

Title: Rethinking the NPT

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# Rethinking the NPT

Joseph F. Pilat

The Treaty on the Nonproliferation of Nuclear Weapons (NPT), with over 160 parties, is the most widely adhered to arms control treaty in history, but it has been criticized throughout its existence. It is confronting a fateful decision on its extension in New York next year, the 25th anniversary of its entry into force. Will the NPT be extended? It will probably, almost certainly, be extended. That question has been the focus of attention, however limited, to date. Should the NPT be extended? This issue is not being addressed, perhaps because it is presumed the treaty should be extended.

In many ways it is unfortunate that fundamental questions about the treaty and its role in the post-Cold War world are not being addressed

- the environment in which the treaty emerged and flourished has changed fundamentally, including the collapse of one of its founding members
- Iraqi and North Korean developments raise important questions about its effectiveness
- the model of the NPT, with its inherent discrimination and its institutionalization of the divide between nuclear-weapon states (NWSs) and nonnuclear-weapon states (NNWSs), is increasingly being questioned and alternatives such as a revival of the Baruch Plan are being put forward; moreover, this model has not been the chosen path for dealing with chemical and biological weapons (CBW).

Is the NPT a relic of the Cold War? A cursory view of history highlights this question.

The dawn of the atomic age was marked by the bombing of Hiroshima and Nagasaki. The unprecedented destructive power of nuclear weaponry was recognized, as was the inability of any one state to monopolize that power. Moreover, the potential for peaceful nuclear uses seemed limitless, with the prospect of atomic airplanes and automobiles, and power too cheap to meter. The military and peaceful atom seemed, then, to have an irresistible allure, and it was widely believed that nuclear science and technology would inevitably spread widely around the world.

In the mid-1940s, the international control of atomic energy was advocated in the Agreed Declaration of Canada, the United Kingdom, and the United States, the Moscow Declaration of the United Kingdom, United States and Soviet Union, and in the Baruch Plan. The approach of the Baruch Plan, presented to the UN Atomic Energy Commission (UNAEC), advocated

international ownership and control of all nuclear activities by an international authority. Specifically, the authority's powers were to begin with the raw material itself and include:

- managerial control or ownership of all atomic-energy activities potentially dangerous to world security
- the power to control, inspect, and license all other atomic activities
- the promotion of the peaceful uses of atomic energy
- the conduct of research and development with the view to ensuring the authority's lead in nuclear science and technology and enabling it to understand and detect misuses of atomic energy.<sup>1</sup>

The United States would not end the manufacture of atomic weapons and dispose of its existing stockpile, and the authority would not be granted full information, according to Baruch, until the "adequate system for control of atomic energy" and "condign punishments" for violations had been agreed and put into operation.<sup>2</sup> Baruch stated that his proposal was intended to be "a basis for beginning our discussion."<sup>3</sup> However, his proposal was probably not negotiable. Indeed, it was doomed to failure in the early years of the Cold War, languishing in the UNAEC.

Atoms for Peace took another approach to dealing with the problem. President Dwight D. Eisenhower, in his Atoms for Peace address to the United Nations General Assembly on December 8, 1958, proposed that:

The governments principally involved, to the extent permitted by elementary prudence, to begin now and continue to make joint contributions from their stockpiles of normal uranium and fissionable materials to an International Atomic Energy Agency. We would expect that such an agency would be set up under the aegis of the United Nations. . . .

Undoubtedly initial and early contributions to this plan would be small in quantity. However, the proposal has the great virtue that it can be undertaken without the irritations and mutual suspicions incident to any attempt to set up a completely acceptable system of worldwide inspection and control.

The Atomic Energy Agency could be made responsible for the impounding, storage, and protection of the contributed fissionable and other materials. The ingenuity of our scientists will provide special safe

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<sup>1</sup>"The Baruch Plan: Statement by the United States Representative [Baruch] to the United Nations Atomic Energy Commission, June 14, 1946," in *Documents on Disarmament*, pp. 10-11.

<sup>2</sup>*Ibid.*, p. 11.

<sup>3</sup>*Ibid.*

conditions under which such a bank of fissionable materials can be made essentially immune to surprise seizure.

The more important responsibility of this Atomic Energy Agency would be to devise methods whereby this fissionable material would be allocated to serve the peaceful pursuits of mankind. . . . A special purpose would be to provide abundant electrical energy in the power-starved areas of the world.<sup>4</sup>

The key idea of contributing fissionable material to an International Atomic Energy Agency (IAEA) was never realized, but the proposal led to the IAEA and fostered peaceful nuclear cooperation under some controls—a regime of regulated supply. As a growing number of states mastered the technology, the number of nuclear-weapon states expanded and there were projections of the dynamic growth of civilian power programs that would provide the wherewithal for even more NWSs in the future, with an attendant rise in the danger of nuclear war, accidents, and the like.

In 1958, in recognition of this danger, of the slowness of negotiations toward general disarmament, and of the fear that proliferation during the negotiations would totally derail them, a draft resolution on the nonproliferation of nuclear weapons was introduced in the General Assembly by Ireland. It was not voted on, but led to deliberations in the General Assembly and the Eighteen Nation Disarmament Commission (ENDC) that resulted in the NPT. Amid growing interest and debate, and an emerging recognition of an area of clear mutual interest between the United States and the Soviet Union, in 1959 a General Assembly Resolution, also an Irish initiative, was adopted. It called, *inter alia*, for the consideration of the feasibility of an international agreement to prevent proliferation subject to inspection and control. In 1961, the General Assembly unanimously adopted yet another Irish resolution calling on all states to conclude an international agreement under which the nuclear states would not give control of weapons or information to nonnuclear nations and the latter would not manufacture or acquire such weapons. Specifically, the operative provisions of the amendment:

1. *Calls upon* all States, and in particular upon the States at present possessing nuclear weapons, to use their best endeavours to secure the conclusion of an international agreement containing provisions under which the nuclear States would undertake to refrain from relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons, and

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<sup>4</sup>“United States ‘Atoms-for-Peace’ Proposal: Address by President Eisenhower to the General Assembly, December 8, 1953,” in *Documents on Disarmament*, pp. 399-400.

provisions under which States not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons;

2. *Urges* all States to co-operate to those ends.<sup>5</sup>

The ENDC took up the issue in the context of general and complete disarmament, proceeding on the basis of separate U.S. and Soviet draft treaties. But, with U.S. and Soviet agreement, nonproliferation was soon treated as a separate, or “collateral,” issue in the ENDC and in the General Assembly. In 1965, the Disarmament Committee discussed nonproliferation and the General Assembly urged action on this matter. In 1967, in both the ENDC and the General Assembly, the United States and the Soviet Union submitted separate but identical drafts of a treaty. These drafts were the basis of the debate in 1968 in the ENDC and elsewhere on an international nonproliferation treaty. While the Irish resolution had focus on key nonacquisition and nontransfer provisions, the debate broadened the scope of the treaty. The debate involved the following additional issues:

- access to technology for peaceful uses of nuclear energy, including nuclear explosions;
- steps to disarmament by nuclear powers; and
- the granting of security guarantees to nonnuclear states.

All of these issues except security assurances were dealt with to some degree in the treaty. Articles IV and V of the treaty dealt with assistance in the peaceful uses of nuclear energy, and Article VI with disarmament. Security assurances were dealt with outside the treaty, with the three depository states developing UN Security Council Resolution 255 on positive security assurances. The treaty was then concluded, a UN resolution commended the draft treaty, after revisions were agreed, and requested the depositories to open the treaty for signature. The treaty entered into force March 5, 1970, with ratification of 40 NNWSs and the three NWS depositories.

In the context of 1968, the NPT was a bold attempt to use multilateral means to balance international concerns for global security with emerging national ambitions in the nuclear arena (civil and military). It reflected U.S. and Soviet interests in securing a degree of stability in their confrontational Cold War relationship and in sensitive regions. It reflected the desires of

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<sup>5</sup>General Assembly Resolution 1665 (XVI): Prevention of the Wider Dissemination of Nuclear Weapons, December 4, 1961. U.N. doc. A/RES/1665 (XVI), December 5, 1961, in *Documents on Disarmament*, 1965, pp. 532-34.

developed industrial nations, especially Europe and Japan, to exploit what appeared a promising technology for commercial use and advantage. And it reflected the hopes of key developing nations that the transfer of this important scientific and technological capability would have the potential to ameliorate their serious socio-economic problems.

The objectives embodied in the resulting treaty involved nonproliferation, the promotion of peaceful uses, and the encouragement of arms control. The fundamental objective of the treaty is to prevent the spread of nuclear weapons to states that do not possess them. The obligations of states parties to the NPT established in the first three articles of the treaty are designed to ensure the realization of this objective. Pursuant to Article I, each nuclear-weapon state party undertakes not directly or indirectly to transfer nuclear weapons or other nuclear explosive devices or the control over such weapons or explosive devices, and not to assist, encourage, or induce any nonnuclear-weapon state to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or the control over such weapons or explosive devices. Under Article II, each NNWS party to the NPT undertakes not to receive the transfer or direct or indirect control of nuclear weapons or other nuclear explosive devices, and not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and not to seek or receive any assistance in their manufacture. Article III provides that each NNWS party to the NPT is to accept international safeguards, as set forth in agreements to be negotiated with the International Atomic Energy Agency, to be applied to all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the purpose of verification of treaty obligations, with a view to preventing the diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.

Another objective of the treaty is to ensure the fullest cooperation in the peaceful uses of nuclear energy, consistent with the objective of nonproliferation. While Article III provides for strict controls over peaceful nuclear activities to ensure that they are not misused for proscribed military purposes, Articles IV and V provide a framework for peaceful cooperation. All the parties to the treaty undertake, in accordance with Article IV, to facilitate the fullest possible exchange of equipment, materials, and scientific and technological information for the peaceful uses of nuclear energy. Those parties to the treaty with an advanced nuclear capability are to cooperate in contributing to the further development of the applications of nuclear energy for

peaceful purposes, especially in the territories of nonnuclear states parties to the treaty, with due consideration for the needs of the developing areas of the world. Article V affirms the principle that potential benefits from peaceful nuclear explosions should be made available to nonnuclear states on a nondiscriminatory basis.

A third objective of the NPT is to encourage arms control efforts in the nuclear and nonnuclear arenas. Accordingly, under Article VI, each of the parties undertakes to pursue "good faith" negotiations on effective measures relating to cessation of the nuclear arms race at an early date, to nuclear disarmament, and to achieving a treaty on general and complete disarmament under strict and effective international control. And, in this vein, Article VII states that nothing in the treaty affects the right of any group of states to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories.

These objectives constituted, however bold for the times, a compromise—a Cold War compromise. This compromise is apparent in language as well as in the negotiating history of the treaty. The collective defense issue, particularly the Multilateral Force (MLF) and Atlantic Nuclear Force (ANF) proposals, bedeviled the negotiations, and the invasion of Czechoslovakia in 1968 delayed the ratification of the treaty in the United States. The NPT compromise:

- did not affect collective defense or extended deterrence, even though the MLF and the ANF never materialized;
- explicitly recognized the central role of nuclear weapons in the East-West confrontation;
- it established divergent obligations for NWSs and NNWSs, although two bargains were designed to ameliorate the differences (that is, access to technology in exchange for no-weapon pledges and safeguards, and the call for disarmament);
- embodied the regulated supply concept of Atoms for Peace; and
- provided for only limited verification (because certain treaty pledges were deemed unverifiable), and thereby constituted a transparency or confidence-building.

This compromise reflected the word of the 1960s, which seemed set in concrete. Indeed, from the late 1950s to early 1990s, the international security environment in which the NPT was conceived and negotiated and had operated was stable. As a consequence, the treaty was accepted as the only politically feasible alternative, and it flourished. After the NPT's entry into

force, there were continued calls by the UN for universal adherence, and growing numbers of parties after the near 25 years of its existence.

The NPT's environment, which appeared to many as reflecting the only possible world included:

- stable but confrontational East-West relations;
- the centrality of nuclear weapons to security;
- global U.S. and Soviet power and influence, along with security guarantees to allies and control over allies and client states;
- mutual U.S.-Soviet interest in nonproliferation, despite the chills and thaws of the cold war;
- limited dissemination of the key technologies, at least to anti status-quo powers, and a U.S. and Soviet lead in technology for much of period; and
- a commitment to nuclear energy (including explosives for long period), which was shared with much of world for most of period under consideration.

With the end of the Cold War, the international environment has changed dramatically, in the following ways:

- instability has become the dominant theme of international relations, raising fears of nuclear self help (one Gulf War lesson is that only nuclear weapons can counter the conventional superiority of the United States and the West);
- the delegitimization and devaluation of nuclear weapons is occurring;
- there are for the first time since the treaty entered into force dramatic successes in arms control;
- the security guarantees connected with Cold War nuclear alliances are declining; they disappeared on the Eastern side in the old sense;
- Soviet and U.S. influence is waning, along with their ability to control allies, clients, friends (for example, eastern Europe, Iraq, North Korea);
- the unprecedented collapse of nuclear weapon state has resulted in new nuclear states (at least temporarily), the collapse of export controls (leakage), "brain drain," and the prospect of "loose nukes";
- nuclear and related technologies are widespread; and

- interest in nuclear power is waning, except in Asia and France.

After the Cold War, it is clear that the setting in which the NPT was established has changed in dramatic ways. First and foremost, neither proliferation nor nuclear power had the appeal or spread as widely as expected. Yet these were the expectations on which the NPT's creation was based. Moreover, the post-Cold War changes undermine every aspect of the foundation on which the NPT was built. This new situation would seem to raise serious questions about the other fundamental assumptions and issues at the heart of the NPT. The world will be confronted by the need to reassess nuclear weapons and their role in the world, nuclear proliferation dangers and the required means to address them in the new environment, and the new prospects for nuclear and nonnuclear energy. These issues will have to be addressed; they cannot be avoided. They will not be resolved rapidly. The current environment is too uncertain, and leadership in the United States and elsewhere consequently too tentative. However, the extension of the NPT, which is mandated for 1995 under Article X.2 of the treaty, provides a forum for their discussion. In many respects, the timing is unfortunate, for there appears to be no way of clarifying any of these issues prior to the April 1995 NPT review and extension conference. Accordingly, the climate will not be particularly promising for discussing the treaty, and especially for the prospect of indefinite extension. Fundamental issues will have to be placed on the post-conference agenda. However this may be, whether the treaty will survive, and if so what it will mean in the future, has to be addressed anew.

The NPT is likely to survive beyond 1995, although its unsettled context could be damaging to its future prospects. In any event it will be a different instrument than it was during the Cold War, and no longer as central to nonproliferation efforts. The NPT will in the future retain a role as a confidence-building measure, as a forum for U.S. security dialogues with Russia or other states, and as a forum for discussions on disarmament and energy. But these roles will be significantly diminished, in part because there are alternatives to the NPT in addressing them that did not exist during the Cold War. The treaty's value and relevance in the future will depend on its contribution to nonproliferation; it will be judged by its success or failure in dealing with:

- NPT holdouts;
- suspicious parties, including Iraq, North Korea, Iran;
- nuclear developments in the former Soviet Union; and

– plutonium control and disposition.

What this means is that there is now a renewed interest among parties to the treaty about its real security value. This value is for the first time on center stage and being seriously questioned. Most states were not directly affected by the provisions of the treaty during the Cold War. Are they now? It depends on the risks of proliferation now and in the future. The future of the NPT *is* going to be tied to the proliferation problem like never before. At past review conferences, proliferation was one of the few issues discussed seriously. The focus was on arms control, then nuclear energy, and lastly on nonproliferation. If the proliferation problem is spiraling out of control, the NPT has failed. Perhaps it could not survive the end of the cold war. Most states have made a no-weapons pledge by now, and would presumably disavow it in this event; it would not be possible or even desirable to save the treaty in the midst of a “nuclear-armed crowd.” If the problem is limited to holdout states and a few parties, the NPT has not failed. It would remain useful as a norm, a confidence-building measure and, depending on safeguards improvements and other issues, an enforceable but limited legal instrument. The latter best characterizes the current situation, but the proliferation situation is not stable and could worsen.

If the NPT survives, it can be, it is argued, a pillar of a post-cold war world committed to multilateralism, respect for international law, etc.; it was the primary basis of postwar actions in Iraq. But this view is probably not compelling any longer, following UN setbacks in recent years in North Korea and elsewhere. Can the NPT be strengthened? Export controls, safeguards, and the like are being improved, and there are new instruments and approaches, including counterproliferation and regional arms control measures, being promoted. These efforts will strengthen the treaty, but they may not be sufficient to ensure its long term survival. There is currently no consensus on the future of the treaty and on nonproliferation—other than in declaratory policy—which limits the ability of the United States or others to strengthen nonproliferation efforts. This lack of consensus probably dooms alternatives, and will favor the treaty as a representation of the status quo for the foreseeable future. The prospects for a consensus in the future depend on the resolution of key problems that have long troubled the treaty. The full range of issues being debated in the context of the NPT’s extension will be debated long after the review and extension conference is over. It will be necessary to develop and address the post-conference agenda of issues, which will include the future of nuclear

weapons, security assurances, and the like. Vigilance is necessary; whatever happens in 1995, the NPT is a treaty that will have to be tended over time or it will wither and die.