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Book Review of Non-Proliferation Treaty: Framework for Nuclear Arms Control

Maris A. Vinovskis

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BOOK REVIEWS

NON-PROLIFERATION TREATY FRAMEWORK FOR NUCLEAR ARMS CONTROL. BY MASON WILLRICH. Charlottesville, Virginia: The Michie Company, 1969 Pp. 341.

After the Non-Proliferation Treaty was signed on July 1, 1968 by the United States, President Johnson hailed the treaty as "the most important international agreement limiting nuclear arms since the nuclear age began." Critics of the treaty have argued that it discriminates against the non-nuclear weapon nations which are called upon to forego any of the advantages of developing or possessing nuclear weapons without an adequate guarantee of their future security or an equal opportunity to develop the peaceful uses of atomic energy.

Despite the flood of articles and books that have been written on the spread of nuclear weapons, it has been difficult to find a comprehensive, well-written examination of the provisions of the Non-Proliferation Treaty. This need has now been met by Professor Mason Willrich's timely analysis of that treaty.

Mason Willrich, currently Professor of Law and Director of the Center for the Study of Science, Technology, and Public Policy at the University of Virginia, has been closely associated with the issues of nuclear development and American policy. From 1962 to 1965 he served as the Assistant General Counsel in the United States Arms Control and Disarmament Agency, and served on the U.S. Delegation to the Eighteen Nation Disarmament Committee in Geneva and to the International Atomic Energy Agency in Vienna.

The book is well-organized and clearly written. The author devotes the first three chapters to explaining the background of the treaty in terms of the technological aspects of nuclear development, the alternative ways of dealing with the proliferation of nuclear weapons, and the pre-existing legal framework for nuclear arms control. In the next four chapters he analyzes the provisions of the Non-Proliferation Treaty in detail, and concludes the book with an assessment of the future implications of the treaty for the control of nuclear weapons. The appendix, which occupies about a third of the book, contains the texts of some of the legal documents dealing with the treaty.

Professor Willrich sees the world at its second cross-roads in the nuclear era. Between 1946-1949 there was an opportunity to place

all nuclear weapons under international control, but the United States and the Soviet Union were unable to resolve their differences on this issue. Now we face the prospect of a rapid increase in the number of nations possessing nuclear weapons because the technological and economic barriers to the manufacture of such weapons has been greatly lowered. At this crucial juncture in history

[t]he underlying issue remains the same: whether world politics can master technology. The Non-Proliferation Treaty does not resolve this issue, but the Treaty does provide a needed legal framework to help the world community come to grips with it. In short, the treaty could become a constitutional document in the construction of a world order in which the risks of nuclear conflagration are successively contained while the benefits of peaceful uses of nuclear energy are widely available.¹

In discussing the provisions and the legal implications of the Non-Proliferation Treaty, Professor Willrich is at his best, for he critically examines each section of the treaty on the basis of the language used, the intention of the framers, and the possible legal interpretations. In his analysis, Professor Willrich is quick to point out the numerous shortcomings of the treaty while noting its strengths.

One of the weaknesses of the treaty is that many of the terms used have not been defined and are likely to cause problems of interpretation in the future. For example, nuclear-weapon powers are prohibited from assisting non-nuclear weapon states in the manufacture of nuclear weapons in Articles I and II, but the meaning of "manufacture" is extremely difficult to ascertain. Does the manufacture of weapons refer only to the final assembly of the nuclear device or does it also cover the numerous preliminary steps such as the operational decisions to build plants and conduct tests?

Another weakness of the treaty is that it contains no provision for the verification of compliance with the restrictions set forth. There is no way to prevent a nation from setting up a secret nuclear weapons program that is entirely apart from its peaceful nuclear industry and consequently not covered by the safeguard provisions of the treaty. The Treaty of Tlatelolco, the 1967 treaty for the prohibition of nuclear weapons in Latin America, provided for special inspections when any party to that treaty suspected another of viola-

1. M. WILLRICH, *NON-PROLIFERATION TREATY: FRAMEWORK FOR NUCLEAR ARMS CONTROL* 3-4 (1969).

tions. The framers of the Non-Proliferation Treaty were unwilling to accept the principle of verification. Similarly, they could not agree upon any procedure to resolve the differences of interpretations that might arise as to the meaning of the treaty.

The largest source of dissatisfaction with the treaty comes from those who feel that the non-nuclear weapon countries have been asked to make the greatest sacrifices while the nuclear weapon powers have the most to gain from the treaty. Though Professor Willrich admittedly writes from an American point of view, he is very sympathetic and sensitive to this issue.

Though the United States and the Soviet Union are deeply concerned about the spread of nuclear weapons to other countries, they were unwilling to commit themselves to any proposals designed to prohibit the further development of their own nuclear arsenals. Non-nuclear weapon countries such as India are expected to renounce their right of acquiring nuclear weapons in return for a vague and ineffective pledge in the United Nations Security Council from the nuclear weapon powers that threats or the use of nuclear weapons against any non-nuclear weapon nation will not be tolerated. Similarly, while both the United States and the Soviet Union are frantically trying to develop an effective ABM system that will protect their own missiles and cities, the Non-Proliferation Treaty prohibits non-nuclear weapon countries from developing such systems themselves since they involve the use of atomic explosives.

The discrimination against non-nuclear weapon nations continues even in the peaceful exploitation of atomic energy, for the use of nuclear explosives for peaceful purposes is prohibited in the case of the non-nuclear weapon states while the nuclear weapon powers are allowed to develop and use them. Furthermore, the atomic energy industries of the non-nuclear weapon countries are subject to international inspections (and the possibilities of disclosure of valuable commercial secrets) whereas the nuclear weapon states are exempt from any inspection of their own peaceful uses of atomic energy.

Certainly the framers of the Non-Proliferation Treaty were quite aware of these disadvantages to the non-nuclear weapon members and they have pledged that the nuclear weapon powers will facilitate the fullest possible exchange of information and co-operation in the peaceful exploitation of atomic energy. But how reliable are such guarantees or promises? Despite the desperate need of underdeveloped countries today for increased foreign aid from the developed nations and

the never-ending pledges by both the United States and the Soviet Union to provide that assistance, both countries have been reducing the amount of foreign aid in recent years. If the history of the recent past is any guide to our future actions, the unfortunate fact emerges that the nuclear weapon powers are likely to put their own immediate interests ahead of the legitimate needs of the international community. Consequently it should not surprise Americans that many non-nuclear weapon countries such as West Germany, India, and Japan are quite reluctant to accept the Non-Proliferation Treaty in exchange for non-binding assurances from the nuclear powers.

Despite these and several other inadequacies in the present treaty, Professor Willrich is hopeful that the Non-Proliferation Treaty will provide the needed framework for the eventual control of the spread of nuclear weapons. He stresses that the treaty can and must be amended as the international community can agree on further safeguards and arms limitations. Particularly important in this regard is the necessity of bringing Red China within the framework of the treaty as soon as possible. In effect, the treaty gives additional time to try to resolve the differences of opinion on the nature and the degree of nuclear development which threatens the very existence of mankind. Whether we use this temporary reprieve wisely or not remains to be seen.

The book is weakest where it attempts to give us an "insight into the interactions between the processes of international politics and technological innovation."² Here the legalistic and structural approach of the author fails to handle the material adequately. For example, the changes in U.S. policy toward the spread of nuclear weapons can be understood only within the context of the domestic and international pressures on American foreign policy decisions. Yet the book devotes very little attention to the reasons behind the shifts in U.S. policy since 1946.

Despite this shortcoming, Professor Willrich's book remains an indispensable reference work on the Non-Proliferation Treaty. Scholars as well as diplomats and practitioners of international law will find this book helpful in analyzing the complicated and ambiguous provisions of that treaty.

MARIS A. VINOVSIS*

2. *Id.* at 8, 9.

* B.A., 1965, Wesleyan University; A.M., 1966, Harvard University. Presently a teaching fellow at Harvard University.