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## TWILIGHT OF THE NPT?

### *Response to Norman Dombey*

**T**HE NUCLEAR NON-PROLIFERATION TREATY belongs to that venerable tradition in the Atlantic world of unequal agreements: those which—in their very texts, rather than just in their effects—give extraordinary benefits and liberties to one set of states while constraining the freedom of action and rights of others. Yet it has been remarkably successful since 1970 in attracting the adherence of the overwhelming majority of countries. Most surprisingly, the one that has benefited most from its terms—the United States—has been most vigorously attempting to undermine the NPT regime over the last eight years, generating a major crisis in the efforts to limit the spread of nuclear weapons through international cooperation.

As Norman Dombey's essay in this issue so vividly demonstrates, the NPT was constructed through US–Soviet negotiations in the 1960s to prevent non-weapon states from acquiring an arsenal, while leaving existing weapon states a free hand to develop and deploy—indeed, use—nuclear weapons as they saw fit.<sup>1</sup> Beyond a purely rhetorical commitment to negotiate disarmament, no restraints were put on them at all. By 1992, once the five permanent members of the UN Security Council—all nuclear powers—had joined, formidable instruments became available to enforce these unequal provisions. Any other country seeking to acquire nuclear weapons could now be referred for judgement before the UNSC, on the charge of posing a threat to peace under Chapter Seven of the Charter. This also allows the Permanent Five to legally bind all UN member states to action—up to and including military attack—against the state in question. This threat would be particularly potent against states that had ratified the NPT, and thus submitted their nuclear facilities to

inspection by the International Atomic Energy Agency. A weapons programme would be a direct violation of their obligations under the Treaty; thus referral to the UNSC would become a predictable institutional outcome of the NPT regime.

### *Policing the South*

The Treaty was signed and ratified only after the Permanent Five had acquired their nuclear weapons—in the case of Britain and France, to preserve their great-power status; in the case of the Soviet Union and then China, to acquire a nuclear-deterrent capacity against the United States. The NPT was designed to lock the rest of the world into accepting the Permanent Five's special rights. Why, in such circumstances, was the NPT regime able to persist, enlarge its membership and fulfil so many of its inequitable goals, not only during the Cold War, but even after? One answer would be that most of the states who had the industrial and technological capacity to build both a nuclear bomb, and the vehicle to transmit it, were already offered protection from nuclear or conventional attack by one of the two superpowers during the Cold War.

States that persisted in their efforts to achieve nuclear-weapon status were those that faced security challenges but could not expect guaranteed protection from a superpower: Israel, in its struggle with the Arab states in the 1950s and 1960s, before the US decisively committed itself to Israeli military security; apartheid South Africa, repeatedly at war in Africa (and indeed, suffering defeats at the hands of Cuban forces in Angola in the 1970s); India, after its defeat by China in the border war of 1962; followed by Pakistan, in response to the threat from India. This explanation for the rarity of moves to circumvent or flout the NPT would also cover the cases of North Korea and Iraq. The former was neither a Russian nor a Chinese satellite, and could not rely on them for ultimate security even during the Cold War, when it faced aggression from both South Korea and the US. Iraq under the Ba'ath also faced grave military threats, not only from the Western powers but also from Israel and Iran, and could not count on superpower protection. But it had the financial resources for a nuclear-weapons programme. Conversely, the majority of states have not perceived themselves to be facing such dire military threats as to warrant the acquisition of nuclear arms. Even those with

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<sup>1</sup> Norman Dombey, 'The Nuclear Non-Proliferation Treaty: Aims, Limitations and Achievements', NLR 52, July–August 2008.

strong traditions of retaining complete autonomy over their security, such as Sweden or Brazil, have refrained from adopting such a course.

Yet absence of military threat may not fully explain the apparent achievements of the NPT regime. Another element of the explanation may be that its success has been much more partial than it seems. The Treaty contains a grey zone between a state being an industrial nuclear power, in the civilian field, and being a nuclear-weapon state. It treats these two statuses as polar opposites: industrial proliferation is actually encouraged, while the cross-over to armaments is outlawed. In practice, no such gulf exists between the two: civilian nuclear power is the necessary threshold for acquiring nuclear-weapon capabilities. This has no doubt ensured that countries such as Germany and Japan—though deeply critical of aspects of the asymmetrical NPT regime—have been prepared to go along with it, for they cannot be described simply as non-weapon states. They would be better termed ‘threshold’ states, which remain within the terms of the Treaty but could, like a number of other formally non-weapon states, transform very swiftly indeed into full-fledged nuclear powers.

This grey zone is combined with the Treaty’s blinkered focus exclusively upon the industrial side of nuclear arms: it has nothing to say about delivery vehicles—that is, missile capabilities. Thus, threshold states can proceed under the terms of the Treaty to develop even intercontinental ballistic missiles without sanction. Nor does the so-called Missile Technology Control Regime serve to block them doing so. The MTCR is an informal club, established in 1987, to prevent diffusion of technology for missiles capable of delivering nuclear warheads—specifically, those able to carry a payload of 500kg at least 300 kilometres. The club’s founders consisted precisely of those developed states which possessed such technologies, namely Canada, Germany, Italy, Japan, the United Kingdom, France and the United States. The first four names are indicative: formally non-nuclear powers, but in reality threshold states with advanced missile technologies. The list of members has now grown to 34, of which 19 are in the European Union. Another 10 are US allies; Russia joined the club in 1995. Not a single country from the global South holds membership.

In short, beneath the headline picture of the NPT anchoring the monopoly of nuclear-weapon states, we find a second layer of reality: a regime,

including the MTCR, which has enabled a substantial number of rich countries, allied to the US, to become threshold states with advanced missile technologies. Alongside these there is a third reality: a sustained effort by the North, plus Russia, to block the possibility of states in the global South acquiring deterrence capability. This pattern is replicated by other organizations that form part of the overall counter-proliferation regime, such as the Nuclear Suppliers Group. This was created in 1975 on US initiative, in the face of India's nuclear-weapons programme.

We are still left with two substantial puzzles: first, why have states in the global South that have bad relations with the United States still tended to adhere to the NPT regime? Secondly, why has the US itself, in the post-Cold War period, shown such hostility to the rules of a regime that gives it such inordinate privileges? The most striking examples of states remaining in the NPT, apparently against their own interests, are North Korea and Iran. American hostility towards them has been long-standing and deep: there is no doubt that the United States has been programmatically committed to overthrowing both regimes, even if its tactics towards each have varied across time. Yet both have continued to declare their respect for the NPT and IAEA. One reason lies in the enthusiasm for civilian nuclear power embedded in the foundations of the IAEA and the NPT. It is worth pointing out that when the IAEA was created in the 1950s and the NPT established at the end of the 1960s, few could envisage any state from the global South acquiring the indigenous know-how to construct their own civilian nuclear-power industry. North Korea and Iran have committed themselves to achieving just that and have been able to legitimate their efforts through the IAEA–NPT framework. Today many others have the technological and financial resources, if they wish, to follow suit. Far from precluding the emergence of threshold states in the South, the regime's rules actually facilitate it.

Furthermore, the NPT does allow states to acquire a nuclear-deterrent capability: under Article X, if a state faces 'extraordinary events' that 'have jeopardized' its 'supreme interests', it may withdraw from the restraints of the Treaty with three months' notice. This was exactly the course taken by North Korea in the face of blunt threats of pre-emptive attack—preventive war—made by the US. Pyongyang gave notice, withdrew and carried out a successful nuclear-weapon test. After the Bush Administration's subsequent retreat, North Korea began to return to the NPT regime.

*Persian smokescreen*

The confrontation between Iran and the US and EU over the former's nuclear programme is paradigmatic of the current contradictions of the NPT regime. Although there are some indications that Iran conducted research relevant to nuclear-weapon production between 1989 and 1993 (in a period when neighbouring Iraq did have a secret crash nuclear programme), there has been no significant evidence since then of clandestine weapon development.<sup>2</sup> Since the 1990s Iran has instead sought to establish civilian nuclear energy and substantial missile capacity. By pursuing both these paths, Iran could hope to become a threshold state in the same sense as Germany and Japan, and it could do so quite legally under the NPT, to which it has continued to adhere under the Islamic Republic. Meanwhile, the US—supported by the EU—has been attempting to prevent Iran from exercising its legal rights to enrich uranium for civilian uses.

This campaign under Bush has been in many ways continuous with Clinton's policy in the mid-1990s. His Administration had dubbed Iran—with which the US had no diplomatic relations—a rogue terrorist state secretly seeking 'weapons of mass destruction', and imposed sweeping sanctions centred on an embargo of Iranian oil.<sup>3</sup> Until 2002, Western Europe rejected both the embargo and Washington's accusations against Tehran. Trade was growing between Iran and the EU, with Germany its main trading partner. By 2000 the EU was preparing the way for a trade agreement with Iran; European oil companies, including British ones, were discussing new investments. The Russian government was pursuing a similar course and had committed itself to a contract to build a nuclear-power station at Bushehr, on the Gulf coast. Iranian foreign policy was geared towards using these links as a vector to integrate the country into the international institutional and trading order.

Against this background, and in the context of American preparations to attack Iraq, Bush's January 2002 State of the Union address denounced

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<sup>2</sup> The Tehran Research Reactor (TRR) had carried out experiments on bismuth irradiation to extract polonium, which, when combined with beryllium, may be used for nuclear-weapon construction. Iran was not, in fact, required to inform the IAEA about such research. The IAEA has declared there is no evidence that Iran ever imported beryllium. Experiment details were in the TRR logbook, safeguarded by the IAEA for 30 years.

<sup>3</sup> See, for example, 'Findings' in the Iran and Libya Sanctions Act of 1996.

the Islamic Republic as part of the ‘Axis of Evil’ and claimed the right to engage in a pre-emptive war to overthrow it. This did not initially alter the EU’s course: it proceeded to sign a new commercial agreement with Iran. Following discussions with Iranian Deputy Foreign Minister Ali Ahani—less than a week after the Bush speech—Spanish Foreign Minister Josep Piqué, speaking for the presidency of the EU, told a news conference in Madrid that the 15-country bloc would seek ‘maximum cooperation’ with Iran on trade, the fight against terrorism and human rights.<sup>4</sup> US pressure, however, soon swung the West European states towards joining its campaign to deny Iran’s right to organize the full nuclear-fuel cycle, and support Washington’s demand that Iran stop enriching uranium on its own territory. The British and French sought to justify this by parroting the charges routinely made against Iran by the Clinton and Bush Administrations, which they had themselves previously ignored. The German government, more squeamish about Bush-style big-lie propaganda, said Tehran should give up its rights as a necessary step towards easing tensions between Iran and the US.

The problem facing the US–British–French approach was that the IAEA inspectorate, under Director General Mohamed ElBaradei, was not prepared to participate in spreading unsubstantiated allegations. In December 2002 the Bush Administration therefore tried to whip up a melodramatic media campaign in the hope of railroading the IAEA Board into taking action against Iran. The trick was to present the news that Iran had been constructing nuclear facilities in Natanz and Arak as a shocking revelation of secret and presumably illegal activity. The US published satellite images of the two sites under construction as proof. This supposedly shocking revelation was nothing of the kind. The Natanz complex was for fuel fabrication; the Arak facility was a heavy-water reactor. NPT safeguards require Iran to inform the IAEA of such facilities only six months before they go into operation. The pilot plant at Natanz was not operational until early 2006 while the one in Arak is not due to start until 2014.<sup>5</sup> The fact that Iran did not inform the Agency

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<sup>4</sup> Suzanne Daley, ‘French Minister Calls US Policy “Simplistic”’, *New York Times*, 7 February 2002. British Foreign Secretary Jack Straw publicly dismissed the Bush speech as designed for domestic consumption, saying it was ‘best understood by the fact that there are mid-term congressional elections in November.’ Of course, he quickly changed his tune.

<sup>5</sup> Siddharth Varadarajan, ‘The Persian Puzzle I: Iran and the invention of a nuclear crisis’, *The Hindu*, 21 September 2005.

of their construction until February 2003 did not constitute any breach of the NPT, and thus the inspectorate refused to treat the US exposé as evidence of this.<sup>6</sup>

During 2003 and 2004 the Bush Administration worked to get rid of ElBaradei and gain control of the IAEA inspectorate. They tapped all his phone calls and engaged in what the *Washington Post* later called an ‘orchestrated campaign’ to spread anonymous accusations that he was a secret supporter of Iran, had capitulated to pressure and was deliberately concealing damning details about Iran’s programme from the Board. ‘The plan is to keep the spotlight on ElBaradei and raise the heat’, a US official said.<sup>7</sup> These kinds of tactics had succeeded earlier in 2002 with the Organization for the Prohibition of Chemical Weapons, a UN body based in The Hague. Its head, José Bustani, had infuriated Washington by attempting to involve the OPCW in the search for suspected chemical weapons in Iraq; the White House successfully undermined and removed him. This had caused little stir internationally because of the OPCW’s fairly low profile, but also because its members wanted to avoid being drawn into the diplomatic row leading up to the Iraq war. The aim now was to unseat ElBaradei when he came up for re-election in December 2004. The US State Department sought alternative candidates such as Australian Foreign Minister Alexander Downer, Brazilian disarmament expert Sergio Duarte and two South Korean officials.<sup>8</sup> Downer was not prepared to stand against ElBaradei, while the latter three represented countries under IAEA investigation for suspect nuclear work.

The drive to remove ElBaradei ultimately failed because a sufficient number of states on the IAEA Board continued to back him. As a result, the US was left with only a few technicalities dating back to the 1990s on which to accuse Iran: it had twice neglected to report enrichment facilities, and there were six instances of ‘failure to provide design

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<sup>6</sup> Under the IAEA’s ‘Additional Protocol’ drafted in the late 1990s, Iran would have had to inform it of plans six months before the start of construction (rather than before becoming operational). By 2002 Iran, like many others, had not yet ratified the Protocol.

<sup>7</sup> Varadarajan, ‘The Persian Puzzle II: What the IAEA really found in Iran’, *The Hindu*, 22 September 2005; Dafna Linzer, ‘IAEA Leader’s Phone Tapped’, *Washington Post*, 12 December 2004.

<sup>8</sup> Linzer, ‘IAEA Leader’s Phone Tapped’.

information or updated design information' for certain installations.<sup>9</sup> IAEA officials did not consider these omissions to be actual breaches of the NPT, and by autumn 2005 they had in any case been cleared up. ElBaradei certified that 'all the declared nuclear material in Iran has been accounted for and, therefore, such material is not diverted to prohibited activities.'

To put these technical violations in perspective, between 2002 and 2005 the Agency found discrepancies in the utilization of nuclear material in as many as 15 countries including Taiwan, Egypt and South Korea. In 2002 and 2003, for example, the latter refused to let inspectors visit facilities connected to its laser-enrichment programme. Subsequently, Seoul confessed to having secretly enriched uranium to a 77 per cent concentration of U-235—sufficient for weapons-grade fissile material. Neither the US nor EU suggested referring the matter to the UNSC.<sup>10</sup> In contrast, there is no evidence whatsoever that Iran has produced weapons-grade uranium. Despite intrusive inspections, no facility or plan to do so has been discovered, nor have any weapon designs surfaced. ElBaradei's September 2005 report concluded that Iranian concealment had been effectively rectified and was no longer a significant problem.<sup>11</sup> With the deepening crisis in Iraq, the Bush Administration eventually split over its own confrontation with Iran: its intelligence apparatus—backed by a powerful segment of the military—sabotaged the drive against Iran within the UNSC and IAEA by declaring that there did not, in fact, seem to be a secret nuclear-weapon programme. For face-saving reasons, the report suggested that Iran may have had one before 2003 but had abandoned it.

### *Primacy and proliferation*

The fate of the NPT since the end of the Cold War has been linked to that of the American drive for global primacy in the military–political field. If that drive had been successful, the Treaty would have become irrelevant and the IAEA inspectorate would have been reduced to a technical and political support system for Washington. The technological core of

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<sup>9</sup> Varadarajan, 'Persian Puzzle II'. A further issue concerned import of uranium from China in 1991.

<sup>10</sup> Varadarajan, 'Persian Puzzle I'.

<sup>11</sup> Varadarajan, 'Persian Puzzle II'. Some of the centrifuges assembled in Natanz showed traces of enriched uranium, but inspectors concluded that these were of Pakistani origin.

the US effort has focused on rendering obsolete other states' attempts to furnish themselves with a nuclear deterrent against American attack. This could be achieved through the development of anti-missile systems within the Star Wars tradition: powerful radar and precision guidance systems could enable the US to destroy missiles on launch. At the same time, the US has been attempting to develop immensely powerful bunker-buster bombs capable of destroying underground nuclear and other military facilities. The political core, meanwhile, has been the doctrine of so-called pre-emptive war, entitling the US to attack regimes that it opposes, and to do so without the support of any multilateral institution such as the IAEA or the UN. A corollary of this is that the US is also free unilaterally to decide which states it allows to acquire nuclear weapons, without bothering with the rules of the NPT regime. This, indeed, has been the premise of the long-standing US policy towards Israel and its current approach to India.

Yet the US campaign seems doomed to failure. In the first place, the technological and military-political capacities it requires do not seem within reach. This is partly the result of drawbacks inherent in anti-missile defence systems: even if the technology works it could be overwhelmed, at least in the case of large countries such as Russia and China, by the opponent's capacity to enlarge its stock of missiles and launch sites. More importantly, hostile states also frequently possess other, non-nuclear forms of deterrence which can lead to a loss of American nerve. This is the lesson of the confrontation with both North Korea and Iran. In each case, Washington blinked. The advanced capitalist world's acceptance of American claims to primacy over it does not seem to extend to allowing the devastation of parts of that zone itself, such as South Korea; nor to tolerating a catastrophic interruption of its main oil supplies. Even where the US succeeds in confining destruction to an excluded state such as Iraq, it lacks the capacity to produce new regimes to its own liking.

For all of these reasons, the US campaign for global primacy and its doctrine of unilateral pre-emptive attack have not constituted a persuasive counter-proliferation regime. The other side of its strategy—promoting nuclear proliferation on the part of friendly states—has also thrown up problems, as in the Israeli, Indian and Pakistani cases. When India and Pakistan demonstrated in the 1990s that they had become nuclear-weapon states, the Clinton Administration imposed sanctions on both,

at least formally respecting the spirit of the NPT. Bush, however, lifted those sanctions and then went on to negotiate and sign an agreement legitimating India's nuclear-weapon status and inaugurating cooperation in the nuclear-energy sphere.<sup>12</sup> This policy not only undermines the cornerstone of the non-proliferation regime and contradicts the central purpose of the Nuclear Suppliers Group, it also demonstrates America's political weakness: the accord will leave India largely independent in the nuclear field, unlike the British, for example, whose deterrent capacity remains deeply dependent on the US.

The Bush–Singh deal would allow India to import fissile material from the US for its civilian nuclear industry while, in return, voluntarily accepting the NPT safeguards regime (including the Additional Protocol), but only for its civilian industry. India would have a free hand to develop and expand its military programme, just as the US has. Indeed the deal would free Indian resources from the civilian industry for military use.<sup>13</sup> India has, of course, promised within the terms of the proposed deal that it will subsequently negotiate a test ban, but this can scarcely be taken seriously since the US itself has not been prepared to ratify the Comprehensive Test-Ban Treaty. In these circumstances India will have gained a great prize—the Bush Administration's endorsement of it as a legitimate nuclear-weapon state—while paying nothing in return, in this domain at least. It will have succeeded in damaging both of the main pillars of the NPT regime: to prevent proliferation and to preserve the five-state nuclear-weapons cartel, possessing the untrammelled right to maintain and enhance their arsenals.

### *Nuclear bonanza*

The Bush Administration's record on nuclear-weapons proliferation, then, is unremittingly negative from the standpoint of its own interests and those of its allies. The priority for rich capitalist non-weapon countries is to maintain their threshold status, while blocking states in the South from gaining it by tightening controls on their development of civilian nuclear industries and missile capabilities. The most obvious

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<sup>12</sup> The Indo-US Civilian Nuclear Agreement was revealed on 18 July 2005 by Prime Minister Singh and President Bush as part of a 'global partnership' to promote 'stability, democracy, prosperity and peace'.

<sup>13</sup> See Arms Control Association, 'Experts Call on Congress to Take Harder Look at US–India Nuclear Deal', 23 November 2005.

way to do this would be for Northern states to try to persuade those in the South to give up the NPT right to carry out their own uranium enrichment; but few would be ready to accept such a restriction on existing prerogatives, particularly when the five-state cartel has ignored all the phraseology in and around the Treaty on taking their own arms-control, test-ban and disarmament measures. On the contrary, the US over the last eight years has been brushing aside all restraints on its own massive rearmament in nuclear, missile and other strategic weapons.

Simultaneously, the US's efforts to turn itself into an aggressive alternative to any rule-based non-proliferation regime have proved woefully ineffective. Its bombastic rhetoric about unilateral preventive war was combined with a volte-face on North Korea and Iran. Meanwhile North Korea has been able to cross the civilian–military boundary and thereby gain the prospect of a better deal than it received from the Clinton Administration, without moving outside the international legal framework. Iran shows every sign of being able to acquire threshold status within NPT provisions. America's readiness to trample upon the rules of the non-proliferation regime and the norms of the UN Charter resulted in a dramatic loss of diplomatic influence: Washington was not even able to unseat the Director General of the IAEA and subordinate that apparatus to the US National Security Council. Its diplomacy towards India has been a spectacular example of wishful thinking and incompetence, producing a deal which does not even give Washington the kind of leverage it has over the British. In short the Bush legacy is one of lamentable failure.

The rational solution to the crisis of the non-proliferation regime would be for threshold states in the North, such as Germany and Japan, to link up with non-nuclear states in the South to demand that the weapon states adopt serious disarmament measures—above all the US but also Israel—as the basis for reviving the NPT in the post-Bush period. This, however, seems remote, not least because there is no sign of a will to submit to such pressure within the United States itself, and in such circumstances Washington's allies tend to shut up. Moreover, the nuclear industries of the Atlantic world and, of course, Russia are looking forward to a bonanza of new business for nuclear-energy investment, especially in the South. In their competitive battles to gain contracts they are unlikely to impose new restrictions on uranium enrichment and reprocessing amongst their prospective customers. In the main

zones where military–political incentives for weapons proliferation are greatest—the ‘Greater Middle East’ and East Asia—there are no indications that the United States is interested in replacing its confrontationist policies, of backing Israel in one theatre and containing China in the other, with a more cooperative approach to regional security. Thus, in this area as in so many others, the days when the United States and its Atlantic allies could credibly present themselves as a leading force on global issues seem to lie in the past.