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**TITLE PAGE**

**Weaponizing State Hierarchy: The Enforcement of the Treaty on the Non-Proliferation of Nuclear Weapons and its Implication on the Principle of Sovereign Equality among UN Member States**

**Research dissertation presented in partial fulfilment of the requirements for  
the degree  
of LLM in International Law**

**Law School, Griffith College Dublin**

**Gywaimen Kassim**

**2024**

## CANDIDATE DECLARATION

Candidate Name: Gywaimen Kassim

I certify that the dissertation entitled **Weaponizing State Hierarchy: The Enforcement of the Treaty on the Non-Proliferation of Nuclear Weapons and its Implication on the Principle of Sovereign Equality among UN Member States** submitted for the degree of **LL.M. in International Law** is the result of my own work and that where reference is made to other work of others, due acknowledgment is given.

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## LIST OF ABBREVIATIONS

CSA	Comprehensive Safeguard Agreements
ENCD	Eighteen Nation Committee on Disarmament
EURATOM	European Atomic Energy Community
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
JCPOA	Joint Comprehensive Plan of Action
NCRI	National Council of Resistance of Iran
NNWS	Non-Nuclear Weapon States
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NWS	Nuclear Weapon States
PTBT	Partial Test Ban Treaty
TNCD	Ten Nation Committee on Disarmament
TNRC	Tehran Nuclear Research Centre
TPNW	Treaty on the Prohibition of Nuclear Weapons
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSCOM	United Nations Special Commission
US	United States of America
VOA	Voluntary Offer Safeguards Agreement
WHO	World Health Organisation
WWI	World War One
WWII	World War Two

## ABSTRACT

*Nuclear weapons are subject to some of the most stringent international regulations, and the United Nations (UN) is central to the successful regulation of these potentially destructive weapons. Under its auspices, the 1967 Treaty on the Non-proliferation of nuclear weapons (NPT) was negotiated, and it remains the primary nuclear regulatory agreement in operation. A major criticism levelled against the NPT is that it creates a system within which a few states enjoy more favourable positions than the majority, and such a system is contrary to the principle of sovereign equality championed by the UN. In this dissertation, the patterns of enforcement of the NPT are considered in an effort to interrogate these criticisms. To ensure that the considerations are robust, the origins and provisions of the NPT are explored, and its available enforcement mechanisms are identified and examined in the process. Case studies are also undertaken to gauge the level of enforcement or non-enforcement against particular states. The findings show that five state parties are able to violate the provisions of the NPT and face no consequences while the remaining parties are held to strict standards of compliance. This work concludes with recommendations for a fairer system of enforcement in hopes that the principles of sovereign equality will be respected in future attempts at nuclear enforcement.*

## 1.0 CHAPTER ONE: INTRODUCTION

**“All animals are equal, but some animals are more equal than others.”<sup>1</sup>**

### 1.1 Background and Motivation

Although George Orwell aimed to critique communist ideologies with the above quote in his 1945 classic, *Animal Farm*, the author inadvertently captured a perfect metaphorical description of an international order that was to emerge two decades after the novella was published.

The international community is sustained by interactions between states that are fundamentally different from one another.<sup>2</sup> While some states may have existed much longer than others and may enjoy larger economies, population, territory, and general global stature, the community purports to operate on the basis of sovereign equality, a principle which regards each state as a valued member with equal rights and responsibilities as every other member.<sup>3</sup> The principle of sovereign equality is a relatively recent development in international relations, only replacing the concept of great-power primacy (which dominated international relations for many years before) in the mid-20<sup>th</sup> century.<sup>4</sup> While certain states could claim to be more important and influential than others under the principle of great-power primacy, the principle of sovereign equality rejects this perspective of the international landscape as an avenue where a state can dominate or be dominated. Instead, it likens states in the international community to individuals under democratic domestic systems, contending that just as the latter are legal personalities subject to the rule of law, states are international personalities, and they must be subject to the same rules and enjoy the same rights and responsibilities.<sup>5</sup>

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<sup>1</sup> George Orwell, *Animal Farm* (Secker and Warburg 1945) at 49.

<sup>2</sup> Georg Sørensen, Jørgen Møller, and Robert Jackson, *Introduction to International Relations: Theories and Approaches* (Oxford University Press 2022).

<sup>3</sup> Martti Koskenniemi and Ville Kari, 'Sovereign Equality' in Jorge Viñuales (ed), *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law* (Cambridge University Press 2020).

<sup>4</sup> Shunji Cui and Barry Buzan, 'Great Power Management in International Society' (2016) 9(2) *The Chinese Journal of International Politics* 181.

<sup>5</sup> Chika Okeke, 'The Doctrine of the Equality of State and Its Applicability to the United Nations Security Council' (2022) 6(1) *African Journal of Law and Human Rights* 97.

States may interact with one another through various avenues, but the most robust and inclusive forum currently available to the international community is the United Nations (UN).<sup>6</sup> As of 2024, the UN boasts a membership of 193 sovereign states which represents 100% of states with undisputed sovereignty.<sup>7</sup> Even some states with disputed sovereignty, such as Palestine and the Republic of Kosovo, enjoy significant representation in the proceedings of the UN, and this bolsters its reputation as the primary platform for international convergence.<sup>8</sup> The UN plays a pivotal role in formulating and enforcing the laws by which states should abide, and it aims to discharge these duties in accordance with the principle of sovereign equality.<sup>9</sup>

**Article 2 (1)** of the **Charter of the United Nations** (UN Charter) provides that the organisation is based on the principle of the sovereign equality of all its members, and it is stated in the preamble of the Charter that the organisation is determined to reaffirm the equal rights of “nations large and small.” The UN attempts to reflect a spirit of equal participation in its affairs, and **Article 9 (2)** of the Charter provides that each member state shall enjoy representation in the General Assembly (UNGA) while **Article 18 (1)** further provides for the right for each member to vote on matters before the UNGA. Although this spirit of sovereign equality is championed as a cornerstone of the UN and the international community in general, many experts have, upon an examination of the realities of international relations, concluded that it enjoys very little application in practice.<sup>10</sup>

Before the declaration of equality in the UN Charter, it was generally recognised that some states were more privileged than others, and the concept of equality was shared only among western states to the exclusion of other states who were considered to be of less importance.<sup>11</sup> During this period, the principle of great-power primacy was in operation, and states with superior resources could dominate and colonise others. As the international community became more civilised, the

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<sup>6</sup> Jussi Hanhimäki, *The United Nations: A Very Short Introduction* (Oxford University Press 2015).

<sup>7</sup> John Moore Jr and Jerry Pubantz, *The New United Nations: International Organization in the Twenty-first Century* (3rd edn, Routledge 2022).

<sup>8</sup> Ardi Imseis, 'On Membership of the United Nations and the State of Palestine: A Critical Account' (2021) 34(4) *Leiden Journal of International Law* 855; Bekim Baliqi, 'Between Legal Norms and Geopolitical Implications: Admission of Kosovo to the United Nations?' (2021) 17 *Balkan Social Science Review* 205.

<sup>9</sup> Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations* (5th edn, Brill Nijhoff 2016).

<sup>10</sup> Thomas Weiss, *What's Wrong with the United Nations and how to Fix it* (3rd edn, John Wiley & Sons 2016); Paul Novosad and Eric Werker, 'Who Runs the International System? Nationality and Leadership in the United Nations Secretariat' (2019) 14 *The Review of International Organizations* 1.

<sup>11</sup> Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press 2007).

concept of sovereign equality gradually usurped the principle of great-power primacy as the basis of interaction between states, but while it appears that the latter principle is totally rejected in today's world, there are clear indications that its tents continue to thrive within the international community.

Scholars have pointed to the inequality fostered by the enjoyment of permanent membership of the UN Security Council (UNSC) by only five member states (China, France, Russia, the United Kingdom, and the United States of America) as one of the obvious vestiges of the principle of great-power primacy.<sup>12</sup> The five states also have one thing in common; they are the only recognised nuclear states i.e. states considered under nuclear treaties to be lawfully in possession of nuclear weapons.<sup>13</sup> It is no coincidence that the nuclear states enjoy the privilege of permanent membership of the UNSC, and the author contends within this research project that the regulation of nuclear weapons reveals the most blatant example of disregard for the principle of sovereign equality among states within the UN.

Nuclear weapons have remained a major international topic since the Hiroshima and Nagasaki bombings at the end of World War II (WWII) demonstrated their destructive potentials, and the international order that emerged shortly after was, and still is, very sensitive to these capabilities.<sup>14</sup> Historically, the outcomes of wars between states directly result in the increase and decrease in international stature of the victor and vanquished respectively, and after WWII there was a general understanding that whoever possessed this nuclear power could emerge victorious in subsequent wars. This is what led Morgenthau to conclude that “the availability of nuclear power as an instrument of foreign policy is the only revolution that has occurred in the structure of international relations since the beginning of history.”<sup>15</sup>

While Morgenthau's position may be an exaggeration, one cannot deny that the dynamics within the international community has been shaped significantly by nuclear capabilities since the mid-

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<sup>12</sup> Matthew Gould and Matthew Rablen, 'Reform of the United Nations Security Council: Equity and Efficiency' (2017) 173(1) Public Choice 14.

<sup>13</sup> Hans Blix, 'UN Security Council vs. Weapons of Mass Destruction' (2016) 85 Nordic Journal International Law 147.

<sup>14</sup> Okubor Nwachukwu and Luke Ogiribo, 'Nuclear Proliferation and the New World Order: What Role for International Law?' (2021) 3 International Review of Law and Jurisprudence 169.

<sup>15</sup> Craig Campbell, 'Hans Morgenthau and the World State Revisited' in Michael Williams (ed), *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations* (Oxford University Press 2007) at 206.

1940s. In recognition of the pivotal role played by nuclear weapons in the relations between states, the UN has attempted to regulate the possession and use of such weapons through various treaties and agreements. The **Treaty on the Non-Proliferation of Nuclear Weapons** (NPT) was the first major treaty to regulate the possession and use of nuclear weapons, and it remains the primary nuclear instrument by which states are to abide.<sup>16</sup>

The NPT entered into force in 1970, and except for India, Pakistan, Israel, South Sudan, and North Korea, all UN member states have ratified the Treaty in an overwhelming display of the support for nuclear regulation.<sup>17</sup> The Treaty aims to nullify the threat of nuclear war by prohibiting the acquisition of nuclear weapons by non-nuclear weapon states and facilitating disarmament by nuclear weapon states. Currently, while most states that were non-nuclear at the time they ratified the Treaty remain non-nuclear either by choice or by enforcement, none of the nuclear states have made any substantial efforts towards disarmament. Even attempts at developing and testing nuclear weapons by states who did not sign or ratify the Treaty are swiftly opposed and, in some cases, sanctioned by the UN and the nuclear powers.<sup>18</sup> This attitude of enforcing the NPT obligations against acquiring nuclear weapons by non-nuclear weapon states while ignoring the disregard for the disarmament obligations by nuclear states suggests a disparity in the enforcement of the Treaty, and it questions the commitment of the international community to the principle of sovereign equality. This commitment will be examined in this research through an examination of the patterns of enforcement of the NPT by the UN.

## 1.2 Central Research Question

This dissertation will be guided by the question: *Are the provisions of the NPT equally enforced against all parties?*

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<sup>16</sup> Thomas Graham, 'The Nuclear Non-proliferation Treaty: Delayed Review—Issues Old and New' (2021) 4(1) *Journal for Peace and Nuclear Disarmament* 186.

<sup>17</sup> Amy Bosnjak, 'The Nuclear Non-Proliferation Treaty-Obligations and Rights of States Parties: Balancing the Pillars of Non-Proliferation, Peaceful Use, and Disarmament' (2017) 8 *Journal of the Philosophy of International Law* 39.

<sup>18</sup> Michal Smetana, '(De-) Stigmatising the Outsider: Nuclear-armed India, United States, and the Global Non-proliferation Order' (2020) 23(3) *Journal of International Relations and Development* 535.

While answering this question, the methods and practices of enforcement of the NPT will be examined to address the topic of this dissertation. The result of this exercise will reveal whether or not a state of inequity exists in the global nuclear order and within the UN itself.

To ensure that the central question is properly engaged, a few supporting questions will also be investigated. They include:

1. *Are the provisions of the NPT indicative of recognition of inequality between states?*
2. *Can the NPT be equally enforced?*
3. *Is equal enforcement necessary? (i.e. are there benefits of unequal enforcement?)*

### 1.3 Aims and Objectives

The aim of the dissertation is to investigate the level of respect for the principle of sovereign equality in the international community by focusing on the enforcement of the provisions of the NPT.

The objectives of the dissertation include:

- Attempting a historical overview of the concept of sovereign equality and its application in the global nuclear order.
- Discussing the NPT, with emphasis being placed on the circumstances behind its creation, the meaning and implications of certain provisions, and the means and instances of enforcement of these provision with the goal of exposing the existence of a hierarchy of states within in the international community.
- Suggesting mechanisms to promote equal enforcement of the treaty among parties to the NPT.

## 1.4 Methodologies

The following methodologies will be adopted in completing this research:

### **1. Doctrinal Analysis:**

The provisions of the NPT will be critically analysed in terms of the obligations it places on the parties, and it is from this analysis that questions about the attitude of the drafters to the concept of sovereign equality among parties will be answered. The intended means of enforcement of the Treaty may also be inferred from studying the text, but the provisions few other documents such as **Chapter VII** of the **UN Charter** will be discussed to fully understand the available options for enforcement of the Treaty.

The NPT cannot be fully appreciated without discussing, or at least alluding to, provisions in related treaties such as the 2021 **Treaty on the Prohibition of Nuclear Weapons** (TPNW).

### **2. Socio Legal Analysis:**

The dynamics that determine the existence or otherwise of a hierarchy of states within the UN as well as those that determine the attitude towards the enforcement of the NPT against one state or the non-enforcement against another are largely social in nature, meaning that the legal examination of the subject must be combined with a social analysis to achieve a comprehensive exploration of the topic. Through this socio-legal approach, the law as it appears in academic books and scholarly arguments will be juxtaposed with law in actual practice within the international society, thereby laying the foundations for panoramic conclusions.

### **3. Historical Analysis:**

The subjects of equality of states within the UN and enforcement of nuclear weapon regulation enjoy eventful pasts which will be examined where necessary. This historical journey will provide much needed context for understanding the discussions that will feature within the body of the dissertation.

## 1.5 Literature Review

A rich body of academic literature exists on the subject of sovereign equality within the UN as well as the state dynamics constantly at play in terms of enforcing nuclear weapon regulations.

The position that states within the UN enjoy sovereign equality has been challenged for a long time, with Greig stating as far back as 1976 that he was in no doubt that the UN Charter itself is based on the principle of great power hegemony.<sup>19</sup> Disagreeing with Greig, Bleckman asserts that the principle of sovereign equality underlines the relationship between states in the UN, and that any exceptions to the principle were ‘based on pragmatic reasons and cannot be interpreted as a general feature of the Charter’.<sup>20</sup> The argument is still raging on in current discourse, with Weiss arguing that political will and capability within the UN often determines which values and preferences will prevail and why,<sup>21</sup> while other scholars claim that, from a democratic point of view, it is undesirable that some countries such as China and the United States (US), each with many millions of inhabitants, have a vote equal to that of the others like Seychelles, ‘with all of 80,000 people’.<sup>22</sup>

With regards to the question of enforcement of the NPT, some authors have called for a mass defection of the non-nuclear states from the treaty as a result of unequal enforcement.<sup>23</sup> According to Doyle, there is a strict and narrow enforcement of non-proliferation requirements placed on non-nuclear states while nuclear states, on the other hand, are permitted to avoid their nuclear disarmament commitments without fear of sanctions.<sup>24</sup> Some others have called for stricter enforcement of the non-proliferation requirements while totally ignoring the equally important matter of enforcing disarmament obligations, and the comments of McDade appear to be the most interesting among such literature. While advocating for harsher sanctions for non-nuclear states, he lamented that North Korea and Iran, “two of the most volatile rogue states in the world today

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<sup>19</sup> Donald Greig, *International Law* (2nd revised edn, Butterworth & Co Publishers Ltd 1976) 709.

<sup>20</sup> Albert Bleckman, ‘Article 2(1)’ in Bruno Simma (ed), *The Charter of the United Nations: A Commentary* (Oxford University Press 1994) 89.

<sup>21</sup> Thomas Weiss, David Fosythe, Roger Coate, and Kelly-Kate Pease, *The United Nations and Changing World Politics* (8th edn, Westview Press 2017) 3.

<sup>22</sup> Peter Baehr and Leon Gordenker, *The United Nations: Reality and Ideal* (4th ed, Palgrave Macmillan 2005) 47.

<sup>23</sup> Thomas Doyle, ‘A Moral Argument for the Mass Defection of Non-Nuclear-Weapon States from the Nuclear Nonproliferation Treaty Regime’ (2017) 23(1) *Global Governance* 15-26.

<sup>24</sup> *ibid* at 15.

will be in a position to use nuclear weapons, arm terrorist organizations with nuclear weapons, and possibly **demand a seat at the table of world powers due to nuclear weapon capabilities**”.<sup>25</sup> McDade’s comments suggest a normalised practice of discrimination between states who should be regarded as ‘world powers’ and others who are not worthy of the title. His comments also indicate that the possession of nuclear capabilities enables a state to ‘demand’ this title, meaning that the enforcement of the NPT may be critical in deciding who may attain this status and who may be excluded from the ‘table’.

The works highlighted above are by no means exhaustive on the topic, and this research will critically engage with the works of many other authors and experts to add a unique voice to these discussions.

### 1.6 Research Structure

In the second chapter, the origins of the NPT will be traced to provide historical context for subsequent discussions, and relevant articles of the Treaty will be examined to establish the different obligations placed on Parties. The chapter will conclude with an analysis of these obligations in relation to the principles of sovereign equality and international rule of law. The third chapter will explore the enforcement mechanisms available to the UN, focusing on their adequacy and effectiveness as well as the practicability of applying these mechanisms to all Parties. In the fourth chapter, case studies on the enforcement of the Treaty against particular states, including Iran and North Korea, will be presented and juxtaposed with cases of non-enforcement against nuclear weapon states with the aim of investigating the reasons for inconsistencies in enforcement. Suggestions for more equitable and impartial systems of enforcement will be advanced in the fifth chapter which will also feature a summary of the entire research project, its findings, and a brief remark on the possible future directions.

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<sup>25</sup> Patrick McDade, ‘The Criminalization of the Proliferation of Nuclear Weapons: Providing a Statutory Regime to Criminalize and Prosecute Nuclear Weapons Proliferators’ (2012) 30(1) Wisconsin International Law Journal 112-140, 113.

## 2.0 CHAPTER TWO: THE NPT AS THE PRIMARY INTERNATIONAL NUCLEAR REGULATORY INSTRUMENT

### 2.1 Brief History of Arms Regulation

The practice of regulating the use of weapons, especially during warfare or times of conflict, has been in existence for millenniums, with evidence showing that agreements determining the rules of weaponry were used during the Sacred Wars of the ancient Greek Amphictyonic leagues (mid-6<sup>th</sup> century BC).<sup>26</sup> A few centuries later, Carthage's use of war elephants was banned by the Roman Republic after the end of the Second Punic War (218-201 BC), and Carthage was forced to give up its warships after being defeated.<sup>27</sup> In more recent history, the **Anglo-French Naval Declarations of 1787**, which Keefer identifies as one of the earliest agreement negotiated specifically for the purpose of limiting armaments, contained commitments to the effect that both sides were to discontinue armaments and all preparations of war.<sup>28</sup>

As humanitarian law developed in the 1860s, states began to make deliberate efforts to minimise the destructions that attended war, and this led to several conferences being organised to foster global agreements and commitments to rules of war. Notably, the **Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (St Petersburg Declaration) of 1868** was signed at a conference organised by the Russian Empire to prohibit the use of explosive projectiles which the Russian Empire itself had developed.<sup>29</sup> The Russian Empire had correctly predicted the disastrous effect of such projectiles, and, of its own volition and in good faith, it facilitated the **Declaration** prohibiting the use of such weapons.

By the start of the 20<sup>th</sup> century, many significant treaties regulating armaments, either directly or indirectly, were in operation, including the **Rush-Bagot Treaty of 1817** and the **Hague Conventions (1899 and 1907)**. These agreements regulated weapons through various measures,

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<sup>26</sup> Joseph Kruzal, 'Arms Control: What's Wrong with the Traditional Approach' in Paul Viotti (ed), *Conflict and Arms Control: An Uncertain Agenda* (Taylor and Francis 1986).

<sup>27</sup> Pedro Barceló, 'Punic Politics, Economy, and Alliances, 218-201' in Dexter Hoyos (ed), *A Companion to the Punic Wars* (Oxford: Wiley-Blackwell 2015), 373.

<sup>28</sup> Scott Keefer, *The Law of Nations and Britain's Quest for Naval Security: International Law and Arms Control, 1898-1914* (Palgrave Macmillan 2011).

<sup>29</sup> Emily Crawford, 'The Enduring Legacy of the St Petersburg Declaration: Distinction, Military Necessity, and the Prohibition of Causing Unnecessary Suffering and Superfluous Injury in IHL' (2019) 20(4) *Journal of the History of International Law* 544.

including total prohibition on the development, use, and/or proliferation of certain weapons, placing significant limitations on these acts, or calling for disarmament in situations where these weapons were already developed or in use.<sup>30</sup>

However, the general atmosphere of conflict that endured for most of the first half of the 20<sup>th</sup> century, beginning with the outbreak of the first world war/WWI (1914-1918), served as a test for the effectiveness of these weapon regulatory agreements, and the unprecedented combatant and civilian casualties that occurred during WWI proved to be the first clap of thunder. By the second world war/WWII (1939-1945), the world was amid a heavy storm of chaos and destruction facilitated primarily by weapons of different sorts, but lightning did not strike until the second week of August 1945, less than a month before the end of the war.<sup>31</sup>

## 2.2 The Development of Nuclear Weapons:

The discovery of nuclear fission in December 1938 was eerily punctual because, less than a year later, the commencement of WWII saw some of the major players in the war instituting projects to adapt this new discovery for violent purposes.<sup>32</sup> The British and Canadian governments instituted the joint “Tube Alloys” program, Nazi Germany funded the *Uranverein/Uranprojekt* (Uranium Club/Uranium Project), and the US initiated the Manhattan Project, all aimed at harnessing nuclear power for the purposes of making a bomb with unprecedented capacity.<sup>33</sup> As the war waged on, the British/Canadian program fused with the American project, and the Nazi German project was abandoned after the tides of war began to turn against them.<sup>34</sup> By the time Nazi Germany surrendered, the Manhattan Project had already successfully developed and tested its atomic bombs.

The war in the Pacific Theatre continued even after Germany surrendered, and with the knowledge that they possessed a weapon that could determine the war, the American government, in a joint

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<sup>30</sup> Robert Blum, *The Foundations of Modern Arms Control: An International History, 1815-1968* (Taylor and Francis 2024).

<sup>31</sup> Ronni Alexander, ‘Reflecting on Hiroshima/Nagasaki at 75’ (2020) 32(3) *Peace Review* 325.

<sup>32</sup> Vaclav Smil, *Energy in World History* (Routledge 1994).

<sup>33</sup> Andrew Futter, *The Politics of Nuclear Weapons* (2nd edn, Palgrave Macmillan 2021).

<sup>34</sup> Laura Considine, ‘Narrative and Nuclear Weapons Politics: The Entelechial Force of the Nuclear Origin Myth’ (2022) 14(3) *International Theory* 551.

effort with the British and Chinese Government, made the **Proclamation Defining Terms for Japanese Surrender (Postdam Declaration)** on July 26 1945 where it was stated that the only alternative for Japan, if it refused to surrender, was “prompt and utter destruction”.<sup>35</sup> The Empire of Japan refused to surrender, and on the 6<sup>th</sup> and 9<sup>th</sup> of August 1945, the American government fulfilled its promise by attacking the Japanese cities of Hiroshima and Nagasaki with its nuclear bombs.

Approximately 213,000 people, mostly civilians, died either instantaneously or within five months due the direct effects of the nuclear bombings of Hiroshima (140,000) and Nagasaki (73,000), and an estimated 210,000 people who survived these first five months became known as the *hibakusha*, a group of people united by physical and mental trauma due to their experience of one of the world’s most catastrophic events.<sup>36</sup> Although the war ended a week after the bombings when the Empire of Japan, crippled by the effects of just two bombs, surrendered to the allies, the world powers immediately commenced preparations for another war. If a third world war was to break out, all the major powers wanted to be prepared with their own nuclear weapons ready for deployment, and thus, the nuclear arms race commenced.<sup>37</sup>

The international community understood the power that a state could enjoy if it had nuclear weapons in its arsenal and, from the end of WWII, nuclear power became currency in foreign relations and global discussion. The Soviet Union (from which Russia emerged) tested its first nuclear weapon in 1949, Britain conducted its first test in 1952, France began nuclear tests in 1960, and the Chinese government commenced its nuclear testing in 1964.<sup>38</sup> The environmental and biological threats that these tests posed to the earth became apparent with each test, but the most significant concern remained the possibility of mankind’s destruction, a glimpse of which had been provided by the Hiroshima and Nagasaki bombings.

### 2.3 The NPT

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<sup>35</sup> Samuel Walker, *Prompt and Utter Destruction: Truman and the Use of the Atomic Bombs Against Japan* (3rd edn, University of North Carolina Press 2016) 69.

<sup>36</sup> Masao Tomonaga, ‘The Atomic Bombings of Hiroshima and Nagasaki: A Summary of the Human Consequences, 1945-2018, and Lessons for Homo Sapiens to End the Nuclear Weapon Age’ (2019) 2(2) *Journal for Peace and Nuclear Disarmament* 491.

<sup>37</sup> Brendan Green, *The Revolution that Failed: Nuclear Competition, Arms Control, and the Cold War* (Cambridge University Press 2020).

<sup>38</sup> Toshihiro Higuchi, *Political Fallout: Nuclear Weapons Testing and the Making of a Global Environmental Crisis* (Stanford University Press 2020).

In a bid to address the environmental and biological problems posed by nuclear weapon testing, the **Partial Test Ban Treaty** (PTBT) 1963 was negotiated to limit nuclear weapon testing activity.<sup>39</sup> The PTBT failed to address substantial issues relating to the development and use of nuclear weapons, meaning that humanity was still at risk of destruction in the event of a global conflict. Recognising that a precarious situation was slowly taking shape, the international community decided to create an agreement to directly regulate the nuclear problem before it became too late.

Discussions about disarmament had begun around the mid-1950s, and the “Irish Resolutions” which were proposed by the Irish representatives at the 1958 General Debate of the UN General Assembly was the first truly global attempt at regulating the spread of nuclear weapons.<sup>40</sup> Although it was vehemently rejected by the US, the resolutions were eventually passed, and they are recognised as the forerunner of the NPT.<sup>41</sup> However, it was only in 1960, after a Berlin meeting between the states that were considered the “Big Four” at the time (US, Britain, Soviet Union, and France) that concrete action was set in motion.<sup>42</sup>

This meeting provided the impetus for a United Nations Disarmament Commission which then created a Ten Nation Committee on Disarmament (TNCD) consisting of the Big Four as well as Canada, Italy, Bulgaria, Czechoslovakia, Poland, and Romania.<sup>43</sup> Tensions arising from the U-2 Incident in May 1960 and the subsequent cancellation of the 1960 Paris Summit which was scheduled to take place just two weeks after the incident caused the TNCD to suspend its meetings indefinitely, and by the time the tensions had subsided in 1961, a new Eighteen Nation Committee on Disarmament (ENCD) was constituted, and it included the original members of the TNCD as well as Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden, and the United Arab Republic.<sup>44</sup>

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<sup>39</sup> Sabine Bauer and Cormac O'Reilly, 'The Comprehensive Nuclear-test-Ban Treaty Organization (CTBTO): Current and Future Role in the Verification Regime of the Nuclear-test-Ban Treaty' in Jonathan Black-Branch and Dieter Fleck (eds), *Nuclear Non-Proliferation in International Law: Volume II-Verification and Compliance* (Asser Press 2016).

<sup>40</sup> Mervyn O'Driscoll and Jamie Walsh, 'Ireland and the 1975 NPT Review Conference: Norm-building and the Role of Small States' (2014) 25 *Irish Studies in International Affairs* 101.

<sup>41</sup> Noel Dorr, *Ireland at the United Nations: Memories of the Early Years* (IPA 2010).

<sup>42</sup> Coit Blacker, *International Arms Control: Issues and Agreements* (2nd edn, Stanford University Press 1984).

<sup>43</sup> Louise Arimatsu, 'Transformative Disarmament: Crafting a Roadmap for Peace' (2021) 97(1) *International Law Studies* 35.

<sup>44</sup> Judith Thorn, 'The UN Conference on Disarmament' in Eric Myjer and Thilo Marauhn (eds), *Research Handbook on International Arms Control Law* (Edward Elgar Publishing 2022)

The attitude of the US and the Soviet Union (who were the “Big Two” within the Big Four) towards negotiating a nuclear regulatory treaty was, at best, lackadaisical, and the TNCD as well as the ENCD were not expected to yield substantial fruit.<sup>45</sup> In fact, the US and the Soviet Union favoured an approach where they tolerated and, in some cases, facilitated the nuclear programs of their close allies in order to achieve alliance cohesion and maintain influence over the design, production, and use of these weapons.<sup>46</sup> This attitude may have stemmed from the fact that the expertise and resources needed for the development of nuclear weapons were available only to the Big Four, and they had the means to deter other nations if the need arose.

The TNCD reflected their disregard for non-western nations on matters of nuclear weapons, and although the addition of eight more members in the ENCD was an attempt to project an inclusive character, the Big Four, especially the US and the Soviet Union, were still in charge. The ENCD met regularly but made little progress for its first few years of existence, but when China managed to record a successful nuclear test in 1964, the US and the Soviet Union realised that it was in their interest to restrict any further admissions into the nuclear club.<sup>47</sup>

Jolted by the successful Chinese test, the prompt negotiation of a regulatory treaty rose to the top of the list on the agenda of the US, and by 1968, the ENCD delivered the fruits of its labour to the UN in the form of a complete draft of the document that was to become the NPT.<sup>48</sup> Popp, recognising the political artifice that facilitated a successful negotiation, maintains that the ENCD was only able to deliver a draft due to the US and Soviet Union’s desire to “freeze the status quo” rather than a commitment to the survival of humanity.<sup>49</sup> Regardless of the motivations for a successful negotiation, the importance of the document was not in doubt, and it was opened for signature on July 1, 1968.<sup>50</sup>

The NPT came into force in 1970 with 46 parties, and although many states did not sign and ratify the Treaty immediately, it was the refusal of France and China, two nuclear powers, that caused

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<sup>45</sup> Blum (n 30).

<sup>46</sup> *ibid* at 12.

<sup>47</sup> *ibid*.

<sup>48</sup> Sara Kutchesfahani, ‘A Staple of Global Nuclear Order’ (2018) 48(5) *Arms Control Today* 6.

<sup>49</sup> Roland Popp, ‘The Long Road to the NPT: From Superpower Collusion to Global Compromise’ in Roland Popp, Liviu Horowitz, and Andreas Wenger (eds), *Negotiating the Nuclear Non-Proliferation Treaty: Origins of the Nuclear Order* (Routledge 2017) 9.

<sup>50</sup> Daryl Kimball, ‘A Historical Timeline’ (2018) 48(5) *Arms Control Today* 16.

the most concern.<sup>51</sup> However, both states acceded to the NPT in 1992, meaning that all the nuclear powers were bound by its provisions, and by the turn of the century, the NPT boasted 187 state parties.<sup>52</sup>

While a few other nuclear regulatory treaties have been agreed, most notably the 2021 TPNW which has not been signed by any of the nuclear powers, only the NPT, with a current count of 190 parties, enjoys an almost universal effectiveness. Thus, a study of the enforcement of the provisions of the NPT will present the clearest picture of the relevance of sovereign equality in nuclear regulation.

#### 2.4 The Provisions of the NPT

The NPT consists of eleven articles which experts have grouped into three categories/pillars namely: non-proliferation, disarmament, and the right to peacefully use nuclear technology.<sup>53</sup> Unlike most other treaties, the NPT does not confer equal rights and obligations upon parties. Instead, it groups parties into “nuclear weapon states” (NWS) and “non-nuclear weapon states” (NNWS) and places responsibilities and rights on them based on the category to which they belong. **Article IX (3)** defines NWS as states as which had manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.

This party classification feature of the NPT immediately raises concerns of favouritism and suggests the existence of a hierarchy among the parties in the eyes of the Treaty.<sup>54</sup> By splitting the parties into categories, striking a fair balance between the rights and duties given to them was always going to prove difficult, and it is no surprise that this categorisation remains a controversial subject in academic and expert commentary.<sup>55</sup> Due to the apocalyptic tendencies of nuclear

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<sup>51</sup> Lewis Dunn, ‘The NPT: Assessing the Past, Building the Future’ (2009) 16(2) Non-proliferation Review 143.

<sup>52</sup> Nobuyasu Abe, ‘The NPT at Fifty: Successes and Failures’ (2020) 3(2) Journal for Peace and Nuclear Disarmament 224.

<sup>53</sup> Adérito Vincente, ‘The Future of the Nuclear Nonproliferation and Disarmament Regime’ in Adérito Vincente, Polina Sinovets, and Julien Theron (eds), *Russia’s War on Ukraine: The Implications for the Global Nuclear Order* (Springer Nature Switzerland 2023).

<sup>54</sup> Fahad AlAsaker, ‘The Discriminatory Nature of the Nuclear Non-Proliferation Treaty’ (2020) 29 Multi-Knowledge Electronic Comprehensive Journal for Education & Science Publications 1.

<sup>55</sup> Sidra Hamidi, ‘Law as Discursive Resource: The Politics of the Nuclear/Non-nuclear Distinction in the Non-Proliferation Treaty’ (2020) 26(2) European Journal of International Relations 545.

warfare, one would expect that all parties to the Treaty would be placed on a level playing field to allay fears of potential destruction, but the Treaty unmistakably grants nuclear advantage to five states, effectively placing all other states at their mercy. However, each NNWS was aware of the NPT's content before signing or acceding to the Treaty, and the provisions remain in force and unchanged even after ten review conferences (the most recent was held in August 2022).<sup>56</sup>

The continued survival of the provisions of the NPT for over half a century suggests a baffling satisfaction by NNWS with the state of affairs created by the Treaty. To understand the reasons behind the perseverance of the NPT despite its glaring flaws, it is imperative to critically examine its provisions. For the sake of cohesion, the provisions will be examined under the category/pillar which they fall.

## 1. Non-Proliferation

The provisions on non-proliferation are contained in **Articles I-III**.

**Article I** provides:

*Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.*

While the provisions of **Article I** place an obligation on NWS, such an obligation is ultimately to their own benefit as it cements their exclusive nuclear power status. Since the Big Two were leading opposing blocs of global association which were steadily heading for each other on a collision course, **Article I** was motivated partly by a desire to address the intention of the Big Two to arm their NNWS allies with nuclear weapons in case a major worldwide confrontation

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<sup>56</sup> Gaukhar Mukhatzhanova, '10th NPT Review Conference' (2022) 52 (8) Arms Control Today 20.

occurred.<sup>57</sup> By freezing the nuclear status quo, the destructive tendencies of such a confrontation were greatly reduced, but the power dynamics in international relations were permanently altered in favour of NWS.<sup>58</sup>

Surprisingly, some of the NWS continue to engage in actions that could be interpreted as offensive to the provisions of **Article I**. Examples may be found in Russia's transfer of some of its nuclear weapons into Belarussian territory during the Russo-Ukrainian war and the North Atlantic Treaty Organisation's (NATO) nuclear deterrence program which involves the hosting of nuclear weapons by NNWS members such as Germany, Belgium, Italy, and Turkey.<sup>59</sup> The lukewarm reactions to these potentially transgressive actions will be discussed further in Chapter 4, and they will be juxtaposed with the more swift and decisive reactions to infringements of the NPT provisions by NNWS.

Some NWS continue to transfer materials and equipment for the purposes of nuclear weapon development among themselves, and the 1958 **US-UK Mutual Defence Agreement**,<sup>60</sup> which remains in force, serves as one of the clearer examples of agreements that challenge **Article I** of the NPT. Although **Article 5 (b)** of the **US-UK Agreement** prohibits the transfer of "atomic weapons" between the parties, **Article 3** provides for the exchange of materials and equipment such as nuclear propulsion plants between the states. The Agreement attempts to exploit the NPT's failure to provide a definition of nuclear weapons by allowing the transfer of information and equipment which, on their own, do not amount to a nuclear weapon.<sup>61</sup> However, the information and equipment could be easily combined to produce nuclear weapons.<sup>62</sup> It is also unlikely that such

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<sup>57</sup> Daria Selezneva, 'Negotiations on Articles I and II of NPT: History and Lessons Learned' in Vladimir Orlov and Sergey Semenov (eds), *Russian–American Nuclear Non-proliferation Dialogue: Lessons Learned and Road Ahead* (Springer Nature 2022).

<sup>58</sup> Marianne Hanson, 'Power to the Have-nots? The NPT and the Limits of a Treaty Hijacked by a "Power-over" Model' (2022) 43(1) *Contemporary Security Policy* 80.

<sup>59</sup> Mariana Budjeryn, 'Distressing a System in Distress: Global Nuclear Order and Russia's War against Ukraine' (2022) 78(6) *Bulletin of the Atomic Scientists* 339; Mika Hayashi, 'NATO's Nuclear Sharing Arrangements Revisited in Light of the NPT and the TPNW' (2021) 26(3) *Journal of Conflict and Security Law* 471.

<sup>60</sup> **Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the uses of Atomic Energy for Mutual Defense Purposes 1958**

<sup>61</sup> Norman Dombey, 'Article I of the Non-Proliferation Treaty and United Kingdom—United States Nuclear Weapon Cooperation' in Ian Bellany, Coit Blacker, and Joseph Gallacher, *The Nuclear Non-proliferation Treaty* (Frank Cass & co 1985).

<sup>62</sup> *ibid.*

an agreement would be allowed to exist if an NNWS was the receiving party, casting more doubt on the Agreements compliance with the NPT.

In case an NWS wishes to disregard the provisions of **Article I** and attempt a transfer of nuclear weapons to NNWS, the latter are obliged by **Article II** to reject such an attempt. **Article II** provides:

*Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.*

By placing a positive obligation on NNWS, **Article II** ensures that the onus of curbing nuclear proliferation by transfer is not based only on a negative obligation on NWS.

While the obligation to reject transfers of nuclear weapons may not have been controversial, **Article II** goes further to prohibit the manufacturing or acquisition by any other means of nuclear weapons by NNWS. Since the nuclear frenzy was in full flow at the time the NPT came into force, some NNWS states were in different stages of nuclear development programs, with some, such as Sweden, even making clandestine plans to begin testing their weapons.<sup>63</sup> These nuclear development programs involved incredible amounts of human and financial resources, and halting these programs meant that the affected states were going to record significant losses. During the negotiation of the Treaty, states such as Brazil and India “stressed the discriminatory aspect” of this obligation against manufacturing nuclear weapons while NWS were allowed to continue such production.<sup>64</sup> The NWS rejected the suggestion of Brazil and India to include obligations prohibiting NWS from manufacturing new weapons, and in response to the reluctance of NWS to compromise, Brazil and India initially refused to be parties to the Treaty.<sup>65</sup> Although Brazil finally

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<sup>63</sup> Thomas Jonter, ‘Sweden: Nuclear Acquisition or Disarmament?’ in Pascal Lottaz and Yoko Iwama (eds), *Neutral Europe and the Creation of the Nonproliferation Regime: 1958-1968* (Taylor & Francis 2023).

<sup>64</sup> Bertrand Goldschmidt, ‘The Negotiation of the Non-proliferation Treaty (NPT)’ (1980) 22(3) IAEA Bulletin 73, at 73.

<sup>65</sup> *ibid.*

acceded to the NPT in 1998 as one of the final states to do so, India remains a non-party, reflecting the feeling of unfairness that may be triggered by **Article II**.

The provisions of **Article III**, which practically require NNWS to submit to inspections and regulation by the International Atomic Energy Agency (IAEA), add insult to injury by widening the gap between the obligations of NWS and NNWS under the Treaty. **Article III (1)** provides that such regulations and inspections are necessary in “preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices,” but by subjecting only NNWS to such obligations, the NPT encourages an idea that some states are above laws and regulations that others are strictly subject to.<sup>66</sup>

The IAEA is an autonomous organisation within the UN System, but unlike most other organisations within this system, the IAEA works very closely with the UNSC.<sup>67</sup> **Articles 3 (7) (b)** and **12 (7) (c)** of the **Statute of the International Atomic Energy Agency** (IAEA Statute) empower the IAEA to report directly to the UNSC after inspecting NNWS, and since the NWS exclusively enjoy permanent seats on the UNSC, NNWS feared that such inspections could amount to industrial espionage.<sup>68</sup> NNWS are also compelled to complete Comprehensive Safeguard Agreements (CSA) with the IAEA which empower the IAEA to inspect any of their nuclear sites as well as exercise other wide supervisory powers over their nuclear programs.<sup>69</sup>

During negotiations, NNWS sought to extend this inspection requirement to NWS, but the NWS rejected such a condition.<sup>70</sup> Instead, the NWS agreed to explore Voluntary Offer Safeguards Agreement (VOA) with the IAEA.<sup>71</sup> VOAs are similar to CSAs but, as the name suggests, NWS are not compelled to complete such agreements and may only enter into them voluntarily. Also, unlike CSAs, VOAs allow NWS to choose what particular facilities of theirs may be inspected. Although the NPT does not provide for VOAs (since they are voluntary), all NWS have VOAs in

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<sup>66</sup> Robert Brown and Jeffrey Kaplow, ‘Talking Peace, Making Weapons: IAEA Technical Cooperation and Nuclear Proliferation’ (2014) 58(3) *Journal of Conflict Resolution* 402.

<sup>67</sup> Hamid Eslamizad, ‘IAEA Reporting Procedure to the UN Security Council with Particular Reference to the Iran Nuclear Case’ (2023) 53(3) *Public Law Studies Quarterly* 1443.

<sup>68</sup> John Carlson, ‘The Evolution of IAEA Safeguards: Technical, Political, and Cultural Dimensions’ in Joseph Pilat (ed), *The International Atomic Energy Agency: Historical Reflections, Current Challenges, and Future Prospects* (Routledge 2021).

<sup>69</sup> David Fischer and Paul Szasz, *Safeguarding the Atom: A Critical Appraisal* (Routledge 2020).

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

force with the IAEA, but the stark differences in obligations and rights on parties to the Treaty means that the level of accountability of states to the IAEA depends on their status as NWS or NNWS.

European nations who were members of the European Atomic Energy Community (EURATOM) contended that since they were already subject to stringent safeguards and measures under the terms of the EURATOM agreement, they should be exempted from the purview of the IAEA.<sup>72</sup> This contention was also rejected by the NWS.

Currently, 182 NNWS parties to the NPT have deposited CSA with the IAEA in compliance with the provisions of **Article III**.<sup>73</sup> This overwhelming attitude of compliance may appear surprising since many states expressed dissatisfaction with this condition, but the realities of diplomacy in a post nuclear world makes it unlikely that any state would act contrary to the joint wishes of the NWS.

## 2. Disarmament

The NPT's provisions on disarmament are contained in **Article VI** which provides:

*Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.*

While the provisions on non-proliferation possess a character of precision and unambiguity, the sole provision on disarmament is intentionally vague and aspirational, raising a red flag as to the commitment of the NPT to the issue.

First, although it recognises only five NWS, it places the obligation to pursue negotiations towards disarmament on each party to the Treaty. Lodgaard suggests that NNWS have a role to play in

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<sup>72</sup> John Krige, 'Euratom and the IAEA: the Problem of Self-inspection' (2015) 15(3) Cold War History 341.

<sup>73</sup> Trevor Findlay, *Transforming Nuclear Safeguards Culture: The IAEA, Iraq, and the Future of Non-proliferation* (MIT Press 2022).

disarmament efforts by leaning on the NWS to “do more in the name of international security.”<sup>74</sup> He further suggests that NNWS may inspire NWS to disarm by deepening their own commitments to remaining non-nuclear. According to him, “the more convincingly non-nuclear they [NNWS] become, the easier it will be for the NWS to go zero.”<sup>75</sup>

The practicability of NNWS “leaning on” NWS on nuclear matters is doubtful, especially when one considers the disregard with which NWS treated the interests of NNWS during the negotiations of the NPT. Many of the subsequent nuclear treaties that were drafted and agreed with significant input from NNWS have been ignored by NWS, with the 2021 TPNW unable to boast a single NWS party.<sup>76</sup> As far as the nuclear subject is concerned, there seems to be a lack of balance or room for compromise during negotiations. Nuclear weapons appear to be the only relevant cards during such negotiations, and by holding all the cards, NWS are bound to dominate all other parties on matters of nuclear policy.

Similarly, the possibility of NNWS inspiring NWS disarmament by becoming more convincingly non-nuclear is slim. The more likely outcome of such a strategy by NNWS will be the strengthening of the position of NWS, and the cultivation of a belief that they (NWS) enjoy a right above other states to pursue their interests, regardless of the detrimental effects that such acts may have on global peace and order.

Second, the Article is carefully crafted to refrain from giving any concrete directions towards disarmament, instead leaving the parties to “pursue negotiations in good faith” for a treaty on general and complete disarmament. Freedman points out that these provisions do not require the parties to achieve any particular outcome within a given time frame, placing nothing more than a promise to act on the parties.<sup>77</sup> A more sceptical observation is made by Casey-Maslen who notes that the provisions do not specify the requirement for such negotiations to be concluded successfully.<sup>78</sup> As hinted by its title, the NPT is primarily concerned with non-proliferation, and

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<sup>74</sup> Sveree Lodgaard, *Nuclear Disarmament and Non-Proliferation: Towards a Nuclear Weapon Free World?* (Routledge 2011) at 168.

<sup>75</sup> *ibid.*

<sup>76</sup> Harald Müller and Carmen Wunderlich, ‘Nuclear Disarmament without the Nuclear-Weapon States: The Nuclear Weapon Ban Treaty’ (2020) 149 (2) *Daedalus* 171.

<sup>77</sup> Lawrence Freedman, ‘Is ‘Old-school’ Nuclear Disarmament Dead?’ in Bård Steen and Olav Njølstad (eds), *Nuclear Disarmament: A Critical Analysis* (Routledge 2019).

<sup>78</sup> Stuart Casey-Maslen, *Nuclear Weapons: Law, Policy, and Practice* (Cambridge University Press 2021) at 87.

the provisions on disarmament may have been included to mitigate the appearances of inequality between the obligations and rights of NWS and NNWS. It is no wonder that the disarmament provisions are innocuous, and it has been suggested that the NPT cannot serve as the basis for serious efforts towards disarmament since it places no such obligation on the NWS.<sup>79</sup>

The NPT is not unique in its reluctance to call for a decisive and time-bound effort towards disarmament. The International Court of Justice (ICJ) initially declined to consider the question of the legality of the possession and threat of use posed to it by the World Health Organisation (WHO) in 1993.<sup>80</sup> The ICJ reasoned that the WHO acted ultra vires by asking such a question, but the UNGA, in recognition of the importance of the ICJ's opinion on the question, adopted **Resolution A/RES/49/75K** in December 1994 which posed a similar question to the ICJ.<sup>81</sup> While the ICJ, contrary to Freedman's position, expressed the opinion that **Article VI** of the NPT operates beyond "a mere obligation of conduct" and directs the parties to achieve a precise result i.e. total and complete disarmament, it held that customary and conventional international law do not permit or prohibit the threat of use of nuclear weapons.

The ambiguous and guileful approach to matters of disarmament by the NPT and the ICJ is unsurprising due to the general understanding within the international community that serious consequences could be suffered if the interests of the NWS are threatened.<sup>82</sup> However, as the ICJ pointed out, an obligation to achieve a precise result is placed on the parties by **Article VI**, but no real steps have been taken towards disarmament for over half a century since the NPT came into force.<sup>83</sup>

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<sup>79</sup> Lodgaard (n. 74) at 172.

<sup>80</sup> John Burroughs, 'The 1996 Advisory Opinion of the International Court of Justice' (2016) 46(6) *Arms Control Today* 32.

<sup>81</sup> Steven Schneebaum, 'What does International Law have to Say about Nuclear Weapons? And what does this have to Say about International Law?' (2019) 39(2) *SAIS Review of International Affairs* 149.

<sup>82</sup> Nick Ritchie, 'A Hegemonic Nuclear Order: Understanding the Ban Treaty and the Power Politics of Nuclear Weapons' (2019) 40(4) *Contemporary Security Policy* 409.

<sup>83</sup> Kyungkook Kang and Jacek Kugler, *Averting Nuclear War* (Springer 2023).

### 3. The Right to Peacefully Use Nuclear Technology

**Article IV (1)** of the NPT provides:

*Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.*

There are numerous potential benefits that may be derived from peaceful applications of nuclear energy, and the NPT recognises the right of each party to explore these advantages by developing research, producing, and using such energy for non-militaristic purposes.<sup>84</sup> Unfortunately, the discovery of nuclear fission coincided with the start of what was to be the most destructive global conflict in the history of mankind, and its application for the purposes of war overshadowed its peaceful functionalities and capabilities.<sup>85</sup> By affirming and encouraging the right to peaceful application of nuclear energy, **Article IV** functions as the only provision of the NPT which objectively operates to the advantage of NNWS.

Apart from developing such research, **Article IV (2)** permits the “fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy” and calls for international cooperation for the application of nuclear energy for development especially in the territories of non-nuclear-weapon States Party to the Treaty. Even before the NPT, the need to apply nuclear energy for peaceful purposes was recognised, and this objective was one of the pillars on which the IAEA was founded. **Article 2** of the IAEA Statute provides that the Agency “shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world.” Although the recognition of the need to promote unrestricted use of nuclear energy for peaceful purposes is commendable, it is not without its controversies.

The main criticism levelled at **Article IV** is that it could encourage the proliferation of nuclear weapons since NNWS could develop the competencies and resources needed to weaponize nuclear energy in the course of peaceful research. This perceived flaw has been described as the Achilles

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<sup>84</sup> Mentor Lecaj, ‘Interpretation of the Peaceful Use of Nuclear Energy in the Nonproliferation Treaty’ (2016) 3(1) European Journal of Social Science Education and Research 201.

<sup>85</sup> Smil (n. 32).

heel of the NPT, and Goldblat ventures to argue that the development of an experimental or prototype nuclear explosive device which is not intended to be used for violent purposes will be protected under **Article IV**.<sup>86</sup> This argument is bolstered by the lack of a clear definition of “peaceful purposes” in the NPT, a potentially problematic omission which may be exploited by dangerously motivated NNWS to blur the lines between objectively peaceful and non-peaceful applications of nuclear energy.<sup>87</sup>

While the criticisms are not without merit, denying NNWS the right to exploit nuclear energy for development purposes would erase any modicum of fairness and equality claimed by the NPT, and it is doubtful that the NPT would be able to boast as many NNWS party without such a provision. At the end of 2023, around 10% of the world’s electricity was being supplied by 412 nuclear power reactors operating in 32 states plus Taiwan, with 60 additional reactors under construction globally, with a further 110 planned in the future.<sup>88</sup> While some states such as Germany and Switzerland have decided to stop nuclear production completely due to the environmental and human calamities that nuclear accidents can cause (as demonstrated by the Chernobyl and Fukushima-Daiichi disasters in 1986 and 2011 respectively), many NNWS states continue to exercise their right to apply nuclear energy for developmental purposes.<sup>89</sup>

## 2.5 Conclusion

NWS and NNWS are supposedly equal members of the international community who are subject to the same obligations and enjoy the same rights, but the provisions of the NPT suggest a hierarchy between them, with the Treaty being described as an agreement premised on a bargain between the nuclear ‘haves’ and ‘have-nots’.<sup>90</sup> Naturally, the ‘haves’ directed the bargain process and orchestrated the creation of a nuclear order where they enjoy an almost unquestionable authority

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<sup>86</sup> Jozef Goldblat, *Arms Control: The New Guide to Negotiations and Agreements* (2nd ed, Sage Publications 2002) at 102.

<sup>87</sup> David Jonas and Ariel Braunstein, ‘What’s Intent got to do with it? Interpreting “Peaceful Purpose” in Article IV. 1 of the NPT’ (2017) 32 *Emory International Law Review* 351.

<sup>88</sup> Holger Rogner, Adnan Shihab-Eldin, and Noura Mansouri, ‘Will Small Modular Reactors Drive the Envisioned Expansion of Nuclear Energy within the Energy Transition?’ (2024) 139 *Oxford Energy Forum* 25.

<sup>89</sup> Casey-Maslen (n. 78).

<sup>90</sup> Andreas Paulus and Jörn Müller “Survival Through Law: Is There a Law Against Nuclear Proliferation” (2007) 18 *Finnish Yearbook of International Law* 83 at 133.

over the 'have-nots', and this system which has survived for almost sixty years seems to be gaining momentum with each passing decade.

The extent of the international status gap facilitated by the possession or non-possession of nuclear weapons, while perceptible from the content of the NPT, can only be fully grasped through a critical analysis of the attitude towards enforcement of the Treaty. An attempt at such an analysis will form the basis of the next chapter.

### **3.0 CHAPTER THREE: ENFORCING THE NPT**

### 3.1 Introduction

Modern international law is often described as a relatively new concept since many of its institutions and subjects have been in existence for less than a century.<sup>91</sup> As a developing field, international law faces numerous challenges, with one of the most significant being the problem of enforcement.<sup>92</sup> Whether the principle/law in question is a controversial one (i.e. reduction of greenhouse gas emissions) or a *jus cogens* (i.e. the prohibition of torture), the available enforcement mechanisms seem to struggle to fulfil their objectives, and this flaw has formed one of the most prolific grounds for criticism of the current system of international law.<sup>93</sup>

Various methods have been adopted for the enforcement of international treaties and agreements, and the effectiveness or otherwise of these methods vary on a case-by-case basis. For more serious infringements of international law (such as war crimes and crimes against humanity), the international system may go as far as imputing individual liability on the accused parties and exploring prosecution and eventual punishment.<sup>94</sup> For less serious infringements, the international system may explore methods as lenient as collective denouncement or as devastating as imposing crippling economic sanctions.<sup>95</sup> Some treaties, such as the **Rome Statute of the International Criminal Court**, specify clear enforcement mechanisms, but the peculiarities of the international landscape always seem to complicate these processes.<sup>96</sup>

Lister identifies the voluntary nature of the international system as the major culprit for these enforcement inadequacies.<sup>97</sup> This voluntary nature is fostered by the concept of sovereign equality which ensures that, apart from peremptory norms/*jus cogens*, states are free to choose the

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<sup>91</sup> Samantha Besson, 'International Legal Theory qua Practice of International Law' in Jean d'Aspremont, Tarcisio Gazzini, André Nollkaemper, and Wouter Werner (eds), *International Law as a Profession* (Cambridge University Press 2017).

<sup>92</sup> Yuji Iwasawa, 'Various Means of Enforcement in International Law' (2024) 65(1) *Harvard International Law Journal* 1.

<sup>93</sup> Jeffrey Dunoff, Monica Hakimi, Steven Ratner, and David Wippman, *International Law: Norms, Actors, Process* (Aspen Publishing 2023).

<sup>94</sup> Lyal Sunga, *Individual Responsibility in International Law for Serious Human Rights Violations* (Brill 2021).

<sup>95</sup> Iwasawa (n.92).

<sup>96</sup> Frank Sullivan, 'The Rome Statute: Opportunities and Challenges in Enforcement' (2016) 26(1) *Indiana International & Comparative Law Review* 1.

<sup>97</sup> Matthew Lister, 'The Legitimizing Role of Consent in International Law' (2010) 11(2) *Chicago Journal of International Law* 663.

agreements and laws by which they are bound.<sup>98</sup> Thus, unlike domestic systems where the legislature passes laws which apply to most or all legal persons within the state, the international system requires the potential subjects of a law to agree to be bound by such laws. It is for this reason that treaties and conventions maintain signatory, accession, and ratification clauses.<sup>99</sup>

Even where a state agrees to be bound by a treaty or any other form of international agreement, the international system relies less on any concrete system of enforcement to ensure compliance and more on the likelihood that the state will respect the principles of *pacta sunt servanda*.<sup>100</sup> The brocard, which translates to “agreements must be observed”, is one of the cornerstones of both ancient and modern international law, but certain obligations are so fundamental to the survival of mankind that a more decisive enforcement procedure is necessary to guarantee international order.<sup>101</sup> The provisions of the NPT are prime examples of obligations that must be positively enforced beyond the hope of voluntary compliance. However, like most other international agreements, the NPT suffers from challenges of enforcement.

Young argues that the challenge of enforcement is only a problem in international law when states have a significant incentive to ignore the relevant principles or agreements by which they have agreed to be bound.<sup>102</sup> It may be argued that very few treaties present a glaring incentive for violation like the NPT. Since the possession of nuclear weapons can drastically elevate the de facto position of states in the international arena, many NNWS would jump at the chance to obtain or develop them, and the NWS would frustrate any effort to achieve total disarmament.

In this chapter, the enforcement mechanisms available to the NPT will be examined. Particularly, this exercise will explore the practicability, effectiveness, and fairness of these mechanisms and gauge their suitability for a purpose as complex as maintaining a balanced enforcement of a treaty with provisions that have been widely criticised as imbalanced. To facilitate this analysis, cases of enforcement and non-enforcement of the Treaty against particular states will be explored to

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<sup>98</sup> *ibid.*

<sup>99</sup> Manfred Elsig and Milewicz Karolina, ‘The Politics of Treaty Signature: The Role of Diplomats and Ties that Bind’ (2017) 22(3) *International Negotiation* 521.

<sup>100</sup> Daniel Davison-Vecchione, ‘Beyond the Forms of Faith: Pacta Sunt Servanda and Loyalty’ (2015) 16(5) *German Law Journal* 1163.

<sup>101</sup> Joseph Crampin, ‘Treaty Withdrawal and Recalcitrant States’ (2020) 9(2) *Cambridge International Law Journal* 225.

<sup>102</sup> Oran Young, ‘Effectiveness of International Environmental Regimes: Existing Knowledge, Cutting-edge Themes, and Research Strategies’ (2011) 108 *Proceedings of the National Academy of Sciences* 19853.

highlight the stark differences in treatment of NWS and NNWS with regards to the fulfilment of their obligations under the NPT.

### 3.2 NPT Enforcement Mechanisms

The NPT does not expressly identify a mechanism for enforcement of its provisions, but various methods have been employed to ensure compliance with the text of the Treaty. These include:

#### 1. **IAEA Reports:**

The safeguarding responsibilities given to the IAEA by **Article III** of the NPT are the closest the Treaty ventures towards specifying an enforcement procedure.<sup>103</sup> After completing a CSA with a state, the IAEA's Department of Safeguards is empowered to carry out on-site verification exercises to ensure that the state is in compliance with the Treaty. As has been previously noted, only NNWS are required to complete CSAs with the IAEA, with NWS only completing VOAs which are much less enforceable by the IAEA.

While NWS can only violate the Treaty by transferring nuclear weapons to other states or by assisting NWS to develop such weapons, a range of activities by NNWS may be interpreted as offending the provisions of the NPT. Such actions by NNWS may be as blatant as actively developing a nuclear weapon or as nebulous as failing to declare nuclear material (even if such failure was due to a genuine mistake or miscalculation).

Where the IAEA determines that a state is acting contrary to their NPT obligations, **Article 12** of the IAEA Statute provides directions on the actions to be taken. **Article 12 (7) (c)** directs the Board of the IAEA to "call upon" the state(s) concerned to remedy the acts amounting to non-compliance. The article further provides that the Board shall report such acts of non-compliance to the UNSC and the UNGA. If the state(s) refuse to remedy the act of non-compliance even after being called upon to do so by the IAEA, the article empowers the Agency to take further steps to enforce the obligations placed on the state(s) by the NPT.

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<sup>103</sup> Robert Brown, *Nuclear Authority: The IAEA and the Absolute Weapon* (Georgetown University Press 2015).

First, the Agency may curtail or suspend assistance being provided to the state(s) by the Agency or by a member and call for the return of materials and equipment made available to the state(s). The IAEA boasts a current membership of 178 states (including the five NWS), and a suspension of nuclear assistance and cooperation to an erring state could have negative impact on the ability of the state to enjoy the developmental benefits that follow peaceful nuclear exploration and application.<sup>104</sup> Although all states have the right to exploit nuclear energy for peaceful means by virtue of **Article IV** of the NPT, the IAEA and some particular states possess technical expertise which may be advantageous to the peaceful nuclear programs of other lesser nuclear advanced states.<sup>105</sup> When a state is prohibited from seeking these expertise, it could have negative effects on such a state's progress in relation to global standards.

Second, the IAEA may suspend the erring state's membership of the Agency. Such a suspension would prevent the state from enjoying the rights and privileges that come with being a member of the Agency such as voting on issues that could have significant impact on the nuclear order and losing access to sensitive and beneficial information that could be advantageous to the state's exploration of nuclear energy.

The IAEA has found several states to be non-compliant with their NPT obligations in the past, and while some were reported to the UNSC and UNGA, others rectified their positions before such reporting became necessary. The IAEA has not yet exercised its powers to halt nuclear assistance to a state or suspend a state's membership of the Agency, preferring to explore the option of calling upon states to rectify acts of non-compliance or reporting to the UNSC in the case of more serious infringements.

In 1992 the government of Romania, of its own volition, requested the IAEA to conduct verification activities within its territory.<sup>106</sup> This was after the discovery of undeclared laboratory-scale research studies on nuclear fuel reprocessing that had been conducted under the previous government. After confirming that the previous Romanian government had conducted experiments

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<sup>104</sup> Trevor Findlay, 'The IAEA's Critical Role' in Christopher Hobbs, Sarah Tzinieris, and Sukesh Aghara (eds), *The Oxford Handbook of Nuclear Security* (Oxford University Press 2024).

<sup>105</sup> *ibid.*

<sup>106</sup> Trevor Findlay, *Proliferation Alert! The IAEA and Non-Compliance Reporting* (Harvard Kennedy School 2015).

in breach of its obligations under the NPT, the IAEA assisted Romania to ensure full compliance with its obligations. The matter was reported to the UNSC for information purposes only.<sup>107</sup>

Similarly, after an Additional Protocol to the CSA between the IAEA and the Republic of Korea was completed in 2004, it was found that the state had conducted unreported laboratory-scale experiments involving the enrichment of uranium using the atomic vapour laser isotope separation process.<sup>108</sup> The Director General of the IAEA referred to such experiments as a “matter of serious concern”, but the Agency decided against officially reporting to the UNSC after the Republic of Korea expressed willingness to rectify the acts.<sup>109</sup>

While the actions of the IAEA may be suitable for enforcing compliance with the NPT in some cases, it is unlikely that a state determined to violate the provisions of the Treaty will be deterred by the prospects of suspension of assistance from or participation in the proceedings of the IAEA.

## 2. Sanctions by the UNSC:

The UNSC has been described as the most important institution in the modern international system.<sup>110</sup> **Article 24 (1)** of the UN Charter places the responsibility for the maintenance of international peace and security on the UNSC, and the subject of nuclear proliferation remains one of the most sensitive in terms of global security. Thus, the UNSC is directly interested in securing total compliance with the provisions of the NPT, and it actively responds to instances of non-compliance.<sup>111</sup>

The UNSC enjoys a wide range of powers in the exercise of its functions. **Article 41** of the UN Charter empowers the UNSC to pursue its objectives by applying measures such as the severance of diplomatic relations and the complete or partial interruption of economic relations between UN member states and the erring state(s). Where these measures are not adequate to achieve the desired

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<sup>107</sup> *ibid.*

<sup>108</sup> Eunjung Lim, ‘South Korea’s Nuclear Dilemmas’ (2019) 2(1) *Journal for Peace and Nuclear Disarmament* 297.

<sup>109</sup> *ibid* at 307.

<sup>110</sup> Michael Wood and Eran Stoecker, *The UN Security Council and International Law* (Cambridge University Press 2022).

<sup>111</sup> Iryna Les, ‘The Role of the UN in Preventing the Proliferation of Nuclear Weapons’ (2023) 6 *Visegrad Journal on Human Rights* 114.

objectives, **Article 42** of the UN Charter empowers the UNSC to military action against the erring state(s). In addition, the UNSC is the only organ of the UN authorised to issue resolutions which are binding on all member states by virtue of **Article 25** of the UN Charter.

The UNSC's commitment to enforcing the non-proliferation of nuclear weapons is so great that the body has passed resolutions compelling states who are not parties to the NPT to abide by its general principles. Most notably, after Israel attacked an Iraqi nuclear site which had been approved by the IAEA, the UNSC passed **Resolution 487** of 1981 requiring Israel to place its nuclear facilities under IAEA safeguards.<sup>112</sup> Although Israel was not a party to the NPT, the UNSC used its unique position as a governing body to all UN member states to ensure Israeli compliance with NPT provisions.

Unlike the case of the IAEA, the options available to the UNSC are more consequential, and states are bound to be deterred by the prospects of being reprimanded by the UNSC. When states decide to pursue activities prohibited by the NPT, the actions of the UNSC can effectively put a stop to such activities. A prime example is the case of South Africa.

The apartheid government of South Africa, fearing an uprising of the local population and aggression from external parties opposed to the racist practices of the government, conducted secret programs to develop nuclear weapons.<sup>113</sup> The UNSC passed **Resolutions 418** of 1977 and **591** of 1986 which placed a mandatory arms embargo against South Africa, and these measures were instrumental in crippling the development and acquisition of nuclear weapons by the state.<sup>114</sup> Although the apartheid government managed to assemble up to six nuclear warheads, pressure from the international community and the UNSC led to the voluntary dismantling of these weapons in the early 1990s.<sup>115</sup>

While the enforcement mechanisms available to the UNSC have the potential to be very effective, the structure and composition of the UNSC presents a serious challenge to the application of these

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<sup>112</sup> Rabah Al-Midhatee, 'The official Arab role in the UN Security Council from the Israeli Aerial Bombardment of Iraq in 1981' (2022) 12(2) *Journal of Babylon Center for Humanities Studies*.

<sup>113</sup> Anna-Mart Van Wyk, 'South African Nuclear Development in the 1970s: A Non-proliferation Conundrum?' in David Holloway and Leopoldo Nuti (eds), *The Making of the Global Nuclear Order in the 1970s: Issues and Controversies* (Routledge 2020).

<sup>114</sup> David Albright and Andrea Stricker, *Revisiting South Africa's Nuclear Weapons Program: Its History, Dismantlement, and Lessons for Today* (ISIS Press 2016).

<sup>115</sup> *ibid.*

mechanisms. **Article 23** of the UN Charter provides that the UNSC shall consist of fifteen members of the UN. Of these fifteen members, ten are non-permanent members who are to be elected for a term of two years by the UNGA while the other five are the NWS. Although the NWS were granted their permanent UNSC seats in 1945 when only the US had a functional nuclear weapon, it reflected an emerging global hierarchy which favoured the major Allied states that were victorious during WWII.<sup>116</sup> This hierarchy was cemented by **Article IX** of the NPT which designated the permanent UNSC members as NWS, and by situating the main enforcement mechanisms of the NPT in the UNSC the NPT was laying the foundations for challenges that continue to form the basis of criticisms aimed at the Treaty.<sup>117</sup>

First, it is impracticable to expect the UNSC to enforce the NPT against a permanent member. This is because, by virtue of **Article 27 (3)** of the UN Charter, all substantive decisions of the UNSC must be made with the concurring votes of the permanent members. Where a permanent member votes against a decision, such a member exercises a veto power which effectively ‘ties the hands’ of the UNSC.<sup>118</sup> A foundational principle of justice is captured by the maxim *nemo iudex in causa sua* (no one should judge their own case), but the peculiar position of NWS as permanent members of the UNSC appears to offend this principle.<sup>119</sup>

Second, apart from exercising this veto power to shield themselves from the consequences of non-compliance with the NPT, the NWS may also invoke this power to protect other states whose interests align with theirs. For example, when China and Russia vetoed plans for heightened restrictions against North Korea in 2023, it was suggested that these states exercised their powers to maintain their favourable positions with respect to supply of coal from North Korea.<sup>120</sup> Similarly, Russia has vetoed several UNSC resolutions against Iran, and it has been suggested that Russia does so to continue enjoying the proceeds of oil trading with Iran.<sup>121</sup>

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<sup>116</sup> David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (Oxford University Press 2009).

<sup>117</sup> Les (n. 111).

<sup>118</sup> Saleh Al-Shraideh, 'The Security Council's Veto in the Balance' (2017) 58 *Journal of Law, Policy & Globalization* 135.

<sup>119</sup> Chika Okeke, 'Rethinking the Applicability of the Nemo Iudex Rule to the Decision-Making Process in the Security Council' (2022) 4(1) *International Journal of Comparative Law and Legal Philosophy* 11.

<sup>120</sup> Lyle Goldstein and Vitaly Kozyrev, 'The Bipolarity Paradox' (2023) 19(2) *North Korean Review* 37.

<sup>121</sup> Ali Omid, 'Russian-Iranian Ties: Strategic Alliance, Strategic Coalition, or Strategic Alignment (Partnership)' (2022) 7(3) *Russian Politics* 341.

Apart from the protection of financial and economic interests, the NWS also exercise their veto powers to protect states who align with their political ideologies.<sup>122</sup> The vestiges of the Western versus Eastern bloc rivalry that dominated the global politics of the latter half of 20<sup>th</sup> century continue to operate in the UNSC, and the likelihood of an NWS exercising its veto powers in favour of a state that is to be sanctioned often depends on the allegiances of such a state.<sup>123</sup>

Since the veto powers of permanent members often affect the applicability of the enforcement mechanisms available to the UNSC, some states attempt to ensure compliance with the NPT by taking matters into their hands.

### **3. Unilateral Actions of Individual States:**

The dangers that come with the proliferation of nuclear weapons are well documented, and states desire a swift and reliable method of enforcement of the NPT to allay fears of mutually assured destruction. To bypass the obstacles that hinder other enforcement methods, some states with considerable resources attempt to address issues of non-compliance by taking unilateral action.

The US has long been referred to as the “world police”, a description that denotes its eagerness to assert policies on other states and force them to act in a certain manner.<sup>124</sup> As the first state to successfully develop and test nuclear weapons (and as the only state to actually deploy nuclear weapons during war), the US occupies a special position as far as nuclear issues are concerned.<sup>125</sup> Aware of its mighty status in nuclear affairs, the US is always eager to address states who are suspected of being non-compliant with the NPT, and it employs various tactics to enforce compliance.

The US commenced its enforcement activities as soon as the NPT came into force, and it was instrumental in coercing some NNWS to ratify the treaty.<sup>126</sup> When South Korea attempted to pursue clandestine nuclear activities for nuclear purposes and refused to ratify the NPT, the threats of sanctions from Washington were the deciding factor in securing South Korean ratification of

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<sup>122</sup> Michael Kelly, 'United Nations Security Council Permanent Membership and the Veto Problem' (2020) 52 *Case Western Reserve Journal of International Law* 101.

<sup>123</sup> *ibid.*

<sup>124</sup> Eugene Carroll Jr, 'Should the US be the World's Policeman?' (1996) 8(4) *Peace Review* 477.

<sup>125</sup> Francis Gavin, *Nuclear Weapons and American Grand Strategy* (Brookings Institution Press 2020).

<sup>126</sup> Popp (n. 49).

the Treaty.<sup>127</sup> Similarly, when the IAEA found that Taiwan was exploiting its right to peaceful nuclear research and development to produce weapons grade plutonium, the ambassador of the US to Taiwan at the time threatened to cut off military assistance to the state.<sup>128</sup> These threats were instrumental in Taiwan's decision to halt this program.

The most notable example of US unilateral enforcement of the NPT can be found in the case of Iran. The dangerous and enduring tensions between the US and many states in the middle east continue to pose a threat to world peace, and the former believes that it must do everything in its power to prevent the proliferation of nuclear weapons among the latter.<sup>129</sup> The US already had a rich history of imposing sanctions against Iran for matters unrelated to nuclear activities, and it was quick to champion sanctions against Iran when the IAEA discovered a secret uranium enrichment program in 2002.<sup>130</sup> Even after a nuclear deal was agreed in 2015 between Iran and the NWS plus Germany, the US managed to pull out of this deal in 2018 and reintroduce even more stringent sanctions on Iran.<sup>131</sup>

The US zealous and ruthless attitude towards its unilateral enforcement activities of the NPT is reflected in its practice of secondary sanctions. Usually, states impose primary sanctions on other states i.e. restrictions on its own companies and agents from trading with the sanctioned state. However, additional restrictions may be imposed on foreign states and companies from transacting business with targets of primary sanctions, and such additional restrictions are known as secondary sanctions.<sup>132</sup> Although secondary sanctions have been criticised as illegally extraterritorial in purpose and effect, the US continues to employ this mechanism especially in terms of nuclear enforcement.<sup>133</sup>

Apart from the US, other NWS, such as Russia and China have made attempts to secure compliance of other states with the NPT. However, these states prefer a more tactical and indirect

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<sup>127</sup> Mark Fitzpatrick, *Asia's Latent Nuclear Powers: Japan, South Korea and Taiwan* (Routledge 2017).

<sup>128</sup> *ibid.*

<sup>129</sup> Tarja Cronberg, 'The Security of Nuclear Weapon-Free Zones: The Middle East as a Test Case for Unconditional Security Assurances' (2022) 5(1) *Journal for Peace and Nuclear Disarmament* 45.

<sup>130</sup> Mazahir Bootwala, 'The Iran Problem: An Evaluation of US Sanctions on Iran and Global Reactions' (2020) 21 *Georgetown Journal of International Affairs* 136.

<sup>131</sup> *Ibid.*

<sup>132</sup> Daniel Meagher, 'Caught in the Economic Crosshairs: Secondary Sanctions, Blocking Regulations, and the American Sanctions Regime' (2020) 89(3) *Fordham Law Review* 999.

<sup>133</sup> Julia Schmidt, 'The Legality of Unilateral Extra-territorial Sanctions under International Law' (2022) 27(1) *Journal of Conflict and Security Law* 53.

approach as opposed to the aggressive attitude of the US. During the negotiation of the NPT, the Kremlin frequently sent correspondence to Warsaw Pact allies to participate in the process, and delegations were sent to these parties by Russia to encourage compliance after the Treaty had been agreed.<sup>134</sup> Declassified documents revealed that Leonid Brezhnev, the Soviet Premier during NPT negotiations, had to exert pressure on Romania (who had nuclear ambitions) to join the NPT.<sup>135</sup>

The actions of non-party states have amounted to enforcement of the NPT in some cases, albeit inadvertently. The states who have refused to accede to the NPT are regarded as holdout states with covert nuclear weapon capabilities, and their activities are watched very closely by the international community and their territorial neighbours who could be directly affected by their nuclear activities.<sup>136</sup> These holdout states also watch their rivals closely, ironically panicking whenever it appears that a rival who has acceded to the NPT is acting contrary to the Treaty.<sup>137</sup> A salient example may be found in the case of Israel who, after uncovering a secret Syrian nuclear program in 2007, conducted “Operation Outside the Box” during which Israeli forces bombed and destroyed Syrian nuclear reactors.<sup>138</sup> Although the legality of the operation remains questionable (Israel refused to acknowledge the attack until 2018), the unilateral action of Israel effectively foiled Syrian attempts to violate the NPT.<sup>139</sup>

While they have proven to be effective in some cases, unilateral enforcement of the NPT undermines the collective decision-making process on which the international community thrives. The IAEA and the UNSC are made up of stakeholders from various states, meaning that their decisions and actions will always reflect an international character. Additionally, these bodies have been granted their powers to enforce the NPT by the Treaty itself (in the case of the IAEA) and the

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<sup>134</sup> Popp (n. 49).

<sup>135</sup> Cezar Stanciu, ‘Autonomy and Ideology: Brezhnev, Ceaușescu and the World Communist Movement’ (2014) 23(1) *Contemporary European History* 115.

<sup>136</sup> Jeffrey Kaplow, *Signing Away the Bomb: The Surprising Success of the Nuclear Nonproliferation Regime* (Cambridge University Press 2023).

<sup>137</sup> Rubina Waseem, ‘Flux in the Middle East and Nuclear Israel’ (2020) 6(2) *Journal of Security & Strategic Analyses* 55.

<sup>138</sup> Ori Wertman and Christian Kaunert, *Israel: National Security and Securitization: The Role of the United States in Defining What Counts* (Springer 2023) 123.

<sup>139</sup> Nir Boms and Stéphane Cohen, ‘Israel and Syria: A Decade of War, 2011–2021’ (2022) 16(1) *Israel Journal of Foreign Affairs* 31.

UN Charter (in the case of the UNSC). Individual states, on the other hand, are usually motivated by selfish interests rather than a sense of duty to the international community.<sup>140</sup>

#### 4. International Denouncement

One of the main purposes of the modern system of the international community is the promotion of general global standards and development, and this is especially true in the case of issues that border on human rights and global peace.<sup>141</sup> While states may express differing opinions on most issues, there are a few on which a consensus has emerged, and it is expected that each state respects the unified stance on these subjects.<sup>142</sup> Where a state acts contrary to these established standards, the international community may respond by “naming and shaming” such a state.<sup>143</sup>

Since international law faces a problem of limited enforcement mechanisms, the international community has employed various creative techniques to secure compliance with norms. The practice of naming and shaming has proven to be one of the most popular tools for achieving change in state behaviour, and as the name suggests, it involves statements identifying and condemning a state for acts which offend international standards.<sup>144</sup> The desire for status, inclusion, and cordial relations with other states in the international community may influence the activities of individual states and cause them to refrain from acting in a manner that may draw widespread criticism.<sup>145</sup>

With 190 out of an eligible 195 state parties ratifying or acceding to the NPT, it may be concluded that the international community is in agreement on the importance of the provisions of the Treaty. Where a state acts contrary to the NPT, its actions may be interpreted as posing threats to global peace and security, and the international community may respond by naming and shaming such

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<sup>140</sup> Surya Subedi, 'The Status of Unilateral Sanctions in International Law' in Surya Subedi (ed), *Unilateral Sanctions in International Law* (Bloomsbury Publishing 2021).

<sup>141</sup> Christopher Joyner, *International Law in the 21st century: Rules for Global Governance* (Rowman & Littlefield 2005).

<sup>142</sup> Christian Fernandez and David Puyana, 'The Search for Consensus and Unanimity within the International Organizations' (2016) 13(1) *US-China Law Review* 53.

<sup>143</sup> Theresa Squatrito, Magnus Lundgren, and Thomas Sommerer, 'Shaming by International Organizations: Mapping Condemnatory Speech Acts Across 27 International Organizations, 1980–2015' (2019) 54(3) *Cooperation and Conflict* 356.

<sup>144</sup> *ibid.*

<sup>145</sup> Faradj Koliev, 'Shaming and Democracy: Explaining Inter-state Shaming in International Organizations' (2020) 41(4) *International Political Science Review* 538.

states.<sup>146</sup> States may make statements individually, or they may condemn the erring state through joint statements with other states or as part of international organisations.<sup>147</sup> Non-governmental organisations, which occupy an important position in the international ecosystem, find naming and shaming as one of their most useful tools, and they never fail to seize the opportunity to condemn states that have acted in violation of internationally agreed standards.<sup>148</sup>

Naming and shaming may be regarded as a softer approach to enforcement than the other available mechanisms, but it is the quickest and cheapest tool available to the international community.<sup>149</sup> Unlike IAEA and UNSC actions which usually take months, sometimes even years, to be implemented, the act of naming and shaming can be completed in a matter of minutes, and it is a tool that is available to all states regardless of status.

Unfortunately, it appears that the potential of this tool has not been maximised, especially by lesser powerful states. While they may condemn the acts of equally less powerful states that contravene the NPT, they are more cautious when the erring state is a powerful state.<sup>150</sup> Lesser powerful states desire the benefits that come with association and alliance with powerful states, and they could lose these economic and security benefits if they publicly criticise their powerful allies.<sup>151</sup> Since naming and shaming requires a collective characteristic for maximum effect, the impracticability of widespread condemnation of powerful states makes it a less effective tool against such states.

The effectiveness of naming and shaming also depends on the attitude of the erring state towards its reputation. While most states prefer to maintain a respectable and upstanding image on the international stage, a few have embraced a rebellious persona which is reflected in their attitude towards international relations. These rogue states are usually unbothered by naming and shaming campaigns, and some, such as North Korea, appear to intentionally provoke the reproof of the international community to bolster their recalcitrant reputation.<sup>152</sup>

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<sup>146</sup> Patricia Shamai, 'Name and Shame: Unravelling the Stigmatization of Weapons of Mass Destruction' (2015) 36(1) Contemporary Security Policy 104.

<sup>147</sup> *ibid.*

<sup>148</sup> Squatrito (n. 143).

<sup>149</sup> Suzanne Katzenstein, 'Reverse-Rhetorical Entrapment: Naming and Shaming as a Two-Way Street' (2013) 46(4) Vanderbilt Journal of Transnational Law 1079.

<sup>150</sup> Rochelle Terman and Erik Voeten, 'The Relational Politics of Shame: Evidence from the Universal Periodic Review' (2018) 13 The Review of International Organizations 1.

<sup>151</sup> *ibid.*

<sup>152</sup> John Lie, 'Mad, Bad, and Dangerous to Know? The Strange Allure and Elusive Reality of North Korea' (2016) 1(18) Cross-Currents: East Asian History and Culture Review 76.

### 3.3 Conclusion

These various mechanisms of enforcement have their advantages and limitations, and while some may appear more effective than others, each serves as an important tool in securing compliance with the NPT. They have all been used in varying degrees to enforce the Treaty, but it may be argued that they have been prevented from achieving their full potential due to the power dynamics that underscore international relations. A few case studies will be undertaken in the following chapter to understand how these dynamics have affected the enforcement or non-enforcement of the NPT.

## **4.0 CHAPTER FOUR: CASE STUDIES**

### 4.1 The Islamic Republic of Iran:

While Iran currently maintains a reputation as one of the more uncooperative parties to the NPT, an exploration of its nuclear history reveals an initially cordial relationship with NWS and the Treaty. Iran's nuclear journey began in earnest in 1957 under the auspices of the US led Atoms for Peace program, and by 1967 the Tehran Nuclear Research Centre (TNRC) was established.<sup>153</sup> The TNRC was supplied with a uranium enriched reactor by an American company, and Iran was courted by many western states as its riches continued to grow from oil trade. France, Sweden, and Germany engaged in trade relating to nuclear technology with Iran throughout the 1970s with little fear that such technology was going to be diverted towards non-peaceful endeavours.<sup>154</sup> However, Iran's global image was abruptly altered by the 1979 Islamic Revolution which saw Ayatollah Ruhollah Khomeini rise to power.<sup>155</sup>

The 444-day long siege of the US embassy in Tehran soured Iran-US relations, and the US embarked on an elaborate retributory campaign against the new Islamic state.<sup>156</sup> Although investigations have established that Iran only began weaponizing its nuclear program in the mid-1980s, the US commenced action against Iran's nuclear program during the 1979-1981 embassy siege.<sup>157</sup> It was not enough for the US to sever all friendly ties with Iran; it wanted all other states to follow suit. Thus, the US exerted pressure on other states who were in business with Iran to cripple the country. While Iran protested most of the sanctions placed on it by the US, there was little opposition towards the nuclear sanctions since Ayatollah Khomeini regarded nuclear technology as the epitome of western corruption of traditional Iranian values.<sup>158</sup> In fact, it has been suggested that Ayatollah Khomeini had plans to discontinue the Iranian nuclear program after his minister of energy dismissed the nuclear efforts of the previous government as "a waste of money."<sup>159</sup>

Despite Ayatollah Khomeini's disposition, Iran could not afford to forgo the developmental benefits of nuclear technology, and its war with Iraq (a state that was heavily suspected of

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<sup>153</sup> Jeremy Bernstein, *Nuclear Iran* (Harvard University Press 2014).

<sup>154</sup> Mustafa Kibaroglu, "Iran's Nuclear Ambitions from a Historical Perspective and the Attitude of the West" (2007) 43(2) Middle Eastern Studies 223.

<sup>155</sup> Syed Jalal, "The Post-Revolutionary Israeli-Iranian Rivalry and Iran's Nuclear Program" (2023) 2(1) Journal of Regional Studies Review 1.

<sup>156</sup> Mahmood Monshipouri, *In the Shadow of Mistrust: The Geopolitics and Diplomacy of US-Iran Relations* (Oxford University Press 2022).

<sup>157</sup> David Oualaalou, *Volatile State: Iran in the Nuclear Age* (Indiana University Press 2018).

<sup>158</sup> David Patrikarakos, *Nuclear Iran: The Birth of an Atomic State* (I.B Tauris 2012).

<sup>159</sup> *ibid* at 95.

developing nuclear weapons) made the acquisition of nuclear weapons enticing.<sup>160</sup> Also, the nuclear activities of other states within the region such as India, Pakistan, and Israel made the Iranian position on nuclear energy untenable, and states in the west (led by the US) watched Iran suspiciously throughout the 1980s. While there are indications that Iran began developing the capacity to weaponize its nuclear programs towards the end of Ayatollah Khomeini's reign, it was under his successor, Ayatollah Khamenei (who came into power in 1989), that Iran embraced and actively pursued nuclear ambitions in a manner that suggested militaristic objectives.<sup>161</sup>

Due to the state of its relationship with the west, Iran had to turn to China and Russia to obtain the materials and expertise to pursue its nuclear program under Khamenei.<sup>162</sup> The supply contracts with China and Russia were ostensibly for the pursuance of civilian and peaceful nuclear projects, but many of these resources were to be converted for purposes that were to be hidden from the international community. The US, maintaining its eagle-eyed surveillance on Iranian affairs, realised the dangers that came with the revived Iranian nuclear projects and increased nuclear specific sanctions on the state.<sup>163</sup>

First, it passed the **Iran-Iraq Arms Non-proliferation Act of 1992** which prohibited the transfer of controlled materials which could contribute “knowingly and materially” to Iran's (and Iraq's) potential development of nuclear weapons.<sup>164</sup> Four years later, the US passed the **Iran-Libya Sanctions Act of 1996** which penalised American or foreign annual investments exceeding twenty million dollars in Iran's energy sector.<sup>165</sup> Iran had come to terms with its antagonization by the US, but it managed to keep up a façade of compliance with the NPT by inviting the IAEA on several occasions to inspect its nuclear sites.<sup>166</sup> This image of compliance ensured that Iran escaped widespread sanctions from the global community. It also meant that Iran could claim that the US was unduly harassing its nuclear programs which were, as had been confirmed by the IAEA,

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<sup>160</sup> Kibaroglu (n. 154).

<sup>161</sup> Patrikarakos (n. 158).

<sup>162</sup> Nicole Grajewski, "An Illusory Entente: The Myth of a Russia-China-Iran "Axis" (2022) 53(1) Asian Affairs 164.

<sup>163</sup> Monshipouri (n. 156).

<sup>164</sup> Ray Takeyh and Suzanne Maloney, "The Self-limiting Success of Iran Sanctions" (2011) 87(6) *International Affairs* 1297.

<sup>165</sup> *ibid.*

<sup>166</sup> Mohammad Homayounvash, *Iran and the Nuclear Question: History and Evolutionary Trajectory* (Routledge 2016).

geared solely towards peaceful applications. It was not until August 2002 that the true extent of the Iranian nuclear program was exposed.

At a press conference held on the 14<sup>th</sup> of August 2002 in Washington DC, the National Council of Resistance of Iran (NCRI), a coalition political organisation opposed to the Islamic government of Iran, revealed the existence of two secret Iranian nuclear sites in the cities of Nantaz and Arak.<sup>167</sup> The Nantaz site was a uranium enrichment site while the Arak site was a plutonium-producing heavy water facility, and both sites had been kept secret for over a decade. Further sites were exposed by the NCRI, most notably the Kala-Electric site which was used for testing assembled centrifuges but was disguised by the Iranian government as a clock manufacturing company.<sup>168</sup> In light of this new information, the IAEA, the UN, and the entire international community swung into action.

It must be noted at this juncture that uranium enrichment and the production of plutonium are not prohibited by the NPT as long as they are done for peaceful purposes. However, as has been established earlier, NNWS parties are subject to strict reporting standards which are governed by CSAs which must be completed with the IAEA. By keeping these nuclear sites secret, Iran was in breach of its reporting obligations and the international community was unsurprisingly apprehensive as to the reasons for this secrecy. In anticipation of the inevitable sanctions, Iran acknowledged the hitherto secret nuclear sites and advanced several arguments in its defence.<sup>169</sup>

Iran's major argument was that it had to conduct its nuclear activities in secret to circumvent unlawful sanctions imposed on it by the US.<sup>170</sup> Iran claimed that the sanctions were unlawful and were in violation of **Article IV** of the NPT which empowered NNWS to explore nuclear energy for developmental purposes. Since there was evidence that the US had sabotaged numerous nuclear contracts and agreements between Iran and other states, Iran had to conduct deals and develop its nuclear program in secrecy.

Iran's other argument was more in attack of the nuclear regime than in defence of itself. Iran claimed that since there was no sanction for the failure of states, especially the NWS, to actively

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<sup>167</sup> Patrikarakos (n 158).

<sup>168</sup> Gary Samore, *Iran's Strategic Weapons Programmes: A Net Assessment* (Routledge 2013).

<sup>169</sup> *ibid.*

<sup>170</sup> Monshipouri (n 156).

pursue nuclear disarmament as directed by **Article VI** of the NPT, it would be unfair to expect states to act in accordance with the other provisions of the NPT.<sup>171</sup> This argument may find backing in **Article 60 (c)** of the **Vienna Convention on the Law of Treaties** which provides that “a material breach of a multilateral treaty entitles any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself.” However, as earlier noted, the NWS intentionally couched **Article IV** of the NPT in an ambiguous manner to ensure that it could be flexibly interpreted. Thus, Iran’s argument that the NWS failure to disarm was in breach of the NPT could not have succeeded despite its merits.

Upon the revelations of the NCRI, the IAEA called on Iran to suspend its enrichment program, declare all secret facilities, and cooperate with IAEA inspectors who were tasked with investigating Iran’s nuclear status and conducting environmental sampling.<sup>172</sup> The IAEA gave Iran a deadline of October 31<sup>st</sup>, 2003, to comply with these requirements or be officially reported to the UNSC, and Iran gladly accepted these terms in fear of the consequences that would come with the involvement of the UNSC.<sup>173</sup> However, Iran failed to act satisfactorily, and the IAEA publicly condemned Iran for failing to cooperate with its inspectors.

The IAEA was in the process of referring Iran’s case to the UNSC when France, Germany, and the UK initiated talks with Iran to amicably resolve the situation.<sup>174</sup> Iran notified the IAEA of its intention to finally comply with its CSA during the talks, but when it was discovered that Iran had begun producing Uranium at one of its facilities, France, Germany, and the UK pulled out of the talks.<sup>175</sup> Frustrated by Iran’s recalcitrant attitude, the IAEA finally referred Iran’s non-compliance to the UNSC on February 4, 2006.<sup>176</sup> Two days later, Iran replied by declaring that it would cease voluntary implementation of the CSA, its additional protocol, and other non-legally binding inspecting procedure.<sup>177</sup>

Before addressing Iran’s case at the UNSC, the NWS and Germany presented a proposal to Iran which offered incentives to halt its Uranium enrichment, but while Iran declared that the proposal

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<sup>171</sup> Farhad Rezaei, *Iran’s Nuclear Program: A study in Proliferation and Rollback* (Springer 2017).

<sup>172</sup> Homayounvash (n. 166).

<sup>173</sup> *ibid.*

<sup>174</sup> Matthias Küntzel, ‘Germany and a Nuclear Iran’ (2014) 26(1/2) *Jewish Political Studies Review* 48.

<sup>175</sup> *ibid.*

<sup>176</sup> Nima Gerami and Pierre Goldschmidt, *The International Atomic Energy Agency’s Decision to Find Iran in Non-Compliance, 2002-2006* (National Defense University Press 2012).

<sup>177</sup> *ibid.*

had some positive elements, it ultimately rejected the Proposal.<sup>178</sup> Thus, the UNSC adopted **Resolution 1696** on July 31, 2006.<sup>179</sup> The Resolution was merely a warning, calling on Iran to comply with its obligations or face serious consequences. Iran showed no intention to cooperate with the terms of **Resolution 1696**, and the UNSC responded by imposing stringent sanctions.

First, **Resolution 1737** was adopted on December 23, 2006.<sup>180</sup> It prohibited all UN members from transferring nuclear related technology to Iran and directed all members to freeze the assets of ten Iranian organisations and twelve Iranian individuals. Despite this, Iran was able to leverage on its alliance with Russia to conclude the purchase of surface-to-air missiles (negotiations for the sale began before the sanctions were adopted).<sup>181</sup> Although Russia and China were part of the process of sanctioning Iran, they enjoyed a more cordial relationship with Iran and even rejected earlier versions of **Resolution 1696** which they deemed as being too harsh.<sup>182</sup> To ensure that Iran could not circumvent sanctions by purchasing nuclear technology in the guise of regular arms, the UNSC intensified the sanctions against Iran by adopting **Resolution 1747** on the 24<sup>th</sup> of March 2007.<sup>183</sup>

This Resolution imposed an arms embargo on Iran and increased the Iranian subjects of frozen asset sanctions. Iran refused to buckle under the pressure of these measures, and the UNSC responded by imposing even more sanctions on Iran. Most notably, **Resolution 1929**, adopted in June 2010, prohibited UN member states from engaging in banking relations with Iran and Iranian entities linked to proliferation, empowered such states to inspect any cargo suspected to be linked with Iran's proliferation activities, and established a Panel of Experts to monitor the implementation of these sanctions by UN member states.<sup>184</sup>

Although the UN sanctions affected Iran, it was clear that a different strategy was needed to resolve the situation. Negotiations between Iran and the NWS presented the most promising alternative,

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<sup>178</sup> Küntzel (n. 174).

<sup>179</sup> Daniel Joyner, *Iran's Nuclear Program and International Law: From Confrontation to Accord* (Oxford University Press 2016).

<sup>180</sup> *ibid.*

<sup>181</sup> Gawdat Bahgat, 'Iran's Ballistic-Missile and Space Program: An Assessment' (2019) 26(1) Middle East Policy 31.

<sup>182</sup> Ariane Tabatabai and Dina Esfandiary, *Triple-Axis: Iran's Relations with Russia and China* (Bloomsbury Publishing 2018).

<sup>183</sup> Joyner (n. 179).

<sup>184</sup> *ibid.*

but the bitter relationship between the US and Iran frustrated these efforts.<sup>185</sup> However, the Obama administration that came into power in 2009 displayed a willingness to explore dialogue with Iran, and President Obama even placed a call to the newly elected President Rouhani of Iran in 2013.<sup>186</sup> This new atmosphere of civil relations between Iran and the US was vital to the conclusion of the **Joint Comprehensive Plan of Action (JCPOA)** also known as the Iran Nuclear Deal on the 14<sup>th</sup> of July 2015.<sup>187</sup>

The JCPOA was concluded between Iran and a coalition of states consisting of the NWS, Germany, and the European Union.<sup>188</sup> Under the JCPOA, Iran agreed to dispose of its stockpile of medium-enriched uranium, significantly reduce its stockpile of low-enriched uranium, and grant the IAEA regular access to all its nuclear facilities. In turn, the international community agreed to lift all the sanctions against Iran and provide relief services to assist in Iran's recovery from the effects of these sanctions. **UNSC Resolution 2231**, adopted six days after the JCPOA came into effect, set out a timeline for the removal of sanctions, and by March 2018 the IAEA reported that Iran was actively implementing its commitments under the agreement.<sup>189</sup> It appeared that the Iran nuclear saga had come to an end, but a change of government in the US resurrected the bad blood between the two states which affected the JCPOA.

The Trump administration announced its withdrawal from the JCPOA in May 2018, reinstating its sanctions against Iran and expressing intentions to negotiate a "better deal."<sup>190</sup> Recognising the damage that such an act could have on the progress that had been made in the past few years, the EU updated its blocking statute to protect European entities and citizens from the consequences of acting contrary to US sanctions. Angered by US withdrawal, Iran reneged on some of its commitments under the JCPOA, raising tensions once again.

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<sup>185</sup> Mirko Sossai, 'The Dynamic of Action and Reaction and the Implementation of the Iran Nuclear Deal' (2020) 66(29) *Questions of International Law* 5.

<sup>186</sup> Luciano Zaccara and Mehran Haghirian, 'Rouhani, the Nuclear Deal, and New Horizons for Iran-US Relations' in Luciano Zaccara (ed), *Foreign Policy of Iran under President Hassan Rouhani's First Term (2013–2017)* (Springer 2020).

<sup>187</sup> Dennis Jett, *The Iran Nuclear Deal: Bombs, Bureaucrats, and Billionaires* (Macmillan 2017).

<sup>188</sup> *ibid.*

<sup>189</sup> Seyed Mousavian, 'The Rise and Fall of the Joint Comprehensive Plan of Action' (2023) 6(6) *Journal of Indo-Pacific Affairs* 32.

<sup>190</sup> *ibid.*

Currently, the JCPOA (which is set to expire in October 2025) is in a state of limbo and efforts to revive talks for a more effective agreement have been met with a series of obstacles. The US has expressed intentions of proposing the restoration of the UNSC sanctions against Iran, but its attempt to extend an arms embargo on August 14, 2020, was defeated after China and Russia voted against such a proposal.<sup>191</sup>

#### 4.2 The Democratic People's Republic of Korea:

North Korea has not been a party to the NPT since 2003, and its decision to withdraw from the Treaty was due to the numerous sanctions that it faced during the period of its subscription. Unlike the case of Iran, there is concrete evidence that North Korea was actively militarising its nuclear program while it was a party to the NPT, an unsurprising fact considering its nuclear history.

North Korea's proximity to Japan (the only victim of a nuclear attack), its experience of US nuclear threats during the Korean War (1950-1953), and its fixation on military superiority cast a shadow of doubt on the purported peaceful intentions of its nuclear program which commenced in the 1950s.<sup>192</sup> The Soviet Union provided assistance during the initial years of North Korea's nuclear program, most notably supervising the construction of the notorious Yongbyon Nuclear Scientific Research Centre which remains a cause of global concern till date.<sup>193</sup> After the research centre became operational in 1962, North Korea expressed interest in weaponizing its nuclear program to the Soviet Union but, according to Pollack, the latter declined to assist for fears that the technology would end up in China.<sup>194</sup> When China conducted its first successful nuclear test two years later, North Korea also sought Chinese assistance for the weaponisation of its nuclear program but its request was rejected.<sup>195</sup>

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<sup>191</sup> Maria Papageorgiou, Mohammad Eslami, and Paulo Duarte, "A 'Soft' Balancing Ménage à Trois? China, Iran and Russia Strategic Triangle vis-à-vis US Hegemony" (2023) 10(1) *Journal of Asian Security and International Affairs* 65.

<sup>192</sup> Terrence Roehrig, 'The History of North Korea Denuclearization Negotiations' in Su-Mi Lee and Terrence Roehrig (eds), *Negotiation Dynamics to Denuclearize North Korea: Cohesion and Disarray* (State University of New York Press 2023).

<sup>193</sup> James Doyle, 'Confronting a Nuclear North Korea' in James Doyle (ed), *Nuclear Safeguards, Security, and Nonproliferation: Achieving Security with Technology and Policy* (2nd edn, Butterworth-Heinemann 2019).

<sup>194</sup> Jonathan Pollack, *No Exit: North Korea, Nuclear Weapons, and International Security* (Routledge 2011) 56.

<sup>195</sup> *ibid.*

While its close allies (such as the Soviet Union and China) and its ‘enemies’ (such as the US) knew of North Korea’s intention to weaponize its nuclear program, its refusal to sign up to the NPT despite heavy involvement in nuclear technology raised the first red flags to the international community.<sup>196</sup> Since it struggled to find assistance for its program, North Korea attempted to independently develop its weapons, but it found that it required the expertise of NWS to achieve success.<sup>197</sup> It was this desire for success that led to its subscription to the NPT.

In return for Soviet assistance in building a nuclear reactor, North Korea acceded to the NPT in 1985.<sup>198</sup> In hindsight, its accession was merely a means to an end, and it had no intentions of abiding by its commitments under the Treaty. The first sign of its ill intentions was its refusal to complete a CSA with the IAEA until 1992.<sup>199</sup> Under **Article III** of the NPT, states are obliged to begin negotiations for the CSA within 180 days of accession, and such negotiations are to be completed with the IAEA not later than 18 months after they are commenced. North Korea completely disregarded this timeline, and the conclusion of the CSA after 7 years of accession only paved the way for a rocky and short-lived relationship with the IAEA. It must be stated here that the IAEA also played a part in prolonging these negotiations when it mistakenly sent out wrong forms to North Korea, an error which stalled the process by almost 18 months.<sup>200</sup>

The first round of IAEA inspections proved to be inconclusive, and North Korea was angered by the request for follow up inspections. After the IAEA persisted with its request for special inspections, North Korea announced its intention to withdraw from the NPT in 1993 and gave a three months’ notice in line with **Article X** of the NPT.<sup>201</sup> Meanwhile, the IAEA reported North Korea’s non-compliance to the UNSC, and the US led calls for sanctions to be placed on North Korea.<sup>202</sup>

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<sup>196</sup> Assefa Gebru, ‘North Korea’s Nuclear Program and the Treaty on the Non-proliferation of Nuclear Weapons: The controversy and its Implications’ (2015) 9(9) *African Journal of Political Science and International Relations* 349.

<sup>197</sup> Tristan Volpe, ‘The Unraveling of North Korea’s Proliferation Blackmail Strategy’ in Sung Kim and Michael Cohen (eds), *North Korea and Nuclear Weapons: Entering the New Era of Deterrence* (Georgetown University Press 2017).

<sup>198</sup> *ibid.*

<sup>199</sup> Aprilia Adiningsih and Ngboawaji Nte, ‘North Korea’s Nuclear Weapons Development: The Impact for International Security and Stability’ (2022) 1(2) *International Law Discourse in Southeast Asia* 123.

<sup>200</sup> Don Oberdorfer, *The Two Koreas: A Contemporary History* (2nd ed, Basic Books 1997) 254.

<sup>201</sup> Pollack (n. 194).

<sup>202</sup> Hina Pandey, *Nuclear Conundrum of Iran and North Korea: From Proliferation Crisis to Non-Proliferation Promise?* (Routledge 2024).

The US already had sanctions in place against North Korea before its nuclear capabilities became an issue. For example, the US had restricted trading activities with North Korea since 1950 under the Trading with the Enemy Act of 1917, and its close alliance with South Korea (North Korea's nemesis) was intentionally amplified to inspire terror in North Korea.<sup>203</sup> Specifically, the **Team Spirit** joint US-South Korea military exercises conducted between 1974 and 1993 were aimed at deterring North Korea from attempting any form of military (including nuclear) aggression in the region, and the US even stationed over one hundred nuclear weapons in South Korea.<sup>204</sup> However, no official sanction had been implemented against North Korea for its refusal to comply with its nuclear obligations, and the US saw the 1993 IAEA referral of North Korea to the UNSC as the perfect opportunity to commence a regime of international sanctions against the erring state.

The US push for sanctions was met with opposition within the UNSC for fear that North Korea could react unfavourably to such an act.<sup>205</sup> After China vetoed US proposal for UNSC sanctions, it was agreed that a statement condemning North Korea and encouraging it to comply would suffice.<sup>206</sup> Thus, UNSC **Resolution 825** (the only UNSC resolution adopted against North Korea while it was a member of the NPT) was adopted on 11 May 1993.<sup>207</sup> The Resolution did not impose any sanctions on North Korea.

One month after **Resolution 825** was adopted (and one day until its three months' notice to withdraw was to expire), North Korea announced that it was no longer going to withdraw from the NPT.<sup>208</sup> Diplomatic alternatives were explored, and an **Agreed Framework** was signed between the US and North Korea on 21 October 1994 in Geneva.<sup>209</sup> Under this framework, the US agreed to lift economic sanctions against North Korea, and the latter agreed to remain a party to the NPT and comply with the Treaty. However, the US failed to lift these sanctions and North Korea reportedly continued secret uranium enrichment programs with the assistance of Pakistan (a non-

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<sup>203</sup> Van Jackson, *Rival Reputations: Coercion and Credibility in US-North Korea Relations* (Cambridge University Press 2016).

<sup>204</sup> *ibid.*

<sup>205</sup> Pollack (n. 194).

<sup>206</sup> *ibid.*

<sup>207</sup> Benjamin Habib, 'The Enforcement Problem in Resolution 2094 and the United Nations Security Council Sanctions Regime: Sanctioning North Korea' (2016) 70(1) *Australian Journal of International Affairs* 50.

<sup>208</sup> *ibid.*

<sup>209</sup> Victor Cha and David Kang, *Nuclear North Korea: A Debate on Engagement Strategies* (Columbia University Press 2018).

party to the NPT).<sup>210</sup> By the time President Bush came into power, it was clear that the Agreed Framework was doomed.

The Framework was signed under the leadership of Clinton, a democrat, and Bush's republican administration had very strong opposing views on North Korea. In his first State of the Union address, Bush labelled North Korea (along with Iran and Iraq) as part of the "axis of evil" due to their nuclear deviance.<sup>211</sup> During an October 2002 meeting between the US and North Korea, the former confronted the latter with evidence of its secret Pakistani-assisted nuclear program.<sup>212</sup> It has been widely reported that after initially denying the accusations, North Korea admitted that the program was ongoing and that very powerful weapons were in development with some nearing completion.<sup>213</sup> North Korea agreed to end the program if the US ceased its aggression against North Korea and recognised it as a sovereign state, but the US refused these terms.

Having admitted to being in violation of the NPT and the Agreed Framework, North Korea saw no reason in maintaining a façade. In December 2002, it removed all IAEA seals and surveillance equipment from its Yongbyon facility and restarted all uranium enrichment and nuclear related operations in earnest.<sup>214</sup> That same month, it ordered all IAEA inspectors to leave its territory, with the last inspector leaving on the 31<sup>st</sup> of December 2002. To put the final nail in the coffin, North Korea announced its withdrawal from the NPT on January 10, 2003.<sup>215</sup> Instead of waiting for three months as stipulated by **Article X** of the NPT, North Korea claimed that the three-month clock had started when it first announced its intention to withdraw in 1993.<sup>216</sup> Since it suspended the 1993 withdrawal one day before it was to become effective, it claimed that it needed to wait only one day for the 2003 announcement to take effect. Thus, on the 11<sup>th</sup> of January 2003, North Korea became the first and, till date, only state to withdraw from the NPT.

Although North Korea has been the subject of numerous nuclear motivated sanctions since 2003 from the UNSC and individual states, all these sanctions were adopted while North Korea was no

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<sup>210</sup> *ibid.*

<sup>211</sup> Edward Olsen, "'Axis of Evil': Impact on US-Korean Relations' (2002) 26(2) *Korea and World Affairs* 184.

<sup>212</sup> Pollack (n. 194).

<sup>213</sup> *ibid.*

<sup>214</sup> *ibid.*

<sup>215</sup> Christopher Ford, 'Deterring or Dissuading NPT Withdrawal: Lessons for the like-Minded' (2022) 46(1) *Fletcher Forum of World Affairs* 19.

<sup>216</sup> *ibid.*

longer a party to the NPT. Therefore, they are beyond the scope of this dissertation. Thus, unlike most other states, North Korea's sanctions during its membership of the Treaty were imposed unilaterally by the US, with the UNSC only adopting one resolution which served merely as a warning.

#### 4.3 The Republic of Iraq:

The case of Iran presents a perfect example of the dangers that plague a system of unequal nuclear enforcement. Like the neighbouring Iran, Iraq began its nuclear program under the auspices of the US led Atoms for Peace program.<sup>217</sup> Shortly after the Iraqi Atomic Energy Commission was established, the 1958 Iraqi military coup ushered in a new government that aligned itself with the Soviet Union.<sup>218</sup> With the assistance of its new allies, Iraq procured a reactor which commenced operations in 1967, marking the beginning of its nuclear activities. Iraq was an original signatory to the NPT, and its initial conduct suggested an intention to comply with the Treaty.<sup>219</sup>

In an account of his time working on the weaponisation of the Iraqi nuclear program, Hamza claims that the release of a book titled "The Israeli Bomb" by Fouad Jabir, an American of Palestinian descent, inspired the development of Iraqi nuclear weapons.<sup>220</sup> According to Hamza, the book warned of an Israeli dominance of the Middle East due to its possession of nuclear weapons and suggested that the Arab world also arms itself. While records of Jabir's book are difficult to obtain, it has been established that Iraq began to weaponize its nuclear program around the early 1970s.<sup>221</sup>

Although Iraq managed to keep its nuclear weapon program secret from IAEA inspectors, its neighbours and the US were aware that it was conducting clandestine processes to weaponize its program.<sup>222</sup> From the late 1970s, Iraq's nuclear sites were attacked by Iranian and Israeli fighter jets, and Yehia al-Meshad, an Egyptian scientist working on the program, was murdered by

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<sup>217</sup> Jacob Hamblin, *The Wretched Atom: America's Global Gamble with Peaceful Nuclear Technology* (Oxford University Press 2021).

<sup>218</sup> Målfrid Braut-Hegghammer, 'Cheater's Dilemma: Iraq, Weapons of Mass Destruction, and the Path to War' (2020) 45(1) *International Security* 51.

<sup>219</sup> *ibid.*

<sup>220</sup> Khidhir Hamza and Jeff Stein, *Saddam's Bombmaker: The Daring Escape of the Man who Built Iraq's Secret Weapon* (Simon and Schuster 2001).

<sup>221</sup> Findlay (n. 73).

<sup>222</sup> Braut-Hegghammer (n. 218).

suspected Israeli Mossad agents.<sup>223</sup> An Israeli attack that occurred on June 7, 1981, particularly caused international controversy, and the IAEA and other international organisations condemned Israel for attempting unilateral enforcement of the nuclear order.<sup>224</sup> Israel argued that its actions were based in part on information supplied by US intelligence and were ultimately in the interest of international safety since Iraq was deceiving the IAEA.

In a radio broadcast on the 24<sup>th</sup> of June 1981, Saddam Hussein commented:

*[A]ny country in the world that seeks peace and security, respects people, and does not wish those people to fall under the hegemony or the oppression of external foreign forces should assist the Arabs in one way or another to obtain the nuclear bomb in order to confront Israel's existing bombs.*<sup>225</sup>

This statement by the Iraqi president was not only declaring Iraq's intent to violate the NPT, but it was also encouraging other states to breach the terms of the Treaty by assisting Arab states in developing or procuring nuclear weapons. Surprisingly, there was very little international reaction to Saddam Hussein statements, and the IAEA only visited Iraq to inspect the damage done to its nuclear facility by the Israeli airstrike.<sup>226</sup> Iraq's resolve to acquire and utilise weapons of mass destruction was displayed during the Iran-Iraq War (1982-1988) when Iraq deployed prohibited chemical weapons on numerous occasions.<sup>227</sup> Despite this disregard for international humanitarian law, states continued to engage in secret deals with Iraq that were clearly geared towards the development of a nuclear weapon. Even NWS were involved in these deals, with the **Scott Report** commissioned by the British government in 1992 exposing the extent of British involvement in supplying Iraq with materials for the weaponization of its nuclear program.<sup>228</sup>

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<sup>223</sup> Brian Chappell, *State Responses to Nuclear Proliferation: The Differential Effects of Threat Perception* (Macmillan 2021).

<sup>224</sup> *ibid.*

<sup>225</sup> Matthew Fuhrmann, *Atomic Assistance: How "Atoms for Peace" Programs Cause Nuclear Insecurity* (Cornell University Press 2012) 113.

<sup>226</sup> Gudrun Harrer, *Dismantling the Iraqi Nuclear Programme: The Inspections of the International Atomic Energy Agency, 1991–1998* (Routledge 2014).

<sup>227</sup> David Walker, "An agonizing death': 1980s US policy on Iraqi chemical weapons during the Iran-Iraq War" (2017) 8(2) *The Journal of the Middle East and Africa* 175.

<sup>228</sup> Owen Thomas, 'Security in the Balance: How Britain Tried to Keep its Iraq War Secrets' (2020) 51(1) *Security Dialogue* 77.

The Iraqi invasion of Kuwait in August 1990 was the beginning of its troubles with the international community.<sup>229</sup> Although Iraq conquered Kuwait within two days, the UN vehemently condemned the invasion and the UNSC adopted twelve resolutions in the space of three months on the issue.<sup>230</sup> The final of the twelve resolutions stipulated a deadline for Iraq's withdrawal from Kuwait, and after Iraq refused to withdraw on the stated date, a coalition of UN states intervened and forcefully liberated Kuwait. As part of the terms of its surrender, Iraq had to comply with the terms of UNSC **Resolution 687**.<sup>231</sup>

The Resolution required Iraq to submit a report declaring the locations of all its weapons of mass destruction within 15 days, and it established the United Nations Special Commission (UNSCOM) which was tasked with monitoring Iraq's compliance with policies against weapons of mass destruction.<sup>232</sup> The coalition forces had also targeted Iraq's nuclear facilities during the war to liberate Kuwait, and the damages were so severe that Iraq's nuclear programs had to be halted.<sup>233</sup>

In its first report to the IAEA in line with **Resolution 687**, Iraq denied having nuclear weapons or nuclear-grade material.<sup>234</sup> The UNSC adopted **Resolution 699** in June 1991 which gave the IAEA powers to inspect nuclear facilities in Iraq and destroy whatever materials necessary, and the IAEA conducted a series of inspections which suggested weaponization of nuclear materials.<sup>235</sup> After the seventh IAEA inspection in October 1991, Iraq finally admitted that research had been ongoing to develop nuclear weapons and revealed that its nuclear facility at Al Atheer was built specifically for the weaponization of its nuclear program.<sup>236</sup>

Although it was determined that Iraq did not yet have the capacity to develop nuclear weapons prior to its invasion of Kuwait, the facility at Al Atheer and a second facility at Al Hatteen were destroyed by the IAEA in 1992, effectively ending any hopes of Iraqi nuclear weapons in the

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<sup>229</sup> Alexander Thompson, *Channels of Power: The UN Security Council and US Statecraft in Iraq* (Cornell University Press 2015).

<sup>230</sup> *ibid.*

<sup>231</sup> *ibid.*

<sup>232</sup> Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee 1990-1994* (Brill 2021).

<sup>233</sup> Hans-Christof von Sponeck, *A Different Kind of War: The UN Sanctions Regime in Iraq* (Berghahn Books 2022).

<sup>234</sup> Harrer (n. 226).

<sup>235</sup> *ibid.*

<sup>236</sup> Findlay (n. 73).

foreseeable future.<sup>237</sup> More nuclear facilities were destroyed, but Iraq's cooperation led to the relaxation of some of the embargos placed on it since its invasion of Kuwait.

Although Iraq was allowed to trade with states once again, UNSC **Resolution 1051** of 1996 imposed complex monitoring mechanisms on Iraqi importation of arms.<sup>238</sup> However, Iraq became hostile towards the UN, and it refused to cooperate with the IAEA or UNSCOM. After the UNSC adopted several resolutions calling for Iraq's cooperation and sanctioning individuals involved in the sudden hostile treatment of the IAEA and UNSCOM, Iraq expelled UN inspectors in December 1998 and prohibited UNSC mandated overflights which monitored all its nuclear facilities.<sup>239</sup> IAEA inspectors also withdrew from Iraq, and although it was agreed that Iraq intended to restart the weaponization of its nuclear program, there was very little chance that any significant progress would be made within the next few years.

Hours after the exodus of UN and IAEA inspectors, a joint US-UK operation, codenamed Desert Fox, was undertaken.<sup>240</sup> Operation Desert Fox was a four-day bombing campaign that targeted Iraqi weapon facilities, and although it was a major success in terms of its objectives, it was met with mixed reactions. Since it was not ordered by the UNSC, the three permanent members who were not a party to the operation were offended, and they sought to lift some of the sanctions on Iraq and disband the UNSCOM to show their displeasure.<sup>241</sup>

Iraq's conduct remained hostile until it announced in January 2000 that it was finally willing to allow the IAEA to inspect its facilities.<sup>242</sup> However, these inspections were conducted remotely until November 2002 when IAEA inspectors were physically allowed into Iraqi territory. When Iraq was found to be in violation of its NPT obligations once again, the UNSC adopted **Resolution 1441** on 8 November 2002, which called for Iraq's disarmament.<sup>243</sup>

Meanwhile, the US and the UK claimed to have found evidence that Iran was hiding dangerous weapons and actively seeking to develop nuclear weapons. Colin Powell, the US Secretary of

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<sup>237</sup> Harrer (n. 226).

<sup>238</sup> *ibid.*

<sup>239</sup> *ibid.*

<sup>240</sup> David Mattingly, *Creating Enemies: Stabilization Operations in Iraq* (Anchor Academic Publishing 2015).

<sup>241</sup> *ibid.*

<sup>242</sup> Findlay (n. 73).

<sup>243</sup> Michael Byers, 'Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity' (2004) 10 *Global Governance* 165.

State, made a presentation to the UNSC on 5 February 2003 presenting the ‘evidence’ and suggesting an invasion of Iraq that was to commence on the 19<sup>th</sup> of March 2003.<sup>244</sup> Certain that a proposal to invade Iraq would be vetoed by the three other permanent members of the UNSC, the US, with the support of the UK, decided to unilaterally enforce Iraqi compliance with the NPT.<sup>245</sup>

The IAEA withdrew its inspectors before the March 19 deadline and as promised, the US invaded Iraq on that date to commence the Iraq War (2003-2011).<sup>246</sup> Many states condemned the action of the US (and the UK), with the three other permanent members expressing their opposition to the war. Koffi Anan, the UN Secretary General at the time, even condemned the invasion as not being in conformity with the UN Charter.<sup>247</sup> Regardless of the international opposition to the war, it lasted for eight years, and it was ultimately discovered that the US and UK had greatly exaggerated their accusations against Iraq.<sup>248</sup>

#### 4.4 Nuclear War States:

While numerous resolutions have been adopted and substantive actions have been taken against NNWS found to be in violation of the NPT, the case of NWS presents a very different picture. The (non)enforcement of the two main obligations placed on NWS by the NPT will be discussed to juxtapose the treatment of the NNWS and the NWS within the global nuclear regulatory system.

##### 1. *Proliferation of Nuclear Weapons:*

The provisions of **Article I** of the NPT place an obligation on NWS to refrain from proliferating nuclear weapons. Such proliferation may occur when they transfer possession or control of such weapons to NNWS, or where they assist such states in the development of nuclear weapons. Although the NWS had the unique privilege of practically dictating the terms of the NPT, meaning

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<sup>244</sup> Christopher O'Sullivan, *Colin Powell: American Power and Intervention from Vietnam to Iraq* (Rowman & Littlefield Publishers 2009).

<sup>245</sup> *ibid.*

<sup>246</sup> Harrer (n. 226).

<sup>247</sup> Martin Walker, ‘Bush v. Annan: Taming the United Nations’ (2005) 22(1) *World Policy Journal* 9.

<sup>248</sup> Melvyn Leffler, *Confronting Saddam Hussein: George W. Bush and the Invasion of Iraq* (Oxford University Press 2023).

that they willingly placed these obligations on themselves, an examination of their practices post-1967 reveals a collective disregard for **Article I**.

First, while there are no indications that any NWS has attempted to provide a NNWS with nuclear weapons since the NPT came into force, many of them have adopted a careless attitude in their trade and exchange of nuclear materials with NNWS that could be interpreted as a violation of the Treaty.<sup>249</sup> As has been earlier noted, the British government secretly supplied Iraq with arms and materials that were to be used in Iraq's nuclear program in the late 1980s. The secrecy of the transactions is indicative of knowledge on the part of the British government that the materials were to be used for prohibited purposes.<sup>250</sup>

Although British actions could be regarded as being in breach of its NPT obligations, the British government was not subject to any form of sanction. Iraq, on the other hand, suffered a host of UNSC sanctions, some of which could be linked to its transactions with the British government. In recognition of the need for some form of sanction to fabricate the existence of a fair system, the British government attempted to publicly sanction those responsible. Four directors of Matrix Churchill, the British arms manufacturing company at the centre of the Arms-to-Iraq Affair, were put on trial for supplying prohibited arms and expertise to Iraq.<sup>251</sup> In a comical turn of events, the trial was quickly halted when it was discovered that the government had actively advised and even encouraged the supplies.<sup>252</sup> With the British government's hypocrisy out in the open, the four directors on trial were compensated for miscarriage of justice.

Russia and China are also known to have assisted the nuclear programs of NNWS who were suspected of engaging in the development of atomic weapons. Russia's dealings with Iraq and North Korea have been highlighted earlier in this research, and China has been identified as the primary benefactor behind Pakistan's controversial but successful nuclear weapons program.<sup>253</sup> None of these NWS have faced any sanctions despite the clarity of the provisions of the NPT on

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<sup>249</sup> Vipin Narang, *Seeking the Bomb: Strategies of Nuclear Proliferation* (Princeton University Press 2022).

<sup>250</sup> David Whitby, "Arming Iraq: How the US and Britain Secretly Built Saddam's War Machine" (1997) 27 *Crime Law & Social Change* 73.

<sup>251</sup> Dave Bartlett, 'The Scott Inquiry: Matrix Churchill and the Arms to Iraq Affair' in Lionel Cliffe, Maureen Ramsay, and Dave Bartlett (eds). *The Politics of Lying: Implications for Democracy* (Macmillan 2000).

<sup>252</sup> *ibid.*

<sup>253</sup> Muhammad Naeem and Abdul Majid, "Analytical Review of Pak-China Strategic Cooperation 1950-2017" (2020) 35(2) *South Asian Studies* 261.

the illegitimacy of their actions, but the NNWS recipients of these nuclear materials are quickly reported by the IAEA and sanctioned accordingly.

A more blatant disregard for **Article I** of the NPT by the NWS may be found in their practice of situating nuclear weapons in the territories of NNWS. While the US may not be as involved in transferring nuclear materials to suspicious NNWS as other NWS, it is notorious for distributing its nuclear warheads across the globe.<sup>254</sup> By maintaining active nuclear weapons in strategic locations beyond their territories, NWS maximise the potential for widespread attack in case of nuclear war.<sup>255</sup>

This practice had been in existence before the NPT came into force, and the Soviet deployment of nuclear weapons to Cuba, an act which was in response to US nuclear weapons stationed in Italy and Turkey, laid the foundations of the Cuban Missile Crisis of 1962 (the closest the world has come to nuclear war).<sup>256</sup> Even after signing and ratifying the NPT, the US and Russia continue to engage in this practice which, surprisingly, is welcomed by many other states.

The most offensive example of this practice may be found in the nuclear sharing policy championed by NATO. The policy encourages the three NWS members of the organisation (US, UK, and France) to involve NNWS members in cases where the organisation opts to engage in nuclear attacks.<sup>257</sup> NATO maintains that this policy encourages deterrence because the involvement of these NNWS in nuclear decisions and operations of the organisation erases the need for them to develop nuclear weapons of their own.<sup>258</sup> Thus, NNWS such as Belgium, Turkey, and the Netherlands currently host nuclear weapons provided by the US under the NATO policy.<sup>259</sup> Schofield found that in 1971, the US had as many as 7,300 nuclear weapons stationed around Europe, with 2000 of these weapons allocated for the exclusive use of NATO.<sup>260</sup>

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<sup>254</sup> Hans Kristensen and Matt Korda, "United States Nuclear Weapons, 2023" (2023) 79(1) *Bulletin of the Atomic Scientists* 28.

<sup>255</sup> Julian Schofield, *Strategic Nuclear Sharing* (Macmillan 2014).

<sup>256</sup> Graham Allison, "The Cuban Missile Crisis at 60" (2022) 52(8) *Arms Control Today* 38.

<sup>257</sup> Kjølvi Egeland, "Spreading the Burden: How NATO became a 'Nuclear' Alliance" (2020) 31(1) *Diplomacy & Statecraft* 143.

<sup>258</sup> Todd Sechser, "Sharing the Bomb: How Foreign Nuclear Deployments Shape Non-proliferation and Deterrence" (2016) 23 *The Non-proliferation Review* 443.

<sup>259</sup> Tom Sauer, "The Impact of the Treaty on the Prohibition of Nuclear Weapons: The Crucial Role of the European NATO Allies" (2024) *Peace Review* 1.

<sup>260</sup> Schofield (n. 255).

Although this policy has been criticised as a violation of **Article I** of the NPT, the US maintains the position that the policy does not violate the Treaty because control of the weapons remain with the NWS until war is declared.<sup>261</sup> During war, however, nuclear attacks may be delivered by specially trained pilots from NNWS, and declassified correspondence from a high-ranking US National Security adviser concluded that “the non-nuclear NATO partners in effect become nuclear powers in time of war.”<sup>262</sup> In a 2017 presentation, William Alberque (the Head of Arms Control and Coordination at NATO) argued that the nuclear sharing policy predates the NPT, meaning that all parties were aware of the policy and recognised that it was not in violation of the NPT at the time the Treaty was signed.<sup>263</sup> An analysis of these arguments reveals the faulty foundations on which they are predicated.

First, there is no indication anywhere within the NPT that its provisions cease to apply in times of war. The position (which was first declared by the Dean Rusk, the US Secretary of State in 1968) has only been expressed by the US, and there has not been any reason for other states to express counter positions on the matter till date.<sup>264</sup> Even if the assertion of the US is accepted, the nuclear sharing arrangement within the NATO system could amount to transferring control of nuclear weapons to NNWS during times of peace. During the Cold War, NNWS hosts of US weapons were frequently in a position to override US control of nuclear weapons.<sup>265</sup> Even currently, the dual-key system operated by the US may be interpreted as granting control of the nuclear weapons to the host states.

Under this dual-key system, the nuclear weapon is secured in a manner that requires two access codes or keys before it can be unlocked and launched.<sup>266</sup> One key/code remains in the possession of the US while the other key is given to the host state. Thus, the host state would be unable to launch the weapon without authorisation by the US. The US argues that this system prohibits the

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<sup>261</sup> Dean Rusk, “Questions on the Draft Non-Proliferation Treaty Asked by US Allies together with Answers Given by the United States,” NPT Hearings 90–92 (Washington, D.C.: United States Senate, 1968).

<sup>262</sup> Martin Butcher, Otfried Nassauer, Tanya Padberg, and Dan Plesch, *Questions of Command and Control: NATO, Nuclear Sharing, and the NPT* (Project on European Non-Proliferation 2000) at 20.

<sup>263</sup> William Alberque, *The NPT and the Origins of NATO’s Nuclear Sharing Arrangements* (At the Permanent Mission of Japan, 5 May 2017). Available online at: <https://vcdnp.org/wp-content/uploads/2017/05/Alberque-Briefing-NPT-Nuclear-Sharing-Arrangements.pdf>

<sup>264</sup> Rusk (n. 261).

<sup>265</sup> Schofield (n. 255) at 72.

<sup>266</sup> Alexander Mattelaer, “Nuclear Sharing and NATO as a ‘Nuclear Alliance’” in Stephan Frühling and Andrew O’Neil (eds). *Alliances, Nuclear Weapons and Escalation: Managing Deterrence in the 21st Century* (ANU Press 2021).

control of the nuclear weapon in accordance with the NPT, but this argument is, at best, a half-truth.<sup>267</sup> Although the host state will be unable to launch the weapon on its own, it may also prevent the US from launching the weapon by withholding the access key/code in its possession. By doing so, the host state exercises some form of control over the nuclear weapon.

Second, the argument advanced by Alberque which attempts to justify the nuclear sharing policy because it predates the NPT is problematic. An analysis of the origins of the NPT (which has been undertaken earlier in this work) reveals that the Treaty came into force to address pre-existing practices, and the fact that nuclear sharing was already widely practiced at the time the Treaty came into force may even strengthen arguments opposing Alberque's position. However, Hayashi maintains that the US and the Soviet Union arrived at a compromise during the NPT negotiations to allow this policy to continue despite the provisions of **Articles I and II**, and this compromise was "quietly accepted by the Non-Aligned members of the ENDC."<sup>268</sup>

Hayashi's position is given credence by the lack of substantial opposition to the nuclear sharing policy by parties to the NPT. In fact, there appears to be widespread acceptance of this practice. Criticism may only be found in academic and expert commentaries, but there seems to be a consciousness even among the experts that this practice would not be contended or sanctioned by any of the empowered bodies.

This consciousness is informed by the involvement of a host of world powers in the practice, including three of the NWS. This immediately rules out any form of sanction by the UNSC. Even states who do not engage in, or are opposed to, the practice would be unlikely to express their position due to the power dynamics that have been discussed in Chapter 3 above. Thus, the US can afford to take its nuclear weapons on what can be described as a world tour without fear of opposition or sanctions.

Apart from the US, Russia has also expressed intentions of deploying its nuclear weapons to strategic locations outside its territory. After the fall of the Soviet Union in 1991, Russia inherited all its nuclear weapons even though some were stationed in territories belonging to newly

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<sup>267</sup> *ibid.*

<sup>268</sup> Mika Hayashi, 'NATO's Nuclear Sharing Arrangements Revisited in Light of the NPT and the TPNW' (2021) 26(3) *Journal of Conflict and Security Law* 471, at 481.

independent states such as Ukraine and Kazakhstan.<sup>269</sup> To ensure that it wasn't offending the NPT, Russia retrieved or disabled all the weapons outside its territory. However, after the Russian invasion of Ukraine in 2022, Russia announced plans to station tactical nuclear weapons within Belarusian territory.<sup>270</sup> Although Belarus is a NNWS, it enthusiastically entered into a nuclear sharing agreement with Russia and welcomed the proposal to host nuclear weapons.

The Russo-Belarusian nuclear sharing agreement was not welcomed with the same approval given to the NATO nuclear sharing policy by the international community, and the agreement was generally condemned by state representatives at the UN.<sup>271</sup> Russia has argued that its nuclear sharing agreement is no different from NATO's nuclear sharing program, but this argument is weakened by the fact that the Russo-Belarusian agreement was only negotiated after Russia commenced hostilities with Ukraine, a state that shares borders with both states.

Despite the backlash received by the Russo-Belarusian program, there has not been any formal sanction against either state. Russia would undoubtedly veto any resolution proposed within the UNSC condemning or sanctioning the agreement, and the few states with the resources to unilaterally sanction Russia would be hesitant to do so for fear of igniting a nuclear confrontation. Thus, Russia can decide to violate the NPT without fear of sanction.

## 2. *Refusal to Disarm*

Although the NPT deliberately refrains from placing specific disarmament obligations on the NWS, it unmistakably urges them to take deliberate and timely steps towards total disarmament. As noted earlier, no NWS has made any serious attempts to disarm itself since the NPT came into force, and an even more lackadaisical attitude can be found in the lack of collective effort towards a framework for future disarmament. This attitude is unjustifiable especially because the issue of total nuclear disarmament has been in discussion since 1946, just a year after the Hiroshima and Nagasaki bombings.

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<sup>269</sup> Mariana Budjeryn, "Non-proliferation and State Succession: The demise of the USSR and the Nuclear Aftermath in Belarus, Kazakhstan, and Ukraine" (2022) 24(2) *Journal of Cold War Studies* 26.

<sup>270</sup> Paul Hansbury, *Belarus in Crisis: From Domestic Unrest to the Russia-Ukraine War* (Oxford University Press 2023).

<sup>271</sup> Hans Kristensen, Matt Korda, Eliana Johns, and Mackenzie Knight, 'Nuclear Weapons Sharing, 2023' (2023) 79(6) *Bulletin of the Atomic Scientists* 393.

In the **Baruch Plan** which was presented to the United Nations Atomic Energy Commission (the precursor to the IAEA) in June 1946, the US agreed to decommission all its nuclear weapons if other states were willing to halt their nuclear programs and submit to a system of international nuclear inspection and monitoring.<sup>272</sup> Since the world was still processing the unprecedented destruction from the atomic bombings of the previous year, most states, especially the Soviet Union, declined the proposal for fear that the US intended to secretly secure nuclear monopoly through the proposed program.<sup>273</sup>

Fifteen years later, the **McCloy-Zorin Accords** of 1961 featured the most optimistic provisions relating to potential disarmament.<sup>274</sup> **Article 1 (a)** of the Agreement, which was completed between the US and the Soviet Union, provided that the Parties intended to achieve a reality where “disarmament is general and complete and war is no longer an instrument for settling international problems.” Although the Agreement was aspirational, the intentions were clear and noble. **Article 1 (a)** of the Accords may have been the inspiration behind **Article VI** of the NPT, but the retention of this aspirational attitude meant that the NPT failed to substantially further the cause of disarmament. Since the NPT came into force, the NWS have failed to take the necessary steps towards disarmament. Although a meeting between President Raegan and General Secretary Gorbachev in 1986 (The Reykjavik Summit) reportedly came close to producing an agreement towards total disarmament, the leaders of the Big Two ultimately left without reaching a consensus.<sup>275</sup>

Currently, the NWS appear to be more interested in maintaining the status quo, and this suggests that the only option for securing compliance with **Article VI** of the NPT is enforcement. The challenges of enforcing the NPT against the NWS have been documented above, and the NNWS seem to have conceded to the special status of these five states. However, in a commendable display of courage and responsibility to the international community, the Marshall Islands (a state

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<sup>272</sup> David Kearns, "The Baruch Plan and the Quest for Atomic Disarmament" (2010) 21(1) *Diplomacy & Statecraft* 41.

<sup>273</sup> Lodgaard (n 74).

<sup>274</sup> *ibid.*

<sup>275</sup> Thomas Simons Jr, "Reykjavik Up Close: Reagan and Gorbachev, October 1986 and After" (2023) 25(4) *Journal of Cold War Studies* 159.

with a population of less than 50,000) filed a lawsuit at the ICJ against all nine states in possession of nuclear weapons (the NWS + India, Israel, North Korea, and Pakistan).<sup>276</sup>

Although the suit was dismissed on the grounds that the Marshall Islands did not have a particular dispute with any of the states, the symbolic value of its action is priceless. While it was unlikely that the ICJ would rule against the NWS on the topic of nuclear weapons as evidenced by its 1996 Advisory Opinion, the Marshall Islands still went ahead to confront the nuclear armed states, making a clear statement.<sup>277</sup> The confidence of the NWS that the international community would remain silent as they ignore their disarmament obligations was shaken, albeit by a relatively tiny voice, but this act by the Marshall Islands showed that NNWS must adopt a proactive stance to achieve equilibrium in the treatment of all state parties to the NPT.

A more collective response by NNWS to the NWS refusal to disarm may be found in the TPNW which came into force in 2021<sup>278</sup>. **Article 4 (2)** of the TPNW provides:

*[E]ach State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices shall immediately remove them from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties... ”*

Unlike the NPT, the TPNW displays a serious commitment to disarmament by suggesting a definite timeline for the decommissioning of nuclear weapons. Unfortunately, none of the NWS is a party to the TPNW, and all except China (which abstained) voted against the resolution that kickstarted negotiations for the Treaty at the UNGA.<sup>279</sup> The absence of NWS renders these disarmament provisions impotent.

The practicality of achieving disarmament has been called into question, and some scholars maintain that the possession of nuclear weapons is the only way to avert the destruction of mankind. Kenneth Waltz (in)famously asserted, in a 1981 monograph, that the spread of nuclear

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<sup>276</sup> Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) [2016] ICJ Rep 833.

<sup>277</sup> A discussion of the ICJ's 1996 Advisory Opinion can be found in page 21 above.

<sup>278</sup> Elayne Whyte, "The Power of the Powerless: Lessons from the TPNW and Reflections on the Practice of Diplomacy" (2023) 6(2) Journal for Peace and Nuclear Disarmament 346.

<sup>279</sup> *ibid.*

weapons would promote peace and reinforce international stability.<sup>280</sup> According to the author, the certainty of destruction that comes with nuclear attack would deter states from engaging in acts that can lead to nuclear escalation, and a possession of nuclear weapons by a significant number of states would eventually contribute to world peace. While Waltz position has its merits, it operates on the assumption that each state possessing nuclear weapons would act reasonably and in the interest of world peace. However, most states in possession of nuclear weapons place the sole power to order their use in the office of their president/prime minister, and the volatility of man, especially in the context of war, could spell disaster for mankind in a world with numerous nuclear armed states.<sup>281</sup>

Apart from promoting world peace, the militaristic value of nuclear weapons is too great to expect NWS to disarm themselves. As the ultimate weapon, military inclined states such as the US and the Soviet Union are unlikely to forgo the capabilities nuclear bombs.<sup>282</sup> There is a possibility that the NWS will commence clandestine nuclear weapon programs if they publicly commit to the process of disarmament. To avoid the secrecy and tensions that gripped the world throughout the cold war, it may be more desirable for these states to maintain public and relatively transparent nuclear weapon programs.

Regardless of the practicability or otherwise of disarmament, the NPT places an obligation on its parties to explore bona fide negotiations aimed towards achieving a world without nuclear weapons, but the NWS have blatantly refused, and even rejected, efforts to comply with this obligation. The outcome of the Marshall Islands case and the situation with the TPNW suggest that efforts to enforce this obligation have very slim chance of success, meaning that the prospect of total disarmament ultimately depends on the willingness of the NWS.

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<sup>280</sup> Kenneth Waltz, *The Spread of Nuclear Weapons: More May Better* (Adelphi Papers, International Institute for Strategic Studies 1981).

<sup>281</sup> Edward Kaplan, *To Kill Nations: American Strategy in the Air-atomic Age and the Rise of Mutually Assured Destruction* (Cornell University Press 2015).

<sup>282</sup> Nina Tannenwald, "Life Beyond Arms Control: Moving Toward a Global Regime of Nuclear Restraint & Responsibility" (2020) 149(2) *Daedalus* 221.

## **5.0 CHAPTER FIVE: CONCLUSION**

### **5.1 The Implication of NPT Enforcement on Sovereign Equality within the UN**

The discussions in the preceding chapters reveal a pattern of inequality in the enforcement of the NPT. This inequality in enforcement is encouraged by the provisions of the Treaty which bestow a special status on the NWS by granting them the exclusive right to legitimately possess nuclear weapons. The segregation of parties creates a group of superpower states who enjoy the benefits of their special nuclear abilities while the others watch in envy.

Apart from granting the NWS exclusive possession of nuclear weapons, the NPT relies on the NWS for its enforcement. Since they are integral to the success of most enforcement mechanisms

available to the NPT, the NWS can afford to engage in the proliferation of nuclear weapons and ignore the call for bona fide disarmament negotiations without fear of consequences. The IAEA relies heavily on support from the NWS to function adequately, the UNSC is practically their exclusive club, they are the only states powerful enough to unilaterally sanction one another, and other members of the international community require an alliance with at least one NWS to secure their interests on the global stage. Thus, the NWS are essentially immune from enforcement of the Treaty.

This outright discrimination is unusual within the UN, an organisation that prides itself as the citadel of international congregation where each state is equally regarded. However, the NPT was negotiated with the full support and under the aegis of the UN, and the organisation allowed the discriminatory provisions within the Treaty to see the light of day. Not only did the UN support these provisions, but it has also constantly given life to them, contributing significantly to the unequal enforcement of the Treaty. It is no surprise that many NNWS feel oppressed or cheated by the provisions of the NPT, and the holdout states have refused to accede to the Treaty partly due to their desire to remain unburdened by its unfair and disadvantageous provisions. North Korea's withdrawal was partially motivated by the fact that it had to face numerous sanctions for violating the Treaty while the NWS (who were responsible for many of these sanctions) could do the same without facing a single sanction.

However, despite the obvious inequality in enforcement of the Treaty, almost all the states of the world continue to remain parties to the Treaty. Surely, a system that is flagrantly biased towards a select few should not be able to survive for as long as the NPT has, and this suggests that the NNWS are either fine with, or are powerless against, the situation. Most NNWS are undesirous of developing nuclear weapons due to the significant resources required and the ultimate destructive potential of these weapons. Even if an NNWS wishes to develop a nuclear weapon, it would be unable to survive the regime of sanctions that would be imposed by the NWS either individually or in their capacity as members of the UNSC.

The discriminatory nature of enforcement of the NPT may also be necessary for world peace, an objective that forms the foundation of the UN. To their credit, the NWS have shown commendable restraint in their possession of nuclear weapons. All of them have been involved in armed conflict at one point or the other since the development of their weapons but, apart from the Hiroshima and

Nagasaki bombings, none have resorted to nuclear attacks during these wars. The same restraint cannot be expected of all other states, and it could be detrimental if the provisions against the development of nuclear weapons are not enforced. The possession of nuclear weapons by NWS contributes to their ability to successfully enforce the NPT, and they may lose this ability if they decommission their weapons. Thus, the UN, by granting the NWS exclusive powers to possess nuclear weapons, may have been deliberately or inadvertently pursuing one of its major objectives.

Regardless of the practical advantages that come with the unequal enforcement of the NPT, it is an act that is against the core principles of the UN. There must be a balance between practicability and principle, but the situation presented by the enforcement of the NPT tips the scale in favour of the former. However, the NNWS appear to understand the reasons behind their unequal treatment, and their collective decision to accept this state of affairs is central to the preservation of world peace.

## 5.2 The Way Forward:

- **A Sole Nuclear Power?**

To address the issue of some states taking precedence over others, the right to legitimately possess nuclear weapons can be situated in a single institution. Since the knowledge and expertise required for the development of nuclear weapons are already in existence, it is possible that some states will secretly develop their own weapons if the NWS disarm. A single institution with the right to lawfully possess nuclear weapons may be able to deter all states from taking this path, but the practicability of creating such an institution may be questioned.

The UN would have been the ideal institution to perform this function, but its negative attitude towards war and armed threat or confrontation makes it unlikely that such a suggestion would be welcomed. The UN famously refuses to create a standing army of its own, preferring to accept military personnel of its member states for peacekeeping missions. The UN has also been the primary forum for discussions about disarmament, and the possession of nuclear weapons by the institution would run contrary to the image it has carefully developed over the years.

However, if a sole institution is to be given the right to possess nuclear weapons, it must be one within which all, or an overwhelming majority of, the states of the world are represented. This way, they can all have a say in the control of these weapons. In a way, they would all be NWS. This would eliminate the segregation between NWS and NNWS perpetuated by the NPT and ensure equal enforcement of nuclear obligations among all states.

While the ambitiousness of this recommendation is acknowledged, there are no limits to the interventions that must be explored when the fate of the world is at stake.

- **Active Disarmament Negotiations**

A more reasonable but highly unlikely plan of action to address the inequality in enforcement of the NPT would be the willing compliance of the NWS with **Article VI** of the Treaty. Since they were not involved in the negotiation of the TPNW which already provides for disarmament, they would be reluctant to accede to the Treaty. However, they may take inspiration from the TPNW and pursue fresh negotiations aimed at arriving at a clear and actionable plan towards disarmament. Such a negotiation must also involve the nuclear holdout states, as it would be futile to lose the nuclear weapons held by states that have signed the NPT while the holdout states continue to possess theirs. In such a case, the holdout states would be able to lay claim to world dominance due to their nuclear capabilities.

After the NWS (and holdout states) disarm, the international community will have to hope that each member continues to abide by the provisions of the NPT to prevent the commencement of a second nuclear arms race.

### 5.3 Concluding Remarks:

This research has explored the unequal standing between the NWS and the NNWS within the framework of the NPT. An exploration of the Treaty's historical background was undertaken to contextualise its provisions, and the enforcement mechanisms available to the Treaty were analysed to juxtapose the contrasting experiences of the NWS and the NNWS. After several case

studies were conducted, the implication of the prevailing patterns of enforcement on the principle of sovereign equality was examined, and recommendations for future directions were provided.

The importance of this academic exercise is appreciated, but it is difficult to maintain an enthusiastic spirit regarding the topic when the complexities of the prevailing realities are considered. Many authors and experts have explored this issue of unequal enforcement of the NPT and the general inequality within the global nuclear order, but very little has changed since the Treaty came into force. Unfortunately, there are no indications that the system will become more inclusive in the future, and the NNWS can only hope that the NWS would abide by the Treaty of their own volition.

## **TABLES AND BIBLIOGRAPHY**

### **TABLES**

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