

Broken Pillars of the NPT: Time to Re-Construct

Maziyar Shokrani*

International Law, Xiamen University

Abstract. *"world is over-armed and peace is under-funded"* [1] Ban Ki-moon The 1968 Treaty on the Non-Proliferation of Nuclear Weapons [2] (NPT), is considered as chief among the international instruments on non-proliferation and application of safeguards. The treaty which came into force on 5 March 1970 consists of three "pillars": non-proliferation, disarmament and the right to peacefully use nuclear technology. The aim of this treaty was initially to stop proliferation of nuclear weapons both vertically i.e., those states which already manufactured and possessed nuclear weapons halt further proliferation and horizontally i.e., no further member state should join the nuclear weapon club. In this paper the author is going to discuss that these three "pillars" are no more effective and strong enough to stop further proliferation and the NPT failed to prevent further proliferation, disarmament and guarantee peaceful uses of nuclear energy due to lack of cooperation and transparency. Finally the author will express his conclusions and suggestions.

Keywords: International Law, Nuclear Law, Non-Proliferation, Disarmament, Peaceful Uses, Nuclear Energy, Nuclear Weapons.

1. Introduction

The discovery of nuclear energy was milestone in human civilization history however its destructive and inhuman uses is well-known to all which has resulted in development of thousands of nuclear warheads and their use against civilians which so far led to killing of 150,000 to 246,000 people [3]. The historical negotiations for nonproliferation began right after the World War II when the United States was the only country who possessed nuclear weapon. Soon after the devastating War, President Dwight D. Eisenhower proposed his famous "*Atom for Peace*" to the UN General Assembly in New York City on December 8, 1953 which later led to negotiations for creating the International Atomic Energy Agency (IAEA). Later the IAEA obtained the authority for policing the nuclear activities of Non-Nuclear Weapon States (NNWS) [4]. Today IAEA is responsible for helping NNWS to engage in peaceful nuclear programs (the 3rd NPT pillar) and ensuring that they do not make any effort to make nuclear weapon (the 1st NPT pillar). In fact the NPT by its discriminatory nature divides its member States into two categories: those who manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967 so called as Nuclear-Weapon States (NWS) and those NNWS which did not do so prior to that date. The NPT provides a range of obligations pertaining to NWS, NNWS or both however, some major obligations pertaining to NWS e.g., the effective measures relating to the cessation of the nuclear arms race and to nuclear disarmament (the 3rd NPT pillar) [5] is ignored to a considerable extent. Forty years after it's coming into force, the NPT has not yet been known as a universal and effective instrument. Some States still want to stay outside the treaty. Among them Israel, demonstrates a great threat to the non-proliferation regime and security of the region especially to Iran as it has threaten Tehran to use military action against its nuclear programs in recent years [6]. Regarding effectiveness of the NPT, there may be a member state that develop or produce nuclear weapons although under NPT legal obligations it cannot do so. The vagueness of Article IV can allow the member States to undergo a clandestine non-civil nuclear program by *using the facilities granted by the NPT for a civil nuclear program* [7].

2. Non-proliferation

* Corresponding author. Tel.: +(86-592-2194065); Fax: +(86-592-2086774); Mobile: +(86-152-592-61514)
E-mail address: (Maziyar.shokrani@gmail.com)

The first Pillar of NPT is outlined in Articles I and II. Respectively, “*Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices*” and, “*Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.*”

According to these articles which are inter-dependent and without concluding one, it will be impossible to conclude another, different sets of obligations are undertaken by both NWS and NNWS where the discriminatory character of the NPT becomes clear. Receiving nuclear weapons or other explosive devices and manufacturing or otherwise acquiring such weapons or devices or seeking assistance to manufacture such devices is only prohibited to NNWS.

One of the most serious non-compliance of article I is the issue of North Atlantic Treaty Organization (NATO) nuclear sharing whereby six non-nuclear NATO countries [8] host U.S. nuclear weapons on their territories. Up to 180 freefall bombs of the type B-61, Modification 10, may be deployed in Europe. These are nuclear weapons designed to be dropped from aircraft. Some of these bombs are designated for possible use in wartime by non-nuclear NATO members [9] which are *prima facie* violations of articles I and II since the U.S. is transferring to NNWS control over nuclear weapon on the pretext of ineffectiveness of NPT in the time of war. The US argument justifying nuclear sharing to the effect that the NPT becomes ineffective in time of war is extremely dangerous; it undermines the stability of the NPT and of international law generally [10]. Another issue which is even more critical is that still there are some countries with substantial nuclear activities which are not interested to join NPT and give up their right to build nuclear bombs. India, Israel and Pakistan fall under this category. India and Pakistan already declared to undergo nuclear bomb test however Israel has not yet declared to possess nuclear weapon. The weak and discriminatory regime established by NPT may even encourage some member states to withdraw from it due to their own security reasons [11]. It's noteworthy that NPT expressly allows each party to withdraw from it if it decides that extraordinary events, related to subject matter of this treaty, have jeopardized the supreme interests of its country [12].

3. Disarmament

The NPT's preamble contains language affirming the desire of treaty signatories to create someday the conditions for a halt to the production of nuclear weapons and complete disarmament that liquidates nuclear weapons and their delivery vehicles from national arsenals. The disarmament term is also mentioned in Article VI whereby *each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control*. This Article is binding not only to those NWS but also to NNWS. So those member states which have not developed nuclear weapons or explosive devices shall actively take part in negotiations for the purpose of complete disarmament. The negotiation of Comprehensive Nuclear-Test-Ban Treaty (CTBT) launched in the mid-1950s was great step to stop any further test of nuclear weapon however this Treaty has never come into force due to non-ratification from 9 of the necessary 44 states with nuclear programs or capabilities -among them United States and Israel- [13] which were listed in an annex to the treaty. Though the CTBT is believed to be one of the best-supported treaties in the history [14] it is likely not to come into force for many years.

Apart from nuclear test ban, no substantial step has been taken to eliminate the nuclear weapons which are already in possession of NWS.

Although in early years of NPT enforcement U.S. and Russia have shown their great concern in nuclear disarmament and stressed the fundamental importance of the NPT and reaffirmed their obligations under it,

including those with regard to effective nuclear disarmament [15] however a number of other members criticized the treaty and its implementation among them Mexico submitted a working paper documenting what is considered to be the lack of effective implementation of article VI of the treaty [16]. Then by concluding the Strategic Arms Reduction Treaty (START I) between USA and USSR and then by concluding START II between USA and Russia, the signatories agreed to reduce drastically the number of nuclear warheads, however we may rather call it “arms control” than “disarmament” since the purpose of arms control is not restricting proliferation of nuclear weapons but it’s just supervising and administration of arms. Unlike disarmament, arms control is not incompatible with arms race [17]. It seems that without codified and legally bind disarmament provisions it will not be realistic to expect the NWS to pursue effective measures relating to disarmament.

4. Peaceful Use of Nuclear Energy

Nuclear energy was initially planned for military use however its benefits to human life were not forgotten. Nuclear material and technology can be used in variety of fields, from generating electricity to medicine and agriculture as well as industry. Although peaceful use of nuclear energy can be extremely harmful to human life and environment in case of insufficient safety provisions and specially when a nuclear accident takes place, NPT expressly authorizes its signatories to use nuclear energy for peaceful purposes: *“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.”* [18]

The above article expressly confers the right to both NNWS and NWS without any discrimination to develop nuclear energy for peaceful purposes although the non-discriminatory aspect of this article is violated. A good example is Iran’s case. Some analysts ask the question why Iran, which enjoys huge oil and gas reserves, needs to invest in a program to generate electricity from nuclear reactors. They argue that Iran could have used its budgetary resources more effectively if it had invested them in its oil production infrastructure [19] however it’s clear that NPT never excluded so called *oil-rich* countries from production and use of nuclear energy. Another critical issue is referring Iran’s case to the United Nations Security Council (UNSC). So far UNSC has passed seven resolutions [20] in connection with Iran’s nuclear program acting under Chapter VII of the Charter of the United Nations however Iran assures that it pursues nuclear program merely for peaceful purposes which are authorized by NPT and claims that the UNSC resolutions are illegal and UNSC is acting beyond its powers. Iran also claims that its nuclear issues which should have been dealt in a purely technical manner within the framework of the IAEA, has been politicized [21].

5. Conclusions

The discovery of nuclear energy was milestone and it can bring numerous benefits to human life however, it can turn to nuclear weapon and wipe out the world at the same time. The NPT was mainly adopted to establish a regime to prevent the states (excluding the NWS) to acquire nuclear weapon. Due to the discriminatory aspect of NPT as well as the advisory opinion of the International Court of Justice (ICJ) on issue of legality of the threat or use of nuclear weapon [22], more countries will be encouraged to join the nuclear arms race and become a *de facto* nuclear weapon state. NPT is proved to be neither an effective treaty nor a universal one. The discriminatory mechanism, vagueness of some of the articles and misinterpretation has resulted in non-efficiency of the treaty to prevent further horizontal and vertical proliferation.

In order to prevent further proliferation, the terms of NPT’s article VI shall be implemented towards a complete disarmament. Those countries that are currently outside the NPT should accede to it as soon as possible considering that even one state outside the NPT can endanger the world security and void universality of NPT. Negotiations to enforce CTBT should be continued in an effective way by using all of the political and legal capacities. Peaceful use of nuclear energy should be fully guaranteed for all of the states without any limitation and discrimination as provided in NPT’s article IV and without UNSC’s intervention beyond its powers. States should bring to mind that the most successful models of non-

proliferation are Nuclear-Weapon-Free Zones (NWFZs) which should be applied to the whole world in order to establish a Nuclear-Weapon-Free World. A Nuclear-Weapon-Free World is definitely a better place to live.

6. References

- [1] Opening address to the 62nd Annual DPI/NGO Conference.
- [2] *Treaty on the Non-Proliferation of Nuclear Weapons*, INFCIRC/140, IAEA, Vienna (1970).
- [3] *According to data provided by Radiation Effects Research Foundation* (a cooperative Japan-US research organization), retrieved from: http://www.rerf.or.jp/general/qa_e/qa1.html, 04.11.2011.
- [4] Id., Supra note 2, Art. III, Para. I.
- [5] Id., Supra note 2, Art. VI.
- [6] In the most recent case the Israeli Prime Minister Benjamin Netanyahu had been trying to persuade his cabinet to back military action against Iran, bbc news 2 November 2011, retrieved from <http://www.bbc.co.uk/news/world-middle-east-15552533>, 5 November 2011.
- [7] L. Tempesti, *Loopholes in the Nuclear Nonproliferation Regime, The case of Iran and North Korea, The Proliferation of Weapons of Mass Destruction and International Humanitarian Law : Current Challenges, Effective Responses*, Sanremo, Italy - Villa Ormond, 16 November 2007 / organized by the International Institute of Humanitarian Law 2008.
- [8] Belgium, Germany, Italy, Netherlands and Turkey.
- [9] O. Nassauer, *Nuclear Sharing in NATO: Is it Legal?*, Science for Democratic Action, April, 2001.
- [10] J. Burroughs, *Two Legal Issues Confronting NATO and Non-Proliferation Regime: US Presidential Decision Directive 60 versus pledges of Non-Use of Nuclear Weapons Made to Non-Nuclear Weapon States, NATO Nuclear Sharing versus the Nuclear Non-Proliferation Treaty*, Lawyers' Committee on Nuclear Policy, New York, 1999.
- [11] Democratic People's Republic of Korea ratified NPT in 1985 and withdrew from it in 2003. The text of its statement reads: A dangerous situation where our nation's sovereignty and our state's security are being seriously violated is prevailing on the Korean Peninsula due to the US vicious hostile policy towards the DPRK, retrieved from: <http://www.atomicarchive.com/Docs/Deterrence/DPRKNPTstatement.shtml>, 2 December 2011.
- [12] Id., Supra note 2, Art. X.
- [13] Other seven states are China, Egypt, India, Indonesia, Iran, North Korea and Pakistan.
- [14] R. Johnson, *Unfinished Business, The Negotiation of the CTBT and the End of Nuclear Testing*, United Nations, New York and Geneva, 2009.
- [15] *The United Nations and Disarmament 1970-1975*, United Nations, New York, 1976, p. 76.
- [16] Ibid.,
- [17] E. Beigzadeh, *Novelty of Treaty on the Non-Proliferation of Nuclear Weapons in Sphere of International Law*, *Journal of Legal Research*, No. 16-17, Faculty of Law, University of Shahid Beheshti, Tehran, 1996.
- [18] Id., Supra note 2, Art. IV.
- [19] D. Gold, *Why does oil-rich Iran need nuclear fuel?*, The Canadian Jewish News, November 17, 2011.
- [20] Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), 1984 (2011).
- [21] *More information including Iran's legal arguments are available in communication dated 12 September 2005 from the permanent mission of Iran to the International Atomic Energy Agency*, INFCIRC/657.
- [22] *ICJ, Nuclear Weapon case, Advisory Opinion*, ICJ Reports 1996, p.226, Legality of the threat or use of nuclear weapons was an advisory opinion delivered by the International Court of Justice (ICJ) accordingly the ICJ stated that: There is in neither customary nor conventional international law any specific authorization of the treat or use of nuclear weapons; There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;...