The Future of the Global Non-Proliferation Regime

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On January 4 of this year, in an op-ed article by George Schultz, William Perry, Henry Kissinger, and Sam Nunn in The Wall Street Journal entitled "A World Free of Nuclear Weapons," the authors contend that reliance on nuclear weapons for deterrence "is becoming increasingly hazardous and decreasingly effective" and that "unless new actions are taken, the US soon will be compelled to enter a new nuclear era that will be more precarious, psychologically disorienting, and economically even more costly than was Cold War deterrence." Noting that President Ronald Reagan had called for the abolishment of "all nuclear weapons," which he considered to be "totally irrational, totally inhumane, good for nothing but killing, possibly destructive of life on earth and civilization," and that General Secretary Mikhail Gorbachev shared this vision, the four authors call for "reassertion of the vision of a world free of nuclear weapons and practical measures toward achieving that goal..."

The Nuclear Non-Proliferation Treaty (NPT) for many years has been the centerpiece of world security. President John F. Kennedy was deeply concerned that nuclear weapons might well sweep all over the world. In 1962 there were reports that by the late 1970s there would be 25-30 nuclear weapon states in the world with nuclear weapons integrated into their arsenals. If that had happened, there would be many more such states today, as probably more than 40 countries now have the capability to build nuclear weapons. With this many nuclear weapons states in the world, a nightmare security situation for the United States would exist; every conflict would carry with it the risk of going nuclear, and it would be impossible to keep nuclear weapons out of the hands of international terrorist organizations.

But the potential weapon proliferation foreseen in the 1960s did not happen and the primary reason that it did not was the negotiation of the NPT and its entry into force in 1970, along with the associated extended deterrence policies – "the nuclear umbrella" – pursued by the United States and the Soviet Union with their allies during the Cold War. Indeed since the NPT entered into force, at least until now, there has been very little nuclear weapon proliferation. In addition to the five nuclear weapon states that existed in 1970 and are recognized by the NPT – the United States, Britain, France, the Soviet Union/Russia and China – three states – India, Pakistan, and Israel – and perhaps North Korea have built nuclear weapon arsenals. India and Israel were already well along by 1970.

But the success of the NPT did not come easily. It was based on a carefully crafted central bargain. In exchange for a commitment from the nonnuclear weapon states (today more than 180 nations) not to acquire nuclear weapons and to submit to international safeguards to verify compliance with this obligation, the five NPT nuclear weapon states pledged unfettered access to peaceful nuclear technologies and undertook to pursue nuclear disarmament negotiations aimed at the eventual elimination of their nuclear arsenals. It is this central bargain that for the last three decades has formed the central underpinnings of the international nonproliferation regime.

However, one of the principal problems with all this has been that the nuclear weapon states have never really delivered on the disarmament part of this bargain set forth in Article VI of the Treaty. The essence of the disarmament commitment was that, pending the eventual elimination of nuclear weapon arsenals, the nuclear weapon states would agree to interim measures to conclude a treaty prohibiting all nuclear weapon tests; negotiate an agreement prohibiting the further production of nuclear bomb explosive material; make drastic reductions in their nuclear arsenals; and

significantly reduce the role of nuclear weapons in their security policies. None of this has been accomplished over 35 years later. Without the political ballast that these measures represent, over the long run the NPT will be viewed by many of the nonnuclear weapon NPT parties as hopelessly discriminatory in favor of the five nuclear weapon states and therefore untenable.

The second half of the bargain made by the NPT nuclear weapon states – unrestricted access to peaceful nuclear technologies for those NPT parties that agree not to acquire nuclear weapons – is important as well. This provision is set forth in Article IV of the NPT. Since part of the idea of balanced obligations provided for in the NPT was to offset the perceived discriminatory effect of the Treaty, in that a few states would be allowed to possess nuclear weapons and most would not, the negotiators provided for the disarmament obligations by the NPT-recognized nuclear weapon states but also sought to ensure that NPT nonnuclear weapon states were not denied non-weapon-related uses of the atom.

This latter point was of particular concern because while all nonnuclear weapon states were required to submit to International Atomic Energy Agency (IAEA) safeguards, the nuclear weapon states were not. It is true that the nuclear weapon states after some years agreed to apply voluntary safeguards to their civilian nuclear facilities; nevertheless during the negotiations, the nonnuclear weapon states wanted additional assurances that they would not suffer a significant economic cost as a result of their participation in the Treaty. Thus, NPT Article IV stipulated that NPT parties were to participate in and have fullest access to materials and information for the peaceful use of nuclear energy. The first sentence of Article IV reads as follows: "Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty." This provision arguably indicates that NPT nonnuclear weapon states do have the right to complete access to the peaceful use of the atom but only if they are Treaty Parties in good standing – hence the reference to "in conformity with" Articles I and II – the nuclear nonproliferation provisions.

However, now the other side of the central bargain has begun to fall apart. India and Pakistan eroded the NPT from the outside by each conducting a series of nuclear weapon tests in 1998 and declaring themselves to be nuclear weapon states. India, Pakistan, and Israel maintain sizable unregulated nuclear weapon arsenals outside the NPT. North Korea withdrew from the NPT in 2003 and may have built up to ten nuclear weapons and has conducted a nuclear weapon test. On February 12, 2007, North Korea agreed, in the context of the Six Party Talks, with the United States, China, Japan, Russia and South Korea to suspend operation of its nuclear reactor and readmit IAEA inspectors. This is a useful first step, but it remains to be seen what effect this latest development will have, given North Korea's long history of deceit and that it is allowed to keep its nuclear weapons pending a future negotiation. The A. Q. Khan secret illegal nuclear weapon technology transferring ring based in Pakistan has been exposed, but who can be sure that we have seen more than the tip of the iceberg? Iran is suspected of having a nuclear weapon program and admitted in late 2003 that it failed to report its acquisition of uranium enrichment technology, as required by its IAEA Safeguard Agreement.

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Iran asserts that it has an "inalienable" right to uranium enrichment technology reflecting the language of NPT Article IV. This would be correct if Iran were an NPT Party in full compliance, but, as indicated above, this provision would appear not to be applicable to parties in violation of their Treaty commitments. The IAEA has condemned Iran for failure to cease its uranium enrichment activities, which it would have a right to pursue if it were in full compliance with the Treaty. However, the Agency has not found evidence of a nuclear weapon program and therefore a violation of Article II,

as referred to in the text of Article IV. Thus, it is debatable whether Iran presently has a legal right under the NPT to access to uranium enrichment technology.

But why might Iran want the nuclear fuel cycle and the attendant option to construct nuclear weapons? The nuclear program is very popular in Iran. It appears that some countries believe that ultimately the only way that they can gain respect in this world, as President Lula of Brazil declared during his first election campaign, is to acquire nuclear weapons. During the Cold War, nuclear weapons distinguished Great Powers from other countries. The permanent members of the Security Council are the five NPT-recognized nuclear weapon states previously mentioned. Forty years ago Great Britain and France both asserted that status was the real reason that they were building nuclear weapons. India declared in 1998 that it was now a big country because it had nuclear weapons. This high political value of nuclear weapons has not changed since the Cold War.

In view of all this, we face the possibility that it might now simply be too late to attempt to change the course of nations and return to policies which will strengthen and support the NPT and the international nonproliferation regime. The cooperative legal and export control regime contemplated by United Nations Security Council Resolution 1540 is contributing much and is of great importance, but the underlying nonproliferation regime is in serious trouble. Hopefully, the NPT regime can be restored to its former strength, but we must recognize the danger. The NPT does not have the support today that it did in the past. And Mohamed El Baradei, the director general of the IAEA, has recently warned of "30 virtual new weapon states on the horizon."

Likely if the NPT is to survive as a viable and effective regime, states both nuclear and non-nuclear are going to have to change their policies profoundly. Article IV in recent years has been strongly criticized as a "loophole" in the NPT that permits nations to benefit from access to peaceful nuclear technology and then subsequently either surreptiously, as was the case in Iraq, or at least in part openly by withdrawing from the Treaty, as was the case with North Korea, undertaking a nuclear weapons program. It has been suggested by the United States, the IAEA and others that unilateral access to technologies such as uranium enrichment, which can be used for weapons as well as civilian power production, be limited to those states which already possess them and that enrichment services, nuclear fuel supply, and related technologies be supplied to other states on a multilateral basis, perhaps under the direction of the IAEA.

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This might well be a worthwhile change but to have any chance of its being adopted by NPT Parties as an amendment to the Treaty, the nuclear weapon states are going to have to perform on their NPT Article VI disarmament obligations, not merely promise as they have many times in the past. This means, at a minimum, ratification of the Comprehensive Nuclear Test Ban Treaty, negotiation of a fissile material cut-off treaty, a return to the process of negotiating actual reductions in nuclear weapons instituted by President Reagan, and a drastic reduction of the role of nuclear weapons in their security policies, best done by explicit adoption of a "no first use" of nuclear weapons policy.

Also, for the NPT to remain viable, the currently unfettered nuclear weapon programs of India, Pakistan, and Israel will have to be brought under some international legal control with these three important members of the world community becoming a part of the world nonproliferation community, the basis of which is the NPT. Also, North Korea must come back to the NPT under a negotiated solution under which its nuclear weapon program is demonstrably ended and all nuclear weapons that it has produced verifiably destroyed.

These measures taken together are a tall order for today's world community of sovereign states. But they are necessary if the NPT is to be restored to viability and the perhaps eventual irresistible spread of nuclear weapons to a large number of

states, and ultimately to international terrorist organizations, is to be checked. The year 2007 may subsequently come to be regarded as the time of the tipping point for the NPT, when either the world community collectively changed its behavior and aggressively moved to establish the NPT as a viable, worldwide, nondiscriminatory Treaty supported by all or decided by action or inaction to run the risk of the highly proliferated world that was President John Kennedy's nightmare. If the latter alternative comes to be a reality and the NPT does in fact fail, then somehow all nations must take to heart the warning sounded in the article by Messrs. Schultz, Perry, Kissinger and Nunn and find a way to proceed directly to a "world free of nuclear weapons." •

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