

Penn State Journal of Law & International Affairs

Volume 2 | Issue 2

November 2013

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ISSN: 2168-7951

Custom Citation

Richard Butler, *NPT: Pillar of Global Governance*, 2 Penn. St. J.L. & Int'l Aff. 237 (2013).

The Penn State Journal of Law & International Affairs is a joint publication of Penn State's School of Law and School of International Affairs.

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2013

VOLUME 2 NO. 2

NPT: A PILLAR OF GLOBAL GOVERNANCE*

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It is of basic importance to remember the negotiating history of the Nuclear Nonproliferation Treaty (NPT) when policymakers and academics analyze the Iran nuclear issue. At the core of that history was a grand bargain between states with and without nuclear weapons. Since then, states have taken a number of steps away from that bargain, and some have even attempted to suggest there was no grand bargain at the outset. Each of these steps has led to serious problems.

KEY ELEMENTS OF THE NPT

The NPT has three components: preventing the proliferation of nuclear weapons;¹ nuclear disarmament;² and protecting the right

* This essay was adapted from the transcribed remarks of Ambassador Richard Butler AC delivered on February 15, 2013 at the annual symposium of the *Penn State Journal of Law & International Affairs* on *The U.S.-Iranian Relationship and the Future of International Order*. Video of the symposium is available at http://law.psu.edu/academics/journals/law_and_international_affairs/lectures_and_symposia.

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of all states to access nuclear science and technology.³ That was the deal then, in all of its parts, and, for the overwhelming number of states in the world today, it should remain the deal.

It also is essential to note a second political point about this treaty. Almost from the beginning, the Treaty has been misrepresented and mis-described, principally by the nuclear-weapon states.⁴ I have sat in countless conferences with representatives from such states, in which they have attempted to tell the world that the Treaty is not about the three components listed above, but rather about only one—preventing others from getting the bomb. Over and over again, the nuclear-weapon states have sought to reinterpret NPT to what they consider their own advantage.

There are many examples of this perspective. However, the example that sticks in my recent memory, which is highly relevant to the Iran issue, was when then-President of the United States, George W. Bush, told the world that the reason Iran must not be allowed to have nuclear weapons is, something to the effect of, *because of the kind of people they are*. I won't dignify this viewpoint by commenting on the obviously racist, or, at the very least, culturally discriminatory aspect of the statement, but I simply point out that this is not what the Treaty says. What it states is that Treaty partners who do not have nuclear weapons—referred to as the non-nuclear-weapon state parties in the Treaty, of which Iran is one—should never get them. This is because the NPT is designed to stop the spread of nuclear weapons and to foster the elimination of those already in existence. Whether or not the nuclear-weapon states like this, these two objectives should be seen as inherently linked.

¹ Treaty on the Non-Proliferation of Nuclear Weapons art. III, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT].

² NPT, *supra* note 1, at art. VI.

³ NPT, *supra* note 1, at art. IV.

⁴ The “nuclear-weapon” states party to the NPT are the United States, the Soviet Union (replaced by Russia), the United Kingdom of Great Britain and Northern Ireland, France, and the People's Republic of China. See U.S. DELEGATION TO THE 2010 NUCLEAR NONPROLIFERATION TREATY REVIEW CONFERENCE, ORIGINS OF THE NPT 2 n.1 (2010), <http://www.state.gov/documents/organization/141503.pdf>.

There is another relevant anecdote I feel compelled to tell, as it has bearing on a mindset that has dogged the NPT. A number of years ago, I visited the head of the United States Arms Control Disarmament Agency, that is, before a subsequent U.S. Administration abolished it.⁵ Its head was Kenneth Adelman. I had sought an appointment with Ken in my capacity as the Australian Ambassador for Disarmament. I spoke with him about what we hoped to achieve in arms control and his responsibilities. I mentioned the Nuclear Nonproliferation Treaty and safeguards inspections including those that were to take place in the United States. He became agitated, stopped me, and asked, “What did you just say? Inspections of the U.S.?” I said, “Well, inspections of your peaceful facilities, not your military facilities.” And he said, “You’re telling me that we have to accept inspections on our facilities?” I said, “Yes, I am.” He said, “No, no, those inspections are to be made of the Russians. They’re the ones who get inspected, not us.” This conversation illustrates the whole notion of good guys and bad guys. It brings to mind the old saying one hears a lot in the disarmament business: disarmament is a great idea, for the other guy.

I am not simply seeking to make fun of this outlook. I am seeking to illustrate that, since the adoption of the NPT, there has been a pervasive view in nuclear-weapon states circles, as reflected in the stories I’ve told you, that the Treaty is essentially about nonproliferation, not nuclear disarmament. This view is factually incorrect.

Embedded in such thinking is also the view that there are legitimately held nuclear weapons. At the present time, this view is consistent with the terms of the Treaty. More specifically, there exists the view that the legitimately held nuclear weapons are those held by our side—by the good guys. All other weapons held or aspired to, especially by adversaries or people of whom we do not approve, are illegitimate.

There are several points to be made about this outlook. First, it is factually incorrect. The NPT is directed to the elimination of *all*

⁵ See Press Release, The White House, Reinventing State, ACDA, USIA and AID (Apr. 18, 1997), <http://dosfan.lib.uic.edu/acda/aboutacd/gore.htm>.

nuclear weapons. Second, it is deeply damaging to the Treaty because it has little or no relationship to the negotiating history of the Treaty. Finally, if pursued further, this outlook will destroy the Treaty.

Let's return to the first of these points. The Treaty envisages a world without nuclear weapons. That some people seek to dispute this historical fact borders on the mind-numbing. How else can one logically interpret a document about nuclear weapons, which establishes that those who do not have them must never get them and that those who do have them must get rid of them? The NPT's objective is to create a world without nuclear weapons. That objective is not served by the sort of flagrant, self-serving misinterpretation of it described above.

1995 REVIEW CONFERENCE ON THE NPT

The NPT provides that after 25 years of its operation, a conference of all parties will be held to determine its future: "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. This decision shall be taken by a majority of the Parties to the Treaty."⁶ In 1995, the world gathered for the Review and Extension Conference of the Nuclear Nonproliferation Treaty to decide whether or not the NPT should continue to exist.⁷

I led Australia's delegation to that conference, and the final deal, done at five minutes to midnight on the last night, was done around my dining room table. I had been asked to convene a small group of the principal actors and to put an agreement together. Interestingly, that group of sixteen principals included the representative from Iran. And the deal was done. It was agreed to extend the Nuclear Nonproliferation Treaty indefinitely. So, the NPT is to exist in perpetuity.

⁶ NPT, *supra* note 1, at art. X, § 2.

⁷ See *1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: 17 April to 12 May 1995 – New York, U.N.*, <http://www.un.org/depts/ddar/nptconf/162.htm> (last visited Sept. 17, 2013).

That agreement should have been easy to reach. It was widely recognized that the NPT gave expression to an utterly desirable norm in civilized human life—that no one should have nuclear weapons. It is the sole international agreement that aspires to this end.

Notwithstanding these values, indefinite extension was only narrowly achieved. The non-nuclear-weapon states who are party to the NPT were thoroughly sick of the fundamental inequality embedded in the NPT.⁸ The Treaty attempts to bridge the gap between nuclear-weapon states and non-nuclear-weapon states by placing upon the former the obligation to progressively reduce their weapons. However, it has been widely noted that the nuclear-weapon states have implemented this obligation inadequately, if at all. In response, the nuclear-weapon states argued that the Treaty had been working well and that criticism of their tardiness in fulfilling their nuclear disarmament obligations was unjustified.⁹

A group of states who were parties to the Treaty, including, very significantly, Egypt, gave serious thought to both leaving the NPT and refusing to agree to its extension.¹⁰ They were talked out of it, mainly through agreement being given to an Egyptian proposal that there be a future conference aimed at establishing the Middle East as a zone free of nuclear weapons.¹¹ The call for a nuclear free zone in the Middle East, of course, brought to the forefront the

⁸ See *Document on Substantive Issues Submitted by Indonesia on Behalf of the Group of Non-Aligned and Other States*, U.N. Doc. NPT/CONF. 1995/14 (Apr. 6, 1995), <http://www.un.org/depts/ddar/nptconf/211a.htm>.

⁹ See *Declaration dated 6 April 1995 by France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America in connection with the treaty on the Non-Proliferation of Nuclear Weapons*, U.N. Doc. NPT/CONF.1995/20 (Apr. 19, 1995), <http://www.un.org/depts/ddar/nptconf/2102.htm>.

¹⁰ See Carol Giacomo, *U.S. pessimistic on Egypt support for nuclear pact*, REUTERS, Feb. 9, 1995.

¹¹ *Resolution on the Middle East*, U.N. Doc. NPT/CONF. 1995/32 (Part I), Annex (Apr. 19, 1995), http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/Resolution_MiddleEast.pdf. See *Arab resolution to call on Israel to join NPT*, AGENCE FRANCE PRESSE ENGLISH WIRE, May 9, 1995; *Resolution on the Middle East*, U.N. Doc. NPT/CONF. 1995/32 (Part I), Annex (Apr. 19, 1995), http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/Resolution_MiddleEast.pdf.

question of Israel's nuclear weapons capability. To be blunt, Israel would have to be at that conference table.¹²

The vision of a nuclear free zone in the Middle East has not been implemented even though it was renewed in the [2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons \(NPT\)](#). As a result, Egypt has essentially walked out of the preparations for the 2015 review conference.¹³

IRAN AND THE NPT

Turning now specifically to Iran, under Article IV, Iran has the right to nuclear science and technology.¹⁴ Specifically, as a non-nuclear-weapon state party to the NPT, Iran has the right to develop, research, produce, and use nuclear energy for peaceful purposes.¹⁵ But, under Articles II and III of the Treaty and their derivatives, Iran has two key obligations: (1) its activities in nuclear science and technology must be conducted under full International Atomic Energy Agency safeguards, and (2) it must not make a nuclear explosive device. For some while now, the IAEA has reported to its board and to the U.N. Security Council that Iran is not fulfilling the first of these obligations.¹⁶ This has given rise to the suspicion that Iran is pursuing the development of a nuclear explosive capability. Neither the IAEA nor national intelligence agencies have yet

¹² See *Israel not likely to sign nuclear pact*, WASH. TIMES, Feb. 1, 1995, available at 1995 WLNR 300991; *Israel to Sign Treaty*, PITTSBURGH POST-GAZETTE, Mar. 24, 1995, available at 1995 WLNR 2408249.

¹³ Stephanie Nebehay, *U.S. regrets Egypt walk-out at nuclear talks*, REUTERS, Apr. 30, 2013, <http://uk.reuters.com/article/2013/04/30/uk-nuclear-npt-egypt-idUKBRE93T0KZ20130430>.

¹⁴ NPT, *supra* note 1, at art. IV.

¹⁵ *Id.*

¹⁶ Int'l Atomic Energy Agency [IAEA], *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Rep. of the Dir. Gen., IAEA Doc. GOV/2012/55 (Nov. 16, 2012), <http://www.iaea.org/Publications/Documents/Board/2012/gov2012-55.pdf>; IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Rep. of the Dir. Gen., IAEA Doc. GOV/2013/27 (May 22, 2013), <http://www.iaea.org/Publications/Documents/Board/2013/gov2013-27.pdf>.

concluded, definitively, that Iran has made a prohibited device. Yet, suspicion that Iran is headed in that direction is deep and held in key capitals.¹⁷

What would be the consequence of an “Iranian breakout,” to use the jargon of the nuclear nonproliferation business? Clearly, such action would wound the Treaty deeply. Many states that were reticent to agree to its indefinite extension would conclude that they had made a mistake. It is not clear that such events would bring the Treaty down entirely, but it is clear that if Iran did actually make a nuclear explosive device, a regional nuclear arms race would ensue. In that case, the NPT might become a dead letter.

Further, a regional nuclear arms race would greatly elevate the prospect of regional war in the Middle East. This, in turn, could involve states outside the region. I’m referring, of course, to an Israeli or Israeli/U.S. attack upon Iran on the eve of Iran acquiring nuclear weapons capability—when a so-called red line¹⁸ set by Israel and/or the U.S. has been crossed. Where such events would lead is incalculable but assumed to be of a massive order of magnitude.

I cannot resist pointing out to you the bitter irony, the grotesque nature, of what elementally would be involved in such a scenario: Israel, a non-party to the NPT but with clandestine nuclear arms capability,¹⁹ attacking another state, presumably with the

¹⁷ See IAEA, *Communication dated 4 March 2008 from the Governor for the Russian Federation and the Resident Representatives of China, France, Germany, the United Kingdom and the United States of America concerning U.N. Security Council resolution 1803 (2008)*, IAEA Doc. INFCIRC/723 (Mar. 5, 2008), <http://www.iaea.org/Publications/Documents/Infcircs/2008/infcirc723.pdf>; IAEA, *Communication dated 12 March 2009 received from the Permanent Missions of China, France, Germany, Russia, the United Kingdom and the United States of America regarding a joint statement on Iran’s nuclear programme*, IAEA Doc. INFCIRC/749 (Apr. 1, 2009), <http://www.iaea.org/Publications/Documents/Infcircs/2009/infcirc749.pdf>.

¹⁸ See Arshad Mohammed, *Key portions of Israeli PM Netanyahu’s U.N. speech on Iran*, REUTERS, Sept. 27, 2012, <http://www.reuters.com/article/2012/09/27/us-un-assembly-israel-text-idUSBRE88Q1RR20120927>; Michael Martinez, *Netanyahu asks U.N. to draw ‘red line’ on Iran’s nuclear plans*, CNN.COM, Sept. 28, 2012, <http://www.cnn.com/2012/09/27/world/new-york-unga/index.html>.

¹⁹ See IAEA, *Israeli nuclear capabilities*, Rep. of the Dir. Gen., IAEA Doc. GOV/2010/49-GC(54)/14 (Sept. 3, 2010),

support, if not the direct participation, of a state recognized by the NPT as a nuclear-weapon state, in order to prevent the state under attack from acquiring nuclear weapons—the very weapons the belligerent states insist are essential to their national security. As satirists sometimes remark when introducing an absurd or amazing piece of human behavior, “you can’t make this stuff up!”

Flynt Leverett, in his most recent book and numerous other writings, has raised important questions about the nature and future of global governance—particularly in the context of the NPT and the case of Iran.²⁰ In my opinion, if developments of the kind I have just described were to occur, and the Nuclear Nonproliferation Treaty was to be seriously harmed, we would witness a significant breakdown in the current system of global governance.

Why? Because the international community of states has said for over 40 years now that the Nuclear Nonproliferation Treaty is the “cornerstone” of nuclear arms control. The NPT has the most member states of any treaty in existence, after the U.N. Charter and Geneva Conventions.²¹ All but four states are parties to it, and this is

http://www.iaea.org/About/Policy/GC/GC54/GC54Documents/English/gc54-14_en.pdf. See also James Conca, *Israel Has Nuclear Weapons, But Only Iran Has Nuclear Power*, FORBES, Oct. 21, 2012, <http://www.forbes.com/sites/jamesconca/2012/10/21/does-anyone-care-about-irans-nuclear-energy-program/>.

²⁰ See generally FLYNT LEVERETT & HILLARY MANN LEVERETT, *GOING TO TEHRAN: WHY THE UNITED STATES MUST COME TO TERMS WITH THE ISLAMIC REPUBLIC OF IRAN* (2013). See also Flynt Leverett & Hillary Mann Leverett, *America’s Iran Policy and the Undermining of International Order*, WORLD FIN. REV., July-Aug. 2013, at 38-42, <http://law.psu.edu/file/TWFR%20Jul-Aug%202013America%20Iran-v2.pdf>.

²¹ See Treaty on the Non-Proliferation of Nuclear Weapons: *Status of the Treaty*, U.N. OFF. FOR DISARMAMENT AFF., <http://disarmament.un.org/treaties/t/npt> (last visited Sept. 17, 2013) (listing 190 states party to the NPT); Growth in United Nations membership, 1945-present, U.N., <http://www.un.org/en/members/growth.shtml> (last visited Sept. 17, 2013) (listing 193 U.N. member states); *Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949*, INT’L COMM. OF THE RED CROSS, http://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORM_StatesParties&xp_treatySelected=380 (last visited Sept. 17, 2013) (listing 195 states party to the Geneva Convention).

testimony to the profound importance of the matters it covers.²² The NPT has within it a key element of global governance—a system of reporting by the IAEA Board of Governors and ultimate enforcement by the Security Council. If the Treaty's protocol is discarded, a systemic breakdown in global governance will have occurred.

Among the changes that such a breakdown could author is the disappearance of the notion of a commitment, held by both the nuclear haves and have-nots, to a world without nuclear weapons.

Secondly, permanent membership of the Security Council would have to be reconsidered. I have discussed reform of the Security Council in another issue of this journal.²³ Possibly a disaster centered on Iran might prove to be the train wreck that would produce this change in global governance that is so widely regarded as seriously overdue. But I think it would be a costly and highly dangerous way to bring about historical change.

Finally, the reference made at this symposium to the realist school of thought needs a response.²⁴ That school, led by many late and great scholars and today by scholars such as John Mearsheimer,²⁵

²² At the time of publication, India, Pakistan, Israel, and the newly formed Republic of South Sudan were not parties to the NPT.

²³ See Richard Butler AC, *Reform of the United Nations Security Council*, 1 PENN. ST. J.L. & INT'L AFF. 23 (2012), <http://elibrary.law.psu.edu/jlia/vol1/iss1/2>.

²⁴ This is referring to a response to a question from the audience at the February 15, 2013 symposium of the *Penn State Journal of Law & International Affairs*, available at <http://elibrary.law.psu.edu/jlia/>.

²⁵ See JOHN J. MEARSHEIMER, WHY LEADERS LIE: THE TRUTH ABOUT LYING IN INTERNATIONAL POLITICS (2011); JOHN J. MEARSHEIMER & STEPHEN M. WALT, THE ISRAEL LOBBY AND U.S. FOREIGN POLICY (2007); JOHN J. MEARSHEIMER, THE TRAGEDY OF GREAT POWER POLITICS (2001); JOHN J. MEARSHEIMER, CONVENTIONAL DETERRENCE (1983); John J. Mearsheimer, *Structural Realism*, in INTERNATIONAL RELATIONS THEORIES: DISCIPLINE AND DIVERSITY 77 (Tim Dunne et al. eds., 3d ed. 2013); John J. Mearsheimer, *The Future of Palestine: Righteous Jews vs. the New Afrikaners*, in AFTER ZIONISM: ONE STATE FOR ISRAEL AND PALESTINE 135 (Antony Loewenstein & Ahmed Moor, eds., 2012), <http://mearsheimer.uchicago.edu/pdfs/PalestineFuture.pdf>; John J. Mearsheimer, *Realists as Idealists*, 20 SEC. STUD. 424 (2011),

claims to see the world with crystal clear eyes and to make utterly realistic, logical, scientific calculations.

If I were a realist being asked for advice on Iran, the NPT, and future global governance, I think I would say to those in Washington: Would you please stop making statements on the alleged basis of realism that you cannot fulfill? Preventing Iran by whatever means necessary from becoming a nuclear-weapon state cannot be done. If Iran is determined to go nuclear, it will succeed. Stop making statements on which you cannot deliver. Making such statements, on a realist basis, is extremely dangerous. If you attempt to deliver your proclaimed objective by going to all-out war, you will impose costs on your nations and your people that are simply unbearable and far worse than the problem you've set out to solve.

The true realist and realistic approach is to work to convince Iran that it should not proceed with a weapons program, but accept, as a matter of realism, that this will require concessions by you, and, in particular, you will need to demonstrate your earnestness with respect to the NPT as the cornerstone to a greater degree than ever before.

Last year, a deeply apposite critique of the operation of the NPT was published. At its core, it alleged that the NPT had been characterized by: "selective nonproliferation and ineffectual abolition."²⁶ This is not what Treaty authors or subsequent partners had in mind. True and realistic leadership of global governance would work urgently to reverse this.

<http://mearsheimer.uchicago.edu/pdfs/Realists-Idealists.pdf>.

²⁶ See Campbell Craig & Jan Ruzicka, *Who's in, who's out?* *Campbell Craig and Jan Ruzicka on the nonproliferation complex*, LONDON REV. OF BOOKS, Feb. 23, 2012, at 37, <http://www.lrb.co.uk/v34/n04/campbell-craig/whos-in-whos-out>.