



Title	NUCLEAR NON-PROLIFERATION REGIME AND ITS FUTURE
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Citation	Osaka University Law Review. 1993, 40, p. 21-44
Version Type	VoR
URL	https://hdl.handle.net/11094/5149
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NUCLEAR NON-PROLIFERATION REGIME AND ITS FUTURE

*Mitsuru Kurosawa**

With the demise of the Cold War era, a new international security order is being sought by many statesmen and scholars all over the world. The nuclear non-proliferation regime whose central place is occupied by the Nuclear Non-Proliferation Treaty (NPT), has played a very important role in maintaining international peace and security. Its importance has been increased recently in proportion with the improvement of East-West relations. As the danger of nuclear confrontation between the United States and the Soviet Union or Russia has declined, the danger of the spread of nuclear weapons gets new momentum.¹⁾

In 1995, a conference of the NPT parties to decide the future of the treaty will be held. The NPT was adopted and opened for signature in 1968 and entered into force in 1970. Every five years after the entry into force of the treaty, review conferences have been held to examine its implementation. These conferences have been useful for discussing the progress of the purposes and provisions of the treaty, but the 1995 extension conference is of crucial importance in deciding the future position of the NPT.

Article 10, paragraph 2 of the NPT stipulates as follows:

Twenty-five years after the entry into force of the treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods.

The decision shall be taken by a majority of the Parties to the Treaty.

In this paper, I would like to examine the kind of role the NPT regime will play in international society from now on, what measures are necessary to maintain and improve the regime and, if it has some deficits, how they can be corrected. With these problems in mind, in the first chapter I will deal with how the NPT regime has been formed and strengthened and its characteristics. In the second chapter, I will examine

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1) *New Dimensions of Arms Regulation and Disarmament in the Post-Cold War Era*, Report of the Secretary-General of the United Nations, Boutros Boutros-Ghali, A/C.1/47/7, 23 October 1992, pp.8-9.

the discussions at the four review conferences, because these have been the forum in which the regime has been scrutinized critically by the parties. In the third chapter, I will propose some measures to strengthen the regime in the future, which include universal participation to the treaty, nuclear disarmament, security of the non-nuclear-weapon states and the application of safeguards.

I The Formation and Characteristics of the NPT Regime

i) The Formation of the NPT Regime

In 1946, at the Atomic Energy Commission established by the first resolution of the United Nations General Assembly, the representative of the United States, Mr. Bernard Baruch, proposed the creation of an International Atomic Development Authority entrusted with all phases of the development and use of atomic energy. It was the first attempt to control the spread of nuclear weapons, but the Soviet Union would not agree because it meant the U.S. would have a monopoly in nuclear energy and it was impossible to be realized.

In 1953, the United States changed its policy on nuclear energy, and President Eisenhower proposed “Atoms for Peace”, that is, the promotion of peaceful uses of atomic energy under safeguards. This proposal subsequently led to the creation of the International Atomic Energy Agency (IAEA) in 1957. According to the Article XII of the IAEA Statute, IAEA safeguards have been applied to nuclear cooperation by the United States and other countries, and these were the first realization of the effort to prevent the spread of nuclear weapons.

Disarmament negotiations under the United Nations in early years concentrated their energy on comprehensive disarmament, but after it proved impossible in late 1950s, they focused on more specific measures like a nuclear test ban and nuclear non-proliferation. The United Nations General Assembly unanimously adopted a resolution in 1961 which defined non-proliferation and called upon states to start negotiations for the treaty, although the negotiation came to an impasse because of NATO’s plan for MLF(multilateral nuclear force).

The first treaty which prevented the spread of nuclear weapons was the 1963 Partial Test Ban Treaty.²⁾ This treaty, prohibiting tests in the atmosphere and under water while permitting testing underground, in effect has prevented new states from conducting

2) President Kennedy, in his Radio-Television Address on July 26, 1963, told that “this treaty can be a step toward preventing the spread of nuclear weapons to nations not now possessing them.” USACDA, *Documents of Disarmament 1963*, p.254.

nuclear tests because of the technological and financial difficulties of underground tests.

The Treaty on the Non-Proliferation of Nuclear Weapons, which is the central structure of the NPT regime and directly deals with the problem, was open for signature on July 1, 1968 and entered into force on March 5, 1970. The core of its obligations is provided for in Articles I and II. Nuclear-weapon states (NWSs) party to the treaty undertake not to transfer nuclear weapons or other nuclear explosive devices to any one, and non-nuclear-weapon states (NNWSs) undertake not to receive or manufacture nuclear weapons or other nuclear explosive devices. These obligations were decided by the United States and the Soviet Union only, who rejected all proposals for amendments by the NNWSs. Full-scope safeguards are applied only to NNWSs according to Article III.

In contrast with these, Article IV provides for cooperation in peaceful uses of nuclear energy and Article VI primarily stipulates an obligation of NWSs to negotiate nuclear disarmament measures in good faith. These two articles were inserted as a compensation to NNWSs who assumed heavy and substantial obligations of non-proliferation. There is no provision which concerns security assurances of NNWSs, though the Security Council adopted a resolution on positive security assurances.

A second approach to prevent the spread of nuclear weapons is the establishment of nuclear-weapon-free zones (NWFZs). NWFZ is a regional approach in contrast to the global one of the NPT, and includes the obligation not to deploy nuclear weapons as well as non-proliferation. Article VII of the NPT encourages the creation of NWFZs.

The first treaty which established NWFZ is the Treaty of Tlatelolco in Latin America of 1967. Its Additional Protocol II which all five NWSs have already ratified includes an obligation of NWSs not to use nuclear weapons against any party to the treaty in the zone. The second one is the South Pacific Nuclear Free Zone Treaty of 1985, and it also includes Protocol 2 which prohibits use of nuclear weapons against parties, although only two NWSs have ratified it so far. These two treaties have adopted a concept of negative security assurances.

A third approach is the conclusion of safeguards agreements with the International Atomic Energy Agency (IAEA), and the application of its safeguards. Parties to the NPT or a treaty establishing NWFZ are naturally under the obligation to accept safeguards to all its peaceful nuclear activities, but other countries have to accept safeguards only to nuclear materials or facilities which they receive from the parties. Recently there has been a strong trend to extend the scope of safeguards to include all nuclear materials and facilities in those countries.

A final approach is a common export control policy among nuclear supplier nations. London Nuclear Suppliers Group adopted guidelines for nuclear export and made a list of materials which trigger safeguards if exported.

The last two approaches are especially directed to states which would not become parties to the NPT or a treaty creating NWFZ but want to receive nuclear assistance.

The NPT regime is made of these international legal documents and common policies among nuclear suppliers.

ii) The Characteristics of the NPT Regime

The NPT regime provides a fundamental framework within which activities concerning nuclear weapons and peaceful uses of nuclear energy shall be conducted. As the *raison d'être* of the regime is to prevent the emergence of new NWSs, every activity concerning the development of nuclear weapons by NNWSs is prohibited, while NWSs are free to improve their nuclear weapon capabilities.

With the context of the interrelationship between or among NNWSs, security of a NNWS would be strengthened in so far as its neighbor or rival state renounces the option of nuclear weapons. And in the context of global security, the increase in the number of NWSs would increase the risk of nuclear conflicts. In these two settings, the regime has its own merits for international peace and security.

But when you think of the regime as a division of NWSs and NNWSs, the two groups of states have different kinds of obligations. And some states argue that the regime is discriminatory.³⁾ The fact that many NNWSs have acceded to the treaty in spite of its discriminatory character, means that many NNWSs not only take into account the merits of the treaty, but also think that its shortcomings can be corrected by the nuclear disarmament measures undertaken by the NWSs. Article VI provides obligations for the NWSs to negotiate in good faith nuclear disarmament measures, and it was expected by many states that nuclear disarmament measures would be implemented in the near future.

The fundamental structure of the NPT regime which divides states into two categories and maintains the status quo regarding the possession of nuclear weapons to only one category of states, suggests that the very possession of nuclear weapons has its own significance in international society. The first is a military value, and the regime guarantees NWSs to be militarily prominent powers. But if the states which now have nuclear weapons behave as if it is safer with nuclear weapons than without

3) W. Mendl, "The Spread of Nuclear Weapons: Lessons from the Past," in C. F. Barnaby (ed.), *Preventing the Spread of Nuclear Weapons*, 1969, p.177.

them, many states will follow the course.⁴⁾ And as long as the NWSs continue an endless and meaningless nuclear arms race, they can not persuade NNWSs that nuclear weapons are neither necessary nor useful for their security.⁵⁾

The possession of nuclear weapons also has political as well as military value because of its extremely destructive power. The political value of the possession of nuclear weapons has its ramifications not only in the nuclear sphere but also in broader international relations in general. The regime has been promoted mainly by the United States and the Soviet Union, and it is suggested that the regime was an attempt by the two states to jointly control world affairs⁶⁾ and they played a role of joint nuclear policemen.⁷⁾ The regime implies not only the monopoly of nuclear weapons by a small group of states, but also consolidation of the NWSs, especially the United States and the Soviet Union, as dominant powers in international affairs.

By the definition of the treaty, NWSs have been permanent members of the Security Council of the United Nations since 1971, when the People's Republic of China got the right of representation. This fact also reinforces the political value of the possession of nuclear weapons with privileged status in the United Nations.

The NPT regime, while contributing to international peace and security by preventing an emergence of new NWSs, underscores the political as well as military value of nuclear weapons. It is this political and military value of nuclear weapons that is the deficit of the regime.

The most significant step toward reducing this deficit is to take measures for nuclear disarmament as provided for in Article VI of the treaty. The freeze or reduction of nuclear weapons by NWSs does not necessarily strengthen the security of NNWSs, but does reduce the political and military value of nuclear weapons. Nuclear disarmament measures, which would reduce the political value of nuclear weapons, would make the desire of NNWSs to get nuclear weapons less intense.

A second concrete measure for NWSs to take is a promise never to use nuclear weapons against NNWSs. Negative security assurances, which prohibit use of nuclear weapons against NNWSs, would deprive NWSs of the political and military usefulness

4) Theodore B. Taylor, "The International Regulation of Nuclear Energy: Peaceful Uses of Nuclear Energy: Environment, Security and Safety Consideration," *Columbia Journal of Transnational Law*, Vol.16, No.3, 1977, p.428.

5) William Epstein, "Failure of Review Conference: Setback for Nuclear Proliferation," *International Perspective*, May/June 1981, p.25.

6) T. B. Millar, "The Nuclear Non-Proliferation Treaty and Super Power Condominium," in Carsten Holbraad (ed.), *Super Power and World Order*, 1971, p.73.

7) Richard Hudson, "N.P.T.: Nuclear Watershed," *Atlantic Community Quarterly*, Vol.6, No.3, Fall 1968, p.242.

of nuclear weapons against NNWSs, and the possibility of the political use of nuclear weapons would be reduced.

II Discussions at the NPT Review Conferences

Under the treaty, the obligations of non-proliferation of nuclear weapons came into force as soon as the treaty was ratified and entered into force, but Article VI on nuclear disarmament and other provisions have the quality of gradual implementation.⁸⁾ In accordance with Article VIII, paragraph 3, conferences have been held every five years in order to review the operation of this Treaty with a view to assuring that the purposes of the preamble and the provisions of the treaty are being realized. Although conferences have been supposed to review all provisions in the treaty, the implementation of Article VI was the focus of discussion, because many states deal with the NPT as a step to nuclear disarmament.⁹⁾

i) The First Review Conference, 1975

At the first conference, the most controversial topic among many of the NWSs and NNWSs was on the implementation of Article VI. While the United States and the Soviet Union argued that they were implementing the obligations under Article VI in good faith indicating the SALT I Agreements, Vladivostock Agreement, Sea-Bed Treaty and Biological Weapon Convention, almost all NNWSs believed that obligations under Article VI had not been implemented.

Non-aligned NNWSs submitted three draft additional protocols to the treaty.

Draft additional protocol I¹⁰⁾ stipulates (1)the United States, the Soviet Union and United Kingdom undertake to decree the suspension of all their underground nuclear weapon tests for a period of ten years, as soon as the number of Parties to the treaty reaches one hundred, (2)they undertake also to extend by three years the moratorium

8) It was suggested that "The basic prophylactic provisions, Articles I and II, are important in themselves but are of primary value as instruments through which the world may gain a few years' respite from uncontrolled proliferation of nuclear weaponry; years which must be used to control the so-called "vertical proliferation" of the two super-Powers." (Edwin Brown Firmage, "The Treaty on the Non-Proliferation of Nuclear Weapons," *American Journal of International Law*, Vol.63, No.4, October 1969, p.746.)

9) For example, a Japanese delegate expressed the opinion that "Since the non-proliferation treaty must not be an end in itself, but one step forward in a series of arms control and disarmament measures to be taken following its conclusion, it will be crucially important to review its operation periodically, and, we think, at fairly frequent intervals." A/C.1/PV.1565, 10 May 1968, para.86.

10) NPT/CONF/17, 12 May 1975, submitted by Ghana, Mexico, Morocco, Nigeria, Peru, Romania, Sudan, Yugoslavia and Zaire.

contemplated in the preceding article, each time that five additional states become Parties to the Treaty, (3) they undertake to transform the moratorium into a treaty for that purpose, as soon as the other nuclear weapon states indicate their willingness to become parties to said treaty.

Draft additional protocol II¹¹⁾ provides (1) the United States and the Soviet Union undertake, as soon as the number of parties to the treaty has reached one hundred: (a) to reduce by fifty per cent the ceiling on 2,400 nuclear strategic delivery vehicles contemplated for each side under the Vladivostok accords; (b) to reduce likewise by fifty percent the ceiling of 1,320 strategic ballistic missiles which each side may equip with multiple independently targetable warheads (MIRV's), (2) they also undertake, once such reductions have been carried out, to reduce by ten per cent the ceilings of 1,200 strategic nuclear delivery vehicles and of 660 strategic ballistic missiles that may be equipped with MIRV's, each time that ten additional states become parties to the treaty.

Draft additional protocol III¹²⁾ stipulates (1) the United States, the Soviet Union and the United Kingdom solemnly undertake (a) never and under no circumstances to use or threaten to use nuclear weapons against non-nuclear-weapon states parties to the treaty whose territories are completely free from nuclear weapons, and (b) to refrain from first use of nuclear weapons against any other non-nuclear-weapon states parties to the treaty.

Although these proposals were worth considering at the conference, the United States and the Soviet Union refused even to discuss the draft protocols by insisting that they could not discuss them in the review conference, because they were tantamount to amendments to the treaty provisions.

At the first conference, there was no progress in the discussions on disarmament, and it became clear that there was a big difference as to the interpretation of Article VI. The conference almost failed but a president saved the conference by submitting a draft final declaration, which was adopted by consensus.

ii) The Second Conference, 1980

At the second conference, the discussion on nuclear disarmament was the most controversial and they failed to adopt a final declaration. The conference was held in

11) NPT/CONF/18, 12 May 1975, submitted by Ghana, Mexico, Morocco, Nigeria, Peru, Romania, Sudan, Yugoslavia and Zaire.

12) NPT/CONF/22, 15 May 1975, submitted by Ecuador, Ghana, Mexico, Nigeria, Peru, Romania, Sudan and Zaire.

a deteriorating international atmosphere, because there was no prospect of SALT II treaty ratification by the United States, no progress on comprehensive test ban (CTB) negotiations, and the new introduction of intermediate-range nuclear forces to Western Europe.

As to the evaluation of the implementation of Article VI, non-aligned countries were very critical and argued that the nuclear arms race still continued with much vigor. States like Canada, Japan and Hungary expressed deep concern about the continuing arms race, though they admitted some progress in the field. The United States and the Soviet Union maintained that there was some progress in the implementation of Article VI, though the progress was slow and partial.

The main demand by NNWSs at this conference was procedural, not substantial, and they asked to start negotiations on CTB at a working group of the Committee on Disarmament in Geneva. But three NWSs preferred tripartite negotiations to multi-lateral ones, and the United States opposed any idea of a moratorium.

The Stockholm Peace Research Institute analyzed the situation as follows:

The demands of the Group of 77 at the Second NPT Review Conference were, in fact, minimal. They did not insist on instant nuclear disarmament but insisted only on some tangible evidence of the nuclear powers' commitment to reach agreements leading to such disarmament. However, the nuclear powers had come essentially empty-handed to the Conference, obviously unprepared for the vehemence of the debate on this article.¹³⁾

iii) The Third Conference, 1985

In the period which the conference reviewed, that is, from 1980 to 1985, the relationship between the United States and the Soviet Union was at a low point and in effect no progress was seen in nuclear disarmament. Fortunately the attitude of NNWSs was not too militant and they succeeded in adopting a final declaration.

The NNWSs asserted that last five years had passed without any progress in the implementation of Article VI, and the final declaration evaluated the implementation of Article VI as follows:

The conference concluded that, since no agreements had been reached in the period under review on effective measures relating to the cessation of an arms race at an early date, on nuclear disarmament and on a treaty on general and complete disarmament under strict and effective interna-

13) "The Second NPT Review Conference," *World Armaments and Disarmament: SIPRI Yearbook 1981*, p.329.

tional control, the aspirations contained in preambular paragraphs 8 to 12 had still not been met, and the objectives under Article VI had not yet been achieved.¹⁴⁾

iv) The Fourth Conference, 1990

The fourth conference of 1990 had been expected to be successful¹⁵⁾ because the international climate was getting better with the end of the cold war. The Intermediate-range Nuclear Force (INF) Treaty was concluded and the fundamental framework of the Strategic Arms Reduction (START) Treaty was agreed. The participants also had in their mind the 1995 extension conference.

As to the implementation of Article VI, in sharp contrast with previous conferences, many states agreed that there was substantial progress in nuclear disarmament. Estimation of the progress of CTB negotiations, however, was varied.

The United States and the United Kingdom took the position that a CTB was a long-term goal, and they had no will to tackle the problem immediately. They felt that the problem should be dealt with gradually by a step-by-step formula. On the other hand, the Soviet Union expressed its readiness to enter negotiations on a CTB and asked the United States and the United Kingdom to follow and accept a moratorium.

Many NNWSs welcomed the progress in nuclear disarmament and demanded that NWSs should start substantial negotiations of a CTB in good faith at the Conference on Disarmament in Geneva, but they were against the linkage of progress of CTB with the problem of NPT extension.

A few NNWSs including Mexico argued that a CTB could be the best contribution for preventing the spread of nuclear weapons, and that it was imperative to conclude a multilateral CTB treaty before 1995.¹⁶⁾ This meant a direct linkage of the conclusion of a CTB treaty with an extension of the treaty after 1995. Particularly because of the difference of opinions between Mexico and the United States, the conference failed to adopt a final declaration.¹⁷⁾

At the conference, Nigeria submitted a proposal on negative security assurances, and Egypt introduced a proposal on positive security guarantees, and they appealed for the need to tackle these problems in the new international climate.

14) NPT/CONF.III/64/I, 25 September 1985.

15) Charles N. Van Doren, "Prognosis for the Fourth Review Conference," *Arms Control Today*, June 1990, pp.18-21.

16) NPT/CONF.IV/MC.1/WP.4, 3 September 1990.

17) John Simpson, "The 1990 Review Conference of the Nuclear Non- Proliferation Treaty," *Round Table*, Vol.318, 1991, pp.143-144.

I followed the arguments at four review conferences, mainly examining the implementation of Article VI of the treaty, because in order to make the NPT more fair and equitable, it is necessary to make progress in nuclear disarmament. The implementation of Article VI has been the problem which attracted many states and the hottest issue at the conferences.

Surely the reviews covered every aspect of the treaty, and the central obligations of the treaty, that is, the obligations of non-transfer, non-acquisition and non-production were thought generally respected, and there existed a strong support for Articles I and II.

As to Article III, there was some criticism that in the application of safeguards, parties to the treaty were treated less advantageous than non-parties, and that NNWSs parties to the treaty were in a handicapped position in comparison with NWSs. The situation has been ameliorated gradually in the former case by the general trends to ask for full-scope safeguards to non-parties, and in the latter case by applying safeguards to some facilities of NWSs.

As to the cooperation in the field of peaceful uses of nuclear energy stipulated in Article IV, some NNWSs argued that the preferential treatment for parties to the treaty was not a general practice, and the export control by the nuclear supplier states hindered the assistance to NNWSs for peaceful uses of nuclear energy. Some measures for these claims were taken and the aspiration for nuclear energy in general has been decreasing.

III Proposals for Maintaining and Strengthening the NPT Regime

i) Universality of and Compliance with the Treaty

(a) France and China

France and China, which detonated nuclear devices in 1960 and 1964 respectively, became NWSs later than the United States, the Soviet Union and the United Kingdom, and opposed the NPT as well as the Partial Test Ban Treaty because they did not like the world system dominated by the latter states, although the NPT regime would guarantee a privileged status for them.¹⁸⁾

With the end of the Cold War era, China in March 1992 and France in August 1992 ratified the NPT and became parties to the treaty. It is significant for all five NWSs to become parties to the treaty. France and China had argued that they would support the NPT regime although they would not be parties to the treaty, but their policies were not so strict as ones of the parties. With the participation of the two states, the danger

18) Harald Muller, "Western Europe Needs Treaty," *Bulletin of the Atomic Scientists*, July/August 1990, p.29.

of nuclear proliferation will decrease as they undertake the obligations of Article I.

More important is the fact that the obligations under Article VI also apply to these states. At the review conferences, they were not criticized because they were not parties, but now they have to pursue negotiations for nuclear disarmament, and with the deep reduction of nuclear weapons by the United States and Russia, they as well as the United Kingdom would have to be involved in the negotiations of strategic nuclear weapon reduction. In particular, for the resolution of the CTB problem, it is urgent for France and China to participate positively in negotiations for it. In this point, the accession by France and China to the treaty has a profound meaning.

(b) South Africa

South Africa had been one of the proliferation-oriented states because of its possession of abundant uranium in their territory and its position of international isolation. After the improvement of the situation in southern Africa in general and the progress towards domestic democratization, in July 1991 the Republic of South Africa signed the NPT. The republic was believed to be developing nuclear weapons and many suspicions about their behavior were reported.

Although caution against their future conduct is necessary, it tends to change the whole map in Africa. As South Africa's participation to the treaty gets rid of any block for neighboring states to join as well, it should be possible to reinvigorate the efforts to create an African nuclear-weapon-free zone which has been pursued since 1960. The establishment of an African NWFZ would not only enhance the security of African states, but also contribute to make the whole Southern hemisphere free from nuclear weapons, together with the Treaty of Tlatelolco, the Rarotonga Treaty and the Antarctic Treaty.

(c) Brazil and Argentina

In November 1990, the Presidents of Brazil and Argentina agreed to abandon formally the development of nuclear weapons, inspect each other's peaceful nuclear activities and adhere to the Treaty of Tlatelolco. Both states furthermore agreed in December 1991 to open their all nuclear facilities for full-scope safeguards by the IAEA.

The two countries were opposed to the NPT because of its discriminatory character, and under military administrations they continued the research and development of nuclear weapons, in particular for each other's rivalry and quest for hegemony in the South America.

As both states accepted IAEA safeguards in all their facilities, we can reasonably

expect they will accede to the Treaty of Tlatelolco in the near future and also to the NPT. Acceding to the NPT regime by the two countries means not only the stopping of their own nuclear weapon programs but also helping stop proliferation in the third world as they are nuclear suppliers.

(d) India and Pakistan

India conducted a "peaceful nuclear explosion" in May 1974 and has been a NWS in substance, but has declared its willingness not to be a NWS. She has enough plutonium which is not under safeguards of the IAEA and continues with research and development of nuclear weapons and missile technology. India has refused to sign the NPT for its discriminatory character. Pakistan, who declined to join the treaty, is believed to have enough capability to make nuclear weapons now.

While India was motivated by its defeat at a war with China in 1962 and China's detonation of nuclear device in 1964, Pakistan was motivated by its loss at a war with India in 1971 and India's explosion of nuclear device in 1974.¹⁹⁾ Because of these chain-reactions, the situation here is very complicated.

Although the two states agreed not to attack nuclear facilities of each other, a proposal of Pakistan to hold a conference among five states, including the United States, the Soviet Union and China to talk about non-proliferation was rejected by India. The prospect for the two to accede to the treaty is so gloomy that confidence-building measures are needed to improve the general situation in the area, if necessary, with the cooperation of the United Nations or outside big powers including China.

(e) Israel

It is generally believed that Israel had developed nuclear weapons in the 1960s and already possesses nearly 200 nuclear weapons now. As the country is surrounded by hostile Arab states, Israel's accession to the treaty would presuppose regional security arrangements in the Middle East.

After the Gulf War, the United States and the Soviet Union recognized the necessity to make efforts to establish a nuclear-weapon-free and chemical-weapon-free zone in the Middle East. President Bush announced an arms control initiative in May 1991, which led to the five power talks to establish guidelines for restraining destabilizing transfers of conventional arms and weapons of mass destruction-related equipment and technology.

19) Brahma Chellaney, "South Asia's Passage to Nuclear Power," *International Security*, Vol.16, No.1, Summer 1991, p.48.

From October 1991, a peace conference on the Middle East started talks at the initiative of the United States and the Soviet Union. The conference is expected to take a long time to reach agreements, but we should expect the conference to build confidence among parties and lead to a lasting peace and nuclear-weapon-free region.

(f) North Korea

In spite of ratifying the NPT in December 1985, North Korea has refused to negotiate and conclude a safeguards agreement with the IAEA. It is an obligation included in Article III to conclude the agreement within 18 months after ratification. Over the last few years international society has had a suspicion that North Korea was developing nuclear weapons, because of the existence of a plutonium reprocessing plant.²⁰⁾

North Korea argued that as long as nuclear weapons of the United States were deployed in South Korea, it was impossible to accept IAEA safeguards. After the threat from the Soviet Union almost disappeared with the end of the Cold War, in September 1991, the United States announced its decision to withdraw land-based tactical nuclear weapons around the world.

After the withdrawal was confirmed, North and South Korea agreed on a joint declaration of denuclearization of the Korean Peninsula in December 1991, and North Korea concluded a safeguards agreement with the IAEA on January 30, 1992. Although the situation in the Korean Peninsula may have small fluctuations, in the post-Cold War world they are making strong strides in the right direction.

(g) Iraq

Iraq, which has ratified the NPT in October 1969 and concluded a safeguards agreement, has subjected its nuclear facilities to IAEA inspection for a long time. When the Israeli air force attacked a Iraqi nuclear facility which was near completion in June 1981, the Director-General of the IAEA gave assurance that IAEA inspection guaranteed that Iraq was not preparing for developing nuclear weapons.

After the Gulf War, an inspection team of the United Nations established by Security Council resolution 687(1991) found that in the facilities which were not declared and in which the IAEA did not apply safeguards, Iraq was conducting the development of nuclear weapons.²¹⁾

20) See Andrew Mack, "North Korea and the Bomb," *Foreign Policy*, No.83, Summer 1991, pp.84-104.

21) See William H. Lewis and Christopher C. Joyner, "Proliferation of Unconventional Weapons: The Case for Coercive Arms Control," *Comparative Strategy*, Vol.10, 1991, pp.299-309.

It reveals the fact that even if a state is a party to the treaty and accepts safeguards, it is possible to make nuclear weapons without being noticed. Pointing out Iraqi violations and criticizing them is not enough. The first thing we should do is to make a system which permits an inspection against suspect sites, and the second is to make efforts to bring peace in the Middle East in general.²²⁾

ii) Nuclear Disarmament

The second measure to maintain and strengthen the NPT regime is to implement the obligations stipulated in Article VI and produce concrete results. Although Article VI does not necessarily provide for the obligations to disarm, almost all NNWSs treat the NPT as a step to nuclear disarmament and there was a general understanding that not immediately but within a certain reasonable time the NWSs are obliged to take nuclear disarmament measures.

This measure is necessary also to take into account the demand of NNWSs that there should be a balance of obligations and responsibilities between NWSs and NNWSs.

(a) INF Treaty and START Treaty

On July 1, 1968 when the NPT was open for signature, the United States and the Soviet Union announced the commencement of Strategic Arms Limitation Talks (SALT). This means they expressed their intention to implement their obligations under Article VI. Although the ABM (anti-ballistic missile) Treaty, SALT I Interim Agreement and SALT II Treaty were signed, the legal status of the treaties on offensive arms was ambiguous and their regulations were tended to authorize both nations' nuclear programs, so that they did not stop the nuclear arms race, not to say nuclear disarmament.

In the late 1980s, with the improvement of relations between East and West in general and the United States and the Soviet Union in particular, there appeared great progress in nuclear disarmament. On December 1987, the United States and the Soviet Union signed the INF (intermediate-range nuclear forces) Treaty and in accordance with the provisions of the treaty which entered into force on June 1, 1988, they eliminated all land-based INF in three years by May 31, 1991.

Although it had some defects that it eliminated only land-based missiles of inter-

22) McGeorge Bundy, "Nuclear Weapons and the Gulf," *Foreign Affairs*, Vol.70, No.4, Fall 1991, p.94; See Richard Wilson, "Nuclear Proliferation and the Case of Iraq," *Journal of Palestine Studies*, Vol.XX, No.3, Spring 1991, pp.5-15.

mediate range, that it did not eliminate nuclear warheads but only missiles, and that its elimination amounted to only a few per cent of all nuclear forces, the treaty is of great significance because it was the first treaty that in fact eliminated one class of nuclear weapons and provided for a very strict verification system including on-site inspections.

From a political point of view, the treaty has special meaning that it codified the end of the Cold War and symbolized the emergence of a new era. Also of great importance is the fact that it was implemented completely in three years as provided for. Being different from the previous treaties which were preventive and demanded no action, this treaty asked the parties to destroy nuclear weapons, and that fact gives us an optimistic perspective for nuclear disarmament.

The START (strategic arms reduction talks) treaty which was concluded on July 31, 1991 after nine years negotiations, was made possible in part by the improvement of East-West relations and by the successful implementation of the INF treaty. Although the treaty is sometimes referred to as stipulating the reduction of strategic weapons by half, it would in fact reduce them by one third because of complex counting rules. It does not include the regulation of SLCMs (sea-launched cruise missiles).

The numbers of nuclear weapons after reduction would be the same as the numbers when negotiations started in 1982, and the reduction is not deep enough, but it is purported to have the effect of reducing the risk of nuclear war by strengthening strategic stability with more reductions of ICBMs and leaving nuclear forces with second strike capability. The START Treaty reduces strategic offensive nuclear weapons for the first time in history and marks a watershed for further nuclear reductions. In that sense the significance of the treaty can not be overemphasized.

After the signature of the START treaty, President Bush in September and President Gorbachev in October 1991 announced unilateral measures for disarmament. Firstly, they decided to withdraw all land-based short-range nuclear forces (SNF), which were mainly stationed in the area where the East and the West confronted directly and there existed a danger that nuclear weapons would be used in conflicts. Secondly they also decided to withdraw tactical nuclear weapons from surface ships and attack submarines. This means the removal of SLCMs which were not included in the START treaty and a big change in U.S. naval policies.

These unilateral but parallel measures were taken by both countries because there was no need to deploy them any more after the end of the Cold War and there emerged a danger that these tactical nuclear weapons might be taken by other states or terrorist groups. These measures were decided unilaterally without a legally binding agreement and implemented accordingly, but it is preferable to consolidate the situation with

legally binding documents.

After the dissolution of the Soviet Union on December 25, 1991, differences of opinion became apparent between the Russian Federation on the one hand and Ukraine and Kazakhstan on the other hand on the treatment of nuclear weapons deployed on the territories of the latter states. With a strong initiative by President Bush, the United States, Russia, Byelarus, Ukraine and Kazakhstan signed a protocol to the START Treaty on May 23, 1992 in Lisbon. The protocol recognizes the altered political situation in the former Soviet Union, makes four states parties to the START treaty and obligates Byelarus, Kazakhstan and Ukraine to adhere to the NPT as NNWSs.

The protocol meets the altered situation caused by the demise of the Soviet Union properly. By making three new republics parties to the treaty, it fortifies their status as independent states, while in substance it recognizes the Russian Federation as the only successor of the Soviet Union with nuclear weapons.

On June 17, 1992, President Bush and President Yeltsin agreed on substantial further reductions in strategic offensive arms as follows: By the year 2003, they will (1) reduce the overall total number of warheads for each to between 3,000 and 3,500, (2) eliminate all MIRVed ICBMs, and (3) reduce SLBM warheads to between 1,700 and 1,750.

Firstly, as this new agreement stipulates a reduction of nuclear warheads by two thirds from existing levels compared with the START treaty which only provides for a reduction by one third, it means further substantial reductions. Secondly, it eliminates all MIRVed ICBMs which were thought to be the most destabilizing by the United States, and this measure will surely strengthen strategic stability. Lastly, a substantial reduction of SLBMs is a compromise by the United States for an yield by the Russia in MIRVed ICBMs.

On January 3, 1993, President Bush and President Yeltsin signed the START II Treaty.

These new agreements symbolize the change of relationship between two countries from confrontation to partnership and friendship and they show the fade-out of the international situation which caused the nuclear arms race for more than 40 years.

The first thing which should be done as soon as possible is to make the START Treaty effective, that is, to accomplish the exchanges of the instruments of ratification. The United States Senate has approved the Treaty by the vote of 93 to 6, and the Russia and Kazakhstan have approved it, but the other two former Soviet republics have not done so.

The second thing is to get approval of ratification of the START II Treaty between the United States and the Russian Federation on further nuclear cuts from each nation's

legislature.

The third thing to be done is to continue negotiations towards further nuclear reductions with the goal of eliminating at first all ICBMs which are the most destabilizing because of its particular characteristics, and secondly all ballistic missiles including SLBMs. With the end of an era of superpower rivalry, these kinds of weapons are not so necessary as they were before, and this measure would help the effort to prevent the spread of missile technologies, which is one of the focal points in the post-Cold War era.²³⁾

With the reduction of missiles, the participation of the United Kingdom, France and China to negotiations will become indispensable.

(b) Comprehensive Nuclear Test Ban (CTB)

Since the entry into force of the NPT, many NNWSs have argued that NWSs should agree on a comprehensive nuclear test ban.²⁴⁾ At the last review conference in 1990, the opinion was that, since a CTB is the most effective measure to strengthen the NPT regime, the highest priority should be given to its negotiation and its conclusion into a treaty. The very reason why the conference failed concerns the difference of opinion on a CTB between the United States and Mexico.²⁵⁾

In the preamble of the Partial Test Ban Treaty, three depositary states sought to achieve the discontinuance of all test explosions of nuclear weapons for all time. They were determined to continue negotiations to this end, and a preambular paragraph of the NPT recalled their determination as a concrete example of their intention on disarmament negotiations.

In January 1991, a conference to amend the Partial Test Ban Treaty into a comprehensive test ban treaty was held, but the effort was unsuccessful because amendments of the treaty needed the consent of all three depositary governments including the United States and the United Kingdom.

Meanwhile, the United States and the Soviet Union agreed on the Threshold Test Ban Treaty in 1974 and the Peaceful Nuclear Explosions Treaty in 1976, which prohibited nuclear explosions above 150 kiloton yield. They had not been ratified for a long time but at last with the conclusion of verification protocols to them in June

23) See Alton Frye, "Zero Ballistic Missiles," *Foreign Policy*, No.88, Fall 1992, pp.3-20.

24) Carl Kaysen, Robert S. McNamara and George W. Rathjens, "Nuclear Weapons after the Cold War," *Foreign Affairs*, Vol.70, No.4, Fall 1991, p.109.

25) See Darryl Howlett and John Simpson, "The NPT and the CTBT: Linkages, Options and Opportunities," *Arms Control*, Vol.13, No.1, April 1992, pp.85-107; John M. Deutch, "The New Nuclear Threat," *Foreign Affairs*, Vol.71, No.4, Fall 1992, p.130.

1990, they were ratified on December 11, 1990. The negotiations for a CTB, which had been conducted by the three nations from 1977, was suspended by the Reagan administration in 1981.

The Soviet Union which has proclaimed a unilateral suspension of nuclear tests on occasion since 1986 with requests for the United States to take a parallel step, has been rather affirmative to a CTB, while the United States and the United Kingdom have argued for a step-by-step approach leading ultimately to a CTB as a long-term goal.

While the U.S. Administration has been reluctant to take steps to a CTB, after the House of Representatives had approved a one-year testing moratorium the Senate voted overwhelmingly on August 3, 1992 to suspend nuclear weapons testing for nine months, limit the number of tests to less than five for the next three years and permanently ban all tests by 1996. Under this strong pressure from the Congress and also with the desire to win the presidential election, on October 2, President Bush signed a bill passed by the Congress. But this bill has the reservation that it works as long as other NWSs refrain from conducting nuclear tests.

Now we face a good opportunity to proceed to a CTB, because Russia and France have declared their intentions to support a moratorium and the U.S. will suspend testing soon. Cooperation of the United Kingdom and China is indispensable for a CTB to become effective.

We have enough reason to be optimistic because the five NWSs have become parties to the NPT and are now under the obligations of Article VI. With the end of the Cold War international society is entering a different world with less emphasis on military strength.

iii) Security of NNWSs

As the NPT regime permits the NWSs to keep their nuclear weapons, they can assure their own security with nuclear weapons, and the states which are under the nuclear umbrella may depend on the NWS's nuclear weapons. In order to strengthen the NPT regime and win a larger participation of NNWSs, it is indispensable to take measures to strengthen the security of states which have voluntarily forsworn the nuclear option.

(a) Negative Security Assurances

Negative security assurances which prohibit the use or threat of the use of nuclear weapons against NNWSs parties to the NPT have been asked for by NNWSs since the time of treaty negotiation, and at the first review conference some NNWSs submitted an additional protocol III to formalize the assurances into a legal document. Although

all five NWSs have made declarations on negative security assurances at the first and second special sessions of the United Nations General Assembly devoted to disarmament in 1978 and 1982, their declarations are neither uniform nor legally binding and NNWSs demand negative security guarantees which have uniform contents and legally binding force.

At the fourth review conference in 1990, Nigeria submitted a proposal²⁶⁾ on an agreement on the prohibition of the use or the threat of use of nuclear weapons against NNWSs parties to the NPT, which would assure negative security to NNWSs parties to the Treaty which are not members of a military alliance with NWS, and those which are members of a military alliance with NWSs but do not permit deployment of nuclear weapons on their territory.

It seems there is emerging a very favorable situation for codifying negative security assurances. Firstly, the rationale for an extended deterrence caused by the Cold War has disappeared with the improvement of East-West relations, the democratization of former eastern European states and the dissolution of the Warsaw Treaty Organization. Secondly, the need to supplement inferiority in conventional arms with nuclear weapons also has disappeared with the conclusion of the Treaty on Conventional Forces in Europe (CFE). Thirdly, tactical nuclear forces have been withdrawn by the unilateral decisions of Presidents Bush and Gorbachev in September and October 1991, and lastly it has become possible for the five NWSs to negotiate this problem within the framework of the NPT because China and France have ratified the treaty and become parties.

(b) Positive Security Assurances

Positive security assurance, which means to give assistance when a NNWS party to the treaty is under the threat of or under attack by nuclear weapons, was given through Security Council resolution 255 (1968) at the time of the adoption of the NPT. In 1968 the People's Republic of China, which was not a member of the U.N., was thought to be a potential aggressor in the resolution, but after the PRC got a seat at the Security Council in 1971, the resolution has been thought to be ineffective because of the veto power.

With the increase of potential nuclear-weapon states, Egypt, which is afraid of a nuclear attack by Israel, demands positive security assurances and at the fourth review conference called upon the U.N. Security Council to adopt a new resolution on security assurances which included assurances beyond what Security Council resolution 255

26) NPT/CONF.IV/17, 24 August 1990.

of 1968 provided for.²⁷⁾

In entering the post-Cold War era and with the prospect that the United Nations would revive its role in maintaining international peace and security, it is advisable to arrange for effective action by the United Nations under Chapter VII of the Charter, but action must be under the strict control of the Security Council.

To recognize positive security assurances to an individual state is dangerous and not recommendable because it would increase the possibility of nuclear weapons being used and it would also enhance the political value of possessing nuclear weapons.

(c) Nuclear-Weapon-Free Zones

The concept of NWFZs is based on the "total absence of nuclear weapons", and includes the obligation of non-deployment besides non-manufacture and non-receipt which are main obligations under the NPT. As a NWFZ is a regional approach while the NPT is a global one, both measures are complementary. In a region where some states do not want to join the NPT, a regional approach, that is, the creation of NWFZ should be pursued.

For the establishment of NWFZ, cooperation by NWSs is indispensable. NWSs have to respect the zones and undertake not to use or threaten to use nuclear weapons against states included in the zones. All five NWSs have ratified the Additional Protocol II to the Tlatelolco Treaty in Latin America, but only two NWSs, that is, the Soviet Union and China have ratified Protocol 2 to the Rarotonga Treaty in the South Pacific. As the international situation has substantially changed, the United States and the United Kingdom should accede to the Protocol and France, now suspending nuclear weapon tests, should undertake negative security assurances.

There have been many proposals for establishing NWFZs in various regions in the world, but realization of the proposals was hindered by the Cold War. Now we should enhance our efforts to establish NWFZs in many regions, because favorable conditions for establishing NWFZs have emerged with the demise of the Cold War era. Firstly, in Africa where a proposal for establishing a NWFZ has existed since 1960 and South Africa, the most dangerous and potential nuclear state, now acceded to the NPT, African states should now endeavor to create a NWFZ.

Secondly, in Southeast Asia where the general situation has gotten better because of the withdrawal of Soviet troops from Vietnam, the closing of the U.S. bases in the Philippines and the ceasefire of the Cambodian civil war, not only ASEAN states but also other countries in the region should begin discussions toward creating a NWFZ.

27) NPT/CONF.IV/31, 24 August 1990.

Thirdly, in the Korean Peninsula where U.S. nuclear weapons have been withdrawn, North Korea has accepted IAEA safeguards, and both Korean states have agreed to a denuclearization of the Peninsula making the Peninsula *de facto* NWFZ, it is possible to translate a *de facto* NWFZ into *de jure* NWFZ, though the situation of North Korea is not clear enough. It might be possible to extend the NWFZ to include Japan which has three non-nuclear policies and a politically proclaimed nuclear-weapon-free status.

In the establishment of NWFZs NNWSs can take the initiative, and by creating them, they are entitled to demand that NWSs undertake not to use nuclear weapons against states included in the zones. There is a general legal conviction that NWSs should respect NNWSs within NWFZs.

iv) Strengthening of Safeguards

Safeguards which have been conducted by the IAEA are an important component of the NPT regime. The safeguards system, whose purpose is to prevent the diversion of nuclear energy from peaceful uses to nuclear weapons, has played a significant role in maintaining and reinforcing the NPT regime while the regime has been developing. And now it is also necessary and possible to extend the safeguards network and implement it more vigorously in order to bolster the NPT regime.

(a) Full-Scope Safeguards

Under paragraph 2 of Article III of the NPT, NNWSs which are not parties to the treaty have to accept IAEA safeguards when they receive nuclear materials or equipment from states party to the treaty, and safeguards apply only to materials or equipment which are provided. The first effort in applying this paragraph is to agree which materials or equipment trigger safeguards, and the London Nuclear Suppliers Group has been working to agree on a trigger list.

The second problem with this paragraph is the comprehensive application of safeguards to NNWSs non-party to the treaty. This is an attempt to cover all peaceful nuclear activities in NNWSs non-party to the treaty under IAEA safeguards. The reasons are, first, to eliminate discriminatory treatment between NNWSs party to the treaty and NNWSs not a party to the treaty, and second, to extend the NPT regime even to NNWSs non-parties. Based on these reasons, full-scope safeguards have been argued since the first review conference.

Australia, Canada, Sweden and the United States have argued that full-scope safeguards must apply in providing assistance, and they have asked recipients to apply full-scope safeguards in their policies or domestic laws. Other countries like the

United Kingdom, France and Germany have requested the application of safeguards only to those provided, though at the fourth review conference Germany changed its policy and adopted full-scope safeguards application.

Having acceded to the treaty, France and China are expected to apply full-scope safeguards, though they have been very reluctant to adopt them.

(b) Special Inspections

As the safeguards system which is applied to NNWSs party to the treaty are concerned with only declared facilities, there is the possibility that a state will conduct nuclear weapon research and development with no safeguards applied. At the time of treaty negotiations, this issue was raised but it was generally believed that to conduct the research and development in secret was very difficult and would not happen.²⁸⁾ But as the recent Iraqi experience has shown, it proves possible to be a party to the treaty and at the same time to conduct the research and development of nuclear weapons.²⁹⁾

Against this background, the necessity to inspect undeclared facilities has been recognized. According to Article 73 of safeguards agreement which is concluded between the IAEA and NNWS party to the treaty in accordance with paragraphs 1 and 4 of Article III of the NPT, the IAEA may make special inspections if the IAEA considers that information made available by the government and information obtained from routine inspections is not adequate for the IAEA to fulfill its responsibilities under this Agreement. According to Article 77, however, in circumstances which may lead to special inspections, the Government and the IAEA shall consult forthwith, and as a result of such consultations the IAEA is able to obtain access to information or locations which are not declared.

As special inspections under the safeguards agreement may be made only when a government agrees to it after consultation with the IAEA, the IAEA can not make special inspections without consent of government concerned. In circumstances like the Iraqi case, a consent will not be expected. But if a government refuses special inspections, it increases the suspicion of violations, and the Board of Governors of the IAEA would take necessary measures and also the Security Council of the United

28) Jan Prawitz, "Arguments for Extended NPT Safeguards," in SIPRI, *Nuclear Proliferation Problems*, 1974, p.161; Herbert Scoville, Jr., "Technical Capabilities of Safeguards," in Bennet Boskey and Mason Willrich (eds.), *Nuclear Proliferation: Prospects for Control*, 1970, p.54; Paul Szasz, "International Atomic Energy Safeguards," in Mason Willrich (ed.), *International Safeguards and Nuclear Industry*, 1977, pp.95-96.

29) Leonard S. Spector, "Nuclear Proliferation in the Middle East," *Orbis*, Vol.36, No.2, Spring 1992, pp.181-186.

Nations would take measures including sanctions.³⁰⁾ The IAEA has never conducted special inspections provided for in the safeguards agreement, and it is necessary for the IAEA to examine the problem and make procedural process clear.³¹⁾

The authority to conduct inspections against a state's will belongs to the Security Council of the United Nations under Chapter VII of the Charter, but the IAEA does not have such authority.

CONCLUSION

In the post-Cold War international society, where nuclear weapons have been reduced and the prospect for future reduction seems bright, the danger of nuclear proliferation is as urgent as or more urgent than before. The NPT regime which has played a central role to regulate nuclear weapons activities in nuclear age, has been supported generally with more than 150 states becoming parties. Although a consensus against nuclear proliferation seems to prevail, there exist some states which do not want to join the NPT so as to keep the nuclear option open, and some states which are parties to the treaty but trying to develop nuclear weapons in secret.

It is imperative to make efforts to keep and strengthen the NPT regime and prevent the further spread of nuclear weapons, but the gist of the issue is rather political than military. As a long-term strategy, it is necessary to decrease the political importance which nuclear weapons imply.³²⁾ Technical measures such as export control and safeguards are effective in the short-term, and those measures afford enough time to take political measures to prevent nuclear weapons. Those technical measures should not be an end in themselves but only a means to take political measures.

We should make efforts towards the establishment of new international and regional security orders which are based on nuclear disarmament and negative security assurances in order to make a more peaceful world as well as to deal with nuclear proliferation.

30) Leonard S. Spector and Jacqueline R. Smith, "Treaty Review: Deadlock Damages Nonproliferation," *Bulletin of the Atomic Scientists*, December 1990, p.41.

31) Jozef Goldblat, "The Fourth Review of the NPT," *Bulletin of Peace Proposal*, Vol.21, No.4, 1990, p.416.

32) Peter A. Clausen, "Nuclear Proliferation in the 1980s and 1990s," in Michael T. Klare and Daniel C. Thomas (eds.), *World Security: Trends and Challenges at Century's End*, 1991, p.166.

