

# The Negotiation of the Non-Proliferation Treaty (NPT)

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by B. Goldschmidt

## THE NEGOTIATIONS

On account of its universal nature, this second agreement on the renunciation of nuclear arms, which was negotiated between 1965 and 1968 (following the partial test ban treaty of 1963), has a political importance that extends far beyond the Tlatelolco Treaty which preceded it.

Negotiation of it began in 1965, following the Chinese explosion of October 1964, and the vote of the United Nations Commission on Disarmament in June 1965, by which the Eighteen-Nation Disarmament Committee (in which France refused to occupy its rightful seat) was requested to consider the question of a treaty or a convention on non-proliferation.

It was not until 1965 that the term "non-proliferation" first appeared; it was taken in its most general sense, since it covered both the increase in the number of atomic weapons possessed by the nuclear powers, their geographical distribution by the latter and the manufacture or acquisition of such arms by non-nuclear powers. Homi Bhabha, the Indian physicist, even suggested a distinction between "vertical" proliferation, meaning an increase in the nuclear arms of the five members of the Club, and "horizontal" proliferation, meaning an increase in the number of countries possessing the new type of weapon.

At the beginning of the negotiations, the stand taken by the various groups of countries with regard to the problem was roughly as follows:

The least advanced countries of the Third World, which were in favour of the aim pursued, hoped that, in exchange for their renunciation, they would be given promises that the nuclear powers would adopt specific measures for nuclear disarmament, would never threaten to use, or use, nuclear devices against them, and would provide them with genuine assistance for advancement in the domain of the peaceful applications of nuclear energy.

Some of the more rapidly developing countries, for example Brazil and India (the latter had become more reticent with regard to this subject since the Chinese explosion and the death of Nehru) stressed the discriminatory aspect of the proposed relinquishing of their sovereignty. As compensation they called for concessions on the part of the nuclear powers, such as the commitment not to manufacture new weapons and to convert part of their stockpiles with a view to peaceful use by the developing countries. These conditions had little chance of being accepted by the two Superpowers and thereby portended the refusal by the objecting developing countries to accede to the future treaty.

Dr. Goldschmidt is Chairman of the Board of Governors of the IAEA.

The industrialized countries, for which the renunciation of nuclear weapons was of real significance in the short term, likewise demanded disarmament measures on the part of the nuclear powers (Sweden called, in addition, for a complete halt to tests). Most of them, however, were basically afraid of being handicapped in world nuclear competition vis-à-vis the powers which had entirely maintained their freedom of action and were likely to benefit from the impact of their military operations on the civil domain. They were also anxious to gain from the peaceful applications of nuclear explosions. Furthermore, they were afraid that international safeguards might possibly be a source of industrial espionage, and insisted that the civil installations of the nuclear powers should likewise be open to inspection by the IAEA, if their own installations were to be. Finally, the non-nuclear Member States of Euratom, supported by the European Commission, demanded that the Community's safeguards should be considered equal to the Agency's, from which they should therefore be exempted.

For the Federal Republic of Germany, Japan and Italy, which had already been obliged to accept this discrimination of abstinence, any further restriction, such as the imposition of international inspection, seemed unacceptable unless they were assured of enjoying, in the civil nuclear domain, exactly the same freedoms and benefits as the nuclear powers.

As far as France was concerned, the future treaty presented no great problem. On the contrary, as with the other nuclear-weapon powers, France was not interested in any extension of the nuclear Club. But having criticized the Moscow partial test ban treaty as discriminatory, and stated that the future treaty did not relate to disarmament, but was only an agreement on the non-armament of unarmed countries, France could neither join in the negotiation nor accede to an eventual non-proliferation treaty of the same discriminatory nature, even though the agreement did not in any way hamper its activities, and sanctioned its status as a nuclear power.

The Soviet Union was in complete control of, and able to restrict, the nuclear activities of the Warsaw Pact countries, for which nuclear abstinence was a fact, with some of them, for example Bulgaria and Hungary (in the same way as Finland) being committed to it under their peace treaties. It was only Romania which showed an independent stand during the negotiations and often sided with the countries of the Third World in their efforts to bring about a more satisfactory balance in the concessions agreed to on both sides.

Furthermore, the Soviet Union was willing to open its satellites to IAEA inspection – which seems not to have pleased them very much – provided the Federal Republic of Germany was likewise inspected.

Aware of the perseverance and dedication shown by the American diplomats in regard to the non-proliferation issue over a span of twenty years, the Soviets were in a good position to secure valuable compensation, especially since with its multilateral force project Washington was contradicting its own principles. Obsessed by the fear of German nuclear rearmament, Moscow was firmly resolved to bring about cancellation of the NATO nuclear force project.

Finally, for the United States what counted most was the adoption and universal observance of strict non-proliferation regulations, the application of which would be effectively monitored by the Agency's inspection system. If the multilateral force project

could be saved as well by demonstrating that it was the President of the United States alone who really had his finger on the trigger, so much the better.

These positions taken by the Superpowers are reflected in the two different drafts of the treaty submitted by the United States to the Eighteen-Nation Disarmament Committee towards the end of 1965, and by the USSR to the General Assembly of the United Nations. The American draft prohibiting the transfer of weapons to the "national" control of a non-nuclear-weapon State left the door open for the supply of weapons to a group of countries. On the other hand, the Soviet text prohibited all non-nuclear countries from taking part in the possession, control over or use of such weapons. During the deliberations of the United Nations, the USSR pointed out that the Atlantic nuclear force project was in fact designed to provide Germany with weapons.

The American-Soviet discussions went on the whole of the following year and at the end of 1966 a way out of the deadlock was finally found, following secret talks between Secretary of State Dean Rusk and Foreign Minister Andrei Gromyko. Under the compromise, Washington abandoned the multilateral force project; this was in fact a victory for the Soviet Union, which in return accepted the status quo, i.e. the presence of American nuclear weapons on the territory of the Atlantic allies of the United States, and no longer objected to consultations between allies on the use of these devices, should such be necessary, namely the establishment of a NATO nuclear planning committee.

This Russian-American agreement showed, despite the tension created by the war in Vietnam, the extent of the political rapprochement between the two powers since the Cuban crisis. The main obstacle to implementing the Treaty having been overcome, the two Great Powers were ready to face together the diverse coalitions of non-nuclear powers. It took another fifteen months before, in 1968, a final text acceptable to the seventeen Member States on the Eighteen-Nation Committee was reached.

Finally, the Conference of the Eighteen-Nation Disarmament Committee at Geneva, within the framework of which the negotiations were formally conducted, transmitted a comprehensive report to the United Nations, which examined the matter during a special session of the General Assembly; this session ended on 12 June 1968, with the adoption of a skilfully worded resolution supported by a hundred votes, with twenty abstentions (including Argentina, Brazil, Spain, France and India). The resolution in fact expressed only the hope that there would be as many accessions to the treaty as possible and did not automatically commit those countries acting in favour of the Treaty to signing it. Furthermore, the United States of America, the United Kingdom and the Soviet Union made a declaration in the Security Council the following week, in which they pledged assistance to any non-nuclear State party to the Treaty in the event that it should be subject to attack or to threat of attack with nuclear weapons.

France, having once again called for a halt to the manufacture of weapons and destruction of existing stockpiles, and having reaffirmed that the Treaty was not a disarmament treaty, nevertheless stated in the United Nations that, though not a signatory, it would behave in future in exactly the same way as the signatory States.

The Treaty thus saw the light of day after more than three years of negotiation, i.e. on 1 July 1968, and was then open to signature by all the countries of the world after having been signed by the three depositary States: the United States of America, the Soviet Union

and the United Kingdom. These three countries had succeeded, during the previous year, in delaying the convocation of a conference of non-nuclear States aimed at modifying the Treaty in such a way as to secure concessions from the nuclear powers both at the disarmament level and in terms of assistance to less advanced countries.

This non-nuclear weapon State conference finally opened at Geneva, in August 1968. It lasted a month. The four nuclear power attended as observers without making any statements. The conference was held in an atmosphere of bitterness, disappointment and resentment, reflecting the need of the countries in question to vent their feelings, if not to rebel, against the Great Powers, which had been exerting constant pressure on them all through the latter stages of the negotiations.

Some of the resolutions adopted at the conference concerned disarmament by the Great Powers, while others were related to the assistance to be provided by them in the field of technician training, the supply of fissionable materials, financial matters and the peaceful uses of nuclear explosions; some of them also dealt with the IAEA safeguards system and its application, and called for broader participation by the countries of the Third World in the IAEA Board of Governors, responsible for the administration of that international organization.

## THE FEATURES OF THE NON-PROLIFERATION TREATY

This Treaty, which is unique in the political history of the world, is aimed at halting the course of this history in a crucial field by fixing once and for all the number of nuclear weapon powers. It defines this type of power, furthermore, as a State which manufactured and exploded a nuclear weapon or any other explosive nuclear device before 1 January 1967, and therefore covers the five nuclear powers alone. It classes France as a member of the club in which it had had so much difficulty, if not in gaining entry, at least in making itself recognized.

The Treaty prohibits the signatory nuclear powers from transferring nuclear weapons or other explosive devices or control over them to any nation whatsoever. It was this clause that put an end to the plan for a NATO nuclear force. The Treaty also prohibits the nuclear weapon States from helping any non-nuclear-weapon State (whether party to the Treaty or not) to manufacture or acquire such weapons or devices, or to have control over them.

This ban fits in with the political line that had always been followed, except for a few minor deviations, by the members of the most exclusive Club in the world, and is in effect the Club's unwritten law. It does not involve any genuine concessions on the part of those belonging to it, but rather leaves the transfer of technology or weapons among the nuclear power themselves completely unrestricted.

Conversely, the other States party to the Treaty i.e. the non-nuclear powers, undertake not to accept the transfer of or control over such weapons or devices from any nation whatsoever and not to manufacture them.

The Treaty not only refers to nuclear weapons without defining them, but also to any other nuclear explosive device. The renunciation of nuclear weapons therefore covers all systems intended for a peaceful nuclear explosion. For the first time one of the peaceful uses of

nuclear fission had been prohibited for the vast majority of States. Previously, nuclear contracts containing a restrictive use clause only prohibited such use for military purposes and not for explosions.

The Treaty for the Prohibition of Nuclear Weapons in Latin America entitles the Signatories to carry out peaceful explosions under certain conditions. But in the case of NPT, since the end of 1966 the Russians and Americans have been in accord on the impossibility of differentiating, from the technical standpoint, between the features specific to the two types of explosion. Hence both types had to be prohibited, as there is only one way of making a nuclear explosion, whether it is for peaceful or military purposes.

The necessity of renouncing the right to peaceful nuclear explosions was deeply felt by a large number of non-nuclear powers and was vigorously opposed by India and Brazil. It came at a time when the two Great Powers were engaged in a whole series of military underground tests and were channelling considerable sums of money into the peaceful applications of nuclear explosions, the potential advantages of which were given tremendous publicity.

The United States and the Soviet Union were thus compelled to agree to the incorporation into the Treaty of a clause promising the non-nuclear powers, at minimal cost and on a non-discriminatory basis, a share of the benefits to be gained from the peaceful uses of nuclear explosions.

In the autumn of 1968, the General Assembly of the United Nations recommended that a study be carried out on establishing, within the IAEA, a service for conducting such peaceful explosions under international control. Between 1970 and 1975, a committee and a large number of international conferences dealt with the technical, legal and safety aspects of the matter, but the clause of the Treaty relating to such explosions for the benefit of the non-nuclear powers has remained a dead letter. The discontinuation, in 1973, of all civil tests in the United States, the underground nuclear explosion in India in 1974, and then, in contrast to past publicity, the cloak of silence enveloping this activity, have made nuclear energy for this purpose the first civilian victim of the cause of non-proliferation, at least in the Western world.

As for the nuclear disarmament measures so insistently demanded during the Treaty negotiations in order to strike a fair balance in the concessions made, the nuclear powers have managed to divest them entirely of their binding nature. In the Treaty, these States only undertake to continue negotiating in good faith to find effective measures for ending the arms race by a date in the near future and for a general and complete disarmament treaty under strict and effective control. They also recall their determination, recorded in the Moscow Treaty five years before, to continue negotiations aimed at a total ban on nuclear weapon tests.

Conversely, the non-nuclear weapon States party to the Treaty undertake to accept IAEA safeguards for the sole purpose of verifying that nuclear energy has not been diverted from peaceful uses to nuclear weapons or other explosive devices. These safeguards apply to all the peaceful nuclear materials and activities, in their territory or elsewhere, under their control. Furthermore, all States party to the Treaty undertake not to provide nuclear materials and equipment specially designed for the processing, utilization or production of uranium-235 and plutonium to any non-nuclear weapon State whatsoever (whether party to

the Treaty or not) unless such materials and equipment are subject to Agency safeguards.

## INSPECTION AND CONTROL UNDER NPT

The clause on international inspection was one of the hardest for the non-nuclear States to "swallow" during the negotiation of NPT. They had agreed, for the sake of non-proliferation, to relinquish the right to weapons and, in practice to the civil uses of nuclear explosives and to be content with pious assurances, rather than specific nuclear disarmament commitments, on the part of the military nuclear powers. In addition, however, they were obliged to open all their nuclear activities to IAEA inspection on a permanent basis. The nuclear powers were exempt from such a requirement and this accentuated the discriminatory nature of the restrictions.

In the past, the non-nuclear States had been in the habit, under the atoms-for-peace policy, of accepting limitations only in return for assistance. This time they were subject to total and definitive restrictions in return for a concession! This only made them more insistent in demanding compensation for their civil nuclear development. The most advanced of these countries called for complete freedom of action, with no stage of the industry, from uranium mining to energy production, being denied them; the least advanced demanded a pledge of assistance from the Big Powers. All of them wanted to have a share in any civil benefits resulting from military research carried out by the members of the Club.

Hence Article IV of the Treaty states that all States party to the Treaty undertake to facilitate the transfer of knowledge, materials and equipment, and to promote international co-operation, especially with respect to the Third World. It is specified, furthermore, in the same Article that "nothing in this Treaty shall be interpreted as affecting the inalienable right of all parties to the Treaty to engage in research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty" (those dealing with renunciation).

This clause was a cardinal one in the eyes of such powers as the Federal Republic of Germany, Japan and Italy, which were afraid of being hampered in international commercial competition vis-à-vis the Allied Powers, the victors of the last war, who remained free from all restriction. They were prepared to make the unilateral concession of renunciation on one specific condition: that they would have complete freedom of action in the civil domain. From this standpoint the Treaty can be summed up in one simple phrase: a nuclear explosion is prohibited, but everything not prohibited is allowed, including all the stages of the fuel cycle, even if they make it possible to produce nuclear explosives.

For the Government of the Federal Republic of Germany in particular, Article IV renders null and void the clauses prohibiting the manufacture of plutonium and uranium enriched to more than 2.1%, similar to the weapons prohibited in the text of Adenauer's letter annexed to the Western European Union (WEU) Treaty.

The signature by the Federal Republic of Germany of a tripartite international agreement with the United Kingdom and the Netherlands for the production of enriched uranium by centrifugation (URENCO) on the very same day as the entry into force of NPT, and the start-up of the German pilot plutonium plant during the same year (1970) were just as

much indications of the German interpretation. None of the countries in the Western European Union had the slightest objection.

One of the arguments, put forward mainly by Japan and the Federal Republic of Germany, against the application of safeguards on all the nuclear activities of the non-nuclear countries party to the Treaty, was the risk of industrial espionage. As a gesture and as an answer to the argument, the United States and the United Kingdom solemnly undertook, in the form of statements by President Lyndon Johnson and Prime Minister Harold Wilson in 1967, to open voluntarily their peaceful facilities to inspection by the IAEA, thereby running the same risks of industrial espionage as the other powers subject to safeguards. The Soviet Union, however, stated that it would not follow suit under any circumstances. This fact reduced the scope of the gesture, which in any case was more of a psychological nature, since these States were still the sole judges of which installations would be exempt from safeguards on grounds of national security, and it was doubtful whether, in the case of the remaining facilities, the IAEA would spend a great deal of manpower and money on inspections devoid of practical value. To some extent, this voluntary submission to inspection may be compared to the attitude of a traveller who has a right to show the customs officials which of his suitcases should be examined.

Furthermore, encouraged by American recognition of the validity of Euratom safeguards, the Member States of the European Community wanted to see these safeguards accepted as adequate for NPT so as to avoid the presence on their territory of inspectors from other countries.

Conversely, verification by the IAEA of German nuclear abstention following abandonment of the NATO nuclear multilateral force project, was the Soviet Union's main aim in negotiation of the Treaty. Indeed, the Soviets, who had become zealous advocates of the Agency's safeguards system, became categorical: to their way of thinking the IAEA should alone be responsible for seeing to the implementation of the Treaty by its Signatories. They refused on principle to recognize any value in safeguards administered by a regional organization, above all by Euratom, which they considered, would allow the Germans, to a certain extent, to apply safeguards to themselves. Finally, the only concession made to the countries of the Community was to recognize the existence of Euratom safeguards as equivalent to the national monitoring systems of other countries, through the verification of which the IAEA safeguards system operates.

The Treaty, like the partial nuclear-test-ban treaty, gives every State the right to withdraw from it, with three months' prior notice, if it is decided that extraordinary events, related to the aim of the Treaty, have jeopardized their supreme interests.

The Treaty did not come into force until 5 March 1970, after the three nuclear powers — the United States, the Soviet Union and the United Kingdom — and 40 non-nuclear States had ratified it.

In the United States the problem of the Treaty's ratification had been one of the topics of the electoral campaign in the autumn of 1968, and Richard Nixon succeeded in preventing the outgoing President and the Democratic Party from gaining prestige from its approval by the Senate. The latter was not obtained until March 1969, with a very large majority.

Despite American and Soviet pressure, ratification by the key countries, i.e. the Federal Republic of Germany, Italy and Japan, was not achieved until 1975 and 1976. In each of

these countries lengthy parliamentary discussions showed the importance attached to the freedom of action in the civil domain, the objections being the imposition of restrictions and apprehensions that accession to the Treaty would be a handicap from the standpoint of commercial competition.

One of the last obstacles to these ratifications, without which the NPT would have lost all its political value, was removed through France's commitment in 1975 to pursue a nuclear export policy in line with the letter of the Treaty and with its procedures for implementation.

At the end of 1979, eleven years after the conclusion of the Treaty, 111 countries had signed it and those possessing nuclear facilities had placed them under IAEA Safeguards, though not without some difficulty in the case of the countries of the European Community.

Through their accession to the Treaty, a number of advanced countries — a quarter of a century after Hiroshima — had thereby unilaterally accepted a reduction of their national sovereignty for the sake of international stability and for the purpose of facilitating the world development of atomic energy.

The conclusion and implementation of the Treaty represented a major success for the United States of America and the Soviet Union. These two Powers had brought off a tour de force and had succeeded, if not in imposing this "nuclear Yalta", then at least in getting it accepted, by conjuring up the spectre of the threat to world peace if countries not possessing nuclear weapons were to acquire them. The two Great Powers had established the principle of a permanent division of the world into two types of powers in its current form. This ambition, unprecedented on such a scale, runs counter to the course of history, and the first demonstration of this, the Indian explosion of May 1974, was not long in coming.