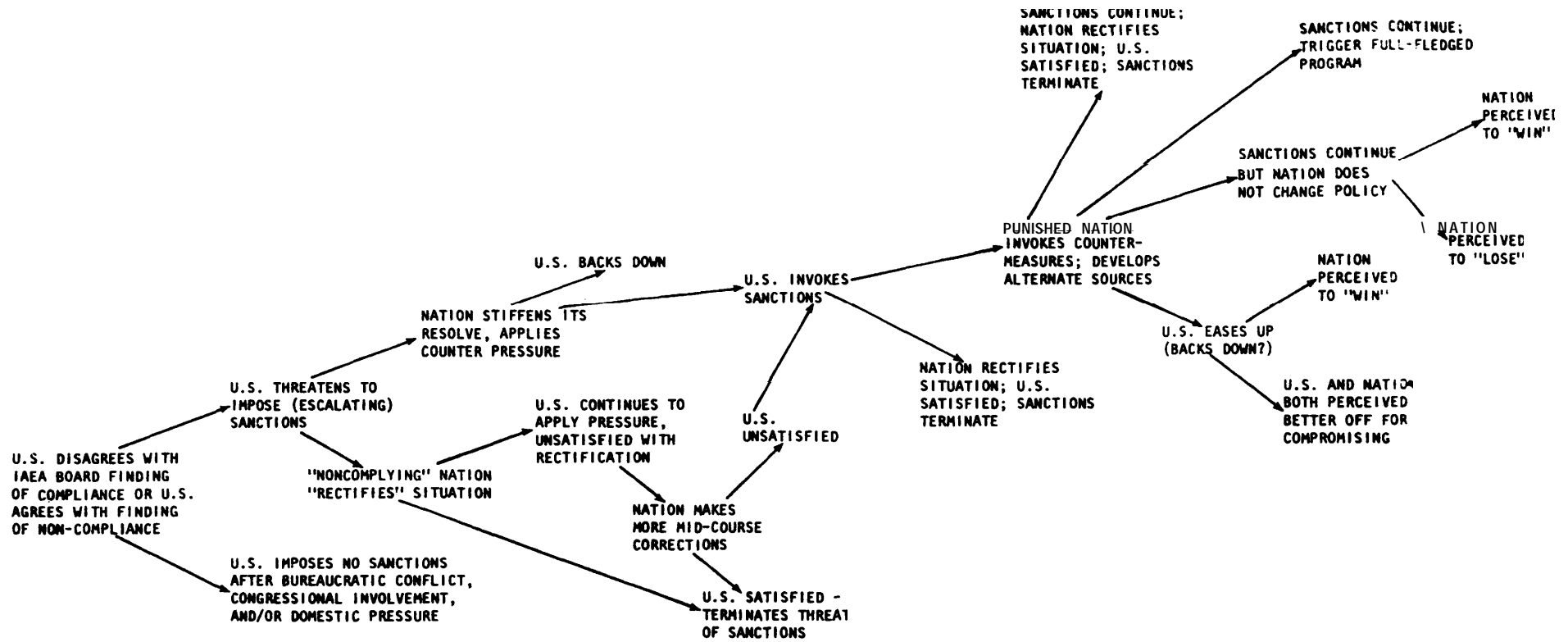
Other questions designed to focus attention upon the peculiarities of particular contexts for threat or imposition of sanctions could be posed. They all suggest that under some conditions there may be compelling reasons not to threaten or apply sanctions. In specific contexts either may appear inappropriate, overly costly, or both. If so, any sanctions strategy may have to permit some degree of flexibility. This need to build flexibility into sanctions strategy becomes even more evident when the varied risks and consequences of invoking sanctions are examined in greater detail.

Risks and Consequences of Threatening and Imposing Sanctions

Turning to the possible consequences of threatening to and/or actually imposing sanctions, the following chart (Table 2) provides a useful starting point. From the vantage point of the United States, it depicts the key decisions that would be involved following an alleged safeguards agreement violation and the major potential alternative outcomes. For ease of discussion, it begins at the point where the United States would be confronted by either an IAEA Board of Governors' finding of non-compliance or one of compliance with which it strongly disagrees. Comparable decision points and alternative possible outcomes would be involved in similar cases beginning from a finding of non-compliance by another supplier nation, an American finding of an Agreement for Cooperation violation, evidence of gray marketeering on the part of some country, an NPT withdrawal, or other triggering activities. The most important possibilities suggested by the chart warrant brief elaboration.

Table 2

ILLUSTRATIVE SANCTION DECISION TREE U.S. BRANCH



First, confronted by an action possibly warranting sanctions, the United States might either simply not impose sanctions or first threaten their imposition and then back down. Among the factors possibly productive of such non-action might be: bureaucratic disagreement about the wisdom of applying sanctions, perhaps threatening other foreign policy goals, in that case; domestic political pressures; fear of reprisal; and/or the lack of suitable levers. As already suggested above, however, the consequences of failure to act could be serious; at the very least, other countries' concern that sanctions would be imposed upon them in similar situations probably would decrease. In particular, if the United States had first threatened to impose sanctions but then backed down, its future threats would be markedly less credible. In addition, many might question the seriousness of American opposition to more widespread proliferation.

Secondly, sanctions could be imposed but their subject might not modify its policy or activities. Not only would such a locally ineffective recourse to sanctions leave the initial country's activities unaffected but, here, too, onlookers might be more prompted to conclude that they, too, had very little to fear. Much would depend upon their particular degree of vulnerability and upon whether American readiness to invoke sanctions, though unsuccessful locally, still would convey a similar future readiness. On that, while granting the importance of local success or failure in influencing onlookers, it may be that for sanctions' further credibility, success need not be total. For example, cessation of clandestine reprocessing though not the return of previously reprocessed material might suffice to deter others.

An additional possible risk is that imposition of sanctions in response to a minor violation, e.g., covert reprocessing of small quantities of plutonium, if it did not produce a cessation of the proscribed activity, actually might trigger a decision to launch a full-fledged nuclear-weapon program. That is, once a country had paid sanctions' political and economic price for a lesser proliferation action, it could decide that the cost had been borne and was bearable, so that it might as well go ahead and acquire the political and military benefits of "going nuclear"

Fourth, threat or imposition of sanctions also entails the risk that the sanctioned nation would threaten or adopt counter-measures painful to the United States, and to its coalition partners in the case of multilateral sanctions. Such retaliatory action might range from using economic counter-leverage--e.g., refusal to repay foreign debts, seizure of foreign investment, or an embargo on key exports such as oil--to engaging in disruptive nuclear export practices--e.g., gray market transfer of nuclear materials, human resources, or technology. Not only might such retaliation hurt the sanctioner, but, as for example with gray marketeering or non-payment of debts, it could provide a source of replacement revenue to aid the sanctioned state.

Each of the preceding potential consequences has emphasized the risks of a sanctions strategy. Nonetheless, as indicated by the chart, a fifth possible outcome is that of successful use of the threat or imposition of sanctions to strengthen proliferation constraints. The sanctioned country could rectify its activities and move to comply with the behavior sought. Or, even though it did not alter its policies,

onlookers still might be impressed by the costs imposed--ones that they, too, could suffer-and by the demonstration of readiness to impose sanctions, both leading them to reassess upward their perception of the constraints upon "going nuclear." Or, at the very least, the costs of non-action in terms of onlookers' perceptions of their freedom of action might be avoided.

However, to insure restored compliance, more than simply the availability of leverage would be needed. Successful use of threatened or imposed sanctions to compel a change of policy also may require certain preconditions. For example, what the desired outcome is following sanctions should be conveyed clearly. That is, what specific actions would terminate sanctions must be stated. For example, in the case of covert reprocessing in violation of an Agreement of Cooperation, the price of revoking sanctions could be cessation of the activity, surrender of the material, and thorough on-site inspection to ensure compliance: the sanctioned country should know specifically which is necessary. Or, following a nuclear test, perhaps qua PNE, the threat of sanctions might be linked to the non-occurrence of a second test. More broadly, if sanctions or their prior threat are to be used successfully not only to deter onlookers but to influence the policies of the sanctioned party, non-proliferation forces and potential proliferators need to have clearly in mind what would either result in the actual imposition of sanctions or their termination once implemented.

Two other possible preconditions for effective use of sanctions should be mentioned. On the one hand, to the extent that the threat of sanctions can be invoked before a possible violation has preceded very

far and before the benefits of violation have begun to accrue, the likelihood of success appears greater. Timely warning, therefore, provides a needed support for sanctions posture. On the other hand, the success of sanctions in terms of their impact upon onlookers may be partly related to perceptions of their legitimacy. The need to legitimate sanctions points to the role of an effective international body such as the IAEA for authorizing sanctions; it also points to the desirability of a careful declaratory policy making clear what may happen in the event of a legal obligation's violation or some other proliferatory action so that action does not appear capricious.

It has to be granted, nonetheless, that the past record of sanctions' threat or imposition has not been one of marked success. Canada's recent termination of nuclear assistance to India did not slow greatly India's nuclear program; nor did Canada's threatened termination of nuclear assistance to Pakistan unless it withdrew its request to purchase a French reprocessing plant produce the desired Pakistani response. Further, United Nations' economic sanctions against Rhodesia have been relatively ineffective in promoting black majority rule: many countries continued to trade with Rhodesia out of need for her products and markets, while Rhodesian economic adaptation, spurred by such outside pressure, produced increased rates of growth, averaging 10 percent, over the last decade. Similar lack of effectiveness characterized use of economic sanctions against Mussolini's Italy by the League of Nations in 1935.

But to extrapolate from the past ineffectiveness of economic sanctions to future sanctions' ineffectiveness may be **inappropriate**.

Instead, detailed assessment of the degree of existing leverage over specific prospective proliferators is needed. Further, it has to be asked whether fewer countries would have to cooperate now to put together an effective multilateral-sanctions coalition. As proposed below, on both counts--the availability of levers and the size of the coalition necessary for effective multilateral sanctions--the prospect of successful recourse to sanctions or their threat appears significantly greater than in the past.

The preceding discussion of possible consequences, as well as the earlier one of contextual factors, suggests that an overall sanctions strategy would have to minimize the potential negative consequences of sanctions while maximizing their prospective direct and indirect non-proliferation effects. Both action and inaction have their costs and risks. The next section tentatively proposes one such strategy, while also enumerating a range of particular sanctions that could be employed within its basic framework.

Sanctions: Strategy and Levers

One possible American sanctions strategy would distinguish two postures: one threatening automatic imposition of sanctions where a clear violation of a legal obligation was involved; a second designed to create a strong presumption that sanctions might be imposed even following more ambiguous violations or in the event of other proliferatory activities. Such a distinction, providing for a degree of flexibility in the application of sanctions, would constitute a suitable balancing of the potential benefits and risks of sanctions.

On the one hand, as already argued, failure to respond strongly following violation of a legal obligation would have serious adverse effects upon non-proliferation efforts. In this case, the risks of inaction are likely, therefore, to outweigh those of action. This is recognized by the rigid threat of automatic sanctions following violations of legal obligations. On the other hand, the presumptive sanctions posture, while emphasizing that more ambiguous activities and not necessarily illegal proliferatory actions could trigger sanctions, acknowledges that in some cases the costs and risks of taking action may be too high and that flexibility may be desirable. Combining suitable declaratory policy and actual decisions, such a posture would convey to any prospective proliferator the need to take seriously the risk of a strong American response--possibly supported by like-minded nations--to future proliferatory activities.

Within the framework of automatic and presumptive sanctions, a broad set of levers might be utilized. Some of these levers already have been suggested by the initial review of the current status of sanctions. More completely, a list of potential sanctions would include the following:

1. termination of nuclear assistance and exports of nuclear fuel and technology by the United States alone or in cooperation with other nuclear suppliers;
2. delaying or cutting off American Ex-Im Bank loans;
- 3* delaying or withholding of American economic assistance;
4. American-supported multilateral delaying or withholding of economic assistance;

5. **delaying or blocking access to World Bank loans, entailing multi-nation action by a small coalition using their weighted voting power;**
6. **imposition of a multilateral trade embargo;**
7. **American refusal to continue supplying late-model conventional arms and associated military training assistance;**
8. **American withdrawal of a prior security guarantee;**
9. **redefinition of the coverage of a pre-existing American security guarantee to preclude response should a third party attack the guaranteed country's nuclear-weapon facilities;**
10. **American expulsion of a country's (engineering) students, termination of landing rights for its airline, prohibition of tourism to and from it, and severance of communications; and**
11. **a ban on private investment within the country in question.**

Given the existence of a broad range of potential levers, what can be said about the relative deterrent impact of each? A more detailed analysis than can be included in this report has indicated that different prospective proliferators are more vulnerable to some levers than to others. Thus, it is not useful to compare the relative deterrent effect, for example, of nuclear-assistance related sanctions to economic assistance sanctions in the abstract. Deterrent impact varies from case to case. At the same time, **what does stand out in detailed analyses is the extent to which nearly all prospective near-term proliferators would be vulnerable to one or more of these levers.**

This may be illustrated in various ways. Some countries, for example, are planning to depend heavily (40-50 percent of mid- to late-1980s

* President McNamara's policy is not to bring loans to a vote when 40 percent of the weighted votes are opposed. The United States plus two or three other countries such as Great Britain, Canada, West Germany, Japan, and the Netherlands would control that 40 percent.

projected capacity) upon nuclear power as a source of electricity.

Termination of supplies of nuclear fuels and associated materials would **seriously affect** such countries. For others, foreign economic assistance, including World Bank assistance, provides a significant percentage (more than 25 percent) of yearly capital inflows. Or, even acknowledging that trade can be redirected over time, there are countries for which foreign trade constitutes a very high percentage of GNP (more than 50 percent) and whose current trading patterns entail heavy dependence upon only two or three key trading partners, including the United States. Similarly, for various countries confronting security threats, continued access to supplies of American conventional arms and/or the continuing protection of the American security umbrella can be endangered only at great risk.

But, it may be asked, are such indicators of theoretical vulnerability adequate measures of the potential deterrent effectiveness of sanctions? Several recently reported events, if true, suggest that where such vulnerabilities have been present non-proliferation forces have been able to use the risk of sanctions to further non-proliferation objectives. According to published reports, American pressure was influential in South Korea's decision to forego acquisition of a plutonium reprocessing plant and perhaps in producing clarification of recent rumors about clandestine reprocessing in Taiwan. And, notwithstanding the limited Canadian success vis-a-vis the nuclear programs of India and Pakistan, a Canadian warning that it might reassess its long-term contracts to supply Japan with uranium may have been a factor in that country's decision to ratify the NPT.

To sum up, a range of levers for use within an overall sanctions strategy entailing both automatic and presumptive sanctions exists.

And, depending upon the prospective proliferator in question, a significant degree of vulnerability to one or more of these levers is likely to be present.

The Role of Sanctions

By way of conclusion, two further points about the role of sanctions in non-proliferation strategy should be made explicitly. On the one hand, sanctions are only one of several possible means of reinforcing or increasing proliferation constraints. More importantly, should pressures to acquire nuclear weapons become sufficiently intense--e.g., because a country's political independence or even national survival was seen to be at stake--the prospect of sanctions would be unlikely to prevent a decision to "go nuclear." Measures for defusing proliferation pressures, therefore, remain vital. As with other efforts to increase constraints, e.g., by more tightly controlling nuclear exports, sanctions may be a necessary but not sufficient anti-proliferation tactic.

On the other hand, if the United States and other nations are going to impose sanctions, the legitimacy of doing so would appear to depend partly upon the extent to which they assume responsibility for defusing those proliferation pressures. To illustrate, in the case of countries closely tied to the United States, the counterpart of using leverage to influence their security policies may be a continued American readiness to preserve existing alliance connections. That counterpart in its various manifestations also needs to be borne in mind when thinking about the role of sanctions in non-proliferation strategy.

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