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## A COMPREHENSIVE APPROACH TO NUCLEAR NON-PROLIFERATION

*Mitsuru Kurosawa\**

The demise of the Cold War was once thought to bring us a very promising future with the disappearance of the confrontation between the United States and the former Soviet Union as well as the significant progress in nuclear reduction negotiations resulting in the START I and START II Treaties.

In spite of and/or because of these developments on the global level, new problems have emerged on the regional level through new phenomena such as the Persian Gulf War, the collapse of the Soviet Union, suspicions over the North Korean nuclear program, and various regional or ethnic conflicts.

On October 21, 1994, The United States and the Democratic People's Republic of Korea(DPRK) agreed to a framework agreement on nuclear issues after the third round of high-level negotiations. This is the first step forward resolving the critical issue of the two Koreans in view of attaining a denuclearized Peninsula. Although it will take much time and money to accomplish this goal, the first step should be praised for regional peace and security.

Non-proliferation issues have come to the forefront in the post-Cold War era.<sup>1)</sup> For example, in his address to the United Nations General Assembly on September 27, 1993, President Bill Clinton said, "One of our most urgent priorities must be attacking the proliferation of weapons of mass destruction, whether they are nuclear, chemical or biological; and the ballistic missiles that can rain them down on populations

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1) For the recent developments of the issue, see John Simpson, "Nuclear Arms Control and an Extended Non-Proliferation Regime," *SIPRI Yearbook 1994*, pp.605-637; Wolfgang K.H.Panofsky and George Bunn, "The Doctrine of the Nuclear-Weapon States and the Future of Non-Proliferation," *Arms Control Today*, Vol.24, No.6, July/August 1994, pp.3-9; Mitchell Rise, "Last Nuclear Summit?" *Washington Quarterly*, Vol.17, No.3, Summer 1994, pp.5-15; John Simpson, "The Nuclear Non-Proliferation Regime: Options and Opportunities," *Disarmament*, Vol.XVI, No.2, 1993, pp.21-38; Mitsuru Donowaki, "Non-Proliferation Issues and the Future of the NPT," *Ibid.*, pp.60-80; Harald Müller, David Fischer and Wolfgang Köter, *Nuclear Non-Proliferation and Global Order*, SIPRI, 1994; Lewis A. Dunn, "Rethinking the Nuclear Equation: The United States and the New Nuclear Powers," *Washington Quarterly*, Vol.17, No.1, Winter 1994, pp.5-25.

hundreds of miles away. ....I have made non-proliferation one of our nation's highest priorities. We intend to weave it more deeply into the fabric of all our relationships with the world's nations and institutions."

As an international effort to respond to this issue, the first UN Security Council Summit in January 1992, which discussed a new world order after the Cold War and asked the Secretary-General to prepare a report for revitalization of the UN function on international peace and security, recognized the vital importance of the problem of non-proliferation in the post-Cold War era. The statement by the Security Council President includes the phrase "proliferation of weapons of mass destruction constitutes the threat to international peace and security". The phrase comes from Article 39 of the UN Charter and this determination of proliferation as a threat to international peace and security is the first necessary step toward UN sanctions under Chapter VII of the Charter. This is a strong expression of the Security Council against proliferation.

In addition, in recent years, there seems to be a tendency to develop new methods and instruments, including military ones, for the dominant global powers to impose non-proliferation on aspirant nuclear proliferators, as shown in the Iraqi and North Korean cases, as well as in the US Defense Counterproliferation Initiative.

The NPT review and extension conference will be held in April/May 1995, which will give parties to the Treaty a good opportunity not only to review and discuss the implementation of the obligations assumed in the Treaty but also to think about broader and more fundamental problems like a new international security order. The conference is different from the four previous review conferences, as the 1995 conference has to decide, by a majority vote, how long the Treaty should be extended.

In this paper, I will discuss, first, the ramifications of the 1995 review and extension conference from the viewpoint of strengthening the NPT regime, and the nuclear disarmament measures which should be taken. Second, I will examine the role of the IAEA (International Atomic Energy Agency) and the United Nations Security Council in buttressing the NPT regime, taking the Iraqi and North Korean cases as examples. Lastly, recent new arguments, including the Defense Counterproliferation Initiative, will be studied to show a new tendency in the efforts toward non-proliferation.

## **I. The Future of the NPT and Nuclear Disarmament**

### **i) The NPT Review and Extension Conference**

At the previous four review conferences held every five years since 1970, discussions to review the operation of the Treaty have focused on the discriminatory aspects of the Treaty and whether and how they have been mitigated, especially in connection

with the implementation of Articles IV and VI. Although every article of the Treaty has been the subject of vigorous discussion and every article should be examined on its own merits at the next conference, the most controversial and competing arguments have been and will be centered on the implementation of the obligations under Article VI.

The 1995 conference is not only a review conference but also an extension conference,<sup>2)</sup> and parties have to decide how long the Treaty should be extended. No nation has a veto on the decision and only a majority of the Parties, which currently means 84 votes among the 166 parties, can decide the extension. However, it would be preferable to extend the Treaty by consensus rather than voting.

There are only three options stipulated in Article X, paragraph 2: i) indefinite extension, ii) an additional fixed period extension, or iii) additional fixed periods extension. The first option is very clear. The second option, which means the expiration of the Treaty after the additional period, can not and should not be accepted, because of the significant role the NPT regime has been playing for international peace and security. The third option is not so clear, and there is no method or procedure stipulated to move from the first period to the second or third period.

The fourth option, which is not clearly provided for in the article but seems not to be excluded, is to have another extension conference ten or twenty-five years later. The intention of the treaty drafters was to defer the decision on Treaty duration for 25 years, and not to expire the Treaty at that time.

At the G-7 Economic Summit held in Naples in July 1994, in its political communique, the participating governments, including Japan, declared their unequivocal support for the indefinite extension of the Treaty in 1995, recognizing that proliferation of weapons of mass destruction and missiles was one of the most serious threats to international peace and security. The previous year, Japan was rather reluctant to join in the indefinite extension at the Summit held in Tokyo.

The Japanese official position supporting the indefinite extension of the NPT was proclaimed by Prime Minister Morihiro Hosokawa in his first policy address on August 23, 1993, just after the strong criticism of Japan because of its ambiguous attitude at the Tokyo Summit. In September 1993, he again made it clear that Japan supported the indefinite extension in his address at the United Nations General Assembly.

There is, however, strong opposition against the indefinite extension of the Treaty

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2) See John Simpson and Darryl Howlett, "The NPT Renewal Conference: Stumbling toward 1995," *International Security*, Vol. 19, No. 1, Summer 1994, pp. 47-71; George Bunn, Charles N. Van Doren & David Fischer, *Options & Opportunities: The NPT Extension Conference of 1995*, PPNN Study Two, 1991.

in Japan. Mayor Hirooka of Hiroshima City, on August 6, 1993 and 1994, clearly stated that he was opposed to the indefinite extension, because it would destabilize the relationship between NWSs and NNWSs, without making a clear way toward eliminating all nuclear weapons. His view is also strongly supported by academic groups and public opinion in Japan.

There are conceptional differences underlying the NPT regime and the extension of the Treaty. On the one hand, the NPT is thought to be a prerequisite to proceed toward nuclear disarmament. For further nuclear disarmament the NPT should therefore be extended indefinitely as nuclear disarmament is possible only on the firm commitment to the NPT. On the other hand, the indefinite extension of the Treaty is perceived as a consolidation of the status quo solidifying the clear division between NWSs and NNWSs.

Those arguments also correspond to the different opinions between those who think the NPT is a goal in itself and those who take the NPT regime as only a step toward the goal of nuclear disarmament. Those who are opposed to the indefinite extension are afraid that the discriminatory regime will continue forever.

A compromise between these two viewpoints should be sought. One example would be to extend the Treaty for additional fixed periods, that is, in every 10 to 25 years the parties to the Treaty would get together to check the progress of nuclear disarmament. Unless a simple majority or a two-thirds majority of the parties agree to the expiration of the Treaty, the Treaty would continue to be effective.

Another compromise would be to take the fourth option, that is, to have another extension conference, just the same as the one held in 1995, 10 or 25 years later.

The direct linkage of the extension with concrete nuclear disarmament measures or a concrete timetable can not be supported from both legal and political points of view. This is because it amounts to the amendment of the Treaty provisions, which must be subject to more rigid procedures than the majority vote. Politically the NPT is too important to be conditioned on these elements.

## ii) The Measures for Nuclear Disarmament

As a better and practical way, some measures should be taken as soon as possible, preferably before the review and extension conference, not only to mitigate the discriminatory character of the NPT and to have a more equitable and stabilizing NPT regime, but also to create a new international security order in the post-Cold War period which de-emphasizes nuclear weapons.

The first and most important measure is a comprehensive nuclear test ban (CTB), whose negotiation has been under way at the Conference on Disarmament in Geneva

since January 1994. A CTB has a symbolic value as a litmus test on whether NWSs have the will to fulfill their obligations under Article VI of the Treaty. This is because a CTB is mentioned in the preamble of the NPT. Since the negotiation of the Treaty almost all NNWSs have claimed the achievement of a CTB as the most significant measure to ameliorate the discriminatory nature of the Treaty.

With the positive U.S. attitude to a CTB<sup>3)</sup> and a constructive negotiation in Geneva,<sup>4)</sup> the possibility of concluding a CTB treaty is higher than at anytime in history. Test ban moratoria have been effective for some years on the United States, the Russian Federation, the United Kingdom and France. Only China has been conducting nuclear tests, once in 1993 and twice in 1994. China declared that a CTBT should be concluded by 1996. This means China will continue testing until 1996. The French position is not so fixed because President Mitterrand is to retire next spring.

Some problems as to the content of the treaty remain unresolved and it is not sure a CTB treaty will be signed, ratified or entered into force before the extension conference. China and France do not seem to be eager to have a treaty before the conference, but it will be better to complete an imperfect treaty before the conference rather than a perfect treaty after that. By an incomplete treaty, I mean a treaty without the initial participation of China, France and nuclear threshold countries, as well as a treaty without sophisticated verification or other important articles.

The second nuclear disarmament measure is a prohibition of the production of fissile materials for weapon purposes, usually called a "cut-off", which was proposed by President Clinton in September 1993. During the negotiation of the NPT it was thought that while a CTB would stop the qualitative nuclear arms race, a cut-off would stop the quantitative nuclear arms race. Now, however, these measures are thought to also be effective in preventing proliferation, although their original effects would still be useful.

The United States has stopped producing nuclear materials for weapon purposes for years and the Russian Federation has substantially stopped producing them, except for a few reactors which simultaneously produce electricity for civilian use but are supposed to be closed by 2000. The target of this measure is mainly threshold countries outside of the NPT, that is, Israel, India and Pakistan. It aims at freezing the nuclear materials for weapon purposes in these countries.

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3) See Glenn T. Seaborg and Benjamin S. Loeb, "Approaching a Comprehensive Test Ban: A United States Historical Perspective," *Disarmament*, Vol. XVI, No. 3, 1993, pp. 35-55.

4) See Yoshitomo Tanaka, "Current Prospects for a Comprehensive Nuclear Test-Ban Treaty," *Disarmament*, Vol. XVI, No. 3, 1993, pp. 9-13; Lars Norgerg, "Current Efforts to Negotiate a Nuclear Test-Ban," *Ibid.*, pp. 14-17.

The measure has a critical shortcoming in that it recognizes a special category for those states just between NWSs and NNWSs. In order to strengthen the NPT regime, the measure should be recognized as a temporary step toward complete denuclearization. Otherwise, it would be counterproductive for the regime.

These two measures are highly recommendable, because not only are they effective measures to stop the nuclear arms race, but they are also non-discriminatory and equitable for all parties, irrespective of their status as NWSs or NNWSs.<sup>5)</sup> Not only the obligations but also the verification measures are the same for all parties. NWSs will then have to accept full-scope safeguards of the IAEA.

The third measure is the implementation of the START I and START II Treaties as soon as possible.<sup>6)</sup> The Lisbon Protocol to the START I Treaty should be signed and ratified as provided for by Ukraine.<sup>7)</sup> This means that Ukraine should accede to the NPT as a NNWS. It is a precondition for Russia to exchange the instrument of ratification of the START I Treaty. Without being entered into force, the content of the START I treaty has been implemented in part by the United States and Russia, but it should be legally binding, because it is the precondition for the START II Treaty to become effective. After Ukraine ratified the NPT, the START I Treaty entered into force on December 5, 1994, which also opens a path to the START II Treaty ratification.

START III negotiations should be started for the further reduction of strategic nuclear forces between the two countries, possibly including the United Kingdom, France and China. It may also be necessary to address non-strategic nuclear forces which have no legal instrument so far.<sup>8)</sup>

The fourth measure is negative security assurances and a pledge of no-first-use of nuclear weapons. The conditions which were attached to each declaration of negative security assurances seem to have lost their meaning because of the collapse of the Warsaw Treaty Organization and the withdrawal by the U.S. and the Soviet Union/Rus-

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5) See Roland Timerbaev, "Strengthening the NPT Regime: A CTBT and a Cut-Off of Fissionable Material," *Disarmament*, Vol.XVI, No.2, 1993, pp.97-108; George Bunn, Roland M.Timerbaev and James F.Leonard, *Nuclear Disarmament: How Much Have the Five Nuclear Powers Promised in the Non-Proliferation Treaty?* The Lawyers Alliance for World Security, the Committee for National Security and the Washington Council on Non-Proliferation, June 1994.

6) See Christoph Bluth, "Strategic Nuclear Weapons and US-Russian Relations: From Confrontation to Co-operative Denuclearization?" *Contemporary Security Policy*, Vol.15, No.1, April 1994, pp.80-108.

7) See Jonathan Samuel Lockwood, "The View from Ukraine: The Aspiring Nuclear Power," *Strategic Review*, Vol.XXI, No.4, Fall 1993, pp.22-30; F.Stephen Larrabee, "Ukraine: Europe's Next Crisis?" *Arms Control Today*, Vol.24, No.6, July/August 1994, pp.14-19.

8) See Ivo H.Daalder, "The Role of the Nuclear Powers," *Disarmament*, Vol.XVI, No.2, 1993, pp.39-50.

sian Federation of tactical and theater nuclear weapons from other countries.

There should be efforts to assume negative security assurances which are uniform, with no conditions and legally binding. The measure would give NNWSs an incentive to join or keep joining the Treaty, and strengthen the NPT regime because the measure would devalue the military and political usefulness of nuclear weapons. In addition, by proceeding one step further, NWSs should proclaim individually or collectively a no-first-use pledge.<sup>9)</sup>

The fifth measure is the establishment of nuclear-weapon-free zones (NWFZs) all around the world.<sup>10)</sup> These are complementary to the NPT and are increasingly important as a measure to strengthen regional security. The initiative to create a NWFZ surely has to come from the countries in a region, but for their success, the cooperation and support by NWSs is indispensable.

In the Korean Peninsula, the Joint Declaration on the Denuclearization in February 1992 should be implemented as soon as possible.<sup>11)</sup> The NWSs should give full support to the establishment of an African NWFZ which will materialize soon.<sup>12)</sup> The protocols to the Rarotonga Treaty, which established a nuclear free zone in the South Pacific, should be signed and ratified by the United States and the United Kingdom. The U.S. should encourage and support the idea of establishing a NWFZ in Southeast Asia.

In the Middle East and South Asia, certain progress in the peace process, including confidence-building measures, will be necessary before trying to establish a NWFZ.

### iii) The Nuclear Posture Review

On October 29, 1993, the Defense Secretary of the U.S. Les Aspin announced that the Department of Defense planned to conduct the first nuclear policy review in 15

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- 9) Paul Warnke, "Strategic Nuclear Policy and Non-Proliferation," *Arms Control Today*, Vol.24, No.4, May 1994, p.5; See George Quester and Victor A.Utgoff, "No-First-Use and Nonproliferation: Redefining Extended Deterrence," *Washington Quarterly*, Vol.17, No.2, Spring 1994, pp.103-114; Dingli Shen, "Toward a Nuclear-Weapon-Free World: A Chinese Perspective," *Bulletin of the Atomic Scientists*, Vol.50, No.2, March/April 1994, pp.51-54.
- 10) See Helen Leigh-Phippard, "Nuclear-Weapon-Free Zones: Problems and Prospects," *Arms Control*, Vol.14, No.2, August 1993, pp.93-114.
- 11) See Tae-Hwan Kwak and Seung-Ho Joo, "The Denuclearization of the Korean Peninsula: Problems and Prospects," *Arms Control*, Vol.14, No.2, August 1993, pp.65-92; Darryl Howlett, "Nuclearization or Denuclearization on the Korean Peninsula," *Contemporary Security Policy*, Vol.15, No.2, August 1994, pp.174-193.
- 12) See Gift Punungwe, "Africa and the International Nuclear Non-Proliferation Regime," *Disarmament*, Vol.XVI, No.2, 1993, pp.153-170; Jeremy Shearar, "Denuclearization in Africa: The South African Dimension," *Ibid.*, pp.171-185; Ibrahima Sy, "A Nuclear-Weapon-Free Zone in Africa," *Disarmament*, Vol.XVI, No.3, 1993, pp.92-102.



years which would include a revision of doctrine, force structure, operations and arms control. In light of the end of the Cold War and the growing danger of nuclear proliferation, there existed some expectation that the U.S. would proceed to START III negotiations for a further cut beyond 3500 and pledge a no-first-use of nuclear weapons.

A nuclear posture review, which had no major change in key issues from the Bush Administration, was announced on September 22, 1994 after a ten month study.<sup>13)</sup> One of the two great issues of the Nuclear Posture Review is how to achieve the proper balance between leading, that is, providing a leadership for further and continuing reductions in nuclear weapons and hedging against a reversal of reform in Russia. The other big issue is how to achieve the benefits of improved safety and security for the residual force of nuclear weapons both in the United States and in Russia. Accordingly, the new posture is said to be no longer based on MAD (Mutual Assured Destruction) but on MAS (Mutual Assured Safety).

First, in the Nuclear Posture Review which covers the time period up to 2003, the U.S. has no will to commit to proceed beyond the START II Treaty for a further cut of nuclear weapons below 3500.<sup>14)</sup> Second, the U.S. will maintain non-strategic nuclear forces in Europe as part of its commitment to the alliance, and its commitments to its allies are neither changed nor in any way diminished.

The former means that there will be no further nuclear reduction negotiations in the near future, in spite of the argument that now it is good opportunity to de-emphasize the role of nuclear weapons by negotiating a further cut, and by starting nuclear reduction negotiations among five NWSs.

The latter means that the U.S. will not pledge no-first-use of nuclear weapons, which is a critical means to reduce the military and political role of nuclear weapons in international society.

## II. The IAEA and the UN Security Council

The IAEA, which was established in 1957 after the "atoms for peace" address by President Eisenhower, has the double purpose of promoting peaceful uses of nuclear energy and preventing their diversion to military uses. Since Article III of the NPT asked NNWSs parties to the Treaty to apply IAEA safeguards to their peaceful nuclear

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13) Defense Department Briefing, *Nuclear Posture Review*, September 22, 1994.

14) See Sven F. Kraemer, "America's Ten Deadly Strategic Gambles: Arms Control or Unilateral Disarmament?" *Strategic Review*, Vol. XXII, No. 4, Fall 1994, pp. 7-22.

materials, the IAEA has applied its safeguards by concluding a safeguards agreement with each party.

In the Cold War era, the focus of safeguards was on industrialized nations, and as frequency of the IAEA inspections is determined in accordance with the amount of nuclear material of each country, a large part of the IAEA safeguards activities have been conducted in the Western European nations, Japan and Canada. In the post-Cold War era, the focus of IAEA safeguards has shifted to developing countries like Iraq and North Korea.

i) The Iraqi Case and its Lessons

The Security Council, on April 3, 1991, adopted Resolution 687, which marked the end of the Persian Gulf War and was formally accepted by Iraq. Under this resolution, the Security Council invites Iraq to reaffirm unconditionally its obligations under the NPT, decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons-usable material, and requests the Director-General of the IAEA to carry out immediate on-site inspections of Iraq's nuclear capabilities.

The Security Council established a United Nations Special Commission (UNSCOM) for conducting the inspection and destruction of Iraq's weapons of mass destruction, and the IAEA was given a special responsibility with regard to nuclear weapons. These inspections were different from usual IAEA inspections because they were decided as a mandatory action by the UN under Chapter VII of the Charter. The IAEA inspectors enjoyed unconditional and unlimited access to any area, facility, record or means of delivery.

As a result of these inspections, it was found that Iraq had a significant uranium enrichment program and a small-scale plutonium production and separation program.<sup>15)</sup> Iraq has been a party to the NPT since 1971 and accepted full-scope safeguards of the IAEA. The fact that Iraq had a significant nuclear weapon development program at undeclared facilities created great doubt as to the effectiveness of the IAEA safeguards and even the effectiveness of the NPT regime.

In this context, the Director-General of the IAEA, Hans Blix wrote, "The Iraqi case

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15) See Rolf Ekeus, "The United Nations Special Commission on Iraq," *SIPRI Yearbook 1992: World Armaments and Disarmament*, pp.509-524; Rolf Ekeus, "The United Nations Special Commission on Iraq: Activities in 1992," *SIPRI Yearbook 1993: World Armaments and Disarmament*, pp.691-703; Tim Trevan, "UNSCOM: Activities in 1993," *SIPRI Yearbook 1994*, pp.739-758; Eric Chauvistré, *The Implications of IAEA Inspections under the Security Council Resolution 687*, UNIDIR Research Papers, No.11, 1992; Benoit Morel, "Nuclear Non-Proliferation and the International Inspection Experience in Iraq," *Disarmament*, Vol.XVI, No.3, 1993, pp.103-121.

opened a new chapter in the world's book of measures to control the further spread of nuclear weapons. It called into question the scope and effectiveness of existing nonproliferation controls....The most serious conclusion relating to nonproliferation that emerged from the Iraqi case was that it had been possible to hide nuclear material and installations subject to safeguards without detection by the IAEA or by foreign intelligence."<sup>16)</sup>

The Executive Chairman of the UNSCOM, Rolf Ekeus, noting that "we have, with Iraq, an instance where a state which has signed and ratified an agreement has blatantly violated its obligations. The international community must be prepared to deal with such violations. The Treaty in itself is not enough; it must be effectively implemented", emphasized the following points: first, special inspections should be conducted, under certain conditions, to sites and activities which have not been declared by a member state; second, the Agency's access to information and intelligence from Governments should be increased; and third, the Agency's activities should be more closely linked to the Security Council.<sup>17)</sup>

The first response to this new situation was the President statement of the UN Security Council on January 31, 1992.<sup>18)</sup> In the statement, the Security Council recognized "the proliferation of all weapons of mass destruction constitutes a threat to international peace and security." In addition, "on nuclear proliferation, they note the importance of the decision of many countries to adhere to the Non-Proliferation Treaty and emphasize the integral role in implementation of that Treaty of fully effective IAEA safeguards, as well as the importance of effective export controls. The members of the Council will take appropriate measures in the case of any violations notified to them by the IAEA."

The second response was taken by the IAEA. The Director General and the secretariat of the IAEA began to search for measures to strengthen the IAEA safeguards based on their bitter experience in the Iraqi case. At the General Conference in September 1991, the Director General Hans Blix emphasized the importance of special inspections as a measure to strengthen the safeguards system. He also mentioned the

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16) Hans Blix, "Verification of Nuclear Nonproliferation: The Lessons of Iraq," *Washington Quarterly*, Vol.15, No.4, Autumn 1992, p.58.

17) Rolf Ekeus, "Minimizing the Risk of Proliferation," United Nations, *Disarmament Topical Papers 10, Non-Proliferation and Confidence-Building Measures in Asia and the Pacific*, 1992, pp.47-48; See David Albright and Mark Hibbs, "Iraq's Quest for the Nuclear Grail: What Can We Learn," *Arms Control Today*, Vol.22, No.6, July/August 1992, pp.3-11; Rolf Ekeus, "The Iraq Experience and the Future of Nuclear Non-Proliferation," *Washington Quarterly*, Vol.15, No.4, Autumn 1992, pp.67-73.

18) UN Doc. S/23500, 31 January 1992.

three conditions that need to be fulfilled to make special inspections effective: i) the inspectors must have access to information from sources besides the state in which the inspections were to be performed; ii) the inspectors must have a right to timely and unrestricted access to any location which, according to credible information, might have an undeclared nuclear installation or contain undeclared nuclear material; and iii) the Agency may need to exercise its right under the Agency's Statute and relationship agreement with the United Nations to have access to the Security Council, if the state in question rejects a request for a special inspection.<sup>19)</sup>

Based on these discussions, the Board of Governors of the IAEA, on February 26, 1992, reaffirmed the Agency's right to undertake special inspections in Member States with comprehensive safeguards agreements, when necessary and appropriate, and to ensure that all nuclear materials in peaceful nuclear activities are under safeguards. The Board further reaffirmed the Agency's rights to obtain and to have access to additional information and locations in accordance with the Agency's Statute and all comprehensive safeguards agreements.<sup>20)</sup>

#### ii) The North Korean Case

The first case where the lessons from the Iraqi experience were very clearly applied was with North Korea. After a long delay and with the end of the Cold War, North Korea signed a safeguards agreement with the IAEA on January 30, 1992, which was entered into force on April 10. After six ad hoc inspections based on an initial report by North Korea, on February 9, 1993 the Director General requested a special inspection in the DPRK in order to clarify significant inconsistencies in samples and measurements and to gain access to two sites.<sup>21)</sup> On February 25, the Board of Governors adopted a resolution calling upon the DPRK to respond positively to the Director General's request.<sup>22)</sup>

North Korea, refusing this request, announced its intention to withdraw from the NPT on March 12. The Board of Governors, on April 1, found that the DPRK was in non-compliance with its obligations under its Safeguards Agreement with the Agency,

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19) *PPNN Newsbrief*, No.15, Autumn 1991, p.14.

20) IAEA Press Release, PR/92/12, 26 February 1992; See Hans Blix, "IAEA Safeguards: New Challenges," *Disarmament*, Vol. XV, No.2, 1992, pp.41-42; David Fischer, Ben Sanders, Lawrence Scheinman and George Bunn, *A New Nuclear Triad: The Non-Proliferation of Nuclear Weapons, International Verification and the International Atomic Energy Agency*, PPNN Study Three, 1992; George Bunn and Roland Timerbaev, *Nuclear Verification under the NPT: What Should It Cover - How Far May It Go?*, PPNN Study Five, 1994.

21) IAEA Press Release, PR/93/4, 16 February 1993.

22) IAEA Doc. GOV/2636, 26 February 1993.

and decided to report the DPRK's non-compliance and the Agency's inability to verify non-diversion of nuclear material required to be safeguarded, to the Security Council of the United Nations.<sup>23)</sup>

Based on the progress of the high level negotiations between the United States and North Korea, North Korea announced the suspension of effectuation of its withdrawal from the NPT, on June 11, just one day before the day when the withdrawal announcement would become legally effective. In spite of these temporary improvements of the situation, other problems like withdrawing nuclear fuel rods from reactors without observation or inspection by the IAEA have arisen, and the nuclear suspicion of North Korea could not be cleared at all.

Facing North Korea's intransigence, members of the Security Council began to discuss the possibility of imposing sanctions,<sup>24)</sup> and in the middle of June 1994 the U.S. delegate to the UN Security Council submitted a draft proposal for sanctions against North Korea. The sequence of these events follows what was decided in 1992 at the IAEA and the UN Security Council based on lessons from the Iraqi case.

After the meeting of Jimmy Carter with Kim Il Sung on June 16, both countries agreed to start the third round of high level consultations under the condition that North Korea freezes its nuclear development. With intensive negotiation and much U.S. compromise, the two nations signed "Agreed Framework between the United States of America and the Democratic People's Republic of Korea" on October 21, 1994.

The Agreed Framework stipulates; I. Both sides will cooperate to replace the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants; II. The two sides will move toward full normalization of political and economic relations; III. Both sides will work together for peace and security on a nuclear-free Korean Peninsula; and IV. Both sides will work together to strengthen the international nuclear non-proliferation regime.

In particular, it was agreed that the DPRK would remain a party to the NPT and would allow implementation of its safeguards agreement under the Treaty, and that the U.S. would provide formal assurances to the DPRK against the threat or use of nuclear weapons by the U.S. With this agreement the non-proliferation regime was kept effective on the Korean Peninsula. Although there remain many ambiguities in the agreement and it will take long time to implement the agreement, it should be praised as the beginning of the overall resolution of the nuclear issue on the Korean Peninsula.

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23) IAEA Doc. GOV/2645, 1 April 1993.

24) See Kathleen C. Bailey, "North Korea: Enough Carrots, Time for the Stick," *Comparative Strategy*, Vol.13, No.3, 1994, pp.277-282.

### iii) The Role of the IAEA and the UN Security Council

In the post-Cold War era, the IAEA and the UN Security Council have worked hard together for the cause of non-proliferation, as shown in the Iraqi and North Korean cases. Generally speaking, these new trends should be praised as improving the function of the IAEA and the Security Council in order to make the world safer and more secure in search for a new international security order. It should be recognized that the meaning of non-proliferation has changed in accordance with the changing international society.

However, these new trends should be understood with the following comments.<sup>25)</sup> First, although the Iraqi case and North Korean case look similar from the viewpoint of non-proliferation or counter-proliferation, the two cases should be separated from each other from a legal and factual point of view. In the Iraqi case, the Security Council took actions under Chapter VII in face of Iraq's invasion of Kuwait, a flagrant violation of one of the fundamental rules of international law, while in the North Korean case, the IAEA found that the DPRK was in non-compliance with the safeguards agreement and the Agency was not able to verify that there had been no diversion. In the former case, the IAEA was permitted an unrestricted inspection right, but in the latter case inspection depended on the safeguards agreement.

Second, in both cases new trends were exercised by the newly revitalized UN Security Council, as well as by the strong will of the United States, pursuing 'the interest of international society' in parallel with 'the interest of the United States'. Indeed, without the strong support of the United States, the UN Security Council could not have worked well. However, for these new trends to be recognized and accepted generally as a new international security order in the post-Cold War era, 'the interest of international society' must prevail more than that of the United States.

Third, regarding access to information based on which a special inspection is to be conducted, in the case of North Korea almost all information has come from U.S. satellite intelligence. Without the information from the U.S., the IAEA could not have asked special inspections of North Korea. However, it would be desirable to collect information more objectively and make information collected more reliable. We should examine, for example, the possibility of collecting information through multilateral or international satellite monitoring.

Lastly, at the time of the NPT conclusion, inspection on undeclared facilities was not discussed seriously because no state was thought to have undeclared facilities. As

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25) See Eric Shouvistré, "The Future of Nuclear Inspection," *Arms Control*, Vol. 14, No. 2, August 1993, pp. 23-64; Ryukichi Imai, "NPT Safeguards Today and Tomorrow," *Disarmament*, Vol. XV, No. 2, 1992, pp. 47-57.

one of the critical lessons from the Iraqi case, the IAEA correctly reaffirmed the right of special inspections. However, special inspections provided for in the safeguards agreement are not the same as the challenge inspection provided for in the Chemical Weapons Convention. In order to make the character of special inspection clearer, it is necessary to work out a precise procedure for special inspections.

### III. Various Approaches to Non-Proliferation

#### i) The Changing Character of Non-Proliferation

The purpose and nature of non-proliferation has been changing since it was established. In the 60s and 70s, the target of non-proliferation was western industrialized nations such as West Germany, Japan, Italy and others. In the 70s and 80s, the so-called threshold countries such as Israel, India, Pakistan, South Africa, Argentina and Brazil, none of which was a party to the NPT, were the main concern of non-proliferation. South Africa acceded to the NPT in 1991, and Argentina and Brazil have already accepted full-scope safeguards of the IAEA by bilateral agreement.<sup>26)</sup> Argentina has also become and Brazil will soon be a party to the Tlatelolco Treaty.

In the post-Cold War era in the 90s, rogue or irresponsible countries such as Iraq and North Korea, both of which are parties to the Treaty, and other developing countries, as well as traditional threshold countries, Israel, India and Pakistan, are the focus of efforts of non-proliferation.<sup>27)</sup>

In this context, it is strongly argued that the traditional efforts for non-proliferation are not enough or not good at all. For example, Mr. Ted Galen Carpenter pointed out: "The recent crisis over North Korea's nuclear program is merely the latest evidence that the global nonproliferation regime, symbolized by the nuclear Non-proliferation Treaty (NPT), is inexorably breaking down."<sup>28)</sup> Similarly, Mr. Seth Cropsey maintained: "the spread of nuclear weapons and the means to deliver them has already advanced so far that the important question is no longer how to stop their proliferation, but rather how to prevent them from being used."<sup>29)</sup>

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26) See Julio C. Carasales, "The Non-Proliferation Treaty, Tlatelolco and the Regional Contribution," *Disarmament*, Vol. XVI, No. 2, 1993, pp. 109-122; John R. Redick, "Latin America's Emerging Non-Proliferation Consensus," *Arms Control Today*, Vol. 24, No. 2, March 1994, pp. 3-7; Jose Goldemberg and Harold A. Feiveson, "Denuclearization in Argentina and Brazil," *Ibid.*, pp. 8-14.

27) See W. Seth Carus, "Proliferation and Security in Southwest Asia," *Washington Quarterly*, Vol. 17, No. 2, Spring 1994, pp. 129-139.

28) Ted Galen Carpenter, "Closing the Nuclear Umbrella," *Foreign Affairs*, Vol. 73, No. 2, March/April 1994, p. 8.

29) Seth Cropsey, "The Only Credible Deterrent," *Foreign Affairs*, Vol. 73, No. 2, March/April 1994, p. 14.

Under the same perception, Mr. Brad Roberts, claiming that nonproliferation may ultimately prove counterproductive as the sole focus of policy in the decades ahead, proposed a new concept termed "antiproliferation". He argued: "The nuclear non-proliferation model of the Cold War years is no longer adequate because it no longer encompasses all significant dimensions of the proliferation problem or the full range of policy responses. Antiproliferation strategies for the future must look beyond the traditional emphasis on denial alone, to include new diplomatic and military elements that emphasize coping with a world in which proliferation is slowly progressing, and manipulating the balance of incentives and disincentives this process creates for more cooperative approaches to problem of international security."<sup>30)</sup>

He emphasizes the necessity of a comprehensive approach to the problem including diplomatic measures to mitigate the incentives of proliferators by pursuing new possibilities for regional arms control, as well as military measures to support diplomatic efforts including the improvement of U.S. military preparedness and the strengthening of the collective security of the United Nations.

## ii) Counterproliferation

Mr. John Deutch had already maintained in 1992, that "The United States, preferably in a multilateral context, should state that any use of nuclear weapons would be considered a *casus belli* and that violation of the NPT would trigger specific sanctions, including the possibility of multilateral and, in exceptional cases, unilateral action. ...The United States should maintain military forces appropriate to make such a threat credible"<sup>31)</sup>

On December 7, 1993 then Secretary of Defense Les Aspin launched the Defense Counterproliferation Initiative.<sup>32)</sup> It is a response to the President's address at the U.N. General Assembly, which emphasized a need to attack the proliferation of weapons of mass destruction. It also takes into account the Pentagon's October 1993 Bottom-Up Review in connection with the spread of weapons of mass destruction (WMD).

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30) Brad Roberts, "From Nonproliferation to Antiproliferation," *International Security*, Vol. 18, No. 1, Summer 1993, p. 173.

31) John M. Deutch, "The New Nuclear Threat," *Foreign Affairs*, Vol. 71, No. 4, Fall 1992, p. 133; See William H. Lewis and Christopher C. Joyner, "Proliferation of Unconventional Weapons: The Case for Coercive Arms Control," *Comparative Strategy*, Vol. 10, No. 4, 1991, pp. 299-309; John R. Powers and Joseph E. Muckerman, "Rethink the Nuclear Threat," *Orbis*, Vol. 38, No. 1, Winter 1994, pp. 99-108.

32) "Nuclear Proliferation Foremost Among 4 Chief Threats for U.S.," *USIA Wireless File*, December 7, 1993, pp. 4-7; See Marc Dean Millot, "Facing the Emerging Reality of Regional Nuclear Adversaries," *Washington Quarterly*, Vol. 17, No. 3, Summer 1994, pp. 41-71.



In addition to the traditional emphasis on prevention, the Counterproliferation Initiative adds protection as a major policy goal. Therefore, at the heart of the Initiative is a drive to develop new military capabilities to deal with this new threat. The stated goals of U.S. counterproliferation doctrine are: (1) to deter countries from acquiring WMD, (2) to reverse WMD programs diplomatically where proliferation has occurred, (3) to protect U.S. interests, forces, and allies from the use and effects of WMD by ensuring that the U.S. has the equipment, intelligence capability, and strategy to deter the threat or use of WMD against U.S. and allied forces in the event of a conflict, and if necessary, (4) to defeat an adversary armed with WMD.<sup>33)</sup>

Under the new Initiative,<sup>34)</sup> in addition to traditional "prevention" measures like dissuasion, denial, arms control and international pressure, new "protection" measures with four subcategories labelled defusing, deterrence, offense and defense, are explained in detail. As a military response to proliferation, the emphasis in offense is the ability to hunt mobile time sensitive targets and to attack buried targets, and in defense, the use of theater missile defenses.<sup>35)</sup>

### iii) A Comprehensive Approach to Non-Proliferation

In order to cope with these recent developments in the post-Cold War era, it is necessary to take a comprehensive approach to the problem of proliferation. A comprehensive approach may include: i) the measures which states willingly take for non-proliferation, including participation in the NPT or NWFZ treaty, and which would give incentives for states to join the non-proliferation regime, such as providing security assurances or reducing nuclear weapons of the NWSs; ii) measures which technically prevent states from getting nuclear-related items, such as export control or technical denial by the Nuclear Exporters' Group, the Australian Group or the MTCR (Missile Technology Control Regime); and iii) measures which forcefully destroy their nuclear capacity by military tools such as those implied in the Defense Counterproliferation Initiative.

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33) Zachary S.Davis, *U.S.Counterproliferation Doctrine: Issues for Congress*, CRS, Library of Congress, September 21, 1994.

34) Les Aspin, Secretary of Defense, *Annual Report to the President and the Congress*, January 1994, pp.34-41.

35) See Keith B.Payne, "Proliferation, Deterrence, Stability and Missile Defense," *Comparative Strategy*, Vol.13, No.1, 1994, pp.117-129; Spurgeon M.Keeny, Jr., "The Theater Missile Defense Threat to U.S. Security," *Arms Control Today*, Vol.24, No.7, September 1994, pp.3-7; Jack Mendelsohn and John B.Rhineland, "Shooting Down the ABM Treaty," *Ibid.*, pp.8-10; John Pike, "Theater Missile Defense Programs: Status and Prospects," *Ibid.*, pp.11-14; David Noshier and Raymond Hall, "The Clinton Plan for Theater Missile Defenses: Costs and Alternatives," *Ibid.*, pp.15-20.

In a few very rare cases it might be necessary to invoke the third measures, including the use of military means, and this would resolve the problem only temporarily. Even if the third measures are employed, it would be necessary to react collectively under the auspice of the United Nations rather than unilaterally by one state.

The second measures of export control are necessary but not sufficient to prevent the spread of nuclear-related materials or technology. They have been playing a role in non-proliferation by making the availability of such materials and technology more difficult and time-consuming. However, they can not resolve the fundamental problem and sometimes have a counterproductive effect by exposing the North-South discrimination.

The first measures which ask states voluntarily to join the NPT or NWFZ treaty should be a central means for non-proliferation. In order to promote accession or participation in these legal instruments, they must be more equitable and non-discriminatory. As a CTB treaty and a cut-off treaty are more equitable and less discriminatory than the NPT, they should be pursued to buttress the non-proliferation regime. Other measures such as a negative security assurances agreement or no-first-use pledge will strengthen the non-proliferation regime by ameliorating the discriminatory character of the current regime.

As each country opposed to joining the regime has its own particular security or political reasons, efforts should be directed toward these particular reasons to resolve the fundamental problems. In parallel with the above-mentioned universal approach, a regional approach which is designed by taking into account particular conditions of the region and tailored for its particular needs should be sought.<sup>36)</sup>

In order to establish a new international security order which will be recognized and accepted by almost all members of the international society, it should depend on each member's political will, rather than the enforcement by some militarily strong states.

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36) See Gerald M. Steinberg, "Non-Proliferation: Time for Regional Approach?" *Orbis*, Vol. 38, No. 3, Summer 1994, pp. 409-423.

