

**The American Problem:
The United States and Noncompliance
in the World of Arms Control and Nonproliferation**

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I. Introduction

Noam Chomsky tells a story that he attributes to St. Augustine: A captured pirate was brought before the emperor Alexander the Great; "How dare you molest the sea?" asked Alexander. "How dare you molest the whole world" replied the pirate, who continued, "Because I do it with a little ship only, I am called a thief; you, doing it with a great navy, are called an emperor."¹

In a number of ways, as Chomsky notes, the story of the pirate and emperor can serve as a powerful analogy for many contests over international power, legality and justice in the modern world. The story is used here as a useful lens for an assessment of compliance with international nuclear arms control, nonproliferation and disarmament treaties and with the larger set of expectations of how states should behave on these issues. It serves to link very directly the questions of identifying and dealing with noncompliance with a particular arms control agreement (or any other agreement for that matter) with the questions of who decides, and how, about what are the treaty obligations or expectations to be complied with, and what constitutes noncompliance.

The significance of such an approach becomes apparent if one asks, for instance, why the United States with its many thousands of nuclear weapons claimed a right to attack and occupy Iraq, and threatens North Korea and Iran, for having tried to acquire such weapons. Or, more generally, why is proliferation of nuclear weapons now presented as a more significant threat to global security than continued possession of these weapons? Or, why is there no international convention banning nuclear weapons despite the United Nations having called for the elimination of nuclear weapons and of all other weapons of mass destruction in the very first General Assembly resolution, on 24 January 1946?

This essay will focus on the United States and its compliance with nuclear arms control and nonproliferation agreements. There are broad reasons for this focus. Firstly, with a view to formulating a normative perspective on compliance, it seems reasonable to insist that existing and proposed mechanisms for establishing compliance with international agreements and expectations ought to be judged by how well they can work when applied to the most powerful state in the system. The United States has had a dominant position in international relations for many decades. This position has become even more powerful with the end of the Cold War. The U.S. dominates the global economy; it has a military capability far greater than that of any other state; it has an almost overwhelming presence in international financial and political institutions; it has a pervasive cultural presence. These sources of power enable the U.S. to strongly shape the context and the conduct of government policy in other states. This includes determining the nature of international negotiations, the resulting agreements, and the interpretation of commitments therein. This is particularly important at a time when the United States'

¹ Noam Chomsky, *Pirates and Emperors: International Terrorism in the Real World* (Montreal: Black Rose Books, 1987), p. 9.

leadership believes that it should enter into treaties only "when they carve American interests in stone."² There are obvious implications and challenges for the international community and for democratically-minded American citizens concerned that their nation should not seek to set itself above or apart from the rest of the world.

Secondly, as the dominant state in the international system the United States has been particularly concerned about noncompliance with nuclear agreements. For many years U.S. military planners, strategic analysts, associated academics and arms control activists have sought to find means to identify and deal with noncompliance, especially in regions the U.S. sees as economically or politically important.³ By and large, this search has been through the lens of U.S. national interests.⁴ Not surprisingly, less scrutiny has been given to the U.S. record of noncompliance.

Thirdly, the United States is directly implicated in many of the major problems over the past decade involving compliance with both long-standing and recent nuclear arms control agreements. The US has already withdrawn from the 1972 Anti-Ballistic Missile Treaty, the Cold War era bilateral superpower pact banning defenses against ballistic missiles; it is the first withdrawal by any state from any arms control treaty. The future of the 1996 Comprehensive Test Ban Treaty, which bans all nuclear weapons tests, is in doubt as the US starts research and development of new low yield nuclear weapons. Of particular importance are concerns about its compliance, and its handling of non-compliance by others, with the 1968 Nuclear Nonproliferation Treaty, the multilateral agreement to restrict the further spread of nuclear weapons and to eliminate existing ones. It is worth noting that, because of US policy, agreements on other types of weapons of mass destruction are also in jeopardy. The U.S. has imposed conditions on its ratification of the 1993 Chemical Weapons Convention, including the right to refuse inspections of U.S. facilities, that are seen as violating the treaty.⁵ It has also rejected the draft protocol on verification of the Biological Weapons Conventions.⁶

A similar focus has been suggested by Harald Muller, who argues that the "most powerful state in the world has slowly but visibly moved away from embracing multilateralism, international law, and international organization as central components of national policy." He argues, therefore, that rather than international organizations or the treaties dealing with arms control and disarmament, "today's problems lie in the

² Thom Shanker, "White House Says the U.S. is Not a Loner, Just Choosy," *The New York Times*, July 31, 2001.

³ The literature and institutional effort that has been generated is enormous.

⁴ Noam Chomsky, *American Power and the New Mandarins*, (New York, NY: Vintage Books, 1969).

⁵ John Gee, the deputy director general of the Organization for the Prohibition of Chemical Weapons, the body charged with implementing the treaty, observed that the U.S. conditions on its ratification appear "prima facie to be contrary to the provisions of the convention." "The CWC at the Two-Year Mark: An Interview with Dr. John Gee," *Arms Control Today*, April/May 1999, p.8.

⁶ Vernon Loeb, "U.S. Won't Back Plan to Enforce Germ Pact", *The Washington Post*, July 21, 2001.

actors" and thus any remedy must address "the actor problem".⁷ Put bluntly, for the majority of the international community the 'actor problem' is the *American problem*.

It may seem presumptuous to make the United States the focus of an assessment of compliance. The United States, by and large, prides itself on the seriousness with which it takes its international commitments and the efforts it makes to protect and enhance freedom and security for all. These claims are strongly held across domestic political boundaries. President Clinton's 1999 report, "A National Security Strategy For A New Century," announces that, "at this moment in history, the United States is called upon to lead — to marshal the forces of freedom and progress; to channel the energies of the global economy into lasting prosperity; to reinforce our democratic ideals and values; to enhance American security and global peace."⁸ President Bush's 2002 National Security Strategy declared "Today, the United States enjoys a position of unparalleled military strength and great economic and political influence. In keeping with our heritage and principles, we do not use our strength to press for unilateral advantage. We seek instead to create a balance of power that favors human freedom... By making the world safer, we allow the people of the world to make their own lives better."⁹

But others have made similar claims in the past. As the story of the pirate and the emperor reveals, emperors claim legitimacy for their exercise of power by justifying it as being for the "common good," in this case protection of the law-abiding against pirates. The fact that emperors have to seek some kind of larger legitimacy indirectly registers the presence of the invisible majority, who are neither pirates nor emperors and may feel beset by both pirates and emperors. While the pirate may not care, the emperor faces more prevalent, enduring, and demanding needs to justify the empire and seek consent for imperial authority or keep facing challenges, any of which may in time become a problem.

Before proceeding further, the implicit question of whether the United States is an imperial power needs to be made explicit. Michael Doyle has argued that 'empire' is not about territoriality as much as it is a relationship where one state uses force, or other forms of power, to control the exercise of sovereignty by another state, and offered as a definition that:

"Empire... is a relationship, formal or informal, in which one state controls the effective political sovereignty of another political society. It can be achieved by force, by political collaboration, by economic, social or cultural dependence.

⁷ Harald Müller, "Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement", *The Nonproliferation Review*, Summer 2000, pp. 88-89.

⁸ The White House, *A National Security Strategy For a New Century*, December 1999, <http://www.globalsecurity.org/military/library/policy/national/nss9912.htm>.

⁹ The White House, *The National Security Strategy of the United States of America*, September 20, 2002, <http://www.globalsecurity.org/military/library/policy/national/nss-020920.pdf>

Imperialism is simply the process or policy of establishing or maintaining empire."¹⁰

The evidence of United States imperialism is painfully clear and all too familiar to many states and people in the global South. The United States has a long history, going back to its founding, of intervening, often violently and with appalling effect, in other countries.¹¹ A major study of the use and threat of use of force by the United States between 1946 and 1975 lists 215 incidents in which U.S. armed forces were used "as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continuing contest of violence."¹² The list excludes actual wars. The familiar examples of U.S. intervention include the overthrow of the governments of Guatemala and Iran, its efforts to overthrow the government of Cuba, the war against Vietnam, the bombing of Cambodia and Laos, and the destabilization of Nicaragua.¹³ The end of the Cold War brought little change. A follow-up study looking at the use and threat of use of force between 1989 and 1998 observed that "unencumbered by Cold War fears of sparking confrontation with the powerful Soviet Union, American policy makers turned frequently to threats and the use of force".¹⁴ The US invasion, conquest and occupation of Afghanistan in 2001 and of Iraq in 2003, and the subsequent threats of use of force against North Korea, Syria and Iran need to be seen as recent expressions of a more enduring pattern.

Matching the history of U.S. imperial attitudes and practices is an equally long tradition of claims to noble intent and denial of its imperial practice; the claims made by Presidents Clinton and Bush marked no new ground. William Appleman Williams has noted that for U.S. policy makers and the larger elite, "transforming the realities of expansion, conquest, and intervention into pious rhetoric about virtue, wealth, and democracy reached its culmination during the decades after World War II."¹⁵ If anything the "pious rhetoric" has become more desperate, with growing calls to embrace the American empire as an instrument for the common good of humanity.¹⁶ It is worth recalling Noam Chomsky's cautionary note from the time of the Vietnam war, as the United States unleashed the largest aerial bombardment in history:

¹⁰ Michael Doyle, *Empires* (Ithaca, NY: Cornell University Press, 1986), p.45.

¹¹ For a list of U.S. interventions, excluding declared wars, from 1787-1941, see William Appleman Williams, *Empire as a Way of Life: An Essay on the Causes and Character of America's Present Predicament Along With A Few Thoughts About An Alternative* (Oxford, Oxford University Press, 1980).

¹² Barry M. Blechman and Stephen S. Kaplan, *Force Without War: U.S. Armed Forces as a Political Instrument* (Washington D.C.: The Brookings Institution, 1978), pp. 547-553.

¹³ Noam Chomsky, *Deterring Democracy* (London: Verso, 1991).

¹⁴ Barry M. Blechman and Tamara Cofma Wittes, *Defining Moment: The Threat and Use of Force in American Foreign Policy Since 1989*, Henry L. Stimson Centre, Occasional Paper No. 6, May 1998.

¹⁵ Williams, op. cit., p. ix.

¹⁶ See for example Michael Ignatieff, "The American Empire- Get Used to It," *The New York Times Magazine*, January 5, 2003, pp. 22-27; and Max Boot, "American Imperialism? No need To Run From The Label," *USA Today*, May 6, 2003.

It is an article of faith that American motives are pure, and not subject to analysis... Although it is nothing new in American intellectual history -- or, for that matter, in the general history of imperialist apologia... The long tradition of naiveté and self-righteousness that disfigures our intellectual history, however, must serve as a warning to the Third World, if such a warning is needed, as to how our protestations of sincerity and benign intent are to be interpreted.¹⁷

With these considerations in mind, this essay begins with a discussion of legitimacy, fairness, and justice, introducing briefly the criteria for legitimacy and fairness in international law and institutions offered by Thomas Franck and the idea of justice as a process advanced by John Rawls. These ideas underlie the presumptions of community that make possible consensual international agreements – the alternative being the imposition of an arrangement, with compliance becoming a synonym for obedience. They also serve to establish a context for judging the institutions, processes and outcomes associated with the origin, nature, and enforcement of arms control and nonproliferation agreements.

The following section looks at the origins and development of nuclear arms control and its place in the policies of the superpowers, especially the United States, in the Cold War. It focuses on how the ideas, values, agreements, and practices of arms control were linked to changing perceptions and circumstances of power and of the role of those bureaucratic institutions most responsible for the conduct of the Cold War.

The end of the Cold War and absence of any clear countervailing capacity, international or domestic, able to contain an imperial United States has thrown the arms control process into possibly terminal crisis. To get a sense of the dynamics of the crisis, the chapter looks at the example of the 1972 Anti-Ballistic Missile (ABM) Treaty, once seen as a corner stone of superpower arms control and then dismissed by leading U.S. policy makers as a cold war relic. In particular, it considers the repeated efforts by the United States to re-interpret the Treaty to allow it deploy a national missile defense and its eventual withdrawal from the Treaty in late 2001.

Turning to multilateral arms control agreements, the chapter looks at the 1996 Comprehensive Test Ban Treaty. It is an example of the pursuit of advantage by a great power and how a treaty was first resisted, then subverted, and finally denied and undermined by the U.S. nuclear weapons laboratories, military planners and policy makers committed to the use of force.

The U.S. has become ever more concerned about noncompliance – its own noncompliance notwithstanding – with the nuclear nonproliferation regime, in particular the 1968 Nuclear Nonproliferation Treaty (NPT). It has cited noncompliance as

¹⁷ Noam Chomsky, *American Power and the New Mandarins*, (New York, NY: Vintage Books, 1969), pp.330-1.

justification for its threats and waging of war. The chapter therefore looks in detail at the NPT, its origins, and the pattern of its enforcement, especially over the past decade. As cases, the paper addresses how the weapons states have avoided complying with their commitments, despite efforts by the international community, and how they have dealt with noncompliance by Israel, Iraq, North Korea, India and Pakistan. The recent U.S. campaign against Iran's covert efforts to develop nuclear weapons is not addressed here.¹⁸ These cases show that what matters for the U.S. in determining and responding to noncompliance with the NPT is not the nature or degree of noncompliance but the particular U.S. interest in these states and their respective regions. It is suggested that rather than a "double standard," it is an American standard that is applied.

The overall argument of the chapter is that even elementary criteria of legitimacy, justice, and fairness are hard to find in either the origins, content, or enforcement of international arms control and nonproliferation agreements. It is argued that the degree of noncompliance by the emperor is so systemic as to dwarf anything a pirate could possibly conceive. But this structural noncompliance is not the real issue. Compliance is not the ultimate goal that the international community (states and people) seeks, it is merely an effect. The goal is peace and justice, and for that much stronger transnational institutions for participatory democracy and a disposition for justice are required. As many have long recognized, an America dominated by powerful, increasingly global economic interests, an entrenched scientific-military-industrial complex, and driven by an imperial ideal is the most important obstacle to this goal.¹⁹

II. A Prelude On Legitimacy, Fairness, and Justice

Arms control agreements do not spring fully formed into a waiting world. They are the result of struggles, sometimes intense and long fought, which have pitched states against each other, and have involved bitter, drawn out battles within and between national bureaucracies, politicians, and publics. They carry the marks of these struggles in their timing, text, and operation. It is important therefore to attend to the politics, diplomacy and context of treaties as much as their actual text.

This is important because agreements able to elicit consent rather than requiring compulsion to be sustained are constrained by the need to command some degree of support, and to conform with certain presumptions about how they are to be properly arrived at and what they should look like. That is, they must appear to be "lawful" to be seen as legitimate. The recourse to law is significant. While the economic and military resources of the great powers may be expressed through problematic international law, it is important to note that law, like other social institutions, has its own characteristics, history, and logic. It requires a certain autonomy if it is to function. In particular, law

¹⁸ For a discussion, see the essay by Feiveson and Shire in this volume.

¹⁹ Williams, op. cit.

inherently must orient itself towards standards of universality and equity. As the historian E. P. Thompson noted, “If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to ... hegemony.”²⁰ It will instead require unending enforcement, perhaps of ever greater severity.

There are long standing differences over the legitimacy, fairness, and justice of international law, institutions and conduct. The sense that current international processes are marked by injustice and unfairness runs deep among many in the global South and among the less self-interested in the North. One need look no further than judgments about the processes and agreements that are supposedly focused on organizing collective international action to preserve the future well being of humanity and the planet. For instance, writing about the 1992 United Nations Conference on Environment and Development (UNCED), otherwise known as the Earth Summit, Tariq Banuri argues that, “whereas Northerners see UNCED as a welcome unfolding of collective action to save humanity, many Southerners, government functionaries as well as non-governmental organizations activists, albeit for different reasons, fear in it the emergence of a new imperialism, of new conditionalities, and of new obstacles to the alleviation of poverty and oppression.”²¹

Considerable scholarly attention has been devoted to clarifying questions of justice and fairness in international negotiations and institutions. It is worth reviewing some of this briefly and using it as a guide to the subsequent discussion of arms control, nonproliferation and noncompliance. In a very influential interpretation, Thomas Franck argues that the two discourses that now dominate international relations are those of legitimacy and justice. Franck suggests that crucial to legitimacy is “right process,” i.e. that a particular law or institution come into being through a mechanism that is in accord with generally accepted notions of what is the right way to create such things.²² The characteristics of a legitimate agreement, once it is arrived at, Franck suggests, are determinacy, validation, coherence, and adherence. Determinacy refers to the extent to which the particular law is seen as clear about what is permitted and what is not. Validation refers to the ways and means by which the international community indicates its satisfaction or otherwise with the method by which the agreement was arrived at. The requirement for coherence is simply that the rule should be applied systematically to the situations where it is meant to apply, i.e. it treats like cases alike. Lastly, adherence is the larger contextual requirement that an agreement fits properly within the broader principles and expectations shared by a community rather than being simply an ad hoc response to a particular situation.

²⁰ E.P.Thompson, *Whigs and Hunters*, (London: Penguin, 1975), p. 263.

²¹ Tariq Banuri, “The Landscape of Diplomatic Conflicts,” in Wolfgang Sachs, ed., *Global Ecology: A New Arena of Political Conflict* (London: Zed Books, 1993), p. 49.

²² Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1995), pp. 25-46, 477, and 481.

While Franck has identified some key principles that can be used to judge international conduct and agreements, there are some important qualifiers. Four observations can be made about Franck's argument. First, it is unhistorical, leaving open the possibility that the most powerful states permit no alternatives to the processes that they dominate and so, by default, existing practice becomes in time "due process." Second, it is statist, treating legitimacy as a matter only for states and formal policy judgments by government officials. This omits both the crucial role of bureaucracies and institutions, which is where contests over legitimacy often take place, and the role of publics and civil society, which is where judgments over legitimacy are also made, even though they may not immediately prevail. Third, judgments over legitimacy, no matter where and by whom they are made, are structured by both persuasion and coercion. Moreover, these instruments of communicative, economic, and military power are profoundly unequally disposed. Fourth, Franck's description of legitimacy seems to presume that justice is not in itself a key requirement for legitimacy, and it leaves open the possibility of the practice of legitimacy hindering the pursuit of justice.

However, justice has received attention in its own right. A notable and widely regarded example is John Rawls' theory of justice, which presents the idea of 'justice as fairness.' Briefly, Rawls suggests that judgment, to be just, should be made from "the original position of equality," that is a situation where "no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like"; Rawls describes this as judgment behind a "veil of ignorance."²³ In effect, justice as fairness requires that those who participate in the judgment should propose or acknowledge only that which they would accept if they were in the same situation as any other members of the community and had to make a binding commitment. There are obvious implications for the conduct of states in international affairs and in particular their dealings in collective institutions and in negotiations intended to provide mutual security and well-being.²⁴

This brief discussion of legitimacy and justice can be combined and applied to an example concerning the United Nations, an institution now widely regarded as the legitimate site for the international community to deliberate and arrive at collective decisions on agreements, as well as for it to judge and respond to noncompliance by individual states. The example deals with the veto power of some members of the United Nations Security Council and has direct relevance for our concern here about compliance and noncompliance with arms control agreements. The origins of the veto usefully illuminate some of the structural issues that need to be considered when looking at compliance by the great powers, and in particular "the American problem". It is

²³ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971; revised edition, Cambridge, MA: Belknap Press, 1999), p. 11.

²⁴ For a critical perspective on the application of Rawls' ideas to international affairs, see Fernando R. Teson, "The Rawlsian Theory of International Law," *Ethics and International Affairs*, vol. 9, 1995, pp. 79-99. For a discussion specifically about nuclear proliferation, see Steven Lee, "Nuclear Proliferation and Nuclear Entitlement," *Ethics and International Affairs*, vol. 9, 1995, pp. 101-131.

particularly apt given the failed US efforts in early 2003 to seek a UN Security Council resolution authorizing its use of force against Iraq.

The United Nations Charter gives the Security Council "primary responsibility for the maintenance of international peace and security". The Security Council is empowered to use sanctions and military force to this end. The U.S., Russia, Britain, France and China, as well as being the major nuclear weapons states, are the only permanent members of the Security Council and are alone in having the power of veto over Council decisions. At the founding conference of the United Nations in San Francisco in 1945, fifty nations met to draw up the Charter. A history of the veto notes that: "Major disagreements arose between Great Britain, the Soviet Union, and the United States on the one hand, and the other smaller and less powerful nations on the other."²⁵ The major powers insisted that the Charter give them power to veto actions by the Security Council, and the less powerful states resisted. The history records that, "At one point during the conference,...several delegations of smaller nations became somewhat unruly in their opposition to the veto", whereupon one of the U.S. delegates, Senator Tom Connally, "told them that they could go home from San Francisco if they wished and report that they had defeated the veto but they could also report that they had torn up the Charter." In short, no veto, no UN. The U.S. and the other victors of World War II prevailed.

This situation rightfully raises questions about the legitimacy and justice of such a process and outcome. The U.S. Secretary of State, Edward R. Stettinius, Jr., in a radio address in May 1945 noted that the veto "has been criticized both here and elsewhere as giving a privileged position to the large nations," but justified it by claiming that the veto was "not a question of privileges, but of using the present distribution of military and industrial power in the world for the maintenance of peace."²⁶ The onset of the Cold War quickly left such justifications behind. There was little peace to be found as the United States and Soviet Union intervened in other states and clashed in proxy wars around the world. The Soviet Union and the United States liberally used the veto.

The efficacy of the veto during the Cold War stemmed in large part from the fact that the superpowers were willing to respect each other's "military and industrial power." The use of the veto was simply a diplomatic marker indicating the degree of willingness to use this power over the issue in question. With the end of the Cold War, the United States was no longer contained by possible Soviet reaction and started, in Phyllis Bennis' apt phrase, "calling the shots" at the United Nations, with Secretary of State Madeline Albright claiming in 1995 that "the UN is a tool of American foreign policy."²⁷

²⁵ Anjali V. Patil, *The UN Veto in World Affairs 1946-1990: A Complete Record and Case Histories of the Security Council's Veto* (London: Mansell, 1992), pp. 5, 15.

²⁶ Radio Report To The American People On The San Francisco Conference By Secretary Of State Edward R. Stettinius, Jr., United States Department of State Bulletin, May 28, 1945.

²⁷ Phyllis Bennis, *Calling The Shots: How Washington Dominates Today's UN* (New York, NY: Olive Branch Press, 2000), p. 245.

As the case of the US war on Iraq has subsequently shown, when the United Nations shows signs of refusing to act as a “tool” the US is willing to damn it to irrelevance. Finding it hard to get UN support for the use of force against Iraq, in a clear threat President Bush declared to the UN General Assembly in September 2002: “All the world now faces a test, and the United Nations a difficult and defining moment. Are Security Council resolutions to be honored and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?”²⁸ Nonetheless, despite US bullying and bribes, the overwhelming majority of Security Council members refused to support a proposed US resolution authorizing a US attack on Iraq, with France and Russia making clear they would use their veto.²⁹ The US withdrew its resolution and in March 2003 invaded Iraq, regardless. This outcome has important implications for the legitimacy, fairness and justice of any institutional arrangements for compliance that are reliant on U.S. and Security Council participation.

III. The Career of Nuclear Arms Control

The question of international control over atomic weapons was raised as soon as they were created at the end of World War II.³⁰ For the U.S., as one of the earliest studies argued, the fear was that not only might “regular rivals on the same level” acquire these “absolute weapons” but that “possibly some of the nations lower down in the power scale might get hold of atomic weapons and change the whole relationship of great and small states.”³¹ These twin challenges have marked U.S. policy ever since.

The United Nations took up the issue in its first resolution, as noted earlier. Having built and used the atomic bomb, the U.S. adopted a policy of monopoly and exclusion, to keep what was called its “winning weapon.” U.S. efforts to think about some form of control through the United Nations sought to preserve this monopoly until the final stage of a lengthy plan, while ensuring no other state would or could build them. The Baruch plan, presented by the United States to the UN in 1946, has rightly been described as an arrangement that “did not differ in substance from an ultimatum the United States might have given Russia to forswear nuclear weapons or be destroyed.”³² The Soviet Union refused to support it and within a few years had tested its own nuclear weapons. The U.S. goal of maintaining a nuclear capability while seeking to deny it to others was eventually

²⁸ Patrick E. Tyler, “A Deepening Fissure,” *The New York Times*, September 13, 2002.

²⁹ Steven R. Weisman, “A Long, Winding Road to a Diplomatic Dead End” *The New York Times*, March 17, 2003.

³⁰ Gregg Herken, *The Winning Weapon: The Atomic Bomb in The Cold War 1945-1950* (Princeton: Princeton University Press, 1982).

³¹ Frederick S. Dunn, Bernard Brodie, Arnold Wolfers, Percy E. Corbett and William T.R. Fox, *The Absolute Weapon: Atomic Power and World Order*, (New York, NY: Harcourt, Brace and Company, 1956), p. 5.

³² Herken, op. cit., p. 171.

shared by the Soviet Union and in time by the other nuclear weapons states and underlies the 1968 Nuclear Nonproliferation Treaty.

The second effort at nuclear arms control can be traced to the mid-1950s and to the Soviet offer of a plan for nuclear disarmament, reductions in conventional forces, and a system of inspections. Matthew Evangelista's study of these talks argues that, even though it had earlier supported these principles, the United States eventually rejected the Soviet plan because of opposition from the U.S. military and the U.S. Atomic Energy Commission, which "exercised effective veto power over U.S. disarmament policy."³³ The U.S. preference for continuing the arms race was not, however, confined to these institutions. McGeorge Bundy claims that "what [U.S. Secretary of State] Dulles feared about proposals for disarmament in 1955 was simply that they might lead to agreement."³⁴ The reasons are instructive. Bundy suggests that Dulles "did not fear the nuclear arms race, because he had confidence the Russians could not keep up."³⁵

Within a few years, however, it became apparent the Soviet Union could keep up and arms control emerged out of the recognition that open conflict between the U.S. and Soviet Union would be mutually ruinous and that something needed to be done.³⁶ As Thomas Schelling observed in a 1961 essay laying out some of the earliest thinking on arms control: "our present military policies and prospects... cannot promise security from a major thermonuclear war; and even modest improvements achieved through cooperation with the Soviets would be welcome."³⁷ Schelling was also very blunt about what such "cooperation" was intended for. Arms control was, he argued, "designed to preserve a nuclear striking power," and it was "an open question whether we ought to be negotiating with our enemies for more arms, less arms, different kinds of arms, or arrangements superimposed on existing armaments."³⁸ Disarmament had now become "an open question."

From this arms control perspective, the U.S. and Soviet Union should agree to manage their conflict and to find ways to stabilize and regulate the relationship of mutual assured destruction that the vast nuclear arsenals of the superpowers had created. As Schelling put it, the need was to "tranquilize relations... while hating and distrusting."³⁹ Thirty years later, he stood by those earlier perceptions arguing that "the purpose of arms control was

³³ Matthew Evangelista, "Cooperation Theory and Disarmament Negotiations in the 1950s," *World Politics*, vol. 42, no. 4 (July 1990), pp. 502-528.

³⁴ McGeorge Bundy, *Danger and Survival: Choices About The Bomb In the First Fifty Years* (New York, NY: Random House, 1988), p. 301.

³⁵ *Ibid.*

³⁶ See for instance, Bernhard G. Bechhoefer, *Postwar Negotiations for Arms Control*, (Washington, D.C., The Brookings Institution, 1961).

³⁷ Thomas C. Schelling, "Reciprocal Measures for Arms Stabilization," *Daedalus: Proceedings of the American Academy of Arts and Sciences*, vol. 89. no.4 (Special Issue: Arms Control), Fall 1960, p. 894.

³⁸ *Ibid.*, p. 893.

³⁹ *Ibid.*, p. 895.

to make deterrence work."⁴⁰ Marcus Raskin has drawn out this darker aspect of arms control, arguing that arms control talks by their nature "eschew essential moral, legal and criminal questions" and that "there is a necrophiliac quality to the technical expertise which calculates one missile against another, as diplomats become brokers in charred bodies." Inevitably, Raskin suggests, "when such negotiations are divorced from the fundamentally criminal nature of the weaponry or strategies under discussion, arms control talks are reduced to narrow quibbles between state representatives on the character and size of mutually genocidal forces."⁴¹

The first two decades of the arms control era brought a series of agreements.⁴² The first of these was the 1959 Antarctic Treaty, which recognized the emergence of possible territorial disputes (the U.S. and Soviet Union did not recognize the claims of other governments) and prohibited military activity there. It codified the status quo. Given public fears and mobilization against nuclear weapons and testing, compounded during the 1962 Cuban missile crisis with the fear of nuclear war, it was no great surprise that the first substantial superpower agreements came soon thereafter, in 1963, with the "Hotline" agreement establishing direct emergency communications between leaders in Washington and Moscow, and the Limited Test Ban Treaty, which prohibited atmospheric nuclear testing. These were followed by the 1967 Outer Space Treaty, which banned nuclear weapons from space, and then the 1968 Non-Proliferation Treaty (this is discussed at length later in this essay). 1971 saw the Seabed Arms Control Treaty, prohibiting nuclear weapons from the seafloor, the Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War, and the "Hotline" modernization agreement. The following year saw both the Biological Weapons Convention, outlawing biological weapons, and the Incidents At Sea Treaty. But the most significant agreements that year were the Anti-Ballistic Missile Treaty, and the Interim Agreement (SALT I), which for the first time limited offensive nuclear arms. The culmination of the process can be said to be the 1973 Prevention of Nuclear War agreement, in which the superpowers committed themselves to "make every effort" to avoid nuclear war.

The changing fortunes of arms control, when looked at in detail, show the impact of domestic political circumstances, especially the political and bureaucratic dynamics of national security policy making and the role of the institutions set up to wage the Cold War.⁴³ The superpowers brought distinct perspectives to these management efforts. Robin

⁴⁰ Thomas C. Schelling, "The Thirtieth Year," *Daedalus: Proceedings of the American Academy of Arts and Sciences*, vol. 120, no. 1 ("Arms Control: Thirty Years On"), Winter 1991, pp. 21-31.

⁴¹ Marcus Raskin, "Nuclear Extermination and the National Security State," *New Left Review*, *Exterminism and Cold War* (London, Verso: 1982) pp. 205-6.

⁴² See United States Arms Control and Disarmament Agency, *Arms Control and Disarmament Agreements*, sixth edition, 1996.

⁴³ On the domestic politics of U.S. nuclear weapons policy during and after the Cold War, see McGeorge Bundy, *op. cit.*; Janne E. Nolan, *Guardians of the Arsenal: The Politics of Nuclear Strategy* (New York: Basic Books, 1989); and Janne E. Nolan, *An Elusive Consensus: Nuclear Weapons and American Security After the Cold War* (Washington, D.C.: Brookings Institution Press, 1999).

Ranger argues that it is possible to distinguish U.S. from Soviet arms control thought and practice, where “the Western, especially the American view... has stressed the idea of arms control as a means of securing apolitical, technical solutions to the threats to strategic stability,” which he labels “technical arms control.” The Soviet Union, on the other hand, “sought to provide political counters to threats to strategic stability,” and so preferred “political arms control.”⁴⁴ The two perspectives have important consequences. The emphasis on science and technology rather than politics serves to privilege the United States even among the nuclear weapon states, and more particularly those institutions within it which command the appropriate expertise.

The influence of the U.S. military and the weapons complex underlies a key problem with arms control, identified by Allan Krass as the fact that “it is assumed that the competition continues unabated in all areas not covered by the agreement. Anything not forbidden is permitted.”⁴⁵ In this situation, verification is a crutch for arms control agreements in that it is supposed to detect and warn of potential violations of an agreement, deter such violations, and build public confidence in the viability of the agreement.⁴⁶ But verification also serves to institutionalize distrust; Krass calls this “the self-fulfilling nature of distrust.”⁴⁷ It is not surprising then to read the damning indictment of arms control in January 2000 offered by General Lee Butler, who retired in 1994 as Commander in Chief of the U.S. Strategic Command: “The traditional arms control process... is not just stalled but dysfunctional. It is freighted with psychology, language, assumptions, and protocols that perpetuate distrust, constrain imagination, limit expectations, and prolong outcomes.”⁴⁸

The urge “to tranquilize relations... while hating and distrusting” that underlies arms control, to use Schelling's description, proved itself vulnerable to political forces that sought to embrace their hate and distrust rather than manage it. In his history of U.S.-U.S.S.R. negotiations in the 1980s, Strobe Talbott has identified how, under President Reagan, “the arms control enterprise came into the hands of a group of people who were extremely critical of the results of that enterprise as it had been conducted by the three previous administrations. These people differed... from their predecessors – in their world outlook, their view of America’s adversaries in Moscow, their own conception of their own opportunities and obligations.”⁴⁹ According to Talbott, “the president and his men had been determined as much as possible to wipe out the vestiges of the old regime.

⁴⁴ Robin Ranger, *Arms and Politics 1958-1978: Arms Control in a Changing World* (Toronto: Macmillan, 1979), p. vii.

⁴⁵ Allan S. Krass, *Verification: How Much is Enough?* (Philadelphia, PA: Taylor & Francis, 1985), p.162.

⁴⁶ William F. Rowell, *Arms Control Verification: A Guide to Policy Issues for the 1980s* (Cambridge, MA: Ballinger, 1986), p. 148.

⁴⁷ Allan S. Krass, *Verification*, op. cit., p. 165.

⁴⁸ Lee Butler, “Zero Tolerance,” *The Bulletin of the Atomic Scientists*, January/February 2000, pp. 20-22 and 72-5.

⁴⁹ Strobe Talbott, *Deadly Gambits: The Reagan Administration and the Stalemate in Nuclear Arms Control* (New York, NY: Knopf, 1984), p. xii.

This meant altering if not scrapping the diplomacy that had held sway since the 1950s, discrediting if not discarding the agreements that earlier administrations had signed."⁵⁰ This impulse towards the untrammelled exercise of U.S. power was also evident in increasingly aggressive interventions and invasions in the Third World, for example in Nicaragua, El Salvador, Angola, Libya, and Grenada.

Over the past decade, U.S. policy makers have seen Soviet disintegration followed by Russia's economic and political collapse and now find themselves spending hundreds of millions of dollars each year to secure Russian nuclear weapons and fissile materials as part of an effort to stop its nuclear weapons complex from hemorrhaging.⁵¹ So even though Russia retains thousands of nuclear weapons, it is no longer perceived as a state at par with the U.S. As the perception of parity has eroded, so arms control seems to have fallen deeper into crisis.

There is certainly a sharpening sense of gloom among advocates of nuclear arms control. Jonathan Schell, the author of the classic warning about the dangers of nuclear weapons, *The Fate of the Earth*, observed that, "ten years after the collapse of the Soviet Union, the startling fact is that nuclear arms control is faring worse in the first days of the twenty-first century than it did in the last days of the Cold War."⁵² He is by no means alone in his judgment. A 1997 study of the United States and its arms control policies suggested that "the rate of progress in virtually all areas of arms control and nonproliferation has slowed noticeably since 1993... its continued progress is by no means guaranteed."⁵³ A grimmer picture still was painted in *The Nuclear Turning Point*, a collaborative volume by leading independent academic experts and proponents of nuclear arms control. It argued that "nuclear arms control is at a crossroads" and warned that "the present arms control regime could unravel".⁵⁴

There are certainly some, such as former U.S. Secretary of State Henry Kissinger, who have welcomed the possible end of arms control and supported the rethinking of U.S. policy. Arms control has served its purpose, argues Kissinger, because "the end of the Cold War has transformed global strategic conditions."⁵⁵ Echoing Kissinger's argument that the collapse of the Soviet Union demands rethinking U.S. policy, David Gompert, Vice President of the Rand Corporation, has suggested that, "now predominant and

⁵⁰ Ibid., p. 343.

⁵¹ See Matthew Bunn, Oleg Bukharin, Jill Cetina, Kenneth Luongo, and Frank von Hippel, "Retooling Russia's Nuclear Cities," *Bulletin of The Atomic Scientists*, October 1998, pp. 44–50.

⁵² Jonathan Schell, "The Folly of Arms Control," *Foreign Affairs*, vol. 79, no. 5 (September/October 2000), p. 27.

⁵³ Allan S. Krass, op. cit., pp. 1-2.

⁵⁴ Harold A. Feiveson, ed., *The Nuclear Turning Point* (Washington, D.C.: Brookings Institution Press, 1999), p. 6.

⁵⁵ Henry Kissinger, "Arms Control to Suit a New World," *Los Angeles Times*, November 20, 1999.

unthreatened, the United States is no longer a status quo power."⁵⁶ In short, the end of the Cold War is seen as having released the U.S. from needing to constrain or regulate its military capabilities, or limit its political and economic ambitions.

The U.S. is now in a position to re-make the shape of the world.⁵⁷ But it has not been easy. Condoleeza Rice, National Security Adviser to President Bush, observed in early 2000 that "the United States has found it exceedingly difficult to define its national interest in the absence of Soviet power."⁵⁸ She has argued that the U.S. finds itself in a position akin to the time soon after the end of World War II, "when American officials thought up the Marshall Plan and helped create NATO and the United Nations and the International Monetary Fund, and undertook the Cold War."⁵⁹ But the world has not been totally transformed. It remains over-shadowed by the institutions, technologies, ideas, values and agreements created during the Cold War. Where these have become an obstacle to now unfettered U.S. ambitions, they are being pushed aside.

IV. The Anti-Ballistic Missile Treaty

On December 13, 2001, President Bush announced formal withdrawal of the United States from the 1972 U.S.-Soviet Anti-Ballistic Missile (ABM) Treaty.⁶⁰ The ABM Treaty banning missile defenses was widely regarded as the foundation of superpower arms control -- a decade earlier it was offered by Thomas Schelling, one of the founders of arms control, as proof of "the doctrinal victory of arms control in this country."⁶¹ The victory was clearly short-lived. The story of the rise and fall of the ABM Treaty offers vivid evidence of the dynamics of U.S. policy on arms control and its approach to compliance.

As noted earlier, the U.S.-Soviet/Russian arms control treaties were the result of an arms race, strategic parity, massive overkill, and public fears. It was recognized, for instance, in 1970 by General Bruce K. Holloway, Commander in Chief of the Strategic Air Command, that "the central fact of our time... is the present relative equality of the U.S. and Soviet strategic military power... this power is the foundation of all diplomacy as well as war".⁶² The recognition of this balance of terror and the need for some kind of

⁵⁶ David C. Gompert, "Sharpen the Fear," *The Bulletin of the Atomic Scientists*, vol. 56, no. 1 (January/February 2000), pp. 22-3 and 76-7.

⁵⁷ The economic and political interests that are being pursued are the theme of much of the recent literature on globalisation, see for instance Richard Falk, *Predatory Globalization* (New York NY: Polity Press, 1999).

⁵⁸ Condoleeza Rice, "Promoting the National Interest," *Foreign Affairs*, January/February 2000, p. 45.

⁵⁹ Nicholas Lehman, "Without a Doubt," *The New Yorker*, October 14, 2001.

⁶⁰ David E. Sanger, "Bush Offers Arms Talks to China As U.S. Pulls Out of ABM Treaty," *The New York Times*, December 14, 2001.

⁶¹ Schelling, "The Thirtieth Year," op. cit., pp. 21-31.

⁶² General Bruce K. Holloway, cited in H. P. Metzger, *The Atomic Establishment* (New York: Simon and Schuster, 1972), p. 45.

discipline on the part of both superpowers (at least with regard to each other) also entailed that coercion and other means to enforce compliance would have been fruitless and even counterproductive. Not surprisingly, superpower treaties contain no provisions for enforcing compliance, whether through sanctions or other means. Instead, the task of ensuring compliance with these arms control agreements has been predominantly one of negotiation and "regime management."⁶³

The ABM Treaty was the example par excellence of this approach to arms control and compliance. It was widely welcomed and there was an "extraordinary level of Senate support for the ABM Treaty" when it was signed by the U.S.⁶⁴ The Treaty was put to a severe test as part of a larger assault on arms control by the Reagan Administration when it launched in March 1983 its Star Wars program to develop space-based missile defenses. For U.S. military planners at that time, Janne Nolan has reported, "it was no longer technically challenging or strategically advantageous to keep adding more warheads to nuclear arsenals."⁶⁵ Space beckoned as a new arena for the pursuit of military advantage. To legitimize its research, development and testing of new anti-ballistic missile systems, the Reagan Administration presented a new interpretation of the ABM Treaty. The prospect that the U.S. was on course to violate the Treaty elicited criticism from the public, the arms control community, Congress, and U.S. allies.⁶⁶ Under pressure, the Star Wars program eventually was restricted to research.

It was the collapse of the Soviet Union that offered the real measure of U.S. commitment to its ABM Treaty obligations. In 1995, the U.S. Congress mandated the deployment of a national missile defense system by 2003, and a year later the Clinton Administration announced that it would develop over the next three years and then prepare to deploy an NMD system within a further three years. In early 1999, the U.S. Senate voted 97-3 for a bill calling for the "United States to deploy as soon as is technologically possible an effective National Missile Defense system."⁶⁷ The program was pursued even though it was clear that the deployment of an anti-ballistic missile system would violate the ABM Treaty, which forbids such systems. Former Secretary of State Henry Kissinger, who was national security adviser to President Nixon when the Treaty was signed, supported

⁶³ For details of the compliance management provisions in the various superpower treaties, see the chapter in this volume by Feiveson and Shire. A model of compliance as a management problem has been advanced by Abram and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995), who claim it is not "willful disobedience but the lack of capability or clarity or priority" that is the primary source of noncompliance (p.22). Subsequent events have revealed how limited was this explanation.

⁶⁴ Michael Krepon and Dan Caldwell, ed., *The Politics of Arms Control Treaty Ratification* (New York, St. Martin's Press, 1991), p. 463.

⁶⁵ Nolan, *Guardians of the Arsenal*, op. cit., p. 154.

⁶⁶ For an analysis, see Harald Müller, "The Internalization of Principles, Norms, and Rules by Governments: The Case of Security Regimes," in Volker Rittberger and Peter Mayer, eds., *Regime Theory and International Relations* (New York: Clarendon Press, 1993), pp. 361-388.

⁶⁷ Craig Cerniello, "Senate, House Approve Bills Calling for NMD Deployment," *Arms Control Today*, March 1999. President Clinton signed the bill the following day.

scrapping the ABM Treaty, arguing that the situation had changed since the treaty was negotiated.⁶⁸ Put simply, the U.S. should now do what it wanted because it could do so.

However, under domestic and international pressure, especially from its traditional allies, the U.S. again sought to unilaterally re-interpret the treaty and its protocols. In June 2000, U.S. government lawyers determined that limited work could begin on building the radars associated with the NMD system, work previously seen as violating the treaty – U.S. officials explained that this new interpretation was the result of "better lawyers."⁶⁹ U.S. allies in Europe and other key leaders decried the effort to evade the Treaty's obligations.⁷⁰ The final decision to begin work was again delayed. The failure of some of the tests of the NMD system may have contributed to this decision in the last days of the Clinton Administration.

President Bush, who is more enthusiastic about missile defense, declared in July 2001 that the U.S. would proceed with its NMD plans no matter what.⁷¹ It was only a matter of time until the conflict between this U.S. policy and the ABM Treaty would become too great to avoid. The Pentagon's Compliance Review Group determined that U.S. NMD plans would violate the ABM treaty in 2002.⁷² Soon afterwards, the U.S. announced its intent to withdraw.

V. The Comprehensive Test Ban Treaty

The history and present crisis over the Comprehensive Test Ban Treaty offer an important insight into the fairness and justice of international arms control negotiations. They show how the United States has tried and to some measure succeeded in delaying and shaping key arms control treaties so that it can sustain its own capacity to maintain and develop its nuclear weapons. To recall the formulation used by John Rawls, the U.S. has steadfastly refused 'the original position of equality.'

In 1954, the radioactive fallout from the United States' "Bravo" thermonuclear explosion affected hundreds of inhabitants of the Marshall Islands and the Japanese fishermen in the Lucky Dragon, causing the death of at least one. This led Indian Prime Minister

⁶⁸ Henry Kissinger, "The Next President's First Obligation," *The Washington Post*, February 9, 2000.

⁶⁹ Steve Schmitt and Steven Lee Myers, "Clinton Lawyers Give A Go-Ahead To Missile Shield: Loophole Seen In Treaty," *The New York Times*, June 15, 2000.

⁷⁰ Marc Lacey, "Putin Bends Clinton's Ear Hoping to Halt Missile Shield," *The New York Times*, July 22, 2000.

⁷¹ David E. Sanger, "Bush's Travels: Antimissile Diplomacy," *The New York Times*, July 24, 2001.

⁷² James Dao, "Defense Panel Sees ABM Violations as Arising Soon," *The New York Times*, August 1, 2001.

Jawaharlal Nehru to propose a nuclear test ban in 1954.⁷³ It also triggered public protests against the health and environmental effects of radioactivity from U.S. and Soviet atmospheric testing of nuclear weapons.⁷⁴ By creating domestic pressure to end nuclear testing, the protests spurred efforts to reach the first significant superpower arms control treaty, the 1963 Limited Test Ban Treaty, forbidding nuclear explosive testing in the atmosphere, space, and under water.

The United States' nuclear weapons laboratories were a major obstacle to this Treaty. But there were other opponents as well; Paul Nitze records that "the Joint Chiefs of Staff, when they realized that President Kennedy was indeed serious about concluding a test ban treaty with the Soviet Union, raised a storm of protest, as did the AEC laboratories."⁷⁵ Herbert York has noted that in order to get support for ratification of the Limited Test Ban Treaty, President Kennedy agreed to a "vigorous" nuclear weapons development program, supported by underground nuclear testing.⁷⁶ The development and testing of nuclear weapons continued apace.

The public pressure for a ban on all nuclear testing faded but did not disappear. By the late 1970s, President Carter decided that a Comprehensive Test Ban was both possible and necessary, could be verified, and was in the United States' national interest. Herbert York, who was the chief U.S. -negotiator at the subsequent CTBT talks in 1979-1980, recalled that the talks came within six months of a final treaty. The talks failed, according to York, because "most of the military, including the Joint Chiefs of Staff and, essentially, the entire permanent civilian nuclear staff, opposed it openly and strongly."⁷⁷

The opposition to the CTBT among U.S. officials hardened in the early 1980s under the Reagan Administration. While doubts were often couched in terms of verification of any possible treaty, a senior U.S. official admitted in 1986 that: "even if we could verify compliance with a comprehensive test ban at this time, it would not be in our interest or the interest of the world to undertake such a ban."⁷⁸ Thus, when the UN General Assembly voted 143-2 for a test ban in December 1987, there were 8 abstentions, and the United States and France opposed the resolution. Another resolution, calling for a halt to

⁷³ See George Perkovich, *India's Nuclear Bomb* (University of California Press, 1999), and George Bunn, "The Status of Norms Against Nuclear Testing," *The Nonproliferation Review*, Winter 1999, pp. 20-32.

⁷⁴ Lawrence S. Wittner, *The Struggle Against The Bomb, Volume Two, Resisting The Bomb – A History of The World Nuclear Disarmament Movement 1954-1970* (Stanford, CA: Stanford University Press, 1997).

⁷⁵ Paul H. Nitze, *From Hiroshima to Glasnost* (New York, NY: Grove Weidenfeld, 1989), p. 191.

⁷⁶ Herbert York, *Making Weapons Talking Peace: A Physicist's Odyssey from Hiroshima to Geneva* (New York, NY: Basic Books, 1987), p. 283.

⁷⁷ *Ibid.*, p. 288

⁷⁸ Richard Perle, testimony to the Senate in 1986, cited in Philip G. Schrag, *Global Action: Nuclear Test Ban Diplomacy and the End of the Cold War* (Boulder, CO: Westview Press, 1992), p. 40.

all nuclear explosions, was supported 137- 3, with the United States, France and UK opposed. A year later, in December 1988, the vote was 146-2.⁷⁹

In the 1990s, however, with the end of the Cold War and growing concerns about the proliferation of nuclear weapons, the United States began to change its position on the CTBT. In 1992, the United States Congress voted for a moratorium on nuclear testing and called for a Test Ban by 1996. The treaty was negotiated at the Conference on Disarmament in a relatively brief period between 1993-1996. This treaty had almost universal support, with the General Assembly in 1996 voting 158-3 to approve the treaty prohibiting all nuclear test explosions in all environments for all time. The U.S. was the first state to sign, and the other nuclear weapon states followed suit. The Treaty now has 167 signatories, and over 100 states have ratified it.⁸⁰ Among the nuclear weapon states, only France, Russia and the UK have ratified.

The official U.S. perception of the CTBT while it was being negotiated and later considered for ratification was very different from that of most other states. The U.S. ambassador to the CTBT negotiations explained that:

It is important to recognize that the motivation of the 38 countries that joined together in this negotiation is not the same. The majority believes, as I understand it, that the banning forever of all nuclear tests in all environments will bring about, and bring about rapidly, the deterioration and decay of all existing nuclear weapons stockpiles. As I understand it, all five nuclear weapons states believe that without testing we can nevertheless maintain for the foreseeable future the viability, the safety and the reliability of our nuclear stockpiles.⁸¹

This was a far cry from the intention and expectation of the majority of states involved in negotiating the Treaty.

Secretary of State Madeline Albright went further and argued that the treaty would in fact strengthen the U.S.

Under the CTBT, America would gain the security benefits of outlawing nuclear tests by others, while locking in a technological status quo that is highly favorable to us. We have conducted more than 1,000 nuclear tests--hundreds more than anyone else. We do not need more tests to protect our security. Would-be proliferators or modernizers, however,

⁷⁹ In 1987, A/RES/42/27: Urgent need for a comprehensive test ban treaty, and in 1988, A/RES/43/64, see Schrag, *ibid.*, p. 42, fn. 176.

⁸⁰ As of July 2003.

⁸¹ Andrew Lichterman and Jacqueline Cabasso, *A Faustian Bargain: Why Stockpile Stewardship is Incompatible With the Process of Nuclear Disarmament* (Oakland, California: Western States Legal Foundation, March 1998).

must test if they are to develop the kind of advanced, compact nuclear weapons that are most threatening.⁸²

But it seems even this was not enough.

The declared rationale of the CTBT is that "the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and nonproliferation in all its aspects".⁸³ However, according to the official U.S. interpretation of the CTBT, this "does not imply that the Treaty prohibits the development of new types of nuclear weapons, or the improvement of existing weapons".⁸⁴

The U.S. feels able to evade a basic goal of the CTBT, banning the development of new nuclear weapons, because of a long list of conditions that were attached to the treaty when it was submitted to the U.S. Senate for consent to ratification. These conditions were explicitly intended to permit the maintenance and modernization of the U.S. nuclear arsenal for the indefinite future, and the retention of nuclear weapons laboratory facilities and programs as well as the capability to resume nuclear testing.⁸⁵ In addition, under the 1994 Nuclear Posture Review and the 1997 Quadrennial Defense Review, there is a requirement from the Department of Defense to the Department of Energy, which has responsibility for managing the nuclear weapons complex, that it "maintain the capability to design, fabricate, and certify new warheads".⁸⁶ Knowledgeable U.S. analysts argue that these conditions and the multibillion dollar new experimental and computational facilities being developed in the weapons laboratories show that "the U.S. government clearly intends to maintain under the CTBT, and indeed significantly enhance, its scientific and technical capabilities for undertaking the development of advanced new types of nuclear weapons."⁸⁷

⁸² Madeline Albright, "A Call for American Consensus," *Time*, November 22, 1999.

⁸³ For Treaty text, see Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, <http://www.ctbto.org/ctbto/treaty.shtml>

⁸⁴ U.S. Department of State, "Article by Article Analysis of the CTBT" a report accompanying President Clinton's letter of transmittal of treaty to U.S. Senate, September 22, 1997, see Federation of American Scientists Website: <http://www.fas.org/nuke/control/ctbt/text/index.html>.

⁸⁵ *Ibid.*, letter of transmittal.

⁸⁶ *Stockpile Stewardship Plan FY2000*, Office of Defense Programs, U.S. Department of Energy, March 15, 1999.

⁸⁷ Christopher E. Paine and Matthew G. Mckinzie, *End Run: The U.S. Government's Plan for Designing Nuclear Weapons and Simulating Nuclear Explosions Under the Comprehensive Test Ban Treaty*, NRDC August 1997, p. 23.

Despite this, on October 13, 1999, the United States Senate refused to give its consent to the ratification of the Test Ban.⁸⁸ Arguing against ratification, Henry Kissinger noted that “six former secretaries of defense, four former national-security advisors and four former CIA directors opposed ratification, while four former secretaries of state, myself included, refused to endorse it.”⁸⁹ The non-ratification added to pressures already at work to interpret the terms of the CTBT as permitting the development of new kinds of nuclear weapons. The U.S. Department of Energy plans for "all" the nuclear weapons in the U.S. stockpile to be replaced with either "modified versions or with entirely new weapons."⁹⁰

An early sign of support for these efforts towards new weapons, despite the Test Ban, was the 2001 U.S. Defense Authorization Bill, which included a provision for a study and "limited research and development" on the "defeat of hardened and deeply buried targets." The sponsors of this provision in the U.S. Senate have argued that it is meant to make possible research and development on low-yield nuclear weapons, circumventing a 1994 ban.⁹¹ In 2002, the ban was lifted and funding approved for steps to reduce the time required to resume nuclear testing from three years to eighteen months.⁹²

As the U.S. pursues new nuclear weapons, there is little that the CTBT can do to deal with this noncompliance. It is generally understood, though not specified, that under the CTBT, as with other treaties, the concerns about noncompliance could be brought to the attention of the UN Security Council if questions of international peace and security are involved. This arrangement by its very nature leaves the nuclear weapons states outside any restrictions, given their veto. This makes it all the more ironic that concerns about the CTBT's lack of compliance enforcement measures, what was called a lack of teeth, figured significantly in the U.S. Senate ratification debate.⁹³ The concern now is that the United States seeks the end of the test ban regime. The U.S. boycott of a November 2001 United Nations Conference to support ratification of the Treaty was apparently because “the Pentagon hoped that a U.S. boycott would contribute to hastening the death of the nuclear pact.”⁹⁴

⁸⁸ Craig Cerniello, “Senate Rejects Comprehensive Test Ban Treaty; Clinton Vows to Continue Moratorium,” *Arms Control Today*, September/October 1999.

⁸⁹ Henry Kissinger, “Arms Control to Suit a New World,” op. cit.

⁹⁰ Greg Mello, “That Old Designing Fever,” *Bulletin of the Atomic Scientists*, January/February 2000, pp. 51-57.

⁹¹ Ian Hoffman, “Low-Yield Nuke Bombs Endorsed,” *Albuquerque Journal*, August 15, 2000, and Philip Bleek, “Defense Bill Bars Unilateral Nuclear Reductions, Orders Posture Review,” *Arms Control Today*, November 2000, p. 26.

⁹² Carl Hulse and James Dao, “Cold War long over, Bush Administration Examines Steps to a Revamped Arsenal,” *The New York Times*, May 29, 2003.

⁹³ This perspective came out clearly during the U.S. Senate’s refusal to ratify the Comprehensive Test Ban Treaty. See Henry A. Kissinger, “Arms Control to Suit a New World”, op. cit., Senator Richard Lugar, Statement released October 7, 1999. Much of the statement is reprinted in *The Bulletin of the Atomic Scientists*, January/February 2000, pp. 44-6. For a further discussion, see the chapter by Feiveson and Shire in this volume.

⁹⁴ Colum Lynch, “U.S. Boycotts Nuclear Test Ban Meeting,” *The Washington Post*, November 12, 2001.

The driving forces against the Comprehensive Test Ban and for nuclear weapons testing are not hard to see. Nuclear weapons designers and military planners are pushing for new designs using arguments couched in strategic terms relevant for the new world. Paul Robinson, the Director of Sandia National Laboratory and chairman of the Policy Subcommittee of the Strategic Advisory Group for the Commanders-in-Chief of the U.S. Strategic Command has proposed developing a special low-yield "To Whom It May Concern" nuclear arsenal, directly at Third World countries.⁹⁵ Stephen Younger, Director of the Defense Threat Reduction Agency and former Associate Laboratory Director for Nuclear Weapons at Los Alamos National Laboratory, has argued that in the post-Cold War world, the U.S. needs new kinds of low-yield nuclear weapons because it faces "new threats" and the continued U.S. "reliance on high-yield strategic [nuclear] weapons could lead to self-deterrence, a limitation of strategic options."⁹⁶ This is by no means the first time such suggestions have come from U.S. weapons laboratories. In 1970, Harold Agnew, Director of Los Alamos National Laboratory, suggested that "if people would prepare the right spectrum of tactical weapons, we might be able to knock off this sort of foolishness we now have in Vietnam and the Middle East or anyplace else."⁹⁷

The United States is renewing its embrace of a nuclear arsenal in the post-Cold War world, knowing that this more deeply embeds nuclear weapons in national and international structures of political and military thinking and action. It could be argued, following Jonathan Schell, that the perversity of this policy shows that the United States pursues these weapons not out of a profound fear of attack but for "deep seated, unarticulated reasons growing out of its own, freely chosen conceptions of national security."⁹⁸ The reasons are however not hard to find. The search is for nuclear weapons that U.S. policy makers would be more able to use against targets in the Third World, and whose use Americans might more readily accept.

VI. The Nuclear Nonproliferation Treaty

The period since the end of the Cold War has seen a massively nuclear-armed, imperial U.S. seeking to deal with small, Third World states in pursuit of nuclear weapons. These dramatic struggles over compliance with the international system of controls over nuclear

⁹⁵ C. Paul Robinson, *A White Paper: Pursuing A Nuclear Weapons Policy for the 21st Century*, Sandia National Laboratory, March 22, 2001. <http://www.sandia.gov/media/whitepaper/2001-04-Robinson.htm>.

⁹⁶ Stephen M. Younger, *Nuclear Weapons in the Twenty-First Century*, LAUR-00-2850, Los Alamos National Laboratory, June 27, 2000.

⁹⁷ Cited in Peter Metzger, *The Atomic Establishment* (New York: Simon and Schuster, 1972), p. 54. For U.S. planning for use of nuclear weapons against Vietnam, see Peter Hayes and Nina Tannenwald, "Nixing Nukes in Vietnam," *Bulletin of Atomic Scientists*, May/June, 2003, pp. 52-59, and the declassified documents on US military planning for use of nuclear weapons, website of Public Education Center, <http://www.publicedcenter.org/stories/vietnam-nukes/>.

⁹⁸ Jonathan Schell, *The Unfinished Twentieth Century*, (London: Verso, 2001), p. 47.

weapons have concerned the 1968 Nuclear Nonproliferation Treaty (NPT) and the attendant norms against nuclear proliferation. To understand these conflicts requires looking at the origin and content of the NPT, its requirements for compliance, and provisions for dealing with noncompliance and enforcement. The question to ask is whether the nuclear weapons states have acted justly and legitimately in their approach to the issue of proliferation.

Following the first U.N. General Assembly resolution of 24 January 1946, calling for “the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction...,” the U.S. and the Soviet offered competing plans for controlling the spread of nuclear weapons. In 1947, the Soviet Union proposed a disarmament agreement at the UN Atomic Energy Commission (UNAEC). Bertrand Goldschmidt, the former head of the French Atomic Energy Commission and a participant in those talks, has argued that “if the UNAEC – in 1948... at a time when there was still only a single nuclear weapon state possessing a small stock of bombs - had agreed [to the proposed treaty]... the nuclear arms race and its tragic acceleration probably could have been slowed down considerably or even avoided.”⁹⁹ The U.S. and its allies rejected the Soviet plan. Goldschmidt argues that “if the ...arguments, which we then put forward, had been applied 20 years later to the NPT they would indubitably have led to the rejection of this treaty which is now the main pillar of our nonproliferation regime.”¹⁰⁰

The history of the NPT can be traced to an Irish resolution introduced in 1958 to the UN's First Committee, which called on nuclear weapon states not to transfer control of nuclear weapons to non-nuclear weapon states, and on non-nuclear weapons states not to produce such weapons.¹⁰¹ The U.S. opposed it. In 1964, China tested nuclear weapons for the first time. A year later, the superpowers had become sufficiently concerned about the need to restrict the possible spread of nuclear weapons that they presented separate draft treaties on nuclear nonproliferation to the Eighteen Nation Disarmament Conference (the forerunner of the Conference on Disarmament). The treaty drafts envisioned not a universal set of prohibitions, but rather a two-tier system in which the five states that had tested nuclear weapons would retain them and not share them, while other countries would agree not to acquire nuclear weapons. The drafts made no mention of arms control and disarmament except in the preambular paragraphs.¹⁰²

Peter Clausen, a historian of the NPT, has noted that for the U.S. the timing of this initiative was linked to its pursuit of its interventionist policies and global interests: “it was no accident that the period of the treaty negotiations corresponded to the high water

⁹⁹ Bertrand Goldschmidt, “A Forerunner of the NPT? The Soviet Proposals of 1947,” *IAEA Bulletin*, Spring 1986, pp. 58-64.

¹⁰⁰ *Ibid.*, p. 63.

¹⁰¹ For a detailed history of the NPT, see Mohammad I. Shaker, *The Non-Proliferation Treaty: Origin and Implementation 1959-1979*, 3 volumes (New York, Oceana Publications, 1980).

¹⁰² *Ibid.*, vol. 3, p. 937 for the American Draft and p. 940 for the Soviet draft.

mark of America's postwar global activism... the spread of nuclear weapons in a region of vital interest to the United States could increase the risks of containment and threaten American access to the region."¹⁰³ The Soviet interest in nonproliferation stemmed from concerns about possible U.S. sharing of nuclear weapons with its NATO allies, in particular West Germany, the emergence of a nuclear China and (as with the U.S.) the need to limit possible threats in regions where it may choose to intervene. These concerns were well founded. During the late 1960s, the U.S. had deployed thousands of nuclear weapons and their components to other countries, including Canada, Cuba, Greenland, Iceland, Japan, Morocco, Philippines, Puerto Rico, South Korea, Spain, Taiwan, Belgium, Greece, Italy, Netherlands, Turkey, UK, and West Germany.¹⁰⁴ At that time, the U.S. had a stockpile of over 32,000 nuclear warheads, and the Soviet Union over 6,000.

In 1967, the U.S. and Soviet Union submitted identical treaty drafts. The draft contained no treaty article dealing specifically with disarmament. Instead, the superpowers proclaimed their good intentions in a non-binding preambular paragraph. They were:

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.¹⁰⁵

It was eventually Mexico that proposed including an article on disarmament in the treaty, which eventually became Article VI, and commits all parties "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."

It was clear early on that even this limited obligation was not welcomed by the nuclear weapons states and would not be readily met. "Under the pressure of the non-aligned states as well as from some of their own allies," Mohammed Shaker notes in his history of the NPT, "the two superpowers merely accepted in the NPT to undertake to pursue negotiations in good faith, but not, as pointed out by one American negotiator, 'to achieve any disarmament agreement, since it is obviously impossible to predict the exact nature and results of such negotiations.'"¹⁰⁶ Even this evidence of the intention to not take the treaty seriously suggests some limited good faith that was not there. Bill Epstein, a veteran United Nations official in the area of arms control and disarmament, records that

¹⁰³ Peter A. Clausen, *Nonproliferation and the National Interest: America's Response to the Spread of Nuclear Weapons* (New York: Harper Collins, 1993), pp. 93-4.

¹⁰⁴ Robert S. Norris, W. M. Arkin, W. Burr, "Where They Were," *The Bulletin of the Atomic Scientists*, November/December 1999, pp. 26-35 and 66-7.

¹⁰⁵ Shaker, op. cit.

¹⁰⁶ Shaker, op. cit., p. 567. The U.S. negotiator was Gerard Smith.

"one of the American negotiators conceded privately that the NPT was 'one of the greatest con games of modern times.'"¹⁰⁷

The scale of the 'con' has become starkly apparent. The nuclear weapons states were able to ensure that there were no compliance provisions applicable to them. They were bound only by "good faith." If they chose not to exercise it, who could make them do otherwise? Thus, thirty years after the NPT was opened for signature, there remain five declared nuclear weapon states which among them possess tens of thousands of nuclear weapons.

For their part, the non-nuclear weapons states have sought to hold the weapons states to their Article VI obligations to disarm. Their efforts have been treated as little more than attempts to plead and to cajole. The fact that many non-nuclear states were dependent on, and often simply clients of, the major powers has meant that other political and economic interests mute the demands they are willing or able to make. The only feature of the NPT that could serve as leverage on the nuclear weapons states is for individual states to withdraw from the treaty, or to agree collectively to either amend or to bring about the end of Treaty.¹⁰⁸ The NPT came with a 25-year lifetime and a requirement for a conference of the signatories at that time to determine whether to extend it and for how long. In principle, the non-nuclear weapon states could have demanded that the nuclear weapons states either comply with their Article VI obligation to disarm or face the end of the NPT bargain by allowing the Treaty to lapse. But, despite their frustration, the non-nuclear weapons states have not been interested in bringing down the NPT, either individually or collectively – no state, as of this writing, has ever withdrawn from the Treaty (although North Korea has given notice of its intention to do so, but there has been no formal determination of its status with regard to the Treaty¹⁰⁹).

The opportunity for the non-nuclear weapons states to bring the Treaty to an end came at the 1995 NPT Review and Extension Conference. But, as the President of the Conference, Jayantha Dhanapala, observed: "It was clear from the very beginning that all delegations did want to extend the Treaty." The real issue at the Conference was that among a large number of delegations "there was a desire for an indefinite extension plus;" the plus being "further commitments towards nuclear disarmament in terms of

¹⁰⁷ William Epstein, *The Last Chance: Nuclear Proliferation and Arms Control* (New York, The Free Press, 1976), p. 118.

¹⁰⁸ Using the amendment provision in the NPT to transform the treaty into one abolishing nuclear weapons has been proposed; see Zia Mian "NGO Remarks to NPT Delegates," NPT Review Conference Precom 2000, New York, 1997; and Zia Mian and M.V. Ramana, "Diplomatic Judo: Using the NPT to Make the Nuclear Weapons States Negotiate the Abolition of Nuclear Weapons," *Disarmament Diplomacy*, April 1999, pp. 7-10.

¹⁰⁹ Christine Kucia, "North Korea's Nuclear Nonproliferation Treaty Status," *Arms Control Today*, July/August 2003, p. 24.

concrete action."¹¹⁰ In short, the demand was for the nuclear weapons states to take seriously and fulfill their treaty commitments. It was not to be.

The United States, the other nuclear powers, and some U.S. allies worked for and got an indefinite extension without conditions or commitments on disarmament. Miguel Marin Bosch, Mexico's Ambassador to the conference, explained that the final decision indefinitely extending the NPT "was what the five permanent members of the Security Council wanted and secured in order to continue being the nuclear haves in a world of overwhelmingly nuclear have-nots."¹¹¹ Bosch went on to apportion responsibility among the nuclear weapons states, observing that "it is a unipolar 1946 world - there is only one superpower."¹¹²

While the links between the outcome of the NPT Review and Extension Conference and the interests it served are important, it is also necessary to attend to the way the decision was arrived at. The evidence suggests the 'diplomacy' was far from meeting even elementary criteria for fairness and justice. According to Indonesia's ambassador, the 1995 decision was arrived at "simply by the use of pressure tactics against smaller countries...many countries complained to us about pressure with conditionalities and other types of pressure."¹¹³ Other representatives of states from the South expressed similar concerns about the coercive private diplomacy. The Venezuelan ambassador, when asked why his state had supported indefinite extension, explained that "there had been too much pressure... applied in all directions," adding that "most of the developing countries are going through difficult times, including my own."¹¹⁴ More directly, the Venezuelan ambassador complained that "this decision has been extracted by force."¹¹⁵ Iran's ambassador made the connection between the means used to arrive at the indefinite extension decision and the implications for its legitimacy. He noted that "a lot of pressures... promises and sometimes threats were put on non-aligned countries... by certain nuclear weapons states, in particular the United States, as well as certain Western countries... this might call into question the method by which the indefinite extension was reached."¹¹⁶

It was noted earlier that validation (the signals of support or dissatisfaction with an agreement) and adherence (how an agreement fits into the larger set of shared principles and institutions) are important contributors to an agreement's legitimacy. The judgment of key non-nuclear weapons states makes clear that the 1995 Conference added

¹¹⁰ Susan B. Walsh, "Delegate Perspectives on the 1995 NPT Review and Extension Conference," *The NonProliferation Review*, Spring-Summer 1995, p.1.

¹¹¹ Miguel Marin-Bosch, "Nuclear Disarmament on the Eve of the Twenty-First Century: Is This as Good as it Gets?," *Disarmament Diplomacy*, April 1999, pp. 5-6.

¹¹² Walsh, op. cit., p. 7.

¹¹³ Ibid., p. 6.

¹¹⁴ Ibid., p. 9.

¹¹⁵ Ibid., p. 9.

¹¹⁶ Ibid., p. 13.

significantly to the growing crisis of legitimacy of the NPT. The crisis became even more acute when, in a 1996 ruling on a case brought before it by the United Nations General Assembly, the International Court of Justice gave its unanimous advisory opinion that under the NPT nuclear weapon states have "an obligation to pursue in good faith *and bring to a conclusion* negotiations leading to nuclear disarmament in all its aspects"¹¹⁷ [emphasis added]. The U.S. Ambassador to the United Nations Conference on Disarmament, Robert Grey, was dismissive: "Our own view is very clear: we don't think it helpful or useful to discuss nuclear disarmament or negotiate nuclear disarmament in a multilateral context."¹¹⁸

In the light of the Court's judgment, the continued refusal by the nuclear weapon states to even permit negotiations on the elimination of nuclear weapons may be read as non-compliance with the NPT. The ICJ judgment and the lack of subsequent progress have given rise to recurring resolutions at the General Assembly demanding action. In December 1999, a paragraph recalling the Court's ruling was put to the vote and adopted by 156 to 3 – the U.S., Russia, and France voted against, while the UK, Israel, and Bulgaria abstained.¹¹⁹ This demand from an overwhelming majority of the international community was simply ignored by the nuclear weapons states. They did not open negotiations on how to comply with the Court's judgment.

The non-nuclear weapons states have persisted in their efforts to seek full compliance with the NPT by the nuclear weapons states. Building on the World Court and General Assembly resolutions, the nuclear weapon states were placed under pressure by demands for nuclear disarmament from the 'New Agenda Coalition' states (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden). At the April 2000 Review Conference of the NPT, the weapons states responded by including in the final document an "unequivocal undertaking... to accomplish the total elimination of their nuclear arsenals".¹²⁰ The seriousness of this "undertaking" became evident soon thereafter. While international newspaper reports declared "5 Atom Powers Agree to Scrap Arsenals" (International Herald Tribune), Ambassador Robert Grey suggested that there were "different evaluations of what has been achieved" and other U.S. officials explained that the agreement "did not represent a significant shift in United States policy."¹²¹ Ambassador Gray was a little more blunt later, saying the declaration "will have no more impact than its had in the past. It's more of the same."¹²²

¹¹⁷ John Burroughs, *The (Il)legality of Threat or Use of Nuclear Weapons*, International Association of Lawyers Against Nuclear Arms (Munster, Lit Verlag, 1997).

¹¹⁸ "U.S. Interest and Priorities at the CD - Interview with U.S. Ambassador Robert T Grey, Jr.," *Arms Control Today*, October 1998, pp. 3-8.

¹¹⁹ *Disarmament Times*, volume XXII, No. 5, December 1999.

¹²⁰ Rebecca Johnson, "The 2000 NPT Review Conference: A Delicate, Hard-Won Compromise," *Disarmament Diplomacy* -- Issue No 46, May 2000, p. 21.

¹²¹ *Ibid.*, p.15.

¹²² John Burroughs, "More Promises to Keep: 2000 NPT Review Conference," *Bombs Away - Newsletter of the Lawyers' Committee on Nuclear Policy*, vol. 13, no. 1 (revised), Fall 2000, p. 4.

At the 2000 Review of the NPT, the states parties agreed to 13 practical steps as part of the effort to implement Article VI of the Treaty.¹²³ The first of these was a commitment to urgent signature and ratification of the CTBT to achieve its early entry into force. With the Bush Administration having made it clear that it will not consider ratification of the Test Ban, there is no prospect of entry into force. Another step was preserving and strengthening the ABM Treaty. The U.S. has since withdrawn from this Treaty. There has been no significant progress on the other steps. A veteran observer of the NPT was moved to observe that in 2003 the NPT “faces some very serious challenges – even threats – that could result in its rather early demise unless great care is taken to address its limitations.”¹²⁴

VII. Enforcing the NPT

While the most powerful states have limited their compliance with the NPT to the narrowest interpretation of certain specific obligations and refused compliance with other parts of the treaty, they have insisted that others comply with all the rules. Part of the problem lies in the structure of the treaty itself, the way in which it plays to power, and in particular the role given to the International Atomic Energy Agency and its Board of Governors, whose membership is determined in such a way that the nuclear weapons states are permanent members.¹²⁵ The Board is supposed to report noncompliance to the Security Council and General Assembly of the United Nations.

It is worth looking briefly at how the IAEA, its Board, and its General Conference work in practice. One particularly illuminating example was provided by the events following the 1981 Israeli attack on Iraq's Osirak nuclear reactor.¹²⁶ The Director General and Board of Governors of the IAEA strongly condemned Israel's action and asked the General Conference of the IAEA to consider suspending Israel from the exercise of its rights and privileges. The General Conference stopped short and voted only to suspend all technical assistance to Israel. The following year, the General Conference considered a resolution to refuse Israel's participation in the meeting. When the vote went against Israel, the U.S. demanded an appeal, and when this was lost the official history of the IAEA records that “the delegations of the United Kingdom and the U.S.A walked out of the conference hall, followed closely by most other Western delegations. Before

¹²³ Report of Main Committee I (NPT/CONF.2000/MC.I/1), 11 May 2000, *Final Document of the 2000 NPT Review Conference*, Vol. II, Part III (New York, NY: United Nations, 2000), pp. 420-1.

¹²⁴ Rebecca Johnson, “Incentives, Obligations and Enforcement: Does The NPT Meet Its States Parties’ Needs?,” *Disarmament Diplomacy*, April/May 2003, p. 3.

¹²⁵ For the details of the NPT's formal mechanisms for establishing and responding to noncompliance, see the chapter by Feiveson and Shire in this volume.

¹²⁶ A history of the IAEA's response to this incident is given in David Fischer, *History of The International Atomic Energy Agency: The First Forty Years* (Vienna: International Atomic Energy Agency, 1997), pp.103-8.

withdrawing from the General Conference, the U.S. delegate announced his government would reassess its policies regarding United States support for and participation in the IAEA and its activities."¹²⁷ In short, the U.S. would pull out of the IAEA or at least severely undermine its functioning. The history also notes that the U.S. has been and remains the largest contributor to the IAEA budget and its technical assistance programs. It came as no surprise when, a few months later, the IAEA Director General and its Board declared that Israel remained a full member of the IAEA, and the U.S. resumed its relationship with the agency.

Given this background, it is worth comparing the responses of the NPT machinery, the United States, the Security Council and the larger international community to the pursuit of nuclear weapons by Israel, Iraq, North Korea, India and Pakistan. In each case, the U.S. took the lead, at times supported by and at other times resisted by other Security Council powers and the larger international community. Given the international role played by the United States and the importance the U.S. has attached to nonproliferation, it is important to frame this discussion by recalling how the U.S. officially describes its interests in each case.

Proliferation: Threat and Response, an annual report from the Office of the Secretary of Defense, proclaims (as it has done for the past five years with hardly any change in wording) that for the Middle East, U.S. goals and interests include "maintaining a steadfast commitment to Israel's security and well-being" and "building and maintaining security arrangements that assure the stability of the Gulf region and unimpeded commercial access to its petroleum reserves."¹²⁸ In the case of North East Asia, the report declares U.S. interests are "to seek a stable and economically prosperous region." For South Asia, the interests are more security oriented, namely "preventing another Indo-Pakistan war, enhancing regional stability, and stemming the proliferation of weapons of mass destruction." It will become clear that, for the U.S., nuclear nonproliferation is in fact subordinate to its other specific national economic and military interests.

Colluding with Israel

Israel has the biggest and most successful nuclear weapons program outside of the five major nuclear weapons states.¹²⁹ It has not signed the NPT and is believed to maintain a stockpile of at least 100 and perhaps several hundred nuclear weapons and to possess ballistic missiles with a range up to 4000 km (Jericho-2), as well as aircraft capable of

¹²⁷ Ibid., p.107.

¹²⁸ *Proliferation: Threat and Response*, Office of the Secretary of Defense (Washington, D.C.: U.S. Government Printing Office, January 2001).

¹²⁹ For a history, see Avner Cohen, "Most Favored Nation," *Bulletin of the Atomic Scientists*, January/February 1995, and Avner Cohen, *Israel and the Bomb* (New York, NY: Columbia University Press, 1998).

delivering nuclear weapons and submarine launched nuclear cruise missiles.¹³⁰ The reporting, analysis and concern about Israel's nuclear weapons capabilities and of the role played by the United States have not been proportionate. This reflects the privileged position Israel holds not just in U.S. policy but also in much of the U.S. arms control and nonproliferation community.

United States support for Israel, especially among the policy making community, has been unaffected by actions which, if taken by any other state, would have been seen as completely unacceptable. These actions include Israel's being prepared to use nuclear weapons in its 1973 war,¹³¹ its 1982 invasion of Lebanon, in which almost 20,000 people were killed and many more injured,¹³² its subsequent occupation of South Lebanon until early 2000, its policy of assassinations and bombings directed against Palestinian leaders in third countries, most notably in 1985 in Tunisia,¹³³ to say nothing of its widespread violation of international law as part of its illegal occupation of the Palestinian West Bank and Gaza. It takes far less for any other state to be dubbed a "rogue state" and subject to censure and punishment by the U.S. and its allies.

The U.S. has never tried to restrain Israel's nuclear weapons program. This has been despite occasional Israeli fears that the program might become an issue. According to Avner Cohen, when President John F. Kennedy met with Israeli Prime Minister David Ben Gurion in May 1961, they discussed Israel's nuclear weapons ambitions and capability for perhaps fifteen minutes and "Kennedy did not try to extract a promise that Israel would not develop a nuclear weapons capability in the future [and] exerted no new pressure and Ben Gurion had no need to use all the arguments he had prepared."¹³⁴ Cohen reports that Ben Gurion "felt relieved." By 1968, as the NPT was being negotiated, President Lyndon Johnson was content simply to tell Israel that, while its accession to the NPT was important to the United States, the U.S. would provide military assistance to Israel nonetheless.

Military support for Israel deepened even further under President Richard Nixon, who pledged "to keep Israel strong."¹³⁵ Subsequently, the U.S. and Israel have developed increasingly close military cooperation, concluding in 1970 an agreement known as the Master Defense Development Data Exchange, which gave Israel access to information on

¹³⁰ Israel Special Weapons Guide, Federation of American Scientists website, <http://www.fas.org/nuke/guide/israel/index.html>.

¹³¹ See Seymour M. Hersh, *The Samson Option: Israel's Nuclear Arsenal and American Foreign Policy* (New York, NY: Random House, 1991).

¹³² Jay Ross, "War Casualties Put at 48,000 in Lebanon," *The Washington Post*, September 3, 1982.

¹³³ On October 1, 1985, Israel attacked the headquarters of the Palestine Liberation Organization in Tunis, with U.S.-supplied jets, killing over 70 people (Frank J. Prial, "Israeli Planes Attack P.L.O. in Tunis," *The New York Times*, October 2, 1985). The U.S. supported the attack, but eventually abstained in the 14-0 UN Security Council vote condemning Israel (Elaine Sciolino, "UN Body Assails Israeli Air Strike," *The New York Times*, October 5, 1985).

¹³⁴ Cohen, *Israel and the Bomb*, op. cit., pp. 111, 156.

¹³⁵ *Ibid.*, p. 316 and p. 326.

a range of military technologies.¹³⁶ The degree and quality of cooperation between the U.S. and Israel have grown markedly over time and now extend far beyond the supply of military technology. In 1987, the Director of Defense Research and Development for Israel's armed forces noted that the two countries had a "dynamic array of joint R and D projects, weapons evaluations, exchange of lessons learned in war, and sharing of test results for weapons systems... [which] has transformed the concept of cooperation into a fantastic process benefiting both nations."¹³⁷ Israel may even have had access to U.S. and French nuclear weapons design and test expertise.¹³⁸ The U.S. has underpinned its cooperation through the provision of \$70-80 billion dollars of military and economic aid to Israel over the past two decades, and it presently provides well in excess of \$3 billion a year. It has been noted that, "as stunning as these amounts are, they substantially underestimate the magnitude of [U.S.] assistance... they do not reflect the numerous special privileges being accorded to Israel."¹³⁹ In 1997, an amendment to the United States Defense Authorization Act barred U.S. companies from taking or selling high resolution satellite pictures of Israel.¹⁴⁰ It is the only state with this protection.

There have been repeated demands from the international community that Israel should give up its nuclear weapons and accede to the NPT. It is the only state in the Middle East that is not a party to the Treaty, making it impossible for the Middle East region to become a nuclear weapon free zone. Demands for such a zone have repeatedly been made by states within the region and by the larger international community through UN General Assembly resolutions, as well as in review conferences of the NPT parties. The 1995 NPT agreement on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" specifically encouraged all NPT states parties to exert "every effort" to universalize membership of the Treaty. In December 1998, the UN General Assembly voted 158-2 in support of a resolution that "calls upon the only state in the region that is not a party to the NPT to accede without further delay and not to develop, produce, test or otherwise acquire nuclear weapons."¹⁴¹ Only Israel and the U.S. voted against the resolution. The U.S. chose to support Israel rather than comply with its obligations under the NPT and respect the clearly stated wishes of the overwhelming majority of the international community.

Since then, the strategic interdependence between the U.S. and Israel has shown every sign of becoming even tighter. In 1998, the U.S. signed a Memorandum of Agreement

¹³⁶ For a history of U.S.-Israel military cooperation, see Stephen Green, *Living By the Sword: America and Israel in the Middle East 1968-1987* (Boston, MA: Faber and Faber, 1988).

¹³⁷ *Ibid.*, p. 222.

¹³⁸ Eric Arnett, "Implications of the Comprehensive Test Ban for Nuclear Weapons Programmes and Decision Making," in Eric Arnett, ed., *Nuclear Weapons After the Comprehensive Test Ban: Implications for Modernisation and Proliferation* (Oxford: Oxford University Press, 1996), p. 15.

¹³⁹ Duncan L. Clarke, Daniel B. O'Connor and Jason D. Ellis, *Send Guns and Money: Security Assistance and U.S. Foreign Policy* (Westport, CT: Praeger, 1997), p. 169.

¹⁴⁰ Ben Iannotta, "Setting the Rules for Remote Sensing," *Aerospace America*, April 1999.

¹⁴¹ A/RES/53/80, Risk of Nuclear Proliferation in the Middle East.

with Israel committing it to "enhancing Israel's defense and deterrent capabilities" and "upgrading the framework of the U.S.-Israel strategic and military relationship, as well as the technological cooperation between them."¹⁴² The agreement included a U.S. commitment to providing "ways and means of assuring and increasing Israel's deterrent power by supplies of modern technology and weapons systems."¹⁴³ It is hard to read this as anything other than a promise of active U.S. support for Israel having and keeping nuclear weapons.¹⁴⁴

The U.S. is not alone in heaping nuclear favors on Israel. France provided the Dimona facility to Israel for making weapons grade plutonium and a reprocessing plant for recovering it, as well as helping with the Jericho missile program. Germany has agreed to pay most of the \$900 million cost of the three Dolphin submarines it is building for Israel, which are capable of firing long-range nuclear-capable cruise missiles.¹⁴⁵ Israel is reported to have tested such missiles to a range of almost 1500 km.¹⁴⁶

The U.S and Israel seem increasingly willing to make explicit the violation of the NPT. In February 2000, an agreement was signed giving Israeli scientists access to "limited nuclear information" from the U.S. nuclear weapons laboratories – such access had previously been restricted because of Israel's refusal to sign the NPT.¹⁴⁷ In making the announcement, U.S. Secretary of Energy Bill Richardson pointed out that Israel "is not treated in a similar fashion as others on our list of sensitive countries." The 'sensitive countries' list is the familiar gallery, including India, Pakistan, Iran, Iraq, and North Korea.¹⁴⁸

The Harrowing of Iraq

In sharp contrast to sustained U.S. military, economic and political support for Israel has been its ruthless and unprecedented use of sanctions and force against Iraq to compel compliance with arms control agreements and U.N. resolutions, culminating in the 2003 invasion and occupation. This case reveals the complex interplay of U.S. politics, interests and power with the international community, international institutions and public opinion over the question of compliance.

¹⁴² U.S.-Israel Memorandum of Agreement, October 31, 1998, Center for Nonproliferation Studies, Monterey, http://cns.miis.edu/research/wmdme/isrl_moa.htm.

¹⁴³ Howard Diamond, "New U.S.-Israeli Strategic Dialogue Announced; Israel Acquires New Submarine," *Arms Control Today*, July/August 1999.

¹⁴⁴ The cooperation extends to missile defenses also. There are plans to link Israel's Arrow-2 anti-ballistic missile system to U.S. radar systems. "Arrow-2 to be Linked to U.S. Radar Detection," *Israel Line*, February 12, 1999.

¹⁴⁵ Howard Diamond, op. cit.

¹⁴⁶ Uzi Mahnaimi and Peter Conradi, "Fears of New Arms Race as Israel Tests Cruise Missiles," *The Sunday Times*, June 18, 2000.

¹⁴⁷ "Israel/U.S. Agreement on Limited Nuclear Technology," *Israel Wire*, February 23, 2000.

¹⁴⁸ "Israel Granted Access to DoE Nuclear Projects," *Jane's Defence Weekly*, March 1, 2000.

The 2003 war against Iraq has been described as the first “disarmament war.”¹⁴⁹ But this takes U.S. claims at face value and ignores both context and precedent. A proper place to start to understand the 2003 war is the enduring U.S. interest in the Middle East region. The U.S. Department of Defense report, *Proliferation: Threat and Response*, describes the U.S. interest there, apart from protecting Israel, as “building and maintaining security arrangements that assure the stability of the Gulf region and unimpeded commercial access to its petroleum reserves.”¹⁵⁰ The Report explains that “the proliferation of NBC [nuclear, biological, chemical] weapons and the means of delivering them poses a significant challenge to the ability of the United States to achieve these goals.”¹⁵¹

The need for political stability and access to oil, more properly continued U.S. control, in the region, explains why while Iraq's invasion of Kuwait in 1990 led to a massive U.S. military intervention and the first U.S.-Iraq war, Iraq's 1980 invasion of Iran merited no comparable U.S. effort to defend Iran. Rather, in the Iran-Iraq war, the U.S. actively sided with Iraq. As a former U.S. ambassador to Iraq argued, “we were concerned that Iraq should not lose the war with Iran, because that would have threatened Saudi Arabia and the Gulf.” The Iran-Iraq war came soon after the Iranian revolution freed the country from the U.S.-backed regime of the Shah, with radical Islamists seizing power afterwards.¹⁵² Iraq threatened U.S. interests in attacking Kuwait, a U.S. client, but not when it attacked post-revolutionary Iran.

The justification given for the first U.S.-Iraq war was that it was a response to Iraq's invasion of Kuwait. Iraq's aggression against Kuwait was subsequently used to justify the efforts to disarm Iraq of its weapons of mass destruction, including through the use of sanctions and eventually as a basis for the second U.S.-Iraq war.¹⁵³ But it is worth keeping in mind that, barely a year before Iraq attacked Kuwait, the U.S. had invaded Panama. The UN General Assembly denounced the U.S. assault as a “flagrant violation of international law.”¹⁵⁴ A similar resolution brought before the U.N. Security Council had the support of all members except for the United States and its traditional nuclear

¹⁴⁹ Peter Slevin and Colum Lynch, “Focus at U.N. Turns To Iraq's Recovery; Germany, France Stress Organization's Role,” *The Washington Post*, March 20, 2003.

¹⁵⁰ Office of the Secretary of Defense, *Proliferation: Threat and Response* (Washington, D.C.: U.S. Government Printing Office, January 2001), p. 33.

¹⁵¹ *Ibid.*

¹⁵² The Shah had been put in power by the 1953 CIA-sponsored coup that overthrew the elected government of Prime Minister Mohammad Mossadegh. For a history of the coup see Stephen Kinzer, *All the Shah's Men: An American Coup and the Roots of Middle East Terror*, (New York NY: John Wiley & Sons, 2003).

¹⁵³ Michael Dobbs, “U.S. had Key Role in Iraq Build-up,” *The Washington Post*, December 30, 2002.

¹⁵⁴ Paul Lewis, “Deal Is Reached at U.N. on Panama Seat as Invasion Is Condemned,” *The New York Times*, December 30, 1989.

armed allies (and former colonial powers) Britain and France, and one other member, Canada (Finland abstained).¹⁵⁵

Iraq's use of chemical weapons against Iran in the Iran-Iraq war, and against the Kurds in the late 1980s, was another key argument used to explain for U.S. policy towards Iraq at the time of and after Iraq's attack on Kuwait. It was referred to repeatedly by President George W. Bush and other U.S. policy makers in the run-up to the second U.S.-Iraq war. But this conveniently overlooks the U.S.-Iraq relationship leading up to and at the time these weapons were actually being used. A *Washington Post* investigation revealed that, during the 1980s "the administrations of Ronald Reagan and George H.W. Bush authorized the sale to Iraq of numerous items that had both military and civilian applications, including poisonous chemicals and deadly biological viruses, such as anthrax and bubonic plague."¹⁵⁶

Even though it was known that Iraq had been making "almost daily use" of chemical weapons against Iran, the United States, according to a National Security Council official, "actively supported the Iraqi war effort," with billions of dollars and "by providing military intelligence and advice to the Iraqis."¹⁵⁷ *The New York Times* reported "American military officers said President Reagan, Vice President George Bush and senior national security aides never withdrew their support for the highly classified program in which more than 60 officers of the Defense Intelligence Agency were secretly providing detailed information on Iranian deployments, tactical planning for battles, plans for air strikes and bomb-damage assessments for Iraq," while at the same time "the C.I.A. provided Iraq with satellite photography of the war front."¹⁵⁸ Similarly, Iraq's use of chemical weapons against the Kurds, most notoriously in 1988 against the town of Halabjah, was met with increased U.S. military assistance.

In 1991, as part of the cease-fire ending the first U.S.-Iraq war, the United Nations Security Council created the United Nations Special Commission (UNSCOM) and mandated it to discover and destroy Iraq's chemical and biological weapons, ballistic missiles, and related production infrastructure.¹⁵⁹ The IAEA was separately charged with uncovering and destroying Iraq's nuclear weapons complex. These weapons programs were a clear breach of Iraq's international treaty commitments, including the NPT. Considering the failure of the Security Council to act in the case of Israel, it is almost perverse that the UN resolution justified action against Iraq in part by "recalling the objective of the establishment of a nuclear-weapons-free zone in the region of the Middle

¹⁵⁵ Paul Lewis, "Fighting in Panama: United Nations; Security Council Condemnation of Invasion Vetoed," *The New York Times*, December 24, 1989.

¹⁵⁶ Dobbs, op. cit.

¹⁵⁷ Ibid.

¹⁵⁸ Patrick E., Tyler, "Officer Say U.S. Aided Iraq in War Despite Use of Gas," *The New York Times*, August 18, 2002.

¹⁵⁹ UNSC Resolution 687, April 3, 1991.

East... and the need to work towards the establishment in the Middle East of a zone free of such weapons."

UNSCOM was a new initiative in the history of both the UN and arms control.¹⁶⁰ Its Executive Chairman reported directly to the Security Council, not to the UN Secretary General. In addition to its chairman, the Commission consisted of 20 members; from the United States, the Russian Federation, the United Kingdom, France, China, Germany, Japan, Canada, the Netherlands, Australia, Austria, Belgium, the Czech Republic, Finland, Italy, Norway, Poland, Venezuela, Nigeria, and Indonesia – in other words, the permanent members of the Security Council, 12 states that could be classed as U.S. allies, along with one state each from Latin America, Africa and Asia. No Arab country was a member.

UNSCOM was staffed not by UN civil servants, but by experts provided by and for the most part paid by their respective governments. The U.S. had a significant presence. UNSCOM was also supported by unprecedented intelligence sharing and cooperation by the United States, including a dedicated U-2 spy plane, equipment, and weapons experts for inspection teams. It was later revealed that U.S. intelligence agencies were using agents disguised as UNSCOM inspectors to monitor Iraqi military activity and collect information used for planning U.S. air attacks.¹⁶¹ The UNSCOM inspectors were withdrawn from Iraq by the United Nations in late 1998 as the United States threatened and prepared to attack Iraq.¹⁶² Iraq was bombed by U.S. and British planes in a 70 hour bombing campaign across the country in December 1998. Many of the targets attacked were sites that had been visited by the UNSCOM inspectors, leading Iraq to refuse to allow the inspectors to return.¹⁶³

There was no authorization for the attacks from the Security Council and no state was willing to join the U.S. and UK in these bombing missions. This may be because they appeared to have a larger purpose, with U.S. officials seeing the bombing as a tool to "contain and degrade the Iraqi military, humiliate Saddam Hussein, and perhaps generate opposition to his rule."¹⁶⁴ This larger plan was made clear in a 1998 U.S. law authorizing \$97 million in military aid and equipment for armed insurgents in Iraq attempting to topple the government.¹⁶⁵

Accompanying the inspections and the use of military force was a set of wide-ranging, severe and destructive sanctions imposed on Iraq at the outset of the Gulf War in 1990.

¹⁶⁰ For details, see the UNSCOM website at <http://www.un.org/Depts/unscom/unscom.htm>.

¹⁶¹ Seymour Hersh, "Saddam's Best Friend," *The New Yorker*, April 5, 1999.

¹⁶² Bradley Graham and John M. Goshko, "More Forces Sent to Gulf As Clinton Warns Iraq; U.N. Arms Inspectors Pulled From Baghdad," *The Washington Post*, November 12, 1998.

¹⁶³ Howard Schneider, "Defiant Iraq Will Not Allow New U.N. Arms Inspectors to Enter," *The Washington Post*, August 24, 2000.

¹⁶⁴ Edward Cody, "Under Iraqi Skies, A Canvas of Death," *Washington Post*, June 16, 2000.

¹⁶⁵ Carl Hulse, "U.S. Said to Approve Anti-Hussein Funding," *The New York Times*, February 2, 2001.

Official U.S. estimates are that by 1998, when the sanctions were replaced by a UN managed oil-for-food program, the sanctions had cost Iraq more than \$120 billion.¹⁶⁶ There was an accompanying humanitarian tragedy. A UNICEF survey of child mortality in Iraq estimated that during the same eight year period, 1991-1998, there had been an additional half million deaths of children under five in the country as a whole.¹⁶⁷

The humanitarian impact of the sanctions regime has raised great disquiet among many, including those charged with dealing with their terrible consequences. UN Assistant Secretary General Denis Halliday, the first UN Humanitarian Coordinator in Iraq, resigned in October 1998 to protest what he called the "genocidal impact" of economic sanctions, while his successor, Hans von Sponeck, resigned a year later voicing similar concerns.¹⁶⁸ Senior U.S. officials saw differently. Secretary of State Madeline Albright was asked in a television interview "We have heard that over half a million children have died. I mean, that's more than died in Hiroshima. And, you know, is the price worth it?" To which she replied, "I think this is a very hard choice. But the price – we think the price is worth it."¹⁶⁹ It is a breath-taking judgment.

The original Security Council resolution on Iraq stated explicitly that sanctions "shall have no further force or effect" once Iraq complied with the weapons inspection regime contained in the resolution. In 1998, on the basis of IAEA reports, Russia, France, and China urged the Security Council to recognize the completion of Iraq's nuclear disarmament, but the move was opposed by the United States.¹⁷⁰ Following the U.N. withdrawal of UNSCOM, in 1999 the Security Council created a new inspection body, the United Nations Monitoring, Verification and Inspection Commission, UNMOVIC. But Iraq again refused to allow inspectors to enter the country.

The coming to power in 2001 of a hard-line conservative Republican government under President George W. Bush, with strong ties to the oil industry, marked the start of a yet more aggressive U.S. policy towards Iraq. Many senior members of the Bush Administration were veterans of his father's administration that had waged the first U.S.-Iraq war, and had subsequently been arguing and organizing for further use of force against Iraq, and other states. It included the authors of a 1992 Pentagon Defense Planning Guidance that was notable for being "conspicuously devoid of references to collective action through the United Nations" and proposed that "the United States be

¹⁶⁶ Remarks of the President on Iraq, December 19, 1998, White House Website, <http://www.whitehouse.gov/WH/New/html/19981219-2655.html>.

¹⁶⁷ Results of the 1999 Iraq Child and Maternal Mortality Surveys, UNICEF, 1999, <http://www.unicef.org/reseval/iraqr.htm>.

¹⁶⁸ Phyllis Bennis, "And They Called It Peace: U.S. Policy on Iraq," *Middle East Report*, 215, Summer 2000.

¹⁶⁹ CBS News, *60 Minutes*, May 12, 1996.

¹⁷⁰ Howard Diamond, "UN Maintains Sanctions on Iraq As Security Council Split Grows," *Arms Control Today*, April 1998.

postured to act independently when collective action cannot be orchestrated.”¹⁷¹ Also, it included signatories to a 1998 letter to President Clinton, organized by a group calling itself the Project for A New American Century, urging “a strategy for removing Saddam's regime from power...[using] a full complement of diplomatic, political and military efforts.”¹⁷²

The attacks on September 11, 2001, against New York and Washington and the widespread support for war against the Taliban regime in Afghanistan opened a window of opportunity for the U.S. to move on Iraq. In late 2001, the U.S. decided to go to war against Iraq, with President Bush's speech writers being asked to make a case for war against Iraq for the forthcoming 2002 State of the Union Address.¹⁷³ In the speech, Bush declared that the U.S. confronted an “axis of evil,” naming North Korea, Iran and Iraq, but focused his charge on Iraq and its pursuit of weapons of mass destruction and ties to Al-Qaeda.¹⁷⁴ After the war, it became clear that there was little if any evidence to substantiate these claims.¹⁷⁵

In choosing war, and in keeping with the perspective of leading officials in the Bush Administration, the U.S. initially dismissed demands that any military action against Iraq should be authorized by the United Nations. The U.S. Congress passed a resolution authorizing the use of force against Iraq without UN authority.¹⁷⁶ The U.S. in fact initiated in mid-2002 a sustained and increasingly intense series of air attacks against Iraq to lay the foundations for a subsequent invasion.¹⁷⁷

In an effort to head off a U.S. attack on Iraq, in November 2002 the Security Council unanimously passed resolution 1441, establishing an unprecedented inspections regime, including the right of UNMOVIC inspectors to “immediate, unimpeded, unconditional and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other

¹⁷¹ Patrick E. Tyler, “U.S. Strategy Plan Calls For Insuring No Rivals Develop,” *The New York Times*, March 8, 1992.

¹⁷² Steven R. Weisman, “Pre-emption: Idea With a Lineage Whose Time Has Come,” *The New York Times*, March 23, 2003.

¹⁷³ Julian Borger, “How I Created the Axis of Evil,” *The Guardian*, January 28, 2003.

¹⁷⁴ David E. Sanger, “The State Of The Union: The Overview; Bush, Focusing On Terrorism, Says Secure U.S. Is Top Priority,” *The New York Times*, January 30, 2002.

¹⁷⁵ James Risen, David E. Sanger and Thom Shanker, “In Sketchy Data, Trying To Gauge Iraq Threat,” *The New York Times*, July 20, 2003. On the absence of ties between Iraq and Al-Qaeda, see James Risen, “C.I.A.; Captives Deny Qaeda Worked With Baghdad,” *The New York Times*, June 9, 2003; and Walter Pincus, “Report Cast Doubt on Iraq-Al Qaeda Connection,” *The Washington Post*, June 22, 2003.

¹⁷⁶ “Resolution That Congress Approved on the Right to Use Force in Iraq” *The New York Times*, October 12, 2002.

¹⁷⁷ Michael R. Gordon, “U.S. Air Raids in '02 Prepared for War in Iraq,” *The New York Times*, July 20, 2003.

persons.”¹⁷⁸ While U.S. officials, supported by the UK, declared that any delay or sign of resistance by Iraq in its compliance with the resolution opened the door for the use of force, the other permanent members of the Security Council emphasized that it was for the United Nations weapons inspectors to determine and report any violations to the Security Council, and for the Council to “take a position.”¹⁷⁹

U.S. plans for war also met determined resistance from public opinion. People took to the streets in a massive popular mobilization in the United States and around the world, arguably the largest mass movement in the twenty years since the anti-nuclear movements of the early 1980s, leading *The New York Times* to talk of the struggle between “two superpowers on the planet: the United States and world public opinion.”¹⁸⁰

Despite this, on February 24, 2003, the United States and UK proposed a Security Council resolution, with support from Spain, declaring that Iraq had failed to comply with resolution 1441, opening the way to the use of force.¹⁸¹ Russia, France and Germany countered with a memorandum calling for at least four more months of inspections, asserting that “the conditions for using force against Iraq are not fulfilled... no evidence has been given that Iraq still possesses weapons of mass destruction or capabilities in this field.”¹⁸² A revised U.S. –UK resolution that was tabled on March 7 gave Iraq a deadline of March 17, by which time the Security Council had to be satisfied that Iraq was in unconditional and active cooperation with UNMOVIC and had handed over all weapons of mass destruction, delivery systems, and information on its programs.¹⁸³ This was rejected by France, Russia and China, the other permanent members of the Council, with France and Russia announcing that they would veto the resolution should it be brought to a vote.¹⁸⁴ The United States sought and failed even to get support from a majority of members of the Security Council, despite what was characterized as “courtships, arm-twisting, compromises and back-room deal-making.”¹⁸⁵

¹⁷⁸ “Where the Draft Resolution Stands: ‘A Final Opportunity to Comply’”, *The New York Times*, November 7, 2002.

¹⁷⁹ Julia Preston, “Security Council Votes, 15-0, For Tough Iraq Resolution; Bush Calls It A ‘Final Test,’” *The New York Times*, November 9, 2002.

¹⁸⁰ Patrick E. Tyler, “A New Power in The Streets,” *The New York Times*, February 17, 2003.

¹⁸¹ “U.S.-British Draft Resolution Stating Position on Iraq,” *The New York Times*, February 25, 2003.

¹⁸² Elaine Sciolino, “France and Germany Call for Long Inspections,” *The New York Times*, February 25, 2003.

¹⁸³ Felicity Barringer, “U.N. Split Widens As Allies Dismiss Deadline On Iraq,” *The New York Times*, March 8, 2003.

¹⁸⁴ Elaine Sciolino, “France To Veto Resolution On Iraq War, Chirac Says,” *The New York Times*, March 11, 2003; Elizabeth Neuffer and John Donnelly, “US Support Lags; Vote Put Off Vetoes Vowed; Compromise On Iraq Eyed,” *The Boston Globe*, March 11, 2003.

¹⁸⁵ Tom Zeller, “How to Win Friends and Influence Small Countries,” *The New York Times*, March 16, 2003; Paul Blustein, “Bush May Use Trade Pacts for Iraq Leverage,” *The Washington Post*, March 15, 2003.

As war seemed inevitable, U.N. Secretary General Kofi Annan made clear that, “if the U.S. and others were to go outside the Council and take military action, it would not be in conformity with the Charter.”¹⁸⁶ The United States and UK withdrew their resolution on March 17, and two days later launched a war on Iraq.

Bargaining with North Korea

On January 10, 2003, North Korea announced its intention to withdraw from the NPT. It had made a similar announcement a decade earlier, in March 1993. It is the only state to have declared its withdrawal from the NPT. The crises that led up to these announcements and its subsequent resolution offers another instance of noncompliance and a set of reactions very different from those evident in the cases of Israel and Iraq.¹⁸⁷ The example of North Korea shows how far the U.S. is willing to go to negotiate over non-compliance when it chooses to do so.

North Korea initiated a nuclear research and development program with Soviet support in the late 1950s, receiving training for nuclear scientists and engineers and, in 1965, a research reactor.¹⁸⁸ This was in keeping with similar efforts underway around the world. In 1953, President Eisenhower had launched the Atoms for Peace Program in part as an effort to cultivate influence among developing countries. This provoked a competition with the Soviet Union to supply nuclear know-how. Over the next few decades, North Korea began to build an infrastructure that could support a nuclear weapons program (as did South Korea, a U.S. ally, for that matter). However, in December 1985, under Soviet pressure, North Korea joined the NPT, as South Korea had done a decade earlier.

For a number of reasons, the deadline for North Korea to sign the obligatory safeguards agreement with the IAEA only came in 1988, and it was missed by North Korea in part because it sought some larger benefit from its signature.¹⁸⁹ It demanded, in particular, the removal of U.S. nuclear weapons from South Korea and an assurance that the U.S. would not use nuclear weapons against it.¹⁹⁰ In 1991, the United States announced the removal of its nuclear weapons from South Korea, albeit as part of a larger set of unilateral measures coordinated with the Soviet Union to withdraw all tactical nuclear weapons from overseas (the goal was to ensure that the collapse of the Soviet Union would not leave any of its tactical nuclear weapons in any of the successor states except Russia). In

¹⁸⁶ Patrick E. Tyler and Felicity Barringer, “Annan Says U.S. Will Violate Charter if It Acts Without Approval,” *The New York Times*, March 11, 2003.

¹⁸⁷ For a history, see Lee Sigal, *Disarming Strangers: Nuclear Diplomacy with North Korea* (Princeton, NJ: Princeton University Press, 1998).

¹⁸⁸ Alexandre Y. Mansourov, “The Origins, Evolution, and Current Politics of the North Korean Nuclear Program,” *The Nonproliferation Review*, Spring/Summer 1995, pp. 25-38.

¹⁸⁹ Sigal, op. cit.

¹⁹⁰ Mitchell Reiss, *Bridled Ambitions: Why Countries Constrain Their Nuclear Capabilities* (Washington, D.C., Woodrow Wilson Center Press, 1995), p. 236.

December 1991, North and South Korea agreed, in a Joint Declaration on a Non-Nuclear Korean Peninsula, that they would "not test, manufacture, produce, introduce, possess, store, deploy, or use nuclear weapons" and would "not possess facilities for nuclear reprocessing and uranium enrichment."¹⁹¹ In January 1992, North Korea signed the IAEA safeguards agreement.

Matters soon took a turn for the worse. The IAEA and North Korea began to negotiate the inspections that underpin safeguards. The U.S. government, a dominant player in the IAEA, "was urging the IAEA to tighten up its monitoring procedures" and at the same time "pressing South Korea to insist on elaborate and intrusive inspections of its own."¹⁹² U.S. policy regarding North Korea at this time has been described as one of "using the IAEA to pry open access to North Korea's nuclear facilities, in an effort to constrain its nuclear program without offering anything in return."¹⁹³ The IAEA, still flinching from its failure to detect Iraq's clandestine nuclear weapon program, began to become more assertive, seeking special inspections at nuclear sites in North Korea.

North Korea resisted the inspections demand and, in March 1993, announced that, as allowed under the NPT, it would withdraw after ninety days. Matters came to a head in April 1993, when the IAEA's Board of Governors voted to refer the matter to the UN Security Council. A week later, the Security Council passed a resolution urging "all member states to encourage the DPRK to respond positively to this resolution and encourages them to facilitate a solution."¹⁹⁴ The United States, for its part, began to consider military action, including possibly attacking North Korea's nuclear facilities.¹⁹⁵ The U.S. did, however, open high level talks with North Korea, and North Korea suspended its withdrawal from the NPT.

Despite the negotiations, the U.S. was prepared to use coercion. For example, in early 1994, U.S. Defense Secretary Perry announced that he had ordered military preparations and warned that the U.S. was looking at "grim alternatives."¹⁹⁶ These preparations included the U.S. Joint Chiefs of Staff putting together a plan to attack North Korea.¹⁹⁷ President Clinton has explained that "We actually drew up plans to attack North Korea and to destroy their reactors and we told them we would attack unless they ended their nuclear programmes."¹⁹⁸ As Lee Sigal notes, North Korea needed little reminder of the

¹⁹¹ Ibid., p. 239.

¹⁹² Ibid., p. 42.

¹⁹³ Ibid., p. 48.

¹⁹⁴ S/RES/825 (1993).

¹⁹⁵ Sigal, op. cit., pp. 60-1.

¹⁹⁶ R. Jeffrey Smith, "Perry Sharply Warns North Korea," *The Washington Post*, March 31, 1994.

¹⁹⁷ William J. Perry, "Its Either Nukes or Negotiation," *The Washington Post*, July 23, 2003.

¹⁹⁸ Elaine Monaghan, "Clinton Planned Attack on Korean Nuclear Reactors," *The Times (London)*, December 16, 2002.

history of U.S. nuclear threats (most notably during the Korean War) or the massive U.S. military presence in South Korea, and now "bristled at every threat."¹⁹⁹

Eventually, in October 1994, the United States and North Korea arrived at a deal, dubbed the Agreed Framework. Its elements were very similar to what North Korea had proposed and the United States rejected a year earlier, and included North Korea freezing and dismantling its nuclear weapons program, based on plutonium production reactors and reprocessing plants, in exchange for two new light-water nuclear reactors for electricity generation and a supply of heavy fuel oil until these were completed.²⁰⁰

The prospect for improved U.S.-North Korean relations suffered a set-back with the victory of the Republicans in U.S. Congressional elections in 1994, who rejected the Agreed Framework and sought to over-turn it by ending funding for it.²⁰¹ There were persistent problems with the implementation of the agreement, including a United States failure to meet its commitment to deliver heavy fuel oil.²⁰² The promise to lift sanctions and improve relations fared little better. In 1997, North Korea threatened to break the agreement and to resume its nuclear activities. This may have been when North Korea sought and acquired uranium enrichment technology from Pakistan, opening a second route to nuclear weapons material.²⁰³ It also tested a new long range missile, the first since before the agreed framework, in the fall of 1998.²⁰⁴

Following a trip by U.S Secretary of Defense William Perry to North Korea, there was agreement to end missile tests in exchange for a lifting of U.S. sanctions and improved relations. By late 2000, the U.S and North Korea formally announced that "neither government would have hostile intent toward the other," that they would make "every effort in the future to build a new relationship free from past enmity."²⁰⁵

The Bush Administration took a much harder line with North Korea after coming to power in 2001. Most dramatically, it sought to discourage South Korea from continuing to pursue efforts to improve its relations with the North.²⁰⁶ A year later, President Bush listed North Korea as one of three states making up an "axis of evil," which were a threat

¹⁹⁹ Sigal, op. cit., p. 229. The U.S. nuclear threats against Korea during the Korean war are described in Bundy, op. cit., pp. 238-245.

²⁰⁰ Alan Riding, "U.S. and North Korea Sign Pact to End Nuclear Dispute," *The New York Times*, October 22, 1994.

²⁰¹ Steven Greenhouse, "Republicans Oppose Deal With Koreans," *The New York Times*, November 27, 1994.

²⁰² "North Korea Says U.S. Is Hampering Oil Supply," *The New York Times*, July 2, 1996.

²⁰³ David E. Sanger and James Dao, "U.S. Says Pakistan Gave Technology To North Korea," *The New York Times*, October 18, 2002.

²⁰⁴ Sheryl Wu Dunn, "North Korea Fires Missile Over Japanese Territory," *The New York Times*, September 1, 1998.

²⁰⁵ Steven Mufson, "Clinton Might Visit N. Korea Next Month," *The Washington Post*, October 13, 2000.

²⁰⁶ Howard French, "Seoul Fears U.S. Is Chilly About Detente With North," *The New York Times*, March 25, 2001.

to the United States and international peace. As it became clear that the United States was intent on attacking Iraq, North Korea, fearing it might be next, demanded a formal guarantee that it would not be attacked. The U.S. refused.

The crisis came to a head in October 2002, when the U.S. confronted North Korea over its uranium enrichment program and North Korea announced an end to its compliance with the Agreed Framework.²⁰⁷ The U.S. followed suit, suspending the heavy fuel oil shipments. The International Atomic Energy Agency responded to North Korea's uranium enrichment program by unanimously adopting a resolution declaring that any such program would be a violation of the NPT.²⁰⁸ North Korea, in turn, demanded that the IAEA remove the seals and cameras that were safeguarding North Korean nuclear facilities, and, when that was refused, removed them unilaterally and ordered IAEA monitors to leave.²⁰⁹ The U.S. response was to propose a policy of "tailored containment" through the Security Council, involving political and economic pressure to force North Korea to give up its nuclear program.²¹⁰ Seeking to assure U.S. allies, and North Korea, U.S. Secretary of State Powell insisted that "we have no intention of attacking North Korea."²¹¹ But, at odds with the U.S. demands to cut-off all aid (except food aid), South Korea, Russia, China and Japan wanted to continue economic assistance to North Korea and sustain the Agreed Framework while pursuing talks.²¹²

The U.S. effort to find a bargain with North Korea continued even though North Korea had announced its withdrawal from the NPT, the Director-General of the IAEA had cited "chronic non-compliance" by North Korea, calling it "a country in defiance of its international obligations," and the IAEA Board of Governors had unanimously demanded North Korea return to compliance with the NPT.²¹³ According to Secretary of State Powell, North Korea had "'thumbed its nose at the international community," while the White House promised more "steady, steely diplomacy."²¹⁴ Chinese and Russian leaders also insisted that the way forward lay in dialogue.²¹⁵

²⁰⁷ David E. Sanger, "North Korea Says It Has A Program On Nuclear Arms," *The New York Times* October 17, 2002.

²⁰⁸ Serge Schmemmann, "U.N. Agency Demands North Korea End Atomic Program," *The New York Times*, November 30, 2002.

²⁰⁹ *Disarmament Diplomacy*, February/March 2003, p. 40.

²¹⁰ Michael R. Gordon, "U.S. Readies Plan To Raise Pressure On North Koreans," *The New York Times*, December 29, 2002.

²¹¹ David Pilling and Peter Spiegel, "US and Japan Agree Stance on North Korea's Nuclear Arms," *The Financial Times*, December 17, 2002.

²¹² Steven R. Weisman, "Japan Says Nuclear Effort In Korea Merits Hard Line," *The New York Times*, December 17, 2002.

²¹³ *Disarmament Diplomacy*, op. cit., p. 41.

²¹⁴ David E. Sanger and Julia Preston, "U.S. Assails Move by North Koreans to Reject Treaty," *The New York Times*, January 11, 2003.

²¹⁵ *Disarmament Diplomacy*, op. cit., p. 44.

Through early 2002, U.S. leaders repeatedly affirmed that they sought a diplomatic settlement and would not invade North Korea, although they would not rule out attacks directed against North Korea nuclear facilities.²¹⁶ North Korea demanded from the United States a “legally-binding non-aggression treaty” and a halt to efforts to impose economic pressure. In exchange, it offered “to clear the U.S. of its security concerns,” a proposal widely interpreted as abandoning its nuclear program. With the U.S. refusing to consider such a treaty, North Korea restarted its reprocessing of spent nuclear fuel to recover plutonium for nuclear weapons.²¹⁷ The U.S. response was to switch its attention to organizing allies in an effort to prevent North Korea from selling either nuclear material or long-range missiles, including through the interception of ships at sea.²¹⁸ The key U.S. ally in the region, South Korea, and the major powers bordering the region, Russia and China, are however not involved.

When North Korea formally announced, for the first time, in June 2003 that it was seeking nuclear weapons, the U.S., in what was described as a “deliberately measured” response, insisted that “there is an opportunity for a diplomatic solution, a political solution.”²¹⁹ As the *New York Times* noted, regarding North Korea the U.S. has adopted “a strategy that appears to be the opposite of the administration approach to Iraq: for each new North Korean declaration, Mr. Bush has responded with the equivalent of a shrug.”²²⁰

Containing India and Pakistan

A final example of efforts to bring about compliance with the international norms and agreements on nuclear arms control deals with the acquisition and testing of nuclear weapons by India and Pakistan. While the former three cases were all areas of prime U.S. interest, South Asia is a case of noncompliance in a region that is seen to have little limited economic significance or strategic importance over much of the past half-century. It also illustrates the use of sanctions as a way to prevent proliferation and for seeking compliance, and how tightly such sanctions are tied to other U.S. interests.

²¹⁶ Guy Dinmore and Andrew Ward, “Pyongyang Warns of ‘Total War’ if US Attacks Nuclear Facilities: US ‘Retains Options,’” *The Financial Times*, February 7, 2003.

²¹⁷ “North Korea Restarts Reactor; IAEA Sends Resolution to UN,” *Arms Control Today*, March 2003, pp. 16-17.

²¹⁸ David E. Sanger, “Bush Shifts Focus To Nuclear Sales By North Korea,” *The New York Times*, May 5, 2003. The states involved in this Proliferation Security Initiative are the United States, Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom.

²¹⁹ David E. Sanger, “North Korea Says it Seeks to Develop Nuclear Arms,” *The New York Times*, June 10, 2003.

²²⁰ David E. Sanger, “President Takes a Softer Stance on North Korea,” *The New York Times*, July 22, 2003.

India began laying the base for its nuclear energy and nuclear weapons program soon after its independence in 1947.²²¹ Its early progress was facilitated by the U.S. Atoms for Peace Program, which permitted India to train over 1,300 nuclear scientists and engineers in the United States between 1955 and 1977.²²² India's first major research reactor was acquired from Canada in a 1955 deal, and both Canada and the U.S. supplied power reactors. India early on adopted a strategy for keeping its nuclear weapons option. U.S. ambivalence to India acquiring nuclear weapons at that time is evident in a 1961 memo to then Secretary of State Dean Rusk that suggested the U.S. help India acquire a nuclear weapon and conduct a test, so that a "friendly Asian power beat Communist China to the punch."²²³ The idea was not taken up and China tested first, in 1964. India's first nuclear test came in 1974, using plutonium from a Canadian supplied research reactor.

Pakistan, a close Cold War ally of the U.S. in Asia, mostly watched as India developed its nuclear infrastructure but tried to stay in the game. Like India, it acquired a Canadian power reactor and refused to sign the NPT. Pakistan launched a serious effort to build nuclear weapons starting in 1972, assigning greater urgency to the program after India's 1974 test. While India had built its own plutonium reprocessing plant, Pakistan, recognizing its more limited capabilities, sought to purchase one from France.

Following India's 1974 nuclear test and with evidence of Pakistan's efforts to follow suit, the United States proposed the formation of a Nuclear Suppliers Group (NSG). The initiative sought to limit proliferation by managing the international trade in key nuclear technologies. It also provided a means of involving France, which was not a party to the NPT and thus was not bound by the treaty's provisions requiring full-scope safeguards on nuclear sales. The NSG has gradually tightened its restrictions on nuclear and dual use trade.

The U.S. also resorted to direct sanctions, but only against Pakistan. These were applied to Pakistan in 1977 to dissuade it from working on a plutonium reprocessing capability, and again in 1979 because of its efforts to procure uranium enrichment technology.²²⁴ In 1981, following the Soviet invasion of Afghanistan and Pakistan's willingness to support the U.S. against the Soviet Union, the sanctions were systematically waived each year for six years. Instead, the U.S. delivered several billion dollars of economic and military aid to Pakistan and chose not to make an issue of its nuclear weapons program. Similarly, in 1985 the United States Congress passed the Pressler Amendment, which requires the

²²¹ For histories of India's nuclear program, see Itty Abraham, *The Making of The Indian Atomic Bomb* (London: Zed Press, 1998) and George Perkovich, *India's Nuclear Bomb* (Berkeley, CA: University of California Press, 1999).

²²² *Difficulties in Determining if Nuclear Training of Foreigners Contributes to Weapons Proliferation*, Report by the Comptroller General of the United States, U.S. General Accounting Office, Washington DC, April 23, 1979.

²²³ Perkovich, op. cit., p. 52.

²²⁴ For details, see Leonard S. Spector, *Nuclear Proliferation Today* (New York: Vintage Books, 1984), pp. 70-110.

President to certify each year that Pakistan does not possess a nuclear device before any economic or military aid can be given. For several years, such certification was given even though there was mounting evidence that Pakistan had acquired a nuclear weapons capability.²²⁵ It took the end of the Afghan war and the collapse of the Soviet Union before the sanctions were finally imposed on Pakistan.²²⁶ By then, Pakistan, with help from China, had acquired nuclear weapons.

In May 1998, first India and then Pakistan tested nuclear weapons. In a unanimous June 1998 resolution condemning the tests, the Security Council called on both states "immediately to stop their nuclear weapon development programs, to refrain from weaponisation or from the deployment of nuclear weapons, to cease development of ballistic missiles capable of delivering nuclear weapons and any further production of fissile material for nuclear weapons, to confirm their policies not to export equipment, materials or technology that could contribute to weapons of mass destruction or missiles capable of delivering them and to undertake appropriate commitments in that regard".²²⁷ It also urged "India and Pakistan, and all other States that have not yet done so, to become Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and to the Comprehensive Nuclear Test Ban Treaty without delay and without conditions." The resolution made it clear that "in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons, India or Pakistan cannot have the status of a nuclear-weapon State." In effect, the Council determined that India and Pakistan should disarm and join the NPT as non-nuclear weapons states. No action was taken; the U.S. applied sanctions to both states, but these were quickly relaxed for domestic political and economic reasons.²²⁸ These sanctions were imposed only because legislation required them to be, and U.S. policy makers went through the motions.²²⁹

Neither India nor Pakistan has signed the CTBT or NPT. Indeed, the only conditions that seem to have been met to date are for no further nuclear tests, no deployment of weapons, and commitments not to export nuclear weapon related technologies. This appearance of compliance may be short-lived. The Security Council had also urged "India and Pakistan to exercise maximum restraint and to avoid threatening military movements, cross-border violations, or other provocations in order to prevent an aggravation of the situation," yet the two soon fought an eleven week war in Kargil, Kashmir, in the spring of 1999. The Security Council took no action.

²²⁵ Leonard Spector, *Nuclear Ambitions: The Spread of Nuclear Weapons, 1989-1990* (Boulder, CO: Westview Press, 1990), pp. 89-117.

²²⁶ Dennis Kux, "Pakistan," in Richard Haass, ed., *Economic Sanctions and American Diplomacy* (New York: Council on Foreign Relations, 1998), pp. 157-176.

²²⁷ UNSC 1172, http://www.fas.org/news/india/1998/06/98060805_tpo.html

²²⁸ Dinshaw Mistry, "Diplomacy, Sanctions, and the U.S. Nonproliferation Dialogue," *Swords and Plowshares*, vol. XII, no. 1, Spring 2000, pp. 3-5.

²²⁹ Randy Rydell, "Giving Nonproliferation Norms Teeth: Sanctions and the NPPA," *The Nonproliferation Review*, Winter 1999, pp. 1-18.

A different set of imperatives came into view when, in spring 2000, President Clinton made the first visit to South Asia by a U.S. President since 1978. Earlier differences on nuclear weapons were set aside. He made it clear that the United States was willing to engage with India on new terms. A joint statement declared that "India and the United States will be partners in peace, with a common interest in and complementary responsibility for ensuring regional and international security."²³⁰ India in effect agreed to 'complement' the exercise of U.S. interests in return for the U.S. making a place for India in the international arena. One early expression of this was India's unprecedented support for President Bush's plan to deploy a National Missile Defense.²³¹ The U.S. has lifted its remaining sanctions on India, which have stood in the way of a burgeoning military cooperation. The lifting of the sanctions was intended to permit greater joint military planning, joint military operations, and U.S. supply of weapons and military technology to India.²³² This has included stronger links with Israel, the key U.S. ally in the Middle East. In 2001, India signed a \$2 billion dollar deal for Israeli military hardware.²³³ The two states have been officially discussing what are described as "similar strategic concerns," including "nuclear nonproliferation, stability in West Asia and the Persian Gulf as well as the spread of extremism and terrorism."²³⁴

Since September 11, when India offered to support the United States in its war in Afghanistan, New Delhi has developed even closer military ties to the United States. The unprecedented" level of military cooperation has involved joint naval patrols, exercises, training, and the largest sale of U.S. arms to India to date, involving \$140 million worth of radar equipment.²³⁵ India's rapidly growing military budget, and plans to spend as much as \$100 billion in the next decade, has attracted interest from other international arms manufacturers, especially Russia, France, and the UK.²³⁶

U.S. relations with Pakistan have seen a similar transformation. Following a military coup in October 1999 by General Pervez Musharraf, the chief of the Army, the United States demanded a return of democracy. This demand, like that for progress on meeting the terms of the Security Council resolution, was muted by concern over Pakistan's growing economic and political crisis, which is marked by a spiraling debt burden, a growing balance of payments problem, and increasingly militant islamist groups. Some in Washington feared that putting pressure on Pakistan could hasten its collapse. As General

²³⁰ U.S.-India Relations: A Vision for the 21st Century, White House website, <http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/2000/3/21/25.text.1>.

²³¹ "India to Hear Out Armitage on NMD", *The Hindu*, May 11, 2001.

²³² Alan Sipress, "U.S. Seeks to Lift Sanctions on India: Aim is to Bolster Military Relations", *The Washington Post*, August 12, 2001.

²³³ Kesav Menon, "Defense Deal with Israel," *The Hindu*, July 18, 2001.

²³⁴ Atul Aneja, "India, Israel to Hold Security Dialogue," *The Hindu*, May 16, 2001.

²³⁵ Celia W. Dugger, "Wider Military Ties With India Offer U.S. Diplomatic Leverage," *The New York Times*, June 10, 2002.

²³⁶ Saritha Rai, "Arms Makers See Great Potential in India Market," *The New York Times*, February 12, 2003.

Anthony C. Zinni, Commander in Chief of U.S. Central Command (which encompasses Pakistan) cautioned, "If Pakistan fails we have major problems... hardliners could take over, or fundamentalists or chaos."²³⁷ The implicit concern was that victory for radical Islam or chaos in Pakistan could lead to the transfer of nuclear weapons to groups inimical to U.S. interests in the oil rich regions of the Middle East, or elsewhere. The goal has become to prevent this danger by saving Pakistan from collapse.

These concerns grew after the September 11 attacks. The United States needed Pakistan's support to wage war against the Taliban and Al-Qaeda in Afghanistan. Soon after September 11, the U.S. rescheduled \$396 million of Pakistan's debt, approved a \$300 million credit line for private investors, over \$100 million help patrol borders and fight drug trafficking, followed by \$600 million in foreign aid.²³⁸ In June 2003, coinciding with an official visit by President Pervez Musharraf, the United States rewarded Pakistan's support in the "war against terrorism," with a further \$3 billion aid package, of which half was military support.²³⁹ Washington has been willing to overlook Pakistan's continued development of nuclear weapons and testing of ballistic missiles, its relationship with North Korea, to say nothing of the problems with the Pakistani national elections of 2001.

There remain two areas of active U.S. concern. The first is possible ties between Pakistani nuclear scientists and radical Islamic groups. In the wake of September 11, it was discovered that three scientists in Pakistan's nuclear weapons program had met with Taliban and Al-Qaeda leaders.²⁴⁰ There was a possibility that several others may have had similar ties.²⁴¹ The second issue of concern has been the physical security of Pakistan's nuclear facilities, nuclear weapons and fissile materials.²⁴² The U.S. has offered and Pakistan has been willing to accept help in this area.²⁴³ It has also been claimed that the U.S. has made plans to try to seize Pakistan's nuclear weapons should the Musharraf regime collapse and radical Islamic groups come to power.²⁴⁴ More dramatically, the Bush Administration's December 2001 Nuclear Posture Review proposed that "in setting requirements for nuclear strike capabilities," it was necessary to consider "unexpected contingencies" which involved "sudden and unpredicted security

²³⁷ Dana Priest, "An Engagement in 10 Time Zones", *Washington Post*, September 29, 2000.

²³⁸ Michael Wines, "Leasing, if not Building, an Anti-Taliban Coalition," *The New York Times*, November 18, 2001.

²³⁹ David E. Sanger, "Bush Offers Pakistan Aid, but No F-16's," *The New York Times*, June 25, 2003.

²⁴⁰ John F. Burns, "Pakistan Atom Experts Held Amid Fear of Leaked Secrets," *The New York Times*, November 1, 2001.

²⁴¹ Douglas Frantz, James Risen and David E. Sanger, "Nuclear Experts in Pakistan May Have Links to Al Qaeda," *The New York Times*, December 9, 2001.

²⁴² Douglas Frantz, "U.S. and Pakistan Discuss Nuclear Security," *The New York Times*, October 1, 2001.

²⁴³ Alex Wagner, "U.S. Offers Nuclear Security Assurance to Pakistan," *Arms Control Today*, December 2001, p. 24.

²⁴⁴ Seymour Hersh, "Watching the Warheads," *The New Yorker*, November 5, 2001.

challenges," citing as an example "a sudden regime change by which an existing nuclear arsenal comes into the hands of a new, hostile leadership group."²⁴⁵

The United States and the larger international community have found ways to "cope" with noncompliance by India and Pakistan. This is despite the widespread belief that there is a real possibility of nuclear war in South Asia.²⁴⁶

VIII. States and Peoples

Despite its great power, systemic noncompliance, involvement in many acts of noncompliance by chosen states, and its success in confronting challenges to its interests over the past several decades, there is anxiety among policy makers in the United States about a crisis of compliance. This has led to a search for ways to hone mechanisms that it can use to more effectively discipline other, less powerful, states and so to compel greater obedience. These include the unilateral use of force, expanded UN enforcement, sharper sanctions, and directly barring individuals from work on weapons of mass destruction.²⁴⁷ These approaches presume there is no need to assure that treaties and norms of international behavior are derived by a process seen universally as fair, legitimate, and equitable. The issue is simply one of finding sufficiently sharp 'teeth' that can ensure compliance by others with the agreements that already exist. These 'teeth' are most obviously sanctions and direct military action (counterproliferation), instruments that are particularly suited to U.S. strengths and that could not be used against it. Naturally, from this perspective, there is no question of finding ways to bring about compliance by the United States.

For the international community, recent experience with U.S. policy on the ABM, CTBT, NPT and Chemical and Biological Weapons Conventions has raised what Harald Müller politely called 'the actor problem', and in this chapter has been put more directly as 'the American problem.' How is the world to deal with noncompliance by the United States given that the United States is the most powerful state in the international system and has a long history of imperial thought, practice, and apologetics?

There are two options. The first is to use collective international action through international institutions. One variant calls for an enhanced role for the United Nations. Since the issue is one of compliance with agreements dealing with international peace and security, enforcement would in the final analysis depend on the use of sanctions or

²⁴⁵ Excerpts from the 2001 Nuclear Posture Review, website of Global Security, <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm>.

²⁴⁶ M.V. Ramana and Z. Mian, "The Nuclear Confrontation in South Asia," *SIPRI Yearbook 2003: Armaments, Disarmament and International Security*, (Oxford: Oxford University Press, 2003), pp. 195-212.

²⁴⁷ For a discussion of these, see the chapter by Feiveson and Shire.

military force and it would be the Security Council that would become the final arbiter of compliance. The past behavior of the Security Council offers little basis for hope.

The crisis over the legitimacy and justice of the rules and structures of the United Nations and its Security Council is only part of a much larger and enduring failure of the UN system in dealing with issues of disarmament and peace. Setting aside the complete failure to meet its founding principle, namely "to save succeeding generations from the scourge of war," the UN system and in particular the Security Council have ignored other important responsibilities. Article 26 of the United Nations Charter declares that: "in order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating... plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments."

There has only been one plan in nearly sixty years that came close to meeting any reasonable criteria for regulating armaments and thus for meeting the obligations of Article 26. Issued by the United States and the Soviet Union on September 20, 1961, this was "The Joint Statement of Agreed Principles for Disarmament Negotiations."²⁴⁸ These principles, known as the McCloy-Zorin agreement after its U.S. and Soviet authors, were subsequently adopted unanimously by the United Nations General Assembly on December 20, 1961. The goal of disarmament negotiations, the joint statement declared, was general and complete disarmament, which "shall ensure that States have at their disposal only such non-nuclear armaments, forces, facilities, and establishments as are agreed to be necessary to maintain internal order and protect the personal security of citizens." The road map was explicit: the disarmament program should be implemented in an agreed sequence, in stages, until it is completed, with each measure and stage carried out within specified time-limits. The goals were:

- a) disbanding of armed forces, the dismantling of military establishments, including bases, the cessation of the production of armaments, as well as their liquidation or conversion to peaceful uses;
- b) the elimination of all stockpiles of nuclear, chemical, bacteriological, and other weapons of mass destruction, and the cessation of the production of such weapons;
- c) the elimination of all means of delivery of weapons of mass destruction;

²⁴⁸ "Joint Statement of Agreed Principles For Disarmament Negotiations," of the Soviet Union and the United States (The McCloy-Zorin Agreement), in Richard Falk and Saul H. Mendlovitz, *The Strategy of World Order, vol. 4, Disarmament and Economic Development* (New York, NY: World Law Fund, 1966), pp. 281-2.

d) the abolition of organizations and institutions designed to organize the military effort of States, the cessation of military training, and the closing of all military training institutions; and

e) the discontinuance of military expenditures.

The McCloy-Zorin principles for disarmament are now almost completely forgotten, even in the arms control community.²⁴⁹ The scale of the failure is stark, and the United States is not the only culprit. In 2002, there were over 30,000 nuclear weapons in the world; with the U.S. having some 7,600 deployed warheads (with another 3000 as spares and reserves, and over 10,600 intact warheads and 5000 plutonium cores in storage) and Russia about 20,000 warheads (over 8,000 are deployed), while China has about 400 weapons, France has 450, and the United Kingdom 185 weapons deployed.²⁵⁰ World military spending in the aftermath of the Cold War; for the period 1992 to 2001, amounted to \$7,625 billion (in 1998 dollars).²⁵¹ By far the largest share of this spending was by the United States (36% of all military expenditure in 2001) with the other permanent members of the Security Council taking up four out of the next five places. The effort to sustain the distribution of military power in the world is evident; the peace that was promised is hard to see.

The conspicuous absence of significant international agreements on military spending and conventional weapons can be traced in large measure to the military production industries and the governments in the United States and Western Europe. The combined arms sales of the largest 100 arms manufacturers in the OECD countries and developing countries in 2000 amounted to \$157 billion, with the U.S. having a 60% share, and its Western European allies responsible for another 30% (i.e. a total of 90% of arms sales); these sales reflect the fact that 43 out of these top 100 arms producers, and 7 out of the top 10, are U.S. corporations, while another 38 of the top 100 companies are Western European.²⁵² Further, as John Harvey has noted: "international trade in military aircraft between industrialized and developing countries nations is well established, pervasive and lucrative... it is no wonder then that the western nations have achieved some success in establishing the Missile Technology Control Regime, but have not attempted even to

²⁴⁹ The McCloy-Zorin Agreement is not even mentioned in recent work, e.g. Allan S. Krass, *The United States and Arms Control: The Challenge of Leadership* (Westport, CT: Praeger, 1997).

²⁵⁰ Hans M. Kristensen and Joshua Handler, "World Nuclear Forces" *SIPRI Year Book 2002: Armaments, Disarmament and International Security*, (Oxford: Oxford University Press, 2002), Appendix 10A, pp. 525-567.

²⁵¹ Elisabeth Skons, Evamaria Loose-Weintraub, Wuyi Omitoogun, Petter Stalenheim, "Military Expenditure," *SIPRI Year Book 2002*, p. 231-296.

²⁵² Reinilde Weidacher and the SIPRI Arms Industry Network, "Arms Industry Data," *SIPRI Year Book 2002*, Appendix 7A, pp. 354-363.

seek, much less reach, agreement on the desirability of discouraging sales of advanced strike aircraft."²⁵³

The role of the Security Council has long been an issue within the United Nations. James A. Paul, in a summary of the debate within the United Nations about the role of the Security Council, noted that "UN members are especially concerned that the Council operates inconsistently, that it often does not enforce its own resolutions and that it sometimes ignores or even violates international law."²⁵⁴ Developing a mechanism to bypass the Security Council and empower the General Assembly would certainly introduce greater equity and fairness into decision making on questions of compliance and permit appropriate international responses to noncompliance by the United States.

There is an existing procedure that could serve as the basis for collective action by the larger international community. The "Uniting for Peace" resolution, adopted by the General Assembly in November 1950, allows the Assembly to take action if the Security Council, because of a lack of unanimity of its permanent members, fails to act in a case where there appears to be a threat to the peace, breach of the peace, or act of aggression. The Assembly is empowered to make recommendations which can include, in the case of a breach of the peace or act of aggression, the use of armed force to maintain or restore international peace and security. An alternative path to empowering the General Assembly would involve amending the United Nations Charter.

Any proposed mechanism must deal with the fact that the members of the General Assembly and the Security Council, as well as the United Nations as an institution, are subject to pressure by those able to exercise it. Under the present circumstances, this is largely American power. Although, as the Security Council's refusal to authorize a U.S. attack on Iraq suggests, this power need not prevail. But the fact that the U.S. went ahead regardless illustrates that the underlying reality is, as U.S. Secretary of State George Marshall pointed out in 1948, that if there is "a complete lack of power equilibrium in the world, the United Nation's cannot function successfully."²⁵⁵

If international institutions are too easily prone to imperial influence, and too easily ignored when they do not consent, then what is left? In an earlier study of compliance with arms control regimes, Harald Müller concluded that "the more regime compliance issues become a matter of domestic discourse, the better the chances of compliance with

²⁵³ John R. Harvey, "Regional Ballistic Missiles and Advanced Strike Aircraft: Comparing Military Effectiveness," *International Security*, vol. 17. No. 2, Fall 1992, p. 79.

²⁵⁴ James A. Paul, "Security Council Reform: Arguments about the Future of the United Nations System," <http://www.globalpolicy.org/security/pubs/secref.htm#veto>.

²⁵⁵ James Traub, "Who Needs the U.N. Security Council?" *The New York Times Magazine*, November 17, 2002, p. 48.

regime rules." ²⁵⁶ This is an important observation in that it emphasizes the role of citizens and domestic political institutions in shaping state policy and government attitudes towards international treaties and obligations. This is what is missing from the story of the pirate and the emperor. The analogy, for all its power, personalizes the confrontation. It fails to make explicit that the sources and conduct of policies and the interests underlying them are located in the politics of the empire. It is there where pressure must be brought to bear.

Transforming U.S. politics when it comes to international issues is no easy matter. Experience has shown that the U.S. government and its policy elites are often able to powerfully shape public sensibilities about particular issues, creating in effect a common sense that supports official positions which are inclined to be coercive and imperial. ²⁵⁷ This is by no means a radical observation. In the case of the United States, the baleful influence of the infamous 'military-industrial-scientific complex' has been well known at least since President Eisenhower's famous 1961 warning of the "conjunction of an immense military establishment and a large arms industry.. [whose] total influence -- economic, political, even spiritual -- is felt in every city, every State house, every office of the Federal government." He went on to argue that "in the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex." ²⁵⁸ To this can be added the other economic interests that rely on this military complex to protect markets and ensure a ready and cheap supply of raw materials. The struggle for compliance must confront the very basis of the economic, social and political system of the United States.

There is a long history of efforts by the international anti-nuclear peace movement to incite action by citizens for nuclear disarmament. The movement has had significant successes, even if it remains on the margins of much conventional academic discussion of the history of arms control. Mass mobilization by peace movements against the threat of nuclear war and the dangers of radioactive fallout from atmospheric nuclear testing in the 1950s led to the first ban on nuclear testing. In the 1960s, it helped lay the basis for the ABM Treaty; in the early 1980s, Western Europe saw the largest political mobilization by citizens in decades, with hundreds of thousands of people demanding nuclear disarmament by the U.S. and USSR. Similarly, in June 1982, almost a million people joined a protest in New York City for an end to the nuclear arms race. These

²⁵⁶ Harald Müller, "The Internalization of Principles, Norms, and Rules by Governments: The Case of Security Regimes," in Volker Rittberger and Peter Mayer, eds., *Regime Theory and International Relations* (New York: Clarendon Press, 1993), p. 388.

²⁵⁷ The classic studies of this process in United States foreign policy include Noam Chomsky, *American Power and the New Mandarins* (New York, Vintage Books, 1969); Noam Chomsky, *For Reasons of State* (New York, Pantheon Books, 1973); Noam Chomsky and Edward Herman, *Manufacturing Consent: The Political Economy of the Mass Media* (New York : Pantheon Books, 1988).

²⁵⁸ This well known speech informs some arms control literature, for example Steven E. Miller, "Politics Over Promise: Domestic Impediments to Arms Control," *International Security*, vol. 8, no. 4, Spring 1984, pp. 67-90.

demonstrations led to the Intermediate Nuclear Forces Treaty.²⁵⁹ The effectiveness of such public action is recognized in Joseph Nye's observation that among the "crucial political roles" of arms control, "the first is to reassure the publics."²⁶⁰

Civil society initiatives have been able to be effective in the post-Cold War period.²⁶¹ A notable example was a six-year campaign by Parliamentarians for Global Action (a New York-based nongovernmental organization with over 1000 members who are legislators in 80 countries), to call a conference of the signatories of the 1963 Partial Test Ban Treaty to consider an amendment to the Treaty that would serve to turn it into a comprehensive ban on all nuclear tests. The campaign succeeded and the conference was called in 1991 in New York, with almost 100 of the 119 signatories present. But, just before the conference began, the U.S. announced that if the amendment were voted on, it would exercise its right of veto as one of the three depository states (the others are the UK and Russia) and so prevent it coming into force. The UK supported the U.S., while Russia was willing to accept the amendment and an end to nuclear testing. During the conference itself NGOs played a major role, and an assessment of the process and the outcome has suggested that a combination of NGOs and smaller states was able to confront and expose the U.S. on the issue of nuclear testing.²⁶² The initiative, and the possibility that it would be repeated, is credited with helping create the pressure which led the Conference on Disarmament to agree on a negotiating mandate for the CTBT two years later.

A more recent example is the campaign for a Nuclear Weapons Convention, a treaty to eliminate nuclear weapons. This emerged from a 1995 study by the International Network of Engineers and Scientists Against Proliferation (INESAP), "Beyond The NPT: Toward A Nuclear Weapon Free World," and from the founding of Abolition 2000, a global network to eliminate nuclear weapons. The latter now has over 2,000 member organizations in more than 90 countries.²⁶³ These initiatives led to a project by the International Physicians for the Prevention of Nuclear War, the International Association of Lawyers Against Nuclear Arms, and INESAP to produce a Model Nuclear Weapons Convention.²⁶⁴ In 1997, Costa Rica submitted the Model Convention as an official UN

²⁵⁹ See Lawrence S. Wittner, *The Struggle Against The Bomb, Volume One, One World or None – A History of the World Nuclear Disarmament Movement Through 1953* (Stanford, CA: Stanford University Press, 1993) and *Volume Two*, op. cit., and also David Cortright, *Peace Works: The Citizen's Role in Ending the Cold War* (Boulder, CO: Westview Press, 1993).

²⁶⁰ Joseph S. Nye, Jr., "Arms Control and International Politics," op. cit., p. 161.

²⁶¹ The success of civil society in creating the 1999 Landmines Convention is discussed in Feiveson and Shire.

²⁶² John Burroughs and Jacqueline Cabasso, "Confronting the Nuclear Armed States in International Negotiating Forums: Lessons for NGOs," *International Negotiation*, vol.4, 1999, pp. 457-480.

²⁶³ For INESAP see <http://www2.hrz.tu-darmstadt.de/ze/ianus/inesap/inesap.html>, and for Abolition 2000 see <http://www.abolition2000.org>.

²⁶⁴ *Security and Survival: The Case For A Nuclear Weapons Convention*, International Physicians for the Prevention of Nuclear War, the International Association of Lawyers Against Nuclear Arms and the International Network of Engineers and Scientists Against Proliferation, Cambridge, MA, 1999.

document, describing it as "a work in progress setting forth the legal, technical and political issues that should be considered to obtain an actual nuclear weapons convention."²⁶⁵ These efforts have garnered support from governments of non-nuclear weapons states, which have used UN General Assembly resolutions to call for such a Convention annually for the past several years, and there have been efforts to discuss it in various parliaments.²⁶⁶

The determined efforts of civil society and the non-nuclear weapons states to achieve nuclear disarmament and to seek compliance by the weapons states with their NPT obligations can be read as an instance of what has been called "rightful resistance," i.e. a popular contestation mounted by the relatively powerless, through an innovative use of laws, policies, and other officially promoted values, working within and at the boundaries of existing official institutions, with the powerful presented as 'disloyal' to their own norms.²⁶⁷ Recent scholarship and experience shows strongly that transnational coalitions of civil society groups, which share an identity and operate across state boundaries, can serve as "teachers of norms" within and between states.²⁶⁸

There is clearly a need for new kinds of international institutions, where civil society can more effectively organize and represent the aspirations of people outside the context and confines of nation states and become a more significant force in the international system. Richard Falk and Andrew Strauss have proposed a Global People's Assembly as a way to meet this need.²⁶⁹ In particular, they have stressed that it would serve as a forum where "the ability to opt out of collective efforts to protect the environment, control or eliminate weapons, safeguard human rights, or otherwise protect the global community could be challenged."²⁷⁰

The challenge of compliance becomes how to build civil society and more specifically peace movements that can impose compliance on states from within and without. This may be the only hope to achieve compliance by the most powerful. This task may be made more or less difficult depending on the way the goal and the path are understood. For much of the past fifty or so years, the peace movement has been focused on the

²⁶⁵ UN General Assembly A/C.1/52/7, 17 November 1997.

²⁶⁶ *Nuclear Weapons Convention Monitor*, Issue 1, April 2000, International Physicians for the Prevention of Nuclear War, Cambridge, MA.

²⁶⁷ Kevin J. O'Brien, "Rightful Resistance," *World Politics*, vol. 49 (October 1996), pp. 31-55. This analysis builds on an important literature on resistance that is legitimized by an appeal to norms put in place by those with power within a community, see especially James C. Scott, *Domination and the Arts of Resistance* (New Haven, CT: Yale University Press, 1990).

²⁶⁸ Matthew Evangelista, *Unarmed Forces: The Transnational Movement to End The Cold War* (Ithaca, New York: Cornell University Press), 1999. The larger roles and practice of transnational groups are addressed in Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, New York: Cornell University Press, 1998).

²⁶⁹ Richard Falk and Andrew Strauss, "Toward Global Parliament," *Foreign Affairs*, January/February 2001, pp. 212-8.

²⁷⁰ *Ibid.*, p. 216.

bomb. It has relied on the devastating destructive power of nuclear weapons, the risk of nuclear war by design or by accident, the high economic costs of nuclear weapons, and the profound environmental consequences associated with the production of nuclear weapons to mobilize public concern. The soaring nuclear arsenals and bitter, crisis-ridden confrontation of the Cold War provided fuel for such efforts. But the dwindling of public fears in the United States after the end of the Cold War has served to emphasize Mahatma Gandhi's observation after the destruction of Hiroshima that it would be a mistake to believe that the bomb's destructive power would so disgust the world as to make it forswear nuclear weapons. The answer to the bomb has to be found elsewhere.

In the final analysis, the need for state compliance with arms control and disarmament agreements and for public participation in an alert and active anti-nuclear peace movement, while important, are not the real issues. The struggle is for peace and justice and that requires transforming the institutions, economies, cultures, and ways of thinking that are the social and economic engines of competition, exploitation, hostility, and conflict, and putting in place institutions that are oriented towards participatory democracy and that cultivate a disposition for justice.