

# INTRODUCTION

## Nuclear Rules, Not Just Rights: The NPT Reexamined

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With 190 state members, the Nuclear Nonproliferation Treaty (NPT) is almost universal. However, it has fallen on hard times. North Korea violated it and withdrew in 2002. Israel, Pakistan, India, and North Korea—the nuclear-armed states most likely to use them—refuse to sign. Others—e.g., Syria, South Korea, and Egypt—have violated its safeguards and yet suffered no serious consequences. Also, with the Iran deal, enriching uranium or re-processing spent reactor fuel, which can bring states to the very brink of bomb making, is now less taboo. Finally, with President Trump’s suggestion that South Korea’s and Japan’s acquisition of nuclear weapons is inevitable, the prospect of the treaty lasting in perpetuity is easily open to question.<sup>1</sup>

It would be nice if it was otherwise. Without adherence to the treaty, a recent report speculated that Japan, South Korea, Poland, Turkey, and Saudi Arabia were all likely to acquire nuclear weapons before 2030 and that the UAE, Taiwan, Iran, Brazil, Nigeria, Argentina, Germany, Malaysia, Vietnam, and Egypt were also possibilities.<sup>2</sup>

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1. Maggie Haberman and David E. Sanger, “Transcript: Donald Trump Expounds on His Foreign Policy Views,” *The New York Times*, March 26, 2016, available from <http://www.nytimes.com/2016/03/27/us/politics/donald-trump-transcript.html>.

2. Clark Murdock and Thomas Karako, *Thinking about the Unthinkable in a*

Should major nuclear states, like the United States, conclude that making nuclear nonproliferation a priority is a mistake? Would it make more sense instead for Washington to bolster friendly states' nuclear capabilities to maintain advantage? Wasn't this precisely what the NPT was devised to prevent for fear that nuclear-armed states helping others get nuclear arms would beget more proliferation, thus making disarmament more remote and nuclear use more likely?

These questions would seem rhetorical especially if the NPT itself was a clear barrier to nuclear proliferation. But it is not. The NPT, even if it was adhered to, has serious loopholes and gaps. Some of these are well known. The NPT allows nuclear-armed states to base their weapons in NPT nonweapons states so long as the weapons remain under the "control" of the nuclear-armed donor state. The immediate concern here is what mischief this might allow for in the possible case of Pakistan or China basing nuclear weapons in other states, such as Saudi Arabia. This worry, however, has received so much attention that it's not immediately in prospect of being realized.

This brief volume focuses on six that are. The first of these concerns how the NPT is currently interpreted. Originally, Irish Foreign Minister Fred Aiken, the diplomat who first proposed the treaty, intended that the treaty be negotiated primarily to prevent the further spread of nuclear weapons. He explicitly subordinated the objectives of nuclear disarmament and of sharing civilian nuclear technology to the higher and, he argued, more pressing goal of nonproliferation. If nuclear weapons continued to spread, he reasoned, nuclear disarmament would be made practically impossible to negotiate. As for civilian nuclear power systems, he saw these rightly as bomb starter kits that required the most intense and innovative inspections to prevent from being diverted to make bombs.

Unfortunately, this is not how we now view the treaty. Instead, the United States and virtually all other countries, including Iran, argue that the NPT rests equally on three pillars or promises: Restraining nuclear nonproliferation and conducting inspections; providing the benefits of peaceful nuclear technology and recognizing the right to acquire them without discrimination; and limiting the nuclear arms race and encouraging nuclear and general disarmament. The problem with this formulation, however, is that it suggests one must promote disarmament and civilian nuclear energy exports as a quid pro quo for nuclear nonproliferation limitations and inspections. If so, the NPT risks becoming more a disarmament and civilian nuclear promotion agreement rather than a treaty to reduce the spread of nuclear weapons related technology.

Related is the question of just how effective the treaty's nuclear safeguards are. These are supposed to prevent military diversions not only from fresh and spent reactor fuel, but also from spent fuel reprocessing plants, plutonium and uranium fuel production plants, and uranium enrichment facilities. As our recent misgivings about Iran's enrichment activities and Japan's plans to reprocess spent fuel at Rokkasho suggest, though, detecting diversions from such activities to make bombs may not be all that reliable or early enough to assure they won't be built. The creators of the International Atomic Energy Agency (IAEA) knew that they did not know how to cope with these safeguards challenges; they hoped they might not have to face them or would be able to do so later when they might arise. They were wrong on both counts. The question now is will we admit as much and draw the line between what can and cannot be safeguarded more tightly?

Yet another concern is nuclear submarines. These require enriched uranium fuel. Under the NPT and the IAEA Statute, states that lack nuclear weapons can not only enrich uranium to power naval reactors, but remove the enriched uranium from IAEA safeguards as soon as this material is applied for an allowed nonexplosive military application (e.g., naval reactors). Brazil, Pakistan, and Iran all claim they have or are planning to have nuclear submarine pro-

grams. Each has had or is feared to have nuclear weapons aspirations.

A related problem is the NPT's inattention to assistance non-nuclear-weapon state parties to the treaty can give to other non-nuclear weapons state parties. This is allowed as is nuclear weapons delivery systems, nuclear weapons basing, and command and control assistance from both non-nuclear-weapon and nuclear weapon states to non-nuclear-weapons states. Germany, for example, could (and has) exported reactor and laser uranium enrichment technology to Iran. It also has exported advance air-independent propulsion submarines to Israel designed to accommodate the delivery of nuclear warheads. China and Russia have exported nuclear-capable missile technology to Iran. All of this is legal under the current interpretation of the NPT.

Finally, the NPT allows members to leave the treaty after 90 days of giving notice of cause to withdraw. This has allowed North Korea to acquire all that it needed to make nuclear weapons under the pretense of producing "peaceful" nuclear energy, violate its safeguard obligations under the NPT, set off a nuclear explosion, and withdraw.

All of these NPT loopholes are examined in this volume. In each chapter, each of these gaps are assessed along with what can be done to close them. One might argue that these critiques and suggestions come late, too late. But that is far from clear. The NPT is still in force and it is the only legal instrument there is to work these matters in a serious fashion.