

UNDER FIRE

by Piet de Klerk

Is the World's Treaty Against the Spread of Nuclear Weapons Strong Enough?



15 Fifteen years into the “atoms for peace” era, Ireland in 1968 took the historic first step to sign the global treaty against the spread of nuclear weapons. Since then, more than 180 other countries without nuclear weapons have joined the pact, most of them during the cold war period. They see their security in not having the bomb, and bind themselves to work for nuclear disarmament everywhere.

Their shared commitments make the global Treaty on the Non-Proliferation of Nuclear Weapons (NPT) the most accepted arms-control agreement in history, a cornerstone of nuclear cooperation. Countries that join it renounce the military atom, and they must accept IAEA safeguards on their nuclear activities to verify it.

But the Treaty is under fire, and some critics think it no longer fits the times. They say it cannot prevent Treaty countries from breaking out at will, or ensure that those having nuclear ambitions or arsenals are actually honouring their pledges. Neither has it attracted three key countries—India and Pakistan, which have tested atomic bombs, and Israel, which is suspected of having them—to its ranks of members.

Not everyone agrees that the NPT is outdated. But it is clear that the Treaty and its associated regime are under stress, and that its fragile condition needs urgent care.

The debate is important and timely—the Treaty comes up for international review in 2005 and countries already are preparing for it.

A major question today is whether the NPT is strong enough to keep the lid on nuclear weapons in the world's changed security environment. A former senior official at the IAEA looks at the challenging picture.

The Changed Environment

Over the past two years, a few important developments have increased the stress on the non-proliferation regime. The first is related to September 11. The “9/11” Al Qaeda attacks on New York and Washington have raised the specter of nuclear terrorism, not because the terrorists used sophisticated weapons—on the contrary—but because of

their proven preparedness to use violence without restraint. Reports—never substantiated—that Bin Laden had tried to put his hands on nuclear weapons in the former Soviet Union increased the fears.

As is well known, the United States subsequently declared war on terrorism. By equating terrorists and the regimes that harbour or sponsor them, the policy took aim not only at sub-national groups, but also at States that are, in US eyes, linked to terrorism. Hence, the “axis of evil” in President Bush’s State of the Union address in January 2002.

Without going into the merits of the US policy, it is instructive to review developments in the three countries mentioned—Iraq, the Democratic People’s Republic of Korea (DPRK), and Iran—which also have increased the stress on the non-proliferation regime (See box, next page).

The NPT Under Fire

“9/11” and the regional developments mentioned above have had a profound impact on non-proliferation thinking. In particular in the United States a more muscular policy emerged. The US *National Strategy to Combat Weapons of Mass Destruction*—issued in December 2002—focuses on the dangers of weapons of mass destruction by “hostile States and terrorists”. While “counter-proliferation” has been part of the US thinking for at least a decade, it now has a more prominent role.

As “we cannot always be successful in preventing and containing the proliferation of WMD to hostile States and terrorists,” the December report states, “the US military and appropriate civilian agencies must possess the full range of operational capabilities to counter the threat and use of WMD by states and terrorists against the United States, our military forces, and friends and allies”.

The developments described have also put the NPT under fire. In July 2003, the *New York Times* joined the debate. In an editorial, it stated that “international controls that contained the spread of nuclear weapons for decades are crumbling”. The editorial said the starting point of “an international effort to repair the torn fabric of nuclear proliferation controls” should be “a frank acknowledgement that the Non-Proliferation Treaty is no longer adequate in its present

Iraq

With the Iraqi acceptance of the return of the inspectors in September 2002, and the subsequent adoption of Security Council resolution 1441 in November 2002, matters seemed to move in the right direction. The IAEA set out to answer the question whether any nuclear weapons programme might have been revived in the period 1998-2002 when it was not present “on the ground” in Iraq.

IAEA inspectors had already documented that Iraq—an NPT member—had breached its commitment in the 1990s by developing a secret nuclear programme. By 1997, the IAEA had a comprehensive and consistent picture of Iraq’s clandestine pre-1991 nuclear weapons programme, and supervised its elimination in the early 1990s.

By March 2003, when the latest rounds of inspections ceased, the IAEA had concluded that, despite some open questions, there were no indications of a revived nuclear weapons programme. That conclusion, however, could not prevent the US-led war in Iraq.

Much has been written about the reasons for starting the war. The only point I would like to make here is that in the period before the war, doubts had been raised about the effectiveness of the IAEA inspections. One may remember the words of US Secretary of State Powell: “The question is not how long the inspectors have to continue to grope around in the dark; the question is when Saddam turns on the light.” The perception that the (nuclear) inspection regime in Iraq was effective is now only slowly gaining ground again as no indications of a nuclear programme have been found.

North Korea

In early 2001 the benefits of the 1994 Agreed Framework between the US and the DPRK (North Korea) seemed within reach. The first of the two light water reactors—promised in the agreement in exchange for a freeze on the existing North-Korean nuclear programme—was actually being built. By the time key nuclear components would have to be installed, presumably in 2005, the DPRK would have to be in full compliance with its NPT safeguards obligations.

Before that point could be reached, however, a new crisis broke out after a DPRK admission that it had started a programme to enrich uranium, which according to the US was for weapons purposes. That set off a crisis that included the DPRK’s expulsion of IAEA inspectors at the end of 2002, and its decision to withdraw from the NPT in early 2003.

In March 2003, the Board of Governors of the IAEA reported the matter to the UN Security Council. The Board had concluded that the IAEA and DPRK safeguards agreement was binding and in force, and that the DPRK was in further non-compliance with it. That is where formally the matter rests for the time being.

Irrespective of whether one recognizes the DPRK withdrawal from the NPT, the fact that for the first time a country took such a step underlines the Treaty’s vulnerability. Moreover, disagreements about how to react to the situation within the Security Council—not unlike 1993 when the IAEA Board first referred the DPRK issue to the Council—have raised doubt about the enforcement of compliance with the Treaty. The six-party talks in Beijing in August have given rise to some optimism, but it is clear that the diplomatic path to a solution is still long. In the meantime the DPRK is free, as a matter of fact, to reprocess the spent fuel of its 5 megawatt reactor.

Iran

Ever since Iran’s decision to build the Bushehr reactor and fuel cycle facilities at Esfahan, it has been clear that Iran had an expanding nuclear programme. Yet revelations in August 2002 about several new fuel cycle facilities came as a surprise.

IAEA Director General Mohamed ElBaradei visited the most important of these facilities, a large-scale enrichment plant, in February 2003. During that visit the Iranian authorities admitted to have imported some—never declared—nuclear material in the early 1990s. They further provided explanations about their nuclear facilities, including facilities for the enrichment of uranium and the production of heavy water.

With these facilities, Iran will have the whole fuel cycle at its disposal. The “break out” potential—a potentially

short route to nuclear weaponry—that this generates has created concern, even if the present programme would be for peaceful purposes only, as Iran’s leaders have stressed repeatedly.

The IAEA is now heavily engaged in the verification of the Iranian programme and its history. As Dr. ElBaradei reported to the Agency’s Board in November 2003, the IAEA’s ability to reach a conclusion on the nature of Iran’s nuclear programme and the correctness and completeness of Iran’s declared nuclear activities will very much depend on its ability to implement in full the safeguards agreement and the Additional Protocol that Iran has concluded with the IAEA. Such Protocols, once they have legally entered into force, give the IAEA the right to receive more information, to carry out inspections in a broad range of places and to make more use of environmental sampling.

form. The treaty does not ban enriching uranium or reprocessing plutonium, the two basic methods of making nuclear bomb fuel. It relies on the good faith of governments. It has no clear enforcement mechanism.”

Other voices have been raised as well to question the traditional nuclear non-proliferation regime.

The view that traditional non-proliferation has failed is strongly defended by Paul Bracken of Yale University. In a paper at the annual meeting in November 2002 of the Carnegie Endowment for International Peace, he makes a distinction between the first and the second nuclear ages. He defines the first one as the age of US-Soviet rivalry, and the second—starting in the 1960s and 1970s—as the age in which nuclear proliferation became multi-polar and the non-proliferation regime was built up.

I consider this distinction not very helpful, but the point here is that Bracken concludes that the second nuclear age is coming to an end. It was already wearing thin in the early 1990s, he says, but now it is in a state of atrophy and broken beyond repair. Bracken refers here to Iraq, to the DPRK and to the nuclear tests of India and Pakistan.

In his view, tightening the basic features of the NPT regime will not help anymore, and more radical actions are required. The NPT has served us for 30 years, much longer than originally expected, he concludes, but now it doesn't work any more.

Steve Miller of the Belfer Center for Science and International Affairs of Harvard University draws similar conclusions. In a May 2003 article, he distinguishes seven challenges to the non-proliferation regime, grouping them under the headings of “crumbling foundations” and “performance anxieties.” He specifically cites the erosion of the nuclear non-proliferation norm; the reconfirmation of the legitimacy of nuclear weapons; the failure to move forward on disarmament; the security of nuclear material; the limits of IAEA safeguards; concerns over nuclear material falling into the wrong hands; the problem of gauging State “intentions”; and the enforcement role of the Security Council.

Miller provides a useful analytical overview of the weaknesses of the NPT regime. He concludes that it has given critics of arms control in Washington potent ammunition for saying that the NPT is not enormously valuable. “The NPT may be accepted as a useful adjunct to this approach,” he says, “but the bedrock of the new US strategy is US military power and unilateral military options.”

Assessing the NPT's Health

To answer the question whether the NPT is dying (slowly or otherwise) or whether it urgently needs to be changed, we have to consider a number of factors.



Petr Pavlicev/IAEA

In December 2002, IAEA inspectors head back to Baghdad from a site 400 kilometers through the desert.

❶ Enforcing the Treaty

The first is that for the US in the post-9/11 shock, non-proliferation instruments other than the NPT have grown in importance. The emphasis has shifted from non-proliferation to counter-proliferation—that is, on efforts to deter and defend against possible proliferation scenarios. The proposal to intercept proliferation relevant trade, launched by President Bush in May 2003 under the name *Proliferation Security Initiative* is such an instrument, as are military actions.

It is important to note that the option of military force has always been part of the NPT regime. The right to decide on the use of force has been given to the Security Council. This is enshrined in the IAEA Statute and in the NPT safeguards agreements.

Yet don't the cases of Iraq and the DPRK prove that the Security Council is part of the problem rather than part of the solution? I would argue that Iraq was a case apart, especially in the last phase before the second Iraq war. The arguments used by the US, UK and Spain—about weapons of mass destruction and the link to terrorism—were not convincing to the majority of the Council.

The case of the DPRK is different. The stakes are higher, not only because the country might have nuclear weapons already. There are important differences of view and interests between all major players—namely, the US, Russia and China on the Security Council, and Japan and South Korea outside of it. I consider the case of the DPRK the most pressing non-proliferation challenge, because the danger is real and the problem has been festering for a long time. But complex diplomatic maneuvers, like the six-party talks, in which there is a will to compromise and a determination to find a common solution, are unavoidable. The use of force hardly appears an option.

There is another dimension, as the case of Iraq illustrates. The use of force comes at a price, especially if such force has been used without the approval of the Security Council. Seen together, the cases of Iraq and the DPRK indicate the limits of the use of force.

② NPT Support Remains Strong

The second factor to consider is that support for the NPT remains strong. This includes US support, despite the fact that the Treaty is not the only star in the US non-proliferation firmament anymore. When John Wolf, the US delegation leader to a recent meeting in Geneva to prepare the 2005 NPT Review Conference addressed the meeting, he said: "Many observers are too quick to write the epitaph for the NPT and for our common efforts. Let me say, up front, that the United States of America rejects that view", and he went on to praise the remarkable record of achievements of the Treaty.

③ Strengthened Inspection Regime

Thirdly, we need to realize that the NPT inspection regime over the last decade has been strengthened considerably, a fact that Miller completely overlooks. Further progress is within reach if all States, especially those that have sensitive nuclear facilities, sign the Additional Protocol to their safeguards agreements with the IAEA.

Unlike critics like the *New York Times* have suggested, the international community does not have to rely on the "good faith of governments" that declare that their nuclear activities are only for peaceful purposes. There is an inspection regime that draws conclusions about compliance and non-compliance.

④ Change is Difficult

The fourth factor is the realization that any change in the NPT will be extremely difficult to achieve. As soon as the right to undertake peaceful nuclear activities is called into question, other parts of the Treaty, including the disarmament obligation of the nuclear weapon States, will be put on the table as well.

This is not to say that nothing can be done. The non-proliferation norm can be strengthened by building on the declaration of the Security Council of 31 January 1992 that proliferation is a threat to international peace and security. Export control regimes, that should involve non-NPT parties, should be strengthened. In order to preserve the credibility of the inspection regime, which in turn is necessary for maintaining the full right to develop the peaceful nuclear fuel cycle, the Additional Protocol should become the verification norm in the near future. On the more technical plane there are ways to promote the proliferation-resistance of fuel cycle facilities. Multinational cooperation in the operation of sensitive nuclear facilities lowers the proliferation risks. In the enrichment area, for example, several international consortia have worked profitably for decades.

Keeping the NPT Top Priority

In conclusion, I would say that the NPT is still healthy, but at the same time in a somewhat fragile state. With near universal membership, the Treaty has proven to be an effective

dam against plans to develop nuclear weapons. The historical record shows that many countries with plans to develop atomic bombs in the 1960s and 1970s gave up the plans sooner or later and became parties to the Treaty. It also shows that States that actually crossed the nuclear threshold, or have the capability to do so, started their nuclear weapons programmes long ago.

A welcome sign of the Treaty's health is the strengthened IAEA nuclear inspection regime that is being put into place. It is based on lessons learned from the system's weaknesses that came to light during the 1990s in Iraq and has demonstrated its "stronger teeth" in countries where it is applied.

However, the NPT regime is and will remain inherently fragile.

The fact that there are two classes of parties to the Treaty, the nuclear-weapon States and the non-nuclear-weapon States, will continue to create tensions. Real strengthening of the regime can only be realized if progress is made on both tracks: for the nuclear-weapon States towards nuclear disarmament (lower number of weapons; cut-off, test ban etc); for the non-nuclear-weapon States towards firmer, better verifiable "no nuke" pledges.

The regime will also remain inherently unstable, because of the ripple effect of proliferation. If indeed the DPRK has been working on the development of nuclear weapons, this would be the first case of proliferation since Iraq and Pakistan started in the early 1970s. Given the nervousness in Seoul and Tokyo, the case of the DPRK illustrates like no other the instability caused by proliferation. Irrespective whether one accepts the way the DPRK left the Treaty, that step also vividly illustrates that being a party to the Treaty does not need to be a pledge that continues forever.

The NPT deals with the proliferation of nuclear weapons and its inspection regime focuses on nuclear material. At the same time, missile proliferation continues unabated, with the most recent example the introduction of the Shahab-3 in Iran's armed forces.

Additionally, the easier ways to transfer sensitive technology in this age of globalization and electronic communication seem to me a matter of grave concern.

For these reasons the further evolution of the world's regime to stop the spread of nuclear weapons needs to remain high on the political agenda. But in my view, the NPT still has the vitality to be in the center of it. There it cannot be missed.

Piet de Klerk was until 1 September 2003 the director of the IAEA's Office of External Relations and Policy Coordination. He thereafter returned to the Netherlands Foreign Service. The essay reflects his personal view. Email: penvdek@attglobal.net

Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

Total number of Parties: 189

The NPT is considered by most States as the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament. Every five years, the Treaty's Parties, presently 189 States, meet to review its implementation.

The next such Review Conference is due in 2005. The Treaty entrusts the IAEA with specific roles as the international safeguards inspectorate and as a multilateral channel for transferring peaceful applications of nuclear technology.

See the UN web pages at disarmament2.un.org/wmd/ for more information on the NPT.

Non-Nuclear-Weapon States

Afghanistan
Albania
Algeria
Andorra, Principality of*
Angola
Antigua and Barbuda*
Argentina
Armenia
Australia
Austria
Azerbaijan

Bahamas*
Bahrain*
Bangladesh
Barbados*
Belarus
Belgium
Belize*
Benin
Bhutan*
Bolivia
Bosnia Herzegovina
Botswana
Brazil
Brunei Darussalam*
Bulgaria
Burkina Faso
Burundi*
Cambodia
Cameroon
Canada
Cape Verde*
Central African Republic
Chad*
Chile
Colombia
Comoros*
Congo, Dem. Rep. of the
Congo, People's Rep. of*
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic

Democratic People's
Republic of Korea*
Denmark
Djibouti*
Dominica*
Dominican Republic

Ecuador
Egypt



El Salvador
Equatorial Guinea*
Eritrea
Estonia
Ethiopia

Fiji*
Finland

Gabon
Gambia*
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea Bissau*
Guinea*
Guyana*

Haiti
Holy See
Honduras
Hungary

Iceland
Indonesia
Iran, Islamic Republic of
Iraq
Ireland
Italy

Jamaica
Japan
Jordan

Kazakhstan

Kenya
Kiribati*
Korea, Republic of
Kuwait
Kyrgyzstan

Lao People's Dem. Rep.*
Latvia
Lebanon
Lesotho*
Liberia
Libyan Arab Jamahiriya
Liechtenstein
Lithuania
Luxembourg

Madagascar
Malawi*
Malaysia
Maldives*
Mali, Republic of
Malta
Marshall Islands
Mauritania*
Mauritius
Mexico
Micronesia, Federated
States of*
Moldova, Republic of
Monaco
Mongolia
Morocco
Mozambique*
Myanmar

Namibia
Nauru*
Nepal*

Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway

Oman*

Palau, Republic of*
Panama
Papua New Guinea*
Paraguay
Peru
Philippines
Poland
Portugal

Qatar

Romania
Rwanda*
Saint Kitts and Nevis*
Saint Lucia *
Saint Vincent and the
Grenadines*
San Marino*
Sao Tome and Principe*
Saudi Arabia
Senegal
Serbia and Montenegro
Seychelles
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands*
Somalia*

South Africa
Spain
Sri Lanka
Sudan
Suriname*
Swaziland*
Sweden
Switzerland
Syrian Arab Republic

Tajikistan
Tanzania
Thailand
The Former Yugoslav
Republic of Macedonia
Timor-Leste
Togo*
Tonga*
Trinidad and Tobago*
Tunisia
Turkey
Turkmenistan*
Tuvalu

Uganda
Ukraine
United Arab Emirates
Uruguay
Uzbekistan

Vanuatu*
Venezuela
Vietnam
Western Samoa*
Yemen, Republic of
Zambia
Zimbabwe

Nuclear-Weapon States

United Kingdom of
Great Britain and
Northern Ireland
(27 November 1968)
United States of America
(5 March 1970)
Russian Federation
(5 March 1970)
China (9 March 1992)
France (2 August 1992)

*Non-member of the IAEA
(and Taiwan, China)