

Is the Nuclear Non-proliferation Regime in crisis? **If so, why? Are there remedies?**

By Pierre Goldschmidt*

Charlottesville Committee on Foreign Relations (CCFR).

May 11, 2006

INTRODUCTION

Alexis de Tocqueville (1805-1859) stated: *“In politics what is often most difficult to understand and appraise is what is taking place under our eyes”*.

De Tocqueville’s insight suggests that it would be wise for the international community to stand back and to reflect on the lessons that should be learned from the International Atomic Energy Agency’s (IAEA) experience in implementing safeguards over the last decade, particularly in North Korea and Iran. Such review and reflection will suggest that, ironically, just when safeguards are getting better, the political will to use them effectively seems to be waning.

This paper will explore how safeguards have gotten better, what lessons can be gleaned from the IAEA’s experience over the last decade, and how the international community can address the problems that have arisen in the past few years.

BRIEF HISTORY

- The IAEA was established in July 1957 as a result of the “Atom for Peace” vision formulated by President Eisenhower in 1953
- In the early 1960’s, President J.F. Kennedy, predicted that before the end of the 1970’s there would be between 20 and 25 states possessing Nuclear Weapons.

This prediction, fortunately, did not materialize.

* Dr. Pierre Goldschmidt, a visiting scholar with Carnegie Endowment of International Peace, was a Deputy Director General of the International Atomic Energy Agency, Head of the Department of Safeguards, from 1999 to June 2005

Since that time only 3 States have tested for the first time a nuclear explosive device (China in 1964, India in 1974 and Pakistan in 1998).

Two more countries, Israel and more recently North Korea, are assumed to have nuclear weapons.

- Therefore, so far, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) which entered into effect in 1970 and the resulting non-proliferation regime can be seen as a success story.
- Indeed during the 1990's, after the fall of the Soviet Union, all Newly Independent States and previously communist countries from Eastern Europe, joined the NPT, as well as France, Brazil, Argentina and other States from Latin America, and most importantly South Africa (in 1991) after agreeing to dismantle its nuclear weapons programme.
- As of today the NPT has been ratified by a record number of 188 States.
- Another positive milestone was reached in 1995 when the NPT was extended for an indefinite period.
- And finally, to everyone's surprise, in December 2003, Libya announced that it was abandoning its undeclared nuclear weapon programme, and allowed the US to remove all sensitive material and equipment from the country.

SAFEGUARDS ARE GETTING BETTER

The IAEA safeguards system is being implemented more effectively and efficiently than ever before. Traditionally, the IAEA focused on accounting for nuclear materials in **each** state facility-by-facility. This work was done only at declared facilities and was largely an audit. Since 1998, however, the IAEA has developed a global analytical approach that asks not simply whether the declared numbers add up, but also, "*What's going on in this state's nuclear program? Is **everything** really consistent?*" The new approach depends upon two tools in particular: improved detection technologies, and a detailed analysis of all relevant information available on each state.

At the heart of this approach is the production and periodic update of State Evaluation Reports (SERs). They combine the results of inspections in the field and environmental swipes with analysis of all relevant information from open sources, including satellite imagery. State Evaluation Reports also analyze the history of all anomalies and inconsistencies recorded during previous inspections and examine whether a state's research and development program is internally consistent, corresponds with stated purposes, and points to a commitment to use nuclear technology exclusively for peaceful purposes. The SERs analyze export and import of relevant nuclear material and equipment, and other information available to the IAEA. Every SER also includes a section that examines the most likely diversion scenarios, on the assumption that the state under review intends to divert

nuclear material for military purposes. Each report leads to a State specific action plan.

Parallel with these developments, the IAEA has improved its surveillance technology, replacing almost all analogue video cameras with digital surveillance cameras. In 2005, there were more than 120 surveillance and radiation monitoring systems with remote transmission capabilities, as compared to only 14 systems in 2000.

Progress is also being made in using more advanced equipment such as ground penetration radar to improve the IAEA's ability to verify that highly complex nuclear facilities conform to their official design.

The IAEA has also established a new R&D project to explore the potential use of advanced technologies in detecting undeclared nuclear material and activities.

In addition, in response to the discovery in 2004 of the extensive covert supply network of sensitive nuclear technology masterminded by Dr. A. Q. Khan (the so called "father" of Pakistan's nuclear weapons programme) which came to light as a result of Libya's disclosure of its clandestine nuclear weapons program, the IAEA Department of Safeguards has established a new unit focused on documenting, investigating and analyzing nuclear trade activities worldwide, with the aim of uncovering the existence of undeclared nuclear activities

This more rigorous and resourceful approach to safeguards has led one knowledgeable commentator (Richard Hooper – IAEA Bulletin – June 2003) to assert that *"changes in structure and practices of the Safeguards Department have been accompanied by a change in culture that is more of a revolution than evolution."* This *"radical departure from the past practice"* was also acknowledged in the US Government Accountability Office Report of October 2005 on Nuclear Non-proliferation.

To be sure, there are still difficulties inherent in ensuring that, in "bulk facilities", even small amounts of nuclear material—a few kilograms among tons—are not diverted without timely detection, but the trend in the capacity of the safeguards system is clearly positive.

These positive developments have been acknowledged worldwide including by John Bolton, the US representative to the UN.

It is widely recognized that notwithstanding their limitations, verification activities by the IAEA's inspectors and analysts, are extremely valuable, indeed irreplaceable. No other international organization would ever be able to carry out a similar job. The IAEA must therefore be supported by all means.

Unfortunately, the international community has failed to strengthen the Agency's authority to exercise its improved capacity in precisely the situations where it is most necessary: namely, when a state has been found to be **in non-compliance** with its safeguards undertakings.

THREE MAJOR CRISES NEED TO BE MENTIONED IN THIS REGARD

IRAQ

At the time of the first Gulf War, in 1991, the world discovered that Iraq had been developing over more than a decade, a secret nuclear weapon programme completely separate from its civil nuclear programme declared to and inspected by the IAEA. The international community acknowledged thereafter that it was not enough for the IAEA to verify that the initial declaration of a State under its Comprehensive Safeguards Agreement is correct but that it was also necessary to verify that it was complete. To achieve that goal it was obvious that the Agency needed broader access rights to information and locations. It took until May 1997 for the IAEA Board of Governors to approve the so called “Model Protocol Additional” designed to enable the Agency to provide the assurance that there are no undeclared nuclear material and activities in a non-nuclear-weapon State (NNWS) party to the NPT. As of March 2006, 75 States have an Additional Protocol in force. However 21 NNWS party to the NPT having known nuclear activities do not yet have an Additional Protocol in force. Among those at least three -Argentina, Brazil and Iran- have uranium enrichment activities.

NORTH KOREA

- Since 1993 North Korea has been declared every year by the IAEA to be in non-compliance with its safeguards agreements and reported to the United Nations Security Council (UNSC), without the latter deciding to take any action.
- In 2003, North Korea notified that it was withdrawing from the NPT (the first time this has happened in the history of the Treaty) and in 2004 declared possessing nuclear weapons, without any move from the UNSC because of China threatening to use its veto right against any resolution adverse to North Korea.

IRAN

The same scenario is now unfolding with Iran.

If the international community does not seem to have learned the lessons from the crisis in North Korea, Iran has.

It is, as we shall see, preparing to follow the same steps as North Korea if the development of its nuclear programme is threatened by the UNSC or any of its members.

One should remember that in November 2003, in a damning report to its Board of Governors, the IAEA revealed that Iran had for the past eighteen years been pursuing an undeclared centrifuge uranium enrichment programme and had concealed a considerable number of nuclear facilities, materials and activities in violation of its safeguards obligations. This should have been reported to the UNSC as foreseen in the Agency's Statute. It was not, for a number of reasons.

First because many countries insisted, as indicated in the IAEA's report, that "*to date, there is no evidence that the previously undeclared nuclear material and activities referred to above were related to a nuclear weapons programme*", even if they were all well aware that the Agency had neither the authority nor the means required to prove that this could be the case before it is too late.

Secondly, it was not reported to the Security Council because of the fear of many Member States that if the issue got out of the IAEA's hands it could initiate a scenario similar to the one that led to the conflict in Iraq.

Also, there was the fear that if Iran was referred to the Security Council, Russia and China would use their veto right to block any resolution adverse to the Islamic Republic, as was the case for North Korea, with no concrete outcome whatsoever.

This explains why, during the last quarter of 2003, France, Germany and the United Kingdom (the so-called EU-3) opted for a diplomatic approach in exchange for a commitment by Tehran to suspend all enrichment related activities. It is regrettable that the US did not, at that time, actively support these efforts. This has been a major missed opportunity.

Two and a half years later, ignoring the repeated requests of the IAEA, Iran has continued its tactics of obfuscation and delay and has made significant progress in developing its nuclear programme. It now has a stockpile of more than 100 tons of natural uranium hexafluoride (the feed material for the enrichment process) safely stored in underground tunnels. It is also producing low enriched uranium in its pilot enrichment plant and is continuing the construction of the large underground enrichment facility at Natanz. Iran has also made significant progress with respect to its intermediate ballistic missiles, which now appear capable of carrying a nuclear warhead a distance of 2000 Km or more.

Although the Agency revealed, in November 2005, and confirmed in January 2006 that Iran had been found in possession of documents for "*the casting of enriched and depleted uranium metal into hemispheres, **related to the fabrication of nuclear weapon components***", and that the Agency had obtained information concerning "*tests related to high explosive and the design of missile re-entry vehicle, all of which could have a military nuclear dimension*", it was not until February 4, 2006 that the Board of Governors finally decided to inform the UNSC.

Three months later, the Security Council has still not taken any concrete action, not even providing the IAEA with the additional legal authority it has said repeatedly is needed to investigate a number of unresolved issues in a timely manner.

This paralysis is mainly due to the attitude of Russia and China, both of which are threatening to veto any UNSC resolution adverse to Iran. Could there be reasons other than their official justifications for their obstructive behaviour?

For instance is it not possible that these two countries may fear that, with more investigation rights, the Agency could discover so far unknown and possibly embarrassing evidence of their previous support for Iran's undeclared nuclear programme?

Or is it that Russia, by systematically blocking any involvement of the UNSC, and by delivering more and more sophisticated weapons to Iran, is pushing the exasperation of the US to the point where they will opt for unilateral sanctions? This would inevitably fuel further anti-American feelings worldwide, while Russia would take advantage not only of higher oil prices but of appearing to behave more responsibly, particularly in the eyes of the countries belonging to the non-aligned movement.

The latter bear their share of responsibility in the growing crisis of the non-proliferation regime. They have for too long pretended to be blind to the developments in Iran and, beyond simply remaining silent, they have actively supported Iran by minimising the seriousness of the situation.

Egypt, for its part, obsessed by the likelihood that Israel possesses nuclear weapons, largely contributed to the failure of the NPT Review Conference in May 2005. It is only recently that some Arab countries seem to have realized the danger that nuclear weapons in Iran would represent for the stability of the region.

Also, the lack of progress by the 5 NWS with regard to the 13 steps, agreed upon in the final document of the 2000 NPT Review Conference, "*for the systematic and progressive [disarmament] efforts to implement Article VI of the NPT*" has been a major cause of frustration among almost all NNWS.

If the most powerful nations on earth insist, as they have in recent years, that they need to maintain and further improve their nuclear arsenals, how could they convince weaker nations that they don't need those weapons even as a deterrence?

And, as if all this was not enough to undermine the credibility of the NPT, in July 2005 the US offered India a broad nuclear cooperation agreement, granting India all the benefits that are reserved for non-nuclear weapon States under the NPT, without requesting from India any real counterbalancing commitment such as

ratifying the Nuclear Comprehensive Test ban Treaty (CTBT)¹. If the US Congress approves this deal as it now stands, and succeeds in curbing the Nuclear Supplier Group (NSG) export rules for what the US has unilaterally defined as the “special case” of India, it is hard to see why Russia, China and others would not feel free to strike similar deals with countries such as Pakistan and Iran, destroying forever the dream of a Middle East free of weapons of mass destruction.

Is it therefore too late to salvage the credibility of a Treaty ratified by 188 States and which has been, until recently, an indisputable success? Unfortunately, the answer is most likely Yes, unless the international community without further delay acts upon the lessons learned from the crisis in North Korea and Iran and takes the necessary actions.

SO WHAT ARE THE REMEDIES?

The single most effective and feasible way to establish the necessary measures is for the UNSC to adopt (under Chapter VII of the UN Charter) **generic** and legally **binding** resolutions stating that:

1. if a State **withdraws** from the NPT after being found by the IAEA to be in **non-compliance** with its safeguards undertakings, such withdrawal constitutes a threat to international peace and security under Article 39 of the UN Charter; and all materials and equipment made available to such a State, or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement (CSA) will be forthwith removed from that State under IAEA supervision and remain under Agency’s Safeguards.
2. If a State is reported by the IAEA to be in **non-compliance**:
 - a. the non compliant State will have to suspend all sensitive nuclear fuel cycle activities for a specified period of time² [but could by all means continue to produce electricity from nuclear power plants], and
 - b. if requested by the IAEA, the UNSC would automatically adopt a **specific** resolution (under Chapter VII) providing the Agency additional verification authority until it has been able to conclude

¹ It is quite astonishing that NNWS and in particular those belonging to the Non-Aligned Movement did not react (more) strongly to the announcement of this agreement

² In line with what Dr. ElBaradei has called a “*rehabilitation period*” or a “*probation period, to build confidence again, before you can exercise your full rights*”. (cf. interview with Newsweek- January 23, 2006)

that there is no undeclared nuclear material and activities in the State and that its declarations to the Agency are correct and complete.

The longer it takes for the UNSC to issue such resolutions the more difficult it will be to save the credibility of the non-proliferation regime.

Independently, the Nuclear Supplier Group could adopt a rule whereby nuclear material and equipment would only be exported if the facilities where they are to be stored or used are covered by both a Comprehensive Safeguards Agreement and an INFCIRC/66-type safeguards Agreement. This requirement would block a recipient State from withdrawing from the NPT and claiming the right to do whatever it wants with the items previously delivered or the materials derived therefrom.³

Coming back to Iran, one has to admit that, while the international community was debating what to do, Iranian leaders have made stunning advances in mastering all technological aspects of uranium conversion and enrichment without incurring any negative repercussion.

Although they have no use for domestically produced low enriched uranium (LEU) for peaceful purposes for at least the next 10 years, Iran is nonetheless busy installing centrifuge enrichment cascades at Natanz.

By ignoring the repeated requests of the IAEA Board of Governors and recently of the UNSC to suspend these activities, Iran is jeopardising any chance of concluding a broad cooperation agreement with the EU that would open the door to large foreign investments, high tech transfers and security guarantees⁴.

By cleverly using to their advantage the divisions among the major powers, by fuelling the fears of a rapid rise in oil prices and by threatening to share their sensitive nuclear know-how with other states and to increase their support to terrorist movements in the region, Iran's leaders seem to have achieved their objective. Their deliberately provocative attitude is most likely a step to prepare for their withdrawal from the NPT, as is the letter they addressed on 21 March 2006 to Secretary General Kofi Annan, complaining about the fact that "*in the past several months, various senior officials of the United States have used false pretexts to make public and thinly-veiled threats of resort to force against the Islamic Republic of Iran in total contempt of international law and the fundamental principles of the Charter of the United Nations*".

³ A CSA remains in force only for so long as the state remains party to the NPT, whereas under a INFCIRC/66-type agreement, all nuclear material supplied or produced under that agreement would remain under safeguards, even if the state withdraws from the NPT, until such time the IAEA has determined that such material is no longer subject to safeguards

⁴ The Iranian leadership has rejected with contempt these European overtures in August 2005.

I understand that last Sunday (May 7) the Iranian Parliament in a letter to Secretary General Kofi Annan, threatened to force their government to withdraw from the NPT if pressure continues for Tehran to suspend uranium enrichment activities⁵.

It is essential for the international community not to wait for Iran's withdrawal from the NPT to demonstrate their unity and support the adoption of the preventive UNSC resolutions suggested above. It is time for the IAEA to formally request the UNSC to provide (under a Chapter VII resolution) the increased investigation authority that the Agency has repeatedly stated is needed in Iran.

Einstein once said: *“the world will not be destroyed by those who do evil, but by those who let them do and refuse to intervene.”*

Inaction may lead to Kennedy's prediction coming true, with dreadful consequences for international security, particularly if one takes into account the new dimension of international terrorism.

Let's be clear: the irresponsible attitude of the international community and the moral cowardice of those who wish to pretend that Iran's nuclear programme is an issue that concerns only the US and Israel will, if they persist, inexorably lead to violence which is always an admission of failure. No one would gain, least of all the Iranian people, who are longing for peace, more jobs and greater freedom.

⁵ It is worth remembering that even Iraq never threatened the international community with a potential withdrawal from the NPT