

# CHALLENGES TO THE NPT REGIME

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June 1, 2004

Soon after 1945, a vast nuclear arms race was underway and, by the end of the Cold War in 1991, the Soviet Union had built 45,000 nuclear weapons and the United States had built more than 30,000. This effort bankrupted the Soviet Union and cost the United States in excess of \$5.5 trillion according to a comprehensive study of this issue by the Brookings Institution published in 1998. By the 1960s, it appeared as if these weapons would spread all over the world. In 1962, there were estimates that there would be 25-30 nuclear weapon states with nuclear weapons integrated into their national arsenals and ready for use by the end of the 1970s. If this had happened, there would be likely more than 50 nuclear weapon states today; the International Atomic Energy Agency (IAEA) has estimated that perhaps 60-70 nations today possess the capability to build such weapons. This would have created a nightmarish world, one in which every conflict would run the risk of going nuclear and where it would be impossible to keep these weapons out of the hands of terrorists, because they would be so widespread.

The principal reason that this did not happen was the negotiation of the NPT in 1968, its entry into force in 1970, and its permanent extension in 1995. The NPT converted what had been an act of national pride—the acquisition of nuclear weapons—into an act considered contrary to the practices of the civilized world. But, the NPT was based on a carefully crafted central bargain. In exchange for most of the world agreeing not to acquire nuclear weapons (now some 182 countries and this obligation was made permanent in 1995), the countries that had nuclear weapons in 1968—the NPT nuclear weapons states—agreed to share peaceful

nuclear technology and to pursue nuclear arms control with three commitments first and foremost: deep reductions in nuclear weapons leading toward their complete elimination, a treaty banning nuclear test explosions, and a pledge never to use nuclear weapons against non-nuclear weapon NPT parties. The NPT was never designed to be a discriminatory treaty permanently dividing the world into two classes of states, a small number of great powers with nuclear weapons and a large number of others without nuclear weapons. That is why nuclear weapon state observance of the arms control part of the central bargain is so important to the long-term viability of the NPT.

Three states were unwilling to accept this central bargain and maintain nuclear weapon programs outside the treaty: Israel, India and Pakistan. Their status remains a significant problem for the NPT Regime and particularly Pakistan with its proliferation risks. But if the nuclear weapon states and most importantly the United States resist observance of their arms control commitments, it is easy for these three states to resist NPT universality. Israel is a special case due to the nature of its region, but India made it clear that it acquired nuclear weapons primarily to be regarded as a first class state.

Pakistan, which is one of the three outside the NPT represents perhaps the gravest threat to the NPT Regime that currently exists. It has a number of useable nuclear weapons and is a state where the Taliban, al-Qaeda, or their sympathizers control a significant portion of the land area. It is also the state, which harbored for many years a illegal, secret network, which supplied nuclear bomb technology to some of the most dangerous countries in the world including North Korea and Iran. This network was headed by Dr. A.Q. Khan, the so-called “father” of the Pakistan bomb program. After Libya, as part of its decision to give up WMD, disclosed what it had purchased from Dr. Khan, Khan admitted his role in the network and then was immediately

pardoned by the President of Pakistan. The Director of the International Atomic Energy Agency has called Khan only the “tip of the iceberg.”

Further, there are states that cheat from inside the NPT regime, a far worse threat. Again, they have a better chance of attempting to justify their violations if the nuclear weapons states do not observe their obligations. This group formerly included Libya and Iraq, presently includes Iran and North Korea, which has withdrawn from the NPT, and may in the future include others. And, if Pakistan is the gravest threat to the NPT, certainly North Korea runs it a close second. The United States and North Korea were close to a settlement of the nuclear issue toward the end of 2000, but the negotiations were not continued by the new Administration in 2001. In January 2003, North Korea withdrew from the NPT and asked the IAEA personnel, most importantly those monitoring the 8,000 spent nuclear fuel rods in storage at Yongbyon, North Korea to leave. Whereas formerly the intelligence estimates were that North Korea may have one to two nuclear weapons, now apparently the estimates are six to eight weapons. Japan in the past has indicated that North Korea with nuclear weapons could cause it to rethink its non-nuclear status with all that would mean for the NPT. Some kind of direct negotiations with North Korea are thus both important and urgent, for the sake of the future of the NPT as well as for world stability.

The United States has proposed that the Nuclear Suppliers Group withhold peaceful nuclear trade from those nations that do not yet have uranium enrichment and spent fuel reprocessing technology unless they undertake never to acquire such technology. This is a defacto revision of the NPT central bargain of non-proliferation in exchange for making peaceful technology available and nuclear arms control. It is aimed at Iran and other states that may try to cheat from inside the NPT regime, but it also takes in states such as Brazil as well that are

committed NPT supporters. In effect, it is asking important non-nuclear states such as Brazil that have permanently given up nuclear weapons in exchange for the free exchange of peaceful nuclear technology and nuclear disarmament by the nuclear weapon states to accept restrictions on their access to peaceful nuclear technology with no move by the United States on the nuclear disarmament side of the ledger, say by ratifying the CTBT, as has Brazil. That the potential abuse of the NPT guarantee of access to peaceful nuclear technology is a serious problem no one denies. But, it must be resolved in a perceived equitable way. Perhaps, the proposal by International Atomic Energy Agency Director General ElBaredi to multilateralize the nuclear fuel cycle by means of a new protocol to the NPT is the way to proceed.

First among the arms control commitments of the NPT nuclear weapon states is the test ban, the CTBT. Since 1968, the CTBT has been regarded by the NPT nonnuclear weapon states as the litmus test of nuclear weapon state compliance with their NPT Article VI arms control commitments. If they are giving up nuclear weapons at least the nuclear weapon states can give up testing their argument goes. Several of the NPT Review Conferences failed over the CTBT issue. A CTBT by 1996 was the principal promise made by the nuclear weapon states to obtain NPT indefinite extension in 1995. The United Kingdom, France, and Russia have ratified the CTBT, China is waiting for the U.S. The U.S. Senate rejected the CTBT in 1999, the Administration has indicated it will not ratify the CTBT and there have been suggestions of a resumption of nuclear testing to develop a new low yield nuclear weapon to serve as a “bunker buster,” a weapon that can be used against deeply buried storage facilities containing WMD. Yet such a weapon likely is unusable because it would create an enormous cloud of radioactive debris and the principal reason for it, the Libyan underground chemical weapon storage facility is no longer a problem. For the United States to resume testing would be disastrous for the NPT,

and of course for the U.S. to actually use such a nuclear weapon would be catastrophic. The long-term viability of the NPT requires U.S. ratification of the CTBT.

Secondly, deep reductions in nuclear weapons are essential for long-term NPT health. Reductions cause the perceived political value of nuclear weapons to decline, reducing their attractiveness and it means fewer weapons generally that could someday fall into the hands of terrorists. And in the post Cold War world, there are not enough conceivable targets for several hundred nuclear weapons much less the many thousands that the United States and Russia still maintain. Yet the 2002 Treaty of Moscow calls for no actual reductions in nuclear weapons and at the same time the strategic nuclear arms reduction process begun by President Reagan and continued by Presidents George H.W. Bush and Clinton has been terminated.

The third highly important issue is nuclear weapon use policy. In 1978, the United States, the Soviet Union, and the United Kingdom undertook never to use nuclear weapons against NPT non-nuclear weapons state unless attacked by such a state in alliance with a nuclear weapon states in order to persuade more non-nuclear states to join the NPT. This commitment was reiterated and made more formal in 1995 with France joining as well (China has always had a blanket no first use policy) in order to achieve the indefinite extension of the NPT. Yet all four of these states maintain national policies of reserving the right to use nuclear weapon states first, presumably against non-nuclear weapon states. This position is contrary to the NPT commitment of these nuclear weapon states and was underscored by the Nuclear Posture Review of 2001, which contemplated the use of nuclear weapons not only against Russia and China, but also against Iraq, Iran, North Korea, Libya, and Syria at the time all NPT non-nuclear weapon states. Surely, it is not unreasonable for states that have permanently renounced

the possession of nuclear weapons to expect their nuclear weapon NPT partners to undertake not to use nuclear weapons against them.

During the Cold War, NATO and the U.S. used the nuclear weapon first use option to offset the huge preponderance in conventional strength in Europe of the Warsaw Pact and the Soviet Union. This policy is no longer justified as the conventional balance is now strongly in favor of NATO but by hyping the value of nuclear weapons the continuation of this policy undermines the NPT. United States adoption of a no first use policy would be a clear indication of a downgrading of the political value of nuclear weapons and would greatly strengthen the NPT.

The United States cares about the potential proliferation of nuclear weapons as well it should. But, does it care enough to make necessary sacrifices such as: pledging not to resume nuclear testing, moving toward CTBT ratification, restarting the strategic arms reduction process, reaffirming the pledge never to use nuclear weapons against NPT non-nuclear weapon states, considering a no first use policy and generally downplaying the value of nuclear weapons?

So given the current situation what is the best course of action to pursue? What should delegates seek at the NPT Review of 2005 approximately a year away? In 1995, the Conference produced the Statement of Principles and in 2000 the Thirteen Steps were agreed. However, progress in achieving the objectives set forth in these two documents from 1995 and 2000 has been minimal. But, they did set the course, and they did contribute to some progress, e.g., the CTBT was completed and signed in 1996, the Additional Protocol was negotiated in 1997, nuclear weapon free zones were established in Africa and South East Asia and there has been recent progress in the expanding the number of parties to the Additional Protocol. Therefore, the following could be considered at the 2005 NPT Review Conference.

Given that a Fissile Material Cut Off Treaty was to be completed by 2005 and this will not happen a resolution could be adopted at the conference containing a framework FMCT composed of broad principles which the NPT Parties agree should be included in a FMCT. Of course, the two states that have been most reluctant to negotiate a FMCT will not be present at the Review Conference, nevertheless, such a document could be of utility in Geneva.

Second, the potential weaponization of Outer Space has been an issue that has concerned nations around the world in recent years. While an international agreement on this subject would not directly involve nuclear weapons, the conclusion of such an agreement could add to the confidence of NPT parties and thereby indirectly strengthen the NPT Regime. Accordingly, the Review Conference could consider a resolution containing principles, which would comprise a framework for an international agreement prohibiting the weaponization of space.

Third, the Negative Security Assurances given by the NPT nuclear weapon state parties in 1995 to secure NPT indefinite extension were national statements associated with a United Nations Security Council Resolution. Nevertheless, even though they were essential to NPT indefinite extension, it was asserted that they should not be considered legally binding. Even so, the International Court of Justice in its 1996 opinion on the Legality of Nuclear Weapons declared that the 1995 NSAs, considering the context in which they were given, should be viewed as having the same legal force as the Protocols to the Nuclear Weapon Free Zone Treaties containing NSAs which of course are legally binding. It has long been an objective of NPT non-nuclear weapon states to obtain legally binding NSAs from their nuclear weapon state treaty partners. The 2005 Review Conference could consider a resolution noting that the ICJ had found the 1995 NSAs to be legally binding and declaring the support of the NPT Parties for the Opinion of the Court.

Fourth, the strategic arms reduction process begun by President Reagan in 1981 was terminated in 2002 at the time of the signing of the Treaty of Moscow, itself not a weapon reduction treaty. The Review Conference could adopt a resolution calling for the recommencement of the process which is important to observance of the Article VI obligations of the nuclear weapon states parties.

And, of course, there should be a resolution strongly urging the continuation of the current nuclear weapon test moratorium and urging the prompt entry into force of the Comprehensive Test Ban Treaty, the most important treaty to the NPT regime after the NPT itself.

Additionally, a resolution urging the prompt ratification of the protocols to the existing nuclear weapon free zone treaties and a declaration of support for the early completion of negotiations on a Central Asia nuclear weapon free zone treaty could be adopted. Support for additional nuclear weapons free zones in the Middle East and elsewhere could be added as in the past.

Further, the dangerous North Korean situation should be addressed by the Review Conference if by the spring of 2005 it does not appear to be on its way to solution. Although, the evidence thus far appears to suggest the contrary, perhaps the desultory six power discussions being held in Beijing will make important progress in the months ahead. But, if this does not happen, the NPT parties should strongly express their concern, urge that the United States undertake best efforts to reach a positive resolution of the nuclear issue with North Korea through direct negotiations and pledge their fullest support.

Finally, the question of NPT universality could be addressed in 2005. There currently are three states with nuclear weapon arsenals that never joined the NPT and whose nuclear weapon

programs exist outside the NPT, India, Pakistan, and Israel. In addition, these programs exist outside of any international control whatsoever. This situation is deleterious to the NPT Regime and should not be allowed to continue to drift. Perhaps, the Review Conference in a resolution could charge the NPT parties to urgently seek a solution to the issue, which is acceptable to the NPT community and to the three states.

Because of the failure of the NPT nuclear weapon states to fully live up to their Article VI related commitments, because of compliance problems which originated within the NPT regime involving such states as Iran and North Korea, because of the lack of NPT universality, compounded by the increasing dangerous world in which we live, the NPT regime is in ever increasing peril. Perhaps, the 2005 Review Conference can take some important first steps toward stability and increased viability for the regime and toward a more secure world community in general.