

**A Case Study of the Law of
Unintended Consequences**
By Frances Mautner-Markhof

Nuclear Non-Proliferation

The creation of international regimes in the post-World War II period was unique in history, and will probably remain so.

THE MULTILATERAL COOPERATION and international organizations that arose in response to the devastation of the 20th century's two world wars spoke to a need to create a new order and mechanisms able to maintain that order. This was a task that no individual country or group of countries could do. Thus arose various regimes that can also be understood as self-organizing complex systems.

In light of this, what were the special conditions under which the Nuclear Non-Proliferation Treaty (NPT) came about? The idea of controlling nuclear weapons proliferation and the peaceful uses of nuclear energy preceded the NPT by a couple of decades, starting at the end of WWII with the Baruch Plan, which was presented in 1946 to the United Nations Atomic Energy Commission. This plan proposed an in-

ternational authority to control both nuclear power and nuclear weapons, with the aim of eliminating nuclear weapons, controlling the nuclear fuel cycle and supporting, under safeguards, the peaceful uses of nuclear energy. Some called this a plan for world government and in fact, when one sees the amount of sovereignty that it required nation-states to relinquish, it was unprecedented. The Soviet Union in particular rejected the initiative, demanding that the US first destroy its nuclear weapons before the plan could even be debated. This was unacceptable to the US and shortly thereafter the Soviet Union detonated its first nuclear weapon. Thus, the first and last great chance to eliminate nuclear weapons was lost.

It may not fit the image of international organizations devoted to promoting peace and development, but the ghost in the machine of the international regimes that arose during the post-World War II period has always been the issue of nuclear weapons. It is no coincidence that the five veto-wielding permanent members of the UN Security Council are also the five officially recognized nuclear weapons states in the NPT. Indeed this was a condition for achieving any agreement to control the proliferation of nuclear weapons. The coupling of nuclear weapons and great power status or aspirations remains to this day.

For those “present at the creation” of the UN and its associated agencies, the hope was that a new era of international cooperation in support of a new world order was being born. This new order was stopped short by the rapid onset of the Cold War. A post-Cold War order is still being sought, but by the end of the Cold War, the enthusiasm and perceived need for international cooperation had greatly decreased as a result of a diminished perception of threat, the existence of a sole superpower and flaws in the UN itself.

SOVEREIGNTY

It is clear that one of the key elements and conditions for creating any international regime, especially one that is legally binding, is the transfer of some measure of sovereignty. For

many states the idea of giving up any amount of sovereignty is non-negotiable. However, as was remarked by Professor Raymond Vernon of Harvard, “one of the most important things which can be done with sovereignty is to negotiate a part of it away on favorable terms.”

Many of the weaknesses in multilateral organizations such as the UN and the International Atomic Energy Agency (IAEA) arise from the unwillingness of sovereign states to relinquish more than a minimum amount of sovereignty. Some complain that such organizations demand that too much sovereignty be relinquished, but the problem has always been the opposite - too little sovereignty has been given up in establishing key international regimes and organizations. The issue of sovereignty is at the root of many of the original and subsequent problems of the UN and the NPT regime. Related to this weakness is the fact that most major countries do not want to see international organizations become too strong. They prefer organizations that can be more easily influenced if not controlled.

In practice, the support by major powers and other states for international intergovernmental organizations is correlated closely with the extent to which such organizations are able and empowered under international law to do what an individual state acting alone cannot do — for example, enforcing international NPT safeguards under the IAEA, or the legally binding nature of UN Security Council resolutions, despite the fact that many such resolutions are ignored.

The system of international safeguards is an important example of the options that an international regime can provide. An interesting case illustrates this point. After the 1981 bombing by Israel of the Osirak research reactor in Iraq, and the subsequent criticism of this military operation by the IAEA General Conference, the US withdrew from the IAEA pending the outcome of a study on whether its interests would be served by remaining a member of that organization. It had taken similar steps on other occasions, having left UNESCO for some years before rejoining. After a period of about a year, the US concluded

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that it was indeed in its interest to remain within the IAEA, the reason being that no individual country or group of countries could duplicate a system of internationally accepted safeguards. This option existed only through the IAEA.

THE NPT: STRENGTHS AND WEAKNESSES

The NPT entered into force in 1970 and now has 187 signatories. It consists of three main parts: nonproliferation of nuclear weapons with the accompanying verification; disarmament; and the right to peaceful uses of nuclear energy. The fact that most NPT parties had to agree to give up some sovereignty in accepting comprehensive international safeguards and allowing on-site and sometimes intrusive inspections by the IAEA shows the minimum necessary to establish and maintain any effective international regime aimed not only at deterrence but also at confidence-building. The NPT, through its mandatory requirement for international safeguards on nuclear materials and facilities in all non-nuclear weapons states parties to the Treaty, has had success not only in preventing proliferation but also as an early warning mechanism and as a confidence- and security-building measure.

However, the elements for the unraveling of the NPT were part of the bargain enabling its creation. First, from the very beginning, the Treaty and the NPT regime created two classes of states which could become parties to the Treaty: on the one hand, the recognized nuclear weapons states who joined on the condition

that they were permitted to continue to manufacture, develop and possess nuclear weapons (but were prohibited from transferring nuclear weapons and related technologies and materials); and all other states, which were forbidden to acquire such weapons. For the latter class, the bargain was that having given up whatever advantages they might gain through possessing nuclear weapons, they would have access to and be able to develop, under safeguards, the complete spectrum of peaceful nuclear applications, including nuclear power and its fuel cycle.

Second, while non-nuclear weapons states were obliged to declare all nuclear materials and facilities and negotiate agreements with the IAEA for comprehensive safeguards, nuclear weapons states were under no such obligation. They agreed years later to accept IAEA safeguards — on a voluntary basis for non-military facilities selected by themselves — in order to counter the argument that their freedom from the obligations and burdens of international safeguards gave them unfair commercial and technological advantages. This attempt to spread the misery, so to speak, has never been convincing. It has gone so far that in the agreement that India and the US have concluded on nuclear cooperation, India is allowed to decide which of its facilities it will put under safeguards, being able to omit anything it chooses to define as associated with its nuclear weapons program.

Third, the Treaty contains no sanctions against nuclear weapons states that fail to live up to the

spirit or letter of the Treaty. And there is nothing which penalizes states which are outside of the Treaty and developed their nuclear weapons through clandestine and illegal means. But the non-nuclear weapons states are confronted with a spectrum of measures should they be declared in noncompliance with their NPT obligations, ultimately reporting the matter to the UN Security Council, which is what happened in the cases of Iraq, Iran and North Korea.

Fourth, no distinction was made on how sensitive nuclear technologies that could support the development of nuclear weapons (as well as nuclear power) were treated, as opposed to other technologies needed for peaceful uses. Had this been done, there would now be an international body with control over the entire nuclear fuel cycle, which is now being proposed by the IAEA, and was previously proposed in a far more rigorous form in the Baruch Plan.

Fifth, the original NPT safeguards had very real deficiencies, specifically, the IAEA could inspect only those materials and facilities which the state chose to declare officially, but it could not inspect undeclared or suspected activities and materials.

Finally, the NPT never encompassed key states able to develop nuclear weapons and intent on doing so, which is why they chose to remain outside of the NPT regime.

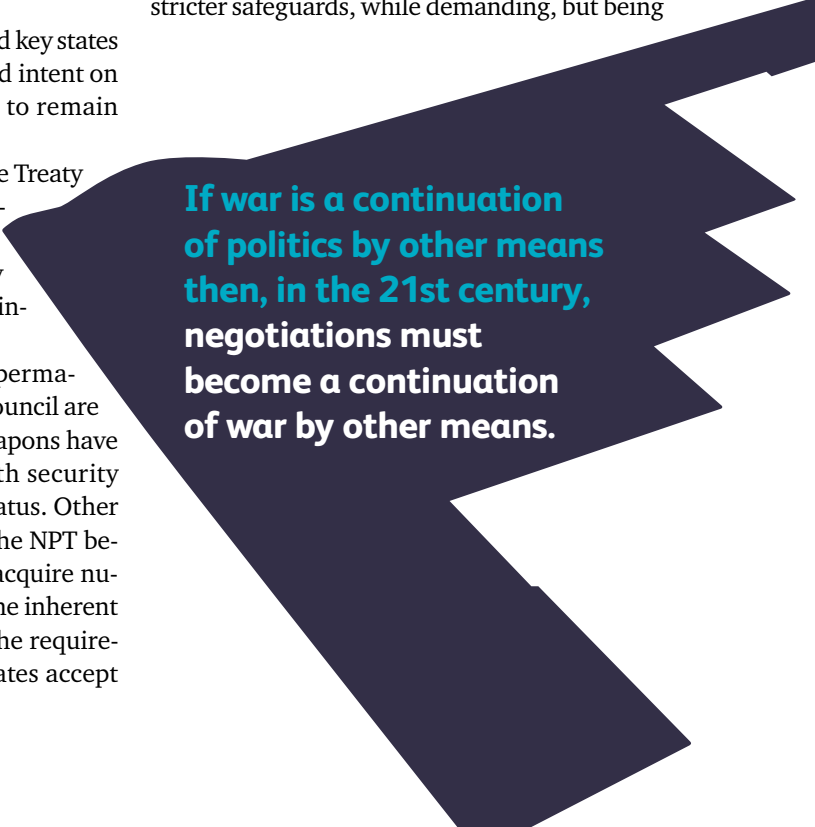
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Owing to the fact that all of the permanent members of the UN Security Council are nuclear weapons states, nuclear weapons have come to be associated not only with security but also with political power and status. Other states, such as India, never signed the NPT because of a single-minded desire to acquire nuclear weapons and the rejection of the inherent inequalities in the NPT, including the requirement that non-nuclear weapons states accept

comprehensive international safeguards and the associated demands on sovereignty. Pakistan, it may be argued, felt compelled to balance India's efforts to acquire nuclear weapons. For Israel, nuclear weapons were assumed to be the unspoken but real assurance of its survival.

All of these factors played a role in the illegal and clandestine development of nuclear weapons by India, Israel and then Pakistan, achieved through the diversion of technologies and materials from so-called peaceful nuclear energy programs, the theft of secrets, and through proscribed technology transfers from certain nuclear weapons states. In the case of India, the fact that China, with whom it had had a series of military conflicts, possessed nuclear weapons played a critical role. In no country did the association of nuclear weapons with power and prestige play a more important and determining role than in India.

Now it is recognized that inherent in the structure of the NPT is yet another category of states (and problems), namely those that signed the NPT, accepted international safeguards, and even agreed to the additional protocol of stricter safeguards, while demanding, but being



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increasingly denied, their right to develop and use technologies for the entire nuclear fuel cycle under their sovereign control. This situation often arose with the aim of transferring or having the option to transfer the relevant technologies to indigenous nuclear weapons programs.

Iraq, North Korea and probably Iran fall into this new category. They are or were parties to the NPT but they nevertheless developed, in parallel and secretly, non-peaceful nuclear capability, including uranium enrichment and plutonium reprocessing. This points out the weaknesses of international safeguards. Simply put, until the first Iraq war, the IAEA could only inspect facilities and materials declared by the state in question, regardless of suspicions about the existence of undeclared facilities and activities. Later, under the provisions of an additional protocol, the IAEA could and did apply far more intrusive, wide-ranging and even unannounced inspections. While a vast improvement, these also have encountered some serious problems, such as inspectors being denied access to critical sites.

NORTH KOREA

The situation in North Korea is an example of this third category of NPT signatory. Up to the end of 2002, its declared nuclear activities were under international safeguards, complete with resident IAEA inspectors. After suspicions were raised concerning undeclared weapons-related uranium enrichment activities, North Korea expelled IAEA inspectors in December 2002. It subsequently withdrew from the NPT, removed previously safeguarded weapons-grade plutonium, produced and tested nuclear weapons. Thus, since the end of 2002 there were no internationally accepted eyes and ears in North Korea, only assumptions and political statements with varying degrees of accuracy and effectiveness. (This is about to change with the acceptance of IAEA verification and monitoring of the closing down of the Yongbyon nuclear reactor as stipulated in the February 2007 six-party agreement).

North Korea's nuclear weapons and activities are being discussed and negotiated in the frame-

work of the six-party talks, involving the two Koreas, China, the US, Russia and Japan. The key to these negotiations is the United States. North Korea has regularly demanded direct one-on-one talks with the US which, until recently, have been turned down. The interesting thing to note in the case of North Korea is that the threat it wants to counter with nuclear weapons does not come from China, Russia or even primarily Japan. It comes from the United States.

In the compromise agreement arrived at in February 2007, North Korea agreed to give up its nuclear-weapons-related activities and accept intrusive IAEA inspections and monitoring in exchange for vast amounts of fuel, food and other aid, while the US agreed to eliminate its financial sanctions, remove its designation of North Korea as a terror-sponsoring state, and offer security guarantees. North Korea is also insisting on receiving a light-water nuclear reactor (for power, not weapons) as a condition for full implementation of the agreement.

North Korea's nuclear weapons weigh heavily on the region, especially on South Korea and Japan, which is now beginning openly to discuss whether it should acquire its own nuclear weapons. This has become a politically polarizing and sensitive issue in Japan and in the region.

North Korea can plausibly assert, especially since its nuclear weapons test in October 2006, that it now has nuclear weapons, while Iraq and certainly Iran could or would not do so. It has not gone unnoticed that this has placed the latter countries in a different category as far as the contemplation and use of force against them is concerned. National and international policies, rhetoric, threats and resolutions reflect this. Conclusions may thus be drawn as to the message this sends on the utility of being able to assert the possession of nuclear weapons — another unintended consequence of the NPT.

IRAN

The situation in Iran is even more complex. The US has no diplomatic relations with Iran and has imposed or threatened sanctions not only

on Iran but also on those dealing with it. Iran has perceived itself to be not only isolated but also surrounded, in military, political and religious terms.

Thus, there has been an evolution in the realities for which international regimes were originally created — from threats perceived more generally and globally, to threats that are local and far more immediate. As far as Iran and North Korea are concerned, all threats are local, as are the means to deal with them.

Why would Iran seek nuclear weapons? Why have other states? One need not look too far in the past to recall the cruel devastation visited

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upon Iran by Iraqi chemical weapons to see one reason, namely, deterrence. Such was the antipathy for the Iranian regime that during the Iraq-Iran war of 1980-1988 Iraq had for the most part the support of the US and European countries, even after it used weapons of mass destruction. Iran is, and sees itself to be, essentially surrounded either by US allies, US-occupied countries, or countries cooperating with the US in its “war on terror.” Iran’s geopolitical situation and its historical and present grievances with the US can be considered as additional motives for acquiring a nuclear deterrent.

The incentives for Iran to comply with the UN Security Council ultimatum on its nuclear program are security guarantees, which can realistically be provided only by the US, and full sovereignty over its nuclear program under IAEA safe-

guards, in keeping with its rights under the NPT.

What may be interpreted in the worst case as the start of a nuclear weapons program to spread power and terror in the region could also be seen as Iran’s ambivalent use of nuclear fuel cycle capabilities for deterrence and prestige. This same ambiguity was cultivated by Saddam Hussein and unwittingly provided a motive for the military attack on Iraq, which turned out to have no nuclear weapons and no nuclear weapons program. The real danger is to push Iran to a point, as was done with North Korea, where it leaves the NPT and stops accepting international safeguards, which until now have allowed for wide-ranging and intrusive inspections. If this happens, the wildest speculations can be used as “facts,” as happened with Iraq, perhaps with similar consequences.

As for an Iranian nuclear weapons capability, which all acknowledge is years away if at all, the country with the most to fear is Israel, which has been pushing the hard-line approach of the US, as it also did regarding the US and Iraq. It has been reported that there are plans by Israel and/or the US for a military operation to destroy Iran’s nuclear facilities, with the idea of repeating the success Israel had in bombing Iraq’s Osirak research reactor in 1981. The likelihood of repeat success is close to zero with Iran. And the situations are so vastly different that such a strike would almost certainly be the prelude to general war and chaos in the Middle East, with devastating unintended consequences.

Thus, having surrounded Iran, not by accident, with governments allied or closely cooperating with the US; having US allies in the region which possess nuclear weapons; having governments in Iran changed by outside force and wars thrust upon it in recent decades, it is difficult to see Iran accepting the dictum and even loss of face associated with the Security Council resolutions. In addition, Iran is and insists on being treated as a regional power.

The diplomatic, political and security situation regarding Iran’s nuclear activities are in a state of flux. There may be room for real negotiations if public posturing can stop. If the NPT is to have any

real future meaning, a way out of the present impasse must be found through the negotiated give and take that could lead to a political solution. These issues cannot be resolved through the use of force but only through political means. The recent results of the six-party talks on North Korea will certainly affect further negotiations with Iran.

States generally prepare for the worst and hope for the best. But there are conditions in which, having prepared for the worst, you get what you prepared for. This is another unfortunate unintended consequence in the case of the NPT regime.

SETBACKS & THREATS TO THE NPT REGIME

Serious setbacks were dealt to the NPT regime by those states — Iraq, North Korea and Iran come to mind — which were or are parties to the NPT and sought to develop, or are suspected of developing, unsafe guarded nuclear weapons programs in parallel with those under safeguards for peaceful purposes. Equally serious setbacks, although not so highly publicized and criticized, were dealt by those states that remained outside of the regime and developed nuclear weapons by whatever means necessary.

The nuclear weapons states under the NPT have also contributed to its weakening, in that they have not fulfilled their Treaty obligations. These states have either turned a blind eye or casually reacted to the secret and illegal development of nuclear weapons by non-NPT states. In some cases they have clandestinely supported such programs through proscribed technology transfers.

The NPT places many obligations on non-nuclear weapons states, but also critical obligations on nuclear weapons states, such as the requirement to achieve disarmament (full disarmament may no longer be an attainable goal in the 21st century) and the discontinuance of all test explosions of nuclear weapons. Specifically, Article VI of the Treaty states that each of the parties undertakes to pursue negotiations in good faith on effective measures relating to the 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.

The reality is quite different. There have been no serious attempts at nuclear weapons reduction and control for many years, and the chances of this happening seem remote. The US reserves the right to develop new types of nuclear weapons and to test both new and existing weapons. In reaction, Russia is now claiming it will also develop and test new nuclear weapons.

The Comprehensive Test Ban Treaty, adopted by the UN General Assembly in 1996 and aimed at the prohibition of all nuclear weapons testing, has still not formally entered into force. The reasons for this are that 44 states must ratify it in order for it to enter into force. The key countries that have signed but not ratified the treaty are China, Colombia, Egypt, Indonesia, Iran, Israel, and the US. The countries that have not signed are North Korea, India and Pakistan.

The issue of sanctions must be very carefully weighed for serious unintended consequences. If Iran were to be pushed to the point where it decided to leave the NPT, as it has a right to do, the cessation or suspension of safeguards would give it the space in which to develop nuclear weapons, as was done by North Korea. In such circumstances, those states that were ambivalent regarding adherence to the NPT would certainly reconsider their options and obligations to maintain their own security and protect their populations and territories. It therefore behooves those who would push for an ultimatum and the associated sanctions to consider the possible unintended consequences in the region and beyond.

The US has recently finalized a US-India nuclear partnership, which accepts India as a de facto nuclear weapons state and consigns to history the illicit means by which India developed nuclear weapons and the resultant consequences in Pakistan and elsewhere. India refuses to become a party to the NPT, and this bilateral pact has been strongly criticized as a terrible precedent and a cynical use of nuclear cooperation to advance political aims, in this case containing

China. Those with short memories argue that the case of India is different from Iran in that India never hid its program — a statement so at variance with the facts as to astound, and anyway, they argue, India is a new ally of the US. The treatment accorded India by the US is far more preferential than that given other nuclear weapons states such as Russia and China.

While the latest agreement, which favors India even more than that worked out in 2005 by President George W. Bush, has not yet been approved by the US Congress, India correctly claims that the agreement and its new nuclear alliance with the US represent a victory and an acknowledgment of its great power status. It is also a huge blow to the integrity and survival of the NPT regime.

STRENGTHENING THE NPT REGIME

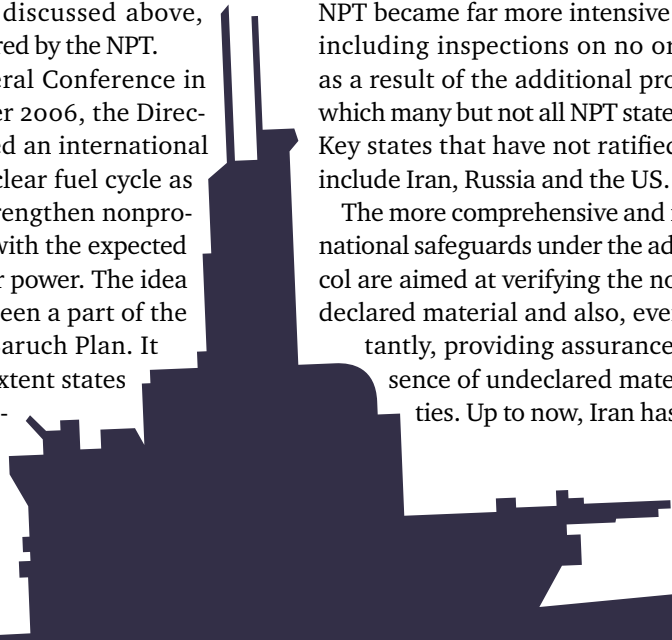
Options and measures to strengthen the NPT regime have been under discussion for years if not decades. The establishment of nuclear weapons free zones in Latin America and the Caribbean, Southeast Asia, the South Pacific and Africa, with a Central Asia nuclear weapons free zone currently being negotiated, are important achievements but they do little to address and correct the serious issues, discussed above, which were not covered by the NPT.

At the IAEA General Conference in Vienna in September 2006, the Director General proposed an international approach to the nuclear fuel cycle as a key measure to strengthen nonproliferation and cope with the expected expansion of nuclear power. The idea is not new, having been a part of the post-World War II Baruch Plan. It is unclear to what extent states will be willing to re-

linquish their right to acquire and use fuel cycle technologies they are entitled to under the NPT. This is a key issue with regard to Iran. Nuclear weapons states almost certainly will not agree to place their civilian, let alone their military, nuclear fuel cycle activities under such international control, even assuming they could disentangle civilian from military nuclear programs. Under such conditions, international control over nuclear fuel cycle activities could result in one more difference in the rights and obligations of the two classes of states in the NPT, and of those outside the NPT. One may also rightly ask: who will guard the guardians?

One measure to strengthen the NPT was taken after the experience of the first Gulf War in 1991. A weakness of NPT safeguards had always been that the IAEA could inspect only those facilities and materials that a country declares, not what the IAEA suspects it has. During and after that war it became clear that international safeguards had proven inadequate for preventing Iraq, an NPT signatory, from developing a clandestine undeclared nuclear weapons program, in parallel with its so-called peaceful, and declared, nuclear power program. After this experience, international safeguards under the NPT became far more intensive and intrusive, including inspections on no or short notice, as a result of the additional protocol of 1998, which many but not all NPT states have ratified. Key states that have not ratified this protocol include Iran, Russia and the US.

The more comprehensive and intrusive international safeguards under the additional protocol are aimed at verifying the non-diversion of declared material and also, even more importantly, providing assurances as to the absence of undeclared material and facilities. Up to now, Iran has allowed IAEA



inspections as if it had ratified the additional protocol. But under international law the inspections conducted in Iran based on the additional protocol are voluntary, since it has not ratified the protocol.

Regarding Iran, the Director General of the IAEA has suggested that the only realistic option at this point may be to allow Iran a very small and closely safeguarded enrichment program, and in this way ensure its compliance with its NPT obligations and in particular comprehensive safeguards including the additional safeguards protocol. While the initial reception to this idea was unenthusiastic, it remains an option.

The IAEA and others have proposed to begin a process leading to a nuclear weapons free zone in the Middle East. This would start with the application of full scope safeguards on all nuclear activities in the Middle East and the development of model agreements as a necessary step towards such a zone. However, no progress has been made on either front, although key states in the region such as Egypt, Saudi Arabia and Iran support a regional nuclear weapons free zone. Discussions with concerned states in the region have failed to produce any agreement even on the agenda for a conference dealing with these issues. With the failure to agree to discuss such an option, the security and stability of all states in the region becomes even more fragile.

The refusal of the US and Israel even to consider discussing a process leading to a Middle East nuclear-weapons-free zone closes off many political, diplomatic and security options. It was a key factor in the failure of the last NPT review conference in 2005. Yet, as with many problems and conflicts in the area, the solutions can only be political.

More realistic might be a nuclear-weapons-free zone in Northeast Asia. This would depend on progress in the six-party talks on the dismantling

of North Korea's nuclear weapons program. Also, increasing political interest in a multilateral security cooperation mechanism in the region could facilitate a nuclear-weapons-free zone to complement that already existing in Southeast Asia.

Another key to strengthening the NPT regime is the entry into force of the test ban treaty. The likelihood of this happening in the foreseeable future, however, is very small given the United States' failure to ratify the pact.

The unfortunate reality here, and in cases like the US-India nuclear alliance and Washington's unwillingness to discuss a Middle East nuclear weapons free zone, is that the US seems mindless and indifferent to the serious unintended consequences of its policies and actions.

NUCLEAR WEAPONS AND TERRORISM

Are nuclear weapons losing their value as the "currency of power?" This would not seem to be the case, especially regarding official and unofficial nuclear weapons states. What is not in question is the acute interest in all types of WMD by certain non-state actors associated with terrorist organizations.

Thus, there are continuous and intense efforts to prevent, control and eliminate the acquisition of nuclear weapons and related technologies and materials by states which are, or are assumed to be, in the process of trying to acquire such capabilities, especially if these states are believed to have connections with any "terrorist" group. The invasion of Iraq in 2003 is an example of the urgency and even haste to destroy any possibility — real or imagined — that WMD could fall into the hands of so-called "axis of evil" states and, by assumption, terrorist groups. It also demonstrates the extent to which some countries will go to accomplish this, in addition to whatever political, economic and strategic motives they may

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have for the use of force. In addition, there is the serious issue of uncontrolled access to unsecured nuclear materials in countries of the former Soviet Union and elsewhere.

It is increasingly feared that nuclear and other weapons of mass destruction could be supplied to terrorist groups by rogue states, while assuming that this would somehow not happen via other countries that acquired nuclear weapons covertly (e.g. Pakistan). This is a thesis that needs to be examined thoroughly and objectively since, in the extreme case, it can lead to war and chaos. The argument can be made that it would be self-destructive and thus highly unlikely for these states to do this, not least because of the grave threats posed by terrorist groups and other non-state actors to the existence and stability of these governments themselves.

Creating political support for war or peace, devastation or negotiation, has always been a

requirement for successfully carrying out crucial but difficult policies. Mobilizing people and opinion to support and justify military action requires not only having or creating an enemy, but also dehumanizing the enemy. Discussing the “hysteria of professed fear of and hostility to the Soviet Union,” George Kennan, a generation ago, warned of a “subconscious need on the part of a great many people for an external enemy — an enemy against whom frustrations could be vented, an enemy who could serve as a convenient target for the externalization of evil, an enemy in whose allegedly inhuman wickedness one could see the reflection of one’s own exceptional virtue.” The need to dehumanize the “enemy” has long been recognized as necessary for undertaking and justifying destruction through force, especially if WMD are involved. The last century and the early part of this century have provided many horrifying examples.

Now, in the 21st century, communism has been replaced by terrorism as the ultimate evil, and the Cold War by the “war on terror” which, together with the categorical dehumanization of terrorists and states that are presumed to support them, has left even fewer options available to those responsible for dealing with these issues.

What options can possibly exist for Kennan’s “exceptionally virtuous” in dealing with the “externalization of evil,” specifically, with terrorists, however defined? Is the use of force the only option, or is a political solution possible and necessary? Political solutions mean negotiation and compromise. How can this be done if there is a refusal to “negotiate with terrorists?” Can and should one negotiate with states that are alleged to be associated with terrorism and terrorists? Can one negotiate with terrorists? How are terrorism and terrorists to be defined — and by whom? Are terrorists a part of the system or outside of the system? Sometimes terrorism is violent resistance against occupation and gross injustice. Sometimes it is blind rage and hatred directed at civilians and societies. Sometimes it is a combination of both. And what of states born through acts of terrorism?

It was noted above that international regimes can be considered open self-organizing complex systems. From time to time such systems reach critical points at which they either evolve to some higher level of organization, or start to disintegrate. Which of these happens depends, among other things, on whether options can be agreed that can deal with the actual and potential instabilities threatening the system. Such options must be developed and agreed cooperatively, balanced by agreed constraints, because imposed options and constraints, however seductive, ultimately have no chance. One must conclude that the cooperative development of such options and constraints is what is lacking in dealing with some of the actual and potential threats and instabilities in the NPT regime.

It is impossible to devise, on a cooperative basis, agreed options and constraints with those with whom one refuses to talk or negotiate with directly. If war is a continuation of politics by other means then, in the 21st century, negotiations must become a continuation of war by other means. The tenet that one does not negotiate with terrorists or certain states, whose defeat ultimately demands the use of force, is leading to Hobbes' permanent condition of war of all against all.

RECALLING THE ROMAN EMPIRE

International regimes do not exist in a vacuum — they are reflections of the environment with which they interact and on which they depend. The NPT regime in the early 21st century is thus different in critical ways from that of the 1970s, 1980s or even 1990s. While such regimes are by definition international in scope, they are essentially creations of the powerful. The main world powers — the US, EU, China, Russia and Japan — must demonstrate leadership and take constructive action on a cooperative basis to defuse tensions, eliminate threats and resolve conflicts that could and would undermine an international system such as the NPT regime, or the United Nations itself. The NPT regime and the UN are in urgent need of revi-

talization. No progress can be made on this as long as world powers are allowed to pick and choose who is punished and who is rewarded for proliferation.

At this point in the new century, no individual country has the resources, international stature or acceptance to do all of this on its own, even if it so wishes. This reality should determine the actual or ideologically driven political, military, economic, financial and moral limitations of even the most powerful states. In this connection, much can be learned from history. In his great work, *The History of the Decline and Fall of the Roman Empire*, Edward Gibbon sought and found the elements that led to the demise of one of the great civilizations. These included the continuous and dangerous breakdown of the rule of law, and the loss of the ability to comprehend and deal with the changes, threats and instabilities to which the empire was increasingly subjected both from within and without. Rome failed to maintain the necessary capabilities and sufficient resources to adapt, innovate and evolve — all of which were needed to preserve its principles, identity and very existence. For Gibbon, “The decline of Rome was the natural and inevitable effect of immoderate greatness.”

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