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INTERNATIONAL LAW AND THE PROLIFERATION OF NUCLEAR WEAPONS

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I. INTRODUCTION

International nuclear non-proliferation and disarmament efforts represent a unique synthesis between the theories and instruments of international law, international relations, and national security. States have long pursued international legal instruments – treaties, resolutions, conventions, etc. – to promote security interests. Since the time before the first nuclear weapon was tested in July of 1945, policymakers, diplomats and others have worried about the consequences of the increasing number of states developing or otherwise acquiring nuclear weapons, and have pursued international law as a means of controlling that threat. Indeed, the first resolution passed by the United Nations General Assembly called for the elimination of nuclear weapons.¹ While the Cold War focused attention on efforts to control the bilateral U.S.-Soviet nuclear arms race, the demise of the superpower rivalry has shifted full attention to the proliferation question in arms control efforts.

Today, the international community recognizes that weapons of mass destruction, principally nuclear weapons, are the primary threat to international peace and security.² To address this danger, a vast array of legal instruments have been assembled to maintain peace and security in the nuclear age by reducing existing nuclear arsenals, limiting the circumstances in which nuclear weapons may

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1. JOZEF GOLDBLAT, *ARMS CONTROL AGREEMENTS: A HANDBOOK* 12 (Praeger Publishers 1983).

2. President Chirac of France, Prime Minister Blair of the United Kingdom and Chancellor Schroeder of Germany noted in an October 8th New York Times op-ed, "As we look to the next century, our greatest concern is proliferation of weapons of mass destruction, and chiefly nuclear proliferation. We have to face the stark truth that nuclear proliferation remains the major threat to world safety." Editorial, Jacques Chirac, Tony Blair & Gerhard Schroder, *A Treaty We All Need*, N.Y. TIMES, Oct. 8, 1999, at A27.

be used and preventing more nations from acquiring them.³ This article will argue that the system of international law built to control the spread of nuclear weapons is being weakened by the lack of progress by the nuclear weapon states⁴ toward fulfilling their nuclear disarmament commitments.

II. WORLD PEACE THROUGH WORLD LAW

International law, as it relates to the control and spread of nuclear weapons, consists of a collection of largely Cold War-era treaties predicated on the belief that both the spread and existence of large arsenals of nuclear weapons represent a threat to international peace and security. More importantly, these agreements,

3. On May 26, 1972 President Nixon and General Secretary Brezhnev signed the ABM Treaty and the Interim Agreement on the Limitation of Strategic Offensive Arms (SALT I). See DENNIS MENOS, *ARMS CONTROL FACT BOOK 91* (McFarland & Co. 1985). The Antiballistic Missile (ABM) Treaty limited the deployment of national missile defenses by either nation. See *id.* at 40-41. The Strategic Arms Limitation Talks (SALT) agreements in 1972 and 1979 placed limits on the numbers of intercontinental ballistic missile (ICBM) launchers, submarine launched ballistic missile (SLBM) launchers, and heavy bombers. While these limits essentially were not lower than the then existing levels of such delivery vehicles and required few actual reductions, the SALT agreements were successful in capping the strategic nuclear missile race, "structur[ing]" the U.S.-Soviet strategic relationship, and paving the way for the arms reductions of the 1980s and 1990s. See Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3462. In the 1987 Intermediate Nuclear Forces Treaty, the United States and Soviet Union agreed for the first time to eliminate an entire class of nuclear weapon delivery systems. See Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of their Intermediate-Range and Shorter-Range Missiles, Dec. 8, 1987, U.S. - U.S.S.R., TREATY DOC. NO. 100-11 [hereinafter INF Treaty]. Pursuant to the INF Treaty, all deployed and non-deployed missile systems with ranges between 500 and 5,500 kilometers were destroyed. See *id.* at art. II.

Finally, the Strategic Arms Reduction Treaties (START I & II) signed in 1991 and 1993 reduced the number of each side's deployed strategic warheads from 12,000 to 6,000, see Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, July 31, 1991, U.S.-U.S.S.R., S. Treaty Doc. No. 102-20, at 2 (1991) [hereinafter START I], and 3,500 should START II come into force, see Treaty Between the United States of America and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms, Jan. 3, 1993, U.S.-Russ., S. Treaty Doc. No. 103-1, at 2 (1993) [hereinafter START II], far below Cold War peak amounts, see Memorandum of Understanding on the Establishment of the Data Base Relating to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, July 31, 1991, U.S.-U.S.S.R., art. II, S. Treaty Doc. No. 102-20, at 328-333 (1991).

4. Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) stipulates that, "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." Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, art. IX, para. 3, 6839 T.I.A.S. 483, 492-93, 729 U.N.T.S. 161, 174-75. All other state parties are referred to in this article as "non-nuclear weapon states."

particularly those in the 1970s that placed limits on U.S. and Soviet nuclear arsenals, were based on the idea that nuclear arms limitations and arms reductions could not be undertaken unless done verifiably and in parallel.

The idea of enforceable, parallel and incremental arms reduction was explored in *World Peace Through World Law*, Louis Sohn and Grenville Clark's precedential book on enhancing the peace-making and enforcing capacities of the United Nations.⁵ Sohn and Clark put forth a comprehensive plan for strengthening the UN Charter to give the organization broad powers to promote and enforce international peace.⁶ They argued that the key to lasting and sustainable world peace "lies in recognizing without reserve that there can in truth be 'no peace without law,' and that for world order disarmament is indispensable."⁷ Mindful of the specter of increasingly large arsenals of increasingly destructive nuclear weapons spreading to an ever-growing number of nations, they argued that the traditional balance of power, i.e. efforts to prevent war through deterrence or a "balance of terror," would provide no solid assurance of peace.⁸ Sohn and Clark instead advocated a process through which all nations would verifiably, gradually, and in parallel relinquish their national military forces over a twelve-year period.⁹

Their proposal, first made in a 1953 document entitled *Peace through Disarmament and Charter Revision*, was offered in the context of a comprehensive plan for an effective system of enforceable world law. In addition to complete disarmament under international safeguards, Sohn and Clark advocated the creation of a system of laws against international violence including the use of force except in self defense, world judicial tribunals to interpret and apply laws, an international police force operated by the strengthened United Nations, and effective world machinery to mitigate global disparities between rich and poor nations, binding on all states.¹⁰ Their proposals were also made in the context of great hope, which was particularly expressed in the second edition

5. See GRENVILLE CLARK & LOUIS B. SOHN, *WORLD PEACE THROUGH WORLD LAW* (2d ed. 1960).

6. See *id.*

7. *Id.* at 206.

8. *Id.*

9. See *id.* at 207. It is important to note that Sohn and Clark were referring not only

of *WORLD PEACE THROUGH WORLD LAW*, published in 1960.¹¹ Unlike the original, the 1960 edition was published after proposals made in September 1959 by the Soviet Union and United Kingdom for "general and complete" or "complete" disarmament.¹² In the forward to that edition, Sohn and Clark wrote:

it is unlikely that any amount of disparagement or obstruction will be effective to suppress these important proposals. But even should they be temporarily suppressed, it is as certain as can be that, in view of the unwillingness of peoples to submit indefinitely to the burdens and risks of the arms race without a real effort to stop it, the subject of total and universal disarmament and all that must go with it will soon come to the front again.¹³

Forty years later it seems that while general and complete disarmament—or even simply nuclear disarmament—has not been achieved or even approached, Sohn and Clark were correct in their assertion that the issue would not disappear. Several key elements of the international nuclear non-proliferation regime resemble some of the specific components of their disarmament plan. For example, the Sohn and Clark plan called for the creation of a UN Nuclear Energy Authority to guard against the diversion of nuclear materials from peaceful to war-making purposes, and to promote the peaceful uses of nuclear energy.¹⁴ This resembles the work of the International Atomic Energy Agency (IAEA) safeguard system, a key component of the 1968 Nuclear Non-Proliferation Treaty (NPT) regime, in verifying compliance with the provisions of the Treaty.¹⁵ The plan similarly called for the establishment of an independent, international Inspection Service responsible for veri-

11. *Id.* at xiii.

12. *Id.* at xi.

13. *Id.*

14. *Id.* at xxvii.

15. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5, at art. III, 6839 T.I.A.S. at 487-89, 729 U.N.T.S. at 172. Article III, paragraph 4 of the NPT states that "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." *Id.* The Safeguard Agreement of each individual state party to the NPT includes a declaration of the amounts and locations of fissile material and facilities used in that nation's nuclear programs. The

fying compliance with and reporting violations of the disarmament plan.

III. NON-PROLIFERATION THROUGH WORLD LAW

Despite its many merits, Sohn and Clark's proposal for world peace through world law was never implemented. The intellectual and logical attraction of their argument aside, the international community has not yet matured to the point at which such a proposal could be feasible. Nevertheless, their argument for promoting peace through the rule of law is, in many respects, relevant to contemporary discussions of nuclear non-proliferation and disarmament issues. While no single overarching authority exists, an elaborate system of multilateral treaty regimes has been assembled to prevent the proliferation of weapons of mass destruction. These include, among others, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),¹⁶ the Comprehensive Nuclear Test Ban Treaty (CTBT),¹⁷ the Antiballistic Missile (ABM) Treaty,¹⁸ the Strategic Arms Reductions Treaties (START I & II),¹⁹ the Intermediate Nuclear Forces (INF) Treaty,²⁰ the Geneva Protocol of 1925,²¹ the Biological Weapons Convention²² and the Chemical Weapons Convention.²³ Recent developments and the lack of progress by the nuclear weapon states toward fulfilling their disarmament commitments threaten to dismantle the entire framework of international law as it relates to the nuclear weapons. In this section, the article will examine the threat currently posed to the treaties and legally binding instruments that are most important to the international non-proliferation regime.

16. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5.

17. Comprehensive Nuclear Test Ban Treaty, *opened for signature* Sept. 24, 1996, S. TREATY DOC. NO. 105-28, 35 I.L.M. 1439.

18. Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, U.S.-U.S.S.R., 23 U.S.T. 3435, T.I.A.S. No. 7503.

19. START I & II, *supra* note 4.

20. INF Treaty, *supra* note 4.

21. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, 94 L.N.T.S. 95.

22. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S. 163.

A. *The NPT Regime*

Throughout the 1940s and 50s the United States and the United Nations sought to develop programs that would allow states to benefit from the peaceful applications of nuclear technology without developing military technologies. The Baruch Plan²⁴ and President Eisenhower's Atoms for Peace program²⁵ are among the examples of efforts initiated under the assumption that states could be persuaded to forgo nuclear weapons in exchange for assistance in developing nuclear energy. This approach proved flawed, and by the early 1960s some Kennedy Administration experts were predicting that the world would be inhabited by up to twenty states with nuclear weapons fully integrated into their military arsenals by the end of the following decade.²⁶ The United States and other nations thus attempted to strengthen international arrangements to forestall that result. The NPT was the principal response.

Signed in 1968 and entered into force in 1970, it committed the parties to the Treaty, 182 non-nuclear weapon states, to never develop or otherwise acquire nuclear weapons and to submit to international safeguards intended to verify compliance with this commitment.²⁷ In exchange, these 182 states were promised unfet-

24. In the winter of 1945 the U.S. State Department formed the Acheson-Lilienthal Committee to examine the feasibility of transferring atomic energy to United Nations (UN) control. RICHARD SMOKE, NATIONAL SECURITY AND THE NUCLEAR DILEMMA: AN INTRODUCTION TO THE AMERICAN EXPERIENCE IN THE COLD WAR 127 (McGraw-Hill 1993). The Committee's report concluded that the U.S. stockpile of nuclear weapons could be safely destroyed if its proposal for UN control of atomic energy was implemented. *Id.* The United States then submitted the proposal included in the Acheson-Lilienthal report to the UN as the Baruch Plan, which would have transferred to a new UN agency the exclusive ownership and management of all atomic materials everywhere in the world from the mining of uranium to nuclear reactors. *Id.* The United States and the Soviet Union could not agree on specific terms, and after a series of proposals and counterproposals, the Baruch Plan was removed from UN consideration. *Id.* at 128.

25. In a 1953 speech before the UN General Assembly President Eisenhower "suggested that the nuclear powers transfer some fissionable materials to an international organization that would supervise their use 'for peaceful purposes.'" *Id.* at 129.

26. There are numerous reports from this era addressing the proliferation threat. For example, the U.S. Arms Control and Disarmament Agency (ACDA) Director, William Foster, said in an August 1964 memo that, unless "inhibitions against the development of further national nuclear capabilities" became stronger "we will soon be faced with a world in which there are ten and then possibly twenty states having national nuclear capabilities." Memorandum from William Foster, to Dean Rusk, Non-Proliferation of Nuclear Weapons, (Aug. 14, 1964) (on file with U.S. ACDA, FOIA case 8782), *quoted in* GEORGE BUNN, ARMS CONTROL BY COMMITTEE: MANAGING NEGOTIATIONS WITH THE RUSSIANS 71 (Stanford Univ. Press 1992).

27. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5, at arts. II, III, 6839 T.I.A.S. at 487-88. 729 U.N.T.S. at 171-72.

tered access to peaceful nuclear technologies.²⁸ The five nuclear weapon states, the United States, Soviet Union (now Russia), United Kingdom, France, and China, pledged to engage in disarmament negotiations aimed at the ultimate elimination of their nuclear arsenals in NPT Article VI.²⁹ This central bargain – non-proliferation in exchange for eventual nuclear disarmament – is the foundation upon which the NPT regime rests.

Since the Treaty had been given a twenty-five year life span with an option for permanent, incremental or no extension thereafter,³⁰ the international community had to agree in 1995 to either extend the Treaty indefinitely, something the United States very much wanted,³¹ or extend it for a fixed period,³² which could have led to its eventual termination. A significant number of key non-nuclear weapon states were dissatisfied with the progress made by the nuclear weapon states in fulfilling their Article VI side of the bargain.³³ Many of these non-nuclear weapon states were reluctant to accept a permanent NPT for fear of being locked into what they saw as an inherently discriminatory regime.³⁴ While the NPT explicitly does not legitimize the arsenals of the nuclear weapon states, many were concerned that a permanent NPT would remove the incentive for those states to reduce their arsenals.

In order to ameliorate this concern, the NPT state-parties at the 1995 Review and Extension Conference negotiated an associated consensus agreement called the Statement of Principles and Objectives for Nuclear Non-Proliferation and Disarmament, intended to strengthen the regime and, in effect, condition the extension of the Treaty.³⁵ The Statement of Principles and Objectives pledged the NPT state-parties to work toward several primary objectives.³⁶ These included universalization of NPT membership and adherence, a reaffirmation of the Article VI commitments of the nuclear

28. *Id.* at art. IV, 6839 T.I.A.S. at 489, 729 U.N.T.S. at 173.

29. *Id.* at arts. IV, VI, 6839 T.I.A.S. at 489-90, 729 U.N.T.S. at 173.

30. *Id.* at art. X, 6839 T.I.A.S. at 494, 729 U.N.T.S. at 175.

31. George Bunn, *Expanding Nuclear Options: Is the U.S. Negating its Non-Use Pledges?*, 26 ARMS CONTROL TODAY 7, 8 (1996).

32. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5 at art. X, 6839 T.I.A.S. at 494, 729 U.N.T.S. at 175.

33. See, e.g., David A. Koplow, *Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?*, 1993 WIS. L. REV. 301, 312-13.

34. See *id.*

35. U.N. DEP'T FOR DISARMAMENT AFFAIRS, 2000 REVIEW CONFERENCE OF THE PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS, PRESS KIT, 2000, at Fact Sheet 5, Decision 2, U.N. Doc. DPI/2085 (2000) [hereinafter 2000 REVIEW CONFERENCE].

36. *Id.*

weapon states to pursue measures in good faith related to eventual nuclear disarmament, and the completion of the Comprehensive Test Ban Treaty (CTBT) by the end of 1996.³⁷ The Statement of Principles and Objectives also called for the commencement of negotiations for a fissile material cutoff treaty, efforts by the nuclear weapon states to reduce global nuclear arsenals, the encouragement of the creation of new nuclear weapon free zones, and further steps to assure the non-nuclear weapon states against the use or threat of use of nuclear weapons.³⁸

Finally, the Statement of Principles and Objectives also included an agreement to strengthen the IAEA's capacity to verify that non-nuclear weapon states did not divert materials and resources from peaceful nuclear programs to nuclear weapon programs.³⁹ Revelations after the Persian Gulf War that Iraq had advanced further than previously thought in its efforts to develop nuclear weapons despite its membership in the NPT regime, as well as recurring problems with North Korea, underscored the importance of enhancing the IAEA's verification capabilities. In response to these concerns, the IAEA last year completed the negotiation of an enhanced safeguards protocol enabling the Agency to use environmental monitoring techniques to detect trace amounts of residue left behind during the enrichment of uranium and plutonium. As of today, 48 nations have signed the accord, but only eight have brought it into force.⁴⁰ Work is still needed to attain signature and entry into force by as many NPT non-nuclear weapon states as possible, especially those with nuclear facilities.

At the 1995 Review Conference, the states parties to the NPT also agreed to a strengthened review process that included the conduct of Review Conferences every five years and Preparatory Committee (PrepCom) meetings in each of the three years prior to the Review Conferences. The agreement establishing this new process stipulated that the PrepComs would meet to consider "principles, objectives, and ways. . . to promote the full implementation of the Treaty, as well as its universality, and to make recommendations thereon to the Review Conferences."⁴¹ The agreement further notes that the Review Conferences should look forward as well as back, stating that, "[t]hey should evaluate the results of the period

37. *Id.*

38. *Id.*

39. *Id.*

40. *Strengthened Safeguard Systems: Additional Protocols*, International Atomic Energy Agency, available at <http://www.iaea.org/worldatom/updates/safeguards.html>.

41. 2000 REVIEW CONFERENCE, *supra* note 28, at Fact Sheet 5, Decision 1.

they are reviewing, including the implementation of undertakings of the States parties under the Treaty, and identify the areas in which, and means through which, further progress should be sought in the future.”⁴²

Together, these provisions enable the states parties to the NPT to meet almost annually to discuss substantive issues relevant to the Treaty, a significant improvement over the previous, quintennial structure in place prior to the 1995 Review Conference. In effect, as part of the agreement to make permanent the NPT, the non-nuclear weapon states were given greater ability and opportunity to address concerns about progress by the nuclear weapon states toward fulfilling their half of the NPT’s basic bargain. However, as the first enhanced NPT Review Conference began on April 24, 2000,⁴³ the NPT regime is in serious trouble.

B. *National Politics and the NPT Regime*

The U.S. Senate rejection of the CTBT⁴⁴ efforts to amend the Antiballistic Missile (ABM) Treaty to allow deployment of a national missile defense,⁴⁵ the stalled START process, the military coup in Pakistan⁴⁶ – the first in a nuclear-equipped nation – and last year’s nuclear tests by India and Pakistan⁴⁷ underscore the perilous condition of the Treaty regime. These issues and others demonstrate the impact that national politics can have on international legal arrangements. In the United States, the issues of national missile defense and the CTBT in particular demonstrate the significance of the intersection between national policies and the NPT.

In terms of missile defense, while President Clinton and former president Yeltsin both referred to the ABM Treaty as the “cornerstone of strategic stability,”⁴⁸ some in the United States are seeking deployment of a national missile defense system that would seem-

42. *Id.*

43. *See id.*

44. The Senate voted 51-48 to reject ratification of the CTBT. *See Senate Votes Down Nuclear Test Ban Treaty*, CNN.com (Oct. 13, 1999), at <http://www.cnn.com/ALLPOLITICS/stories/1999/10/13/test.ban>.

45. *See John King, Clinton, Putin Exchange Complaints in Oslo Meeting*, CNN.com (Nov. 2, 1999), at <http://www.cnn.com/WORLD/europe/9911/02/clinton.putin/index.html>.

46. *See Musharraf Won't Set Timetable to Restore Democracy in Pakistan*, CNN.com (Nov. 5, 1999), at <http://www.cnn.com/ASIANOW/south/9911/04/pakistan.musharraf>.

47. *See Indian Prime Minister Defends Test Decision*, CNN.com (May 11, 1999), at <http://www.cnn.com/WORLD/asiapcf/9905/11/india.nuclear.01>.

48. Thomas Graham & John B. Rhineland, *An ABM Olive Branch*, MOSCOW TIMES, Sept. 28, 1999, at 1, available at 1999 WL 6809140.

ingly require U.S. violation or abrogation of the Treaty. Since 1972 the ABM Treaty has prohibited the deployment of a nationwide missile defense by either the United States or Russia, and limited each side to one ABM deployment site with 100 interceptors. By limiting the amount of defenses either side could deploy, the ABM Treaty made the SALT limitations and START reductions of the superpower nuclear arsenals possible. If one nation could deploy an effective nationwide defense against a missile attack, the other would be forced to build larger arsenals in order to overwhelm those defenses and thereby maintain a credible deterrent. If one nation had an effective nationwide defense, it might be more inclined to initiate a first strike with the expectation that the remaining arsenal of the undefended opponent would be insufficient to penetrate the defensive shield. Either of these situations was destabilizing and certainly would have rendered further arms control impossible. The ABM Treaty thus represents an effort to employ legal instruments to contain the arms race.

With the report of the Rumsfeld Commission in 1998, many in Congress assert that they are concerned anew with the alleged missile threat from so-called "rogue states" such as Iran, Iraq, and North Korea.⁴⁹ They argue that the ABM Treaty is a relic of the Cold War and that U.S. national security requires the deployment of a limited national missile defense system against the threat of missile attacks from such nations regardless of the ABM Treaty.⁵⁰ The Clinton Administration pursued discussions with the Russians intended to attain agreement from Moscow to negotiate amendments to the ABM Treaty that would allow the deployment of a limited defense.⁵¹

The link between strategic offensive and defensive systems remains as critical today as it was during the Cold War. In a letter to President Clinton, then President Yeltsin remarked that unilateral U.S. deployment of a NMD system "would have extremely dangerous consequences for the entire arms control process."⁵² Russian Defense Ministry officials have stated publicly that unilat-

49. In July 1998, the Commission to Assess the Ballistic Threat to the United States, headed by former Secretary of Defense Donald Rumsfeld, released a report warning that ballistic missiles from rogue nations could strike U.S. cities with "little or no warning" perhaps within five years. See Laura Myers, *Report Cites Missile Attack Dangers*, ASSOCIATED PRESS, July 16, 1998, 1998 WL 66962220.

50. See, e.g., *Yeltsin Warns Clinton Against Missile Defense*, BALTIMORE SUN, Nov. 3, 1999, at A26.

51. See *id.*

52. *Id.*

eral U.S. NMD deployment would do "unacceptable damage to the reduction of strategic offensive weapons."⁵³ China and France have similarly indicated that such deployments, even those designed to ward off attack from so-called rogue states, would cause them to significantly expand rather than contract their strategic nuclear arsenals.⁵⁴ In fact, an all-out nuclear arms race among the United States, Russia and China could conceivably result from unilateral U.S. NMD deployment. Needless to say, such activity would be highly damaging to the NPT regime. If the NPT regime is to be preserved, we must maintain the viability of the ABM Treaty and continue the START nuclear arms reduction process.

The CTBT is similarly important to preserving the system of international law relating to controlling the spread of nuclear weapons. The relationship between the test ban and the nuclear non-proliferation regime is explicit. The Preamble of the NPT expresses the desire of the state-parties to see the completion of a comprehensive test ban.⁵⁵ The Statement of Principles and Objectives adopted in 1995 as previously discussed, specifically called for the completion of the test ban by the end of 1996.⁵⁶ This was the only objective given a specific timeline for achievement, a fact that underscores the importance of the test ban to the health of the NPT regime. Indeed, non-nuclear weapon states have long regarded the CTBT as a litmus test of the nuclear weapon states' willingness to live up to their half of the basic NPT bargain. While the CTBT was completed in 1996 as regarded by the Statement of Principles and Objectives, the Treaty has not yet entered into

53. Ambassador Thomas Graham, Jr., *Strengthening Arms Control*, 23 WASH. Q. 183, 193 (2000) (attributing the quotation to Russian Defense Minister Sergeyev). Deputy Defense Minister Nikolai Mikhailov stated in October 1999 that if the United States deployed NMD, Russia would deploy enough nuclear warheads to overwhelm it. Daniel Schoor, *The New Arms Race*, CHRISTIAN SCIENCE MONITOR, Oct. 29, 1999, at 11.

54. See Craig R. Whitney, *France Presses for a Power Independent of the U.S.*, N.Y. TIMES, Nov. 7, 1999, at 9.

55. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 5, at Preamble, 6839 T.I.A.S. at 484-86, 729 U.N.T.S. at 169, 171. A paragraph in the Preamble of the NPT reads, "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." *Id.*

56. 2000 REVIEW CONFERENCE, *supra* note 28, at Fact Sheet 5, Decision 2.

force.⁵⁷ U.S. Senate rejection of the Treaty in 1999⁵⁸ was seen by some non-nuclear weapon states as an act of bad faith and could serve as a rationale for freeing them from their commitment to a permanent NPT.⁵⁹

C. *Legally-Binding Security Assurances*

The complex of legally binding treaty-related security assurances is another important element of international law related to nuclear non-proliferation. The Statement of Principles and Objectives includes a reference to the negative security assurances⁶⁰ offered to the NPT non-nuclear weapon states by the nuclear weapon states, serving as a principal means of de-legitimizing nuclear weapons, and thereby retarding their proliferation. The United States first extended negative security assurances to NPT non-nuclear weapon states in the context of the 1978 UN Special Session on Disarmament, pledging that it "[would] not use nuclear weapons against any non-nuclear weapons state party to the NPT. . . except in the case of an attack on the United States, its territories or armed forces, or its allies, by such a state allied to a nuclear-weapons state or associated with a nuclear-weapons state in carrying out or sustaining the attack."⁶¹ This exception was included to hedge against a massive conventional assault in Europe from a non-nuclear member of the Warsaw Pact or in Asia from

57. See Comprehensive Nuclear Test-Ban Treaty (CTBT), *supra* note 19, at art. XIV, 35 I.L.M. at 1457. Article XIV of the CTBT stipulates that the CTBT cannot enter into force until the forty-four states that possess nuclear reactors or research facilities and are members of the Conference on Disarmament have ratified the treaty. *Id.* These states include Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States of America, Vietnam, and Zaire. *Id.* at Annex 2, 35 I.L.M. at 1458.

58. See *Senate Votes Down Nuclear Test Ban Treaty*, CNN.com (Oct. 13, 1999), at <http://www.cnn.com/ALLPOLITICS/stories/1999/10/13/test.ban/>.

59. See Jacques Chirac, *supra* note 3, at A27.

60. "Negative security assurances" are commitments from the nuclear weapon states not to attack or threaten to attack the non-nuclear weapon states with nuclear weapons. See MENOS, *supra* note 4, at 31. "Positive security assurances," as I use the term in this article, are commitments by the nuclear weapon states to come to the assistance of non-nuclear weapon states if they should be attacked with nuclear weapons. See, e.g., WILLIAM EPSTEIN, *THE LAST CHANCE: NUCLEAR PROLIFERATION AND ARMS CONTROL* 105-06 (1976). Both are essential to reducing the incentive of non-nuclear weapon states to acquire nuclear weapons.

61. Bunn, *supra* note 23, at 7.

North Korea.⁶² Similar pledges were subsequently offered by the Soviet Union and the United Kingdom.⁶³

In 1995, the nuclear weapon states again issued non-use of nuclear weapons pledges against non-nuclear weapon states.⁶⁴ Then-U.S. Secretary of State Warren Christopher delivered the United States assurance that it would not use nuclear weapons against any non-nuclear weapon state party to the NPT "except in the case of an invasion or any attack on the United States, its territories, its armed forces or other troops, its allies, or on a State toward which it has a security commitment, carried out or sustained by such a non-nuclear weapon State in association or alliance with a nuclear weapon State."⁶⁵ Pursuant to this pledge, then, the United States retained the right to use nuclear weapons first only if engaged in a military conflict with another nuclear weapon state, a state not party to the NPT, or an NPT non-nuclear weapon state attacking the United States in alliance with a nuclear weapon state. France, the United Kingdom and Russia offered similar negative security assurances, subsequently harmonized and submitted as the basis of UN Security Council Resolution 984 on security assurances.⁶⁶ Since China has consistently maintained an unequivocal "no first-use" policy⁶⁷ - the ultimate negative security assurance - as a part of its nuclear doctrine since its first nuclear test, it did not need to issue a separate statement in 1995.

The negative security assurances offered in the context of the 1995 Review and Extension Conference were a critical part of the *quid pro quo* for indefinite extension of the NPT and are central to the viability of the regime. After all, if a non-nuclear weapon state is going to permanently forswear nuclear weapons, the least it can expect from nuclear weapon state-parties is that it will not be attacked with nuclear weapons. Further, the five nuclear weapon states have signed legally binding protocols to the nuclear weapon free zone treaties for Latin America, the South Pacific, and Africa, composing altogether some 90 nations.⁶⁸ In these protocols, the

62. *Id.* at 8.

63. See MENOS, *supra* note 4, at 31.

64. U.S. Offers Nuclear Security Guarantees, UPI, Apr. 5, 1995, LEXIS, Nexis Library, UPI File.

65. Bunn, *supra* note 23, at 8.

66. *Id.* at 8-9.

67. See MENOS, *supra* note 56, at 31.

68. Prohibition of Nuclear Weapons in Latin America, Feb. 14, 1967, 22 U.S.T. 762, 783, 634 U.N.T.S. 281, 326 [hereinafter Treaty of Tlatelolco], was entered into force on April 22, 1968. The treaty has been signed by 33 nations and ratified by 32—Cuba being the exception. See Ragnhild Ferm, *Annex A: Arms Control and Disarmament Agreements, in*

nuclear weapon states have undertaken to never use or threaten to use nuclear weapons against nuclear weapon free zone treaty parties. The World Court implied in a 1996 Advisory Opinion that the NPT-related assurances commitments are as binding legally as are the nuclear weapon free zone undertakings.⁶⁹

D. *International Law and Security Assurances: NATO as a Case Study*

While the NPT nuclear weapon states have all extended negative security assurances to non-nuclear weapon state-parties to the NPT, all but China maintain policies including the option of using nuclear weapons first in the event of a future conflict. In exploring the intersection between national policy and international law, an interesting case study is the issue of the nuclear weapon use policies of the North Atlantic Treaty Organization and its member states. NATO currently maintains a policy retaining the option to use nuclear weapons first, a policy that is potentially inconsistent with the 1995 NPT-related negative security assurances made by its member states. On one hand the United States, the United Kingdom and France have pledged never to use nuclear weapons against the NPT non-nuclear weapon states. On the other, as

SIPRI YEARBOOK 1999: ARMAMENTS, DISARMAMENTS, AND INTERNATIONAL SECURITY, at 708 (Stockholm Int'l Peace Res. Inst. eds. 1999). It establishes a nuclear weapon free zone (a region in which all states agree not to acquire or otherwise place or allow outside states to place nuclear weapons) in Latin America. See Treaty of Tlatelolco, *supra*, 22 U.S.T. at 765, 634 U.N.T.S. at 330. The South Pacific Nuclear Free Zone Treaty, Aug. 6, 1985, 1445 U.N.T.S. 177, 177, 178, 182 [hereinafter Treaty of Rarotonga], was entered into force on December 11, 1986 and establishes a nuclear weapon free zone in the South Pacific. See *id.* at art. 3, 1445 U.N.T.S. at 179. The Treaty of Pelindaba, African Nuclear-Weapon-Free Zone Treaty (Pelindaba Text) *opened for signature*, Apr. 11, 1996, 35 I.L.M. 698 (1996), has been signed by 52 of 53 nations—Madagascar was the exception as of July 1997 – but as of January 1999 had not yet entered into force. All of the nuclear weapon states have signed Protocols to these treaties which legally commit them not to use or threaten to use nuclear weapons against states that are parties to those treaties. See Ferm, *supra*, at 708-22. All five nuclear weapon states have ratified the Protocols to the Treaty of Tlatelolco and every state but the United States has ratified the Protocols to the Treaties of Pelindaba and Rarotonga. The Treaty on the Southeast Asia Nuclear Weapon-Free Zone, Dec. 15, 1995, 35 I.L.M. 635 [hereinafter Treaty of Bangkok] which was signed on December 15, 1995, by ten nations and went into force in 1997, establishes a nuclear weapon free zone in Southeast Asia and includes a similar protocol, which has not been signed by the nuclear weapon states because of provisions in the Treaty extending the Zone into adjacent high seas areas. See Armitav Acharya & Sola Ogunbanwo, *The Nuclear Weapon-Free Zones in South-East Asia and Africa*, in SIPRI YEARBOOK 1998: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 443-49 (Stockholm Int'l Peace Res. Inst. eds. 1998).

69. International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (July 8, 1996), at <http://www.icj-cij.org/icjwww/idecisions/isummaries/iunanaummary960708.htm>.

members of NATO these three states retain the right to introduce nuclear weapons into future conflicts, presumably against non-nuclear weapon states parties to the NPT since the Treaty includes 182 non-nuclear weapon states – and all states except Cuba, India, Israel and Pakistan – among its membership.

This inconsistency between the policies of NATO and its nuclear weapon state members and the legally binding commitments made by those states has serious practical implications. In today's world it makes nuclear proliferation more likely. For the NATO Alliance, the most powerful conventional force in history, to insist that it needs the threat of retaliation with nuclear weapons to deter, for example, the biological weapons of Saddam Hussein, raises the question why Iran or Egypt or virtually anyone else does not need them as well. Retaining a first-use of nuclear weapons option directly undermines efforts to persuade non-nuclear weapon states to continue to refrain from developing nuclear weapons. The first-use option suggests that these weapons have many roles and are essential to the security and greatness of a state. Furthermore, by retaining the option to use nuclear weapons first, NATO doctrine reinforces the high political value already attributed to nuclear weapons, thereby making non-proliferation more difficult to achieve.

Some critics, however, contend that NATO cannot adopt a policy of failing to introducing nuclear weapons into future conflicts, because such a policy would leave the members of the Alliance vulnerable to an attack with chemical or biological weapons. They argue that a NATO policy of not using nuclear weapons first would undermine the current doctrine of "calculated ambiguity," which relies on uncertainty in the minds of potential aggressors about the level of response to such attacks for deterrence. It is important to keep in mind, however, that the NPT-related negative security assurance commitments and those contained in nuclear weapon free zone treaty protocols do not include any exceptions that would allow the first use of nuclear weapons in response to a chemical or biological weapon attack.

Nevertheless, when the United States signed the African Nuclear Weapon Free Zone Treaty, the Treaty of Pelindaba, the legal doctrine of "belligerent reprisal" was cited by a White House official to justify the right to use nuclear weapons to retaliate against a chemical or biological weapon attack under certain very limited circumstances. The doctrine is an old rule of customary international law providing that a nation attacked by another state in a manner in

violation of international law has the right to suspend any international commitments between itself and the offending party.⁷⁰ Thus, if a nation violates the international law rule against the first use of chemical weapons established by the 1925 Geneva Protocol, now considered part of customary international law binding on all states forever,⁷¹ the victimized nation could respond with whatever weapons it chooses, including nuclear weapons.⁷² The response must be proportional (which would almost never be the case in responding to attacks with chemical and biological weapons except in the massive attack on a city example mentioned above) and necessary to stop the attack.⁷³

In recognition of these factors, several non-nuclear weapon state members of the Alliance have begun to press for NATO adoption of a policy of not introducing nuclear weapons into future conflicts. In a November 1998 interview, German Foreign Minister Joschka Fischer indicated his belief that the world has changed enough for the NATO to adjust its policy regarding the use of nuclear weapons.⁷⁴ His suggestion that NATO could adopt "a no-first-use" policy, was sharply criticized by the United States. Secretary of State Madeleine Albright, supported by Secretary of Defense William Cohen and other senior administration officials, remarked that the United States "do[es] not believe that a [NATO nuclear posture] review is necessary" and that the Alliance has "the right nuclear strategy."⁷⁵ Nevertheless, several NATO allies, including Canada and Germany, expressed their support for a review of the policy before the April 1999 Summit in Washington.⁷⁶

At the April Summit, largely as a result of these efforts, NATO opened the door to such a review. The Washington Summit Communiqué states in paragraph 32:

70. See Bunn, *supra* note 23, at 9.

71. See *id.* at 7, 9.

72. *Id.*

73. *Id.*

74. Rainer Poertner & Olaf Ihlau, *We Do Not Want Unilateral Action*, DER SPIEGEL, Nov. 23, 1998, at 87.

75. Press Conference at NATO Headquarters, U.S. Secretary of State Albright, NATO Headquarters, (Dec. 8, 1998) available at <http://www.nato.int/usa/state/s981208a.htm>.

76. REPORT OF THE STANDING COMMITTEE FOR FOREIGN AFFAIRS AND INTERNATIONAL TRADE IN THE CANADIAN PARLIAMENT (Dec. 1998), CANADA AND THE NUCLEAR CHALLENGE: REDUCING THE POLITICAL VALUE OF NUCLEAR WEAPONS FOR THE TWENTY-FIRST CENTURY. The standing committee report included a recommendation that Ottawa urge NATO to review its nuclear weapons policy. *Id.* at 10. Similarly, Resolution number NR 22/ 26200-V, which called upon NATO to consider the adoption of a no first use policy, was passed in the Dutch Parliament on December 3, 1998.

In light of overall strategic developments and the reduced salience of nuclear weapons, the Alliance will consider options for confidence and security-building measures, verification, non-proliferation and arms control and disarmament. The Council in Permanent Session will propose a process to Ministers in December for considering such options. The responsible NATO bodies would accomplish this.⁷⁷

At a news conference on April 24, Canadian Foreign Affairs Minister Lloyd Axworthy confirmed the willingness of NATO "to have a review initiated" of its nuclear weapon policies. Mr. Axworthy added: "It's a message that the [Canadian] Prime Minister took [to] certain NATO leaders. . . I think we have now gained an acknowledgement that such a review would be appropriate and that there would be directions to the NATO Council to start the mechanics of bringing that about."

Leading up to the NATO Ministerial meetings in December, however, some believed that certain members of the Alliance were seeking to exclude the nuclear weapon use doctrine issue from the agenda of the review, prompting Mr. Axworthy to renew his campaign. In a December 14, 1999 interview he noted that "it's just absolute insanity that we would not focus on this matter. I find it very disturbing."⁷⁸ He pledged to use the Ministerial to push for a formal Alliance review of its nuclear weapon use policy.⁷⁹ As a result of his efforts, the communiqué agreed upon by NATO foreign ministers on December 15, 1999 announced that NATO had "decided to set in train" the process agreed to at the Washington Summit and "instructed the Council in Permanent Session to task the Senior Political Committee. . . to review Alliance policy options in support of confidence and security building measures, verification, non-proliferation, and arms control and disarmament."⁸⁰ The nuclear doctrine issue was not specifically excluded from the review and likely will be addressed.

It is important to the success of the NPT regime for NATO to consider adopting a policy of not using nuclear weapons first upon completion of the review in December 2000. That is, NATO

77. Press Release, North Atlantic Treaty Organization, Washington Summit Communique: An Alliance for the 21st Century, NAC-S(99)64, at ¶32 (Apr. 24, 1999), available at <http://nato.int/docu/pr/1999/p99-064e.htm>.

78. Allan Thompson, *Axworthy Renews War on Nuclear Weapons*, TORONTO STAR, Dec. 14, 1999, at 1, available at 1999 WL 24008810.

79. *Id.*

80. Press Release, North Atlantic Treaty Organization, Ministerial Meeting of the North Atlantic Council, M-NAC2(99)166, at ¶44 (Dec. 15, 1999), available at <http://www.nato.int/docu/pr/1999/p99-166e.htm>.

should consider adopting a policy pursuant to which the Alliance declares that it will not introduce nuclear weapons into future conflicts. Such a step would signal to the world that, instead of relying on policies based on the threat of nuclear retaliation to prevent massive conventional attack or the use of chemical or biological weapons against its members, NATO is prepared to work to promote legal structures designed to control such weapons. In other words, NATO should, like Sohn and Clark, demonstrate its commitment to non-proliferation through world law rather than pursue security through "deterrents" or "a balance of terror"⁸¹. NATO's principal strategy regarding all weapons of mass destruction should be to strive toward a merger of the norms against the use and acquisition of these weapons into customary international law binding on all nations. With the Chemical Weapons Convention, the Biological Weapons Convention and the Geneva Protocols banning the use, manufacture, stockpiling, or otherwise possession of chemical and biological weapons the world has made significant progress in this respect. Today, there is yet no comparable agreement concerning nuclear weapons, and none is likely in the foreseeable future. In the medium term, the objective should be to build a sufficiently strong NPT regime so that the norms of non-use and non-proliferation of nuclear weapons gradually merge with customary international law.

IV. THE NPT: WHAT LIES AHEAD

The NPT cannot be so strengthened without effective leadership from the nuclear weapon states. The current international political environment, lacking the kind of leadership from the nuclear weapon states contemplated by the NPT Statement of Principles and Objectives could open the door to the gradual disintegration of the NPT and the widespread proliferation of nuclear weapons if not corrected soon. Once opened, that door will be difficult to close, creating a truly nightmarish situation for international security. Every future conflict, no matter how small, could run the risk of going nuclear and it would be almost impossible to keep nuclear weapons from falling into the hands of dangerous non-state actors such as terrorist organizations, religious cults and criminal conspiracies.

As the Statement of Principles and Objectives remains unimplemented in important respects, some non-nuclear weapon state-par-

81. See CLARK & SOHN, *supra* note 6, at xv.

ties to the Treaty are becoming increasingly dissatisfied with the lack of progress in nuclear arms reductions and, by extension, their perception that the nuclear weapon states are not committed to NPT Article VI disarmament obligations.⁸² There is a real threat that the NPT could begin to unravel, perhaps beginning subsequent to and despite the April 2000 Review Conference. In one scenario, nations such as North Korea, Iran or Iraq eventually may test nuclear weapons. This could oblige some states presently committed to non-proliferation – Japan, Egypt, and South Korea, for example – to reconsider their status as non-nuclear weapon states. If they were to do so, the NPT regime would be destroyed and, because of the delicate compromise it contains, could never be revived, which would undermine international stability and security worldwide.

In a second scenario, states remaining committed to nuclear non-proliferation and disarmament, for example the more than 110 nations party to nuclear weapon free zone agreements, may determine that they no longer benefit from their membership in what is perceived as an inherently discriminatory NPT regime. These states, not proliferation risks but rather frustrated disarmers, may withdraw from the NPT and opt to ensure their security through other regional arrangements. While withdrawal by these non-nuclear weapon states from the NPT would not itself be proliferative, it would nevertheless destroy the non-proliferation regime and the legitimacy of its non-proliferation norms.

V. HOW TO FIX IT

This outcome is not written in stone. The NPT regime will survive if the nuclear weapon states demonstrate leadership. While the United Kingdom and France have taken important steps to reduce their nuclear arsenals in recent years and have signed and ratified the CTBT,⁸³ the United States and Russia also must take strong action.⁸⁴ Recent reports indicate that the Russian Government is prepared to press for Duma ratification of START II before

82. See, e.g., Brad Roberts, *The Road Ahead for Arms Control*, 23 WASH. Q. 219, 225-26 (Spring 2000).

83. *World Nuclear Powers: A Status Report*, 31 NAT'L J. 3044, 3046-47 (1999).

84. France has scaled back its Submarine Launched Ballistic Missile (SLBM) force and has completely eliminated its ground-based nuclear arsenal and dismantled its test site. The United Kingdom has also reduced its arsenal of deployed strategic nuclear weapons to a level lower than that of any other NPT nuclear weapon state and has reduced the alert status of its remaining nuclear arsenal.

the Review Conference.⁸⁵ This would be an important step. The United States and Russia should undertake good faith efforts to ratify and secure entry into force of the CTBT, vigorously pursue further nuclear arms reductions to much lower levels and seek deployment of NMD in an agreement preserving the viability of the ABM Treaty. In addition, the nuclear weapon states should consider declaring they will not introduce nuclear weapons into future conflicts or, at least to agree to make the 1995 negative security assurances legally binding. These steps should be taken in the context of the NPT Article VI commitments of the nuclear weapon states, perhaps in the form of a new Statement of Principles and Objectives. All of the states parties could then adopt therein a consensus position that there will be no threats of any damage to the NPT regime until the 2005 Review Conference in exchange for these commitments from the nuclear weapon states. Everything must be done to minimize the risk that any state might consider withdrawal from the NPT.

The greater hope, then, is a decision at the 2005 Conference to reaffirm the fundamental importance of international commitment to the NPT. If the NPT regime is reaffirmed at the Review Conference of 2005, the nuclear disarmament process could continue. After 2005 the United States and Russia could agree to a limit of 500 nuclear tactical warheads for each, which could then lead to a limit of 1000 total nuclear weapons for each the United States and Russia. In turn, this could lead to the establishment of a five-power nuclear disarmament process with three main objectives:

1. Reduction of U.S. and Russian nuclear arsenals to residual levels in the low 100s;
2. Reduction of the nuclear arsenals of China, France and the U.K. to levels below 100; and
3. Elimination of the nuclear arsenals of India, Pakistan and Israel, but with their fissile material retained on their territories under international safeguards as a hedge against a breakdown of the agreement. These three states would also agree to join the NPT as non-nuclear weapon states.⁸⁶

In addition, all the non-nuclear weapon states would repledge their non-nuclear status and all the NPT parties would commit themselves to joint action – including force if necessary – against

85. *Russia Mulls Nuclear Treaty*, ASSOCIATED PRESS, Mar. 21, 2000.

86. Only four states (India, Pakistan, Israel and Cuba) are not parties to the NPT. See Robert Holloway, *Historic Consensus Breathes New Life into Non-Proliferation Treaty*, AGENCE FRANCE PRESSE, May 21, 2000, at 1, available at 2000 WL 2797794.

any violator. These levels would be the end point until the world has sufficiently changed to permit contemplation of nuclear weapon prohibition. By this stage, the NPT regime would be so strong that the principle of non-use of nuclear weapons and the NPT norm of non-proliferation would be considered to have merged into customary international law binding on all states forever.

VI. CONCLUSION

If a world similar to that envisioned by Louis Sohn – a world characterized by sustainable peace – is to emerge in this new century, the proliferation of nuclear weapons must be prevented. The NPT regime must be maintained, strengthened and eventually recognized as customary international law. The alternative to a world in which security and nuclear non-proliferation are pursued through international legal structures is a world in which states seek security through a militaristic race to the top constituting a humanitarian race to the bottom. It is overwhelmingly in the interest of the international community to preserve the NPT regime and promote the rule of law in world affairs.