

Asia: Non-proliferation and safeguards

A view from India on international and regional developments, the NPT, and the role of the IAEA's safeguards system

By S.K. Singh

The international community and the IAEA have been worried over the years about certain Asian countries which have not been agreeable to signing the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The extraordinary changes that have overtaken the world, especially Asia, in the last two or three dozen months have changed this. Now the world is worried about certain countries that have signed the NPT but have been functioning as if no such Treaty existed.

Israel and Pakistan have refrained from signing the Treaty. Iraq, Iran, and North Korea are signatories of fairly long standing. Experts in international law are not unanimous about whether or not Kazakhstan is bound by the commitments made by the former Soviet Union, as a signatory of the Treaty. Anyway, the Foreign Minister of Kazakhstan has indicated that his country is not averse to signing the Treaty, after becoming a member of the United Nations.

The mandate of the IAEA is to deal with peaceful uses of nuclear energy. The IAEA Statute nowhere mentions or uses the expressions "proliferation" or "non-proliferation". Between the time the Agency was set up in 1957 and the NPT came to be negotiated and opened for signatures in 1969, France and China too had become nuclear-weapon States. It may be recalled that the USA, USSR, and UK had developed and deployed their nuclear weapons prior to the NPT being negotiated.

The safeguards system (as contained in IAEA document INFCIRC/66) was evolved by the Agency prior to the signing of the NPT. After the coming into force of the NPT, this safeguards system was made considerably more strict and rigid. It now also took into account the commitments and obligations assumed by IAEA Member States in respect of non-proliferation.

The post-NPT safeguards system of the IAEA is contained in document INFCIRC/153. This

document was finalised by the IAEA Board of Governors only in February 1972. This takes into account Article III of the NPT, which indicates that the required safeguards "shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere".

If the idea of the NPT is to free the world from the curse of nuclear weapons, then why is it that a few nations continue to claim the possession of nuclear weapons as their exclusive and legitimate right? And the IAEA does not contradict them. Terror cannot replace logic. The world cannot accept the thesis that for many countries scientific and technological freedom should be induced to wither because of what some call the selective imperatives of horizontal non-proliferation.

We should also note here that the IAEA itself is not a party to the NPT. However, the NPT States have assumed obligations vis-à-vis the Agency under consequential safeguards agreements, which under the NPT itself they are obliged to conclude with the Agency.

The use of atomic bombs against Japan in August 1945, in terms of customary international law, has been considered illegal by most international lawyers. International law maintains a distinction between combatants and non-combatants, between military and other targets, prohibits the use of poisoned weapons, prohibits commission of crimes against humanity, insists on the protection of the civilian populations, and does not permit any disproportionality in self-defence. There was some thought given to the banning of any further use of the nuclear weapon, and, in that process, the non-utilisation of this technology. But as L.W. Herron notes, this technology was found to be too fascinating, its power too seductive for the genie to be left in the bottle.*

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* See "A lawyer's view of safeguards and non-proliferation", by L.W. Herron, *IAEA Bulletin*, Vol. 24, No. 3 (1982).



IAEA safeguards inspectors (centre) checking fresh fuel elements at a nuclear power plant.

At one time, before the USSR and the UK became powers possessing nuclear weapons, it had appeared possible that the USA would be persuaded to move towards unilateral nuclear disarmament.

However, once this proliferation had taken place, first from one nuclear-weapon State, to three, and later on to five, the world found that proliferation had run amuck. It was only after that stage that the vertical proliferators chose to become passionately hostile to the idea of horizontal proliferation. Hence the NPT. And hence indeed the involvement of the Agency with the implementation of obligations assumed under the NPT.

It is useful to recall this background.

Recent nuclear developments

The changing world has seen, during the last 2 years, a number of developments in the nuclear field in Asia.

For some time now, Israel has been acknowledged as a virtual nuclear-weapon State. At the end of the Iraq/Kuwait war came revelations about how far Iraq, a signatory of the NPT, had moved in the direction of acquiring clandestinely the wherewithal for fabricating nuclear weapons. Indeed, without the victory of the allied powers against Iraq, it would not have been possible to uncover so much evidence about Iraq's clandestine march towards acquiring nuclear

weapons. Pakistan, according to Western intelligence reports, has received advice and assistance from China enabling it to come very close indeed to making a nuclear weapon. US President Bush has been forced to deny to Pakistan the certification which is required under the Pressler Amendment, before the US Congress can authorise funds for providing Pakistan any economic and/or military aid. And now the Pakistan Foreign Secretary has acknowledged that they can assemble the bomb at will. North Korea, another signatory of the NPT, is suspected to have covered considerable ground on the road to acquiring nuclear weapons capacity.

Consequent to the collapse of the old Soviet Union, its republics became independent. These republics wish to retain some unity of purpose and functioning in certain specific areas. They are all committed to transferring all the nuclear weapons, which may be on their territory, to the territory of President Boris Yeltsin's Russian Federation. However, there have been certain worrisome delays in the transfer of weapons from former republics like Kazakhstan.

What the international community faces in these situations in Asia are not problems concerning the IAEA's safeguards system, but rather of non-proliferation. And what lies behind that is the question of the political will of the international community to move significantly towards general and complete disarmament.

The preamble of the NPT mentions international tensions and the need to strengthen trust between States, so that they could cease manufacturing nuclear weapons and liquidate their existing stockpiles, and eliminate from their national arsenals nuclear weapons, as well as the means of their delivery.

All this can be achieved under a Treaty on general and complete disarmament and a system of international verification, under strict and effective international control. Immediately after the end of the Cold War and the dismantling of the Warsaw Treaty, this could have been worked out. But this seems to have faded away already, mainly due to the desire of the five nuclear-weapon powers to keep maintaining, acquiring, and inventing new nuclear armaments. The world must acknowledge that during the last 3 years significant steps were taken by the USA and the USSR by negotiating various disarmament measures leading to a significant improvement in this field. But these now seem stalled.

Against this background, when the nuclear haves advise the nuclear have-nots not to acquire what the former already have, the entire exercise becomes a bit unreal, a bit of a mockery. It becomes even more difficult to swallow all this when the new Russian Federation admits candid-

ly the error in counting the nuclear weapons in the former Soviet Union. The error according to experts could be as high as 20%.

And what about the suspicion of some of these inaccurately counted weapons falling into irresponsible hands? The Pakistani and Iraqi clandestine nuclear-weapon programmes illustrate how a signatory as well as a non-signatory to the NPT can receive advice, assistance, and nuclear material to pursue their respective ambitious weapons programmes. Supplies, advice, and assistance have obviously been forthcoming from "countries" that are developed in the nuclear field, and are either signatories to the NPT or those that have promised to abide by its terms. It would appear that more than political friendship, the magic of the market place has been the motivating force in this field too. The desire to make profits has motivated the industrialists of certain States to overcome their abhorrence of nuclear weapons and their squeamishness in respect of breaking their pledged word.

Safeguards and the IAEA

We are passing through not merely a period of change but also of contradictions.

On the one hand, the two most major weapons States have agreed to carry out deep cuts in armaments, and to defuse conflict situations around the world. But on the other hand, neither side has shown any inclination to move towards a comprehensive Test Ban Treaty or to acknowledge the need to achieve, in a time bound framework, general and complete disarmament.

There is a new security environment in the world. And it would appear that the great powers are all interested in reorganising their nuclear arsenals in this new context. But they are adverse to giving up their quest for achieving superior power.

There is talk of strengthening safeguards and giving more teeth to the IAEA, but it is confined only to the horizontal aspect of the nuclear proliferation problem. There are no ready answers to many questions relating to the gray zone in which aspects of morality and philosophy, science and technology, economic strength, and military prowess all merge.

How can the IAEA, reflecting the will of the world community, ensure further compliance by States which are themselves signatories to the NPT and thus committed to full-scope safeguards? Under its Statute, how can it ensure greater transparency in the nuclear programme of countries like China, Pakistan, and India who

have chosen to remain outside full-scope safeguards? How can it ensure that safeguarded material is not diverted for military use?

To adapt the language once used by the late Dr Homi Bhabha: "Safeguards in respect of a nuclear-weapon State are like a boat without a bottom."

China, it may be recalled, until now has had a comparatively minuscule nuclear power programme, and the bulk of its nuclear programme has been weapons-oriented. It has chosen to place only a few non-military nuclear facilities under safeguards. Pakistan's Kahuta enrichment plant has been in operation for nearly a decade and Pakistan has been hard put to justify the purpose of this plant as it has no nuclear power programme that can utilise the uranium enriched in Kahuta.

The problems faced by the IAEA arise in respect of its responsibilities arising not from its Statute but from the role assigned to it under the NPT. Plainly put, the problem is that the Agency has neither the organisation nor the possibility to detect clandestine facilities or undeclared nuclear activities of NPT States.

It should be recalled that when the NPT was signed, the responsibility assigned to the IAEA was not to seek out clandestine activity, but simply to verify that the declared activities do not result in diversion of safeguarded nuclear material. The situation in respect of material safeguarded by the IAEA, in respect of power plants around the world, becomes clear when we recognise that only 32% of all power reactors in the world, representing approximately 32% of the total world nuclear power generating capacity, are subject to the NPT-type safeguards provided for in document INFCIRC/153. In other words, safeguards are meant to sound an alert regarding commitments and undertakings assumed in the context of NPT, rather than to police the nuclear world.

The NPT seeks to ensure a kind of disarmament of those that were unarmed. Now some of them are quietly trying to get armed and that is not cricket. The international community seems to be vaguely desirous of ensuring that IAEA safeguards (whether of the 153-type or the 66-type) result in non-proliferation, especially in cases where the situation has already moved towards proliferation.

The IAEA seems to have no means of preventing the nuclear haves, or even the highly industrialised powers, all signatories to the NPT, not to assist non-nuclear-weapon States in developing their nuclear weapons. It is generally recognised that certain nuclear-weapon States have assisted selected non-nuclear-weapon States by giving them bomb designs and testing

their data facilities. Under what procedure or through what logistical arrangements can this kind of activity be checked by the IAEA? Or for that matter by the UN Security Council?

Indeed, the proliferation control systems formulated and evolved so painstakingly under the IAEA/NPT prescriptions have been exposed as meaningless, hollow, and ineffective by the near-successful efforts of Iraq and North Korea to join the ranks of nuclear-weapon States, albeit of the mini category. There have been those, over the years, who have agonised also about the nuclear direction that they thought was being taken by Taiwan. If anything, the IAEA's safeguards system has acted as a figleaf or a disguise favouring rather than exposing the potential proliferators.

Nuclear dilemmas

The nuclear dilemmas the world faces in today's Asia must focus attention on the basic illegitimacy of nuclear weapons, for it was in Asia alone that they have ever been used to wreak the ultimate in vengeance. We cannot pretend that the question of non-proliferation is unrelated to the problem of nuclear disarmament and elimination of nuclear weapons. By now the nuclear-weapon States, one hopes, are mature and evolved; and capable of declaring that their weapons cannot be considered legitimate means for self-defence.

The recent experience, post-Gulf War, indicates that signing Treaties and committing themselves to full-scope safeguards has provided certain people with a camouflage, and not promoted transparency. One is being driven to the ultimate conclusion that genuine and sincere democracy alone is a guarantee for adherence to international commitments.

Preventing the use of nuclear technology for destructive purposes must necessarily involve the IAEA in declaring that it is unequivocally opposed to nuclear weapons everywhere — including in the five declared nuclear-weapon States — but the threat of proliferation lingers on.

One is reminded of the stanza in Pablo Neruda's poem *The Water Song*:

*"It is time, love, to break off that sombre rose,
Shut up the stars, and bury the ash in the Earth;
And, in the rising of the light,
wake with those who awoke,
Or go on in the dream, reaching the other shore
Of the sea which has no other shore."*