

# **NEGOTIATING NUCLEAR WEAPONS**

## **A STUDY ON THE MERIT OF ARTICLE VI OF THE NUCLEAR NON-PROLIFERATION TREATY FOR NUCLEAR DISARMAMENT**

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## Executive Summary

In 1970 the Nuclear Non-Proliferation Treaty (NPT) entered into force. Since then, it has been regarded as one of the important international legally binding regimes with respect to nuclear weapons, and has proven to be a solid foundation for many subsequent (nuclear) arms control related measures. The NPT makes a distinction between Nuclear Weapon States (NWS; the United States, Russia, the United Kingdom, France and China), and Non-Nuclear Weapon States (NNWS; all the other state parties to the NPT), of which the latter promised not to (attempt to) acquire nuclear weapons. As part of this bargain, the NNWS gain access to the technology of the peaceful use of nuclear energy, while the NWS have an obligation to negotiate nuclear disarmament. This is phrased in Article VI of the NPT, which states that “[e]ach 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”. At present however, around 27,000 nuclear weapons continue to exist, which casts doubts on the merit of this specific Article. Especially since the end of the Cold War, many NNWS and non-governmental organisations (NGO’s) also question the necessity of possessing nuclear weapons, for they argue that the risk on (accidental or intentional) nuclear war should be reduced to zero. The topical research question for this thesis is therefore: **What is the merit of Article VI within the Nuclear Non-Proliferation Treaty for nuclear disarmament?** Four additional sub questions have been devised to answer this research question, and are structured to narrow the discussion from broad (nuclear) disarmament towards the nuclear disarmament negotiations of the Nuclear Non-Proliferation Treaty, and more specifically nuclear disarmament under Article VI and the NWS’ degree of compliance with it. The first sub question deals with the measures that have been taken outside the Nuclear Non-Proliferation Treaty framework as part of the overall disarmament and arms control discussion. While the two concepts are sometimes used interchangeably and have evolved since the 1940’s and 1950’s, disarmament can be defined as the reduction of weapons in a specific category of weapons *in order to be protected against the threat of weapons*. Arms control on the other hand, *intends to seek security* through a more strict control of weapons. Three concepts of measures taken for nuclear disarmament outside of the NPT framework are addressed in this section. Depending on the perspective of looking at a NWFZ treaty, from a ‘local’ perspective the concept of a NWFZ is defined as a clear example of *disarmament*, since it completely prohibits the deployment of nuclear weapons in a localised area. Moreover, the concept itself does not merely intend to control nuclear weapons, but to seek its total abolishment in *the given area*. This fits the theoretical rationale underlying the concept for

disarmament, for supporters of disarmament want to be protected against the threat of weapons (i.e. negative security assurances), while the supporters of arms control seek security through a more strict control of weapons. The two other measures, the Comprehensive Test Ban Treaty and the No-First-Use principle, fit the description of arms control, since they intend to restrict nuclear weapons by prohibiting NWS from nuclear testing or using, not from prohibiting or restricting the possession of nuclear weapon. Nuclear disarmament in Article VI of the NPT however, is the result of long negotiations between many states with all of them having different agenda's. The result therefore, is an ambiguous provision with several interpretations possible. Since Article VI calls for all states to *pursue* negotiations in *good faith*, this can be strictly legally interpreted as merely a party's intention, and not as a legal obligation for it is not stated in such manner. As a result, the International Court of Justice (ICJ) has presented an Advisory Opinion (which in itself is not legally binding), to also *conclude* these negotiations. The last ten to fifteen years have also demonstrated a strong willingness on behalf of the NNWS, NGO's, and the ICJ to opt for a broader legal-political interpretation of the Article as part of a broader campaign to call for complete nuclear disarmament. In addition, the Final Documents of the 1995 and 2000 NPT Review Conferences have provided a blueprint for achieving nuclear disarmament, although the NWS' record on this leaves much to desire for. It is however evident, that broad international opinion is clearly pitted against the possession of nuclear weapons. The last sub question analyses the degree of compliance with Article VI with respect to the five Nuclear Weapon States. This is analysed both quantitatively and qualitatively. Strictly from a quantitatively perspective, all Nuclear Weapon States have decreased their nuclear arsenals considerably (with the possible exception of China). From a qualitative perspective, the outcome is less promising. All NWS continue to modernise their nuclear arsenals, and continue to regard nuclear weapons as a vital component of their nuclear security strategies. Although the NPT provides a rigid international non-proliferation regime of which a substitute is at present hard to imagine, many challenges remain to be addressed. Some of these challenges are how to deal with states that are not party to the NPT and how to deal with non-state actors. For as long as the NPT is not universally applicable and a credible terrorism threat (with regards to weapons of mass destruction) continues to be present, it is hard to envisage any short-term general and complete nuclear disarmament. And for as long as the NPT is in place, NNWS and NGO's will continue to remind the NWS of their (legal-political) obligation to disarm with respect to Article VI.

## **Abbreviations**

ABM: Anti-Ballistic Missile (Treaty)  
ACM: Advanced Cruise Missile  
ALCM: Air Launched Cruise Missile  
ASM: Anti-Surface Missile  
CBM: Confidence Building Measures  
CD: Conference on Disarmament (Geneva)  
CTBT: Comprehensive Test-Ban Treaty  
CTBTO: Comprehensive Test-Ban Treaty Organisation  
ENDC: Eighteen Nation Disarmament Committee  
FMCT: Fissile Material Cut-Off Treaty  
IAEA: International Atomic Energy Agency  
ICBM: Intercontinental Ballistic Missile  
ICJ: International Court of Justice  
IGO: Inter-governmental Organisation  
INF: Intermediate-Range Nuclear Forces Treaty  
NAM: Non-Aligned Movement  
NGO: Non-Governmental Organisation  
NPT: Nuclear Non-proliferation Treaty  
NWFZ: Nuclear-Weapon-Free Zone  
NWS: Nuclear Weapon States  
NNWS: Non-Nuclear Weapon States  
NATO: North Atlantic Treaty Organisation  
SALT: Strategic Arms Limitations Treaty  
SERV: Security-Enhanced Re-Entry Vehicle  
SLBM: Submarine Launched Ballistic Missile  
SLBM: Submarine Launched Cruise Missile  
SRAM: Short-Range Attack Missile  
SSBN: Ballistic Missile Submarines (Nuclear Powered)  
SORT: Strategic Offensive Reductions Treaty  
START: Strategic Arms Reduction Treaty  
UNGA: United Nations General Assembly  
UNSC: United Nations Security Council  
WMD: Weapons of Mass Destruction

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## Foreword

This Master Thesis is part of the conclusion of my Master European Studies at both the University of Twente (the Netherlands) and the Westfälische Wilhelms-Universität Münster (Germany). Shortly after I finished my study courses, I was accepted as an intern at the Dutch Ministry of Foreign Affairs, and more specifically at the Nuclear Affairs and Non-Proliferation Division of the Security Policy Department in 2007. During my internship, I directly learned about the immense obstacles that states face with respect to the negotiations or review of international treaties. One of these treaties was the Nuclear Non-Proliferation Treaty, of which the 2007 NPT Preparatory Committee was held in Vienna, Austria, from 30 April to 11 May 2007. This internship was a great opportunity to get directly involved with security policy, a subject in which I was long since interested. The writing of my Master Thesis could not have been possible without an excellent team of supervisors. First of all I want to thank this team who, regardless of being remotely spread out over an axis of over 500 kilometres, were nevertheless closely related to the subject matter and through the use of digital communication; Professor Ramses Wessel of the University of Twente (the Netherlands), Professor Reinhard Meyers of the Westfälische Wilhelms-Universität Münster (Germany), and of course Frank van Beuningen, Special Advisor to the Security Policy Department of the Dutch Ministry of Foreign Affairs who inspired me to research nuclear disarmament in the first place.

I also want to thank Arthur and Ellen Baas for their neverending support and encouragement during the writing of my thesis. Additionally, I want to thank the team of the Nuclear Affairs and Non-Proliferation Division for their unwarranted support and inspiration during my internship, and of course for the opportunity to return as a policy advisor near the end of my period of study, only to find out that there is still a lot of intriguing work to be done on nuclear disarmament and non-proliferation.

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## 1. Problem definition

In early 2007, the British government decided to extend and improve its nuclear capability, in effect continuing a more than 55-year long period of nuclear deterrence. The proposed renewal of the Trident system, which involves the replacement of the current Vanguard nuclear ballistic missile submarines and the upgrading of its nuclear-armed Trident missiles, narrowly passed by the House of Commons. The decision was met with sharp criticism of many supporters of nuclear disarmament, as it was seen as a step away from the agreements made during the negotiations of the Nuclear Non-Proliferation Treaty (NPT) dating from 1968. This treaty was signed by both Non-Nuclear Weapon States as well as the five Nuclear Weapon States (i.e. US, UK, France, the then-Soviet Union, and China). However, in order to obtain the assurance of the Non-Nuclear Weapon States not to undertake nuclear weapons development, the five Nuclear Weapon States consecutively promised they would commit to full nuclear disarmament, as was embodied in Article VI of the NPT:

Article VI (NPT):

*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.*

Additionally, the Non-Nuclear Weapon States were entitled to develop the non-military use of nuclear energy, and were allowed to receive and exchange technical assistance when required (Art. IV, NPT). The treaty has been considered as a positive contribution to maintaining the peace during the Cold War, but after twenty-five years the Treaty expired. In 1995, the five Nuclear Weapon State signatories pressed for an indefinite extension of the treaty, but in turn had to pledge to the Non-Nuclear Weapon States that five-yearly conferences would be held which would operate as platforms for negotiations towards the goal of full nuclear disarmament. The outcome of these review conferences have so far been plagued by numerous disagreements, many of which focus around the perceived (mainly by the Non-Nuclear Weapon States) unwillingness of the five Nuclear Weapon States to disarm their nuclear weapon arsenals completely. Meanwhile, Article VI continues to act as a strong dividing mechanism on the international stage, in both a strategic and legal way. Strategically, as Non-Nuclear Weapon States argue that the Cold War-era threat of nuclear war has diminished, and legally, as continuing nuclear deterrence would undermine international nuclear disarmament in general. Therefore, the condition of present world affairs presents itself with the question whether Article VI of the

NPT can be considered generally effective or not. The effectiveness of Article VI has proved to be an important matter of debate during the five-yearly NPT Review Conferences. In the light of the aforementioned introduction, the research question is as follows:

*What is the merit of Article VI within the Nuclear Non-Proliferation Treaty for nuclear disarmament?*

In order to provide a well-founded and sound answer on this question, several subordinate questions have been devised to assist in structuring the main research question. These sub questions are designed in such a way as to narrow the discussion from the perspective of broad (nuclear) disarmament towards the nuclear disarmament negotiations of the Nuclear Non-Proliferation Treaty, and more specifically nuclear disarmament under Article VI and the NWS degree of compliance with it.

*What measures have been taken for nuclear disarmament outside of the Nuclear Non-Proliferation Treaty?*

During the negotiations leading to the conclusion of the NPT, many proposals were put forward which would in theory enhance the effectiveness of the Treaty, and especially in terms of (nuclear) disarmament. This chapter addresses the early history of nuclear disarmament and its early proposals. In addition, the historical setting will discuss the change from disarmament to arms control, and to what extent these definitions still have an impact on the phrasing of present-day disarmament obligations. An important aspect of this is the theoretical framework on (nuclear) disarmament and arms control. However, since the primary analytical focus is on the legal dimension of Article VI and its interpretation and the subsequent degree of compliance of the Nuclear Weapon States, the scope of this section does consequently not focus primarily on the extensive literature written on nuclear disarmament and arms control. Focusing on the scientific analytical framework of nuclear disarmament and arms control based on the literature written over the past 60 years would require significantly more research, but does not fall within the scope of the current research. The various definitions and their development are however addressed in brief. Furthermore in this section, three significant proposals are illustrated which were not specifically included within the legal framework of the NPT (largely due to objection voiced by the Nuclear Weapon States), but remain to be of prime importance to the overall success rate of the disarmament efforts of the NPT and continue to be negotiated in close conjunction with the Treaty, albeit negotiated in a different international legal framework (i.e. the United Nations or separate treaties). These proposals include the Comprehensive Test-Ban Treaty, the No-First-Use Principle, and the Nuclear-Weapon-Free Zone treaties. Since the entry into force of the NPT, the question is whether these proposals have given rise to a parallel

progress towards nuclear disarmament, and in what way they have contributed to the obligations for disarmament negotiations placed upon all states that are party to the NPT.

*What are the fundamental elements of the Nuclear Non-Proliferation Treaty?*

Prior to taking a detailed look at the specifics of Article VI of the NPT, the treaty itself ought to be examined in order to correctly realise the value of the principles behind non-proliferation. Therefore, the essentials of the treaty, together with its actors and its structure will be explained first. The four countries that remain outside the treaty (India, Pakistan, Israel and North Korea), will only be discussed briefly, for the focus of this thesis is primarily on the five official Nuclear Weapon States that are party to the NPT. Secondly, there will be a comprehensive analysis of the five principles of non-proliferation as agreed to in United Nations General Assembly Resolution 2828 during its 20<sup>th</sup> Session. As these principles form the foundation of the NPT, they will be related to the other articles within the treaty as they are part of a recurring element in the following chapters. Subsequent to the fundamental study of the NPT, the following step will be to look into the disarmament obligations and responsibilities of the five Nuclear Weapon States as required by the NPT by looking at the negotiations leading to the formulation of Article VI and the way this interpretation has evolved over the years.

*What was originally intended with Article VI NPT and how did its interpretation develop over the past 40 years?*

This chapter will focus on the original negotiations regarding the interpretation of the clauses within Article VI of the NPT, and the manner this interpretation has developed over the nearly forty years since the entering into force of the treaty. This analysis will take into account the criticism that has been raised by mainly the Non-Nuclear Weapon States concerning the obligations and responsibilities that the Nuclear Weapon States have with respect to nuclear arms control and disarmament. The evaluation of the negotiations to the drafting of Article VI of the NPT will be accomplished by using some of the transcripts of the 430 sessions of the Eighteen Nation Disarmament Committee (ENDC), held in Geneva between 1962 and 1969, which are available in the Digital Library of the University of Michigan. As a guideline for this, the study by Mohamed I. Shaker (1980) regarding the origin and implementation of the NPT will be used. For doing this, the clauses of Article VI are partitioned into three main segments, which constitute the parties to the treaty, the pursuance of negotiations, and the areas of negotiations. Afterwards, the main conclusions of the NPT Review Conferences are studied to address the question of a developing interpretation. Particular notice will be taken of the outcome of the 1995 and 2000 NPT Review Conferences, the 1996 interpretation of Article VI by the International Court of

Justice, as well as the most recent NPT Review Conference of 2005. A significant part of this analysis will also focus on the contemporary debate on the interpretation of Article VI, as it forms a key element in understanding the disputes between the Nuclear Weapon States and the Non-Nuclear Weapon States. After taking stock of the negotiations with respect to the interpretation of the legal definition of Article VI, the next step is to determine whether the five Nuclear Weapon States have in fact fulfilled their obligations and responsibilities as specified in Article VI of the NPT.

*Have the nuclear weapons policies of the NPT's five Nuclear Weapon States been compliant with their disarmament obligations under Article VI of the NPT?*

In order to present a correct depiction of the achievements of the five Nuclear Weapon States with regards to nuclear disarmament, the approach will be twofold. The first approach is by looking at the quantitative aspects of nuclear disarmament. For this, the Yearbook series of 'Armaments, Disarmament and International Security' of the Stockholm International Peace Research Institute (SIPRI) will be used as a guiding principle in order to highlight the qualitative as well as quantitative component of the disarmament process. The SIPRI Yearbooks used will be the ones that correspond to the scheduled five-yearly NPT Review Conferences in order to present a structured representation of nuclear disarmament. Besides studying the amount of nuclear warheads of each Nuclear Weapon State (provided the data is publicly available), the type of delivery vehicles as well as the range of these delivery vehicles will be taken into account as well. The second approach however, will focus on the qualitative dimension of nuclear disarmament. For doing this, policy documents from the states concerned as well as policy analyses from various expert as well as NGO's will address the degree of compliance with the disarmament obligations. This section will also address the national nuclear security policies of the Nuclear Weapon States.

## 2. Measures towards Nuclear Disarmament

Before focusing on the legal aspects of nuclear disarmament and the measures taken towards achieving it, it is important to first take a brief look at the theoretical framework of arms control and disarmament in order to understand the concepts involved. Although the latter is generally thought to be the more far-reaching of the two, both terms are occasionally used indiscriminately as synonyms. A large amount of literature has been devoted to the definition and the differences between the two terms. Consequently, the following section is concerned with the theoretical perspectives regarding arms control and disarmament.<sup>1</sup>

### 2.1. Defining Arms Control and Disarmament

In the field of nuclear disarmament, the terms of disarmament and arms control are often strongly *sequentially* interrelated. From a historic perspective, this relation originates from the fact that the United States and the Soviet Union<sup>2</sup> failed to achieve nuclear *disarmament* in the immediate years following the Second World War, after which the outcome was a nuclear and conventional arms race between the two superpowers. This in turn, eventually led to negotiations aimed at establishing the formation of mutual *arms control*.<sup>3</sup> The sequential relation of the terms disarmament and arms control stems from the historical usage of the term, with ‘disarmament’ being used mainly in the period prior to the 1950’s, and the term ‘arms control’ being used since the second half of the 1950’s. Despite this seemingly clear distinction, the two concepts have been used in a similar fashion.

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<sup>1</sup> The theoretical framework used for this section derives mainly from the work of J.G. Siccama (see: Siccama, J.G. (1987), “Wapenbeheersing”, Nederlands Instituut voor Internationale Betrekkingen Clingendael, Den Haag). Although a large amount of literature has been written on the theory of arms control and disarmament, a theoretical study on the exact definitions falls outside the scope of this thesis, which is mainly concerned with the legal dimension of nuclear disarmament and the Nuclear Weapon States’ compliance with their respective legal obligations with respect to the Nuclear Non-Proliferation Treaty, and to a lesser extent to the political and military theoretical concepts of the use of nuclear weapons, or the desire to achieve full (nuclear) disarmament as a way of enhancing military security. Although briefly mentioned, this is not considered to be the main focus of this study.

<sup>2</sup> The Soviet Union detonated its first nuclear weapon four years after the first US nuclear weapon test, in 1949. The decision made by President Truman to monopolise America’s possession of nuclear weapons, and his rejection of proposals to create an international legal regime for the control of the peaceful application of nuclear energy, provoked the Soviet Union to develop its own nuclear bomb. See: Athanasopoulos, H. (2000), “Nuclear Disarmament in International Law”. North Carolina: McFarland & Company, Inc., Publishers.

<sup>3</sup> Some of these arms control measures include the ABM Treaty, START I & II, and the INF treaty, which will be discussed further on.

Disarmament itself is defined in a number of ways. Bull (1965) refers to disarmament as the "...reduction or abolition of armaments. It may be unilateral or multilateral; general or local, comprehensive or partial, controlled or uncontrolled".<sup>4</sup> From a military theoretical perspective, disarmament can be defined as the "...most direct – and in sense the crudest – response to the problem of military means. Its logic is that since weapons create the problem, the solution is to get rid of them".<sup>5</sup> Disarmament has therefore often been referred to as the panacea for the problems of international conflict and as the distraction from the difficult problems of assuring national security, some forms of disarmament actually enhance the military security for all states at the expense of others, while other forms tend threaten the security of all states.<sup>6</sup> In all, five different types of disarmament states can be discerned;<sup>7</sup>

1. Local disarmament (a localised disarmed area)
2. General disarmament (the necessary participation of all states in the disarmament process, also known as the principle of universality)<sup>8</sup>
3. Complete disarmament (involves weapon categories)<sup>9</sup>
4. Qualitative partial disarmament (some specific types of armament)
5. Quantitative partial disarmament (some percentage or absolute number of a given armament).

The concept of disarmament can therefore be applied to all weapons (general and complete disarmament), or to specific categories of weapons (i.e. nuclear weapons). This concept can be applied unilaterally or multilaterally, and can involve partial or complete elimination of the

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<sup>4</sup> Bull, H. (1965), "The Control of the Arms Race: Disarmament and Arms Control in the Missile Age", Frederick A. Prager, New York, p. vii.

<sup>5</sup> Singer, J.D. (1962), "Arms Control and Disarmament: Towards a Synthesis in National Security Policy", Ohio State University Press, Columbus, pp. 173-176.

<sup>6</sup> See further: Abt, C.C. (1963), "Disarmament as a Strategy", *The Journal of Conflict Resolution*, Vol. 7, No. 3, Weapons Management in World Politics: Proceedings of the International Arms Control Symposium, December 1962, pp. 293-308. Abt provides a thorough analysis of the different concepts of disarmament, which also takes into account the associated gains, costs and risks involved (pp. 387-390). While Abt does not make a clear distinction between arms control and disarmament, he does make a clear distinction between the disarmament process and the disarmament state (i.e. a state to which that process is intended to lead). His description of the disarmament process however mimics the concept of arms control negotiations as described further on, with the noted exception as will be discussed.

<sup>7</sup> See further: Abt. *op. cit.* p. 295. The five different types of disarmament are closely related to the concept of disarmament as defined by Bull.

<sup>8</sup> See further: Siccama *op. cit.* p. 34.

<sup>9</sup> *Ibid.*

specified type(s) of weapon. Additionally, the concept refers both to the process by which capabilities are reduced, and to the end condition of being disarmed.

The precise definition of disarmament is difficult to illustrate without an understanding of the definition of arms control. The problem with characterising arms control is however that this concept has not clearly been defined. The many definitions that are attributed to arms control, which often partly overlap, is itself evidence of the poor characterisation of the concept. When looked upon the concept of 'arms control' more closely, the literal description of it represents at the same time the limited scope of its intended goal. That is to say, if one wants to *control* arms, it has to be on the condition that arms are evidently present in order to establish some form of control over them; *de facto, conditio sine qua non*. Siccama (1987) uses this description to state that arms control is a collection of measures taken to limit the possession of arms, but not to prohibit them.<sup>10</sup> This collection of arms control measures which limit weapons, but not prohibit them, can be divided into three groups;<sup>11</sup>

1) Geographical limitations; this group constitutes the measures that are required to restrict the deployment of weapons on territory not part of the states themselves.<sup>12</sup> In addition, this also involves limitations on nuclear test explosions,<sup>13</sup> the Nuclear Non-Proliferation Treaty,<sup>14</sup> and Nuclear-Weapon-Free Zones.

2) Numerical limitations; this is the group of arms control measures most strongly connected to the general notion of arms control, and involves the treaty-based numerical limitations for a particular amount of weapons of a specific type. Such treaties include the Strategic Arms Limitation Talks Treaties (SALT), the Anti-Ballistic Missile Treaty (ABM),

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<sup>10</sup> Cf. Abt *op. cit.*, pp. 295-296. Siccama refers to arms control as measures designed to control arms, not to prohibit arms. Abt on the contrary, refers to the disarmament process as the eventual state of the *prohibition* of all arms, as defined in the description of disarmament. This is a result of not

<sup>11</sup> Siccama *op. cit.* pp. 35-51.

<sup>12</sup> The Antarctica Treaty (1961), the Outer Space Treaty (1967), and the Seabed Arms Control Treaty (1972) are examples of these kinds of arms control measures. See further: Siccama *op. cit.* p. 35.

<sup>13</sup> The Partial Test Ban Treaty (1963) prohibits all nuclear tests except underground. See further: Siccama *op. cit.* p. 36.

<sup>14</sup> The Non-Proliferation Treaty is strictly speaking not a bulkhead against the geographical proliferation of nuclear weapons since Nuclear Weapon States are permitted to deploy nuclear weapons on the territory of allied states. These allied (mainly Non-Nuclear Weapon) states themselves are however not permitted to possess their own nuclear weapons. See further Chapter 3. Although Siccama classifies the NPT as belonging to the first group of arms control measures, due to the unique significance of the NPT for arms control he even considers creating a different classification for the Treaty (Siccama *op. cit.* p. 38).



and the Strategic Arms Reduction Treaties (START),<sup>15</sup> as well as the Conventional Forces in Europe Treaty (CFE).

3) Measures to promote stability; Compared to the measures taken for putting geographical limitations on armaments, relatively little has been done to address the promotion of stability. One of the most significant measures that have been implemented following the end of the Second World War is the installation of a Hotline between the United States and the Soviet Union (Russia). Other stability promoting measures include the inclusion of Confidence Building Measures and the (unilaterally) declared No-First-Use principle and the Comprehensive Test-Ban Treaty.

#### *2.1.1. Development of Arms Control Theory*

It is generally believed that arms control belongs to a series of closely related perspectives of which the central them focuses on “peace through the manipulation of force”.<sup>16</sup> This objective can be achieved in a number of ways, of which one focuses on placing this force in the hands of a central authority, while others focuses on the creation of a system of collective security, by accepting a system of mutual deterrence, by abolishing or reducing force, or through establishing restraints and limits on forces. This last method appears to reflect the principle of arms most accurately. Early theorists, defined arms control in the broadest possible sense possible in which generally all forms of military cooperation were confined. Or as Hedley Bull put it, arms control is “cooperation between antagonistic pairs of states in the military field, whether this cooperation is founded upon interests that are exclusively those of the cooperating states themselves or on interests that are more widely shared”.<sup>17</sup> Later on, theorists tended to view the objectives of the concept of arms control threefold. For Schelling and Halperin, these objectives included reducing the likelihood of war; reducing the political and economic costs of preparing for war; and minimizing the scope and violence of war if it occurred.<sup>18</sup> Bull envisaged three similar objectives for arms control; the contribution to international security and stop the drift to war; the release of economic resources otherwise squandered in armaments; and the preclusion of preparing for war,

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<sup>15</sup> The SALT, ABM and START treaties will be further discussed in Chapter 5 concerning the degree of compliance of the Nuclear Weapon States with Article VI, since it generally involves the bilateral negotiations between the United States and the Soviet Union (Russia).

<sup>16</sup> Bull, H. (1961), “The Control of the Arms Race: Disarmament and Arms Control in the Missile Age”, Frederick A. Praeger Publishers, New York, pp. 4–5.

<sup>17</sup> Bull, *op. cit.*, p. xxxv.

<sup>18</sup> Schelling, T.C. and M.H. Halperin, (1985), “Strategy and Arms Control”, Pergamon-Brassey’s, Washington, DC, (orig. publ. 1961), p. 3.

which is morally wrong.<sup>19</sup> Many practitioners debated the priority of these three objectives, but the first of these objectives, the prevention of war, is generally believed to be the principal objective of arms control.<sup>20</sup>

More recently however, political leaders and the media have created a more limited definition of the concept of arms control, in which arms control is defined to a set of activities dealing with specific steps to control related weapon systems, codified in formal agreements or treaties. During the Cold War, many analysts viewed arms control as the process of bilateral arms control negotiations between the United States and the Soviet Union. These bilateral negotiations were expected to result in the establishment of a formal treaty, an arrangement of inspections to ensure verifiable compliance with the provisions of the treaty, and an enforcement mechanism to coerce compliance. These are the ideal elements for arms control, but not always necessary, as arms control is a process of which involves “specific, declared steps by a state to enhance security through cooperation with others, [whether they are], unilateral, bilateral, or multilateral”.<sup>21</sup> This description fits with the placement of the concept of arms control under the heading of cooperative security, a new concept which has gained popularity following the end of the Cold War.

Cooperative security is generally defined as a “commitment to regulate the size, technical composition, investment patterns, and operational practice of all military forces by mutual consent for mutual benefit”.<sup>22</sup> This includes the introduction of measures to reduce the risk war, and measures which are not specifically directed at a specific state or coalition. The concept of cooperative security certainly reflects the reality of the era which began following the end of the Cold War, as is apparent in institutions such as the European Union and the new role that NATO has agreed to.<sup>23</sup> As is the case with the EU and NATO, the application of the concept of cooperative security can take place among states which share similar values, and can involve

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<sup>19</sup> Bull, *op. cit.*, pp. 3-4.

<sup>20</sup> Larsen, J.A. (2004), “Arms Control: Cooperative Security in a Changing Environment”, Lynne Rienner Publishers, Boulder, Colorado, pp. 2-3.

<sup>21</sup> *Ibid.*

<sup>22</sup> Carter, A.B. et. al. (1992), “A New Concept of Cooperative Security”, Brookings Institution, Washington DC, p. 6.

<sup>23</sup> The role NATO plays in the world has changed dramatically following the end of the Cold War, when it decided to intervene in Bosnia and Kosovo. More recently, the International Security Assistance Force (ISAF) in Afghanistan proved that the objectives of NATO are not aimed specifically at a state or a coalition of states, but rather put into use on an ‘ad-hoc’ basis when the need arises or when all other (i.e. United Nations) solutions have failed.

much more than military affairs alone, including a common diplomacy and a common economic area.

Therefore, arms control as a way of enhancing security can be observed as a counterintuitive approach to national security. The notion of keeping national security dependent on the cooperation with probable military adversaries and the limiting of arms which, when based upon a threat assessment, appears to be illogical. The answer to this question lies in the premises of the outcome of negotiations, since negotiating in the first place has the potential of building confidence and understanding between adversaries which can result in the decrease of hostilities.

#### *2.1.2. Explaining the Development in Arms Control Theory*

The concept of war changed dramatically following the release of nuclear weapons on Hiroshima and Nagasaki. For the first time in history, warfare in its most extreme form (i.e. nuclear war), had the possibility to bring about total annihilation on the planet. Prior to World War II, states tended to regulate arms in the broadest possible way as a form of cooperation between antagonistic pairs of states in the military field as stated previously. Following the Hiroshima en Nagasaki in 1945, this concept was changed dramatically. Certainly due to the crises at the beginning of the Cold War, such as the Berlin Airlift of 1948 and the Cuban Missile Crisis of 1962, did theorists began to view arms control as a way of preventing nuclear war as a contribution to international security and to reduce the likelihood of war. This included a changed perception that arms control negotiations should lead to general and complete disarmament and which included limited measures that would enhance cooperative security arrangements. Therefore, the “propaganda-laden disarmament efforts of the 1940’s and 1950’s”<sup>24</sup> were gradually replaced by more modest and more realistic objectives of arms control, which eventually resulted in the arms control treaties of the 1960’s to the 1980’s.

With the collapse of the Soviet Union, deterring nuclear war was deemed a less serious threat than for example the proliferation of weapons of mass destruction to states (or non-state actors) of critical concern. The overall objective of arms control remained nevertheless generally the same; as an instrument of national security. Even so, the conceptual problems of defence planners at the operational level did change dramatically compared to the threats faced by defence planners during the 1950’s and 1960’s.<sup>25</sup> Additionally, the number of bilateral agreements

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<sup>24</sup> Larsen, *op. cit.*, p. 6.

<sup>25</sup> Larsen, *op. cit.*, p. 5.

between the two (former) superpowers also increased. The early 1990's were marked with a great deal of optimism when a record number of arms control treaties were signed and entered into force. Additionally, arms control treaties were seen as a solution to preventing the proliferation of weapons of mass destruction, increasing regional stability, and enhancing economic and environmental stability in a multi-polar and interdependent world. The concept of arms control has now transformed to accommodate the new international security and stability agenda, in which the traditionally formal and structured approach required to reach agreements, was broadened to include a more informal way of cooperation between states. This new mode of cooperation resulted in more unilateral and reciprocal declarations, as well as an increased need for verification and transparency provisions with respect to the arms control treaties. In addition, new international organisations have been established to streamline the processes of data sharing, inspection, and monitoring.<sup>26</sup>

The events of September 11 2001 have introduced an entirely new debate with respect to arms control theory. Questions are being raised on how arms control can contribute to the increased threat of the proliferation of weapons of mass destruction, and in what way the existing international institutions can contribute to this threat. What kind of new multilateral institutions might be introduced, and what kind of arms control measures are required to tackle this issue? It is evident that traditional arms control measures need to be re-evaluated and need to be refocused on an additional set of arms control measures to include new threats such as information warfare and weapons in space (or launched at space). Additionally, new states have presented themselves at the negotiating table such as China and India. A new phenomenon in this field appears to be the increased presence of non-governmental organisations at arms control negotiations, as is evident in the 1997 Mine Ban Treaty and the still to be finalised Cluster Munitions Treaty. Therefore, the traditional concept of arms control needs to be broadened to include non-state actors as well.

### *2.1.3. Arms Control vs. Disarmament*

As stated previously, the term of 'disarmament' was initially used rather frequently during the Hague Peace Conferences in the beginning of the 20<sup>th</sup> Century up until the beginning of the Cold War in theoretical literature. During the initial phase of the Cold War, the academic focus

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<sup>26</sup> Examples of these new international organizations include the Organisation for the Prohibition of Chemical Weapons (OPCW), as well as the Comprehensive Test-Ban Treaty Organisation (CTBTO), both established in 1997 and 1996 respectively.

slowly shifted more towards the term of 'arms control'.<sup>27</sup> Hence, the change in perception on the definition of 'disarmament' towards 'arms control' was running parallel to the political and military developments instigated by the two superpowers at that time, mainly caused by the developing nuclear doctrine. This also reflected the shifting notion that it was easier to simply attempt to 'manage' an arms race rather than trying to eliminate armaments as a whole. Only after the opportunities to abandon nuclear weapons failed to take root during the late 1940's,<sup>28</sup> only then did states attempt to fit their policies in a more realistic framework. By simply accepting the existence of the nuclear bomb, states began to devise rules in order to decrease the possibility of an accidentally triggered nuclear war.<sup>29</sup> Policy makers soon embraced the more pragmatic policy of 'arms control'. But although it was clear that the solution of arms control offered no "final solution to the curse of armaments upon mankind",<sup>30</sup> arms control is "justified only in so far as it decreases the probability of war without creating a situation in which surrender will become inevitable".<sup>31</sup>

This is also emphasised by others,<sup>32</sup> as there was growing scepticism concerning the benefits of general and complete disarmament. This is illustrated by describing two of the negative aspects of disarmament with respect to military theory.<sup>33</sup> The first one is the military concept of a surprise attack, of which the probability of one occurring decreases with the numerical weapon advantage a state has. In other words, the more weapons a state possesses, the more difficulty it causes the adversary to take them all out in a first strike. Consequently, in order to decrease the likelihood of a surprise attack (as was the philosophy during the Cold War), one should in fact take the position of a supporter of armament rather than disarmament. Additionally, an agreement brokered between two competing powers concerning a large quantity of weapons should be easier to maintain. That is to say, when an agreement (that limits the number of weapons) is negotiated between two opposing states that already contain a significant

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<sup>27</sup> See further Freedman, L. (1981), "The Evolution of Nuclear Strategy", The McMillan Press LTD, Hong Kong.

<sup>28</sup> One of the opportunities was the failing of the US initiated Baruch-plan, mentioned in following section concerning the history of nuclear disarmament.

<sup>29</sup> The process to decrease the likelihood of accidental nuclear war was especially accelerated following the anxiety caused by the 1962 Cuban Missile Crisis (Freedman, *op. cit.*, p. 194).

<sup>30</sup> Freedman, *op. cit.* 1981. p. 196.

<sup>31</sup> Teller in Siccama, *op. cit.* 1981. p. 73.

<sup>32</sup> See further: Schelling in Freedman, *op. cit.* 1987

<sup>33</sup> Cf. Abt *op. cit.* pp. 296-298. The concept of disarmament in military theory is referred to as the strategic use of disarmament. Disarmament can be considered a strategy because it is a sequence of moves calculated to achieve the specific objectives in a given environment.

sub-ceiling, the likelihood of the other side attempting to secretly develop even more weapons is decreased. In other words, “restraint on the part of potential enemies will be matched by restraint of our own”,<sup>34</sup> as the states involved are less likely to attempt to achieve a dominating position over its opponent. This is regarded to be one of the main differences between the concepts of arms control and disarmament, for the supporters of the latter belief that armaments should be fundamentally reduced, whereas supporters of the former argue that armaments can be properly managed.<sup>35</sup>

The second aspect used as an illustration to point to the negative aspect of disarmament in military theory, is that the concept of disarmament is considered alien to military thinkers, whereas arms control on the other hand can be regarded as a way of improving military strategy, as it excludes the possibility for surrender and therefore acts as a prolongation of the military equilibrium. This notion is disputed by Freedman (1981), as he alleges that arms control is treated more like a civilian concept by the military. That is to say, all the military strives for is merely the overwhelming of the opponent by superior military strength. Only after a position of dominance is achieved the military considers the situation as stable. From this historical perspective, some experts have argued that the use of the concept of arms control is simply a way of broadening the term of disarmament.<sup>36</sup> And although there is certainly evidence of a relationship between the concepts of arms control and disarmament, in addition to the fact that both concepts are often used interchangeably, more distinct differences are recognisable. First of all, disarmament refers to the reduction of weapons whereas arms control refers to control and limitation rather than destruction.<sup>37</sup> In addition, the underlying idea behind the two concepts is also different, since the supporters of disarmament *want to be protected* against the threat of weapons, whereas supporters of arms control *seek security* through the better control of weapons. Furthermore, supporters of disarmaments regard the existence of arms as the cause of war, whereas supporters of arms control generally do not identify such a cause-and-effect relationship.<sup>38</sup>

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<sup>34</sup> Schelling in Freedman, *op. cit.* 1987, p. 196.

<sup>35</sup> Merwe, F. (2003), “Arms Control and Disarmament in South Africa after the Cold War”, in: Strategic Review for Southern Africa, pp. 2

<sup>36</sup> Schelling, T.C. and M.H. Halperin (1961), “Strategy and Arms Control”, Twentieth Century Fund, New York, p. 2.

<sup>37</sup> Siccama, *op. cit.* p. 33-35.

<sup>38</sup> Bull *op. cit.* pp. 4-9.

#### 2.1.4. *Conditions for Arms Control*

With respect to the ideal conditions required for the successful conclusion of arms control negotiations, Siccama offers a useful hypothesis. In short; it is assumed that the probability of successfully concluding arms control negotiations and subsequently complying with its conclusions increases when the numerical military balance of power between the negotiating partners is more or less equal.<sup>39</sup> The better military forces match each other numerically, the better the opportunity for successful concluded negotiations. But equal strength of military capabilities alone does not appear to be the single important condition for arms control negotiations. Other examples that demonstrate the opposite can for example be found in the absolute *unequal* balance of power between two (or more) powers. Such an example is the round of negotiations leading up to the Versailles Peace Treaty, when the victors of World War I imposed weighty arms limitations on Germany. Another example is the Nuclear Non-proliferation Treaty itself, in which it was decided that Non-Nuclear Weapon States relinquish any claims for nuclear weapons, in exchange for allowing the peaceful use of nuclear energy. In order to prevent further nuclear proliferation, the Nuclear Weapon States monopolised their claims on nuclear weapons.<sup>40</sup> These two examples illustrate the two-sided connection in arms control. On the one hand, it is the complete *symmetry* in the balance of power that increases the probability on a positive outcome in arms control negotiations, whereas complete *asymmetry* in the balance of power can result in a similar outcome. With respect to the successful conclusion of arms control agreements therefore, it is either absolute parity or absolute disparity.<sup>41</sup>

#### 2.1.5. *Arms Control Law*

In general, there are three types of arms control instruments; unilateral, bilateral and multilateral measures.<sup>42</sup> The latter two are generally concluded between states in treaty form, the first is claimed independently by an individual state. Arms control law is the part of international

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<sup>39</sup> Siccama *op. cit.* p. 11.

<sup>40</sup> The discriminatory character of the Nuclear Non-Proliferation Treaty has been one of the key criticisms of the treaty, which will be discussed in more detail in the following chapter. When taking into consideration one of the ideal conditions for arms control negotiations, one might argue that the unequal power balance created following the entry into force of the NPT provides an excellent negotiating platform (albeit discriminatory of character) for the successful pursuing of subsequent arms control arrangements.

<sup>41</sup> *Ibid.* Siccama refers to the concept of parity and disparity as a rare example of a verifiable hypothesis with respect to the theory of arms control. The U-shaped relation demonstrates that absolute parity or absolute disparity offer the best opportunity for balanced results, while the intermediate area offers limited opportunities for permanent agreements (p. 12-14).

<sup>42</sup> *Cf.* Abt *op. cit.* p. 296. Abt provides twelve types of disarmament processes, similar, but not limited to the unilateral, bilateral and multilateral arms control measures.

law which roughly involves the limitations of military power in two categories; conventional weapons and weapons of mass destruction (nuclear, biological, and chemical weapons).<sup>43</sup> Also related to, but essentially part of a different legal component, are the confidence building measures and inspection regimes required for the verification of arms control treaties. These arrangements are often politically binding or the result of mutually adjusted foreign policies. The sources of law of arm control law are mainly derived from treaty law and not customary law, since the freedom of possession of arms is considered a fundamental principle. The International Court of Justice asserts that therefore “[s]tate practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorisation but, on the contrary, is formulated in terms of prohibition”.<sup>44</sup> However, states can be obliged to conduct negotiations for the arms reduction as is part of specific treaty obligations for negotiations, as is the case with Article VI of the NPT.

## 2.2. *Early History of Nuclear Disarmament*

In 1946, the United States submitted a proposal to the United Nations that would lead to prohibition of the production and possession of nuclear weapons. The plan proposed to establish a supranational institution which would enable peaceful use of nuclear energy, but without the direct involvement of national authorities. In addition, the organisation was permitted to apply sanctions following violations of the rules of operation. The principal element of the plan provided that “control must precede prohibition”.<sup>45</sup> As part of this plan therefore, the supervision of this control mechanism would not be subject to any veto of one of the permanent members of the United Nations Security Council. The Baruch Plan, which envisaged the creation of an “Atomic Development Authority” in order to exercise control, was eventually halted by the Soviet Union, although it is alleged that this was done so in order to prevent the United State from being the sole custodian of nuclear weapons technology.<sup>46</sup> Another possible explanation is

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<sup>43</sup> See Horbach, L. et al. (2007), “Handboek Internationaal Recht”, TMC Asser Press, Amsterdam, pp. 592-593. With respect to weapons of mass destruction (WMD), this mainly constitutes the limitation of resources and technology for the production of ‘dual-use’ goods (i.e. goods that can be used either for civilian or for military purposes). For conventional weapons, arms control treaties are mostly limited to the armaments such as small arms, aircraft, tanks, and artillery, but also the quantity of the numerical level of military personnel. Additionally, conventional arms control treaties also involve the composition and disposition of troops, as well as the specific types of weapons and weapon systems.

<sup>44</sup> “Legality on the Threat or Use of Nuclear Weapons”, International Court of Justice, (1996), Advisory Opinion of 8 July 1996, para. 21-22, 52.

<sup>45</sup> SIPRI (1969), “SIPRI Yearbook of Worlds Armaments and Disarmament – 1968/69”, Stockholm International Peace Research Institute, Humanities Press, Inc., New York; p. 145.

<sup>46</sup> Hoekema, *op. cit.* 1985. p. 1.



the Soviet aversion of a suspected Western dominated control authority, which would exercise a large degree of influence on Soviet nuclear-related research.<sup>47</sup> Therefore, the Soviet devised its own plan for nuclear disarmament, in which the US-principle was reversed. The Soviet counter-proposal suggested to prohibit the use and production of nuclear weapons, and to destroy all nuclear weapons stocks. In short, this plan provided that “prohibition and destruction would precede control”.<sup>48</sup> Since the Cuban Missile Crisis of 1962, the political climate for negotiations between the US and the Soviet Union had improved, and the tone was consequently set for the debate on nuclear non-proliferation. The consultations were challenging not only because of the (still contradictory) attitudes of the two superpowers, but also because of the already established Euratom inspection system, which was seen as incompatible with the prospected International Atomic Energy Agency<sup>49</sup>.

### 2.3. *The Comprehensive Test-Ban Treaty (CTBT)*

Following the classification of different types of disarmament states and arms control measures, three examples with respect to nuclear disarmament will now be detailed to look at the measures taken for nuclear disarmament other than the Non-Proliferation Treaty, or which have been strongly influenced by it. As part of the disarmament commitments referred to in Article VI of the NPT, an important element of this aspect is the commitment of all parties to the Treaty to achieve the permanent termination of all nuclear weapons test explosions, as is stated in the preambles of both the Partial Test Ban Treaty (1963) and the NPT (1968). While the CTBT has not entered into force yet, it obligates each state that is party to it to not to undertake any nuclear weapon test explosion or any other nuclear explosion, and to refrain in any way from encouraging, participating or causing any state to carry out nuclear explosions.<sup>50</sup> One of the cornerstones of the CTBT are its extensive verification provisions, which include an International Monitoring System consisting of a project number of 321 monitoring stations worldwide (which is supplemented by thousands of civilian seismic stations), the provision of Confidence Building Measures, and short-notice on-site inspections.<sup>51</sup> Additional secondary benefits have been introduced with the signing of the CTBT in 1996, such as the establishment of worldwide

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<sup>47</sup> SIPRI, *op. cit.* 1969; p. 151.

<sup>48</sup> SIPRI, *op. cit.* 1969; p. 151.

<sup>49</sup> Hoekema & de Klerk, *op. cit.* 1985.

<sup>50</sup> Article I, Comprehensive Test-Ban Treaty.

<sup>51</sup> Kimball, *op. cit.*, p. 3.

monitoring stations which can also detect earthquakes, as well as the prevention of further environmental and health damage from nuclear test explosions.

### 2.3.1. *The Comprehensive Test-Ban Treaty and the NPT*

During the negotiations leading up to the establishment of the NPT, the Non-Nuclear Weapon States made arduous, albeit unavailing attempts to include the pronouncement of a comprehensive test-ban within the framework of NPT. Many Non-Nuclear Weapon States have regarded the inclusion of a comprehensive test-ban as “the single most important first step towards halting and reversing the nuclear arms race”,<sup>52</sup> as they regard this as the “litmus test of superpower sincerity in carrying out the obligations they incurred by sponsoring and signing the NPT”.<sup>53</sup> The five Nuclear Weapon States (The US, Russia, UK, France and China) however, have regarded the CTBT as to be of secondary importance.<sup>54</sup> Instead, the kind of CTBT which would have been acceptable to the Nuclear Weapon States during the Cold War was in theory to be of a relative limited duration and would still permit a low number of nuclear weapons tests. The advantage of this kind of limited test ban treaty for the Nuclear Weapon States was that it would not obstruct all major innovation in development of nuclear weapons. For the Non-Nuclear Weapon States however, this ‘gesture of goodwill’ was completely unacceptable.<sup>55</sup> Another reason for why the CTBT was not initially included in the conclusion of the NPT was that during the 1960’s, seismic technology was yet too underdeveloped in order to detect nuclear small underground explosions.<sup>56</sup>

In 1996 however, a Comprehensive Test-Ban Treaty was finally concluded and opened for signature in September of the same year. Included in the treaty, was an entry into force provision which required the ratification by all 44 nuclear-capable states (i.e. states operating nuclear research reactors). In the event that this ratification would not be completed within three years of the opening for signature, a conference would be held to consider how to accelerate the ratification process. In 1999 such a conference was held but it was without a clear political

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<sup>52</sup> Epstein, W. (1982), “A Disastrous Decision”, in: *Arms Control: The Journal of Arms Control and Disarmament*, Vol. 12, No. 8, September 1982, p.7.

<sup>53</sup> Mayne, Mayne, C.W. (1983), “UN Disarmament Efforts: Is There Life After the Second UN Special Session on Disarmament?”, in: Edward C. Luck (ed.), “*Arms Control: The Multilateral Alternative* (New York & London, New York University Press, 1983), p. 85.

<sup>54</sup> Keohane, D. (1984), “British Performance in Implementing Article VI of the NPT”, in: *Arms Control: The Journal of Arms Control and Disarmament*, Vol. 5, No. 3, December 1984 pp. 37-39.

<sup>55</sup> *Ibid.*

<sup>56</sup> Kimball, D. (2005), “Achieving Entry into Force of the CTBT”, in: *Nuclear Disarmament: What Now? Reaching Critical Will*, January 2005, p. 4.

outcome. At present, three states<sup>57</sup> have not signed the CTBT and the likelihood to do so has decreased over time since the treaty opened for signature due to the alleged dim prospects of the treaty ever entering into force.<sup>58</sup> Of the 44 nuclear-capable states, ten states have signed, but not yet ratified the treaty.<sup>59</sup> Of the five Nuclear Weapon States, only France, the United Kingdom and Russia have ratified the CTBT. China's progress towards ratification is understood to be dependent on the US decision on ratification and its decision on missile defence.<sup>60</sup> The United States Senate voted in October 1999 not to ratify the CTBT, on the grounds that the treaty itself would not be verifiable in the long term and that ratification would impede the reliability of the present US nuclear arsenal without testing. The Bush administration too has vowed in its Nuclear Posture Review of 2001 that the US will not support CTBT ratification in the foreseeable future.<sup>61</sup> Nonetheless, broad international support for the CTBT and the fact that the US itself has not conducted a nuclear test in fifteen years and therefore adhering to its test moratorium, together with its support to a de facto global moratorium by signing the treaty in the first place has demonstrated that the obligations under customary international law are indeed influential on the US policy on nuclear weapons.<sup>62</sup> Critics argue however, that recent plans for the testing of nuclear weapons without detonation<sup>63</sup> and the 2005 Doctrine for Joint Nuclear Operations which enables the US to order a pre-emptive attack with nuclear weapons have undermined the determination towards nuclear disarmament.<sup>64</sup>

While the CTBT is not a legal component of the NPT, the CTBT does add to the long-term viability of the Treaty. As was noted by the Special Representative of the ratifying states to promote the ratification process of the CTBT, Ambassador Jaap Ramaker stated in September 2006 that the CTBT and the NPT are "both conceptually and politically" closely connected to

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<sup>57</sup> The states which have not yet signed the CTBT are North Korea, India, and Pakistan (see: [www.ctbto.org](http://www.ctbto.org); accessed on November 14, 2007).

<sup>58</sup> Middle Powers Initiative (MPI) (2006), "The Article VI Forum: Responding to the Challenges to the NPT", Report of the Third Meeting, September 28-29, 2006, p. 14.

<sup>59</sup> [www.ctbto.org](http://www.ctbto.org); accessed on November 14, 2007.

<sup>60</sup> Middle Powers Initiative *op. cit.* p. 16.

<sup>61</sup> *Ibid.* p. 15.

<sup>62</sup> LaVera, D.J. (2004), "The US Senate Vote on the Comprehensive Test-Ban Treaty", in: Arms Control Today, Arms Control Association, October 2000, p. 4.

<sup>63</sup> This modernisation program is also known as the Reliable Replacement Warhead, or RRW. See further: Civiak, R. (2006), "The Reliable Replacement Warhead Program; A Slippery Slope to New Nuclear Weapons", Tri-Valley CAREs, January 2006.

<sup>64</sup> Pincus, W. (2005), "Pentagon Revises Nuclear Strike Plan", in: Washington Post, September 11 2005.

each other.<sup>65</sup> The preamble of the NPT repeats the determination of the parties to the Partial Test-Ban Treaty, to “seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end”.<sup>66</sup>

### 2.3.2. *Loopholes in the CTBT*

Despite the fact that the Comprehensive Test-Ban Treaty has been considered central to the prevention of the testing of new types of nuclear warheads and which therefore acts as a powerful impediment to the dangers of a nuclear arms race competition between the (Near-) Nuclear Weapon States, the treaty does contain some legal and practical loopholes. What the CTBT of 1996 does not do for example, is preventing the production of crude nuclear devices which can be performed without testing, although the development of nuclear weapons designed to be fitted on a ballistic missile is practically impossible without having performed some basic field testing of the new weapon design. This might endanger the reliability of the crude nuclear weapon, of which the risk of accidental detonation is thereby increased, therefore threatening the stability of the strategic balance.<sup>67</sup> Another loophole is that the treaty does not prohibit sub critical laboratory tests “that are not subject to any verification or observation as well as the retention of operational test facilities”.<sup>68</sup>

### 2.4. *Principle of No-First-Use*

The history on the principle of No-First-Use of nuclear weapons holds some conflicting aspects to it. During World War II, US President Harry S. Truman authorised the use of nuclear weapons against Japan, whereas following the end of the War, Truman instructed US military commanders that they could plan for using nuclear weapons, but could not count on using them. After the first Soviet nuclear test however, this policy was revised and the official national defence policy granted the US the possibility of the first use of nuclear weapons, for as at the time the policy of No-First-Use would be seen as a sign of weakness on behalf of the United States and would result in a sentiment of insecurity by its allies. Subsequent American administrations too ruled out the possibility of implementing the No-First-Use policy, and this position was even incorporated in the official NATO doctrine as a means of countering a Soviet

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<sup>65</sup> *Ibid.* p. 16.

<sup>66</sup> Preamble, Nuclear Non-Proliferation Treaty.

<sup>67</sup> Kimball, *op. cit.*, p. 5.

<sup>68</sup> Rauf, T. (2000), “Towards Nuclear Disarmament”, UNIDIR Disarmament Forum, 2001/1, p. 4.

conventional attack on Europe should NATO conventional forces fail to hold onto their defensive positions.<sup>69</sup> Other opponents of the No-First-Use policy stated that the opportunity for the first use of a nuclear weapon should always remain open as a way of launching a pre-emptive attack on the (developing) nuclear (or other WMD) arsenals of the opponent.<sup>70</sup> The refusal to implement the No-First-Use policy was nonetheless strongly influenced following the entry into force of the NPT in 1970, in which the Non-Nuclear Weapon States officially abandoned their plans for the development and production of nuclear weapons. As part of this grand bargain, the Non-Nuclear Weapon States also demanded security guarantees and as a result, the United States, the Soviet Union, and the United Kingdom pledged to pursue negotiations in the United Nations framework. To be more precise; negotiations were however to be conducted outside the legal framework of the NPT treaty but they would be in close conjunction with the NPT. Acting on the initiative of the US and the UK, the UN Security Council opted for a resolution detailing the obligation as placed upon all UN member states in Chapter VII of the United Nations Charter, to provide assistance to those member states under threat or attack by nuclear aggression (the so-called Positive Security Assurance). And although this resolution was welcomed by the Non-Nuclear Weapon States, they felt the decision felt short of a legally binding commitment not to use nuclear weapons against Non-Nuclear Weapon States in the first place (i.e. a Negative Security Assurance). To accommodate the anxiety of the Non-Nuclear Weapon States, the US together with the UK and France signed the protocols of the Nuclear-Weapon-Free Zone in Latin America, Africa, and the South Pacific by taking on a level of restraint for using nuclear weapons.<sup>71</sup>

#### 2.4.1. *Criticism on the No-First-Use Principle*

Nevertheless, much criticism has been directed at the perceived sincerity of declaring a policy of No-First-Use. In 1982 for example, the Soviet Union unilaterally pledged not to resort to the first use of nuclear weapons, although doubt on this statement was expressed by some Western Nuclear Weapon States on the sincerity of such a policy, for evidence was found detailing Soviet nuclear contingency plans for a conventional NATO attack from West-Germany.<sup>72</sup> In addition, no alteration in Soviet nuclear weapons deployments could be

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<sup>69</sup> Feiveson, H.A. and E.J. Hoogendoorn (2003), “No First Use of Nuclear Weapons”, in: *The Nonproliferation Review / Summer 2003*, p. 2.

<sup>70</sup> Milne, T. (2002), “The First Use of Nuclear Weapons”, Workshop Report, Pugwash Meeting No. 279, London, UK, 15-17 November 2002, p. 2.

<sup>71</sup> It must be noted however, that the US Senate has not ratified the protocols of the NWFZ's of Africa and the South Pacific (see further: Feiveson, 2003).

<sup>72</sup> Feiveson, *op. cit.* p. 4.

observed.<sup>73</sup> The verbal declaration of a No-First-Use policy is therefore stated to more likely detract from stability rather than to contribute to it. This perspective is illustrated in the previous example given of the 1982 Soviet political declaration of NFU, but with a military doctrine in place which is opposite to this statement. This criticism is reflected in the assumption that “[n]ations plan for war not by listening to their rivals commitments but by looking at their capabilities”.<sup>74</sup> That is to say, if nuclear weapons are deployed in the military theatre of operations, than they are capable of being used. And as long they are capable of being used, than they must be destroyed by the opponent (whether by conventional (if possible) or nuclear (if necessary) means). A political declaration could therefore not change the doctrine of military planners, of which the prime objective is to destroy the opponents’ nuclear weapons capability before it is deployed against their own forces. Complete nuclear disarmament might therefore act as a more attractive incentive for not using nuclear weapons, although critics argue that the risk of a conventional attack is thereby increased.<sup>75</sup>

It was expected that following the end of the Cold War the Five Nuclear Weapon States would re-evaluate their policy of No-First-Use, but no significant steps have been taken to demonstrate such willingness, despite German requests for a reassessment of current NATO policies. The calls for nuclear policy reassessment were dimmed following the 1993 Russian decision to renounce its 1982 policy on No-First-Use and to make it parallel to the nuclear policy of NATO. At present however, China remains the only Nuclear Weapon States to have maintained an official No-First-Use policy. Of the non-NPT state parties, India repeatedly stated that it would not resort to the first use of nuclear weapons, despite Pakistan’s policy of retaining this right by itself in order to deter a superior Indian conventional attack.<sup>76</sup>

### 2.5. Nuclear-Weapon-Free Zones

While the establishment and recognition of Nuclear-Weapon-Free Zones (NWFZ) is not a compulsory component of the nuclear disarmament obligations as specified in the Non-Proliferation Treaty, they still form a crucial element in the overall disarmament debate. NWFZ contribute to the control of proliferating nuclear weapons and are considered essential

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<sup>73</sup> Mirne, *op. cit.* p. 3.

<sup>74</sup> Joffe, J. (1985), “Nuclear Weapons, No First Use, and European Order”, in: *Ethics*, Vol. 95, No. 3, Special Issue: Symposium on Ethics and Nuclear Deterrence (April 1995), p. 609.

<sup>75</sup> *Ibid.* p. 610-612.

<sup>76</sup> Feiveson, *op. cit.* p. 6.

towards the creation of a nuclear weapons free world, and indeed as one of the most vital steps towards complete nuclear disarmament. A NWFZ is a particular geographical area which is entirely exempt of nuclear weapons, and prohibits the development, testing, stationing and use of nuclear armaments. NWFZ vary both in legal scope as well as geographical magnitude, and are established in a number of areas in the world.<sup>77</sup> NWFZ are regarded as zones which “[...] prohibits the development, manufacture, stockpiling, acquisition, possession, control, assistance in research on the development, manufacture, stockpiling or acquisition, or possession, of any nuclear explosive device within the zone of application by any contracting party”.<sup>78</sup>

#### *2.5.1. The Importance of Nuclear-Weapon-Free Zones for Nuclear Disarmament*

NWFZ treaties contribute to the strengthening of nuclear disarmament and non-proliferation efforts with the objective of the total elimination of nuclear weapons. Since the conclusion of the treaty permitting the establishment of the first Nuclear-Weapon-Free Zone (in Latin America and the Caribbean) in 1967, various guiding principles and criteria have been outlined to establish and recognise future NWFZ treaties. These set of guiding principles and criteria are mainly grounded on the definition of a NWFZ as detailed in the 1975 UN General Assembly Resolution 3472 B (XXX), which specifies a Nuclear-Weapon-Free Zone as:

*“[...] any zone, recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercise of their sovereignty, has established by virtue of a treaty or convention whereby:*

- a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined;*
- b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute.” (UNGA Resolution 3472 B)*

Included in UNGA Resolution 3472 are the obligations placed upon Nuclear Weapon States with respect to their responsibilities in dealing with NWFZ treaties. These obligations contains the assurance to respect the statute of total absence of nuclear weapons in the declared Zone, the promise not to contribute in acts violating the provisions of the treaty establishing the Zone, and to refrain from using or threatening to use nuclear weapons against the states included in the Zone (UNGA Resolution 2472 B, II.2 a/b/c). Later on, these obligations were augmented or further elaborated by more detailed guiding principles and criteria, such as the 1999 UN

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<sup>77</sup> For an overview of present-day Nuclear-Weapon-Free Zones, see Appendix F.

<sup>78</sup> Rauf, T. (1997), “Nuclear-Weapon-Free Zones”, International Organisations and Nonproliferation Project Center for Nonproliferation Studies, Monterey, California; July 25 1997, p. 2.

Disarmament Commission Report which builds upon previous UN documents.<sup>79</sup> With respect to recognition of NWFZ treaties and their ratification by the Nuclear Weapon States, both the United States and the Soviet Union (Russia) each put forward their own set of general criteria supporting the NWFZ treaties. The United Kingdom, France and China on the other hand tend to assess each NWFZ treaty on a case-by-case basis, with their positions evolving or changing in the light of their respective interests in the region.

### 2.5.2. NWFZ and the NPT

The importance of NWFZ treaties was also stressed during the 1995 NPT Review and Extension Conference, and is specifically referred to in the adopted document of “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”.<sup>80</sup> And while existing NWFZ treaties bear a resemblance to the NPT itself in terms of the legal provisions, some significant differences do exist. The principal difference between the Nuclear Non-Proliferation Treaty and Nuclear-Weapon-Free Zone treaties concerns the stationing of nuclear weapons on the territory of Non-Nuclear Weapon States. Whereas the NPT does not specifically prohibit the NWS from stationing nuclear weapons on the territories of the Non-Nuclear Weapon States (i.e. the deployment of US nuclear weapons on German territory), the NWFZ treaties do prohibit Non-Nuclear Weapon States from accepting the deployment of nuclear weapons by the Nuclear Weapon States. In this respect the NWFZ treaties are legally more restrictive than the provisions included in the NPT framework. Customary international law however dictates that many states party to the NPT regard this ban to be applicable within the NPT framework as well, for the NPT prohibits (albeit it is vaguely on the issue of deployment) the transfer of nuclear weapons from Nuclear Weapon States to Non-Nuclear Weapon States (Nuclear Threat Initiative, 2004). As previously stated, this transfer (i.e. within the framework of a military alliance such as NATO) is possible for as long as the nuclear weapons remain in legal and physical control of the Nuclear Weapon States itself.<sup>81</sup>

Another difference between the NWFZ and the NPT is the scope of the legal measures, for the NPT takes a global approach on nuclear disarmament, whereas NWFZ treaties take a regional approach. It is therefore argued that by joining a NWFZ, states parties demonstrate an

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<sup>79</sup> See: Report of the UN Disarmament Commission, A/54/42, 1999.

<sup>80</sup> Referred to specifically in Article VII of the NPT, Nuclear-Weapon-Free Zone treaties (NWFZ) are closely related to the disarmament obligations placed upon all states party to the NPT as provided within Article VI, as it guarantees the right of states to “[...] conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories” (Article VII, NPT).

<sup>81</sup> Rauf (1997), *op. cit.*, p. 4.



even higher level of commitment to disarmament and non-proliferation (Nuclear Threat Initiative, 2004). The three pillars of the NPT (non-proliferation, disarmament, peaceful use of nuclear energy) are also represented in the NWFZ treaties. NWFZ have an additional requirement, for Nuclear Weapon States generally need to provide security assurances so that they will not threaten or use nuclear weapons against any state located within the Zone. These Negative Security Assurances (NSA's) are included in every protocol of the NWFZ treaties. As was previously mentioned with the case of the principle of No-First-Use, many Non-Nuclear Weapon States wished for the inclusion of NSA's within the framework of the NPT as well, but three Nuclear Weapon States (the United States, the Soviet Union, and the United Kingdom) decided to pursue this matter within the framework of the United Nations, albeit in close conjunction with the NPT itself. Following the first NWFZ treaties, the Nuclear Weapon States were slow with the provision of security assurances to these Zones. In 1978, all Nuclear Weapon States issued unilateral statements on security assurances, although China remains the only one to have given these unconditionally. UN Security Council Resolution 984 formally acknowledged these commitments made by the Nuclear Weapon States, but felt short of addressing the need of legally binding security assurances as a protocol to the NPT, as it merely "[n]otes the means available for assisting [in the case of an act of aggression by threat or use of nuclear weapons] such a Non-Nuclear Weapon State party to the [NPT], including an investigation into the situation and appropriate measures to settle the dispute and restore international peace and security;" (UNSC Resolution 984). The inclusion of such a protocol is contained however in the existing NWFZ treaties, although not all of them are ratified by the Nuclear Weapon States on the grounds specified previously.

## *2.6. Sub conclusion*

Although it is evident that some fundamental differences exist between the definitions of arms control and disarmament, the two concepts are sometimes used interchangeably in theoretical literature. This makes any distinction between the concepts occasionally rather opaque. In general it can be concluded however, that disarmament can be applied to all weapons (general and complete disarmament), or to specific categories of weapons (i.e. nuclear weapons). This can be done unilaterally or multilaterally, and can involve partial or complete elimination of the specified type(s) of weapon. Additionally, the concept refers both to the process by which capabilities are reduced, and to the end condition of being disarmed. Nuclear disarmament certainly fits in the framework of the concept of disarmament as the name clearly implies (i.e. in Article VI, the ultimate objective is the abolishment of nuclear weapons, not simply regulating

them for the benefit of possessing them indefinitely. Or at least, that is what the majority of the Non-Nuclear Weapon States insist). The means to achieve this objective can be, as is evident from past the experience of the Cold War, certainly be done through the use of arms control treaties. This does not mean that other measures taken for nuclear disarmament, such as the CTBT, the NWFZ, and the NFU have entirely addressed the obligations of the Nuclear Weapon States to disarm. Still, these three measures can be regarded as supporting mechanisms to facilitate nuclear disarmament by acting as confidence building measures to contribute to international stability and to reduce nuclear proliferation (as is the case of the establishment of NWFZ's). Nevertheless, the classification of these mechanisms is difficult, for the classification of Siccama permits the principle of a NWFZ to be regarded as an arms control measure since it limits the geographical proliferation of nuclear weapons. An important element of this is that it depends on the viewpoint of which one takes. For example, when observed from the (local) perspective from the states party to a NWFZ treaty, the concept can be defined as a disarmament measure, since a NWFZ completely abolishes nuclear weapons in a given area.. From a wider perspective however, a NWFZ treaty does not directly address the nuclear weapon arsenals of the Nuclear Weapon States, apart perhaps from a assurance not to use or threat to use nuclear weapons. This fits the *arms control* description used by Siccama. The classification of a NWFZ treaty is therefore peculiar. The CTBT and NFU can also be classified as a measure of *arms control*, since it belongs to the measures to promote stability. By prohibiting the Nuclear Weapon States from undertaking nuclear weapon tests, the discriminatory objections of the Non-Nuclear Weapon States are to some extent met, although not completely. Two of the three mechanism discussed do certainly fit more in the description of arms control than disarmament, for the first involves limitation and reduction of armaments while the latter concerns its ultimate abolition.

As previously mentioned, strictly from a 'local' perspective, the concept of a NWFZ could be defined as a clear example of *disarmament*, since it completely prohibits the deployment of nuclear weapons in a localised area. In other words, the concept itself does not merely intend to control nuclear weapons, but to seek its total abolishment in *the given area*. This fits the theoretical rationale underlying the concept for disarmament, for supporters of disarmament want to be protected against the threat of weapons (i.e. negative security assurances), while the supporters of arms control seek security through a more strict control of weapons. From the arms control theories discussed in this chapter, the CTBT can consequently be considered as a way of *arms control*, since it intends to restrict nuclear weapons by prohibiting NWS from nuclear testing, not from prohibiting or restricting the possession of nuclear weapons. The principle of NFU can be viewed from a similar perspective, since it does not intends to prohibit the

possession of nuclear weapons, but merely intends to curtail its potential use. Security is sought after by way of influencing the nuclear strategy which in turn affects international stability. It must be noted however, that this is still by some regarded as the *process* of disarmament, whereas others view this more as a way of arms control. Arms control theory also indicates that the ideal conditions for arms control negotiations could stem from the unequal military balance of power. In theory therefore, the discriminatory character of the NPT would therefore provide a fertile ground for the conclusion of successful (nuclear) arms control negotiations. Whether this argument holds ground will be the subject of the subsequent chapters. It is however also apparent that the traditional arms control treaties, as concluded during the Cold War and the period immediately afterwards, are subject to fundamental upheaval. While the end of the Cold War certainly demonstrated a new momentum for arms control, that era appears to be over at present. There is currently a transition from traditional arms control negotiations to a set of informal negotiating procedures, which attempts to include the new threats of the beginning of the 21<sup>st</sup> Century. Arms control measures negotiated through the concept of cooperative security certainly appears to be promising, especially when the principles of verification, transparency and compliance are taken in strict consideration.

### 3. The Fundamental Elements of the Nuclear Non-Proliferation Treaty

In this chapter, the basic structure of the NPT will be addressed, together with the actors that are party to it as well as the basic obligations and responsibilities as specified in the treaty. Afterwards, the five main principles of nuclear non-proliferation will be discussed together with their (evolved) interpretation and their implementation in the Non-Proliferation Treaty itself. Those principles involved with Article VI will be discussed in greater detail in the chapter concerning the interpretation of Article VI.

#### 3.1. Main Objective of the NPT

The Non-Proliferation Treaty (NPT), officially known as the Treaty on the Non-Proliferation of Nuclear Weapons, is an international treaty intended to counter the spread of nuclear weapons as well as to support international cooperation in the development of peaceful applications of atomic energy. In addition, it also makes a reference to the international community aspirations for general and complete disarmament. The NPT is one of the first most comprehensive treaties ever concluded on the issue of weaponry and it forms the foundation of the nuclear non-proliferation regime, as it is the only international legal instrument through which a state can commit itself to non-nuclear weapon status<sup>82</sup>. Another important aspect of the NPT is its safeguards requirement, which monitors and inspects nuclear materials and facilities in Non-Nuclear Weapon States. Moreover, the treaty's preamble states that all states party to the treaty should negotiate towards the conclusion of a comprehensive nuclear test-ban, something which has been achieved in 1996 although not yet all signatories have ratified it.

In short, the treaty:

- Forbids member states without nuclear weapons from developing them;
- Forbids the five member states with nuclear weapons from transferring them to any other state;
- Provides assurance through the application of international safeguards that peaceful nuclear programs in NNWS will not be diverted to nuclear weapons or other nuclear explosive devices;

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<sup>82</sup> SIPRI, "SIPRI Yearbook, Armaments Disarmament and International Security – 1996", Stockholm International Peace Research Institute, Humanities Press, Inc., New York, 561.

- Facilitates access to peaceful uses of nuclear energy for all NNWS under international safeguards;
- Commits member states to pursue good faith negotiations toward ending the nuclear arms race and achieving nuclear disarmament<sup>83</sup>.

The Nuclear Non-proliferation Treaty was opened for signature on July 1 1968, and was signed by three of the five Nuclear Weapon States (i.e. United States, Soviet Union (Russia), United Kingdom and 58 Non-Nuclear Weapon States (the two other Nuclear Weapon States at the time of entry into force were France and China, but they did not sign the treaty until 1992). On March 5 1970, the Treaty entered into force.<sup>84</sup> At the time of writing, the number of parties to the NPT has grown to 189. The Treaty states that after twenty-five years, an Extension Conference would be held which would determine whether the NPT shall continue in force indefinitely. This has indeed happened during the 1995 Review and Extension Conference.

### *3.2. Actors within the NPT*

The actors within the NPT consist of the Nuclear Weapon States (NWS) and the Non-Nuclear Weapon States (NNWS). Nuclear Weapon States, as defined by Article IX.3 of the NPT, are defined as state parties to the treaty that have detonated a nuclear device before January 1968 (i.e. the United States, Soviet Union (Russia), United Kingdom, France and China. Non-Nuclear Weapon States are state parties to the NPT that did not detonate a nuclear device before or after January 1 1967 and are party to the NPT.<sup>85</sup> An important aspect not to be overlooked is the physical presence of nuclear weapons on the territory of a Non-Nuclear Weapon State.<sup>86</sup>

Not all United Nations Member States signed the Treaty however, although some of them were involved in the negotiations to the treaty, such as India and Pakistan. The latter two declined to sign the treaty and did detonate nuclear devices in 1974 and 1998 respectively. These

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<sup>83</sup> Nuclear Threat Initiative, 2004.

<sup>84</sup> Hoekema & de Klerk, 1985.

<sup>85</sup> Article IX.3, NPT.

<sup>86</sup> For the debate on (nuclear) disarmament however, this has no bearing on the legal issues discussed here, as the NPT specifically classifies Nuclear Weapon States as those states which have detonated a nuclear weapon prior to January 1967. The case of Germany does not fit into this classification, as it did not detonate any nuclear weapon in the first place, and secondly, all the nuclear weapons on its territory are in the legal and physical control of the United States (see Dombey, N. et al, (1987), "Becoming a non-nuclear weapon state: Britain, the NPT and safeguards", in: *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 63, No. 2 (Spring, 1987), pp. 191-204); see further below.

states however, despite being in possession of one or more nuclear weapons, are not officially acknowledged for being a Nuclear Weapon State as they did not sign and ratify the NPT. Another exception to this is Israel, for it too never signed and ratified the treaty. North Korea on the other hand, did sign and ratify the NPT in 1985, but claimed it had withdrawn from the treaty in 2003<sup>87</sup>. Debate on the legitimacy of North Korea's decision is still ongoing.

### 3.3. Three Pillar structure of the NPT

In general, the Nuclear Non-Proliferation Treaty is interpreted as being based on three main pillars, even though the Treaty itself does not specifically mention these as such. The three pillars are regarded as equally important, and include:

1. Non-Proliferation
2. Disarmament
3. Peaceful use of nuclear energy

The core of the treaty consists of Article I and II of the Treaty, which deals with the elements of the first pillar (non-proliferation) and is considered as the main aim of the NPT. Without it, the Nuclear Weapon States feared that nuclear weapons would spread uncontrollably to other states and would therefore destabilise global stability. President John F. Kennedy stated in March 1963 that without the NPT, “[...] by 1970 there may be ten nuclear powers, instead of four, and by 1975, 15 or so”<sup>88</sup>. Article I and II of the NPT deal with the matter that Nuclear Weapon States (NWS) are not allowed to transfer nuclear weapons to Non-Nuclear Weapon States (NNWS), nor assist them in its development. Non-Nuclear Weapon States on the other hand, are at the same time not allowed to agree to assistance in developing nuclear weapons. There is however, an ambiguity in the legal framework of these NPT articles, as it does not specifically refer to (non-) Nuclear Weapon States *not* included in the treaty. In other words, Nuclear Weapon States are allowed to assist (non-) Nuclear Weapon States that are *not* party to the NPT in the development or acquirement of nuclear weapons<sup>89</sup>. Moreover, the NPT does not prohibit nuclear cooperation within the framework of an alliance. Furthermore, the United States issued a unilateral declaration which states that “[...] the NPT does not deal with allied consultations and planning on nuclear defence so long as no transfer of nuclear weapons or

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<sup>87</sup> Nuclear Threat Initiative, 2004.

<sup>88</sup> Hoekema, J.Th. and P. de Klerk, (1985), “Non-proliferatie verdrag”, Ministerie van Buitenlandse Zaken, Den Haag, p.3.

<sup>89</sup> *Ibid.*, p. 3.

control over them results. It does not deal with arrangements for deployment within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which the treaty would no longer be controlling<sup>90</sup>. Additionally, states that are not party to the NPT (India, Israel, Pakistan, North Korea), often argue that Nuclear Weapon States have the *ex parte* benefits of 1) already possessing nuclear weapons, 2) upgrading and expanding their nuclear arsenals, and 3) do not share nuclear technology with developing countries.<sup>91</sup>

The combination of all three pillars of the NPT is also known as the Grand Bargain, as Non-Nuclear Weapon States pledged not to develop nuclear weapons, in return for unobtrusive access to the benefits of peaceful nuclear technology, while being subject to international monitoring and inspection. The Nuclear Weapon States were therefore required to share the technology essential for the peaceful use of nuclear energy with the states that joined the Treaty as Non-Nuclear Weapon States, while simultaneously pledging for negotiations ‘in good faith’ leading towards (nuclear) disarmament.

#### *3.4. Five Main Principles of Non-Proliferation*

Several proposals and suggestions for United Nations General Assembly (UNGA) resolutions had been put forward that would call for the negotiation of an international treaty to prevent the proliferation of nuclear weapons. In 1965, both the United States and the Soviet Union submitted their own proposals for nuclear non-proliferation. The most important difference between those proposals was the legal definition and nuclear framework of military alliances. The Soviets feared what they called “[...] the German nuclear trigger finger [...]” within the NATO alliance<sup>92</sup>, which was an anxiety still reminiscent of the Soviet conflict with Nazi-Germany during the Second World War. Nevertheless, during the United Nations’ 20<sup>th</sup> Session of the General Assembly of 1965, a resolution (UNGA 2028 (XX), see Appendix C) was finally adopted that was based on five main guiding principles. These guiding principles were the outcome of a large number of discussions within the United Nations, as to come up with a solution to call for nuclear disarmament in order to prevent war and reduce international tensions following the Cuban Missile Crisis of 1962.<sup>93</sup> These guiding principles, as formulated during the

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<sup>90</sup> *Ibid.*, p. 5.

<sup>91</sup> *Ibid.*, p. 4.

<sup>92</sup> *Ibid.*, p. 3.

<sup>93</sup> Shaker, M. (1980), “The Nuclear Non-Proliferation Treaty; Origin and Implementation 1969-1979”, Oceana Publications, Inc., London, 1980

20<sup>th</sup> Session of the General Assembly, are regarded as the foundations of the Nuclear Non-Proliferation Treaty:

- a) The treaty should be void of any loop-holes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form.
- b) The treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers.
- c) The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament
- d) There should be acceptable and workable provisions to ensure the effectiveness of the treaty.
- e) Nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their territories.<sup>94</sup>

The intention of principle (a) was formulated to ensure that no Nuclear or Non-Nuclear Weapon State would be involved in the proliferation of nuclear weapons. The Soviet Union's interpretation of this principle involved especially its reassurance that the West subsequently did not permit West-Germany any access to (the knowledge of) nuclear weapons, especially if this was through military alliances.<sup>95</sup> The US interpretation addressed the Soviet concern in interpretation, as it was emphasised that "[...] no proposal which the United States had considered in NATO would place control of nuclear weapons, or information on their manufacture, in the hands of any non-nuclear country [...]".<sup>96</sup>

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<sup>94</sup> *Ibid.*, p. 37.

<sup>95</sup> The Soviet Union was particularly concerned with the nuclear sharing agreement within the framework of the NATO alliance, of which NATO members deny any violation of their obligations under the NPT, more specifically Article I and II. The NATO members that are included in these bilateral Programs of Cooperation are Germany, Belgium, The Netherlands, Italy and Turkey. The US interpretation of Article I and II states that the provisions of Article I and II is only concerned with the transfer of "nuclear weapons" and "other nuclear explosive devices", which (according to the interpretation) does not constitute the transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, as long as the transfer does not involve nuclear warheads or bombs. The NATO nuclear sharing provision will be held in place until a decision to go to war has been made, upon which the NPT would no longer be controlling (see further Butcher, (1997) "NATO Nuclear Sharing and the NPT – Questions to be answered").

<sup>96</sup> Shaker, *op. cit.* 1980; p. 50.



For other Non-Nuclear Weapon States however, the main obstacle for the interpretation of principle (a) lies with the specific mentioning of a ‘loop-hole’. Whilst the United States and the Soviet Union deduced this to the meaning of military alliances, other (non-nuclear) states interpreted this as the absence of international verification and control. These states regarded the inclusion of this principle therefore as a method of ensuring the enduring effectiveness of the treaty. The main essentials of principle (a) are clearly notable in Article I and II of the NPT:

Article I (NPT)

*“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.”<sup>97</sup>*

Article II (NPT)

*“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.”<sup>98</sup>*

The second principle (b) reflected the wishes of mainly the Non-Nuclear Weapon States, although several of these states were divided themselves on the interpretation of this principle. For example, some states asserted the treaty should include a “[...] specific and formal undertaking by the nuclear Powers not to use their atomic weapons and not to exert any pressure, political and military, based on the possession of such weapons [...]”<sup>99</sup> In other words, several NNWS emphasised the importance of security guarantees.<sup>100</sup> Other NNWS on the other hand, stressed the importance of the ‘responsibilities and obligations’ of Nuclear Weapon States to engage in the abandoning of nuclear weapons research and manufacturing, and to start the destruction of their nuclear weapon stockpiles.

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<sup>97</sup> Emphasis added.

<sup>98</sup> Emphasis added.

<sup>99</sup> *Ibid.*, p. 53.

<sup>100</sup> The aspects of security guarantees will be explained in greater detail in Chapter x.

Yet almost immediately after adopting the guiding principles, principle (b) was already causing controversy, albeit it was intended as a gesture of goodwill mainly on behalf of the NWS in order to meet the demands of NNWS. This controversy can be explained by the fact that during the negotiations a number of states called for the coupling of the non-proliferation treaty with other measures required to facilitate general nuclear disarmament.<sup>101</sup> In contrast, other states regarded the treaty as a first step in a series of steps towards realising other viable disarmament measures. The importance of this dividing issue was emphasised by the suggestion made in an earlier joint memorandum by eight non-aligned members to the Eighteen Nation Disarmament Committee (ENDC). This memorandum is regarded by Shaker (1980) as the immediate origin of principle (b), as it states that measures to prohibit the spread of nuclear weapons (i.e. the NPT) should be “[...] coupled with or followed by tangible steps [...]”<sup>102</sup> to achieve the cessation of the nuclear arms race and nuclear disarmament in general (the phrase ‘coupled with or followed by’ turned out to cause much wider debate during the drafting of Article VI of the NPT as well, but this will be detailed in the next chapter). This interpretation of principle (b) is therefore closely related to principle (c). At a later stage however, principle (b) also became closely associated with the alienable right of all parties to the application of peaceful nuclear energy technology, which was reiterated in Article IV of the NPT

#### Article IV (NPT)

*“1. 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.*

*2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.”<sup>103</sup>*

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<sup>101</sup> Other measures are the Comprehensive Test-Ban Treaty (CTBT) and a cut-off of the production of fissile materials (FMCT), see more extensively on this issue Chapter x.

<sup>102</sup> *Ibid.*, p. 55.

<sup>103</sup> Emphasis added.

The third principle (c) did at first not cause any direct comments, as it was generally thought by self-explanatory. Most of the debate however, did concern the question whether the NPT would be ‘coupled with or followed by’ tangible steps for the cessation of the nuclear arms race and towards (nuclear) disarmament. The outcome of this debate will be discussed in the following chapter. Nevertheless, it was clear that Principle (c) was closely associated with principle (b), as far as the kind of balanced responsibilities and obligations in nuclear disarmament were concerned. This principle is most closely associated with Article VI of the NPT:

#### Article VI (NPT)

*“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.”<sup>104</sup>*

Although many of the other principles discussed earlier might in one way or the other contribute to the effectiveness of the treaty,<sup>105</sup> principle (d) was related more directly at the question of verification and control. Especially the United States referred to the aspect of inspection, as its representative stated that is regrettable that the principle “[...] failed to reflect more clearly the wide support [...] for the application of IAEA or equivalent international safeguards [...]”<sup>106</sup> This interpretation of principle (d) was later implemented in a more detailed way in Article III.<sup>107</sup> Other elements of principle (d) relating to the principle of universality of adherence to the treaty and the right of amendments, duration and withdrawal<sup>108</sup> too were eventually implemented in the NPT.

To conclude, principle (e) was added to the resolution by specific request of Mexico. The main reason for this was the fact that during the 1960’s, many of the Latin American states were

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<sup>104</sup> Emphasis added.

<sup>105</sup> Aspects with respect to contributing to the effectiveness of the Treaty are; avoiding loop-holes in principle (a), guaranteeing the security of NNWS and the ensuring of disarmament in principle (c).

<sup>106</sup> *Ibid.*, p.59.

<sup>107</sup> See further Appendix A.

<sup>108</sup> The right of amendments, duration and withdrawal are referred to in Article VIII, Article IX, and Article X of the NPT respectively.

already involved in the planning of a denuclearised zone on their continent, which would later culminate in the Treaty of Tlatelolco in 1969, officially known as the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. However, principle (e) did not only refer to those states that were in the process of negotiating a Nuclear-Weapons-Free Zone (NWFZ), but also to those states that were still contemplating whether or not to establish an equivalent (the establishment of NWFZ's will be looked upon more closely in Chapter 5). The support for principle (e) is most clearly discernable in Article VII of the NPT:

#### Article VII

*“Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.”<sup>109</sup>*

The five principles, from which the inspiration was gleaned from the supplementation of the proposals and suggestions from a multilateral framework of various NWS and NNWS, are therefore to be regarded as the prerequisites for a successful conclusion of the Nuclear Non-Proliferation Treaty. The role that the principles of resolution 2028 played during the negotiating phase of the draft treaty, and the various interpretations related to it, were instrumental in formalising the concept on which the treaty was based. In order to ensure the effectiveness of the treaty<sup>110</sup>, several states proposed to include a reference of UNGA 2028 itself in the draft NPT, as in doing so would “[...] contribute to the proper implementation and sound interpretation of the treaty”<sup>111</sup>. However, the United States appealed against this proposal, by stating that it did not oppose the resolution in general, but that the draft treaty was not solely based on UNGA resolution 2028 as it also included elements of the draft memoranda prepared during the negotiating of the resolution. But not referring specifically to this resolution did not detract from the value of the principles as guiding principles, as the United States and the Soviet Union (as the two most influential co-sponsors of the treaty), both accredited the five principles for their inspiration for the NPT.

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<sup>109</sup> Emphasis added.

<sup>110</sup> By entailing non-proliferation principle (d).

<sup>111</sup> *Ibid.*, p. 64.

### 3.5. *The Value of the NPT*

The immense significance of the NPT lies in its achievement of persuading the vast majority of 180 states to voluntarily abandon the ability to acquire the most powerful weapon in history. In order to understand this issue, two interest-based answers can be provided to address this seemingly illogicality; the ‘collective good’ consideration and the consideration of equality. First of all, there appears to be a collective understanding of the fact that the uncontrolled proliferation of nuclear weapons has a threatening effect on international stability. In other words, the greater the total of states being in possession of nuclear weapons; the greater the risk will be on nuclear war, whether it is based on accident, miscalculation, or misperception.<sup>112</sup> Since international stability is considered to be a collective good, every single potential nuclear weapon state would understand that its contribution would only add to a destabilising international balance of power. The NPT addresses the issue of collective good in the sense that it provides a guarantee which is sufficient enough to ensure that everyone – with the exception of the five NWS – will stay non-nuclear, “thus avoiding the risk of destruction of the common good by many uncoordinated individual steps”.<sup>113</sup> The second interest-based argument of equality is constituted of the Grand Bargain of the NPT, which allows the NWS to retain their nuclear weapon arsenals in return for their obligation to disarm (i.e. Article VI of the NPT). The NNWS’ complete renunciation of nuclear weapons thus persuades the NWS to disarm, which would in theory mean a return to equality.<sup>114</sup>

### 3.6. *Criticism of the NPT*

The NPT has almost<sup>115</sup> certainly fulfilled this consideration of equality, since the previously uncontrolled proliferation of nuclear weapons has been kept in check with respect to the states that are party to the NPT.<sup>116</sup> This was and still is however primarily a key argument for the five NWS. For the NNWS however, the interest-based consideration of equality has been

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<sup>112</sup> Müller, H. (2005), “A Treaty in Troubled Waters: Reflections on the Failed NPT Review Conference”, in: *The International Spectator*, Vol. 3, 2005, p. 36-37.

<sup>113</sup> *Ibid.* p. 37.

<sup>114</sup> *Ibid.* p. 37.

<sup>115</sup> The possible sole exception to this would be the withdrawal of North Korea from the NPT in 2003, after which it allegedly tested a nuclear weapon in October 2006. Negotiations are however under way to once again swing North Korea back to the international NPT-balance of power.

<sup>116</sup> India, Pakistan and Israel have not signed the Nuclear Non-Proliferation Treaty, and are therefore considered to be located outside the ‘NPT-controlled proliferation’ group of states.

equally unfulfilled. The NWS are still in possession of their nuclear weapons, and stand accused by the NNWS of having demonstrated a lack of commitment to their disarmament obligations. This matter of legal discrimination between the 'haves' and 'have-nots' continues to provoke a serious degree of discomfort on part of the NNWS, since this was not the Grand Bargain which the NPT had promised. The perceived legal discrimination which originates from Articles II and VI of the NPT in turn derives from the NWS insistence on controlling horizontal proliferation (i.e. nuclear weapons proliferating to other NPT state parties, Article II of the NPT). The NNWS on the other hand, clearly demanded a halt on the vertical proliferation of nuclear weapons (i.e. the obligation of the NWS to pursue the inverse of a nuclear build-up, or denuclearisation). With regard to horizontal proliferation therefore, the NPT places clear and categorical obligations on the NNWS to maintain their non-nuclear status as such, while simultaneously the NPT lacks the specific and dynamic legal regime to impose on the NWS their obligations to abandon nuclear weapons. In other words, the demand of the NNWS to establish an "effective and conditional legal link between their obligations to renounce the acquisition of nuclear weapons capabilities themselves, and the commitment of the NWS to cease their nuclear arms race and achieve nuclear disarmament, do not seem to have been legally recognised by the NPT".<sup>117</sup>

### *3.7. Sub conclusion*

The objective of the Nuclear Non-Proliferation Treaty is, as the name implies, to control the otherwise unrestrained spread of nuclear weapons to a large number of states. The ability to create an international regime which has persuaded the NNWS to voluntarily abandon their (until then 'rightful' opportunity) to acquire nuclear weapons, can be considered to be an amazing accomplishment. Nevertheless, what the NPT fails to address however is the establishment of an acceptable balance of mutual responsibilities and obligations between the NWS and NNWS with respect to the overall goal of nuclear disarmament of the NWS. The NNWS are therefore, based on their legal obligations under Article II as compared to the legal obligations of the NWS under Article VI; considered to be at a legal disadvantage, for the NPT lacks a strict legal regime to oblige nuclear disarmament on part of the NWS. The next chapter will focus on the arguments provided by the NWS that have resulted in this alleged legal disadvantage, and will also look at the way in which the interpretation has evolved over the years since the entry into force of the NPT.

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<sup>117</sup> Athanasopoulos, H. (2000), "Nuclear Disarmament in International Law". North Carolina: McFarland & Company, Inc., Publishers, p. 48.

#### 4. The Interpretation of Article VI and its Development

For the two superpowers of the Cold War, the negotiations of the NPT were an opportunity, and simultaneously an assessment of the efforts by the United States and the Soviet Union to halt, or at least decelerate their nuclear arms race. Ultimately, this has culminated in the formulation of Article VI of the NPT. What follows is an analysis to understand the original interpretation of the treaty, and in what way this interpretation has developed over the approximately forty years since its entry into force in 1970. In the subsequent chapter, an assessment will be made regarding the extent to which the obligation has been fulfilled over the years since the Treaty entered into force. But in order to correctly understand the context in which these legal terms were defined, the historical perspective will be examined first, together with the subsequent evolving interpretations.

##### *4.1. Negotiations leading to the Formulation of Article VI of the NPT*

As was discussed in the previous chapter, this article was formed by employing the principles (b) and (c) as outlined in UNGA resolution 2028. These two principles are closely related to each other, as for the Non-Nuclear Weapon States, these principles embodied their desire to not only work towards the ultimate goal of nuclear disarmament, but it also entailed a more equitable balance of shared responsibilities and obligations on behalf of *all* the parties to the treaty; nuclear as well as non-nuclear. The final formulation of Article VI was the result of a series of lengthy negotiations between various UN member states, most of which took place within the Eighteen Nation Disarmament Committee (ENDC). The objective of this Committee was to establish a constructive dialogue between the United States and the Soviet Union concerning the objective of nuclear disarmament, as well as confidence-building measures and the control of nuclear tests. The Committee (1962-1968), which was based on an equal representation of East and West<sup>118</sup>, was the successor of the Ten Nation Disarmament Committee (1960), and which itself was later succeeded by the Conference of the Committee on Disarmament (1969-1978) and more recently the Conference on Disarmament, all of which were based in Geneva.<sup>119</sup>

Before scrutinising the formulation of the obligation for pursuing negotiations as stated in Article VI of the NPT, the terms ‘arms control’ and ‘disarmament’, both of which have been

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<sup>118</sup> See further Appendix B.

<sup>119</sup> United Nations Office at Geneva website, 2007.

used rather indiscriminately over the years, will have to be distinguished in order to prevent confusion as to the meaning of the terms used.

#### *4.2. Analysing Article VI*

In the following subsection, the formulation of the clauses within Article VI will be analysed. This will be done in three parts; the first part will cover the parties to the obligation, whilst the second part will focus on the interpretation and historical connotation of the obligation as stated in the Article (i.e. the pursuance of negotiations). The third part will deal with the interpretation regarding the three areas of these negotiations as specified in the obligation (i.e. cessation of the nuclear arms race, nuclear disarmament, and a treaty on general and complete disarmament).

##### *4.2.1. The Parties to the Treaty*

The stated obligation within Article VI commits all the Parties that have signed and ratified the treaty. The importance of this element is also reiterated within the preamble of the treaty text, where all the parties to the treaty urge “the cooperation of all States in the attainment of this objective”. In the first draft proposals of the treaty however, this was formulated otherwise. At first, most of the issued proposals and suggestions stated that the Nuclear Weapon States alone should be held responsible for the pursuance of negotiations towards achieving the objectives in the three areas specified. Shaker (1980) states, that this reflected the compensatory nature of the proposals that were designed to restore the imbalance of responsibilities and obligations between the Nuclear and Non Nuclear Weapon States. Moreover, the early proposals listed various measures that were aimed specifically at the Nuclear Weapon States, as only they (according to the proposals) were in a credible and realistic position to achieve nuclear disarmament as for possessing nuclear weapons in the first place.

It took some time before the states that were party to the ENDC had reached an agreement on this matter, as Romania continued to emphasise the individual responsibilities of the NWS regarding nuclear disarmament. Brazil however, suggested in making a clear distinction between the cessation of the nuclear arms race and nuclear disarmament on one side, and a treaty on general and complete disarmament on the other. Nevertheless, it was clear that the object of the latter domain of the Brazilian proposal was to call upon all states to achieve a treaty on general and complete disarmament, while the two former domains simultaneously called upon the Nuclear Weapon States to negotiate on fulfilling their individual responsibilities. The nuclear states in return admitted their responsibility, as the United States assured that the draft treaty



“[...] constitutes a solemn affirmation of the responsibility of nuclear-weapon States to strive for effective measures regarding cessation of the nuclear arms race and disarmament”.<sup>120</sup> The Brazilian proposal appeared therefore to broker a valid and reasonable accord between the NNWS and NWS and this suggestion was approved soon after (Shaker, 1980).

However, the significance of directly addressing the NWS on their responsibilities concerning nuclear disarmament, continued to remain a principal issue for the NNWS. But the motivation for this was actually more a question of principle rather than a question of security. Whilst achieving a more secure world would certainly be in the interest of all states parties, the very renunciation of the development of nuclear weapons *by the NNWS* was, from their perspective, in fact a very generous quid pro quo for demanding such a serious commitment on part of the NWS when it came to nuclear disarmament and arms control. Therefore, the NNWS demanded an equally important compensation for their willingness to renounce their ‘own right’ to nuclear weapons (albeit not many of them were capable of manufacturing nuclear weapons at the time of formulating Article VI). But this matter of principle was not the only important achievement for the NNWS, as by alleviating themselves to the same level of authority as the NWS with regard to nuclear disarmament and arms control, they would also had to shoulder upon themselves the accompanying responsibilities of playing an instrumental role with respect to this field. Many NNWS however, and particularly the members of the Non-Aligned Movement (NAM), had already shown their commitment by playing an “instigating and catalytic role in the field of arms control and disarmament”.<sup>121</sup>

In other words, the formulation of Article VI presented the NNWS not only with an opportunity to exert pressure on the NWS for achieving results, but also as an occasion to participate actively in the negotiations.<sup>122</sup> In reality however, this did not take away the discontent of the NNWS with regards to the bilateral character of several of the arms limiting talks<sup>123</sup> that solely took place between the United States and the Soviet Union. During the 1975 NPT Review Conference, this troublesome aspect was addressed by the Nuclear Weapon States themselves by stating specifically that the achievement of arms limitations and disarmament measures was a matter of importance to all the parties to the NPT. The Soviet Union thereafter, extended these

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<sup>120</sup> ENDC/PV 357, para. 66, 18 Jan. 1968.

<sup>121</sup> Shaker, *op. cit.* 1980; p. 565.

<sup>122</sup> ENDC/PV. 327, para. 5, 31 Aug 1968.

<sup>123</sup> The Strategic Arms Limitations Talks (SALT) is an example of the largely bilateral character of the arms limitation talks in which the other NWS and NNWS played little (if no) part.

responsibilities even to states that at the time were *not* participating in the negotiations leading to the drafting of NPT, i.e. China and France.<sup>124</sup> Consequently, these debates illustrated the continuing divide between those states which insisted upon the responsibilities of the Nuclear Weapon States on one hand, and the states that considered the obligation to achieve nuclear disarmament to be a matter of all states that are party to the NPT on the other.

#### 4.2.2. Pursuance of Negotiations

The obligation to pursue negotiations ‘in good faith’ on effective measure in the field of nuclear disarmament, was prior to the 1968 drafts of the treaties only stipulated in the preamble of the earlier draft treaty. Many members of the ENDC however, expressed their desire to include in the treaty a number of provisions that would establish a closer link between the NPT and the subsequent steps in the field of nuclear and general disarmament. Simultaneously however, other states asserted that “[...] the treaty on the non-proliferation of nuclear weapons is not an end in itself but merely a step towards the achievement of nuclear and general disarmament”.<sup>125</sup> Shaker (1980) therefore stresses that there were two approaches to the debate of linking the NPT to other measures of arms control and disarmament that were offered during the ENDC negotiations of the NPT. The first approach, which was favoured by the two superpowers, concerned a simple treaty that would contain no linkage to any other forms of arms control and disarmament measures, whether these were represented within the NPT, coupled with it, or following its conclusion.

This version of the NPT would therefore present constructive conditions for achieving general and complete (nuclear) disarmament as illustrated in principle (c) of UNGA resolution 2028. From the perspective of the superpowers, linking the conclusion of the NPT to other measures in a single package would, as stated by the Soviet Union; “[...] merely create new obstacles in our negotiations and would in fact render more difficult or even prevent the achievement of an agreement on non-proliferation”.<sup>126</sup> The superpowers preferred to keep these two legal topics separated as the parties negotiating the treaty were already very much divided on this issue itself. Additionally, the superpowers felt that the perceived imbalance of obligations and responsibilities as addressed by the NNWS was in fact more imaginary than reality, as both the United States and the Soviet Union had already demonstrated their willingness to undertake

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<sup>124</sup> Shaker, *op. cit.* 1980.

<sup>125</sup> ENDC/PV 357, para. 29, 18 Jan. 1968.

<sup>126</sup> ENDC/PV 357, para. 29, 18 Jan. 1968.

responsibilities without reciprocity during the conclusion of the Partial Test-Ban Treaty of 1963.<sup>127</sup> It is clear from these statements that the superpowers preferred a step-by-step approach over a single package which included measures for nuclear and general disarmament.

The second approach identified by Shaker (1980), concerned the solution as initially submitted to the ENDC by eight members of the Non-Aligned Movement. The second approach differs from the first approach as it is in favour of linking the measures to prohibit the spread of nuclear weapons (i.e. the NPT) to the cessation of the arms race and the elimination of nuclear weapons stocks and their delivery systems. This approach represented the original joint memorandum submitted by the eight non-aligned members of the ENDC, from which the principle (b) and (c) originated. Simultaneously however, the second approach itself highlighted the divergence of views among the states that had submitted the joint memorandum, as they could not agree on the matter whether the NPT should be 'coupled with or followed by' the additional measures.

Shaker (1980) therefore identifies three main trends to categorise the divergence of views among the supporters of the second approach. The first trend was advocated by Sweden and India within the ENDC, and proposed a special 'integrated' solution, in which non-proliferation was to be linked to a variety of measures in one single package. These measures constituted a complete cessation on the manufacturing of nuclear weapons, the issuing of security guarantees, a comprehensive test-ban and a cut-off of the production of fissile materials for military purposes. Sweden however, questioned the meaning of including the latter two within a treaty which was aimed at nuclear non-proliferation.<sup>128</sup> India therefore, was one of the staunchest supporters of the integration package. It stated that if no country were to manufacture nuclear weapons, this would greatly address the question of balance and mutuality of responsibilities and obligations, together with the danger of the proliferation of nuclear weapons.<sup>129</sup> The same strong language was at first also directed towards the significance of principle (c), as India advocated an additional article within the NPT which stated that NWS must negotiate a program for the reduction of nuclear weapon stock piles and delivery systems. Soon after however, India softened its stance and

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<sup>127</sup> Shaker, *op. cit.* 1980.

<sup>128</sup> ENDC/PV 243, p. 10, 24 Feb. 1966.

<sup>129</sup> ENDC/PV 298, para. 27, 23 May 1967.

suggested the substitution of the clause ‘negotiate’ into ‘undertake’ certain measures of disarmament.<sup>130</sup>

The latter alteration was in fact more in line with the second main trend in the debate. This trend did not suggest an arms control measure within the framework of the NPT as India and Sweden had proposed, but rather favoured an obligation by the NWS were requested ‘to undertake to adopt’ certain measures of disarmament. This proposal was largely advocated by Romania, and the clause was intended for having three types of effects. These effects were planned to exemplify the “[...] elimination of an obvious political and judicial lack of balance [...], the illustration of equality of treatment, [...] and the establishment of an acceptable balance of mutual responsibilities and obligations between the Nuclear Weapon States and Non-Nuclear Weapon States”.<sup>131</sup> Although the intention of this clause was to link the NPT with other measures of arms control and disarmament, Shaker (1980) regards this proposal more of a second-best solution. Furthermore, the proposal was rejected by the United States and the Soviet Union, mainly because it was deemed unfeasible in legal terms to “[...] enter into obligations to arrive at agreements”.<sup>132</sup>

The third main trend, designed to address this legal pitfall, was promoted by Mexico and Brazil and focused more on the object of ‘the negotiation’ itself rather than the specific legal obligation to ‘undertake’ certain measures of disarmament or the legal obligation of negotiating an integrated package of arms control and disarmament measures. Mexico introduced this proposal as it felt that horizontal proliferation could not be made conditional or subordinate to vertical proliferation.<sup>133</sup> More specifically, it referred to UNGA resolution 2028 in which the General Assembly had requested that the new treaty should be a step towards disarmament, and not an instrument that would already embody an agreement on disarmament.<sup>134</sup> Not all states could wholeheartedly agree on this formulation, but they did believe it was the only solution acceptable to the superpowers. These states still deemed negotiating not as an objective in itself but rather as a means to achieve concrete results. Shaker (1980) further believes that some states grudgingly consented to the formulation of this clause, as they would take refuge in the UN

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<sup>130</sup> ENDC/PV 334, para. 45, 28 Sep. 1967.

<sup>131</sup> ENDC/PV 342, paras. 26-29, 26 Oct. 1967.

<sup>132</sup> Shaker, *op. cit.* 1980; p. 571.

<sup>133</sup> Shaker, *op. cit.* 1980.

<sup>134</sup> ENDC/PV 304, para. 11, 13 Jun. 1967.

General Assembly Resolution 2373 (XXII)<sup>135</sup> commending the final draft of the NPT. Some states interpreted this as laying upon the Nuclear Weapon States a serious obligation “to agree on further constructive measures of disarmament over and above the provision of Article VI of the NPT”.<sup>136</sup>

The other states,<sup>137</sup> exerted pressure on the superpowers as they felt that some form of compensation on the part of the nuclear powers was required in order to achieve an agreement. In the end therefore, both the United States and the Soviet Union reluctantly agreed to pursue negotiations ‘in good faith’, even though it was reiterated that in order to achieve any agreement on disarmament, it was necessary to at least have some credible understanding regarding the exact nature and future outcome of these negotiations. This was something that, according to the superpowers, was yet impossible to determine at the time of the drafting of the NPT. Additionally, general dissatisfaction was also felt with regards to the lack of specification of the measures for future negotiations, apart from the general three areas stated in Article VI.

#### 4.2.3. *Areas of the Negotiations*

An extensive debate with respect to the specification of the three areas took place during the negotiations in the ENDC. The draft treaties of both the United States and the Soviet Union proposed to include a number of clauses that referred to agreements to halt the nuclear arms race, to reduce nuclear armaments within the framework of general and complete disarmament under effective international control (Shaker, 1980). After these formal draft treaties were submitted, a number of other states within the ENDC made a number of suggestions that included more specific references for future negotiations as they felt these were lacking in the draft treaties. Mexico for example, proposed to include an additional clause to the draft treaty, which referred to the prohibition of all nuclear weapon tests. Furthermore, the preamble of the draft treaty also referred to the cessation of the manufacture of nuclear weapons, the liquidation of existing stockpiles, and so forth “pursuant to a Treaty on general and complete disarmament”.<sup>138</sup> Therefore, a second suggestion was made to ensure that each of the different measures “[...] were not made entirely conditional on the achievement of a treaty on general and complete disarmament”.<sup>139</sup> Finally, a third suggestion was with regards to the time schedule of the

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<sup>135</sup> See Appendix D

<sup>136</sup> Shaker, *op. cit.* 1980; p. 572.

<sup>137</sup> Especially the non-aligned states as well as those allied to the superpowers (Shaker, *op. cit.* 1980).

<sup>138</sup> ENDC/PV 331, para. 20, 19 Sep. 1967.

<sup>139</sup> Shaker, *op. cit.* p. 575.

negotiations, on which Mexico proposed to “[...] pursue negotiations, with all the speed and perseverance, [...]” (ENDC/PV 331, para. 20, 19 Sep. 1967).

Romania and Brazil too, expressed their desire to include a number of similar amendments in the treaty, including a reference to the time factor of the negotiations in addition to making the NPT independent from the a treaty on general and complete disarmament. Furthermore, Romania proposed to include a reference to the prohibition of the use of nuclear weapons to the measures already listed. What is apparent from these three proposals is their explicit recommendation for a time schedule for negotiations and their specific enumeration of the specific measures to be undertaken for nuclear disarmament. The superpowers nonetheless, claimed that the specification of the different measures for nuclear disarmament would only hamper the negotiations of the NPT as the divergence of views among the members of the ENDC was particularly difficult to overcome. This view was shared by some of the other non-aligned members of the ENDC, such as Sweden and the United Arab Republic. These states asserted that they were not in favour of overloading Article VI with too many details.<sup>140</sup>

In order to meet some of the demands of the objecting members of the ENDC, Sweden proposed the inclusion of a reference in the preamble of the NPT with respect to the preamble of the Partial Test-Ban Treaty of 1963, which sought to achieve the ban of all nuclear weapon tests. Another suggestion was made with regards to the time factor of the negotiations, in which Sweden proposed to insert the clause ‘at an early date’. Another suggested amendment was to change ‘disarmament’ into ‘nuclear disarmament’, as to underline the main objective of the negotiations.<sup>141</sup> The United Kingdom also suggested altering the wording of the treaty in order to specify that the reference in the article was to effective measures, not just unspecified negotiations. Therefore, the UK proposed to replace the word ‘regarding’ with the phrase ‘relating to’, and placing the word ‘to’ before the words ‘nuclear disarmament’ (Shaker, 1980). These proposals were accepted by the United States and the Soviet Union in their joint draft of the treaty of 11 March 1968, which stated that all states were obliged to pursue negotiations:

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<sup>140</sup> ENDC/PV 376, para. 35, 20 Feb. 1968.

<sup>141</sup> ENDC/PV 363, para. 12, 8 Feb. 1968.

#### Article VI (NPT)

*“[...] 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.”<sup>142</sup>*

A final analysis of the three areas stated in Article VI, reveals that no particular measures to be negotiated were specified in the article.<sup>143</sup> However, the measures to be negotiated are required to be related to the three areas as listed, which are described in a logical order of priorities. Furthermore, the measures are specified in the preamble of the NPT and could therefore serve as guide in identifying the objectives of the negotiations. By inserting the clause ‘at an early date’, the importance of urgency was also addressed, albeit only accountable for the cessation of the nuclear arms race. This was done deliberately, as the cessation of the nuclear arms race could consequently facilitate further negotiations on general and complete (nuclear) disarmament. The negotiations on the different measures were therefore not made conditional upon their inclusion within the framework of general and complete disarmament.<sup>144</sup> In addition, in order to appease dissatisfaction among some of the ENDC-members with respect to the formulation of Article VI, repeated references were made in subsequent UN General Assembly sessions to the more detailed preambular paragraphs corresponding to Article VI, as well as to the importance of Article VIII and its related references to review conferences.

#### *4.3. NPT Review Conferences since 1975*

Prior to the First NPT Review Conference in 1975, numerous states expressed their desire for a strengthening of the Treaty, especially following the Indian nuclear weapon test of 1974. Following the Indian nuclear explosion it was generally believed that the technological and economic barriers to the acquisition of nuclear weapons were no longer sufficient. Therefore, great expectations were placed upon the NPT Review Conference of 1975 as a way of reinforcing the political barrier as to limit the proliferation of nuclear weapons. Article VI was thought to be paramount to the strengthening of this political barrier, as the abolishment of all nuclear weapons would in theory act as an incentive for Near-Nuclear Weapon States not to pursue the development and production of these weapons of mass destruction. The main obligations, as

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<sup>142</sup> Emphasis added.

<sup>143</sup> This was as vainly requested by Brazil, Mexico, and Romania (Shaker, *op. cit.* 1980).

<sup>144</sup> Shaker, *op. cit.* 1980.

defined in Article VI of the NPT, were placed upon the Nuclear Weapon States<sup>145</sup> as to be in the vanguard in negotiations leading to nuclear disarmament. For many Non-Nuclear Weapon States, vast reductions in the nuclear weapons arsenals alone were believed to be relatively insufficient in demonstrating the nuclear powers 'good faith', while reaching agreement on a Comprehensive Test-Ban Treaty, the prohibition of all nuclear underground explosions, and at least some progress in moderating the nuclear arms race in the SALT-process were regarded as first steps towards demonstrating some goodwill. Nevertheless, the clause within Article VI of the NPT requiring "effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament" had not been negotiated since the treaty came into force until the First NPT Review Conference, and some observers prior to the Conference expressed doubts on whether this would in fact occur in Geneva itself.<sup>146</sup> Following the Conference, these observers were proven to be right as only general and noncommittal statements were made in the Final Declaration regarding the desirability of discontinuing nuclear-weapon tests and reducing nuclear weapons systems.<sup>147</sup> All state parties to the Treaty did however agree to resolve an open-ended clause Article VIII, in which it was declared state parties "may" hold a Review Conference every five years. From 1975 on, a NPT Review Conference was to be held in Geneva every five years in order to "[...] review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized".<sup>148</sup>

During the Second Review Conference in Geneva held in 1980, the NNWS intensified their efforts by attempting to persuade the NWS<sup>149</sup> to adhere to their obligations with respect to Article VI. Instead, many NNWS from the Non-Aligned Movement raised their concern about the intensifying of the qualitative and quantitative nuclear arms race and stressed that its continuation would "[...] adversely affect the efforts to prevent further spread of nuclear explosive capability".<sup>150</sup> Despite of this, Western states were less critical in assessing the

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<sup>145</sup> Many states felt that these obligations were especially applicable to the United States and the Soviet Union (Shaker, *op. cit.* 1980).

<sup>146</sup> SIPRI (1975), "SIPRI Yearbook of Worlds Armaments and Disarmament – 1975", Stockholm International Peace Research Institute, Humanities Press, Inc., New York

<sup>147</sup> SIPRI (1976), "SIPRI Yearbook of Worlds Armaments and Disarmament – 1976", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>148</sup> Article VIII, paragraph 3 of the NPT.

<sup>149</sup> All of the five NWS were reminded by the NNWS of their obligations under Article VI of the NPT, but in particular the United States and the Soviet Union for they possessed the largest nuclear arsenals (see SIPRI (1981), "SIPRI Yearbook of Worlds Armaments and Disarmament – 1981", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>150</sup> SIPRI, *op. cit.* 1981; p. 324.



achievements made since the previous NPT Review Conference, and praised the signing of the SALT II Treaty by both the United States and the Soviet Union in 1979. This was echoed by some observers of the Conference, as they signalled a similar cautious advance in the arms control negotiations for SALT II thought to be more ambitious than the SALT I Interim Agreement.<sup>151</sup> Nevertheless, a similar advance was observed in the arms race itself as simultaneously significant technological developments were made which would affect the strategic balance unfavourably, such as the placing of more advanced ICBM's and the planned positioning of new cruise missiles in Western Europe. In addition, changes were made in the US strategic nuclear weapons doctrine, where a slow shift from Mutual Assured Destruction towards the selective targeting of Soviet military forces was observed. According to the United States, this shift "[...] would envisage limited options to permit the termination of a nuclear conflict at lower levels of destruction, avoiding large scale damage to urban areas"<sup>152</sup> and was made possible due to technological advances made in improving ballistic missile accuracy. These developments caused the NNWS to strengthen their calls for an increased effort by the United States and the Soviet Union to adhere (and preferably expand) their commitments made under SALT I and SALT II. The latter one however, was at risk of not being ratified by the United States as part of its broader disapproving policy of the Soviet invasion of Afghanistan in 1979. SIPRI (1981) also noted that the signing of a Comprehensive Test-Ban Treaty would act as a considerable balance between the responsibilities and obligations of the NWS to adhere to Article VI. Negotiations on the instigation of a moratorium stalled however due to the superpowers inability to reach consensus on a verifiable treaty.<sup>153</sup>

The main issues on the agenda of the Third NPT Review Conference held in Geneva in 1985 called for restraint on part of the United States and the Soviet Union in their intensifying nuclear arms race. Many observers of the conference, which found the outcomes of the two previous NPT Review Conferences rather unsatisfactory, held unpretentious expectations for the outcome of the Third NPT Review Conference.<sup>154</sup> It was generally thought to be a reiteration on what had already been stated before, with many of the NNWS calling for the NWS to fulfil their responsibilities and obligations with respect to Article VI. The result of the Conference was less disappointing however, with the two superpowers confronting each other less than expected on

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<sup>151</sup> SIPRI, *op. cit.* 1981.

<sup>152</sup> SIPRI, *op. cit.* 1980; p. 326.

<sup>153</sup> SIPRI, *op. cit.* 1981.

<sup>154</sup> SIPRI (1986), "SIPRI Yearbook of Worlds Armaments and Disarmament – 1986", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

their respective positions regarding nuclear weapons. This underlined the political importance of the five-yearly conferences on nuclear non-proliferation during which the two superpowers were required to engage in direct talks concerning arms control. Nevertheless, the United States received criticism by many of the NNWS on its declared refusal to terminate nuclear weapons testing. The Soviet Union on the other hand, was lauded for its unilateral moratorium on nuclear testing and its exertion for the prevention of an arms race in outer space. All parties also respected the importance of the NPT as a significant instrument in negotiating nuclear disarmament, and therefore made strenuous efforts to achieve consensus on a final declaration. In this declaration, several of the achievements that had been made were heralded (i.e. the establishment of various Nuclear-Weapon-Free Zones in the 1970's, the Treaty for the Prohibition of Weapons of Mass Destruction on the Seabed of 1971, the Outer Space Treaty of 1967), but simultaneously the notion of regret was expressed regarding the continuing development and deployment of nuclear weapon systems. Additionally, the declaration reiterated the importance of implementing the provisions with respect to Article VI.

At the Fourth NPT Review Conference of 1990, the three Nuclear Weapon States party to the Treaty<sup>155</sup> praised the progress that had been achieved in the field of arms control since the last Review Conference of 1985. One of the main items on the agenda was the negotiations regarding the conclusion of a Comprehensive Test-Ban Treaty. The NWS did state however, that the planned NPT extension of 1995 should not be dependent on the conclusion of any other arms control agreement such as the CTBT, even though already one of them (i.e. the Soviet Union) had already proclaimed a unilateral moratorium on nuclear weapons testing.<sup>156</sup> Furthermore, the Soviet Union reemphasised at the Conference its decision on the endorsement of Nuclear-Weapons-Free Zones by ratifying some of the protocols of these NWFZ-treaties, something the United States and the United Kingdom thus far had refused to do so. In response, the latter two stated that the negative security guarantees that they had provided were already sufficient and adequate. But despite these differences of opinion, the three Nuclear Weapon States party to the treaty appeared to be “[...] more united in purpose and appearance than at any other previous Review Conference”.<sup>157</sup> This attitude however, may have brought the three NWS into a state of complacency and a false sense of security regarding their recent achievements in

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<sup>155</sup> France and China did not sign the NPT until 1992 but had been engaged in the negotiations as observer states (see SIPRI (1995), “SIPRI Yearbook, Armaments Disarmament and International Security – 1995”, Stockholm International Peace Research Institute, Humanities Press, Inc., New York).

<sup>156</sup> SIPRI (1991), “SIPRI Yearbook of Worlds Armaments and Disarmament – 1991”, Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>157</sup> SIPRI *op. cit.* 1991; p. 561.

the field of arms control negotiations, and therefore ignored much of the criticism from the NNWS regarding their disarmament record. In the end therefore, the state parties could not agree to a similar Final Declaration.<sup>158</sup> The absence of a Final Declaration led to the failure of the Conference to endorse and provide a formal status to any of the recommendations made during the negotiations. The incomplete outcome caused anxiety among many of the attendees of the Fourth NPT Review Conference, for no formal framework had been drawn for the ensuing crucial 1995 decision on the extension of the Treaty.

#### 4.3.1. 1995 NPT Review and Extension Conference

Therefore, the Fifth NPT Review and Extension Conference of 1995 was an extraordinary Review Conference, as it had already been planned in 1968 by way of Article X of the NPT, in which it was stated that “twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods”.<sup>159</sup> As all state parties regarded the NPT as the cornerstone of nuclear disarmament, the legal foundations of the Treaty were indeed made permanent during the Conference, yet a fierce debate ensued with respect to the exact objectives on how to handle the progress towards nuclear disarmament. In the overall nuclear non-proliferation context, many changes had occurred since the last Review Conference. With the Soviet Union now dissolved, and the official Nuclear Weapon States now augmented with France and China following their signing of the NPT in 1992, new challenges now lay ahead with increasing ambiguity regarding the nuclear facilities of those states not associated with the NPT. Two other principal decisions were made during this Conference, one of which concerned several amendments made to the process for reviewing the implementation of the treaty which was outlined in the document called *Strengthening the Review Process*, and the second being the formation of a set of detailed ‘yardsticks’ for evaluating that implementation in the document called *Principles and Objectives*.<sup>160</sup> Additionally, a resolution was passed on the proposed establishment of a zone free of weapons of mass destruction in the Middle East. The two decisions regarding the implementation and its evaluation of the NPT were made as to provide “[...] alternative means of generating political leverage over the Nuclear Weapon States, and to offer a more focused method of addressing non-proliferation and disarmament issues at NPT Review Conferences” (SIPRI, 1996; p. 569).

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<sup>158</sup> This also occurred previously at the NPT Review Conference of 1980 (SIPRI, *op. cit.* 1980).

<sup>159</sup> Article X, paragraph 2 of the NPT.

<sup>160</sup> SIPRI *op. cit.* 1996.

In the first document, several distinct elements were outlined. These elements contained the mandatory nature of the five yearly conferences, as well as the establishment of three Preparatory Committee meetings prior to every Review Conference in order to consider the principles, objectives and methods to promote the implementation of the Treaty. This change presented a significant shift from the traditional manner in which Review Conferences were held, as issues discussed therein exclusively dealt with procedural questions. Now in four of every five years, state parties to the NPT were now to discuss disarmament and non-proliferation issues instead of once every five years. The second document detailed a set of criteria against which progress in the relevant non-proliferation areas<sup>161</sup> can be measured.<sup>162</sup> With respect to nuclear disarmament, all state parties committed themselves to the establishment of a verifiable Comprehensive Test-Ban Treaty no later than 1996 and the immediate commencement of negotiations regarding a universally applicable convention banning the production of fissile materials for nuclear weapons.<sup>163</sup> But despite of the three principal decisions made during the Fifth NPT Review and Extension Conference, no consensus could be reached on the proclamation of a Final Declaration. The ‘success’ therefore, lies mainly in the fact that a new structure had been devised which would enable a more effective NPT reviewing arrangement. For the first time ever, the Nuclear Weapon States had conceded a more precise interpretation of Article VI of the NPT by setting clear objectives for their disarmament obligations (the proposed conclusion of CTBT and FMCT) and by promising to initiate ‘progressive and systematic steps’ towards nuclear disarmament (in the Sixth NPT Review Conference in 2000 these steps were further elaborated).

#### 4.3.2. ICJ Interpretation of Article VI

Prior to the Sixth NPT Review Conference in 2000, another significant occurrence took place which would affect the interpretation of Article VI, as in 1996 the International Court of Justice provided an advisory opinion on the Legality of the Threat or the Use of Nuclear Weapons on request of the United Nations General Assembly. On the basis of the provision as is stated in Article VI of the NPT, the Court found anonymously that:

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<sup>161</sup> The set of criteria set out include Universality, Non-Proliferation, Nuclear Disarmament, NWFZ, Security Assurances, Safeguards, and the Peaceful use of Nuclear Energy (Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament, UNODA website).

<sup>162</sup> SIPRI *op. cit.* 1996.

<sup>163</sup> This is the proposed Fissile Material Cut-Off Treaty, or FMCT. No formal FMCT has yet been negotiated, as states are yet unable to reach consensus on a wide range of issues, ranging from the definition of fissile material to its verification procedures (Reaching Critical Will, 2007).

*“[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”* (Emphasis added)

The Court’s addition of the phrase ‘and bring to a conclusion’ was added as the Court believes that the obligation to negotiate as stated in Article VI encloses far more than merely the obligation to conduct these negotiations. From the perspective of the Court, the addition of the phrase meant that the obligation should also include the achievement of a “[...] precise result-nuclear disarmament in all its aspects-by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith”.<sup>164</sup> In other words, the negotiations should lead to a particular and verifiable result as part of the duties and responsibilities as required from the Nuclear Weapon States. Critics argue however, that the Court’s ruling is rather ambiguous as the Court does one hand indeed call for the conclusion of the negotiations, while simultaneously it does not detail any timetable or negotiating forum for reaching the desired result on the other. Furthermore, the Court does not clarify the exact content of the ‘effective measures’ to be taken nor does it specify the disposition of ‘strict and effective international control’. The Court therefore avoided the resolution of difficult questions concerning the arms reductions, elimination of stocks and verification and compliance procedures. Matheson (1997) states that “[i]n this sense, the “precise result” called for by the Court is not very precise; nor could it be so”. In addition, Matheson also believes that the Court’s ruling puts no supplementary and unreasonable demands on any other party to the treaty on how these provisions within Article VI should be structured and formulated, therefore requiring no policy changes in the field of nuclear arms control for any of the Nuclear Weapon States themselves.<sup>165</sup>

#### *4.3.3. 2000 NPT Review Conference (Thirteen Steps)*

Although the Court’s ruling fell short of demanding an abrupt change in policy, the framework on how to implement the Treaty (and subsequently verifying it) had already been outlined during the last Review Conference of 1995. As a result, expectations were high for the Sixth NPT Review Conference of 2000. To some extent these expectations were well founded, as for since the first time since 1985, a Final Declaration was agreed upon by the state parties.

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<sup>164</sup> International Court of Justice, (1996), “Legality on the Threat or Use of Nuclear Weapons”, Advisory Opinion of 8 July 1996.

<sup>165</sup> See further Matheson, M.J. (1997), “The Opinions of the International Court of Justice on the Threat or Use of Nuclear Weapons”, in: *The American Journal of International Law*, Vol. 91, No. 3, July 1997, pp. 417-435.

Furthermore, an 'action plan' on nuclear disarmament was proposed and accepted which included the unequivocal undertaking by the five NWS to complete the total elimination of their nuclear arsenals as part of their systematic and progressive efforts to implement Article VI.<sup>166</sup> This action plan consisted of Thirteen Steps to be taken.<sup>167</sup> In short, all state parties agreed to reaffirm their commitment to the CTBT, the Conference on Disarmament agreeing to a programme of work including the commencement of negotiations on FMCT and its conclusion within five years, the principle of irreversibility to be applied to nuclear disarmament and other arms control measures, regular reports by all states on the implementation of Article VI, and the development of verification to provide assurance of compliance with nuclear disarmament agreements to achieve and maintain a nuclear-weapon-free world.

Following the 2000 NPT Review Conference however, representatives of the NWS indicated that the decisions taken would not signal major changes in their nuclear weapon policies, nor would it stimulate progress in the work of the Conference of Disarmament in Geneva.<sup>168</sup> On the other side, all states party to the NPT (including the NWS) recognised the collective interest in sustaining and maintaining the NPT, and were therefore prepared to sideline their differences on a multitude of pressing issues<sup>169</sup> in order to achieve consensus on a Final Declaration. Some observers at the time therefore regarded the Final Declaration of the 2000 NPT Review Conference as a "[...] preparation, or even a substitute, long-heralded fourth UN Special Session on Disarmament given its range of unilateral, bilateral and multilateral actions, and in the priority it gave to Confidence Building Measures (CBM's), arms reductions, verification and the irreversibility of disarmament activities".<sup>170</sup> Simultaneously however, the same observers did identify some of the problems that lay ahead, such as on how to translate the commitments into practical actions. In their view, these follow-up activities would determine the eventual outcome of the Review Conference and whether it would be regarded as a significant shift in global disarmament policies.

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<sup>166</sup> Nuclear Threat Initiative, 2007.

<sup>167</sup> See Appendix E.

<sup>168</sup> SIPRI (2001), "SIPRI Yearbook, Armaments Disarmament and International Security – 2001", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>169</sup> Pressing issues surrounding the 2000 NPT Review Conference include the upcoming NATO expansion of 2004, Iraq's alleged WMD program, the proposed Missile Defence, and the unresolved Kosovo issue in the (former) Federal Republic of Yugoslavia, see SIPRI (2001), "SIPRI Yearbook, Armaments Disarmament and International Security – 2001", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>170</sup> SIPRI, 2001, *op. cit.*; p. 502.

#### 4.3.4. 2005 NPT Review Conference

The Seventh NPT Review Conference of 2005 was indeed haunted by the perceived dangers identified following the 2000 NPT Review Conference. Despite the initial support of the United States for the measures to be taken in the Thirteen Steps action plan during that Review Conference, it decided to no longer support adhere to these decisions. And although the American government did in fact sign the CTBT in 1996, the subsequent administration did not ratify the treaty itself. Furthermore, the United States unilaterally withdrew from the Anti-Ballistic Missile Treaty and has since pursued an informal approach to nuclear arms reduction negotiations with Russia for it did not ratify START II.<sup>171</sup> The parties at the 2005 NPT Review Conference also did not reach any substantive agreements, even though they agreed on a rather uncomplicated Final Declaration. This Declaration was reminiscent of the Final Declarations prior to 1995, in which most aspects were limited to procedural issues. For many of the NAM states, this was to be partly attributable to the conduct of the United States, which allegedly attempted to focus on procedural manoeuvres rather than important disarmament measures. In some instances, the United States received support from other NWS in addressing the procedural questions. Furthermore, the United States was criticised for not adhering to the concluded agreements in the Thirteen Steps action plan of 2000.<sup>172</sup>

Several observers noted that the disappointing 2005 NPT Review Conference was a missed opportunity for significant disarmament efforts, while others stipulated that a number of delegations might as well appreciate the fact that the Final Declaration was merely confined to procedural matters as the divisions among the attendees were already too wide to overcome during the Conference itself. The main issues which divided the state parties concerned the withdrawal of North Korea out of the NPT,<sup>173</sup> the nuclear energy programs of Iran, and what to do with Pakistan and India. However, critics point out that a Review Conference should not be judged merely by the (in-)ability by state parties to agree by consensus on a final declaration. As stated previously, the state parties did explore ways to strengthen the Treaty by debating methods to enforce compliance to the provisions of the Treaty and to look at preventing further withdrawals from the Treaty. Even though no definitive solutions were found on these outstanding issues, the Review Conference provided a powerful negotiating forum on how to

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<sup>171</sup> Nuclear Threat Initiative, 2007.

<sup>172</sup> SIPRI (2006), "SIPRI Yearbook, Armaments Disarmament and International Security – 2006", Stockholm International Peace Research Institute, Humanities Press, Inc., New York.

<sup>173</sup> At the time, the states party to the NPT were able to agree on a common response to the DPRK's stated withdrawal from the NPT which was not beneficial to the credibility of the NPT, see SIPRI, *op. cit.* 2006.

address these issues in the future. And despite the more or less disappointing outcome of the 2005 NPT Review Conference, another significant event took place in the same year which demonstrated the persistent determination for the full implementation of Article VI. The Thirteen Practical Steps as agreed to in the 2000 NPT Review Conference were endorsed in a “Renewed Determination” resolution<sup>174</sup> sponsored by Japan in 2005, which was adopted by 168 states in favour, two against<sup>175</sup>, and seven in abstention. However, yet another feature which became more prominent with each Review Conference following the end of the Cold War was the increasingly prominent role NGO’s and IGO’s<sup>176</sup> play in the negotiating phases, albeit in observer roles. This reflects the increasingly important global wind of change in which non-state parties play an ever greater role in the negotiations of international treaties.

#### *4.4. Differences in Interpretation of Article VI*

Since the entry into force of the Nuclear Non-Proliferation Treaty in 1970 up until the collapse of the Soviet Union, relatively little debate took place on the exact interpretation of Article VI. While many of the states party to the Treaty repeatedly called for the rapid accomplishment of nuclear disarmament, the NWS themselves often referred in response to the achievements made in the various arms control talks and treaties. Following the end of the Cold War however, many NNWS intensified their attempts to demand the abolishment of nuclear weapons for they regarded the nuclear arms race effectively over. The NWS tended to disagree, and their nuclear deterrence policies continued to remain an important aspect of their defence and foreign policies. But simultaneously during the 1990’s, a sequence of events rapidly unfolded which strongly influenced the debate on the interpretation of the provisions on nuclear disarmament as outlined in Article VI of the NPT. The extent of this debate focused on a variety of aspects relating to nuclear disarmament, and mainly focused on the following.

- The principle of ‘good faith’
- The relationship between nuclear disarmament and general and complete disarmament

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<sup>174</sup> See: A/RES/60/65.

<sup>175</sup> The states which objected to the 2005 “Renewed Determination” UNGA resolution were the United States and India. See further: Burroughs, J. (2006), “The Legal Framework for Non-Use and Elimination of Nuclear Weapons”, Briefing Paper for Greenpeace International, February 2006, p.15.

<sup>176</sup> Several of the International Governmental Organisations that took part in the negotiations include the IAEA, CTBTO, EU, African Union, and Arab League, see SIPRI, *op. cit.* 2006.



- The disposition of subsequent developments with respect to the interpretation of Article VI
- The twofold obligation of the ICJ 1996 Advisory Opinion

#### 4.4.1. *The Principle of 'Good Faith'*

Two points of view concerning the principle of 'good faith' as stated in Article VI of the NPT can be discerned, in which one of them supports the strict legal interpretation of the provision, while the other views the principle from a broader legal-political perspective, supported by interpretations of supranational institutions and customary international law. From the first perspective concerning the aspect of 'good faith', it is argued by some experts<sup>177</sup> that the original legal construction<sup>178</sup> leaves open the possibility that negotiations conducted in such manner might not even take place, let alone succeed. From this perspective, the provision of 'good faith' recognises the prospect that a party to the treaty might try but ultimately fail in achieving a successful conclusion of the negotiations. This result might derive from the state party's own inability to reach an agreement, or from a failure of good faith by the other state parties.<sup>179</sup> Another aspect of the provision of 'good faith' is also paraphrased in the Treaty's preamble, in which all state parties to the NPT

*"[d]eclar[e] their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament"*<sup>180</sup>

Additionally, NPT state parties

*"[d]esir[e] to further the easing of international tensions and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, ..., pursuant to a treaty on general and complete disarmament under strict and effective international control"*<sup>181</sup>

According to the supporters of the legal perspective, this clearly underlines the parties' *intention*, and consequently not a strict *legal obligation* to move towards the objective of

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<sup>177</sup> Ford, C. (2007), "Debating Disarmament, Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons", in: *Nonproliferation Review*, Vol. 14, No. 3, November 2007.

<sup>178</sup> Of '*pursue[ing]* ... in good faith' (emphasis added).

<sup>179</sup> Ford, *op. cit.* 2007; p. 403.

<sup>180</sup> Para. 9, Preamble of the NPT (emphasis added).

<sup>181</sup> Para 12, Preamble of the NPT (emphasis added).

disarmament. From this legal perspective, it is therefore argued that the ICJ's description of 'concluding' negotiations (by supplementing 'pursuing' negotiations) does not fit the initial formulation of the disarmament provisions as stated the NPT. Hence, the principle of 'good faith' is therefore more accurately reflected in the preambular phrases of 'intention' and 'desire', than it is in the Court's interpretation of Article VI.

The second interpretation of the principle of 'good faith' is advocated by those who favour who prefer a less stringent view of the interpretation of the principle of 'good faith' and bases their arguments on a broader legal-political scale. From the perspective of general international law, Burroughs views the principle of 'good faith' as an approach in which state parties are required to enter negotiations in the first place, after which state parties consider and re-examine (counter-) proposals of other parties, in order to reach the stated objective of the negotiations.<sup>182</sup> This perspective is supported by a previous case concerning a dispute between Hungary and Slovakia over the construction of a dam, in which the ICJ urged both parties to re-enter negotiations by the principle of 'good faith', in which this principle was defined as an

*“[o]blig[ation] the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realised”*<sup>183</sup>

Another example of the obligation of 'good faith' negotiation was also presented by a World Trade Organisation panel in which the principle

*“implies a continuity of efforts ... It is this continuity of efforts that matters, not a particular move at a given time, followed by inaction”*<sup>184</sup>

The prominent international lawyer Antonio Cassese offers an additional, yet similar perspective on the obligation of good faith negotiation, which also applies to the absence of a precise objective or mandated achievement of negotiations. Provided that state parties are already engaged in negotiations, they are not allowed to

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<sup>182</sup> Burroughs, J. 2006, "The Legal Framework for Non-Use and Elimination of Nuclear Weapons", Briefing Paper for Greenpeace International, February 2006.

<sup>183</sup> Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), ICJ Rep. 1997, para. 142.

<sup>184</sup> Panel Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Recourse to article 21.5 of the DSU by Malaysia, GATT Doc. WT/DS58/RW (June 15, 2001), para. 5.60. The Panel Report was upheld by the Appellate Body Report dated October 22, 2001.

1. advance excuses for not engaging into or pursuing negotiations or;
2. to accomplish acts which would defeat the object and purpose of the future treaty.<sup>185</sup>

The latter requirement (2) can perfectly be applied to nuclear disarmament negotiations, for it prevents state parties from testing and developing new or modified nuclear warhead designs which could aggravate the (nuclear) military balance.<sup>186</sup> But besides negotiating for nuclear disarmament and the cessation of the nuclear arms race, Article VI also requires the states that are party to the NPT to negotiate in good faith towards a treaty on general and complete disarmament under strict and effective control.

#### *4.4.2. The Relationship between Nuclear Disarmament and General and Complete Disarmament*

With respect to the linkage between nuclear disarmament and general and complete disarmament, experts disagree whether these two are intrinsically linked to each other. In terms of theoretical disarmament, those who observe a link between these two provisions, argue that states must retain some of their nuclear capability in order to contain the far more destructive capability of conventional weapons. From this perspective, nuclear weapons must not be eliminated until there is a consensus on general and complete disarmament, for they believe nuclear threat can act as a powerful deterrent to conventional war.<sup>187</sup> Critics strongly reject this assertion by stating that this formula “erodes the line which the conscience of humanity has drawn between conventional weapons and weapons of mass destruction”.<sup>188</sup> In terms of the legal language contained within Article VI of the NPT regarding a possible linkage, experts also disagree on the linkage between nuclear disarmament and general and complete disarmament.

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<sup>185</sup> Cassese, A. (1993), “The Israel-PLO Agreement and Self-Determination,” *European Journal of International Law*, vol. 4, no. 4, 1993, p. 567.

<sup>186</sup> Burroughs, *op. cit.* 2006, p. 11.

<sup>187</sup> Westervelt, D. (1996), “Non-proliferation and nuclear arms reduction”, in: *Los Alamos Monitor, Opinions*, Page 4, May 14 1996. Furthermore, Waltz argues that the more states acquire nuclear weapons, the more stable international security will be since deterrence supports war in general. See further: Waltz, K.N. (1993), “The Realistic Nuclear Regime”, *Security Studies*, Vol. 2, No. 3/4, 1993.

<sup>188</sup> Burroughs, J. (1996), “Conventional Disarmament isn’t linked to NPT”, in: *Los Alamos Monitor, Opinions*, Page 4, May 23 1996.

#### 4.4.2.1. Linkage

As was mentioned previously, the issue of linking nuclear disarmament to general and complete disarmament had been a contentious issue on the agenda during the negotiations of the NPT. The debate on linkage has been a recurring event during the subsequent NPT Review Conferences with the NWS even adopting contradictory positions on this issue.<sup>189</sup> According to the supporters of linking the two disarmament obligations, the NPT contemplates that the elimination of nuclear weapons is to take place within the context of general and complete disarmament. With respect to the legal language, some experts believe that evidence for this linkage is made in the twelfth preambular paragraph of the NPT.<sup>190</sup> In this paragraph, nuclear disarmament is “pursuant to...” (a treaty on) general and complete disarmament, of which this provision is interpreted by some as meaning “in accordance with”, and not “in pursuit of”.<sup>191</sup> This is understood to be meaning that nuclear disarmament is expected to occur pursuant (rather than prior) to a treaty on general and complete disarmament. Such measures are therefore not described as steps towards nuclear disarmament expected *before* such an overall disarmament agreement is reached, for this language undercuts the idea that “nuclear weapon states’ failure to agree on total nuclear disarmament in advance of such a general treaty constitutes non-compliance”.<sup>192</sup> Some critics even point to the fact that “the widespread insistence on pursuit of nuclear disarmament [...], in the absence of any serious effort toward general (non-nuclear) disarmament [...], is cynical and disingenuous”.<sup>193</sup> Further evidence for the view supporting a linkage between nuclear disarmament and general and complete disarmament is found in the

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<sup>189</sup> The US, French and UK delegations to the 1995 NPT Review Conference for example, reasserted this linkage during the debates in Main Committee 1, in which these delegations had a tendency of locating nuclear disarmament within the framework of general and complete disarmament (see: Johnson, R. “ACRONYM Report No. 7, September 1995”, Part III: Review, Acronym Institute for Disarmament Diplomacy). These positions have been contradictory with the statements made by higher government officials. US representative Fisher stated for example that Article VI “does not make the negotiations of these measures conditional upon their inclusion with the framework of a treaty on general and complete disarmament”. While the delegations of the US, UK and France acknowledged nuclear disarmament to be present within the framework of general and complete disarmament during the debates in Main Committee 1, their joint declaration (including Russia) did not mention any specific linkage (Burroughs, J. *op. cit.* p. 4).

<sup>190</sup> “[d]esir[e] to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery *pursuant to* a Treaty on general and complete disarmament under strict and effective international control” Preamble of the NPT (emphasis added).

<sup>191</sup> Westervelt, D., *op. cit.* p. 4.

<sup>192</sup> Ford (2007), *op. cit.* p. 404. This view is considered to be in line with the US interpretation of Article VI, specifically because this perspective was present in Article VI in the NPT treaty draft, jointly conjured by the United States and the Soviet Union.

<sup>193</sup> Westervelt, D., *op. cit.* p. 4.

same preambular paragraph, in which “the easing of international tension and the strengthening of trust between States” are regarded as prerequisites for achieving *any* of the disarmament objectives outlined in the NPT. The sequence of these prerequisites is important for supporting the argument that the burden for (any) disarmament) does not fall on the NWS alone but rather on all the States party to the Treaty.<sup>194</sup> Additionally, the provision of “pursuant to” in the preamble of the NPT undercuts the idea that NWS are required to bring their nuclear weapon stockpiles completely to zero *prior* to any the agreement on a treaty on general and complete disarmament. This argument is upheld by the fact that Article VI refers to the cessation of the nuclear arms race “at an early date”, for the article contains no reference to any specific timetable when it comes to achieving the two goals of disarmament. It must be noted however, that nothing in the preamble or Article VI of the NPT prohibits the NWS from achieving nuclear disarmament prior to general and complete disarmament.<sup>195</sup>

#### 4.4.2.2. *No Linkage*

According to other experts however, there is no necessary legal linkage between nuclear disarmament and general and complete disarmament. Their most important justification for this is the fact that Article VI itself contains two distinct obligations, separated by a comma, one to nuclear disarmament, and the second to negotiate a treaty on general and complete disarmament.<sup>196</sup> While all experts agree on the fact that general and complete disarmament refers to comprehensive demilitarisation of all major conventional weapons, some say *a treaty* on general and complete disarmament does not necessary involves all armaments.<sup>197</sup> To support this, reference is made to the UN practice of referring to a wide range of arms control talks as part of the framework of general and complete disarmament.<sup>198</sup> With respect to the preamble of the NPT, reference is made to a treaty on elimination of nuclear forces *as an instance of a type of treaty*, the type being treaties on general and complete disarmament. Similarly, the Biological Weapons Convention and Chemical Weapons Convention are also examples of treaties on general and complete disarmament. The Thirteen Practical Steps, as part of the Final Document of the 2000 NPT Review Conference also support this view, for the steps referring to nuclear disarmament

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<sup>194</sup> Ford *op. cit.* p. 404.

<sup>195</sup> *Ibid.* p. 405.

<sup>196</sup> Burroughs, J. (2007), Commentary on “Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons”, November 29, 2007.

<sup>197</sup> *Ibid.* p. 4

<sup>198</sup> Agreements on the abolishment of cluster bombs, landmines, and chemical and biological weapons are generally considered as components of the general and complete disarmament process (see: Burroughs, J. (2007), *op. cit.* p. 4

and general and complete disarmament are separated.<sup>199</sup> Therefore, experts state that while there are no legal linkages between nuclear disarmament and general and complete disarmament, practical are discernible.<sup>200</sup>

With respect to the connection between nuclear disarmament and general and complete disarmament, experts say that some form of relationship does exist, “as an element of a nuclear weapon free world may be control or elimination of systems, notably missiles that can be used for the rapid delivery of warheads, whether nuclear or conventional”.<sup>201</sup> According to one of the UN representatives to the draft Treaty negotiations<sup>202</sup>, the language in the preambular paragraph was an acknowledgment of this connection. This correlation is however different from the connection regarding the presumption that the existence of a nuclear threat deters conventional war.

#### *4.4.3. Implications of Subsequent Developments regarding Interpretation*

Legal scholars and experts tend to disagree on the exact nature of the implications of subsequent developments regarding the interpretation of Article VI, for during the 1990's a sequence of events rapidly unfolded which heavily influenced the debate on its interpretation. At the 1995 NPT Review and Extension Conference, the decision on the Principles and Objectives for Nuclear Non-Proliferation and Disarmament was adopted in order to bring about the full realisation and implementation of all the provisions of the treaty. This was followed by the 1996 ICJ Advisory Opinion which also included an interpretation of Article VI. Finally, at the 2000

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<sup>199</sup> Step six refers to the elimination of nuclear weapons (i.e. “an unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI), while step eleven refers to general and complete disarmament (i.e. “reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control”). See: Final Document of the 2000 NPT Review Conference.

<sup>200</sup> These practical links could involve verification regimes of other treaties on general and complete disarmament, such as the verification regimes on the ban on Biological Weapons and on the deployment of weapons in outer space. These regimes could assist in providing greater confidence for the NWS in proceeding towards nuclear disarmament (See: “Non-Governmental Organisations’ Statements to the States Party to the Seventh Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons”, part of the NGO Presentations to the 2005 NPT Review Conference, May 11, 2005. New York.

<sup>201</sup> This view is supported by the International Network of Scientists and Engineers Against Proliferation, which is a global, non-profit, UN-credited non-governmental network of scientists founded in 1993, of which the stated objective is to promote non-proliferation and disarmament of all kinds of weapons of mass destruction ([www.inesap.org](http://www.inesap.org), accessed on November 9, 2007)

<sup>202</sup> William Epstein, who was the UN Secretary General’s representative during the NPT negotiations, is quoted in: Burroughs, J. (1996), *op. cit.* p.4.

NPT Review Conference, an agreement was reached to adopt the Thirteen Practical Steps for Nuclear Disarmament.

While all experts agree on the legally non-binding nature of the Court's Advisory Opinion itself (which in itself is reflected in the word 'advisory'), there is significant debate on whether this opinion has (or should have) produced further consequences for the realisation of nuclear disarmament. Similar debate involves the implications of the two agreements reached at the 1995 and 2000 NPT Review Conferences. It is argued by some that the Court's advisory opinion holds no credible implication for the interpretation of Article VI due to its legally non-binding nature, while others are more cautious to simply dismiss the political significance of the ensuing developments. Some of the latter also find evidence in other international treaties to enforce their confidence in the strength of customary international law.

#### 4.4.3.1. *Legally Non-binding*

Proponents of the strict non-binding nature of the advisory opinion assert that ICJ advisory opinions are not binding on states, but that they are in fact, "to state the obvious, merely advisory".<sup>203</sup> Furthermore, Ford (2007) even alleges that the Court's pronouncement on Article VI may in fact itself have been *ultra vires*.<sup>204</sup> This is illustrated by referring to Article 65, paragraph 1 of the ICJ Statute, in which "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request".<sup>205</sup> Since no specific question was posed on the matter of Article VI, Ford therefore regards the advisory opinion on Article VI inconsistent with its provisions under Article 65 of the Statute.

Moreover, Judge Schwebel of the International Court of Justice stated that as the opinion on the meaning of Article VI was not responsive to the question put to the Court by the United Nations General Assembly, it is therefore to be treated a mere *dictum*.<sup>206</sup> Ford (2007) however,

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<sup>203</sup> Ford, *op. cit.* 2007; p. 402.

<sup>204</sup> The argument of *ultra vires* was provided by the Court itself as to refer to the extraneous nature of the question with respect to the legal scope of the activities of the World Health Organisation, which was therefore determined to be invalid as the WHO acted outside of its legal capacity (Advisory Opinion on the Request by the World Health Organisation, July 8 1996).

<sup>205</sup> Statute of the International Court of Justice ([www.icj-cij.org](http://www.icj-cij.org))

<sup>206</sup> A *dictum* refers to an observation by a judge with respect to a point of law arising in a case before him (Oxford Dictionary of Law, Oxford University Press, Oxford 1996). Ford (2007) argues that Schwebel's opinion is to be treated as *obiter dictum*, for it refers to a comment made in a legal opinion that was not essential to the case at hand. It is therefore not part of the *ratio decidendi* (the principle or principles of law

refers to the opinion of Judge Schwebel as to underline his *de jure* argumentation of the extraneous nature of the Court's opinion of Article VI. It must be noted nevertheless, that the Court's vote of the paragraph on Article VI passed unanimously, and that Judge Schwebel voted in favour of the paragraph referring to Article VI despite his seemingly dissenting opinion. Ford nevertheless considers the Court's advisory opinion as to contain procedural defects.<sup>207</sup>

#### 4.4.3.2. *Legally-Political Binding*

The proponents of interpreting Article VI mainly from the legal perspective treat their analysis much like a provision in a contract or as an ordinary article in a treaty. However, some critics argue that Article VI should be analysed largely from a political perspective since the article itself is part of the *political* grand bargain approach as the main crux of the NPT.<sup>208</sup> Some experts that are also in favour of acknowledging the implications of a broader interpretation of Article VI, provide a supporting, albeit different perspective. They argue that the importance of *subsequent agreements* is not to be neglected when interpreting Article VI.<sup>209</sup> These experts believe that the legality of the subsequent agreements made in the NPT context following its entry into force, is in fact enforced by another international treaty which entered into force in 1980. The Vienna Convention on the Law of Treaties was drafted by the International Law Commission of the United Nations, and codified pre-existing customary international law on treaties concluded between states in written form. One of the articles of this treaty is attributed to the general rule of interpretation.<sup>210</sup>

In short, Article 31(3) of the Vienna Convention on the Law of Treaties regards *subsequent agreement* and *subsequent practice* to be jointly considered with the context of agreements and instruments made in connection with the treaty's adoption with regards to the interpretation of

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on which the court reaches its advisory opinion) of the case and has consequently no legal binding precedent. However, what Ford fails to mention is that it may be cited as persuasive authority in later cases, therefore augmenting additional level of authority to the dictum itself (Oxford Dictionary of Law, 1996). The decision to regard the Judge's dictum as void would therefore be rather premature; especially when it is considered that the vote on the opinion's paragraph dealing with Article VI was passed unanimously by all the Judges of the Court.

<sup>207</sup> Ford *op. cit.* 2007; p. 403.

<sup>208</sup> Graham, T. (2007), "The Origin and Interpretation of Article VI", Commentary on "Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons", November 29, 2007.

<sup>209</sup> These agreements include the Principles and Objectives Document agreed at during the 1995 NPT Review and Extension Conference, the Thirteen Practical Steps of the 2000 NPT Review Conference.

<sup>210</sup> See Appendix G: Article 31 of the Vienna Convention on the Law of Treaties.



this treaty.<sup>211</sup> With respect to the Document of Principles and Objectives (adopted at the 1995 NPT Review and Extension Conference) and the Thirteen Practical Steps (as part of the Final Document as accepted at the 2000 NPT Review Conference), these experts<sup>212</sup> believe that these documents too, fall within the scope of Article 31(3) of the Vienna Convention on the Law of Treaties and are therefore to be regarded as legally binding to all state parties of the NPT. In the Final Document of the 2000 NPT Review Conference, such a ‘subsequent agreement’ was made, as it was stated that

“[t]he Conference *agrees* on the following practical steps for the systematic and progressive efforts to implement Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraphs 3 and 4(c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament...”<sup>213</sup>

Following this provision (i.e. “agrees”), other references were made in the same document which “reiterated” or “reaffirmed” preambular and operative provisions of the NPT. Since the Final Document was adopted with the approval of all the states party to the NPT, the Thirteen Practical hence constitute a consensus agreement. Concurringly, the agreement to the Final Document was reached in the context of a proceeding authorised by Article VIII of the NPT.<sup>214</sup> The phrase in the Final Document “systematic and progressive efforts” refers to the Principles and Objectives adopted in connection with the decision to extend the Treaty indefinitely, as derived from Article X(2) of the NPT, since the Thirteen Practical Steps concern the implementation of these Principles and Objectives. The decision to extend the Treaty indefinitely is regarded by these experts as the adoption of a treaty, for the NPT was allowed to expire twenty-five years following its entry into force in 1970 as is authorised in Article X(2) of the NPT. Consequently, the Principles and Objectives can be compared to “any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty”, as stated in Article 31(2)(a) of the Vienna Convention on the Law of Treaties. In other words, the Principles and Objectives carry additional weight as they are “inextricably bound

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<sup>211</sup> Weiss, P. (2005), “The Thirteen Steps: Legal or Political?”, Lawyers’ Committee on Nuclear Policy, ([www.lncp.org](http://www.lncp.org)).

<sup>212</sup> See Rabinder Singh, QC, and Professor Christine Chinkin, “Joint Advice July 20, 2004, para 20 ([www.acronym.org/uk/dd/dd78/78news02.htm#01](http://www.acronym.org/uk/dd/dd78/78news02.htm#01)),— and Carnahan, B.M. (1987), “Current Development: Treaty Review Conferences”, American Journal of International Law, January 1987).

<sup>213</sup> Final Document of the 2000 NPT Review Conference (emphasis added).

<sup>214</sup> “...to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised” (Article VIII of the NPT).

up with a decision pursuant to Article X(2) that is both legally binding and of supreme practical importance”.<sup>215</sup> Additionally, the International Court of Justice agrees with this view regarding interpretation of treaties as it quoted the International Law Commission by stating that “an agreement as to the interpretation of a provision reached after the conclusion of the treaty represents an authentic interpretation by the parties which must be read into the treaty for purposes of its interpretation”.<sup>216</sup>

The Thirteen Practical constitute not only the “subsequent agreement” as referred to in Article 31(3)(a), but also the “subsequent practice” as referred to in Article 31(3)(b) of the Vienna Convention on the Law of Treaties. The International Law Commission itself has stated that

“...the importance of such subsequent practice in the application of the treaty, as an element of interpretation, is obvious; for it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty. Recourse to it as a means of interpretation is well-established in the jurisprudence of international tribunals”.<sup>217</sup>

In addition, the WTO Appellate Body too, recognises the importance of subsequent practice in treaty interpretation, as it referred to the essence of subsequent practice as a “concordant, common and consistent sequence of acts or pronouncements”.<sup>218</sup> This sequence of acts and pronouncements did take place following the NPT’s entry into force, in which many states stated specific measures to be taken for nuclear disarmament, of which some of them have since been implemented, or are in the process of being implemented.<sup>219</sup> The 1995 Principles and Objectives therefore mimicked the 1968 NPT agenda in which many (party) states called for the implementation of these measures. With respect to Article 31 of the Vienna Convention on the Law of Treaties therefore, experts say that the Thirteen Practical Steps consequently built upon an existing and solid foundation created from the NPT Review Conferences which resulted in a blend of both subsequent agreements and subsequent practices, and are therefore instrumental in

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<sup>215</sup> Weiss, *op. cit.* 2005, p. 2.

<sup>216</sup> International Law Commission, Yearbook of the International Law Commission, 1966, Vol. II, p. 221, para. 14, cited in International Court of Justice, Judgment: Case Concerning Kasikili/Sedudu Island, 13 December 1999.

<sup>217</sup> International Law Commission, 1966.

<sup>218</sup> Weiss, *op. cit.* 2005, p. 3.

<sup>219</sup> The cessation of nuclear weapons testing (CTBT), the non-use of nuclear weapons, subsequent elimination of nuclear weapon stockpiles, and progress (albeit slow) on the FMCT.

interpreting Article VI. As a result, regardless of whether the Thirteen Practical Steps are considered as ideal means of implementing Article VI, from the perspective of Article 31 of the Vienna Convention on the Law of Treaties the Practical Steps can be authoritatively considered as an essential guide to the interpretation of Article VI.<sup>220</sup>

#### 4.4.4. Twofold obligation of the ICJ 1996 Advisory Opinion

In its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice relied on a distinction drawn in international law between two different sets of obligations when it referred to the disarmament obligations stated in Article VI of the NPT.<sup>221</sup> As previously stated, the Court adopted unanimously that

*“[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations relating to the cessation of the nuclear arms at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”<sup>222</sup>*

In short, it distinguished between an obligation of conduct (the pursuit of negotiations in good faith), and an obligation of result (to conclude negotiations). The former requires state parties to perform or refrain from a specific action, while the latter requires a state party to bring about a stated outcome. The Court’s advisory opinion was derived mainly from Article VI itself, while simultaneously referring to the Treaty’s preamble as well. Within Article VI, reference is made to the achievement of result,<sup>223</sup> as well as to the conduct of negotiations.<sup>224</sup> It appears that customary international law is in favour of the Court’s ruling. Up to 2006, 168 states voted in favour of a paragraph that underlined the ICJ’s conclusion (three states voted against; Russia, US, and Israel, while five abstained (UK, France).<sup>225</sup> What’s more important, is that the Court’s advisory opinion not only refers to the meaning of negotiations ‘in good faith’, but also to the

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<sup>220</sup> Weiss, *op. cit.* 2005, p. 43.

<sup>221</sup> Dispositif, para. 105(2) F, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice (1996).

<sup>222</sup> *Ibid.* (emphasis added).

<sup>223</sup> This being the cessation of the nuclear arms at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament (Article VI, NPT).

<sup>224</sup> “to pursue negotiations in good faith” (Article VI, NPT).

<sup>225</sup> Burroughs, J. *op. cit.* p. 15.

“unacceptability of nuclear weapons in the light of international humanitarian law, and the need<sup>226</sup> for true international law”<sup>227</sup>

Ford however, challenges the ‘twofold obligation’<sup>228</sup> as stated by the ICJ by comparing it to the other articles of the NPT. According to Ford, the legal requirements of Article VI as initially drafted are equally unambiguous compared to the other similarly clearly formulated articles of the Treaty.<sup>229</sup> By referring to the NPT’s original drafting, Ford underlines hereby the peculiarity of not referring to the ‘conclusion of negotiations’ in the first place (i.e. during the NPT negotiations) and therefore takes Article VI in its original form completely for granted.<sup>230</sup> However as previously mentioned, Shaker (1980) emphasises the serious debate that did in fact took place among the attendees of the ENDC on whether or not include a more specific legal requirement on the issue of concluding negotiations and detailing steps to achieve nuclear disarmament, a similar critique mentioned previously by Rao (1970) in his commentary of the NPT. During these negotiations, the state parties failed to reach consensus because of the intensive debates between NNWS and NWS. More specifically, by referring to the twofold obligation, Ford even states that the phrasing of Article VI is contrary to the Court’s interpretation of the Article VI.<sup>231</sup>

#### 4.5. Sub Conclusion

Following the analysis of Article VI, it can be concluded that despite the criticism on the lack of constructive steps present for nuclear disarmament, these steps had however been envisaged by the some of the negotiators in the first place, but their absence was rather the result of a consensus reached between the NNWS and the NWS. Following the end of the Cold War,

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<sup>226</sup> In the form of a Nuclear Weapons Convention, similar to the existing Biological Weapons Convention (BWC) and the Chemical Weapons Convention (CWC). The latter is by many states regarded as the most successful example of international efforts for the non-proliferation of weapons of mass destruction, for it not only bans chemical weapons, but it also requires their destruction within a limited time frame. The CWC is implemented by the Organisation for the Prohibition of Chemical Weapons, headquartered in The Hague (OPCW Website at [www.opcw.org](http://www.opcw.org), accessed at November 16, 2007).

<sup>227</sup> Burroughs *op. cit.* 2007.

<sup>228</sup> The ‘twofold obligation’ refers to the Court’s interpretation of Article VI as the “twofold obligation to pursue and to conclude negotiations” (ICJ, *op. cit.*, paragraph 100)

<sup>229</sup> Ford refers hereby to other ‘unambiguously’ drafted NPT article texts include Article I & II (NWS/NNWS “undertake [not] to”), and Article III (each NNWS “undertake to accept” nuclear safeguards) (Ford, *op. cit.* 2007, p. 403).

<sup>230</sup> The mere obligation to ‘pursue negotiations’ as stated in Article VI of the NPT.

<sup>231</sup> Ford *op. cit.* 2007; p. 403

the NNWS pressed for a more serious commitment on behalf of the NWS to realise their disarmament obligations, which resulted in the agreement on the Final Documents of the 1995 and 2000 NPT Conferences. These documents presented a straight-forward step-by-step approach on how to achieve the objective of nuclear disarmament. And although the debate on whether nuclear disarmament is to be placed within the context of general and complete disarmament has not been decided, following the preceding analysis it can be concluded that there is no necessary legal linkage between the two disarmament obligations present within the legal framework of the NPT. And although indistinct references for linking nuclear disarmament to general and complete disarmament are made in the preamble, it is important to note that preambular paragraphs themselves are not legally binding. The legally non-binding nature of the preamble, together with the structure and negotiating history of Article VI, and the interpretation provided by the states following the Treaty's entry into force, there is no legal linkage between nuclear disarmament and general and complete disarmament.

Together with the ending of the Cold War, a gradual change in the interpretation of Article VI also took place in the 1990's, which was strongly influenced by the International Court of Justice Advisory Opinion on the use or threat of use of nuclear weapons. Although the question directed to the Court did not concern nuclear disarmament, the Court nevertheless issued a legally non-binding interpretation of Article VI. And whilst the interpretation in this Advisory Opinion is legally non-binding, it is generally regarded as an authoritative interpretation of an Article VI which all states that are a member of the NPT consider as legally binding. This event, together with the reinforced pressure of NNWS and NGO's and the history of the NPT Review Conference negotiations, in addition to repeated UNGA resolutions calling for conclusive negotiations on nuclear disarmament, resulted in a shift from viewing Article VI from a legal perspective towards viewing the Article from a broader (as well as broadly supported) political perspective. Article 31 of the Vienna Convention reinforces this perspective, for it elevates the legal position of customary international law by codifying it, including subsequent agreements such as the Final Documents of the NPT Review Conferences.

A similar shift from the legal perspective towards a broader political perspective is also apparent with respect to the principle of good faith in Article VI. The original interpretation to pursue negotiations in good faith left open the possibility that such negotiations might not even take place, since there was only an intention or desire to pursue negotiations. The ICJ supplemented this phrasing by stating that all state parties also have the obligation to conclude these negotiations. The obligation to conclude negotiations was thereafter also reiterated by

several UNGA Resolutions which called for conclusive negotiations on nuclear disarmament and were in fact passed by a vast majority of UN Member States. This again demonstrates the importance of customary international law, for international law in general requires that 'good faith' is the willingness to enter negotiations, after which proposals are considered and positions re-examined in order to reach the stated objective. The stated objective in the case of nuclear disarmament is already clearly represented in Article VI, and even supplemented by the Court's decision and subsequent international agreements such as the Final Documents of the NPT Review Conferences. This stated objective is supported by the vast majority of the state parties to the NPT which are in favour of nuclear disarmament. Whether the Nuclear Weapon States are compliant with these obligations will be assessed in the following chapter.

## 5. NWS Policy Compliance with Article VI of the NPT

Since the entry into force of the Nuclear Non-Proliferation Treaty, the interpretation of Article VI has undergone various changes which have influenced the debate on the disarmament obligations of the five Nuclear Weapon States. With the International Court of Justice calling for a stricter implementation of these obligations, together with the step-by-step framework agreed upon at the 1995 and 2000 NPT Review Conferences and the NNWS increasingly calling for the NWS to follow up on their responsibilities, the following chapter will detail the NWS' level of compliance with the three areas of negotiations as specified in Article VI; negotiation in good faith of effective measures relating to the cessation of the nuclear arms race at an early date, negotiation in good faith of effective measures relating to nuclear disarmament, and negotiation in good faith on a treaty on general and complete disarmament under strict and effective international control.

### 5.1. *Criteria for Analysing Non-Compliance*

In order to analyse the Nuclear Weapon States' degree of compliance with the obligations as listed in Article VI, several key criteria and principles for compliance must be outlined in order to construct a just and complete assessment of the NWS record of their disarmament responsibilities. In the previous chapter, the importance of the evolving interpretation of Article VI has demonstrated that these key criteria and principles do not only consist of the phrasing of the Article itself alone, but are also augmented by the ensuing declarations and final documents of the Review Conferences, the interpretation of the International Court of Justice, United Nations General Assembly Resolutions, other arms control treaties concluded outside the NPT framework, and contributions of experts, NGO's and IGO's. Therefore, the key criteria and principles for compliance with Article VI can therefore be formulated to consist of the following:<sup>232</sup>

- 1) The reduction and elimination of nuclear arsenals are to be accomplished pursuant to principles of verification, transparency, and irreversibility.<sup>233</sup>

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<sup>232</sup> Burroughs (2006) created these four criteria and principles for compliance with Article VI following his analysis of the ensuing declarations and documents which were agreed upon since the entry into force of the NPT in 1970, and therefore represent an excellent set of key criteria and principles for the analysis of compliance with Article VI (See further: Burroughs, 2006, *op. cit.* pp. 15-21).

<sup>233</sup> The first criterion for compliance with Article VI stems from the Thirteen Practical Steps as agreed to in the 2000 NPT Review Conference and more specifically from steps five, six and nine.

- 2) Implementation of the disarmament obligation is facilitated by a diminishing role of nuclear weapons in security policies and reduction of their operational status.<sup>234</sup>
- 3) The process of nuclear disarmament must involve all Nuclear Weapon States as soon as appropriate in the reduction and elimination of nuclear arsenals and related measures as well as multilateral deliberations and negotiations involving Nuclear Weapon States.<sup>235</sup>
- 4) The obligation is to achieve the complete elimination of nuclear weapons, without any precondition of comprehensive demilitarisation.<sup>236</sup>

These key criteria and principles for compliance focus on the three main negotiating areas of Article VI, which constitute of the 1) cessation of the nuclear arms race, 2) nuclear disarmament, and 3) a treaty on general and complete disarmament. In terms of the first area of negotiations, it is important to note that the assessment of compliance involves both qualitative and quantitative elements. The quantitative element refers to the numerical increase or decrease of nuclear weapons arsenals, while the qualitative element refers to the extent of the modernisation programs. The second negotiating area (2) is mainly concerned with the fact that nuclear disarmament must take place in accordance with the principles of verification, transparency, and irreversibility. Furthermore, this also involves both the diminishing role of nuclear weapons in security policies as well as the reduction of their operational status. The third area of negotiation refers to a treaty on general and complete disarmament, much in the same way as the Biological Weapons Convention and the Chemical Weapons Convention, in which it represents progress towards the achievement of general and complete disarmament.

Since the disarmament process does not constitute a fairly recent process that has only been initiated following the Thirteen Practical Steps, it is important to take into account the history of the nuclear weapons programs as well as the historic disarmament record of each of the NWS. The chapter is divided in three, of which the first part addresses the two NWS that still possess the largest arsenals of nuclear weapons, the United States and Russia. These two NWS are still considered as the most influential players in the field of nuclear disarmament, for they

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<sup>234</sup> The second criterion for compliance originates mainly from step 9d and step 9e of the Thirteen Practical Steps Document. In addition, the declaration of a policy of No-First-Use plays an important role in diminishing the role of nuclear weapons in security policies (see: Chapter 2.4: The Principle of No-First-Use).

<sup>235</sup> As was stated previously, it is important to note that Article VI is not only an obligation for the NWS, but for *all* the state parties that signed the NPT. See: Chapter 4.2.1. The Parties to the Treaty).

<sup>236</sup> The last criterion refers to the legal separation between the nuclear disarmament obligation and the treaty on general and complete disarmament.



share a rich and vital record on bilateral nuclear arms control talks. The second addresses the smaller nuclear arsenals of the United Kingdom and France, and although they possess a nuclear weapon arsenal far smaller than the US and Russia, they nevertheless still regard their nuclear weapons policies as vital to their strategic national interests and have similar perspectives on nuclear disarmament as the US and Russia. The last part concerns the disarmament efforts of China, for it retains a slightly different nuclear security policy than the other four, and should therefore be studied separately.

#### *5.1.1. Information Accuracy*

Due to the sensitive nature of the exact number of nuclear weapons and their delivery systems, reliability continues to be an important factor in the analysis of the policy compliance of the NWS that are party to the NPT. However during the 1960's, the technological development of Western satellite reconnaissance, together with increased transparency following several arms control agreements did increase the reliability of information to some extent, although some information might still be inaccurate. It is also important to note that, besides the general Article VI obligations, only the United States and Russia are bound to their agreed arms reduction treaties, while the United Kingdom, France and China are not. The UK and France on the other hand are themselves more forthcoming about the composition of their nuclear arsenals and nuclear weapon strategies than China, which will become evident in the following assessment. The sources of open-source information for this assessment will derive largely from the assessments made by the SIPRI institute, as well as from various government White Papers on nuclear strategy and expert analyses. SIPRI's reputation as a well-regarded unbiased research institute provides a relatively precise open-source account of the nuclear weapons arsenals and security policies of the NWS. At the time of the writing of the first SIPRI Yearbooks, the Soviet Union was less forthcoming in publicising its nuclear weapons numbers, although the subsequent arms control treaties together with their obligations for more transparency provided a better overview of the numbers involved. Consequently, it is important to note that the analysis is not based on irrefutable facts, but rather on assumptions made during the time of writing of the Yearbooks.

In review, by agreeing to Article VI, both the NWS and NNWS have committed themselves to the pursuit of:

“[...] negotiations in good faith on effective measures relating to the 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.”<sup>237</sup>

Additionally to the pledges made in Article VI, all parties to the treaty express their determination towards nuclear disarmament by agreeing to seek a comprehensive test-ban, as is stated in the treaty’s preamble by seeking to:

“[...] achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end [...]”<sup>238</sup>

Since the inception of the NPT, the United States and the Soviet Union have been viewed by the Non-Nuclear Weapon States as the most important states that bear a special responsibility to nuclear disarmament with respect to Article VI, for they possess nuclear weapon stockpiles that are ten to twenty times bigger than the other Nuclear Weapon States that are party to the NPT, such as the United Kingdom, France and China.<sup>239</sup>

#### 5.1.2. Legal Issues following Hypothetical Unilateral Nuclear Disarmament

But before looking at the nuclear arsenals and security policies of the NWS and at the manner these policies have been compliant with Article VI, one also has to look at the status of the NWS under the NPT. The Treaty clearly states that NWS are defined as “[...] a nuclear-weapon State [...] which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.”<sup>240</sup> In other words, the NWS maintain their status as such in perpetuity under the Treaty, as long as the Treaty remains in force in its present form.<sup>241</sup> Therefore, the NWS will be defined as such although dismissive of the fact whether they actually are in possession of nuclear weapons or not. This also brings about a degree of legal ambiguity, for any NWS which has unilaterally disarmed will *still* be subject to Article I of the Treaty,<sup>242</sup> and

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<sup>237</sup> Article VI of the NPT.

<sup>238</sup> Preamble of the NPT.

<sup>239</sup> Mendelsohn, J. & D. Lockwood (1995), “The Nuclear Weapon States and Article VI of the NPT”, in: *Arms Control Today*, March 1995, p. 11.

<sup>240</sup> Article IX, paragraph 3 of the NPT.

<sup>241</sup> Dombey, *op. cit.* 1987, p. 192.

<sup>242</sup> Article I of the NPT implicitly recognises the right of NWS to retain and produce nuclear weapons, provided that they do not transfer knowledge or provide access to the development of nuclear weapons, see: Dombey, *op. cit.* 1987, p. 192.

not bound to Article II under which NNWS are addressed.<sup>243</sup> This hypothetical consequence brings about an interesting legal predicament, for one NWS-government might unilateral decide to abolish nuclear weapons, whereas a successive government is allowed to resume production should it desires, *and* is even legally permitted to receive technological assistance for it from one or several of the other NWS. To somehow address this ambiguity event, the NPT includes provisions for its own amendment under Article VIII, paragraph 1 and Article VIII, paragraph 2 of the NPT. For a possible future change in the status of a NWS, or any amendment whatsoever, a conference ought to be held on the proposed amendment, which must be approved and ratified by a majority of the NWS and NNWS parties to the Treaty. In addition, all the parties serving on the IAEA Board of Governors must give their unanimous approval. Critics argue however, that amending these procedures is virtually impossible, as no amendment has yet been seriously proposed since the Treaty's entry into force in 1970.<sup>244</sup> It must be noted however, that no amendment of this magnitude<sup>245</sup> has been proposed to this date, and therefore by suggesting that such an amendment is impossible to be ever accepted might be rather premature. Another legal alternative would also be the unilateral declaration of a NWS willing to disarm to consider itself *as if* it were a NNWS under the NPT and would therefore accept its resulting responsibilities and obligations within Article II of the NPT. A similar position has been taken by France prior to its signing of the Treaty in 1992, as it stated in 1968 that it would live up to its obligations henceforth as if it was a party to the NPT.<sup>246</sup>

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<sup>243</sup> Article II of the NPT asserts that state parties are not entitled to accept knowledge or access to the development of nuclear weapons, see Dombey, *op. cit.* 1987, p. 192.

<sup>244</sup> Dombey, *op. cit.* 1987, p. 193.

<sup>245</sup> Never before has there been any proposal submitted to request a change in legal status of a Nuclear Weapon State to a Non-Nuclear Weapon State (See: Dombey, *op. cit.* 1987, p. 192-193).

<sup>246</sup> See for a more detailed analysis of this legal precedent: Dombey, *op. cit.* 1987, p. 193-194.

## 5.2. *The Behemoths at Odds; Disarmament efforts of the United States and the Soviet Union/Russia*

For a period of time since the invention of the nuclear weapon in 1945, the United States maintained a position of nuclear superiority and invulnerability, as it possessed a monopoly of nuclear weapons until 1949, the year the Soviet Union detonated its own atomic bomb. This technological nuclear advantage that the Americans had was only hampered by their inability to deliver these weapons directly to the Soviet Union from the US homeland due to the limited range of its long-range bombers. As a result, the United States had to rely on European airfields in order to launch a nuclear attack. The lack of effective nuclear delivery systems sparked a technological quest parallel to the nuclear weapons development, and which would soon form the crux of US nuclear weapons policy that would last for over fifty years (and was mimicked by a Soviet adaptation). This crux consisted of the so-called nuclear triad, which embodies the combination of Strategic Bombers, Submarine-Launched Ballistic Missiles (SLBM's) and Intercontinental Ballistic Missiles (ICBM's). Additionally in the years following the end of World War II, numerous rounds of negotiations took place to discuss (nuclear) disarmament. Until the entry into force of the NPT in 1970, the United States and the Soviet Union had already met on nearly 6,000 occasions to discuss arms limitations. Simultaneously, the United Nations proclaimed the 1970's as a Disarmament Decade and called for a programme that could lead to general and complete disarmament. Despite the promising intentions of the international body, both the US and the Soviet Union were significantly less susceptible to such a programme. In the beginning of the 1970's, both superpowers were reported to be "[...] unwilling to tie themselves to a precise pattern of negotiations and prefer to keep strictly to themselves the judgment of which measures should be dealt with and when".<sup>247</sup> Many other (Non-Nuclear Weapon) states at the time favoured a world disarmament conference to be held that would provide a fresh impetus into the stalling nuclear and general disarmament negotiations. SIPRI's perspective on these efforts during the early 1970s was rather sceptic, for it stated that such a conference would simply not be able to solve the problems without difficulty. Without the prerequisite of a strong political will as to abolish all nuclear arsenals, the then stated policy of trying to readjust nuclear weapons without actually making them less effective will not suffice.<sup>248</sup>

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<sup>247</sup> SIPRI (1972), "SIPRI Yearbook of Worlds Armaments and Disarmament – 1972", Stockholm International Peace Research Institute, Humanities Press, Inc., New York; p. xxiv.

<sup>248</sup> SIPRI, *op. cit.* 1972.

This policy of readjustment is a policy distinctive of the Nuclear Weapon States, but is especially noticeable in the policies of the two superpowers at the beginning of the 1970's. As was previously stated, the United States and the Soviet Union have both been engaged in various efforts to agree to mutual arms limitations of their strategic nuclear forces. And while doing so, it appears reasonable that the two had shown at least some level of mutual restraint in developing strategic nuclear weapons in order to demonstrate some token of goodwill towards the other. But contrary to commonsense, no evidence of this restraint was apparent during the early 1970's. The arms race continued unabated and the advances in military technology in the three areas of the strategic nuclear triad<sup>249</sup> continued to increase the threat of a nuclear confrontation. In terms of technological superiority, the United States maintained a clear advantage over the Soviet Union in possessing and developing more advanced strategic nuclear weapons forces, barring the maximum size of the nuclear warheads carried by ICBM's. Nevertheless, in terms of the policy of deterrence, the differences in performance appear to be irrelevant. Even during the early 1970's, both superpowers appear to have many more nuclear weapons, (and simultaneously of higher quality), than is necessary to project a credibly enough threat to the adversary's cities and industries. In other words, any further improvement in the performance of strategic nuclear weapons is unnecessary if the intended policy is that of maintaining the existing deterrence posture. SIPRI furthermore states that any qualitative improvement is positively dangerous to the strategic balance "[...] upon which deterrence is, unfortunately, perceived to depend".<sup>250</sup> Additionally, with an increase in qualitative performance, the risk of nuclear war breaking out by accident, design or miscalculation is comparably increased.

#### *5.2.1. Importance of Bilateral Negotiations*

Article VI of the NPT calls on all parties to engage in negotiations leading to nuclear disarmament, but the majority of these negotiations appeared to focus on the two superpowers of the Cold War, the United States and the Soviet Union. The preference of these states for bilateral talks can be found in a number of reasons. The bilateral character of some of one of the most important nuclear arms control talks (such as START and SALT) were seen by both the US and the Soviet Union as a shared institutionalised manifestation of the superpowers' concern regarding the prevention of a nuclear confrontation, especially following the growing awareness about the potential disastrous consequences caused by the implementation of Mutual Assured Destruction. Secondly, the level of asymmetry between the size of the nuclear forces of the US

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<sup>249</sup> The nuclear triad consist of ICBM's, SLBM's, and strategic bombers (SOURCE)

<sup>250</sup> SIPRI, *op. cit.* 1972; p. 3.

and the Soviet Union on one hand, and the size of the United Kingdom, France and China on the other, continued to marginalise the already weak bargaining position of the latter. Thirdly, the Soviet Union initially sought to secure recognition (specifically of the United States) of it being a true equal superpower, and therefore did not desire to extend the negotiations into a multilateral framework.<sup>251</sup> Fourthly, the bilateral character of the SALT talks fitted the perceived strategic parity that had been reached at the end of the 1960's which culminated in both superpowers desire to "[...] channel their military rivalry into a more regulated enclosure by means of negotiated limitations".<sup>252</sup> Fifthly, both the US and the Soviet Union expressed their interest in keeping the talks private due to the great stakes involved and of the sensitive nature of the subject at hand, as excluding other parties would enhance the prospect for a successful conclusion of the negotiations. And sixthly, the remaining nuclear powers not directly involved in the talks were experiencing a degree of decreasing strategic influence due to the process of decolonisation and economic strain.<sup>253</sup> In addition, as became apparent in the recently unclassified documents of the Nixon administration, then-President Nixon stated that the Five-Power discussions were merely cosmetic, for the most significant issues ought to be a matter merely for the Two-Power relationship.<sup>254</sup>

### 5.2.2. *Strategic Arms Limitation Talks (SALT)*

One example of bilateral talks between the two superpowers culminated in a series of agreements on the limitation of strategic arms, even though improvements continued to be incorporated in the nuclear arsenals of the two superpowers. The most important of these are the Strategic Arms Limitation Talks (SALT) between the US and the USSR which commenced in 1969. During the early 1970's this policy of 'arm-while-you-talk' has therefore been viewed with scepticism for being a cover for the continuation of armament rather than a means to disarmament.<sup>255</sup> The stated objectives of SALT was to prevent any further erosion in the strategic balance between the nuclear forces of the US and the USSR, to avoid further intensification of the nuclear arms race, and to strengthen the Non-Proliferation Treaty. At the time of negotiations, the United States maintained a qualitative lead in the development of strategic

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<sup>251</sup> Keohane, D. (1984), "British Performance in Implementing Article VI of the NPT", in: *Arms Control: The Journal of Arms Control and Disarmament*, Vol. 5, No. 3, December 1984 pp. 4-6.

<sup>252</sup> Keohane, *op. cit.* 1984; p. 39.

<sup>253</sup> Keohane (1984) cites the example of the United Kingdom withdrawing from its 'East of Suez' military bastions p. 8.

<sup>254</sup> Memorandum, Meeting between Soviet Ambassador Dobrynin, President Nixon and Henry Kissinger, June 15 1971, <http://www.state.gov/documents/organization/91162.pdf>

<sup>255</sup> SIPRI, *op. cit.* 1972.

nuclear forces, while the quantitative advantage was slowly tipping towards the Soviet Union. In 1967, the US had put a unilateral freeze on the number of ICBM launchers by maintaining a number of 1054 ICBM's and 656 SLBM's, whereas the Soviet Union continued to expand the size of its strategic nuclear missile force by an additional 10 percent during the early negotiating phases of SALT I. The strategic balance between the two superpowers did however begin to erode due to the development of Multiple Independently Targetable Re-entry Vehicles (MIRV), mainly by the US, and the introduction of an Anti-Ballistic Missile system (ABM) by the Soviet Union. MIRV was a system which permitted an individual missile to carry a number of warheads directed at separate targets, therefore increasing the effectiveness of a single ballistic missile n-fold.<sup>256</sup> The ABM system was initially planned by the Soviet Union to defend Moscow against a ballistic missile attack. Following the Soviet decision to construct an anti-ballistic missile shield around Moscow, the Americans decided to plan a similar, limited shield around several US cities. This plan was later reduced to an ABM system which would defend two land-based ICBM facilities in order to protect its retaliatory forces.<sup>257</sup>

The strategic balance was further distorted by the fact that the main allies of the United States were located overseas,<sup>258</sup> while the allies of the Soviet Union were mainly situated along its borders. This complicated the issue of equating certain missile systems and categories of weapons and in "defining overall strategic equivalence".<sup>259</sup> The Soviet representatives wanted to define 'strategic' within the SALT framework to any nuclear weapons that were capable of hitting the territory of the other. The American representatives objected to this, as this would also include the forward-based systems located in Europe while excluding the Soviet intermediate range missiles aimed at Western Europe.<sup>260</sup> The assertion that the strong US commitment to its overseas alliances caused a significant asymmetry in geographical equivalence meant that the United States only wanted to limit SALT I to strategic intercontinental systems (this predicament was later addressed with the signing of the Intermediate-Range Nuclear Forces Treaty or INF Treaty). Following initial failures in reaching an agreement, the Soviet Union sought to limit SALT I to ABM systems. The US responded by stating that a restraint in defensive systems could not be coupled to an unrestricted increase in offensive weapon systems. This deadlock was finally

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<sup>256</sup> With 'n' being the number of MIRV's capable of being carried by a ballistic missile, see SIPRI, *op. cit.* 1972.

<sup>257</sup> SIPRI, *op. cit.* 1972.

<sup>258</sup> i.e. Western Europe and Japan (State Department website, accessed on September 29, 2007).

<sup>259</sup> State Department, *op. cit.* 2007.

<sup>260</sup> SIPRI, *op. cit.* 1972.

brokered by negotiations at the highest levels of government, and in 1972 the two heads of state finally signed a treaty which would curtail the number of ABM installations<sup>261</sup>, and an interim agreement that would freeze the number of ballistic missile launchers at existing levels for five years.<sup>262</sup> But despite the pledges made in the 1968 Nuclear Non-Proliferation Treaty, the SALT I negotiations led to limited results with respect to the responsibilities and obligations of the NWS as is stated in Article VI of the NPT. The SALT I Treaty did in fact lead to the renunciation of a nation-wide defensive ABM shield by both superpowers therefore enhancing the strategic stability between the United States and the Soviet Union.<sup>263</sup> Despite its expiration date in 1977, both governments decided to adhere to the provisions of SALT I by refraining from actions incompatible with these provisions.<sup>264</sup>

Following the entry into force of SALT I in 1971, the governments of the United States and the Soviet Union decided to continue negotiations to address several of the aspects not included in SALT I (i.e. the strategic bombers) and to seek a permanent agreement on more complex measures for the limitation of strategic offensive armaments.<sup>265</sup> SALT II was signed in June 1979, and it limited US and Soviet ICBM launchers, SLBM launchers, strategic bombers to 2,400 delivery vehicles and imposed several other restrictions on strategic nuclear forces. More specifically, SALT II called for reducing the number of delivery vehicles to 2,250 in 1981. Oddly enough, the treaty authorised the Soviets to reduce their strategic nuclear weapons delivery vehicles by around 270 vehicles, but as the total of US delivery vehicles was already below this number, the Americans were thus 'allowed' to increase their amount. However, anger at the Soviet invasion of Afghanistan caused the US administration to postpone ratification of the Treaty, and it has not entered into force since. Critics have pointed out that the SALT negotiations have actually aggravated the nuclear rivalry between the superpowers, as it did inadvertently allowed for the (qualitative) enhancing of existing nuclear weapons systems.<sup>266</sup> In 1986, the Reagan administration ordered that new arms control negotiations would not be based

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<sup>261</sup> The ABM Treaty called for the establishment of one Missile Defence shield for each superpower at either a city or a ballistic missile installation; see: SIPRI, *op. cit.* 1981.

<sup>262</sup> Keohane, *op. cit.* 1984.

<sup>263</sup> Keohane, *op. cit.* 1984.

<sup>264</sup> SIPRI, *op. cit.* 1981.

<sup>265</sup> SIPRI, *op. cit.* 1981.

<sup>266</sup> Keohane, *op. cit.* 1984.



on the standards as illustrated in the SALT structure, but rather on decisions based on the threat posed by Soviet forces.<sup>267</sup>

### 5.2.3. *Strategic Arms Reduction Treaty (START)*

This new structure of arms control arrangements was proposed by the Reagan administration in the early 1980's, and eventually evolved into the Strategic Arms Reduction Treaty (START) signed in July 1991. The treaty required the US and the Soviet Union to reduce their deployed delivery vehicles to 1,600, with no more than 6,000 deployed nuclear warheads (i.e. 4,900 warheads on ballistic missiles and a maximum of 1,540 and 1,100 warheads on heavy and mobile ICBM's). Observers regarded these provisions as major concessions with respect to undertaking significant reductions in their strategic nuclear arsenals (SIPRI, 1991). In total, the United States was required to cut its total ballistic missiles warhead by 36%, while the Soviet Union would have to cut its warheads by 50%. Other than with the SALT treaties, START did in fact take strategic force modernisation into account by banning several categories of strategic weapons. These include the development of new heavy and mobile ICBM's, heavy SLBM's, ICBM's and SLBM's with more than 10 MIRV's, rapid reload of ICBM launchers, long-range MIRV-ed Air Launched Cruise Missiles (ALCM's), and strict limitations on the movement of deployed mobile ICBM launchers and missiles.<sup>268</sup> In addition to these qualitative reductions, effective verification provisions were negotiated as well and included on-site inspections, continuous monitoring of mobile ICBM production sites, regular exchanges of information (i.e. telemetric information), and satellite reconnaissance.<sup>269</sup> Despite these ambitious arrangements, observers still noted several strict shortcomings in the provisions of START. Even though START did address strategic nuclear force modernisation, it failed to take into account the modernisations that were under way at the time of negotiating. In other words, START was only applicable to those (ageing) nuclear weapons currently deployed and barred future development, while neglecting the development of more accurate nuclear weapon systems taking place at the time of negotiating. While the post-START strategic nuclear forces would be smaller in number than prior to the treaty, the accuracy of the nuclear weapon systems in development could however be increased.

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<sup>267</sup> Arms Control Association, 2002.

<sup>268</sup> SIPRI, *op. cit.* 1991

<sup>269</sup> SIPRI, *op. cit.* 1991; Arms Control Association (2002), "US-Soviet/Russian Nuclear Arms Control", [www.armscontrol.org](http://www.armscontrol.org) (accessed on September 29, 2007).

Moreover, the START provisions were only applicable to the deployed nuclear strategic force, without taking into consideration the existing nuclear arsenals. Critics therefore stated, that the following the entry into force of START, the “[...] potential size of post-START strategic forces is obscured”.<sup>270</sup> From the US perspective, it also failed to achieve one of its own primary START objectives, as it initially desired a Soviet strategic nuclear forces reduction which would make it on par with those of the United States. The START treaty itself was even ambiguous in its composition, as some weapon systems such as Submarine Launched Cruise Missiles (SCLM’s) were left out of its provisions. Curiously, the START provisions called for a maximum number of 6,000 nuclear warheads, while in reality this number was permitted to exceed if SCLM’s and stocked nuclear warheads were taken into account. These quirks led observers to believe that START itself would not bring about significant nuclear force reductions. And while START took into account the number of ICBM’s, relatively less attention was paid to the number of strategic bombers. With the (largely American) technological advances in the development of stealth aircraft in the 1980’s, the desired increase in strategic stability was therefore in peril. Furthermore, despite the inclusion of verification provisions with respect to mobile ICBM launchers, the Soviet Union still possessed a significant array of these weapons to which the START-cuts were insufficient as to decrease the vulnerability of the US ICBM force.<sup>271</sup> Despite these shortcomings, ensuing START II and START III treaties failed to enter into force, or were never fully negotiated.<sup>272</sup>

#### 5.2.4. *Strategic Offensive Reductions Treaty*

Since the 1970’s, the agreements on arms control treaties led to a significant reduction of nuclear weapons. However since 2000, little progress has been made on the reduction of the operational status of nuclear forces, although the SORT treaty represents some form of de-alerting. Signed on May 24 2002, and ratified on June 1 2003, the United States and Russia agreed to limit their nuclear arsenals to 1.700 – 2.200 nuclear warheads each, with a withdrawal option if given a three months written notice to the other. Still, with an approximate number of 1.700 – 2.200 nuclear warheads each, the readiness level of the delivery systems has not been significantly been addressed in the treaty.<sup>273</sup> Furthermore, the SORT treaty has not addressed the principles of verification, transparency and irreversibility in bilateral reductions as specified in the Thirteen

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<sup>270</sup> SIPRI, *op. cit.* 1991, p. 399.

<sup>271</sup> SIPRI, *op. cit.* 1991

<sup>272</sup> The START II and START III treaty was officially bypassed by the SORT treaty signed in 2002 (Nuclear Threat Initiative website, accessed on November 18, 2007).

<sup>273</sup> Burroughs, 2006, *op. cit.*, p. 19.

Practical Steps, since the treaty only calls for a single verification point in time (i.e. December 31, 2012). Technically speaking, the US and Russia would not be bound to any restrictions on the increase of nuclear weapons after this date, for no subsequent arms control treaty is in place to verify any future developments. In addition, the SORT treaty does not call for the destruction and dismantling of the delivery systems and warheads (i.e. the principle of irreversibility), but merely for the deactivation of these systems contrary to the earlier START I, START II, and START III treaties. Again technically speaking, both the US and Russia reserve the right to maintain a responsive force capable of relatively short-time redeployment. Finally, the principles of verification and transparency have not been properly addressed, for the only verification methods still in place is the START I treaty which expires on December 5, 2009. The SORT treaty did not address any verification and transparency methods on how to monitor the destruction and dismantlement of the nuclear warheads and associated delivery mechanisms. No further US-Russian negotiations are planned to address the absence of the verification, transparency and irreversibility issues, or the actions to be taken following the SORT treaty's 2012 expiration date. A topic for concern with respect to disarmament which still creates continues to create tension between Russia and the United States is the issue of Missile Defence. The United States has proposed to install a protective 'umbrella' composed of anti-ballistic missile systems and a radar in respectively Poland and the Czech Republic. While the United States insists that the proposed anti-ballistic missile system is merely aimed as a defence against 'rogue states' such as Iran and North Korea, Russia tends to view the installations as a provocation instead.

#### *5.2.5. Nuclear Weapons in Security Policies and Reduction of Operational Status*

The reduction of the operational status of the nuclear weapons of the United States and Russia corresponds to the element of the cessation of nuclear arms race within Article VI. In 1995, prior to the NPT Review and Extension Conference, the United States, Russia, France and the United Kingdom declared an end to the nuclear arms race. Critics tend to dispute this declaration, for they regard the modernisation programs of nuclear weapons contrary to the cessation of the nuclear arms race, as well as contrary to the principle of good faith since it bars action that undermines the achievement of the objective of the negotiation process. In addition, this is also contrary to step 9(e) of the Thirteen Practical Steps which calls for commitment to a diminishing role of nuclear weapons in security policies.<sup>274</sup> The NWS themselves consider the

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<sup>274</sup> See further: "Non-Governmental Organisations' Statements to the States Party to the Seventh Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons", part of the NGO Presentations to the 2005 NPT Review Conference, May 11, 2005. New York.

modernisation of their nuclear weapons as an inevitable by-product of the necessary replacement of their existing systems that have reached the end of their service lives.<sup>275</sup> An example of this is the Reliable Replacement Warhead program of the United States which envisages an improvement in the reliability, safety, and security of existing weapons and their components.<sup>276</sup> Russia too has announced the development of new weapons systems in order to replace ageing weapon systems, which include new manoeuvrable warheads, new road-mobile missile delivery systems, and new aircraft- and submarine-launched cruise missiles.<sup>277</sup> The suggestion that Russia is thought to be lacking in resources to adequately modernise its nuclear weapons delivery mechanisms might even reluctantly favour the principle of irreversibility, for it therefore fulfils its obligation to reduce the number of delivery systems since it cannot effectively replace them. The United States on the other hand, did order the deactivation (and not elimination) of its delivery systems. Instead, these systems will be converted for the use of conventional warheads, thereby passing by the principle of irreversibility.<sup>278</sup>

With respect to a possible shift in security policies towards a diminished role of nuclear weapons as is outlined in the Thirteen Practical Steps, both the United States and Russia continue to rely on nuclear weapons as a cornerstone of their national security for the foreseeable future. Russia has indicated in its 2000 Security Concept that nuclear weapons can be used “to repulse armed aggression, if all other means of resolving the crisis have been exhausted”. In addition, as previously stated,<sup>279</sup> Russia has abandoned its policy of No-First-Use in 1993. The United States too has outlined its strategy for nuclear weapons in its 2001 Nuclear Posture Review, in which “[n]uclear weapons could be employed against targets able to withstand non-nuclear attack, (for example, deep underground bunkers or bio-weapon facilities)”.<sup>280</sup> In addition, in its 2006 Strategic Deterrence Joint Operating Concept, the US stated that “[d]irect capabilities required for deterrence include the ability to carry out: force projection operations, including the capability to decisively defeat regional aggression; kinetic and non-kinetic global strike operations, including

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<sup>275</sup> See further: Burroughs, 2006, *op. cit.* p. 19.

<sup>276</sup> U.S. Congress Committee on Appropriations, (2004), “Conference Report to Accompany H.R. 4818—Consolidated Appropriations Act, 2005. Nov. 20, 2004. H. Rept. 108-792. Division C., p. 951.

<sup>277</sup> Norris, R.S. and H.M. Kristensen (2005), p. 22.

<sup>278</sup> Shadow Report on the Thirteen Practical Steps, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 14, 2007, p. 5.

<sup>279</sup> See: Chapter 2.4. The Principle of No-First-Use.

<sup>280</sup> Excerpts of the 2001 Nuclear Posture Review, [www.globalsecurity.org](http://www.globalsecurity.org), accessed on December 12, 2007.

the possible employment of nuclear weapons”.<sup>281</sup> Furthermore, the US decision to unilaterally withdraw from the ABM-treaty in order to develop its missile defence system, has caused Russia to withdraw from the START II treaty, which was contrary to the agreed Step number 7 of the Thirteen Practical Steps.<sup>282</sup>

Another major component of nuclear disarmament to which the United States and Russia and the other NWS have committed themselves by agreeing to the Thirteen Practical Steps, is the importance of signatures and urgency of signatures and ratifications, without delay and without conditions, to achieve the early entry-into-force of the Comprehensive Test-Ban Treaty. As was previously stated,<sup>283</sup> the United States continues to obstruct the ratification of the CTBT by demonstrating no willingness of ratifying the treaty. Russia did however ratify the treaty in 2000.<sup>284</sup> With respect to the moratoria that were to be declared following the agreement to the Thirteen Practical Steps, the United States had already imposed a moratorium on nuclear testing, and so did (the then) Soviet Union in 1990. Since the unilaterally declared moratoria, no nuclear tests have been undertaken since. Furthermore, the United States has generally supported the view that disarmament is a topic too broad to be discussed merely in the Conference on Disarmament, and that a subsidiary ad-hoc body ought to be installed of which the primary focuses would be the multilateral nuclear disarmament, a view supported by Russia, the United Kingdom and France.

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<sup>281</sup> Department of Defense, (2006), “Strategic Deterrence Joint Operating Concept”, February 2006, p. 39.

<sup>282</sup> Step 7 of the Thirteen Practical Steps, as agreed upon at the 2000 NPT Review Conference, stated that “[t]he early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the Treaty on the Limitation of Anti-Ballistic Missile Systems as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions”.

<sup>283</sup> See: Chapter 2.3; The Comprehensive Test-Ban Treaty.

<sup>284</sup> Shadow Report on the Thirteen Practical Steps, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 14, 2007, p. 4

<b>Overview of the US-USSR Strategic Nuclear Arms Control Agreements</b>						
	SALT I	SALT II	START I	START II	START III	SORT
Deployed Warhead Limit	Limited Missiles, Not Warheads	Limited Missiles and Bombers, Not Warheads	6,000	3,000-3,500	2,000-2,500	1,700-2,200
Deployed Delivery Vehicle Limit	U.S.: 1,710 ICBMs & SLBMs; USSR: 2,347 ICBMs & SLBMS	2250	1,600	Not Applicable	Not Applicable	Not Applicable
Status	Expired	Never Entered Into Force	In Force	Never Entered Into Force	Never Negotiated	Signed, Awaits Ratification
Date Signed	May 26, 1972	June 18, 1979	July 31, 1991	January 3, 1993	Not Applicable	May 24, 2002
Date Entered Into Force	October 3, 1972	Not Applicable	December 5, 1994	Not Applicable	Not Applicable	?
Implementation Deadline	Not Applicable	December 31, 1981	December 5, 2001	December 31, 2007	December 31, 2007	December 31, 2012
Expiration Date	October 3, 1977	December 31, 1985	December 5, 2009	December 5, 2009	Not Applicable	December 31, 2012
Source: <a href="http://www.armscontrol.org">www.armscontrol.org</a>						

United States; Present-day Nuclear Forces						
Type	Designation	No. Deployed	Year first deployed	Range (km) <sup>285</sup>	Warhead loading	No. of warheads
B61-3, -4 bombs	/	n.a.	1979	n.a.	0.3-170 kt	400 <sup>286</sup>
Tomahawk SLCM	/	320	1984	2,500	1 x 5-150 kt	100 <sup>287</sup>
<i>Bombers</i>						
B-2	Spirit	21/16	1994	11,000	Bombs	533 <sup>288</sup>
B-52H	Stratofortress	85/56	1961	16,000	ALCM	984
					ACM	400
<i>ICBM<sub>s</sub></i> <sup>289</sup>						
LGM-30G	Minuteman III Mk-12	50 <sup>290</sup>	1970	13,000	3 x 170 kt	150
		150			1 x 170 kt	150
	Minuteman III Mk-12A	150	1979	13,000	2-3 x 335 kt	450
		100			1 x 335 kt	100
Minuteman III Mk-12A SERV <sup>291</sup>	50	2006	13,000	1 x 300 kt	50	
<i>SSBN<sub>s</sub>/SLBM<sub>s</sub></i> <sup>292</sup>						
UGM-133A	Trident II (D-5) Mk-4	n.a.	1992	>7,400	6 x 100 kt	1,344
	Trident II (D-5) Mk-5	n.a.	1990	>7,400	6 x 475 kt	384
<b>Total</b>						<b>5,045</b> <sup>293</sup>

<sup>285</sup> Aircraft range is given for illustrative purposes only; actual mission range will vary according to flight profile and weapon loading (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>286</sup> As many as 400 bombs (including possibly inactive weapons) are deployed in Europe (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>287</sup> Another 190 W80-0 warheads are in inactive storage (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>288</sup> Available for both the B-52H and B-2A bombers, but the B-2A is thought to be the main bomb-delivery vehicle (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>289</sup> The 2006 Quadrennial Defense Review decided to reduce the ICBM force by 50 missiles to 450 by 2008. The download of most Minuteman ICBMs to a single warhead to meet the warhead ceiling mandated by the 2002 Strategic Offensive Reductions Treaty (SORT) is underway. The W62 (Mk-12) will be retired by 2009. The 450 missiles will carry a total of 500 warheads with hundreds more in reserve for upload if necessary (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>290</sup> The 50 missiles of the 564th Missile Squadron at Malmstrom Air Force Base are scheduled for withdrawal from service in 2007 (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>291</sup> The SERV programme converts the W87/Mk-21 warhead previously deployed on the Peacekeeper ICBM for deployment on the Minuteman III ICBM (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>292</sup> Two of 14 SSBNs are undergoing conversion from the C-4 missile (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<b>Russia; Present-day Nuclear Forces</b>						
Type and Russian designation	(NATO/US) designation	No. Deployed	Year first deployed	Range (km) <sup>294</sup>	Warhead loading	No. of warheads
<i>ASW and SAM weapons</i>						
SS-N-15/16 torpedoes						158
SA-N-3/6						
<i>Land-based non-strategic bombers</i>						
Su-24	(Fencer)	371	1974		2 x bombs	
Tu-22M	(Backfire)	116	1974		2 x AS-4	
					ASM's	
					Bombs	
<i>Naval non-strategic attack aircraft</i>						
Su-24	(Fencer)	58	1974			
Tu-22M	(Backfire)	58	1974		2 x AS-4	
					ASM's	
					Bombs	
<i>SLCM's</i>						
SS-N-12						266
SS-N-19						
SS-N-21						
SS-N-22						
<i>ABM's</i> <sup>295</sup>						
51T6	(SH-11 Gorgon)	32	1989		1 x 1000 kt	32
53T6	(SH-08 Gazelle)	68	1986		1 x 10 kt	68
<i>Bombers</i>						
Tu-160	(Blackjack)	14	1987	10,500-13,200	12 x AS-15B ALCM's AS-16 SRAMs bombs	168
Tu-95MS16	(Bear-H16)	32	1981	6,500-	16 x AS-15A	

<sup>293</sup> Another 260 warheads are spares and roughly 5000 warheads are kept in the responsive force or inactive stockpile or are awaiting dismantlement, giving a total stockpile of just over 10 000 warheads. In addition, more than 12 000 plutonium pits are stored at the Pantex Plant in Texas (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>294</sup> Aircraft range is given for illustrative purposes only; actual mission range will vary according to flight profile and weapon loading (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>295</sup> The Gorgon missile may have been retired. The SA-10 Grumble, SA-12A Gladiator, SA-12B Giant and S-400 Triumf may have some capability against some ballistic missiles. About 600 nuclear warheads may be associated with them (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).



				10,500	ALCM's bombs	
Tu-95MS6	(Bear-H6)	32	1981	6,500- 10,500	6 x AS-15A ALCM's bombs	192
<i>ICBM's</i>						
RS-12M Topol	(SS-25 Sickle)	243	1985	10,500	1 x 550 kt	243
RS-12M1 Topol-M	(SS-27)	3	2006	10,500	1 x 550 kt	3
RS-12M2 Topol-M		44	1997	10,500	1 x 550 kt	44
RS-18	(SS-19 Stiletto)	123	1980	10,000	6 x 500-750 kt	738
RS-20 B/V	(SS-18 Satan)	76	1979	11,000- 15,000	10 x 500-750 kt	760
<i>SLBM's</i>						
RSM-50	(SS-N-18 M1 Stingray)	80	1978	6,500	3 x 200 kt	252
RSM-54 Stineva	(SS-N-23 Skiff)	96	1986	9,000	4 x 100 kt	384
<b>Total</b>						<b>5,614</b>

### 5.3. The Secondary Powers; The United Kingdom and France

Although the United Kingdom and France have a far smaller nuclear arsenal than that of the United States and Russia, their disarmament efforts are unique in the way that both states have significantly reduced their nuclear weapons following the end of the Cold War, while simultaneously retaining a part of it as deterrence in their nuclear security policies.<sup>296</sup> With respect to the CTBT, the United Kingdom and France were the first NWS to sign and ratify the treaty in 1998.

#### 5.3.1. Nuclear Weapon Development in the United Kingdom

While the United Kingdom did cooperate together with Canada in the Manhattan Project (the US development of its first nuclear weapon), it started to develop its own nuclear weapons programme shortly following World War II after the US refused to continue its nuclear cooperation with the UK when it signed the Atomic Energy Act (McMahon Act) of 1946. This act restricted any foreign access to the US nuclear weapons program. Despite of these setbacks,

<sup>296</sup> While China too has reduced its number of nuclear weapons unilaterally since the 1980's, it has never publicly declared a policy of nuclear deterrence (See: China's National Defence White Paper, 2006). In addition, it continuously calls upon the other NWS to abandon their nuclear policies of deterrence (Statement by H.E. Sha Zukang, Ambassador of the People's Republic of China for Disarmament Affairs, at the First Committee of the 52<sup>nd</sup> Session of the United Nations General Assembly, October 14, 1997)

the British continued to develop their own nuclear weapons, and finally detonated a nuclear weapon successfully in October 1952. Nuclear cooperation with the US resumed following the signing of various agreements which included the transfer of US-produced nuclear weapon delivery systems as well as the nuclear weapons themselves. This was made possible due to several amendments made in the US Atomic Energy Act that enabled limited exchanges.<sup>297</sup> As part of these agreements, the United Kingdom was allowed to utilise the Nevada Test Site to test its domestically produced nuclear weapons. And following the cancellation of several national nuclear weapon delivery systems, the United Kingdom opted for the US-produced Polaris SLBM system, while sustaining its reliance on strategic bombers. In the beginning of the 1980's, the British purchased the US-produced Trident system, currently the backbone of the British nuclear deterrence as the reliance on strategic nuclear bombers was put an end to.<sup>298</sup>

### 5.3.2. *British involvement in the CTBT negotiations*

Of all the five Nuclear Weapon States that are party to the NPT, the United Kingdom has maintained the record of testing the least number of nuclear weapons. The United Kingdom played a limited role in the establishment of the Threshold Ban Treaty (1974) and the Peaceful Nuclear Explosions Treaty (1976), as the UK was not involved as an equal partner in the US-USSR talks on the NPT. Later on, the British did attempt to play a larger role at the negotiating table in trying to reach consensus on a (limited) CTBT during the 1970's, as this allegedly fitted the desired enhanced reputation of UK Prime Minister Callaghan to be regarded by his electorate as "an international peacemaker".<sup>299</sup> During these negotiations, the three major powers were anxious to reach a successful conclusion of the talks leading to a limited period CTBT, as was demonstrated by the willingness to make some major concessions by all sides in order to reach the agreement. The reasons for this can be found in personal desire of the US and UK administrations of that time to reach consensus, and the Soviet rapprochement during the same period, despite strong opposition from the defence establishment and nuclear weapons laboratories. The deteriorating of US-USSR relations at the end of the 1970's following the Soviet invasion of Afghanistan led to the diminishing of chances to conclude a test ban treaty.<sup>300</sup>

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<sup>297</sup> Norris, 1994.

<sup>298</sup> Norris, 1994.

<sup>299</sup> Keohane *op. cit.*, p. 39

<sup>300</sup> Keohane, *op. cit.*, p. 40.

### 5.3.3. *Strategic Arms Limitation Talks*

As with the Threshold Ban Treaty (1974) and the Peaceful Nuclear Explosions Treaty (1976), the United Kingdom was not involved in the SALT negotiations during the commencement of the talks. As was detailed previously, Britain's strategic position had been diminished at the end of the 1960's following its decision to withdraw 'East of Suez'. The influence of the United Kingdom on the SALT negotiations is therefore seen as limited, although subsequent UK governments experienced some "[...] anxieties that the non-circumvention provisions in existing or potential SALT agreements could seriously inhibit the development of its own nuclear capability [...]".<sup>301</sup>

During the 1980's, several European political leaders demanded that the United Kingdom and France were to be involved in the INF (and later START) talks as well, as contrary to the SALT Treaties, critics argued that the proposed INF Treaty now involved the European-based systems as well. This criticism was reiterated by the Soviet Union, which claimed that a substantial proportion of the West's intermediate range nuclear forces too were targeted on the USSR, therefore supporting inclusion of the British and the French in the INF negotiations. The Soviet claim was strengthened by the fact that during the 1980's the United Kingdom planned to multiply its strategic nuclear forces significantly, which would enlarge NATO's overall strategic nuclear capability. But the Soviet claim was reinforced by its own very important *raison d'État*: When the British and French nuclear weapons arsenals were to be included in the INF negotiations, the United States was to be compelled to remove a significant number of its own European-based intermediate range nuclear weapons whereby the Soviet Union would gain a strategic advantage over the US.

The British parliament was presented with an opportunity to commence complete nuclear disarmament in March 2007, in which a government proposal was debated concerning the prolongation of the Trident program, the nuclear powered submarine armed with nuclear armed ballistic missiles (the essence of the United Kingdom's nuclear deterrent). The result of this debate was the retention of nuclear weapons until at least 2055. Ever since the dismantlement of the last Chevaline warhead in 2002, the United Kingdom has not engaged in any further nuclear disarmament, although the 2006 Government White Paper details the reduction of the nuclear arsenal to 160 operational warheads, which corresponds to a 20% reduction in overall stockpile

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<sup>301</sup> Keohane, *op. cit.*, p. 41.

(SIPRI, 2007). Concerning unilateral disarmament, the UK government stated that currently no circumstances exist to choose this path, and detailed that considerable bilateral progress ought to be made to reduce large nuclear arsenals for the UK nuclear weapons stockpile is considered a fraction of the total amount. Only after considerable pledges have been made on behalf of the United States and Russia with respect to a significant reduction of their strategic nuclear arsenals, the United Kingdom would actively engage in multilateral negotiations for nuclear disarmament. In addition to this requirement, the UK government desires for a world in which all states are in full compliance with their obligations under the NPT. And with respect to negative and positive security guarantees, the United Kingdom has provided various NSA's in 1995 and have signed the protocols to various Nuclear-Weapon-Free Zones.

#### *5.3.4. Nuclear Weapon Development in France*

France was in a similar economic situation as the United Kingdom following World War II. Some French scientists participated in heavy water research prior to the War, and French president Charles de Gaulle regarded atomic energy as an important aspect of the reconstruction of France. Despite the lack of sufficient funds and the political instability of the Fourth Republic, civilian nuclear energy research was reinitiated in 1946 and several breakthroughs were made which enabled the production of plutonium. The political determination to obtain nuclear weapons had been reinforced following the French defeat at Dien Bien Phu in Indochina (presently: Vietnam) as a way of restoring French 'grandeur' on the world stage (Norris, 1994). As a result, France detonated its first nuclear weapon in February 1960 in (then French) Algeria. The acquirement of the bomb was for France a way to maintain French independence, and to remind the two superpowers of the Cold War that France was not to be neglected in international affairs.

#### *5.3.3. Nuclear Weapons in Security Policies and Reduction of Operational Status*

France is considered by some observers as an unlikely partner for nuclear disarmament (O'Neill, 1995), mainly due to the element of political competition between Paris, London, and Berlin when it comes to exerting influence in the European Union. For both the United Kingdom and France, the retaining of nuclear weapons is increasingly regarded as a way of securing attention for their interests, even at the expense of Germany. Although both governments have endured criticism from various civil protest movements for not committing themselves completely to nuclear disarmament, nuclear weapons are apparently not unpopular enough to be the central agenda item of any major political (opposition) party. O'Neill (1995) suggests that political parties apparently do not see any political advantage in doing away with them. Another similarity in the nuclear policies of both states is their assertion that their nuclear

weapons act as a substitute should American resolve in a crisis fails. Moreover, French and British nuclear deterrence serves as an additional potent reminder of a second-strike capability should a potential aggressor threaten or use nuclear weapons. O'Neill further states that the possession of nuclear weapons is a warrant for their status as Permanent Members of the UN Security Council.

Ever since the 1970's, the position of the successive British governments was to possess a strategic nuclear capability which would make an effective contribution to NATO in order to act as a credible nuclear deterrent. Britain has for over forty years maintained this defence policy which is stated to rely on a "[...] formal military alliance with a nuclear power (the NATO alliance with the USA); nuclear bases and facilities of an allied state (USA) situated on its territory; and possession of its own nuclear weapons and delivery systems of various types".<sup>302</sup> Political leaders of the United Kingdom have indicated that they believe that Britain's nuclear deterrence policy acts as a significant contribution to NATO's deterrence policy. NATO itself has affirmed its intention to maintain nuclear weapons as a principal component for deterrence in its Strategic Concept of 1999. The continued reliance on nuclear weapons as deterrence has incited critics to argue that the United Kingdom has done little to facilitate a move in the direction of nuclear disarmament as required by Article VI of the NPT.<sup>303</sup>

As for the diminishing role for nuclear weapons in security policies, the United Kingdom outlined its nuclear weapons strategy in the December 2006 White Paper, "The Future of the United Kingdom's Nuclear Deterrent". In this document, the United Kingdom claimed that the current state of world affairs does not justify the complete nuclear disarmament of its arsenal, for "significant nuclear arsenals remain, some of which are being modernised and expanded [and] the number of states possessing nuclear weapons has continued to grow, as demonstrated most recently by North Korea's attempted nuclear test in October [in 2006]".<sup>304</sup> In the same document, several key principles were laid out which detailed the UK's deterrence policy.<sup>305</sup> Simultaneously

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<sup>302</sup> Roberts, 1983, p. 191

<sup>303</sup> SIPRI, 2005

<sup>304</sup> White Paper (2006), "The Future of the United Kingdom's Nuclear Deterrent", UK Ministry of Defence, December 2006, p. 6.

<sup>305</sup> These principles for UK nuclear deterrence represent (*Ibid.* pp. 17-18):

- A focus on preventing nuclear attack;
- Retention of the minimum amount of destructive power required to achieve deterrence objectives;

however, the UK acknowledged that at present there are was no current threat that warranted nuclear weapons and that the only way to deter undetermined future threats was to retain nuclear weapons. In addition, the use of nuclear weapons is considered out “in self-defence (including the defence of NATO allies) and even in extreme circumstances.<sup>306</sup> With respect to the first area of negotiation of Article VI (the cessation of the nuclear arms race; i.e. the quantitative level of nuclear weapons), the United Kingdom has stipulated that its nuclear arsenal is not dependent on the “size of other nation’s arsenals but on the minimum necessary to deter any threat to our vital interests”.<sup>307</sup>

Nevertheless, in the same White Paper of 1998, the UK has concluded that it can safely make further reductions to its nuclear arsenal’s Cold War levels, and that it currently only requires one nuclear armed ballistic missile submarine on patrol at any time with a reduced load of 48 nuclear warheads. In addition, the nuclear armed missiles are on a reduced alert state and require a delay of several days to launch when ordered to attack, contrary to the alert state of several minutes as was the case during the Cold War.<sup>308</sup> Another element which involves the first area of negotiations within Article VI is the UK Trident modernisation programme as was previously briefly discussed.<sup>309</sup> On March 14, 2007, the British House of Commons approved the plan to improve and extent the Trident nuclear weapon system, extending the program until 2055. But since 2002, no further reductions in nuclear warheads are planned.

The nuclear weapons policy of France follows a similar pattern of that of the United Kingdom. French nuclear deterrence policy continues to play an important role of French national defence, as was outlined in the White Paper on Defence.<sup>310</sup> In addition, an important speech has been given January 2006, in which then-president Jacques Chirac outlined France’s nuclear weapons policy. Chirac stated that France was willing to use nuclear weapons as “a firm

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-Deliberate ambiguity about precisely when, how, and at what scale the UK would contemplate using nuclear weapons

-Support for the Euro-Atlantic area through NATO;

-Retention of an independent nuclear deterrent, with an independent decision-making centre reinforces that of allies.

<sup>306</sup> *Ibid.* p. 14.

<sup>307</sup> White Paper (1998), “Strategic Defence Review”, July 1998, para. 61.

<sup>308</sup> United Kingdom Nuclear Forces, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 4, 2007.

<sup>309</sup> See: Chapter 1; Problem Definition

<sup>310</sup> France Nuclear Forces, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 4, 2007.

and appropriate response from us” to “an attack on France's vital interests”.<sup>311</sup> In addition, Chirac stated that France had reconfigured its nuclear forces in preparation for a nuclear strike against any country that it concludes as launched an act of terrorism (including WMD) against French territory. Nuclear deterrence is still regarded by France as a predominant factor in international stability. Similar to the United Kingdom, France sees no reason to initiate unilateral disarmament since the other NWS and non-NPT Nuclear Weapon States have demonstrated any will to implement a unilateral disarmament process. And while France alleges to maintain a policy of non-use, it too has reserved the right to launch a nuclear attack as was outlined in Chirac’s speech on the response to a terrorist attack against French territory.

Again, similar to the United States, Russia, and the United Kingdom, France too has initiated a modernization program to develop nuclear forces for use through 2040, and has not indicated any willingness to revise this policy in the forthcoming future. France continues to possess a highly advanced nuclear arsenal based on aircraft-delivered nuclear weapons, as well as on nuclear-armed ballistic missile submarines (SSBN) which is in a continuous process of being modernised. Since the Cold War however, several major nuclear weapons reductions have taken place in the periods 1991-1992 and 1996-1997, in which it abolished its strategic surface-to-surface missile program and the limitation of its number of SSBN’s. Together with the United Kingdom, France is one of two NWS to have completely abandoned its surface-to-surface nuclear missile systems, and has cut the number of nuclear warhead delivery systems and its nuclear weapons budget by half since the end of the Cold War.<sup>312</sup> The French record on the CTBT was notorious, for it was one of the last NWS to test its nuclear weapons up until 1996, despite a unilateral declared moratorium in 1992. Since 1996 however, France has not conducted any nuclear weapons testing and has now signed and ratified the CTBT, and since 1992 is a state party to the NPT. With regards to the French involvement in the third area of negotiations (a treaty on general and complete disarmament), France has indicated in May 2004 that it is engaged in a “1995 action program [as including] the determination to move forward systematically and progressively in cutting nuclear weapons as a whole within the framework of general and complete disarmament”.<sup>313</sup> By making this statement, France therefore believes in the elimination

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<sup>311</sup> *Ibid.*

<sup>312</sup> *Ibid.*

<sup>313</sup> “Non-Governmental Organisations’ Statements to the States Party to the Seventh Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons”, part of the NGO Presentations to the 2005 NPT Review Conference, May 11, 2005. New York, p. 3.2.

of nuclear weapons within the framework of general and complete disarmament, despite there being no legal linkage between the two as was previously mentioned.

<b>United Kingdom; Present-day Nuclear Forces</b>						
Type	Designation	No. Deployed	Year first deployed	Range (km) <sup>314</sup>	Warhead loading	No. of warheads
<i>SLBM's</i>	Trident II (D-5)	48	1994	>7,400	1-3 x 100 kt	160 <sup>315</sup>
<b>Total</b>						<b>160</b>

<b>France; Present-day Nuclear Forces</b>					
Type	No. Deployed	Year first deployed	Range (km) <sup>316</sup>	Warhead loading	No. of warheads
<i>Carrier-based Aircraft</i>					
Super Étendard	24	1978	650	1 x 300 kt ASMP	10
<i>Land-based Aircraft</i>					
Mirage 2000N	60	1988	2,750	1 x 300 kt ASMP	50
<i>SLBM's</i> <sup>317</sup>					
M45	48	1996	6,000 <sup>318</sup>	6 x 100 kt	288
<b>Total</b>					<b>348</b>

<sup>314</sup> Aircraft range is given for illustrative purposes only; actual mission range will vary according to flight profile and weapon loading (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>315</sup> Fewer than 160 warheads are operationally available, up to 144 to arm 48 missiles on 3 of 4 SSBNs. Only 1 submarine is on patrol at any time, with up to 48 warheads. The UK like the other 4 nuclear weapon states probably also has a small reserve of inactive warheads. The size of this reserve is unknown but might include enough warheads to arm 1 submarine. This would give a total stockpile of close to 200 warheads (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>316</sup> Aircraft range is given for illustrative purposes only; actual mission range will vary according to flight profile and weapon loading (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>317</sup> The fourth and final Triumphant Class SSBN, Le Terrible, will replace Le Inflexible in 2010 and be retrofitted with the longer-range M51.1 SLBM (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>318</sup> The range of M45 is listed as only 4000 km in a 2001 report from the National Defence Commission of the French National Assembly (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).



#### *5.4. The Odd one out*

China is the Nuclear Weapon State which has consistently called for the complete nuclear disarmament of all NWS, and is officially opposed to security policies of deterrence based on the threat of nuclear weapons. In addition, it has called upon all states to convene a conference similar to Biological Weapon Convention and the Chemical Weapon Convention to abolish all nuclear weapons under strict and verifiable international control. When compared to the other NWS, China's nuclear weapons program stands out however because of the ambiguity surrounding it, in addition to the somewhat conflicting (unofficial) statements which at some times appear to contradict official nuclear policy.

##### *5.4.1. The Nuclear Weapon Development of China*

China's development of nuclear weapons has for a while been closely politically linked to the Soviet Union. In 1955, Mao officially decided that China should develop a nuclear weapons program. Various agreements were signed with the Soviet Union for the provision of assistance for peaceful nuclear energy research, in exchange for Chinese uranium. In 1956, the Soviet Union supplied a heavy water reactor to China, in addition to the delivery of an R-1 missile (which in itself was a copy of the World War II-era German V2 rocket). A special Soviet-Chinese agreement was signed in 1958 to supply China with a Soviet-manufactured prototype nuclear bomb, as well the delivery of several R-2 missiles. From this Soviet missile, China built its first ICBM and established its Deng Fong ballistic missile program. One year later however, the decision to supply China with a nuclear bomb prototype was cancelled unilaterally by the USSR, after which China decided to pursue a weapon independently. Relations between the two states worsened, until the point that all Soviet advisors working in China were withdrawn. Continuing its nuclear weapons research without foreign assistance finally resulted in the first Chinese nuclear weapon detonation in October 1964. From that time on, Chinese ballistic missile, strategic bomber, and nuclear submarine research expanded, albeit most of it was still based on Soviet design. In 1984, China formally joined the IAEA, after which it acceded to the NPT in 1992.<sup>319</sup>

##### *5.4.2. Disarmament Efforts*

Several main characteristics can be observed when assessing China's official position on (nuclear) disarmament. Firstly; China appears to equate the concept of general arms control with

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<sup>319</sup> Norris, 1994.

the control of nuclear arms. The possibility of solely reducing conventional arms is mentioned in some government reports, but always in connection with nuclear disarmament (SIPRI, 1972). China rejected a (Soviet-proposed) NWS conference on nuclear disarmament in the 1970's by stating that it is "[...] impossible to settle questions on nuclear disarmament by relying on negotiations only between a few big powers possessing nuclear weapons" (SIPRI, 1972; p. 494). The exclusion of NNWS was the principal perceived shortcoming in the Soviet-proposed conference. China underlined this statement by referring to the Partial Test-Ban Treaty, NPT, and SALT having not put any restraint on the nuclear arms race, and called for all nations to be involved in the (nuclear) disarmament negotiations. Organising a conference on general and complete disarmament was therefore considered to be entirely unrealistic in the absence of a conclusive agreement on nuclear disarmament.

Secondly; China's attitude towards nuclear weapons was for a long time rather ambiguous. Official Chinese statements with respect to nuclear weapons had repeatedly reflected Chinese socialist ideology, for which the atom bomb was merely regarded as a paper tiger. Chairman Mao believed that the outcome of war is not simply decided by new types of weapons, but rather by the people itself (the so-called "man's superiority over technology" (SIPRI, 1972; p. 485). For this being the official position for China ever since the end of World War II, it is remarkable that China was simultaneously working towards the development of its own nuclear weapon. This can however be explained by the fact that China regarded the acquirement of nuclear weapons as a means of breaking the nuclear monopoly of both the United States and the Soviet Union in order to prevent all-out nuclear war. This reflected the notion that although China did not directly support NNWS in obtaining nuclear weapons, it did issued moral support for those states (socialist and non-socialist) willing to do so as a counterweight to the US and USSR in their arms race. In addition, some Chinese statements suggest a familiarity to the French arguments on the matter of nuclear weapons and national prestige, as according to this philosophy NNWS are regarded as 'second-rank' on the world stage and therefore 'subject' to the directives of the US and USSR (SIPRI, 1972). To illustrate, China did publicly support French nuclear weapons policy for maintaining an independent nuclear deterrent course. Moreover, China initially the signing of the Partial Test-Ban Treaty of 1963 (one year prior to China's first nuclear explosion), which it regarded as a method used by the superpowers as a way of preventing China from obtaining a nuclear weapon. Also prior to its first nuclear test, China emphasised the importance of having a Nuclear-Weapons-Free Zone on the Asian continent, of which the zone was later extended to include the US and USSR as well. The entire proposal of establishing NWFZ's as a first step in nuclear disarmament was abandoned however after China

obtained nuclear weapons itself. What was, and continues to remain an important cornerstone of Chinese nuclear policy, is its proposal for a no-first-use agreement. The support for such an agreement was immediately voiced following China's first nuclear explosion, by stating that China "[...] will never at any time and under any circumstances be the first to use nuclear weapons".<sup>320</sup> This proposal was however, rejected by the United States, although the Soviet Union proved to be more responsive as they had been advocating a similar proposal since the 1940's. China also insisted that such a commitment by all NWS should be made prior to any conference on (nuclear) disarmament.

While Russia, France and the United Kingdom have signed and ratified the Comprehensive Test-Ban Treaty, China in turn has indeed signed, but not ratified the treaty. At present, the Chinese government has stated that the ratification process is still underway at its National Congress, despite becoming a signatory in 1996.<sup>321</sup>

#### 5.4.3. *Nuclear Weapons in Security Policies and Reduction of Operational Status*

As with the identification of some other Chinese national security policy measures, it is sometimes difficult to gauge the precise meaning of Chinese nuclear policy. On some occasions, the nuclear policy is specified clearly, as has always been the case with China's stance on its no-first-use policy. Recent government White Papers have suggested that China is firmly committed to this policy, although some individuals closely linked to government officials have publicly voiced their criticism and advocated a change to the no-first-policy.<sup>322</sup> Overall, China's nuclear policy appears to be focused on several inter-related aspects. As China maintains the smallest nuclear weapon arsenal of all five NWS, China continues to voice support for the total elimination of all nuclear weapon stockpiles. In its National Defence White Paper of 2006, China publicly states that it is "[p]ursuing a self-defensive nuclear strategy [...] of which the [...] goal is to deter other countries from using or threatening to use nuclear weapons against China".<sup>323</sup>

As is the case with the other four NWS, China too pursues a nuclear weapon modernisation program, albeit very slowly. The amount of nuclear warheads appears to hold relatively steady at an approximate number of 145 since the 1980's. In its White Paper, the

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<sup>320</sup> SIPRI, 1972 *op. cit.*; p. 496.

<sup>321</sup> Shadow Report on the Thirteen Practical Steps, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 14, 2007, p. 1.

<sup>322</sup> China Nuclear Forces, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 6, 2007.

<sup>323</sup> China's National Defence White Paper, 2006

Chinese Ministry of Defence has indicated that China “aims at progressively improving its force structure of having both nuclear and conventional missiles, and raising its capabilities in strategic deterrence and conventional strike under conditions of information-isation”.<sup>324</sup> At present however, the long-developed ballistic missiles have still not replaced China’s ageing ballistic missile force, and this is not expected to do so until the end of the decade. Upgrades for its ICBM-force slowly continue to be incorporated, with the objective of increasing the payload and range of its missiles. Furthermore, in response on the US plans on missile defence, China is reported to consider deploying multiple warheads on its missiles. The nuclear submarine deterrent of China is, compared to other NWS (with the possible exception of Russia), fairly underdeveloped. At present, it is estimated that China has only one nuclear armed ballistic missile submarine in operation, which has never undertook a deterrent patrol.<sup>325</sup> Development is continuing however on a new type of SSBN, but it is not expected to be deployed before the end of this decade as well. With respect to strategic bombers, China is not believed to have an aircraft whose specialised role it is to act as a nuclear weapon delivery vehicle.<sup>326</sup> US intelligence reports however, claim that China continues to improve its nuclear arsenal both quantitatively and qualitatively, with the size of its ICBM arsenal expected to triple in 2010.<sup>327</sup> Because of the ambiguity and lack of transparency surrounding China’s nuclear program, it is difficult to assess its compliance with the principle of irreversibility.

<b>China; Present-day Nuclear Forces</b>						
Type and Chinese designation	(US) designation	No. Deployed	Year first deployed	Range (km) <sup>328</sup>	Warhead loading	No. of warheads
<i>Short-range ballistic missiles</i> <sup>329</sup>						
	(DF-15 and DF-11)					
<i>Aircraft</i> <sup>330</sup>						

<sup>324</sup> *Ibid.* p. 6.

<sup>325</sup> China Nuclear Forces, [www.reachingcriticalwill.org](http://www.reachingcriticalwill.org), accessed on December 6, 2007.

<sup>326</sup> *Ibid.*

<sup>327</sup> Kucia, C. (2002), “Chinese Nuclear Forces to Grow, Report Says”, in: *Arms Control Today*, Vol. 32, No. 7, September 2002.

<sup>328</sup> Aircraft range is given for illustrative purposes only; actual mission range will vary according to flight profile and weapon loading (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>329</sup> The existence of tactical warheads is highly uncertain, but several low-yield nuclear tests in the 1970s and US Government statements in the 1980s and 1990s suggest that some tactical warheads may have been developed (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

Attack	(Qian-5 Others?)	?	1972-?	?	1 x bomb	~20
H-6	(B-6)	20	1965	3,100	1 x bomb	~20
<i>Land-based missiles</i>						
DF-21A	(CSS-5)	35	1991	2,100 <sup>331</sup>	1 x 200-300 kt	35
DF-31	(?)	0	(2007)	~7,250	1 x ?	
DF-31A		0	(2008- 2010)	~11,270	1 x ?	
DF-3A	(CSS-2)	16	1971	3,100 <sup>332</sup>	1 x 3.3 Mt	16
DF-4	(CSS-3)	22	1980	> 5,500	1 x 3.3 Mt	22
DF-5A	(CSS-4)	20	1981	13,000	1 x 4-5 Mt	20
<i>SLBM's</i>						
JL-1 <sup>333</sup>	(CSS-NX-3)	12	1986	> 1,770	1 x 200-300 kt	12
JL-2	(?)	0	(2008- 2010)	~8,000	1 x ?	
Total						~145 <sup>334</sup>

### 5.5. Sub Conclusion

When assessing the NWS' level of compliance with Article VI, it would be too premature to simply imply that since the NWS are still in possession of nuclear weapons almost forty years since the entry into force of the NPT, the merit of the Article VI can be declared utterly void. Nevertheless, apart from their agreements to the Thirteen Practical Steps of the 2000 NPT Review Conference, the NWS did not demonstrate any serious commitment to nuclear disarmament. Since the end of the Cold War however, the nuclear weapon arsenals of all the Nuclear Weapon States have indeed declined considerably, particularly those of the United States and the Soviet Union. There is therefore visible a clear quantitative trend downwards (with the possible exception of China), while the qualitative modernisation of the nuclear forces of all the

<sup>330</sup> A small stockpile of bombs with yields between 10 kt and 3 Mt is thought to exist for delivery by aircraft. Chinese aircraft are not believed to have nuclear weapon delivery as a primary role. Figures for aircraft are for nuclear-configured versions only (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>331</sup> The range of the DF-3A and the DF-21A missiles may be longer than is normally reported (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>332</sup> The range of the DF-3A and the DF-21A missiles may be longer than is normally reported (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>333</sup> The JL-1 SLBM has never been fully operational (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

<sup>334</sup> Additional warheads are thought to be in storage. The total stockpile is believed to comprise c. 200 warheads (SIPRI, FIRST Database Nuclear Forces, *op. cit.* 2007).

NWS nevertheless clearly continues. This unfortunately reflects the equivocality which is part of the first area of negotiations (the cessation of the nuclear arms race), for this refers both to the quantitative and qualitative components of nuclear weapon systems. The reduction and elimination of the nuclear arsenals must be in accordance with the principles of verification, transparency and irreversibility, and negotiations in good faith imply that no actions must impede the objective of nuclear disarmament.

Since 1996, all of the NWS have demonstrated their commitment to the principle of good faith by not undertaking any nuclear weapons testing by signing the CTBT. But the CTBT has not entered into force yet as it still awaits ratification of the US and China, nevertheless its principles and objectives have already become an internationally accepted norm. With respect to the commitment to negotiations towards nuclear disarmament however, no bilateral or multilateral negotiations are under way to seriously address this issue. In addition, the principles of verification, transparency and irreversibility have been seriously undermined by the US-Russian SORT treaty, for these principles were simply not incorporated in the treaty. Overall, none of the NWS (as well as the Non-NPT nuclear weapon states), have demonstrated any intention to renounce nuclear weapons in the foreseeable future, or have indicated any positive change in their nuclear security policies.

The main arguments of the Nuclear Weapon States for the lack of commitment for nuclear disarmament appear to focus on three elements. The United Kingdom, France and China refuse to disarm unilaterally as they await constructive bilateral negotiations between the US and Russia first, for they possess the largest arsenals of nuclear weapons and are therefore primarily responsible for taking the lead in nuclear disarmament. The other three NWS are not bound to any arms control treaties, although at least the United Kingdom and France have unilaterally reduced their nuclear weapon stockpiles. Secondly, without an agreement on a multilateral framework on nuclear disarmament (i.e. a Nuclear Weapons Convention), there appears to be little incentive to seriously negotiate disarmament. Thirdly, all NWS cite unknown future threats represented by state as well as non-state actors as a *raison d'état* for retaining nuclear weapons. This is further complicated by the fact that the non-NPT nuclear weapon states are not bound to the Treaty's requirements, while simultaneously demonstrating advancing their nuclear arsenals. This demonstrates the increased pressure on all NPT state parties to find a solution for addressing the disarmament efforts of those states outside the NPT. The preamble of the NPT, together with the final documents of the 1995 and 2000 NPT Review Conferences, nevertheless provides a detailed plan to fully implement the obligations and responsibilities of Article VI,

although it only concerns the states that are party to the NPT. Obviously, one the main challenges ahead is represented by the NPT's inability to deal with nuclear weapon states outside of its legal framework, for a solution for this issue might even be a solution for its own forty-year old quandary on nuclear disarmament.

## 6. Main Conclusion

This study commenced with a statement questioning the merit of Article VI of the NPT for nuclear disarmament. Almost forty years since the entry into force of the NPT, a number of conclusions can be drawn from this analysis. The first and foremost question would be; did Article VI live up to its expectations of nuclear disarmament? The answer *could* of course be bluntly put as utterly negative; The Five Nuclear Weapon States did not abolish their nuclear weapons, several non-NPT states did in fact acquire nuclear weapons while one NPT state party even withdrew from the Treaty, there is yet no Nuclear Weapon Convention such as the already established Chemical Weapon Convention and Biological Weapon Convention, and the qualitative aspects of the reduction of nuclear armaments are not sufficiently addressed (i.e. the modernisation of nuclear weapons). Furthermore, Article VI was intended to address the vertical proliferation of nuclear weapons on part of the NWS, whereas the objective of Article II was to concentrate on the restriction of horizontal proliferation among the NNWS.

The legally discriminatory disposition of the NPT however also provides for opportunities, despite its negative connotation. In its book on arms control, Siccama referred to the conditions for arms control negotiations, in which an absolute unequal military balance of power could provide for ideal conditions for negotiations. With respect to the NPT therefore, its discriminatory character *does* in fact provide a fertile ground for conducting negotiations on nuclear disarmament in the first place. For example, the five-yearly NPT Review Conference offers a multilateral negotiating forum on which to focus on collective issues regarding nuclear non-proliferation, nuclear energy and nuclear disarmament, although the negotiations are not primarily aimed at Article VI but do also address the other elements as part of a wider NPT framework. During these Review Conferences, additional pressure is put up by the NNWS and NGO's on the NWS to address nuclear disarmament. Since the obligations in Article VI rest upon all states of the NPT, and therefore not only on the NWS, the NWS can not afford to simply ignore the vast majority of the signatory states to adhere to their obligations and responsibilities. Ultimately therefore, the provision of a multilateral negotiating forum as a product of the NPT Review Conferences can therefore be considered as an important merit of Article VI for nuclear disarmament.

Quantitatively, the NWS often point out, the number of nuclear weapons have been decreased significantly. In addition, the risks to the uncontrolled proliferation of nuclear weapons could have been greater if there were absolutely no legal framework such as the NPT. But clearly,



customary international law and world opinion – represented by the vast majority of NNWS NPT signatories and NGO's– is clearly pitted against the five Nuclear Weapon States. The NWS have also not dismissed the concept of nuclear disarmament entirely; they have just not demonstrated sufficient commitment to adhering to their disarmament obligations. In the past forty years however, several confidence building measures have been introduced to promote a stable and fertile negotiating platform. These steps include the halting of global proliferation by the voluntary establishment of several Nuclear-Weapon-Free Zones in various areas of the world, as well as the formation of a Comprehensive Test-Ban Treaty, which has unfortunately not entered into force yet. Nevertheless, its principles and objectives have already become an internationally accepted norm among all states signatory to the NPT. All these steps demonstrate the principle of negotiating in 'good faith', the principle so notoriously present in Article VI itself. Good faith stipulates that trust must be given by more parties than one. Other treaties or confidence measures can assist in promoting this principle, and are regarded as small steps towards the ultimate objective of nuclear disarmament.

A second, vital component of the merit of Article VI lies in the series of events which took place following the end of the Cold War. The Final Documents of the 1995 and 2000 NPT Review Conferences, in addition to the 1996 Advisory Opinion of the International Court of Justice, resulted in a blueprint of implementation as well as a strengthened and stricter interpretation of Article VI. The lack of steps for disarmament was a large source of criticism on the phrasing of Article VI, which has (at least partially) been addressed by the subsequent agreements and interpretation. While there is still no strict verifiable and enforceable regime in place to implement any firm steps towards disarmament, at least some form of 'blueprint' is in place. The unilateral reductions of the United Kingdom and France following the end of the Cold War can certainly be regarded as a step in the right direction, albeit a change in nuclear posture is still left to be initiated. The White Papers published by the five Nuclear Weapon States however predict a bleak future, for none of the NWS have yet demonstrated any willingness to engage in short-term multilateral disarmament negotiations. The long-term nuclear security strategies with periods extending to the second half of the 21<sup>st</sup> Century also contribute to a disappointing outlook for nuclear disarmament. But can the unilateral reductions, nuclear arms control treaties, the Chinese declaration of No-First-Use of nuclear weapons, the establishment of several NWFZ's, be regarded as a successful consequence of Article VI of the NPT? Not likely. Besides the NPT, many other factors have influenced and continue to influence decisions on nuclear disarmament, such as alterations in the international balance of power caused by the ending of the Cold War, the events of September 11, 2001, or the rise of India and China. The planned

construction of a US or NATO Missile Defence Shield in Europe continues to undermine the fragile trust and confidence between Russia on one hand, and the United States and Europe on the other as well. Irrespective of the consequences of Article VI, the fact remains that its evolved context still provides truly unique legal obligations on five nuclear armed states to disarm. Moreover, it is evident to many state parties that at present there is yet no clear substitute for the Nuclear Non-Proliferation Treaty. Therefore, for as long as the legal framework of the Nuclear Non-Proliferation Treaty is in place, all states party will have to continue to keep the precarious and fragile Grand Bargain in place for as long as they all value the significance of contributing to global security.

## 7. Recommendations for Future Research

As already outlined in the problem definition, the primary focus of this thesis is on the legal dimension of Article VI. This does not mean that the theoretical framework of the (nuclear) disarmament and arms control discussion of the past sixty years is unimportant. It certainly is. However, in order to keep the scope of the thesis focused, it was decided to address the theoretical framework in brief. Further research should therefore be conducted on these aspects, and particularly on the transformation of the decades-old disarmament and arms control discussion and its effects upon Article VI of the NPT. Additionally, further research can also be done on the various theoretical concepts of disarmament and arms control theory to the establishment of the Non-Proliferation Treaty itself.

Another topic of interest not addressed in this thesis (again in order to keep the scope focused), is the discussion on the non-NPT states such as Israel, India, Pakistan, and North Korea. Analysing this predicament and finding possible solutions is important because they too influence the debate on nuclear disarmament heavily.

One of the main elements of the main conclusion centres on the realisation of a future Nuclear Weapon Convention – similar to the Biological Weapon Convention and the Chemical Weapon Convention. Several important aspects have to be analysed to address future challenges. For example, the focus of this study has been on the influence of NWS on nuclear disarmament, but what about the influence of NNWS on nuclear disarmament? And more importantly, what has been the influence of non-state actors (i.e. influence of NGO's on nuclear disarmament and the influence of non-state actors such as A.Q. Khan or terrorist organisations on nuclear *armament*?

Yet another important disarmament issue could be the question on why some NNWS party to the NPT (i.e. Libya, South Africa) discontinue their illegal nuclear weapon programs despite a lack of enforcement mechanisms on behalf of the international community? What can be learned from this experience and how can they be applied on states of concern such as Iran and North Korea. And for the Nuclear Weapon Weapons themselves; how to address the qualitative aspects of quantitatively reducing nuclear weapons? (i.e. the modernisation programs vs. the reduction of nuclear weapon stockpiles). What will be the consequences and in what way does it hampers future nuclear disarmament?

## 8. Policy Recommendations for Nuclear Disarmament

In order to set out a clear strategy for the achievement of nuclear disarmament, a number of recommendations have been outlined that can act as guidelines for policy advisors. First of all, all states party to the NPT and the Comprehensive Test-Ban Treaty should achieve the entry into force of the CTBT as soon as possible. At present, 44 ratifications are needed to achieve full entry into force, while the United States, China and Israel have signed but not ratified the treaty. Additionally, India, Pakistan and North Korea have not signed nor ratified the treaty. Secondly, the implementation and enforcement mechanisms of the NPT need to be strengthened in order to ensure full compliance with all the provisions of the Treaty. Thirdly, all states party to the NPT must declare renewed support for (strengthened) Nuclear Weapon Free Zone treaties and particularly to the principles of verification and security assurances as set out by the guidelines established by the 1999 Substantive Session of the United Nations Commission on Disarmament. The creation of a zone free of weapons of mass destruction in the Middle East can also contribute to peace and stability in the region. Fourthly, the United States and Russia will have to commence negotiations on a new arms control treaty which will supersede the soon-to-expire START and SORT treaties. Additionally, agreement will have to be reached on a new treaty dealing with weapons in outer space.

All states party to the NPT should prepare the groundwork for a future Nuclear Weapon Convention while using the NPT as the cornerstone for these negotiations. Instrumental to a successful Nuclear Weapon Convention is a set of multilaterally verifiable set of confidence building measures, of which some will be outlined below.

- The Nuclear Weapon States should pursue and conclude negotiations to declare legally binding and verifiable principles of No-First Use as part of a broad set of confidence building measures.
- In order to reduce the risk on accidental nuclear war, all Nuclear Weapon States (and nuclear weapon states not party to the NPT) should implement tighter and verifiable security measures in their nuclear security strategies, that will simultaneously act as confidence building measures for ensuing negotiations nuclear disarmament and on a treaty on general and complete disarmament.
- The Nuclear Weapon States with currently the largest nuclear arsenals (i.e. the United States and Russia) should implement transparent and verifiable de-alerting policies with respect to their nuclear weapon arsenals.

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## **Appendix A: Treaty on the Non-Proliferation of Nuclear Weapons (NPT)**

*Signed at Washington, London, and Moscow July 1, 1968*

*Ratification advised by U.S. Senate March 13, 1969*

*Ratified by U.S. President November 24, 1969*

*U.S. ratification deposited at Washington, London, and Moscow March 5, 1970*

*Proclaimed by U.S. President March 5, 1970*

*Entered into force March 5, 1970*

The States concluding this Treaty, hereinafter referred to as the "Parties to the Treaty",

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties of the Treaty, whether nuclear-weapon or non-nuclear weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the cooperation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the worlds human and economic resources,

Have agreed as follows:

#### Article I

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.

#### Article II

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.

#### Article III

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the

Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied to all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

#### Article IV

1. 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.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also



cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

#### Article V

Each party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a nondiscriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

#### Article VI

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.

#### Article VII

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

#### Article VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

#### Article IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the

date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to article 102 of the Charter of the United Nations.

#### Article X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

#### Article XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

*IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.*

*DONE in triplicate, at the cities of Washington, London and Moscow, this first day of July one thousand nine hundred sixty-eight.*

## **Appendix B: Members of the Eighteen Nation Disarmament Committee (1962-1968)**

- Brazil
- Bulgaria
- Burma
- Canada
- Czechoslovakia
- Ethiopia
- (France decided at the first meeting not to participate, explaining that it hoped that it might be possible later for the disarmament problem to be discussed among the powers that could contribute effectively to its solution)
- India
- Italy
- Mexico
- Nigeria
- Poland
- Romania
- Sweden
- Union of Soviet Socialist Republics
- United Arab Republic
- United Kingdom
- United States of America

## Appendix C: United Nations General Assembly Resolution 2028 (XX)

### 2028 (XX). Non-proliferation of nuclear weapons

#### *The General Assembly,*

Conscious of its responsibility under the Charter of the United Nations for disarmament and the consolidation of peace,

Mindful of its responsibility in accordance with Article 11, paragraph 1, of the Charter, which stipulates that the General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both,

Recalling its resolutions 1665 (XVI) of 4 December 1961 and 1908 (XVIII) of 27 November 1963,

Recognising the urgency and great importance of the question of preventing the proliferation of nuclear weapons,

Noting with satisfaction the efforts of Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and the United Arab Republic to achieve the solution of the problem of non-proliferation of nuclear weapons, as contained in their joint memorandum of 15 September 1965,<sup>1</sup>

<sup>1</sup> Official Records of the Disarmament Commission, Supplement for January to December 1965, document DC/227, annex 1, sect. E.

Convinced that General Assembly resolutions 1652 (XVI) of 24 November 1961 and 1911 (XVIII) of 27 November 1963 aim at preventing the proliferation of nuclear weapons,

Believing that it is imperative to exert further efforts to conclude a treaty to prevent the proliferation of nuclear weapons,

1. Urges all States to take all steps necessary for the early conclusion of a treaty to prevent the proliferation of nuclear weapons;

2. Calls upon the Conference of the Eighteen-Nation Committee on Disarmament to give urgent consideration to the question of non-proliferation of nuclear weapons and, to that end, to reconvene as early as possible with a view to negotiating an international treaty to prevent the proliferation of nuclear weapons, based on the following main principles:

(a) The treaty should be void of any loop-holes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form;

(b) The treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers;

(c) The treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament;

(d) There should be acceptable and workable provisions to ensure the effectiveness of the treaty;

(e) Nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories;

3. Transmits the records of the First Committee relating to the discussion of the item entitled "Non-proliferation of nuclear weapons", together with all other relevant documents, to the Eighteen-Nation Committee for its consideration;

4. Requests the Eighteen-Nation Committee to submit to the General Assembly at an early date a report on the results of its work on a treaty to prevent the proliferation of nuclear weapons.

1382nd plenary meeting,  
19 November 1965.

Convinced that the proliferation of nuclear weapons would endanger the security of all States and make more difficult the achievement of general and complete disarmament under effective international control,

Noting the declaration adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its first regular session, held at Cairo in July 1964,<sup>2</sup> and the Declaration entitled "Programme for Peace and International Co-operation" adopted by the Second Conference of Heads of State or Government of Non-Aligned Countries, held at Cairo in October 1964,

Noting also the draft treaties to prevent the proliferation of nuclear weapons submitted by the United States of America<sup>3</sup> and the Union of Soviet Socialist Republics,<sup>4</sup> respectively,

Noting further that a draft unilateral non-acquisition declaration has been submitted by Italy,<sup>5</sup>

<sup>2</sup> For the resolution entitled "Denuclearization of Africa" adopted by the Assembly of Heads of State and Government, see Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 105, document A/5975.

<sup>3</sup> See A/5963.

<sup>4</sup> Official Records of the Disarmament Commission, Supplement for January to December 1965, document DC/227, annex 1, sect. A.

<sup>5</sup> Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 106, document A/5976.

<sup>6</sup> Official Records of the Disarmament Commission, Supplement for January to December 1965, document DC/227, annex 1, sect. D.

## Appendix D: United Nations General Assembly Resolution 2373 (XXII)

### **2373 (XXII). Treaty on the Non-Proliferation of Nuclear Weapons**

*The General Assembly,*

*Recalling* its resolutions 2346 A (XXII) of 19 December 1967, 2153 A (XXI) of 17 November 1966, 2149 (XXI) of 4 November 1966, 2028 (XX) of 19 November 1965 and 1665 (XVI) of 4 December 1961,

*Convinced* of the urgency and great importance of preventing the spread of nuclear weapons and of intensifying international co-operation in the development of peaceful applications of atomic energy,

*Having considered* the report of the Conference of the Eighteen-Nation Committee on Disarmament, dated 4 March 1968,<sup>1</sup> and appreciative of the work of the Committee on the elaboration of the draft non-proliferation treaty, which is attached to that report,<sup>2</sup>

*Convinced* that, pursuant to the provisions of the treaty, all signatories have the right to engage in research, production and use of nuclear energy for peaceful purposes and will be able to acquire source and special fissionable materials, as well as equipment for the processing, use and production of nuclear material for peaceful purposes,

*Convinced further* that an agreement to prevent the further proliferation of nuclear weapons must be followed as soon as possible by effective measures on the cessation of the nuclear arms race and on nuclear disarmament, and that the non-proliferation treaty will contribute to this aim,

*Affirming* that in the interest of international peace and security both nuclear-weapon and non-nuclear-weapon States carry the responsibility of acting in accordance with the principles of the Charter of the United Nations that the sovereign equality of all States shall be respected, that the threat or use of force in international relations shall be refrained from and that international disputes shall be settled by peaceful means,

1. *Commends* the Treaty on the Non-Proliferation of Nuclear Weapons, the text of which is annexed to the present resolution;

2. *Requests* the Depositary Governments to open the Treaty for signature and ratification at the earliest possible date;

3. *Expresses the hope* for the widest possible adherence to the Treaty by both nuclear-weapon and non-nuclear-weapon States;

4. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament and the nuclear-weapon States urgently to pursue negotiations on effective measures relating to the 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;

5. *Requests* the Conference of the Eighteen-Nation Committee on Disarmament to report on the progress of its work to the General Assembly at its twenty-third session.

*1672nd plenary meeting,  
12 June 1968.*

<sup>1</sup>*Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 28, document A/7073-1/C/230.*

<sup>2</sup>*Ibid.*, annex 1.

## **Appendix E: Thirteen Practical Steps of the 2000 NPT Review Conference**

1. The importance and urgency of signatures and ratifications, without delay and without conditions and in accordance with constitutional processes, to achieve the early entry into force of the Comprehensive Nuclear-Test-Ban Treaty.
2. A moratorium on nuclear-weapon-test explosions or any other nuclear explosions pending entry into force of that Treaty.
3. The necessity of negotiations in the Conference on Disarmament on a nondiscriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices in accordance with the statement of the Special Coordinator in 1995 and the mandate contained therein, taking into consideration both nuclear disarmament and nuclear non-proliferation objectives. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate commencement of negotiations on such a treaty with a view to their conclusion within five years.
4. The necessity of establishing in the Conference on Disarmament an appropriate subsidiary body with a mandate to deal with nuclear disarmament. The Conference on Disarmament is urged to agree on a programme of work which includes the immediate establishment of such a body.
5. The principle of irreversibility to apply to nuclear disarmament, nuclear and other related arms control and reduction measures.
6. An unequivocal undertaking by the Nuclear Weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI.
7. The early entry into force and full implementation of START II and the conclusion of START III as soon as possible while preserving and strengthening the Treaty on the Limitation of Anti-Ballistic Missile Systems as a cornerstone of strategic stability and as a basis for further reductions of strategic offensive weapons, in accordance with its provisions.
8. The completion and implementation of the Trilateral Initiative between the United States of America, the Russian Federation and the International Atomic Energy Agency.
9. Steps by all the nuclear-weapon States leading to nuclear disarmament in a way that promotes international stability, and based on the principle of undiminished security for all:

- Further efforts by the nuclear-weapon States to reduce their nuclear arsenals unilaterally;
  - Increased transparency by the Nuclear Weapon States with regard to the nuclear weapons capabilities and the implementation of agreements pursuant to article VI and as a voluntary confidence building measure to support further progress on nuclear disarmament;
  - The further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process;
  - Concrete agreed measures to further reduce the operational status of nuclear weapons systems;
  - A diminishing role for nuclear weapons in security policies to minimize the risk that these weapons will ever be used and to facilitate the process of their total elimination;
  - The engagement as soon as appropriate of all the nuclear-weapon States in the process leading to the total elimination of their nuclear weapons.
10. Arrangements by all nuclear-weapon States to place, as soon as practicable, fissile material designated by each of them as no longer required for military purposes under IAEA or other relevant international verification and arrangements for the disposition of such material for peaceful purposes, to ensure that such material remains permanently outside military programmes.
  11. Reaffirmation that the ultimate objective of the efforts of States in the disarmament process is general and complete disarmament under effective international control.
  12. Regular reports, within the framework of the strengthened review process for the Non-Proliferation Treaty, by all States parties on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, and recalling the advisory opinion of the International Court of Justice of 8 July 1996.
  13. The further development of the verification capabilities that will be required to provide assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a nuclear-weapon-free world.



## Appendix F: Overview of the Nuclear-Weapon-Free Zones

Treaty Name	Overview	Protocols	US	UK	France	China	Russia
Antarctica	Antarctica, including ice shelves	None	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified
Tlatelolco	Latin America and Caribbean  Open for signature: 14 Feb. 1967  Entry into force: 25 Apr. 1969  Indefinite duration	I: Prescribes the application of denuclearisation status for which France, the Netherlands, UK, and US are responsible are de jure or de facto responsible within the treaty's limits	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	N/A	N/A
		II: Requires the NWS to respect the denuclearisation status and to refrain from the use or the threat of use of nuclear weapons against treaty parties	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified
Rarotonga	South Pacific  Open for signature: 6 Aug. 1985  Entry into force: 11 Dec. 1986  Indefinite duration	I: Calls on each party to apply prohibitions of the treaty with respect to areas within its geographical boundary for which it is internationally responsible	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	N/A	N/A
		II: Calls on the NWS to refrain from the use or threat of use of nuclear explosive devices against parties to the treaty or against another's territories within the NWFZ	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified
		III: Calls on the NWS to refrain from testing nuclear explosive devices within the treaty zone	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified
Bangkok	Southeast Asia  Open for signature: 15 Dec. 1995  Entry into force: 28 Mar. 1997  Indefinite duration	I: Currently open for signature, it would require the NWS to undertake to respect the Treaty and not to contribute to any act that violates it, and to refrain from the use or threat of use of any nuclear weapons against states party to the Treaty or within the NWFZ	Not yet signed	Not yet signed	Not yet signed	Not yet signed	Not yet signed
Pelindaba	Africa  Open for signature: 11 Apr. 1996  Entry into force: Not yet  Indefinite duration	I: Calls on the NWS not to use or threaten the use of nuclear explosive devices against signatories, or within the NWFZ	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified	Signed/ Ratified
		II: Calls on the NWS to refrain from testing, assisting, or encouraging the testing of					

		nuclear explosive devices in the NWFZ					
		III: Calls on each party, with respect to the territories for which it is de jure or de facto internationally responsible, to apply the requirements of the treaty. Protocol II was opened for signature and ratification to France and Spain	N/A	N/A	Signed/Ratified	N/A	N/A
Central Asia	Central Asia Open for signature: 8 Dec. 2006 Entry into force: Not yet Indefinite duration	Currently open for signature, it calls on the NWS not to use or threaten the use nuclear weapon or other nuclear explosive device against any party to the treaty; and not to contribute to any act that constitutes a violation of the treaty or of its protocol	Not yet signed	Not yet signed	Not yet signed	Not yet signed	Not yet signed

## **Appendix G: Article 31 of the Vienna Convention on the Law of Treaties**

### *Article 31 (General Rule of Interpretation)*

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
  - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.  
(Emphasis supplied.)
4. A special meaning shall be given to a term if it is established that the parties so intended.