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**The Role of the United Nations Security Council in the  
Strengthening of the Withdrawal Clause of the  
Treaty on the Non-Proliferation of Nuclear Weapons**

*by*

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#### **Bibliography**

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## Abstract

The DPRK is the only State that attempted to leave the Nuclear Non-Proliferation Treaty (NPT) in 1993 and 2003. In accordance with Article X(1) of the NPT, a withdrawing State is required, *inter alia*, to submit notifications of withdrawal to all States Parties to the NPT and to the United Nations Security Council (UNSC). However, the role of the UNSC in such a case is not defined in Article X(1) of the NPT. Thus, both in 1993 and 2003, there were disagreements among the UNSC members on the involvement of the UNSC into the matter and its possible actions to respond to the announcements of withdrawal from the NPT.

The UNSC was criticized for either not fully deploying its mandate under the UN Charter, or intervening in the matter of withdrawal. In some cases, actions of the UNSC were regarded as an infringement of the sovereign right of States to leave Treaties.

This PhD dissertation assesses the powers of the UNSC under the UN Charter that gives the UNSC the mandate to take actions in case of threat to international peace and security. The dissertation focuses on Article 39 of the UN Charter, under which the UNSC defines such threat; and on the competence of the UNSC to pass binding decisions under Chapter VII of the UN Charter. The dissertation concludes that the UNSC has the authority to define withdrawal from the NPT as a threat to international peace and the security and consequently to take actions under Chapter VII.

## Glossary of Acronyms

ABACC	Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials
ABM	Anti-Ballistic Missile (Treaty)
AOSIS	Alliance of Small Island States
AP	Model Additional Protocol (IAEA)
AWE	Atomic Weapons Establishment (in the UK)
BTWC	Biological and Toxin Weapons Convention
CD	Conference on Disarmament
CSAs	comprehensive safeguards agreements
CTBT	Comprehensive Nuclear Test Ban Treaty
CWC	Chemical Weapons Convention
DPRK	Democratic People's Republic of Korea (North Korea)
ENDC	Eighteen-Nation Disarmament Committee
EU	European Union
EURATOM	European Atomic Energy Community
FMCT	Fissile Material Cut-off Treaty
G-21	Group of Non-Aligned States at the CD
HEU	Highly Enriched Uranium
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IMO	International Maritime Organisation
INF	Intermediate-Range Nuclear Forces (Treaty)
INFCIRC	Information Circular (IAEA)
KEDO	Korean Peninsula Energy Development Organization
Kt	Kiloton
MC.I	Main Committee I (on Disarmament) (NPT Review Conference)
MC.II	Main Committee II (on Safeguards) (NPT Review Conference)
MC.III	Main Committee III (Nuclear Energy for 'peaceful' uses) (NPT Review Conference)
MLF	Multilateral Nuclear Force
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NNWS	non-nuclear-weapon States
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NPTREC	NPT Review and Extension Conference
NSAs	Negative Security Assurances

NSG	Nuclear Suppliers Group
NWS	nuclear-weapon States
NWFZ	nuclear-weapon-free zone
OECD	Organisation for Economic Cooperation and Development
OPANAL	Agency for the Prohibition of Nuclear Weapons in Latin America
OSCE	Organisation of Security and Cooperation in Europe
PAROS	Prevention of an Arms Race in Outer Space
PNE	Peaceful Nuclear Explosion
PrepCom	Preparatory Committee (of the NPT)
PSA	Positive Security Assurance
P-5	“Permanent Five” – the five nuclear-weapon States, which are also the permanent members of the UNSC: US, Russian Federation, UK, China and France
PTBT	Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty)
RevConf	Review Conference (of the NPT)
SALT	Strategic Arms Limitation Treaties
SIR	Safeguards Implementation Report
SPF	South Pacific Forum
START	Treaty on the Reduction and Limitation of Strategic Offensive Arms
TIA	Transparency in Armaments
TNDC	Ten-Nation Disarmament Committee
UAR	United Arab Republic
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAEC	United Nations Atomic Energy Commission
UNCIO	United Nations Conference on International Organization
UNDC	United Nations Disarmament Commission
UNSAC	United Nations Scientific Advisory Committee
UNSC	United Nations Security Council
UNSSOD	United Nations Special Session On Disarmament
US	United States of America
USSR	Union of Soviet Socialist Republics
VOAs	voluntary offer safeguards agreements (IAEA)
WMD	Weapons of mass destruction

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## Introduction

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### 1. Definition of the problem

In the community of States, peace, order and good governance are the primary values. These must be reached and sustained with the help of international law that constitutes a fundamental tool for structuring and regulating relations between States. Though international law attempts to cover all issues and to provide solutions to most of the problems, this process is never ending. New events bring new problems that seek solution. The international nuclear non-proliferation regime is not an exception.<sup>1</sup> Though there is a vast international legal basis designed by States with the aim of halting nuclear proliferation,<sup>2</sup>

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<sup>1</sup> “The term “non-proliferation regime” commonly denotes the set of legal norms, voluntary undertakings and policies which were developed by the international community to deal with the threat of nuclear weapons proliferation. Major components of the system are regarded to include regional and universal agreements by which States commit themselves not to manufacture or possess nuclear weapons; safeguards systems established to verify these commitments; guide-lines, developed by supplier States to ensure that proliferation-related materials, equipment and technology are not supplied without application of safeguards, and that restraint is exercised for the supply of sensitive facilities, technology and materials; and the universal convention and guide-lines designed to ensure the physical protection of nuclear material and facilities.” **ElBaradei, Mohammed**, *The Role of International Atomic Energy Agency Safeguards in the Evolution of the Nuclear Non-Proliferation Regime: Some Lessons for Other Arms Control Measures*, in **Dahlitz, Julie, & Dicke, D.**, *The International Law of Arms Control and Disarmament*, Vol. I: Arms Control and Disarmament Law (New York: United Nations, 1991), p. 95; The elements of the non-proliferation regime also include “accelerated steps towards nuclear disarmament; and appropriate arrangements for global and regional security.” **ElBaradei, Mohammed**, *Safeguarding the Atom. The IAEA & International Nuclear Affairs*, IAEA Bulletin (1999), Vol. 41, No. 4, p. 2; **Bunn, George**, *The World’s Non-Proliferation Regime in Time*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 8-9.

<sup>2</sup> “Nuclear proliferation” refers to the spread of nuclear weapons, fissile material, nuclear technology and knowledge that might be put to military use.

the control of the spread of nuclear weapons<sup>3</sup> and nuclear technologies remains problematic in many respects.

After the horror of World War II, when nuclear weapons were used for the first time, national and international efforts converged on the arms race and disarmament issues.<sup>4</sup> The international community considered the issue of peace protection to be the main task of the international legal order.<sup>5</sup> Therefore, particular attention has been devoted to nuclear weapons due to their dangers and threat to humanity.<sup>6</sup> “There have been psychological, moral, and legal taboos against using nuclear weapons as a rational instrument of statecraft since 1945, when Hiroshima and Nagasaki were attacked.”<sup>7</sup> The international community has been aware that nuclear proliferation poses a serious threat to international peace and security. It was widely believed that nuclear proliferation beyond the original “nuclear club” of five States (China, France, the United Kingdom (UK), the USSR (now the Russian

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<sup>3</sup> The 1954 Protocol III (Annex II) to the 1948 Brussels Treaty (Paris Agreements on the Western European Union), defined a nuclear weapon “as any weapon which contains, or is designed to contain or utilize, nuclear fuel or radioactive isotopes and which, by explosion or other uncontrolled nuclear transformation of the nuclear fuel, or by radioactivity of the nuclear fuel or radioactive isotopes, is capable of mass destruction, mass injury or mass poisoning”. Article 5 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco, 1967) provides the following definition: “a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.”

<sup>4</sup> **Freeman, John**, *Is Arms Control Law in Crisis?*, Journal of Conflict & Security Law (2004), Vol. 9, No. 3, p. 307.

<sup>5</sup> The United Nations (UN) was created in 1945 above all else “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”. See *Preamble*, the UN Charter. Available at < <http://www.un.org/aboutun/charter/index.html> > (accessed on 23 September 2007).

<sup>6</sup> **Eden, Lynn**, *Underestimating the Consequences of Use of Nuclear Weapons: Condemned to Repeat the Past's Errors?*, Physics and Society (2005), Vol. 34, No. 1, pp. 6-7; **Farrow, Lachlan (ed.)**, *Accidental Nuclear War: A Post-Cold War Assessment*, New England Journal of Medicine (1998), Vol. 338, No. 18, pp. 1326-1331; **Ramana, M.V.**, *Bombing Bombay? Effects of Nuclear Weapons and a Case Study of a Hypothetical Explosion* (Cambridge, USA: International Physicians for the Prevention of Nuclear War (IPPNW), 1998), p. 38; **ICJ Advisory Opinion** (8 July 1996) on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, **Dissenting Opinion of Judge Weeramantry, Part II: Nature and Effects of Nuclear Weapons** (1996). Available at < [http://www.fas.org/nuke/control/icj/text/iunan\\_ijudgment\\_19960708\\_Dissenting\\_Weeramantry.htm](http://www.fas.org/nuke/control/icj/text/iunan_ijudgment_19960708_Dissenting_Weeramantry.htm) > (accessed on 13 June 2008).

<sup>7</sup> **Stanley Richard, and Kraig Michael Ryan**, *The NPT: Can this Treaty be Saved?*, Bulletin of the Atomic Scientists (Sep/Oct 2003), Vol. 59, No. 5, p. 63.

Federation), and the United States (US) was likely to occur and that it would be led mainly by advanced industrial countries such as Germany, Italy, Japan, Sweden and Switzerland.<sup>8</sup> This concern led to the development of the international nuclear non-proliferation regime, which encompasses legal norms incorporated in bilateral and multilateral agreements.<sup>9</sup> The regime comprises various restrictive rules as well as establishes specialized institutions, both at State and international levels, that have been intended to contain, control, and prevent the proliferation of nuclear weapons.<sup>10</sup>

The issues of non-proliferation and disarmament are interrelated in international politics and international law. From the outset of the UN, the matter of nuclear disarmament has been viewed as an essential condition for the maintenance of global peace and security. The UN General Assembly (UNGA) – the most representative body of the UN – endorsed its responsibility in the area of disarmament and other areas related to the maintenance of international peace and security.<sup>11</sup> The first resolution adopted by the UNGA during its first

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<sup>8</sup> Carnesale Albert, Doty Paul, Hoffmann Stanley, Huntington Samuel, Nye Joseph, and Sagan Scott, *Living with Nuclear Weapons* (Cambridge, Mass.: Harvard University Press, 1983), p. 215. A similar assessment – “The world is fast approaching a point of no return in the prospects of controlling the spread of nuclear weapons” – appeared in a secret US report presented to President Lyndon Johnson in 1965. See **Committee on Nuclear Proliferation, A Report to the President** (21 January 1965). Available at <[http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB1/nhch7\\_1.htm](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB1/nhch7_1.htm)> (accessed on 12 November 2007).

<sup>9</sup> See *ft.* 1 above.

<sup>10</sup> *Ibid.*

<sup>11</sup> Article 11 of the UN Charter: “1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both. 2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion. 3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security...” Available at <<http://www.un.org/aboutun/charter/index.html>> (accessed on 23 September 2007).

session addressed the issue of nuclear disarmament and proliferation.<sup>12</sup> In that document, the UNGA reaffirmed the UN's permanent interest and responsibility for disarmament and recognized that a peaceful environment should be developed in the world without arms.<sup>13</sup> Following its establishment, the UN developed a broad institutional system to handle the problems of disarmament and non-proliferation.<sup>14</sup> With the entry into force of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1970,<sup>15</sup> international concern over nuclear proliferation in Europe began to wane, though worries about nuclear proliferation in Latin America and South Africa were becoming particular sources of anxiety.<sup>16</sup>

The necessity to strengthen control of the proliferation of nuclear weapons and nuclear technologies is a critical inquiry that gained a major relevance with the end of the

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<sup>12</sup> **UNGA Res. 1** (24 January 1946) on the *Establishment of a Commission to Deal with the Problem Raised by the Discovery of Atomic Energy*. Available at <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/032/52/IMG/NR003252.pdf?OpenElement>> (accessed on 3 May 2007). For more on the activity of the UNGA in the field of disarmament see **Wolfrum, Rudiger (ed.)**, *United Nations: Law, Policies and Practice* (München: Beck, 1995), Vol. 2, pp. 407-412.

<sup>13</sup> **UNGA Res. 1252 A** (4 November 1958) on the *Question of Disarmament, the Discontinuation of Atomic and Hydrogen Weapons Tests, the Reduction of the Military Budgets of the USSR, the USA, the UK and France, by 10 to 15 per cent and the Use of Part of the Savings so Effected for Assistance to the Under-developed Countries*. Available at <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/746/96/IMG/NR074696.pdf?OpenElement>> (accessed on 30 November 2007).

<sup>14</sup> The First Committee of the UNGA evaluates proposals in the field of disarmament and prepares them for vote in the UNGA. The UN Disarmament Commission (UNDC), which was set up by the **UNGA Res. 502** (11 January 1952) was designed to deliberate basic disarmament concepts and norms by consensus and it acts as a subsidiary organ of the UNGA. Eighteen-Nation Committee on Disarmament (ENDC) was approved by the **UNGA Res. 1722** (20 December 1961). For more on this issue see **Wolfrum, Rudiger (ed.)**, *United Nations: Law, Policies and Practice* (München: Beck, 1995), Vol. 2, pp. 407-412. The issues of atomic energy and its employment were addressed by the United Nations Atomic Energy Commission (UNAEC) that was first convened in June 1946, and by the United Nations Scientific Advisory Committee (UNSAC) established by the UNGA as the Advisory Committee on the Peaceful Uses of Atomic Energy. For more on this issue see **Scasz, Paul C.**, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), pp. 16-19, 26-28, 239-240, 279.

<sup>15</sup> The NPT was opened for signature on 1 July 1968 and entered into force on 5 March 1970. Source: **UNTS**, No. 10485, vol. 729, pp. 169-175; also reproduced in IAEA Information Circular **INFCIRC/140** (22 April 1970). Currently, 190 States are Parties to the NPT. The Democratic People's Republic of Korea's (DPRK) 2003 withdrawal is controversial, but the UN Department for Disarmament Affairs maintains the DPRK on its list of NPT States. See *Status of Multilateral Arms Regulation and Disarmament Agreements. NPT*. Available at <<http://disarmament2.un.org/TreatyStatus.nsf>> (accessed on 9 August 2009).

<sup>16</sup> **Albright, David**, *South Africa and the Affordable Bomb*, Bulletin of the Atomic Scientists (July/August 2004), Vol. 50, No. 4; **Stumpf, Waldo**, *South Africa's Nuclear Weapons Program: From Deterrence to Dismantlement*, Arms Control Today (December 1995/January 1996), Vol. 25, No. 10, pp. 3-8; **IAEA**, *Report by the Director General: The Agency's Verification Activities in South Africa* (8 September 1993).



Cold War. The shift from a bipolar world emphasized the problems that are different nowadays in comparison to those that existed before 1991.<sup>17</sup> The stability calculations made during the Cold War no longer mean much, however, because the underlying political and strategic relationship between the Russian Federation and the US has fundamentally changed.<sup>18</sup> Instead of two superpowers seeking to prevent a nuclear war by design or accident and to establish predictability and crisis management through arms control so as to achieve a stable parity between them, the primary current needs are to prevent horizontal nuclear proliferation,<sup>19</sup> as well as to disarm the States possessing nuclear weapons. Proliferation of nuclear weapons and existing nuclear arsenals threaten international peace and security. Acquisition and development of nuclear weapons will not only lead to the growth of the so-called “nuclear club”, but it will also undermine the credibility of the current global nuclear non-proliferation regime centred around the NPT<sup>20</sup> by giving rise to dissatisfaction of its States Parties. In this view, “[t]he whole international community,

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<sup>17</sup> **Strobe Talbott**, *Foreword* in **Levi, Michael A. and O’Hanlon, Michael E.**, *The Future of Arms Control* (Washington D.C.: Brookings Institution Press, 2005), pp. x-xi.

<sup>18</sup> **Levi, Michael A. and O’Hanlon, Michael E.**, *The Future of Arms Control* (Washington D.C.: Brookings Institution Press, 2005), p. 20.

<sup>19</sup> “Horizontal proliferation” is defined as “[t]he increase in the number of states capable of possessing, manufacturing or deploying a given weapons technology. Usually used to describe the spread of nuclear weapon or ballistic missile capabilities.” **MCIS CNS, NPT BRIEFING BOOK 2008 EDITION, Part I, Section 1: Nuclear Energy and Nuclear Weapons: An Introductory Guide**, p. 33. Available at < <http://www.mcis.soton.ac.uk/publications/briefingbook2008.html> > (accessed on 22 June 2008); Horizontal proliferation is distinct from “vertical proliferation” which is explained as “[t]he quantitative and/or qualitative increase in the possession, manufacture or deployment of a given weapons technology by an individual state. Usually used to describe the increase of nuclear weapon or ballistic missile capabilities.” **MCIS CNS, NPT BRIEFING BOOK 2008 EDITION, Part I, Section 1: Nuclear Energy and Nuclear Weapons: An Introductory Guide**, p. 35. Available at < <http://www.mcis.soton.ac.uk/publications/briefingbook2008.html> > (accessed on 22 June 2008). “Vertical proliferation” refers to the growth of the nuclear arsenals, the expansion or refinement of existing nuclear-weapon capabilities of the nuclear weapon States. **Weapons of Mass Destruction Commission** (final report), *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms* (Stockholm: EO Grafiska, 1 June 2006), p. 38; **Singer, J. David and Tago, Atsushi**, *The Proliferation of Nuclear Weapons: From Vertical to Horizontal?*, Paper presented at the annual meeting of *The Midwest Political Science Association* (Palmer House Hilton, Chicago, Illinois 15 April 2004).

<sup>20</sup> For more on the NPT as the centerpiece of the nuclear non-proliferation regime see Chapter 1, p. 37, pp. 43-44.

nuclear and non-nuclear alike, is concerned about proliferation.”<sup>21</sup> This problem requires the establishment of effective institutionalized mechanisms able to restrain the dissemination of nuclear weapons and access to nuclear weapons development technologies.

At present, the 50-year effort to control the spread of nuclear weapons and nuclear power is in crisis. As overall confidence in the stability of the nuclear non-proliferation regime, which is based on the NPT, has been shaken, the issue was also addressed by the UN High-Level Panel on Threats, Challenges and Change, which paid attention to the problems of the NPT, the non-proliferation regime and recommended the ways of their strengthening.<sup>22</sup> UN Secretary-General Kofi A. Annan in his foreword to the Report of the UN High-Level Panel stated that “there is a real danger that we could see a cascade of nuclear proliferation in the near future”.<sup>23</sup>

The risk of horizontal proliferation has become the primary concern and it is present in a number of regions, such as the North-East Asia and the Middle East. The NPT is threatened both internally by its presumably weapon-seeking States Parties and by the failure of the nuclear-weapon States (NWS)<sup>24</sup> to disarm, as well as externally by States non-Parties

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<sup>21</sup> **Roche, Douglas**, *Nuclear Law & Disorder*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 10.

<sup>22</sup> The High-Level Panel on Threats, Challenges and Change was set up in November 2003 and is one of the three panels set up by the UN Secretary General Kofi Annan to make recommendations on UN reform. The Panel was “tasked with examining the major threats and challenges the world faces in the broad field of peace and security, including economic and social issues insofar as they relate to peace and security, and making recommendations for the elements of a collective response”. See < <http://www.un.org/secureworld/panelmembers.html>>, < <http://www.globalpolicy.org/reform/initiatives/panels/high/index.htm> > (accessed on 10 June 2008). High-Level Panel on Threats, Challenges and Change spoke on the NPT, the non-proliferation regime and the threat posed by nuclear weapons in **High-level Panel on Treats, Challenges and Change**, *A more secure world: our shared responsibility*, A/59/565 (2 December 2004), para. 20 (p. 14), 37 (p. 18) 107-112 (p. 39). Available at < <http://www.un.org/secureworld/report2.pdf> > (accessed on 21 May 2009).

<sup>23</sup> **High-level Panel on Treats, Challenges and Change**, *A more secure world: our shared responsibility*, A/59/565 (2 December 2004), p. viii. Available at < <http://www.un.org/secureworld/report2.pdf> > (accessed on 21 May 2009).

<sup>24</sup> Article IX(3) of the NPT: “... a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” There are five NWS – China, France, the Russian Federation, the UK, and the US. The US made the first test of nuclear weapons on 16 July 1945, then it dropped nuclear bombs on two Japanese cities Hiroshima and Nagasaki on 6 and 9 August 1945 respectively.

to the NPT – Israel, India, and Pakistan. Covert nuclear weapon programmes in Iraq and Libya reinforced the fear that States may develop weapons without being discovered.<sup>25</sup> The Democratic People’s Republic’s of Korea (DPRK’s) announcements of withdrawal from the NPT in 1993 and 2003, along with its claim that it possessed nuclear weapons and a subsequent nuclear test led to a diplomatic crisis.<sup>26</sup> That situation proved that there was lack of effective means to respond to withdrawal from the NPT.<sup>27</sup>

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The USSR tested its first nonnuclear device on 29 August 1949. On 3 October 1952, the UK became the third possessor of nuclear weapons. France joined the “nuclear club” on 13 February 1960. The last one to explode its first device was China on 16 October 1964. Available at < <http://www.pircenter.org/edu/handbook/chapter1-1.html> > (accessed on 16 September 2005). Later, on 18 May 1974, India conducted its first nuclear test and Pakistan on 29 May 1998. See the Table of nuclear tests at < <http://www.pircenter.org/edu/handbook/chapter2-1.html#tab1> > (accessed on 9 August 2009). The Democratic People’s Republic of Korea (DPRK) claims it has conducted a nuclear test on 9 October 2006. See page 9 below.

<sup>25</sup> Iraq Nuclear Verification Office (INVO) extensive inspection activities in Iraq between 1991 and 1998 resulted in a technically coherent picture of Iraq’s clandestine nuclear programme. **IAEA, *Iraq Nuclear File: Key Findings***. Available at < <http://www.iaea.org/OurWork/SV/Invo/factsheet.html> > (accessed on 10 September 2009). In December 2003, Libya informed the IAEA that it had been conducting a clandestine nuclear-weapon acquisition programme, and asked the Agency to verify its dismantlement. **IAEA Press Release 2003/14**, IAEA Director General to Visit Libya (Vienna, 22 December 2003). Available at < <http://www.iaea.org/NewsCenter/PressReleases/2003/prn200314.html> > (accessed on 22 June 2008). **IAEA, Report by Director General, Implementation of the NPT Safeguards Agreement of the Socialist People’s Libyan Arab Jamahiriya, GOV/2004/12** (22 February 2008). Available at < <http://www.iaea.org/Publications/Documents/Board/2004/gov2004-12.pdf> > (accessed on 22 June 2008); **IAEA Board Resolution, Implementation of the NPT Safeguards Agreement of the Socialist People’s Libyan Arab Jamahiriya, GOV/2004/18** (10 March 2004). Available at < <http://www.iaea.org/Publications/Documents/Board/2004/gov2004-18.pdf> > (accessed on 22 June 2008). See also **Hart, John and Kile, Shannon**, *Libya’s renunciation of nuclear, biological and chemical weapons and ballistic missiles*, Sipri Yearbook, 2005, no. YEAR 2005, pp. 629-648; **Jentleson Bruce W., and Whytok Chtistopher A.**, *Who “Won” Libya? The Force-Diplomacy Debate and Its Implications for Theory and Policy*, International Security, (Winter 2005/06), Vol. 30, No. 3, pp. 47-86; **Campbell, Kurt M., Einhorn, Robert J., Reiss, Mitchell B. (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004), p. 322.

<sup>26</sup> **Brooke, James**, *North Korea says it has nuclear weapons and rejects talks*, New York Times (10 February 2005). Available at < <http://www.nytimes.com/2005/02/10/international/asia/10cnd-korea.html?ex=1179892800&en=dc29d54bfb85af6a&ei=5070> > (accessed on 30 October 2006); **BBC News**, *North Korea statement on nuclear test* (summarized version of a statement released by the foreign ministry of North Korea announcing plans to test a nuclear weapon). Available at < <http://news.bbc.co.uk/2/hi/asia-pacific/5402292.stm> > (accessed on 30 October 2006).

<sup>27</sup> **Bunn George, and Rhinelander John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, Disarmament Diplomacy (April – May 2005), No. 79. Available at <http://www.acronym.org.uk/dd/dd79/79gbjr.htm>, (accessed on 15 June 2006). See also *Article X: Withdrawal: Working Paper submitted by the Republic of Korea, NPT/CONF.2010/PC.II/WP.29* (5 May 2008), p.1. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/39/PDF/G0861139.pdf?OpenElement> >.

Iran's previously undeclared nuclear activities, including Uranium enrichment, were perceived by some States as the threat to the integrity of the NPT.<sup>28</sup> At the same time, the policies enunciated by the Bush Administration may have added more to the perceptions of further undermining of the Treaty. The US's collaboration with India on nuclear energy, which is not a Party to the NPT, has further blurred the advantages of being Party to the NPT.<sup>29</sup> There is another risk that US military doctrine – that has elevated nuclear weapons to a war-fighting role – may create disincentive to other States to remain non-nuclear.<sup>30</sup> The

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<sup>28</sup> **National Intelligence Council, National Intelligence Estimates, Iran: Nuclear Intentions and Capabilities** (November 2007). Available at < [http://www.dni.gov/press\\_releases/20071203\\_release.pdf](http://www.dni.gov/press_releases/20071203_release.pdf) > (accessed on 30 November 2007); *IAEA findings on Iran dismissed* (30 October 2007). Available at < [http://news.bbc.co.uk/2/hi/middle\\_east/7068478.stm](http://news.bbc.co.uk/2/hi/middle_east/7068478.stm) > (accessed on 1 November 2007); *IAEA Daily Press Review*, available at < <http://www.iaea.org/NewsCenter/Dpr/pressreview.html> > (accessed on 4 November 2007); **IAEA Board of Governors, Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions 1737 (2006), 1747 (2007) and 1803 (2008) in the Islamic Republic of Iran** (GOV/2008/15), 26 May 2008. Available at < <http://www.iaea.org/Publications/Documents/Board/2008/gov2008-15.pdf> > (accessed on 5 June 2008); *Iran on the offensive over nuclear issue*, Times Online (28 May 2008). Available at < [http://www.timesonline.co.uk/tol/news/world/middle\\_east/article4019255.ece](http://www.timesonline.co.uk/tol/news/world/middle_east/article4019255.ece) > (accessed on 5 June 2008); See also **Fitzpatrick, Mark, Assessing Iran's Nuclear Programme**, (Autumn 2006), Vol. 48, No. 3, pp. 5-26; On Syria see **Windrem, Robert and Mitchell, Andrea, Did Syria cover-up nuclear facility?**, NBC News (25 October 2007). Available at < <http://www.msnbc.msn.com/id/21479058/> > (accessed on 4 November 2007); **Associated Press, Syria on nuclear 'watch list,' US official says. Nuke expert points to contacts with North Korea, foreign intelligence**, (25 October 2007). Available at < <http://www.msnbc.msn.com/id/20781697/> > (accessed on 4 November 2007); **Warrik Joby and Wright Robi, Search Is Urged for Syrian Nuclear Sites**, Washington Post (29 May 2008). Available at < <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/28/AR2008052803061.html> > (accessed on 5 June 2008); **Asculai, Ephraim, Syria, the NPT, and the IAEA**, INSS Insight (29 April 2008), No. 53. Available at < <http://www.rightsidenews.com/20080429824/global-terrorism/syria-the-npt-and-the-iaea.html> > (accessed on 6 June 2008); **Back, Ian, UN inspectors investigate suspected nuclear site in Syria**, Guardian (2 June 2008). Available at < <http://www.guardian.co.uk/world/2008/jun/02/syria.nuclear?gusrc=rss&feed=networkfront> > (accessed on 6 June 2008).

<sup>29</sup> Under the terms of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act signed by President Bush on 18 December 2006, the US agreed to deal with India as though the later were a Party to the NPT ceasing a previously existed embargo on the transfer of civilian nuclear technology to India. According to the deal, the Act authorizes India to import uranium though pending agreement by the Nuclear Suppliers Group (NSG) requiring India to abide by IAEA safeguards at nuclear facilities it designates as for civilian use. See **Squassoni Sharon, Parillo Jill Marie, U.S.-India Nuclear Cooperation: A Side-By-Side Comparison of Current Legislation. CRS Report for Congress** (22 November 2006). Available at < <http://www.fas.org/sgp/crs/nuke/RL33561.pdf> > (accessed on 13 May 2007); **Levi Michael A., Ferguson Charles D., U.S.-India Nuclear Cooperation: A Strategy for Moving Forward**, CSR No. 16 (June 2006) Council on Foreign Relations. Available at < <http://www.cfr.org/content/publications/attachments/USIndiaNuclearCSR.pdf> > (accessed on 13 July 2006).

<sup>30</sup> **Weiss, Leonard, U.S.-India Nuclear Cooperation: Better Later than Sooner**, Nonproliferation Review (November 2007), Vol. 14, No. 3, pp. 429-457. Available at < <http://cns.miis.edu/pubs/npr/vol14/143/143weiss.pdf> > (accessed on 10 April 2008); **US Department of**

danger is that many States might view nuclear weapons as useful, even essential, instruments to maintain their security. In this environment, a vast number of events may motivate States to start a nuclear arms race to use these weapons as a powerful deterrent.<sup>31</sup> The declaration by the Arab States of their consideration of a possibility to withdraw from the NPT in case Israel acknowledges its possession of nuclear weapons<sup>32</sup> should not be underestimated.

There are also more recent risks to the nuclear non-proliferation regime centred on the NPT that are caused by a State that announced its withdrawal from the NPT – the DPRK. Thus, the DPRK conducted an underground nuclear explosion on 9 October 2006, in the vicinity of P’unggye,<sup>33</sup> and claimed on 25 May 2009 that it had conducted another nuclear test.<sup>34</sup> It also announced progress in uranium reprocessing and enrichment activities.<sup>35</sup>

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**Defence**, *Nuclear Posture Review*, Submitted to Congress in December 2001. Available at < <http://www.globalsecurity.org/wmd/library/policy/dod/npr.htm> > (accessed on 22 November 2007); **White House**, *The National Security Strategy of the United States of America* (September 2002). Available at < <http://www.whitehouse.gov/nsc/nss.pdf> > (accessed on 7 June 2008); **White House**, *National Strategy to Combat Weapons of Mass Destruction* (December 2002). Available at < <http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf> > (accessed on 7 June 2008); **US Joint Chiefs of Staff**, *The National Military Strategy of the United States of America* (2004), p. 12; **US Department of Defence**, *Strategic Deterrence Joint Operating Concept* (February 2004), p. 8. Available at < [http://dtic.mil/joinvision/sd\\_joc\\_vl.doc](http://dtic.mil/joinvision/sd_joc_vl.doc) > (accessed on 22 November 2007); **US Department of Defence, Defence Science Board (DSB)**, *Report of the Defence Science Board Task Force on Future Strategic Strike Forces* (2004). Available at < <http://www.acq.osd.mil/dsb/reports/fssf.pdf> > (accessed on 7 June 2008).

<sup>31</sup> **Campbell, Kurt M., Einhorn, Robert J., Reiss, Mitchell B. (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004), pp.3-4.

<sup>32</sup> The Arab League announced on 5 March 2008 that if Israel acknowledged having nuclear weapons, then all Arab States would collectively withdraw from the NPT. **The Associated Press**, *Arab League vows to drop out of NPT if Israel admits it has nuclear weapons* (5 March 2008). Available at < <http://www.haaretz.com/hasen/spages/961275.html> > (accessed on 13 June 2008).

<sup>33</sup> “Analysis of air samples collected on October 11, 2006 detected radioactive debris which confirms that North Korea conducted an underground nuclear explosion in the vicinity of P’unggye on October 9, 2006. The explosion yield was less than a kiloton.” See *ODNI News Release No. 19-06*. Available at < [http://www.dni.gov/announcements/20061016\\_release.pdf](http://www.dni.gov/announcements/20061016_release.pdf) > (accessed on 10 September 2009).

<sup>34</sup> **CTBTO**, *Overview: DPRK 2009 announced test*. Available at < <http://www.ctbto.org/the-treaty/developments-after-1996/2009-dprk-announced-nuclear-test/> > (accessed on 10 September 2009).

<sup>35</sup> DPRK Permanent Representative Sends Letter to President of UNSC (4 September 2009). Available at < <http://www.kcna.co.jp/item/2009/200909/news04/20090904-04ee.html> > (accessed on 10 September 2009); *N. Korea says it has reached final phase of uranium enrichment*, Yonhap English News (4 September 2009); *S. Korea condemns N. Korea's uranium enrichment*, Yonhap English News (4 September 2009).

The existence of clandestine nuclear supply networks, so called proliferation rings, has emerged as a new threat to the global non-proliferation regime.<sup>36</sup> Horizontal nuclear proliferation would contribute to a growing number of nuclear weapon possessors, stimulate a “chain effect” and undermine nuclear deterrence among NWS and inspiring NNWS to give up their non-nuclear status.<sup>37</sup> Many NNWS have sufficient scientific and economic capabilities to acquire nuclear weapons. The start of new nuclear arms races may become a convincing reason for NPT States Parties to abandon the NPT in order to be free of their obligations of non-acquisition of nuclear weapons or those of nuclear disarmament. Such a scenario would lead to the collapse of the NPT. The reality of even more thousands of nuclear warheads around the world would render the international situation unmanageable and increase the danger of nuclear war. As long as the States maintain nuclear weapons or rely on the threat of their use for any purpose, other States would be tempted to develop such weapons. This would increase the likelihood of accidental or deliberate use of nuclear weapons. Moreover, the maintenance of peace and stability in the contemporary world faces new challenges due to the presence of not only current and potential military conflicts, but also of non-State actors, such as terrorist organizations, which have become one of the enduring nightmares of the post-Cold War world.

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<sup>36</sup> **Braun Chaim, Chyba Christopher F.**, *Proliferation Rings: New Challenger to the Nuclear Nonproliferation Regime*, International Security (Fall 2004), Vol. 29, No. 2, pp. 5-49; **Timerbaev, Roland**, *What Next for the NPT? Facing the Moment of Truth*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 4-7; **Bunn, George**, *The Nuclear Nonproliferation Treaty: History and Current Problems*, Arms Control Today (December 2005), Arms Control Association; **Stanley Richard, Kraig Michael Ryan**, *The NPT: Can this Treaty be Saved?*, Bulletin of the Atomic Scientists (Sep/Oct 2003), Vol. 59, No. 5, pp. 59-65; **Lodding Jan, Rauf Tariq**, *IAEA & NPT: The Verification Challenge*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 20-26; **Lord, Carnes**, *The Past and Future of Nonproliferation*, Naval War College Review (Autumn 2001), Vol. 54, No. 4, pp.153-157; **Leaver, Richard**, *The failing NPT: the case for institutional reform*, Australian Journal of International Affairs (December 2005), Vol. 59, Issue <http://www.informaworld.com/smpp/title~content=g727298974~db=all> 4, pp. 417-424.

<sup>37</sup> “Proliferation begets proliferation”, **Shultz, George**, *Preventing the Proliferation of Nuclear Weapons*, Department of State Bulletin (1984), Vol. 84, p. 18.

The withdrawal from the NPT of a State Party that has the intention to acquire nuclear weapons might lead to horizontal nuclear proliferation as well. It may escalate the withdrawal of other NPT Parties that relying on the withdrawal clause of the NPT embedded in Article X(1) of the NPT,<sup>38</sup> may view a withdrawal of a potential nuclear proliferator to be a threat to their existence and, therefore, may regard it as an “extraordinary event” that has “jeopardized the supreme interests of its country”.<sup>39</sup> But the implications of withdrawal would differ depending on the reasons for withdrawal being a general dissatisfaction with the regime or a choice to go nuclear. A flood of withdrawals from the NPT would foster horizontal proliferation of nuclear weapons. It would witness the collapse of near-universal global restraints on nuclear proliferation as embodied in the NPT and may lead to any regional crisis deteriorating to become a potential nuclear crisis. Moreover, as a part of the general arms control system, the collapse of the NPT may have a negative effect on other aspects of proliferation of weapons of mass destruction (WMD) as well as controls on conventional weapons. It has been argued that should the NPT collapse, the Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC) may collapse as well.<sup>40</sup>

A new study of international efforts to ensure the non-proliferation of nuclear weapons is timely. Currently, there is a need of an efficient intervention of the international community into crisis situations, which may undermine the existing nuclear non-proliferation

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<sup>38</sup> Article X(1) of the NPT: “Each party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.”

<sup>39</sup> The first sentence of Article X (1) of the NPT envisages that “Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that *extraordinary events*, related to the subject matter of this Treaty, have *jeopardized the supreme interests of its country*.” (*emphasis added*)

<sup>40</sup> **Stanley Richard, Kraig Michael Ryan**, *The NPT: Can this Treaty be Saved?*, Bulletin of the Atomic Scientists (Sep-Oct 2003), Vol. 59, No. 5, p. 59.

regime. Particular attention needs to be focused on the NPT – the core instrument of the regime – intended to halt nuclear proliferation and to seek the elimination of nuclear weapons. At present, the NPT faces a number of institutional and technical challenges related to the problems in the implementation by the States of the provisions of the Treaty. Considering the variety of existing threats to the NPT and the necessity to preserve the integrity of the nuclear non-proliferation regime, this dissertation focuses on the strengthening of the withdrawal clause of the NPT embedded in Article X(1) of the NPT by defining a clear role for the UN Security Council (UNSC) in the implementation of this article.

The issue of withdrawal from the NPT was chosen for this dissertation for a variety of reasons. First of all, the NPT and the compliance of its States Parties with their obligations under the Treaty are regarded as the core of the nuclear non-proliferation regime. The international community has never abandoned the effort on the preservation of the integrity and authority of the NPT and its strengthening against proliferation threats. The relevance of the NPT related issues got even a higher standing after the UNSC's meeting (6191st) on 24 September 2009 entitled "Maintenance of international peace and security: Nuclear non-proliferation and nuclear disarmament" unanimously adopted resolution 1887.<sup>41</sup> This resolution underlined, *inter alia*, that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and

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<sup>41</sup> The meeting was convened by US President Barack Obama in his capacity as current UNSC Chairman. This was the fifth time in history that the UNSC has met at the level of heads of state, and the first time it has been chaired by a US president.



for the peaceful uses of nuclear energy.<sup>42</sup> Its paragraph 17 is specifically dedicated to the matter of withdrawal from the NPT. In accordance with this paragraph, the UNSC

[u]ndertakes to address without delay any State's notice of withdrawal from the NPT, including the events described in the statement provided by the State pursuant to Article X of the Treaty, while noting ongoing discussions in the course of the NPT review on identifying modalities under which NPT States Parties could collectively respond to notification of withdrawal, and affirms that a State remains responsible under international law for violations of the NPT committed prior to its withdrawal.

Second, the NPT withdrawal clause demonstrated its weakness in regard to the DPRK's announcement of withdrawal from the NPT in 1993 and 2003. Thus, both the withdrawal provision of the NPT and the UNSC were criticized. The NPT was criticized for the lack of a stringent mechanism, which would not allow potential violators to leave the Treaty. While the UNSC was criticized for its lack of action with respect to the DPRK's announcements that resulted in opening doors for further nuclear proliferation, which should have been curtailed by the NPT, and increasing the regional and global threat. Up to now, no comprehensive assessment of the strengthening of the withdrawal clause of the NPT has been developed. This niche gives space for academic research. There has been little written on the issue of withdrawal from the NPT because this item has not been a priority issue for the discussions of NPT States since there was no existing or perceived risk that any NPT State would leave the Treaty. The discussions on the NPT were related to some major issues such as disarmament, negative security assurances, universality of the Treaty, etc. Until the DPRK resumed in 2003 its first attempt of 1993 to leave the NPT, there was no interest in this

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<sup>42</sup> **UNSC Res. 1887** (24 September 2009). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N09/523/74/PDF/N0952374.pdf?OpenElement> > (accessed on 16 October 2009).

subject matter. However, since then not enough has been done by the international community to deter any possible future abuse of the NPT benefits that may result in a withdrawal from the Treaty and escalation of a military nuclear programme.

Third, other WMD treaties, namely the BTWC and the CWC, have similar withdrawal clauses envisaging the role of the UNSC in a similar way as it is done in the NPT. The common characteristics of the withdrawal clauses of the three treaties is the notification requirement for withdrawal according to which a State deciding to withdraw from the treaty should give a notice of withdrawal to all other States Parties to the treaty and to the UNSC three months in advance, and such a notice should include a statement of extraordinary events it regards as having jeopardized its supreme interests.<sup>43</sup> As in the NPT, the definition of the role of the UNSC in the withdrawal mechanism of the BTWC and CWC is quite limited. Therefore, in case of withdrawal of a State Party from these treaties, the role of the UNSC should be more clearly defined and refined by the States Parties. Given the importance of all WMD treaties for the maintenance of international peace and security, the withdrawal from the abovementioned treaties may have an impact on regional and global proliferation of WMD. If the NPT States Parties manage to introduce a workable solution for the strengthening of the NPT Article X(1) on withdrawal, such a solution could be also valid for withdrawals from the BTWC and the CWC, and most probably it could be accepted by their respective States Parties.

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<sup>43</sup> See Annex 2: *Treaty withdrawal - notification requirements*.

## 2. Policy relevance

Proliferation concerns – as well as the anticipated expansion in the peaceful uses of nuclear energy and the increasing availability of the required technology – are the trends that are likely to persist in the future. These trends have resulted in strengthened efforts to promote peaceful uses of nuclear energy and to create new mechanisms able to halt horizontal nuclear proliferation.<sup>44</sup> But they do not resolve the weaknesses embedded in the NPT, as it is the case of its Article X(1).

Since the inception of the NPT, there has always been a possibility for its State Party to build a capacity to develop nuclear weapons and then withdraw from the Treaty. The NPT addresses this risk by limiting the circumstances, in which withdrawal is possible. According to Article X(1) of the NPT, a State Party to the Treaty seeking to withdraw is required to have determined that “... extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country.”<sup>45</sup> To underline the seriousness of any proposed withdrawal, Article X(1) requires that notice of withdrawal be given not only to all other Parties, but also to the UNSC. NPT withdrawal is not a tool for States that violate their Treaty obligations by the means of which they may try to avoid being held accountable for such breaches, in accordance with the resolutions of the UNSC and, where appropriate, of the

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<sup>44</sup> Some of such approaches are multilateral nuclear approaches (MNAs) and Assurances of Supply. For more on these approaches see **Rauf, Tariq and Vovchok, Zoryana**, *Fuel for thought*, IAEA Bulletin (March 2008), Vol. 49, No. 2, pp. 59-63. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull492/49204845963.pdf> > (accessed on 14 September 2009); **Rauf, Tariq and Vovchok, Zoryana**, *A Secure Nuclear Future*, IAEA Bulletin (September 2009), Vol. 51, No. 1, pp. 10-13. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull511/index.html> > (accessed on 14 September 2009).

<sup>45</sup> See ft. 38 above.

Board of Governors of the International Atomic Energy Agency (IAEA).<sup>46</sup> One of the major concerns in such case is that Article IV of the NPT promises NNWS Party to the Treaty full cooperation by other Parties – namely the NWS – in the development of civilian uses of nuclear energy, as long as these uses are under international safeguards of the IAEA. However, this should not allow a State Party to withdraw from the NPT in a manner that frees it from IAEA safeguards obligations and then use fissile materials or production facilities, acquired while a Party to the NPT, to make nuclear weapons.

As mentioned above, the non-use of the NPT withdrawal clause remains very important for preservation of integrity of the NPT. Article X(1) of the NPT on withdrawal refers to the UNSC as to an institution to which “[e]ach Party ... shall give notice of ... withdrawal ... three months in advance.” However, though this provision of the NPT envisages a role for the UNSC, it remains silent on the actions that the UNSC should undertake in the case of withdrawal from the NPT of its State Party.

Considering the importance of the issue of withdrawal for the preservation of the integrity of the NPT and of arms control, UN disarmament expert Jozef Goldblat claims that “[w]ithdrawal from the NPT should be prohibited or allowed only by a qualified majority of the Parties under very restrictive conditions.”<sup>47</sup> In view of preservation of the NPT, the Director General of the IAEA, Mohammed ElBaradei said that

[n]o country should be allowed to withdraw from the NPT without clear consequences. The treaty now allows any member to do so with three months notice. This provision of the treaty should be curtailed; at a minimum, notice of NPT withdrawal should prompt an

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<sup>46</sup> The Board of Governors is composed of 35 Member States, as designated and elected by the General Conference. For more see < <http://www.iaea.org/About/Policy/Board/index.html> > (accessed on 14 September 2009).

<sup>47</sup> **Goldblat, Jozef**, *Can Nuclear Proliferation be Stopped?* (Geneva: Geneva International Peace Research Institute, 2007), p. 70.

automatic review by the United Nations Security Council. Furthermore, any NPT state found to be in non-compliance should first resolve all outstanding compliance questions in order to benefit from the treaty.<sup>48</sup>

States Parties to the NPT have also elaborated various proposals in this regard and presented those during the NPT Review Conferences (RevConfs) and Preparatory Committees (PrepComs) to the NPT RevConf.<sup>49</sup> A relatively smaller body of research attempted to provide workable solutions to the issue of withdrawal encountered by the Treaty, though some legal aspects of withdrawal have been reflected in the literature.<sup>50</sup> In this respect, very little has been written on the exercise and improvement of NPT withdrawal clause, although this phenomenon had attracted somewhat greater interest following the DPRK's announcement of withdrawal from the NPT in 2003.<sup>51</sup> Most of the studies on the NPT have paid an extensive attention to the assessment of the causes of proliferation and anticipation of their consequences,<sup>52</sup> study of persistent inequalities between the NWS and NNWS with

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<sup>48</sup> **ElBaradei, Mohamed**, *Preserving the Non-Proliferation Treaty*, Disarmament Forum (2004), No. 4, p. 7.

<sup>49</sup> *Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand*, NPT/CONF.2005/WP.16; *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, European Union common approach: Working Paper submitted by Luxembourg on behalf of the European Union*, NPT/CONF.2005/WP.32; *Strengthening the implementation of article X of the Treaty on the Non-Proliferation of Nuclear Weapons: Working paper submitted by the United States*, NPT/CONF.2005/WP.59, etc. For more on the views of the States Party to the NPT on withdrawal, see Chapter 3 of this dissertation. On the nature of the NPT RevConfs see **Shaker, Mohamed**, *The Evolving International Regime of Nuclear Non-Proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, pp. 34-39.

<sup>50</sup> **Ahlström, Christer**, *Withdrawal from arms control treaties*, Sipri Yearbook, 2004, pp. 763-777; **Bunn George, Rhineland John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, Disarmament Diplomacy (April/May 2005), No. 79; **Nielsen Jenny, Simpson John**, *The NPT Withdrawal Clause and its Negotiating History* (MCIS NPT Issue Review: July, 2004); **Williams Joshua, Wolfsthal Jon**, *The NPT at 35: A Crisis of Compliance or a Crisis of Confidence?* Available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16850> (accessed on 10 June 2008); **Cannizzaro, Enzo**, *Recesso dal Trattato sulla non proliferazione nucleare e minaccia alla pace*, Rivista di diritto internazionale (2006), Vol. 89, fascicolo 4, pp. 1079-1082.

<sup>51</sup> **Asada, Masahiko**, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, Journal of Conflict & Security Law (2004), Vol. 9, No. 3, pp. 331-335; **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, pp. 93-102.

<sup>52</sup> **Braun Chaim, Chyba Christopher F.**, *Proliferation Rings: New Challenger to the Nuclear Nonproliferation Regime*, International Security (Fall 2004), Vol. 29, No. 2, pp. 5-49; **Campbell Kurt M.**,

respect to their commitments,<sup>53</sup> evaluation of the potential crisis of the NPT and its impact on the whole regime of non-proliferation,<sup>54</sup> the sustainability of the Treaty etc.<sup>55</sup>

The continuing confrontations between the NPT States Parties during the previous PrepComs and RevConfs<sup>56</sup> have proved to be challenging to the integrity of the Treaty and have resulted in the impossibility of reaching agreement between the NPT States on many

**Einhorn Robert J., Reiss Mitchell B. (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004); **Cirincione Joseph, Wolfsthal Jon, Rajkumar Miriam**, *Deadly arsenals: tracking weapons of mass destruction* (Washington DC: Carnegie Endowment for International Peace, 2002); **Cirincione, Joseph**, *A Global Assessment of Nuclear Proliferation Threats*, The Weapons of Mass Destruction Commission (June 2004). Available at < <http://www.wmdcommission.org/files/No10.pdf> > (accessed on 12 December 2007); **Center for Nonproliferation Studies**, *Inventory of International Nonproliferation Organizations & Regimes // Membership of selected states, India*, available at <<http://cns.miis.edu/pubs/inven/pdfs/india.pdf>> (accessed on 18 May 2007); **Dong-Joon Jo, Gartzke Erik**, *Determinants of Nuclear Weapons Proliferation*, Journal of Conflict Resolution (February 2007), Vol. 51, No. 1, pp. 167-194; **Lavoy, Peter R.**, *Nuclear Proliferation Over the Next Decade: Causes, Warning Signs, and Policy Responses*, Nonproliferation Review (November 2006), Vol. 13, No 3, pp. 433-454.

<sup>53</sup> **Müller, Harald**, *Farewell to Arms. What's Blocking Nuclear Disarmament?*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 12-15; **Pac, Henryk**, *The Anti-Proliferation Impact of CTBT*, in **Dahlitz, Julie., (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 79-82; **Rauf, Tariq**, *Towards Nuclear Disarmament*, UNIDIR Disarmament Forum (2000), Vol. 1, pp. 39-50.

<sup>54</sup> **Bunn, George**, *The Nonproliferation Regime under Siege* (CISAC, 1999). Available at < <http://se2.isn.ch/serviceengine/FileContent?serviceID=ESDP&fileid=A75AA1EA-2170-3E74-1164-DCCD4EAD5733&lng=en> > (accessed on 17 December 2007); **Center for International Security and Cooperation**, *Preventing Nuclear Proliferation and Nuclear Terrorism Essential steps to reduce the availability of nuclear-explosive materials* (March 2005); **Goldblat, Jozef**, *Can Nuclear Proliferation be Stopped?* (Geneva: Geneva International Peace Research Institute, 2007); **Lavoy, Peter R.**, *Nuclear Proliferation Over the Next Decade: Causes, Warning Signs, and Policy Responses*, Nonproliferation Review (November 2006), Vol. 13, No 3, pp. 433-454; **Lord, Carnes**, *The Past and Future of Nonproliferation*, Naval War College Review (Autumn 2001), Vol. 54, No. 4, pp.153-157; **Perkovich, George**, *The End of the Nonproliferation Regime?* (Carnegie endowment: November 2006). Available at < [http://www.carnegieendowment.org/files/perkovich\\_current\\_history.pdf](http://www.carnegieendowment.org/files/perkovich_current_history.pdf) > (accessed on 21 December 2007).

<sup>55</sup> **Bunn, George**, *The Nuclear Nonproliferation Treaty: History and Current Problems*, Arms Control Today (December 2003), Arms Control Association, available at <[http://www.armscontrol.org/act/2003\\_12/Bunn.asp](http://www.armscontrol.org/act/2003_12/Bunn.asp)> (accessed on 8 June 2007); **Carranza, Mario E.**, *Can the NPT Survive? The Theory and Practice of US Nuclear Non-proliferation Policy after September 11*, Contemporary Security Policy (December 2006), Vol. 27, No.3, pp. 489-525; **Kuppuswamy, Chamundeeswari**, *Is the nuclear Non-Proliferation Treaty shaking at its foundations? Stock taking after the 2005 NPT Review Conference*, Journal of Conflict and Security Law (2006), Vol. 11, No. 1, pp. 141-155; **Rauf Tariq, Johnson Rebecca**, *After the NPT's Indefinite Extension*, The Nonproliferation Review (Fall 1995), pp 28-41; **Stanley Richard, Kraig Michael Ryan**, *The NPT: Can this Treaty be Saved?*, Bulletin of the Atomic Scientists (Sep/Oct 2003), Vol. 59, No. 5, pp. 59-65.

<sup>56</sup> **Johnson, Rebecca**, *The 2005 NPT Conference in Crisis: Risk and Opportunities*, Disarmament Diplomacy (April/May 2005), No. 79. Available at < <http://www.acronym.org.uk/dd/dd79/79npt.htm> > (accessed on 21 June 2007).

essential issues embraced by the Treaty.<sup>57</sup> Currently, some States Parties to the NPT demand that neither the withdrawal clause of the NPT, nor its interpretation should be altered in any way.<sup>58</sup> Thus, any attempts to amend any of the provisions of the NPT may fail since passing of an amendment to the NPT is very complex and requires approval of “a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty.”<sup>59</sup> Therefore, an idea of strengthening the NPT withdrawal clause through its

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<sup>57</sup> “In light of negative developments preceding the 2000 NPT RevConf, South Africa withdrew from the presidency of the RevConf on 2 November 1999. It was an unprecedented move”. See **Rauf, Tariq**, *The 2000 NPT Review Conference: Challenges and Prospects*, Report of the Center for Nonproliferation Studies (CNS) (2000), p. 4. Available at < <http://cns.miis.edu/pubs/ionp/21apr00.pdf> > (accessed on 28 December 2007). The 2005 NPT RevConf “was the biggest failure in the history of the NPT. While previous reviews did not succeed in adopting a consensus final declaration because of a single issue, the CTBT, as in 1980 or 1990, or while their failure was neutralised by the seminal indefinite extension of the NPT, as in 1995, this time there was disagreement among the parties across all frontlines.” See **Müller, Harald**, *The 2005 NPT Review Conference: Reasons and Consequences of failure and Options for Repair*, The Weapons of Mass Destruction Commission (2005), No. 31, p. 1. Available at < <http://www.wmdcommission.org/files/No31.pdf> > (accessed on 12 December 2007); **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed*, Disarmament Diplomacy (Autumn 2005), No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 10 June 2008); **Kuppuswamy, Chamundeeswari**, *Is the nuclear Non-Proliferation Treaty shaking at its foundations? Stock taking after the 2005 NPT Review Conference*, Journal of Conflict and Security Law (2006), Vol. 11, No. 1, pp. 141-155. The 2007 PrepCom by the beginning of the second week had no an agreed agenda by the States Party to the NPT and as the 2005 Review Conference could result with deadlock and no substantive outcome. See **Johnson, Rebecca**, *Back from the Brink? The 2007 NPT PrepCom Report*, Disarmament Diplomacy (Summer 2007, No. 85. Available at < <http://www.acronym.org.uk/dd/dd85/85npt.htm> > (accessed on 10 May 2008). The 2008 NPT PrepCom adopts report but not the Chair’s factual and balanced Summary. See **Johnson, Rebecca**, *NPT PrepCom 2008* (9 May 2008). Available at < <http://www.acronym.org.uk/npt/08pc07.htm> > (accessed on 10 May 2008).

<sup>58</sup> *Statement of the Islamic Republic of Iran*, 2008 NPT PrepCom (7 May 2008): Iran underlined that any amendment or reinterpretation of Article X(1) “would actually undermine the NPT regime and create uncertainties and loopholes”. Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Iran\\_a\\_m.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Iran_a_m.pdf) > (accessed on 26 June 2008); On 7 May 2008, South Africa in its statement at the 2008 NPT PrepCom mentioned that “[c]are should be taken that proposals to interpret Article X do not create ambiguity. Such legal uncertainty is always undesirable and may undermine the Treaty itself”. Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07SouthAfrica\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07SouthAfrica_am.pdf) > (accessed on 26 June 2008).

<sup>59</sup> Article VIII (1) of the NPT envisages that “[a]ny Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.” Article VIII (2) establishes that “[a]ny amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties...” For more on amendment procedure of the NPT see **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, pp. 32-34.

amendment is not considered in this work. The intent is to support a better use of existing law to ensure a prompt and appropriate response in a case of withdrawal from the NPT.

States Parties to the NPT also have different views on the role of the UNSC in the withdrawal mechanism. Some of them request the UNSC to play a bigger role and to be empowered to restrain withdrawal or take other actions as deemed necessary.<sup>60</sup> At the same time other States Parties to the NPT raise a question on the appropriateness of the involvement of the UNSC in dealing with the withdrawal from the NPT believing that “[b]ringing the issue of withdrawal to the security Council, which is limited in membership and consists of permanent members who have veto rights, will contribute to a biased decision making process”.<sup>61</sup>

The issue of withdrawal is recognized by many States as one of a high importance. The Prime Minister of the UK, Gordon Brown, said in 2009 that “any material breach or withdrawal from the Non Proliferation Treaty should automatically lead to reference to the United Nations Security Council – and indeed it should be assumed that sanctions will be

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<sup>60</sup> “...any notice of withdrawal should prompt immediate verification of the State’s compliance with the Treaty, if necessary *mandated by the Security Council*” (emphasis added), *Statement of New Zealand*, 2008 NPT PrepCom (7 May 2008). Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07NewZealand\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07NewZealand_am.pdf) > (accessed on 25 June 2008); “Australia considers it would be appropriate for the UN Security Council to convene automatically and immediately should any state give notice of NPT withdrawal.” *Statement of Australia*, 2008 NPT PrepCom (7 May 2008). Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Australia\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Australia_am.pdf) > (accessed on 25 June 2008); Japan reiterated that “the UN Security Council convene automatically and immediately when a State gives notice of withdrawal” and underlined that “the Security Council is required to appropriately fulfill its duty in accordance with the Charter of the United Nations.” *Statement of Japan*, 2008 NPT PrepCom (7 May 2008). Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Japan\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Japan_am.pdf) > (accessed on 25 June 2008).

<sup>61</sup> *Statement of Indonesia*, 2008 NPT PrepCom (7 May 2008). Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Indonesia\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Indonesia_am.pdf) > (accessed on 25 June 2008). For the views of the NPT States Parties on the role of the UNSC in withdrawal from the NPT see Chapter 3 of the dissertation.



imposed in response to anything other than the most minor of breaches.”<sup>62</sup> In 2009, the G8 leaders, which endorsed the strategy of “Moving Toward a World Without Nuclear Weapons”, released a statement, in which they had agreed that “stronger measures are needed to address non-compliance or unjustified withdrawals from the NPT, to include appropriate action by the UN Security Council and robust use of IAEA inspection authorities.”<sup>63</sup>

The upcoming 2010 NPT RevConf will again address substantive and procedural issues related to the NPT. Though the NPT States Parties, depending on their State interests, view various problems as the most relevant for the NPT and, thus, it is also difficult to establish “top” level problems of the Treaty, the matter of withdrawal from the Treaty remains one of the troublesome clauses of the NPT that should be clarified.<sup>64</sup> The States Parties to the NPT would be expected to agree on measures to respond to any notification of withdrawal from the Treaty. Any progress in this area would help to preserve international peace and stability as the NPT review process is to bring together the interests of the NPT States and provide congruent solutions to overcome the existing NPT crisis by the use of diplomacy and law. In this view, not only diplomats involved in the NPT review process, but also academics should consider an evaluation of the NPT withdrawal clause to propose an efficient mechanism of a monitored withdrawal from the Treaty that would strengthen the NPT and the non-proliferation regime and bring among the States Parties to the NPT a

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<sup>62</sup> *Speech by the Rt Hon Gordon Brown MP, Prime Minister of the United Kingdom* delivered at the opening of the **International Nuclear Fuel Cycle Conference** (London, 17 March 2009). See also *Brown calls for renewed nuclear bargain* (World Nuclear News, 17 March 2009). Available at <[http://www.world-nuclear-news.org/NP\\_Brown\\_calls\\_for\\_renewed\\_nuclear\\_bargain\\_1703091.html](http://www.world-nuclear-news.org/NP_Brown_calls_for_renewed_nuclear_bargain_1703091.html)> (accessed on 20 March 2009).

<sup>63</sup> *G8 Leaders Addressing the Nuclear Threat at the L'Aquila Summit* (8 July 2009). Available at <<http://www.america.gov/st/texttrans-english/2009/July/20090709115208emffen0.9851605.html>> (accessed on 10 September 2009).

<sup>64</sup> See ft. 51, 52 above.

common understanding of the matter and the role of the UNSC in the NPT withdrawal mechanism.

### **3. Task of the research**

The abovementioned considerations constitute the basis for this research, which is also intended to contribute to the debate on the withdrawal from the NPT, and provide a better understanding of the withdrawal mechanism and the role of the UNSC in this process. The assumption of the current study is that the withdrawal clause of the NPT may be strengthened by an effective institutionalized mechanism – provided by the UNSC – able to monitor the withdrawal from the NPT in a way to prevent withdrawals of potential violators of the Treaty, which may trigger the risk of further nuclear proliferation. In this regard, it is important to recognize the untapped potential of the UN Charter and utilize the flexibility that its drafters so wisely managed to build into this document a long time ago. Therefore, a reading of the NPT withdrawal clause and the powers of the UNSC suggests that the UNSC may be the institution to efficiently monitor any withdrawal from the NPT. This dissertation shall verify whether the UNSC has necessary competence to be involved in the implementation of Article X(1) of the NPT and respond to announcements of withdrawal as a potential “threat to the peace”.

As noted previously, the focus of this dissertation is on the NPT’s withdrawal clause embedded in NPT Article X(1); the powers of the UNSC under this provision; the debates on the role of the UNSC in withdrawal from the NPT, which took place during the negotiations of the Treaty; the unique practice of withdrawal from the NPT made by the DPRK; the

actions of the UNSC taken in response to the DPRK's announcements of withdrawal from the NPT in 1993 and 2003; the views of the NPT States on the withdrawal from the NPT and the role of the UNSC in the process. Subsequently, the dissertation will provide an assessment of the powers of the UNSC under the UN Charter as well as the study on the decisions the UNSC may take in relation to withdrawal from the NPT.

These levels of analysis are required to assess, firstly, whether the UNSC has a competence in addressing withdrawal from the NPT, as pointed out by many NPT States Parties and contested by a few other NPT States; secondly, whether the UNSC may consider withdrawal from the NPT as a "threat to the peace" under Article 39 of the UN Charter; and, thirdly, if the UNSC may do so, to assess, which the plausible actions the UNSC may take to address such threat.

#### **4. Research methodology**

As mentioned above, the main purpose of this dissertation is to identify the role of the UNSC in the implementation of the NPT withdrawal clause and the actions it may take in response to withdrawal. For that to be done, it is necessary to find the sources of law applicable to this issue and then, ideally, to recommend a solution to the problem. This research is also driven by policy considerations of the States Parties to the NPT, reflected in recent meetings on the review process of the Treaty.

This academic research benefits from the professional involvement of the author in her professional capacity as a member of the IAEA delegation to the 2008 and 2009 NPT PrepComs, where the issue of withdrawal from the NPT and the role of the UNSC in this

process were discussed by the NPT States. This experience further strengthens this academic research and contributes to the purely scholarly debates on the issue.

This dissertation will make use of empirical legal research and doctrinal research<sup>65</sup> to enable the author to pursue the research from a variety of perspectives on the subject matter. Empirical legal research implies the collection and observation of relevant data. These data may be historical or contemporary, based on existing law, the results of surveys and interviews, primary data collection and the outcomes of secondary archival research.<sup>66</sup> The empirical method used in this study is the combination of both quantitative and qualitative approaches.

For purpose of the doctrinal, or theoretical, research the author analyses the primary sources relevant for the assessment of the Article X(1) of the NPT, the powers of the UNSC as envisaged in the UN Charter, the implementation of Article X(1) of the NPT by the DPRK during its announcements of withdrawal from the NPT in 1993 and 2003; and the UNSC's practice in addressing these cases. This research is often done from a historical perspective and may also include secondary sources, such as books, journal articles and other written commentaries on the primary sources. This method helps to provide an analysis of the applicable law to demonstrate how it has developed in terms of juridical reasoning and legal enactment.

The research will seek to provide a level of explanation as to why particular norms of international law have emerged, highlighting the interests of States that affected the formation of the content of these norms. This will be done by making use of other than legal

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<sup>65</sup> **McConville Mike and Chui Wing Hong (ed.)**, *Research Methods for Law* (Edinburgh University Press, 2007), p. 3, 16.

<sup>66</sup> **Epstein, Lee and Gary King**, *Empirical Research and the Goals of Legal Scholarship: The Rules of Inference*, *University of Chicago Law Review* (Winter 2002), Vol. 69, No. 1, pp. 2-3.

disciplines – historical analysis for the assessment of the negotiating history of the NPT, its withdrawal clause and the negotiations on the powers of the UNSC as part of the UN Charter. Such interdisciplinary approach is needed to understand the gap between “law in books” and “law in action” and the operation of law in international diplomacy. Interdisciplinary research broadens legal discourse in terms of its theoretical and conceptual framework, which guides the direction of this study and identify empirical evidence to answer research questions.

For the purpose of the doctrinal method, this dissertation will rely on the following types of literature:

1) primary bibliographic sources: such as the NPT *travaux préparatoires* developed in the course of negotiations of the NPT and its withdrawal clause; relevant resolutions of the UNGA; statements of the NPT States Parties on withdrawal delivered at the NPT RevConfs and PrepComs, as well as working papers, national reports and other official documents of the NPT PrepComs and RevConfs; the UN Charter, which determines the powers of the UNSC and related *travaux préparatoires* of the San Francisco Conference on the establishment of the UN (United Nations Conference on International Organization (UNCIO)); the records of the International Court of Justice (ICJ), where the Court expressed itself on the interpretation of the powers of the UNSC; the records of the UNSC practice in the field of non-proliferation and interpretation of a “threat to the peace” under Article 39 of the UN Charter that will be assessed through the examination of relevant resolutions of the UNSC; and

2) secondary bibliographic sources that provide interpretation of the primary sources, an overview and assessment of their developments: the “Repertoire of the Practice of the

Security Council”, which is a guide to the proceedings of the UNSC and sets out in a readily accessible form the practices and procedures, to which the UNSC has had recourse. It does not substitute for the records of the UNSC, which constitute the only comprehensive and authoritative account of its deliberations;<sup>67</sup> the “Repertory of Practice of United Nations Organs”,<sup>68</sup> which is a legal publication containing analytical studies of the decisions of the principal organs of the UN under each of the Articles of the UN Charter, prepared by the relevant Secretariat units concerned in accordance with their operational responsibilities and under the guidance of the Inter-Departmental Committee on Charter Repertory; and the legal doctrine on the interpretation of the provisions of the UN Charter, of the decisions of the UNSC and cases of the ICJ; relevant books, publications, and articles.<sup>69</sup>

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<sup>67</sup> Available at < [www.un.org/Depts/dpa/repertoire/](http://www.un.org/Depts/dpa/repertoire/)>.

<sup>68</sup> Available at < <http://www.un.org/law/repertory/>>.

<sup>69</sup> Please, refer to the List of Literature.

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### Introductory note

For the purpose of informing the reader about the importance of the NPT and its positive achievements directed at halting nuclear proliferation, this Chapter will provide essential information on the NPT's negotiation process, which was an outstanding effort of the international community aimed at establishing a first legal instrument to control the spread of nuclear weapons. It also includes analysis of the "three pillar" structure of the Treaty and of its substantive provisions incorporated in those pillars, and explains the origins and content of the famous "NPT bargain" that managed to bring together the interests of NWS and NNWS.

The NPT, besides being the first treaty for the control of nuclear weapons, has been a successful step to a more secure world and establish the NPT as a contributor to the maintenance of international peace and security, regardless of its numerous shortcomings that were mentioned in the Introduction to this dissertation. Some of the NPT's positive achievements are analysed in this Chapter – broad adherence to the Treaty, its indefinite extension and establishment of international safeguards. The assessment of these positive aspects of the NPT will also provide the reader with necessary knowledge of some tools of the Treaty that play an important role in the study of the issues related to withdrawal from the NPT.

## 1.1. The scope of the NPT and its substantive provisions:

### historical background

After signing the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water,<sup>1</sup> which in its Preamble recalls the aim of the three original Parties – the UK, the US, and the USSR – of “the speediest possible achievement of an agreement on general and complete disarmament”, the need for a treaty preventing the proliferation of nuclear weapons and nuclear weapon technology became ever more urgent.<sup>2</sup> The aim was to preserve for the then nuclear States their privileged status of weapon possessors as well as to close the door of the “nuclear club” to any new potential members since there was evidence that the capacity to produce nuclear weapons was spreading.<sup>3</sup> The anxiety of States as to a potential rapid expansion of the “nuclear club” with consequent increase in the risk of nuclear conflict was demonstrated in a draft resolution on the subject of non-proliferation introduced in the UNGA by the Republic of Ireland on 17 October 1958. The Irish proposal was the first to suggest to the two superpowers – the US and the USSR – nuclear arms control as an intermediate step towards non-proliferation. It presumed that the further spread of nuclear weapons could bring the risk of accidental and catalytic nuclear war and instability both for States with and without nuclear weapons. The provisions of the proposal were debated and arguably balanced in the

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<sup>1</sup> The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water is known as the Moscow Partial (or Limited) Test Ban Treaty (PTBT) and Agreed Communiqué of 25 July 1963. The Treaty was signed in Moscow on 5 August 1963 and entered into force on 1 October 1963, by which time, apart from three original signatories (the US, the USSR and the UK), 98 other countries had opted to sign it. These countries did not, however, include France and the People’s Republic of China, both already on the threshold of becoming nuclear powers. Source: UNTS, vol. 480 (1963) (United Nations: New York).

<sup>2</sup> **Goldblat, Jozef**, *Arms Control: A Guide to Negotiations and Agreements*, (Oslo, London: PRIO and SAGE Publications, 1994), p.302. For the history of negotiations of the NPT see **Bunn, George and Rhinelander, John**, *Looking Back: The Nuclear Nonproliferation Treaty Then and Now*, Arms Control Today (July/August 2008). Available at < [http://www.armscontrol.org/act/2008\\_07-08/lookingback.asp](http://www.armscontrol.org/act/2008_07-08/lookingback.asp) > (accessed on 7 July 2008).

<sup>3</sup> **Singh Nagendra, and McWhinney Edward**, *Nuclear Weapons and Contemporary International Law* (2<sup>nd</sup> revised ed.) (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1989), p. 238; **Carnesale Albert, Doty Paul, Hoffmann Stanley, Huntington Samuel, Nye Joseph, and Sagan Scott**, *Living with Nuclear Weapons* (Cambridge, Mass.: Harvard University Press, 1983), p. 215.



NPT's first two articles prohibiting the transfer or acquisition of nuclear weapons "directly or indirectly." Though the matter did not pass to a vote that session, the Irish delegation requested to include the issue of control of the dissemination of nuclear weapons in the agenda of the following session of the UNGA. In 1959, the "Irish Resolution" was approved by the UNGA.<sup>4</sup> The resolution suggested that the then existing Ten-Nation Disarmament Committee (TNDC)<sup>5</sup> should consider the means for averting the danger of an increase in the number of States possessing nuclear weapons, including the feasibility of an international agreement, subject to inspection and control, whereby the States producing nuclear weapons would refrain from handing over the control of such weapons to any State not possessing them and whereby the States not possessing such weapons would refrain from manufacturing them.<sup>6</sup>

Thereafter, the UNGA adopted various notions on the need to control the spread of nuclear weapons, with the two super-powers variously supporting, opposing or abstaining, according to whether the resolution in question directed itself to the question of the transfer of nuclear arms within the framework of a military alliance. A Swedish-sponsored resolution requesting an inquiry into the conditions, under which States not possessing nuclear weapons might be willing to enter into specific "undertakings to refrain from

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<sup>4</sup> **UNGA Res. 1380** (20 November 1959) on the *Prevention of the Wider Dissemination of Nuclear Weapons* (adopted by a vote of 68 to 0, with 12 abstentions). Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/142/03/IMG/NR014203.pdf?OpenElement> > (accessed on 30 November 2007).

<sup>5</sup> The TNDC was established at the Geneva Conference of Foreign Ministers following an agreement among the Governments of France, the USSR, the UK and the US. The Conference met in Geneva between 15 March and 28 June 1960, with the participation of Bulgaria, Czechoslovakia, Poland, Romania and the USSR on one side, and Canada, France, Italy, the UK and the US on the other. In a communiqué attached to a letter of 7 September 1959 addressed to the UN Secretary-General, the Ministers for Foreign Affairs of France, the USSR, the UK and the US noted, with regard to the establishment of the committee that "[t]he setting up of the Disarmament Committee in no way diminishes or encroaches upon the responsibilities of the United Nations in this field. In setting up the committee the special responsibility resting on the great powers to find a basis for agreement is taken into account... It is the hope of our four Governments that the results achieved will provide a useful basis for the consideration of disarmament in the United Nations". **Disarmament Commission**, *Suppl. for January-December 1959, DC/144*, Annex.

<sup>6</sup> **UNGA Res. 1380** (20 November 1959), para. 1. See also **De Gara, John**, *Nuclear Proliferation and Security. International Conciliation* (May 1970), No. 578 (New York: Carnegie Endowment for International Peace, 1970), p. 8; **Delcoigne G., Rubinstein G.**, *Non-prolifération des armes nucléaires et systèmes de contrôle* (Bruxelles, 1970), p. 72; **Willrich, Mason**, *Non-Proliferation Treaty. Framework for Nuclear Arms Control* (Charlottesville, Va.: The Michie Company, 1969), p. 61.

manufacturing or otherwise acquiring such weapons and to refuse to receive, in the future, nuclear weapons in their territories on behalf of any other country”. This resolution was adopted by the UNGA as resolution 1664.<sup>7</sup> At the same time, another Irish proposed resolution calling for an international agreement whereby nuclear States would undertake to “refrain from relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons”, was adopted by the UNGA as resolution 1665.<sup>8</sup> Starting in 1962, the Eighteen-Nation Disarmament Committee (ENDC), the successor to the TNDC, was opened in Geneva and studied the possibilities of an agreement based on UNGA resolution 1665.<sup>9</sup>

However, the US and the USSR could not agree on whether the North Atlantic Treaty Organisation’s (NATO’s) framework on the multilateral nuclear force (MLF) was

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<sup>7</sup> **UNGA Res. 1664** (4 December 1961) was adopted by a vote of 58 to 10, with 23 abstentions. Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/167/17/IMG/NR016717.pdf?OpenElement> > (accessed on 10 August 2009). By Resolution 1664 (XVI), the UNGA requested the Secretary-General to make an inquiry into the conditions under which States not possessing nuclear weapons might be willing to enter into specific undertakings to refrain from manufacturing or otherwise acquiring such weapons and to refuse to receive, in the future, nuclear weapons in their territories on behalf of any other State. See *Repertory of Practice of United Nations Organs, Article 11*, Supplement No. 3 (1959 - 1966), Volume 1, p. 236, 261. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp3\\_voll-art11\\_e.pdf](http://untreaty.un.org/cod/repertory/art11/english/rep_supp3_voll-art11_e.pdf) > (accessed on 10 August 2009).

<sup>8</sup> **UNGA Res. 1665** (4 December 1961) called upon all States, in particular upon the States possessing nuclear weapons, to endeavour to seek the conclusion of an international agreement containing provisions under which the nuclear States would undertake to refrain from relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons, and provisions under which States not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons. See *Repertory of Practice of United Nations Organs, Article 11*, Supplement No. 3 (1959 - 1966), Vol. 1, p. 233. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp3\\_voll-art11\\_e.pdf](http://untreaty.un.org/cod/repertory/art11/english/rep_supp3_voll-art11_e.pdf) > (accessed on 10 August 2009).

<sup>9</sup> The ENDC was established by **UNGA Res. 1722** (20 December 1961) on the *Question of Disarmament* (the resolution is available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/167/75/IMG/NR016775.pdf?OpenElement> > (accessed on 4 June 2008). The ENDC was the successor of the TNDC, which was considered to be too small. The US and the USSR agreed to establish the ENDC, which also remained outside the UN system. The UNGA maintained its ultimate responsibility for all disarmament proposals made by this Committee. However, the documents of the ENDC were published as the UN documents. In 1969 and 1975 the membership of the ENDC was extended to 31 members. On 16 December 1969, the UNGA passed **Res. 2602 B**, which changed its name to the Conference of the Committee on Disarmament (the resolution is available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/257/36/IMG/NR025736.pdf?OpenElement> > (accessed on 4 June 2008)). With reference to the final document of the Special Session on Disarmament in 1978 (res. S-10/2), the Committee on Disarmament was established as its successor. In 1984, it was renamed as the Conference on Disarmament. See **Wolfrum, Rudiger (ed.)**, *United Nations: Law, Policies and Practice* (München: Beck, 1995), Vol. 1, pp. 408-409.

compatible with the principle of non-dissemination of nuclear weapons.<sup>10</sup> The USSR insisted on a treaty that could prohibit the arrangements that the US had with its NATO allies for deployment in their countries of US nuclear weapons under US control. The USSR-US disagreement on an MLF of naval vessels with nuclear weapons under NATO command constituted one of the major obstacles to reaching an agreement. In order to avoid lengthy discussions with NATO allies, the US Congress urged negotiation of a nuclear non-proliferation treaty. It seemed that the countries were influenced by the fact that, following the French example, the People's Republic of China successfully completed an experimental nuclear explosion in 1964.<sup>11</sup> In the compromise, the US gave up on the MLF and the USSR gave up a prohibition against US deployment of nuclear weapons in allied NATO States, provided the weapons remained under the control of the US. The compromise enabled the US on 17 August 1965 to submit to the ENDC a draft treaty to prevent the spread of nuclear weapons. The USSR followed the US and deposited its own draft at the UNGA on 27 September 1965. The UNGA voted on 19 November 1965 to adopt, by 93 to 0 with 5 abstentions,<sup>12</sup> UNGA resolution 2028 calling for the conclusion of a non-proliferation treaty and asking the ENDC to charge itself with this task on the basis of the following five principles:<sup>13</sup>

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<sup>10</sup> NATO, which represents a defensive military alliance, was established by the Washington Treaty concluded on 4 April 1949. Available at < <http://www.nato.int/docu/basicxt/treaty.htm> > (accessed on 04 June 2008). The principle of the MLF was incorporated in the key provision of the Washington Treaty – Article 5 – that was modelled after Article 51 of the UN Charter and refers to the right of individual or collective self-defence recognised by Article 51 of the UN Charter. NATO recognized the desire of the Western European States to use nuclear forces for their defence in the event of a conventional attack. This concept produced a relationship between conventional and strategic warfare. See **Gazzini, Tarcisio**, *NATO's Role in the Collective Security System*, *Journal of Conflict & Security Law* (2003), Vol. 8 No. 2, p. 231; **Bunn, George and Rhineland, John**, *Looking Back: The Nuclear Nonproliferation Treaty Then and Now*, *Arms Control Today* (July/August 2008). Available at < [http://www.armscontrol.org/act/2008\\_07-08/lookingback.asp](http://www.armscontrol.org/act/2008_07-08/lookingback.asp) > (accessed on 7 July 2008).

<sup>11</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation* (London: Oceana Publications, 1980) Vol. II; **Willrich, Mason**, *Non-Proliferation Treaty. Framework for Nuclear Arms Control* (Charlottesville, Va.: The Michie Company, 1969).

<sup>12</sup> *Repertory of Practice of United Nations Organs, Article 11*, Supplement No. 3 (1959 - 1966), Volume 1, p. 261. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp3\\_voll-art11\\_e.pdf](http://untreaty.un.org/cod/repertory/art11/english/rep_supp3_voll-art11_e.pdf) > (accessed on 10 August 2009).

<sup>13</sup> **UNGA Res. 2028** (19 November 1965) on *Non-proliferation of nuclear weapons*. Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/217/91/IMG/NR021791.pdf?OpenElement> > (accessed on 4 November 2007). See also *Repertory of Practice of United Nations Organs, Article 11*,

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

At the same time, the UNGA attempted to create an environment that could contribute to the adoption of a treaty on nuclear non-proliferation. With this aim two resolutions on nuclear non-proliferation were adopted in November 1966. In resolution 2149, the UNGA appealed to all States pending conclusion of a nuclear non-proliferation treaty, to renounce actions that might hamper agreement on such a treaty and in resolution 2153-A the UNGA called upon the ENDC to give priority to the issue of nuclear non-proliferation and also to consider the issue of assurances to NNWS.<sup>14</sup>

On the basis of the abovementioned five principles introduced by the UNGA resolution 2028 and following extensive negotiations between the USSR and the US, in August 1967 the USSR and the US submitted for the consideration of the ENDC two separate but identical draft texts of a non-proliferation treaty. Following criticisms voiced

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Supplement No. 3 (1959 - 1966), Vol. 1, p. 235. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp3\\_vol1-art11\\_e.pdf](http://untreaty.un.org/cod/repertory/art11/english/rep_supp3_vol1-art11_e.pdf) > (accessed on 10 August 2009); **Burns, E.L.M.**, *The Nonproliferation Treaty: Its negotiations and Prospects*, International Organization (1969), Vol. 23, No. 4, p. 802; **De Gara, John**, *Nuclear Proliferation and Security* (New York: Carnegie Endowment for International Peace, 1970), p. 21; **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 25.

<sup>14</sup> *Repertory of Practice of United Nations Organs, Article 11*, Supplement No. 4 (1966 - 1969), Vol. 1, p. 127. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp4\\_vol1-art11\\_e.pdf#pagemode=none](http://untreaty.un.org/cod/repertory/art11/english/rep_supp4_vol1-art11_e.pdf#pagemode=none) > (accessed on 10 August 2009).

by other countries – West Germany and Sweden in particular – the USSR and the US then filed a jointly agreed text before the ENDC on 11 March 1968. This text was then sent to the UNGA.<sup>15</sup> This was the first time in UN disarmament history that a resolution sponsored by both the USSR and the US had failed to secure unanimous approval by the UNGA. In spite of the chilly attitudes, however, the resolution was adopted with 95 votes in favour, four votes against, and 21 abstentions. Among the abstentions were Brazil, Burma, and India, all of which were members of the ENDC, and France, one of the nuclear powers.<sup>16</sup> The situation reflected some of the misgivings expressed in the ENDC at the USSR-US joint action in shaping the course of the negotiations by various NNWS for additional assurances. Going beyond the provisions of the treaty, the USSR, the US, and the UK agreed to sponsor a resolution on security assurances in the UNSC and to make separate, but substantially identical individual declarations re-affirming their intentions concerning the principles in UNSC resolution 255.<sup>17</sup> Thus, the three declarations of the NWS were annexed to the draft of UNSC resolution 255. After further revision mainly of the Preamble and Articles IV and V, on 12 June 1968, the UNGA adopted resolution 2373, which “commended” the attached text of the NPT and expressed the hope for the widest possible adherence to the Treaty by both NWS and NNWS.<sup>18</sup> The NPT was opened for signature on

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<sup>15</sup> **UNGA Res. 2346 A** (19 December 1967) requested the ENDC to present it with a full report on the negotiations on a non-proliferation treaty on or before 15 March 1968. The Resolution served as an incentive for the US and the USSR to foster the collaboration on the draft treaty. See **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation* (Oceana Publications, 1980) Vol.1; See also **Willrich, Mason**, *Non-Proliferation Treaty. Framework for Nuclear Arms Control*, (Charlottesville, Va.: The Michie Company, 1969).

<sup>16</sup> Albania, Cuba, Tanzania, and Zambia voted against. **Burns, E.L.M.**, *The Nonproliferation Treaty: Its negotiations and Prospects*, International Organization (1969), Vol. 23, No. 4, pp. 789.

<sup>17</sup> **UNSC Res. 255** (19 June 1968) on the *Question relating to measures to safeguard non-nuclear-weapon States parties to the Treaty on the Non-Proliferation of Nuclear Weapons*. **UNSC Res. 255** was adopted by a majority vote of 10 to 0 with 5 abstentions (Algeria, Brazil, France, India and Pakistan). Both China and France, the remaining NWS, were not bound by the Resolution and were not Parties to the NPT at that time. Available at <

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/248/36/IMG/NR024836.pdf?OpenElement> > (accessed on 4 June 2008).

<sup>18</sup> *Repertory of Practice of United Nations Organs, Article 11*, Supplement No. 4 (1966 - 1969), Vol. 1, p. 122. Available at < [http://untreaty.un.org/cod/repertory/art11/english/rep\\_supp4\\_voll-art11\\_e.pdf#pagemode=none](http://untreaty.un.org/cod/repertory/art11/english/rep_supp4_voll-art11_e.pdf#pagemode=none) > (accessed on 10 August 2009).

1 July 1968 and was signed on the same day by the USSR, the US, and other 60 States and entered into force on 5 March 1970 upon the 40<sup>th</sup> ratification by a signatory State.<sup>19</sup>

***The content of the NPT in light of UNGA resolution 2028 (1965)***

There are two main parts in the NPT: a Preamble and 11 Articles. The Preamble plays an important role in the interpretation of the Treaty.<sup>20</sup> It is useful to consider the main provisions of the NPT in the light of the five principles formulated by the UNGA in resolution 2028 that served as an advanced guide to the drafting of the Treaty.<sup>21</sup>

Pursuant to Article I of the NPT,

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

Article II of the Treaty imposes reciprocal obligations on NNWS Party

not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

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<sup>19</sup> *Arms Control Chronology*. Available at < <http://usinfo.state.gov/journals/itps/0897/ijpe/pj3chron.htm> > (accessed on 16 June 2008); *NPT (in chronological order by deposit)*. Available at < <http://disarmament.un.org/TreatyStatus.nsf> > (accessed on 16 June 2008).

<sup>20</sup> **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 26.

<sup>21</sup> See Chapter 1, ft. 13, p. 32.

In terms of UNGA resolution 2028, and with the definitive abandonment in early 1966 by the US of the MLF project integrated into NATO, any reference in the Treaty to a prohibition on the transfer of nuclear arms to NNWS within the members of the military alliance had become unnecessary in the view of the USSR. The US renunciation of the MLF was an important gain for the USSR and this was one reason for its non-objection to the creation of a Nuclear Committee of NATO.<sup>22</sup>

The second principle set out in UNGA resolution 2028, namely an “acceptable balance of mutual responsibilities and obligations” of the NWS and NNWS, was achieved in Articles IV and V of the NPT, providing respectively for “the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy” and

to ensure that ... potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a nondiscriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development.

Additionally, since the NPT did not contain any specific obligation to ensure the security of NNWS, the NNWS insisted on security assurances as an essential component of an effective nuclear non-proliferation regime. The then three NWS (the USSR, the US, and the UK accompanied UNGA resolution 2028 with their parallel Declarations and UNSC

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<sup>22</sup> The NATO’s nuclear sharing arrangements were at the centre of negotiations between the US and the USSR on Articles I and II of the NPT in the mid-1960s. NATO nuclear sharing appears to be in breach of these obligations as it intended to allow the transfer of US nuclear weapons to non-nuclear Allies in time of war. NATO asserts that nuclear sharing is compatible with the NPT, based on a US interpretation that it does “not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling”. In the 1990s, this interpretation has become increasingly controversial. At the 1995 NPT RevConf, Mexico asked in Main Committee 1 for clarification on whether nuclear sharing breached Articles I and II. Mexico’s concerns were taken up by the Non-Aligned Movement (NAM). As a result several proposals for language questioning the US interpretation were put forward for inclusion in the Committee’s final report, including the language saying that “The Conference notes that among States parties there are various interpretations of the implementation of certain aspects of articles I and II which need clarification, especially regarding the obligations of nuclear weapon States parties...when acting in cooperation with groups of nuclear-weapon States parties under regional arrangements...” NATO asserts that nuclear sharing is in compliance with the NPT because it pre-dates the NPT. For more on this issue see *NATO’s Positions Regarding Nuclear Non-Proliferation, Arms Control and Disarmament and Related Issues*. Available at < <http://www.nato.int/issues/nuclear/position.html> > (accessed on 2 November 2007).

resolution 255 adopted on 19 June 1968 where they provided NNWS with security guarantees.<sup>23</sup>

The third principle of UNGA resolution 2028 is that the final Treaty should be a step towards general and complete disarmament and more particularly nuclear disarmament, rests in Article VI, where the Parties undertake to pursue negotiations in good faith towards that end.

The fourth principle of UNGA resolution 2028 concerning workable provisions to ensure the effectiveness of the Treaty is reflected in Article III (1) that stipulates that the NNWS will accept safeguards, as set forth in an agreement to be negotiated and concluded with the IAEA, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear devices. Each State Party to the NPT undertakes, under Article III (2),

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

The final principle of UNGA resolution 2028 on the creation – by regional treaties – of nuclear-weapon-free zones (NWFZs), is expressly recognized in Article VII of the NPT.<sup>24</sup> This principle had been inserted into the resolution 2028 at the time it was being voted at the UNGA in 1965, primarily at the insistence of the Latin American countries, then

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<sup>23</sup> Under **UNSC Res. 255** (19 June 1968), the USSR, the UK, and the US pledged immediate assistance, in accordance with the UN Charter, to any NNWS Parties to the NPT, which is a “victim of an act or an object of a threat of aggression”, in which nuclear weapons are used. These pledges are known as “positive assurances” and they restate the duty of the UN to provide assistance to a country, which is an object of aggression as mentioned in the UN Charter. See **Goldblat, Jozef**, *Arms Control: The New Guide to Negotiations and Agreements* (2<sup>nd</sup> edition) (London: SAGE Publications, 2002), pp. 110-111; **Goldblat, Jozef**, *Can Nuclear Proliferation be Stopped?* (Geneva: Geneva International Peace Research Institute, 2007), p. 27.

<sup>24</sup> The issue of creation of NWFZs preceded **UNGA Res. 2028** (19 November 1965). The UNGA urged for the creation of NWFZs in **UNGA Res. 1911** (27 November 1963), in **UNGA Res. 2033** (3 December 1965).



actively engaged in negotiating their own regional denuclearization treaty – the Treaty for the Prohibition of Nuclear Weapons in Latin America.<sup>25</sup>

***The NPT's scope of action based on the “three pillar” structure of the Treaty***

Since its inception, the NPT is regarded as the cornerstone of the global nuclear non-proliferation and disarmament regime and an important “tool for strengthening security”.<sup>26</sup> It was designed to stop the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy according to specific safeguards, and to encourage negotiations to halt the nuclear arms race. It is a unique widely-adhered to and internationally legally binding treaty that prohibits the possession of the most devastating weapons by most of the States,<sup>27</sup> while, however, tolerating the possession of nuclear weapons, for an undefined period, by five States.<sup>28</sup>

An important feature of the NPT consists in the division of its States Parties into two legally defined categories, known as NWS and NNWS. According to the definition provided in Article IX (3) of the NPT, “a nuclear-weapon State is one which has manufactured and exploded a nuclear weapons or other nuclear explosive device prior to 1 January 1967.” Under the terms of this provision, only five States – China, France, the UK,

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<sup>25</sup> Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) signed at Mexico City on 14 February 1967 entered into force on 22 April 1968. Source: UNTS, Vol. 634.

<sup>26</sup> **Johnson, Rebecca**, *Looking Towards 2010: What does the Nonproliferation Regime need?*, Disarmament Diplomacy (Spring 2007), No. 87. Available at < <http://www.acronym.org.uk/dd/dd84/84npt.htm> > (accessed on 21 June 2007); **Sokolski, Henry**, *Best of Intentions: America's Campaign against Strategic Weapons Proliferation* (Westport, Conn.: Praeger, 2001); *NPT Review Process: 1970-1995*. Available at < <http://www.reachingcriticalwill.org/legal/npt/hist.html> > (accessed on 27 June 2005).

<sup>27</sup> See Introduction, ft. 15.

<sup>28</sup> **ElBaradei, Mohammed**, *Preserving the Non-Proliferation Treaty*, Special Comment (Disarmament Forum, 2004), No. 4, p. 4.

the US and the USSR – gained the legal status of NWS.<sup>29</sup> All other States Parties to the NPT are NNWS.<sup>30</sup>

The NPT was also intended to link the concerns of those States that acquired nuclear weapons, but did not desire further proliferation, with those States which remained non-possessors of nuclear weapons, but had the potential to make use of nuclear energy. The resulting NPT “bargain” between NNWS and NWS reflects the “three pillar” structure of the Treaty and entails a balance of commitments between these two types of States Parties to the Treaty.<sup>31</sup> It is recognized that the NPT is based on a triangular linkage between verified nuclear non-proliferation, cooperation in peaceful uses of nuclear energy, and nuclear disarmament. Properly the agreed consolidation of this linkage led to the agreement on the NPT in 1968.<sup>32</sup> Any new international non-proliferation compromise would be organized on the same basis as those are the main components of nuclear non-proliferation regime.<sup>33</sup>

According to the accomplishments of the Treaty “bargain”, the object of the NPT’s obligations – nuclear weapons and nuclear explosive devices – remained enshrined in Articles I and II of the NPT.<sup>34</sup> These principles constituted the basis for the non-

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<sup>29</sup> See Introduction, ft. 24.

<sup>30</sup> For more on the dilemma on the status of the States that tested nuclear weapons after 1 January 1967 and are not Party to the NPT (India exploded device in 1974 and Pakistan in May 1998) see **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 26.

<sup>31</sup> “The original “bargain” of the Treaty is generally understood to be the elimination of nuclear weapons through the commitment by non-nuclear-weapon states not to acquire nuclear weapons and the commitment by five nuclear-weapon states to pursue nuclear disarmament.” See **Weapons of Mass Destruction Commission**, final report, *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms* (Stockholm: EO Grafiska, 1 June 2006), p. 62. See also **The Carter Center, Middle Powers Initiative**, *Atlanta Consultation II on the future of the NPT: Nuclear Disarmament & Non-Proliferation: A Balanced Approach*, Final report (26-28 January 2005), p. 4. Available at < <http://www.middlepowers.org/pubs/2005atlantareport.pdf> > (accessed on 20 November 2005).

<sup>32</sup> **ElBaradei, Mohammed** quoted in **Bunn, George**, *The World’s Non-Proliferation Regime in Time*, IAEA Bulletin (March 2005), Vol. 46, No.2, p. 8.

<sup>33</sup> **ElBaradei, Mohammed**, *Preserving the Non-Proliferation Treaty*, Special Comment (Disarmament Forum, 2004), No. 4, p. 4.

<sup>34</sup> Nuclear weapons are not defined in the text of the NPT. The term “nuclear weapons” meant nuclear bombs and warheads. Concerning the term “other nuclear explosive devices”, during the negotiations of the NPT the term meant nuclear explosive devices needed for peaceful purposes within Article V of the NPT. See **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 27.

proliferation pillar of the NPT through the establishment of three sets of obligations for both NWS and NNWS:<sup>35</sup> 1) not to transfer and not to receive nuclear weapons or nuclear explosive devices; 2) not to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices; 3) not to assist in any way, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, while NNWS undertake not to seek or receive any assistance in the manufacture of nuclear weapons or nuclear explosive devices.<sup>36</sup> Transfer and receipt of nuclear weapons or nuclear explosive devices are prohibited between NWS. Additionally, no international organization could own or apply by its own means nuclear explosive devices for peaceful purposes. However, consultations and planning on nuclear strategy are not incompatible with the NPT so long as no transfer of nuclear weapons or control over them occurs. Deployment of nuclear weapons within an allied territory is not prohibited by the NPT, but may be restricted by other international legal instruments such as those establishing NWFZs.<sup>37</sup> The second set of obligations on manufacture and acquisition of nuclear weapons or nuclear explosive devices applies to NNWS, but it does not create the same prohibition for NWS.<sup>38</sup> The third type of obligations refers to assistance in receiving nuclear weapons. Thus, assistance, encouragement or inducement for NWS to NNWS is acceptable only for peaceful usage of nuclear energy, which is subordinated to respective

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The 1954 Protocol III (Annex II) to the 1948 Brussels Treaty (Paris Agreements on the Western European Union), defined a nuclear weapon “as any weapon which contains, or is designed to contain or utilize, nuclear fuel or radioactive isotopes and which, by explosion or other uncontrolled nuclear transformation of the nuclear fuel, or by radioactivity of the nuclear fuel or radioactive isotopes, is capable of mass destruction, mass injury or mass poisoning”; Art. 5 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco, 1967) provides the following definition: “a nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. An instrument that may be used for the transport or propulsion of the device is not included in this definition if it is separable from the device and not an indivisible part thereof.”

<sup>35</sup> Weiss, Leonard, *Atoms for Peace*, Bulletin of the Atomic Scientists (November-December 2003), pp. 34, 37, 41.

<sup>36</sup> With regard to the obligation of *non-transfer and non-receipt*, a US document contained an important interpretation of the NPT by the US that raised objections during the negotiation of the text of the NPT at the ENDC. See Shaker, Mohamed, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), pp. 234-235.

<sup>37</sup> Ibid, pp. 28-29.

<sup>38</sup> Ibid, p. 29.

IAEA safeguards. While assistance among NNWS Parties to the NPT is prohibited under the Treaty, and if the assistance was intended to manufacture nuclear weapons, it would be regarded as a violation of the NPT.

In relation to nuclear disarmament, according to the NPT, the five NWS are obligated under Article VI of the NPT to engage in negotiations on nuclear disarmament to reduce and eventually eliminate their own nuclear arsenals over time.<sup>39</sup> The NPT is the only multilateral treaty that legally binds the NWS to pursue nuclear disarmament negotiations.<sup>40</sup> Yet, at the time of the NPT negotiations, the goal was to put an end to the arms race between the US and the USSR, as it was costly and potentially destabilizing and dangerous, although that initiative might have seemed unlikely and “general and complete disarmament” altogether utopian. The NWS, the US and the USSR in particular, did pursue negotiations and strategic arms limitations since the 1970s to date.<sup>41</sup> The abrupt end of the Cold War and the collapse of the USSR made deep reductions in nuclear armaments possible.<sup>42</sup> Nevertheless, in the first years of the 21<sup>st</sup> century, the US and Russia changed their policies on nuclear disarmament and on the role of nuclear weapons in general.<sup>43</sup> The

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<sup>39</sup> Article VI of the NPT: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.”

<sup>40</sup> “[I]t is only in the context of the NPT that the five recognized nuclear-weapon states (NWS) are legally bound to pursue and achieve nuclear disarmament.” See **ElBaradei, Mohammed**, *Preserving the Non-Proliferation Treaty*, Special Comment (Disarmament forum, 2004), No. 4, p. 4.

<sup>41</sup> The Strategic Arms Limitation Treaties (SALT) represent important progress in terms of quantitative arms limitation, though they failed to address qualitative aspect of advancements in weapons systems. SALT I produced the Anti-Ballistic Missile (ABM) Treaty in 1972, and Interim Agreement between the USA and the USSR on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, which set limits on the total number of offensive missiles allowable addressed in the 1979 SALT II Agreements. See **Notburga K. Calvo-Goller and Calvo, Michel**, *The SALT Agreements: Content, Application, Verification*, (Dordrecht: Martinus Nijhoff Publishers, 1987); **Payne, Samuel B. Jr.**, *The Soviet Union and SALT* (Cambridge, MA: MIT Press, 1980); **Wolfe, Thomas**, *The SALT Experience* (Cambridge, MA: Ballinger, 1979). The qualitative problem of nuclear disarmament was addressed in the 1987 Intermediate-Range Nuclear Forces (INF) Treaty between the US and the USSR, and later by the 1991 Treaty on the Reduction and Limitation of Strategic Offensive Arms (START I).

<sup>42</sup> START II treaty between the United States and Russia in 1993. See **Minuteman Missile, Historic Resource Study**, Section III — *Peace Movement, Nuclear Disarmament, and the Future, Chapter 2: Strategic Arms Reduction Treaty and Disarmament of Minuteman II (1990s)*. Available at < <http://www.nps.gov/archive/mimi/history/srs/hrs3-2.htm> > (accessed on 26 June 2008).

<sup>43</sup> On 13 December 2001, US President Bush announced the US withdrawal from the ABM Treaty. The withdrawal nullified START II because the Russian Duma had conditioned its approval vote for START II on a continuation of the ABM Treaty. See **Goldblat, Jozef**, *Arms Control: The New Guide to Negotiations and*

objectives of Article VI have not been achieved since the motives for pursuing nuclear weapons remain unchanged.<sup>44</sup> Some States perceiving urgent security threats might view nuclear weapons as the best way to deter attack. Noting that all five permanent members of the UNSC are the NWS, some might view nuclear weapons as important for prestige.<sup>45</sup>

In exchange for the assurance of nuclear disarmament and assistance in development of civil nuclear power programmes, the NNWS Parties to the NPT committed themselves not to pursue nuclear weapons, to have only peaceful use of nuclear power and to allow the IAEA to inspect their nuclear facilities and materials to ensure that peaceful nuclear technology is not diverted to military purposes.<sup>46</sup> The NPT would not have been adopted nor received the widespread adherence it obtained afterwards without a political bargain with respect to peaceful uses and nuclear disarmament.<sup>47</sup> These obligations are incorporated in Article IV of the NPT. For NNWS joining the NPT, there was a *quid pro quo*, under which the NNWS renounced nuclear weapons in return for obtaining access to the civil nuclear technology and materials necessary to exploit commercial nuclear power. This was seen as a major benefit of the NPT for NNWS that was made explicit in Article IV of the NPT.<sup>48</sup> This “exchange” was to allow NNWS access to presumably abundant and

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*Agreements* (2<sup>nd</sup> ed.) (London: SAGE Publications, 2002), pp. 79-80. In 2005 former defence secretary Robert McNamara summed up his concerns on US actions: “I would characterize current US nuclear weapons policy as immoral, illegal, militarily unnecessary, and dreadfully dangerous.” Quoted in **Carter, Jimmy**, *A Dangerous Deal with India*, Washington Post (29 March 2006). Available at <<http://www.washingtonpost.com/wp-dyn/content/article/2006/03/28/AR2006032801210.html>> (accessed on 12 April 2006).

<sup>44</sup> **Manning Robert, Roberts Brad, Montaperto Ronald**, *China, Nuclear Weapons, and Arms Control*, Council on Foreign Relations Press (April 2000). Available at <<http://www.cfr.org/content/publications/attachments/china.pdf>> (accessed on 22 June 2007); **Gottemoeller, Rose**, *Nuclear necessity in Putin's Russia*, Arms Control Today (April 2004). Available at <[http://www.armscontrol.org/act/2004\\_04/Gottemoeller.asp](http://www.armscontrol.org/act/2004_04/Gottemoeller.asp)> (accessed on 22 June 2007).

<sup>45</sup> **Campbell Kurt, Einhorn Robert, Reiss Mitchell (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004).

<sup>46</sup> Article III of the NPT outlines the requirement for NNWS to accept safeguards administered by the IAEA. These are to applied to “all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.”

<sup>47</sup> *Multilateral Approach to the Nuclear Fuel Cycle: Expert Group Report submitted to the Director General of the International Atomic Energy Agency*, IAEA document **INFCIRC/640** (22 February 2005). Available at <<http://www.iaea.org/Publications/Documents/Infircs/2005/infirc640.pdf>> (accessed on 22 December 2007).

<sup>48</sup> Article IV of the NPT: “1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes

low-cost nuclear electricity supplies, as it was also envisioned in President Dwight Eisenhower's "Atoms for Peace" program of 1953.<sup>49</sup> At that time, nuclear electric-power industry was a technology desired by developing countries.<sup>50</sup> Article IV of the NPT is currently the subject of some dispute over States' right to operate specific "sensitive facilities", as it constrains two contradictory statements relevant to this issue. On the one hand it reaffirms the "inalienable right" to develop or use nuclear energy for peaceful purpose.<sup>51</sup> Article IV was specifically drafted to preclude any attempt to reinterpret the NPT so as to inhibit a States' right to nuclear technologies - so long as the technology is used for peaceful purposes. On the other hand, Article IV also stipulates that it has to be implemented "in conformity with Articles I and II" of the NPT.<sup>52</sup>

The above assessment of the "nuclear bargain" that was struck between the States during the negotiations of the text of Treaty and the review of the core provisions of the NPT viewed the interdependent obligations of the NWS and NNWS that are expressed in Articles I and II, III, IV and VI of the NPT. These are the provisions that the Treaty

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without discrimination and in conformity with articles I and II of this Treaty. 2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world."

<sup>49</sup> Eisenhower's 1953 "Atoms for Peace" speech came after the failure of earlier US non-proliferation efforts introduced by the "Baruch Plan" of the Truman administration. Eisenhower proposed providing assistance to other countries in the peaceful uses of atomic energy. As a result of his proposal, the IAEA was created to provide both assistance and inspectors for peaceful nuclear activities. See **Weiss, Leonard**, *Atoms for Peace*, Bulletin of the Atomic Scientists (November-December 2003), Vol. 59, No. 6, pp. 34, 37, 41; **Krass Allan, Boskma Peter, Elzen Boelie, and Smit Wim**, *Uranium Enrichment and Nuclear Weapon Proliferation* (Taylor and Francis/ Stockholm International Peace Research Institute, 1983), *Chapter 7: A history of non-proliferation efforts*, p. 195.

<sup>50</sup> **Krass Allan, Boskma Peter, Elzen Boelie, and Smit Wim**, *Uranium Enrichment and Nuclear Weapon Proliferation* (Taylor and Francis/ Stockholm International Peace Research Institute, 1983), *Chapter 7: A history of non-proliferation efforts*, p. 202.

<sup>51</sup> **Zhang Xinjun**, *The Riddle of "Inalienable Right" in Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons: Intentional Ambiguity*, Chinese Journal of International Law (2006), Vol. 5, No. 3, 647–662.

<sup>52</sup> *Multilateral Approach to the Nuclear Fuel Cycle: Expert Group Report submitted to the Director General of the International Atomic Energy Agency*, IAEA document **INFCIRC/640** (22 February 2005). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/2005/infcirc640.pdf> > (accessed on 22 December 2007).

negotiation process aimed in order to make subsequent adherence to the NPT more attractive for NNWS.<sup>53</sup>

## 1.2. The NPT's successful achievements in restraining nuclear proliferation

The NPT provides the foundation and the regulatory framework for the international nuclear non-proliferation regime aimed at preventing the spread of nuclear weapons around the world. The NPT is the most widely adhered to arms control treaty and it includes all States with the exception of India, Israel, Pakistan, and the DPRK.<sup>54</sup> The UN Secretary-General in his report submitted to the First Committee of the UNGA in 1992 referred to the NPT as to the document providing an indispensable framework for global non-proliferation efforts.<sup>55</sup> According to Ambassador Robert T. Grey, a former US arms control negotiator, the NPT is “in many ways an agreement as important as the UN Charter itself.”<sup>56</sup> International Relations scholars also view the NPT as the centrepiece of the nuclear non-proliferation regime.<sup>57</sup>

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<sup>53</sup> **Talbott, Strobe**, *Foreword*, in **Levi Michael, O'Hanlon Michael**, *The Future of Arms Control* (Washington D.C.: Brookings Institution Press, 2005), p. xi; **Roche, Douglas**, *Nuclear Law & Disorder*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 10.

<sup>54</sup> See Introduction, ft. 15.

<sup>55</sup> UN Secretary-General, Report on *New Dimensions of Arms Regulation and Disarmament in the Post-Cold War Era* (27 October 1992).

<sup>56</sup> **Bipartisan Security Group**, *Status of Nuclear Non-Proliferation Treaty, Interim Report* (Global Security Institute, June 2003), preface.

<sup>57</sup> **Nye, Joseph**, *The International Nonproliferation Regime* (Stanley Foundation, 1980), p. 3; **Nye, Joseph**, *Maintaining a Nonproliferation Regime*, International Organization (Winter 1981), Vol. 35, No. 1, p. 16; **Smith, Roger K.**, *Explaining the Non-proliferation Regime: Anomalies for Contemporary International Relations Theory*, International Organization (Spring, 1987), Vol. 41, No. 2, pp. 253-281; **Schiff, Benjamin**, *International Nuclear Technology Transfer: Dilemmas of Dissemination and Control* (Rowman & Allanheld, 1984), pp. 22-29; **Scheinman, Lawrence**, *Nuclear Safeguards and Non-proliferation in a Changing World Order*, Security Dialogue (1992), Vol. 23, No. 4, pp. 37-50; **Van Ham, Peter**, *Managing Non-proliferation Regimes*, in *Power, Politics and Policies* (London: Royal Institute of International Affairs, 1994), pp. 38-40. On the relation between the NPT and nuclear non-proliferation regime, some comments supported the notion that the NPT is the central element of the regime. See, **Scheinman, Lawrence**, *Nuclear Safeguards and Non-proliferation in a Changing World Order*, Security Dialogue (1992), Vol. 23, No. 4, p. 37; **Nye Joseph S.**,

Since its entry into force in 1970, the NPT has obtained political credibility through a wide adherence of States that in 1995 agreed upon an indefinite extension of the Treaty. The NPT has provided conflict avoidance giving rise to positive and negative security assurances. It has also played the key role in defining normative basis for international safeguards that prevented the alteration of peaceful nuclear programmes into military ones and prohibited the further development and spread of nuclear weapons. These successes of the NPT are assessed in the following section.

### ***1.2.1. Wide participation in the NPT***

At the time of the negotiations of the text of the NPT, the Treaty was intended to include all the States of the world – both the definite possessors of nuclear weapons, as well as the States that could acquire these weapons in the future.<sup>58</sup> The non-proliferation norm established by the NPT, the long-term efforts of the States to promote its acceptance, and the compulsory IAEA inspections prescribed by the Treaty proved to be efficient. Due to the NPT, there are not 30 or more NWS, as it was estimated for US President John F. Kennedy by the US Department of Defense in 1963, but much fewer.<sup>59</sup> According to the 1963 study of the US Department of Defence, 14 or more States could have had nuclear weapons and suitable delivery vehicles by the early 1970s, if nothing had been done to

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*Maintaining a Nonproliferation Regime*, International Organization (Winter, 1981), Vol. 35, No. 1, p. 18; **Nye, Joseph**, *The International Nonproliferation Regime* (Stanley Foundation, 1980), p. 7; **Smith, Roger**, *Explaining the Non-proliferation Regime: Anomalies for Contemporary International Relations Theory*, International Organization (Spring, 1987), Vol. 41, No. 2, p. 253, 257 (the NPT is more important compared to other instruments of the regime); **Ahlström, Christer**, *The Status of Multilateral Export Control Regimes: An Examination of Legal and Non-legal Agreements in International Co-operation* (Uppsala: Justus Förlag, 1999), p. 35.

<sup>58</sup> **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, pp. 31-32; **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 780; **Timerbaev, Roland**, *What Next for the NPT? Facing the Moment of Truth*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 4.

<sup>59</sup> Press Conference (21 March 1963) *Public Papers of the Presidents of the United States: John F. Kennedy, 1963* (Washington, DC, United States Government Printing Office, 1964), p. 280.



prevent such a scenario from unfolding. Among the so-called “nuclear-capable” States of the list, there were the major industrialized Group of Seven allies of the US plus China,<sup>60</sup> Czechoslovakia, India, Israel, Poland, and Sweden.<sup>61</sup> However, the list did not include Switzerland, Australia, South Korea, or Taiwan, which all had the scientific capabilities of building nuclear weapons and might have considered that option. The report did not mention the case of South Africa, which confessed that it had built a small nuclear arsenal of six nuclear bombs during the 1980s. Having dismantled them unilaterally, it formalized its non-nuclear status by joining the NPT as a NNWS.<sup>62</sup>

The study by the US Department of Defense also could not foresee the dissolution of the USSR in December 1991. Nuclear weapons deployed on the territory of the former three Soviet republics – Belarus, Kazakhstan, and Ukraine – gave rise to fear that new NNWS would emerge threatening the effectiveness of the NPT and other disarmament treaties (START I). At that time, the three republics had nearly one-third of the ex-USSR inventory of strategic nuclear weapons stationed on their territories. But considering that in January 1992, the Russian Federation declared itself the “legal successor of the Soviet Union from the standpoint of responsibility for the fulfillment of international obligations” covering obligations “under bilateral and multilateral agreements in the field of arms limitation and disarmament”, it was prohibited from transferring control over nuclear weapons to any country, “directly or indirectly” under the terms of the NPT. By signing the Lisbon Protocol to the START I on 23 May 1992, Belarus, Kazakhstan, and Ukraine

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<sup>60</sup> On 9 March 1992, China deposited with the Government of the UK an instrument of accession to the NPT. See *Status of Multilateral Arms Regulation and Disarmament Agreements. NPT*. Available at < <http://disarmament2.un.org/TreatyStatus.nsf> > (accessed on 9 August 2009).

<sup>61</sup> **Bunn, George**, *The Nuclear Nonproliferation Treaty: History and Current Problems*, Arms Control Today (December 2003), Arms Control Association. Available at <[http://www.armscontrol.org/act/2003\\_12/Bunn.asp](http://www.armscontrol.org/act/2003_12/Bunn.asp)> (accessed on 26 May 2007).

<sup>62</sup> On 10 July 1991, South Africa deposited with the Government of the US an instrument of accession to the NPT. See *Status of Multilateral Arms Regulation and Disarmament Agreements. NPT*. Available at < <http://disarmament2.un.org/TreatyStatus.nsf> > (accessed on 9 August 2009). See also **Boureston, Jack and Lacey, Jennifer**, *Shoring Up a Crucial Bridge: South Africa's Pressing Nuclear Choices*, Arms Control Today (January-February 2007). Available at < [http://www.armscontrol.org/act/2007\\_01-02/BourestonLacey](http://www.armscontrol.org/act/2007_01-02/BourestonLacey) > (accessed on 26 May 2007).

pledged to guarantee the elimination of all nuclear weapons located on their territories and to accede to the NPT as NNWS “in the shortest possible time”.<sup>63</sup> After negotiations with Russia and the US, the three ex-USSR republics were supplied with financial incentives and promises not to attack them with nuclear weapons.<sup>64</sup> They were also secured in part by a unique US programme, referred to as “Nunn-Lugar” after the two US Senate sponsors, which sought to reduce the nuclear threat through cooperative efforts with Russia. Without the NPT norm, these States would probably not have given up their inherited nuclear weapons.

The 1963 US Department of Defense list did not include Argentina and Brazil,<sup>65</sup> which later began their nuclear weapons programmes, but then negotiated a bilateral agreement not to acquire nuclear weapons and joined the NPT officially by renouncing their nuclear weapon ambitions and jointly accepted comprehensive IAEA safeguards.<sup>66</sup> Nor was Libya included in the 1963 Pentagon list.<sup>67</sup>

If there had been no NPT providing the non-proliferation constraints and the incentives for remaining non-nuclear, the total number of the States possessing nuclear

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<sup>63</sup> Though no deadline was set for accession to the NPT, the ex-USSR republics acceded to the NPT as NNWS by the end of 1994. The first to accede was Belarus on 9 February 1993. On 14 February 1994, Kazakhstan became a Party to the NPT followed by Ukraine on 5 December 1994. See *Status of Multilateral Arms Regulation and Disarmament Agreements. NPT*. Available at < <http://disarmament2.un.org/TreatyStatus.nsf> > (accessed on 9 August 2009). **Goldblat, Jozef**, *Arms Control: The New Guide to Negotiations and Agreements* (2<sup>nd</sup> ed.) (London: SAGE Publications, 2002), p. 90.

<sup>64</sup> **UNSC Res. 984** (11 April 1995) on security assurances to NNWS Party to the NPT. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N95/106/06/PDF/N9510606.pdf?OpenElement> > (accessed on 11 August 2009).

<sup>65</sup> On 18 September 1998, Brazil deposited instruments of accession to the NPT, thus increasing the number of States Parties to 187 States. See *Status of Multilateral Arms Regulation and Disarmament Agreements. NPT*. Available at < <http://disarmament2.un.org/TreatyStatus.nsf> > (accessed on 9 August 2009).

<sup>66</sup> *Agreement of 13 December 1991 between the Republic of Argentina, the Federative Republic of Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and the International Atomic Energy Agency for the Application of Safeguards*, reproduced in IAEA document INFCIRC/435/Mod.3. Available at < <http://www.iaea.org/Publications/Documents/Infcircs/2000/infcirc435m3.pdf> > (accessed on 4 November 2007). See also **Campbell Kurt, Einhorn Robert, Reiss Mitchell, (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004), pp. 8-9.

<sup>67</sup> In December 2003, Libya informed the IAEA that it had been conducting a clandestine nuclear-weapon acquisition programme, and asked the Agency to verify its dismantlement. See also **Hart John, and Kile Shannon**, *Libya's renunciation of nuclear, biological and chemical weapons and ballistic missiles* (Sipri Yearbook, 2005), no. YEAR2005, pp. 629-648; **Jentleson Bruce, Whytok Christopher**, *Who “Won” Libya? The Force-Diplomacy Debate and Its Implications for Theory and Policy*, *International Security*, (Winter 2005/06), Vol. 30, No. 3, pp. 47-86; **Campbell Kurt, Einhorn Robert, Reiss Mitchell, (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004), p. 322.

weapons might have reached at least 35 by now.<sup>68</sup> But in 2010, there are only nine such States, with one or two still trying to achieve nuclear-weapon status.<sup>69</sup> Since the conclusion of the NPT, many more States have given up nuclear weapon programs than have started them. Additionally, considering the vast array of nuclear arms control treaties adopted, there are fewer NWS in the world.<sup>70</sup>

The near universality of the NPT has succeeded in creating a nuclear non-proliferation regime that has made the world safer by significantly raising the political cost of acquiring nuclear weapons. This near universal acceptance probably owes a great deal to the presence of the withdrawal clause envisaged in Article X(1) of the NPT.<sup>71</sup> The fact that the NPT has not become fully universal, however, is one of major shortcomings of the

<sup>68</sup> See Annex 1: *Countries with nuclear weapons or programmes – past and present*.

<sup>69</sup> Those nine States are the five NPT NWS, plus the DPRK, India, Israel, Pakistan. Currently, Iran is suspected of pursuing a nuclear-weapon programme. See **National Intelligence Council, National Intelligence Estimates, Iran: Nuclear Intentions and Capabilities** (November 2007). Available at < [http://www.dni.gov/press\\_releases/20071203\\_release.pdf](http://www.dni.gov/press_releases/20071203_release.pdf) > (accessed on 30 November 2007); *IAEA findings on Iran dismissed* (30 October 2007). Available at < [http://news.bbc.co.uk/2/hi/middle\\_east/7068478.stm](http://news.bbc.co.uk/2/hi/middle_east/7068478.stm) > (accessed on 1 November 2007); *IAEA Daily Press Review*, available at < <http://www.iaea.org/NewsCenter/Dpr/pressreview.html> > (accessed on 4 November 2007); See also **Fitzpatrick, Mark**, *Assessing Iran's Nuclear Programme*, (Autumn 2006), Vol. 48, No. 3, pp. 5-26. On suspicion of Syria see **Windrem Robert and Mitchell Andrea**, *Did Syria cover-up nuclear facility?*, NBC News (25 October 2007). Available at < <http://www.msnbc.msn.com/id/21479058/> > (accessed on 4 November 2007); **Associated Press**, *Syria on nuclear 'watch list,' US official says. Nuke expert points to contacts with North Korea, foreign intelligence*, (25 October 2007). Available at < <http://www.msnbc.msn.com/id/20781697/> > (accessed on 4 November 2007); "...The Agency has been able to continue to verify the non-diversion of declared nuclear material in Iran, including all declared low enriched uranium....The Agency regrettably was unable to make any progress on the remaining issues which give rise to concerns about possible military dimensions of Iran's nuclear programme because of lack of cooperation by Iran. For the Agency to be able to make progress, Iran needs to provide substantive information and access to relevant documentation, locations and individuals in connection with all of the outstanding issues..." See **IAEA, Introductory Statement to the Board of Governors by IAEA Director General Dr. Mohamed ElBaradei** (2 March 2009). Available at < <http://www.iaea.org/NewsCenter/Statements/2009/ebsp2009n002.html> > (accessed on 11 August 2009); "...The Agency has been able to continue to verify the non-diversion of declared nuclear material in Iran... And there has been no movement by Iran on outstanding issues which need to be clarified to exclude the possibility of military dimensions to Iran's nuclear programme. As I mentioned before, without implementation by Iran of the additional protocol and the required safeguards measures, as well as the clarification of outstanding issues, the Agency will not be able to provide assurances about the absence of undeclared nuclear activities in Iran" See **IAEA, Introductory Statement to the Board of Governors by IAEA Director General Dr. Mohamed ElBaradei** (15 June 2009). Available at < <http://www.iaea.org/NewsCenter/Statements/2009/ebsp2009n005.html> > (accessed on 11 August 2009); **Presbo, Andreas**, *Safeguards in Iran: prospects and challenges, Trust & Verify* (April-June 2009), Issue No. 125. Available at < <http://www.vertic.org/assets/TV/TV125.pdf> > (accessed on 11 August 2009).

<sup>70</sup> **Timerbaev, Roland**, *What Next for the NPT? Facing the Moment of Truth*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 4; **Bunn, George**, *The Worlds' Non-Proliferation Regime in Time*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 8.

<sup>71</sup> **Du Preez, Jean**, *The 2005 NPT review Conference: Can it Meet the Nuclear Challenge?*, Arms Control Today (April 2005). Available at < [http://www.armscontrol.org/act/2005\\_04/duPreez.asp](http://www.armscontrol.org/act/2005_04/duPreez.asp) > (accessed on 13 June 2005).

nuclear non-proliferation regime with potential serious consequences. Still, the NPT States Parties may have to accept that four States with nuclear weapons will remain outside the Treaty. The NPT does not permit the DPRK, India, Pakistan, and Israel to join as NWS, but they are not likely to give up their nuclear weapons development strategies anytime to be able to join the NPT as NNWS.

### *1.2.2. The NPT's indefinite extension*

Pursuant to Article X(2) of the NPT,

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

It was widely recognized that the 1995 NPT Review and Extension Conference (NPTREC) was of historical importance and of profound historical significance for international peace and security. Even before the UNGA launched the preparatory process for the 1995 NPTREC by its resolution 47/52A in 1992,<sup>72</sup> the 1995 NPTREC had attracted broad international attention. Numerous books and articles on the subject had been published and the States Parties to the NPT started developing their strategy.<sup>73</sup>

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<sup>72</sup> UNGA Resolution (on the report of the First Committee (A/47/691)) 47/52. *General and complete disarmament. A: Treaty on the Non-Proliferation of nuclear Weapons: 1995 Conference and its preparatory Committee* (adopted 24 December 1992). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N92/843/65/IMG/N9284365.pdf?OpenElement> > (accessed 20 May 2009).

<sup>73</sup> For more on the 1995 NPTREC see **Fischer, David**, *Towards the 1995: The Prospects for Ending the Proliferation of Nuclear Weapons* (Aldershot UK: Dartmouth Publishers for the United Nations Institute for Disarmament Research, 1993); **Goldblat, Jozef**, *Issues Facing the 1995 NPT Extension Conference*, *Security Dialogue* (1992), Vol. 23, No. 4, pp. 25-32; **Rauf, Tariq and Johnson, Rebecca**, *After the NPT's Indefinite Extension*, *The Nonproliferation Review* (Autumn 1995), Vol. 3, Issue 1, pp. 28-41; **Shaker, Mohamed**, *The 1995 NPT Extension Conference: A Rejoinder*, *Security Dialogue* (1992), Vol. 23, No. 4, pp. 33-36; **Simpson, John and Howlett, Darryl**, *The NPT Renewal Conference: Stumbling toward 1995*, *International Security* (Summer, 1994), Vol. 19, No. 1, pp. 41-71.

The 1993 NPT PrepCom for the 1995 NPTREC adopted the programme of work including the items relevant for the work of the 1995 NPTREC.<sup>74</sup> The 1993 NPT PrepCom decided that the NPTREC would take place in New York from 17 April to 12 May 1995.<sup>75</sup> For the first time, the NPT RevConf took place at the UN Headquarters in New York.<sup>76</sup> The decision to move the 1995 NPTREC from Geneva to New York was made to guarantee a broader participation of States, as far as not all Parties to the NPT were represented in Geneva, whereas they all were presented in New York.<sup>77</sup>

By the time the NPTREC opened on 17 April 1995, there was strong and growing support among the NPT States Parties for majority decision to extend the NPT indefinitely. However, the danger of a confrontation over the extension was real. Though, besides the proposal for an indefinite extension, there were the proposals for 25-year rollover periods of extensions, a fixed 25-year period and a fixed shorter period, which were advanced from time to time, those proposals did not gain sufficient support, which would have helped them to acquire greater weight. Those proposals were not pursued with the same enthusiasm as the proposal for an indefinite extension, which led to the pledge of support of different regions and groups limiting the possibilities of the Non-Aligned Movement (NAM)<sup>78</sup> to develop its own position on the issue.<sup>79</sup>

<sup>74</sup> The 1993 NPT PrepCom took place in New York from 10 to 14 May 1993, as it was approved by **UNGA Res. 47/52A** (24 December 1992). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N92/843/65/IMG/N9284365.pdf?OpenElement> > (accessed 20 May 2009).

<sup>75</sup> *Progress Report of the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (First session)*, **NPT/CONF.1995/PC.I/2** (14 May 1993), para. 14(a) on *Dates and venue of the Conference*. Available at < [http://disarmament.un.org/Library.nsf/95c7e7dc864dfc0a85256bc8005085b7/4051fe2d89cbdf1e8525736a006821f7/\\$FILE/npt-conf1995-pci-2.pdf](http://disarmament.un.org/Library.nsf/95c7e7dc864dfc0a85256bc8005085b7/4051fe2d89cbdf1e8525736a006821f7/$FILE/npt-conf1995-pci-2.pdf) > (accessed on 11 August 2009).

<sup>76</sup> According to Article VIII (3) of the NPT, RevConfs are to be held in Geneva every five years.

<sup>77</sup> **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of the Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 36.

<sup>78</sup> The Non-Aligned Movement (NAM) is an international organization of States considering themselves not formally aligned with or against any major power bloc. It was founded in April 1955. The purpose of the organisation as stated in the *Havana Declaration of 1979* is to ensure “the national independence, sovereignty, territorial integrity and security of non-aligned countries” in their “struggle against imperialism, colonialism, neo-colonialism, racism, and all forms of foreign aggression, occupation, domination, interference or hegemony as well as against great powers and bloc politics. See *Text of speech by Cuban President Fidel Castro to the 34th UN General Assembly, in his position as chairman of the non-aligned*

Thus, the 1995 NPTREC started in the highly charged political environment. The Western and Eastern Groups set as their objective an indefinite and unconditional extension of the NPT.<sup>80</sup> The overall intention was to preserve the most widely subscribed to multilateral treaty to sustain the efforts of fighting proliferation of nuclear weapons, especially after the revelation of the Iraqi programme and the DPRK's announcement of withdrawal from the NPT. Moreover, the permanent extension of the NPT was also needed to continue the record of its performance in such areas as nuclear disarmament, peaceful use of nuclear energy, security assurances for NNWS, NWFZ, especially the Middle East, the credibility of safeguards and other issues including the universality of the NPT.<sup>81</sup>

The States Parties to the NPT decided that the NPT “shall continue in force indefinitely”.<sup>82</sup> The majority principle of decision-making could be counter-productive, though the Treaty stipulated that the extension decisions should be taken by a majority. The RevConfs predating the 1995 NPTREC had avoided voting mainly because of the NAM, which benefited from the majority support for their position at those RevConfs.<sup>83</sup> The Conference adopted without a vote a package of decisions on “Strengthening the review process for the Treaty” (NPT/CONF.1995/L.4) (Decision 1),<sup>84</sup> “Principles and objectives for nuclear non-proliferation and disarmament” (NPT/CONF.1995/L.5) (Decision 2)<sup>85</sup> and

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*countries Movement*. Available at < <http://lanic.utexas.edu/la/cb/cuba/castro/1979/19791012> > (accessed on 1 September 2009). For more on the NAM, see < <http://www.nam.gov.za/> > (accessed on 1 September 2009).

<sup>79</sup> **Dhanapala, Jayantha and Rydell Randy**, *Multilateral Diplomacy and the NPT: An Insider's Account* (UNIDIR: Geneva, 2005) (UNIDIR/2005/3), p. 6.

<sup>80</sup> *Ibid.*, pp. 2-3.

<sup>81</sup> *Ibid.*, p. 3.

<sup>82</sup> **1995 NPTREC, Final Document, Part I, Organization and work of the Conference New York (1995)**, Decision 3 (NPT/CONF.1995/32/DEC.3) *Extension of the Treaty on Non-Proliferation of Nuclear Weapons* (1 May 1995). Available at < <http://www.fas.org/nuke/control/npt/docs/2142.htm> > (accessed on 18 June 2008).

<sup>83</sup> **Dhanapala, Jayantha and Rydell Randy**, *Multilateral Diplomacy and the NPT: An Insider's Account* (UNIDIR: Geneva, 2005) (UNIDIR/2005/3), p. 5.

<sup>84</sup> **1995 NPTREC, Final Document, Part I, Organization and work of the Conference New York (1995)**, Decision 1 on *Strengthening the review process for the Treaty* (NPT/CONF.1995/32). Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199532.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199532.pdf) > (accessed 18 May 2009).

<sup>85</sup> **1995 NPTREC, Final Document, Part I, Organization and work of the Conference New York (1995)**, Decision 2 on *Principles and objectives for nuclear non-proliferation and disarmament* (NPT/CONF.1995/32 (Part 1)). Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199501.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199501.pdf) > (accessed 18 May 2009).

on “Extension of the Treaty on the Non-Proliferation of Nuclear Weapons” (NPT/CONF.1995/L.6) (Decision 3).<sup>86</sup> The Resolution on the Middle East was co-sponsored by the NPT depositories — the Russian Federation, the United Kingdom, and the US — calling for the establishment in the region of the Middle East of a zone free of any WMD.<sup>87</sup> Arab States negotiated the Resolution to adopt it with other decisions of the 1995 NPTREC and to strengthen an indefinite duration of the NPT.<sup>88</sup>

It is mentioned in the text of the Decision that the 1995 NPTREC of the Parties to the Treaty reviewed “the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control”.<sup>89</sup> The NPT was extended without voting “as a majority exists among States Parties to the Treaty for its indefinite extension, in accordance with article X, paragraph 2, the Treaty shall continue in force indefinitely”.<sup>90</sup>

The package of Decisions on the extension of the NPT reaffirmed the need for its continued implementation in a strengthened manner. The indefinite extension of the NPT was subject to certain conditions, embodied in the Decisions 1 and 2. The main requirement was that the NWS should foster the implementation of their commitments

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<sup>86</sup> **1995 NPTREC, Final Document, Part I, Organization and work of the Conference New York (1995)**, Decision 3 on *Extension of the Treaty on the Non-Proliferation of Nuclear Weapons* (NPT/CONF.1995/32 (Part 1)). Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199503.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199503.pdf) > (accessed 18 May 2009).

<sup>87</sup> *Ibid.*

<sup>88</sup> Arab States Parties to the NPT were not willing to accept an unlimited duration of the Treaty while Israel was not a Party to the NPT and was not accepting full-scope safeguards on all its activities. **Shaker, Mohamed**, *The evolving international regime of nuclear non-proliferation. Collected Courses of The Hague Academy of International Law, 2006* (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, p. 39.

<sup>89</sup> **1995 NPTREC, Final Document, Part I, Organization and work of the Conference New York (1995)**, Decision 3 on *Extension of the Treaty on the Non-Proliferation of Nuclear Weapons* (NPT/CONF.1995/32 (Part 1)). Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199503.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199503.pdf) > (accessed 18 May 2009).

<sup>90</sup> *Ibid.*

under Article VI of the NPT related to nuclear disarmament, including the conclusion of the Comprehensive Nuclear Test-Ban Treaty (CTBT).<sup>91</sup>

The fact that the decision to extend the NPT indefinitely was made without a vote, is of both immediate and long-term significance. If the decision had been taken by a vote, it might have left in its wake a division of views among States, reconciliation of which would surely have been difficult. But more importantly, the very foundation of the NPT could have been undermined, if a substantial number of States had voted against indefinite extension. Thus, the decision without a vote was the best solution, because it made it possible to avoid all those problems, each of which could have been harmful for the future of the NPT. After being extended indefinitely, the NPT became a consolidated international norm on curbing nuclear proliferation and, therefore, an important contribution to the maintenance of international peace.<sup>92</sup>

During the post-Cold War era, the 1995 NPTREC has been the most important event in efforts to achieve nuclear non-proliferation.<sup>93</sup> The results of the NPTREC were believed to have important implications for the future of the world. It offered a good opportunity for States to reflect upon the significance of the NPT and its extension.<sup>94</sup> The thorough review of the Treaty by the States Parties led them to reaffirm that the NPT is an indispensable instrument for the peace and stability of the international community. It was

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<sup>91</sup> **Timerbaev, Roland**, *What Next for the NPT? Facing the Moment of Truth*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 5-6.

<sup>92</sup> **Amano, Yukiya**, *The Significance of the NPT Extension*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: Arms Control and Disarmament Law (New York: United Nations, 1996), p. 74.

<sup>93</sup> The 1995 NPTREC was attended by 175 of 178 States parties and by 195 NGOs. **ACRONYM Report No.11, Part 1: From 1970 to 1998 (April 1998)**. Available at < <http://www.acronym.org.uk/acrorep/a11pt1.htm> > (accessed on 10 November 2007). See also **Dhanapala, Jayantha and Rydell Randy**, *Multilateral Diplomacy and the NPT: An Insider's Account* (UNIDIR: Geneva, 2005) (UNIDIR/2005/3), p. 1.

<sup>94</sup> **Rauf, Tariq and Johnson, Rebecca**, *After the NPT's Indefinite Extension*, *The Nonproliferation Review* (Autumn 1995), Vol. 3, Issue 1, pp 28-41.



that shared perception that led the NPT States Parties to decide to support the indefinite extension of the Treaty.<sup>95</sup>

### ***1.2.3. International safeguards***

In December 1953, US President Dwight D. Eisenhower in his “Atoms for Peace” address to the UNGA proposed to share nuclear materials and information for peaceful purposes with other States through a new international agency. That speech led to negotiations which established the IAEA in 1957.<sup>96</sup> The IAEA was established to facilitate the peaceful uses of nuclear energy, while ensuring that the assistance the IAEA provides would not be used for military purposes.

By the time the NPT entered into force on 5 March 1970, the IAEA had established its safeguards system.<sup>97</sup> When the NPT came into force, it became urgent to construct a

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<sup>95</sup> **Amano, Yukiya**, *The Significance of the NPT Extension*, in **Dahlitz, Julie, (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: Arms Control and Disarmament Law (New York: United Nations, 1996), p. 73.

<sup>96</sup> The Statute of the IAEA was approved on 23 October 1956 by the Conference on the Statute of the IAEA, held at the UN in New York, and opened for signature three days later. It entered into force on 29 July 1957, following the deposit of instruments of ratification by eighteen states (among which, by operation of Article XXI of the IAEA Statute, were required to be Canada, France, the USSR, the UK and the US) with the depositary government, the US. The text of the IAEA Statute is available at < [http://www.iaea.org/About/statute\\_text.html](http://www.iaea.org/About/statute_text.html) > (accessed on 5 November 2007). For more information see **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Part A. *Foundation* (Chapter 1. *Antecedents*, Chapter 2. *Formulating the Statute*), pp. 11-45; **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, p. 8.

<sup>97</sup> The IAEA established the first safeguards system in 1961 published in IAEA document INFCIRC/26 which covered only small research reactors, the technology that was being traded at that time. The system was extended in 1964 to cover large reactors (**INFCIRC/26/Add.1**). In 1964 and 1965, the IAEA’s system was thoroughly revised (**INFCIRC/66**), and included procedures for safeguarding principal nuclear facilities and nuclear material at other locations. In 1966 and 1968, the IAEA’s safeguards system underwent further revision: first to add special provisions for safeguards at reprocessing plants (**INFCIRC/66/Rev.1**), and then to include additional provisions for safeguarded nuclear material in conversion and fuel fabrication plants (**INFCIRC/66/Rev.2**, the “Safeguards Document”), after the USSR became convinced of the security benefits of containing nuclear proliferation this more elaborate and intrusive model was elaborated in 1965. The Safeguards Document was not a *model* agreement, and its provisions only acquired legally binding force when and to the extent they were incorporated into safeguards agreements. See **OTA-ISS-615**, *Nuclear Safeguards and the International Atomic Energy Agency* (Report, 1995) pp. 24-36; **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, p. 8; **Scasz, Paul**, *The Law and Practice of the*

safeguards system covering the entire nuclear fuel cycle of the NNWS Parties to the Treaty. The basic premise of the NPT related to the verification was that without nuclear material a State could not produce a nuclear weapon. Therefore, all imports and domestic production of nuclear weapon related materials were decided to be subject to safeguards, pursuant to the NPT, in order to assure the non-proliferation of nuclear weapons.<sup>98</sup> The States with substantial nuclear energy activities were determined that the NPT should not impair their nuclear industries' right to engage in all non-military nuclear activities, including reprocessing spent fuel to recover plutonium and enriched uranium. They also sought to ensure that safeguards should not be unduly intrusive, especially since the NPT did not require the NWS to accept any safeguards whatsoever.<sup>99</sup>

In the context of the NPT, the IAEA is mandated to provide the international community with credible assurance that any nuclear material in peaceful use is not being diverted to nuclear weapon or other explosive devices. This is Article III (1) of the NPT that makes it mandatory for all NNWS Parties to conclude safeguards agreements with the IAEA,<sup>100</sup> to enable the IAEA to verify “the fulfillment of [their] obligations assumed under

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*International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Chapter 21, pp. 531-658; **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, pp. 269-409; **Scheinman, Adam M.**, *Calling for Action. The Next Generation Safeguards Initiative*, *Nonproliferation Review* (July 2009), Vol. 16, No. 2, pp. 257-267.

<sup>98</sup> **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, p. 9.

<sup>99</sup> See **Blix, Hans**, *Aspects juridiques des garanties de l'AIEA*, AFDI (193), pp. 37-58; **Delcoigne, G., Rubinstein, D.M.**, *Non-prolifération des armes nucléaires et systèmes de contrôle* (Bruxelles, 1970); **Edwards, D.M.**, *International Legal Aspects of Safeguards and the Non-Proliferation of Nuclear Weapons*, ICLQ (1984), pp. 1-21; **IAEA**, *Non-Proliferation and International Safeguards* (Vienna: IAEA, 1978); **Fischer, David**, *Safeguarding the Atom: A Critical Appraisal* (London: SIPRI, 1985).

<sup>100</sup> *The Structure and Content of Agreements Between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*<sup>44</sup> was approved by the Board of Governors in 1972 and published as IAEA document INFCIRC/153 (Corr.). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc153.pdf> > (accessed on 25 October 2007). Comprehensive Safeguards Agreements (CSAs) are concluded by NNWS party to the NPT. Safeguards agreements are international agreements governed by international law. They are concluded between the IAEA and a State or States (and, in some instances, regional organizations, such as EURATOM and ABACC). Safeguards agreements are drafted by the IAEA Secretariat on the basis of the model agreement reproduced in IAEA document INFCIRC/153; negotiated with the other parties to the agreement; approved by the Board of Governors of the IAEA; and signed by the Director General of the IAEA and by the Head of State, Head of Government or Foreign Minister of the State Party (or representatives with full powers to do

this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices”. The same Article also mentions that “[t]he safeguards required by this Article shall be applied on *all* source or special fissionable material in *all* peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere” (emphasis added).

Similarly to the NPT, NWFZ treaties also require their States Parties to conclude Comprehensive Safeguards Agreements (CSAs) with the IAEA.<sup>101</sup> The IAEA also derives its authority to establish, administer and apply safeguards from Article III.A.5 of its Statute.<sup>102</sup> Pursuant to its statutory authority, the IAEA concludes three main types of safeguards agreements with States of different categories for the application of safeguards based on their respective legal obligations and establishes various State undertakings with regard to IAEA verification. These agreements include CSAs for NNWS of the NPT, voluntary offer agreements (VOAs) for NWS Parties to the NPT, and item-specific safeguards agreements for non-NPT States.<sup>103</sup>

The agreements that NNWS conclude with the IAEA as part of their obligations under Article III of the NPT are based on INFCIRC/153 (Corr.) that has been used as the

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so). Safeguards agreement enters into force either upon signature or upon receipt by the IAEA of written notification that the State’s requirements for entry into force have been met. The difference in procedure of the entry into force depends on the State’s domestic law requirements. See **Rockwood, Laura**, *The IAEA’s Strengthened Safeguards System*, *Journal of Conflict and Security Law* (2002), Vol. 7, No. 1, p. 123; **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, pp. 8-10.

<sup>101</sup> The Agency, through its safeguards system, verifies compliance in the context of different NWFZ treaties in the States with CSAs in force. The Treaty for the Prohibition of Nuclear Weapons in Latin America (the Treaty of Tlatelolco, concluded in 1967, before the NPT) requires States Party to conclude CSAs with the IAEA (Articles 13, 16(1)(a)). So do the other regional NWFZ agreements, including the 1985 South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga), the 1995 Treaty of Bangkok (for Southeast Asia), the 1996 Treaty of Pelindaba (for Africa) and the 2006 Central Asian Nuclear Weapon-Free-Zone Treaty (which also requires States Party to conclude Additional Protocols to safeguards agreements).

<sup>102</sup> Article III (*Functions*) A.5 of the IAEA Statute: “A. The Agency is authorized: .... 5. To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State’s activities in the field of atomic energy.”

<sup>103</sup> On the nature of safeguards agreements see Chapter 1, ft. 97, p. 53.

basis for CSAs.<sup>104</sup> Paragraph 3 of this agreement also requires the IAEA “to ensure that the safeguards will be applied ... on *all* source or special fissionable material in *all* peaceful nuclear activities within the territory of the State ... for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices” (emphasis added). Therefore these agreements become known as *full scope or comprehensive* safeguards agreements (CSAs). Additionally, paragraph 3 of INFCIRC/153 (Corr.) requests States to “co-operate to facilitate the implementation of the safeguards.” This system, based on material accountancy, has proved reliable in providing assurances about the peaceful use of declared nuclear material and declared facilities (i.e. that States’ declarations are correct).<sup>105</sup>

The purpose of the application of the IAEA safeguards is to promote peaceful uses of nuclear energy, deter and identify possible incipient nuclear weapon programmes and enable enforcement of IAEA Board of Governors and the UNSC resolutions on safeguards compliance. IAEA safeguards also play a vital role in ensuring the security of nuclear trade, advancing the renaissance of nuclear energy without furthering danger of proliferation of nuclear weapons.

Beside the CSAs for NNWS, the IAEA safeguards system also include the VOAs, which regard the five NWS Parties to the NPT.<sup>106</sup> Although NWS are not required to accept safeguards under the NPT (only NNWS are under this obligation), the UK and the USA made voluntary offers to accept safeguards still prior to the entry into force of the

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<sup>104</sup> “*The Structure and Content of Agreements Between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*” was approved by the Board of Governors in 1972 and published as IAEA document **INFCIRC/153 (Corr.)**. Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc153.pdf> > (accessed on 25 October 2007). For more on INFCIRC/153 see **Rockwood, Laura**, *The IAEA’s Strengthened Safeguards System*, *Journal of Conflict and Security Law* (2002), Vol. 7, No. 1, p. 123; **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, p. 10.

<sup>105</sup> **Hooper, Richard**, *The changing nature of safeguards*, IAEA Bulletin (June 2003), Vol. 45, No. 1, p. 7.

<sup>106</sup> **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, p. 308.

NPT.<sup>107</sup> Under the offer, the IAEA would be permitted to apply safeguards to all nuclear activities in the USA, excluding only those with direct national security significance. The UK made a similar offer also in December 1967.<sup>108</sup>

Pursuant to their respective VOAs, the NWS voluntarily submit, although by different methods, certain of their activities, facilities or nuclear materials to safeguards applied by the IAEA and have concluded safeguards agreements covering some or all of their peaceful nuclear activities.<sup>109</sup> Generally, VOAs follow the format of agreements based on INFCIRC/153 (Corr.), but the scope of VOAs is limited and covers only the facilities and the material that a State notifies to the IAEA for the application of safeguards. VOAs serve two purposes: to broaden the IAEA's safeguards experience by allowing for inspections at advanced facilities, and to demonstrate that NWS are not commercially advantaged by being exempt from safeguards on their peaceful nuclear activities.<sup>110</sup>

The IAEA Board of Governors also adopted an important legal requirement for non-NPT States that possess nuclear weapons: India, Israel, and Pakistan.<sup>111</sup> Those are item-specific safeguards that are based on the safeguards procedures approved by the IAEA

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<sup>107</sup> Agreement for the Application of the Safeguards to the United States Reactor Facilities, 15 June 1964 and a further Agreement on 9 December 1980 (INFCIRC/288). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc288.shtml> > (accessed on 23 June 2008). See also Scasz, Paul, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, pp. 309-310.

<sup>108</sup> Scasz, Paul, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, p. 310.

<sup>109</sup> Agreement for the Application of the Safeguards to the United States Reactor Facilities (15 June 1964) and a further Agreement on 9 December 1980 (INFCIRC/288). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc288.shtml> > (accessed on 23 June 2008); Agreement between the USSR and the IAEA (21 February 1985) (succeeded to by the Russian Federation) (INFCIRC/327). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc327.pdf> > (accessed on 23 June 2008); Agreement between the UK, the IAEA and the EURATOM (6 September 1976) (INFCIRC/263); Agreement between France, the IAEA and the EURATOM (27 July 1978) (INFCIRC/290). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc290.pdf> > (accessed on 23 June 2008); Agreement between People's Republic of China and the IAEA (20 September 1988) (INFCIRC/369). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc369.pdf> > (accessed on 23 June 2008).

<sup>110</sup> Scasz, Paul, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, pp. 309-317; IAEA, *The Safeguards Implementation Report for 2008. Report by the Director General*, GOV/2009/24 (5 May 2009), p. 2, 9.

<sup>111</sup> IAEA, *The Safeguards Implementation Report for 2008. Report by the Director General*, GOV/2009/24 (5 May 2009), p. 2, 8.

Board of Governors and published in INFCIRC/66/Rev.2 and its earlier versions.<sup>112</sup> These agreements cover only specified material, facilities and other items placed under safeguards, and States Parties to such agreements undertake not to use the material, facilities and/or other items under safeguards in such a way as to further any military purpose.<sup>113</sup>

In May 1997, the IAEA Board of Governors strengthened the Agency's safeguards system and approved the Model Additional Protocol (AP) to the Agreement(s) between State(s) and the IAEA for the application of safeguards (INFCIRC/540 (Corr.)).<sup>114</sup> The Foreword of INFCIRC/540 (Corr.) notes that the Protocol is available for adoption and implementation by all States with IAEA safeguards agreements. NPT NNWS are obligated to accept all of the provisions of the AP. The necessity to strengthen IAEA safeguards came from the lessons learned from the discovery of Iraq's clandestine nuclear weapon programme in 1991, the DPRK's failure to comply with its safeguards agreement in 1992, and the experience of verifying South Africa's dismantling its nuclear weapon programme in the early 1990s.<sup>115</sup> The need for a more effective IAEA safeguards regime, including the tools to strengthen the Agency's capability to detect undeclared nuclear activities led to the adoption of the AP in 1997.<sup>116</sup> The AP was designed with the aim of strengthening the

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<sup>112</sup> *The Agency's Safeguards System* (1965, as Provisionally Extended in 1966 and 1968), INFCIRC/66/Rev.2 (16 September 1968). Available at <<http://www.iaea.org/Publications/Documents/Infcircs/Others/inf66r2.shtml>> (accessed on 16 August 2009).

<sup>113</sup> **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, p. 10.

<sup>114</sup> *Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards*, INFCIRC/540 (1998). Available at <<http://www.iaea.org/Publications/Documents/Infcircs/1998/infirc540corrected.pdf>> (accessed on 16 September 2007).

<sup>115</sup> IAEA inspectors discovered Iraq's efforts to enrich uranium and an attempt to use (to make nuclear weapons) highly enriched research-reactor uranium provided for peaceful purposes by France and the USSR. See **Cirincione Joseph, Wolfsthal John, Rajkumar Miriam**, *Deadly Arsenal: Tracking Weapons of Mass Destruction* (Carnegie Endowment for International Peace, 2002), pp. 271, 273-275; **Bunn, George and Braun, Chaim**, *Terrorism Potential of Research Reactors Compared with Power Reactors*, *American Behavioral Sciences* (February 2003), vol. 46, No. 6, pp. 714, 717-718; **Boureston, Jack and Lacey, Jennifer**, *Shoring Up a Crucial Bridge: South Africa's Pressing Nuclear Choices*, *Arms Control Today* (January-February 2007), pp. 18-21.

<sup>116</sup> **Rockwood, Laura**, *The IAEA's Strengthened Safeguards System*, *Journal of Conflict and Security Law* (2002), Vol. 7, No. 1, pp. 124-126.

IAEA's verification capacity to contribute to global nuclear non-proliferation objectives by providing the Agency with broader information on peaceful nuclear activities as well as offering its inspectors a wider access to nuclear sites so that the IAEA can verify that no declared nuclear material has been diverted to non-peaceful uses and also provide assurances that there is no undeclared material or activities. The AP is not a free standing legal instrument and in itself it does not provide added legal authority, but only additional measures to fill the gaps in the information reported under safeguards agreements as provided in INFCIRC/153 (Corr.) when applied in NNWS Parties to the NPT.<sup>117</sup>

As analysed above, the IAEA international safeguards system is directly established by the NPT and it provides the main safeguards that are applied at present. Since the first NPT RevConf in 1975, the States Parties to the NPT have recognized that the IAEA is the authority responsible for verifying and assuring States' obligations under the Treaty and acknowledged the importance role the IAEA safeguards play in the nuclear non-proliferation regime. Besides the IAEA, there are also other institutions that sustain the activity of the Agency. Those are the European Atomic Energy Community (EURATOM), the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL), and the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC), established in 1957, 1967, and 1991 respectively.<sup>118</sup> Multilateral agreements, just like bilateral ones, can foresee a role for IAEA safeguards either as an alternative for or as a supplement to any control system established by the agreement or even as the primary or sole means of control.<sup>119</sup>

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<sup>117</sup> Article 1 of the AP determines the manner in which the AP should be implemented in conjunction with the Safeguards Agreement. See **Rockwood, Laura**, *The IAEA's Strengthened Safeguards System*, Journal of Conflict and Security Law (2002), Vol. 7, No. 1, pp. 128-134.

<sup>118</sup> **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Chapter 21, pp. 541-550; **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993), Chapter 21, pp. 133-134, 277, 283-284, 382-389.

<sup>119</sup> **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Chapter 21, p. 541.

They represent important regional initiatives to promote the peaceful use of nuclear energy and provide important confidence- and security-building measures that complement the work of the IAEA. The EURATOM establishes a control system intended to ensure that nuclear material within the Community is not diverted to other purposes than those intended (Articles 77-85).<sup>120</sup> As far as both France and the UK that are NWS and members of the Community, certain nuclear material may be exempted for military purposes. Article III (4) of the NPT envisages joint safeguards with the IAEA.<sup>121</sup> Thus, with a view of avoiding duplication of control measures and complying with the EURATOM, *the Agreement between Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, the European Atomic Energy Community and the IAEA in Implementation of Article III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons*.<sup>122</sup> The inspection system is designed to deter proliferation through international pressure, disapproval, and possible sanctions and countermeasures. In order to prevent proliferation, IAEA inspections must be effective, and the prospect of international disapproval strong enough to deter a NNWS from pursuing nuclear weapons development.

The 2000 NPT RevConf Final Document made 62 references to IAEA safeguards and recognized the IAEA's verification system as a fundamental pillar of the nuclear non-proliferation regime.<sup>123</sup> It was stated that IAEA safeguards play an indispensable role in the

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<sup>120</sup> As part of obligations under Article III of the NPT, States members of EURATOM conclude agreements with the IAEA are known as **INFCIRC/193**, which is available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf193.shtml> > (accessed on 12 December 2007).

<sup>121</sup> Article III (4) of the NPT: "Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency."

<sup>122</sup> The Agreement is reproduced in **INFCIRC/193** (14 September 1973). The Agreement was signed on 5 April 1973 and entered into force on 21 February 1977. Greece and Portugal acceded to the Agreement on December 17, 1981 and on July 1, 1986, respectively. The text of the Agreement is available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf193.shtml> > (accessed on 23 June 2008).

<sup>123</sup> **Lodding Jan, Rauf Tariq**, *IAEA and NPT: The verification Challenge. Challenging Nuclear Issues Point Way Forward*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 20. Available at < [http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea\\_npt.pdf](http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea_npt.pdf) > (accessed on 28 December 2007). See also *Final Document: 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/28* (Part I, II, III, and IV) (19 May 2000). *Volume 1* (Parts I and II), available at <



implementation of the Treaty and help to create an environment conducive to nuclear confidence, cooperation and disarmament. The NPT States Parties also reaffirmed that the IAEA is the sole competent authority responsible for verifying and assuring compliance with safeguards agreements, and expressed its conviction that nothing should be done to undermine its authority in this regard. The 2000 NPT RevConf also expressed its conviction that nothing should be done to undermine the authority of the IAEA in this regard. It urged the IAEA to continue implementing strengthened safeguards measures as broadly as possible; and called upon all States Parties to give their full and continuing support to the Agency's safeguards system.<sup>124</sup> Also at the 2005 NPT RevConf, the NPT States Parties underlined that the IAEA-established multilateral safeguards mechanism is the most appropriate way to address verification and safeguards issues and stressed the importance of the IAEA safeguards system. The States also fully recognized the role of IAEA as an independent intergovernmental, science and technology-based organization in the UN system, which serves as the sole verification agency for nuclear safeguards and the global focal point for nuclear technical cooperation.<sup>125</sup>

The IAEA's findings and conclusions, which are based upon an evaluation of all the information available to the IAEA in exercising its rights and fulfilling its obligations, are published annually in the Safeguards Implementation Report (SIR). The latest SIR was the one for 2008, which reported that safeguards were applied for 163 States that have

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<http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> >; *Volume II, Part 3, Documents Issued at the Conference* (Part III), available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> >; *Volume III, Part IV, Summary Records* (Part IV), available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> > (accessed on 3 June 2009).

<sup>124</sup> **Lodding Jan, Rauf Tariq**, *IAEA and NPT: The verification Challenge. Challenging Nuclear Issues Point Way Forward*, IAEA Bulletin (March 2005), Vol. 46, No. 2, p. 20. Available at <  
[http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea\\_npt.pdf](http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea_npt.pdf) > (accessed on 28 December 2007).

<sup>125</sup> *Substantive issues to be considered by Main Committee II of the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Working paper presented by the members of the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/WP.19* (2 May 2005), pp. 2-3. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/29/PDF/N0535029.pdf?OpenElement> > (accessed on 7 September 2009).

safeguards agreements in force with the Agency. The IAEA reported findings and conclusions for 2008 with regard to each type of safeguards agreement. These findings and conclusions are based upon an evaluation of all the information available to the IAEA in exercising its rights and fulfilling its safeguards obligations for that year.<sup>126</sup>

Pursuant to Article 12(C) of its Statute, the IAEA has to report to the UNSC non-compliance with safeguards. The provision requires IAEA inspectors to “report any non-compliance [with safeguards obligations] to the Director General who shall thereupon submit the report to the Board of Governors”.<sup>127</sup> Paragraph 12 of the Inspectors Document<sup>128</sup> permits a State that disagrees with the report of the IAEA’s inspectors “to submit a report on the matter to the Board of Governors”. If the Board finds any non-compliance to have occurred, Article 12(C) of the IAEA Statute requires it to “report the non-compliance to all members and to the Security Council and General Assembly of the United Nations”, and the latter part of this requirement is incorporated into Article III(2) of the Relationship Agreement with the UN.<sup>129</sup> Unlike other reports required to be submitted to the UN,<sup>130</sup> Article 5(E)(6) of the IAEA Statute specifies that these need not be submitted to the IAEA General Conference for prior approval.<sup>131</sup>

In addition to the mentioned reports pursuant to Article 12(C), Article 3(B)(4) of the IAEA Statute requires the IAEA to submit reports “when appropriate, to the Security Council” and specifies that “if in connexion with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the

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<sup>126</sup> IAEA, *The Safeguards Implementation Report for 2008. Report by the Director General*, GOV/2009/24 (5 May 2009), p.1

<sup>127</sup> Scasz, Paul, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Section 21. 7.2.4.

<sup>128</sup> IAEA document GC(V)/INF/39, Annex; Section 21.4.2

<sup>129</sup> INFCIRC/11, Part I. A.

<sup>130</sup> Scasz, Paul, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970), Sections 32.1.4 and 32.1.5.

<sup>131</sup> IAEA *Reports to the UN Security Council*. Available at the official website of the IAEA < <http://www.iaea.org/OurWork/SV/Invo/statements.html> > (accessed on 16 August 2009).

maintenance of international peace and security”. Pursuant to Article 16(B)(1) of the IAEA Statute, this requirement is included in Article III(1)(b) of the Relationship Agreement with the UN.<sup>132</sup>

## Conclusions of the Chapter

Control of nuclear armaments became one of the primary concern of the States, which wanted to halt a potential rapid expansion of possessors of the most dangerous weapons. For this purpose, following the signing of the PTBT, they started the negotiations of a nuclear non-proliferation treaty, currently the NPT. It was not long after the risk of escalation of a nuclear war during the 1962 Cuban Missile Crisis and the risk of another possible similar conflict was growing with a growing number of possessors of nuclear weapons.

The NPT entered into force in 1970 and since then it has been perceived as the centerpiece of the nuclear non-proliferations. Its “three pillar” structure gave rise to a broad nuclear non-proliferation regime, which considerably prevented the growth of possessors of the dangerous weapons. This Chapter described only some of the successful developments of the NPT – its almost universal character, indefinite extension, and the establishment of a strong safeguards system – due to which the NPT continues to contribute to the establishment of confidence in nuclear non-proliferation measures. All these positive developments were possible because of the recognition by the States of the importance of the NPT and the trust they have in it.

The international safeguards administered by the IAEA constitute an important part of the regime. IAEA safeguards provide a mechanism to ensure that special fissionable and

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<sup>132</sup> INFCIRC/11, Part I. A.

other materials, services, equipment, facilities, and information are not used for any military purpose. In this way the IAEA safeguards provide assurance of compliance of NNWS Parties to the NPT with their relevant obligations under the Treaty. This Chapter provided only a brief assessment of the safeguards systems and the IAEA's obligation to report to the UNSC the cases of violation of safeguards agreements. However, it pointed out the case when due to IAEA safeguards there was discovered Iraq's clandestine nuclear weapon programme in 1991.

## **Chapter 2. The NPT's withdrawal clause and the competence of the UNSC**

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### **Introductory note**

This Chapter is dedicated to the assessment of the NPT withdrawal clause in Article X(1) of the NPT, its similarity with the withdrawal provisions of other WMD treaties. An extensive attention will be paid to the study of the negotiation history of the NPT withdrawal provision and the role of the UNSC as it is envisaged in the process of withdrawal from the Treaty. As far as Article X(1) of the NPT was put into operation only by one State – the DPRK, the Chapter analyses both cases of the DPRK's announcements of withdrawal from the NPT in 1993 and 2003 and the respective responses of the UNSC. The aim of this Chapter is to study the problems in the withdrawal clause of the NPT and the role of the UNSC that was intended by the negotiators of the NPT.

## 2.1. Withdrawal from WMD treaties and notification requirements to the UNSC

A common feature of various arms control and disarmament treaties is that they allow for the possibility of States Parties to withdraw. The three global WMD treaties – the NPT, the BTWC<sup>1</sup> and the CWC<sup>2</sup> – all contain provisions allowing States Parties to withdraw under the particular circumstance of supreme national interest, subject to a requirement to “*give notice of such withdrawal to ... the United Nations Security Council three months in advance*”.<sup>3</sup>

After the DPRK’s announcement of withdrawal from the NPT in 2003, the procedure of withdrawal under Article X(1) of the NPT,<sup>4</sup> as well as the right to withdraw from the NPT have been criticized.<sup>5</sup> The matter of withdrawal from the NPT was also addressed by the UN Secretary General’s High-Level Panel on Threats, Challenges and Change,<sup>6</sup> consisting of former ministers and former presidents appointed by the UN Secretary-General from 19 States, which said in December 2004 that the nuclear non-

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<sup>1</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC), opened for Signature in London, Moscow and Washington on 10 April 1972. Entered into force in 1975. Source UNTS (1976), Vol. 1015, p. 164 (No. 14860).

<sup>2</sup> Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (CWC) was adopted by the **UNGA Res. A/RES/47/39** (30 November 1992) and opened for signature in Paris on 13 January 1993. Entered into force on 29 April 1997.

<sup>3</sup> See Annex 2: *Treaty withdrawal - notification requirements*.

<sup>4</sup> See Introduction, ft. 37, p. 10.

<sup>5</sup> See Chapter 3 of the dissertation on the discussion of withdrawal from the NPT by the States Parties to the NPT during the NPT review cycle 1993-2003.

<sup>6</sup> The UN Secretary General, Kofi Annan, during his second term established three panels to make recommendations on UN reform. Those were the “Panel of Eminent Persons on United Nations-Civil Society Relations”, the “Panel on Threats, Challenges and Change”, and the Panel on System-Wide Coherence”. In September 2003, Secretary General announced to the UNGA his appointment of a High Level Panel on Threats, Challenges and Change. The 16 Panel members conducted an in-depth study on global threats and provided an analysis of future challenges to peace and security. The Panel also recommended changes necessary to ensure effective collective action, including a review of the principal organs of the UN. In December 2004, the “Panel on Threats, Challenges and Change” released its report which discussed some controversial issues including Security Council enlargement and the “responsibility to protect” doctrine. For more on the Panel see < <http://www.un.org/secureworld/> >, < <http://www.globalpolicy.org/un-reform/un-reform-initiatives/highlevel-panels.html> >, < <http://www.globalpolicy.org/un-reform/un-reform-initiatives/highlevel-panels/32369.html> > (accessed on 17 August 2009).

proliferation regime was at risk due to lack of compliance of States with their commitments under the Treaty, withdrawal or threats of withdrawal from the NPT that could be instrumentalized by States Parties to escape those commitments, a changing international security environment and the diffusion of technology. Such an erosion of the nuclear non-proliferation regime could result in an irreversible cascade of proliferation.<sup>7</sup>

The High Level Panel added that “[w]hile the Treaty on the Non-Proliferation of Nuclear Weapons provides the right of withdrawal from the Treaty, States should be urged not to do so”.<sup>8</sup> It also proposed that a withdrawing State should remain responsible for violations committed while still being a Party to the NPT. Therefore a “verification of its compliance with the Treaty, if necessary mandated by the Security Council” may contribute to the strengthening of the existing procedure of withdrawal from the NPT.<sup>9</sup> The High-Level Panel specified that a notice of withdrawal from the NPT submitted by a withdrawing State to the UNSC

should prompt immediate verification of [the withdrawing NPT party’s] compliance with the [t]reaty, if necessary, mandated by the Security Council. The IAEA Board of Governors should resolve that, in the event of violations, all assistance provided by IAEA should be withdrawn.<sup>10</sup>

The Weapons of Mass Destruction Commission (WMDC) in its final report entitled “Weapons of Terror” also assessed the problem of withdrawal from the NPT. It concluded that

any withdrawal must – as provided in the three multilateral WMD treaties – come to the attention of the Security Council. The Council can then examine whether any planned

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<sup>7</sup> **High-Level Panel on Threats, Challenges and Change**, *A More Secure World: Our Shared Responsibility*, A/59/565 (2 December 2004), p. 39, para. 111. Available at <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.565\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.565_En.pdf)> (accessed on 21 May 2009).

<sup>8</sup> *Ibid.*, para. 134, p. 45.

<sup>9</sup> *Ibid.*, p. 12, para. 9.

<sup>10</sup> *Ibid.*, p. 43, para. 134.

withdrawal constitutes a threat to the peace and can consider what measures it might wish to take in response.<sup>11</sup>

The WMDC reiterated that a problem of the NPT is that “the treaty’s provision regarding withdrawal fails to identify such action as the serious event it is. It makes it simply procedural.” According to the WMDC, the UNSC should examine whether the planned withdrawal constitutes a threat to the peace and consider what measures it might take.<sup>12</sup>

## 2.2. The UNSC powers under the NPT withdrawal clause

The NPT withdrawal clause, which is embedded in Article X(1) of the Treaty, is the only provision of the NPT which refers to the UNSC. Still during negotiations it was deemed that the intention and purpose of withdrawal from the NPT could be a development of nuclear weapons capability based on the technology and material acquired while being a State Party to the NPT. Withdrawal of States which have such intentions may have devastating effects on the credibility of the Treaty, as it would enormously undermine the collective security of all States Parties and, if not properly addressed, might result in the collapse of the Treaty itself. Thus withdrawal from the Treaty was one of the primary concerns of the drafters of the NPT which attempted to put certain constraints on withdrawal from the Treaty.

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<sup>11</sup> **Weapons of Mass Destruction Commission**, final report, *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms* (Stockholm: EO Grafiska, 1 June 2006), p. 51. The WMDC was established on an initiative by the late Foreign Minister of Sweden, Anna Lindh, acting on a proposal by then United Nations Under-Secretary-General Jayantha Dhanapala. The Swedish Government invited Dr. Hans Blix to set up and chair the Commission. He presented the composition of the Commission to the public on 16 December, 2003 and explained what he saw were major tasks for it. The Commission’s secretariat is based in Stockholm. See < <http://www.wmdcommission.org> > (accessed on 1 July 2008).

<sup>12</sup> **Weapons of Mass Destruction Commission**, final report, *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms* (Stockholm: EO Grafiska, 1 June 2006), p. 63.



This section of the Chapter presents an outline of the history of negotiations of the NPT withdrawal and debates that evolved around the determination of the role of the UNSC in the withdrawal procedure.

### 2.2.1. Negotiations on the NPT withdrawal clause

As it was mentioned above, the only provision of the NPT that refers to the UNSC is the withdrawal clause of the Treaty (Article X(1)). In the course of negotiation of the NPT, the negotiating parties – the USSR and the US – had opposing approaches to the understanding of necessity of the withdrawal clause. Though the US proposed an elaborated withdrawal clause, the USSR did not consider that a withdrawal clause was needed in the NPT and held a position that it was a sovereign right of any Party to the Treaty to withdraw from it “if it was contrary to its supreme national interests”.<sup>13</sup> The USSR also expressed concern that the specific inclusion of a withdrawal article might have been interpreted as negating the existence of this sovereign right.<sup>14</sup> These USSR objections to the inclusion of any withdrawal article in the Treaty appear in part to have been related to a belief that “any special termination and revision clauses would generally further the assumption that a treaty can be denounced only in the way provided, and not in any other way”.<sup>15</sup> The US defended its insistence on its specific inclusion as a necessary requirement to ensure Senate ratification.<sup>16</sup> Although the US and USSR co-chaired the NPT

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<sup>13</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 885.

<sup>14</sup> **Nielsen, Jenny, and Simpson, John**, *The NPT Withdrawal Clause and its Negotiating History* (MCIS NPT Issue Review: July, 2004), p. 2. Available at <[http://www.mcis.soton.ac.uk/Site\\_Files/pdf/withdrawal\\_clause\\_NPT\\_nielsen&simpson\\_2004.pdf](http://www.mcis.soton.ac.uk/Site_Files/pdf/withdrawal_clause_NPT_nielsen&simpson_2004.pdf)> (accessed on 20 June 2005).

<sup>15</sup> **Lysen, Göran**, *The Adequacy of the Law of Treaties to Arms Control Agreements*, in **Dahlitz, Julie (ed.)**, *Avoidance and Settlement of Arms Control Disputes*, Arms Control and Disarmament Law, (New York: United Nations, 1994), Vol. 2, p. 138.

<sup>16</sup> **Fischer, Adrian**, *Outlawry of War and Disarmament, Collected Courses of the Hague Academy of International Law* (1971), Vol. 133, p. 394.

negotiations, and their interests are reflected in the final text, they also had to take into account the concerns of other key States bearing in mind that they had to persuade all potential proliferators to sign and ratify the treaty.<sup>17</sup> NNWS were also asked to contribute to the formulation of the withdrawal clause. One of those which took a close interest in the issue of restrictions on the grounds for withdrawal was the United Arab Republic (UAR) (i.e. Egypt).<sup>18</sup> It argued that withdrawal should not be a matter of absolute discretionary power, but should depend on non-observance of the Treaty arising from its non-application or violation by other Party, or from the fact that a third State is supplying nuclear weapons to a NNWS Party to the NPT. The connection between withdrawal and failure to fulfil obligations relating to disarmament was also discussed during the drafting negotiations. Burma, for example, suggested revising the withdrawal clause to make failure to fulfil in good faith the provisions of the article on nuclear disarmament a basis for withdrawal.<sup>19</sup> Italy together with the Federal Republic of Germany sought agreement on a text which would give all Parties an unconditional right to withdraw from the Treaty at the end of a fixed period of time, through provisions which would require them to make a positive decision to continue. At the time the Germans and the Italians were concerned with the possibility of NATO dissolving and also wanted to keep alive the option for an MLF. Therefore their objectives were to (i) to maintain the option for the acquisition of nuclear weapons by a multilateral institution; (ii) to avoid an indefinite in time obligation not to acquire nuclear weapons; (iii) to avoid a treaty of an unlimited duration without an obligation for the NWS to disarm that would have created a permanent division of States as

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<sup>17</sup> Nielsen, Jenny and Simpson, John, *The NPT Withdrawal Clause and its Negotiating History* (MCIS NPT Issue Review: July, 2004). Available at <[http://www.mcis.soton.ac.uk/Site\\_Files/pdf/withdrawal\\_clause\\_NPT\\_nielsen&simpson\\_2004.pdf](http://www.mcis.soton.ac.uk/Site_Files/pdf/withdrawal_clause_NPT_nielsen&simpson_2004.pdf)> (accessed on 20 June 2005).

<sup>18</sup> The UAR was a union between Egypt and Syria. The union began in 1958 and existed until 1961 when Syria seceded from the union. Egypt continued to be known officially as the United Arab Republic until 1971. For more see **Podeh, Elie**, *The Decline of Arab Unity: The Rise And Fall of the United Arab Republic* (Sussex Academic Press, 1999).

<sup>19</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation 1959-1979* (London: Oceana Publications, 1980), Vol. II, p. 889.

possessor and non-possessors of nuclear weapons.<sup>20</sup> The US and USSR - the two co-chairmen of the ENDC on creating a treaty – were opposed to inclusion of the last element in the text. But the US was very sensitive to the need to meet some of these concerns of its NATO allies – Italy and the Federal Republic of Germany – and Japan. These States viewed the drafting of the withdrawal clause (Article X(1)) in the light of developments in the negotiation of the NPT extension clause (Article X(2)). The outcome of the negotiations of the draft of the NPT brought a compromise arrangement consisting of two elements negotiated by the time of the 1967 NATO summit. One element regarded the insertion into Article VIII of a paragraph mandating the three NWS – the UK, the US, and the USSR – which were also the depositaries for the NPT, to convene a conference to review the implementation of the Treaty after five years, with the option that the States Parties to the NPT could request the convening of further review conferences at five year intervals. The second was an addition to Article X(2), which stated that:

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

The goal was to create conditions that would have allowed the States Parties to the NPT to review their security situation related to non-possession of nuclear weapons every five years at the end of the fixed period and give them the possibility to decide after twenty-five years whether to continue to accept the Treaty's constraints on acquiring nuclear weapons or abandon them by agreeing to extend the duration of the NPT for a further short, fixed term or a series of renewable fixed periods or indefinitely.<sup>21</sup>

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<sup>20</sup> **Bunn George, Van Doren, Fischer David**, *Options & Opportunities: The NPT Extension Conference of 1995 (PPNN Study Two)* (Southampton: Mountbatten Centre for International Studies, 1991), p. 5.

<sup>21</sup> **MCIS CNS**, *NPT BRIEFING BOOK 2008 EDITION*, pp. 8-9. Available at < <http://www.mcis.soton.ac.uk/publications/briefingbook2008.html> > (accessed on 22 June 2008).

### 2.2.2. Content of the NPT withdrawal clause

The language of the NPT withdrawal clause was developed on the basis of Article IV of the PTBT.<sup>22</sup> Thus, Article X (1) of the NPT contains most of the text of Article IV of the PTBT, as presented below:

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

The underlined text above reflects the content of Article IV of the PTBT. The other text demonstrates the additional requirements added to the PTBT text by the negotiators of the NPT, namely by the USSR and the US. The final text of the NPT withdrawal clause appears to be a compromise between the US and USSR positions on the matter of withdrawal and the text of the provision starts with the recognition of the existence of the right of a State to withdraw in exercising its national sovereignty. As Shaker points out, the language of the final draft of the withdrawal clause was consistent with the positions of the negotiators.<sup>23</sup> The US side welcomed the manner in which the withdrawal from the NPT could be affected, the USSR obtained the recognition that the withdrawal from the Treaty was a right inherent in State sovereignty.<sup>24</sup>

The PTBT provision was intended to give a State Party to the PTBT right to withdraw from the Treaty by simply giving a notice of withdrawal to all PTBT Parties

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<sup>22</sup> See Chapter 1, ft. 1, p. 28.

<sup>23</sup> Ambassador Mohamed Shaker was a negotiator of the NPT and the President of the Third NPT RevConf in 1985.

<sup>24</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 886.

when it decides “that extraordinary events...have jeopardized the supreme interests of its country.”<sup>25</sup> The NPT negotiating parties added new insights to withdrawal that went beyond Article IV of the PTBT. The NPT withdrawal conditions added to those specified for PTBT Parties were included with specific purposes to impose additional procedural and substantial restrictions on States contemplating to withdraw from the NPT.<sup>26</sup> These additional constraints were seen as those that were needed to “provide an additional brake on hasty withdrawal action without limiting the basic right of withdrawal”.<sup>27</sup> The new language of the NPT withdrawal clause regarded a requirement to a withdrawing State to submit a three-month notice of withdrawal not only to all States Parties to the NPT, but also to the UNSC. The NPT also added language saying that the withdrawing party must include in the notice “a statement of the extraordinary events it regards as having jeopardized its supreme interests,” whereas Article IV of the PTBT did not contain the above mentioned requirements.<sup>28</sup>

During the NPT negotiations, these two NPT additions to the PTBT language were specifically questioned by Brazil, a participant in the formal negotiating conference. Brazil argued that the new language would add limitations on withdrawal that were not in the PTBT. In his response, the USSR representative justified the additions by explaining that

the observance of the non-proliferation treaty and its effectiveness are bound to be related to the powers of the Security Council, which according to Article 24 of the

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<sup>25</sup> **Bunn, George**, *Arms Control by Committee: Managing Negotiations with the Russians* (Stanford: Stanford University Press, 1992), p. 38.

<sup>26</sup> **Bunn, George, and Rhineland, John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, *Disarmament Diplomacy* (April/May 2005), No. 79. Available at < <http://www.acronym.org.uk/dd/dd79/79gbr.htm> > (accessed on 12 May 2005); **Howlett, Darryl and Simpson, John**, *Nuclear non-proliferation – how to ensure an effective compliance mechanism*, in **Burkard Schmitt**, *Effective non-proliferation: the EU and the 2005 NPT Review Conference*, Chaillot Paper 77 (April 2005), p. 15. Available at < <http://www.iss-eu.org/chaillot/chai77.pdf> > (accessed on 10 May 2005).

<sup>27</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation 1959-1979* (London: Oceana Publications, 1980), Vol. II, p. 893.

<sup>28</sup> **Bunn, George, and Rhineland, John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, *Disarmament Diplomacy* (April/May 2005), Issue No. 79. Available at < [http://www.armscontrol.org/ACT/2005\\_05/Bunn\\_Rhineland.asp](http://www.armscontrol.org/ACT/2005_05/Bunn_Rhineland.asp) > (accessed on 12 May 2005).

United Nations Charter, has the primary responsibility for the maintenance of international peace and security.<sup>29</sup>

### 2.2.2.1. Grounds for withdrawal

The first sentence of the NPT withdrawal clause, which is identical to that of the PRTB, stipulates that each Party to the Treaty has right to withdraw “if it decided that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country.” As mentioned above, the negotiations on the NPT withdrawal clause reflected those of the PTBT withdrawal clause. In the draft of the PTBT submitted by the UK and the US for the negotiations in Moscow in summer 1963, it was considered that acts by third parties would constitute the only legitimate grounds for withdrawal. In particular three grounds for withdrawal had been discussed in that context:

- (1) The non-fulfilment by a State Party of its obligations under the treaty;
- (2) The conduct of nuclear explosions by a State not party to the treaty under circumstances which might jeopardize the withdrawing party’s national security; and
- (3) The occurrence of nuclear explosions under circumstances in which it was impossible to identify the State conducting the explosions and that such explosions, if conducted by a party to the treaty, would violate the treaty or, if not conducted by a party, might jeopardize the withdrawing party’s national security.<sup>30</sup>

In 1963 the listed grounds did not raise any objections from the USSR side which, however, was reluctant to include “nuclear explosions” as the ground for withdrawal from

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<sup>29</sup> ENDC, Provisional Verbatim 377 (12 March 1968), paras. 24-31. See also **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 895.

<sup>30</sup> *Ibid.*, pp. 887-888.

the NPT bearing in mind potential NWSs, such as China.<sup>31</sup> Therefore it was decided by the negotiators to insert into Article IV of the PTBT, on withdrawal, the qualifying phrase “related to the subject matter of this Treaty” after the words “extraordinary events”.<sup>32</sup> At the time of the negotiations of the PTBT withdrawal, it was not a primary concern to determine in advance the exact meaning of the “extraordinary events” “related to the subject matter of the Treaty”. Instead, the flexibility was needed in those circumstances.<sup>33</sup> One was that it allowed Germany, Italy and other potential proliferators to take the view that the end of NATO etc. would free them to withdraw from the treaty. At the same time, it allowed a party to exercise the right of withdrawal in the event of the violation of the Treaty by a third party, rather than invoking the suspension or termination of the Treaty under the principles of treaty law. Therefore, pursuant to the withdrawal from the NPT, a view on the existence of the extraordinary events is left completely to the discretion of a State Party withdrawing from the NPT.<sup>34</sup> However, in the course of the negotiation of the NPT, the US officials considered violation of (or non-compliance with) the Treaty as a ground for withdrawal, that is qualifying it as an extraordinary event “related to the subject matter of this Treaty”.<sup>35</sup> Other specific qualifying grounds mentioned by the US were the dissolution of NATO and the eruption of wars.

However, a debate on the delimitation of the grounds for withdrawal arose among the non-aligned members of the ENDC. Thus, the representative of the UAR claimed that withdrawal from the NPT “should not be a matter of absolute discretionary power but

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<sup>31</sup> On 16 October 1964 China successfully exploded its first atomic bomb (Uranium 235) with a yield of 22kT. See *Chinese Nuclear Programme*. Available at <<http://www.sinodefence.com/strategic/nuclear/history.asp>> (accessed on 6 July 2008).

<sup>32</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 888.

<sup>33</sup> *Ibid.*, p. 888.

<sup>34</sup> Aust argues that although the withdrawal provision “gives a discretion to the withdrawing party,” the additional requirement to give a statement of the “extraordinary events” requires the party to “have grounds for its decision.” **Aust, Anthony**, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2000), p. 228.

<sup>35</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 889.

should depend on non-observance of the treaty arising from its non-application or violation by a contracting party, or from the fact that a third State is supplying nuclear weapons to some other State.”<sup>36</sup> The Egypt representative added that leaving the grounds for withdrawal to discretionary power of the States would enable an easy withdrawal from the Treaty undermining in this way its credibility.<sup>37</sup> In relation to the definition of extraordinary event “related to the subject matter of this Treaty”, a discussion on fulfilment of disarmament obligation arose. Thus, Sweden noticed that

[i]t would seem reasonable that, if it is manifest at a review conference that the intention of the treaty to achieve cessation of the nuclear arms race and to obtain nuclear disarmament have in reality been blatantly disregarded, parties to the treaty may come to regard this an extraordinary event jeopardizing their own supreme interests.<sup>38</sup>

The representative of Burma being concerned with the issue of disarmament proposed to make failure to fulfil in good faith the obligations on nuclear disarmament a ground for withdrawal from the NPT.<sup>39</sup> The other members of the ENDC – Brazil and Argentina – also proposed to amend the withdrawal clause. Thus, after the submission of the identical treaty drafts of 24 August 1967, Brazil proposed to amend the withdrawal clause (Article VII) in the following way:

...[e]ach Party shall... have the right to withdraw... if it decides that there *have arisen or may arise* circumstances related with the subject matter of this Treaty which *may affect* the supreme interest of its country.<sup>40</sup> (*emphasis added*)

The Brazilian proposal, though being reintroduced by the Brazilian delegation after the submission of the identical drafts of the treaty of 18 January 1968, did not get attention at the ENDC. However, it was criticized by Poland and the US which stated that the Brazilian

<sup>36</sup> ENDC, Provisional Verbatim 245 (3 March 1966), p. 10. See also ENDC Provisional Verbatim 294 (16 March 1967), para. 16.

<sup>37</sup> ENDC, Provisional Verbatim 367 (20 February 1968), para. 43.

<sup>38</sup> ENDC, Provisional Verbatim 363 (8 February 1968), para. 17.

<sup>39</sup> ENDC, Provisional Verbatim 337 (10 October 1967), para. 20.

<sup>40</sup> DCOR, Suppl. For 1967 and 1968, Docs. DC/230 and Add. 1, Annex IN, Section 16 (ENDC/201 (31 October 1967)), para. 9.



amendment would link withdrawal to an arbitrary hypotheses of a withdrawing State rather than to objective and verifiable facts.<sup>41</sup>

Another attempt to introduce more details into the withdrawal clause (Article VII) of the identical treaty drafts of 24 August 1967 was made by Nigeria which proposed the following grounds for withdrawal:

- (a) that the aims of the Treaty are being frustrated;
- (b) that the failure by a State of group of States to adhere to the Treaty jeopardizes the existing or potential balance of power in its area, thereby threatening its security;
- (c) that any other extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country.<sup>42</sup>

The Nigerian proposal was criticized by Canada. It was said that the first ground for withdrawal, as proposed by Nigeria, would give space to a broad variety of interpretations and that would have undermined the Treaty. In relation to the second ground, Canada was concerned that a delay in Treaty ratification could be perceived as a failure to adhere to the Treaty. Later Nigeria accepted a set of other amendments to Article X of the joint treaty draft of 11 March 1968, which indicated that grounds for withdrawal were not only the “extraordinary events” but also other “important international developments” which “have jeopardized, or are likely to jeopardize, the national interests” of the country. These amendments were submitted to the ENDC before its last adjournment on 14 March 1968 and were referred to in the UNGA during the debates in April-June 1968 which led to the final formulation of the text of the NPT.<sup>43</sup>

As described above, the course of the negotiation of the grounds for withdrawal from the NPT showed that the negotiations of these issues were controversial and some key concepts remained unclear. Though, with respect to the preceding treaties, the NPT reflects

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<sup>41</sup> **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 891.

<sup>42</sup> *Ibid.*, pp. 891-892.

<sup>43</sup> *Ibid.*, p. 892.

a progress in the development of the provisions on withdrawal in general, the wording of the Treaty left judgements on the existence of the extraordinary events completely to the discretion of a withdrawing State Party. However, the negotiators of the NPT withdrawal clause attempted to set up in a more precise way the procedures for withdrawal from the NPT, which are also of principal importance.

#### **2.2.2.2. Assessment of procedural requirements for withdrawal**

The withdrawal procedure provided in Article X(1) of the NPT contains four procedural requirements. Thus, a State Party, which decides that extraordinary events related to the subject matter of the Treaty have jeopardized its supreme interest, shall give notice of such withdrawal (i) to all other States Parties to the Treaty, and (ii) to the UNSC (iii) three months in advance, and (iv) such notice should include a statement of the extraordinary events. In comparison to the withdrawal clause of the PTBT, which requires giving notice of the decision to withdraw to the other States Parties to the Treaty, the NPT withdrawal contains two important additions that are assessed below:

(1) to give notice to the UNSC; and

(2) to include a statement of the extraordinary-events.

A requirement that obliges a withdrawing State Party to notify its withdrawal to all States Parties to the Treaty was established under the PTBT and was questioned only by Brazil, which proposed to notify withdrawal to the Depositary Governments only.<sup>44</sup> The second requirement to notify withdrawal to the UNSC thereby makes the withdrawal a matter for consideration of the UNSC. The negotiating history of the NPT shows that the drafters of the Treaty intended to authorise the UNSC to consider a withdrawal of a State Party and

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<sup>44</sup> Ibid., p. 894.

take an action to maintain international peace and security.<sup>45</sup> When the first version of the withdrawal clause was introduced in the first US draft of the Treaty in 1965, the US representative at the ENDC said that

[t]hese requirements have been added because they provide an additional brake of hasty withdrawal action without limiting the basic right of withdrawal. In addition the Security Council notification and explanation are clearly appropriate in view of the serious security ramifications of withdrawal.<sup>46</sup>

Later on the US representative also explained that these requirements were needed to provide an explicit role for the UN and an opportunity for consultations to avoid withdrawal from the NPT.<sup>47</sup> However, the requirement to give notice to the UNSC was questioned by a representative of Brazil who said that

the Charter of the United Nations entrusts the Security Council with functions specifically related to the maintenance of world peace and security and not with those of participating in the mechanism of withdrawal from any treaty. Moreover, among the members of the Security Council there may be some which will not be parties to the Treaty, as will probably be the case with one of the permanent members. A country having decided to withdraw from the treaty might thus be placed, at least theoretically, in the strange situation of stating the reasons justifying its decision before a body composed of States a certain number of which are not parties to the non-proliferation treaty.<sup>48</sup>

The statement of Brazil was criticized by the co-Chairmen of the ENDC – the USSR and the US. The first was the representative of the US to say that “the Security Council is not limited under the Charter to consider matters in which all its members are directly involved. ... any non-parties to the treaty itself; but they have the same right as other

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<sup>45</sup> **Bunn, George and Rhineland, John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, Disarmament Diplomacy (April/May 2005), No. 79. Available at < <http://www.acronym.org.uk/dd/dd79/79gbr.htm> > (accessed on 12 May 2005)

<sup>46</sup> ENDC, Provisional Verbatim 224 (17 August 1965), para. 20.

<sup>47</sup> UN GAOR, 20<sup>th</sup> session, 1<sup>st</sup> Committee, 1366<sup>th</sup> meeting (27 October 1965), para. 18.

<sup>48</sup> ENDC, Provisional Verbatim 363 (8 February 1968), para. 58.

members of the Security Council to express their views concerning matters affecting international peace and security.”<sup>49</sup> Following the US, the USSR representative mentioned that the “observance of a non-proliferation treaty and its effectiveness are bound to be related to the powers of the Security Council, which according to the United Nations Charter, Article 24, has the primary responsibility for the maintenance of international peace and security.” In its statement the USSR also referred to Article 30 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco),<sup>50</sup> which includes similar requirement for the procedure of withdrawal from the treaty, and Article 12(C) of the Statute of the IAEA,<sup>51</sup> which envisages notification to the UNSC of non-compliance of the IAEA Members with their undertaking.<sup>52</sup>

Under the UN Charter, the UNSC has authority to take action to maintain international peace and security.<sup>53</sup> Article X(1) of the Treaty names the UNSC and envisages a time frame of a three-month required notice of withdrawal and a submission of a statement of the reasons for a proposed withdrawal from the NPT. Most probably the three-month notice was supposed to give UNSC members time to review a notice of withdrawal submitted by a withdrawing State Party, to consult and obtain information about the causes and consequences of the withdrawal of the State Party, and to negotiate the UNSC’s response to such an action. Probably the intention to name the UNSC in Article X(1) was motivated by considerations that a withdrawal from the NPT may constitute a serious threat to the maintenance of international peace and security as referred

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<sup>49</sup> ENDC, Provisional Verbatim 368 (21 February 1968), para. 24.

<sup>50</sup> Article 30 corresponds to Article 31(2) of the amended Treaty of Tlatelolco: “The denunciation shall take effect three months after the delivery to the Secretary General of the Agency of the notification by the Government of the Signatory State concerned. The Secretary General shall immediately communicate such notification to the other Contracting Parties and to the Secretary General of the United Nations for the information of the United Nations Security Council and the General Assembly. He shall also communicate it to the Secretary General of the Organization of American States.” Available at < <http://www.opanal.org/opanal/Tlatelolco/P-Tlatelolco-i.htm> > (accessed on 3 July 2008).

<sup>51</sup> Article 12(C) of the IAEA Statute: “...The Board [of the IAEA] shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations...” Available at < [http://www.iaea.org/About/statute\\_text.html#A1.12](http://www.iaea.org/About/statute_text.html#A1.12) > (accessed on 3 July 2008).

<sup>52</sup> ENDC, Provisional Verbatim 377 (12 March 1968), paras. 24-31.

<sup>53</sup> See Chapter 4 of the dissertation.

to in Article 39 of the UN Charter. Once the notice of withdrawal is under the consideration of the UNSC, the UNSC may recognize that a submitted notice of withdrawal from the NPT constitutes a threat to international peace and security. Additionally, as an aggravating factor for withdrawal of a State from the NPT would be a declaration by the IAEA of its non-compliance with respective safeguards agreement. Such a case may give rise to an understanding that a withdrawal of a State is a way to assure itself a right to freely manufacture nuclear weapons without violating Treaty obligations once it is not Party to the NPT.<sup>54</sup> The assessment of the NPT withdrawal clause thus suggests that the UNSC should review the grounds for withdrawal. Chapter 4 of the present work examines whether the UNSC has the authority to pass a decision on them and whether it can prevent a State Party to the NPT from withdrawing.

Another procedural requirement for withdrawal is a submission of a statement of the extraordinary events that are considered by the withdrawing Party as those that have jeopardized its supreme interests. In this regard, the Romanian delegation twice proposed an amendment to the draft of the withdrawal clause expressing the view that it would be sufficient if a withdrawing State Party submits a notice of withdrawal from the Treaty to other Parties and to the UNSC.<sup>55</sup> It was also pointed out that the PTBT and the Treaty of Tlatelolco did not contain such a requirement.<sup>56</sup> The necessity of inclusion of the requirement for a withdrawing State to submit a statement of the reasons for withdrawal was defended by the US and the USSR delegations to the ENDC. The US representative said that withdrawal from the NPT would be a very important act and therefore other States

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<sup>54</sup> **Goldschmidt, Peter**, *Rule of Law, Politics and Nuclear Non-proliferation*, paper given at the Ecole Internationale de Droit Nucléaire, Université de Montpellier (Session 2007), p. 3.

<sup>55</sup> First a formal amendment to delete any reference to such a statement was submitted to Article VII of the treaty drafts of 24 August 1967. The proposal of the same amendment was resubmitted to Article X of the identical treaty drafts of 18 January 1968. **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980), p. 896.

<sup>56</sup> ENDC, Provisional Verbatim 362 (6 February 1968), para. 6.

Parties would have a legitimate interest to know the reasons for such actions.<sup>57</sup> The statement of the USSR delegation reaffirmed the view that “other parties to this treaty must receive an explanation of the reasons for withdrawal from the treaty.” The USSR sustained that there would be no other authority that may explain the reasons for withdrawal better than a withdrawing State. Additionally, the submission of a statement was considered as a restraint that would make a withdrawing State to consider the views of public opinion regarding its withdrawal.<sup>58</sup>

The last procedural requirement for withdrawal under the NPT is that a three-month period should elapse before an announced withdrawal takes effect. This period of withdrawal is echoed in other subsequent global WMD treaties - the BWC and the CWC – both of which envisage a requirement to “*give notice of such withdrawal to ... the United Nations Security Council three months in advance*”.<sup>59</sup>

### **2.3. Practice of withdrawal from the NPT and the UNSC: the case of the DPRK**

As of September 2009, the DPRK remains the only State that announced its withdrawal from the NPT. The DPRK’s case of withdrawal was very complex in its nature and due to this reason there is some ambiguity upon the determination of a precise date when this State left the NPT. Since it was the first case of implementation of Article X(1) of the NPT, the international community found itself in a difficult situation to find any

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<sup>57</sup> ENDC, Provisional Verbatim 368 (21 February 1968), para. 23. The Canadian delegation expressed similar views as well. See ENDC, Provisional Verbatim 345 (6 November 1968), para. 36.

<sup>58</sup> ENDC, Provisional Verbatim 377 (12 March 1968), paras. 34-35.

<sup>59</sup> See Annex 2: *Treaty withdrawal - notification requirements*.

solution to the problem. The UNSC addressed the DPRK's case in its resolutions and presidential statement not because it was seized with the withdrawal of the State from the NPT, but only because the IAEA reported the DPRK's non-compliance with its NPT safeguards agreement. The present sub-chapter presents an overview of the DPRK's experience of being Party to the NPT, its complex case of withdrawal from the NPT and the actions the UNSC took in response to the DPRK's withdrawal.

### 2.3.1. The DPRK as a Party to the NPT

The DPRK obtained its first nuclear reactor from the USSR in 1965.<sup>60</sup> It was installed at Yongbyon, where the DPRK had established its nuclear research facility in 1964.<sup>61</sup> In 1977, the DPRK signed its first safeguards agreement with the IAEA.<sup>62</sup> That agreement allowed the IAEA to inspect the USSR-supplied 2MW IRT-research reactor and 0.1MW critical assembly located at Yongbyon.<sup>63</sup> Subsequently, that place – Yongbyon – became a nuclear development centre of the DPRK and caused much concern in the 1990s. The supply by the USSR of a light-water reactor to the DPRK was conditioned on the latter's accession to the NPT.<sup>64</sup> However, the DPRK acceded to the NPT only in December

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<sup>60</sup> The DPRK received a 2MW IRT-nuclear research reactor from the USSR. Additionally, the USSR supplied the DPRK with a small 0.1MW critical assembly. In exchange for the reactor, North Korea exports the spent fuel from the reactor back to the USSR. **Bermudez, Joseph**, *North Korea's Nuclear Programme*, Jane's Intelligence Review (September 1991), p.406; **Spector, Leonard**, *Nuclear Ambitions: The Spread Of Nuclear Weapons 1989-1990*, (Boulder: Westview Press, 1990), p.139.

<sup>61</sup> **Spector Leonard, and Smith Jacqueline**, *North Korea: The Next Nuclear Nightmare?*, Arms Control Today (March 1991), Vol. 21, No. 2, pp. 8-13.

<sup>62</sup> On 20 July 1977, the DPRK signed INFCIRC/66 type Safeguards Agreement (INFCIRC/252).

<sup>63</sup> **Bermudez, Joseph**, *North Korea's Nuclear Programme*, Jane's Intelligence Review (September 1991), p.406.

<sup>64</sup> **S/2003/91** (27 January 2003), p. 5. For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, 27 January 2003.*

1985.<sup>65</sup> The DPRK's nuclear issues were always troublesome for the Treaty. Regardless of its obligations under the NPT and despite its membership in the IAEA,<sup>66</sup> the DPRK was unwilling to conclude the IAEA Safeguards Agreement required by the NPT, even though safeguards have an integral role in the implementation of the NPT and in ensuring the peaceful uses of nuclear energy. According to Article III(4) of the NPT, NNWS Parties to the NPT are obliged to accept full-scope safeguards by concluding an agreement with the IAEA no later than 18 months after the entry into force of the Treaty for them. The DPRK instead accepted the IAEA safeguards more than six years after its accession to the NPT.<sup>67</sup> The DPRK prescribed that omission partly to the presence of US tactical nuclear forces in the South Korea.<sup>68</sup> In October 1989, the DPRK viewed the establishment of a NWFZ on the Korean Peninsula as a precondition to conclude its safeguards agreement with the IAEA.<sup>69</sup>

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<sup>65</sup> The DPRK deposited the instrument of accession to the NPT with the Governments of the Russian Federation on 2 December 1985. See **UN Office for Disarmament Affairs**, *Multilateral Arms Regulation and Disarmament Agreements. NPT, List of Parties*. Available at < <http://disarmament.un.org/TreatyStatus.nsf/e03053a22d4bf8478525688f00693182/75be5ddac25db7ed8525688f006d2640?OpenDocument> > (accessed on 30 December 2007).

<sup>66</sup> The DPRK became a member of the IAEA in September 1974. Its accession to the Agency was intended to create an image of compliance among members of the international community and increase pressure on South Korea to abandon its nuclear programme. See **Mazarr, Michael**, *North Korea and the Bomb: A Case Study in Nonproliferation* (New York, NY: St. Martin's Press, 1995), pp. 25-30.

<sup>67</sup> *Agreement of 30 January 1992 between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*. The Agreement was approved by the IAEA's Board of Governors on 12 September 1991 and signed in Vienna on 30 January 1992. The Agreement entered into force, pursuant to Article 25, on 10 April 1992. The text of the Agreement is reproduced in IAEA document INFCIRC/140, see IAEA INFCIRC/403 (May 1992). Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml> > (accessed on 4 July 2008). It is important to notice that in mid-1987 the IAEA mistakenly sent the wrong safeguards agreement document to the DPRK. The agreement sent was designed for individual sites rather than for general inspections. Due to its error, the IAEA granted the DPRK another 18 months to negotiate and sign a safeguards agreement. See **Oberdorfer, Don**, *The Two Koreas: A Contemporary History* (Reading, MA: Addison-Wesley, 1997), pp.254-255.

<sup>68</sup> **Mazarr, Michael**, *North Korea and the Bomb: A Case Study in Nonproliferation* (New York: St. Martin's Press, 1995), pp. 67-68.

<sup>69</sup> **CNS, James Martin Center for Nonproliferation Studies**, *North Korea Special Collection*. Available at < <http://cns.miis.edu/research/korea/nuc/iaea7789.htm> > (accessed on 4 July 2008).



The US withdrawal of its nuclear weapons from South Korea fostered the programme of denuclearization of Korean Peninsula.<sup>70</sup> South Korea and the DPRK realized the denuclearization of the Korean Peninsula by signing a denuclearisation agreement entitled “Joint Declaration on the Denuclearization of the Korean Peninsula”.<sup>71</sup> The Korean Central News Agency (KCNA) specifically referred to the South Korea-US decision on denuclearization as to an important element that led to the DPRK to accept the IAEA safeguards.<sup>72</sup> Subsequently, the DPRK signed the Safeguards Agreement with the IAEA on 30 January 1992.<sup>73</sup> The DPRK’s Deputy Minister for the atomic energy industry said that the DPRK would abide by the agreement fully. However, the DPRK did not ratify nor implement the agreement at this time and the DPRK’s foreign ministry mentioned that the process of ratification by the legislature could take as long as six months.<sup>74</sup> The DPRK delayed the ratification of its NPT safeguards agreement and that situation created suspicions that the DPRK might produce weapon-grade plutonium or conceal plutonium before the inspections could begin.<sup>75</sup>

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<sup>70</sup> On 27 September 1991, the US announced the elimination of the US “entire worldwide inventory of ground-launched, short-range nuclear weapons”. See US President George Bush, *Address to the Nation on Reducing United States and Soviet Nuclear Weapons* (27 September 1991). Available at < [http://www.bits.de/NRANEU/START/documents/unilateral\\_cuts.htm](http://www.bits.de/NRANEU/START/documents/unilateral_cuts.htm) > (accessed on 30 December 2007). Thus, the US withdraw its nuclear weapons from South Korea.

<sup>71</sup> *Joint Declaration by South and North Korea on the Denuclearization of the Korean Peninsula* was signed on 20 January 1992 and entered into force on 19 February 1992. Available at < <http://www.state.gov/t/ac/rls/or/2004/31011.htm> > (accessed on 30 December 2007).

<sup>72</sup> See Letter dated 24 January 2003 (S/2003/91) from the representative of the DPRK addressed to the President of the UNSC, transmitting a letter dated 10 January 2003 from the Minister for Foreign Affairs of the DPRK to the President of the UNSC, and enclosures. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/226/41/PDF/N0322641.pdf?OpenElement> > (accessed on 8 September 2009). For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, 27 January 2003.*

<sup>73</sup> *Agreement of 30 January 1992 between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons* (INFCIRC/403). The agreement entered into force on 10 April 1992. Available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml> > (accessed on 27 November 2007).

<sup>74</sup> **Mazarr, Michael**, *North Korea And The Bomb: A Case Study In Nonproliferation*, (New York, NY: St. Martin’s Press, 1995), p.82; **Weisman, Steven**, *New York Times* (31 January 1992), p.2; *Washington Times*, 3 February 1992, p.A10.

<sup>75</sup> **Seib, Gerald**, *Wall Street Journal* (9 March 1992), p.A10.

### 2.3.2. The DPRK nuclear crisis and the first announcement of withdrawal

#### from the NPT in 1993

The first crisis originated from the DPRK's non-compliance with its safeguards agreement. The problems with the implementation of NPT safeguards in the DPRK emerged on 4 May 1992 when the DPRK submitted the Initial Report.<sup>76</sup> Pursuant to Article 62 of the Safeguards Agreement, the DPRK was supposed to declare its all nuclear facilities and materials.<sup>77</sup> The report, however, did not list the actual amount of plutonium the DPRK had reprocessed at Yongbyon. It only reported quantities of plutonium that were separated in 1990 at an industrial-scale reprocessing facility still under construction.<sup>78</sup> The DPRK said that the plutonium was acquired from damaged fuel assemblies from the 5MW research reactor. Thus, in order to verify the correctness and completeness of the information contained in the Initial Report, the IAEA initiated *ad hoc* inspections in accordance with Article 71 of the Agreement concluded with the DPRK.<sup>79</sup> The inspections revealed some inconsistencies between the information contained in the Initial Report and the IAEA findings.<sup>80</sup> As far as the DPRK refused to provide access to the specified

<sup>76</sup> The DPRK submitted a 150-page Report twenty-five days before schedule. **Mazarr, Michael**, *North Korea And The Bomb: A Case Study In Nonproliferation*, (New York, NY: St. Martin's Press, 1995), p.83.

<sup>77</sup> Article 62 of INFCIRC/403: "The Agency shall be provided with an initial report on all nuclear material subject to safeguards under this Agreement. The initial report shall be dispatched by the Democratic People's Republic of Korea to the Agency within thirty days of the last day of the calendar month in which this Agreement enters into force, and shall reflect the situation as of the last day of that month." Available at <<http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml>> (accessed on 27 November 2006).

<sup>78</sup> **CNS, James Martin Center for Nonproliferation Studies**, *North Korea Special Collection*. Available at <<http://cns.miis.edu/research/korea/nuc/iaea92.htm>> (accessed on 4 July 2008).

<sup>79</sup> Article 71 of INFCIRC/403: "The Agency may make ad hoc inspections in order to: a) verify the information contained in the initial report on the nuclear material subject to safeguards under this Agreement; b) identify and verify changes in the situation which have occurred since the date of the initial report; and identify, and c) if possible verify the quantity and composition of, nuclear material in accordance with Articles 93 and 96, before its transfer out of or upon its transfer into the Democratic People's Republic of Korea."

<sup>80</sup> The Initial Report submitted by the DPRK on 4 May 1992 listed a 5 MW(e) graphite moderated Magnox type reactor, a fuel fabrication plant, a "radiochemical laboratory" (in reality, a reprocessing plant) and two much larger Magnox reactors of 50 MW(e) and 200 MW(e) under construction. three Magnox reactors had been or were being built by the DPRK itself. Until the DPRK sent the IAEA an "Initial Report". Before the Initial Report was submitted, the IAEA had been aware only of the USSR supplied research reactor (5 MW(th)) and a critical assembly. Moreover, the IAEA revealed that the Initial Report did not list the actual

additional sites, the-then IAEA Director General – Hans Blix – in accordance with Article 73(b) of the Safeguards Agreement requested the DPRK to accept a special inspection, which the DPRK refused.<sup>81</sup> In response to the DPRK’s refusal the IAEA’s Board of Governors passed without a vote a resolution on 25 February 1993 calling upon the DPRK to respond positively and without delay to the Director General’s request.<sup>82</sup> Under the pressure of these demands, on 12 March 1993 the DPRK declared its decision to withdraw from the NPT.<sup>83</sup> Article 26 of the Safeguards Agreement between the DPRK and the IAEA clearly stipulates that it “shall remain in force as long as the Democratic People’s Republic of Korea is party to the [NPT]”.<sup>84</sup>

In its declaration, the DPRK named two reasons posing as “a grave situation” that led to for withdrawing from the NPT: 1) the Team Spirit “nuclear war rehearsal” military manoeuvres in the Korean Peninsula; 2) the IAEA’s resolution demanding for special inspection of two suspect sites. The DPRK also accused the IAEA’s officials of the lack of “impartiality and strict neutrality” as they insisted on a special inspection of the DPRK’s

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amount of plutonium the DPRK had reprocessed at Yongbyon. See **Fischer, David**, *The DPRK’s Violation of its NPT Safeguards Agreement with the IAEA. Excerpt from “History of the International Atomic Energy Agency”* (Vienna: IAEA, 1997), p. 289; *Statement of Hans Blix, Director General, IAEA, at Informal Briefing of United Nations Security Council regarding the Democratic People’s Republic of Korea (DPRK)* (6 April 1993, New York).

<sup>81</sup> Pursuant to Article 73(b) of INFCIRC/403, special inspections are those that may be conducted “if the Agency considers that information made available by the Democratic People’s Republic of Korea ... is not adequate for the Agency to fulfil its responsibilities under this [the Safeguards] Agreement”. < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml> > (accessed on 27 November 2006).

<sup>82</sup> IAEA resolution GOV/2636 (25 February 1993), reproduced in IAEA document INFCIRC/419 (8 April 1993), Annex 3. Available at < <http://www.fas.org/news/un/dprk/inf419.html> > (accessed on 4 July 2008).

<sup>83</sup> With the letter (S/25405) dated 12 March 1993 addressed to the President of the UNSC, the representative of the DPRK transmitted a letter of the same date from the Minister for Foreign Affairs of the DPRK. In his letter, the DPRK’s Minister for Foreign Affairs informed the UNSC that the Government of the DPRK had decided, on 12 March 1993, to withdraw from the NPT, in accordance with Article X(1) of the NPT, in connection with the extraordinary situation prevailing in the DPRK, which jeopardized its supreme interests. *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%201993.pdf> > (accessed on 8 September 2009). For the text of the letter see Annex 4: *Letter dated 12 March 1993 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/25405, 12 March 1993*.

<sup>84</sup> INFCIRC/403 (May 1992), available at < <http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml> > (accessed on 22 May 2007).

military bases while ignoring the DPRK's demand for an inspection of the US nuclear bases in the South Korea.<sup>85</sup> The DPRK attached a statement to its withdrawal notice that is sent to the three NPT depository States and the then 154 NPT States Parties, in which it accuses the IAEA of violating its sovereignty and interfering in its internal affairs, attempting to stifle its socialist regime, and of being a "lackey" of the US. According to the DPRK, the US influenced the officials of the IAEA Secretariat and Member States at the IAEA Board of Governors meeting on 25 February 1993 to adopt a resolution requiring the DPRK to open military sites to inspection that are not nuclear-related.<sup>86</sup>

On 1 April 1993, the IAEA's Board of Governors adopted a resolution,<sup>87</sup> in which it found that the DPRK was in non-compliance with its obligations under the Safeguards Agreement and that the IAEA was not able to verify that there had been no diversion of nuclear material to nuclear weapons.<sup>88</sup> In accordance with Article 12(C) of the IAEA Statute and in accordance with Article 19 of the Safeguards Agreement, on 8 April 1993, the IAEA reported these findings to the UNSC and the UNGA.<sup>89</sup>

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<sup>85</sup> See Chapter 2, ft. 83, p. 88.

<sup>86</sup> *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%2093.pdf> > (accessed on 8 September 2009); **Don Oberdorfer**, *The Two Koreas: A Contemporary History* (Reading, MA: Addison-Wesley, 1997), p. 280; **Gamini Seneviratne**, *IAEA Struggling to Stand Firm and Find Face-Saver for North Korea*, *Nucleonics Week* (18 March 1993), p. 10; **Sanger, David E.**, *West Knew of North Korea Nuclear Development*, *New York Times* (13 March 1993), p. 3, in Lexis-Nexis, < <http://web.lexis-nexis.com> >; < [http://www.nti.org/e\\_research/profiles/NK/Nuclear/46\\_622.html](http://www.nti.org/e_research/profiles/NK/Nuclear/46_622.html) >.

<sup>87</sup> IAEA resolution GOV/2645 (*Report by the Director General of the International Atomic Energy Agency on Behalf of the Board of Governors to all Members of the Agency on the Non-Compliance of the Democratic People's Republic of Korea with the Agreement Between the IAEA and the Democratic People's Republic of Korea for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons (INFCIRC/403) and on the Agency's inability to verify the Non-Diversion of Material Required to be Safeguarded*) was adopted by a vote of 28 to 2 (China and Libya), with 4 abstentions (India, Pakistan, Syria and Vietnam). The resolution is reproduced in IAEA document INFCIRC/419 (8 April 1993), Annex 1. Available at < <http://www.fas.org/news/un/dprk/inf419.html> > (accessed on 4 July 2008).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.* Pursuant to Article 12(C) of the IAEA Statute, "...[t]he [IAEA] Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations...". See also *Statement of IAEA Director General regarding DPRK at informal briefing of UNSC* (6 April 1993). Available at < <http://www.globalsecurity.org/wmd/library/news/dprk/un/dgsp1993n10.html> > (accessed on 8 September 2009).

### 2.3.3. The response of the UNSC to the DPRK's announcement of withdrawal in 1993

In response to the DPRK's notice of withdrawal from the NPT, the three depositary governments of the NPT – the UK, the US, the Russian Federation (as the successor of the USSR)<sup>90</sup> – on 1 April 1993 issued a statement regarding the DPRK's announcement of withdrawal, which questioned whether “the DPRK's stated reasons for withdrawing from the Treaty constitute extraordinary events *relating to the subject-matter of the Treaty*” (emphasis added).<sup>91</sup>

In the case of the DPRK, which was referred to the UNSC in 1993 by the IAEA Board of Governors on the ground that the State had been found to be in non-compliance with its NPT safeguards agreement, the UNSC, attempting to restore compliance by the DPRK and consequently to prevent further proliferation of the nuclear threat, took up the matter in informal consultations because there was no agreement in the UNSC to take this up in a formal setting. The President of the UNSC reflected on these deliberations in his brief statement on behalf of the Members of the UNSC which emphasized the importance of the NPT [including compliance with its related IAEA safeguards].<sup>92</sup>

At its 3212th meeting, on 11 May 1993, the UNSC included in its agenda the letter dated 12 March 1993 from the representative of the DPRK addressed to the President of the Council, the letter dated 19 March 1993 from the Secretary-General addressed to the President of the UNSC, and the note by the Secretary-General.<sup>93</sup> The UNSC invited the representatives of the DPRK and the Republic of Korea, at their request, to participate in

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<sup>90</sup> Article IX(2) of the NPT: “...the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.”

<sup>91</sup> S/25515 (2 April 1993) p. 2.

<sup>92</sup> S/25562 (8 April 1993). Available at < <http://www.un.int/korea/sc.html> > (accessed on 8 September 2009). For the text of the Statement of the President of the UNSC see Annex 6: *Statement by the President of the UNSC, S/25562, 8 April 1993*.

<sup>93</sup> *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*, p. 4. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%2093.pdf> > (accessed on 8 September 2009).

the discussion, without the right to vote.<sup>94</sup> At the outset of the public meeting, the President (Russian Federation) then drew the attention of the members of the UNSC to a draft resolution<sup>95</sup> submitted by France, Hungary, Japan, New Zealand, the Russian Federation, Spain, the UK, and the US as well as to several other documents submitted in relation to the matter.<sup>96</sup> The issue under discussion by the UNSC was the DPRK's failure to adhere to its obligations under a Safeguards Agreement with the IAEA and its subsequent announcement of intent to withdraw from the NPT.<sup>97</sup>

In course of the UNSC meeting, the representative of the DPRK took the floor and referring to his letter of 10 May 1993,<sup>98</sup> in which he had officially requested the UNSC to consider at the meeting issues related to the abuse by the IAEA of the Safeguards Agreement between the DPRK and the IAEA, expressed the hope that his request would be considered a formal agenda item, in accordance with the relevant provisions of the UN Charter and the provisional rules of procedure of the UNSC. Recalling the statement of his

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<sup>94</sup> At the time the 3212<sup>th</sup> meeting of UNSC took place, the 1993 NPT PrepCom was running the second day of its session. The DPRK was present at its session as far as still on 2 May 1993, it informed the UN about its decisions to participate in it. Later, on 3 May 1993, the DPRK's Information Minister announced that the DPRK would rejoin the NPT at the conditions that the IAEA had to remain neutral, to give assurances that military facilities would remain closed to foreign inspections, and the US had to guarantee that it would not use nuclear weapons against DPRK and withdraw all nuclear weapons and facilities from South Korea. *NTI: Country Overviews: North Korea: Nuclear Chronology, 1993*. Available at < [http://www.nti.org/e\\_research/profiles/NK/Nuclear/46\\_622.html](http://www.nti.org/e_research/profiles/NK/Nuclear/46_622.html) > (accessed on 3 September 2009). For more on the discussion of the DPRK issue, see Chapter 3 of the dissertation.

<sup>94</sup> **UNGA Res. 47/52 A** (9 December 1992). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N92/843/65/IMG/N9284365.pdf?OpenElement> > (accessed on 3 September 2009).

<sup>95</sup> **S/25745** (11 May 1993).

<sup>96</sup> Letter dated 9 April 1993 from the Permanent Representative of the DPRK addressed to the President of the UNSC (**S/25576**); letter dated 12 April 1993 from the Permanent Representative of Bulgaria addressed to the Secretary-General (**S/25581**); letter dated 13 April 1993 from the Chargé d'Affaires, a.i. of the Permanent Mission of Turkey addressed to the Secretary-General (**S/25593**); letter dated 15 April 1993 from the Permanent Representative of the DPRK addressed to the President of the UNSC (**S/25595**); letter dated 4 May 1993 from the Permanent Representative of Paraguay addressed to the Secretary-General (**S/25734**); letter dated 10 May 1993 from the Permanent Representative of the DPRK addressed to the President of the UNSC (**S/25747**).

<sup>97</sup> *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*, p. 8. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%2093.pdf> > (accessed on 8 September 2009).

<sup>98</sup> Letter dated 10 May 1993 from the Permanent Representative of the DPRK addressed to the President of the UNSC (**S/25747**).

Government issued on 12 March 1993,<sup>99</sup> he pointed out that the major reason which had forced the DPRK to withdraw from the NPT was the increase by the US of nuclear threats to its country and manipulation of some IAEA officials. He mentioned that the US by maintaining its nuclear weapons deployed in South Korea, had escalated its nuclear threat against the DPRK, which, according to him, constituted a violation of the NPT as well as of UNSC resolution 255 (1968) of 19 June 1968.<sup>100</sup> The DPRK added that there was no legal or technical ground for the UNSC to discuss the DPRK's "non-compliance" with the Safeguards Agreement or the DPRK's withdrawal from the NPT.<sup>101</sup> The DPRK presented its announced withdrawal from the NPT as a self-defence measure based on a State's right to withdraw from the Treaty in the exercise of its national sovereignty, in case a State Party to the Treaty decides that its supreme interests are threatened.<sup>102</sup> According to the DPRK, its withdrawal from the NPT and the problems in implementing the Safeguards Agreement could not be construed as harming world peace, nor threatening the security of other States.

With regard to the draft resolution<sup>103</sup> submitted by France, Hungary, Japan, New Zealand, the Russian Federation, Spain, the UK, and the US, the representative of the DPRK stated that it had to be rejected being unreasonable and in contravention of Article 2(4) of the Charter and Article 3(D) of the IAEA Statute, which called for respect of the sovereignty of the Member States. According to the DPRK, the draft resolution had infringed upon the sovereignty of the DPRK, ignoring the requirements of Article 33 of Chapter VI of the UN Charter, the Statute of the IAEA and the norms of international law according to which the disputes should be resolved through dialogue and negotiations. The

<sup>99</sup> S/25405 (12 March 1993). See Chapter 2, ft. 83, p. 88.

<sup>100</sup> UNSC Res. 255 (19 June 1968), adopted by 10 votes to none, with 5 abstentions (Algeria, Brazil, France, India, Pakistan). Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/248/36/IMG/NR024836.pdf?OpenElement> > (accessed on 8 September 2009).

<sup>101</sup> *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*, p. 6. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%2093.pdf> > (accessed on 8 September 2009).

<sup>102</sup> Ibid.

<sup>103</sup> S/25745 (11 May 1993).

DPRK concluded that adoption of such a resolution would compel the DPRK to take corresponding self-defence measures and called upon the US to withdraw the resolution.<sup>104</sup>

The representative of the Republic of Korea contested the statement of the DPRK and stated that that by refusing IAEA inspections of suspected nuclear sites and deciding to pull out of the NPT, the DPRK posed a serious threat to international peace and security, in particular the security and stability of North East Asia, as well as to the NPT and the IAEA safeguards system. He recalled the Presidential statement<sup>105</sup> adopted at the UNSC Summit meeting of 31 January 1992 which provided, *inter alia*, that the members of the UNSC would take appropriate measures in the case of any violations notified to them by the IAEA and the UNSC, in particular, was entrusted with the maintenance of international peace and security under the UN Charter.<sup>106</sup>

The US emphasized that these disputes related to the DPRK's issue concerned international agencies and the international community, not just a single country. Addressing the charges made against the US by the DPRK, the US mentioned that like other States, it had provided information and technical support to the IAEA at the IAEA's request to support the implementation of safeguards on nuclear materials and facilities. The IAEA's conclusions on the implementation safeguards in the State were primarily based on information obtained by its own inspectors taking into account information provided by other IAEA Member States. The US denied that its actions could have posed a nuclear

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<sup>104</sup> *Repertoire Of The Practice Of The Security Council, Repertoire 12th Supplement 1993 – 1995: Chapter VIII*, p. 6. Available at < <http://www.un.org/en/sc/repertoire/93-95/CHAPTER%208/ASIA/15%20-%20Letters%20dated%2012%20and%2019%20March%2093.pdf> > (accessed on 8 September 2009).

<sup>105</sup> **S/23500** (31 January 1992). For the text of the Presidential statement see Annex 3: *UNSC Declaration on Disarmament, Arms Control and Weapons of Mass Destruction, S/23500, 31 January 1992*.

<sup>106</sup> *Provisional Verbatim Record of the 3212<sup>th</sup> meeting of the UNSC, S/PV.3212* (11 May 1993), pp. 26-33. Available at < <http://daccessdds.un.org/doc/UNDOC/PRO/N93/858/28/PDF/N9385828.pdf?OpenElement> > (accessed on 8 September 2009).



threat to the DPRK, indicating that the “Team Spirit” joint military manoeuvres in Korean Peninsula were a purely defensive conventional exercise.<sup>107</sup>

China, speaking in explanation of vote of abstention, objected the UNSC’s taking up the DPRK’s issue by arguing that the matter was strictly between the DPRK and the IAEA, between the DPRK and the US, and between the DPRK and Republic of Korea, and therefore it had to be settled between them. Moreover, China opposed imposing pressure on the DPRK.<sup>108</sup>

Following the discussions, the UNSC’s judgement of the DPRK’s issue was spelled out in its resolution 825.<sup>109</sup> Referring to the views of UNSC members and invoking the statements by the depositaries of the NPT,<sup>110</sup> the UNSC in its resolution 825 called upon the DPRK to reconsider the announcement of its intention to withdraw from the NPT and “thus to reaffirm its commitments to the Treaty” (para. 1). It further called upon “the DPRK to honour its non-proliferation obligations under the Treaty and comply with its safeguards agreement” (para. 2). Though in paragraph 3 of the resolution, the UNSC “decide[d] to remain seized of the matter and to consider further ... action if necessary”, it did not assessment of the announcement of withdrawal from the NPT. Instead, the UNSC “urge[d] all Member States to encourage the DPRK to respond positively to this resolution, and encourage[d] them to facilitate a solution” (para. 4).

After the vote, the representative of France said that the situation made it necessary for the UNSC to manifest, clearly and unambiguously, its determination to see the emergence of an early settlement. The resolution attested to its resolve to settle a disturbing

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<sup>107</sup> *Provisional Verbatim Record of the 3212<sup>th</sup> meeting of the UNSC*, S/PV.3212 (11 May 1993), pp. 33-35. Available at < <http://daccessdds.un.org/doc/UNDOC/PRO/N93/858/28/PDF/N9385828.pdf?OpenElement> > (accessed on 8 September 2009).

<sup>108</sup> *Ibid.*, pp. 42-43.

<sup>109</sup> **UNSC Res. 825** (11 May 1993) (13 in favour and 2 abstentions of China and Pakistan). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N93/280/49/IMG/N9328049.pdf?OpenElement> > (accessed on 4 July 2008). For the text of the resolution see Annex 7: *UNSC resolution 825, 11 May 1993*. For the vote, see *Provisional Verbatim Record of the 3212<sup>th</sup> meeting of the UNSC*, S/PV.3212 (11 May 1993), p. 44. Available at < <http://daccessdds.un.org/doc/UNDOC/PRO/N93/858/28/PDF/N9385828.pdf?OpenElement> > (accessed on 8 September 2009).

<sup>110</sup> **S/25515** (2 April 1993).

situation which represented an important disagreement between the DPRK and the whole of the international community and was not a simple bilateral crisis. The text of the resolution was, however, not intended to be threatening and also took into account the prospects for opening up bilateral dialogue in parallel to the multilateral framework. France concluded by saying that the passing of the 12 June deadline, when the DPRK withdrawal from the NPT would become effective, would not exonerate the DPRK and would prompt the UNSC, as provided in the resolution, to draw all the appropriate conclusions.<sup>111</sup>

The representative of the UK stated that his delegation did not question the right of the States to withdraw from treaties, if such withdrawal was in accordance with the provisions of the treaty concerned. He reminded that Article X(1) of the NPT required that in exercising its national sovereignty a Party withdrawing from the Treaty shall give notice of such withdrawal to all other Parties to the Treaty and to the UNSC three months in advance, and that such notice should include a statement of the extraordinary events, related to the subject matter of the Treaty, which it regarded as having jeopardized its supreme interests. In this connection, he recalled the joint statement of 1 April 1993 by the three co-depositaries of the NPT – the Russian federation, the UK and the US – in which they questioned whether the DPRK's stated reasons for withdrawal constituted extraordinary events related to the subject matter of the NPT.<sup>112</sup> With respect to the DPRK's status under its safeguards agreement, he noted that the DPRK remained bound by its obligation. The UK maintained that it was proper that the UNSC should play its role in handling the issue and remaining seized of the matter since further action could be considered.<sup>113</sup>

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<sup>111</sup> *Provisional Verbatim Record of the 3212<sup>th</sup> meeting of the UNSC*, S/PV.3212 (11 May 1993), pp. 47-48. Available at < <http://daccessdds.un.org/doc/UNDOC/PRO/N93/858/28/PDF/N9385828.pdf?OpenElement> > (accessed on 8 September 2009).

<sup>112</sup> **S/25515** (2 April 1993).

<sup>113</sup> *Provisional Verbatim Record of the 3212<sup>th</sup> meeting of the UNSC*, S/PV.3212 (11 May 1993), pp. 53-55. Available at < <http://daccessdds.un.org/doc/UNDOC/PRO/N93/858/28/PDF/N9385828.pdf?OpenElement> > (accessed on 8 September 2009).

Somewhat different opinion was represented by Pakistan that expressed the view that the problem between the DPRK and the IAEA had been referred to the UNSC in a rather precipitate manner. Therefore Pakistan abstained in the vote on the IAEA Board of Governors' resolution of 1 April 1993, but had endorsed the UNSC's statement of 8 April 1993, which encouraged a resumption of consultations between the two parties. Pakistan had also abstained in the vote on the resolution 825, having difficulties with the seventh preambular paragraph and operative paragraph 1.<sup>114</sup> Pakistan was of the view that the seventh preambular paragraph was inconsistent with the letter and spirit of Article X of the NPT, particularly when read in conjunction with operative paragraph 1 of the resolution. Article X of the NPT recognised the right of a State Party to withdraw from the Treaty if it decided that extraordinary events related to the subject matter had jeopardized its supreme interests. Therefore, that decision had been left entirely to the State Party concerned.

A comprehensive review of the discussions in the UNSC of the DPRK issue in May 1993 reflects the perception by the UNSC Members of their obligation to address non-compliance with the NPT – which is a key instrument for maintaining international peace and security and the cornerstone of the nuclear non-proliferation and disarmament regime. The choice of language of the resolution 825 proved that the UNSC Members had made it clear that the nuclear non-proliferation issue belonged to range of affairs the UNSC had to deal with. The UNSC Members implied that the DPRK problem of non-compliance with its NPT safeguards agreement and notification of withdrawal from the NPT was clearly of concern for international peace and security. It was therefore declared by the UNSC

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<sup>114</sup> **UNSC Res. 825**, seventh preambular paragraph: "Taking note of the statement made on 1 April 1993 by the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America, the depositaries of the Treaty, which questions whether the Democratic People's Republic of Korea's stated reasons for withdrawing from the Treaty constitute extraordinary events relating to the subject-matter of the Treaty"; **UNSC Res. 825**, operative para. 1: "1. Calls upon the Democratic People's Republic of Korea to reconsider the announcement contained in the letter dated 12 March 1993 and thus to reaffirm its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons." Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N93/280/49/IMG/N9328049.pdf?OpenElement> > (accessed on 4 July 2008). For the text of the resolution see Annex 7: *UNSC resolution 825, 11 May 1993*.

Members that the intention in the UN Charter indeed was to assign a vital role to the UNSC in disarmament matters. Though the UNSC's message was restrained, it made a clear statement that the DPRK's actions with respect to the NPT were under international scrutiny and that such behaviour was considered unacceptable for nuclear non-proliferation and it would not be tolerated.<sup>115</sup> The fact that the DPRK chose to appear at the UNSC's public meeting to argue its case, demonstrated that States recognize the political standing and legal authority of the UNSC and thus feel compelled to account for their policies and actions before the UNSC. Given this practice, the UNSC appears to have the role of a "quasi-tribunal" and its Members the roles of judges and arbiters.<sup>116</sup>

This first announcement by the DPRK of its withdrawal from the NPT was not finalized as the DPRK suspended it on 11 June 1993, one day short of the three months period provided for in Article X(1) of the NPT. The DPRK "decided unilaterally to suspend as long as it considers necessary the effectuation of its withdrawal from the NPT".<sup>117</sup> At that time the DPRK also had an intention to participate in the 1993 NPT PrepCom which was scheduled for 10 May.<sup>118</sup> Therefore, the State informed the UN on 2 May 1993, the DPRK about its decisions to attend the PrepCom.<sup>119</sup> And, on 3 May 1993, the DPRK's Information Minister announced that the DPRK would rejoin the NPT at the conditions that the IAEA had to remain neutral, to give assurances that military facilities would remain closed to foreign inspections, and the US had to guarantee that it would not use nuclear weapons against DPRK and withdraw all nuclear weapons and facilities from South Korea.<sup>120</sup>

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<sup>115</sup> **Dedring, Juergen**, *The United Nations Security Council in the 1990s: Resurgence and Renewal* (New York: State University of New York Press, 2008), p. 115-117.

<sup>116</sup> *Ibid.*, p. 117.

<sup>117</sup> *DPRK-US Joint Statement* (11 June 1993). Available at < [http://www1.korea-np.co.jp/pk/011th\\_issue/97100102.htm](http://www1.korea-np.co.jp/pk/011th_issue/97100102.htm) > (accessed on 3 September 2009).

<sup>118</sup> See Chapter 3, pp. 112-113.

<sup>119</sup> *Ibid.*

<sup>120</sup> *NTI: Country Overviews: North Korea: Nuclear Chronology, 1993*. Available at < [http://www.nti.org/e\\_research/profiles/NK/Nuclear/46\\_622.html](http://www.nti.org/e_research/profiles/NK/Nuclear/46_622.html) > (accessed on 3 September 2009).

Thus, in 1993, the UNSC did not impose any sanctions in relation to the DPRK's notification of withdrawal. It was the IAEA that applied the first institutional sanctions against the DPRK by suspending technical assistance to the DPRK on 10 June 1994,<sup>121</sup> in connection with the DPRK's non-compliance with its NPT safeguards agreement. The DPRK responded to this decision by announcing its withdrawal from the IAEA.<sup>122</sup> Consequently, the DPRK did not participate in the activities of the IAEA as a Member State, but it was not released from obligations under the Safeguards Agreement, as far as the application of IAEA safeguards is not conditioned by membership in the IAEA.<sup>123</sup>

### **2.3.4. The DPRK nuclear crisis and the second announcement of withdrawal from the NPT in 2003**

Though there was a continuing difference of views between the Agency and the DPRK as to the status of the Safeguards Agreement, both sides continued to hold regular technical meetings in Vienna to resolve outstanding issues. However, there was no progress on key issues. In the meantime, on 15 December 1995 the Korean Peninsula Energy Development Organization (KEDO)<sup>124</sup> concluded with the DPRK an Agreement on Supply

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<sup>121</sup> The sanctions were decided upon by a vote of 28 to 1 (Libya) with 4 abstentions (including China); **Fischer, David**, *History of the International Atomic Energy Agency* (Vienna: IAEA, 1997), p. 290; *IAEA Bulletin*, (1994), Vol. 36, No. 3, p. 58.

<sup>122</sup> *The Withdrawal of the Democratic People's Republic of Korea from the International Atomic Energy Agency*, IAEA document INFCIRC/447 (21 June 1994). Available at < <http://www.fas.org/news/un/dprk/inf447.html> > (accessed on 5 July 2008).

<sup>123</sup> For instance, Taiwan has accepted IAEA safeguards though it is not a member of the IAEA.

<sup>124</sup> On 21 October 1994, the US and the DPRK signed the Agreed Framework – reproduced in the IAEA document **INFCIRC/457** (2 November 1994), under which the DPRK agreed to freeze and ultimately dismantle its nuclear program. The Agreed Framework sought to resolve comprehensively the issues arising from the DPRK nuclear program. The DPRK facilities subject to the freeze included an operational 5 MWe experimental graphite-moderated reactor, a partially complete reprocessing facility, and a 50 MWe power reactor under construction, all at the Yongbyon Nuclear Research Center, as well as a 200 MWe power reactor under construction at Taechon, DPRK. For support of these goals, KEDO was established on March 9, 1995, when Japan, the Republic of Korea, and the US expressed their common desire to implement the key

of a Light-Water Reactor Project to the DPRK.<sup>125</sup> With the delivery of key nuclear components in prospect, the IAEA started to urge the DPRK to extend its full cooperation with the Agency. The DPRK did not respond positively to the IAEA's initiative announced by the IAEA Director General at the IAEA General Conference in September 2000.<sup>126</sup>

A high concern about the DPRK's nuclear activity started with the US press statement of 16 October 2002, in which the US disclosed the DPRK confession, in talks with Assistant Secretary Kelly in early October that it had a "programme to enrich uranium for nuclear weapons".<sup>127</sup> In response to this revelation, not only the US, but also South Korea and Japan denounced it as a violation of relevant agreements to which the DPRK was a party.<sup>128</sup> In the light of the alleged violations, KEDO suspended heavy oil deliveries to the DPRK.<sup>129</sup> The conclusion was drawn that the DPRK's programme was a violation of the Agreed Framework, the NPT, the DPRK's Safeguards Agreement and the North-South Joint Declaration on the Denuclearization of the Korean Peninsula. In light of those

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provisions of the Agreed Framework and signed the Agreement on the Establishment of the Korean Peninsula Energy Development Organization (KEDO). For more information on KEDO see < <http://www.kedo.org> > (accessed on 8 September 2009).

<sup>125</sup> *Agreement on Supply of a Light-Water Reactor to the Democratic People's Republic of Korea Between the Korean Peninsula Energy Development Organization and the Government of the Democratic People's Republic of Korea*. Available at < <http://www.kedo.org/pdfs/SupplyAgreement.pdf> > (accessed on 8 September 2009).

<sup>126</sup> **IAEA**, *Statement to the Forty-fourth Regular Session of the IAEA General Conference 2000 by IAEA Director General Dr. Mohamed ElBaradei* (18 September 2000). The DPRK did not agree to discuss a programme of work on the verification of the correctness and completeness of its initial report. Repeated efforts in the course of 2002 to convene a technical meeting for the same purpose were not successful neither. For more see **Asada, Masahiko**, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 3, pp. 338-340; **IAEA Media Advisory 2002/5**, *Fact Sheet on DPRK Nuclear Safeguards*. Available at < [http://www.iaea.org/NewsCenter/MediaAdvisory/2002/med-advise\\_052.shtml](http://www.iaea.org/NewsCenter/MediaAdvisory/2002/med-advise_052.shtml) > (accessed on 5 July 2008).

<sup>127</sup> **US State Department**, *Press Statement by Richard Boucher, Spokesman: North Korean Nuclear Program* (16 October 2002). Available at < <http://www.state.gov/r/pa/prs/ps/2002/14432.htm> > (accessed on 5 July 2008).

<sup>128</sup> *Joint US-Japan-ROK Trilateral Statement* (Los Cabos, Mexico, 26 October 2002). Available at < <http://www.whitehouse.gov/news/releases/2002/10/20021026-1.html> > (accessed on 5 July 2008).

<sup>129</sup> **KEDO**, *KEDO Executive Board Meeting Concludes* (14 November 2002). Available at < [http://www.kedo.org/news\\_detail.asp?NewsID=23](http://www.kedo.org/news_detail.asp?NewsID=23) > (accessed on 5 July 2008).

violations the KEDO Board decided to suspend heavy oil deliveries as of the December shipment.<sup>130</sup>

Shortly after the October disclosures, on 17 and 18 October, the IAEA faxed its requests of information about the alleged programme and offered “to dispatch a senior team to the DPRK or to receive a DPRK team in Vienna, to discuss recent information and the general question of the implementation of IAEA safeguards in the DPRK”. However, the DPRK did not reply to these requests.<sup>131</sup> Therefore, on 29 November 2002, the IAEA Board of Governors adopted a resolution without a vote, which reaffirmed that the DPRK’s NPT safeguards agreement (INFCIRC/403) remained binding and in force (para. b), recognised that the programme to enrich uranium for nuclear weapons or any other covert nuclear activities would constitute a violation of the DPRK’s international commitments, including its Safeguards Agreement with the IAEA (para. 5) and urged the DPRK to “give up any nuclear weapons programme” (para. 9).<sup>132</sup>

In response to these events, the DPRK Foreign Minister sent a letter, dated 2 December 2002, to the IAEA Director General expressing disappointment about the Agency’s unilateral and unfair approach, noting that the DPRK could not accept the IAEA resolution. On 12 December, the IAEA Director General received a further letter, from the Director General of the General Department of Atomic Energy in the DPRK, conveying the DPRK decision on that day to lift the freeze on its nuclear facilities as of 13 December in light of the US suspension of the heavy fuel oil supply pursuant to the Agreed Framework. The IAEA Director General replied the same day urging the DPRK not to take unilateral steps related to seals or cameras and to agree to an urgent meeting of technical experts to

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<sup>130</sup> IAEA, *Fact Sheet on DPRK Nuclear Safeguards*. Available at < [http://www.iaea.org/NewsCenter/Focus/IaeaDprk/fact\\_sheet\\_may2003.shtml](http://www.iaea.org/NewsCenter/Focus/IaeaDprk/fact_sheet_may2003.shtml) > (accessed on 8 September 2009).

<sup>131</sup> Ibid.

<sup>132</sup> IAEA, *Report by the Director General on the Implementation of the NPT Safeguards Agreement between the Agency and the Democratic People’s Republic of Korea*, GOV/2002/60 (29 November 2002). Available at < <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB87/nk23.pdf> > (accessed on 5 July 2008).

discuss practical arrangements involved in moving from the freeze to normal safeguards operations. However, on 22 December the DPRK started to cut seals and disable surveillance cameras at the Yongbyon nuclear facility and on 27 December it ordered the IAEA inspectors to leave the country.

Following up the DPRK's actions, on 6 January 2003, the IAEA's Board of Governors adopted by consensus a further resolution<sup>133</sup> deploring "in the strongest terms" the DPRK's unilateral acts to remove and impede the functioning of containment and surveillance equipment at its nuclear facilities, and calling for its urgent and full cooperation with the Agency, but the Board stopped short of reporting the matter to the UNSC.

### **2.3.5. The response of the UNSC to the DPRK's announcement of withdrawal in 2003**

In response to the IAEA's actions, the DPRK declared the IAEA's resolution as unjust on 10 January 2003.<sup>134</sup> The same day in a letter to the President of the UNSC,<sup>135</sup> the DPRK informed the UNSC about its decision to revoke the 1993 suspension of its withdrawal from the NPT and declared that it would take full effect the next day – on 11

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<sup>133</sup> IAEA, *Report by the Director General on the Implementation of the NPT Safeguards Agreement Between the Agency and the Democratic People's Republic of Korea*, GOV/2003/3 (6 January 2003). Available at < <http://www.iaea.org/NewsCenter/MediaAdvisory/2003/gov2003-3.pdf> > (accessed on 5 July 2008).

<sup>134</sup> *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91*, pp. 3-4: *Statement of the Government of the Democratic People's Republic of Korea dated 10 January 2003*. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/226/41/PDF/N0322641.pdf?OpenElement> > (accessed on 8 September 2009). For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91*, 27 January 2003.

<sup>135</sup> *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91*, p. 2: *Letter dated 10 January 2003 from the Minister for Foreign Affairs of the Democratic People's Republic of Korea addressed to the President of the Security Council*. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/226/41/PDF/N0322641.pdf?OpenElement> > (accessed on 8 September 2009). For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91*, 27 January 2003.



January 2003 – and the DPRK would thus no longer be bound by the NPT. The letter enclosed the “Statement of the Government of the Democratic People’s Republic of Korea” which explained in detail not only the logic of “automatic and immediate effectuation” of the withdrawal from the NPT, but also the situation that led to the decision. It began by saying that: “[a] dangerous situation where our nation’s sovereignty and our State’s security are being seriously violated is prevailing on the Korean peninsula due to the vicious, hostile policy of the United States of America towards the Democratic People’s Republic of Korea”. It specifically stated that “[u]nder its manipulation, the IAEA, in those resolutions, termed the DPRK “a criminal” and demanded that it scrap what the United States called a “nuclear programme”.<sup>136</sup> The DPRK in its Statement concluded that “the DPRK withdrawing from the NPT is totally free from the binding force of the safeguards accord with the IAEA under its article 3 [providing for cooperation between the DPRK and the IAEA].”<sup>137</sup>

The DPRK stated that it had decided to “unilaterally suspend as long as it considers it necessary” the effectuation of the DPRK’s withdrawal from the NPT one day before the coming into effect of its withdrawal from the NPT on 12 June 1993, and that the US informed the UNSC of the above on 14 June 1993. Therefore, it did not need to give a further notice to other NPT Parties and the UNSC and its “withdrawal from the NPT [would] be effectuated fully from 11 January 2003, the day after the submission of the present letter to the Security Council.”<sup>138</sup>

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<sup>136</sup> Letter dated 24 January 2003 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, pp. 3-4: Statement of the Government of the Democratic People’s Republic of Korea dated 10 January 2003. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/226/41/PDF/N0322641.pdf?OpenElement> > (accessed on 8 September 2009). For the text of the letter see Annex 8: Letter dated 24 January 2003 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, 27 January 2003.

<sup>137</sup> Ibid.

<sup>138</sup> Letter dated 24 January 2003 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, p. 2: Letter dated 10 January 2003 from the Minister for Foreign Affairs of the Democratic People’s Republic of Korea addressed to the President of the Security Council. Available at <

The DPRK Ambassador in New York said that the DPRK had no intention to develop nuclear weapons or to use its nuclear technology for anything other than peaceful purposes, such as generating electricity.<sup>139</sup> The UN Secretary General Kofi Annan “[w]hile noting the denial by the DPRK of any intentions to acquire nuclear weapons” underlined that it was important to respect “Treaty obligations in achieving international peace and security in accordance with international law” and urged the DPRK to reconsider its decision to withdraw from the NPT.<sup>140</sup> The IAEA Director General Mohamed ElBaradei also called upon the DPRK to reverse its decision to leave the NPT.<sup>141</sup>

Unlike in 1993, the NPT depositories did not make any statement in response to the DPRK’s announced withdrawal, nor other NPT States Parties responded to it. Several weeks after the DPRK’s notification of withdrawal and expert level consultations between the permanent members of the UNSC, during which two UNSC members – China and Russia – indicated their objections to the UNSC’s involvement,<sup>142</sup> on 9 April 2003, the UNSC in the closed-door meeting considered the DPRK’s withdrawal from the NPT and its

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<http://daccessdds.un.org/doc/UNDOC/GEN/N03/226/41/PDF/N0322641.pdf?OpenElement> > (accessed on 8 September 2009). For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, 27 January 2003.*

<sup>139</sup> **Mydans, Seth**, *Threats and Responses: Nuclear Standoff; North Korea Says it is Withdrawing from Arms Treaty*, The New York Times (10 January 2003). Available at < <http://query.nytimes.com/gst/fullpage.html?res=9905E1DF1F3EF933A25752C0A9659C8B63> > (accessed on 7 July 2008); see also < <http://www.un.org/apps/news/story.asp?NewsID=5840&Cr=korea&Cr1=> > (accessed on 7 July 2008).

<sup>140</sup> **UN**, *Statement attributable to the Spokesman for the Secretary-General on the Democratic People’s Republic of Korea’s announcement of its withdrawal from the Nuclear Non-proliferation Treaty* (New York, 10 January 2008). Available at < <http://www.un.org/apps/sg/sgstats.asp?nid=225> > (accessed on 7 July 2008).

<sup>141</sup> **IAEA**, *In Focus: IAEA and DPRK, News Update on IAEA and North Korea, Chronology Highlighting Key Events (December 2002 - February 2003)*. Available at < [http://www.iaea.org/NewsCenter/Focus/iaeaDprk/chrono\\_dec.shtml](http://www.iaea.org/NewsCenter/Focus/iaeaDprk/chrono_dec.shtml) > (accessed on 7 July 2008).

<sup>142</sup> On April 8, China had stalled efforts to obtain a UNSC statement that criticizes the DPRK for refusing to submit to monitoring of its suspected nuclear weapons program by the UN, saying such a statement would “complicate” diplomatic attempts to resolve the standoff. *China Blocks U.N. Statement Condemning N. Korea*, Washington Post (9 April 2003), p. 16. As in 1993, the UNSC took no effective action on the DPRK’s notice of withdrawal from the NPT in 2003 as China again blocked the UNSC’s decision to respond to the DPRK’s announcement of withdrawal from the NPT. **Bunn, George and Rhinelander, John**, *NPT Withdrawal: Time for the Security Council to Step In*, Arms Control Today (May 2005). Available at < [http://www.armscontrol.org/act/2005\\_05/Bunn\\_Rhinelander.asp](http://www.armscontrol.org/act/2005_05/Bunn_Rhinelander.asp) > (accessed on 7 July 2008).

non-compliance with its IAEA Safeguards Agreement obligations.<sup>143</sup> Following the meeting, the UNSC President, Ambassador Adolfo Aguilar Zinser of Mexico, told reporters that UNSC Members “expressed their concern and the Council will continue to follow up developments on this matter.”<sup>144</sup>

## 2.4. The DPRK’s current status under the NPT

There is no a common understanding of the DPRK’s status under the NPT due to the complexity of the DPRK’s case of withdrawal from the NPT that developed in the following steps:

- 1) the DPRK announced its decision to withdraw from the NPT on 12 March 1993 (1<sup>st</sup> announcement);
- 2) the DPRK suspended the announced withdrawal from the NPT in the US–DPRK Joint Statement on 11 June 1993, one day prior to its effectuation; and
- 3) the DPRK informed the UNSC on 10 January 2003 that it had revoked the suspension of the effectuation of its withdrawal, with the effect that it would no longer be bound by the NPT as of 11 January 2003 (2<sup>nd</sup> announcement).

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<sup>143</sup> The UNSC met as a direct result of the IAEA Board of Governors decision on 12 February 2003 to report to the UNGA and the UNSC on the DPRK’s “continued non-compliance with its IAEA Safeguards Agreement and the Agency’s inability to verify non-diversion of nuclear material that is subject to safeguards.” **IAEA, IAEA Board of Governors Adopts Resolution on Safeguards in North Korea**, Media Advisory 2003/48, 12 February 2003. (The resolution was adopted by an overwhelming majority with no objection with only Russia and Cuba abstaining.) See **Du Preez, Jean and Potter, William**, *North Korea’s Withdrawal From the NPT: A Reality Check*. Available at < <http://cns.miis.edu/pubs/week/030409.htm> > (accessed on 7 July 2008).

<sup>144</sup> *Briefing to the Press* (9 April 2003). Available at < [http://www.un.int/mexico/sc/comunicado\\_09abr2003\\_ing.htm](http://www.un.int/mexico/sc/comunicado_09abr2003_ing.htm) > (accessed on 8 September 2009). For the text of the briefing see Annex 9: *UNSC briefing on the DPRK to the press, 9 April 2003*. See also **Du Preez, Jean and Potter, William**, *North Korea’s Withdrawal From the NPT: A Reality Check*. Available at < <http://cns.miis.edu/pubs/week/030409.htm> > (accessed on 7 July 2008).

Pursuant to Article X(1) of the NPT, a State Party must fulfil three procedural requirements to withdraw from the NPT:

- 1) a statement of extraordinary events that have jeopardised its supreme interests must be included in its notice of withdrawal;
- 2) the notice must be given to all other Parties to the Treaty and the UNSC; and
- 3) a period of three months must elapse before the notice of withdrawal takes effect.

Considering these requirements, there might be the following possible ways of interpreting the DPRK's status under the NPT:<sup>145</sup>

- 1) the DPRK withdrew from the NPT as of 12 June 1993 (three months after its first announcement);
- 2) the DPRK withdrew from the NPT as of 11 January 2003 (one day after its second announcement);
- 3) the DPRK withdrew from the NPT as of 11 April 2003 (three months after its second announcement); and
- 4) the DPRK still remains Party to the NPT.

The first interpretation does not find any support among NPT States Parties, nor do the DPRK's actions support this as: it announced that it had suspended its notification of withdrawal in 1993 on the 89<sup>th</sup> day of the three month advance notification period, and it participated in the 1995 NPTREC as a State Party during the first week and no other State Party raised any question about its participation.<sup>146</sup>

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<sup>145</sup> **Asada, Masahiko.**, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, Journal of Conflict & Security Law (2004), Vol. 9, No. 3, p. 332, pp. 342-343; **International Law Association**, Berlin Conference (2004), Arms Control and Disarmament Law, Final Report of the Committee, *International Legal Regulation for Arms Control and Disarmament*, pp. 4-5. Available at <<http://www.ila-hq.org/pdf/Arms%20Control/Final%20Report%202004.pdf#search=%22international%20law%20association%20berlin%20conference%202004%20arms%20control%20and%20disarmament%20law%22>> (accessed 9 October 2006).

<sup>146</sup> The DPRK withdrew from the proceedings of the Conference after the first week following its Memorandum to the Conference Secretariat on May 9, citing what it perceived as biases in the Conference against the DPRK. See **Rauf, Tariq and Johnson, Rebecca**, *After the NPT's Indefinite Extension: the Future of the Global*, Nonproliferation Review (Fall 1995), Vol. 3, Issue 1, p. 40. Also see Chapter 3 of the dissertation

The second interpretation corresponds to the DPRK's official position. The DPRK considers that as far as it decided to suspend unilaterally its 12 March 1993 notice of withdrawal in the US-DPRK Joint Statement on 11 June 1993, one day before its effectuation and revoked that suspension on 10 January 2003, the withdrawal from the NPT fully took effect on the following day of the announcement, that is on 11 January 2003.<sup>147</sup>

The third option could be considered as possible because there was not any strong objection by the international community – the UNSC and the States Parties to the NPT – to the DPRK's announcement.

Those, who support the idea that the DPRK still remains a Party to the NPT, assess strictly whether the DPRK's second announcement of withdrawal meets all the requirements envisaged in Article X(1) of the NPT: a statement of the extraordinary events jeopardising the DPRK's supreme interests and/or submission a statement of the extraordinary events that jeopardized its supreme interests and the notification of the withdrawal to *all* States Parties to the Treaty and the UNSC three months prior to withdrawal (emphasis added). In reference to the notice of withdrawal that was submitted to Japan by the DPRK in 2003, Japan expressed its doubt whether the DPRK fulfilled the withdrawal procedure by claiming that in the 2003 DPRK statement there was no reference to extraordinary events that the DPRK regarded as those that had jeopardised its supreme interests. Concerning notification of withdrawal to "all other Parties to the Treaty" and to the UNSC, according to one author, several States claimed that the DPRK's announcement of withdrawal in 2003 was not received by all States Parties to the NPT.<sup>148</sup> However, some States, China for instance, argued that since Article X(1) of the NPT envisaged that each

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<sup>147</sup> *Letter dated 10 January 2003 from the Minister for Foreign Affairs of the Democratic People's Republic of Korea addressed to the President of the Security Council*, in **S/2003/91**, p. 2. For the text of the letter see Annex 8: *Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council*, S/2003/91, 27 January 2003.

<sup>148</sup> Romania was mentioned as one of those States that have not received the DPRK's notice in 2003. See **Asada, Masahiko**, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, *Journal of Conflict & Security Law* (Winter 2004), Vol. 9, No. 3, p. 347.

Party had the “right to withdraw” from the Treaty in exercising its “national sovereignty”, the fact that some States Parties to the NPT did not receive the notice of withdrawal or that “the extraordinary events” were not fully explained out in the notice, would not make invalid such a notice of withdrawal as far as “withdrawal [from the Treaty] is a matter of national sovereignty”.<sup>149</sup>

Though, the IAEA is not a Party to the NPT, the IAEA Director General in his report of 22 January 2003 expressed opinion on the DPRK’s status in the NPT. The report maintained that though the interpretation of the NPT belongs to its States Parties, the status of the DPRK’s adherence to the NPT was relevant to the Agency because the NPT Safeguards Agreement could remain in force only while the DPRK were a Party to the NPT. In that context, the IAEA made reference to the fact that the NPT contains no provision for the “suspension” of a notice of withdrawal from the NPT, and that Article 68 of the Vienna Convention on the Law of Treaties provides only for the revocation of an instrument or notification of withdrawal from a treaty. Thus, the IAEA’s report concluded that the 11 June 1993 “moratorium on the effectuation of its withdrawal from the NPT” by the DPRK should be treated as a revocation of its notice of withdrawal. To effect its withdrawal from the NPT, the DPRK would have to issue a new notice of withdrawal in compliance with the terms of Article X (1) of the NPT, giving three months’ advance notice – not one day – to all other Parties to the NPT and to the UNSC, and include a statement of the current extraordinary events it regards as having jeopardized its supreme interests.<sup>150</sup> The Board “took note” of the report and in its resolution of 12 February 2003, the Board mentioned that it had “considered the report of the Director General

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<sup>149</sup> Ibid., p. 347.

<sup>150</sup> *Report by the Director General on the Implementation of the Resolution Adopted by the Board on 6 January 2003 and of the Agreement between the IAEA and the Democratic People’s Republic of Korea for the Application of Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons*, GOV/2003/4 (22 January 2003) para. 7. Available at <  
[http://www.iaea.org/NewsCenter/Statements/2003/report\\_gov2003-4.pdf](http://www.iaea.org/NewsCenter/Statements/2003/report_gov2003-4.pdf)> (accessed on 5 July 2008).

(GOV/2003/4)”.<sup>151</sup> Thus, it could be assumed from the same resolution that the Board Members agreed to the conclusion that the DPRK argument of immediate withdrawal was not acceptable, because it confirms that the IAEA’s Safeguards Agreement with the DPRK pursuant to the NPT “remains binding and in force”.<sup>152</sup>

## Conclusions of the Chapter

The issue of withdrawal from the NPT is one of the challenges to the integrity of the NPT. The ease of withdrawal from the NPT has created the possibility for an NPT State to benefit from the Treaty while being Party to it and then withdraw from the NPT to proceed with the development of nuclear weapon capabilities. For these reasons, it was proposed that the route to rapid withdrawal from the NPT be blocked.<sup>153</sup>

The DPRK’s announcements of withdrawal from the NPT – the first from the Treaty – raise the questions about whether such a withdrawal process under Article X(1) of the NPT is valid and whether the UNSC has exercised fully its mandate in those cases. To date, the UNSC has not pronounced itself on whether the DPRK remains a Party to the NPT or not. Thus, the DPRK’s *de facto* withdrawal from the NPT raises questions

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<sup>151</sup> IAEA Board of Governors Adopts Resolution on Safeguards in North Korea (12 February 2003). Available at < [http://www.iaea.org/NewsCenter/MediaAdvisory/2003/med-advise\\_048.shtml](http://www.iaea.org/NewsCenter/MediaAdvisory/2003/med-advise_048.shtml) > (accessed on 8 September 2009).

<sup>152</sup> Ibid, para. c.

<sup>153</sup> “No country should be allowed to withdraw from the NPT without clear consequences. The treaty now allows any member to do so with three months notice. This provision of the treaty should be curtailed; at a minimum, notice of NPT withdrawal should prompt an automatic review by the United Nations Security Council. Furthermore, any NPT state found to be in non-compliance should first resolve all outstanding compliance questions in order to benefit from the treaty.” See **ElBaradei, Mohammed**, *Preserving the Non-Proliferation Treaty*, Special Comment (Disarmament forum, 2004), No. 4, p. 7.

concerning the DPRK's status under the NPT,<sup>154</sup> which has implications with respect to the DPRK's obligations under the NPT.

The research proved that the deadlock in the UNSC's action, especially in 2003, was mainly due to the objections of China and Russia to the UNSC's involvement in responding to the DPRK's announcement of withdrawal from the NPT. In both cases of announcement of withdrawal in 1993 and 2003, it seems that the Members of the UNSC were not sure about the UNSC competence to address withdrawal from the NPT.<sup>155</sup> This was one of the reasons that prevented the UNSC from responding efficiently to the DPRK's announcements of withdrawal. In 2003, the only action the UNSC took in this regard was a statement of the President of the UNSC saying that UNSC members "expressed their concern and the Council will continue to follow up developments on this matter". In order to assess whether the UNSC exhausted its authority in the cases of the DPRK's announcements of withdrawal, Chapter 4 of the dissertation will study the powers of the UNSC to assess its competence under the UN Charter and the means of response.

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<sup>154</sup> **Goldschmidt, Peter**, *Rule of Law, Politics and Nuclear Non-proliferation*, paper given at the Ecole Internationale de Droit Nucléaire, Université de Montpellier (Session 2007), p. 2.

<sup>155</sup> For more on the views of the NPT States Parties about the role of the UNSC in the implementation of Article X(1) of the NPT see Chapter 3 of the dissertation.



## **Chapter 3: NPT review cycle in 1993-2009: discussions by the NPT States Parties of Article X(1) of the NPT and the role of the UNSC in the withdrawal mechanism**

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## **Introductory note**

The present Chapter tracks the evolution of the discussion during the NPT review cycle by the States Parties to the NPT of the issue of withdrawal from the NPT, as well as the role of the UNSC in the withdrawal process. Since the withdrawal Article X(1) of the NPT was first put into action by the DPRK in 1993 and in 2003, the research covers the time span from 1993 through to 2009, including the overview of the most recent debate at the NPT PrepCom that took place in New York in 2009. The Chapter reviews the official documents issued during the NPT review cycle starting from 1993: the States' statements delivered on the matter of withdrawal, working papers, documents of the RevConf and PrepCom sessions, as well as States' national reports in some cases.

For the purposes of this Chapter, the NPT review cycle refers to the NPT review process as referred to in Article VIII (3) of the NPT and according to which

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

Accordingly, the first NPT RevConf was held in 1975 and at quinquennial intervals thereafter. In Decision 1 of the 1995 NPTREC, States Parties decided to hold a review

conference quinquennially as a part of the strengthened review process for the Treaty, without the requirement of going through the Depositary Governments.<sup>1</sup>

A chronological study of the evolution of the debate on the NPT withdrawal clause is needed to assess, first, the increase in interest of the States Parties to the NPT, on the issue of withdrawal from the Treaty; second, to identify the States most actively involved in the debate; and third, to define and summarize their views on the issue, and to assess their proposals on the role of the UNSC in the process of withdrawal from the NPT.

The NPT and the discussion of its issues in the NPT review cycle have been studied by many academics in the area of international relations and international law. However, the debates of the NPT States Parties on the withdrawal from the NPT and the role of the UNSC have not been adequately covered in the literature yet, while attention has been paid to the discussion of disarmament, universalization of the Treaty, establishment of a Middle East nuclear-weapon-free zone (NWFZ), peaceful uses of nuclear energy, safeguards application etc.<sup>2</sup>

It is clear that a review and assessment of States' views on the issue of withdrawal from the Treaty would be appropriate in view of the forthcoming 2010 NPT RevConf, which is expected to address the matter. Thus, it would be useful to sum up the discussions that took

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<sup>1</sup> The 1995 NPTREC Decision 1 on *Strengthening the Review Process for the Treaty*, NPT/CONF.1995/32. Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199532.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199532.pdf) > (accessed 18 May 2009). See Chapter 1, pp. 50-52.

<sup>2</sup> **Dhanapala, Jayantha and Rydell Randy**, *Multilateral Diplomacy and the NPT: An Insider's Account* (UNIDIR: Geneva, 2005) (UNIDIR/2005/3); **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed*, *Disarmament Diplomacy* (Autumn 2005), No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 10 June 2008); **Rauf, Tariq**, *Towards NPT 2005: An Action Plan for the 13 Steps Towards Nuclear Disarmament*, Report of the Center for Nonproliferation Studies (CNS) (2001). Available at < <http://cns.miis.edu/pubs/reports/pdfs/npt2005.pdf> > (accessed on 28 December 2007); **Rauf, Tariq**, *The 2000 NPT Review Conference: Challenges and Prospects*, Report of the Center for Nonproliferation Studies (CNS) (2000). Available at < <http://cns.miis.edu/pubs/ionp/21apr00.pdf> > (accessed on 28 December 2007).

place before the 2010 NPT RevConf given that the current state of the debate would serve as the starting point for discussions in 2010.

The research focus of this Chapter acquires additional importance in view of the recent developments with respect to the DPRK's nuclear activities and discussions among neighbouring States and in the UNSC that followed its announced withdrawal from the NPT<sup>3</sup> and the reactions of many States Parties to the NPT, which remain dissatisfied with the implementation of the Treaty in other areas, notably the pace of nuclear disarmament and the lack of progress on a Middle East NWFZ and this context may voice the possibility of their withdrawal from the NPT.<sup>4</sup> Furthermore, this research may provide input for the studies on the dynamics of the views of the members of the UNSC, especially of its permanent five members, on the response mechanisms to withdrawal from the NPT and other treaties of WMD as well as the studies on related decision-making processes of the UNSC.

### **3.1. Addressing withdrawal at the 1993 NPT PrepCom and the 1995**

#### **NPTREC**

As noted in the previous Chapter, the DPRK first announced its withdrawal from the NPT on 12 March 1993 and then suspended it on 11 June 1993, one day short of the three

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<sup>3</sup> For more on the DPRK's nuclear activities see Chapter 2 of the dissertation, pp. 85-103.

<sup>4</sup> See Introduction and Chapter 1 of the dissertation.

months period provided for in Article X(1) of the NPT. The DPRK “decided unilaterally to suspend as long as it considers necessary the effectuation of its withdrawal from the NPT”.<sup>5</sup>

On 2 May 1993, the DPRK informed the UN about its decisions to participate in the 1993 NPT PrepCom, which was scheduled for 10 May.<sup>6</sup> And, on 3 May 1993, the DPRK’s Information Minister announced that the DPRK would rejoin the NPT at the conditions that the IAEA had to remain neutral, to give assurances that military facilities would remain closed to foreign inspections, and the US had to guarantee that it would not use nuclear weapons against DPRK and withdraw all nuclear weapons and facilities from South Korea.<sup>7</sup>

The 1993 NPT PrepCom was established by a resolution of the UNGA,<sup>8</sup> which took note of the decision of the Parties to the NPT, following appropriate consultations, to form a preparatory committee for a conference to review the operation of the Treaty and to decide on its extension, in accordance with Article X(2), and also as provided for in Article VIII (3) of the Treaty.<sup>9</sup> The 1993 NPT PrepCom was held at UN Headquarters in New York from 10 to 14 May 1993. The other two sessions were established by the decision on the 1993 NPT PrepCom and took place at UN Headquarters in New York from 17 to 21 January 1994 and at the “Palais des Nations” in Geneva from 12 to 16 September 1994.<sup>10</sup> The DPRK attended

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<sup>5</sup> *DPRK-US Joint Statement* (11 June 1993). Available at < [http://www1.korea-np.co.jp/pk/011th\\_issue/97100102.htm](http://www1.korea-np.co.jp/pk/011th_issue/97100102.htm) > (accessed on 3 September 2009).

<sup>6</sup> See below on the 1993 NPT PrepCom.

<sup>7</sup> *NTI: Country Overviews: North Korea: Nuclear Chronology, 1993*. Available at < [http://www.nti.org/e\\_research/profiles/NK/Nuclear/46\\_622.html](http://www.nti.org/e_research/profiles/NK/Nuclear/46_622.html) > (accessed on 3 September 2009).

<sup>8</sup> **UNGA Res. 47/52 A** (9 December 1992). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N92/843/65/IMG/N9284365.pdf?OpenElement> > (accessed on 3 September 2009).

<sup>9</sup> *Progress Report of the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (First session)*, **NPT/CONF.1995/PC.I/2** (14 May 1993), para. 3. Available at < <http://www.un.org/Depts/ddar/nptconf/21ea.htm> > (accessed on 11 August 2009).

<sup>10</sup> *Ibid.*; *Progress Report of the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (Second session)*, **NPT/CONF.1995/PC.II/3** (21 January 1994). Available at < <http://www.un.org/Depts/ddar/nptconf/2126.htm> > (accessed on 11 August 2009); *Report of the Preparatory Committee for the 1995 Conference of the Parties to the Treaty on the Non-Proliferation of*

the sessions of the PrepCom for the 1995 NPTREC as well as the first [two] weeks of the conference before deciding to remove itself from the NPT review process.<sup>11</sup> The issue of withdrawal did not feature in the deliberations at the 1995 NPTREC and accordingly, the “Principles and Objectives for Nuclear Non-Proliferation and Disarmament” (Decision II) contained no reference to withdrawal from the Treaty.

### 3.2. Addressing withdrawal at the 2000 NPT RevConf

The 2000 NPT RevConf was the first to be held after the historic 1995 NPTREC that extended the NPT indefinitely in the context of parallel undertakings on a strengthened review process, principles and objectives for nuclear non-proliferation and nuclear disarmament, and a resolution on the Middle East.<sup>12</sup> During the review period from 1995 to 2000 a number of negative developments had taken place,<sup>13</sup> which had led to fears that the

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*Nuclear Weapons (Third session)*, NPT/CONF.1995/PC.III/15 (21 September 1994). Available at < <http://www.un.org/Depts/ddar/nptconf/2172.htm> > (accessed on 11 August 2009).

<sup>11</sup> The DPRK withdrew from the proceedings of the Conference after the first week following its Memorandum to the Conference Secretariat on May 9, citing what it perceived as biases in the Conference against the DPRK. See **Rauf Tariq and Johnson Rebecca**, *After the NPT's Indefinite Extension: the Future of the Global*, Nonproliferation Review (Fall 1995), Vol. 3, Issue 1, p. 40.

<sup>12</sup> For more on the 2000 NPT RevConf see **Rauf, Tariq**, *Reinforcing the Strengthened Review Process* (5 May 2000) Available at < <http://cns.miis.edu/cns/projects/ionp/npt2k.htm> > (accessed on 20 May 2009); **Rauf, Tariq**, *An Unequivocal Success? Implications of the NPT Review Conference*, Arms Control Today (July/August 2000). Available at < <http://www.armscontrol.org/ACT/julaug00/raufjulaug.html> > > (accessed on 20 May 2009); Interview, *Ambassador Abdallah Baali on the 2000 NPT Review Conference*, The Nonproliferation Review (Fall-Winter 2000), p. 8. Available at < <http://cns.miis.edu/pubs/npr/vol07/73/baal73.htm> >> (accessed on 20 May 2009); **Rauf, Tariq**, *Towards NPT 2005: An Action Plan for the “13-Steps” Towards Nuclear Disarmament Agreed at NPT 2000*. Available at < <http://cns.miis.edu/pubs/reports/npt2005.htm> > (accessed on 20 May 2009).

<sup>13</sup> These included, among others, three PrepCom sessions held in 1997, 1998 and 1999 that were unable to agree by consensus on a set of recommendations to the review conference; a standstill in the START process on further verified reductions in strategic nuclear weapons; deleterious implications for continuing nuclear arms reductions and for strategic stability of US plans for missile defences beyond those permitted under the 1972 ABM Treaty; continuing stalemate at the Conference on Disarmament (CD); nuclear weapon

2000 NPT RevConf could end in failure. Regardless of the difficulties, there were also a few positive developments during this review cycle.<sup>14</sup> Though three PrepCom sessions held in 1997, 1998 and 1999 were unable to agree by consensus on a set of recommendations to the review conference as mandated in paragraph 4 of the 1995 NPTREC Decision 1,<sup>15</sup> the PrepComm however, managed to almost complete the procedural preparations for the 2000 NPT RevConf.<sup>16</sup>

The 2000 NPT RevConf reviewed the implementation of the NPT article by article, but in most instances the discussion stopped at Article IX, though such specific issues as security assurances and the Resolution on the Middle East were added.<sup>17</sup> Article X of the NPT was not included in the Agenda of the 2000 NPT RevConf, therefore the issue was not been raised by the participating States Parties in their debates. Thus, it was not reflected in the 2000 NPT RevConf Background paper prepared by the UN Secretariat,<sup>18</sup> nor in a final

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testing in South Asia; failure of the CTBT to enter into force; and re-rationalization of nuclear weapon doctrines as well as domestic opposition to further nuclear arms reductions in the US and the Russian Federation.

<sup>14</sup> Those positive aspects relate to the opening for signature of the CTBT in September 1996; unilateral reductions in strategic and tactical nuclear weapons by France and the UK; and continuing reductions in strategic nuclear weapons under START I and under the Cooperative Threat Reduction programme.

<sup>15</sup> Pursuant to paragraph 4 of the 1995 NPTREC Decision 1 on *Strengthening the Review Process for the Treaty (NPT/CONF.1995/32)*. Available at < [http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT\\_CONF199532.pdf](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199532.pdf) > (accessed 18 May 2009).

<sup>16</sup> **Rauf, Tariq**, *Preparing for the 2002 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process* (Annecy Briefing Seminar: 8-9 March 2002), p. 2. Available at < <http://nelib-wl.iaea.org/lib/ebooks/trauf.pdf> > (accessed 20 May 2009).

<sup>17</sup> *Letter dated 20 April 2000 from the Permanent Representative of Indonesia addressed to the Provisional Secretary-General of the Review Conference, NPT/CONF.2000/18* (24 April 2000) [Indonesia spoke on behalf of the Group of States members of the Movement of Non-Aligned Countries parties to the NPT and in capacity as Chairman of the Working Group on Disarmament, Movement of Non-Aligned Countries]. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/401/50/PDF/N0040150.pdf?OpenElement> > (accessed on 3 June 2009); *Note Verbale dated 25 April 2000 from the Permanent Mission of Portugal to the United Nations addressed to the Secretariat of the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/19* (28 April 2000) [Portugal spoke on behalf of the Council of the European Union transmitting “Council common position of 13 April 2000 relating to the 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons”]. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/409/80/PDF/N0040980.pdf?OpenElement> > (accessed on 3 June 2009)

<sup>18</sup> *Realization of the goals of the Treaty on the Non-Proliferation of Nuclear Weapons in various regions of the world, NPT/CONF.2000/8* (3 April 2000). Available at <

document adopted by the 2000 NPT RevConf.<sup>19</sup> The 2000 Final Document represented the latest collective word of the 187 NPT States regarding legally and politically binding guidelines for the future implementation of the NPT and the conduct of an enhanced strengthened review process. It called for, *inter alia*, an unequivocal undertaking to the total elimination of nuclear weapons, establishing agreed thirteen practical steps for further progress in nuclear disarmament and nuclear non-proliferation, and further enhancing elements of a strengthened review process, which was the key aspect of the 2000 NPT RevConf.<sup>20</sup>

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<http://daccessdds.un.org/doc/UNDOC/GEN/N00/381/29/PDF/N0038129.pdf?OpenElement> > (accessed 3 June 2009).

<sup>19</sup> The Final Document, consisting of three volumes and four parts, dealt with the review of the operation of the NPT taking into account the decisions and the resolution adopted by the 1995 NPTREC *Improving the effectiveness of the strengthened review process for the Treaty* (Part I), and with Organization and work of the Conference (Part II), *Documents issued at the Conference* (Part III), and *Summary Records* (Part IV). See *Final Document: 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/28* (Part I, II, III, and IV) (19 May 2000). *Volume I* (Parts I and II), available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> >; *Volume II, Part 3, Documents Issued at the Conference* (Part III), available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> >; *Volume III, Part IV, Summary Records* (Part IV), available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/453/64/PDF/N0045364.pdf?OpenElement> > (accessed on 3 June 2009).

<sup>20</sup> *Implementation of the decision on strengthening the review process for the Treaty: Working Paper submitted by Japan and Australia, NPT/CONF.2000/WP.2/REV.1* (9 May 2000). Available at < <http://daccessdds.un.org/TMP/4610456.html> > (accessed on 3 June 2009); *Strengthening the review process for the Treaty: Treaty on the Non-Proliferation of Nuclear Weapons: Revised Working Paper submitted by Ireland, NPT/CONF.2000/WP.4/REV.1* (4 May 2000). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/416/29/PDF/N0041629.pdf?OpenElement> > (accessed on 3 June 2009); *Reinforcing the strengthened review process: Working Paper submitted by Canada, NPT/CONF.2000/WP.5*; *Strengthened review: Working Paper submitted by the United States of America, NPT/CONF.2000/WP.6* (3 May 2000). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/415/22/PDF/N0041522.pdf?OpenElement> > (accessed on 3 June 2009); *Proposals to improve the effectiveness of the strengthened review process of the Non-Proliferation Treaty, including a programme of action: Working Paper submitted by the Netherlands and Norway, NPT/CONF.2000/WP.7* (4 May 2000). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/416/37/PDF/N0041637.pdf?OpenElement> > (accessed on 3 June 2009); *Strengthening the review process for the Treaty: Proposal for the establishment of a Non-Proliferation Treaty Management Board: Working Paper submitted by Nigeria, NPT/CONF.2000/WP.9* (9 May 2000). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N00/422/95/PDF/N0042295.pdf?OpenElement> > (accessed on 3 June 2009).



### 3.3. Withdrawal discussion at the 2002 NPT PrepCom

Following the 2000 NPT RevConf, the NPT review cycle proceeded with the PrepCom for the 2005 NPT Conference, established in accordance with General Assembly resolution 56/24 O of 29 November 2001.<sup>21</sup> At the first session of the PrepCom, 139 States of the then 187 States parties to the NPT participated in its work in New York from 8 to 19 April 2002.<sup>22</sup> The DPRK did not attend the 2002 PrepCom.<sup>23</sup>

The purpose of the PrepCom was to prepare for the RevConf in terms of assessing the implementation of the NPT during the 2000 – 2005 period, addressing procedural issues related to the organization of the Conference and the remaining sessions of the PrepCom.<sup>24</sup> The majority of the 2002 NPT PrepCom meetings were dedicated to substantive discussion of nuclear non-proliferation, disarmament, nuclear-weapon-free zones, safeguards, review of the implementation of Article VI of the NPT dealing with disarmament,<sup>25</sup> safeguards, and the

<sup>21</sup> **UNGA Res. 56/24 O** (29 November 2001). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N01/477/49/PDF/N0147749.pdf?OpenElement> >. Also see **UNODA, NPT Review Conferences and Preparatory Committees**. Available at < [http://www.un.org/disarmament/WMD/Nuclear/NPT\\_Review\\_Conferences.shtml](http://www.un.org/disarmament/WMD/Nuclear/NPT_Review_Conferences.shtml) > (accessed on 4 June 2009). The PrepCom held three sessions, one per year, in April-May 2002, 2003, and 2004.

<sup>22</sup> **NPT/CONF.2005/PC.I/21/Corr.1** (17 May 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/387/78/PDF/N0238778.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>23</sup> Ibid. The DPRK stopped attending the NPT review cycle in 1995.

<sup>24</sup> *Press Release: Preparatory Committee for Non-Proliferation Treaty Review Conference to meet, 8-19 April, DC/2826* (3 April 2002). Available at < <http://www.un.org/News/Press/docs/2002/dc2826.doc.htm> > (accessed on 4 June 2009); *Press Release: First Session of Preparatory Committee for 2005 Review Conference of Parties to the Treaty on Non-Proliferation of Nuclear Weapons, DC/2830* (19 April 2002). Available at < <http://www.un.org/News/Press/docs/2002/DC2830.doc.htm> > (accessed on 4 June 2009).

<sup>25</sup> *Implementation of article VI and paragraph 4 (c) of the 1995 Decision on "Principles and objectives for nuclear non-proliferation and disarmament"*: report submitted by Poland, **NPT/CONF.2005/PC.I/4** (26 March 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/304/37/PDF/N0230437.pdf?OpenElement> > (accessed 4 June 2009); *Implementation of article VI and paragraph 4 (c) of the 1995 Decision on "Principles and objectives for nuclear non-proliferation and disarmament"*: report submitted by Thailand, **NPT/CONF.2005/PC.I/5** (26 March 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/304/48/IMG/N0230448.pdf?OpenElement> > <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement> >

peaceful use of nuclear energy. Time was also allocated for consideration of specific issues, such as nuclear disarmament, regional issues, including the steps to promote the achievement of a nuclear-weapon-free zone in the Middle East pursuant to implementation of the resolution on the Middle East adopted by the 1995 NPT RevConf and reaffirmed in the Final Document of the 2000 NPT RevConf,<sup>26</sup> and the safety and security of peaceful nuclear

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(accessed 4 June 2009); *Implementation of additional measures to help promote nuclear disarmament and the non-proliferation of nuclear weapons, through the efforts of the Office of the Atomic Energy Agency for Peace*: report submitted by Thailand, **NPT/CONF.2005/PC.I/5/Add.1** (4 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/317/09/PDF/N0231709.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement>> (accessed 4 June 2009); *Implementation of article VI obligations under the Treaty on the Non-Proliferation of Nuclear Weapons*: report submitted by Australia, **NPT/CONF.2005/PC.I/6** (27 March 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/307/50/IMG/N0230750.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement>> (accessed 4 June 2009); *Report within the framework of the strengthened review process for the Non-Proliferation Treaty, on the implementation of article VI and paragraph 4 (c) of the 1995 Decision on "Principles and objectives for nuclear non-proliferation and disarmament"*, submitted by Indonesia, **NPT/CONF.2005/PC.I/8** (4 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/317/15/IMG/N0231715.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement>> (accessed 4 June 2009); *Implementation of article VI and paragraph 4 (c) of the 1995 Decision on "Principles and objectives for nuclear non-proliferation and disarmament"*: report submitted by Sweden, **NPT/CONF.2005/PC.I/10** (8 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/320/45/PDF/N0232045.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement>> (accessed 4 June 2009).

<sup>26</sup> *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: compilation of reports submitted by Algeria, Australia, Egypt and Jordan*, **NPT/CONF.2005/PC.I/3** (3 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/303/10/PDF/N0230310.pdf?OpenElement> > (accessed on 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: compilation of reports submitted by Canada, China, Morocco, Sweden and United Kingdom of Great Britain and Northern Ireland*, **NPT/CONF.2005/PC.I/3/Add.1** (9 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/323/43/PDF/N0232343.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/303/10/PDF/N0230310.pdf?OpenElement>> (accessed on 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: compilation of reports submitted by Saudi Arabia and Tunisia*, **NPT/CONF.2005/PC.I/3/Add.2** (12 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/330/45/PDF/N0233045.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/323/43/PDF/N0232343.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/303/10/PDF/N0230310.pdf?OpenElement>> (accessed on 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: report submitted by the United States of America*, **NPT/CONF.2005/PC.I/3/Add.3** (15 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/333/41/IMG/N0233341.pdf?OpenElement>

programmes.<sup>27</sup> The issue of withdrawal was not of concern at that time. It was neither included in the 2002 NPT PrepCom Draft Indicative Time Table,<sup>28</sup> nor addressed by the participants in their statements and working papers.<sup>29</sup> Therefore, the Report of the PrepCom on its first session and the summary records of its 19 meetings did not reflect any discussion of the implementation of Article X(1) of the NPT.<sup>30</sup> The 2002 NPT PrepCom ended with a Chairman's Factual Summary, which was not negotiated nor opened for formal discussion after it had been tabled.<sup>31</sup> The Summary generally summarized the issues, which were

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<http://daccessdds.un.org/doc/UNDOC/GEN/N02/323/43/PDF/N0232343.pdf?OpenElement>  
<http://daccessdds.un.org/doc/UNDOC/GEN/N02/303/10/PDF/N0230310.pdf?OpenElement>  
 (accessed on 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: compilation of reports submitted by Japan and Libyan Arab Jamahiriya*, NPT/CONF.2005/PC.I/3/Add.4 (16 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/333/65/PDF/N0233365.pdf?OpenElement> > (accessed 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: compilation of reports submitted by France and Tunisia*, NPT/CONF.2005/PC.I/3/Add.5 (18 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement> > (accessed 4 June 2009); *Steps to promote the achievement of a nuclear-weapon-free zone in the Middle East and the realization of the goals and objectives of the 1995 Resolution on the Middle East: report submitted by Qatar*, NPT/CONF.2005/PC.I/3/Add.6 (18 April 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/340/03/PDF/N0234003.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/N02/339/18/PDF/N0233918.pdf?OpenElement> > (accessed 4 June 2009).

<sup>27</sup> *Press Release: First Session of Preparatory Committee for 2005 Review Conference of Parties to the Treaty on Non-Proliferation of Nuclear Weapons*, DC/2830 (19 April 2002). Available at < <http://www.un.org/News/Press/docs/2002/DC2830.doc.htm> > (accessed on 4 June 2009).

<sup>28</sup> *Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Provisional agenda*, NPT/CONF.2005/PC.I/1 (26 March 2002). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/302/98/PDF/N0230298.pdf?OpenElement> > (accessed on 4 June 2009).

<sup>29</sup> 14 working papers were submitted to the 2002 NPT PrepCom by the States Parties. See *Report of the Preparatory Committee on its first session*, NPT/CONF.2005/PC.I/21 (19 April 2002), pp. 8-9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>30</sup> Summary records of the opening meeting, NPT/CONF.2005/PC.I/SR.1 (4 June 2002), summary records of the general debate (NPT/CONF.2005/PC.I/SR.1-4 and 6 (4 June – 21 August 2002), and records of the closing meetings, NPT/CONF.2005/PC.I/SR.18 and 19 (5 June 2002). Summary records are available at < [http://www.un.org/disarmament/WMD/Nuclear/First\\_Session\\_SRs.shtml](http://www.un.org/disarmament/WMD/Nuclear/First_Session_SRs.shtml) > (accessed on 5 June 2009).

<sup>31</sup> *Report of the Preparatory Committee on its first session*, NPT/CONF.2005/PC.I/21 (19 April 2002), Annex II: *Chairman's factual summary*, pp. 12-16. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N02/350/36/PDF/N0235036.pdf?OpenElement> > (accessed on 5 June 2009).

discussed at the PrepCom, commenting on a few points of disagreement, and presented a reflection of the Chairman on the substantive proceedings of the PrepCom.

### 3.4. Withdrawal discussion at the 2003 NPT PrepCom

The second session of the PrepCom for the 2005 NPT RevConf took place from 28 April to 9 May 2003 at the Palais des Nations in Geneva.<sup>32</sup> It was the time of very serious proliferation challenges which included, *inter alia*, the DPRK's announced withdrawal from the NPT on 10 January 2003; the US allegations of clandestine nuclear facilities in Iran in August 2002.<sup>33</sup> Moreover, the US-led war on Iraq was viewed by many as an inadvertent promoter of proliferation.

The US chose to make non-compliance with the NPT its major theme for the PrepCom, devoting a large part of its combative opening statement to accusing the DPRK

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<sup>32</sup> 106 States Parties to the NPT participated in the 2003 NPT PrepCom. See **Report of the Preparatory Committee on its second session, NPT/CONF.2005/PC.II/50** (13 May 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement> > (accessed on 5 June 2009). The open meetings of the session were also attended by representatives of the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), the Preparatory Commission for the CTBT Organization, the European Commission, the League of Arab States and the Organization of the Islamic Conference, and by representatives of 37 non-governmental organizations (NGOs). *List of non-governmental organizations, NPT/CONF.2005.PC.II/INF.3* (28 April 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/36/IMG/G0361536.pdf?OpenElement> > (accessed on 5 June 2009); **NPT/CONF.2005.PC.II/INF.3/Add.1** (5 May 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/38/IMG/G0361538.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>33</sup> Those referred to the existence in Iran of two secret nuclear sites: a uranium enrichment facility in Natanz and a heavy water facility in Arak. Their previously secret existence was disclosed by the National Council of Resistance of Iran (NCRI) an Iranian opposition group on 15 August 2002. Satellite imagery made available in December 2002 indicated that Natanz could be used as a gas centrifuge facility for uranium enrichment. **Salama, Sammy; Ruster, Karen, *A Preemptive Attack on Iran's Nuclear Facilities: Possible Consequences***, Monterey Institute of International Studies. Available at < <http://cns.miis.edu/stories/040812.htm> > (accessed on 1 September 2009). Those allegations were first detailed by the US State Department in December 2002, when US State Department spokesman Richard Boucher said during a 13 December 2002 State Department briefing that the US has "reached the conclusion that Iran is actively working to develop nuclear-weapons capability." See RFE/RL Iran Report (16 December 2002).

and Iran non-compliance with Treaty obligations, along with references to the Ba'ath regime's attempts to develop an Iraqi nuclear bomb. In contrast with this narrow US view of non-compliance, many NNWS wanted to draw attention also to the deficiencies and derelictions in the NWS' compliance with the Treaty's nuclear disarmament obligations, especially the 13-Steps agreed at the NPT RevConf in 2000.<sup>34</sup>

While many States wanted the PrepCom to address the DPRK's violation and announced withdrawal from the Treaty, the US was determined to discuss in depth the issues related to Iran's nuclear activities. The announced, but disputed, withdrawal from the Treaty by the DPRK was set to one side to avoid delaying the start of the meeting. Recognising that there were "diverging views" on the status of the DPRK, and that "a debate on the issue would only serve to the detriment of the purpose of the Preparatory Committee...to consider principles, objectives and ways in order to promote the full implementation of the Treaty, as well as its universality", the Chair of the PrepCom, decided "under his own responsibility, not to open a debate on this issue and to retain the nameplate of [the DPRK], temporarily, in his custody."<sup>35</sup> This decision of the Chair led to the avoidance of divisive and time consuming arguments about whether the DPRK nameplate should or should not be removed, and thus opening an inconclusive discussion on whether it had withdrawn from the NPT, or placed in its usual alphabetical place in the Conference room, indicating that its withdrawal was still in doubt, despite the DPRK's announcement and notification of withdrawal.

While some States considered the DPRK's withdrawal as an accomplished fact, however much they might regret it, others argued that the withdrawal clause in the treaty,

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<sup>34</sup> For a summary and analysis of the 13-step "plan of action" on nuclear disarmament, see **Johnson, Rebecca**, *The 2000 NPT Review Conference: a Delicate, Hard-Won Compromise*, Disarmament Diplomacy (May 2000), No. 46.

<sup>35</sup> **Laszlo Mólnár**, *Statement from the Chair*, Opening Session, 28 April 2003, reproduced in the *Draft Report of the Preparatory Committee on its second session*, NPT/CONF.2005/PC.II/CRP.1.

Article X(1), could apply only to those States that were in good standing with the NPT prior to withdrawal.<sup>36</sup> Many delegates appreciated and welcomed the Chair's solution to the issue of the DPRK's status at the NPT PrepCom, but some States expressed their reservations outside the meeting room.<sup>37</sup> Some NGO observers, which attended the 2003 NPT PrepCom, noted that some States' delegations were not satisfied with such a solution of the problem and argued that such a decision of the Chair's conferred the DPRK the special status it desired.<sup>38</sup>

## Statements

During the General Debate at the 2003 NPT PrepCom, numerous States Parties expressed varying degrees of condemnation of the DPRK's unilateral announcement of withdrawal from the Treaty, its expulsion of IAEA inspectors, and the signs of the revival of the DPRK's nuclear weapon programme. The statement of the European Union (EU) was an example of the stronger level of criticism which deplored the DPRK's action and urged it to reconsider and "fulfil its commitments under the NPT, retract its announcement to withdraw from the NPT and readmit IAEA inspectors."<sup>39</sup> The EU emphasised its "firm resolve to contribute to the search for a peaceful solution, through negotiations..."<sup>40</sup> The New Agenda

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<sup>36</sup> See below the section on Statements.

<sup>37</sup> **Johnson, Rebecca**, *Rogues and Rhetoric: The 2003 NPT PrepCom Slides Backwards (NPT Report)*, Disarmament Diplomacy (June-July 2003), Issue No. 71. Available at < <http://www.acronym.org.uk/dd/dd71/71npt.htm> > (accessed 7 June 2009).

<sup>38</sup> Ibid.

<sup>39</sup> Statement of Greece on behalf of the European Union, General Debate (28 April 2003).

<sup>40</sup> For the statements delivered by the States party at the 2003 NPT PrepCom see official website of the NGO **Reaching Critical Will**, *2003 NPT Preparatory Committee*. Available at < <http://www.reachingcriticalwill.org/legal/npt/2003index.html> > (accessed 20 July 2009).

Coalition (NAC),<sup>41</sup> emphasised the importance of “dialogue over confrontation” and called for a peaceful resolution “leading to the DPRK’s return to full compliance with the Treaty’s terms”.<sup>42</sup> However, the NAM<sup>43</sup> referring to DPRK’s announcement of withdrawal from the NPT only noted the DPRK’s decision and “express[ed] the view that the parties directly concerned resolve, through dialogue and negotiations, all issues related to the withdrawal of the DPRK from the NPT as an extension of their goodwill.”<sup>44</sup> The US stated that the DPRK’s “withdrawal action was both cynical, in light of its long-standing breach of the Treaty, and dangerous in its impact on security in Northeast Asia”. It referred to the cases of the DPRK’s reported admission of a covert uranium enrichment programme in October 2002. The US added that “[i]f NPT withdrawal and threats to acquire nuclear weapons become the currency of international bargaining, our world will be in chaos.” Therefore the US urged all NPT parties to call the DPRK to “abandon your nuclear weapons ambitions and return to compliance with the NPT.” The statement revealed the US’ determination “to end North Korea’s threat through peaceful, diplomatic means”, but by reminding, however, that “all [our] options remain available”.<sup>45</sup> In the following debate under the “Cluster 1”, the US argued that a diplomatic solution... must be multilateral in conception and execution.”

The UK also deplored the DPRK’s announcement of withdrawal. France echoing many of the UK’s points also noted the DPRK’s “ambitious ballistic missile

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<sup>41</sup> The NAC was officially launched in Dublin in June 1998, with a Joint Declaration by the Ministers for Foreign Affairs of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, Sweden, and Slovenia, the latter of which subsequently left the Coalition. Available at < [http://www.ccnr.org/8\\_nation\\_declaration.html](http://www.ccnr.org/8_nation_declaration.html) > (accessed on 1 September 2009). The NAC seeks to build an international consensus to make progress on nuclear disarmament under the NPT.

<sup>42</sup> See Chapter 3, ft. 40, p. 122.

<sup>43</sup> See Chapter 1, ft. 77, p. 50

<sup>44</sup> Statement of Malaysia on behalf of the NAM, General Debate (28 April 2003).

<sup>45</sup> Statement of the USA, General Debate (28 April 2003).

programme...[and] chemical arsenal” and argued for the UNSC to contribute to a peaceful resolution of the crisis.

China did not mention the DPRK in its plenary statement, only in a short statement during the debate on regional issues at the end of the first week. The statement stressed simply that China “stands for maintaining the nuclear-weapon-free status of the Korean peninsula...and resolving the DPRK nuclear issue peacefully through negotiation.” With regard to the Beijing talks between China, the US and the DPRK China noted that “the DPRK nuclear issue is complex and sensitive.”

Russia was “of the opinion that the return of the DPRK to the nuclear non-proliferation regime is necessary and possible.”<sup>46</sup> Japan did not refer to the withdrawal of the DPRK per se, but rather focused on a broader perspective of the DPRK’s case saying that it could not accept “any development, transfer or possession of nuclear weapons by North Korea” and urged the DPRK “to refreeze its nuclear related facilities and to take prompt action to dismantle its whole nuclear weapons program in a verifiable and irreversible manner.”<sup>47</sup>

### **National reports**

In course of reporting by the States Parties to the NPT on the implementation of Article VI on the realization of the goals and objectives of the 1995 Resolution on the Middle

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<sup>46</sup> Statement of the Russian Federation, General Debate (28 April 2003).

<sup>47</sup> Statement of Japan, General Debate (29 April 2003).



East,<sup>48</sup> some States also took the opportunity to address the issue of withdrawal from the NPT. Thus, Hungary and Lithuania regretted the decision of the DPRK to withdraw from the Treaty and called upon the DPRK to reconsider this decision.<sup>49</sup> Lithuania aligned itself with the position of EU in exhorting the DPRK to comply with all its treaty obligations, to retract its announcement to withdraw from the NPT and readmit the IAEA inspectors.<sup>50</sup> New Zealand did not name the withdrawal from the NPT as an accomplished act and thus urged the DPRK to cease efforts to withdraw from the Treaty.<sup>51</sup> Similarly the NAC expressed its hope for the DPRK's return to full compliance with the Treaty,<sup>52</sup> and Canada urged the DPRK to reverse its decision and comply fully with all its nuclear non-proliferation obligations.<sup>53</sup> The same position took South Africa by seeing the DPRK's decision as a

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<sup>48</sup> The 2000 NPT RevConf Final Document specifically provides for two parallel reporting requirements. The first, is regular reports on the implementation of Article VI (and associated elements); and, the second, is reports to both the PrepCom and the RevConf on the realization of the goals and objectives of the 1995 Resolution on the Middle East. The 2000 Final Document provides specific guidance that these reports would be considered at meetings of the preparatory committee and at the 2010 RevConf. Consequently, one meeting should be allocated at each session of the PrepCom for the 2010 RevConf to receive and consider these reports. See **Rauf, Tariq**, *Preparing for the 2007 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process* (Annecy Briefing Seminar: 15-16 March 2007), p. 13. Available at < [http://cns.miis.edu/research/npt/pdf/070424\\_tariq\\_rauf.pdf](http://cns.miis.edu/research/npt/pdf/070424_tariq_rauf.pdf) > (accessed on 28 June 2009).

<sup>49</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraph 4 (c) of the 1995 decision on "Principles and objectives for nuclear non-proliferation and disarmament"*, Report submitted by Hungary, **NPT/CONF.2005/PC.II/2** (11 April 2003), para. 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/323/16/PDF/N0332316.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>50</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons*, Report submitted by the Republic of Lithuania, **NPT/CONF.2005/PC.II/10** (28 April 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/610/62/PDF/G0361062.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>51</sup> *Treaty on the Non-Proliferation of Nuclear Weapons*, Report submitted by the Government of New Zealand, **NPT/CONF.2005/PC.II/14** (29 April 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/11/PDF/G0361111.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>52</sup> *New Agenda Coalition Paper*, Submitted by New Zealand on behalf of Brazil, Egypt, Ireland, Mexico, South Africa and Sweden as members of the NAC, **NPT/CONF.2005/PC.II/16** (29 April 2003), para. 25. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/52/PDF/G0361152.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>53</sup> *Implementation of the Non-Proliferation Treaty*, Report submitted by Canada, **NPT/CONF.2005/PC.II/19** (30 April 2003), para. 17. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/80/PDF/G0361180.pdf?OpenElement> > (accessed on 5 June 2009).

matter of concern and calling on the DPRK to reconsider and reverse its decision.<sup>54</sup> Malaysia also was concerned with the decision by the DPRK to withdraw from the NPT.<sup>55</sup> The League of Arab States (LAS)<sup>56</sup> noted the fundamental principle of universality of the NPT, which had not been achieved not only because of the refusal of some States to accede to the Treaty, but also by those that had withdrawn or threatened to withdraw from the NPT.<sup>57</sup> As many other States present at the 2003 NPT PrepCom, Romania was concerned with the DPRK's decision to withdraw from the NPT and thus supported cooperation with other NPT States to sustain diplomatic efforts aiming to encourage the DPRK to reverse its decision and come into full compliance with the NPT.<sup>58</sup> Peru as a supporter of complete elimination of nuclear weapons and the then Chair of the Rio Group coordinated the *communiqué* of 16 January

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<sup>54</sup> *The strengthened review process for the Treaty on the Non-Proliferation of Nuclear Weapons: Implementation of Article VI and other provisions*, Report submitted by South Africa, **NPT/CONF.2005/PC.II/25** (1 May 2003), page 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/38/PDF/G0361238.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>55</sup> *Provisions of the Final Document of the 2000 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons in particular Articles VI and VII of the Treaty*, Report submitted by Malaysia, **NPT/CONF.2005/PC.II/22** (30 April 2003), para. 9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/611/94/PDF/G0361194.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>56</sup> The Arab League (officially called the League of Arab States (LAS)) was established as a regional organization in Cairo on 22 March 1945. The LAS currently has 22 members: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. The main goal of the league is to "draw closer the relations between member States and co-ordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries." See *Pact of the League of Arab States* (22 March 1945). Available at < [http://avalon.law.yale.edu/20th\\_century/arableag.asp](http://avalon.law.yale.edu/20th_century/arableag.asp) > (accessed on 1 September 2009). For more on the LAS see < [http://www.arableagueonline.org/las/index\\_en.jsp](http://www.arableagueonline.org/las/index_en.jsp) > (accessed on 1 September 2009).

<sup>57</sup> *Paper submitted by The Permanent Delegation of the League of Arab States to the United Nations at Geneva on behalf of the League of Arab States*, **NPT/CONF.2005/PC.II/38** (6 May 2003). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/89/PDF/G0361389.pdf?OpenElement> > <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/38/PDF/G0361238.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>58</sup> *Implementation of Article VI and paragraph 4 (c) of the 1995 Decision on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament"*, Report submitted by Romania, **NPT/CONF.2005/PC.II/42** (8 May 2003), para. 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/614/91/PDF/G0361491.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/89/PDF/G0361389.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/38/PDF/G0361238.pdf?OpenElement> > (accessed on 5 June 2009).

2003 relating to the situation created by the decision of the DPRK to withdraw from the NPT and IAEA safeguards. Peru stated that the DPRK's decision affected the stability of the East Asia region and lead to a step back from the international commitments to maintain international peace and security among the States. The above noted *communiqué* urged the DPRK and the international community "to make every possible effort to find, at the earliest stage, a solution to this crisis through the appropriate diplomatic channels, in strict conformity with the purposes and principles of the Charter of the United Nations".<sup>59</sup>

### Working papers

Only two States – Japan and Malaysia – addressed the issue of the DPRK's withdrawal in their working papers.<sup>60</sup> Japan noted the withdrawal case in the section on B on "Non-compliance". Japan was deeply concerned about the steps taken by the DPRK with regard to problems associated with compliance of the NPT. It stated that the action by the DPRK could lead to the erosion of the credibility of the NPT which could not be the interest of any Member State. In this regard, Japan strongly called upon North Korea to show its political will to co-operate with the international community in reducing the uncertainties and

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<sup>59</sup> *Improving the effectiveness of the strengthened review process for the Treaty on the Non-Proliferation of Nuclear Weapons and implementation of article VI of the Treaty and paragraph 4 (c) of the 1995 Decision on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament"*, Report submitted by Peru, **NPT/CONF.2005/PC.II/49** (9 May 2003), paras. 14 and 59. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/614/91/PDF/G0361491.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/89/PDF/G0361389.pdf?OpenElement> <http://daccessdds.un.org/doc/UNDOC/GEN/G03/612/38/PDF/G0361238.pdf?OpenElement> > (accessed on 5 June 2009).

<sup>60</sup> In total, 19 working papers were submitted to the second session of the 2005 NPT PrepCom. See *Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Second Session, 28 April - 9 May 2003, Geneva, Official Documents*. Available at < [http://www.un.org/disarmament/WMD/Nuclear/2nd\\_review\\_official\\_docs.shtml](http://www.un.org/disarmament/WMD/Nuclear/2nd_review_official_docs.shtml) > (accessed on 7 June 2009).

in increasing mutual confidence by taking concrete actions. Japan reiterated that it could not accept any development, transfer, acquisition or possession of nuclear weapons by the DPRK and strongly urged the DPRK to comply with all its obligations under the NPT and under the safeguards agreement with the IAEA, to refreeze its nuclear related facilities and to pass to dismantling its nuclear weapons program in a verifiable and irreversible manner.<sup>61</sup>

The NAM States also remained concerned with the DPRK's decision withdraw from the NPT. The NAM requested the parties directly concerned to resolve all issues related to the withdrawal of the DPRK from the NPT through dialogue and negotiations.<sup>62</sup>

### **Conclusion: 2003 NPT PrepCom**

The 2003 NPT PrepCom was concluded by midday on 9 May with the adoption of a procedural report listing decisions, participants, 19 working papers on proposed courses of action to strengthen the NPT regime and other procedural data, to which was attached the Chair's Factual Summary. Prior to the start of the PrepCom, there were expectations that the DPRK's withdrawal could be a major issue of the event. However, relying only on the reflection of the matter in the Chair's Factual Summary, one may conclude that the issue of the DPRK's withdrawal from the NPT was a minor and barely mentioned. The fact was that the sole delicate reference to the matter was made in paragraph 28 of the Chair's Factual Summary saying, inter alia, that

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<sup>61</sup> *Working Paper submitted by Japan, NPT/CONF.2005/PC.II/WP.15* (6 May 2003), paras. 41-42. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/613/75/PDF/G0361375.pdf?OpenElement> > (accessed on 7 June 2009).

<sup>62</sup> *Working Paper submitted by Malaysia on behalf of the Group of Non-Aligned and Other States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/PC.II/WP.19* (8 May 2003), para. 6. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G03/615/05/PDF/G0361505.pdf?OpenElement> > (accessed on 7 June 2009).

[a] wide range of concerns was expressed on the recent developments regarding the Democratic People's Republic of Korea's nuclear issue. In this regard, States parties called upon the DPRK to show its political will to cooperate with the international community in increasing mutual confidence.... States parties felt that the DPRK's decision to withdraw from the Treaty represented a serious challenge to the global non-proliferation regime.... The Preparatory Committee took note of a statement by the Chair at the first meeting of the session related to the views of States parties on the DPRK's status in the Treaty.<sup>63</sup>

Furthermore, it was clear that the NPT States Parties' response to the withdrawal from the Treaty lacked determination and in its weakness failed to rise to the challenge of addressing a defection from the NPT. This was yet another example of where geo-political considerations trumped non-proliferation considerations – over its history, the NPT repeatedly has suffered from such considerations. The views of the DPRK's immediate neighbours, such as South Korea, Japan, China and the Russian Federation, supported indirectly by the US, Australia, New Zealand and a few other Western States, prevailed in avoiding inclusion of harsh language directed against the DPRK in the Chair's factual summary. On the other hand, as noted in the preceding paragraphs, many statements during the plenary and (regional) cluster sessions were quite critical of the DPRK's actions. This situation also reflected the reality that the NPT States Parties at the time in May 2003 had not recognized the importance of the

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<sup>63</sup> *Report of the Preparatory Committee on its second session, NPT/CONF.2005/PC.II/50* (13 May 2003), para. 28. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N03/369/10/PDF/N0336910.pdf?OpenElement> > (accessed on 5 June 2009).

DPRK's withdrawal and were struggling to find appropriate responses.<sup>64</sup> The issue of the role of the UNSC in withdrawal from them NPT was not addressed at all.

### 3.5. Withdrawal discussion at the 2004 NPT PrepCom

The third and the last session of the PrepCom for the 2005 NPT RevConf took place at the UN Headquarters in New York from 26 April to 7 May 2004.<sup>65</sup> In view of the strengthened NPT review mechanism adopted at the 2000 NPT RevConf, the 2004 NPT PrepCom had the task to produce a consensus report with recommendations to the RevConf<sup>66</sup> and to finalise the procedural arrangements for the RevConf.<sup>67</sup>

With regard to the participation of the DPRK, the Chairman of the 2004 NPT PrepCom carried out consultations the NPT States Parties to prepare the ground for the outcome of the sessions as well as the agenda of the RevConf. The consultations revealed diverging views on the status of the DPRK in the NPT and the Chairman decided not to open a debate on this issue being convinced that a debate on the issue would only serve to the disadvantage of the purpose of the PrepCom, which had to produce a consensus report containing recommendations to the RevConf taking into account the deliberations and results

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<sup>64</sup> Du Preez, Jean, *The Second NPT PrepCom for the 2005 Review Conference: Prospects for Progress* (August 2003). Available at < [http://www.nti.org/e\\_research/e3\\_32a.html](http://www.nti.org/e_research/e3_32a.html) > (accessed on 11 August 2009).

<sup>65</sup> The Chairman of the third session was Ambassador Sudjadhan Parnohadiningrat of Indonesia.

<sup>66</sup> *Improving the effectiveness of the strengthened review process for the NPT*, NPT/CONF.2000/28 (Part I), para. 7: "At its third and, as appropriate, fourth session, the Preparatory Committee, taking into account the deliberations and results of its previous sessions, should make every effort to produce a consensus report containing recommendations to the Review Conference."

<sup>67</sup> *Ibid.*, para. 8.

of the previous sessions.<sup>68</sup> Accordingly, the Chair of the 2004 NPT PrepCom took the same decision as the Chair of the 2003 NPT PrepCom and asked the NPT Secretariat to hold the nameplate of the DPRK temporarily in the conference room for the duration of the third session of the PrepCom.<sup>69</sup> As the third session of the NPT PrepCom followed the same agenda that was adopted at the first session of the Committee, as contained in paragraph 8 of document NPT/CONF.2005/PC.I/21 and Corr.1,<sup>70</sup> the issue of the DPRK's withdrawal was not formally on the 2004 NPT PrepCom's indicative timetable.

### Statements<sup>71</sup>

As in 2003, during the 2004 NPT PrepCom, numerous States recalled the unprecedented notification by the DPRK of its withdrawal from the NPT.<sup>72</sup> The Republic of Korea stated that the NPT's integrity and credibility had suffered a "serious blow", as a result of recent cases of non-compliance and an announced withdrawal, which altogether revealed inherent limitations and loopholes in the Treaty. It added that the withdrawal provision of the NPT should be revisited and complemented to prevent the "de-universalization" of the NPT.

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<sup>68</sup> *Press Release: Preparatory Committee for 2005 Review Conference of the NPT, 26 April – 7 May, DC/2918* (22 April 2009). Available at < <http://www.un.org/News/Press/docs/2004/dc2918.doc.htm> > (accessed on 7 June 2009).

<sup>69</sup> *Final Report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/1* (20 May 2004), para. 10. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement> > (accessed on 7 June 2009).

<sup>70</sup> *Ibid.*, para. 7.

<sup>71</sup> *Press Release: Final Preparatory Session for 2005 Review Conference on the NPT Opens at Headquarters. Speakers Highlight Recent Challenges to Treaty, With Some Suggesting Effectiveness Called Into Question, DC/2920* (26 April 2004) (1<sup>st</sup> and 2<sup>nd</sup> meetings of the third session of the 2005 PrepCom). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/320/80/PDF/N0432080.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>72</sup> **Reaching Critical Will**, *Official Statements to the Third Preparatory Committee of the 2005 Review Conference*. Available at < <http://www.reachingcriticalwill.org/legal/npt/prepcom04/statements.html> > (accessed on 26 July 2009).

In that connection, the Republic of Korea invited constructive proposals, including the idea of requiring the approval of the UNSC for withdrawal.<sup>73</sup> That was the first time in course of the NPT review process when a State supported a stronger involvement of the UNSC in the withdrawal from the NPT.

The EU deplored the DPRK's withdrawal announcement, called for a return to full compliance and the dismantlement of any clandestine programme and a peaceful resolution. Switzerland noted that international efforts had so far produced no results. Australia and Japan wanted the DPRK to follow Libya's example and Australia recommended that States Parties to consider in 2005 some common understandings to ensure that a withdrawal was not seen as a viable option for escaping nuclear non-proliferation obligations. Malaysia speaking on behalf of the NAM noted the decision of the DPRK to withdraw from the NPT, as it did in 2003, and expressed the view that the States directly concerned should resolve by diplomatic means and negotiations all issues related to the withdrawal. Canada addressed the matter of withdrawal quite attentively noting that the RevConf would have to make a decision in this regard to correct the vulnerability of the NPT. The US referred to the DPRK's announced withdrawal as a strategic move of a violator of the NPT, but no mechanism of dealing with the problem was proposed in 2004.

France said the UNSC needed to be clearly committed to support the settlement of the crisis. Russia believed that the DPRK's return to the NPT was not only necessary, but also realistically possible. Also Ukraine said the DPRK should relinquish its nuclear ambitions and resume its cooperation with the IAEA and return into compliance with its obligations under the NPT. Mexico added that diplomacy should be used to reverse the DPRK's

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<sup>73</sup> *Statement of the Republic of Korea* (26 April 2004), p. 4. Available at <  
<http://www.reachingcriticalwill.org/legal/npt/prepcom04/korea26.pdf>> (accessed on 26 July 2009).



withdrawal from the NPT. Ireland deplored the DPRK's withdrawal from the NPT and called on it to reverse its decision. Japan also urged the DPRK to retract such decisions. Belarus expressed its worry about the DPRK's unilateral decision to withdraw from the NPT – the Treaty which constituted a basis for international security and strategic stability. Belarus pointed out that the DPRK's renewed participation in the NPT should be solved solely by peaceful means on the basis of international law, both at bilateral and multilateral levels, with due respect to the legitimate concerns of all interested parties. Germany stressed that no State withdrawing from the NPT should have the right to benefit from the capacities that it had established in the nuclear field as a result of having made use of Article IV of the Treaty and/or having benefited from the assistance and cooperation provided under the Treaty by the IAEA or other States Parties.

### **National reports**

Besides the usual discussion of the cases of alleged non-compliance of Iran, the DPRK, and Libya, and the implementation by the NWS of Article VI of the NPT, the DPRK's announcement of withdrawal from the NPT was also reflected in the States' interventions and reports.<sup>74</sup>

In their national reports, Canada and Austria both deplored the announcement by the DPRK of its intention to withdraw from the NPT and urged the DPRK to reverse its decision and comply fully with all nuclear non-proliferation norms, including the obligations

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<sup>74</sup> **Johnson, Rebecca**, *Report on the 2004 NPT PrepCom*, Disarmament Diplomacy (May/June 2004), Issue No. 77. Available at < <http://www.acronym.org.uk/dd/dd77/77npt.htm> > (accessed on 7 June 2009).

contained in the NPT safeguards agreement with the IAEA.<sup>75</sup> Luxemburg was also of the similar view by disapproving the 2003 DPRK's announcement of its intention to withdraw from the NPT and urged the DPRK to return to full compliance with its international non-proliferation obligations under the NPT.<sup>76</sup> Lithuania being concerned with the importance of universalisation of the NPT expressed its deep regret over the withdrawal of the DPRK from the NPT and, similarly to Canada and Luxemburg urged the DPRK to return to full compliance with the NPT.<sup>77</sup> The New Agenda Coalition in its turn stressed the importance of reversing the DPRK's announcement of its intention to withdraw from the NPT and called on the DPRK to return to full compliance with the NPT. In this connection, the New Agenda Coalition supported the establishment of a nuclear weapons free Korean peninsula.<sup>78</sup> New Zealand was also very concerned at the DPRK's stance against the NPT and urged the DPRK to cease efforts to withdraw from the Treaty.<sup>79</sup>

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<sup>75</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Canada*, NPT/CONF.2005/PC.III/1 (4 April 2004), para. 18, page 6. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/301/43/PDF/N0430143.pdf?OpenElement> > (accessed on 9 June 2009); *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Austria*, NPT/CONF.2005/PC.III/36 34 (4 May 2004), page 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/337/61/PDF/N0433761.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>76</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: 2004 Report submitted by Luxembourg*, NPT/CONF.2005/PC.III/34 (4 May 2004), page 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/337/34/PDF/N0433734.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>77</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by the Republic of Lithuania*, NPT/CONF.2005/PC.III/5 (20 April 2009), page 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/316/66/PDF/N0431666.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>78</sup> *New Agenda Coalition Substantive Recommendations to the Third Session of the Preparatory Committee of the 2005 NPT Review Conference*, NPT/CONF.2005/PC.III/11 (26 April 2004), para. 11. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/324/43/PDF/N0432443.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>79</sup> *Treaty on the Non-Proliferation of Nuclear Weapons: Report by the Government of New Zealand*, NPT/CONF.2005/PC.III/27 (30 April 2004), page 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/333/91/PDF/N0433391.pdf?OpenElement> > (accessed on 9 June 2009).

## Working papers

Of total 30 working papers submitted by the States and groups of States to the 2004 NPT PrepCom, six papers were dedicated to the assessment of the problem of withdrawal from the NPT and were attempting to strengthen the withdrawal mechanism in order to prevent potential violators of the NPT from abandoning the Treaty while being in non-compliance with its provisions.

Canada noted that in 2003, the NPT had experienced severe shocks to its authority and integrity, including the unprecedented notification of withdrawal from the Treaty. Canada stressed that this and other incidents underlined the need for a regular review of the Treaty's implementation and for a capacity to respond rapidly to challenges to the NPT. In this regard, Canada proposed to establish a standing bureau of the review process of the NPT comprised of the President and Chairs of the quinquennial review conference (to be elected at the end of each review conference with a mandate extending until the subsequent review conference). The bureau would be empowered, at the request of the Depositary Governments, the UN Secretary General or pursuant to a consensus decision of its own, to convene extraordinary sessions of the General Conference of States Parties when situations arose that threatened the integrity or viability of the Treaty, for example, a notification of intent to withdraw from the Treaty or the violation by a State Parties of its obligations under the Treaty.<sup>80</sup>

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<sup>80</sup> *Overcoming the Institutional Deficit of the NPT: Working paper submitted by Canada, NPT/CONF.2005/PC.III/WP.1* (5 April 2004), paras. 2 and 3 (ii). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/301/49/PDF/N0430149.pdf?OpenElement> > (accessed on 8 June 2009).

League of Arab States noted only that withdrawal from the NPT, as well as a threat to withdraw, would put under the risk the effectiveness and subsistence of the Treaty.<sup>81</sup> It did not go further to provide its view on procedure of withdrawal or ways to strengthen it.

Germany submitted two working papers in which it discussed the withdrawal from the NPT and the ways of strengthening its implementation.<sup>82</sup> In its first paper, Germany recalled its suggestions of procedures and mechanisms which could strengthen the NPT against withdrawal and non-compliance, which it had made at the 2003 NPT PrepCom. In 2004 Germany added that in order to maintain the authority of the NPT, “every effort should be undertaken to prevent state parties from withdrawing from the NPT and subsequently becoming de-facto nuclear weapon states.”<sup>83</sup> Accordingly, German delegation proposed that the NPT RevConf could make an effort to agree on the rules and procedures to be followed in case of a State’s intention to withdraw from the NPT. It noted that those arrangements should establish in advance the necessary steps and procedures which should be observed in such a case and should not limit or exclude the States’ right under Article X(1) of the NPT to withdraw from the Treaty. However, it was noted in the paper that “the right of withdrawal

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<sup>81</sup> *Working paper submitted by Egypt as the Chairman of the Arab Group for April on behalf of States members of the League of Arab States on the 2005 NPT Review Conference*, NPT/CONF.2005/PC.III/WP.12 (28 April 2004), p. 2. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/330/11/PDF/N0433011.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>82</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms: working paper submitted by Germany*, NPT/CONF.2005/PC.III/WP.15 (29 April 2004). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement> > (accessed on 8 June 2009); *Compliance: Working paper submitted by Germany*, NPT/CONF.2005/PC.III/WP.16 (29 April 2004). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/27/PDF/N0433127.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>83</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms: working paper submitted by Germany*, NPT/CONF.2005/PC.III/WP.15 (29 April 2004), p. 1. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement> > (accessed on 8 June 2009).

cannot be exercised in cases where the State in question is or is alleged to be (with relevant investigations/procedures underway) in non-compliance with the NPT.”<sup>84</sup> Germany presented quite detailed ideas on improvement of withdrawal procedures, structuring of the communication between NPT States, and structuring of the reaction to a withdrawal. But the role the UNSC could play in the process was rather limited and modest. Thus, the working paper noted the UNSC only in one instance saying that a State withdrawing from the NPT would be still accountable for breaches or acts of non-compliance committed while still being a Party to the NPT. Thus, in accordance with international law, the State would continue to be subject to decisions of the relevant international institutions such as the IAEA and the UNSC.<sup>85</sup>

In its second working paper, Germany dedicated an entire section to the enforcement of the NPT. In that section Germany addressed the issue of withdrawal from the NPT suggesting adoption of new withdrawal procedures that, inter alia, should include an obligation for a withdrawing State to hold prior consultations in the framework of an extraordinary conference of all NPT States Parties. Germany recommended establishing special provisions to govern withdrawal which would have to be recorded in the Final Document of the Review Conference and subsequently supported by the UNSC. Germany specified that these provisions should determine a limit to the right of withdrawal indicating that it cannot be exercised if a withdrawing State is, or is alleged to be (with relevant

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<sup>84</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms: working paper submitted by Germany, NPT/CONF.2005/PC.III/WP.15* (29 April 2004), p. 2. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>85</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms: working paper submitted by Germany, NPT/CONF.2005/PC.III/WP.15* (29 April 2004), p. 3. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement> > (accessed on 8 June 2009).

investigations/procedures underway), in violation of the Treaty. And, no State withdrawing from the NPT should have the right to benefit from the capacities in the nuclear field under Article IV of the NPT and/or from the assistance and cooperation provided by the IAEA or other State Party to the NPT.<sup>86</sup> In reference to the enforcement of the NPT, Germany took the position that the role of the UNSC as the final arbiter of compliance should be strengthened and suggested studying a possibility of establishing a “Code of Conduct” for the UNSC to deal with the cases of serious violations of the NPT and other treaties on WMD and possibly providing automatic responses to such cases.<sup>87</sup>

In its working paper on strengthening of the nuclear non-proliferation regime, France also noted the issue of withdrawal from the NPT and the DPRK’s intention to withdraw from the Treaty.<sup>88</sup> France provided a detailed assessment of the content of Article X(1) of the NPT saying that in accordance with international law, a State that withdraws from the NPT should remain responsible for violations committed while still a Party to the Treaty. It added that the UNSC would be the relevant international framework to reaffirm such a principle. France also envisaged a set of measures that should accompany and follow a withdrawal of a State. Thus, it noted that without prejudice to other measures decided by the UNSC, a State that withdraws should no be able to make use of all nuclear materials, facilities, equipment or technologies acquired before its withdrawal. Those acquisitions should be returned to the supplying State, frozen or dismantled under international verification. Additional measures foreseen by France were meant to include into inter-governmental agreements on sensitive or

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<sup>86</sup> *Compliance: Working paper submitted by Germany*, NPT/CONF.2005/PC.III/WP.16 (29 April 2004), pp. 3-4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/27/PDF/N0433127.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>87</sup> *Ibid.*, pp. 3-4.

<sup>88</sup> *Strengthening the nuclear non-proliferation regime: Working paper submitted by France*, NPT/CONF.2005/PC.III/WP.22 (4 May 2004), p. 1. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/337/21/PDF/N0433721.pdf?OpenElement> > (accessed on 8 June 2009).

major nuclear transfers, a clause forbidding the use of the transferred nuclear materials, facilities, equipment or technologies in case of withdrawal.<sup>89</sup>

The NAM, on the contrary, made a modest reference to the withdrawal clause of the NPT by noting the DPRK's decision to withdraw from the NPT and expressed the view that the parties directly concerned should resolve all issues related to this withdrawal by the means of dialogue and negotiations expressing their goodwill.<sup>90</sup>

### **Conclusion: 2004 NPT PrepCom**

The 2004 NPT PrepCom, which was the final preparatory meeting before the 2005 NPT RevConf, ended in disarray late on 7 May 2004.<sup>91</sup> The 2004 NPT PrepCom had to produce recommendations for the conference, as preparatory meetings had done in the past, but the delegates could not agree even on an agenda for the 2005 NPT RevConf mainly due to differences over non-compliance and nuclear disarmament, nor background documentation for the 2005 NPT RevConf, and did not manage to resolve differences on numerous other political and procedural issues, including withdrawal.<sup>92</sup>

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<sup>89</sup> Ibid., p. 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/337/21/PDF/N0433721.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>90</sup> Working paper submitted by Malaysia on behalf of the Group of Non-aligned and Other States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, **NPT/CONF.2005/PC.III/WP.24** (4 May 2004), para 9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/343/81/PDF/N0434381.pdf?OpenElement> > (accessed on 8 June 2009).

<sup>91</sup> Final report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, **NPT/CONF.2005/1** (20 May 2004), para. 37, p. 9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement> > (accessed on 28 July 2009).

<sup>92</sup> The NPT States could not agree on how to refer to their own consensus decisions they had adopted at the 2000 NPT RevConf. *The 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (2-27 May 2005, New York)*, page 2. Available at < <http://www.un.org/events/npt2005/presskit.pdf> > (accessed on 9 June 2009). "...conflicts and disagreements

These difficulties encountered at the 2004 NPT PrepCom affected also the adoption of the final report of the PrepCom. While the Chairs of the first and second PrepComs<sup>93</sup> developed summaries of the debate under the own auspices, not requiring consensus, the Chair of the third PrepCom<sup>94</sup> had to produce a consensus document. It was a difficult task to achieve considering the significant political differences that were evident at the 2004 NPT PrepCom.<sup>95</sup> Thus, the 2004 Chair's Summary referred to the issue of Article X(1) of the NPT only in two paragraphs. The Summary reminded of the usual "great concern" of the DPRK's nuclear programmes undermining peace and security and "deep concern regarding the DPRK's decision ... to withdraw from the Treaty, which represents a serious challenge to the global non-proliferation regime". It also noted that the States Parties had urged the DPRK to promptly come into compliance with the NPT.<sup>96</sup> The other paragraph of the Chair's Summary provided a more detailed, though a very brief, reflection of the content of discussions of withdrawal from the NPT. It fairly noted that the States had "recogniz[ed] the right of each State Party to withdraw from the Treaty as provided for in Article X(1)", but they had also "proposed that procedures be established for the exercise of this right in a

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were always the reality of the NPT meetings but those were frequently spaced by a good will and trust. In 2004, the good will and trust were gone when the NWS led by the US were claiming that the NPT priorities should have been directed to stopping the proliferation of nuclear weapons and that the problem of their own compliance with Article VI, which calls for good faith negotiations toward the complete elimination of nuclear weapons, was non-existent. The leading NNWS claimed the exact opposite: the proliferation of nuclear weapons could not be stopped while the NWS arrogate unto themselves the possession of nuclear weapons and refuse to enter into comprehensive negotiations toward elimination as directed by the International Court of Justice." See **Johnson, Rebecca**, *The NPT in 2004: Testing the Limits*, Disarmament Diplomacy (March/April 2004), Issue 76. Available at < <http://www.acronym.org.uk/dd/dd76/76npt.htm> > (accessed on 28 July 2009); **Johnson, Rebecca**, *Report on the 2004 NPT PrepCom*, Disarmament Diplomacy (May/June 2004), Issue 77. Available at < <http://www.acronym.org.uk/dd/dd77/77npt.htm> > (accessed on 28 July 2009).

<sup>93</sup> Ambassador Henrik Salander of Sweden in 2002 and Ambassador László Molnár of Hungary in 2003.

<sup>94</sup> Ambassador Sudjadnan Parnohadinigrat of Indonesia.

<sup>95</sup> See above the section on the 2004 NPT PrepCom.

<sup>96</sup> *Chair's Summary*, **NPT/CONF.2005/PC.III/WP.27** (10 May 2004), para. 17. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/344/47/PDF/N0434447.pdf?OpenElement> > (accessed on 7 June 2009).



manner consistent with the purposes and objectives of the Treaty”,<sup>97</sup> which, inter alia, were those of ensuring the non-proliferation of nuclear weapons.

The meeting was closed with a final report containing a minimum of details.<sup>98</sup> The 2004 NPT PrepCom was regarded, by some, as the worst failure in the then 34-year history of the NPT.<sup>99</sup> The failure of the 2004 NPT PrepCom, which was mandated to make recommendations to the RevConf, foreshadowed a bad start for the 2005 NPT RevConf. The differences between the positions of the NWS and the NNWS that arose at the PrepCom were so broad leading to doubts that the 2005 NPT RevConf could produce any consensus between the two camps

### 3.6. Addressing withdrawal at the 2005 NPT RevConf

The 2005 NPT RevConf was held from 2 to 27 May 2005 at the UN Headquarters in New York.<sup>100</sup> The 2005 NPT RevConf began unraveling from the first day, when it opened without an agenda. Though the President of the RevConf – Ambassador Sergio Duarte of Brazil - had held numerous consultations on the agenda and other issues in the intervening year, he did not manage to obtain an agreement on an agenda before the start of the RevConf.

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<sup>97</sup> Ibid., para. 52.

<sup>98</sup> *Final report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, NPT/CONF.2005/1 (20 May 2004). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/358/37/PDF/N0435837.pdf?OpenElement> > (accessed on 28 July 2009).

<sup>99</sup> **Senator Douglas Roche, O.C., Middle Powers Initiative (Executive Summary)**, *Renuclearization or Disarmament: A Fateful Choice for Humanity* (May 2004). Available at < <http://www.reachingcriticalwill.org/legal/npt/prepcom04/NGOanal.html> > (accessed on 7 June 2009).

<sup>100</sup> *2005 Review Conference of the parties to the NPT*, official website. Available at < <http://www.un.org/events/npt2005/> > (accessed on 28 July 2009).

In a strategic move that turned out to have doomed the 2005 RevConf, the US, supported by France, refused to acknowledge the consensus outcome of the last RevConf in 2000 and 1995 as the basis for reviewing and evaluating progress on implementation of the Treaty in 2005. The New Agenda Coalition (NAC) and others refused to accept an agenda that ignored the 2000 and 1995 outcomes. As noted previously, the 2004 PrepCom also was unable to agree on the agenda for the 2005 RevConf, leaving that task for its President.<sup>101</sup>

Concerning the DPRK's participation in the 2005 NPT RevConf, the President of the RevConf stated that consultations conducted prior to the Conference in accordance with the mandate given to him by the PrepCom had revealed the continuation of divergent views on the status of the DPRK in relation to the NPT. By default, States Parties were prepared to uphold the procedure applied by the Chairs of the second and third sessions of the PrepCom, but a number of other States Parties wished to discuss the general question of withdrawal as provided for in Article X(1) of the Treaty. Ambassador Duarte noted that it was the intention of the President, under his own responsibility, not to open a debate on the status of the DPRK and to retain the nameplate of that country temporarily in his custody. He asked the Secretariat to hold the nameplate in the conference room for the duration of the RevConf. That action was in no way meant to prejudice the outcome of ongoing consultations on the issue or the consideration of questions related to Article X(1) of the Treaty.<sup>102</sup>

The Agenda was agreed only on the ninth day of the RevConf. According to it the discussion of the implementation of Article X(1) on withdrawal from the NPT was to take

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<sup>101</sup> **Johnson, Rebecca**, *Report on the 2004 NPT PrepCom*, Disarmament Diplomacy 77 (May/June 2004), Issue No. 77. Available at < <http://www.acronym.org.uk/dd/dd77/77npt.htm> > (accessed on 21 June 2009).

<sup>102</sup> **NPT/CONF.2005/57** (Part III), para. 38, page 9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement> > (accessed on 21 June 2009).

place under agenda item 16(e), “Other provisions of the Treaty, including Article X”.<sup>103</sup> Pursuant to the decision of the 2005 NPT RevConf on the *Allocation of items to the Main Committees of the Conference* (NPT/CONF.2005/DEC.1) under the so-called clusters, the issue on withdrawal from the NPT was discussed under the group of matters identified as *Cluster 3 - Specific Issue (Other provisions of the Treaty, including Article X)*.<sup>104</sup> This was the first time when the discussion of the implementation of Article X was formally part of the agenda of the NPT review process.

As the issue of withdrawal from the NPT announced by the DPRK in 2003 was expected to be among the issues that could be considered at great length at the 2005 NPT RevConf,<sup>105</sup> several States reflected on the matter in their national reports and statements.

## Statements

Following the adoption of the Agenda of the 2005 NPT RevConf, the next procedural standoff concerned the work programme and delayed the start of substantive debates until late in the third week. Finally, at the very end of the sixteenth day on 18 May, agreement was

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<sup>103</sup> The Conference adopted its Agenda (NPT/CONF.2005/30) at its 14th plenary meeting, on 11 May 2005. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/66/PDF/N0534166.pdf?OpenElement> > (accessed on 21 June 2009). See also *Decision on subsidiary bodies*, NPT/CONF.2005/DEC.2 (18 May 2005), para. c. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/03/PDF/N0535003.pdf?OpenElement> > (accessed on 9 June 2009); *Allocation of items to the Main Committees of the Conference*, NPT/CONF.2005/DEC.1 (18 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/97/PDF/N0534997.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>104</sup> NPT/CONF.2005/DEC.1 was adopted at the 19th plenary meeting of the 2005 NPT RevConf on 18 May 2005. For full text of the decisions is available at < <http://www.wwan.cn/events/npt2005/decisions.html> > (accessed on 14 May 2009).

<sup>105</sup> Johnson, Rebecca, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

reached on three main committees and three subsidiary bodies.<sup>106</sup> In accordance with rule 34 of the rules of procedure, the Conference decided to establish, for the duration of the 2005 RevConf, subsidiary body 1, subsidiary body 2 and subsidiary body 3 under Main Committee I, Main Committee II and Main Committee III, respectively. It decided that the subsidiary bodies would be open-ended, hold meetings within the overall time allocated to the Main Committees, be held in private, and that the outcome of their work would be reflected in the report of their respective Main Committees of the Conference.<sup>107</sup> Subsidiary body 3 chaired by Mr. Alfredo Labbé (Chile) addressed agenda item 16(e) entitled “Other provisions of the Treaty, including Article X”.<sup>108</sup>

Once the committees got going, the Conference had little more than five days to discuss the many working papers and proposals on issues as diverse as further practical steps on disarmament; nuclear doctrines and nuclear sharing; the nuclear fuel cycle; making the IAEA additional protocol the safeguards standard and a condition of supply; universality; nuclear weapon free zones; nuclear safety and security; and keeping weapons and materials out of the hands of terrorists.<sup>109</sup> A considerable number of statements raised concerns about the DPRK announced withdrawal from the NPT in January 2003. Particularly, South Korea

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<sup>106</sup> Chair of MC.I (nuclear disarmament), Sudjadnan Parnohadiningrat (Indonesia); Chair of SB.I (focussing on practical disarmament and security assurances), Tim Caughley (New Zealand); Chair of MC.II (safeguards and NWFZs), László Molnár (Hungary); Chair of SB.II (focussing on regional issues, including implementation of the 1995 resolution on the Middle East) Antonio Nuñez Garcia-Sauco (Spain); Chair of MC.III (nuclear energy and safety), Elisabet Borsiin-Bonnier (Sweden); Chair of SB.III (“other provisions of the treaty” including Article X on withdrawal), Alfredo Labbé (Chile). See also **NPT/CONF.2005/57** (Part I), paras. 18-20, page 6. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/390/07/PDF/N0539007.pdf?OpenElement> > (accessed on 23 June 2009).

<sup>107</sup> **NPT/CONF.2005/DEC.2** (18 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/03/PDF/N0535003.pdf?OpenElement> > (accessed on 23 June 2009).

<sup>108</sup> **NPT/CONF.2005/57** (Part I), para. 20, page 6. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/390/07/PDF/N0539007.pdf?OpenElement> > (accessed on 23 June 2009).

<sup>109</sup> **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

argued that “the Korean peninsula suffers from diminished security because of the miserable failure of the NPT to contain the nuclear spectre”. Australia expressed its view that notice of withdrawal warranted immediate, automatic consideration by the UNSC.<sup>110</sup> The EU also openly deplored the DPRK’s announcement of intention to withdraw from the NPT and urged the DPRK to fully comply with its obligations under the Treaty and its IAEA safeguards agreement and asked the RevConf to give serious consideration to the question of withdrawal.<sup>111</sup>

The US stated that the DPRK had violated its safeguards and non-proliferation obligations under the NPT before announcing its intention to withdraw from the Treaty and condemned its assertion of 10 February 2005 that it had manufactured nuclear weapons.<sup>112</sup>

Ireland was concerned with the issue and stated that the 2005 NPT RevConf should attempt to reach a common understanding of the implications of withdrawal from the Treaty and consider the best way to address such an action.<sup>113</sup>

Canada noted the disregard of Treaty obligations by the DPRK, its withdrawal from the Treaty, and acknowledged possession of nuclear weapons put the authority and integrity of the NPT under risk. It encouraged States Parties to arrange extraordinary meetings that should be held automatically within a two weeks’ notice of a withdrawal from the NPT.<sup>114</sup>

Peru also was supportive of the idea to task the RevConf to develop mechanisms to manage situations where States benefited from their rights under the NPT to develop nuclear

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<sup>110</sup> **NPT/CONF.2005/57** (Part III), para. 17, page 15. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement>> (accessed on 21 June 2009).

<sup>111</sup> *Ibid.*, para. 35, page 190.

<sup>112</sup> *Ibid.*, para. 35, page 17.

<sup>113</sup> *Ibid.*, para. 60, page 22.

<sup>114</sup> *Ibid.*, para. 66, page 213.

technology and then withdrew from the Treaty and renounce their non-proliferation and disarmament commitments.<sup>115</sup>

Sweden called for a clear role of the UNSC, which should make it more costly for any State to withdraw from the NPT in the future. Of a similar view was Iceland calling for stronger measures to discourage withdrawal from the NPT.<sup>116</sup> According to Sweden, the UNSC should respond in a unified manner to non-compliance with the Treaty and to announcements of withdrawal working closely with the IAEA on matters of non-compliance, safeguards and verification processes.<sup>117</sup> It also asked the RevConf to strengthen the international framework of the Treaty, including a standing bureau appointed at the beginning of every review process, so that any future withdrawals by States could be addressed decisively and effectively.<sup>118</sup>

The withdrawal of the DPRK from the Treaty was also regarded by Poland and Guatemala as serious challenge global non-proliferation efforts.<sup>119</sup> Poland welcomed discussions on proposals for a mechanism that would make withdrawal from the NPT more difficult and deprive such States of the benefits gained from international cooperation in the peaceful uses of nuclear energy.<sup>120</sup> Chile also supported the view that States that withdraw from the NPT should not benefit from the use of nuclear materials, facilities or technologies acquired being party to the NPT.<sup>121</sup>

The Republic of Korea made a hard-hitting statement condemning the DPRK's complete disregard for and defiance of all nuclear non-proliferation norms. However, the

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<sup>115</sup> Ibid., para. 79, page 25.

<sup>116</sup> Ibid., para. 43, page 47.

<sup>117</sup> Ibid., para. 76, page 203.

<sup>118</sup> Ibid., paras. 1, 5, page 27.

<sup>119</sup> Ibid., para. 37, page 56.

<sup>120</sup> Ibid., para. 20, page 29; para. 21, page. 30.

<sup>121</sup> Ibid., para. 26, page 30.

Republic of Korea did not regard the DPRK's withdrawal as an act that had in fact taken place. Rather, it referred to it as to the announced withdrawal from the Treaty that had undermined the integrity and credibility of the NPT and posed an unacceptable threat to peace and security for the Korean Peninsula, North-East Asia and beyond and had demonstrated the inherent limitations of the Treaty in dealing with an intractable challenge from a determined proliferator. In view of the importance of achieving universal adherence to the NPT, the Republic of Korea suggested that the States Parties should revisit the withdrawal provision of Article X(1) of the Treaty in order to make withdrawal more difficult. It was open to various options in this regard including approval of any withdrawal from the NPT by the UNSC.<sup>122</sup> It also pointed out, as well as Croatia,<sup>123</sup> that better tools were needed to respond to the threats to the NPT and supported Canada's proposal of an annual forum as a means of overcoming the NPT regime's "institutional deficit".<sup>124</sup> Besides these suggestions, the Republic of Korea added that the RevConf should also have to adequately address the announcement of withdrawal by the DPRK as threatening the universality of the NPT.<sup>125</sup>

Italy regarded both the withdrawal from the NPT and the inconclusive results of the past preparatory process as an institutional weakness in the Treaty.<sup>126</sup> This argument was picked up by Slovenia that supported the EU position on withdrawal from the NPT and stressed that the Conference should adopt appropriate measures to discourage States Parties

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<sup>122</sup> **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

<sup>123</sup> **NPT/CONF.2005/57** (Part III), para. 3, page 62. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement> > (accessed on 22 June 2009).

<sup>124</sup> *Ibid.*, para. 37, 39, page 32; para. 44, page. 34.

<sup>125</sup> *Ibid.*, para. 7, page 205.

<sup>126</sup> *Ibid.*, para. 23, page 44.

from withdrawing, while the UNSC should play a greater role in addressing violations of Treaty obligations.<sup>127</sup> Lithuania, as well as Bulgaria, shared the same view to request a response from the RevConf to the challenges to the NPT, such as withdrawal from the Treaty.<sup>128</sup> It added that States that had withdrawn from the Treaty should not enjoy the benefits of nuclear technologies acquired under the NPT.<sup>129</sup>

Similar to the Republic of Korea, Spain was also concerned with the preservation of the universality of the NPT threatened by the withdrawal of the DPRK.<sup>130</sup> Moldova called on the DPRK to reconsider its withdrawal from the Treaty.<sup>131</sup> While Yemen did not view withdrawal as an acceptable action and explained that no State Party should be allowed to denounce the NPT or to withdraw from it.<sup>132</sup> Of a less strict view was Belgium that did not exclude possibility of withdrawal from the Treaty, but asked the Conference to consider the repercussions of withdrawal of a State Party including the possibility of intervention by the UNSC.<sup>133</sup>

Other States expressed their concern about the future of the NPT after the DPRK's withdrawal. For Jamaica, the situation contributed to a heightened sense of insecurity<sup>134</sup> and the United Republic of Tanzania stated that withdrawal had not boded well for the NPT, while its indefinite extension had not brought about the expected results.<sup>135</sup>

Another State deeply concerned with the preservation of the universality of the NPT, besides the Republic of Korea, was France which called on the Conference to highlight the

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<sup>127</sup> Ibid., para. 41, page 47.

<sup>128</sup> Ibid., para. 33, page 92-93.

<sup>129</sup> Ibid., para. 48, page 48.

<sup>130</sup> Ibid., para. 53, page 59.

<sup>131</sup> Ibid., para. 8, page 62.

<sup>132</sup> Ibid., para. 16, page 64.

<sup>133</sup> Ibid., para. 19, page 64.

<sup>134</sup> Ibid., para. 13, page 68.

<sup>135</sup> Ibid., para. 21, page 76.



importance of effective implementation of the withdrawal clause and the repercussions of illegal withdrawals. With this aim, France demanded that the Conference should consider the consequences of withdrawal from the NPT and hold States Parties accountable for any violations committed prior to their withdrawal. It also envisaged a more specific role for the UNSC in the withdrawal mechanism and proposed that the UNSC should be notified of a State Party's intention to withdraw and examine the situation of each case. In order to prevent and limit negative consequences of withdrawals, France proposed that intergovernmental agreements on the transfer of nuclear items should prohibit the use of previously transferred nuclear materials, facilities, equipment or technologies in the event of withdrawal from the NPT. Moreover, France pointed out that States withdrawing from the Treaty must be required to freeze, under IAEA control, and then dismantle and return, nuclear items purchased from a third country for peaceful uses prior to withdrawal.<sup>136</sup> France also commented on the role of the UNSC in withdrawal from the NPT. It noted that withdrawal from the Treaty could constitute a threat to international security and, as such, should fall within the competence of the UNSC.<sup>137</sup>

Belarus regretted the decision of the DPRK to withdraw from the NPT, but did not regard that act as having taken effect. It referred to the possibility of renewed participation of the DPRK in the Treaty, which should be achieved only relying international law.<sup>138</sup> Norway also considered the outcome of the DPRK's decision to withdraw from the NPT as an announcement to withdraw from the Treaty and did not consider that the DPRK in fact had withdrawn from the Treaty. Norway pointed out that withdrawal should not be seen as a

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<sup>136</sup> Ibid., para. 39, page 79; para. 43, page. 80.

<sup>137</sup> Ibid., para. 48, page 199.

<sup>138</sup> Ibid., para. 3, page 89.

practical formality that could have no consequences,<sup>139</sup> and asked the RevConf to identify the appropriate disincentives to be applied in future in the event that a State Party indicated its intent to withdraw from the Treaty.<sup>140</sup> Thailand and Philippines, however, regarded the DPRK as a State that had withdrawn from the NPT.<sup>141</sup> Philippines pointed out the necessity to prevent States that were in breach of the Treaty from trying to escape their obligations simply by withdrawing.<sup>142</sup> For Argentina, the DPRK's withdrawal from the Treaty and the subsequent disclosure that it possessed nuclear weapons had been two of the most unfortunate events ever considered in the NPT review process. It called upon the international community to respond to those events with a stronger commitment of the UNSC in that regard.<sup>143</sup>

Germany noted that the then situation of the DPRK highlighted the importance of consideration of the issue of withdrawal of States from the NPT, and of enforcement of the Treaty. Though recognizing the sovereign right of any State to withdraw from the Treaty, Germany noted that an adequate system was needed to react to such withdrawals. It noted that the central role of the UNSC in considering such withdrawals must be confirmed and that this would strengthen confidence in the UNSC's ability to act decisively, effectively and in a unified manner. Germany stated further that a notification of withdrawal should trigger an immediate consultation process among NPT States Parties to address the issue.<sup>144</sup> It added that the consequences of withdrawal from the Treaty should be made clear and that the States should be aware of them. Germany in its working paper noted that no State withdrawing

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<sup>139</sup> Ibid., para. 16, page 90.

<sup>140</sup> Ibid., para. 8, page 121.

<sup>141</sup> Ibid., para. 23, page 91; para. 28, page. 92.

<sup>142</sup> Ibid., paras. 4, 8, page 98.

<sup>143</sup> Ibid., para. 2, page 158.

<sup>144</sup> Ibid., para. 68, page 202.

from the NPT should have the right to benefit from the nuclear capacity which it had acquired under Article IV of the Treaty.<sup>145</sup>

Switzerland called on the DPRK to renounce any nuclear weapon programme and to reverse its withdrawal from the NPT, and hoped that the final document of the Conference would reflect that call. It also supported all multilateral efforts, including the six-party talks, to find a diplomatic solution to the crisis. According to Switzerland, the lack of consequences of the DPRK's withdrawal from the Treaty demonstrated an institutional weakness of the NPT regime which could no longer offer the international community adequate assurances that nuclear energy would be used only for peaceful purposes if a State Party decided to withdraw from the Treaty. In order to deal with the issue, Switzerland suggested strengthening the Treaty, taking into consideration of the Canada's proposals on addressing the NPT's institutional deficit.<sup>146</sup> Switzerland also asked the RevConf to adopt recommendations on the basis of the relevant working papers to prevent abuse of Article X(1) of the NPT.<sup>147</sup>

Australia considered the DPRK's announcement of withdrawal from the NPT as an accomplished fact which it named as a new challenge to the NPT regime. It called upon the Conference to urge the DPRK to comply once again with the NPT and to completely abandon its nuclear weapon programme.<sup>148</sup>

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<sup>145</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms: working paper submitted by Germany, NPT/CONF.2005/PC.III/WP.15* (29 April 2004). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement>> (accessed on 8 June 2009).

<sup>146</sup> NPT/CONF.2005/57 (Part III), para. 64, page 202. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement>> (accessed on 22 June 2009).

<sup>147</sup> *Ibid.*, para. 54, page 251.

<sup>148</sup> *Ibid.*, para. 75, page 203.

The US stated that achieving universality of the NPT had become more distant following the DPRK's announcement of its intention to withdraw from the Treaty. The US noted that announcing an intention to withdraw from the Treaty was either a response to being caught in breach of the Treaty or a prelude to acquiring nuclear weapons openly following withdrawal. The US claimed that the statements made by the DPRK since January 2003 revealed that it was in precisely that situation. Given that the 2005 NPT RevConf was the first since those events took place, it should therefore carefully consider Article X(1) of the NPT. The US did not object the withdrawal from the NPT recognizing it as a sovereign right of every State, but pointed out that States Parties also had a sovereign right to consider the effects on their individual and collective security of such a withdrawal. They should make it clear that withdrawal from the Treaty carried consequences, thus deterring such action and furthering the goal of universal adherence.<sup>149</sup>

The US clearly identified the consequences of withdrawal from the Treaty. Should a State Party withdraw from the NPT before remedying its violations, it must remain accountable for those actions even after withdrawal and must understand the consequences of its actions. It called upon the States Parties in general, and the Treaty's depositaries in particular, to consider wide-ranging methods to dissuade any States Parties from withdrawal and to oppose any expressed intention to withdraw, particularly where that announcement followed a breach of non-proliferation obligations or took place in preparation for pursuit of a nuclear weapon programme.

The US recalled the UNSC Presidential Statement of 31 January 1992 that noted *inter alia* that proliferation of nuclear weapons was a threat to international peace and security. In this regard, the US noted the indispensable role of the UNSC and proposed a detailed

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<sup>149</sup> Ibid., paras. 62-67, page 252-253.

elaboration of the involvement of the UNSC at all stages of the notification and process of withdrawal. First, the UNSC must meet promptly to consider the consequences of an intended withdrawal and the possibility of measures stopping short of a withdrawal to address and resolve the extraordinary circumstances cited by the State Party concerned. Second, if withdrawal took place, the UNSC should consider the full range of options available under the UN Charter and warranted by the circumstances, particularly if a State withdrawing from the Treaty had breached obligations that it had not only freely assumed, but that other States Parties had taken into account when determining how to protect their own security. The UNSC could request the IAEA to provide details of the withdrawing State's compliance with safeguards requirements, reprocessing and enrichment capabilities, and any holdings of enriched uranium and separated plutonium. Third, if the conditions of Article X(1) were fulfilled and withdrawal from the NPT was completed, the UNSC might consider stringent measures, if it believed that the post-withdrawal situation was a threat to international peace and security.

As one of the ways of mitigating the consequences of withdrawal, the US proposed that the IAEA Board of Governors, independently of any UNSC action, should discuss measures to preserve safeguards over nuclear equipment and material in the withdrawing State, report promptly to the UNSC any outstanding compliance concerns relating to safeguards or other issues, and examine whether there were grounds to suspend IAEA technical cooperation.<sup>150</sup>

The US proposed further stringent measures following a withdrawal and also an announcement of an intention to withdraw from the NPT. These related to nuclear supplies and actions to prevent clandestine transfers. The US deemed that nuclear supplies to States

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<sup>150</sup> Ibid., paras. 62-64, page 252.

should cease, that had withdrawn from the NPT and were pursuing nuclear activities without safeguards, or were seeking a nuclear weapon capability. Even an announcement of an intention to withdraw from the Treaty should be sufficient to halting nuclear supplies.

Moreover, the US argued that such States should be denied the ability to use imported nuclear supplies and materials while they were still Parties to the NPT, as their ability to obtain such supplies and materials would have stemmed from their professed commitment to the Treaty and acceptance of IAEA safeguards. In order to reserve the ability for the denial of supplies, the Supplier States, according to the US, should enshrine in their bilateral nuclear supply agreements the right to seek denial of use, elimination or return to the original supplier of nuclear supplies and materials if the recipient State withdrew from the NPT, and the Nuclear Suppliers Group (NSG) could also incorporate a right of return in its export guidelines. The US proposed that return of such items could also be directed by the UNSC in a resolution adopted under Chapter VII of the UN Charter if such a response was deemed necessary in the light of the threat to international peace and security. Nuclear suppliers might also meet to consider joint or unilateral action to monitor compliance with bilateral assurances connected with nuclear material and equipment supplied before withdrawal from the NPT.

The US recalled that the concept of removing supplies from a State which had failed to meet its non-proliferation obligations was not new, since it was incorporated in Article XII, section B and Article XII, section C, of the IAEA Statute.<sup>151</sup> The US also proposed that

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<sup>151</sup> Article 12(B) of the IAEA Statute: “The Agency shall, as necessary, establish a staff of inspectors. The Staff of inspectors shall have the responsibility of examining all operations conducted by the Agency itself to determine whether the Agency is complying with the health and safety measures prescribed by it for application to projects subject to its approval, supervision or control, and whether the Agency is taking adequate measures to prevent the source and special fissionable materials in its custody or used or produced in its own operations from being used in furtherance of any military purpose. The Agency shall take remedial action forthwith to correct any non-compliance or failure to take adequate measures.” Article 12(C) of the IAEA Statute: “....The

the States Parties possessing intelligence and interdiction resources, to focus their efforts on a withdrawing State in order to prevent clandestine transfers from contributing to the acquisition of nuclear weapon capability or the proliferation of such technology to others.<sup>152</sup>

Not all States Parties to the NPT agreed with the stringent mechanism of withdrawal and harsh consequences of such an action as proposed by the US. Malaysia, for instance, acknowledged the sovereign right of States to withdraw from the Treaty, as provided for in Article X(1) of the NPT and noted that withdrawal from international conventions and treaties must be governed by international treaty law.<sup>153</sup> Qatar speaking on behalf of the Arab States Parties to the NPT stated that Article X(1) of the NPT affirmed the sovereign right of States Parties to withdraw from the Treaty and spelled out the steps necessary for doing so. The Arab States felt that any amendment stiffening the withdrawal procedures and attendant penalties would not only entail a long ratification process by the national institutions of each State Party, but could also have a negative impact on universalization by giving States non-Parties additional reasons not to accede.<sup>154</sup>

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Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations. In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient member or group of members. The Agency may also, in accordance with article XIX, suspend any non-complying member from the exercise of the privileges and rights of membership.”

<sup>152</sup> NPT/CONF.2005/57 (Part III), paras. 62-67, page 252-253. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement> > (accessed on 22 June 2009).

<sup>153</sup> Ibid., para. 50, page 250.

<sup>154</sup> Ibid., para. 68, page 253-254.

## National reports

Though Canada in its national report referred to Article X of the NPT, it did not address the issue of withdrawal per se, but it only noted that it had introduced a resolution on the DPRK at the September 2004 IAEA General Conference which sought to promote the resumption of the DPRK's obligations under the NPT. This suggested that Canada did not consider the DPRK's announcement of withdrawal from the NPT had in fact taken place.<sup>155</sup>

As in previous years, Austria deplored the announcement by the DPRK of its intention to withdraw from NPT and continued to urge the DPRK to reverse its decision and to comply fully with all nuclear non-proliferation norms and its obligations contained in the NPT safeguards agreement with the IAEA, as well as to dismantle its nuclear weapon programme in a complete, verifiable and irreversible manner.<sup>156</sup>

Poland deeply regretted the withdrawal of the DPRK from the Treaty and was concerned with the February 2005 announcement by the DPRK of its possession of nuclear weapons.<sup>157</sup> Lithuania while speaking about universal adherence to the NPT, which it viewed as a core objective of the States Parties, also deplored the announcement by the DPRK its intention to withdraw from the Treaty and continued to urge it to return to full compliance with its international non-proliferation obligations under the NPT, including its safeguards agreement with IAEA. Lithuania added that no State should be able to withdraw from the

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<sup>155</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Canada, NPT/CONF.2005/7* (21 April 2005), para. 28. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/317/37/PDF/N0531737.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>156</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Austria, NPT/CONF.2005/9* (26 April 2005), para. 21. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/52/PDF/N0532352.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>157</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Poland, NPT/CONF.2005/16* (2 May 2005), para 25. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/328/85/PDF/N0532885.pdf?OpenElement> > (accessed on 21 June 2009).



NPT and then continue to enjoy the benefits of nuclear technologies or facilities acquired while they remained Parties to the Treaty.<sup>158</sup> Latvia also noted the need to address the issue of withdrawal from the NPT as such cases would undermine the Treaty and threaten the global security system. Therefore, Latvia concluded that withdrawal must be avoided by all available means, and that in this regard, the 2005 NPT RevConf had to adopt by consensus conditions which would make withdrawal from the NPT difficult and costly.<sup>159</sup>

The Russian Federation, a depositary of the NPT, also referred to the withdrawal of the DPRK from the NPT. It underlined the exceptional sensitivity of the issue of the withdrawal of States from the NPT and noted the necessity to minimize the possibility of situations where States could refuse to fulfil their obligations under the Treaty. Russia proposed to enhance the responsibility of States for deciding to withdraw from the NPT as one of the ways to strengthen the Treaty through the adoption of political measures and procedures which would be applied in such cases without revising the NPT provisions.<sup>160</sup>

Croatia regretted the DPRK's notification of withdrawal from the NPT and stated that the question of withdrawal from the Treaty should be seriously addressed.<sup>161</sup> Guatemala and Indonesia regretted the withdrawal of the DPRK from the NPT and urged it to come back to

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<sup>158</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Lithuania, NPT/CONF.2005/23* (4 May 2005), paras. 25-26. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/333/35/PDF/N0533335.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>159</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraph 4 (c) of the 1995 decision on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament": Report submitted by Latvia, NPT/CONF.2005/28* (16 May 2005), para. 18. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/345/39/PDF/N0534539.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>160</sup> *National report on the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons by the Russian Federation, NPT/CONF.2005/29* (11 May 2005), paras. 86-87. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/340/74/PDF/N0534074.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>161</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by the Republic of Croatia, NPT/CONF.2005/42* (18 May 2005), para. 21. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/94/PDF/N0534894.pdf?OpenElement> > (accessed on 21 June 2009).

the Treaty and to implement its provisions as soon as possible.<sup>162</sup> Indonesia added that the future withdrawals would have to be dealt with through negotiations and a consensus decision.<sup>163</sup> Luxembourg did not refer to the withdrawal of the DPRK from the NPT as such, but noted the DPRK's announced intention to withdraw from the NPT in January 2003, which it deplored and similar to many NPT States urged the DPRK to return to full compliance with its international non-proliferation obligations under the Treaty.<sup>164</sup> New Zealand remained very concerned at the stance of the DPRK against the NPT and urged the DPRK to reconsider its announced withdrawal from the Treaty, as well as its proclaimed nuclear weapon programme.<sup>165</sup>

The European Union adopted the Common Position in relation to the 2005 RevConf of the NPT.<sup>166</sup> According to the Common Position, the European Union would, inter alia, promote drawing attention to the potential implications for international peace and security of

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<sup>162</sup> *National report of Guatemala as called for in the 2000 review of the operation of the Treaty on the Non-Proliferation of Nuclear Weapons, taking into account the decisions and the resolution adopted at the 1995 Review and Extension Conference of the Parties to the Treaty, with a focus on the implementation of article VI of the Treaty and paragraphs 3 and 4 (c) of the decision adopted in 1995 on principles and objectives for nuclear non-proliferation and disarmament: Report submitted by Guatemala, NPT/CONF.2005/37* (13 May 2005), para. 26. Available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/343/67/PDF/N0534367.pdf?OpenElement>> (accessed on 21 June 2009).

<sup>163</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by Indonesia, NPT/CONF.2005/45* (20 May 2005), para. 16. Available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/352/26/PDF/N0535226.pdf?OpenElement>> (accessed on 21 June 2009).

<sup>164</sup> *Implementation of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons pursuant to paragraph 4 (c) of the 1995 decision on principles and objectives for nuclear non-proliferation and disarmament: Report submitted by Luxembourg, NPT/CONF.2005/53* (26 May 2005), para. 6. Available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/364/74/PDF/N0536474.pdf?OpenElement>> (accessed on 21 June 2009).

<sup>165</sup> *Treaty on the Non-Proliferation of Nuclear Weapons: Report submitted by the Government of New Zealand, NPT/CONF.2005/38* (13 May 2005), para. 19. Available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/343/95/PDF/N0534395.pdf?OpenElement>> (accessed on 21 June 2009).

<sup>166</sup> *2005/329/PESC* (25 April 2005).

withdrawal from the NPT, urging the adoption of measures to discourage withdrawal from the Treaty.<sup>167</sup>

In its national report, Brazil provided a more extensive assessment of the withdrawal provision than did other States. It started by referring to withdrawal from the NPT as a sovereign right that is widely recognized under international law. In particular, it pointed out that the indefinite extension of the NPT at the 1995 NPTREC had not altered Article X(1) of the NPT and that its withdrawal procedure conformed to international conventional practice.<sup>168</sup> Stressing the relevance of the NPT for international peace and stability, Brazil expressed its point of view that Article X(1) of the NPT made reference to the UNSC as if requesting it to engage in diplomatic negotiations to address the reasons adduced by a withdrawing State. Brazil, as many other States, suggested making withdrawal from the NPT more difficult, especially if such withdrawal could cover the intent to engage in nuclear proliferation or in any other way to erode the NPT.<sup>169</sup>

### **Working papers**

Several working were submitted at the 2005 NPT RevConf by the NPT States. Those in one way or another addressed the matter of the DPRK's announced withdrawal from the

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<sup>167</sup> *Note verbale dated 17 May 2005 from the Permanent Representative of the Grand Duchy of Luxembourg to the United Nations addressed to the Secretary-General of the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/41* (17 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/78/IMG/N0534878.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>168</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT): Report submitted by Brazil, NPT/CONF.2005/43* (20 May 2005), para. 42. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/352/32/PDF/N0535232.pdf?OpenElement> > (accessed on 21 June 2009).

<sup>169</sup> *Ibid.*, paras. 42-44.

NPT and the so-called “loopholes” in the Treaty’s withdrawal clause embedded in Article X(1) of the NPT, as well as presented elaborated proposals on the ways of strengthening of the withdrawal procedure that could impede potential violators of the Treaty to leave the NPT while being non-compliant with their obligations under the Treaty and with an intention to pursue development of nuclear weapons.

The EU working paper drew attention to the potential implications for international peace and security of withdrawal from the NPT and urged the adoption of measures to discourage withdrawal from the Treaty.<sup>170</sup>

Similarly as in their statement, NAM States Parties noted the decision by the DPRK to withdraw from the NPT and expressed the view that the parties directly concerned should resolve, through dialogue and negotiations, all issues related to that withdrawal, as an expression of their goodwill.<sup>171</sup>

Australia and New Zealand submitted a joint working on Article X(1) of the NPT.<sup>172</sup> The two States acknowledged that since the inception of the NPT, there had been the possibility of a State Party to the Treaty to building a capacity for rapid breakout to nuclear weapons and then withdraw from the Treaty. However, they noted that Article X(1) required a withdrawing States to submit the notice of withdrawal not only to all other States Party, but

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<sup>170</sup> *Working paper submitted by the European Union, Fundamental elements proposed by the European Union, in conformity with the Common Position adopted by the EU Council of Ministers, to be inserted in the Final Document of the 2005 NPT Conference concerning Main Committee III, NPT/CONF.2005/MC.III/WP.1* (19 May 2005), para. 8. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/350/86/PDF/N0535086.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>171</sup> *Working paper presented by the members of the Group of Non-Aligned Movement States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/WP.8* (26 April 2005), para. 45. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/323/10/PDF/N0532310.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>172</sup> *Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand, NPT/CONF.2005/WP.16* (28 April 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/327/03/PDF/N0532703.pdf?OpenElement> > (accessed on 29 July 2009).

also to the UNSC and supposedly this requirement was meant to underline the seriousness of any proposed withdrawal. The implications of the withdrawal of any Party from the Treaty could have serious implications. Australia and New Zealand did not suggest any amendment to Article X(1), but affirmed that the States Parties should not be able to evade their obligations and commitments under the Treaty simply by withdrawing from it. Their proposal was that, first, any State withdrawing from the Treaty should remain accountable for any breach of its obligations while still a Party. Second, the UNSC to convene automatically and immediately when any State gives notice of withdrawal from the NPT, given the potential threat to international peace and security of such an action by a State. The UNSC could, inter alia, set out the conditions for the proceeds of a notified withdrawal. Australia and New Zealand also recognized that there would also be merit in convening an extraordinary meeting of the States Parties to the NPT to consider any case of withdrawal. Third, there should be agreed consequences of withdrawal, whereby nuclear equipment, technology or material acquired for peaceful uses should remain subject to NPT obligations.

The working paper submitted by Luxembourg on behalf of the EU contained some similarities with the above noted working paper of Australia and New Zealand.<sup>173</sup> The EU recognized the importance of clarifying the consequences of a withdrawal from the NPT<sup>174</sup> and affirmed that a withdrawal from the Treaty could constitute a threat to international peace and security.<sup>175</sup>

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<sup>173</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, European Union common approach: Working Paper submitted by Luxembourg on behalf of the European Union, NPT/CONF.2005/WP.32* (10 May 2005). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/339/76/PDF/N0533976.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>174</sup> *Ibid.*, para. 2.

<sup>175</sup> *Ibid.*, para. 5 (c).

Some differences between the approaches presented in the working papers of Australia and New Zealand and the EU regarded the proposal by the EU role of the depositary States in the event of notice of withdrawal. The EU proposed that the depositary States to immediately begin a consultation process of interested Parties to explore ways and means to address the issues raised by the notification of intent, taking also into account the state of compliance of the notifying Party with its safeguards undertakings as assessed by the IAEA.<sup>176</sup> Additionally, it suggested that the RevConf reiterate the understanding of the obligations contained in Article X(1) and examine a withdrawal as an issue that should be of immediate relevance to the UNSC, which is the final arbiter in maintaining international peace and security.<sup>177</sup> It went further and suggested that in case of a notification withdrawal under Article X(1), the UNSC should mandate a special IAEA inspection of the notifying Party.<sup>178</sup>

Besides this paper, Luxemburg submitted other two working papers on behalf of the EU.<sup>179</sup> Those were addressed to the Main Committee 1 and the Main Committee 2 of the RevConf.<sup>180</sup> In those papers, the EU confirmed again its view that the DPRK's

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<sup>176</sup> Ibid., para. 4 (a).

<sup>177</sup> Ibid., para. 4 (b).

<sup>178</sup> Ibid., para. 4 (c).

<sup>179</sup> *Working paper based on the European Union Statement for Main Committee I: Submitted by Luxembourg on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the countries of the Stabilization and Association Process and potential candidates Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro, as well as Norway, member of the European Economic Area, NPT/CONF.2005/WP.43* (18 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/46/PDF/N0534946.pdf?OpenElement> > (accessed on 9 June 2009); *Working paper based on the European Union Statement for Main Committee II: Submitted by Luxembourg on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the countries of the Stabilization and Association Process and potential candidates Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro, as well as Norway, member of the European Economic Area, NPT/CONF.2005/WP.44* (18 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/52/PDF/N0534952.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>180</sup> Main Committee 1 items: implementation of the provisions of the Treaty relating to non-proliferation of nuclear weapons, disarmament and international peace and security: Articles I and II and preambular paragraphs 1 to 3, Article VI and preambular paragraphs 8 to 12, security assurances; Specific issue - nuclear

announcement of its intention to withdraw from the NPT had posed an unprecedented challenge which should be given serious consideration by the RevConf.<sup>181</sup> The EU states continued urging the DPRK to return to full compliance with its international non-proliferation obligations under the Treaty.<sup>182</sup>

Two working papers submitted by Japan dedicated a section each to the issues of the DPRK's decision to withdraw from the NPT.<sup>183</sup> In the first paper, Japan developed 21 measures to strengthen the NPT by the 21<sup>st</sup> century in the light of the recent challenges to the NPT posed by the DPRK's nuclear programme and clandestine networks of nuclear proliferation, the proliferation of weapons of mass destruction and their means of delivery which remained a great threat to international peace and stability. Japan suggested that the 2005 NPT RevConf include those 21 measures in its final documents. One of the measures

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disarmament and security assurances. Main Committee 2 items: implementation of the provisions of the Treaty relating to Non-Proliferation of nuclear weapons, safeguards and nuclear-weapon-free zones; Specific issue - regional issues, including with respect to the Middle East and the implementation of the 1995 resolution on the Middle East. See *Allocation of items to the Main Committees of the Conference*, **NPT/CONF.2005/DEC.1** (18 May 2005). Available at <

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/97/PDF/N0534997.pdf?OpenElement> > (accessed on 30 July 2009).

<sup>181</sup> *Working paper based on the European Union Statement for Main Committee I: Submitted by Luxembourg on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the countries of the Stabilization and Association Process and potential candidates Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro, as well as Norway, member of the European Economic Area*, **NPT/CONF.2005/WP.43** (18 May 2005), para. 22. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/46/PDF/N0534946.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>182</sup> *Working paper based on the European Union Statement for Main Committee II: Submitted by Luxembourg on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, the countries of the Stabilization and Association Process and potential candidates Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro, as well as Norway, member of the European Economic Area*, **NPT/CONF.2005/WP.44** (18 May 2005), para. 18. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/349/52/PDF/N0534952.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>183</sup> *Further measures to strengthen the Treaty on the Non-Proliferation of Nuclear Weapons, Twenty-one Measures for the Twenty-first Century: Working paper submitted by Japan*, **NPT/CONF.2005/WP.21** (17 May 2005), section 9, paras. 18-21. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/11/PDF/N0533211.pdf?OpenElement> > (accessed on 9 June 2009); *Working paper of Japan*, **NPT/CONF.2005/WP.22** (19 May 2005), section 6, paras. 74-76. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/56/PDF/N0533256.pdf?OpenElement> > (accessed on 9 June 2009);

concerned non-proliferation and addressed DPRK related issues. Thus, Japan suggested that the RevConf expresses deep concern about the DPRK's decision to withdraw from the Treaty and named it as a serious challenge to the global non-proliferation regime<sup>184</sup> and to urge the DPRK to promptly comply with the NPT and completely dismantle its entire nuclear programme, including its uranium enrichment programme.<sup>185</sup>

The other paper by Japan assessed the matter in its section 6 named accordingly as “[w]ithdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons” proving that the issue of withdrawal from the NPT was quite important for Japan. Taking into consideration the DPRK case, Japan noted that the international community should not tolerate a withdrawal of a State that had developed nuclear-weapon capabilities under false pretences being a NNWS Party to the NPT. Japan shared the point of view of many States that the withdrawal of any State from the NPT would significantly undermine the universality of the Treaty and the confidence of the States Parties in the international nuclear non-proliferation regime and that it should remain responsible for violations it committed while a Party. As well as France and the US, Japan suggested that the best way to deal with withdrawal was to deter it by making it more costly and listed some measures that could be undertaken for this purpose.<sup>186</sup>

Norway was of view that the announced withdrawal of the DPRK posed fundamental challenges to the NPT, and, as well as Japan, suggested developing disincentives to

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<sup>184</sup> *Further measures to strengthen the Treaty on the Non-Proliferation of Nuclear Weapons, Twenty-one Measures for the Twenty-first Century: Working paper submitted by Japan, NPT/CONF.2005/WP.21* (17 May 2005), section 9, para. 18. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/11/PDF/N0533211.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>185</sup> *Ibid.*, section 9, para. 20.

<sup>186</sup> *Working paper of Japan, NPT/CONF.2005/WP.22* (19 May 2005), section 6, paras. 75-76. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/56/PDF/N0533256.pdf?OpenElement> > (accessed on 9 June 2009);



withdrawal from the Treaty by strengthening the institutional machinery of the Treaty. It reminded of the essential role of the UNSC in this respect and charged the RevConf to outline new disincentives against withdrawal from the Treaty.<sup>187</sup>

Belgium, Lithuania, the Netherlands, Norway, Spain, Poland and Turkey also took the opportunity to submit a joint working paper in which, inter alia, they touched upon the issue of withdrawal, following the general tendency of States referred to the announcement by the DPRK of its intention to withdraw from the Treaty as a challenge to the credibility and the functionality of the NPT and urged the DPRK to return to full compliance with its international non-proliferation obligations under the NPT, including its safeguards agreement with IAEA. In this regard they also reiterated the important role of the UNSC in maintaining international peace and security and call for further definition of that role with respect to withdrawal from the NPT.<sup>188</sup>

Canada, in its turn, did not suggest strengthening and clarifying the role of the UNSC in the mechanism of withdrawal from the NPT. It proposed that a notification of intent to withdraw from the Treaty should be dealt with by an extraordinary Conference of States Parties that would have to be convened within two weeks of submission by a State of such a notification of intent to withdraw from the Treaty.<sup>189</sup>

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<sup>187</sup> *Working paper submitted by Norway: NPT – a dynamic instrument and core pillar of international security*, NPT/CONF.2005/WP.23 (4 May 2005), paras. 12, 13(e). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/332/37/PDF/N0533237.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>188</sup> *Working paper submitted by Belgium, Lithuania, the Netherlands, Norway, Spain, Poland and Turkey for consideration at the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, NPT/CONF.2005/WP.35 (11 May 2005), paras 4-5. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/89/PDF/N0534189.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>189</sup> *Achieving permanence with accountability: Working paper submitted by Canada*, NPT/CONF.2005/WP.39 (17 May 2005), pp. 1-2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/13/PDF/N0534713.pdf?OpenElement> > (accessed on 9 June 2009).

The Republic of Korea<sup>190</sup> noted the DPRK's disregard for and defiance of nuclear non-proliferation norms under the NPT regime and characterized its announcement of withdrawal from the Treaty as the most daunting challenge to the universality of the NPT, integrity and credibility of the global non-proliferation regime but also to peace and security on the Korean peninsula and beyond. The Republic of Korea asked the Conference to reflect deep concern of the matter.<sup>191</sup> Though, the Republic of Korea noted that the Conference had to explore viable remedial measures to withdrawal from the NPT, it did not suggest any specific mechanism, nor defined the role of the UNSC in the process.<sup>192</sup>

The working paper of the US presented a detailed assessment of the problem and offered specific language for inclusion in the final report of Main Committee III and in any final document of the 2005 NPT RevConf.<sup>193</sup> The US started with the recognition of the sovereign right of the States to withdraw from the Treaty. But it also added that the Parties to the Treaty should clarify the consequences of withdrawal from the Treaty and, in doing so, deter such actions which hamper achievement of the universality of the NPT. As measures to prevent withdrawal from the NPT, it suggested the Conference to agree upon providing all possible assistance to any State contemplating a notification of withdrawal in order to dissuade it from such a decision<sup>194</sup> and to urge the UNSC to meet promptly upon receipt of a notification of withdrawal and identify steps to deal with the State's intention to withdraw,

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<sup>190</sup> *Views on substantive issues of the 2005 Review Conference: Working paper submitted by the Republic of Korea*, **NPT/CONF.2005/WP.42** (17 May 2005), paras. 23-24, 27-29. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/348/23/PDF/N0534823.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>191</sup> *Ibid.*, paras. 23-24, 27.

<sup>192</sup> *Ibid.*, paras. 29.

<sup>193</sup> *Strengthening the implementation of article X of the Treaty on the Non-Proliferation of Nuclear Weapons: Working paper submitted by the United States*, **NPT/CONF.2005/WP.59** (24 May 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/357/76/PDF/N0535776.pdf?OpenElement> > (accessed on 9 June 2009).

<sup>194</sup> *Ibid.*, para. 2.

including addressing any security consequences of the intended withdrawal and, as appropriate, engaging the State intending to withdraw in a dialogue.<sup>195</sup> Besides these measures, the US was of view that NPT Parties should consider a wide range of actions in response to the withdrawal and the NPT Depository States should determine the role they might play in such a situation.<sup>196</sup>

### **Conclusion: 2005 NPT RevConf**

The 2005 NPT RevConf was confronted with the very difficult task of dealing with some difficult and unresolved challenges to the integrity and effectiveness of the non-proliferation.<sup>197</sup> One of the major challenges was, and still is, the DPRK's apparent ease of withdrawal from the Treaty and its subsequent testing of nuclear weapons.

That was the first time in the course of the NPT review cycle when the issue of withdrawal from the NPT was seriously discussed by the States Parties to the Treaty.<sup>198</sup> The 2005 NPT RevConf extensively discussed the matter within the Main Committee III (MC.III)<sup>199</sup> and under subsidiary body 3 (SB.III),<sup>200</sup> under agenda item entitled "Other provisions of the Treaty including Article X", the issue of withdrawal.<sup>201</sup>

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<sup>195</sup> Ibid., para. 4.

<sup>196</sup> Ibid., para. 6.

<sup>197</sup> **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

<sup>198</sup> **NPT/CONF.2005/57** (Part III), para. 52, page 138. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/292/21/PDF/N0829221.pdf?OpenElement> > (accessed on 22 June 2009).

<sup>199</sup> "Under rule 34 of its rules of procedure, the Conference established Main Committee III as one of its three Main Committees and decided to allocate to it the following items for its consideration (see document **NPT/CONF.2005/DEC.1**)..." See Report of Main Committee III: Establishment and terms of reference, **NPT/CONF.2005/MC.III/1** (25 May 2005), para. 1. Available at <

The discussion of Article X(1) at the 2005 NPT RevConf can be regarded as constructive and enabling good progress on this important issue. While NPT withdrawal was recognized as a sovereign right of the States, it was clear from the discussion that there was wide support for stronger disincentives to withdrawal and an appropriate international response to any cases of withdrawal.

Divergent views continued to persist with regard to the DPRK's status with respect to the NPT, after it had announced its withdrawal from the Treaty in January 2003. The issue was additionally complicated by the concern over the DPRK's continued non-compliance with the safeguards provisions of the NPT, especially since the IAEA remained unable to verify nuclear material subject to safeguards in the DPRK and the completeness and correctness of the DPRK's initial declaration of 1992 on safeguards implementation.<sup>202</sup> Therefore, the situation in the DPRK was regarded as one continuing to pose a serious challenge to the nuclear non-proliferation regime.<sup>203</sup>

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<http://daccessdds.un.org/doc/UNDOC/GEN/N05/359/95/PDF/N0535995.pdf?OpenElement> > (accessed 3 August 2009).

<sup>200</sup> “At its nineteenth plenary meeting, on 18 May 2005, the Conference decided to establish, for the duration of the 2005 Review Conference, a subsidiary body under Main Committee III that would focus on other provisions of the Treaty, including article X (see document **NPT/CONF.2005/DEC.2**). Furthermore, the Conference decided that the subsidiary body would be open-ended, that its meetings would be held in private and that the outcome of its work would be reflected in the report of Main Committee III to the Conference. The subsidiary body was chaired by Ambassador Alfredo Labbe (Chile).” See Report of Main Committee III: Establishment and terms of reference, **NPT/CONF.2005/MC.III/1** (25 May 2005), para. 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/359/95/PDF/N0535995.pdf?OpenElement> > (accessed 3 August 2009).

<sup>201</sup> “Under rule 34 of its rules of procedure, the Conference established Main Committee III as one of its three Main Committees and decided to allocate to it the following items for its consideration (see document **NPT/CONF.2005/DEC.1**)...” See Report of Main Committee III: Establishment and terms of reference, **NPT/CONF.2005/MC.III/1** (25 May 2005), para. 1. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/359/95/PDF/N0535995.pdf?OpenElement> > (accessed 3 August 2009).

<sup>202</sup> Since December 2002, the IAEA had not been permitted to perform any verification activities in the DPRK and therefore it could not provide any level of assurance of the non-diversion of nuclear material. See Chapter 2 of the dissertation, pp. 99-100.

<sup>203</sup> *The 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (2-27 May 2005, New York)*, pp. 3-4. Available at < <http://www.un.org/events/npt2005/presskit.pdf> > (accessed on 9 June 2009).

While the majority of the States devoted only a few sentences to the problem of DPRK's announced withdrawal and the issue of more stringent implementation of the withdrawal provision under Article X(1) of the NPT, some of them, such as the Republic of Korea, France and the US presented elaborate mechanisms for addressing the new threat to the NPT, assessing both the procedure and the consequences of withdrawal from the Treaty. Their proposals presented a clear definition of the role of the UNSC, which was regarded as indispensable to prevent the Treaty from achieving universality and giving space to abuse of its provisions resulting in proliferation of nuclear weapons.

Though no formal agreement on the role of the UNSC in the implementation of Article X(1) was reached at the 2005 NPT RevConf, the discussion of the issue nevertheless did send some clear messages. It became evident that for any State Party, notification of withdrawal could give the possibility to avoid accountability for violation of NPT obligations. The discussion in 2005 also confirmed that, consistent with the international legal principles applying to treaties, withdrawal would not absolve a State Party from fulfilling obligations it had not met at the time of withdrawal. Another clear message was that nuclear items acquired on the basis that they would be used for peaceful purposes while a State was subject to the non-proliferation assurances of the NPT remained subject to peaceful use obligations, even if a State had withdrawn from the NPT.

The Chairman of MC.III produced a draft report on the committee's work, which included six paragraphs from the report of subsidiary body III on withdrawal from the Treaty,<sup>204</sup> as reproduced below:

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<sup>204</sup> *Draft Report of Main Committee III, excerpt concerning Article X (from Subsidiary Body III)*. Available at < <http://www.acronym.org.uk/dd/dd80/80nptdocs.htm#03a> > (accessed on 29 August 2009).

*Draft Report of Main Committee III, excerpt concerning Article X (from Subsidiary Body III)*

[III. Article X

The Conference re-affirms that:

1. Withdrawal remains a sovereign right for States Parties under Article X and International Law. Article X subjects this sovereign right to conditions and a time framework.
2. Recalling the NPT's role as a cornerstone of international peace and security and in order to preserve the Treaty's objective of universality, Depositaries and States Parties should undertake consultations and conduct every diplomatic effort to convince the withdrawing Party to reconsider its sovereign decision. In doing so, States Parties should also address the legitimate security needs of the withdrawing Party. Regional diplomatic initiatives should be encouraged and supported.
3. Withdrawal may pose threats to international peace and security. These are to be assessed by the Security Council according to the UN Charter.
4. Under International Law, the withdrawing Party remains liable for Treaty violations perpetrated prior to the notification of withdrawal.
5. Nuclear material, equipment and technology acquired by a State for peaceful purposes before withdrawal must remain subject to peaceful use under IAEA safeguards.

6. Nuclear supplying States Parties should consider negotiating the incorporation of dismantling and/or return clauses in the event of withdrawal, in arrangements or contracts concluded with other States Parties, as appropriate in accordance with International Law and national legislation.]

For a variety of reasons related to the differences on key issues among several influential States, MC.III was unable to adopt its report on its substantive discussions and recommendations. Despite the important divisions among several NPT States, there nonetheless was an expectation that it could be possible to find agreement on text that clarified the interpretation of Article X(1) on treaty withdrawal and pointed the way forward (without necessarily proposing decisions or commitments on strengthening the treaty's institutional capacity or the powers of States Parties).<sup>205</sup>

The 2005 NPT RevConf failed to agree on a final report on the implementation of the Treaty, it could only agree on its procedural report, given the deep and wide-ranging differences over principles, policies and interpretations of the Treaty prevailing among the participating States Parties.<sup>206</sup>

It is not surprising, therefore, that the 2005 NPT RevConf has been recognized as the most abject failure of the NPT States Parties. Delegates from 153 States could not agree to adopt any decisions or recommendations for furthering progress in the vital security issues of nuclear non-proliferation and disarmament.<sup>207</sup> Thus, a key opportunity was lost for States

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<sup>205</sup> **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

<sup>206</sup> *Ibid.*

<sup>207</sup> **Johnson, Rebecca**, *The NPT Review Conference 2005: Acronym Special Coverage, Day 26: Spineless NPT Conference Papers Over Cracks and Ends with a Whimper* (27 May 2005). Available at < <http://www.acronym.org.uk/npt/05rep12.htm> > (accessed on 3 August 2009); **Lewis, Patricia**, *The NPT review conference: no bargains in the UN basement* (01 June 2005). Available at < [http://www.opendemocracy.net/globalization-summits/nuclear\\_2563.jsp](http://www.opendemocracy.net/globalization-summits/nuclear_2563.jsp) > (accessed on 3 August 2009); **Cirincione, Joseph**, *Failure in New York* (7 June 2005), Carnegie Endowment for International Peace,

Parties to pronounce on the matter of withdrawal from the Treaty and to provide interpretive guidance for the future on how to manage the exercise of the right to withdraw from the Treaty without the resulting threat to international peace and security.<sup>208</sup>

### 3.7. Withdrawal discussion at the 2007 NPT PrepCom

The 2007 NPT PrepCom was held some six months after the nuclear test carried out by the DPRK on 9 October 2006.<sup>209</sup> The first session of the PrepCom was held from 30 April through 11 May 2007 at the Austria Centre Vienna (ACV) in Vienna (Austria) to launch the opening of preparations for the 2010 NPT RevConf.<sup>210</sup>

Of the then 189 States Parties to the NPT, 106 States participated in the 2007 NPT PrepCom.<sup>211</sup> The meeting opened in an atmosphere of cautious optimism that broke down by the beginning of the second (and last) week of the PrepCom when there was still no agreement on the Agenda, while the Chair's efforts to get it agreed to before the PrepCom had been thwarted in different measures by France and US on one side, and by Iran on the other side. The main areas of contention were that France and the US opposed specific

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Nonproliferation. Available at < <http://www.carnegieendowment.org/npp/publications/index.cfm?fa=view&id=17042> > (accessed on 3 August 2009);

<sup>208</sup> **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed* (Disarmament Diplomacy, Autumn 2005), Issue No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 23 June 2009).

<sup>209</sup> **BBC News**, *N Korea statement on nuclear test* (summarized version of a statement released by the foreign ministry of North Korea announcing plans to test a nuclear weapon). Available at < <http://news.bbc.co.uk/2/hi/asia-pacific/5402292.stm> > (accessed on 30 October 2006).

<sup>210</sup> Official website of the 2007 NPT PrepCom is available at < <http://www.un.org/NPT2010> > (accessed on 3 August 2009).

<sup>211</sup> **Rauf, Tariq**, *The long road to a "Nukes-Free" World: States are preparing for the next Review Conference of the world's Nuclear non-proliferation Treaty (NPT) in 2010*, IAEA Bulletin (September 2007), Vol. 49, No. 1, p. 16. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull491/pdfs/06npt.pdf> > (accessed on 8 December 2008).



mention of the outcomes of the 1995 and 2000 NPT RevConfs and pressed to include an item on non-compliance in the Agenda. Iran, on the other hand, opposed any reference to non-compliance, and eventually proposed an alternate formulation of compliance with all provisions of the NPT – which was opposed by France and the US. In the end, only during the second week on the PrepCom, on 8 May 2007, a formulation was agreed for the Agenda that enable the PrepCom to conduct its business over its remaining four days.

The delay in adopting the Agenda meant that only half a day could be spent on each of the cluster debates - nuclear disarmament, safeguards and nuclear energy - and sessions on practical nuclear disarmament steps and security assurances; regional issues, including the 1995 Resolution on the Middle East; and “other provisions of the Treaty including Article X”, the euphemism for addressing withdrawal and procedures to strengthen the NPT. Given the reduced time available, many States put forward their proposals in working papers.

The Agenda of the NPT PrepCom for the 2010 NPT RevConf agreed in 2007 did not list the discussion of Article X among its items.<sup>212</sup> The matter was nonetheless discussed during one session and part of the consideration of three specific blocs of issues, among other provisions of the Treaty, including Article X.<sup>213</sup>

At the 2007 NPT PrepCom, most of the States Parties recognized that suspension or curtailment of the right to withdraw, as reflected in Article X(1), was neither feasible nor desirable. However, a significant number of States noted that the cost of withdrawal should

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<sup>212</sup> *Provisional Agenda*, NPT/CONF.2010/PC.I/1 (26 April 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/319/94/PDF/N0731994.pdf?OpenElement> > (accessed on 28 June 2009); *Agenda*, NPT/CONF.2010/PC.I/15 (8 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/336/72/PDF/N0733672.pdf?OpenElement> > (accessed on 28 June 2009).

<sup>213</sup> *Report of the Preparatory Committee on its first session*, NPT/CONF.2010/PC.I/22 (11 May 2007), para. 17. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/357/92/PDF/N0735792.pdf?OpenElement> > (accessed on 28 June 2009).

be elevated, in order to render leaving the Treaty less attractive and to deter States Parties from withdrawing.

NAM States, as in 2005, voiced their view that the right to withdraw was a sovereign right and that if it was subjected to punitive measures or other constraints, such action would introduce yet another level of discrimination in the Treaty against States Parties. The point was emphasized that especially for countries in regions that have non-NPT States possessing or pursuing nuclear-weapon programmes, the right to withdraw must be preserved so as not to place NPT Parties at a disadvantage vis-à-vis non-Parties or violators.

#### **Statements: General debate**

In course of the general debate, Japan noted that withdrawal from the NPT could have serious consequences for international peace and security and called for more in-depth discussions on the issue.<sup>214</sup> Australia expressed the view that Parties to the Treaty should agree on measures to strengthen disincentives to withdrawal and to ensure an appropriate response to such cases.<sup>215</sup> The EU, similar to Japan, expressed concern about the implications for international peace and security of withdrawal from the NPT and urged the PrepCom to adopt measures to discourage withdrawal.<sup>216</sup>

The US noted that withdrawal from the NPT must be made unattractive. As in previous years, it proposed that States Parties to the NPT should affirm that accountability for violations would persist even after withdrawal and should call for IAEA measures for

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<sup>214</sup> *Summary record of the 1st meeting*, NPT/CONF.2010/PC.I/SR.1 (30 July 2007), para. 29, page 5. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/38/PDF/N0732938.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>215</sup> *Ibid.*, para. 35, pages 5-6.

<sup>216</sup> *Ibid.*, para. 68, page 10.

continued safeguarding of nuclear equipment and material in a withdrawing State Party.<sup>217</sup>

The Republic of Korea noted that the abuse by the DPRK of the NPT withdrawal clause had seriously undermined confidence in the Treaty, and thus required further attention. It stressed that the non-proliferation regime needed better tools to respond to such situations that threaten the integrity of the Treaty.<sup>218</sup>

The UK stated that a State deciding to withdraw could not subsequently benefit from nuclear technologies obtained while a State Party, or seek to use them to further an illegal nuclear weapons programme. The UK did not regard the DPRK as a State that had withdrawn from the NPT and therefore called on the DPRK to return to compliance with all its international obligations, including those under the Treaty and its IAEA safeguards agreements, as well as to comply with the relevant UNSC resolutions.<sup>219</sup>

Speaking about the right to withdraw from the Treaty under Article X(1) of the NPT, Indonesia presented quite a divergent view on the issues in comparison to the Western States. Indonesia stated that under the Vienna Convention on the Law of Treaties (VCLT) such withdrawal did not affect any right, obligation or legal situation of the Parties created through the execution of the Treaty prior to its termination. Indonesia reminded that obligations and commitments should be applied equally to NWS and NNWS. Therefore, according to Indonesia, it would be unfair to insist that NNWS should comply with their obligations when the nuclear-weapon States had failed to fulfil their disarmament commitments. It concluded

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<sup>217</sup> *Summary record of the 2nd meeting, NPT/CONF.2010/PC.I/SR.2* (16 October 2007), para. 6, page 2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/44/PDF/N0732944.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>218</sup> *Ibid.*, para. 25, page 5.

<sup>219</sup> *Ibid.*, paras. 32-33, page 6.

that such an approach proved the existence of double standards that would only further undermine the integrity of the Treaty.<sup>220</sup>

France remained seized of the crisis caused by the announcement of the DPRK of its intention to withdraw from the NPT and the DPRK's nuclear test in October 2006.<sup>221</sup> Taking into consideration the grave consequences of the DPRK's abandonment of the Treaty, France called for further consideration of the issue of withdrawal from the Treaty leaving no possibility to any State Party to acquire nuclear materials, facilities and technology under Article IV only to withdraw subsequently from the Treaty and use them for military purposes. France drew attention to a working paper of the EU entitled "Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union common approach",<sup>222</sup> which set out the effects of withdrawal. France specified that any State withdrawing from the Treaty should no longer use nuclear materials, facilities, equipment and technologies acquired from a third country prior to withdrawal. Such nuclear materials must be frozen, with a view to having them dismantled or returned to a supplier State, under IAEA control. As a post-withdrawal measure it proposed that an INFCIRC/66-type agreement should cover each facility pending its dismantling or return.<sup>223</sup>

Colombia and Kenya were the other two States that noted the matter during the general debate, but they limited themselves just to a brief reference to the matter. Thus,

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<sup>220</sup> *Summary record of the 3rd meeting, NPT/CONF.2010/PC.I/SR.3* (13 September 2007), para. 11, page 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/56/PDF/N0732956.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>221</sup> *Ibid.*, para. 37, page 7.

<sup>222</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union common approach. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.25* (10 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/56/PDF/N0732956.pdf?OpenElement> > (accessed on 3 August 2009).

<sup>223</sup> *Summary record of the 3rd meeting, NPT/CONF.2010/PC.I/SR.3* (13 September 2007), para. 38, page 7. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/56/PDF/N0732956.pdf?OpenElement> > (accessed on 2 July 2009).

Colombia noted that it was essential to make progress in the discussion of Article X of the NPT and to consider the consequences of withdrawal from the Treaty as a whole.<sup>224</sup> Kenya stated that besides the PrepComs, the “Conference should also address the issue of withdrawal from the Treaty.”<sup>225</sup>

### Statements: Cluster III debate

Due to shortage of time left for substantial debate on the issues because of the delayed adoption of the Agenda of the 2007 NPT PrepCom, as noted above, a rushed debate on the NPT’s withdrawal provision (Article X(1)) took place during the last day of the PrepCom, during its final working session on Friday morning, 11 May 2007.<sup>226</sup> Only 14 States managed to deliver their brief speeches on the issue.<sup>227</sup>

Canada referred to the DPRK’s development of nuclear weapons and underlined the necessity to address the issue of Article X(1) and the DPRK’s withdrawal during the current NPT review cycle in order to establish a common understanding before any other similar challenges to the NPT could appear. Canada asked the PrepCom to agree on a few principles governing withdrawal applicable to a withdrawing State, such as prohibition to retain the

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<sup>224</sup> *Summary record of the 4th meeting, NPT/CONF.2010/PC.I/SR.4* (9 October 2007), para. 10, page 3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/62/PDF/N0732962.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>225</sup> *Summary record of the 6th meeting, NPT/CONF.2010/PC.I/SR.6* (22 October 2007), para. 66, page 10. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/68/PDF/N0732968.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>226</sup> State statements on *Other provisions of the Treaty, including Article X* at the 2007 NPT PrepCom are available at < <http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements.html> > (accessed on 2 July 2009).

<sup>227</sup> Those States were Canada, South Africa, Republic of Korea, New Zealand, Cuba, Japan, Australia, Syria, Norway, US, EU, UK, Argentina, Switzerland. See **Reaching Critical Will**, *Statements from the nuclear Non-Proliferation Treaty Preparatory Committee, April 30 - May 11, 2007, Vienna*. Available at < <http://www.reachingcriticalwill.org/legal/npt/prepcom07/statements.html> > (accessed on 3 August 2009).

fruits of its adherence to the Treaty; compulsory compliance of a State with its NPT obligations prior to exercising its right to withdraw under Article X(1); and that even withdrawal from the NPT would not absolve a State from responsibility for violations committed while a Party to the Treaty. In conclusion, Canada reiterated the points made in its working paper<sup>228</sup> that any notification of intent to withdraw from the NPT should be considered as an extraordinary situation that threatened the integrity and viability of the NPT and which merited a commensurate response.

A very strong position on withdrawal from the NPT was presented by South Africa. Its views differed substantially from the views expressed by the Western States. South Africa, as well as Cuba, both reiterated that Article X(1) of the NPT clearly provided that a State may withdraw from the Treaty in the exercise of its sovereign right in certain defined circumstances and in accordance with the procedure set out in this Article. South Africa stressed that Article X(1), therefore, should not be opened up to any re-interpretation, which could be in the interest of certain States, as was pointed by Cuba. It stated that the re-interpretation could create ambiguity and loose legal interpretations that might undermine the Treaty by creating loopholes. South Africa, however supported debate on the procedural aspects of withdrawal, it did not approve the discussions on penalising withdrawal from the NPT and argued that such an aspect had not been provided for in the Treaty itself and probably had not even been meant by the drafters of the NPT. South Africa remained in firm in its conclusion that the penalisation of withdrawal could only be achieved through an amendment to the NPT. South Africa's statement aimed at strengthening of sovereign right

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<sup>228</sup> *Other provisions: institutional reform, article X and withdrawal. Working paper submitted by Canada, NPT/CONF.2010/PC.I/WP.42* (7 May 2007) 2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/333/50/PDF/N0733350.pdf?OpenElement> > (accessed on 2 July 2009).

of States to withdraw from treaties and stressed the importance of the VCLT in such mechanisms. To sustain that argument, South Africa referred to Article 54 of the VCLT, pursuant to which “[t]he termination of a treaty or the withdrawal of a party may take place: (a) in conformity with the provisions of the treaty; or (b) at any time by consent of all the parties after consultation with the other contracting States.”

The Republic of Korea also recognized that the right to withdraw from the NPT pursuant to Article X(1) should be respected and thus shared the view of South Africa in this regard. But it did not share the other parts of South Africa’s argument on withdrawal. The Republic of Korea emphasized the imperative to address in an efficient manner, the abuse of the right of withdrawal by States that had violated their Treaty obligations. Portraying the risk of acquisition by potential violators of necessary materials and technologies to manufacture nuclear weapons obtained under Article IV of the NPT for peaceful nuclear activities, the Republic of Korea stressed the necessity for the States Parties to the NPT to consider the establishment of a collective and systematic response mechanism to NPT withdrawals. It supported its proposal by a list of criteria that, a withdrawing State should meet: i) full implementation of all obligations under the NPT before the withdrawal; ii) immediate return of nuclear equipment and materials obtained under Article IV of the NPT to the supplying States; and iii) placing such equipment and material under IAEA safeguards pending their return to the supplying States. The Republic of Korea was of the view that any withdrawal from the NPT, unlike withdrawals from other treaties, might pose a direct threat to international peace and security and severely undermine the validity and durability of the NPT. It used the argument to encourage the State Party to develop constructive and active deliberations on a collective response mechanism to a possible case of withdrawal from the

Treaty throughout the entire 2010 NPT review cycle with a view of adopting a decision or a guideline on Article X(1) at the 2010 NPT RevConf.

Japan viewed the debate on Article X(1) on withdrawal as the utmost priority of the NPT review cycle and the PrepCom in particular. Keeping in mind the case of the DPRK, Japan stated that ignoring the withdrawal of a State from the NPT after it had clandestinely acquired the capability to produce nuclear weapons and caused regional and international security concerns, could seriously affect the universality of the Treaty and confidence in the international nuclear non-proliferation regime based on the NPT. While elaborating on the ways of an expeditious response to withdrawal, Japan rejected the possibility of amending the Treaty as an unrealistic option. Japan believed that the best approach to deter withdrawal, and preferably to avoid it, would be to raise the costs associated with the action, to which the States should promptly agree by developing a mechanism to handle the issue appropriately. With respect to the measures for raising the costs of withdrawal proposed by Japan, these were substantially the same as those proposed by the Republic of Korea. Japan also proposed some additional procedural elements. First, procedural steps of withdrawal, such as a “notification of withdrawal” should be elaborated in the way to serve as an effective deterrent to withdrawal, rather than a “roadmap”. Second, a consultation mechanism among the States Parties should be established to seek a reconsideration of the decision by a withdrawing State. Third, the UNSC should convene automatically and immediately when any State gave a notice of withdrawal or an inspection to verify the compliance of a withdrawing State with the NPT should be mandated by a decision of the UNSC. The feasibility of such a proposal would depend largely on the intentions of the UNSC. Japan in its statement picked up the language of the 2005 Draft Report of Main Committee III and said that the involvement of



the UNSC in withdrawal from the NPT was vital because a withdrawal from the NPT could deeply affect international peace and security.

Australia referred to NPT withdrawal as a key issue for the review cycle, during which all NPT Parties should ensure that no other NPT Party would follow the DPRK's route of developing nuclear technology, announcing withdrawal from the Treaty and using that same technology for a nuclear weapons program. It added that the discussion of NPT withdrawal issues should go forward relying on the previous discussion on this matter at the 2005 NPT RevConf. Australia spoke on both procedure and consequence of withdrawal from the NPT. It welcomed the firm support in 2005 for the principle that a State withdrawing from the NPT should not be able to benefit from nuclear materials, equipment and technology acquired while Party to the Treaty. It agreed that the measures to give effect to this principle should include incorporation of clauses in intergovernmental nuclear supply agreements forbidding the use of nuclear items subject to such agreements and dismantling and/or return of such items, if the recipient withdraws from the NPT. The same condition should apply to nuclear materials, equipment and technologies produced from, or with the help of, the nuclear materials, equipment and technology originally transferred. Australia was of the view that the drafters of the NPT acknowledged the seriousness of any withdrawal by requiring in Article X(1) that notice of withdrawal be given not only to all other States Parties, but also to the UNSC. As well as Japan, Australia stated it would be appropriate for the UNSC to convene automatically and immediately when any State gave notice of withdrawal. Such a prompt action would enable the UNSC to consider the implications for international peace and security and the action required. If the UNSC considered the withdrawal as a threat to international peace and security, it would have to respond

appropriately in accordance with the UN Charter. Australia noted that notification of withdrawal by a State that had violated its NPT commitments was a special concern given that the State involved may have embarked on a nuclear weapons programme. These were the suggestions made by the US still at the 2005 NPT RevConf and they found their continuity in the statements of the other States two years later.

Norway stated that the core of the withdrawal problem of the NPT was in the institutional deficit of the Treaty, which, given the importance of the Treaty, should be addressed by the international community. As a remedy to the problem, it proposed to overcome it by a better structured review process, strengthened by annual meetings of the States Parties. The annual meetings could consider the operation of the NPT in general, focusing on particular issues, and address matters of particular concern such as issues of non-compliance and withdrawal. However, Norway specified that those annual meetings should not undermine the authority and statutory role of the UNSC or of the IAEA. It also proposed some other additional ways to strengthen the institutional machinery of the NPT through as enhanced support of the NPT secretariat and the possible setting up of a standing bureau for the NPT.

The US was a strong advocate of an enhanced role for the UNSC in the NPT withdrawal mechanism. It stated that in the event a Party in violation of its non-proliferation obligations announced its intent to withdraw from the Treaty, this likely would be coupled with the intention to acquire nuclear weapons. Because such an action could threaten international peace and security, the UNSC would have to carefully consider the potential consequences of withdrawal for international peace and security. The US believed that there could be specific measures the UNSC, the IAEA Board of Governors, and nuclear suppliers

could take in such a case. For that purpose, the UNSC should meet promptly upon receipt of a notification of withdrawal to consider the Party's reasons for withdrawing, the plausible consequences of such withdrawal for peace and security, and measures that might address the withdrawing Party's concerns. In order to possibly assess the reasons for withdrawal of a States, the UNSC could ask the IAEA to provide relevant information about the States in question, including the status of its safeguards compliance, its technological capabilities, its holdings of relevant nuclear materials, and inspectors' assessments of the State's activities. The UNSC could also consider consulting with the withdrawing State and make clear the possible steps the UNSC might take in response to the withdrawal from the NPT. The US was very explicit on the ways of involvement of the UNSC in the withdrawal from the NPT and its authority in case when an announced by a State withdrawal actually takes place. It proposed that in such cases the UNSC should consider whether the resulting situation could constitute a threat to international peace and security. If it did so, the UNSC should consider all appropriate measures, including invoking its authority under Chapter VII of the UN Charter, to address the threat.

The US clarified that the IAEA would not have a direct role in matters related to NPT withdrawal, but its role in safeguards implementation and compliance would be essential if a State in violation of its safeguards obligations announced its intent to withdraw from the NPT. Therefore, the US proposed that the IAEA Board of Governors consider the actions it could take in response to such an announcement. Those actions could include a prompt report to the UNSC, in accordance with the IAEA Statute, on findings of any safeguards non-compliance by a withdrawing State, as well as response to UNSC requests to provide such a report or information regarding any other compliance concerns. In order to mitigate the risks

of an announced withdrawal, the US also proposed that the IAEA Board could suspend IAEA projects or technical assistance to a State found to be in non-compliance with its safeguards obligations and withdraw any material or equipment from such a State provided by the IAEA.

The EU drew attention to its working paper submitted to the 2005 NPT RevConf in which it had drawn attention to the potential implications for international peace and security of withdrawal from the NPT.<sup>229</sup> The EU underlined the central role of the UNSC as the final arbiter in maintaining international peace and security. While each State Party had a sovereign right to withdraw from the NPT, a withdrawal could constitute a threat to international peace and security. The legal requirements as set out in Article X(1) of the NPT and the implications of a withdrawal should thus be clarified and an understanding should be reached on appropriate actions in case of an announced withdrawal from the Treaty. Here, the EU indicated an important role of the UNSC and stated that any withdrawal notification under Article X(1) of the NPT should prompt the UNSC to consider this issue and its implications as a matter of urgency, including examination of the cause for the withdrawal, which according to the requirements of Article X(1) has to be “extraordinary events related to the subject matter of the Treaty”.

The EU added that in cases where a withdrawal of a State from the NPT could not be avoided, a State should remain internationally liable for any violations of the NPT committed prior to withdrawal. All nuclear materials, equipment, technologies and facilities, acquired or developed for peaceful purposes under the NPT should remain, in case of a withdrawal from

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<sup>229</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, European Union common approach: Working Paper submitted by Luxembourg on behalf of the European Union, NPT/CONF.2005/WP.32* (10 May 2005), para. 4 (c). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/339/76/PDF/N0533976.pdf?OpenElement> > (accessed on 9 June 2009).

the Treaty, restricted to peaceful uses only and as a consequence had to remain subject to IAEA safeguards. The EU stressed that the contributions and discussions that took place at the 2005 RevConf proved to be very useful. Therefore, according to the EU, the review process leading up to the 2010 NPT RevConf should build upon that discussion.

The UK's view about the 2005 NPT RevConf differed from the EU's position. The UK was disappointed that the 2005 NPT RevConf had been unable to find consensus on increasing the cost of withdrawal from the NPT as it was a serious threat to international peace and security. It stressed that the States Parties had to ensure that the States withdrawing from the Treaty in order then to pursue a nuclear weapons programme, should be unable to benefit from the material, technology and information, to which they had access through being a State Party. However, the UK did not speak on the role of the UNSC.

For Argentina, the core concern with respect to withdrawal was the necessity to promote disincentives to withdraw from the NPT through a strengthened institutional mechanism foreseen in the Treaty. With regard to such a mechanism, Argentina favoured the establishment of a permanent entity that would call for annual meetings of the States Parties and special meetings, if necessary; and the elaboration of the mechanism that would make costly any withdrawal from the NPT.

Switzerland stated that the withdrawal of the DPRK from the NPT had identified a loophole in Article X(1) of the Treaty. However, without questioning the right of withdrawal from the NPT, Switzerland added that any new withdrawal from the Treaty should be avoided for sake of strengthening international security. Switzerland stated that for this purpose, it would be important to indicate clearly legal consequences for all States Parties willing to withdraw from the Treaty.

Though the time available for the substantive discussions was constrained, the delegations used that limited time very efficiently. Many States took the position that suspending the right to withdraw contained in Article X(1) was not feasible or desirable as it was a sovereign right of the States, but a large number of interventions argued that the cost of withdrawal should be raised, so as to make leaving the NPT less attractive and deter States from withdrawing. Some States, especially from the NAM, raised concerns that the right to withdraw was a sovereign right in keeping with the UN Charter and that if it were made subject to punitive measures or constraints, this would introduce another level of discrimination in the NPT. There was a broad agreement that if any State chose to withdraw from the NPT, then any nuclear technology or facilities that had been acquired under Article IV of the NPT for peaceful purposes must remain for peaceful purposes and under IAEA safeguards.<sup>230</sup>

### **National reports**

Out of 19 States that submitted national reports, only two States – Canada and New Zealand – noted the issues related to Article X(1) of the NPT and the DPRK's withdrawal from the NPT.<sup>231</sup> Canada addressed Article X(1) of the NPT and stated that it had continued to coordinate a core group of States at the IAEA General Conference responsible for a resolution on the DPRK. It noted that in September 2005 and 2006 the Canadian led core group facilitated the adoption by consensus of a resolution which sought to promote the

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<sup>230</sup> **Johnson, Rebecca**, *Back from the Brink? The 2007 NPT PrepCom Report*, Disarmament Diplomacy (Summer 2007) Issue No. 85. Available at < <http://www.acronym.org.uk/dd/dd85/85npt.htm> > (accessed on 28 June 2009).

<sup>231</sup> State reports are available as Official documents of the 2007 NPT PrepCom at its official website < <http://www.un.org/NPT2010/documents.html> > (accessed on 28 June 2009).

resumption by the DPRK of its obligations under the NPT, including the implementation of its comprehensive safeguards agreement.<sup>232</sup> New Zealand noted its concern regarding the DPRK's announced withdrawal from the NPT. In this regard, New Zealand expressed its support of the Six Party Talks process and expressed hope that this process would eventually lead to the return of the DPRK to active membership of the NPT and to meeting its Treaty obligations and resuming cooperation with IAEA.<sup>233</sup> None of the reports mentioned the role of the UNSC in Article X(1) of the NPT.

### Working papers

The working papers on withdrawal from the NPT submitted by the States presented very elaborate assessments of the matter that added additional information to their statements. Japan's working paper dedicated a full section to Article X(1).<sup>234</sup> Most of those comments on the issue reiterated the views expressed in the statement. Japan being seriously concerned with the issue of withdrawal from the NPT, noted that there should be no tolerance of withdrawal a State from the NPT after it had developed a nuclear weapons capability under the Treaty. Japan stated that the best way to deter withdrawal would be to make withdrawal more costly. In order to reach this goal, the States Parties to the NPT should

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<sup>232</sup> *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, Report submitted by Canada, NPT/CONF.2010/PC.I/9* (1 May 2007), para. 31. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/326/80/PDF/N0732680.pdf?OpenElement> > (accessed on 28 June 2009).

<sup>233</sup> *Treaty on the Non-Proliferation of Nuclear Weapons, Report submitted by New Zealand, NPT/CONF.2010/PC.I/17* (10 May 2007), para. 17. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/338/33/PDF/N0733833.pdf?OpenElement> > (accessed on 28 June 2009).

<sup>234</sup> *Working paper submitted by Japan, NPT/CONF.2010/PC.I/WP.2* (27 April 2007), Section VI. *Withdrawal from the NPT*, paras. 79-82. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/321/57/PDF/N0732157.pdf?OpenElement> > (accessed on 30 June 2009).

reaffirm that a State withdrawing from the NPT should remain responsible for violations it committed while a being Party to the Treaty. In line with this argument, Japan also listed other measures that could make withdrawal costly, such as prohibition to use for military purpose the nuclear capabilities acquired under the pretext of peaceful use of nuclear energy while under Article IV of the Treaty; retrieve by supplier States for the purpose of neutralization of the nuclear material, facilities, equipment, etc., that were transferred to a withdrawing State prior to its withdrawal. Japan proposed to resume the discussion of the withdrawal issue at had been achieved at the NPT 2005 RevConf, building upon its results of the useful discussions and deepening the discussions to reach an agreement on concrete measures conducive to deterring withdrawal from the NPT during the 2010 NPT RevConf. Being concerned with the measure of deterrence of withdrawal, Japan's working paper, however, did not make any proposal with respect of the role of the UNSC in withdrawal mechanism, not even to the extend it did in its statement on the issue.

In addition to the statement on withdrawal issue, the US noted the matter in its two working papers.<sup>235</sup> In the first paper on the challenges of non-proliferation non-compliance, the US reminded that the DPRK had been secretly working to develop nuclear weapons for many years, notwithstanding its accession to the NPT and that such efforts of the DPRK prior to its effective withdrawal had constituted an undeniable violation of its NPT obligations,

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<sup>235</sup> *Challenges of non-proliferation non-compliance, Working paper submitted by the United States of America, NPT/CONF.2010/PC.I/WP.18* (3 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/81/PDF/N0732981.pdf?OpenElement> > (accessed on 2 July 2009); *Article X of the Treaty on the Non-Proliferation of Nuclear Weapons: deterring and responding to withdrawal by Treaty violators. Working paper submitted by the United States of America, NPT/CONF.2010/PC.I/WP.22* (3 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/08/PDF/N0733008.pdf?OpenElement> > (accessed on 2 July 2009).



both of Article II and Article III.<sup>236</sup> It also noted the DPRK's nuclear detonation conducted on 9 October 2006 condemned by the UNSC resolution 1718 (2006).<sup>237</sup> In its second working paper, the US addressed exclusively the issues of Article X(1) of the NPT prescribing it an utmost importance in retaining the great benefits of the NPT for the international community, which could be dangerously eroded, if States violating the NPT could easily withdraw from the Treaty developing nuclear weapons and enjoy the fruits of their violation with impunity. The NPT with its system of interrelated security and developmental benefits could collapse undermining the Treaty's basic non-proliferation rules and making universal adherence pointless. That was the argument of the US for making violation of Treaty obligation costly.<sup>238</sup>

The US asked the NPT States Parties to consider Article X(1), deterrence of withdrawal and response to NPT withdrawal of the violators of the NPT as important and urgent and place the issue high upon their agenda for the 2010 NPT review cycle, relying on the achievements of the 2005 NPT RevConf.<sup>239</sup> As many other States, the US reminded that withdrawal would not absolve a State of any violation of the Treaty that was committed while still a Party to the Treaty and it should not avoid corrective action by the international community depriving it of such benefits while in violation of the Treaty. The US explained that pursuant to Article X(1), States have a right to withdraw from the NPT, but they do not

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<sup>236</sup> *Challenges of non-proliferation non-compliance, Working paper submitted by the United States of America, NPT/CONF.2010/PC.I/WP.18* (3 May 2007), paras. 11-13, 17. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N07/329/81/PDF/N0732981.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>237</sup> *Ibid.*, para. 13.

<sup>238</sup> *Article X of the Treaty on the Non-Proliferation of Nuclear Weapons: deterring and responding to withdrawal by Treaty violators. Working paper submitted by the United States of America, NPT/CONF.2010/PC.I/WP.22* (3 May 2007), para. 2. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/08/PDF/N0733008.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>239</sup> *Ibid.*, para. 3.

have a right to profit from their violations, and other States Parties should ensure that they do not.<sup>240</sup> Continuing the argument, the US shared its views on deterrence and effective response to withdrawal from the NPT. It explained that a three months' notice required by Article X(1) gives States Parties, the UNSC, and any interested Party an opportunity to seek to influence the withdrawing Party, to prepare to deal with the consequences of a completed withdrawal, or to review and evaluate a statement by the withdrawing Party of the circumstances it believes jeopardize its supreme interests and thus provide for withdrawal. The US clarified that although a decision to withdraw is solely a matter of national sovereignty, the international community should seek to exercise any avenues of redress available to it, if it is clear that such withdrawal reasons are offered in bad faith, especially with the intent of continuing pre-existing NPT violations.<sup>241</sup>

The US noted that the NPT conveys no power to stop withdrawal from taking effect, even if the reasons for such an action as provided by a withdrawing State are improper. But the NPT neither prevents the international community from taking appropriate steps against a withdrawing Party, especially a Party that had demonstrated that its actions posed a threat to international peace and security. The US explained as it did in its statement that NPT withdrawal would ordinarily raise issues within the competence of the UNSC, especially if it is a withdrawal of a State that already violated its NPT obligations.<sup>242</sup> In response to withdrawal, the US proposed NPT States Parties to undertake a wide range of actions to dissuade a State from withdrawing while in violation of the Treaty and to express opposition to such a step before, during, and after a three-month notice period envisaged in Article X(1)

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<sup>240</sup> *Ibid.*, para. 6.

<sup>241</sup> *Ibid.*, para. 9.

<sup>242</sup> *Ibid.*, para. 10.

and such measures, depending on the circumstances, could include an action of the UNSC.<sup>243</sup> As well as in its statement, the US affirmed its view that an NPT violator's intention to withdraw from the NPT would likely be coupled with the intention to acquire nuclear weapons. Therefore, according to the US, the UNSC must consider the potential consequences of the intended withdrawal for international peace and security meeting promptly upon the receipt of a notification of withdrawal. The UNSC would have to consider the extraordinary events cited by the Party as jeopardizing its supreme interests and thereby triggering its intention to withdraw and the possibility that alternative measures short of withdrawal might address and resolve the circumstances cited by the Party.<sup>244</sup> The US reminded that the UNSC named the proliferation of nuclear weapons as a threat to international peace and security. Accordingly, in a case of withdrawal from the NPT by a violator, the UNSC should consider the full range of options provided by the UN Charter, including under Chapter VII, depending on the circumstances of the case. Those proposals on the role of the UNSC in withdrawal reflected most of the content of the US speech under cluster III. In addition, the US proposed that the UNSC could ask the IAEA for all relevant information it may have about the State in question, including the status of safeguards compliance by the withdrawing State. The US suggested that the IAEA could also provide other information on a State, such as the State's capabilities in reprocessing and enrichment and any holdings of enriched uranium and plutonium, as well as its inspectors' assessments of nuclear activities known to be under way in that State. The UNSC could also consider undertaking consultations with the withdrawing Party and clarify its possible the steps the UNSC might take. Should the withdrawal be completed fulfilling the requirements of Article

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<sup>243</sup> Ibid., para. 11.

<sup>244</sup> Ibid., para. 12.

X(1) of the NPT, the UNSC should carefully consider whether the situation resulting from the withdrawal constitutes a threat to international peace and security. Having made such a determination, the UNSC should consider all appropriate measures to impose specific conditions of transparency and accountability on nuclear-related activity and regulate the scope of permissible nuclear-related dealings in the State in question.<sup>245</sup> As noted in its statement, the US emphasized the role of the IAEA and the necessity of prompt reporting by the IAEA Board of Governors to the UNSC of any safeguards or other compliance concerns with respect to the withdrawing State, as well as suspension of IAEA technical assistance to such a Party, whether on grounds provided in the IAEA statute, as a matter of policy, or as directed by the UNSC.<sup>246</sup>

The US concluded that the right to withdraw from the NPT remains a sovereign right, also granted by the Treaty itself. But nothing in the NPT gives States the right to benefit from their violation of the Treaty's provisions and without meeting the consequences of such acts and avoiding responsibility. The US asked the States Parties to make clear that they would ensure that all appropriate consequences would follow a withdrawal from the Treaty by a violator. Such a collective action would also help deterring such actions and further the goal of universal adherence. Therefore the US represented the issue as a top priority for the 2010 NPT review cycle that should develop and encourage such measures reinforcing the NPT.<sup>247</sup>

As well as the US, the EU also submitted two working papers which paid attention to withdrawal from the Treaty.<sup>248</sup> In the first paper, the EU drew attention to the potential

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<sup>245</sup> Ibid., paras. 14-15.

<sup>246</sup> Ibid., para. 16.

<sup>247</sup> Ibid., para. 18.

<sup>248</sup> *Preparing for a successful Review Conference 2010. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.30* (4 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/331/53/PDF/N0733153.pdf?OpenElement> > (accessed on 2 July 2009); *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union*

implications for international peace and security of withdrawal from the NPT, recognized the contribution of the discussions of the 2005 NPT RevConf, and urged the adoption during the current review cycle of measures to discourage withdrawal from the Treaty on the basis of the existing principles.<sup>249</sup>

In the second, more detailed, working paper the EU analyzed the legal requirements and implications of withdrawal from the NPT for international security.<sup>250</sup> The EU regarded the right to withdraw from the NPT as a sovereign right of each State Party, but reminded that a withdrawal could, in a given case, constitute a threat to international peace and security. Therefore, the EU followed the argument of the US specifying that the legal requirements of Article X(1) of the NPT and the consequences of a withdrawal should be clarified.<sup>251</sup> The EU working paper in its section on the assessment of legal requirements of withdrawal from the NPT explained that a “notice of withdrawal” would have to be given in writing in a form of a *note verbale* to the Governments of all States Parties to the NPT and the President of the UNSC. The *note verbale* would have to be circulated three months in advance of an intended withdrawal and shall include a detailed and specific statement of the required extraordinary events the State regards as having jeopardized its supreme interests. The three-month period should start with the date of transmission of the *note verbale* to the

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*common approach. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.25* (10 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/32/PDF/N0733032.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>249</sup> *Preparing for a successful Review Conference 2010. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.30* (4 May 2007), para. 11. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/331/53/PDF/N0733153.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>250</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union common approach. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.25* (10 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/32/PDF/N0733032.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>251</sup> *Ibid.*, para. 3.

above-mentioned recipients; any other declarations, public statements or letters of intention would not be considered as valid to shorten this the required three-month period.<sup>252</sup>

The EU also provided its legal understanding of the implementation of Article X(1) of the NPT. Thus, the EU stated that in the event of announcement by a State Party of its intention to withdraw from the Treaty under the provisions of Article X(1), the depositary States should immediately begin a consultation process of interested States Parties to explore ways and means to address the issues raised by the notification of intent, taking into account the situation of the notifying Party vis-à-vis its safeguards undertakings as regularly assessed by the IAEA. Such notification would also prompt the depositaries of the Treaty to consider the issue and its implications as a matter of urgency. The EU stressed the key role of the UNSC which, as the final arbiter in maintaining international peace and security, should take into immediate consideration a notification of withdrawal under Article X(1), consider its implications as a matter of urgency, including examination of the cause for the withdrawal. The EU further proposed that UNSC should declare that its consideration of a withdrawal notification would include the matter of a special inspection by the IAEA of the notifying Party. In dealing with the effects of withdrawal, the EU proposed a State should remain liable for violations committed prior to withdrawal from the NPT. As in its statement, the EU proposed a list of principles and measures should be observed in the case of withdrawal, according to which the preparation of the withdrawal decision with a view to conducting a military nuclear programme should be regarded as a violation of the objectives of the Treaty. Such a withdrawal should be considered as such that constitutes a threat to international peace and security and all nuclear materials, equipment, technologies and facilities developed for peaceful purposes should remain restricted to peaceful uses only and subject to IAEA

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<sup>252</sup> Ibid., paras. 4-6.

safeguards.<sup>253</sup> The measures proposed by the EU in its working paper were quite similar to those suggested by the US and Japan. It represented a formation of a common approach of the majority of western States on how to act in case of withdrawal from the NPT.

As most of the States that expressed their view on withdrawal, Australia<sup>254</sup> in its working paper reminded of the discussion of the 2005 NPT RevConf that had been supportive of stronger disincentives to withdrawal and an appropriate international response in any cases of withdrawal though recognizing that NPT withdrawal remains a sovereign right.<sup>255</sup> Australia pointed out that NPT withdrawal had to be a key issue for the 2010 NPT review cycle and all NPT States Parties had to ensure that no other NPT State could announce withdrawal from the Treaty and use technology for a nuclear weapons programme.<sup>256</sup> Australia supported the 2005 NPT RevConf principle that a State that withdraws from the NPT should not be able to benefit from nuclear materials, equipment and technology acquired while Party to the Treaty. It noted that the measures indicated in the 2007 EU working paper should give effect to this principle. Australia's comments on the withdrawal clause and the role of the UNSC that was envisaged by the drafters of the Treaty, as well as Australia's proposal of an immediate UNSC meeting were the same as in its statement.<sup>257</sup>

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<sup>253</sup> Ibid., para. 10.

<sup>254</sup> *Perspectives on issues related to cluster 2. Working paper submitted by Australia, NPT/CONF.2010/PC.I/WP.32* (7 May 2007), para. 7. Available at <[http://www.un.org/NPT2010/offdocs\\_9\\_May/NPT\\_CONF\\_2010\\_PC\\_I\\_WP\\_32\\_E.pdf](http://www.un.org/NPT2010/offdocs_9_May/NPT_CONF_2010_PC_I_WP_32_E.pdf)> (accessed on 2 July 2009).

<sup>255</sup> *Perspectives on issues related to article X of the Treaty on the Non-Proliferation of Nuclear Weapons. Working paper submitted by Australia, NPT/CONF.2010/PC.I/WP.34* (7 May 2007), para. 1. Available at <[http://www.un.org/NPT2010/offdocs\\_9\\_May/NPT\\_CONF\\_2010\\_PC\\_I\\_WP\\_34\\_E.pdf](http://www.un.org/NPT2010/offdocs_9_May/NPT_CONF_2010_PC_I_WP_34_E.pdf)> (accessed on 2 July 2009).

<sup>256</sup> Ibid., para. 6.

<sup>257</sup> Ibid., para. 5.

Canada took an opportunity to call again for a broader institutional reform of the NPT, which it initially had proposed in its working paper submitted at the 2005 RevConf.<sup>258</sup> The 2005 Canadian paper called for a series of institutional reforms beginning with the establishment of a small standing bureau of the NPT, which would convene extraordinary sessions in the event that a State Party submits a notification of intent to withdraw from the NPT, or if other situations arise that threaten the integrity or viability of the NPT. Canada proposed that the members of the bureau could also act as stewards of the Treaty and provide much-needed continuity throughout the review cycle, also interacting with other diplomatic entities or processes relevant to the NPT's purposes (e.g. with respect to the Six-Party Talks on the DPRK).<sup>259</sup>

Canada stressed the importance of addressing the issue of withdrawal adequately during the 2010 NPT review cycle in order to establish a common understanding before facing new challenges to the Treaty. In this respect, it proposed the PrepCom to agree on several principles that it also indicated in its statement. The principles put forwarded by Canada were the same as those proposed by the EU, France, Japan and the US in their respective working papers. Additionally, Canada reiterated its point of view that any notification of intent to withdraw from the NPT should be considered as an extraordinary situation that threatened the integrity and viability of the Treaty and that merited a commensurate response.<sup>260</sup> However, besides proposing the establishment of a small standing

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<sup>258</sup> *Achieving permanence with accountability: Working paper submitted by Canada, NPT/CONF.2005/WP.39* (17 May 2005). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/347/13/PDF/N0534713.pdf?OpenElement>> (accessed on 9 June 2009).

<sup>259</sup> *Other provisions: institutional reform, article X and withdrawal. Working paper submitted by Canada, NPT/CONF.2010/PC.I/WP.42* (7 May 2007), para. 2. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N07/333/50/PDF/N0733350.pdf?OpenElement>> (accessed on 2 July 2009).

<sup>260</sup> *Ibid.*, paras. 5-6.



bureau of the NPT to ensure an institutional reform of the NPT, Canada's working paper did not present any consideration of a role of the UNSC under Article X(1) of the NPT and its involvement in the process. Three other working papers submitted to the 2007 NPT PrepCom, addressed the issue of withdrawal from the NPT. The first paper was drafted by the Group of 10 (organized at the IAEA in Vienna) comprising Australia, Austria, Canada, Denmark, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden. The second paper was submitted by the UK, and the third by Norway.<sup>261</sup> However, none of these three papers were as detailed on withdrawal from the NPT as were the papers assessed above. These papers did not refer to the view of the drafters of the NPT on the role of the UNSC in the implementation of the withdrawal provision of the NPT. The paper of the Group of 10 deeply regretted the DPRK had announced withdrawal from the NPT and called upon the DPRK to come into compliance with the NPT and with IAEA safeguards, dismantle its nuclear weapons programme in a prompt, verifiable and irreversible way.<sup>262</sup> The UK paper urged the DPRK to return to compliance with its commitments under the NPT,<sup>263</sup> and

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<sup>261</sup> *Article III and preambular paragraphs 4 and 5, especially in their relationship to article IV and preambular paragraphs 6 and 7: compliance and verification. Working paper by Australia, Austria, Canada, Denmark, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden, NPT/CONF.2010/PC.I/WP.50* (23 May 2007), Annex, paras. 1-2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/334/52/PDF/N0733452.pdf?OpenElement> > (accessed on 2 July 2009); *Working paper on cluster 2 issues submitted by the United Kingdom of Great Britain and Northern Ireland, NPT/CONF.2010/PC.I/WP.60* (9 May 2007), Annex, para. 10. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/336/59/PDF/N0733659.pdf?OpenElement> > (accessed on 2 July 2009); *Cluster II. Working paper submitted by Norway, NPT/CONF.2010/PC.I/WP.64* (10 May 2007) para. 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/339/08/PDF/N0733908.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>262</sup> *Article III and preambular paragraphs 4 and 5, especially in their relationship to article IV and preambular paragraphs 6 and 7: compliance and verification. Working paper by Australia, Austria, Canada, Denmark, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden, NPT/CONF.2010/PC.I/WP.50* (23 May 2007), Annex, paras. 1-2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/334/52/PDF/N0733452.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>263</sup> *Working paper on cluster 2 issues submitted by the United Kingdom of Great Britain and Northern Ireland, NPT/CONF.2010/PC.I/WP.60* (9 May 2007), Annex, para. 10. Available at <

Norway reminded that it had underlined a number of occasions that the DPRK was bound by its NPT obligations.<sup>264</sup>

### **Chairman's working paper and conclusion: 2007 NPT PrepCom**

The Chair issued a 51-paragraph Chairman's working paper on 11 May 2007.<sup>265</sup> The States' initial response was that the Chairman's working paper was a good and fair representation of the substance put forward during the PrepCom. It was also regarded as a more specific one in comparison with the other final products of the previous years with regard to the range of concerns and responses raised by the States.

The factual summary of the substantive discussions prepared by the Chairman of the 2007 NPT PrepCom, which was attached as a Chair's working paper<sup>266</sup> to the procedural report of the PrepCom, included three paragraphs on the withdrawal issue – as reproduced below:

*46. States parties were reminded about discussion held at the 2005 Review Conference on the need for disincentives on and response to withdrawal from the Treaty. While reaffirming the sovereign right of each State party to withdraw from the NPT as provided for in Article X (1), it was noted that Article X envisaged that the exercise of withdrawal would occur only in the face of extraordinary events. Importance was attached to the*

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<http://daccessdds.un.org/doc/UNDOC/GEN/N07/336/59/PDF/N0733659.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>264</sup> *Cluster II. Working paper submitted by Norway, NPT/CONF.2010/PC.I/WP.64* (10 May 2007) para. 4. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/339/08/PDF/N0733908.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>265</sup> *Chairman's working paper, NPT/CONF.2010/PC.I/WP.78* (11 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/353/04/PDF/N0735304.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>266</sup> **Johnson, Rebecca**, *Back from the Brink? The 2007 NPT PrepCom Report*, Disarmament Diplomacy (Summer 2007) Issue No. 85. Available at < <http://www.acronym.org.uk/dd/dd85/85npt.htm> > (accessed on 28 June 2009).

*need for any withdrawal to take place in a manner consistent with the purposes and objectives of the Treaty and that its consequences would be subject to international scrutiny.*

*47. It was emphasized that under international law, a withdrawing party is liable for breaches of the Treaty that occurred prior to the withdrawal. It was also stressed that nuclear material, equipment and technology acquired by the States for peaceful purposes prior to the withdrawal must remain subject to peaceful uses under IAEA safeguards.*

*48. The need was noted for States parties to undertake consultations and conduct every diplomatic effort, including on a regional basis, to encourage a Party to reconsider its sovereign position to withdraw. Given the particular circumstances envisaged in Article X for the exercise of the right to withdraw, the role of the Security Council as provided for in that Article was also underlined.*

The Chairman's working paper concluded that States Parties had recalled the discussions at the 2005 NPT RevConf on the need for disincentives on, and response to, withdrawal from the Treaty and had reaffirmed the sovereign right of each State Party to withdraw from the NPT as provided for in Article X(1). The Chairman noted that Article X(1) envisaged the possibility of withdrawal only in the face of extraordinary events and relying on the discussion concluded that the States had regarded as very important to make any withdrawal consistent with the purposes and objectives of the Treaty, and had left the assessment of the consequences to international scrutiny.<sup>267</sup> The Chair also recalled the views that the States that withdraw from the NPT should not be able to benefit from nuclear materials, equipment and technology acquired while Party to the Treaty and that under international law, a withdrawing Party was liable for breaches of the Treaty that occurred prior to withdrawal.

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<sup>267</sup> *Chairman's working paper, NPT/CONF.2010/PC.I/WP.78* (11 May 2007), para. 46. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/353/04/PDF/N0735304.pdf?OpenElement> > (accessed on 2 July 2009).

However, given the divergence of the views on the role of the UNSC expressed by the States, the Chair could not conclude that there was an agreement on defining a clear of the UNSC in implementing Article X(1). Therefore, his conclusion on the role of the UNSC under Article X(1) was quite weak and mentioned only that the role of the UNSC had been underlined by the NPT States.<sup>268</sup>

States Parties generally were of the view that the Treaty's withdrawal provision should be exercised only as a solemn and last resort action. If any State leaves the Treaty, then any nuclear technology or facilities that it has acquired under Article IV provisions for peaceful purposes must continue to remain in exclusively peaceful use. Such nuclear materials or facilities in a withdrawing State, therefore, must either be shut down or certified as decommissioned by the IAEA or they should continue to remain under IAEA safeguards.

### **3.8. Withdrawal discussion at the 2008 NPT PrepCom\***

The second PrepCom meeting for the 2010 NPT RevConf took place in Geneva from 28 April to 9 May 2008. It was chaired with by Ambassador Volodymyr Yelchenko of Ukraine. On the basis of the Agenda adopted for the PrepCom after difficult negotiations and delays at the 2007 session of PrepCom, the Chair devoted the maximum time available to debates on the issues of substance.<sup>269</sup> The 2008 PrepCom thus had sufficient time to discuss

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<sup>268</sup> Ibid., paras. 46-48.

\* **The author, Zoryana Vovchok, participated in the 2008 NPT PrepCom as a member of IAEA delegation.**

<sup>269</sup> *Agenda, NPT/CONF.2010/PC.I/15* (8 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/336/72/PDF/N0733672.pdf?OpenElement> > (accessed on 2 July 2009).

the three specific blocs of issues.<sup>270</sup> Two sessions were specifically devoted to the discussion of “Other provisions of the treaty including Article X” under cluster III specific time.<sup>271</sup>

### Statements

On 8 May, fourteen States delivered statements on the issue of withdrawal from the NPT,<sup>272</sup> which essentially repeated their previous views already expressed during the 2007 PrepCom and the 2005 RevConf. Australia noted out that the States Parties to the NPT had demonstrated wide support for stronger disincentives to withdrawal and for an appropriate international response in any case of withdrawal. Canada reiterated a call for agreement on basic principles of withdrawal and the point that it had made in its working paper in 2007 and noted that any notification of intent of withdrawal from the NPT should be considered an extraordinary situation that threatened the integrity and viability of the NPT. Its position on the procedure of addressing of an announcement of withdrawal from the NPT remained unchanged since 2005 and 2007 as it noted that such a case should be discussed at an extraordinary meeting of States Parties convened for this purpose and did not make any reference to the role of the UNSC in addressing such an announcement of withdrawal. Canada indicated the principles that should govern withdrawal from the NPT in line with the necessity of a withdrawing State to comply with the Treaty obligations. It repeated that no

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<sup>270</sup> The following three specific blocs of issues were considered: (a) Nuclear disarmament and security assurances; (b) Regional issues, including with respect to the Middle East and the implementation of the 1995 resolution on the Middle East; (c) Other provisions of the Treaty, including article X. See *Report of the Preparatory Committee on its second session*, NPT/CONF.2010/PC.II/13 (9 May 2008), para. 20. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/349/39/PDF/N0834939.pdf?OpenElement> > (accessed on 8 July 2009).

<sup>271</sup> *Indicative Timetable. Week 2*, NPT/CONF.2010/PC.II/INF.3/Rev.2 (5 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/51/PDF/G0861151.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>272</sup> Australia, Canada, Japan, South Africa, Indonesia, Republic of Korea, US, EU, New Zealand, Syria, Switzerland, Iran, Cuba, Argentina. For the statements see official website of NGO **Reaching Critical Will**, *Government Statements from the second session of the Preparatory Committee for the 2010 nuclear Non-Proliferation Treaty Review Conference (28 April - 9 May 2008)*. Available at < <http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements.html> > (accessed on 6 July 2009).

State should leave the NPT while retaining the benefits of the Treaty, it should be in compliance with its NPT obligations and its withdrawal from the Treaty should not absolve it from responsibility for violations committed being Party to the NPT.

Japan again named the issue of withdrawal from the NPT as a matter of great importance and as one of the most critical and urgent problems of the NPT. It also repeated its views from 2007 and 2005 and reiterated that ignoring the withdrawal of a State Party after it had acquired clandestinely the capability to produce nuclear weapons could provoke regional and international security concerns, seriously affect the universality of the NPT and the confidence in the international nuclear non-proliferation regime based on the Treaty. Japan referred to the 2007 Chair's summary mentioning withdrawal from the NPT, which had noted an evolving common awareness of the significance of responsibility of a State for any violations it committed whilst a Party to the NPT even after it had withdrawn from the Treaty; prohibition to use nuclear materials, facilities and technologies obtained being a Party to the NPT for any other purposes except peaceful; return or neutralization of the nuclear items obtained prior to withdrawal. Japan noted that the feasibility of this proposal depended on the intentions of the UNSC. Given that withdrawal from the NPT was related to international peace and security, Japan noted that in such a case, the UNSC would have to act appropriately in accordance with the UN Charter.

As in 2007, South Africa expressed its concern that some States' proposals could attempt to reinterpret Article X(1) of the NPT and those efforts could create ambiguity. Thus, South Africa stressed that withdrawal from the NPT was a sovereign right of every State Party to the NPT and it should be exercised according to the procedure set out in Article X(1) of the NPT. South Africa added that the endeavours to arrange *ex post facto* penalization of

withdrawal from the NPT, which was not envisaged in the NPT itself, would be inappropriate. Penalization of withdrawal from the NPT could be achieved only through an amendment of the NPT in accordance with Article VIII of the NPT. South Africa referred to Article 54 of the VCLT envisaging that “the termination of a treaty or the withdrawal of a Party may take place: a) in conformity with the provisions of the treaty; or b) at any time by consent of all Parties after consultation with the other contracting States.” South Africa noted that the discussions of withdrawal should be limited to clarifying the procedures outlined in Article X(1) and the proposal constituting an amendment of the Treaty provision would not be considered, unless the States Parties agree to amend the NPT in accordance with Article VIII of the NPT.

Indonesia took note of the proposals of other States that proposed a bigger role for the UNSC to restrain withdrawal or to take other actions it deemed necessary, but criticised the decision-making process in the UNSC and the veto rights of the permanent members. This was the first open and direct rejection by a State Party of the proposals for a strengthened role for the UNSC in the withdrawal process of the NPT based on criticism of the decision-making mechanism of the UNSC. Indonesia proposed to keep the discussion of the withdrawal process within the framework of the NPT, and to deal with the case of announcement of withdrawal from the NPT through the establishment of an emergency meeting of the NPT States Parties. Indonesia argued in support of its proposal by saying that three months would be sufficient to prepare for such a meeting in New York, since all Parties to the NPT are represented at the UN in New York.

The Republic of Korea referred to its working paper on Article X, which reiterated its 2007 position.<sup>273</sup> As many other States, it recognized the right to withdraw from the NPT, but stressed that violators of the NPT should not be allowed to withdraw from the Treaty or to retain nuclear materials and technologies acquired while being a Party to the NPT. The Republic of Korea again proposed its procedural and substantial requirements for withdrawal and noted its firm view that Article X(1) required a withdrawing State to submit a three-month notice of withdrawal to the UNSC. It noted that the negotiating history of Article X(1) showed that the drafters of the Treaty intended to engage the UNSC because a withdrawal from the NPT could constitute a serious threat to the maintenance of international peace and security. In this regard, the Republic of Korea made reference to Article 39 of the UN Charter. It considered a three-month notice as the time needed for the States Parties to respond to the withdrawal. With regard to response measures, the Republic of Korea suggested, *inter alia*, prompt consideration by the UNSC of the situation.

The US stated that at the 2010 NPT RevConf it would be important to develop consensus on the key areas of the NPT in order to reflect this in the comprehensive document of the Conference that would set forth detailed views on every single issue of the NPT, including the response to withdrawal from the Treaty by violators. The US clarified that it was aware of a difficulty to reach consensus on any measures designed to make withdrawal from the NPT more difficult. It reiterated its view from 2007 and 2005 that all States Parties have a right to withdraw, which cannot be affected without amending the Treaty. However, the US pointed out that in the event of a notice of withdrawal, the UNSC should review the

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<sup>273</sup> *Article X – Withdrawal. Working paper submitted by the Republic of Korea, NPT/CONF.2010/PC.II/WP.29* (5 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/39/PDF/G0861139.pdf?OpenElement> > (accessed on 5 August 2009).



matter immediately, consider the consequences and take any action in response that may be appropriate and consistent with the UN Charter. The US proposed that UNSC should seek to ensure that nuclear material and technology continue to be subject to IAEA safeguards. Unless the UNSC took such measures, no State should continue any nuclear supply to a State that violated the NPT. In case a violator State announced its intention to withdraw from the NPT, any such endorsements of the UNSC should be revisited.

The EU as well, as in 2007, recognized the right to withdraw from the NPT, stressed the need to find an adequate response since withdrawal could constitute a serious threat to international peace and security. The EU called for clarification of the legal requirements set out in Article X(1) and the implications of withdrawal. The EU in its statement, as well as in its working paper of 2007,<sup>274</sup> underlined the central role of the UNSC as the final arbiter in maintaining international peace and security. To meet this objective, the EU stated that in case of any withdrawal notification the UNSC should consider the issue of withdrawal as a matter of urgency and carefully examine the causes for the withdrawal.

Given that withdrawal from the NPT constituted one of the most fundamental challenges to the NPT, which “is the antithesis of universalization”, New Zealand again called on States Parties to agree, as a matter of priority, on measures to respond to any notification of withdrawal. As other delegations that were active on the issue of withdrawal, New Zealand referred to a joint working paper that it had submitted together with Australia at the 2005 NPT RevConf.<sup>275</sup> The key ideas of that paper were that following a notice of

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<sup>274</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union common approach. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.25* (10 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/32/PDF/N0733032.pdf?OpenElement> > (accessed on 2 July 2009).

<sup>275</sup> *Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand, NPT/CONF.2005/WP.16* (28 April 2005). Available at <

withdrawal, a withdrawing State should be subject to verification of its compliance with the NPT, even mandated by the UNSC, in case of necessity; an extraordinary meeting of NPT States Parties should be convened; nuclear materials, equipment, and technology acquired by a State while being a Party to the NPT should remain subject to peaceful use obligations, even if a State withdraws from the NPT.

Switzerland proposed that in dealing with the issue of withdrawal, it would be important to encourage States Parties to remain committed to the NPT by taking a more constructive approach to realizing the objectives of the Treaty.

Iran took floor for the first time on the issue of withdrawal and stressed that at the 2000 NPT RevConf the States Parties undertook “to make determined efforts towards the achievement of the goal of universality of the Treaty.” Those efforts referred to the enhancement of regional security, particularly in areas of tension such as the Middle East and South Asia. Since those issues were not resolved, Iran stated that the issue of withdrawal from the NPT, which it named as an effort to amend Article X(1), should not be ranked as a priority issue in the review process. Iran referred to the position of NAM States which in response to the recommendation on withdrawal made by the UN High-Level Panel on Treats, Challenges and Change had declared that the recommendation of the Panel went beyond the provisions of the NPT. According to NAM, withdrawal from the NPT should be governed by international treaty law, as South Africa had pointed out.<sup>276</sup> Iran, similar to South Africa and Indonesia, declared most of the proposals of other States as being efforts to reinterpret Article X(1), which would be tantamount to an amendment of the NPT. Iran reminded that an amendment to the Treaty would be valid only when the States Parties demonstrated their

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<http://daccessdds.un.org/doc/UNDOC/GEN/N05/327/03/PDF/N0532703.pdf?OpenElement> > (accessed on 29 July 2009).

<sup>276</sup> See above the statement of South Africa, p. 203.

intention to be bound by those amendments. However, Iran did not object explicitly to the proposals related to the role of the UNSC, though it considered such proposals as efforts to amend the NPT withdrawal provision.

Argentina favoured a mechanism that would make withdrawal more costly through the introduction of consultations through extraordinary conferences called into session immediately after an announcement of withdrawal. Those conferences would have to assess the extraordinary events motivating withdrawal by a State and promote solutions to the situation. Argentina also shared the view that a withdrawing State would have to remain responsible for violation of its obligations committed prior to withdrawal from the NPT. A withdrawal from the NPT for the purpose of development of a military nuclear programme would violate the objectives of the NPT. The material, equipment, technologies obtained for peaceful uses of nuclear energy would have to be placed under IAEA safeguards. Those principles governing withdrawal were supported by numerous States and thus reaffirmed by Argentina in its statement. However, no reference to the UNSC and its role under Article X(1) was made by Argentina.

### **Working papers**

Following its experience of 2007, Japan submitted again a working paper on withdrawal and made reference to its working paper of 2007,<sup>277</sup> where it had clarified its

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<sup>277</sup> *Working paper submitted by Japan, NPT/CONF.2010/PC.I/WP.2* (27 April 2007), Section VI. *Withdrawal from the NPT*, paras. 79-82. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/321/57/PDF/N0732157.pdf?OpenElement> > (accessed on 30 June 2009).

position on withdrawal.<sup>278</sup> Japan found support of its position in the Chair's working paper of 2007 and noted that the summary had recorded the elements reflected in the discussions that were aimed at deterring withdrawal by upholding a set of relevant principles of the international law, by clarifying the requirements stipulated in Article X(1) of the Treaty, and by stressing the importance of appropriate international responses including the role of the UNSC.

Both the Syrian Arab Republic and Iran submitted their first working papers on withdrawal. Syria affirmed its view that States Parties had a legitimate and sovereign right to withdraw from the NPT should they consider that exceptional events could damage their higher national interests.<sup>279</sup>

In light of ensuring a successful 2010 NPT RevConf, Germany proposed the non-proliferation track should include in its tasks and objectives, the development of a joint understanding on the withdrawal provision of Article X(1) of the NPT.<sup>280</sup>

Iran reiterated most of its ideas expressed in the statement concluding that the NPT RevConf and its PrepCom had to deal with more important priorities and challenges related to the implementation of the two main pillars of the NPT, namely nuclear disarmament and peaceful use of nuclear energy, rather than discussing withdrawal from the Treaty. Given these necessities, Iran stated that the discussion of the issues related to Article X(1) of the

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<sup>278</sup> Working paper submitted by Japan, *Perspectives on Issues related to Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: Bolstering the Benefits of the NPT Regime to Prevent Withdrawal*, NPT/CONF.2010/PC.II/WP.11 (28 April 2008), para. 2. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/609/75/PDF/G0860975.pdf?OpenElement> > (accessed 1 June 2009).

<sup>279</sup> *Substantive issues on the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons: working paper submitted by the Syrian Arab Republic* (29 April 2008), NPT/CONF.2010/PC.II/WP.19, para. 17. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/610/46/PDF/G0861046.pdf?OpenElement> > (accessed 1 June 2009).

<sup>280</sup> *Working Towards a Successful 2010 NPT Review Conference: working paper submitted by Germany* (30 April 2008), NPT/CONF.2010/PC.II/WP.22, para. 6 (iv). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/610/60/PDF/G0861060.pdf?OpenElement> > (accessed 1 June 2009).

Treaty would only divert the attention of the States Parties from their real tasks.<sup>281</sup> It added that withdrawal from the NPT should be governed by international treaty law, as it had been pointed out by South Africa.<sup>282</sup> Iran reiterated that the proposals for strengthening the withdrawal clause of the NPT in most of cases attempted to reinterpret Article X(1) and in substance would constitute a legal amendment of the NPT that would undermine its regime and create uncertainties and loopholes in it. Any such proposal should follow the procedures envisaged in Article VIII of the NPT<sup>283</sup> and would become binding only when all States Parties demonstrated their intention to be legally bound by them through ratification of such amendments, otherwise such proposals would have no basis in international law.<sup>284</sup> Supporting the sovereign right of States to withdraw from the NPT, Iran shared the view of the South Africa that all international treaties were governed by the customary rules of the law of treaties, many of which had been reproduced in the 1969 VCLT. Iran referred to Article 54 of the VCLT that provided that “the withdrawal of a Party may take place in

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<sup>281</sup> *Other Provisions of the Treaty, Including Article X: working Paper submitted by the Islamic Republic of Iran* (30 April 2008), **NPT/CONF.2010/PC.II/WP.24**, paras. 1-3. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/610/74/PDF/G0861074.pdf?OpenElement> > (accessed 1 June 2009).

<sup>282</sup> See above the statement of South Africa, delivered under Cluster III specific time, the 2008 NPT PrepCom, p. 203.

<sup>283</sup> Article VIII of the NPT: “1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment. 2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment....”

<sup>284</sup> Working paper submitted by the Islamic Republic of Iran, *Other Provisions of the Treaty, including Article X* (20 April 2009) **NPT/CONF.2010/PC.III/WP.4**, para. 5 Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/301/29/PDF/N0930129.pdf?OpenElement> > (accessed 14 May 2009).

conformity with the provisions of the treaty”. Iran explained that the NPT’s terms of withdrawal were very explicit and “recognize[d] the existence of the unconditional right of a State to withdraw in exercising its national sovereignty.” Iran expressed concern that acceptance of new withdrawal prerequisites that were not provided for in the Treaty could create a precedent to act differently from what was required in the VCLT.<sup>285</sup> In conclusion, Iran warned the participating States that the 2010 NPT RevConf and its PrepCom were facing more important priorities and challenges than Article X(1) of the NPT.<sup>286</sup>

The Republic of Korea again reaffirmed that the announced withdrawal from the Treaty by the DPRK had posed a serious question about the validity and viability of the Treaty and therefore, the States Parties had to review and consider an effective and collective response mechanism to withdrawal from the NPT.<sup>287</sup> The Republic of Korea reiterated that Article X(1) of the NPT contained a requirement for the withdrawing Party to notify the UNSC of its action, and that the NPT drafters intended to engage the UNSC because a withdrawal from the Treaty might constitute a serious threat to the international peace and security. Three months advance notice had been included to give the UNSC and the States Parties enough time to respond to the extraordinary event of such a withdrawal. The Republic of Korea proposed that such a notice, which it considered as an additional element of restraint of withdrawal, should be submitted in written form and, if done in the form of a

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<sup>285</sup> Ibid, paras. 7-8.

<sup>286</sup> According to Iran, the current major challenges of the NPT are those related to the implementation of its two main pillars Treaty, namely nuclear disarmament and the peaceful use of nuclear energy. See *Other Provisions of the Treaty, including Article X: Working paper submitted by the Islamic Republic of Iran, NPT/CONF.2010/PC.III/WP.4* (20 April 2009), para. 2, 9-10. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/301/29/PDF/N0930129.pdf?OpenElement> > (accessed 14 May 2009).

<sup>287</sup> *Article X: Withdrawal: working Paper submitted by the Republic of Korea, NPT/CONF.2010/PC.II/WP.29* (5 May 2008), paras. 3-9. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/39/PDF/G0861139.pdf?OpenElement> > (accessed 9 July 2009).

unilateral declaration or public statement, it should not be considered valid. The proposed response mechanism would have to rely on a prompt consideration of the situation by the UNSC.<sup>288</sup>

In a joint working paper, the Republic of Korea and the US expressed their view that States Parties to the NPT should work together to develop and implement more effective measures to dissuade such withdrawal and to respond vigorously to it to preserve continued integrity and efficacy of the NPT.<sup>289</sup> The joint paper noted that the right of withdrawal under Article X(1) was not subject to reinterpretation and the penalization of withdrawal per se would not be appropriate since the drafters of the Treaty had foreseen that a State Party could withdraw in certain circumstances when confronted by a threat to its supreme interest. As working papers of the other States, the joint working paper of Korea and the US reiterated the principles governing withdrawal from the 2005 NPT RevConf, according to which a withdrawal from the NPT would not absolve a State of any violation of the Treaty committed while being a Party to it and that a withdrawing State should remain accountable for the violations which it did not remedy before withdrawal from the NPT. They pointed out to the importance of fulfilment of the requirement of a three-month notice of withdrawal that should be given to States Parties and the UNSC in advance to given them enough time to seek to influence the withdrawing Party or to prepare to deal with the consequences of a completed withdrawal. Upon a notice of withdrawal by a Party in violation of the Treaty, the

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<sup>288</sup> *Article X: Withdrawal: working Paper submitted by the Republic of Korea, NPT/CONF.2010/PC.II/WP.29* (5 May 2008), para. 9(b). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/39/PDF/G0861139.pdf?OpenElement> > (accessed 9 July 2009).

<sup>289</sup> *Deterring and responding to withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons by Treaty violators: working paper presented by the Republic of Korea and the United States of America, NPT/CONF.2010/PC.II/WP.42* (9 May 2008). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N08/349/04/PDF/N0834904.pdf?OpenElement> > (accessed 9 July 2009).

UNSC should immediately review the matter and consult the Parties to the Treaty to explore ways and means to address the issues. The UNSC should meet promptly to consider the “extraordinary events, related to the subject matter of the Treaty” cited as reasons for withdrawal, alternative measures to address and resolve the circumstances cited by the Party giving notice, as well as the potential consequences of the intended withdrawal for international peace and security.

Both the Republic of Korea and the US reiterated that the violator’s intention to withdraw would likely be coupled with the intention to acquire nuclear weapons. They noted that on the basis of the UN Charter, the UNSC should consider options to such a withdrawing State Party responsible for its past non-compliance or addressing any threat to peace and security that its actions may present, or both. Among other actions, the UNSC should seek to ensure continuing implementation of safeguards in the withdrawing State Party until past violations were remedied fully.

At the 2008 NPT PrepCom, Ukraine submitted its first working paper where, inter alia, it addressed the issue of Article X(1) of the NPT stressing that withdrawal from the NPT was the sovereign right of each State Party to the NPT. However, Ukraine added that withdrawal from the Treaty could undoubtedly undermine the integrity and confidence in the international nuclear non-proliferation regime based on the NPT and it could result in a domino effect of withdrawals.<sup>290</sup> Ukraine suggested that the 2010 NPT RevConf should establish a subsidiary body to address all aspects of the issue, including clarification of legal requirements set out in Article X(1) and consequences of withdrawal, drawing upon the

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<sup>290</sup> *Preparing for a Successful Review Conference 2010: working paper submitted by Ukraine*, NPT/CONF.2010/PC.II/WP.36 (8 May 2008), para. 40. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/612/44/PDF/G0861244.pdf?OpenElement> > (accessed 9 July 2009).



results of earlier discussions on this issue by the States Parties.<sup>291</sup> In this regard, Ukraine proposed to establish a standing NPT Office which, as proposed by Canada still in 2005, besides dealing with administrative matters and organization of Treaty-related meetings, could be in charge of extraordinary sessions in the event when a State Party submitted a notification of intent to withdraw from the NPT.<sup>292</sup>

### **Chairman's working paper**

The Chair's working paper covered the key articles of the NPT and most of the major issues addressed at the PrepCom.<sup>293</sup> The Chairman's paper summarised the discussion on the right to withdraw from the NPT and responses by NPT States Parties. Thus, the Chair reflected that States Parties had reaffirmed the sovereign right of each State Party to withdraw from the NPT under Article X(1) and had noted that the goal was not to deny the right to withdraw, which would have to be exercised only in the face of extraordinary events, but to make it more difficult for possible violators of the NPT to withdraw from it aiming to escape accountability for non-compliance with their obligations under the Treaty. The Chair concluded that importance had been attached to the need of exercising withdrawal in a way consistent with the NPT requirements, purposes and objectives. Because of its potential to undermine the Treaty, a withdrawal from the NPT would be internationally scrutinized in accordance with Article X(1) by the recipients of the note of withdrawal – by States Parties

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<sup>291</sup> Ibid., para. 41.

<sup>292</sup> Ibid., paras. 42-43.

<sup>293</sup> **Johnson, Rebecca**, *The 2008 NPT PrepCom: Good Meeting, but was it Relevant?*, Disarmament Diplomacy (Summer 2008), Issue no. 88. Available at < <http://www.acronym.org.uk/dd/dd88/88npt.htm> > (accessed on 6 July 2009).

and the UNSC. The States urged elaboration of effective and prompt modalities of response to notifications of withdrawal.<sup>294</sup> However, the Chair's working paper did not reflect the content of the detailed proposals on the role of the UNSC and its strengthened involvement in the withdrawal mechanism, which had been explained in several statements and working papers because such proposals had not garnered broad support. The Chairman's paper dedicated only one sentence to those aspects saying "[g]iven the particular circumstances envisaged in Article X for the exercise of the right to withdraw, the role of the UNSC, as provided for in that article, was also underlined".<sup>295</sup> That language was very close to the Chair's working paper issued at the 2007 NPT PrepCom.<sup>296</sup>

### **Conclusion: 2008 PrepCom**

In comparison with the 2007 NPT PrepCom, the 2008 PrepCom went much more smoothly. There was sufficient time for discussions on all core issues of nuclear disarmament, nuclear energy, safeguards, withdrawal from the treaty and other implementation measures. Though the Chair had produced a comprehensive factual summary that found favour with an overwhelming majority of delegations, given the opposition of

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<sup>294</sup> *Chairman's working paper, NPT/CONF.2010/PC.II/WP.43* (9 May 2008), para. 58. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/349/27/PDF/N0834927.pdf?OpenElement> > (accessed 9 July 2009).

<sup>295</sup> *Ibid.*, para. 60.

<sup>296</sup> *Chairman's working paper, NPT/CONF.2010/PC.I/WP.78* (11 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/353/04/PDF/N0735304.pdf?OpenElement> > (accessed on 2 July 2009).

some States (notably the US), it was decided not to push for this summary to be formally annexed to the report of the PrepCom.<sup>297</sup>

The 2008 NPT PrepCom afforded another opportunity for a detailed discussion of the issue of withdrawal. Some States made their first statements<sup>298</sup> on the issue of withdrawal and/or submitted their first working papers.<sup>299</sup> The involvement of these new actors in the discussion contributed to the diversity of views on withdrawal from the NPT and further highlighted the clear differences in views among the States, dividing them into two camps and in that way created yet another point of conflict and disagreement among States Parties. The new participants of the debate also introduced new arguments with regard to the issue of withdrawal, based on the reference to the VCLT for the support of a sovereign right to withdraw from the Treaty in line with international law, in opposition to the proposals of some Western States – the US, the EU, France, the Republic of Korea – that had called for a major role of the UNSC in the withdrawal mechanism. Iran called for a downgrading of the issue of withdrawal from being a key issue to just an ordinary one that should not be more important than the issues of disarmament or establishment of a Middle East nuclear-weapon-free zone.

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<sup>297</sup> **Johnson, Rebecca**, *The 2008 NPT PrepCom: Good Meeting, but was it Relevant?*, Disarmament Diplomacy (Summer 2008), Issue no. 88. Available at < <http://www.acronym.org.uk/dd/dd88/88npt.htm> > (accessed 6 July 2009).

<sup>298</sup> For i.e., Indonesia, Iran.

<sup>299</sup> For i.e., Syria, Iran, Ukraine.

### 3.9. Withdrawal discussion at the 2009 NPT PrepCom<sup>\*</sup>

The 2009 NPT PrepCom - the third and final session of the PrepCom for the 2010 NPT RevConf was held from 4 to 15 May 2009 at UN Headquarters in New York, after the missile launches by DPRK on 5 April 2009, which were perceived by some States as another threat to the NPT and an action that undermined confidence in the commitment of the DPRK to peace and security.<sup>300</sup> The 2009 NPT PrepCom, as other previous sessions, addressed the discussion of withdrawal from the NPT under *Cluster 3 - Specific Issue (Other provisions of the Treaty, including Article X)*.<sup>301</sup> Besides 11 statements on the matter of withdrawal that were delivered on 11 May 2009 under Cluster 3 - Specific Issue (Other provisions of the Treaty, including Article X),<sup>302</sup> four working papers were submitted by the States Parties and groups of States to provide solutions to the issue of withdrawal.

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<sup>\*</sup> **The authors, Zoryana Vovchok, participated in the 2008 NPT PrepCom as a member of IAEA delegation.**

<sup>300</sup> *Statement of Canada*, (4 May 2009), p. 1. Available at <

<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-8-Canada-English.pdf>> (accessed on 6 August 2009); *Implementation of the Treaty on the Non-Proliferation of Nuclear Weapons. Report submitted by Canada, NPT/CONF.2010/PC.III/4* (20 April 2009), para. 5. Available at <

<http://daccessdds.un.org/doc/UNDOC/GEN/N09/307/65/PDF/N0930765.pdf?OpenElement>> (accessed on 6 August 2009); *Statement of New Zealand* (4 May 2009), p. 4. Available at <

<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-11-New-Zealand.pdf>> (accessed on 6 August 2009); *Statement of the Republic of Korea* (4 May 2009), p. 2. Available at <

<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-14-Rep-of-Korea.pdf>> (accessed on 6 August 2009); *Statement of Iceland* (4 May 2009), p. 2. Available at <

<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/05May2009/05May2009AMSpeaker-12-Iceland.pdf>> (accessed on 6 August 2009).

<sup>301</sup> The 2009 NPT PrepCom took place in New York, from 4 to 15 May 2009. Official website of the Third Session is available at < <http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/>> (accessed 14 May 2009). Pursuant to the decision of the 2005 NPT Review Conference on the *Allocation of items to the Main Committees of the Conference (NPT/CONF.2005/DEC.1)*, withdrawal from the NPT belongs to the so called *Cluster 3 - Specific Issue (Other provisions of the Treaty, including Article X)*.

<sup>302</sup> The following States spoke on withdrawal from the NPT: the US, Czech Republic on behalf of the EU, Australia, Japan, Norway, Russian Federation, Canada, Iran, the Republic of Korea, Indonesia, and Cuba. For the content of the statements see official website of the NGO **Reaching Critical Will**, *Government Statements from the third session of the Preparatory Committee for the 2010 nuclear Non-Proliferation Treaty Review*

## Statements

As in the previous sessions of the NPT PrepCom and the 2005 NPT RevConf, the third session of the NPT PrepCom also reflected the divergences in the views of the States Parties. Thus, with regard to Article X(1), Cuba reiterated its view expressed during previous sessions, that the withdrawal provision of the NPT was very clear. It recalled the position of the NAM on the issue first raised at the 2005 NPT RevConf when it was stated that the proposals on that issue went beyond the provisions of the NPT. The NAM States reiterated that the right of withdrawal should be governed by international treaty law.<sup>303</sup>

Many NPT States being concerned with the missile launches by the DPRK in April 2009 fostered their arguments for a strengthened mechanism of withdrawal that would not allow withdrawals of potential violators of the NPT. In this regard, Australia highlighted the need to increase disincentives to withdraw from the NPT, strengthen and formalize international responses to any cases of withdrawal, including referral to the UNSC.<sup>304</sup> In response to the views that the withdrawal provision should not be considered as an issue of primary importance, the Republic of Korea stated that the misuse of Article X(1) had been the focus of the attention of the NPT States Parties since the DPRK's announcement of withdrawal and stressed the necessity to consider an effective and collective response mechanism to a withdrawal from the NPT.<sup>305</sup> The US referred to the statement of President

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*Conference, 4–15 May 2009.* Available at <  
<http://www.reachingcriticalwill.org/legal/npt/prepcom09/statements.html> > (accessed on 6 August 2009).

<sup>303</sup> *Statement of Cuba (Non-Aligned Movement)* (4 May 2009), p. 4. Available at <  
<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-3-Cuba-NAM-English.pdf> > (accessed on 6 August 2009).

<sup>304</sup> *Statement of Australia* (4 May 2009), p. 4. Available at <  
<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-10-Australia.pdf> > (accessed on 6 August 2009).

<sup>305</sup> *Statement of the Republic of Korea* (4 May 2009), p. 3. Available at <  
<http://www.un.org/disarmament/WMD/Nuclear/NPT2010Prepcom/PrepCom2009/statements/2009/04May2009/04May2009AMSpeaker-14-Rep-of-Korea.pdf> > (accessed on 6 August 2009).

Obama who in his speech in Prague in April 2009 had suggested focusing on collective actions aimed at discouraging withdrawal from the NPT without cause.<sup>306</sup> The US, as before, recognized the sovereign right of the States to withdraw from the NPT, and expressed its concern of a withdrawal by a State that had breached its obligations prior to withdrawal. In this regard, the US reiterated that NPT Parties should develop effective unilateral and/or multilateral mechanisms to dissuade both violation of the Treaty provisions and the subsequent withdrawal. Norway supported this view adding that such efforts would further deepen the security benefits of the NPT through for instance codifying security assurances within the NPT. The US explained that those mechanisms could be grounded in international agreements other than the NPT and could envisage an action of the UNSC or an action outside the UNSC, and, if possible, support diplomatic solution. The US stated that such a set of complementary mechanisms would enable the international community to take an effective action with regard to withdrawal by the means of consultations among States Parties prior to the effective date of an announced withdrawal, return of nuclear material or equipment provided to a Party prior to its withdrawal, or at least continued application of safeguards to nuclear equipment and material in a withdrawing State Party, as well as restrictions on the supply of nuclear material and equipment to such a State after its withdrawal from the NPT. These were the so-called principles of withdrawal supported by most of the Western States during the discussions on withdrawal from the NPT. Highlighting the issue of withdrawal as a matter of high importance, the US called on the international community and especially members of the UNSC to summon the political will to arrest a

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<sup>306</sup> **The White House**, Office of the Press Secretary, *Remarks by President Barack Obama*, Hradcany Square, Prague, Czech Republic (5 April 2009). Available at < [http://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/) > (accessed 30 May 2009).

trend that could not be allowed to continue. However, with regard to the definition of the role of the UNSC, the only references by the US to the UNSC were those as above. Thus, in comparison with the previous years, the 2009 statement of the US on withdrawal did not attempt to stress the ultimate importance of the UNSC and strengthening of its role in the withdrawal from the NPT.

The EU statement delivered by the Presidency held by the Czech Republic reminded that many approaches to withdrawal from the NPT had been developed in the previous sessions. The same point was reflected in the statement of Japan, which noted that the issue had been vigorously discussed at the 2005 NPT RevConf and the exchange of views further deepened during the discussions at the 2007 and 2008 PrepCom sessions. The EU and the Republic of Korea noted that they had submitted their respective working papers on withdrawal at the 2007 and at the 2008 NPT PrepCom sessions respectively.<sup>307</sup>

Given the efforts dedicated to the consideration of withdrawal, Japan and the Republic of Korea reiterated that they would expect the 2010 NPT RevConf to adopt a decision or a guideline on Article X(1) contributing to the strengthening of the NPT regime. The Republic of Korea added that an agreed and a more clarified interpretation of Article X(1) would effectively prevent the possibility of abuse of the right to withdraw from the NPT.

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<sup>307</sup> *Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons: European Union common approach. Working paper submitted by the European Union, NPT/CONF.2010/PC.I/WP.25* (10 May 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/330/32/PDF/N0733032.pdf?OpenElement> > (accessed on 2 July 2009); *Article X: Withdrawal: working Paper submitted by the Republic of Korea, NPT/CONF.2010/PC.II/WP.29* (5 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/G08/611/39/PDF/G0861139.pdf?OpenElement> > (accessed 9 July 2009); *Deterring and responding to withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons by Treaty violators: working paper presented by the Republic of Korea and the United States of America, NPT/CONF.2010/PC.II/WP.42* (9 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/349/04/PDF/N0834904.pdf?OpenElement> > (accessed 9 July 2009).

As at the 2007 and 2008 NPT PrepCom sessions, the EU, Japan and the US did not question the sovereign right of the States to withdraw from the NPT. However, Australia, Norway, the EU and the Republic of Korea reiterated that withdrawal from the NPT could constitute a serious threat to international peace and security. Norway and the Republic of Korea added that while the matter should be addressed by the UNSC, the rights of a State under the NPT, such as peaceful nuclear cooperation, including technical assistance from the IAEA, would have to be suspended following the withdrawal from the NPT. The Russian Federation also supported strengthening the role of the UNSC in the context of withdrawal from the NPT. However, it disagreed that any withdrawal could pose a threat to peace and international security and should be subject to consideration by the UNSC as a matter of urgency. This was an important concern raised by one of the permanent members of the UNSC, which, moreover, differed from the views of some other States mentioned above for which any withdrawal from the NPT could pose a threat to peace and international security.

The EU, Japan, and the Republic of Korea were concerned with the establishment of a framework that would help to manage the consequences of a State's decision to withdraw from the NPT. In this regard the EU laid out a methodology that it had submitted in 2008 proposing a prompt action of the depositaries of the NPT and the UNSC as a matter of urgency to consider a withdrawal of an NPT State by assessing the implications of such a withdrawal, including examination of the cause of the withdrawal, and take an immediate action based on due account of all elements of a case of withdrawal.

Japan, which until 2007 had been silent on the role of the UNSC in withdrawal from the NPT, supported the important role of the UNSC and its automatic and immediate meeting



on the matter of withdrawal from the NPT and reminded that the UNSC should act in accordance with the UN Charter.

Canada, the EU, Japan and the Russian Federation deemed that States should remain internationally liable for violations of the NPT committed prior to withdrawal from the Treaty. They also requested the application of IAEA safeguards to nuclear material, equipment, technologies and facilities acquired or developed by a State while being a Party to the NPT even after withdrawal from the NPT.

Japan noted that it would prefer to have the above-mentioned methodology affirmed at the 2010 NPT RevConf without leading to creation of new hurdles to NPT withdrawal. Canada stressed that a State should be in compliance with its NPT obligations prior to its withdrawal and that no State should be allowed to withdraw from the NPT in a way that could enable it to retain the benefits of the NPT while abandoning its NPT obligations.

The Russian Federation added that in case of withdrawal it would be necessary to convene the IAEA Board of Governors as soon as possible in order to instruct the IAEA to verify the State's compliance with its obligations under its safeguards agreement. In case of State's failure to observe its safeguards obligations, the IAEA Board of Governors should report the non-compliance to the UNSC in accordance with Article 12(c) of the IAEA Statute.

Canada's position on Article X(1) had not changed since 2005 and in 2009 it proposed again to strengthen the NPT review process by Annual Conferences and a Standing Bureau to be composed of the two immediate past chairs and the current chair and it did not mention the UNSC as a possible player in case of withdrawal from the NPT. Instead, the proposed Bureau, which was suggested by Canada as a tool to provide continuity to the NPT

during and in between the NPT PrepCom sessions, would supposedly deal with withdrawal from the NPT.

The position of Iran remained the same since 2008. Though it acknowledged that withdrawal from the NPT was a sensitive issue, it still did not recognize it as important as other main priorities of the NPT, such as its universality, non-implementation of disarmament obligations, development of new nuclear weapons, peaceful use of nuclear energy. With regard to the proposals on strengthening Article X(1), it repeated its position that such proposals were reinterpreting that provision and would therefore constitute an amendment to the Treaty. In comparison with 2008, Iran added another argument to its position saying that the most effective measures to prevent any withdrawal from the NPT would be an enhancement of international cooperation and assistance among States Parties and to discourage States non-Party by stopping double standard policies in relation to them.

Indonesia, as in 2008, reiterated that Article X(1) of the NPT was self explanatory. In support of this view, Indonesia, as well as Iran, referred to the VCLT, according to which the withdrawal from a treaty may take place in conformity with the provisions of the treaty. Indonesia opposed the proposals for a major role for the UNSC and suggested instead, in cases of withdrawal from the NPT, to call for an emergency meeting of the NPT States Parties in New York. This point of view was also reflected in the statement of Cuba, which proposed an objective examination of a withdrawal that should be done by the States Parties that should also try to convince a withdrawing State to refrain from withdrawal from the NPT. This proposal of Cuba was based on the consideration that UNSC would tend to consider withdrawal from the NPT as a threat to international peace and security. However,

as a prerequisite of withdrawal from the NPT, Cuba stressed the importance of full compliance with all provisions of the NPT, including Article X(1).

### Working papers

The 2009 NPT PrepCom received four working papers that addressed the issue of withdrawal from the Treaty. This was the lowest number in the current PrepCom process. However, since States had already submitted working papers in previous sessions in 2007 and 2008, they heeded the Chair's call to present only those working papers that contained new ideas or new proposals.

The only detailed paper on withdrawal was submitted by Iran. It repeated, however, the content of its working paper submitted to the 2008 NPT PrepCom. Iran again reiterated the NAM's critical response to the proposals of the High-Level Panel of 2004 and noted that withdrawal from the NPT was a sensitive and delicate issue.<sup>308</sup> Iran maintained its view that the proposals on strengthening the withdrawal clause attempted to reinterpret Article X(1) of the NPT and therefore, were equal to the legal amendments of the Treaty, which in this case would undermine the NPT regime. Iran's firm position was that any such proposal would have to follow the NPT's amendment procedure under Article VIII of the Treaty,<sup>309</sup> and it

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<sup>308</sup> *Other Provisions of the Treaty, including Article X: Working paper submitted by the Islamic Republic of Iran*, **NPT/CONF.2010/PC.III/WP.4** (20 April 2009). Available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N09/301/29/PDF/N0930129.pdf?OpenElement>> (accessed 14 May 2009).

<sup>309</sup> Article VIII of the NPT: "1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment. 2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International

would become binding only when all States Parties ratified it to demonstrate their intention to be legally bound by it. Otherwise, such proposals discussed within the RevConf would have no basis in international law.<sup>310</sup> Iran again stood in support of the sovereign right of States to withdraw from the NPT. It reiterated its 2008 position that customary international rule codified in Article 54 of the 1969 VCLT, provided that “the withdrawal of a party may take place in conformity with the provisions of the treaty”. For Iran the terms of withdrawal from the NPT were explicit and therefore “recogniz[ing] the existence of the unconditional right of a State to withdraw in exercising its national sovereignty.”<sup>311</sup> Iran repeated its concern that the new prerequisites for withdrawal once accepted could establish a precedent to act outside the relevant provisions of the VCLT.<sup>312</sup> As in 2008, Iran stressed that the 2010 NPT RevConf and its PrepCom should deal with more important priorities and challenges than Article X of the NPT.<sup>313</sup>

Other papers made a brief reference to the issue of withdrawal from the NPT. A paper submitted by the Syrian Arab Republic “affirm[ed] the legal and sovereign right of a State party to withdraw from the Treaty should it believe that extraordinary events might

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

<sup>310</sup> *Other Provisions of the Treaty, including Article X: Working paper submitted by the Islamic Republic of Iran, NPT/CONF.2010/PC.III/WP.4* (20 April 2009), para. 5. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/301/29/PDF/N0930129.pdf?OpenElement> > (accessed 14 May 2009).

<sup>311</sup> *Ibid.*, para. 8.

<sup>312</sup> *Ibid.*, paras. 7-8.

<sup>313</sup> According to Iran, the current major challenges of the NPT are those related to the implementation of its two main pillars Treaty, namely nuclear disarmament and the peaceful use of nuclear energy. See *Ibid.*, para. 2, paras. 9-10.

jeopardize its supreme national interests.”<sup>314</sup> However, this was the only reference to withdrawal in this paper. The EU working paper proposed a set of elements that should be adopted at the 2010 NPT RevConf as a part of an action plan to improve collective capacity to tackle proliferation and strengthen the nuclear non-proliferation regime and all three pillars of the NPT. As part of the elements of the non-proliferation pillar of the NPT, the EU proposed to determine the consequences of a State’s non-compliance with its non-proliferation obligations under the Treaty, its safeguards agreement, as well as consequences of withdrawal from the Treaty.<sup>315</sup> A working paper submitted by Belgium, Lithuania, the Netherlands, Norway, Poland, Spain and Turkey complemented the proposals contained in the working paper submitted by them at the 2005 NPT RevConf and reiterated the conviction of these States that international peace and security would be negatively affected if a State Party decided to withdraw from the NPT. The paper called on all NPT States to remain indefinitely committed to it.<sup>316</sup> In terms of strengthening the consultative mechanism for the NPT, as defined in the 1995 and 2000 RevConf outcomes on strengthening the Treaty’s review process, the paper recalled that the NPT warranted a substantial and continuous follow-up, *inter alia*, on the issue of withdrawal. Therefore, it stressed that “while fully

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<sup>314</sup> *Substantive issues in the Implementation of the Provisions of the Non-Proliferation of Nuclear Weapons Treaty: Working paper submitted by the Syrian Arab Republic, NPT/CONF.2010/PC.III/WP.9* (17 April 2009), para. 18. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/305/82/PDF/N0930582.pdf?OpenElement> > (accessed 14 May 2009).

<sup>315</sup> *Working Paper on the European Union forward-looking proposals on all three pillars of the Treaty on the Non-Proliferation of Nuclear Weapons to be part of an action plan adopted by the 2010 Review Conference, NPT/CONF.2010/PC.III/WP.26* (6 May 2009), para. 5(b). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/327/59/PDF/N0932759.pdf?OpenElement> > (accessed 14 May 2009).

<sup>316</sup> *Working paper submitted by Belgium, Lithuania, the Netherlands, Norway, Poland, Spain and Turkey for consideration at the third session of the Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2010/PC.III/WP.33* (12 May 2009), para. 7. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/335/04/PDF/N0933504.pdf?OpenElement> > (accessed 14 May 2009).

recognizing the primary responsibility of the Security Council for the maintenance of international peace and security, States parties should urgently consult upon receipt of a notification by a State party of its intention to withdraw from the Treaty.”<sup>317</sup> The three papers provided only a limited discussion of the implementation of Article X(1) and none of them mentioned the role of the UNSC in this regard.

These were the only four working papers that touched on the issue of withdrawal from the NPT. In comparison with the 2008 NPT PrepCom, and especially with the 2005 NPT RevConf, the drop in the number of working papers could be perceived as a sign of shrinking interest in the issue of the part of Western States, while indicating a growing interest by NAM States, notably Iran. The latter was the only State that submitted to the 2009 NPT PrepCom a working paper entirely dedicated to the matter of withdrawal from the NPT, while the other three working papers assessed the issue of withdrawal along with other numerous issues of the NPT. However, as detailed working papers were already submitted in 2007 and 2008, these papers were included in the report of the PrepCom to the 2010 NPT RevConf, hence there was no compelling need to resubmit them in 2009.

### **Conclusion: 2009 PrepCom**

Although the 2009 NPT PrepCom was not able to agree on substantive recommendations to transmit to the 2010 NPT RevConf, the Chair’s factual summary provide a good basis for discussions during the 2010 NPT RevConf. Article X(1) of the NPT remained a key issue during the PrepCom sessions and many States Parties would expect the

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<sup>317</sup> Ibid., para. 14(b).

2010 NPT RevConf to provide further perspectives and guidance on the matter of withdrawal.

The major features of the debate on withdrawal at the 2009 NPT PrepCom were the consolidation of the opposition to the proposals of the Western States for a major role for the UNSC. The States that were reluctant to accept in discussions on the role of the UNSC were the NAM States – South Africa, Iran, Indonesia, Cuba, which mainly reiterated their views expressed at the 2008 NPT PrepCom. The Western States were not as much active on the discussion of Article X(1) of the NPT. Some of them did not take the floor at all, while the position of the US with regard to the role of the UNSC became much softer in comparison with the 2008 NPT PrepCom.

## **Conclusions of the Chapter**

The announcement of withdrawal from the NPT by the DPRK in January 2003 triggered active discussions already at the second session of the PrepCom for the 2005 NPT RevConf that took place in 2003. The discussions continued at the subsequent session of the PrepCom in 2004. The discussions intensified at the 2005 NPT RevConf and at the three sessions in 2006 – 2009 of the PrepCom for the 2010 NPT RevConf.

The DPRK's withdrawal from the NPT led to intensive discussions in NPT fora, including in Main Committee III at the 2005 NPT RevConf and in all sessions of the PrepCom for the 2010 NPT RevConf, of how the nuclear non-proliferation regime could

better deter and respond to withdrawal from the Treaty by States that were in violation of its provisions. The issue was one of the areas where the States Parties came close to agreement at the 2005 NPT RevConf.<sup>318</sup> Therefore, many States stressed that the 2010 NPT RevConf should build upon this work.<sup>319</sup>

The working papers illustrated the increasing impetus for providing greater clarity on how the States Parties and the UNSC could collectively respond to a withdrawal from the NPT. The development of a common position regarding withdrawal from the Treaty would help ensure a prompt and appropriate international response in future cases.<sup>320</sup>

The discussions of NPT States confirmed that withdrawal from the NPT could not be a means for States that had violated their NPT obligations to avoid being held accountable.<sup>321</sup> In this regard, some States made reference to Article 70 of the VCLT to the effect that withdrawal would not absolve a State Party from meeting its unfulfilled obligations at the time of withdrawal. Some States proposed that nuclear materials, equipment and technology acquired for peaceful purposes when a State was a Party to the NPT would forever remain subject to peaceful use obligations, even if that State subsequently withdrew from the NPT.

Though different measures of response to withdrawal have been proposed, most of the States, though not all, stressed the importance of the UNSC in the process. Several States recognized that the drafters of the NPT had acknowledged the seriousness of any withdrawal by requiring in Article X(1) that notice of withdrawal be given not only to all States Parties,

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<sup>318</sup> New Zealand Statement, *Cluster III: Specific Time on Article X and Other Issues* (7 May 2007).

<sup>319</sup> EU Statement, *Withdrawal from the Treaty* (7 May 2007).

<sup>320</sup> *Detering and responding to withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons by Treaty violators: working paper presented by the Republic of Korea and the United States of America, NPT/CONF.2010/PC.II/WP.42* (9 May 2008). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N08/349/04/PDF/N0834904.pdf?OpenElement> > (accessed 9 July 2009).

<sup>321</sup> Statement of Australia, *Other provisions of the Treaty, including Article X* (7 May 2008). Available at < [http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Australia\\_am.pdf](http://www.reachingcriticalwill.org/legal/npt/prepcom08/statements/Cluster%203/SpecificIssues/May07Australia_am.pdf) > (accessed on 6 July 2009).



but also to the UNSC. Many of them pointed out that withdrawal from the NPT posed a threat to international peace and security, therefore the UNSC should act appropriately in accordance with Chapter VII of the UN Charter.

Some States proposed that the UNSC should convene automatically and immediately, should any State submit a notice of withdrawal. In this way, the UNSC, which should have to consider the issue as a matter of urgency, would be able to consider the implications for international peace and security and contemplate its response. Given that the powers of the UNSC are specified in the UN Charter, it has a responsibility to respond appropriately in accordance with the Charter, should the withdrawal threaten international peace and security. Some States also suggested that the UNSC could also demand an immediate verification of the State's compliance with IAEA safeguards. These views were expressed mainly by the Western States.

The NAM States considered active involvement of the UNSC as an attempt to reinterpret the provisions of the NPT, and therefore they regarded such proposals as unacceptable, unless the States Parties decided to formally amend the NPT in accordance with Article VIII of the Treaty, which defined the amendment procedure.

Generally, throughout the NPT review cycle, NAM did not support the proposals on the role of the UNSC in withdrawal from the NPT. The NAM maintained that the right of withdrawal from treaties or conventions should be governed by international treaty law, by the VCLT. Furthermore, beginning in 2008, some States pointed out that too much attention had been paid to the matter of withdrawal at the expenses of more crucial issues, such as disarmament and the 1995 Middle East Resolution.<sup>322</sup>

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<sup>322</sup> *Other Provisions of the Treaty, Including Article X: Working Paper submitted by the Islamic Republic of Iran, NPT/CONF.2010/PC.II/WP.24* (30 April 2008). Available at <

Given the afore-mentioned discussion, it is increasingly clear that the issue of withdrawal will remain contentious at the 2010 NPT RevConf, and it is unlikely that the outcome document would be able to secure agreement on a common position to strengthen the role of the UNSC in the withdrawal process or to reinterpret the provisions of Article X(1) in a manner that made the specified process more onerous. On the other hand, areas of convergence of views include that withdrawal from the NPT would be a serious matter and that States Parties need to address it in a responsible manner.

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<http://daccessdds.un.org/doc/UNDOC/GEN/G08/610/74/PDF/G0861074.pdf?OpenElement> > (accessed 1 June 2009); *Working paper submitted by the Islamic Republic of Iran, Other Provisions of the Treaty, including Article X, NPT/CONF.2010/PC.III/WP.4* (20 April 2009). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/301/29/PDF/N0930129.pdf?OpenElement> > (accessed 14 May 2009); and Statement of Iran at the PrepCom in 2008 and 2009.

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*“The Security Council is not a body that merely enforces agreed law. It is a law unto itself. If it considers any situation as a threat to the peace, it may decide what measures shall be taken. No principles of law are laid down to guide it; it can decide in accordance with what it thinks is expedient. It could be a tool enabling certain powers to advance their selfish interests at the expense of another power.”<sup>1</sup>*

<sup>1</sup> Dulles, John Foster, *War or Peace* (New York: Macmillan, 1950), pp. 194-195.

## Introduction

As discussed in the previous Chapter, many of the NPT States discussed the issue of withdrawal from the NPT in the framework of the NPT review cycle between 1993 and 2009. Some of them argued for a major role of the UNSC in the withdrawal process. They suggested a list of actions for the UNSC to take in case of an announcement of withdrawal from the NPT and in case a withdrawal from the NPT takes place. Among such proposed actions, there were suggestions that the UNSC should regard withdrawal from the NPT as a “threat to the peace” under Article 39 of the UN Charter and take action under Chapter VII of the UN Charter. In response to such proposals, other States’ reaction was against major involvement by the UNSC and their considerations raised doubts about the UNSC’s competence in the subject of withdrawal from the NPT. Therefore, this Chapter studies the powers of the UNSC to assess whether the UNSC has the competence to deal with the withdrawal from the NPT.

Until the 1990s, the UNSC had not been involved much in matters of proliferation of nuclear weapons and other WMD.<sup>2</sup> In the view of new challenges to the international nuclear non-proliferation regime and the NPT, the issue of non-proliferation has become one of the primary interests of the international community, which has been deeply concerned with the maintenance of international peace and security that remains the responsibility of the UNSC.<sup>3</sup> In its statement of 31 January 1992, the UNSC recognized that “the proliferation of all weapons of mass destruction constitutes a threat to international peace and security”. The UNSC also adopted resolution 1540 in 2004, under Chapter VII of the UN Charter, affirming that proliferation of nuclear weapons and their

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<sup>2</sup> **Texeira, Pascal**, *The Security Council at the Dawn of the Twenty-First Century: To What Extent Is It Willing and Able to Maintain International Peace and Security?* (New York: United Nations, UNIDIR, 2004), p. 9.

<sup>3</sup> **Cannizzaro, Enzo**, *Recesso dal Trattato sulla non proliferazione nucleare e minaccia alla pace*, *Rivista di diritto internazionale* (2006), Vol. 89, fascicolo 4, pp. 1080-1081.

means of delivery constitutes a threat to international peace and security.<sup>4</sup> Therefore, it seems that the traditional non-proliferation regime has changed its character and has become a system, whose violation will automatically constitute a threat to international peace and security.

Still in the past, an understanding of the powers of the UNSC was neatly encapsulated by the US Secretary General John Foster Dulles, who said that the UNSC applies a law of its own, i.e. an autonomous body of rules, much of which the UNSC elaborates at its entire discretion with a view to the discharge of its primordial mission of maintaining or strengthening international peace and security.<sup>5</sup> The statement that the UNSC creates and imposes its own law raises the following core questions: whether the UNSC is a law making institution, and whether the UNSC, while operating in a lawmaker mode, is exempted from the requirements under the UN Charter and the rules and principles of international law. As there is no common view on the nature of the UNSC, the UNSC is often viewed as an organ with a quasi-judicial role,<sup>6</sup> as a political organ that acts for political reasons<sup>7</sup> deriving its competence from the UN Charter and passing resolutions having legal consequences, especially those adopted under Chapter VII, which are believed to have a normative character.<sup>8</sup>

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<sup>4</sup> **UNSC Res. 1540** (24 April 2004). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement> > (accessed on 2 March 2009).

<sup>5</sup> **Dulles, John Foster**, *War or Peace* (New York: Macmillan, 1950).

<sup>6</sup> **Schachter, Oscar**, *The Quasi-judicial Role of the Security Council and the General Assembly*, *American Journal of International Law* (1964), Vol. 58, p. 960.

<sup>7</sup> **Dinstein, Yoram**, *War, Aggression and Self-defence* (2<sup>nd</sup> ed.) (New York: Cambridge University Press, 1994), p. 282, 305; **Kirgis, Federic**, *The Security Council's First Fifty Years*, *American Journal of International Law* (1995), Vol. 89, p. 507; **Schachter, Oscar**, *Self-defence and the Rule of Law*, *American Journal of International Law* (1989), Vol. 83, No. 2, p. 259, 263; **Texeira, Pascal**, *The Security Council at the Dawn of the Twenty-First Century: To What Extent Is It Willing and Able to Maintain International Peace and Security?* (New York: United Nations, UNIDIR, 2004), p. 3; **Wood, Michael**, *The UN Security Council and International Law. First Lecture: The Legal Framework of the Security Council*, *Hersch Lauterpacht Memorial Lectures* (University of Cambridge, 7-9 November 2006), pp. 3-4; Judge Schwebel's dissenting opinion in Case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), ICJ Reports (27 June 1986), paras. 259, 290.

<sup>8</sup> A resolution of the UNSC may be considered as a norm. Given that the UNSC adopts resolutions, it is assumed that it creates norms within the institutional framework defined by the UN Charter. See **De Brichambaut, Marc Perrin**, *The Role of the United Nations Security Council in the International Legal System*, in **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and*

Since the end of the Cold War, the UNSC has been using more actively its enforcement powers to maintain international peace and security under the collective security system envisaged in Chapter VII of the UN Charter.<sup>9</sup> The resolutions adopted by the UNSC since 1990 under Chapter VII are unprecedented both in number and the scope of their content and have extended the UNSC's role.<sup>10</sup> Those resolutions have included the termination of hostilities through restraining the sovereignty of a defeated aggressor State (Iraq),<sup>11</sup> military intervention into a State for humanitarian reasons in response to the breakdown of civil authority and resulting international anarchy in another State (Somalia),<sup>12</sup> a severe limitation of the right of individual and collective self-defense of a State through the maintenance in place of a mandatory arms embargo (former Yugoslavia and Bosnia-Herzegovina),<sup>13</sup> sanctions for an alleged collaboration with terrorists (Sudan

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*international law* (Oxford, New York, N.Y.: Oxford university press, 2000), p. 269. However, pursuant to Article 38(1) of the Statute of the International Court of Justice (ICJ), the resolutions of the UNSC are not source of international law. The Statute of the ICJ was ratified along with the UN Charter on 28 July 1945 and went into effect on 24 October 1945. Article 38(1) of the Statute of the ICJ states: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 5, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

<sup>9</sup> Collective security is sometimes meant to include the utilization of non-coercive norms of activity by the international community. These may be preventive diplomacy, the utilization of the traditional methods of dispute settlement and other forms of non-coercive activity aimed at achieving an accepted solution to a conflict. The term "collective security", as it is meant to be used in this work, is associated with the use by the international community of military force and diplomatic and economic measures of a coercive nature in response to serious threats to the peace or outbreak of aggression. Additionally, "[t]he UN Charter constitutes a collective security system which gives the Security Council the primary role to maintain and restore peace and, under Chapter VII, broad powers to achieve these objectives." See **Shaw, Malcolm Nathan**, *International Law* (5<sup>th</sup> ed.) (Cambridge: Cambridge University Press, 2003), p. 1086.

<sup>10</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 36; **Freudenschuß, H.**, *Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council*, European Journal of International Law (1994), Vol. 5, pp. 492-531.

<sup>11</sup> UNSC resolutions on Iraq: **UNSC Res. 660** (2 August 1990), **UNSC Res. 661** (6 August 1990), **UNSC Res. 674** (29 October 1990), **UNSC Res. 678** (29 November 1990), **UNSC Res. 687** (3 April 1991), **UNSC Res. 706** (15 August 1991), etc. Available at < <http://www.casi.org.uk/info/scriraq.html#1990> >, < <http://www.iraganalysis.org/info/343> > (accessed on 15 March 2008).

<sup>12</sup> UNSC resolutions on Somalia: **UNSC Res. 733** (23 January 1992), **UNSC Res. 1356** (19 June 2001), **UNSC Res. 1425** (22 January 2002), **UNSC Res. 1725** (6 December 2006). Available at < <http://www.un-somalia.org/docs/Resolution1725-2006.pdf> > (accessed on 15 March 2008).

<sup>13</sup> **UNSC Res. 713** (25 September 1991). Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/49/IMG/NR059649.pdf?OpenElement> > (accessed on 15 March 2008).

and Afghanistan), and ordering to Libya to extradite two nationals allegedly responsible for acts of State sponsored terrorism directed against two permanent members of the UNSC for trial in their national courts.<sup>14</sup> The UNSC has also created a new administrative instrument for the settlement of claims for war damages and changed the rules of State responsibility with the establishment of the UN Compensation Commission for Claims (UNCC) against Iraq in Geneva,<sup>15</sup> and used its authority under Chapter VII to establish International Criminal Tribunals for war crimes in former Yugoslavia and Rwanda.<sup>16</sup>

Those actions of the UNSC have brought new concerns for a new world order centered on the UNSC itself. The above mentioned measures and others taken by the UNSC have been frequently criticized and often viewed as *ultra vires*, illegal, unjust or an outcome of a poor policy. This criticism of the UNSC has focused on the powers and functions of the UNSC in the exercise of its authority, legitimacy of its acts, possible control over them, as well as a proper and effective functioning of the UN collective security system.<sup>17</sup> On the one hand, the UNSC has been criticized for being a tool of its five permanent members.<sup>18</sup> On the other hand, the UNSC has been accused for not venturing far enough in the scope of its activities, as in the case of the conflict in former

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<sup>14</sup> UNSC resolutions on Libya: **UNSC Res. 731** (21 January 1992), **UNSC Res. 748** (31 March 1992), **UNSC Res. 883** (11 November 1993). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N93/626/78/PDF/N9362678.pdf?OpenElement> > (accessed on 15 March 2008).

<sup>15</sup> The UNCC was created in 1991 as a subsidiary organ of the UNSC. The UNSC acting under Chapter VII of the UN Charter adopted **UNSC Res. 692** (20 May 1991), by which it established the UNCC and the UN Compensation Fund. Available at < <http://www2.unog.ch/uncc/resolutio/res0692.pdf> > (accessed on 16 March 2008). Its mandate is to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait. Available at < <http://www2.unog.ch/uncc/> > (accessed on 16 March 2008).

<sup>16</sup> *United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, established by **UNSC Res. 827** (25 May 1993). Available at < [http://www.un.org/icty/legaldoc-e/basic/statut/S-RES-827\\_93.htm](http://www.un.org/icty/legaldoc-e/basic/statut/S-RES-827_93.htm) > (accessed on 16 March 2008); The Rwanda Tribunal was established by **UNSC Res. 955** (8 November 1994) and was given a similar mandate. Available at < <http://www.un.org/icty/english/Resolutions/955e.htm> > (accessed on 16 March 2008). **Hunt, David**, *The International Criminal Court. High Hopes, 'Creative Ambiguity' and an Unfortunate Mistrust in International Judges*, *Journal of International Criminal Justice* (2004), Vol. 2, pp. 56-70.

<sup>17</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), Vol. 26, p. 36.

<sup>18</sup> **Murphy, S.D.**, *The Security Council, legitimacy, and the Concept of Collective Security After the Cold War*, *Columbia Journal of Transnational Law* (1994), Vol. 32, pp. 201-288.

Yugoslavia, the DPRK, etc. The critics of the post-Cold War UNSC maintain that the UNSC has remained seized by the power of its permanent members, the US in particular.<sup>19</sup> Nevertheless, the UNSC is still the only body of the UN that brings together divergent views and interests of States attempting to accommodate them and resulting in adoption of binding resolutions that reflect a mix of various geopolitical considerations.

This Chapter has the task to assess the powers of the UNSC in the context of the UN Charter's collective security system as well as the nature and the extent of the UNSC's enforcement powers.<sup>20</sup> The Chapter also assesses the powers of the UNSC in determining a "threat to the peace" under Article 39 of the UN Charter and the UNSC's practice in the situations that pose a "threat to the peace". The focus of the Chapter is to provide a study on the UNSC powers to interpret a "threat to the peace" under Article 39 of the UN Charter and assess whether the UNSC has the capacity to qualify a withdrawal from the NPT as a threat under Article 39. Following that, the Chapter studies briefly the UNSC powers and means of response to the threats to the peace as envisaged in Chapter VII of the UN Charter.

Considering that the practice of the UNSC under Chapter VII of the UN Charter has extensively evolved recently, any study on the UNSC based on its past practice may become quickly outdated and irrelevant for future developments. An analysis of the

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<sup>19</sup> **Texeira, Pascal**, *The Security Council at the Dawn of the Twenty-First Century: To What Extent Is It Willing and Able to Maintain International Peace and Security?* (New York: United Nations, UNIDIR, 2004), p. 3.

<sup>20</sup> The UN Charter collective security system is embodied in its Chapter VII entitled "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression" and in Article 24 of the UN Charter, which confers primarily responsibility for the maintenance of international peace and security upon the UNSC.<sup>20</sup> Besides Chapter VII, Chapter VI of the UN Charter also grants the UNSC certain powers with respect to preventive diplomacy and peaceful settlement of disputes. It is related to the second of the purposes stated in Article 1(1) of the UN Charter (on the peaceful settlement of disputes), while Chapter VII relates to the first of the purposes envisaged in Article 1(1), that is the maintenance of international peace and security by effective collective measures "for the prevention and removal of threats to the peace, and for the suppression of acts of aggression and other breaches of the peace." These two functions of the UNSC are distinct. Thus, the exercise of functions under Chapter VI is governed by general international law, while the enforcement measures under Chapter VII are governed by the Purposes and Principles of the UN. See **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 38.



powers of the UNSC may also differ depending on the focus of the study. However, such studies will have to engage in the assessment of some general issues, such as historical background of the UNSC powers developed during the negotiation of the UN Charter, the legal context of the actions of the UNSC, the legal nature and implications of its powers, its role within the UN Charter and the international community, its relationship with UN Member States, etc. Nevertheless, considering the extensive practice the UNSC has developed over decades, it would be impossible to cover in a single monograph the entire range of the UNSC's legal issues, conceptual and generic, practical and specific alike.

#### ***4.1. Strengthening of the international peace and security and the UN Charter***

Approaching the end of World War II, at the Dumbarton Oaks Conference in 1944 the USSR, the UK and the US, with some input of China, came out with a plan (known as the Dumbarton Oaks plan) to create an organization that would serve as a mechanism for post-World War II international security.<sup>21</sup> The plan that was further refined at Yalta in early 1945 and later in 1945 was conceived in the UN Charter negotiated at San Francisco. The UN Charter was concluded as a central multilateral agreement for the preservation and strengthening of international peace and security and above all else “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”.<sup>22</sup> However, unlike the Covenant of the League of Nations,<sup>23</sup> which had attached considerable importance to disarmament and

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<sup>21</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 506.

<sup>22</sup> **Charter of the United Nations**, *Preamble*. Available at < <http://www.un.org/aboutun/chater/> > (accessed on 15 March 2008).

<sup>23</sup> **The Covenant of the League of Nations** was adopted in December 1924 (including amendments). Available at < <http://www.historicaldocuments.com/CovenantoftheLeagueofNations.htm> > (accessed on 15 March 2008).

to the means needed to achieve it,<sup>24</sup> the UN Charter made few references to arms control and disarmament, which are viewed as “a supportive element in the maintenance of international peace and security, but certainly not as the most important element as it used to be in the Covenant of the League of Nations”.<sup>25</sup> Unlike the Covenant of the League of Nations, the UN Charter was drafted when World War II was still in progress and when the planning system of disarmament might have seemed ill-timed.<sup>26</sup> However, Article 11 of the UN Charter authorized the UNGA to consider “the principles governing disarmament and the regulation of armaments” and empowered it to make recommendations with regard to such principles to the Member States or the UNSC, or both. Article 26 of the UN Charter gave the UNSC the responsibility to formulate plans for the establishment of a system for regulation of armaments, to the extent that there would be the least diversion of the world’s human and economic resources for armaments.<sup>27</sup>

#### ***4.2. The negotiation on the powers of the UNSC at the United Nations Conference on the International Organization***

At the San Francisco Conference – the United Nations Conference on the International Organization (UNCIO) convened to draft the UN Charter – the establishment of the UNSC was a result of compromise among the interests of the major

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<sup>24</sup> Article 9 of the Covenant of the League of Nations stated that the maintenance of peace requires the reduction of arms. Available at < <http://fletcher.tufts.edu/multi/www/league-covenant.html> > (accessed on 15 March 2008).

<sup>25</sup> The UN Charter does not address directly the matter of the proliferation and/or non-proliferation of WMD. The question is approached from the perspectives of disarmament in general. See also **Den Dekker, Guido**, *The Effectiveness of International Supervision in Arms Control Law*, Journal of Conflict & Security Law (2004), Vol. 9, No. 3, p. 316.

<sup>26</sup> **Pollard, Albert Frederick**, *The League of Nations in History* (BiblioLife, 2009).

<sup>27</sup> **Elaraby, Nabil**, *The Security Council and Nuclear Weapons*, Presented at a meeting of the NGO Working Group on the Security Council, May 28, 1996, < <http://www.globalpolicy.org/security/docs/elaraby.htm> > (accessed May 16, 2006).

powers. The major powers while drafting the UN Charter relied on the experience of the League of Nations and attempted to strengthen the new organization – the UN – to enable it to deal effectively with peace and security issues.<sup>28</sup> One of the intended goals was to create an organ that could act effectively to settle disputes or take enforcement action in the cases of a threat to the peace, breach of peace or act of aggression. The concern of the negotiators was that during the existence of the League of Nations, the major powers were not involved enough into the solutions of disputes, which had to be resolved in a manner acceptable to the majority of the members.<sup>29</sup>

Therefore, unlike the Covenant of the League of Nations, which was anchored on the unanimity rule, the UN Charter included the veto power of the permanent members of the UNSC.<sup>30</sup> The veto issue was a sensitive one at the UNCIO. However, still before the Conference was convened, it was expected that the veto had to be included in the Charter to bring the major powers into the membership of the new organization. Therefore, the right to veto of the permanent members of the UNSC did not raise serious objections at the UNCIO.<sup>31</sup> It was believed that in order to maintain or restore peace and security, the UNSC might need to rely on military staff and facilities of the States Member of the UN under Article 43 of the UN Charter. Therefore, another innovation of the UN Charter was the creation of the Military Staff Committee under Article 47 of the UN Charter necessary to advise and assist the UNSC on the military aspects of maintaining peace.<sup>32</sup> The negotiators of the Charter being concerned with the strengthening of the UNSC, did not borrow the Covenant's provisions that allowed either party to a dispute to transfer the

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<sup>28</sup> See Chapter 4, ft. 23 above.

<sup>29</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 508.

<sup>30</sup> Article 5 of the Covenant of the League of Nations provided that, except for procedural matters, "decisions at any meeting of the Assembly or of the Council shall require agreement of all the Members of the League represented at the meeting."

<sup>31</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 507.

<sup>32</sup> *Ibid.*, p. 507.

matter from the Council to the Assembly,<sup>33</sup> and did not include the provisions of Article 15 of the Covenant that envisaged a requirement for Member States to refer “any dispute likely to lead to a rupture” to the League Council, if it was not submitted to arbitration or judicial settlement.<sup>34</sup> The matter of discussion in relation to the right to veto regarded the extent to which the veto was supposed to be used. In this respect, the USSR took a position that the veto had to be used also in disputes involving a permanent member of the UNSC. As the US and France objected to such an extreme use of veto, the compromise on the issue was reached in Article 27(3) of the UN Charter, which envisages that a party to a dispute shall abstain from voting in decisions under Chapter VI, but not under Chapter VII.

During the UNCIO, various proposals were put forward by many “small” States for a larger role of the General Assembly in the preservation of international peace.<sup>35</sup> These States, being concerned with how to keep the Council under check and control, proposed to associate the General Assembly with the Council in taking enforcement action and to enable the General Assembly to pass judgement on the Council’s actions. For various reasons, however, the great powers rejected these proposals as well as the proposals to review the Council’s powers under the Charter after a few years’ experience.<sup>36</sup> The most decisive reason was that there existed “general agreement as to the paramount importance of the Security Council being placed in a position to act

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<sup>33</sup> This transfer of matters, which took place in the League of Nations, was established in Article 15(9) of the Covenant of the League of Nations. Only 3 of the 60 disputes were transferred to the Assembly of the League of Nations in accordance with this provision. See *Ibid.*, p. 507.

<sup>34</sup> Pursuant to Article 15(1) and (2) of the Covenant of the League of Nations, any dispute between League members that was likely to lead to a rupture was to be submitted to the Council, with the statement of the case. According to Article 15(4), if no settlement was reached, the Council was to publish a report with a statement of the facts, acting as an implicit fact finding authority, and with its recommendations to the parties. These provisions gave enabled the League Council to make a quasi judicial pronouncements. See *Ibid.*

<sup>35</sup> For an overview of the proposed amendments see **UNCIO**, Vol. 11, p. 767-769 (**Doc. 360, III/1/16** (15 May 1945)).

<sup>36</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 508.

quickly and effectively.”<sup>37</sup> Moreover, it was deemed that the participation of the General Assembly on the matter of the maintenance of international peace and security might have been hampered by this objective.<sup>38</sup> Therefore, the assignment of primary responsibility was linked to the interest of ensuring “prompt and effective action” by the UN.<sup>39</sup> It was concluded at the UNCIO that as far as the Security Council included a majority of members elected by the General Assembly, the Council “must be granted full confidence since, aside from the question of the unanimity of the permanent members, it expresses, in the final analysis, only the opinions of the Assembly.”<sup>40</sup> Still, as some of those proposals acquired a certain degree of support at the UNCIO, the General Assembly was conferred some authority to participate in deciding upon peace and security matters.<sup>41</sup>

#### ***4.3. The interpretation of the UN Charter on the powers of the UNSC***

Thus, it was agreed at the UNCIO that the UNSC would be the organ of the UN that would have to act effectively to settle disputes or to take enforcement action in the cases of a threat to the peace, breach of peace or act of aggression, and agreed to provide the UNSC with the powers necessary to fulfill this mandate.

The UN Charter – the legal document establishing the UN as an international organisation – determines the functions and the powers of the organization and distributes

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<sup>37</sup> *Statement of Mr. Morgenstjerne, the Norwegian President of the UNCIO*. See **UNCIO**, Vol. 11, p. 13 (**Doc. 943 III/5**).

<sup>38</sup> “It is impossible to conceive of swift and effective action if the decision of the Council must be submitted to ratification by the Assembly, or if the measures adopted by the Council are susceptible of revision by the Assembly.” See *Report of Mr. Joseph Paul-Boncour*, **UNCIO**, Vol. 11, p. 14.

<sup>39</sup> **Ahlström, Christer**, *United Nations Security Council Resolution 1540: non-proliferation by means of international legislation*, *Sipri Yearbook* 2007, p. 462.

<sup>40</sup> *Report of Joseph Paul-Boncour*, **UNCIO**, Vol. 11, p. 14.

<sup>41</sup> The outcome of the conference is encapsulated in the UN Charter. The division of competence in peace and security matters between the UNGA and the UNSC is further explained in Chapter 4, pp. 247-251.

those between its organs.<sup>42</sup> The UN Charter, as a constituent document of the UN, has some distinctive features, which should be taken in to consideration during the interpretation of its provisions. First of all, it does not contain provisions on its interpretation. The drafters of the UN Charter abstained from including any clause on its interpretation. At the UNCIO, the Belgian delegation proposed that the ICJ be the interpretative organ of the UN Charter, in the capacity of being the guarantor of objectivity and uniformity of jurisprudence.<sup>43</sup> That proposal was rejected by the UNCIO. Belgium made the second proposal, which was also rejected, suggesting that the plenary of the whole Organization, the General Assembly, relying on its “sovereign competence” should interpret the provisions of the Charter.<sup>44</sup>

The UNCIO expressed its view on the matter of interpretation of the UN Charter in the report of the Legal Committee IV/2, which decided:

- 1) to recognize that, as the report had stressed, each organ would inevitably interpret from day to day those provisions of the Charter which concern its activities;<sup>45</sup>
- 2) to renounce setting up a specific mechanism for interpreting the provisions of the Charter;<sup>46</sup>

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<sup>42</sup> Goodrich L. M., Hambro E., and Simons, A., *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), p. 13. Skubiszewski, K., *Remarks on the Interpretation of the United Nations Charter*, in Bernhardt, R. (ed.), *Völkerrecht als Rechtsordnung, International Gerichtsbarkeit, Menschenrechte, Festschrift für Hermann Mosler* (Berlin: Springer-Verlag, 1983), pp. 891-894.

<sup>43</sup> UNCIO, Vol. 13, para. 657 (Commission IV, Judicial Organization, **Doc. 873, IV/2/37(1)**, 9 June 1945, p. 1).

<sup>44</sup> UNCIO, Vol. 8, p. 394 (Commission II, General Assembly, **Doc. 528, II/1/24**, 23 May 1945, p. 4); Vol. 3, p. 339 (General, **Doc. 2, G/7(k)(1)**, 4 May 1945, p. 5).

<sup>45</sup> “In the course of operations from a day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter that are applicable to its particular functions. The process is inherent in the functioning of any body which operates under an instrument defining its functions and powers.” See UNCIO, Vol. 13, pp. 709 (Commission IV, Judicial Organization, **Doc. 873, IV/2/37(1)**, 12 June 1945, pp. 7-8); *Ibid.*, p. 831 (**Doc. 750, VI/2/B/1**, p. 1). The subcommittee later made a further explanation saying the following: “It is to be understood, of course, that if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable, it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter”. See *Ibid.*, p. 710.

<sup>46</sup> “Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle [from a day to day ... each organ will interpret such parts of the Charter that are applicable to its particular functions].” “[T]he nature of the Organisation and of its operation would not seem to be such as to invite the inclusion in the Charter of any provision of this nature.” See UNCIO,

3) to invite Member States as well as the General Assembly and the Security Council to submit disputes on the interpretation of the Charter to the International Court of Justice;<sup>47</sup>

4) to leave the question of an authoritative interpretation of the Charter pragmatically open (a “committee” of experts of the type provided for in Article 13 of the Statute of the Court could make suggestions for the creation of a special organ for giving official interpretations of the Charter).<sup>48</sup>

The abovementioned decisions of the UNCIO reflected in the report of the Legal Committee, though been officially presented and included in the report of the UNCIO, do not have the same weight, as if they were included in the UN Charter. Not being ratified by each State in the same way as the UN Charter was ratified, they do not have the same substantial formality as the UN Charter.<sup>49</sup> As it was noted by the ICJ judge Mohammed Bedjaoui, these decisions are complementary to the UN Charter and must be read with the Charter, which under Article 96 makes possible a resort to advisory jurisdiction of the ICJ. Pursuant to paragraph 1 of Article 96, “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.” Other organs and specialized agencies may request advisory opinions “on legal questions arising within the scope of their activities” under paragraph 2 of Article 96. The absence of a clause on interpretation in the UN Charter limits the possibility of protection against any action in excess of Charter powers, and may be even conducive to

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Vol. 13, paras. 709-710 (Commission IV, Judicial Organization, **Doc. 873, IV/2/37(1)**, 12 June 1945, pp. 7-8).

<sup>47</sup> “If two Member States are at the variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter.” See *Ibid.*, para. 710 (*Ibid.*, p.2).

<sup>48</sup> “[I]n cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment.” See *Ibid.*, para. 710 (*Ibid.*, p.2). For more on debates about interpretation, see the records of Committees II/2 and IV/2 and especially **UNCIO**, Vol. 13, pp. 636-638. (**Doc. 664, IV/2/33**, 29 May 1945). For an account of the circumstances in which the declaration on interpretation was adopted see **Russel, Ruth**, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Washington: Brookings Institution: 1958), p. 925.

<sup>49</sup> **Bedjaoui, Mohammed**, *The New World Order and the Security Council. Testing the Legality of its Acts* (Dordrecht: Martinus Nijhoff Publisher, 1994), p. 11.

it, as the UN organs and Member States of the Organisation interpret their functions envisaged in the UN Charter on a day to day basis and according to their own discretion.<sup>50</sup>

As mentioned above, at the outset of the UN, the Legal Committee IV/2 adopted the declaration establishing the principles, according to which the UN organs have right to interpret the Charter provisions on their activities enjoying in this sense a “Kompetenz-Kompetenz” prerogative. Since the principal organs of the UN interpret certain elements of the UN Charter on their own, the power of interpreting of the UN Charter is dispersed among the UN organs. The interpretations of other principal organ of the UN – the UN Secretariat – and of its legal department, are rendered in the form of legal opinions published in the *Juridical Yearbook of the United Nations*.<sup>51</sup> Moreover, UN Member States also have the right to interpret the UN Charter. The ICJ also interprets the UN Charter’s provision in its judgements, advisory opinions, and other decisions when aspects of law of the UN call for appraisal. Thus, the States may also refer to the ICJ, a Charter-interpretation dispute under its contentious function.<sup>52</sup> According to Article 59 of the ICJ Statute, the Court’s interpretation is effective only between the litigants, except if Member States with legal interest in it had intervened in the sense of Article 62 or 63 of the ICJ Statute.

As far as the UN is a highly politicised organization, “the deliberate political input into the interpretative processes through the procedures of decision-making by voting or

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<sup>50</sup> Ibid., p. 9.

<sup>51</sup> **UNGA Res. 1814** (18 December 1962) requested the Secretary-General to publish a Juridical Yearbook which would include documentary materials of a legal character concerning the UN and related intergovernmental organizations. The Yearbook is prepared by the Codification Division of the UN Office of Legal Affairs. This web site contains selected legal opinions included in the volumes of the Yearbook that are already completed but not yet published, namely, volumes for the years 1998 to 2000. Available at < <http://www.un.org/law/UNJuridicalYearbook/index.htm> > (accessed on 25 July 2008).

<sup>52</sup> On the powers of the ICJ see **Di Mohamed Sameh M. Amr**, *The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations* (The Hague, New York: Kluwer Law International, 2003).



by consensus” will influence interpretative decisions more than legal considerations.<sup>53</sup> Goodrich, Hambro and Simons share the same opinion by saying that “since the responsibility for interpretation is vested in organs and members alike, the process is more likely to be political than judicial...[T]he view taken in any particular situation is more often the result of a bargaining process or an exercise of power than an attempt to apply Charter provisions by a process of reasoning based on accepted principles of interpretation.”<sup>54</sup> Kelsen also agrees that “the international community established at the San Francisco Conference is by its very nature a political phenomenon and that a merely juristic interpretation cannot justice to it.”<sup>55</sup>

Thus, there are no fixed rules on the interpretation of the UN Charter provisions. “All ‘rules’ of interpretation have the character of ‘guidelines’ since their application in a particular case depends so much on the appreciation of the context and the circumstances of the point to be interpreted.”<sup>56</sup> Hence, the interpretation cannot be served by a set of concrete suggested rules to be applied in all the circumstances.<sup>57</sup> Neither does the practice of the ICJ establish any consistent approach to the interpretation of treaties applying either the teleological method,<sup>58</sup> the ordinary meaning reasoning,<sup>59</sup> intentional<sup>60</sup> or the textual one according to the requirements of the situation.<sup>61</sup>

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<sup>53</sup> **Rosenne, Shabtai**, *Developments in the Law of Treaties 1945-1986* (Cambridge: Cambridge University Press, 1989), p. 192.

<sup>54</sup> **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), p. 15.

<sup>55</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. xvii.

<sup>56</sup> **Waldock, Humphrey**, *Sixth Report on the Law of Treaties*, Yearbook of the International Law Commission (YBILC) (1966), Vol. 2, p. 94.

<sup>57</sup> **Sinclair, Ian**, *The Vienna Convention on the Law of Treaties* (2<sup>nd</sup> ed.) (Manchester, Manchester University Press, 1984), p. 63.

<sup>58</sup> *Certain Expenses of the United Nations (Art. 17, Para. 2, of the Charter)*, ICJ Rep. (1962), 151 ff.; the *Reparation for Injuries Case*, ICJ Rep. (1949), 171 ff.; the *Ambatielos Case* (Prelim. Obj.), Greece vs. UK, ICJ Rep. (1952), 28 ff.

<sup>59</sup> The predominant cases in this respect are the *First and Second Admission Cases*, ICJ Rep. (1948), 57 ff. and ICJ Rep. (1950), 4 ff.; the *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization case*, ICJ Rep. (1960), 150 ff.; the *Arbitral Award of 31 July 1989* (Merits), Guinea Bissau vs. Senegal, ICJ Rep. (1991), para. 48; *Land, Island and Maritime Frontier Dispute* (Merits), El Salvador vs. Honduras, Nicaragua intervening, ICJ Rep. (1992), paras. 373-380; *Territorial Dispute* (Merits), Libya vs. Chad, ICJ Rep. (1994), para. 43; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Jur.), Qatar vs. Bahrain, ICJ Rep. (1995), para. 18.

Having noted the various approaches to the interpretation of the text of the UN Charter, this Chapter on the powers of the UNSC in relation to maintenance of international peace and security as determined in the constituent document of the UN, will provide an interpretation of the relevant provisions of the UN Charter. Attention will be paid to the *travaux préparatoires* and the practice of the UNSC, as well to the well established legal doctrine in the area.

#### ***4.4. The determination of competence of the UNSC under the UN Charter***

The UNSC is a principal organ of the UN, established by Article 7 of the UN Charter, together with the UNGA, the Economic and Social Council (ECOSOC), the Trusteeship Council, the ICJ and the Secretariat. In addressing the UNSC's purpose, one should consider Article 1 of the UN Charter envisaging the purposes of the UN, which are, inter alia, "to take effective collective measures for the prevention and removal of threats to the peace", and consider Article 24 on the functions and powers of the UNSC that are "to ensure prompt and effective action" to that end.

Once the UN was created in 1945, it was determined that "the UNSC would play a central role in maintenance and restoration of international peace and security."<sup>62</sup> The scope of UNSC authority has always been a concern of diplomats and scholars starting from the very inception of the UN. Thus, the participants to the negotiations of the UN

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<sup>60</sup> The *Anglo-Iranian Oil Company case* (Prelim. Obj.), UK vs. Iran, ICJ Rep. (1952), paras. 105-106.

<sup>61</sup> Sato, Tetsuo, *Evolving Constitutions of International Organizations* (The Hague: Kluwer Law International, 1996), p. 154.

<sup>62</sup> Sarooshi, Danesh, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999), p. 3.

Charter attempted to bring their recollections and the knowledge of proceedings anticipating the problems that could be encountered by the international community.<sup>63</sup>

The UNSC is referred to as “that most mysterious and misunderstood international body”.<sup>64</sup> The actions of the UNSC can be better understood once the principal aspects of the legal framework in which it operates are explained. The necessary aspects that should be explained in this regard are the nature of the UNSC and the UN Charter provisions which determine the role of the UNSC, principles of distinction between binding and non-binding decisions of the UNSC, and the priority accorded to the UNSC decisions in accordance with Article 103 of the UN Charter. The following parts of the Chapter will provide an assessment of the relevant provisions of the UN Charter, which determine the division of powers between the UNGA and the UNSC, and the competence of the UNSC in relation to the maintenance of international peace and security.

As Hans Kelsen said, “[t]he competence of the Security Council coincides to a great extent with the competence of the entire Organisation; for the performance of almost all legally important functions of the United Nations is conferred upon the Security Council either exclusively or together with the General Assembly.”<sup>65</sup> It was mentioned above that the issue of division of powers between the UNGA and the UNSC in relation to peace and security matters was raised during the UNCIO, which was convened to draft the UN Charter. In the course of the negotiations, the proposals for a larger role of the UNGA in the preservation of international peace were not adopted.

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<sup>63</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 509.

<sup>64</sup> **Wood, Michael**, *The UN Security Council and International Law. First Lecture: The Legal Framework of the Security Council*, Lauterpacht Memorial Lectures (University of Cambridge, 7<sup>th</sup>- 9<sup>th</sup> November 2006), p. 1.

<sup>65</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 279.

The outcome of the negotiations at the UNCIO is reflected in the UN Charter, which provides certain criteria to delimit the functions and powers between the UNGA and the UNSC. In general terms, according to the UN Charter, the decision-making powers of the UNGA are restricted to internal organizational matters of the UN, including semi-external matters, such as the budget, or admission, suspension and expulsion of members, while the UNSC possesses decisional powers in the field of international peace and security.<sup>66</sup>

In relation to the authority to participate in deciding upon peace and security matters, pursuant to Article 10 of the UN Charter, the UNGA can discuss such matters and make recommendations unless the UNSC was exercising its functions in the matter.<sup>67</sup> The UN Charter envisaged a division of functions between the UNGA and the UNSC in this area, by determining that the UNGA “may consider the general principles of co-operation in the maintenance of international peace and security” in accordance with Article 11(1), may discuss questions related to the maintenance of international peace and security, and make recommendations under Article 11(2) except as provided in Article 12 (1), which prevents the UNGA from acting in such cases.<sup>68</sup> The UNGA does not have any authority to decide that the UNSC does not exercise its functions and, thus, it cannot

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<sup>66</sup> **Öberg, Marko Divac**, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, *The European Journal of International Law* (2005), Vol. 16 No. 5, pp. 883.

<sup>67</sup> Article 10 of the UN Charter: “The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.”

<sup>68</sup> Article 11(2) of the UN Charter: “The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.” Article 12 of the UN Charter: “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests”. See also **Martinez, Luis Miguel Hinojosa**, *The Legislative Role of the Security Council in its Fight Against Terrorism: Legal, Political and Practical Limits*, *International & Comparative Law Quarterly* (April 2008), Vol. 57, p. 336.

avoid the restrictions posed by Article 12.<sup>69</sup> Instead, any issue, which requires a necessary action, shall be referred to the UNSC. Article 12 is designed to prevent clashes between the two organs and it provides that, while the UNSC is exercising its functions with regard to particular dispute, the UNGA shall not make any recommendation unless the UNSC so requests.<sup>70</sup> However, the UNGA may act on a broad range of issues, even by a simple majority vote, and may discuss and make recommendations on any matter within the scope of the UN Charter, subject to Article 12. Of course, Article 2(7) of the UN Charter established limits on the actions of the UN organs to preclude “intervention” in matters “essentially within the domestic jurisdiction of any state,” with an exception for the “enforcement measures” by the UNSC under Chapter VII. The UN Charter does not contain definitions of the quoted terms.<sup>71</sup>

From a more general perspective, Article 13(1)(a) confers on the UNGA a limited normative function by indicating that it can promote studies and make recommendations for “encouraging the progressive development of international law and its codification.”<sup>72</sup> In practice, these competences have been translated into drafting resolutions, in which the UNGA identified international law, in a declarative function,<sup>73</sup> although it could not draw

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<sup>69</sup> Kirgis, Federic, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 508.

<sup>70</sup> Article 12 of the UN Charter: “(1) While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. (2) The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.”

<sup>71</sup> Kirgis, Federic, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 508.

<sup>72</sup> Art. 13(1)(a) of the UN Charter: “The General Assembly shall initiate studies and make recommendations for the purpose of: (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification.”

<sup>73</sup> See, for instance, **UNGA Res. 2625** (24 October 1970) on *Declaration on principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* (24 October 1970). The ICJ referred to many resolutions of the UNGA to clarify content of the norms of customary international law. See Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), ICJ Rep. 134, which remits to **UNGA Res. 2625** (24 October 1970) to set out the specific content of the principle of the prohibition of the use of force (para 87), or of the principle of self determination of peoples (para. 88). However, the fact that the

up additional or complementary norms that imposed new obligations on the States. Pursuant to Article 13(1) of the UN Charter, the UNGA created its Sixth Committee and the International Law Commission (ILC).<sup>74</sup> The States' debates in the Sixth Committee, and in other subsidiary bodies created *ad hoc* for the negotiation of certain international conventions, sustain the drafting procedure of treaties that are subsequently approved by the UNGA, but which lack binding force, if they are not ratified by a sufficient number of States. Thus, the UNGA has the competence to "encourage" the progressive development of international law, but the consent of the States in this process is indispensable.

Concerning the UNSC, it is deemed that the UN Charter defines mainly executive competences of the UNSC.<sup>75</sup> This approach has led to the development of a bulk of legal doctrines according to which the UNSC has the competence to confront particular cases that threaten international peace and security,<sup>76</sup> but lacks legislative competence,<sup>77</sup> understood as the capacity to issue binding norms of general scope on abstract questions.<sup>78</sup> Others recognize that the UNSC has an administrative regulatory

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**UNGA Res. 2625** (24 October 1970) indicates that a given action is contrary to the Charter or international law does not signify *per se* that this is necessarily so. In the Advisory Opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflicts*, the ICJ "noted that General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*". See ICJ Rep (1996), paras. 70-71.

<sup>74</sup> The ILC was established in 1948. Its mandate is the progressive development and codification of international law, in accordance with Article 13(1)(a) of the UN Charter. For more on the ILC see < <http://www.un.org/law/ilc> > (accessed on 29 August 2009). Although Article 16 of the ILC Statute reserves to the UNGA the "progressive development" of international law, the ILC does not distinguish in practice its work of "codification" from that of "progressive development", carrying out both tasks together (ILC review of the work methods of the UNGA after fifty years, **UN Doc. A/51/10** (1996), paras. 157-158.)

<sup>75</sup> **Martinez, Luis Miguel Hinojosa**, *The Legislative Role of the Security Council in its Fight Against Terrorism: Legal, Political and Practical Limits*, International & Comparative Law Quarterly (April 2008), Vol. 57, p. 338.

<sup>76</sup> **Arangio-Ruiz, Gaetano**, *On the Security Council's "Law Making"*, *Rivista di Diritto Internazionale* (2000), Vol. 83, pp. 692-700; **Gowlland-Debbas, Vera**, *The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance*, *European Journal of International Law* (2000), Vol. 11, No. 2, pp. 377.

<sup>77</sup> **Lagrange, Evelyne**, *Le Conseil de sécurité des Nations Unies peut-il violer le droit international?*, *Revue belge de droit international* (RBDI) (2004), Vol. 37, No. 2, p. 577.

<sup>78</sup> **Koskeniemi, Martti**, *The Police in the Temple. Order, Justice and the UN: A Dialectical View*, *EJIL* (1995), Vol. 6, No.1, p. 345; **Pellet, Alain**, *Peut-on et doit-on contrôler les actions du Conseil de sécurité?* in **Boutros, Ghali**, *Le Chapitre VII de la Charte des Nations Unies* (Pedone, Paris, 1995), p. 236.

competence,<sup>79</sup> and exceptional normative competence to address the cases that threaten international peace and security.<sup>80</sup>

At the other extreme, there are the authors sustaining the legislative capacity of the UNSC.<sup>81</sup> According to them, the UNSC has had quasi-legislative authority from the outset of the UN. These scholars maintain that there is a distinction between quasi-legislative and actual legislative authority.<sup>82</sup> A widely accepted definition of UN legislative authority is encapsulated as follows:

[L]egislative acts have three essential characteristics: they are unilateral in form, they create or modify some elements of a legal norm, and the legal norm in question is general in nature, that is, directed to indeterminate addresses and capable of repeated application in time.<sup>83</sup>

This line of argument also claims that there are no provisions in the UN Charter that would preclude the legislative capacity of the UNSC.<sup>84</sup> The UN Charter does not establish any limits on the discretion of the UNSC other than respect for the purposes and principles of the UN as set forth in Article 24(2) of the UN Charter when deciding which measures should be adopted under Chapter VII.<sup>85</sup> However, it is important to note that in

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<sup>79</sup> **Sur, Serge**, *Conclusions in Boutros, Ghali, Le Chapitre VII de la Charte des Nations Unies* (Pedone, Paris, 1995), p. 311.

<sup>80</sup> In relation to **UNSC Res. 1373** (28 September 2001) and **1540** (28 April 2004) Corten says that these resolutions “se présentent comme des décisions de type réglementaire et non comme l’expression de règles générales”. **Corten, Olivier**, *La participation du Conseil de Sécurité à l’élaboration, à la cristallisation ou à la consolidation de règles coutumières*, *Revue belge de droit international (RBDI)* (2004), Vol. 37, No. 2, p. 562.

<sup>81</sup> **Alvarez, Jose**, *Hegemonic International Law Revised*, *American Journal of International Law* (2003), Vol. 97, No. 4, p. 874; **Kirgis, Federic**, *The Security Council’s First Fifty Years*, *American Journal of International Law* (1995), Vol. 89, pp. 520-527; **Szasz, Paul**, *The Security Council Starts Legislating*, *American Journal of International Law* (2002), Vol. 96, No. 4, pp. 904-905.

<sup>82</sup> **Kirgis, Federic**, *The Security Council’s First Fifty Years*, *American Journal of International Law* (1995), Vol. 89, p. 520.

<sup>83</sup> **Yemin, Edward**, *Legislative Powers in the United Nations and Specialized Agencies* (Leyden: Sijthoff, 1969), p. 6.

<sup>84</sup> **Alvarez, Jose**, *Hegemonic International Law Revised*, *American Journal of International Law* (2003), Vol. 97, No. 4, p. 874; **Szasz, Paul**, *The Security Council Starts Legislating*, *American Journal of International Law* (2002), Vol. 96, No. 4, pp. 904-905.

<sup>85</sup> For more on the limits on the powers of the UNSC see **Bothe, M.**, *Les limites des pouvoirs du Conseil de Sécurité*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993); **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of*

the normative field the UN Charter imposes a first limit on the UNSC, which is based on the balance of powers between the two main organs of the UN: the UNSC and UNGA. Thus, for instance, the UNSC does not have the competence for the codification and progressive development of international law because that function is assigned to the UNGA by Article 13(1) of the UN Charter.<sup>86</sup>

Resuming the assessment of the powers of the UNSC initiated in Chapter 4.4, this part of the Chapter will study the provisions of the UN Charter determining the competence of the UNSC. Those are Chapter V, VI and VII of the UN Charter. Chapter V entitled “The Security Council” determines the composition, functions, and decision-making mechanism of the UNSC. Chapters VI and VII of the UN Charter, which are entitled, respectively, “Pacific Settlement of Disputes” and “Action with Respect to Threat to the Peace, Breaches of the Peace, and Acts of Aggression”, give the UNSC the authority to take certain actions in relation to cases envisaged in those Chapters. These and some other provisions of the UN Charter, as mentioned above, as well as Articles 24 and 25, provide for the powers of the UNSC. These will be assessed in the following section.

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International Law (1995), Vol. 26, pp. 33-138; **Lamb, Susan**, *Legal Limits to United Nations Security Council Powers*, in **Goodwin-Gill G., Talmon S. (ed.)**, *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), pp. 361-388; **Nolte, Georg**, *The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections* in **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000); **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001).

<sup>86</sup> Regardless the separation of powers between the UNSC and the UNGA in relation to codification and progressive development of international law, the UNSC expands its competence. Thus, in its resolution 1624, the UNSC paid special attention to the problem of development as an element that contributes to strengthening the international fight against terrorism. See **UNSC Res. 1624** (of 14 September 2005). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf?OpenElement> > (accessed on 14 August 2008). The UNSC also attempted to identify what rules of the Convention on International Civil Aviation of 7 December 1944 and its annexes must be considered as norms of customary international law. See **UNSC Res. 1067** (of 26 July 1996). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N96/190/72/PDF/N9619072.pdf?OpenElement> > (accessed on 14 August 2008).



#### ***4.4.1. Powers of the UNSC under Article 24 of the UN Charter***

At the time of the establishment of the UN, the maintenance of international peace and security was the main *raison d'être* of the Organization.<sup>87</sup> With the creation of the UN, the UNSC was envisaged to play a central role in the maintenance or restoration of international peace and security.<sup>88</sup> The starting point for any assessment of the powers of the UNSC is paragraph 1 of Article 24 of the UN Charter, which states that

[i]n order to ensure prompt and effective action by the United Nations, its Member States confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Paragraph 2 of Article 24 provides that

[i]n discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

Thus, paragraph 1 of Article 24 contains three following statements:

- 1) that the Members of the UN “confer on the Security Council primary responsibility for the maintenance of international peace and security”;
- 2) that the purpose of conferring upon the UNSC primary responsibility for the maintenance of international peace and security is “to ensure prompt and effective action by the United Nations”; and
- 3) that the Members “agree that in carrying out its duties under this responsibility the Security Council acts on their behalf”.

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<sup>87</sup> **Herndl, K.**, *Reflections on the Role, Functions and Procedure of the Security Council of the United Nations*, 206 Recueil des Cours (1986), pp. 289-395, 301; **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969); **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001), p. 26.

<sup>88</sup> **Sarooshi, Danesh**, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999), p. 3.

Article 24(1) raises several legal issues among which there is the matter of delegation of powers to the UNSC. Thus, according to Kelsen, only the first two statements of Article 24(1) are of legal importance and the third one provides only a theoretical characterisation of the functions of the UNSC, which according to him is legally irrelevant.<sup>89</sup> This statement is sustained by the reasoning that as far as the UNSC is the organ of the UN as stated in Article 7(1) of the UN Charter, it “acts on behalf of the United Nations, not on behalf of its Members”.<sup>90</sup> Kelsen challenges the interpretation that the UNSC acts on behalf of the Member States, as far as not all UN Members are represented in the UNSC. Therefore, Kelsen deems that the UNSC acts on behalf of the UN as a whole. Consequently, any act of the UNSC should be seen as an action of the UN. In line with this argument, the author continues that the statement saying that “the Members confer on the Security Council, etc” is not correct either. Kelsen claims that “it is the Charter, which confers responsibilities on the Security Council.”<sup>91</sup> He further explains that the UN Charter should not be assessed as a treaty concluded by the “Members”, but as a treaty concluded by the States, which subsequently became the “Members” of the UN by means of the UN Charter, when it entered into force for them.<sup>92</sup>

Another approach to the delegation of powers to the UNSC maintains that the UN Member States delegated their powers to the UNSC through Article 24 of the UN Charter.<sup>93</sup> However, such an interpretation of Article 24 is deemed problematic as the source of the UNSC’s enforcement powers is not in fact a delegation of powers by UN Members.<sup>94</sup> Supporters of this argument note that the UN Member States could not

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<sup>89</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 280.

<sup>90</sup> *Ibid.*, p. 280.

<sup>91</sup> *Ibid.*, p. 281.

<sup>92</sup> *Ibid.*, pp. 281-282.

<sup>93</sup> **Sarooshi, Danesh**, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999), p. 26. **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991), p. 450.

<sup>94</sup> **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 404.

delegate powers to the UNSC, since technically it is the UN Charter which confers these powers on the UNSC. According to them a delegation of sovereign rights took place with the foundation of the UN, which is with the conclusion of the founding treaty and its acceptance and ratification by the Member States. Therefore, the UN Charter, as the constituent instrument of the UN, has itself created certain powers and conferred those to the UNSC.<sup>95</sup> This formalistic approach stating that the Member States cannot themselves delegate powers to the UNSC as far as there is the UN Charter, does not mean, however, that the UN Charter acts as a mechanism by which States can delegate certain powers to an organ of an international organization or an organization as a whole.

As far as the UN Charter is a direct conferrer of the powers, but the original source of that power are the UN Member States as a whole, one may rightly conclude that UNSC powers are delegated to it by the UN Member States.<sup>96</sup> This understanding reflects the meaning of Article 24(1) of the UN Charter, which in clear terms states that the UN Member States “agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf”.

The second statement saying that the purpose of conferring upon the UNSC primary responsibility for the maintenance of international peace and security is “to ensure prompt and effective action by the United Nations” contains an ambiguous term “action”, which is used with different meanings in the UN Charter. The term may refer to any act of the UN that may be a discussion, call, recommendation, or enforcement measure. According to Article 37(2) of the UN Charter, “action” means recommendations of procedures or methods of adjustment.<sup>97</sup> Article 48 of the UN Charter

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<sup>95</sup> *Ibid.*, p. 404.

<sup>96</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), vol. 26, p. 33, p. 125.

<sup>97</sup> Article 37(2) of the UN Charter: “If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.” Article 36 of the UN Charter: “1) The Security Council may, at any stage of a dispute of the nature referred to in

interprets it as an enforcement action.<sup>98</sup> In Article 11(2), it designates, probably, enforcement action, which is the specific action reserved to the UNSC, as determined under Chapter VII of the UN Charter.<sup>99</sup> No other organ of the UN (except the five great powers during the transition period, under Article 106) and no Member (except in case of self-defence under Article 51 or acting against an ex-enemy State under Article 53(3) and Article 107) is authorised by the UN Charter to take such an action. According to Kelsen, “effective” measures mean enforcement action. Therefore, the “effective” action by the UN envisaged in Article 24(1), would refer to enforcement action.<sup>100</sup>

With regard to the first statement of Article 24(1) of the UN Charter on the UNSC’s responsibility for the maintenance of international peace and security – “confer on the Security Council primary responsibility for the maintenance of international peace and security” – it is important to underline that in the practice of the UN the term “primary” has been interpreted so as not to mean an “exclusive” responsibility. Such exclusivity is solely reserved for coercive or enforcement actions under Chapter VII of the UN Charter.<sup>101</sup> For that reason, in 1950, the UNGA in response to the deadlock that

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Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment. 2) The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties. 3) In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.”

<sup>98</sup> Article 48 of the UN Charter: “1) The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. 2) Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.”

<sup>99</sup> Article 11(2) of the UN Charter: “The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.” For more on the definition of the term “action” under the UN Charter see **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), pp. 91-94, 204-207.

<sup>100</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 281.

<sup>101</sup> *Ibid.*, p. 281.

existed in the UNSC adopted the “Uniting for Peace” Resolution,<sup>102</sup> in which it asserted a secondary or subsidiary competence of the UNGA with regard to the maintenance of international peace and security.<sup>103</sup> The USSR and its allies strongly opposed the “Uniting for Peace” Resolution. For the exercise of this subsidiary competence, the UNGA by its resolution 1000 (ES-I) established a UN Emergency Force (UNEF I) during the Suez crisis of 1956.<sup>104</sup> Therefore, the UNGA had to request an advisory opinion of the ICJ on the question whether the expenditures of UNEF I and of the ONUC were expenses of the UN within the meaning of Article 17(2) of the UN Charter.<sup>105</sup> Having examined the functions of the UNGA and the UNSC, the ICJ concluded in its opinion that “the responsibility conferred [under Article 24(1)] is “primary” and not “exclusive”.<sup>106</sup> This exclusivity is reserved for coercive or enforcement actions under Chapter VII of the UN Charter.<sup>107</sup> However, the ICJ concluded that peace-keeping operations at stake were not enforcement actions. Therefore, the ICJ concluded that the UNGA had power “to organize peace-keeping operations, at the request or with consent, of the States concerned” under the first sentence of Article 11(2):

The General Assembly may discuss any question related to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may take recommendations with regard to any such questions to the

<sup>102</sup> **UNGA Res. 377** (3 November 1950), adopted by 52 votes to 2, with 2 abstentions. Available at < <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf> > (accessed on 31 July 2008).

<sup>103</sup> Commentary on **UNGA Res. 377** see in **Wolfrum, Rudiger (ed.)**, *United Nations: Law, Policies and Practice* (München: Beck, 1995), vol. 2, pp. 1341-1348.

<sup>104</sup> **UNGA Res. 1000 (ES-I)** (5 November 1956) was adopted (by 57 votes to nil with two abstentions) at the first emergency session under the mechanism determined by the “Uniting for Peace” resolution. Available at <

<http://domino.un.org/UNISPAL.NSF/a06f2943c226015c85256c40005d359c/4357c71acd47f4af852560df006762d9!OpenDocument> > (accessed on 16 August 2008).

<sup>105</sup> **UNGA Res. 1731** (20 December 1961). Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/167/84/IMG/NR016784.pdf?OpenElement> > (accessed on 16 August 2008).

<sup>106</sup> *Certain Expenses of the United Nations (Art. 17, Para. 2, of the Charter)*, Advisory Opinion of the ICJ Rep. (20 July 1962), para. 163.

<sup>107</sup> *Ibid.*, para. 163.

state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussions.<sup>108</sup>

Resuming the assessment of Article 24 of the UN Charter, paragraph 2 states the following:

In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

The first sentence of Article 24(2) expressly provides that the UNSC in discharging the “duties” envisaged in Article 24(1) has to act in accordance with the principles of the UN. These are laid down in Articles 1 and 2 of the UN Charter. Thus, it may be intended that the UNSC is expected to act within the “principles of justice and international law”. However, the first sentence of Article 24(2) does not expressly say that the UNSC is bound by the “principles of justice and international law” in exercising its powers.<sup>109</sup>

Still during the UNCIO, the major powers rejected a proposal to extend the obligation of the UNSC to act in conformity with the principles of justice and international law, as far as those obligations might have limited the UNSC’s freedom of swift action. However, the idea that the UNSC should act in accordance with the UN Charter and its limits was acceptable during the debate at the UNCIO. For instance, the US delegate argued that “the Charter had to be considered in its entirety and if the

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<sup>108</sup> The ICJ considered that “the kind of action referred to in Article 11(2) is coercive or enforcement action.” See *Certain Expenses of the United Nations (Art. 17, Para. 2, of the Charter)*, Advisory Opinion of the ICJ Rep. (20 July 1962), para. 164. In this quotation, the ICJ used the words “the maintenance of international peace and security” from Article 24(1) and they have the same meaning as the words “to maintain international peace and security” of Article 1(1) of the UN Charter. These words characterise a specific purpose of the UN, and, according to Kelsen, might reflect the intention of those who drafted Article 24 of the UN Charter. See **Kelsen, Hans**, *The Law of the United Nations* (New York: Frederick A. Praeger, 1964), p. 284.

<sup>109</sup> *Ibid.*, p. 294-295; **Akande, K.**, *The International Court of Justice and the Security Council: Is there Room for Judicial Control of Decisions of the Political Organs of the United Nations?*, *International & Comparative Law Quarterly*, vol. 46 (1997), pp. 318-319.

Security Council violates its principles and purposes it would be acting *ultra vires*".<sup>110</sup> This interpretation matches a wide spread and shared current understanding that the UNSC has to observe at least the limits of the law of the Charter in exercising its functions.<sup>111</sup> Therefore, the powers of the UNSC are not "unfettered by any restraints."<sup>112</sup> Even recently, the UN War Crimes Tribunal for the Former Yugoslavia in its decision on the defence motion on jurisdiction in the *Tadić Case* said the following on the same matter:<sup>113</sup>

Support for the view that the Security Council cannot act arbitrarily or for an ulterior purpose is found in the nature of the Charter as a treaty delegating powers to the United Nations. In fact, such a limitation is almost a corollary of the principle that the organs of the United Nations must act in accordance with the powers delegated to them. It is a matter of logic that if the Security Council acted arbitrarily or for an ulterior purpose it would be acting outside the purview of the powers delegated to it in the Charter.

Continuing the assessment of the powers of the UNSC under Article 24 of the UN Charter, the second sentence of Article 24(2) states that "[t]he specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII." The term "specific powers" in this context is not defined in the UN

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<sup>110</sup> **Doc. 555.III/1/27, UNCIO**, Vol. 11, p. 379. See also **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), pp. 27-28.

<sup>111</sup> **Bothe, M.**, *Les limites des pouvoirs du Conseil de Sécurité*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993); **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), Vol. 26, pp. 33-138; **Lamb, Susan**, *Legal Limits to United Nations Security Council Powers*, in **Goodwin-Gill G., Talmon S. (ed.)**, *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), pp. 361-388; **Nolte, Georg**, *The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections* in **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000); **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001).

<sup>112</sup> It should be noted that Article 2(7) declares that "nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." This proviso is, however, not applicable to enforcement measures under Chapter VII of the Charter. **Ahlström, Christer**, *United Nations Security Council Resolution 1540: non-proliferation by means of international legislation*, *Sipri Yearbook* 2007, p. 462, ft. 13.

<sup>113</sup> *Prosecutor v. Dusko Tadić* (Jurisdiction), 105 ILR, p. 432 (para. 15 of the Judgment).

Charter. It is neither clear whether the powers of the UNSC are “specific” as they are granted only to the UNSC, or whether they are “specific” in comparison with the other powers of the UNSC. These powers could be also regarded as “specific” in the sense that the other organs of the UN have no such powers. However, according to Kelsen this understanding of the term “specific” is valid only with respect to the powers laid down in Chapter VII, under which the UNSC has the power to take enforcement action.<sup>114</sup> On the same matter of determination of the content of the term “specific”, the ICJ in its Advisory Opinion on *Namibia* held that:

reference in paragraph 2 of this Article [24] to specific powers of the Security Council under certain chapters of the Charter does not exclude the existence of general powers to discharge the responsibility conferred in paragraph 1.<sup>115</sup>

Kelsen did not support the same interpretation claiming that “it is impossible to interpret Article 24 to mean that it confers upon the Council powers not conferred upon it in other Article of the Charter (or the Statute).”<sup>116</sup> According to Kelsen, the powers of the UNSC envisaged in Article 24(1) amount to general powers.<sup>117</sup> However, it is generally accepted that the term “specific” powers – as it is mentioned in Article 24(2) – does not imply that the UNSC has only the powers that are mentioned in Article 24(2) of the UN Charter.<sup>118</sup>

<sup>114</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), pp. 290-291.

<sup>115</sup> *Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Adv. Op., ICJ Rep. (1971), para. 110, at 52; Article 24(1) of the UN Charter: “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

<sup>116</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 284.

<sup>117</sup> *Ibid.*, p. 284; The UNSC was envisaged to play an important role in maintenance or restoration of international peace and security. See also **Sarooshi, Danesh**, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999), p. 3.

<sup>118</sup> **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents*, (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), p. 204; **Kelsen, Hans**, *The Law of the United Nations* (New York: Frederick A. Praeger, 1964), pp. 283-285; **Delbrück, J.**, *Article 24*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed) (Oxford: Oxford University Press, 2002), p. 403; **Herndl, K.**, *Reflections on the Role, Functions and Procedures of the Security Council of the United Nations*, 206 *Recueil des Cours* (1987), pp. 326-331. Herndl also claimed that Chapter VI of the



Chapters VI, VII, and VIII of the UN Charter determine functions of the UNSC corresponding to the means by which Article 1(1) gives the UN the task of maintaining international peace and security.<sup>119</sup> Chapters VI and VIII deal with pacific settlement of disputes and the adjustment of other situations providing for regional arrangements. Chapter VII determines the actions of the UNSC with respect to threats to the peace, breaches of the peace, and acts of aggression. But Chapter XII refers to the trusteeship system, and the functions conferred upon the UNSC in this Chapter are different from those conferred by Article 1(1) upon the UN for the maintenance of international peace and security, in the narrower and specific sense of this term. If the trusteeship functions of the UNSC are duties that the UNSC has under its responsibility for the maintenance of international peace and security, this term must be used in Article 24(1) in a broader sense than in Article 1(1).

The UNSC also has additional powers other than those defined in Article 24(2), namely under Chapters VI, VII, and VIII of the UN Charter. The ICJ's dictum in the *Reparation for Injuries* Case claims that the UNSC possesses further competences, which are not listed in the Charter, but are necessary for the exercise of its responsibility:

Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.<sup>120</sup>

The above mentioned quotation from the *Reparation for Injuries* Case relates to the implied powers of the Organization, which were restated by the ICJ in its Advisory Opinion on the *Legality of The Use by a State of Nuclear Weapons in Armed Conflict*:

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UN Charter was "more or less fallen into disuse", in favour of an exercise of the general competence granted to the UNSC under Article 24; *Ibid.*, p. 331.

<sup>119</sup> Article 1(1) of the UN Charter: "The Purposes of the United Nations are: 1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

<sup>120</sup> The *Reparation for Injuries* Case, ICJ Reports (1949), at 182.

International organizations are subjects to international law which do not, unlike States, possess a general competence. International organizations are governed by the “principle of speciality”, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them. ... The powers conferred on international organizations are normally subject of an express statement in their constituent instruments. Nevertheless, the necessities of international life may point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organizations can exercise such powers, known as “implied” powers.<sup>121</sup>

Thus, the UNSC has additional powers defined in other Chapters of the UN Charter, as envisaged in Chapters IV, V, and XIV<sup>122</sup> and in the Statute of the ICJ that is an integral part of the UN Charter.<sup>123</sup> Among these powers there is the one envisaged in Article 94(2) of Chapter XIV, under which the UNSC makes recommendations or decides upon measures to be taken to give effect to a judgment of the ICJ with which a party fails to comply.<sup>124</sup> As far as in accordance with Article 24(2), the UNSC is bound to conform to the principles and purposes of the UN only in discharging of its functions under Chapters VI, VII, VIII and XII, it maybe claimed that Article 24(2) should not be applied to the powers of the UNSC under Article 94(2).<sup>125</sup>

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<sup>121</sup> *Legality of The Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, ICJ Rep. (1996), para. 25, 78.

<sup>122</sup> At the 36<sup>th</sup> meeting of the UNSC the delegate of Mexico stated that the first sentence of Article 24 (2) “invests the Council with implied powers wider in scope than the specific powers laid down in Chapters VI, VII, VIII and XII, to which the second sentence of the same paragraph and Article refers.” (Journal of the Security Council, 1<sup>st</sup> Year, No. 30, p. 594.)

<sup>123</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 291.

<sup>124</sup> Art. 94(2) of the UN Charter: “If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

<sup>125</sup> For more see **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), pp. 291-292.

Besides the problem of interpretation of the term “specific” in relation to the powers of the UNSC under Article 24(2), there is also a difficulty in the assessment of the term “duties”, as far as Article 24(2) says that the specific powers are granted to the UNSC for the discharge of the duties that are mentioned in Article 24(1). Kelsen deems that this term is not correct either because the UN Charter does not really impose “duties” upon the organs of the UN, but rather determines their functions and powers. Moreover, the heading of Article 24 refers to “Functions and Powers” and not duties.<sup>126</sup>

#### ***4.4.2. Competence of the UNSC under Article 25 of the UN Charter***

As to the legal effects of the acts of the UNSC, Article 25 of the UN Charter, which comes within Chapter V of the UN Charter broadly entitled “The Security Council,” stipulates that:

The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

As indicated in the *Repertory of Practice of United Nations Organs*, the text of Article 25 does not contain precise delimitation of the range of questions to which it relates. The UNSC did not define the scope of the obligation of UN Members under Article 25, nor indicated it on any occasion that a particular decision should or should not be considered as falling under that Article.<sup>127</sup>

There are several questions in relation to this provision of the UN Charter. The first question is about the acts of the UNSC which amount to a decision and, thus, can be considered as binding under Article 25 of the UN Charter. This question may be

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<sup>126</sup> Kelsen, Hans, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 285, p. 288.

<sup>127</sup> *Repertory of Practice of United Nations Organs. The Charter of the United Nations*, Supplement No. 1 (1954 - 1955), Vol. 1, p. 257. Available at <[http://untreaty.un.org/cod/repertory/art25/english/rep\\_suppl\\_vol1-art25\\_e.pdf](http://untreaty.un.org/cod/repertory/art25/english/rep_suppl_vol1-art25_e.pdf)> (accessed on 3 September 2008).

paraphrased as to whether Article 25 of the UN Charter applies only to the UNSC's decisions taken under Chapter VII. The second question is about the relevance and interpretation of the phrase "in accordance with the present Charter." The UN Charter does not settle the first question and its terminology is not consistent in this respect.<sup>128</sup>

#### 4.4.2.1. Definition of "decisions" of the UNSC in terms of Article 25

The issue of whether Article 25 of the UN Charter was intended to apply to Chapter VI as well as to Chapter VII is not clarified in the *travaux préparatoires*. The final draft of Article 25 prepared by the Co-ordination Committee used the wording "so as to make it clear that members would only be obliged to carry out those Council decisions that are legally mandatory."<sup>129</sup> However, this work of the Co-ordination Committee does not provide a substantially helpful clarification. The main controversy in the course of negotiations of Article 25 was related to whether the obligation to carry out decisions of the UNSC was limited to decisions taken under Chapter VI, VII and VIII. Belgian proposal to limit the application of Article 25 was rejected at the UNCIO.<sup>130</sup> Therefore, considering this implication, the *travaux préparatoires* provide some evidence that Article 25 was not intended to be limited to Chapter VII, or inapplicable to Chapter VI.

A key term of Article 25 is "decision" and it refers to the prescriptions of the UNSC that the UN Member States have agreed in advance to "accept" and be bound by

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<sup>128</sup> Thus, for example Articles 15(1), 25, 27(2), 27(3), 37(2), 39, 40, 41, 44, 48, 49, 94(1) of the UN Charter refer to decisions in one form or another. Articles 4(2), 5, 6, 36(1), 36(3), 37(2), 38, 39, 93(2), 94(2) and 97 relate to recommendations of the UNSC. Other provisions include the term "acting" or "taking of action" (Articles 24(2) and 42); "calling upon" (Articles 33(2) and 40); and "utilizing" (Article 53).

<sup>129</sup> **Russel, Ruth**, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Washington: Brookings Institution: 1958), p. 665.

<sup>130</sup> **UNCIO Documents**, Committee 111/11, (25 May 1945), Vol. 11, p. 393.

them.<sup>131</sup> However, it is unclear whether the “decisions” of the UNSC under both Chapters VI and VII of the UN Charter would be binding on UN Member States under Article 25, or whether Article 25 indeed says that the term “decisions” refers only to decisions of the UNSC under Chapter VII of the UN Charter pursuant to a finding under Article 39 that there has been a threat to the peace, breach of the peace, or act of aggression.<sup>132</sup> It is generally accepted that the acts of the UNSC related to the peaceful settlement of disputes under Chapter VI of the UN Charter are recommendatory and therefore are viewed as non-binding. At the same time, measures taken by the UNSC under Chapter VII of the UN Charter are viewed as binding decisions.<sup>133</sup> Properly this issue, though it is shared by many, needs to be assessed in this Chapter.

The term “decision” may be interpreted so as to mean any resolution adopted by the UNSC, or only a decision which, in accordance with the provisions of the UN Charter, is binding upon the Members of the UN. If the latter interpretation is accepted, the acts of the UNSC which are titled as “recommendations” though being adopted under Chapter VI or under Chapter VII would not be regarded as “decisions” within the meaning of Article 25 of the UN Charter. But the decisions of the UNSC which, in accordance with the UN Charter, are not binding upon the Member States, such as mere recommendations, may nevertheless assume a binding character, if the UNSC, under Article 39, considers non-compliance with its decisions as a threat to the peace and takes enforcement action against the recalcitrant Member State.

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<sup>131</sup> The term “accept” “expresses the idea that the Members are “obliged” to carry out the decisions of the Security Council.” For more see **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p. 95. According to Kelsen, “they [the members of the United Nations] are subordinated to this organ, a relationship which is incompatible with the statement that this organ acts on their behalf.”<sup>131</sup>

<sup>132</sup> **Higgins, Rosalyn**, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, *International and Comparative Law Quarterly* (1972), Vol. 21, No. 1, p. 275.

<sup>133</sup> **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001), pp. 31-32.

Upon the request of the UNSC, the ICJ introduced an interpretation of the acts of the UNSC in the *Namibia Case*.<sup>134</sup> The ICJ was required to direct its attention to the legal consequences of a series of resolutions on Namibia in the UNGA and in the UNSC.<sup>135</sup> In this case, South Africa advanced that these resolutions were at most recommendations and therefore the UN Member States had the faculty to accept or reject them. However, the ICJ rejected the arguments of South Africa.<sup>136</sup> In the context of the *Namibia Case*, the ICJ found that:

It has been contended [by South Africa] that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to "the decisions of the Security Council" adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter which deals with the functions and powers of the Security Council. If Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter.<sup>137</sup>

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<sup>134</sup> It was the first time the UNSC exercised its rights under Article 96(1) of the UN Charter to ask the ICJ for an advisory opinion by adopting **UNSC Res. 284** (29 July 1970) where it asked the ICJ the following question: "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)?" See **UNSC Res. 284** (29 July 1970). See also **Higgins, Rosalyn**, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, *International and Comparative Law Quarterly* (1972), Vol. 21, No. 1, pp. 271; **Pomerance, Michla**, *Case Analysis: The ICJ and South West Africa (Namibia): A Retrospective Legal/Political Assessment*, *Leiden Journal of International Law* (1999), Vol. 12, No. 2, pp. 425-436.

<sup>135</sup> In relation to the situation around Namibia, there were adopted the following resolutions by the UNSC and the UNGA: **UNSC Res. 264** (20 March 1969), **UNSC Res. 269** (12 August 1969), **UNSC Res. 276** (30 January 1970); **UNGA Res. 2145** (27 October 1966).

<sup>136</sup> **Higgins, Rosalyn**, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, *International and Comparative Law Quarterly* (1972), Vol. 21, No. 1, pp. 272.

<sup>137</sup> *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, *Adv. Op.*, ICJ Rep. (1971), para. 113. Available at < <http://www.icj-cij.org/docket/files/53/5595.pdf> > (accessed 8 March 2009). See also **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001), p. 32.

In relation to the effect of the decisions by the UNSC on UN Member States, the ICJ stressed in the context of the Namibia Case that:

the decisions made by the Security Council ... were adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25. The decisions are consequently binding on all States Members of the United Nations which are thus under obligation to accept and carry them out.<sup>138</sup>

The UNSC in its resolution 269 referred specifically to Article 25 of the UN Charter, when it stated that the UNSC was:

Mindful of its responsibility to take necessary action to secure strict compliance with the obligations entered into by States Members of the United Nations under the provisions of Article 25 of the Charter of the United Nations.<sup>139</sup>

During the *Namibia Case*, various important features of the UNSC decisions were discussed. One of the matters that definitely went beyond the scope of the *Namibia Case* was addressed by the representative of the UK who said that

the Security Council can take decisions generally binding on Member States only when the Security Council has made a determination under Article 39.... Only in these circumstances are the decisions binding under Article 25.<sup>140</sup>

Thus, the UK wanted to point out that only the resolutions taken under Chapter VII, could be considered as “decisions” under Article 25 of the UN Charter and, thus, could be binding upon the UN Member States. It was also noted that the UNSC resolutions are deemed to find an additional basis under Article 24 of the UN Charter, which provides the legal basis for the resolutions.<sup>141</sup>

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<sup>138</sup> *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Adv. Op., ICJ Rep. (1971), para. 115. Available at < <http://www.icj-cij.org/docket/files/53/5595.pdf> > (accessed 8 March 2009).

<sup>139</sup> UNSC Res. 269 (12 August 1969). Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/250/92/IMG/NR025092.pdf?OpenElement> > (accessed on 30 August 2008).

<sup>140</sup> *Per* the representative of the UK, Sir Colin Crowe, meeting records S/PV. 1589 (6 October 1971), p. 26. Available at < [http://www.un.org/depts/dhl/resources/namibia/by\\_type.htm](http://www.un.org/depts/dhl/resources/namibia/by_type.htm) > (accessed on 30 August 2009).

<sup>141</sup> Oral Statements, ICJ Report (1971), C.R. 71/1 at 54.

However, a reading of Article 25 does not clearly state whether UNSC decisions taken under Chapter VI are binding or not for UN Member States. For instance, the titles of Chapters VI and VII of the UN Charter do not suggest that they should be read as “Recommendations for the settlement of disputes” and “Decisions with respect to a breakdown of peace” respectively. Though Article 25 stands separately from both Chapter VI and Chapter VII, its prescription that UN Member States are bound by decisions of the UNSC also derives from Article 24(1), according to which the UNSC has primary responsibility for the maintenance of international peace and security.<sup>142</sup> Thus, this view would support the position of the UK noted above, according to which the only binding resolutions of the UNSC are those taken under Article 39, that is to say “for the maintenance of international peace and security” as requested in Article 24(1) of the UN Charter.<sup>143</sup> However, Article 24(2) says that the specific powers granted to the UNSC for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII of the UN Charter. Thus, it could be argued that if Article 25 had to be applied only to Chapter VII, it would have been included in Chapter VII.

Chapter VI of the UN Charter itself does not contain in its wording the term “decision”. Article 33(2) provides that the UNSC may “call upon” parties to settle their dispute by certain peaceful means listed in Article 33(1). This phrase is stronger than the phrase “recommend” used in Articles 36 or 37. However, the UNSC in effect requires the parties to note obligations they have accepted under Article 33(1).<sup>144</sup>

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<sup>142</sup> **Higgins, Rosalyn**, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, *International and Comparative Law Quarterly* (1972), Vol. 21, No. 1, p. 277.

<sup>143</sup> Article 24(1) of the UN Charter: “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

<sup>144</sup> “Article 33 (1) requires parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” See **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), p. 209.



The ICJ, therefore, suggested that it was necessary to consider the wording and context of a resolution of the UNSC in order to determine whether the UNSC intended to adopt a decision or recommendation. The ICJ expressed this approach in its Advisory Opinion on the matter by saying that

the language of a resolution of the Security Council should be carefully analyzed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have in fact been exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussion leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.<sup>145</sup>

In the Lockerbie Case, where the ICJ had to again face the issues related to the binding force of the UNSC's resolution, it said that the States concerned – Libya and the US – were obliged to carry out the decisions of the UNSC in accordance with Article 25 of the UN Charter.<sup>146</sup> Moreover, the ICJ added that in accordance with Article 103 of the UN Charter, the obligations of the States under UNSC resolution prevailed over their obligations under any other international agreement.<sup>147</sup> Given that the term “decision” of Article is not mentioned in Chapter VI, and bearing in mind the abovementioned practice of the ICJ, one may conclude that the provision of Article 25 apply to the decisions of the UNSC taken under Chapter VII of the UN Charter.

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<sup>145</sup> *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Adv. Op., ICJ Rep. (1971), para. 114.

<sup>146</sup> *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. USA)*, ICJ Reports (1992), para. 114.

<sup>147</sup> The ICJ referred to **UNSC Res. 748** (31 March 1992). See *Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. USA)*, ICJ Reports (1992), para. 114.

#### 4.4.2.2. Requirement to act “in accordance with the present Charter”

The second issue related to Article 25 of the UN Charter refers to the wording “in accordance with the present Charter” which is used in relation to the decisions of the UNSC and/or to the obligations of the UN Member States to accept and carry out these decisions. This wording is ambiguous, as well as the above mentioned term “decisions” used in the same Article 25. A duty for the Members of the UN to act in conformity with the decisions of the UNSC, established under Article 25 of the UN Charter, could be read as binding only if the UNSC acted “in accordance with the present Charter”.

Article 24(2) of the UN Charter adds that the UNSC is bound to act “in accordance with the Purposes and Principles of the United Nations”. Article 1(1) of the UN Charter, determining the Purposes, also establishes the obligation to act “in conformity with the principles of justice and international law” in relation to the function of “bringing about by peaceful means adjustment or settlement of international disputes or situations” (the acts of the UNSC under Chapter VI). This excludes this rule from the function of taking “effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression and other breaches of the peace” (the function of the UNSC under Chapter VII, especially Article 39).<sup>148</sup> In other words, the Members of the UN would be obliged to respect the decisions of the UNSC only if the Council acted *intra vires*. However, this interpretation is not fully accepted as there are concerns that this approach would give certain Member States some leeway to decide whether or not a decision of the UNSC is *intra vires* or not.<sup>149</sup> In this context, it should be noted that several key provisions of the UN Charter are vague and, consequently, that it may be difficult in a concrete situation to determine whether or not the UNSC has acted within its authority. Yet, if the UNSC took a decision that would clearly appear to

<sup>148</sup> **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), pp. 294-295.

<sup>149</sup> **Delbrück, J., Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 459.

be outside its powers, it could be considered as a debatable issue on whether the UN Member States would indeed be under a legal obligation to comply with such a decision of the UNSC.<sup>150</sup>

In the cases when the UN organs commit acts that go beyond the scope of the powers conferred to them by the UN Charter, the question of *ultra vires* arises.<sup>151</sup> As mentioned above, the end of the Cold War resulted in the revitalization of the activity of the UNSC and an increase of its activity.<sup>152</sup> The activity of the UNSC has aroused a great deal of controversy both among scholars and among the States questioning whether the acts of the UNSC are *ultra vires*, whether the UNSC revealed a new form of creating international norms that override States consent as the only material source of international law. In the fulfilment of its functions, the UNSC might act and adopt decisions in the way which does not entirely reflect the procedures laid down in the UN Charter.<sup>153</sup> Though the UNSC may exercise a high degree of political discretion, especially when determining the existence of a threat to international peace and security under Chapter VII of the UN Charter, its powers are not unlimited.<sup>154</sup> The UNSC remains at all times a body of the UN and thus must operate within the boundaries of the UN Charter.<sup>155</sup>

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<sup>150</sup> See *Prosecutor v. Tadić*, Appeal on Jurisdiction (ICTY, No. IT-94-1-AR72), §43, 2 Oct. 1995; **Nolte, Georg**, *The limits of the Security Council's powers and its functions in the international legal system: some reflections*, in **Byers, Michael (ed.)**, *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford university Press, 2000), pp. 315-326; and **Talmon, Stefan**, *The Security Council as World Legislator*, *American Journal of Internal Law* (2005), Vol. 99, pp. 175-193.

<sup>151</sup> **Lauterpacht, Elihu**, *The Legal Effect of Illegal Acts of International Organizations*, in *Cambridge Essays in International Law: Essays in Honour of Lord McNair* (London: Stevens, 1965), pp. 88-121.

<sup>152</sup> See also **Wood, Michael**, *Security Council Working Methods and Procedure: Recent Developments*, *The International and Comparative Law Quarterly* (1996), Vol. 45, No. 1, p. 151.

<sup>153</sup> Although it is true that within the UN system, explicit powers have been supplemented by implied ones, and that the evolutionary character of the UN Charter renders it difficult to define the exact extent of an organ's powers, this does not detract from the view that, in principle, at least, the concept of "ultra vires" is nevertheless relevant to the acts of the Security Council and the powers enumerated in the Charter. See also **Brownlie, I.**, *Principles of Public International Law* (5<sup>th</sup> ed.) (Oxford, 1998), p. 702.

<sup>154</sup> **Lamb, Susan**, *Legal Limits to United Nations Security Council Powers*, in **Goodwin-Gill G., Talmon S. (ed.)**, *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), p. 365.

<sup>155</sup> See *Prosecutor v. Dusko Tadić* (Jurisdiction), Trial Chamber, 10 August 1995, para. 42: "The Security Council is an organ of an international organization, established by a treaty which serves as a constitutional

This assessment of the powers of the UNSC under Articles 24 and 25 of the UN Charter maintains that the UNSC has the power to act with the aim of protection of the international peace and security. Moreover, given the distinction of powers of the UNGA and the UNSC, the latter is the only organ of the UN that should take an effective action in such cases. Upon determination of existence of a threat to international peace under Article 39, as suggested by numerous NPT States during the NPT review cycle studies in Chapter 3, the UNSC will have to take measures under Chapter VII of the UN Charter. The decisions passed by the UNSC in this regard will be binding for the UN Member States, pursuant to Article 25 of the UN Charter. Therefore, the interpretation by the UNSC of a withdrawal from the Treaty as a threat to peace under Article 39 is crucial for the application upon a withdrawing State of binding measures under Chapter VII of the UN Charter.

#### ***4.5. The UNSC's powers to determine a "threat to the peace" under Article 39 of the UN Charter***

As discussed in Chapter 3 and mentioned in the introductory note of this Chapter, a withdrawal from the NPT may be regarded by the UNSC, as well as by the States Parties to the NPT, as a threat to international peace and security. Many States Parties to the NPT, therefore, consider that the role of the UNSC in relation to withdrawal from the NPT should be expanded and that the UNSC should determine such an action of a withdrawing State Party as the existence of "threat to the peace, breach of the peace, or an act of aggression" as provided for in Article 39 of the UN Charter.<sup>156</sup> Given that many

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framework for that organization. The Security Council is thus subject to certain constitutional limitations, and neither the text nor the spirit of the Charter conceives of the Security Council as unbound by law."

<sup>156</sup> **Frowein, Jochen A.**, *Article 39*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 618; **Gill, Terry**, *Legal and Some*

States Parties to the NPT view withdrawal from the Treaty as a threat to international peace and security, they also suggest that the UNSC should regard such an action of a withdrawing State from the NPT as a threat under Article 39 of the UN Charter. Although the UNSC rarely invokes specific articles of the UN Charter, including Article 39, in its decisions or recommendations under Chapter VII, it has always based its enforcement measures on the terms of that provision. Without a determination that a given situation poses either threat to the peace or constitutes a breach of the peace or act of aggression, the UNSC cannot take enforcement measures under Chapter VII of the UN Charter. This is accepted and proved both by the authoritative commentaries on the UN Charter and the practice of the UNSC itself and it will be explained in a more detailed way further in this Chapter.

The UNSC has the power to determine whether a situation constitutes a threat to international peace and security, a notion for which there is no definition to be found either in the UN Charter or in the actual practice of the UN since its creation in 1945.<sup>157</sup> This conceptual issue provided a broad scope of manoeuvre for the UNSC to conclude whether a situation constitutes a threat to peace, a breach of the peace, or an aggression. Given that the UNSC possesses a margin of flexibility in exercising and interpreting its authority,<sup>158</sup> as it was mentioned above in this Chapter, the issue to be addressed in this section of the dissertation concerns the UNSC's powers to interpret Article 39 in determining the existence of a threat to the peace.

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*Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 39; **Gowlland-Debbas, Vera**, *Security Council Enforcement Action and Issues of State Responsibility*, International and Comparative Law Quarterly (1994), Vol. 43, pp. 55-98; **Goodrich, L.M. and Simons, A.P.**, *The United Nations and the Maintenance of International Peace and Security* (2<sup>nd</sup> ed.) (Washington D.C., 1962), pp. 346-347.

<sup>157</sup> **De Brichambaut, Marc Perrin**, *The Role of the United Nations Security Council in the International Legal System*, in **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000), pp. 270.

<sup>158</sup> **Taylor, G.D.S.**, *The Content of the Rule Against Abuse of Rights in International Law*, British Yearbook of International Law (1972-1973), Vol. 46, p. 325.

#### 4.5.1. Content of Article 39 of the UN Charter and the concept of a “threat to the peace”

Article 39 opens Chapter VII of the UN Charter and determines the conditions of application of this Chapter of the UN Charter. It provides that

[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 39 of the UN Charter provides that the UNSC plays the central role in the application of both parts of Article 39, which are the determination of existence of the situations justifying the use of the exceptional powers of Chapter VII and a response deemed appropriate to such a situation, ranging from recommendations to the use of exceptional powers, by taking an enforcement action under the relevant provisions of Chapter VII with a view to maintaining or restoring international peace and security.<sup>159</sup> The range of permissible measures under Chapter VII is described in Articles 40 (provisional measures), 41 (measures not involving the use of force), and 42 (measures that imply the use of armed force).

Thus, the situations qualifying resort to the powers provided for in Chapter VII of the UN Charter are a “threat to the peace”, a “breach of the peace”, or an “act of aggression”. While the latter is more amenable to a legal determination, it nevertheless is not specifically defined and, indeed, the UN organs have shied away from rigid classifications of “act of aggression.”<sup>160</sup> The provisions of Article 39 provide a clear

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<sup>159</sup> Gill, Terry, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 39.

<sup>160</sup> In this regard, note the failure of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (ICC) in Rome to agree on a workable definition of

understanding that the UNSC has the complete discretion to interpret the three concepts of Article 39 of the UN Charter - “threat to the peace”, “breach of the peace” and “act of aggression” – which unleash Chapter VII sanctions. It was also mentioned above that the UNSC enjoys the power of interpretation of the UN Charter provisions that are relevant to its activity.<sup>161</sup>

The same considerations are confirmed in the statements reflected in the *Tadić Case*, where the ICTY said that

[t]he Security Council plays the central role in the application of both parts of the Article. It is the Security Council that makes the determination that there exists one of the situations justifying the use of the “exceptional powers” of Chapter VII. And it is also the Security Council that chooses the reaction to such a situation: it either makes recommendations (i.e., opts not to use the exceptional powers but to continue to operate under Chapter VI) or decides to use the exceptional powers by ordering measures to be taken in accordance with Articles 41 and 42 with a view to maintaining or restoring international peace and security. The situations justifying resort to the powers provided for in Chapter VII are a “threat to the peace”, a “breach of the peace” or an “act of aggression.” While the “act of aggression” is more amenable to a legal determination, the “threat to the peace” is more of a political concept. But the determination that there exists such a threat is not a totally unfettered discretion, as it has to remain, at the very least, within the limits of the Purposes and Principles of the Charter.<sup>162</sup>

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aggression for inclusion in the text of the Statute of the ICC, despite the existence of considerable political will to do so. For the text of the Statute of the ICC, see **UN Doc. A/CONF.183/9** (17 July 1998). See also “*Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*” (**UNGA Res. 2625** (24 October 1970), whose list of state conduct constituting aggression is however illustrative, rather than exhaustive; see also **UNGA Res. 3314** (14 December 1974) on “*Definition of Aggression*”. Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement> > < <http://home.earthlink.net/~platter/aggression/3314.html> > (accessed on 8 October 2008).

<sup>161</sup> See Chapter 4.3. *The interpretation of the UN Charter on the powers of the UNSC*.

<sup>162</sup> *Prosecutor v. Dusko Tadić*, (2 October 1995), Para. 29. Available at < <http://www.un.org/icty/tadic/appeal/decision-e/51002.htm> > (accessed on 24 September 2008).

In the relation to the second aspect of Article 39, the scope of the UNSC's power to make recommendations and adopt measures after having made the necessary Article 39 determination, the Appeals Chamber of the ICTY said that

Article 39 leaves the choice of means and their evaluation to the Security Council, which enjoys wide discretionary powers in this regard; and it could not have been otherwise, as such a choice involves political evaluations of highly complex and dynamic situations.<sup>163</sup>

For the purpose of this study on the assessment of the withdrawal from the NPT, only the concept of a “threat to the peace” is considered in the assessment of the content of Article 39 of the UN Charter. However, a “threat to the peace” remains more of a political concept.<sup>164</sup> The same point of view is reflected in a seminal work of Combacau, which defines “a threat to the peace in the sense of Article 39 of the UN Charter as a situation which the organ competent to impose sanctions, declares an actual threat to the peace.”<sup>165</sup> As such, this concept has tended to expand over the years, and currently it includes humanitarian emergencies, overthrow of democratically-elected leaders, extreme repression of civilian populations and cross-border refugee flows threatening regional security, and failure to hold perpetrators of major atrocities accountable.<sup>166</sup> Substantive broadening of the concept of a “threat to the peace” substantially included “internal crises

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<sup>163</sup> *Prosecutor v. Dusko Tadić*, (2 October 1995), para. 39. Available at < <http://www.un.org/icty/tadic/appeal/decision-e/51002.htm> > (accessed on 24 September 2008).

<sup>164</sup> **Lamb, Susan**, *Legal Limits to United Nations Security Council Powers*, in **Goodwin-Gill G., Talmon S. (ed.)**, *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), pp. 374-375.

<sup>165</sup> **Combacau, Jean**, *Le pouvoir de sanction de l'ONU: Etude théorique de la coercition non militaire* (Paris, A. Pedone: 1974), p. 100, “une menace pour la paix au sens de l'art. 39 est une situation dont l'organe compétent pour déclencher une action de sanctions déclare qu'elle menace effectivement la paix”. Combacau deemed this definition as the only definition compatible with the constitutional practice of the UN related to the interpretation of Article 39 of the UN Charter. See **Kooijmans, Peter H.**, *The Enlargement of the Concept “Threat to the Peace”*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), p. 111.

<sup>166</sup> **Kooijmans, Peter H.**, *The Enlargement of the Concept “Threat to the Peace”*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), pp. 111-121.



where there was a plausible concern that their continuation might lead to international conflict or destabilize neighbouring countries.”<sup>167</sup>

#### **4.5.2. The UNCIO and the discussion of the discretionary powers of the UNSC in relation to Article 39**

As mentioned above, Article 39 of the UN Charter provides the UNSC with a quasi-discretionary power to determine whether a situation constitutes a threat to or breach of international peace and security.<sup>168</sup> The UNSC is bound neither by any definition, nor formula as to what constitutes a threat to, or breach of the peace, or act of aggression, nor by the views of the Member States, nor other organs of the UN, as to the nature of the situation or action to be taken.<sup>169</sup>

During the UNCIO, the question of the limits of the UNSC’s discretion in making determinations under Article 39 and taking preventive or remedial enforcement measures was the subject of considerable debate.<sup>170</sup> In a statement of the Rapporteur of the UNCIO Committee, which dealt with the role and powers of the UNSC, the powers and the discretions of the UNSC were characterized in the following way:

Wide freedom of judgement is left [to the Council] as regards the moment it may choose to intervene and the means to be applied, with the sole reserve that it should act “in accordance with the purposes of the Organization.” It is for the Council to

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<sup>167</sup> **Matheson, Michael J.**, *Council Unbound: The Growth of UN Decision Making on Conflict and Post-conflict Issues after the Cold War* (United States Institute of Peace Press, 2007).

<sup>168</sup> Article 39 of the UN Charter: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security.”

<sup>169</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), Vol. 26, p. 45.

<sup>170</sup> *United Nations Conference on International Organization Documents*, Vol. 12, pp. 502-514 and 578, wherein proposed amendments and comments by various States regarding Chapter VIII, Section B of the Dumbarton Oaks Proposals by the Four Sponsoring Powers are contained. (Chapter VIII, Section B of the Dumbarton Oaks Proposals corresponds to the present Chapter VII of the UN Charter.) See also **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), pp. 294-295, 326-327.

determine the danger of aggression or the act of aggression ... following which it had its recourse to recommendations, or coercive measures.<sup>171</sup>

This statement clearly transmits the outcome of the UNCIO with regard to the scope of the UNSC's discretion to make determinations relating to the provisions of Article 39 and to take – or abstain from taking – any action it deems necessary or expedient to maintain or restore the peace. The sole limitation – aside from those contained in Article 27 of the UN Charter relating to the necessary number of votes and the veto power of the Permanent Members related to decisions as substantive questions – is that the UNSC's actions must be “in accordance with the purposes of the Organization.”

#### **4.5.3. The UNSC's practice of determination of a “threat to the peace” under Article 39 during the Cold War**

Still during its early period, the UNSC treated some matters as constituting a threat to the peace even though they did not involve actual or imminent international hostilities. Those cases belong to two somewhat overlapping categories: 1) the cases involving Governments demonstrably in gross violation of fundamental norms of international law; and 2) those related to civil wars.<sup>172</sup> The decisions under Chapter VII taken by the UNSC in both kinds of situations are important sources of evidence as to the emergence of practice and the application of some kind of “standards” in the “hard” cases. For instance, in 1946, the UNSC debated the item on whether General Francisco Franco's Falangist regime in Spain constituted a “threat to the peace” because of its

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<sup>171</sup> *United Nations Conference on International Organization Documents*, Vol. 12 p. 527. (Statement of Rapporteur M. Joseph Paul Boncour at the opening meeting of the Committee entrusted with the drafting of the enforcement provisions of the UN Charter).

<sup>172</sup> **Frank, Thomas M.**, *The Security Council and “Threats to the Peace”*: some Remarks on Remarkable Recent Developments, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), p. 90.

ideological and military association with Hitlerite Germany and Mussolini's Italy and whether this was augmented by its repression of the Spanish people.<sup>173</sup> Although the emerging Cold War prevented a decision on a matter, the debate was instructive. The representative of Poland invoking Articles 2(6), 34 and 35 of the UN Charter placed on the UNSC's agenda the question "arising from the existence and activities of the Franco regime in Spain."<sup>174</sup> He proposed a resolution, which declared that the Franco regime "endangered international peace and security." Invoking Articles 39 and 41 of the UN Charter, the representative of Poland called on Members of the UNSC "who maintain diplomatic relations with the Franco Government to sever such relation immediately."<sup>175</sup>

The discretion of the UNSC powers to interpret the concepts of Article 39 of the UN Charter is also recognized in UNGA resolution 3314, containing a definition of the concept of "aggression".<sup>176</sup> Thus though Article 3 of the Annex to the resolution lists acts that shall qualify as an act of aggression, Article 4 clarifies that the list is not exhaustive and envisages that the UNSC may determine that other acts constitute aggression under the provisions of the UN Charter.<sup>177</sup>

In some instances, the UNGA attempted to determine that a certain situation constituted a threat to the peace despite of Article 12(1) of the UN Charter that forbids the UNGA to make recommendations with regard to a situation, which is under consideration of the UNSC, unless the UNGA deals with such a situation under the "Uniting for Peace" Resolution.<sup>178</sup> In those cases, the UNGA may pass resolutions

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<sup>173</sup> UNSC Res. 4 (29 April 1946), UNSC Res. 7 (27 July 1946), UNSC Res. 10 (4 November 1946).

<sup>174</sup> S/32 and S/34, SCOR, I.1, Supp. 2, pp. 54-55.

<sup>175</sup> UNSC (17 April 1946), SCOR, I.1, No. 2, p. 167.

<sup>176</sup> UNGA Res. 3314 (14 December 1974) on "Definition of Aggression". Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement> > < <http://home.earthlink.net/~platter/aggression/3314.html> > (accessed on 8 October 2008).

<sup>177</sup> Article 4 of the UNGA res. 3314: "The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter." Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement> > < <http://home.earthlink.net/~platter/aggression/3314.html> > (accessed on 8 October 2008).

<sup>178</sup> See Chapter 4, ft. 102, p. 257. "Uniting for Peace" Resolution asserted a secondary (or subsidiary) competence of the UNGA with regard to the maintenance of international peace and security. For a

recommending UN Member States to take sanctions-type measures with respect to a State concerned and then the UNGA should request the UNSC to take appropriate measures, including mandatory sanctions, to secure compliance with the UNGA's resolutions.<sup>179</sup> For instance, although the UNSC qualified the 1950 attack on South Korea by the DPRK as a breach of the peace and not as a act of aggression (just as it did in the case of Iraq's attack on Kuwait in 1990), the UNGA acting under the "Uniting for Peace" Resolution, called the DPRK and the People's Republic of China aggressors,<sup>180</sup> and recommended a comprehensive arms embargo.<sup>181</sup> In the established practice of determinations of the existence of a threat to the peace, the UNSC was bound neither by the UNGA determinations, nor by the UNGA's request to take measures to secure compliance with the Assembly's resolutions.<sup>182</sup>

The boundary between threats to the peace and domestic affairs became a crucial source of debate during the "Congo crisis" that dominated UNSC sessions in 1960 and 1961, soon after the Congo became independent from Belgium on 30 June 1960.<sup>183</sup> On 12 July 1961, less than two weeks after independence, the President and Prime Minister of the Congo jointly asked the UN Secretary-General for military assistance to end a "Belgian ... act of aggression" against the country.<sup>184</sup> Following the murder of Congo's

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commentary on **UNGA Res. 377** see Chapter 4, ft. 104, p. 256. On gradual erosion of the prohibition of Article 12 (1) see **Cot, J., and Pellet, A., (ed.)**, *La Charte des Nations Unies* (1<sup>st</sup> ed.) (Paris/Brussels, 1985), pp. 302-305.

<sup>179</sup> See, e.g., the following resolutions, adopted in 1966: **UNGA Res. 2202** (10 February 1965) concerning the policy of apartheid in South Africa; **UNGA Res. 2184** (12 December 1966) concerning the territories under Portuguese administration.

<sup>180</sup> **UNGA Res. 498** (1 February 1951) on "Intervention of the Central People's Government of the People's Republic of China in Korea". Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/744/45/IMG/NR074445.pdf?OpenElement> >  
(accessed on 8 October 2008).

<sup>181</sup> **UNGA Res. 500** (18 May 1951) on "Additional Measures to be Employed to Meet the Aggression in Korea". Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/744/47/IMG/NR074447.pdf?OpenElement> >  
(accessed on 8 October 2008).

<sup>182</sup> **Kooijmans, Peter H.**, *The Enlargement of the Concept "Threat to the Peace"*, in **Dupuy, René-Jean.**, *Le Développement du Rôle du Conseil de Sécurité. // Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), p. 112.

<sup>183</sup> **Petersen, Keith S.**, *The Business of the United Nations Security Council: History (1946-1963) and Prospects*, *The Journal of Politics* (November 1965), Vol. 27, No. 4, p. 828.

<sup>184</sup> **UN doc. S/4382** (12 July 1960).

Prime Minister Patrice Lumumba, the UNSC passed a resolution acknowledging “the danger of wide-spread civil war and bloodshed in the Congo and the threat to international peace and security...”<sup>185</sup> Having thus applied Article 39, the resolution then authorized “the use of force, if necessary, in the last resort” by UN troops to “prevent the occurrence of civil war in the Congo...”<sup>186</sup>

The UNSC confirmed in other resolutions that civil wars may rise to the level of Chapter VII. In case of Rhodesia in 1965, the UNSC adopted a resolution condemning a declaration of independence unilaterally declared by the self-governing British colony of Rhodesia and called on

All States not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance to this illegal regime.<sup>187</sup>

A few days later, the UNSC determined that the “situation” resulting from the unilaterally declared independence

is extremely grave, that the Government of the United Kingdom of Great Britain and Northern Ireland should put an end to it and that its continuance in time constitutes a threat to international peace and security.<sup>188</sup>

Until the end of the Cold War, the UNSC had been reluctant to determine a threat to or a breach of the peace and to make references to Article 39 or Chapter VII of the UN Charter when deciding that a situation posed a threat to international peace and security, and it could appear that such a reference was not required at the time. In many cases, the UNSC resolutions had formulations, which fell short of term of a “threat to peace”.<sup>189</sup>

The UNSC, instead of referring to Article 39 of the UN Charter, could make reference to

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<sup>185</sup> UNSC Res. 4741 (21 February 1961).

<sup>186</sup> UNSC Res. 4741 (21 February 1961), at Part A, para. 1.

<sup>187</sup> UNSC Res. 216 (12 November 1965).

<sup>188</sup> UNSC Res. 217 (20 November 1965).

<sup>189</sup> A plethora of expressions was used by the UNSC, some of them are: “likely to endanger the maintenance of international peace and security” (UNSC Res. 163 (22 June 1961)); “fraught with a threat to peace and security in the region” (UNSC Res. 302 (24 November 1971)); “seriously disturbs international peace and security” (UNSC Res. 218 (23 November 1965)); “the continuance of the situation in time constitutes a threat to international peace and security” (UNSC Res. 217 (20 November 1965)); “likely to threaten international peace and security” (UNSC Res. 186 (4 March 1964)).

other provisions of Chapter VII<sup>190</sup> or could state that it was “acting under Chapter VII of the UN Charter”. In a number of cases, the UNSC without referring to Chapter VII condemned “aggressive acts” or even “acts of aggression” committed by certain States.<sup>191</sup>

Only in the resolutions dealing with South Africa’s military incursions into Angola in 1979, the UNSC used strong language naming those incursions as “a serious threat to international peace and security”, and contemplated the possibility of imposing further sanctions, including a mandatory arms embargo.<sup>192</sup> The only example of mandatory sanctions imposed by the UNSC before 1990 is in its resolution 418 imposing the arms embargo against South Africa.<sup>193</sup> Operative paragraph 1 of the resolution envisages that the UNSC

determines, having regard to the policies and acts of the South African Government, that the acquisition by South Africa of arms and related *matériel* constitutes a threat to the maintenance of international peace and security.

In the preambular paragraphs to this resolution, the UNSC included its rationale reference to the policy of racial discrimination, the aggressive acts committed against the neighbouring States.

Notwithstanding different formulations employed by the UNSC, in one form or another it made a determination within the terms of Article 39, before taking further measures under Chapter VII.<sup>194</sup> As observed by Kirgis, this practice “by now amounts to authoritative interpretation of Chapter VII to the effect that an Article 39 determination

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<sup>190</sup> An example is provided by **UNSC Res. 232** (16 December 1966) on Southern Rhodesia, in which the UNSC stated that it was “Acting in accordance with Article 39 and 41 of the Charter.”

<sup>191</sup> **UNSC Res. 386** (17 March 1976) on Southern Rhodesia; **UNSC Res. 527** (15 December 1982) on South Africa; **UNSC Res. 573** (4 October 1985) on Israel.

<sup>192</sup> **UNSC Res. 447** (28 March 1979). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/370/61/IMG/NR037061.pdf?OpenElement> >  
 (accessed on 8 October 2008).

<sup>193</sup> **UNSC Res. 418** (4 November 1977). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/297/01/IMG/NR029701.pdf?OpenElement> >  
 (accessed on 16 August 2009).

<sup>194</sup> **White, N.D.**, *The United Nations and the Maintenance of International Peace and Security*, (Manchester, UK; New York, NY, USA: Manchester University Press, 1990), p. 37.

must be made in advance of, or at the time of, enforcement action.”<sup>195</sup> Once the decision to impose sanctions has been taken or was seriously contemplated by the UNSC, it is possible to find the determination of the existence of a “threat to the peace” firmly embedded in an operative paragraph of a resolution. The first time this happened was in UNSC resolution 54 dealing with the hostilities, which had broken out in Palestine after Israel’s Declaration of Independence.<sup>196</sup> In an earlier resolution, the UNSC warned that if that resolution were rejected, the situation would have to be considered with a view to action under Chapter VII.<sup>197</sup> In the second case, the UNSC formally determined that the situation in Palestine constituted a “threat to the peace” within the meaning of Article 39, ordered an immediate cease-fire pursuant to Article 40 and declared its intention to take further action under Chapter VII in case of non-compliance. The threat worked and an armistice was agreed upon. The qualification of the situation as a “threat to the peace” instead of a “breach of the peace” probably had to do with the rather confused situation in Palestine, which was seen by some as a civil war and by others as an international armed conflict.<sup>198</sup>

In view of the paucity of cases in which the UNSC decided that a situation was a “threat to the peace”, little guidance can be obtained from State practice before 1990 as to

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<sup>195</sup> **Kirgis, Frederic**, *The Security Council’s First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 512.

<sup>196</sup> **UNSC Res. 54** (15 July 1948). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/047/79/IMG/NR004779.pdf?OpenElement> >  
 (accessed on 16 August 2009).

<sup>197</sup> **UNSC Res. 50** (29 May 1948). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/047/75/IMG/NR004775.pdf?OpenElement> >  
 (accessed on 16 August 2009).

<sup>198</sup> **Combacau, Jean**, *Le pouvoir de sanction de l’ONU: Etude théorique de la coercition non militaire* (Paris, A. Pedone: 1974). It may be recalled that Hans Kelsen defends the thesis that in the case of action of insurgents, which the UNSC wishes to consider as an armed attack in the sense of the UN Charter, as it deems it necessary to apply Article 39, “it can declare this armed attack only as a threat to the peace, and that means a threat to the international peace, and not as a breach of the international peace, that is the peace between states, not the peace within one and the same state.” See **Kelsen, Hans.**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000), p 930.

its interpretation.<sup>199</sup> Combacau in 1974 deemed that there must be an explosive situation that constitutes an actual and persistent threat to international peace and security. But he admits that it is fully within the competence of the UNSC to determine also which situations do not meet these standards as a threat to the peace.<sup>200</sup> The 1966 resolution of the UNSC with regard to Southern Rhodesia could be a case point.<sup>201</sup> The resolution contains references to Articles 39 and 41 and calls in operative paragraph 1 the “present situation in Southern Rhodesia a threat to international peace and security.” However, the UNSC did not include into the text of the resolution any explanation of its reasoning. Therefore the UNSC’s determination gave rise to severe criticism.<sup>202</sup>

#### **4.5.4. The UNSC’s practice of determination of a “threat to the peace” under Article 39 in the post-Cold War era**

The significance of a formal determination of the existence of a “threat to the peace” should not be under-estimated as it empowers the UNSC to act under Chapter VII of the UN Charter. Goodrich and Simons referring to the effect of such a determination on the parties in the Palestine war of 1948 say that:

Even if not regarded as necessarily a prelude to enforcement action, it has been viewed as an expression of moral condemnation, which, irrespective of its material effects, is not to be treated lightly and as of no consequence.<sup>203</sup>

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<sup>199</sup> **Dedring, Juergen**, *The United Nations Security Council in the 1990s: Resurgence and Renewal* (New York: State University of New York Press, 2008).

<sup>200</sup> **Combacau, Jean**, *Le pouvoir de sanction de l’ONU: Etude théorique de la coercition non militaire* (Paris, A. Pedone: 1974).

<sup>201</sup> **UNSC Res. 232** (16 December 1966). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/227/55/IMG/NR022755.pdf?OpenElement>>  
 (accessed on 16 August 2009).

<sup>202</sup> The UNSC was criticized by **Fenwick, C. G.**, *When Is There a Threat to the Peace? Rhodesia*, *American Journal of International Law* (1967), Vol. 61, pp. 753-755.

<sup>203</sup> **Goodrich, L.M. and Simons, A.P.**, *The United Nations and the Maintenance of International Peace and Security* (2<sup>nd</sup> ed.) (Washington D.C., 1962), p. 346.



This approach presented by Goodrich and Simons became even more important in a post Cold War period, when the UNSC has begun to exercise more effectively its primary power for the maintenance of international peace and security. The period 1989-1992 was a critical period in the history of the UNSC in which, after decades of limited involvement, the UNSC members had to face a rapid growth of accumulation of grave international crises.<sup>204</sup> On 31 January 1992, at the UNSC summit meeting on the subject of its responsibility for the maintenance of international peace and security, the hope was expressed that there would be new opportunities for the maintenance of peace and security in the new era, though there were new risks following the break-up and the transformation of several UN Member States.<sup>205</sup> In the statement adopted at the conclusion of the meeting, the members of the UNSC reaffirmed their commitment to the collective security system of the UN Charter to deal with threats to peace and to reverse acts of aggression. They said that under new favourable circumstances the UNSC could begin to fulfil more effectively its primary responsibility for the maintenance of international peace and security.<sup>206</sup>

During the same period of 1989-1992, the members of the UNSC also identified some generic threats to peace and security. In the 1992 statement of the President of the UNSC on behalf of its members delivered at the conclusion of the summit meeting on the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”, the UNSC members expressed the view that the proliferation of WMD constitutes a threat to international peace and security and that the

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<sup>204</sup> *Repertoire of the Practice of the Security Council. Supplement 1989-1992* (New York: United Nations, 2007), p. 877.

<sup>205</sup> This was the first meeting of the UNSC held at the level of Heads of State and Government. **S/PV.3046.**

<sup>206</sup> **S/23500** (31 January 1992). For the text of the Presidential statement see Annex 3: *UNSC Declaration on Disarmament, Arms Control and Weapons of Mass Destruction, S/23500, 31 January 1992.*

non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.<sup>207</sup>

The UNSC's reluctance in applying Article 39 has considerably decreased since the end of the Cold War. The 1990 war of Iraq against Kuwait was a very important item in the UNSC agenda. The Yugoslavian crisis starting in 1991 also required years of efforts by the UNSC. An overview of the UNSC's reports for the period of June 1990-June 1992 reveals the large agenda of the UNSC and the complexity of the items. Together with the questions of the 1990 war of Iraq against Kuwait one finds the items on Central America, Cambodia, Angola, Western Sahara, and Liberia.

In 1991, the Iraq case in the UNSC's practice was of a great significance when the UNSC invoked Iraq's non-compliance with five bilateral and multilateral agreements to which Iraq is a party to justify the imposition of sanctions, control and inspection. These agreements are the 1963 Kuwait-Iraq boundary settlement,<sup>208</sup> the Geneva Protocol on Gas and Bacteriological Warfare,<sup>209</sup> the Convention on Biological Weapons,<sup>210</sup> the NPT<sup>211</sup> and the Hostages Convention.<sup>212</sup> Taking into consideration the actions of the UNSC, one might conclude that violations of treaties imposing duties of major importance for preservation of peace may be considered by the UNSC as threats to peace and security. Thus, it would imply recourse to remedies under Chapter VII of the UN Charter, even if the treaties themselves contain no enforcement provisions and provide only juridical remedies or arbitration in the event of an alleged breach.

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<sup>207</sup> Ibid.

<sup>208</sup> Agreed Minutes between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters (4 October 1963), *UNTS*, Vol. 485, No. 7063.

<sup>209</sup> Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Cases, and of Bacteriological Methods of Warfare (17 June 1925). *XCIV LNTS* (1929), No. 2138.

<sup>210</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (10 April 1972).

<sup>211</sup> See Introduction, ft. 15.

<sup>212</sup> International Convention Against the Taking of Hostages (18 December 1979). *UNGA Res. 34/146*, 34 UN GAOR, Supp. No.46, 245; *UN Doc. A/34/46* (1979).

An even more potentially significant implication of resolution 687 is that a State's failure to ratify some major international conventions – for example, Iraq's failure to ratify the Biological and Toxin Weapons Convention (BTWC) – may be viewed by the UNSC as contributing to the “threat that all weapons of mass destruction pose to peace and security.”<sup>213</sup> The UNSC did not say, however, that the failure of a State to ratify such a convention by itself constitutes a basis upon which Chapter VII remedies can be applied. Nonetheless, it does imply that such non-ratification, taken together with past practice of the State, justifies the UNSC's reminding Iraq that, even as a non-party, it must comply with the Convention's norms, and that the intent to comply in future can best be attested by ratification. Thus, the UNSC “[i]nvites Iraq...to ratify the Convention...”<sup>214</sup> and invokes Chapter VII to require that Iraq renounce biological weapons and open itself to inspection. In making these demands, backed by enforcement sanctions, the UNSC further decided that its authority could be extended and augmented indefinitely, that it would “remain seized of the matter” and could “take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.”<sup>215</sup>

The legitimacy of such an extensive interpretation by the UNSC of its authority under Chapter VII, in spite of Article 2(7), was justified by the UN Under-Secretary-General for Legal Affairs. He stated that Iraq “through its uncooperative behaviour, has forfeited the possibility of a speedy lifting of sanctions...”<sup>216</sup> The Iraq case represents a significant explication of the UNSC's authority in interpreting Article 39 in a way that a State's uncooperative behaviour could be considered by the UNSC as a “threat to the

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<sup>213</sup> UNSC Res. 687 (3 April 1991), *Preamble*. Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>>  
 (accessed on 16 April 2009).

<sup>214</sup> *Ibid.*, para. 7.

<sup>215</sup> *Ibid.*, para. 34.

<sup>216</sup> Quoted from **Fleischhauer, C.-A.**, *The Year of International Law Review*, Address to the 86<sup>th</sup> Annual Meeting of the American Society of International Law (4 April 1992), p. 3.

peace” and would hence necessitate the use of collective measures to compel co-operation with international normative standards beyond those specified as binding obligations of the UN Charter.

A further example of the invocation by the UNSC of Chapter VII is its resolution 707 condemning various failures of Iraq to disclose weapons capabilities and co-operate with the inspectors, as well as its

non-compliance ... with its obligations under its safeguards agreement with the International Atomic Energy Agency ... which constitutes a violation of its commitments as a party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968...<sup>217</sup>

The resolution demands full compliance under what was clearly meant as an implied threat of further collective measures. In this instance, the UNSC actually interpreted the legal obligations of Iraq under international conventions, judged Iraq’s non-compliant conduct to constitute a violation and indicated that such a violation gave rise to the enforcement authority of the UNSC under Chapter VII of the UN Charter. This, too, is a precedent of significance for the potential and legitimacy of UNSC actions to enforce treaty-based norms of conduct.

In the period of 1991-1992, besides Yugoslavia-related agenda items, the load of issues before the UNSC increased by inclusion of the items on Haiti, Libya, Somalia, and Nagorno-Karabakh.<sup>218</sup> A remarkable determination by the UNSC of the existence of a “threat to the peace” in the post-Cold War era is contained in resolution 748.<sup>219</sup> In this resolution the UNSC qualified as a threat to the peace the failure by the Libyan Government to demonstrate its renunciation of terrorism by not surrendering to the US or the UK two Libyan officials alleged of having caused the air

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<sup>217</sup> UNSC Res. 707 (15 August 1991), para. 2.

<sup>218</sup> Dedring, Juergen, *The United Nations Security Council in the 1990s: Resurgence and Renewal* (New York: State University of New York Press, 2008), p. 17.

<sup>219</sup> UNSC Res. 748 (31 March 1992). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/011/07/IMG/NR001107.pdf?OpenElement> >  
 (accessed on 16 August 2009).

crash at Lockerbie.<sup>220</sup> In this case the interpretation of “threat to the peace” by the UNSC remains distant from the criteria for such definition suggested by Combacau, as mentioned above, which refer to an explosive situation which is an actual and persistent threat to the peace.<sup>221</sup> The situation can hardly be called explosive whereas the threat to the peace is not actual either but latent at the most.

Apart from the case of Libya, the UNSC mostly determined the existence of a “threat to the peace” after fighting has broken out. Thus, in the case of the repression of the Iraqi civilian population in many parts of Iraq, including in Kurdish populated areas, the consequence of the repression – a mass flow of refugees to neighbouring countries – was regarded by the UNSC as threat to “international peace and security in the region”.<sup>222</sup> It became highly desirable that a “threat to the peace” had to be identified at an earlier stage to avert that threat. A flexible use of the notion of “threat to the peace” in the sense of Article 39 of the UN Charter may serve as a political tool to put pressure upon certain States by applying selective measures under Article 41 of the UN Charter in order to prevent the actual escalation of conflict involving use of weapons.<sup>223</sup>

The definition of the “threat to the peace” has been evolving over the time. In this regard, it was noted in the statement read at the conclusion of the meeting of the UNSC held at the level of Heads of State and Government on 31 January 1992, that

[t]he absence of war and military conflicts amongst States does not itself ensure international peace and security. The non-military sources of instability in the

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<sup>220</sup> Ibid.

<sup>221</sup> **Combacau, Jean**, *Le pouvoir de sanction de l'ONU: Etude théorique de la coercition non militaire* (Paris, A. Pedone: 1974).

<sup>222</sup> **UNSC Res. 688** (5 April 1991). Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement> >  
(accessed on 16 August 2009).

<sup>223</sup> **Kooijmans, Peter H.**, *The Enlargement of the Concept “Threat to the Peace”*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), p. 120.

economic, social, humanitarian and ecological fields have become threats to peace and security.<sup>224</sup>

As assessed above, the threats to international peace and security are not enumerated in the Charter and can only be discovered by the UNSC in practice through the consideration of facts.

The threats related to nuclear non-proliferation were not explicitly mentioned in the UN Charter also because the UN Charter had been drafted before the destructive potential of WMD first became salient to the States engaged in the UNCIO. The bombing of Hiroshima took place two months after the UN Charter was signed and four months before the first meeting of the UNSC.<sup>225</sup> Therefore, the text of the UN Charter could not be expected to have conferred upon the UNSC a duty to “police” nuclear non-proliferation. However, the role of the UNSC in the area of nuclear non-proliferation has evolved through a series of statements and resolutions. It was mentioned above that in some cases the exercise by States of their rights can be considered by the UNSC as factual matters that signal a threat to the peace. Thus, also such rights as withdrawal from the NPT, cutting off negotiations, denying inspection and withholding cooperation, issuing threatening statements, or giving rise to evidence of nuclear testing may be considered by the UNSC as threat to the peace.<sup>226</sup>

There has been an evolution of these concerns in recent years with the UNSC bringing non-proliferation concerns more squarely onto its agenda. In 1992, State leaders of the States members of the UNSC issued a Statement saying that the spread of nuclear and other weapons of mass destruction constituted a “threat to international peace and security” within the meaning of Chapter VII which authorizes the council to take action

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<sup>224</sup> Chapter 4, ft. 206, p. 286.

<sup>225</sup> Hiroshima was bombed on 6 August and Nagasaki on 9 August 1945. See **De Groot, Gerard J.**, *The bomb: a life* (Harvard University Press, 2006), pp. 2-3. While the UNSC held its first meeting of the then ten members on 17 January 1946 at Church House in London. Available at < <http://www.una-conncticut.org/dmdocuments/JANJUNE07.pdf> > (accessed on 5 October 2009).

<sup>226</sup> **Kanwar, Vik**, *Two Crises of Confidence: Securing Non-Proliferation and the Rule of Law Through Security Council Resolutions*, Ohio Northern University Law Review (2008), Vol. 34, p. 10.

against such threats.<sup>227</sup> Though the statement itself does not have the same legal effect as a UNSC resolution, subsequent resolutions of the UNSC related to non-proliferation concerns were based on that Statement.

In 1991, the UNSC Resolution 687 was the first to identify proliferation is a threat.<sup>228</sup> In 2004, the UNSC passed its landmark resolution 1540 on non-proliferation of WMD, in which it affirmed that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.<sup>229</sup> The resolution reaffirmed the abovementioned Statement of the UNSC President adopted at the UNSC's meeting at the level of Heads of State and Government on 31 January 1992,<sup>230</sup> and added that illicit trafficking in WMD and their means of delivery, as well as related materials, adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security.<sup>231</sup> Following UNSC resolution 1540, in its resolution 1673, the UNSC reaffirmed its position that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.<sup>232</sup>

Many times, the UNSC has said that the proliferation of WMD and their means of delivery constitute a threat to international peace and security. Thus, in 2006 the Statement by the President of the UNSC, delivered on behalf of the UNSC reaffirmed that the proliferation of weapons of mass destruction and their means of delivery

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<sup>227</sup> **S/23500** (31 January 1992). For the text of the Presidential statement see Annex 3: *UNSC Declaration on Disarmament, Arms Control and Weapons of Mass Destruction, S/23500, 31 January 1992*.

<sup>228</sup> **UNSC Res. 687** (3 April 1991), op. 17: "Conscious of the treta that all weapons of mass destruction pose to peace and security in the area...". Available at <  
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/596/23/IMG/NR059623.pdf?OpenElement>>  
(accessed 16 April 2009).

<sup>229</sup> **UNSC Res. 1540** (28 April 2004). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>> (accessed on 12 September 2009).

<sup>230</sup> See Chapter 4, ft. 208, p. 287.

<sup>231</sup> **UNSC Res. 1540** (28 April 2004), op. 9. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>> (accessed on 12 September 2009).

<sup>232</sup> **UNSC Res. 1673** (27 April 2006), op. 2. Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N06/331/10/PDF/N0633110.pdf?OpenElement>> (accessed on 12 September 2009).

constitute a threat to international peace and security.<sup>233</sup> This Statement was made in response to the statement of 3 October 2006 by the Ministry of Foreign Affairs of the DPRK, in which it stated that the DPRK would conduct a nuclear test in the future. The UNSC stressed that a nuclear test, if carried out by the DPRK, would represent a clear threat to international peace and security. When the DPRK announced that it had conducted a test of a nuclear weapon on 9 October 2006, the UNSC responded to that action by adopting resolution 1718. This resolution referred to the above mentioned Presidential Statement and expressed the gravest concern at the claim by the DPRK and at the challenge such a test constituted to the NPT and to international efforts aimed at strengthening the global regime of non-proliferation of nuclear weapons. Being concerned that the test claimed by the DPRK had generated increased tension in the region and beyond, the UNSC determined therefore that there was a clear threat to international peace and security.

In response to the second nuclear test conducted by the DPRK on 25 May 2009,<sup>234</sup> the UNSC in its resolution 1874 reaffirmed that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security.<sup>235</sup> The UNSC added that the DPRK's nuclear test had been conducted in violation of resolution 1718, and constituted a challenge to the NPT and to international efforts aimed at strengthening of the global regime of non-proliferation of nuclear weapons, and posed a danger to peace and stability in the region and beyond.<sup>236</sup> It expressed its gravest concern that the nuclear test and missile activities carried out by the DPRK had further generated increased tension in the region and

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<sup>233</sup> **S/PRST/2006/41** (6 October 2006). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N06/557/05/PDF/N0655705.pdf?OpenElement>> (accessed on 12 September 2009).

<sup>234</sup> See Introduction, p. 9.

<sup>235</sup> **UNSC Res. 1874** (12 June 2009). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N09/368/49/PDF/N0936849.pdf?OpenElement>> (accessed on 12 September 2009).

<sup>236</sup> *Ibid.*, op. 2.



beyond, and determined that there continued to exist a clear threat to international peace and security.<sup>237</sup>

In light of the abovementioned developments in the nuclear non-proliferation, the States participants of the most recent sessions of the NPT review cycle have been supportive of the expansion of the UNSC's role in withdrawal from the NPT, affirming that:

Given the importance of the Treaty on the Non-Proliferation of Nuclear Weapons for international peace and security, a withdrawal notification under article X, paragraph 1, should be qualified as being of immediate relevance to the Security Council. Request that any withdrawal notification under article X, paragraph 1, prompt the Security Council to consider this issue and its implications as a matter of urgency, including examination of the cause for the withdrawal, which according to the requirements of article X has to be "related to the subject matter of the Treaty"; Request that the Security Council further declare that, in case of withdrawal notification under article X, paragraph 1, its consideration will include the matter of a special IAEA inspection of the notifying party.<sup>238</sup>

This is an interpretation in favour of the UNSC's power to condition or prevent withdrawal through Article X(1) of the NPT. It can also be argued that such an action would be consistent with the duties of the UNSC under the UN Charter. Whether or not Article X(1) was specifically intended to give the UNSC an opportunity to block any withdrawal that might produce a "threat to international peace and security," certain factual determinations may be made, if the UNSC scrutinizes withdrawal under this

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<sup>237</sup> Ibid., op. 8.

<sup>238</sup> *Strengthening the NPT against withdrawal and non-compliance. Suggestions for the establishment of procedures and mechanisms. Working paper submitted by Germany, NPT/CONF.2005/PC.III/WP.15* (29 April 2004). Available at < <http://www.un.org/events/npt2005/npt-conf2005-wp56e.pdf> > (accessed on 9 April 2009).

mandate.<sup>239</sup> These kinds of arguments can be rehearsed in application to the DPRK, a currently relevant case study for the issue of withdrawal.<sup>240</sup>

#### ***4.6. The actions of the UNSC in relation to the maintenance of international peace and security***

The previous section of the dissertation conveyed that the UNSC has exclusive power to determine threat to the peace and security under Article 39 of the UN Charter.<sup>241</sup> The UNSC has considerably increased its activities with regard to this subject matter and the practice of the UNSC has proved that the definition by the UNSC of a “threat to the peace” has been evolving over time.

Following the determination of the existence of a “threat to the peace”, under Chapter VII, the UNSC has the authority to order provisional measures<sup>242</sup> and the authority to order enforcement measures to be taken against a State,<sup>243</sup> that is to impose

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<sup>239</sup> Here is an example of the factual arguments the UNSC could consider in the case of the DPRK, and the factual determinations it could have made. Arguably a nuclear-armed DPRK could trigger: 1) a regional arms race in Asia: Japan, Taiwan, or South Korea might decide to their own nuclear weapons program, which would reverberate in China, India and Pakistan; 2) US posture may harden in nuclear deterrence strategies in the region; 3) Danger of the DPRK selling its plutonium, highly enriched uranium, or finished weapons to other countries (already ballistic missiles sold missiles to Iran, Yemen, Syria, and Pakistan), or terrorists (already prohibited by UNSC resolution 1540); 4) Any number of States could imitate the DPRK’s moves and acquire the capacity to produce fissile materials and manufacture nuclear weapons under the guise of “peaceful” nuclear endeavours allowed by the NPT.

<sup>240</sup> **UNSC Res. 825** (11 May 1993). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N93/280/49/IMG/N9328049.pdf?OpenElement> > (accessed on 9 April 2009).

<sup>241</sup> The enforcement powers of the Council are based on broad discretionary findings. At the UNCIO, it was deliberately left to the UNSC to decide on a case-by-case basis when to use its enforcement powers: see **Doc. 881, III/3/46, UNCIO**, Vol. 12, p. 502, 505 (1945); This exclusive authority is contained in Article 39 of the Charter. The *travaux préparatoires* of Article 39 validates this interpretation: see the statement by the rapporteur of Committee III/3 that dealt with Article 39. See **UNCIO**, Vol. 12, p. 505. See also Judge Weeramantry in his opinion (dissenting on other points) in the *Lockerbie* case, *Provisional Measures Phase, ICJ Reports* (1992), p. 66 at p. 176; **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991), p. 645; **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 608.

<sup>242</sup> This authority is contained in Article 40 of the UN Charter. See **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991), p. 667; **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 617.

<sup>243</sup> The word enforcement, as it is used here, has a meaning different from the way, in which it is often used in domestic legal systems: it does not necessarily mean action designed to ensure compliance with law. See

economic and military sanctions against a State or entities within a State.<sup>244</sup> Such actions under Chapter VII, envisaged in Articles 40, 41, and 42, are expected by the NPT States Parties, which call for a major role of the UNSC in the event of a State's withdrawal from the Treaty.

Article 40 represents the first step of the UNSC's gradually escalating efforts under Chapter VII to bring about compliance with its demands. It does not contain the threat or use of military force. Article 41 still does not allow for the use of armed force but it does permit the "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." Should the measures outlined in Article 41 prove inadequate and inefficient, the UNSC may take measures under Article 42, which allows for actions "by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations".

It is clear that under Chapter VII of the UN Charter, the UNSC has the sole prerogative to decide when and what type of enforcement measures should be taken.<sup>245</sup> However, the UN Charter does not expressly state which tools the UNSC can use in its efforts to ensure the maintenance or restoration of international peace and security. This

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also **Cassese, Antonio**, *International Law in a Divided World* (Oxford: Oxford University Press: 1994), p. 215.

<sup>244</sup> The authority to impose economic sanctions is contained in Article 41 of the UN Charter, and for military sanctions is contained in Article 42. For more on Article 41 see **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991), p. 691; **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 621; **Reisman Michael, and Stevick Douglas**, *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes*, *European Journal of International Law* (1998), Vol. 9, p. 86. For more on Article 42, see **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991), p. 705; **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), p. 628.

<sup>245</sup> For example, Kirk has observed that "[the] Freedom [of the Security Council] to decide when to apply coercive measures is matched by an equal discretion as to what measures may be taken." (**Kirk, Grayson**, *The Enforcement of Security*, *Yale LJ* (1946), Vol. 55, p. 1081, 1089.) See also **Dinstein, Yoram**, *War, Aggression and Self-defence* (2<sup>nd</sup> ed.) (New York: Cambridge University Press, 1994), pp. 281-2.

section will provide a more detailed assessment of the actions the UNSC may take in response to a threat to international peace and security.

Chapter VII of the UN Charter empowers the UNSC to deal forcefully with a “threat to the peace” and authorises the UNSC to enforce its decisions and enforce compliance through economic sanctions and military force.<sup>246</sup> In this way, the UNSC appears to be the most powerful organ of the UN.<sup>247</sup> In cases when a State poses a threat to other States, or individuals outside its borders, Chapter VII of the UN Charter gives the UNSC powers to take any coercive action, including ultimately a military action, that it deems “necessary to maintain or restore international peace and security”. The UNSC may take these actions regardless of whether the threat involves a “threat to the peace, breach of the peace or an act of aggression”, and regardless of when it takes place – currently, in the imminent future, or in the distant future – or whether it is constituted by an act or an omission committed by a State or non-state actors. The threat may also be constituted by an actual or potential act of violence, or simply by a challenge of the UNSC’s authority.<sup>248</sup>

#### ***4.6.1. Provisional measures under Articles 40 of the UN Charter***

One of the coercive instruments of Chapter VII of the UN Charter available at disposal of the UNSC is Article 40 that gives the UNSC powers to indicate “such provisional measures as it deems necessary or desirable” in order to prevent an aggravation of the situation before making recommendations or taking other measures

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<sup>246</sup> Properly through the actions of the UNSC, the UN Charter acquires a possibility to address not only state but also non-state actions. **Boulden Jane, Weiss Thomas**, *Tactical Multilateralism: Coaxing America Back to the UN*, Survival (Autumn, 2004), Vol. 46, No. 3, pp. 104. See also UNSC Resolutions adopted as “the global response to global terror”: **UNSC Res. 1368** (12 September 2001), **1373** (28 September 2001), **1377** (12 November 2001), **1452** (20 December 2002), **1455** (17 January 2003), **1456** (20 January 2003); For more on UNSC resolution adopted in relation to international terrorism, see **Khalil, Mona Ali**, *Iraq, Afganistan, and the War on Terrorism: Winning the Battle and Losing the War*, Georgia Journal of International and Comparative Law (Fall 2004), Vol. 33, No. 1, pp. 261-272.

<sup>247</sup> “Threats to international peace and security are what the Security Council says they are.” See **Evans, Gareth**, *When is it Right to Fight?*, Survival (Autumn, 2004), Vol. 46, No. 3, p. 69.

<sup>248</sup> **Evans, Gareth**, *When is it Right to Fight?*, Survival (Autumn, 2004), Vol. 46, No. 3, p. 67.

under Article 39 of the UN Charter.<sup>249</sup> These powers of the UNSC are related to the prevention, abatement or cessation of conflicts or other situations constituting threat to the peace, breach of the peace or act of aggression in accordance with Article 39 of the UN Charter.

The UNSC may take measures, which would precede its finding that a “threat to the peace” exists or that a breach of the peace or act of aggression has occurred. These can also be measures intended to complement enforcement measures, which the UNSC determines as necessary. These complementary measures may be demands or calls for the withdrawal of armed forces,<sup>250</sup> a demand for the cessation of hostilities,<sup>251</sup> calls upon the parties to refrain from further military action and to stop acts of violence,<sup>252</sup> calls upon the parties to refrain from all actions that might create further tension or affect adversely

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<sup>249</sup> Article 40 of the UN Charter: “In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.”

<sup>250</sup> **UNSC Res. 279** (12 May 1970); **UNSC Res. 280** (19 May 1970), 7th preambular para. 2; **UNSC Res. 285** (5 September 1970); **UNSC Res. 425** (19 March 1978), para. 2; in connexion with the situation in the Middle East. **UNSC Res. 289** (23 November 1970), para. 2; in connexion with the complaint by Guinea. **UNSC Res. 301** (20 October 1971), para. 8; **UNSC Res. 310** (4 February 1972), para. 7; **UNSC Res. 366** (17 December 1974), para. 4; in connexion with the situation in Namibia. **UNSC Res. 328** (10 March 1973), para. 5; in connexion with the complaint by Zambia. **UNSC Res. 353** (20 July 1974), para. 4; **UNSC Res. 354** (23 July 1974): in connexion with the situation in Cyprus. **UNSC Res. 380** (6 November 1975), para. 2; in connexion with the situation concerning Western Sahara. **UNSC Res. 384** (22 December 1975), para. 2; **UNSC Res. 389** (22 April 1976), para. 2; in connexion with the situation in Timor. **UNSC Res. 428** (6 May 1978), para. 3; in connexion with the complaint by Angola against South Africa. **UNSC Res. 454** (2 November 1979), para. 2; **UNSC Res. 475** (27 June 1980), para. 3; **UNSC Res. 545** (20 December 1983), para. 3; **UNSC Res. 546** (6 January 1984), para. 3: complaint by Angola against South Africa; **UNSC Res. 466** (11 April 1980), para. 2: complaint by Zambia against South Africa; **UNSC Res. 502** (3 April 1982), para. 2: in connection with the letter dated 1 April 1982 from the representative of the UK.

<sup>251</sup> **UNSC Res. 502** (3 April 1982), para. 1, in connection with the letter dated 1 April 1982 from the representative of the UK.

<sup>252</sup> **UNSC Res. 294** (15 June 1971), para. 1; **UNSC Res. 321** (23 October 1972), para. 3, in connexion with the complaint by Senegal. **UNSC Res. 313** (28 February 1972); **UNSC Res. 316** (26 June 1972), para. 1, **UNSC Res. 332** (21 April 1973), para. 3; **UNSC Res. 337** (15 August 1973), para. 4; **UNSC Res. 347** (24 April 1974), para. 1; **UNSC Res. 425** (19 March 1978), para. 2; **UNSC Res. 436** (6 October 1978), para. 1, in connexion with the situation in the Middle East; **UNSC Res. 326** (1973), para. 3, in connexion with the complaint by Zambia; Statement of the President representing the consensus of the members of the UNSC SC (29), Supplement for January-March, 1974, S/11229, para. 2, in connexion with the complaint by Iraq concerning incidents on its frontiers with Iran; **UNSC Res. 392** (19 June 1976), para. 5, in connexion with the situation in South Africa. **UNSC Res. 393** (30 July 1976), para. 3, in connexion with the complaint by Zambia against South Africa.

the prospects for a peaceful solution,<sup>253</sup> calls upon a party to rescind certain measures in occupied territory,<sup>254</sup> calls upon the parties to seek a solution through negotiations,<sup>255</sup> calls on Member States to cooperate with the UN,<sup>256</sup> demand for the cessation of armed invasions, acts of aggression or other serious infractions,<sup>257</sup> calls to respect the right of free navigation,<sup>258</sup> calls to refrain from action that could lead to further escalation and widening of a conflict,<sup>259</sup> calls to all States to refrain from sending observers to elections declared as null and void,<sup>260</sup> and calls on certain Member States to take a number of specific measures.<sup>261</sup>

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<sup>253</sup> **UNSC Res. 307** (21 December 1971), para. 2, in connexion with the situation in the India/Pakistan subcontinent. **UNSC Res. 367** (12 March 1975), paras. 1 and 8; **UNSC Res. 391** (15 June 1976), para. 3; **UNSC Res. 401** (14 December 1976), para. 3; **UNSC Res. 410** (15 June 1977), para. 3; **UNSC Res. 414** (15 September 1977), para. 2; **UNSC Res. 422** (15 December 1977), para. 3, in connexion with the situation in Cyprus; **UNSC Res. 379** (2 November 1975), para. 1, in connexion with the situation concerning Western Sahara.

<sup>254</sup> **UNSC Res. 298** (25 September 1971), para. 4; in connexion with the situation in the Middle East; Statement of the President on behalf of the UNSC, dated 17 November 1976 (SC (31), Suppl. for Oct.-Dec., 1976, S/12233, para. 4), in connexion with the situation in the occupied Arab territories.

<sup>255</sup> **UNSC Res. 322** (22 November 1972), para. 3; in connexion with the situation in Territories under Portuguese administration. **UNSC Res. 357** (14 August 1974), para. 3; in connexion with the situation in Cyprus. **UNSC Res. 395** (25 August 1976), para. 3; in connexion with the complaint by Greece against Turkey.

<sup>256</sup> **UNSC Res. 323** (6 December 1972), para. 6; **UNSC Res. 435** (29 September 1978), para. 5; **UNSC Res. 439** (13 November 1978), para. 5; in connexion with the situation in Namibia.

<sup>257</sup> **UNSC Res. 289** (23 November 1970), para. 1; in connexion with the complaint by Guinea. **UNSC Res. 307** (21 December 1971), para. 1; in connexion with the situation in the India/Pakistan subcontinent. **UNSC Res. 322** (22 November 1972), para. 2; in connexion with the situation in Territories under Portuguese administration. **UNSC Res. 338** (22 October 1973), para. 1; **UNSC Res. 339** (23 October 1973), para. 1; **UNSC Res. 340** (25 October 1973), para. 1; **UNSC Res. 436** (6 October 1978), para. 1; in connexion with the situation in the Middle East. **UNSC Res. 353** (20 July 1974), para. 2; **UNSC Res. 354** (23 July 1974); **UNSC Res. 357** (14 August 1974), para. 2; **UNSC Res. 358** (15 August 1974), para. 2; **UNSC Res. 360** (16 August 1974), para. 2; in connexion with the situation in Cyprus. **UNSC Res. 403** (14 January 1977), para. 4; in connexion with the complaint by Botswana against the illegal regime in Southern Rhodesia. **UNSC Res. 447** (28 March 1979), para. 3; **UNSC Res. 454** (2 November 1979), para. 2; **UNSC Res. 546** (6 January 1984), para. 3; complaint by Angola against South Africa; **UNSC Res. 552** (1 June 1984), para. 5; in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

<sup>258</sup> **UNSC Res. 552** (1 June 1984), para. 1; in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

<sup>259</sup> *Ibid.*, para. 3; in connection with the letter dated 21 May 1984 from the representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates

<sup>260</sup> **UNSC Res. 445** (8 March 1979), paras. 6, 7: question concerning the situation in South Rhodesia.

<sup>261</sup> **UNSC Res. 282** (23 July 1970), para. 4 (strengthen arms embargo), in connection with the question of race conflict in South Africa; **UNSC Res. 300** (12 October 1971), para. 2 (South Africa to respect the sovereignty and territorial integrity of Zambia), in connection with the complaint by Zambia; **UNSC Res. 311** (4 February 1972), para. 4 (South Africa to release persons imprisoned, interned or otherwise subjected to restrictions), in connection with the question of race conflict in South Africa; **UNSC Res. 312** (4 February 1972), para. 4 (Portugal to cease the colonial wars, to withdraw its armed forces, to promulgate an unconditional amnesty, to transfer political power to the peoples in the colonial territories), in connection with the situation in Territories under Portuguese administration; **UNSC Res. 317** (21 June 1972), para. 3

The provisional measures should be either preventive or conservatory in nature and the UNSC should not be under an obligation to resort to them before taking enforcement measures. Depending on a case, the UNSC is free to decide whether to resort to provisional measures and how to implement them and whether these measures should precede or reinforce enforcement measures.<sup>262</sup>

Numerous resolutions of the UNSC contained warnings that in case of lack of compliance with the terms of resolutions under Article 40, the UNSC would consider further steps to take adequate and effective measures, if its calls were not heeded,<sup>263</sup> or would consider other Chapter VII measures.<sup>264</sup> Sometimes, the UNSC indicated that the

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(Israel to return detainees), in connection with the situation in the Middle East; **UNSC Res. 385** (30 January 1976), para. 4 (South Africa to end its bantustan policy), para. 10 (withdrawal from Namibia), and para. 11 (release of all Namibian political prisoners, abolition of race laws, unconditional grant of the right to return for all exiles), in connection with the situation in Namibia; **UNSC Res. 387** (31 March 1976), para. 2 (South Africa to respect the independence of the People's Republic of Angola), para. 3 (South Africa to stop using Namibia for attacks on Angola and other African States), para. 5 (South Africa to compensate Angola for the damages), in connection with the complaint by Kenya concerning the act of aggression committed by South Africa against the People's Republic of Angola; **UNSC Res. 402** (22 December 1976), para. 4 (South Africa to reopen the border posts), in connection with the complaint by Lesotho against South Africa; **UNSC Res. 417** (31 October 1977), para. 3 (South Africa to end violence and repression against the black people; release all persons arbitrarily imprisoned and detained; cease the violence against demonstrators against *apartheid*, the murders in detention and the torture of political prisoners; abrogate the bans on organizations and news media opposed to apartheid; abolish the system of racial discrimination and the policy of bantustanization), in connection with the question of South Africa; **UNSC Res. 428** (6 May 1978), para. 7 (South Africa to end the occupation of Namibia), in connection with the complaint by Angola against South Africa; **UNSC Res. 439** (13 November 1978), para. 4 (South Africa to cancel the elections planned in Namibia), in connection with the situation in Namibia.

<sup>262</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), Vol. 26, pp. 46-47.

<sup>263</sup> **UNSC Res. 280** (19 May 1970), para. 3, in connection with the situation in the Middle East; **UNSC Res. 290** (8 December 1970), para. 8, in connection with the complaint by Guinea; **UNSC Res. 310** (4 February 1972), para. 8, in connection with the situation in Namibia; **UNSC Res. 337** (15 August 1973), para. 4, in connection with the situation in the Middle East; **UNSC Res. 353** (20 July 1974), para. 7; **UNSC Res. 357** (14 August 1974), para. 4; **UNSC Res. 360** (16 August 1974), para. 5, in connection with the situation in Cyprus; **UNSC Res. 366** (17 December 1974), para. 6, in connection with the situation in Namibia; **UNSC Res. 379** (2 November 1975), para. 2, in connection with the situation concerning Western Sahara; **UNSC Res. 385** (30 January 1976), para. 12, in connection with the situation in Namibia; **UNSC Res. 393** (30 July 1976), para. 6, in connection with the complaint by Zambia against South Africa.

<sup>264</sup> **UNSC Res. 428** (6 May 1978), para. 8, in connection with the complaint by Angola against South Africa; **UNSC Res. 439** (13 November 1978), para. 6, in connection with the situation in Namibia.

UNSC would meet again to consider other steps<sup>265</sup> or the UNSC simply stated its intention to meet again if its decision was not implemented.<sup>266</sup>

Though the provisional measures are to be adopted under Chapter VII of the UN Charter, the legal effect of those provisional measures, which are phrased in the form of recommendations or requests that are not binding, is not clearly determined in the literature.<sup>267</sup> In cases when the UNSC adopts provisional measures in the form of “demand” or “orders” and not in the form of request or recommendation, or when it is clear from the context in which the measures are taken that they are intended to be complied with, these provisional measures are binding.<sup>268</sup> Considering that the measures are adopted along with the determination by the UNSC under Article 39 of the UN Charter of the existence of threat to the peace, these measures are of binding character.

In its more than 60-year practice, the UNSC has adopted numerous resolutions under Article 40 of the UN Charter.<sup>269</sup> With regard to proliferation matters, on 29 March 2006, the UNSC included in its agenda an item entitled “Non-proliferation”.<sup>270</sup> Within this item, on 31 July 2006 the UNSC adopted resolution 1696 with respect to Iran, where it acted under Article 40 of Chapter VII of the UN Charter. In this resolution, the UNSC demanded Iran to suspend all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA and requested by 31 August 2006 a

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<sup>265</sup> **UNSC Res. 302** (24 November 1971), para. 9, and **UNSC Res. 321** (23 October 1972), para. 5. in connection with the complaint by Senegal.

<sup>266</sup> **UNSC Res. 300** (12 October 1971), para. 3, in connection with the complaint by Zambia; **UNSC Res. 316** (26 June 1972), para. 4, in connection with the situation in the Middle East.

<sup>267</sup> **Herndl, K.**, *Reflections on the Role, Functions and Procedures of the Security Council of the United Nations*, 206 Recueil des Cours (1987), p. 292, 324-325; **Goodrich, L.M. and Simons, A.P.**, *The United Nations and the Maintenance of International Peace and Security* (2<sup>nd</sup> ed.) (Washington D.C., 1962), pp. 383-384.

<sup>268</sup> **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 47.

<sup>269</sup> See *The Repertoire of the Practice of the Security Council*. Available at <<http://www.un.org/en/sc/repertoire/>> (accessed on 15 September 2009); *Repertory of Practice of United Nations Organs, Extracts relating to Article 40 of the Charter of the United Nations*. Available at <<http://www.un.org/law/repertory/>> (accessed on 15 September 2009).

<sup>270</sup> *Repertoire 15th Supplement (2004 – 2007): Chapter VIII*. Available at <<http://www.un.org/en/sc/repertoire/>> (accessed on 24 September 2009).



report from the IAEA's Director General to the IAEA Board of Governors and in parallel to the UNSC on whether Iran had established suspension of all activities mentioned in this resolution, as well as on the process of Iranian compliance with all the steps required by the IAEA Board and with the above provisions of this resolution.<sup>271</sup> In order to persuade Iran to comply with resolution 1696 and the requirements of the IAEA, the UNSC expressed its intention to adopt measures under Article 41 of the UN Charter in case Iran does not comply with resolution 1696 by that date and underlined that further decisions would be required, if additional measures are necessary.<sup>272</sup>

This abovementioned example of the UNSC actions under Article 40 of the UN Charter proves that the Article 40 measures, if not respected by a State concerned, would lead to the adoption of measures under Article 41 of the UN Charter. In this resolution, the UNSC clearly expressed its intention to follow this way.

#### ***4.6.2. Sanctions of non-military character under Article 41 of the UN Charter***

Another provision of the UN Charter that grants the UNSC the option of adopting additional sanctions is Article 41.<sup>273</sup> Under this provision, the UNSC may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the UN to apply such measures. However, these measures are not necessarily restricted to the list of sanctions envisaged

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<sup>271</sup> **UNSC Res. 1696** (31 July 2006) (received 14 votes in favour and one against - Qatar). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N06/450/22/PDF/N0645022.pdf?OpenElement> > (accessed on 14 September 2004).

<sup>272</sup> *Ibid.*, paras. 2, 7, 8.

<sup>273</sup> Article 41 of the UN Charter: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." See also **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), pp. 311-312.

in Article 41.<sup>274</sup> The sanctions may vary from symbolic condemnation to the coercive actions, including a request of compliance with the decisions of the UNSC.

These measures are legally binding upon all Members of the UN. The Charter empowers the UN to ensure the compliance of non-Member States of the UN. However, the UNSC may decide to terminate or to suspend the measures.<sup>275</sup>

In the first 20 years of the UNSC's practice, it did not impose any sanctions under Article 41.<sup>276</sup> Beginning with 1966, the UNSC invoked Article 41 in a number of resolutions of the UNSC. Thus, the UNSC imposed sanctions on Southern Rhodesia in 1966<sup>277</sup> and in 1977 an arms embargo on South Africa.<sup>278</sup> Until 1990, those had been the only two examples of the UNSC taking actions under Article 41. In August-September 1990, the UNSC sanctioned Iraq for the invasion of Kuwait.<sup>279</sup> Following the termination of the military operations against Iraq by the US-led coalition forces, a comprehensive array of sanctions was maintained in place by the UNSC to induce Iraq's compliance

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<sup>274</sup> **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969), pp. 311-312; **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, *Netherlands Yearbook of International Law* (1995), Vol. 26, p. 48.

<sup>275</sup> **Caron, David**, *The Legitimacy of the Collective Authority of the Security Council*, *American Journal of International Law* (1993), Vol. 87, No. 4, p. 552.

<sup>276</sup> *Repertory of Practice of United Nations Organs, Extracts relating to Article 42 of the Charter of the United Nations*. Available at < <http://www.un.org/law/repertory/> > (accessed on 15 September 2009).

<sup>277</sup> **UNSC Res. 232** (16 December 1966) made reference to Articles 39 and 41. Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/227/55/IMG/NR022755.pdf?OpenElement> > (accessed on 2 October 2009).

<sup>278</sup> **UNSC Res. 418** (4 November 1977) made reference to Chapter VII of the UN Charter, but not to Article 41. Available at < <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/297/01/IMG/NR029701.pdf?OpenElement> > (accessed on 2 October 2009). See also *Repertory of Practice of the United Nations, Extracts relating to Article 41 of the Charter of the United Nations*, Supplement No 6 (1979 - 1984), volume 3, p. 2. Available at < [http://untreaty.un.org/cod/repertory/art41/english/rep\\_supp6\\_vol3\\_art41\\_e.pdf](http://untreaty.un.org/cod/repertory/art41/english/rep_supp6_vol3_art41_e.pdf) > (accessed on 30 August 2009).

<sup>279</sup> **UNSC Res. 660** (2 August 1990) **UNSC Res. 661** (6 August 1990) imposing comprehensive economic and financial embargo upon Iraq; **UNSC Res. 662** (9 August 1990), **UNSC Res. 664** (18 August 1990); **UNSC Res. 665** (25 August 1990) empowered States with naval forces in the area to ensure compliance with the embargo; **UNSC Res. 670** (25 September 1990) extended the embargo to prohibit all civil air traffic to or from Iraq, except where authorized by the UN.

with the terms of its ceasefire resolution.<sup>280</sup> However, Article 41 of the UN Charter was not explicitly invoked in these resolutions.

Later, there were adopted sanctions against Yugoslavia (Serbia and Montenegro) that imposed economic, scientific, cultural sanctions and other sanctions upon the Federal Republic of Yugoslavia (Serbia and Montenegro)<sup>281</sup> in addition to an arms embargo on the entire territory of the former Yugoslav Socialist Federal Republic.<sup>282</sup> Sanctions were also imposed with regard to the situation in Somalia,<sup>283</sup> and against Libya.<sup>284</sup>

The UNSC in its practice adopted numerous resolutions under Article 41 of Chapter VII and this dissertation does not aim to assess them all. It is rather more desirable, for the purpose of the dissertation, to pay attention to the most recent sanctions adopted by the UNSC with regard to non-proliferation. Recently, there have been a few cases in front of the UNSC on the matter. One of the most pronounced is the case of Iran, with regard to which the UNSC adopted resolution 1737 in 2006,<sup>285</sup> where it took actions against Iran under Article 41 of the UN Charter. The resolution was adopted as a measure of response to a lack of compliance of Iran with the previous UNSC resolution 1696. Thus, in resolution 1737, the UNSC noted with concern that “Iran ha[d] not established full and sustained suspension of all enrichment-related and reprocessing activities as set

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<sup>280</sup> **UNSC Res. 674** (29 October 1990), **UNSC Res. 677** (28 November 1990), **UNSC Res. 678** (29 November 1990), **UNSC Res. 686** (2 March 1991). In **UNSC Res. 687** (3 April 1991), in particular, the UNSC decided under Chapter VII, that Iraq had to unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of all chemical and biological weapons and all stocks of agents and all related subsystems and components and of all ballistic missiles with a range greater than 150 kilometers and related major parts, etc.

<sup>281</sup> **UNSC Res. 757** (30 May 1992) and **UNSC Res. 787** (16 November 1992), in which the sanctions were further tightened and extended. **UNSC Res. 781** (9 October 1992) and **UNSC Res. 786** (10 November 1992) also imposed a ban on the use of military aircraft above the territory of Bosnia-Herzegovina, and further tightened this measure in **UNSC Res. 816** (31 March 1993) by authorizing Member States to take any necessary measures to ensure compliance with the ban on flight, with the embargo by inspecting vessels bound for Yugoslav ports in the Adriatic Sea.

<sup>282</sup> **UNSC Res. 713** (26 September 1991).

<sup>283</sup> **UNSC Res. 733** (23 January 1992).

<sup>284</sup> **UNSC Res. 748** (31 March 1992) and **UNSC Res. 883** (11 November 1993), following the refusal of Libya to surrender its two officials suspected of involvement in the destruction of a Pan-Am airliner over Lockerbie, Scotland, in 1988.

<sup>285</sup> **UNSC Res. 1737** (23 December 2006). Available at <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N06/681/42/PDF/N0668142.pdf?OpenElement>> (accessed on 12 September 2009).

out in resolution 1696 (2006)... nor complied with the provisions of Security Council resolution 1696 (2006)".<sup>286</sup> The UNSC affirmed that Iran had to comply without delay with the resolutions of the IAEA Board of Governors and decided that Iran had to suspend without delay proliferation sensitive nuclear activities.<sup>287</sup> The UNSC also made a decision that all States had to "take the necessary measures to prevent the supply, sale or transfer directly or indirectly from their territories, or by their nationals or using their flag vessels or aircraft to, or for the use in or benefit of, Iran, and whether or not originating in their territories, of the following items, materials, equipment, goods and technology."<sup>288</sup> In the same resolution, the UNSC, acting under Article 41, decided that all States had to freeze the funds, other financial assets and economic resources which were on their territories at the date of adoption of this resolution or at any time thereafter, that are owned or controlled by the persons or entities designated in the Annex to the resolution, as well as those of additional persons or entities designated by the UNSC or by the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, including through illicit means, and that the measures in this paragraph shall cease to apply in respect of such persons or entities if, and at such.<sup>289</sup>

Following the adoption of resolution 1696 on Iran, the UNSC resumed the discussion of "Non-proliferation" agenda item on 23 December 2006. The President of the UNSC drew attention of the UNSC to various reports from IAEA Director General, required as UNSC measures under Article 40 in accordance with UNSC resolution 1696. The reports stated, *inter alia*, that Iran had not provided the necessary transparency to remove uncertainties associated with some of its activities nor suspended its enrichment

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<sup>286</sup> Ibid., op. 6.

<sup>287</sup> Ibid., paras. 2-3.

<sup>288</sup> Ibid., para. 4.

<sup>289</sup> Ibid., para. 12.

related activities and that the IAEA remained unable to make further progress in its efforts to verify the correctness and completeness of the declarations to confirm the peaceful nature of the nuclear programme.<sup>290</sup> Thus, the UNSC – being concerned with the proliferation risks presented by the Iranian nuclear programme, Iran’s continuing failure to meet the requirements of the IAEA Board of Governors and to comply with the UNSC resolution 1696 – voted unanimously on resolution 1737.<sup>291</sup>

Under Article 41 of the UN Charter, the UNSC resolution 1737 decided on a list of actions to be taken by Iran, all States and the IAEA.<sup>292</sup> Thus, Iran without further delay had to suspend its proliferation sensitive nuclear activities and provide such access and cooperation as the IAEA requests to be able to verify the suspension as well as stop export of the items in documents S/2006/814 and S/2006/815.<sup>293</sup> The UNSC also decided that all States had to take the necessary measures to prevent the supply, sale or transfer from their territories of all items and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy water-related activities and prevent the provision to Iran of any technical assistance or training, financial assistance, investment, or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use of the prohibited items.<sup>294</sup> The UNSC also decided that all States had to freeze the funds, other financial assets and economic resources, which are on their territories at the date of adoption of this resolution or at any time thereafter, and which are owned or controlled by the persons or entities designated in the Annex to

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<sup>290</sup> S/2006/150 and S/2006/270, as well as the report dated 31 August 2006, transmitted in a Note by the President of the UNSC of the same date, S/2006/702 (31 August 2006). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N06/485/39/IMG/N0648539.pdf?OpenElement> > (accessed on 20 October 2009).

<sup>291</sup> UNSC Res. 1737 (23 December 2006). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N06/681/42/PDF/N0668142.pdf?OpenElement> > (accessed on 14 September 2009); *Repertoire 15th Supplement (2004 – 2007): Chapter VIII*, p. 10. Available at < <http://www.un.org/en/sc/repertoire/> > (accessed on 23 September 2009).

<sup>292</sup> UNSC Res. 1737 (23 December 2006), paras. 1-24. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N06/681/42/PDF/N0668142.pdf?OpenElement> > (accessed on 14 September 2009).

<sup>293</sup> *Ibid.*, paras. 2, 7, 8.

<sup>294</sup> *Ibid.*, paras. 3-6.

the resolution, as well as those of additional persons or entities designated by the UNSC or by the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities.<sup>295</sup>

The UNSC decided that the IAEA had to restrict technical cooperation provided to Iran only to food, agricultural, medical, safety or other humanitarian purposes and requested IAEA Director General to report within 60 days following the adoption of the resolution on whether Iran established suspension of all activities mentioned in this resolution. Additionally, the UNSC decided to establish a Committee of the UNSC to implement this resolution.<sup>296</sup>

A third resolution adopted by the UNSC under Chapter VII with respect to Iran's nuclear activities,<sup>297</sup> and the second, after resolution 1737, adopted by the UNSC under Article 41, was resolution 1747.<sup>298</sup> Under resolution 1747, the UNSC acting under Article 41 of the UN Charter, reaffirmed, as it had done in its resolution 1737, that Iran without any further delay should take steps required by the IAEA Board of Governors in its resolution GOV/2006/14 and affirmed its decisions that Iran should take the steps required in paragraph 2 of resolution 1737.

As far as the Iran did not comply with the requirements of the previous two resolutions, the UNSC had to address the matter again. Acting again under Article 41 of the UN Charter, the UNSC adopted its third resolution – resolution 1803 – in relation to

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<sup>295</sup> Ibid., para. 12.

<sup>296</sup> Ibid., para. 18.

<sup>297</sup> **UNSC Res. 1696** (31 July 2006), **UNSC Res. 1737** (23 December 2006), **UNSC Res. 1747** (24 March 2007).

<sup>298</sup> **UNSC Res. 1747** (24 March 2007). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N07/281/40/PDF/N0728140.pdf?OpenElement> > (accessed on 14 September 2009); **UNSC, Security Council Toughens Sanctions Against Iran, Adds Arms Embargo, With Unanimous Adoption Of Resolution 1747 (2007)**, Press Release (24 March 2007). Available at < <http://www.un.org/News/Press/docs/2007/sc8980.doc.htm> > (2 October 2009); **UNSC, Security Council Tightens Restrictions On Iran's Proliferation-Sensitive Nuclear Activities, Increases Vigilance Over Iranian Banks, Has States Inspect Cargo**, Press Release (3 March 2008). Available at < <http://www.un.org/News/Press/docs/2008/sc9268.doc.htm> > (2 October 2009).

Iran's nuclear programme.<sup>299</sup> This resolution, *inter alia*, supported the IAEA in strengthening its safeguards on Iran's nuclear activities in accordance with the Safeguards Agreement between Iran and the IAEA.<sup>300</sup> The UNSC decided that all States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated in Annex II to this resolution as well as of additional persons designated by the UNSC or the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology specified by and under the measures in paragraphs 3 and 4 of resolution 1737, except where such entry or transit is for activities directly related to the items in subparagraphs 3 (b)(i) and (ii) of resolution 1737 and provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory.<sup>301</sup> The UNSC imposed additional restriction on the imports to Iran by deciding that all States should take the necessary measures to prevent the supply, sale or transfer directly or indirectly from their territories or by their nationals or using their flag vessels or aircraft to, or for use in or benefit of, Iran, and whether or not originating in their territories.<sup>302</sup>

Another "pending" proliferation case in front of the UNSC is the case on the DPRK. In response to the nuclear test proclaimed by the DPRK on 9 October 2006 in flagrant disregard of its relevant resolutions, in particular resolution 1695 (2006), as well as of the statement of its President of 6 October 2006,<sup>303</sup> the UNSC adopted resolution

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<sup>299</sup> UNSC Res. 1803 (3 March 2008). Available <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N08/257/81/PDF/N0825781.pdf?OpenElement>> (accessed on 14 September 2009).

<sup>300</sup> Ibid., para. 2.

<sup>301</sup> Ibid., para. 5.

<sup>302</sup> Ibid., para. 8.

<sup>303</sup> S/PRST/2006/41 (6 October 2006). Available <

1718 and acting under Chapter VII of the UN Charter.<sup>304</sup> In this resolution, the UNSC took measures under Article 41.

It also demanded the DPRK to immediately retract its announcement of withdrawal from the NPT and return to the NPT and IAEA safeguards. The decision of the UNSC said that the DPRK should act strictly in accordance with the obligations applicable to parties under the NPT and the terms and conditions of its IAEA Safeguards Agreement.

The issue of the effectiveness of sanctions under Article 41 and readiness of the States to comply with them is open, though it is known that UNSC sanctions under Chapter VII of the UN Charter are binding. However, there is no guarantee that the sanctions would be effective and this will depend on numerous political, economic and other considerations of not only a sanctioned State alone. In most of the cases, sanctions under Article 41 remain the only feasible measure to which the UNSC Member States can agree being reluctant to adopt more forceful measures.

#### ***4.6.3. Collective enforcement measures under Article 42 of the UN Charter***

Article 42 provides the UNSC with the power to take an action by military forces, if it is necessary to maintain or restore international peace and security.<sup>305</sup> The UNSC may decide to take such measures when it considers that non-military measures under Article 41 would be inefficient or have proved to be inefficient. Article 42 provides the UNSC with a broad mandate to take a variety of military enforcement measures ranging

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<sup>304</sup> UNSC Res. 1718 (14 October 2006). Available <<http://daccessdds.un.org/doc/UNDOC/GEN/N06/572/07/PDF/N0657207.pdf?OpenElement>> (accessed on 12 September 2009).

<sup>305</sup> Article 42 of the UN Charter: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”



from demonstrations through blockades of communications and trade to large scale and protracted combined operations of either a defensive or offensive character at the level of full-scale warfare.

Military enforcement measures may only take place after the UNSC determines the existence of a “threat to the peace”, or that a breach of the peace or act of aggression has occurred. Otherwise, a military action cannot be qualified as a collective military enforcement measure.<sup>306</sup> The coercive military enforcement measures adopted by the UNSC, which are directed against a particular State or other entity depend on the type of objective to be achieved. They are traditional military operations carried out with a specific context, the UN Charter collective security system, for the specific purpose of compelling the target State(s) or entity to comply with the directions and the decisions of the UNSC.<sup>307</sup> These military enforcement measures are distinct from other UN activities, in which military personnel and forces are employed for such operations as peacekeeping, humanitarian assistance and relief, or preventive diplomacy.

Pursuant to Article 42, the UNSC has a broad discretion to determine the timing, purpose and modalities of military enforcement measures. There is no legal obligation for the UNSC to refrain from authorizing military enforcement action until sanctions under Articles 40 and 41 have been first applied. The UNSC is not obliged either to wait until an actual attack or act of aggression had occurred before determining that a situation posing a threat to the peace permits the employment of military enforcement measures. Most probably, in order to ensure compliance with the UNSC’s decisions at an early

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<sup>306</sup> *Repertoire of the Practice of the Security Council* (1985-1988) Chapter XI, p. 420.

**Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, p. 51.

<sup>307</sup> **Bowet, D.W.**, *United Nations Forces: A Legal Study of United Nations Practice* (London, Stevens & Sons, 1964), pp. 267-268; **White N.D.**, *Keeping the Peace: the United Nations and the maintenance of International Security* (Manchester University press, 1993), pp. 199-206; *Certain Expenses Case*, ICJ Rep. (1962), p. 151, pp. 170-171, 175-177.

stage, the UNSC may decide demonstrations and blockades to reinforce an embargo and prevent an outbreak of hostilities.<sup>308</sup>

In cases of flagrant aggression or other large scale breaches of the peace, the UNSC may take swift and effective military enforcement action and determine that non-military measures would be inadequate. At the UNCIO, this proposition received general support of the Commission III dealing with enforcement arrangements, especially it was supported by the smaller States, such as Belgium.<sup>309</sup>

The system of military enforcement measures of the UNSC envisaged in the UN Charter relies on the UN Members' armed forces, which are supposed to be made available to the UNSC to maintain or restore international peace and security, but may be used for self-defence in the case of armed attack against a UN Member before the UNSC takes the necessary measures.<sup>310</sup> Article 47 of the UN Charter envisages establishment of a Military Staff Committee to advise and assist the UNSC on military questions relating to peace and security.<sup>311</sup> At the UNCIO, the idea to establish the Military Staff Committee came from the UK.<sup>312</sup> Though this Committee was established in 1946, it has

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<sup>308</sup> Gill, Terry, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, pp. 52-53.

<sup>309</sup> UNCIO, Vol. 12, p. 507.

<sup>310</sup> Thus, according to Goldblat, in order to ensure the efficiency of the UNSC enforcement measures, the national armed forces must be maintained continuously. See Goldblat, Jozef, *Arms Control. A Guide to Negotiations and Agreements*. (London, Oslo, Thousand Oaks, New Delhi: SAGE Publications, International Peace Research Institute, 1994), p. 24.

<sup>311</sup> Article 47 of the UN Charter: "(1) There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament. (2) The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work. (3) The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently. (4) The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees."

<sup>312</sup> Hilderbrand, Robert, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill: University of North Carolina Press, 1990), p. 156.

not been very actively involved into the exercise of the UNSC's powers.<sup>313</sup> Its core function related to the strategic direction of any armed forces placed at the disposal of the UNSC relies on the agreements envisaged in Article 43 of the UN Charter.<sup>314</sup> The Military Staff Committee could be much more important in the UN enforcement actions, if Article 43 was negotiated differently.<sup>315</sup> The enforcement powers of the UNSC may be hampered by breaches by the UN Member States of their obligations, such as non-payment of duties required by Article 17(2) of the UN Charter, failure to keep forces permanently on call deployment, prescribed by Article 43,<sup>316</sup> and failure to coordinate military strategy as envisaged in Article 47.

Article 106 of the UN Charter expressly contemplates that Article 43 agreements between the Member States and the UN will "enable [the UNSC] to begin the exercise of its responsibilities under Article 42."<sup>317</sup> This demonstrates clearly that still in 1945 there

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<sup>313</sup> **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, p. 521.

<sup>314</sup> Article 43 of the UN Charter: "1) All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. 2) Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. 3) The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes."

<sup>315</sup> During the negotiations of Article 43 of the UN Charter, the US supported the Article 43 agreements, but the USSR perceived that policy as a threat to the USSR as it deemed that the Article 43 agreement could be used by the US and other Western forces for stationing their forces in forward position. See **Kirgis, Federic**, *The United States Commitment to the Norms of the United Nations and Its Related Agencies*, Transnational Law & Contemporary Problems (Spring 1991), Vol. 1, No. 1, p. 125, pp. 130-131; **Schachter, Oscar**, *Authorized Uses of Force by the United Nations and regional Organizations*, in **Damrosch Lori Fidler, Scheffer David (ed.)**, *Law and Force in the New International Order* (Boulder: Westview Press, 1991), p. 65, pp. 71-72.

<sup>316</sup> Art. 43 (1): "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."

<sup>317</sup> Article 106 of the UN Charter: "Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security."

was an understanding that the UNSC could use force under Article 42 only if a sufficient number of special agreements envisaged in Article 43 was concluded.<sup>318</sup> However, it is important to underline that Article 42 does not necessarily makes armed actions of the UNSC dependent on Article 43 and on the Military Staff Committee.<sup>319</sup> Article 42 does not say that the UN Member States will take armed action as it is deemed necessary by the UNSC.

In the “Uniting for Peace” Resolution, adopted in 1950, the UNSC recommended the UN Member States to provide such assistance to South Korea “as may be necessary to repel the armed attack [from North Korea] and to restore peace and security in the area.”<sup>320</sup> The resolutions on that matter were interpreted to authorize carrying out into the territory of the aggressor with goal – restoring international peace and security – that sounds very much like an Article 41 or 42 goal.

The first reference to Article 42 by the UNSC, which might be deemed as an implicit reference, was made in 1966 in resolution 221 relating to Southern Rhodesia.<sup>321</sup> In this resolution, the UNSC determined that the situation constituted a “threat to the peace” and called upon the Government of the Member State to prevent, by the use of force if necessary, the arrival of an oil tanker at a designated port, and to arrest and detain another tanker upon its departure from the same port, if its cargo were discharged there.<sup>322</sup> Amendments which would have explicitly invoked Article 42, together with Article 41, were not adopted.<sup>323</sup>

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<sup>318</sup> **Kelsen, Hans**, *The Law of the United Nations* (New York: Frederick A. Praeger, Inc., 1950), p. 756; **Schachter, Oscar**, *United Nations Law in the Gulf Conflict*, *American Journal of International Law* (1991), Vol. 85, p. 452, 464;

<sup>319</sup> **Scheffer, David**, *Commentary on Collective Security*, in **Damrosch Lori Fisler, and Scheffer David (eds.)** *Law and Force in the New International Order* (Boulder: Westview Press, 1991), p. 100, 106.

<sup>320</sup> See Chapter 4, ft. 102, p. 257.

<sup>321</sup> *Repertory of Practice of United Nations Organs. ,Extracts relating to Article 42 of the Charter of the United Nations*, Supplement No. 3 (1959 - 1966), Vol. 2, p. 238.

<sup>322</sup> UNSC, 21<sup>st</sup> year, 1276<sup>th</sup> meeting: para. 12, **S/7236/Rev.1**; same text as **UNSC Res. 221** (1966).

<sup>323</sup> UNSC, 21<sup>st</sup> year, Supplement for April-June, p. 32, S/7243.

In another draft resolution, which was not adopted, there was made a reference in connection with a provision, which should have called upon the Government of a Member State to take the measures provided for in Chapter VII of the Charter, in order to prevent “by the use of air, sea, or land forces” any supplies from reaching a Non-Self-Governing Territory. Such reference might have been considered as relevant for the language of Article 42.<sup>324</sup> In the same draft resolution, a reference was made to UNSC resolution 221, in which the use of force by the abovementioned Government was authorized. The draft resolution would again have called upon that Government to take all necessary measures, including the use of force, to abolish the “racist minority regime” in that territory.<sup>325</sup> The UNSC made more references to Article 42 of the UN Charter in other draft resolutions on Southern Rhodesia, which, however, were not adopted.<sup>326</sup>

The UNSC made explicit references to Article 42 during consideration of the items on complaints by Cuba, the USSR and the US;<sup>327</sup> the Cyprus question<sup>328</sup> and Question relating to the policies of apartheid of the Government of the Republic of South Africa.<sup>329</sup> The UNSC explicitly invoked Article 42 in a draft resolution on the question of South Africa in 1977,<sup>330</sup> which was not put to the vote, but a few months later was

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<sup>324</sup> UNSC, 21<sup>st</sup> year, Supplement for April-June, p. 82, S/7285/Add. 1.

<sup>325</sup> Ibid.

<sup>326</sup> UNSC, 23<sup>rd</sup> year, Supplement for April-June, pp. 120 and 121, S/8545, operative para. 7; para. 37; UNSC, 24<sup>th</sup> year, Supplement for April-June, p. 338, S/9270/Rev. 1, operative para. 2. In another instance, the UNSC considered a draft resolution in connexion with the situation in Southern Rhodesia in 1970. It provided, *inter alia*, that the UNSC would condemn the refusal of the administering power to use force against the illegal racist regime. The draft resolution was voted upon and failed of adoption, to the negative votes of two permanent members of the UNSC. See UNSC (25<sup>th</sup> year), Suppl. for January-March, 1970, S/9696, submitted by Burundi, Nepal, Sierra Leone, Syria and Zambia at the 1532<sup>nd</sup> meeting of the UNSC on 12 March 1970. For the vote see UNSC (25<sup>th</sup> year), 1534<sup>th</sup> meeting, paras. 205-207. At the UNSC 1531<sup>st</sup> meeting (paras. 40-41), Sierra Leone invoked Article 42 together with Article 41 and asked that sanctions against Southern Rhodesia be extended to include South Africa and Portugal. In reply, the UK stated that it could not undertake to start using force against Southern Rhodesia, which had been self-governing for half a century (See the 1534<sup>th</sup> meeting of the UNSC, paras. 10-19).

<sup>327</sup> UNSC (17<sup>th</sup> year), 1024<sup>th</sup> meeting: Ghana para 109.

<sup>328</sup> UNSC (18<sup>th</sup> year), 1078<sup>th</sup> meeting: Cyprus, para. 98.

<sup>329</sup> UNSC (19<sup>th</sup> year), 1217<sup>th</sup> meeting: Sierra Leone, para. 103; 1129<sup>th</sup> meeting, Indonesia, paras. 12, 13, 22, 26. See also *Repertoire of the Practice of the Security Council (1985-1988)* Chapter XI, pp. 424-425.

<sup>330</sup> UNSC (32<sup>nd</sup> year), *Suppl. for January-March, 1977, S/12310*, para. 5: “Decides that, in case of non-compliance with paragraph 3 of the present resolution, the Security Council shall consider appropriate action under all the provisions of the Charter, including Articles 39-46.” The UNSC President called

resubmitted in revised form.<sup>331</sup> It was then put to the vote, but was not adopted, owing to the negative votes of three permanent members of the UNSC.<sup>332</sup>

The UNSC has not invoked Article 42 explicitly in any of its decisions, but it did, however, adopt a number of resolutions, by which it called upon States to take “all measures necessary”<sup>333</sup> to enforce demands related to the restoration of international peace and security, and which are therefore of relevance to the interpretation of Article 42. These include, in particular, resolution 678, authorizing States cooperating with the Government of Kuwait to use all necessary means to enforce the withdrawal of the Iraqi forces from the territory of Kuwait,<sup>334</sup> authorizing a multinational force to use of “all necessary measures” to restore peace and security, and to facilitate the delivery of humanitarian assistance in East Timor; authorized the UN Mission in Sierra Leone to “take the necessary action” in the context of a specific aspect of its peacekeeping operations; authorized the deployment of the NATO-led Stabilization Force to achieve, by using “all necessary means”, the objectives set out in its decision; authorized a NATO-led multinational force to establish an international security presence in Kosovo, with “all necessary means” to fulfil its responsibilities; and authorized a temporary

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attention to the draft resolution, which had been submitted by Benin, Libyan Arab Republic and Mauritius, at the 1998<sup>th</sup> meeting on 30 March 1977.

<sup>331</sup> UNSC (32<sup>nd</sup> year), *Suppl. for October-December, 1977, S/12310/Rev.1*. However, paragraph 5 remained unchanged. See *Repertory of Practice of United Nations Organs. ,Extracts relating to Article 42 of the Charter of the United Nations, Supplement No. 5 (1970 - 1978), Vol. 2, p. 160.*

<sup>332</sup> For the vote see UNSC (32<sup>nd</sup> year), 2045<sup>th</sup> meeting, para. 53. Senegal invoked Article 42 in quoting the draft resolution (2039<sup>th</sup> meeting, para. 36). For UNSC practice in 1979 – 1984, see *Repertory of Practice of United Nations Organs. ,Extracts relating to Article 42 of the Charter of the United Nation Supplement No 6 (1979 - 1984), Vol. 3, p. 191.* Madagascar also called explicitly for measures under Article 42 (1991<sup>st</sup> meeting, para. 84).

<sup>333</sup> “All measures necessary” – this was the precise wording used in **UNSC Res. 770** (13 August 1992), para. 2. In **UNSC Res. 665** (25 August 1990), para. 1, **UNSC Res. 787** (16 November 1992), para. 12, and **UNSC Res. 794** (3 December 1992), para. 16, references were made to “such measures (commensurate to the specific circumstances) as may be necessary”, and in **UNSC Res. 678** 29 (November 1990), para. 2, and **UNSC Res. 794** (3 December 1992), para. 10 referred to “all necessary means”. For more see *Repertoire of the Practice of the Security Council (1989-1992) Chapter XI, pp. 913-919; pp. 52-75.*

<sup>334</sup> In his report entitled “An Agenda for Peace”, however, the UN Secretary-General expressed the view that, in the situation between Iraq and Kuwait, the UNSC had not actually made use of the option envisaged in Article 42, as the UNSC had chosen to authorize Member States to take measures on its behalf. See **S/24111**, paras. 42-44.

multinational force in eastern Zaire, to conduct a humanitarian operation, by using “all necessary means.”<sup>335</sup>

In some cases, the UNSC’s authorization of the use of armed forces may be seen as a stamp of approval on Member States’ claims to be entitled to act in self-defence under Article 51. This is one way to explain the UN Charter basis of resolution 678, authorizing the use of “all necessary means” (armed force) against Iraq to drive it from Kuwait “and to restore international peace and security in the area.”<sup>336</sup> It is also a plausible explanation for resolution 83, the model for resolution 678.

The recent practice of the UNSC proves that the members of the UNSC avoid making reference to Article 42 even in draft resolutions. Some of the UNSC permanent members are reluctant to allow the use of military force under Article 42. Therefore, following the adoption of above mentioned resolution 1696 on Iran, the representative of the Russian Federation, while noting that the resolution had made the demand for the suspension of enrichment activities in Iran mandatory for the IAEA, as per Article 40 of the UN Charter, emphasized that any additional measures to implement the resolution should rule out the use of military force.<sup>337</sup> Other non-permanent UNSC members on board – Japan and Argentina – stressed the importance of resolving the issue of non-proliferation through diplomatic and peaceful means.<sup>338</sup>

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<sup>335</sup> *Repertoire of the Practice of the Security Council* (1996-1999) Chapter XI, pp. 913-919; pp. 64-76; The UNSC in eight cases authorized enforcement action under Chapter VII of the Charter, for the maintenance of peace and security: Sierra Leone, the Democratic Republic of the Congo (DRC), Bosnia and Herzegovina, Afghanistan, Côte d’Ivoire, Liberia, East Timor and Iraq, *Repertoire of the Practice of the Security Council* (2000-2003) Chapter XI, pp. 103-107.

<sup>336</sup> **UNSC Res. 678** (29 November 1990); UNSCOR, 45<sup>th</sup> Sess., Resolution and Decision, pp. 27-28, **UN Doc. S/INF/46** (1990), reprinted in 29 ILM 1565 (1990).

<sup>337</sup> **S/PV.5500**, p. 5.

<sup>338</sup> *Ibid.*, p. 7 (Japan) and p. 7 (Argentina).

#### ***4.7. Conclusions: withdrawal from the NPT and actions to be taken by the UNSC***

As it was mentioned in Chapter III of the dissertation, many States Parties to the NPT called for a major role of the UNSC in monitoring withdrawal from the Treaty. They stressed on the importance of generating a solution to the problem in view of the forthcoming NPT RevConf in 2010. The States pointed out that the withdrawal from the NPT should be a transparent process, in which the notice of withdrawal should be received and fully assessed by both NPT States and the UNSC before a withdrawing State leaves the Treaty and the benefits of NPT should be returned so that the State would not have a capability of building a nuclear weapon relying on the technology and material obtained while being a Party to the Treaty.

The international community now faces the issue of how such a problem should be addressed by the UNSC. The assessment of the powers of the UNSC made above suggests that the UNSC has the authority to interpret Article 39 of the UN Charter. It may consider a withdrawal from the NPT as a “threat to the peace”. Having decided it, the UNSC has the authority to take an action under Chapter VII of the UN Charter, including the use of force under Article 42, to require a delay in withdrawal, to prevent withdrawal, or to direct other action by the withdrawing Party as a condition of withdrawal, etc.

This section of the Chapter aims to assess the types and content of the resolutions that may be adopted by the UNSC in response to a withdrawal from the NPT. The two main views that the UNSC may adopt a generic resolution that would have a set of standard criteria and sanctions to be applied to any State withdrawing from the NPT, depending on whether such a State is in good standing with its non-proliferation obligations or not. The other view is that the UNSC should treat every case of withdrawal from the NPT individually and adopt case specific resolutions.



#### 4.7.1. Preventive generic resolution of the UNSC

A resolution of the UNSC adopted in case of an announcement of withdrawal from the NPT by an NPT State may not be narrowly tailored or confined to a specific case, but could address a systemic problem of non-proliferation, anticipating a troubling pattern, which the previous UN Secretary-General Kofi Annan called a potential “cascade of proliferation.”<sup>339</sup> In recent writings and statements, examples of generic and binding resolutions have been offered by non-proliferation experts such as the IAEA’s Director General ElBaradei,<sup>340</sup> Pierre Goldschmidt, former head of the IAEA’s safeguards department,<sup>341</sup> and George Perkovich of the Carnegie Endowment for International Peace.<sup>342</sup> Some such UNSC resolutions were proposed to have a preemptive character.

In 2005, nuclear experts from 26 States were convened by the Director General of the IAEA and agreed that the UNSC should consider taking action in the event of a notice of withdrawal from the NPT. They said that the UNSC, “as the international organ bearing the main responsibility for the maintenance of international peace and security, should be prepared to respond to such action [for example, withdrawing from the NPT to operate an enrichment or reprocessing facility without international inspection], insofar as withdrawal from the NPT could be seen as a threat to international peace and security.”<sup>343</sup> The main concern of the experts was to ensure that the IAEA could have access to nuclear facilities of a withdrawing State to verify whether that there were no

<sup>339</sup> **High-Level Panel on Threats, Challenges and Change**, *A More Secure World: Our Shared Responsibility*, A/59/565 (2 December 2004), para. 111, page 39. Available at < <http://www.un.org/secureworld/report2.pdf> > (accessed on 21 May 2009).

<sup>340</sup> **ElBaradei, Mohamed**, *Saving Ourselves From Self Destruction*, The New York Times (12 February 2004).

<sup>341</sup> **Goldschmidt, Pierre**, *Rule of Law, Politics and Nuclear Non-proliferation*, paper given at the Ecole Internationale de Droit Nucléaire, Université de Montpellier (Session 2007); **Goldschmidt, Pierre**, *Concrete Steps to Improve the Nonproliferation Regime* (Carnegie Endowment for International Peace, 2009), No. 100. Available at < [http://carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](http://carnegieendowment.org/files/improve_nonpro_regime.pdf) > (accessed on 8 April 2009).

<sup>342</sup> **Goldschmidt Pierre, Perkovich George**, *Iran: Next Steps for UN Security Council* (18 January 2006). Available at < <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=845&&prog=zgp&proj=znpp> > (accessed on 4 October 2009).

<sup>343</sup> See “Multilateral Approaches to the Nuclear Fuel Cycle,” para. 329. Available at < [http://www-pub.iaea.org/MTCD/publications/PDF/mna-2005\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/mna-2005_web.pdf) > (accessed on 20 April 2009).

violations of the safeguards agreements under the NPT before the withdrawal takes effect. UNSC resolution in such case would allow IAEA inspections in a withdrawing (or a withdrawn) State.

Withdrawal from the NPT by a NNWS, which has been found by the IAEA to be in non-compliance with its safeguards agreement, would be a “threat to the peace” and the integrity of the NPT. The exercise of right of all NNWS to benefit from peaceful use of nuclear energy under Article IV of the Treaty might be harmed, if the States violating their NPT obligations and safeguards agreements manage to withdraw from the NPT and initiate the development of a nuclear weapon without being held responsible for their unlawful acts.

In order to prevent such a scenario, one of the options for UNSC action may be the adoption of a generic resolution under Chapter VII of the UN Charter, stating that if a State withdraws from the NPT after being found by the IAEA to be in non-compliance with its safeguards undertakings, such a withdrawal constitutes a “threat to the peace”, as defined under Article 39 of the UN Charter.<sup>344</sup> Such a generic resolution may deter a State found to be in non-compliance with its comprehensive safeguards agreements from giving a notice of its withdrawal from the NPT and to guarantee a timely and effective reaction of the UNSC.<sup>345</sup> As many NPT States have argued, even after a withdrawal from the NPT the States should remain responsible for violations of the NPT safeguards they had committed while Parties to the NPT, the UNSC could include in the general resolution this aspect<sup>346</sup> and a prohibition for a withdrawing NPT State to use nuclear

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<sup>344</sup> **Goldschmidt, Pierre**, *Concrete Steps to Improve the Nonproliferation Regime* (Carnegie Endowment for International Peace, 2009), No. 100, p. 16. Available at <  
[http://carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](http://carnegieendowment.org/files/improve_nonpro_regime.pdf)> (accessed on 8 April 2009).

<sup>345</sup> This resolution may be based on the model contained in Annex 11: *Draft UN Security Council resolution on NPT Withdrawal*.

<sup>346</sup> A report by the Carnegie Endowment for International Peace suggests that the UNSC could adopt a resolution that would hold an NPT State, which withdraws from the Treaty, responsible for violations committed while it was a Party to the Treaty. See **Perkovich George, Mathews Jessica T., Cirincione Joseph, Gottemoeller Rose, Wolfsthal Jon B.**, *Universal Compliance: A Strategy for Nuclear Security*, (Washington: Carnegie Endowment for International Peace, March 2005).

materials, facilities, or technologies acquired under the NPT, which, instead, should be returned to the States that provided them.<sup>347</sup>

In course of the NPT review cycle 1993-2009 many States suggested that all “nuclear equipment, technology, and know-how” obtained under the NPT should remain forever restricted to peaceful uses under IAEA safeguards, even if an NPT Party withdrew from the Treaty. If implemented by the UNSC, this proposal would have had an effect on what the DPRK could use for making weapons. The generic resolution of the UNSC could also provide for such measures as requesting that all materials and equipment made available to a withdrawn State or resulting from the assistance provided to it under a comprehensive safeguards agreement would have to be frozen, remain under the Agency’s safeguards and possibly removed from the State under IAEA supervision.<sup>348</sup>

At the 2005 NPT RevConf, a working paper by Germany called on NPT States to agree “that the right of withdrawal cannot be exercised in cases where the State in question is...in noncompliance with the NPT,” as the DPRK was when it withdrew.<sup>349</sup> Some scholar experts on non-proliferation maintain that the UNSC may prohibit or condition the withdrawal from the NPT, if a withdrawing State is a potential violator of the Treaty.<sup>350</sup>

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<sup>347</sup> However, while assessing the case of the DPRK that withdrew from the NPT in 2003, the DPRK would have had very little to give up under this proposal. The DPRK received nuclear assistance from the Soviet Union starting in the 1950s before it joined the NPT. It was the USSR that helped train DPRK scientists in nuclear technology. I also provided an experimental reactor for training and research and pressed the DPRK to join the NPT. The burned fuel rods from which the DPRK has made plutonium came from an operating reactor in Yongbyon copied after one in the UK, the design for which had been made public. The natural uranium used to fuel this reactor probably came largely from DPRK’s own mines. **Bunn, George, A Brief History of DPRK’s Nuclear Weapons-Related Efforts** in **May, Michael (ed.), Verifying the Agreed Framework** (Livermore, CA: Livermore National Laboratory’s Center for Global Security Research and Stanford University’s Center for International Security and Cooperation, 2001), pp. 15-16.

<sup>348</sup> **Center for International Security and Cooperation and Program on Science and Global Security, Preventing Nuclear Proliferation and Nuclear Terrorism** (April 2005), Chapter 2, pp. 5-6.

<sup>349</sup> *Strengthening the NPT Against Withdrawal and Non-Compliance: Suggestions for the Establishment of Procedures and Mechanisms. Working paper submitted by Germany, NPT/CONF.2005/PC.III/WP.15* (29 April 2004), p. 2. Available at <

<http://daccessdds.un.org/doc/UNDOC/GEN/N04/331/08/PDF/N0433108.pdf?OpenElement> > (accessed on 4 October 2009).

<sup>350</sup> **Bunn, George and Rhinelander, John, NPT Withdrawal: Time for the Security Council to Step In, Arms Control Today** (May 2005). Available at <  
[http://www.armscontrol.org/act/2005\\_05/Bunn\\_Rhinelander.asp](http://www.armscontrol.org/act/2005_05/Bunn_Rhinelander.asp) > (accessed on 7 July 2008).

Theoretically, the UNSC resolution may also provide means for preventing the States from an unintentional violation of the NPT provisions by supplying nuclear materials and technology to a withdrawing State Party, which after leaving the NPT develops nuclear weapons with such materials and technology. In this case, a supplying State may be considered in violation of the NPT as nuclear exports that would “assist” a NNWS to make nuclear weapons are prohibited by the NPT, unless the nuclear facilities that result are under IAEA safeguards and are used for peaceful purposes.<sup>351</sup> This aspect is highly political and is not included in the annexed draft resolution.<sup>352</sup>

#### ***4.7.2. Case specific resolutions of the UNSC***

Most of the UNSC permanent members are reluctant to have such a generic preemptive resolution to deal with a withdrawal from the NPT.<sup>353</sup> They hold that each case of withdrawal should be assessed individually by the UNSC as every State’s case would be different. In some cases, a withdrawing State may be found or suspected in violation of its non-proliferation obligation and IAEA safeguards agreements. Such cases should be treated differently from those when a State withdrawing from the NPT is in good standing with its NPT obligations and IAEA safeguards. In order to meet the above mentioned concern of the UNSC permanent members, the IAEA has to be involved in the withdrawal mechanism and its role remains to be defined as the IAEA conclusions on nuclear activities of a withdrawing State would be crucial for the UNSC’s decision on withdrawal.

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<sup>351</sup> See NPT Articles I, II, III, and IV.

<sup>352</sup> See Annex 11: *Draft UN Security Council resolution on NPT Withdrawal*.

<sup>353</sup> The author made this assessment on the basis of interviews of the representatives of the permanent members of the UNSC – the UK, the US, France, China – and the representatives of Japan, who are in charge of non-proliferation and the UNSC’s issues. The interviews took place at the UN Headquarters in New York during the 2009 NPT PrepComm.

However, for this approach to be effective, a procedure of withdrawal from the NPT should be clearly established to identify the modalities of involvement and interaction of a withdrawing State, the UNSC, and the IAEA. These issues were actively discussed by NPT States during NPT review cycle 2003-2009 and were also reflected in the UN High-level Panel on Threats, Challenges and Change.<sup>354</sup>

In comparison with the preventive approach, the case specific approach may be considered as a more accurate one, which would expect the UNSC to pay attention not only to whether the non-proliferation obligations were violated by a withdrawing State, but also to the “extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of” this State that are part of procedure of withdrawal from in the NPT envisaged in the NPT withdrawal clause in Article X(1).

Assessment of the views of NPT States, especially of NWS, expressed during NPT review cycle debates on withdrawal from the Treaty suggests that a case specific UNSC resolution would not be very much different from a generic UNSC resolution. A case specific resolution will reflect some of the UNSC measures with respect to NPT obligations by a withdrawing State, responsibility for the violations committed while being a Party to the Treaty, placement of supplied nuclear material and technology under IAEA safeguards and subsequent return of those items to a supplier State, etc.

For both resolutions to be effective, they would have to include a mechanism ensuring interaction of a withdrawing State, the UNSC, and the IAEA, if such is not defined in a separate resolution. As pointed out by numerous NPT States and the UN High-Level-Panel, in case of announcement of withdrawal from the NPT, the UNSC first of all should authorize prompt immediate verification of the withdrawing NPT State’s compliance with the NPT, which, if necessary, could be mandated by the UNSC. This would mean that the UNSC, for example, would be able to command a withdrawing

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<sup>354</sup> For more on the views of the NPT States see Chapter 3: NPT review cycle in 1993-2009: discussions by the NPT States Parties of Article X(1) of the NPT and the role of the UNSC in the withdrawal mechanism.

Party, such as the DPRK in 1993 and 2003, to permit the IAEA to conduct effective inspections of its nuclear activities to verify the non-diversion of nuclear material to be able to conclude that no violations of the NPT constituting a threat to international peace take place before its withdrawal from the NPT takes effect.

Second, having received an IAEA report on the nuclear programme of a withdrawing State, the UNSC would assess whether a withdrawing State is in good standing with its non-proliferation obligation or not. If the State is in good standing with the NPT, the UNSC would still have to make the State return to the supplier State(s) the material and technologies gained under the NPT. Prior to the restitution, its nuclear activities should be frozen and placed under IAEA safeguards. If the State is found to be in violation of the NPT, the UNSC has the authority to conclude that a withdrawal from the NPT of such a State would constitute a “threat to the peace” and may take measures under Chapter VII of the UN Charter.

At this stage, the UNSC may also take steps to censure the actions of a withdrawing State and make a statement condemning non-compliance with international obligations, requesting cooperation, and urging the cessation of certain activities. For UNSC members diplomatically and economically engaged with the targeted State, censure is an attractive alternative to Chapter VII actions, because it can be secured by consensus rather than requiring a vote on the record. Resolutions that order compliance or censure instances of non-compliance might buy time where more coercive actions can be too costly, or where consensus has not been reached on pursuing sanctions or military force.<sup>355</sup> However, if censure is the end result of UNSC involvement, it is likely that little has been gained.<sup>356</sup>

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<sup>355</sup> In recent years, the IAEA has indicated Iraq, the DPRK, Libya and Romania as candidates for censure, based on non-compliance alone, but every step towards censure has been controversial. See **Lodding Jan, Rauf Tariq**, *IAEA and NPT: The verification Challenge. Challenging Nuclear Issues Point Way Forward*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 20-25. Available at <

The third phase is a culmination of the UNSC activity as the decisions of the UNSC under Chapter VII of the UN Charter are mandatory and binding. As described above, the UNSC has a broad range of actions under Chapter VII. It may consider adopting provisional measures under Article 40, some punitive measures, beginning with non-forcible measures, economic sanctions and embargoes, and severance of diplomatic relations under Article 41 and, ultimately, other forms of military enforcement which must be pursued under Article 42.

A brief study on Article 42 sanctions included in this work suggests that it would be quite difficult, if not impossible, for the UNSC to authorize the use of force against an alleged violating State withdrawing from the NPT. The views of the UNSC permanent members differ on this issue and a consensus on it does not seem to be possible.

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[http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea\\_npt.pdf](http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea_npt.pdf) > (accessed on 28 December 2007).

<sup>356</sup> **Kanwar, Vik**, *Two Crises of Confidence: Securing Non-Proliferation and the Rule of Law Through Security Council Resolutions*, Ohio Northern University Law Review (2008), Vol. 34, p. 34. Available at < [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=vik\\_kanwar](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=vik_kanwar) > (accessed on 10 September 2009).

## **Conclusions of the Dissertation: *the UNSC has the mandate to respond to announcements of withdrawal from the NPT***

The withdrawal from the NPT under its Article X(1) and the role of the UNSC in the withdrawal process is the subject of this dissertation which is based on a multidisciplinary approach and, therefore, is reflective of the legal, historical and political aspects of the research issue. This dissertation studies the role of the UNSC by exploring the negotiation history of the withdrawal provision of the NPT, its implementation by the UNSC in cases of announcements of withdrawal from the NPT by the DPRK's of withdrawal in 1993 and 2003, and the discussion of Article X(1) by the NPT States in course of the NPT review cycle from 1993 to 2009.

The withdrawal provision of the NPT should be not implemented as to allow any abuse of the benefits of the Treaty, which is particularly important in strengthening the global nuclear non-proliferation regime. The dissertation focuses on the strengthening of Article X(1) withdrawal clause of the NPT to preserve the integrity of the Treaty against the horizontal nuclear-proliferation and to assess possible actions of the UNSC in this regard.

The NPT withdrawal clause is not detailed on the procedures that could follow the fulfilment of the withdrawal notification requirements. It only envisages that the States Parties and the UNSC are the recipients of a three-month advanced notification of the withdrawal and does not define their involvement in the process.

The focus of the dissertation was on the role of the UNSC in the NPT withdrawal clause, on the ways the UNSC could address announcements of withdrawal from the Treaty and the means by which it could respond to them. For this purpose, the dissertation studied



the powers of the UNSC under this provision; the debates on the role of the UNSC in the withdrawal from the NPT, which took place during the negotiations Article X(1) of the NPT; the unique practice of implementation of Article X(1) on withdrawal from the NPT made by the DPRK; the actions of the UNSC taken during the DPRK's announcements of withdrawal from the NPT; the views of the NPT States on the withdrawal from the NPT and the role of the UNSC in the process. The dissertation also included a study of the relevant powers of the UNSC under the UN Charter as well as the study on the decisions the UNSC may take in relation to withdrawal from the NPT.

Chapter 1 gives the reader necessary tools to understand the broader picture of the NPT and underlines the importance of the Treaty for international peace and security. It provides essential information on the NPT, its negotiation history, core concepts of the treaty based non-proliferation regime, and the analysis of its substantive provisions incorporated in its “three pillar” structure – disarmament, non-proliferation and peaceful uses of nuclear energy. The NPT was negotiated at the time when there was a potential for a rapid expansion of the “nuclear club” and hence a growing risk of nuclear conflict. In 1958, the Republic of Ireland introduced in the UNGA a draft resolution on non-proliferation proposing to establish a control mechanism over the dissemination of nuclear weapons. Following successful experimental explosion by France in 1960 and China in 1964,<sup>1</sup> the US and the USSR moved to the negotiations of a non-proliferation treaty. In November 1965, the UNGA adopted resolution 2028 calling for the conclusion of a non-proliferation treaty and asking the ENDC to charge itself with this task. Following extensive negotiations between the USSR and the US, in August 1967 the two States submitted for the consideration of the ENDC two separate but identical drafts of the text of a non-proliferation treaty that was approved by the UNGA. Following further revision of mainly of the Preamble and Articles IV and V, the UNGA adopted resolution 2373 on 12

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<sup>1</sup> See Chapter 1, ft. 28, p. 37.

June 1968, which “commended” the attached text of the NPT and expressed the hope for the widest possible adherence to the Treaty by both NWS and NNWS. The effort of years of negotiations of many States – the NPT – was signed by the USSR, the US, and other 60 States on the first day it was opened for signature on 1 July 1968. Since that time, the NPT has been considered as the cornerstone of the global nuclear non-proliferation and disarmament regime strengthening security and maintaining international peace.

Since its entry into force in 1970, the NPT has had numerous successful achievements that are of utmost importance for international peace and security and the dissertation described some of them. One of those is the “quasi universal” character of the NPT – after the UN Charter, the NPT is the most broadly adhered to international agreement bringing together 189 States.<sup>2</sup> The broad participation in the NPT established almost universal constraints on nuclear-non-proliferation. This near universal acceptance of the NPT could be also built to a certain extent on the presence of the withdrawal clause of Article X(1) of the NPT, which recognized the sovereign right of States to withdrawal from the Treaty, but at the same time provided for a withdrawal mechanism. Without the NPT, there would have been more States in possession of nuclear weapons and the number of such States might have reached at least 35 by now.<sup>3</sup> The positive non-proliferation and disarmament spirit of the NPT provided strong non-proliferation constraints and incentives for having non-nuclear status. Even after the dissolution of the USSR in December 1991, the former three Soviet republics – Belarus, Kazakhstan, and Ukraine – acceded to the NPT as NNWS and eliminated all nuclear weapons located on their territories.

The other achievement of the NPT is its indefinite extension. Pursuant to Article X(2) of the NPT, the Treaty was concluded by the States for a period of 25 years, after which a conference of NPT States had to decide whether the NPT could continue in force indefinitely, or could be extended for an additional fixed period. At the 1995 NPTREC, the

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<sup>2</sup> See Chapter 1.2.1. *Wide participation in the NPT.*

<sup>3</sup> See Annex 1: *Countries with nuclear weapons or programmes – past and present.*

States Parties to the NPT decided without a vote that the NPT “shall continue in force indefinitely”.<sup>4</sup> The Conference adopted without a vote a package of decisions on an indefinite duration of the NPT. The indefinite extension of the NPT was subject to certain conditions, embodied in Decision 1 “Strengthening the review process for the Treaty” and Decision 2 on “Principles and objectives for nuclear non-proliferation and disarmament”. The main condition was that the NWS should foster the implementation of their disarmament commitments under Article VI, including the conclusion of the CTBT. In the new post-Cold War era, the indefinite extension of the NPT was one of the most important measures taken to sustain nuclear non-proliferation efforts. It was the evidence of the recognition by the NPT States Parties of the importance of this Treaty as a measure for the preservation of international peace and trust in its positive contribution to the international security.

Another positive contribution of the NPT is the establishment of the current IAEA international safeguards system, which in accordance with Article III(1) to the Treaty requires the NNWS Parties to the NPT to conclude safeguards agreements with the IAEA to enable the IAEA to verify “the fulfilment of [their] obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices”. The objective of the safeguards is to ensure that nuclear and other material, services, equipment, facilities, and information are not used in such a way as to further any military purpose. The purpose of the application of the IAEA safeguards is to promote peaceful uses of nuclear energy, deter and identify possible incipient nuclear weapon programmes and enable enforcement of the IAEA Board of Governors and the UNSC resolutions on safeguards compliance. The IAEA safeguards system made it possible to discover Iraq’s clandestine nuclear weapon programme in 1991. After that the Members decided to strengthen the IAEA’s verification capacity to

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<sup>4</sup> See Chapter 1.2.2. *The NPT’s indefinite extension.*

contribute to global non-proliferation objectives and prevent illicit nuclear programmes. For this purpose, the IAEA Board of Governors adopted the AP in 1997, according to which the States have to provide the IAEA information on all peaceful nuclear activities and offer IAEA inspectors a wider access to nuclear sites so that the IAEA can verify that no nuclear material has been diverted to non-peaceful uses. IAEA safeguards play an indispensable role in the implementation of the NPT and help to create an environment conducive to nuclear confidence, cooperation and disarmament. IAEA safeguards also play a vital role in ensuring the security of nuclear trade, advancing the renaissance of nuclear energy without furthering danger of proliferation of nuclear weapons. Additionally, all imports and domestic production of nuclear weapon related materials were decided to be subject to safeguards, pursuant to the NPT, in order to assure the non-proliferation of nuclear weapons.

A NNWS that leaves the NPT exercising its withdrawal right under Article X(1) is no longer obliged by the requirements of Article III(1) of the NPT on safeguards, as well as all other NPT provisions, after it withdraws from the Treaty. Its safeguards agreement with the IAEA would be terminated and the IAEA would no longer be able to access its nuclear sites and to verify whether nuclear material is not diverted to non-peaceful uses. If such a withdrawn State has an intention to develop nuclear military programme, the IAEA would not be able to detect it and therefore the NPT would not be able to meet its goals of sustaining nuclear non-proliferation efforts.

Following the DPRK's second announcement of withdrawal from the NPT in 2003, the High-Level Panel on Threats, Challenges and Change said in December 2004 that the nuclear non-proliferation regime was at risk due to lack of compliance of States with their commitments under the Treaty, withdrawal or threats of withdrawal from the NPT made by the States Parties to escape their NPT commitments exposed the nuclear non-proliferation regime to a risk that could result in an irreversible cascade of proliferation.

Chapter 2 focuses on the NPT's withdrawal clause and the competence of the UNSC, and points out that the withdrawal clauses of other treaties on weapons proliferation and disarmament – the BTWC and CWC – have almost identical withdrawal mechanisms, which also envisage a role for the UNSC in the withdrawal process as a recipient of a notification of withdrawal, but do not explicate the actions the UNSC should take in such a case. Withdrawal provisions are simply procedural and do not identify any response action to such serious event as a withdrawal from the Treaty.

For the purpose of a better understanding of the content of the NPT's withdrawal Article X(1) and the intention of the negotiators to include the role of the UNSC in this clause, Chapter 2 presents a concise negotiation history of Article X(1) of the NPT. The research proved that during the negotiations of the NPT, there was concern that the intention and purpose of withdrawal from the Treaty could be for the development of a nuclear weapon capability based on the technology and material acquired while being a State Party to the NPT. It was deemed by the negotiators that withdrawal of such States would undermine the credibility of the NPT, negatively affect the collective security of all NPT States, and might even lead to the collapse of the Treaty.<sup>5</sup>

During the negotiations of the NPT withdrawal clause the main negotiators and at the same time the two co-chairs of the negotiations – the US and the USSR – had different views on the content of the withdrawal clause, which was negotiated on the model of the withdrawal clause of the PTBT. The US wanted a detailed withdrawal clause, while the USSR was of view that a withdrawal provision in the NPT might have been interpreted as a restriction on the sovereign right of the States to withdraw. The co-chairs also keeping in mind the goal to persuade all potential proliferators to sign and ratify the Treaty also had to take into account the views of the other States and the NNWS were also asked to contribute to the formulation of the withdrawal clause. For example Egypt was particularly interested

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<sup>5</sup> See Chapter 2.2. *The UNSC powers under the NPT withdrawal clause.*

in the issue of restrictions on the grounds for withdrawal and argued that withdrawal should depend on non-observance or violation of the NPT by any other Party, and also on the fact that a third State is supplying nuclear weapons to a NNWS Party to the NPT. However, the negotiations of the NPT withdrawal clause under Article X(1) were viewed in the light of developments in the negotiation of the NPT extension clause under Article X(2). The outcome of the negotiations of the NPT withdrawal brought a compromise arrangement consisting of two elements. One element was Article VIII mandating the depositaries of the NPT to convene a conference to review the implementation of the Treaty and the second one was an addition to Article X(2) introducing an initial twenty-five year duration limit for the NPT, thus giving the States the possibility to decide after twenty-five years whether to continue accepting the Treaty's constraints on acquiring nuclear weapons indefinitely or for a further fixed term or series of renewable fixed periods.

The final text of Article X(1) of the NPT was a compromise between the US and USSR positions as the clause starts with the recognition of the States' sovereignty right to withdraw from the Treaty. On the other hand, the NPT withdrawal, in comparison with the PTBT withdrawal clause, contained additional procedural and substantive restrictions on States contemplating to withdraw from the NPT in order to prevent any hasty withdrawal without limiting the basic right of withdrawal. Such additional restrictions introduced the requirement for a withdrawing State to submit a three-month notice of withdrawal not only all States Parties to the NPT, but also to the UNSC, and also to include in the withdrawal notice "a statement of the extraordinary events it regards as having jeopardized its supreme interests". According to Article X(1), a determination of the existence of the extraordinary events is left completely to the discretion of a State withdrawing from the NPT. However, during the negotiation of the withdrawal clause, some States were against such a freedom of action for a withdrawing State. For example, the representative of Egypt noted that leaving the definition of the grounds for withdrawal to the discretion of a withdrawing

State would enable an easy withdrawal from the NPT and undermine its credibility in this way. Though during the NPT negotiations many States submitted their proposals for the definition of the grounds for withdrawal that they wanted to be included in the NPT in order to limit the possibility of a withdrawing State to interpret “extraordinary events”, this key concept remained undefined in the final draft of Article X(1).

With regard to the role of the UNSC in the procedure of withdrawal from the NPT, the negotiators of the Treaty noted that the intention was to authorise the UNSC to consider a withdrawal of a State Party and take an action with respect to it in order to maintain international peace and security.<sup>6</sup> The negotiating parties that were in favour of the inclusion of the UNSC in the withdrawal mechanism stressed that observance of a non-proliferation treaty and its effectiveness are bound to be related to the powers of the UNSC, which – as this dissertation notes – according to Article 24 of the UN Charter has the primary responsibility for the maintenance of international peace and security.

The procedural issues of withdrawal from the NPT, which were not clearly defined during the negotiations of the Treaty, created favourable conditions for an easy withdrawal from the NPT of a potential violator. The State that employed Article X(1) procedures was the DPRK. The DPRK announced withdrawal from the NPT twice, the first time in 1993 and the second in 2003. In 1993, the DPRK’s case ended up before the UNSC only because the IAEA reported to the UNSC that the DPRK had been found to be in non-compliance with its NPT safeguards agreement. Therefore, the issue under discussion by the UNSC was the DPRK’s failure to adhere to its obligations under a Safeguards Agreement with the IAEA. The DPRK’s subsequent announcement of intent to withdraw from the NPT also became a focus of the UNSC.

Since there was no agreement in the UNSC to take up these issues in a formal meeting and the UNSC took up the matter in informal consultations trying to restore

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<sup>6</sup> See Chapter 2.2.2.2. *Assessment of procedural requirements for withdrawal.*

compliance by the DPRK with the NPT and prevent further proliferation of the nuclear threat. The outcome of the consultations was a brief statement of the UNSC President on behalf of the Members of the UNSC which emphasized the importance of the NPT, but did not directly address the withdrawal issue.

This “soft” response of the UNSC was due to the lack of a clear definition in Article X(1) of the NPT of the role of the UNSC in withdrawal mechanism. Therefore, the UNSC Members had different views on a possible response of the UNSC to the announcement of withdrawal depending on their interpretation of Article X(1) and of the related powers of the UNSC. However, later, the UNSC managed to agree upon inclusion in its agenda of the letter from the DPRK declaring its decision to withdraw from the NPT. Nevertheless, the representatives of the DPRK invited by the UNSC also stressed that the UNSC had no legal or technical ground to discuss the DPRK’s withdrawal from the NPT. As mentioned above, this rejection of the involvement of the UNSC in the assessment of an announcement of withdrawal was because the NPT’s withdrawal clause does not envisage a response mechanism to withdrawal from the NPT and does not define the actions the UNSC may take in such a case.

Regardless of the protests of the DPRK, the UNSC adopted resolution 825 on 11 May 1993. However, the resolution was rather soft. It did not make any reference to Article 39, or to Chapter VII of the UN Charter, only called upon the DPRK to reconsider the announcement of its intention to withdraw from the NPT. Though the UNSC response to the announcement of withdrawal from the NPT was restrained and the UNSC did not impose any sanctions in relation to the DPRK’s notification of withdrawal, it still pointed to the concerns of the UNSC with the DPRK’s actions with respect to the NPT and pointed out that those were under international scrutiny being considered as unacceptable for nuclear non-proliferation regime. The first announcement of withdrawal did not take effect as the DPRK being interested in participating in the 1993 NPT PrepCom suspended its



announcement of withdrawal from the NPT only one day short of the three months period provided for in Article X(1) of the NPT.<sup>7</sup>

The second DPRK announcement of withdrawal from the NPT took place on 10 January 2003, when the DPRK in its letter to the President of the UNSC informed the UNSC about its decision to revoke the 1993 suspension of its notice of withdrawal from the NPT and declared that it would take full effect the next day – on 11 January 2003 – and the DPRK would thus no longer be bound by the NPT.<sup>8</sup> In this case, though the UN and the IAEA made their statements on the matter, none of the NPT States responded to the DPRK's announcement. The stalemate in the UNSC was mainly due to the objections to the UNSC's involvement maintained by China and Russia. Again, as in 1993, the UNSC States were not sure about the UNSC competence in addressing withdrawal from the NPT. This problem paralyzed the UNSC response to the DPRK's announcement of withdrawal. The only action the UNSC took in this regard was a statement of the President of the UNSC saying that UNSC members "expressed their concern and the Council will continue to follow up developments on this matter". In this case, the UNSC did not deploy its powers under the UN Charter to respond to the DPRK's announcement of withdrawal from the NPT and the DPRK considers itself as having withdrawn from the NPT, though the majority of the NPT States did not accept this view and still consider the DPRK as a Party to the NPT.<sup>9</sup>

Given the divergence of the views of NPT States on the authority of the UNSC to address the DPRK's announcement of withdrawal from the NPT as it happened in 1993 and 2003, the dissertation assessed the views of the NPT States Parties on the role of the UNSC under Article X(1) of the NPT, which they expressed in 1993-2009. The NPT review process is the official forum where the States review the implementation of the NPT

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<sup>7</sup> See Chapter 2.3.4. *The DPRK nuclear crisis and the second announcement of withdrawal from the NPT in 2003.*

<sup>8</sup> See Chapter 2.3.5. *The response of the UNSC to the DPRK's announcement of withdrawal in 2003.*

<sup>9</sup> See Chapter 3.4. *Withdrawal discussion at the 2003 NPT PrepCom.*

review process and express their view on it. Relying on an empirical approach, an extensive study of the primary sources was undertaken in the dissertation to provide a thorough assessment of the views of the NPT States with regard to the role of the UNSC in the implementation of Article X(1) of the NPT. Chapter 3 reviewed and assessed the statements delivered by the States, their national reports, working papers, and final papers produced in course of the NPT review cycle from 1993 to 2009. This effort produced the first empirical study on the issue of withdrawal from the NPT.

Following the DPRK's first announcement of withdrawal in 1993, the matter was not discussed in the NPT review cycle. The implementation of Article X(1) of the NPT was first discussed in 2003. However, the discussion did not address the role of the UNSC in the withdrawal process. The first support of a stronger involvement of the UNSC in the withdrawal from the NPT was expressed in 2004, when the Republic of Korea, and France, invited constructive proposals, including the idea of requiring the approval of the UNSC for withdrawal. Germany noted that the UNSC's role in the NPT should be strengthened and suggested establishing a "Code of Conduct" for the UNSC to deal with the cases of serious violations of the NPT and other treaties on WMD and possibly providing automatic responses to such cases.

Since 2005, the issue of implementation of Article X(1) of the NPT has become a part of the agenda of the NPT review process and has been discussed by the NPT States Parties under the group of matters identified as *Cluster 3 - Specific Issue* "Other provisions of the Treaty, including Article X".<sup>10</sup> In 2005, the States began to call for a clear role of the UNSC under Article X(1), which should make it more costly for any State to withdraw from the NPT in the future. These proposals stated that the UNSC should respond in a unified manner to announcements of withdrawal working closely with the IAEA on matters of non-compliance, safeguards and verification processes. In 2005, following the trend

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<sup>10</sup> See Chapter 3.6. *Addressing withdrawal at the 2005 NPT RevConf*.

established by the UNSC permanent States, more NPT States were open to consider various options on the UNSC's involvement in the implementation of Article X(1) of the NPT including approval of any withdrawal from the Treaty by the UNSC.

Germany recognized the central role of the UNSC in considering that such withdrawals must be approved by the UNSC and that this would strengthen confidence in the UNSC's ability to act decisively, effectively and in a unified manner. The US proposed a detailed elaboration of the involvement of the UNSC at all stages of the notification and process of withdrawal beginning with a prompt meeting of the UNSC to consider the consequences of a withdrawal of an NPT State and the measures to stop a withdrawal by addressing and resolving the extraordinary circumstances cited by a withdrawing State Party. The US suggested that in case a withdrawal took place, the UNSC should consider the full range of options available under the UN Charter, particularly if a withdrawn State had breached its obligations under the NPT.

Thus, since 2005 the NPT States started supporting major involvement of the UNSC at all stages of the notification and process of withdrawal and proposed stringent measures to be imposed by the UNSC following a withdrawal from the Treaty. This was not the only mechanism proposed by the States. For instance, Canada proposed that withdrawals from the NPT should be dealt with by an extraordinary Conference of NPT States, which should be convened within two weeks of submission by a State of a notification of withdrawal. However, this proposal did not enjoy broad acceptance, as the preference of the majority of NPT States was to see the UNSC deal with withdrawals from the NPT given that it was already mentioned in Article X(1) of the NPT.

At the 2005 NPT RevConf, the issue of the implementation of Article X(1) and the role of the UNSC started acquiring a greater importance for NPT States though some of them were still reluctant to suggest any specific withdrawal mechanism or define the role of the UNSC in the process. Though the 2005 NPT RevConf failed to agree on a final

report on the implementation of the Treaty or on the draft report of Main Committee III because of the differences of the States' views on some key issues other than withdrawal, the draft report of Main Committee III included the wording saying that withdrawal from the NPT may pose threats to international peace and security and thus it is to be assessed by the UNSC according to the UN Charter.<sup>11</sup> This was an important progress achieved in this area since the 2003 DPRK's announcement of withdrawal from the NPT.

Since the 2007 NPT PrepCom, there started emerging some opposition of the NAM States to the view that the UNSC should be involved in the procedure of withdrawal from the NPT. The views of some States, such as Japan, Australia, the EU, New Zealand, and others expressed in 2007 reflected the principles of involvement of the UNSC proposed by the US at the 2005 NPT RevConf and further elaborated on them. They supported the views that the UNSC should convene automatically and immediately when any State gives a notice of withdrawal. Japan in its statement picked up the language of the 2005 Draft Report of Main Committee III and said that the involvement of the UNSC in withdrawal from the NPT was vital because a withdrawal from the NPT could deeply affect international peace and security. The US position became tougher as it expressed its firm belief that there should be defined specific measures the UNSC could take in a case of withdrawal from the NPT. For instance, it proposed that in such cases the UNSC should consider whether a withdrawal from the NPT could constitute a threat to international peace and security should consider the full range of options provided by the UN Charter, including under Chapter VII, depending on the circumstances of the case. At the 2005 NPT RevConf, one UNSC permanent member – the UK – did not address at all the matter of the role of the UNSC in the implementation of Article X(1). And, Canada also maintained its line of not referring to the role of the UNSC. However, given the divergence of the views on the role of the UNSC expressed by the NPT States, the Chair of the 2005 NPT RevCpnf

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<sup>11</sup> See Chapter 3. *Conclusion: 2005 NPT RevConf*.

could not conclude that there was an agreement on defining a clear role of the UNSC in implementing Article X(1). Therefore, his conclusion on the role of the UNSC under Article X(1) was quite weak and mentioned only that the role of the UNSC had been underlined by the NPT States.

At the 2008 NPT PrepCom, the discussion of the role of the UNSC under Article X(1) of the NPT became more polarized between the NAM and the Western States, including the US, Japan, and the Republic of Korea. South Africa, Indonesia and Iran, as the NAM States, opposed the proposals on a major role of the UNSC and introduced a new argument stating that some States' proposals were directed at reinterpretation of Article X(1) of the NPT and supported their position by referring to the Vienna Convention on the Law of Treaties (VCLT), under which withdrawal from the NPT was a sovereign right. Without making any reference to the UNSC actions under Chapter VII of the UN Charter, that had been advocated by the US, Japan, France, the EU and others since 2005, South Africa rejected any possible *ex post facto* penalization of withdrawal from the NPT and held that such penalization was not envisaged in the NPT itself and would be inappropriate.

The objections against defining a clear role for the UNSC and giving possibility to its actions under Chapter VII of the UN Charter were also made by Indonesia, which criticised the decision-making process in the UNSC and the veto rights of its permanent members, and therefore could not accept the proposals that were promoting the UNSC to assess withdrawals and take decisions on that matter. In 2008, a new player on the stage of discussions of Article X(1) of the NPT was Iran, which stated that such discussion should not be ranked as a priority issue in the NPT review process. However, Iran did not object explicitly to the proposals related to the role of the UNSC. The positions of the Western States remained unchanged and they continued supporting the centrality of the role of the UNSC in the implementation of Article X(1).

Many NPT States being concerned with the missile launches by the DPRK in April 2009, bolstered their arguments at the 2009 NPT PrepCom for a strengthened mechanism of withdrawal that would not allow withdrawals by potential violators of the NPT, by increasing disincentives to withdraw from the Treaty, strengthening and formalizing international responses to any cases of withdrawal, including an immediate referral to the case to the UNSC. The US, for instance, submitted a very detailed set of principles of a response mechanism envisaging an action of the UNSC or an action outside the UNSC, and, if possible, support diplomatic solution. These principles were broadly supported by most of the Western States during the discussions on withdrawal from the NPT. The EU, Japan, and the Republic of Korea reiterated their positions from the previous years and focused on the establishment of a framework that would help to manage the consequences of a State's decision to withdraw from the NPT. The States did not question the sovereign right of the States to withdraw from the NPT, but many of them deemed that withdrawal from the NPT could constitute a serious threat to international peace and security, though the Russian Federation was not sure that such threat would be that much dangerous for the NPT and, therefore, hesitated that it should be subject to consideration by the UNSC as a matter of urgency. This position was not in line with the view of most of the Western States. However, not all of the Western States were supportive of the strengthening of the role of the UNSC in the implementation of Article X(1). For instance, since 2005, Canada has proposed a Standing Bureau to deal with withdrawals and has not said that the issue should be dealt with by the UNSC. At the same time, the "opposition" to the proposals for a major role for the UNSC started consolidating in 2009 enjoying the support of the NAM, South Africa, Iran, Indonesia, Cuba which in 2009 mainly reiterated their views expressed at the 2008 NPT PrepCom and Iran warned again that the 2010 NPT RevConf should deal with more important priorities and challenges than Article X(1) of the NPT.

In 2009, there seemed to be a lack of interest of the three permanent members of the UNSC – China, France, and the UK – which did not express their views on the matter, while the US softened its position and the Russian Federation did not have a strong view on the role of the UNSC. This situation poses more questions rather than gives answers to the evolution and possible conclusions of the discussion on the role of the UNSC in the implementation of Article X(1) at the 2010 NPT RevConf. Do these States have hesitations about the authority of the UNSC to deal with withdrawal from the NPT? Do they have doubts about whether a withdrawal from the NPT could be considered as a threat to peace? Are they reluctant the UNSC to take response measures under Chapter VII? Are they unwilling to agree on the response measures at the NPT PrepComs/RevConf because they foresee that some of the permanent members of the UNSC would veto decisions related to Article X(1) of the NPT? Or did they start losing their interest under the pressure of the NAM “opposition”?

Nevertheless, many NPT States pointed out that NPT withdrawal would have to be a key issue for the 2010 NPT RevConf. They reiterated their expectation for the 2010 NPT RevConf to adopt a decision or a guideline on Article X(1) providing an agreed clarified interpretation of Article X(1). Such measures should be directed at the strengthening of the clause and would efficiently prevent the possibility of abuse of the right to withdraw from the NPT and would contribute to the strengthening of the NPT regime.

The NPT States became aware of a difficulty to reach consensus on any measures designed to make withdrawal from the NPT more difficult. The “opposition” did not recognize the authority of the UNSC to deal with the withdrawal from the NPT and will most probably get even more consolidated at the 2010 NPT RevConf. This may lead to a bigger disagreement between the NAM and the Western States on the issue, further polarization their views on the matter, and most probably preclude them from agreeing on a role for the UNSC in the implementation of Article X(1) of the NPT. Moreover, if some of

the permanent members of the UNSC happen to be unwilling to support the strengthening of the NPT withdrawal clause by giving major role to the UNSC, the 2010 NPT RevConf would not even get close to having such proposals reflected in the NPT RevConf papers and/or in the conclusions of the President of the 2010 NPT RevConf. If it is the case, this would be another lost opportunity for the NPT States to strengthen Article X(1) of the NPT making the Treaty more resistant to any further proliferation of nuclear weapons unleashed by a withdrawal from the Treaty. At the moment, there are no risks of possible withdrawal from the NPT. But as in the case of the DPRK, its notices of withdrawal from the Treaty were unexpected as well and the NPT was not ready to respond to them. The NPT States should learn this tough lesson and agree upon measures to be taken in such cases to avoid making the same mistakes in the future.

Taking into consideration the concerns of some of the NPT States about the authority of the UNSC in dealing with withdrawal, Chapter 4 studied the powers of the UNSC under the UN Charter to identify its competence to address such issue. It is important to be aware of the untapped potential of the UN Charter and of the flexibility of its provisions that the drafters so wisely built into this document a long time ago. The research proved that the intention of the drafters of the UN Charter was to create a strong new organization – the UN – able to deal effectively with peace and security issues, better than the League of Nations. At the time of the establishment of the UN, the maintenance of international peace and security was the main *raison d'être* of the Organization. For this purpose, they decided to create an organ that could ensure prompt and effective action to settle disputes or take enforcement action in the cases of a threat to the peace, breach of peace or act of aggression – the UNSC. These core powers of the UNSC are enshrined in Articles 24 and 25 of the UN Charter. Under Article 24(1) of the UN Charter, UN Member States confer on the UNSC primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the



UNSC acts on their behalf. Pursuant to Article 25 of the UN Charter, the UN Members agree to accept and carry out the decisions of the UNSC in accordance with the UN Charter. These powers of the UNSC are studied in Chapter 4. Since the UN Charter does not have a clause on interpretation on its provisions, each UN organ has right to interpret the UN Charter provisions on their activities. Thus, the UNSC has an exclusive competence to interpret and apply Article 39 of the UN Charter and, thereby, to activate the application of Chapter VII measures. The research upholds that there is not any fixed definition of the concept of a “threat to the peace”, which, moreover, has been expanded in the UNSC practice. Combining these powers of the UNSC together, the UNSC is the most influential organ of the UN.

A thorough assessment of these provisions, as it has been made in this dissertation, should not leave space to the doubts of the NPT States, which were mentioned above, about the UNSC’s competence in dealing with withdrawal from the NPT. The NPT States should not attempt to limit the UNSC in the exercise of its powers under Article 24(1) of the UN Charter by denying it a role in the implementation of Article X(1) of the NPT. As the organ charged with the primary responsibility for the maintenance of international peace and security at the international level and the most powerful organ of the UN, the UNSC will inevitably be a target of criticism of the States and verification of its mandate and legality of its actions. However, a misuse of the UNSC’s authority would lead to the cases of disruption of international order, peace and security.

The case of the DPRK has proved that withdrawal of an NPT State, which is not in a good standing with its obligations under the NPT, would result in nuclear proliferation. In 1992, the UNSC members expressed the view that nuclear proliferation constitutes threat to international peace and security.<sup>12</sup> Therefore, in order to fulfil its mandate under Article 24(1) maintaining and restoring international peace and security, the UNSC shall consider

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<sup>12</sup> S/23500 (31 January 1992), UNSC Res. 687 (3 April 1991), UNSC Res. 1540 (28 April 2004), UNSC Res. 1673 (27 April 2006), UNSC Res. 1874 (12 June 2009).

an announcement of withdrawal from the NPT under Article 39 to assess whether it constitutes a “threat to the peace”. However, the UNSC did not seem to have exercised fully its powerful authority when addressing the 1993 and 2003 DPRK’s announcements of withdrawal from the NPT. In 1993, its response by means of a statement of the UNSC President and resolution 825 was very modest. It did not assess the withdrawal under Article 39 of the UN Charter and it did not consider application of Chapter VII measures. In 2003, the UNSC’s response was even weaker as there was only one statement of the President of the UNSC saying that UNSC members “expressed their concern and the Council will continue to follow up developments on this matter”. These actions of the UNSC were not fully adequate to meet its mandate under Article 24(1) as they lacked prompt and effective action that could have prevented nuclear proliferation risk that followed the DPRK’s announcement of withdrawal. Therefore, it is difficult to sustain that in those cases the UNSC discharged properly its “primary responsibility for the maintenance of international peace and security”, which was conferred on it by the outset of the UN Charter.

The lack of action of the UNSC was mainly due to the reluctance of some of its permanent members – China and Russia – as it was explained in Chapter 2 of the dissertation. The UNSC actions to a great extent depend on the will of its permanent members, which seemed to be reluctant to consider the DPRK’s announcement of withdrawal under Article 39. The 2009 NPT PrepCom also registered decrease of interest of the UNSC permanent members in the problems related to the implementation of Article X(1) and promoting a major role of the UNSC in it.

Hopefully, the situation would improve and the UNSC would be more active to provide appropriate response to withdrawal from the NPT given that the UNSC adopted resolution 1887 on 24 September 2009, under which it undertook to address without delay any State’s notice of withdrawal from the NPT, including the reasons for withdrawal

described in the statement of a withdrawing State in accordance with Article X(1) of the Treaty. At this stage, the UNSC would have to be able and ready to engage effectively in both preventive diplomacy and enforcement measures, with the tools and methods in place necessary to cope with existing and emerging threats to international peace and security. With regard to identifying modalities of collective response to notification of withdrawal, the resolution 1887 states that the UNSC would have take into consideration the discussions in the course of the NPT review. Hopefully, this resolution brought the UNSC members closer in the collaboration in the area of non-proliferation and would help to adopt a decision or a guideline for the implementation of Article X(1), providing an agreed clarified interpretation of Article X(1) and defining the role of the UNSC in it with the consideration of the UNSC mandate under Article 24(1) of the UN Charter.

In exercising its powers, the UNSC should consider any notice on withdrawal from the NPT to be potentially an issue of fundamental importance to international peace and security. For the purpose of an effective response to a notice of withdrawal and taking into consideration a time limit for the withdrawal to take place three months after the notice of withdrawal is submitted, the UNSC would have to consider the matter as a matter of urgency, as it has been proposed by many NPT States. Bearing in mind the views of the NPT States that the withdrawal from the NPT is a “threat to the peace”, it would be highly desirable that a “threat to the peace” under Article 39 had to be identified at an earlier stage to avert that threat. In case of existence of an actual threat, the UNSC should be prepared to authorize a series of binding measures under Chapter VII of the UN Charter.

The overall conclusion of the dissertation is that the UNSC in fulfillment of its powers under the UN Charter has the authority to assess every notification of withdrawal from the NPT and generate a response to it. In case the UNSC considers a withdrawal from the NPT as a threat to international peace, it should apply measures under Chapter VII of the UN Charter, which bring binding obligations on would-be proliferators. It would be up

to the UNSC to decide whether to address every case of NPT withdrawal individually or to develop in advance a mechanism of assessment and response to such actions. UNSC resolutions would be able to provide confidence-building measures.

The practical value of this dissertation is that it provides analysis and a background material for the high level discussions on withdrawal from the NPT and the role of the UNSC in the withdrawal mechanism. The forthcoming debate at the level of States on the issue of withdrawal will take place at the Headquarters of the UN, in New York in May 2010.<sup>13</sup> This will be the 2010 NPT RevConf, during which the issue of implementation of Article X(1) of the NPT will be discussed again by the NPT States Parties agenda item 16 (e), “Other provisions of the Treaty, including Article X”.<sup>14</sup> The information laid down in the dissertation may contribute to the debate on the strengthening of Article X(1) on the Treaty so that the UNSC would be better positioned to anticipate and respond to emerging challenges to peace and security posed by the withdrawal from the NPT, and the States could predict UNSC actions and rely upon norms guiding UNSC measures to avoid complex proliferation crises.

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<sup>13</sup> “The Committee decided to hold the Review Conference in New York from 3 to 28 May 2010.” See **NPT/CONF.2010/PC.III/DEC.1** (13 May 2009). Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N09/336/31/PDF/N0933631.pdf?OpenElement> > (accessed on 12 October 2009).

<sup>14</sup> The Conference adopted its Agenda (**NPT/CONF.2005/30**) at its 14th plenary meeting, on 11 May 2005. Available at < <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/66/PDF/N0534166.pdf?OpenElement> > (accessed on 21 June 2009). See also *Decision on subsidiary bodies*, **NPT/CONF.2005/DEC.2** (18 May 2005), para. c.; *Allocation of items to the Main Committees of the Conference*, **NPT/CONF.2005/DEC.1** (18 May 2005).

## **ANNEXES**

## Annex 1: States with nuclear weapons or programmes – past and present<sup>1</sup>

### NPT NUCLEAR WEAPON STATES

China United Kingdom  
France United States  
Russia

### RECENTLY TERMINATED PROGRAMMES

Iraq  
Libya

### NON-NPT NUCLEAR WEAPON STATES

India  
Israel  
Pakistan

### GAVE UP INHERITED WEAPONS

Belarus  
Kazakhstan  
Ukraine

### SUSPECTED PROGRAMMES

Iran  
North Korea

### PROGRAMMES OR CONSIDERATION ENDED AFTER 1970

Argentina <sup>a</sup>	South Korea
Australia <sup>b</sup>	Spain
Brazil	Switzerland <sup>b</sup>
Canada <sup>c</sup>	Taiwan
Romania	Yugoslavia
South Africa	

### INTENTIONS SUSPECTED BUT NO WEAPONS PROGRAMME IDENTIFIED

Algeria  
Saudi Arabia  
Syria<sup>e</sup>

### PROGRAMMES OR CONSIDERATION ENDED BEFORE 1970

Egypt	Norway <sup>b</sup>
Italy <sup>b</sup>	Sweden <sup>c</sup>
Japan <sup>b</sup>	West Germany <sup>d</sup>

*Note: Thirty-five countries in total.*

<sup>a</sup> Country had an active nuclear programme, but intent to produce weapons is unconfirmed.

<sup>b</sup> A programme for nuclear weapons was debated, but active nuclear programmes were civilian in nature.

<sup>c</sup> Canada had between 250 and 450 US-supplied NW deployed on Canadian delivery systems until the early 1980s. In 1978, Prime Minister Pierre Trudeau declared that Canada was “the first nuclear-armed country to have chosen to divest itself of nuclear weapons.” See **Duane Bratt**, *Canada’s Nuclear Schizophrenia*, Bulletin of the Atomic Scientists (March/April 2002), Vol. 58, No. 2, pp. 44–50.

<sup>d</sup> Though West Germany never went beyond consideration of an indigenous NW programme, Bonn did possess US-supplied NW. These weapons required the explicit approval of the American president before they could be used.

<sup>e</sup> Syria has been subject to the reports of the IAEA since November 2008.

<sup>1</sup> **Perkovich George, Mathews Jessica T., Cirincione Joseph, Gottemoeller Rose, Wolfsthal, Jon B.**, *Universal Compliance: A Strategy for Nuclear Security*, (Washington: Carnegie Endowment for International Peace, March 2005), p. 20.

<sup>e</sup> “The original members of the Eurodif study group included private and governmental organizations from Belgium, Italy, Spain, Sweden, FR Germany, the Netherlands and the UK. The latter three countries, after they formed Urenco, withdrew from Eurodif in May 1973 [13b]. In the same year the remaining countries transformed the study group into a private enrichment company, which in 1974 decided to build a large gaseous diffusion plant in France at Tricastin. Sweden subsequently withdrew from the project in 1974 [18b], probably because of the uncertain prospects for future expansion of its nuclear power plant capacity. Sweden’s existing enrichment needs were already satisfied by supply contracts with the USA and the USSR. Their 10 per cent share in Eurodif went to Iran in 1975, when the Iranian Atomic Energy Commission and the French company Cogema (a wholly owned subsidiary of the CEA) established the enterprise Sofidif (60 per cent Cogema, 40 per cent Iranian AEO), which acquired a 25 per cent share in Eurodif.” Quoted from Krass, p. 200.

## **Annex 2: Treaty withdrawal - notification requirements**

### **Non-Proliferation Treaty (NPT)**

#### Article X

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

### **Biological and Toxin Weapons Convention (BTWC)**

#### Article XIII

(1) This Convention shall be of unlimited duration.

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

### **Chemical Weapons Convention (CWC)**

#### Article XVI

##### DURATION AND WITHDRAWAL

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention if it decides that extraordinary events, related to the subject-matter of this Convention, have jeopardized the supreme interests of its country. *It shall give notice of such withdrawal 90 days in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council.* Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests. *(emphasis added)*

## Annex 3: UNSC Declaration on Disarmament, Arms Control and Weapons of Mass Destruction, S/23500, 31 January 1992

UNITED  
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### Security Council

Distr.  
ORIGINAL

S/23500  
31 January 1992

ORIGINAL: ENGLISH

#### NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

At the conclusion of the 3046th meeting of the Security Council, held at the level of Heads of State and Government on 31 January 1992 in connection with the item entitled "The responsibility of the Security Council in the maintenance of international peace and security", the President of the Security Council made the following statement on behalf of the members of the Council.

"The members of the Security Council have authorized me to make the following statement on their behalf.

"The Security Council met at the Headquarters of the United Nations in New York on 31 January 1992, for the first time at the level of Heads of State and Government. The members of the Council considered, within the framework of their commitment to the United Nations Charter, 'The responsibility of the Security Council in the maintenance of international peace and security'. <sup>1/</sup>

<sup>1/</sup> The meeting was chaired by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland as the President of the Security Council for January. Statements were made by His Excellency Dr. Franz Vranitzky, Federal Chancellor of Austria, His Excellency Mr. Wilfried Martens, Prime Minister of Belgium, His Excellency Dr. Carlos Alberto Wahnnon de Carvalho Veiga, Prime Minister of Cape Verde, His Excellency Mr. Li Peng, Premier of the State Council of China, His Excellency Dr. Rodrigo Borja-Cevallos, Constitutional President of Ecuador, His Excellency Mr. François Mitterrand, President of France, His Excellency Dr. Géza Jeszenszky, Minister for Foreign Affairs and Personal Envoy of the Prime Minister of Hungary, His Excellency Mr. P. V. Narasimha Rao, Prime Minister of India, His Excellency Mr. Kiichi Miyazawa, Prime Minister of Japan, His Majesty Hassan II, King of Morocco, His Excellency Mr. Boris N. Yeltsin, President of the Russian Federation, His Excellency the Rt. Hon. John Major MP, Prime Minister of the United Kingdom of Great Britain and Northern Ireland, His Excellency Mr. George Bush, President of the United States of America, His Excellency Dr. Carlos Andrés Pérez, President of Venezuela and His Excellency Dr. Nathan Shamuyarira, Minister of Foreign Affairs and Personal Envoy of the President of Zimbabwe, as well as by the Secretary-General, His Excellency Dr. Boutros Boutros-Ghali.



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English  
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"The members of the Security Council consider that their meeting is a timely recognition of the fact that there are new favourable international circumstances under which the Security Council has begun to fulfil more effectively its primary responsibility for the maintenance of international peace and security.

"A time of change

"This meeting takes place at a time of momentous change. The ending of the Cold War has raised hopes for a safer, more equitable and more humane world. Rapid progress has been made, in many regions of the world, towards democracy and responsive forms of government, as well as towards achieving the Purposes set out in the Charter. The completion of the dismantling of apartheid in South Africa would constitute a major contribution to these Purposes and positive trends, including to the encouragement of respect for human rights and fundamental freedoms.

"Last year, under the authority of the United Nations, the international community succeeded in enabling Kuwait to regain its sovereignty and territorial integrity, which it had lost as a result of Iraqi aggression. The resolutions adopted by the Security Council remain essential to the restoration of peace and stability in the region and must be fully implemented. At the same time the members of the Council are concerned by the humanitarian situation of the innocent civilian population of Iraq.

"The members of the Council support the Middle East peace process, facilitated by the Russian Federation and the United States, and hope that it will be brought to a successful conclusion on the basis of Council resolutions 242 (1967) and 338 (1973).

"They welcome the role the United Nations has been able to play under the Charter in progress towards settling long-standing regional disputes, and will work for further progress towards their resolution. They applaud the valuable contribution being made by United Nations peace-keeping forces now operating in Asia, Africa, Latin America and Europe.

"The members of the Council note that United Nations peace-keeping tasks have increased and broadened considerably in recent years. Election monitoring, human rights verification and the repatriation of refugees have in the settlement of some regional conflicts, at the request or with the agreement of the parties concerned, been integral parts of the Security Council's effort to maintain international peace and security. They welcome these developments.

"The members of the Council also recognize that change, however welcome, has brought new risks for stability and security. Some of the most acute problems result from changes to State structures. The members of the Council will encourage all efforts to help achieve peace, stability and cooperation during these changes.

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Page 3

"The international community therefore faces new challenges in the search for peace. All Member States expect the United Nations to play a central role at this crucial stage. The members of the Council stress the importance of strengthening and improving the United Nations to increase its effectiveness. They are determined to assume fully their responsibilities within the United Nations Organization in the framework of the Charter.

"The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.

#### "Commitment to collective security

"The members of the Council pledge their commitment to international law and to the United Nations Charter. All disputes between States should be peacefully resolved in accordance with the provisions of the Charter.

"The members of the council reaffirm their commitment to the collective security system of the Charter to deal with threats to peace and to reverse acts of aggression.

"The members of the Council express their deep concern over acts of international terrorism and emphasize the need for the international community to deal effectively with all such acts.

#### "Peacemaking and peace-keeping

"To strengthen the effectiveness of these commitments, and in order that the Security Council should have the means to discharge its primary responsibility under the Charter for the maintenance of international peace and security, the members of the Council have decided on the following approach.

"They invite the Secretary-General to prepare, for circulation to the Members of the United Nations by 1 July 1992, his analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping.

"The Secretary-General's analysis and recommendations could cover the role of the United Nations in identifying potential crises and areas of instability as well as the contribution to be made by regional organizations in accordance with Chapter VIII of the United Nations Charter in helping the work of the Council. They could also cover the need for adequate resources, both material and financial. The

Secretary-General might draw on lessons learned in recent United Nations peace-keeping missions to recommend ways of making more effective Secretariat planning and operations. He could also consider how greater use might be made of his good offices, and of his other functions under the United Nations Charter.

"Disarmament, arms control and weapons of mass destruction

"The members of the Council, while fully conscious of the responsibilities of other organs of the United Nations in the fields of disarmament, arms control and non-proliferation, reaffirm the crucial contribution which progress in these areas can make to the maintenance of international peace and security. They express their commitment to take concrete steps to enhance the effectiveness of the United Nations in these areas.

"The members of the Council underline the need for all Member States to fulfil their obligations in relation to arms control and disarmament; to prevent the proliferation in all its aspects of all weapons of mass destruction; to avoid excessive and destabilizing accumulations and transfers of arms; and to resolve peacefully in accordance with the Charter any problems concerning these matters threatening or disrupting the maintenance of regional and global stability. They emphasize the importance of the early ratification and implementation by the States concerned of all international and regional arms control arrangements, especially the START and CFE Treaties.

"The proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.

"On nuclear proliferation, they note the importance of the decision of many countries to adhere to the Non-Proliferation Treaty and emphasize the integral role in the implementation of that Treaty of fully effective IAEA safeguards, as well as the importance of effective export controls. The members of the Council will take appropriate measures in the case of any violations notified to them by the IAEA.

"On chemical weapons, they support the efforts of the Geneva Conference with a view to reaching agreement on the conclusion, by the end of 1992, of a universal convention, including a verification regime, to prohibit chemical weapons.

"On conventional armaments, they note the General Assembly's vote in favour of a United Nations register of arms transfers as a first step, and in this connection recognize the importance of all States providing all the information called for in the General Assembly's resolution.

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English  
Page 5

"In conclusion, the members of the Security Council affirm their determination to build on the initiative of their meeting in order to secure positive advances in promoting international peace and security. They agree that the United Nations Secretary-General has a crucial role to play. The members of the Council express their deep appreciation to the outgoing Secretary-General, His Excellency Mr. Javier Pérez de Cuéllar, for his outstanding contribution to the work of the United Nations, culminating in the signature of the El Salvador peace agreement. They welcome the new Secretary-General, His Excellency Dr. Boutros Boutros-Ghali, and note with satisfaction his intention to strengthen and improve the functioning of the United Nations. They pledge their full support to him, and undertake to work closely with him and his staff in fulfilment of their shared objectives, including a more efficient and effective United Nations system.

"The members of the Council agree that the world now has the best chance of achieving international peace and security since the foundation of the United Nations. They undertake to work in close cooperation with other United Nations Member States in their own efforts to achieve this, as well as to address urgently all the other problems, in particular those of economic and social development, requiring the collective response of the international community. They recognize that peace and prosperity are indivisible and that lasting peace and stability require effective international cooperation for the eradication of poverty and the promotion of a better life for all in larger freedom."

**Annex 4: Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/25405, 12 March 1993**

**UNITED  
NATIONS**

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**Security Council**

Distr.  
GENERAL

S/25405  
12 March 1993

ORIGINAL: ENGLISH

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LETTER DATED 12 MARCH 1993 FROM THE PERMANENT REPRESENTATIVE OF  
THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA TO THE UNITED NATIONS  
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit a letter dated 12 March 1993, addressed to you by His Excellency Mr. Kim Yong Nam, Minister for Foreign Affairs of the Democratic People's Republic of Korea.

(Signed) PAK Gil Yon  
Ambassador  
Permanent Representative

S/25405  
English  
Page 2

Annex

Letter dated 12 March 1993 from the Minister for Foreign Affairs  
of the Democratic People's Republic of Korea addressed to the  
President of the Security Council

I would like, upon authorization, to inform the Security Council of the United Nations that the Government of the Democratic People's Republic of Korea decided on 12 March 1993 to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in accordance with paragraph 1 of Article X of the NPT, in connection with the extraordinary situation prevailing in the DPRK, which jeopardizes its supreme interests.

The United States together with south Korea has resumed the "Team Spirit" joint military exercises, a nuclear war rehearsal, threatening the DPRK, and instigated some officials of the IAEA Secretariat and certain member States to adopt an unjust "resolution" at the meeting of the IAEA Board of Governors on 25 February 1993 demanding us to open our military sites that have no relevance at all to the nuclear activities, in violation of the IAEA Statute, the Safeguards Agreement and the agreement the IAEA had reached with the DPRK.

This is an undisguised strong-arm act designed to disarm the DPRK and strangle our socialist system, which jeopardizes its supreme interests.

If such act were tolerated, it would only set a precedent for helping to legitimize the nuclear threats against the non-nuclear-weapon State Parties and interference in their internal affairs, to say nothing of our country falling a victim to a super-Power.

I hope that the Security Council of the United Nations will take note of the decision of the Government of the Democratic People's Republic of Korea to withdraw from the NPT until the United States nuclear threats and the unjust conduct of the IAEA against the DPRK will be recognized to have been removed.

(Signed) KIM Yong Nam  
Minister for Foreign Affairs  
Democratic People's Republic of Korea

**Annex 5: Letter dated 1 April 1993 from the Representatives of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America addressed to the President of the Security Council, S/25515, 2 April 1993**

UNITED  
NATIONS

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**Security Council**

Distr.  
GENERAL

S/25515  
2 April 1993

ORIGINAL: ENGLISH

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LETTER DATED 1 APRIL 1993 FROM THE REPRESENTATIVES OF THE  
RUSSIAN FEDERATION, THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA  
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

We have the honour to bring to your attention the text of the statement on the Democratic People's Republic of Korea issued on 1 April 1993 by the Depositary Governments of the Treaty on the Non-Proliferation of Nuclear Weapons.

We should be most grateful if you would have the text of this letter and its annex circulated as a document of the Security Council.

(Signed)

Yuliy VORONTSOV  
Permanent Representative  
of the Russian Federation

(Signed)

Edward WALKER  
Deputy Permanent  
Representative of the  
United States of  
America

(Signed)

Sir David MANNAY KCMG  
Permanent Representative  
of the United Kingdom  
of Great Britain and  
Northern Ireland

S/25515  
English  
Page 2

Annex

Democratic People's Republic of Korea:  
NPT Co-Depositaries Statement

The Governments of the Russian Federation, United Kingdom and the United States, which are the depositary Governments of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), wish to issue the following statement:

"We express regret and concern at the announcement by the Democratic People's Republic of Korea (DPRK) of its intention to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

Since the NPT is an essential element of international peace and security, DPRK withdrawal from the NPT would constitute a serious threat to regional and international stability.

We question whether the DPRK's stated reasons for withdrawing from the Treaty constitute extraordinary events relating to the subject-matter of the Treaty. In this regard, we recall that nuclear-related security assurances have been provided to the DPRK as a non-nuclear-weapon State party to the NPT.

Remaining a party to the Treaty and complying fully with its terms would be in the DPRK's interests. It would help to reassure the international community about the nature of the DPRK's nuclear programme and the DPRK's desire for positive international relations, including peaceful nuclear cooperation.

Moreover, DPRK withdrawal from the NPT would jeopardize stability on the Korean peninsula, which has improved in recent years, and undermine efforts to implement the North-South Joint Declaration on Denuclearization of the Korean Peninsula.

We urge the DPRK to retract its announcement and to comply fully with its Treaty commitments and its safeguards obligations, which remain in force. In this respect, we strongly support the efforts of the International Atomic Energy Agency to implement its safeguards agreement with the DPRK."

The three Governments call upon all NPT parties to associate themselves with this statement and to urge the DPRK to reconsider its position and to fulfil its commitment under the Treaty.

1 April 1993

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# Annex 6: Statement by the President of the UNSC, S/25562, 8 April 1993

UNITED  
NATIONS

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## Security Council

Distr.  
GENERAL

S/25562  
8 April 1993

ORIGINAL: ENGLISH

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### NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

After consultations of the Council held on 8 April 1993, the President of the Security Council made the following statement to the media on behalf of the members of the Council:

"The members of the Security Council take note of the oral statement on 6 April 1993 and the written report of International Atomic Energy Agency (IAEA) Director General Dr. Hans Blix (S/25556). The members of the Council also take note of the letter of 12 March 1993 of the Permanent Representative of the Democratic People's Republic of Korea (DPRK) to the President of the Security Council (S/25405), enclosing one from his Foreign Minister with reference to Article X of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

"The members of the Council are concerned at the situation which has arisen. In this connection they reaffirm the importance of the NPT and of the parties to it adhering to it.

"The members of the Council also express their support for the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.

"The members of the Council welcome all efforts aimed at resolving this situation and in particular encourage the IAEA to continue its consultations with the DPRK and its constructive endeavours for a proper settlement of the nuclear verification issue in the DPRK.

"The members of the Security Council will continue to follow the situation."

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## Annex 7: UNSC resolution 825, 11 May 1993

UNITED  
NATIONS**S**

## Security Council

Distr.  
GENERALS/RES/825 (1993)\*  
11 May 1993

## RESOLUTION 825 (1993)

Adopted by the Security Council at its 3212th meeting,  
on 11 May 1993

The Security Council,

Having considered with concern the letter from the Minister for Foreign Affairs of the Democratic People's Republic of Korea (DPRK) dated 12 March 1993 addressed to the President of the Council (S/25405) concerning the intention of the Government of the DPRK to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (the Treaty) and the report of the Director-General of the International Atomic Energy Agency (IAEA) (S/25556),

Recalling the Security Council presidential statement of 8 April 1993 (S/25562) in which the members of the Council welcome all efforts aimed at resolving this situation and, in particular, encourage the IAEA to continue its consultations with the DPRK for proper settlement of the nuclear verification issue in the DPRK,

Noting in that context the critical importance of the Treaty, and emphasizing the integral role of IAEA safeguards in the implementation of the Treaty and in ensuring the peaceful uses of nuclear energy, and reaffirming the crucial contribution which progress in non-proliferation can make to the maintenance of international peace and security,

Recalling the Joint Declaration by the DPRK and the Republic of Korea (ROK) on the denuclearization of the Korean Peninsula, which includes establishment of a credible and effective bilateral inspection regime and a pledge not to possess nuclear reprocessing and uranium enrichment facilities,

NOTING that the DPRK is party to the Treaty and has concluded a full-scope safeguards agreement as required by that Treaty,

\* Reissued for technical reasons.

S/RES/825 (1993)  
Page 2

Having also considered with regret the IAEA Board of Governors' findings contained in its resolution of 1 April 1993 that the DPRK is in non-compliance with its obligations under the IAEA-DPRK safeguards agreement (INFCIRC/403), and that the IAEA is not able to verify that there has been no diversion of nuclear materials required to be safeguarded under the terms of the IAEA-DPRK safeguards agreement to nuclear weapons or other nuclear explosive devices,

Noting the 1 April 1993 statement by the Russian Federation, the United Kingdom and the United States, the depositaries of the Treaty (S/25515), which questions whether the DPRK's stated reasons for withdrawing from the Treaty constitute extraordinary events relating to the subject-matter of the Treaty,

Noting the letter of reply by the DPRK to the Director-General of the IAEA dated 22 April 1993 which, inter alia, encourages and urges the Director-General to hold consultations with the DPRK on the implementation of the safeguards agreement, noting also that the DPRK has expressed its willingness to seek a negotiated solution to this issue,

Welcoming recent signs of improved cooperation between the DPRK and the IAEA and the prospect of contacts between the DPRK and other Member States,

1. Calls upon the DPRK to reconsider the announcement contained in the letter of 12 March 1993 and thus to reaffirm its commitment to the Treaty;
2. Further calls upon the DPRK to honour its non-proliferation obligations under the Treaty and comply with its safeguards agreement with the IAEA as specified by the IAEA Board of Governors' resolution of 25 February 1993;
3. Requests the Director-General of the IAEA to continue to consult with the DPRK with a view to resolving the issues which are the subject of the Board of Governors' findings and to report to the Security Council on his efforts in due time;
4. Urges all Member States to encourage the DPRK to respond positively to this resolution, and encourages them to facilitate a solution;
5. Decides to remain seized of the matter and to consider further Security Council action if necessary.

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**Annex 8: Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, S/2003/91, 27 January 2003**

United Nations

S/2003/91



**Security Council**

Distr.: General  
27 January 2003

Original: English

**Letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council**

I have the honour to transmit to you herewith a detailed report issued by the Korean Central News Agency (KCNA) on 21 January 2003 on the circumstances of the withdrawal of the Democratic People's Republic of Korea from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (see annex III).

While wishing to draw your attention to the KCNA detailed report, I also transmit herewith a letter dated 10 January 2003 addressed to you from Paek Nam Sun, Minister for Foreign Affairs of the Democratic People's Republic of Korea, on the decision of the Democratic People's Republic of Korea Government to revoke the "suspension" on the effectuation of its withdrawal from the NPT (see annex I) and a statement issued by the Democratic People's Republic of Korea Government on 10 January 2003 (see annex II).

I should be grateful if you could have the text of the present letter and its annexes circulated as a document of the Security Council.

*(Signed)* Paek Gil Yon  
Ambassador  
Permanent Representative

**Annex I to the letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council**

**Letter dated 10 January 2003 from the Minister for Foreign Affairs of the Democratic People's Republic of Korea addressed to the President of the Security Council**

Upon authorization, I inform the Security Council of the United Nations that the Government of the Democratic People's Republic of Korea decided on 10 January 2003 to revoke the "suspension" on the effectuation of its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), according to which the DPRK's withdrawal from the NPT will come into effect.

In this regard, I would like to recall that the Government of the DPRK decided on 12 March 1993 to withdraw from the NPT and that its Minister for Foreign Affairs addressed a letter to the Security Council on the same day, as contained in document S/25403, notifying it of the Government's decision on the withdrawal from the NPT in accordance with paragraph 1 of Article X of the Treaty.

I also recall that, through the Joint Statement of the DPRK and the United States of America dated 11 June 1993, the Government of the DPRK decided to "unilaterally suspend as long as it considers it necessary" the effectuation of the DPRK's withdrawal from the NPT one day before the coming into effect of its withdrawal from the NPT on 12 June 1993, and that the United States informed the Security Council of the above on 14 June 1993.

Therefore, in accordance with the DPRK Government's decision of 10 January 2003, the DPRK's withdrawal from the NPT will be effectuated fully from 11 January 2003, the day after the submission of the present letter to the Security Council.

This measure conforms fully with the purposes and principles of the United Nations Charter, as it becomes a rightful self-defensive measure to safeguard the sovereignty and right to existence of the country and nation, which are at the crossroads of life and death due to the ever-intensifying United States hostile policy and pressure on the DPRK.

Enclosed herewith is a copy of the statement of the Government of the DPRK dated 10 January 2003 (see annex II), which explains the details concerning the Government's decision.

*(Signed)* Paek Nam Sun  
Minister for Foreign Affairs  
Democratic People's Republic of Korea

**Annex II to the letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council**

**Statement of the Government of the Democratic People's Republic of Korea dated 10 January 2003**

A dangerous situation where our nation's sovereignty and our State's security are being seriously violated is prevailing on the Korean peninsula due to the vicious, hostile policy of the United States of America towards the Democratic People's Republic of Korea.

The United States instigated the International Atomic Energy Agency (IAEA) to adopt another resolution against the DPRK on 6 January, in the wake of a similar resolution adopted on 29 November 2002.

Under its manipulation, the IAEA, in those resolutions, termed the DPRK "a criminal" and demanded that it scrap what the United States called a "nuclear programme" at once in a verifiable way, in disregard of the nature of the nuclear issue, a product of the hostile United States policy towards the DPRK, and its unique status since it declared a suspension of the effectation of its withdrawal from the Nuclear Non-Proliferation Treaty (NPT).

Following the adoption of the latest resolution, the IAEA Director General issued an ultimatum to the effect that the Agency would bring the matter to the United Nations Security Council to apply sanctions against the DPRK unless it implemented the resolution in a few weeks.

This clearly proves that the IAEA still remains a servant and a spokesman for the United States and the NPT is being used as a tool for implementing the hostile United States policy towards the DPRK intended to disarm it and destroy its system by force.

Particular mention should be made of the fact that the IAEA, in the recent resolution, kept mum about the United States, which has grossly violated the NPT and the DPRK-United States Agreed Framework, but urged the DPRK, the victim, to unconditionally accept the United States demand for disarmament and forfeit its right to self-defence, and the Agency was praised by the United States for saying all that the United States wanted it to. This glaringly reveals the falsehood and hypocrisy of the signboard of impartiality the IAEA put up.

The DPRK Government vehemently rejects and denounces this resolution of the IAEA, considering it a grave encroachment upon our country's sovereignty and the dignity of the nation.

It is none other than the United States which wrecks peace and security on the Korean peninsula and drives the situation there to an extremely dangerous phase.

After the appearance of the Bush Administration, the United States listed the DPRK as part of an "axis of evil", adopting this as a national policy to oppose its system, and singled it out as a target of pre-emptive nuclear attack, openly declaring a nuclear war.

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Systematically violating the DPRK-United States Agreed Framework, the United States brought up another "nuclear suspicion" and stopped the supply of heavy oil, reducing the Agreed Framework to a dead document.

It also answered the DPRK's sincere proposal for the conclusion of the DPRK-United States non-aggression treaty and its patient efforts for negotiations with such threats as "blockade" and "military punishment" and with an arrogant attitude, blustering that it may talk but negotiations are impossible.

The United States went so far as to instigate the IAEA to internationalize its moves to stifle the DPRK, putting its declaration of a war into practice. This has eliminated the last possibility of solving the nuclear issue of the Korean peninsula in a peaceful and fair way.

It was due to such nuclear war moves of the United States against the DPRK and the partiality of the IAEA that the DPRK was compelled to declare its withdrawal from the NPT in March 1993, when a touch-and-go situation was created on the Korean peninsula.

As it has become clear once again that the United States persistently seeks to stifle the DPRK at any cost and the IAEA is used as a tool for executing the hostile United States policy towards the DPRK, we can no longer remain bound to the NPT, allowing the country's security and the dignity of our nation to be infringed upon.

In a grave situation where our State's supreme interests are most seriously threatened, the DPRK Government adopts the following decisions to protect the sovereignty of the country and the nation and their right to existence and dignity:

Firstly, the DPRK Government declares an automatic and immediate effectuation of its withdrawal from the NPT, on which "it unilaterally announced a moratorium as long as it deemed necessary" according to the 11 June 1993, DPRK-United States Joint Statement, now that the United States has unilaterally abandoned its commitments to stop nuclear threats and renounce hostility towards the DPRK in line with the same statement.

Secondly, it declares that the withdrawal of the DPRK from the NPT is totally free from the binding force of the Safeguards Agreement with the IAEA under its article 3.

The withdrawal from the NPT is a legitimate self-defensive measure taken against the United States moves to stifle the DPRK and the unreasonable behaviour of the IAEA in following the United States.

Though we pull out of the NPT, we have no intention to produce nuclear weapons, and our nuclear activities at this stage will be confined only to peaceful purposes such as the production of electricity.

If the United States drops its hostile policy of stifling the DPRK and stops its nuclear threat against the DPRK, the DPRK may prove through a separate verification between the DPRK and the United States that it does not make any nuclear weapons.

The United States and the IAEA will never evade their responsibilities for compelling the DPRK to withdraw from the NPT, by ignoring the DPRK's last efforts to seek a peaceful settlement of the nuclear issue through negotiations.

**Annex III to the letter dated 24 January 2003 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council**

**Detailed report of the Korean Central News Agency dated 21 January 2003 on the circumstances of the withdrawal of the Democratic People's Republic of Korea from the Treaty on the Non-Proliferation of Nuclear Weapons**

If the United States of America abandons its hostile policy and refrains from nuclear threat, the Democratic People's Republic of Korea may substantiate through a special verification between the two countries that it does not manufacture nuclear weapons. The nuclear issue of the Korean peninsula should be settled peacefully through fair negotiations that call upon both the DPRK and the United States to clear each other of their concerns on an equal footing. This is the consistent stand of the DPRK Government.

The Korean Central News Agency (KCNA) stresses this in a detailed report on the circumstances of the DPRK Government's withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which was released on 21 January 2003.

**On the details of the DPRK's accession to the NPT**

The purpose of the DPRK's accession to the NPT was to remove the United States nuclear threat to it and, mainly, to satisfactorily solve the power problem with nuclear energy.

After deciding to regard light-water reactors as main means of electricity production in the country, the DPRK had contacts with some developed countries to purchase such reactors, but in vain. None of them responded to our request.

To begin with, we intended to buy advanced light-water reactors from Western countries such as Canada, Sweden and France but failed to do so due to the United States obstruction based on the Coordinating Committee on Export Controls.

So we had to negotiate with the former Soviet Union on this matter, though its light-water reactor was less advanced than Western countries' in technical aspects. At that time, the Soviet Union contended that its offer of nuclear-related technology to the DPRK would be possible only when it acceded to the NPT and signed the Safeguards Agreement with the International Atomic Energy Agency. So the DPRK prudently examined this matter.

The DPRK acceded to the NPT on 12 December 1985 for the purpose of ensuring international cooperation in the nuclear power industry and, at the same time, removing the nuclear threat to itself and turning the Korean peninsula into a nuclear-free zone.



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#### On the circumstances of the delayed conclusion of the Safeguards Agreement

Even after the DPRK's accession to the NPT, the United States escalated its nuclear threat to the DPRK, making it impossible for the former to sign the Safeguards Agreement according to the NPT.

On 7 January 1992, the South Korean Defence Ministry and the United States Department of Defense and the South Korea-United States "combined command" jointly declared the discontinuation of the "Team Spirit" joint military exercises. High-level talks were held between the DPRK and the United States on 22 January 1992.

As conditions and circumstances were created after the United States and South Korea made a verbal promise, the DPRK signed the Safeguards Agreement with the IAEA on 30 January 1992.

The third session of the ninth Supreme People's Assembly of the DPRK, held on 9 April 1992, approved the Safeguards Agreement on the premise that none of the depositories of the NPT would deploy nuclear weapons on the Korean peninsula and pose a nuclear threat to the DPRK, and the DPRK informed the IAEA of this approval on 10 April, the following day.

The Safeguards Agreement between the DPRK and the IAEA thus came into force on 10 April 1992.

#### On the details of the DPRK's declaration of its withdrawal from the NPT

After the conclusion of the Safeguards Agreement between the DPRK and the IAEA, the United States spread the rumour about "suspected nuclear activities" in the DPRK's graphite-moderated reactor and its related facilities, sparking a "nuclear crisis".

An agreement was reached between the DPRK and the former Soviet Union on economic and technical cooperation in building nuclear power plants in 1985, after the DPRK's accession to the NPT. But this agreement was not implemented except for a site survey done for the project.

We therefore adopted it as a policy to create a nuclear power industry suited to our specific conditions, to live our own way, and began developing our own nuclear power technology.

For the development of its nuclear power industry, the DPRK chose a graphite-moderated-type reactor which could be developed not with any other country's raw materials but with its own rich resources and technology.

Over the past years, the DPRK has honestly fulfilled its commitments under the Safeguards Agreement.

We presented the initial inventory report on nuclear material and design information on nuclear facilities to the IAEA secretariat on 4 May 1992, far ahead of schedule; they were to be sent at the end of the year under articles 42 and 62 of the Safeguards Agreement.

We also ensured the visit to the DPRK by the IAEA delegation, led by its Director General from 11 to 16 May 1992, allowing it to inspect all the nuclear facilities it wished to see and even the objects it considered doubtful.

We provided full cooperation to the IAEA's ad hoc inspection team in its activities on six occasions.

However, the United States and its followers of the IAEA secretariat used such inspections under the NPT and the Safeguards Agreement to spy on the DPRK and undermine its socialist system.

Some of the IAEA secretariat systematically conveyed the results of the IAEA's inspections of the DPRK to the United States, which, under the pretext of what the IAEA called "inconsistency", demanded a "special inspection" of the DPRK's military objects, complicating the nuclear issue of the Korean peninsula.

The United States invited the IAEA Director General to a United States House of Representatives joint hearing on 22 July 1992, to inform it of the DPRK's nuclear programme, while urging him to conduct a "special inspection" or "surprise inspection" of the DPRK.

Raising a hue and cry over the "suspected nuclear development" in the DPRK, the United States instigated some members of the IAEA secretariat and certain member nations of the Agency to adopt, at the February 1993 meeting of the IAEA Board of Governors, an unreasonable resolution, which called for an inspection of the DPRK's military facilities that have nothing to do with nuclear activities.

Timed to coincide with the adoption of this resolution, the United States resumed the already suspended "Team Spirit", again seriously threatening the DPRK's sovereignty and right to existence.

Talks between the DPRK and the United States were held to discuss the nuclear issue at the former's request, but came to a rupture due to the long-standing hostile relationship and distrust between the two countries.

Under the prevailing situation, the DPRK proclaimed a semi-state of war to defend the sovereignty and security of the country and decided to withdraw from the NPT on 12 March 1993 to protect its supreme interests.

It also took the measure of withdrawing from the IAEA on 13 June 1994, as the 10 June 1994 meeting of its Board of Governors had adopted a resolution on the suspension of the Agency's cooperation with the DPRK, calling for opening its military objects under the pretext of the nuclear issue.

#### **On the DPRK's unique status:**

The DPRK's sincere efforts to prevent the outbreak of a war on the Korean peninsula and ensure regional peace and stability, and the strong demand of the world's peace-loving people, compelled the United States to come to the negotiating table for a peaceful solution to the nuclear issue of the peninsula.

The DPRK-United States Joint Statement was adopted on 11 June 1993 after several rounds of bilateral negotiations.

In the Statement, the United States promised not to use force, including nuclear weapons against the DPRK or to threaten it with them, but to respect its sovereignty and refrain from interfering in its internal affairs.

The DPRK decided to temporarily suspend the effect of its withdrawal from the NPT as long as it considers necessary.

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The DPRK had thus been placed in a unique status as regards its relations with the NPT. This unique status was also recognized by the United States and the IAEA secretariat.

After the publication of the DPRK-United States Joint Statement, three-phased talks took place between the two countries, and they resulted in the adoption of the DPRK-United States Agreed Framework on 21 October 1994, which called for a fundamental solution to the nuclear issue on the Korean peninsula.

**On the effectuation of the DPRK's withdrawal from the NPT, on which it had declared a moratorium**

The United States had no will to implement the Agreed Framework from the beginning and has systematically violated it, calculating that the DPRK would collapse.

It has not honoured its commitment to provide light-water reactors to the DPRK. The key point of the Agreed Framework is the United States provision of light-water reactors to the DPRK in return for its freeze on nuclear facilities.

The United States deliberately delayed its conclusion of a contract on the provision of light-water reactors to the DPRK, urging it to receive South Korean-type light-water reactors.

As a result, the agreement on the provision of light-water reactors between the DPRK and the United States-led Korean Peninsula Energy Development Organization was concluded on 15 December 1995, almost eight months after 21 April of the same year, the last day cited in the Agreed Framework.

Only site preparation has been done in the project of the light-water reactors which the United States committed itself to provide to the DPRK by 2003 under the Agreed Framework.

Due to the delayed provision by the United States of light-water reactors the DPRK suffered a huge loss of electricity and underwent a grave economic crisis, which led to the present situation, where even its right to existence is seriously threatened.

The United States has not sincerely honoured its legal commitment to annually supply 500,000 tons of heavy oil to the DPRK in compensation for the energy loss caused by its freeze on graphite-moderated reactors and their related facilities until the No. 1 light-water reactor power plant is completed, in line with paragraph 2 of article 1 of the Agreed Framework.

At the DPRK-United States New York talks held in March 2000 the DPRK side suggested that the United States compensate for the loss of electricity caused by the delayed provision of the light-water reactors.

On 14 November last year the United States decided to stop supplying heavy oil to the DPRK from December, thus abandoning the last commitment it had been honouring under the Agreed Framework.

This compelled the DPRK to restart its nuclear facilities, which had been frozen under the Agreed Framework, to make up for a vacuum created in power generation due to the United States decision to stop supplying heavy oil to the DPRK.

According to article 2 of the Agreed Framework, the DPRK Government decided to lift the measures whereby United States-made goods were restricted from entering the DPRK and United States-flagged trading vessels were banned from entering ports in the DPRK when involved in the DPRK's trade with other countries from mid-January 1995, three months after the adoption of the Agreed Framework. But the United States lifted only part of symbolic sanctions applied against the DPRK in travel, telecommunications, finance and passage through territorial air, but did not take any substantial measures to ease sanctions in such fields as trade and investment barriers.

Under article 3 of the Agreed Framework the United States is committed to giving the DPRK formal assurances against the use or threat of nuclear weapons.

In 1993, when the DPRK-United States talks for a peaceful settlement of the nuclear issue on the Korean peninsula were under way, the United States worked out a "New Operation Plan 5027" for a pre-emptive nuclear attack on it behind the curtain of the dialogue and systematically stepped up its preparations to put it into practice to stifle the DPRK.

From early in 1995, the Foal Eagle 95, Hognuk 96, Rimpac 96, Hwarang 96 and Ulji Focus Lens joint military exercises and other, nuclear war exercises targeted against the DPRK were frantically staged on the land, on the sea and in the air in all parts of South Korea almost every day of every year.

In February 1997 the United States moved depleted uranium shells from its Okinawa base to South Korea to deploy them there for an actual war, and on 8 June that year it issued an interim report on the re-examination of the United States-Japan Defence Cooperation Guidelines in Honolulu.

In January 1999 the United States Defense Secretary and the Chairman of the United States Joint Chiefs of Staff flew into South Korea to hold the twentieth meeting of the Military Commission and the thirtieth annual Security Consultative Meeting with South Korean brass hats, at which they released a joint statement. In that statement they claimed that the DPRK remained a constant threat to their national interests and they would strongly retaliate against the DPRK with nuclear weapons and all other means in case of emergency.

No sooner had the authorities of the Bush Administration taken office than they adopted it as their policy to stifle the DPRK by force and put the already started bilateral talks in total stalemate.

Bush went so far as to let loose vituperation against the supreme leadership of the DPRK and dubbed the DPRK "part of an axis of evil" in his State of the Union message delivered at the Congress on 30 January 2002.

Particular mention should be made of the fact that the Bush Administration even went so far as to list the DPRK as a target of its pre-emptive nuclear attack, thus totally destroying the foundation of the Agreed Framework and wantonly violating the basic spirit of the NPT.

In the wake of the visit to Pyongyang of the United States President's special envoy early in October last year, the Bush Administration groundlessly asserted that the DPRK had pushed ahead with its nuclear programme in violation of the Agreed Framework, and blustered that there would be no bilateral talks and that would

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adversely affect the DPRK-Japan and inter-Korean relations unless the DPRK scrapped its programme.

The United States insisted on the brigandish assertion that the DPRK should receive nuclear inspection, though it was stipulated in article 4 of the Agreed Framework and elsewhere that the DPRK would receive it only after turbine, generator and other non-nuclear parts of light-water reactors were delivered to it, thus driving the situation to a worse phase than that of the early 1990s.

The United States again instigated the IAEA on 6 January this year to adopt an anti-DPRK resolution in the wake of the similar one on 29 November last year.

The United States, which openly scrapped the Agreed Framework, instigated even the IAEA to internationalize its moves to stifle the DPRK, thus putting into practice its declaration of a war against the DPRK.

This compelled the DPRK to withdraw from the NPT, which is being misused as a tool for implementing the hostile United States policy towards the DPRK, in order to protect its sovereignty and right to existence.

As seen above, the nuclear issue on the Korean peninsula is a product of the hostile United States policy towards the DPRK, and therefore it is an issue to be settled between the DPRK and the United States through negotiations.

The conclusion of a non-aggression treaty between the DPRK and the United States would provide the only realistic way of fundamentally solving the nuclear issue on the Korean peninsula and peacefully settling the obtaining grave situation.

If the United States signs the treaty and legally assures the DPRK of its non-aggression, including the non-use of nuclear weapons, the DPRK can also clear the United States of its security concerns.

Though the DPRK pulled out of the NPT, its nuclear activities will be limited to peaceful purposes, including power generation, at the present stage.

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## **Annex 9: UNSC briefing on the DPRK to the press, 9 April 2003<sup>2</sup>**

We members of the Council held these consultations to consider the Democratic People's Republic of Korea nuclear issue. Members of the Council expressed their concern and the Council will continue to follow up developments on this matter. There is nothing else to add to this. I can only tell you that in regard to Mexico's view on the matter, we have reiterated what was expressed by the Rio Group on January of this year and Mexico deplores the decision of North Korea to pull out of the Non-Proliferation Treaty and Mexico calls on North Korea to rejoin the Treaty and expects that this matter will be resolved by the diplomatic means so that we one day could achieve a non-nuclear peninsula of Korea.

The Council is certainly concerned about the question of disarmament and in that regard the Council will continue to exercise its efforts in the area of disarmament.

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<sup>2</sup> Source Permanent Mission of Mexico to the United Nations. Available at < [http://www.un.int/mexico/sc/comunicado\\_09abr2003\\_ing.htm](http://www.un.int/mexico/sc/comunicado_09abr2003_ing.htm) > (accessed 23 October 2009).

## Annex 10: UNSC resolution 1887, 24 September 2009

United Nations

S/RES/1887 (2009)



Security Council

Distr.: General  
24 September 2009

### Resolution 1887 (2009)

Adopted by the Security Council at its 6191st meeting, on  
24 September 2009

*The Security Council,*

*Resolving to seek a safer world for all and to create the conditions for a world without nuclear weapons, in accordance with the goals of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in a way that promotes international stability, and based on the principle of undiminished security for all,*

*Reaffirming the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,*

*Recalling also that the above Statement (S/23500) underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,*

*Reaffirming that proliferation of weapons of mass destruction, and their means of delivery, constitutes a threat to international peace and security,*

*Bearing in mind the responsibilities of other organs of the United Nations and relevant international organizations in the field of disarmament, arms control and non-proliferation, as well as the Conference on Disarmament, and supporting them to continue to play their due roles,*

*Underlining that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy,*

*Reaffirming its firm commitment to the NPT and its conviction that the international nuclear non-proliferation regime should be maintained and strengthened to ensure its effective implementation, and recalling in this regard the outcomes of past NPT Review Conferences, including the 1995 and 2000 final documents,*

*Calling for further progress on all aspects of disarmament to enhance global security,*

09-52374 (E)



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*Recalling* the Statement by its President adopted at the Council's meeting held on 19 November 2008 (S/PRST/2008/43),

*Welcoming* the decisions of those non-nuclear-weapon States that have dismantled their nuclear weapons programs or renounced the possession of nuclear weapons,

*Welcoming* the nuclear arms reduction and disarmament efforts undertaken and accomplished by nuclear-weapon States, and *underlining* the need to pursue further efforts in the sphere of nuclear disarmament, in accordance with Article VI of the NPT,

*Welcoming* in this connection the decision of the Russian Federation and the United States of America to conduct negotiations to conclude a new comprehensive legally binding agreement to replace the Treaty on the Reduction and Limitation of Strategic Offensive Arms, which expires in December 2009,

*Welcoming and supporting* the steps taken to conclude nuclear-weapon-free zone treaties and *reaffirming* the conviction that the establishment of internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at among the States of the region concerned, and in accordance with the 1999 United Nations Disarmament Commission guidelines, enhances global and regional peace and security, strengthens the nuclear non-proliferation regime, and contributes toward realizing the objectives of nuclear disarmament,

*Noting* its support, in this context, for the convening of the Second Conference of States Parties and signatories of the Treaties that establish Nuclear-Weapon-Free Zones to be held in New York on 30 April 2010,

*Reaffirming* its resolutions 825 (1993), 1695 (2006), 1718 (2006), and 1874 (2009),

*Reaffirming* its resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), and 1835 (2008),

*Reaffirming* all other relevant non-proliferation resolutions adopted by the Security Council,

*Gravely concerned* about the threat of nuclear terrorism, and *recognizing* the need for all States to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists,

*Noting* with interest the initiative to convene, in coordination with the International Atomic Energy Agency (IAEA), an international conference on the peaceful uses of nuclear energy,

*Expressing* its support for the convening of the 2010 Global Summit on Nuclear Security,

*Affirming* its support for the Convention on the Physical Protection of Nuclear Material and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism,

*Recognizing* the progress made by the Global Initiative to Combat Nuclear Terrorism, and the G-8 Global Partnership,



*Noting* the contribution of civil society in promoting all the objectives of the NPT,

*Reaffirming* its resolution 1540 (2004) and the necessity for all States to implement fully the measures contained therein, and *calling upon* all Member States and international and regional organizations to cooperate actively with the Committee established pursuant to that resolution, including in the course of the comprehensive review as called for in resolution 1810 (2008),

1. *Emphasizes* that a situation of non-compliance with non-proliferation obligations shall be brought to the attention of the Security Council, which will determine if that situation constitutes a threat to international peace and security, and *emphasizes* the Security Council's primary responsibility in addressing such threats;

2. *Calls upon* States Parties to the NPT to comply fully with all their obligations and fulfil their commitments under the Treaty;

3. *Notes* that enjoyment of the benefits of the NPT by a State Party can be assured only by its compliance with the obligations thereunder;

4. *Calls upon* all States that are not Parties to the NPT to accede to the Treaty as non-nuclear-weapon States so as to achieve its universality at an early date, and pending their accession to the Treaty, to adhere to its terms;

5. *Calls upon* the Parties to the NPT, pursuant to Article VI of the Treaty, to undertake to pursue negotiations in good faith on effective measures relating to nuclear arms reduction and disarmament, and on a Treaty on general and complete disarmament under strict and effective international control, and *calls on* all other States to join in this endeavour;

6. *Calls upon* all States Parties to the NPT to cooperate so that the 2010 NPT Review Conference can successfully strengthen the Treaty and set realistic and achievable goals in all the Treaty's three pillars: non-proliferation, the peaceful uses of nuclear energy, and disarmament;

7. *Calls upon* all States to refrain from conducting a nuclear test explosion and to sign and ratify the Comprehensive Nuclear Test Ban Treaty (CTBT), thereby bringing the treaty into force at an early date;

8. *Calls upon* the Conference on Disarmament to negotiate a Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices as soon as possible, *welcomes* the Conference on Disarmament's adoption by consensus of its Program of Work in 2009, and *requests* all Member States to cooperate in guiding the Conference to an early commencement of substantive work;

9. *Recalls* the statements by each of the five nuclear-weapon States, noted by resolution 984 (1995), in which they give security assurances against the use of nuclear weapons to non-nuclear-weapon State Parties to the NPT, and *affirms* that such security assurances strengthen the nuclear non-proliferation regime;

10. *Expresses* particular concern at the current major challenges to the non-proliferation regime that the Security Council has acted upon, *demanding* that the parties concerned comply fully with their obligations under the relevant Security

Council resolutions, and *reaffirms* its call upon them to find an early negotiated solution to these issues;

11. *Encourages* efforts to ensure development of peaceful uses of nuclear energy by countries seeking to maintain or develop their capacities in this field in a framework that reduces proliferation risk and adheres to the highest international standards for safeguards, security, and safety;

12. *Underlines* that the NPT recognizes in Article IV the inalienable right of the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II, and *recalls* in this context Article III of the NPT and Article II of the IAEA Statute;

13. *Calls upon* States to adopt stricter national controls for the export of sensitive goods and technologies of the nuclear fuel cycle;

14. *Encourages* the work of the IAEA on multilateral approaches to the nuclear fuel cycle, including assurances of nuclear fuel supply and related measures, as effective means of addressing the expanding need for nuclear fuel and nuclear fuel services and minimizing the risk of proliferation, and *urges* the IAEA Board of Governors to agree upon measures to this end as soon as possible;

15. *Affirms* that effective IAEA safeguards are essential to prevent nuclear proliferation and to facilitate cooperation in the field of peaceful uses of nuclear energy, and in that regard:

a. *Calls upon* all non-nuclear-weapon States party to the NPT that have yet to bring into force a comprehensive safeguards agreement or a modified small quantities protocol to do so immediately;

b. *Calls upon* all States to sign, ratify and implement an additional protocol, which together with comprehensive safeguards agreements constitute essential elements of the IAEA safeguards system;

c. *Stresses* the importance for all Member States to ensure that the IAEA continue to have all the necessary resources and authority to verify the declared use of nuclear materials and facilities and the absence of undeclared activities, and for the IAEA to report to the Council accordingly as appropriate;

16. *Encourages* States to provide the IAEA with the cooperation necessary for it to verify whether a state is in compliance with its safeguards obligations, and *affirms* the Security Council's resolve to support the IAEA's efforts to that end, consistent with its authorities under the Charter;

17. *Undertakes* to address without delay any State's notice of withdrawal from the NPT, including the events described in the statement provided by the State pursuant to Article X of the Treaty, while noting ongoing discussions in the course of the NPT review on identifying modalities under which NPT States Parties could collectively respond to notification of withdrawal, and *affirms* that a State remains responsible under international law for violations of the NPT committed prior to its withdrawal;

18. *Encourages* States to require as a condition of nuclear exports that the recipient State agree that, in the event that it should terminate, withdraw from, or be found by the IAEA Board of Governors to be in non-compliance with its IAEA safeguards agreement, the supplier state would have a right to require the return of nuclear material and equipment provided prior to such termination, non-compliance or withdrawal, as well as any special nuclear material produced through the use of such material or equipment;

19. *Encourages* States to consider whether a recipient State has signed and ratified an additional protocol based on the model additional protocol in making nuclear export decisions;

20. *Urges* States to require as a condition of nuclear exports that the recipient State agree that, in the event that it should terminate its IAEA safeguards agreement, safeguards shall continue with respect to any nuclear material and equipment provided prior to such termination, as well as any special nuclear material produced through the use of such material or equipment;

21. *Calls for* universal adherence to the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism;

22. *Welcomes* the March 2009 recommendations of the Security Council Committee established pursuant to resolution 1540 (2004) to make more effective use of existing funding mechanisms, including the consideration of the establishment of a voluntary fund, and *affirms* its commitment to promote full implementation of resolution 1540 (2004) by Member States by ensuring effective and sustainable support for the activities of the 1540 Committee;

23. *Reaffirms* the need for full implementation of resolution 1540 (2004) by Member States and, with an aim of preventing access to, or assistance and financing for, weapons of mass destruction, related materials and their means of delivery by non-State actors, as defined in the resolution, *calls upon* Member States to cooperate actively with the Committee established pursuant to that resolution and the IAEA, including rendering assistance, at their request, for their implementation of resolution 1540 (2004) provisions, and in this context *welcomes* the forthcoming comprehensive review of the status of implementation of resolution 1540 (2004) with a view to increasing its effectiveness, and *calls upon* all States to participate actively in this review;

24. *Calls upon* Member States to share best practices with a view to improved safety standards and nuclear security practices and raise standards of nuclear security to reduce the risk of nuclear terrorism, with the aim of securing all vulnerable nuclear material from such risks within four years;

25. *Calls upon* all States to manage responsibly and minimize to the greatest extent that is technically and economically feasible the use of highly enriched uranium for civilian purposes, including by working to convert research reactors and radioisotope production processes to the use of low enriched uranium fuels and targets;

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26. *Calls upon* all States to improve their national capabilities to detect, deter, and disrupt illicit trafficking in nuclear materials throughout their territories, and *calls upon* those States in a position to do so to work to enhance international partnerships and capacity building in this regard;

27. *Urges* all States to take all appropriate national measures in accordance with their national authorities and legislation, and consistent with international law, to prevent proliferation financing and shipments, to strengthen export controls, to secure sensitive materials, and to control access to intangible transfers of technology;

28. *Declares* its resolve to monitor closely any situations involving the proliferation of nuclear weapons, their means of delivery or related material, including to or by non-State actors as they are defined in resolution 1540 (2004), and, as appropriate, to take such measures as may be necessary to ensure the maintenance of international peace and security;

29. *Decides* to remain seized of the matter.

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## **Annex 11: Draft UN Security Council resolution on NPT Withdrawal<sup>3</sup>**

*The Security Council,*

*Affirming* that proliferation of nuclear, [chemical and biological] weapons, as well as their means of delivery, constitutes a threat to international peace and security,

*Reaffirming*, in this context, the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on January 31, 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

*Recalling also* that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

*Affirming* its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, [chemical and biological] weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

*Affirming* its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, [chemical or biological] weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

*Affirming* that prevention of proliferation of nuclear, [chemical and biological] weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

*Recognizing further* the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, [chemical or biological] weapons and their means of delivery,

*Affirming* that any State party to the NPT has the right to withdraw from the Treaty in accordance with its Article X.1,

*Recognizing* the threat posed to international peace and security by a state withdrawing from the NPT after having been found by the IAEA in non-compliance with its NPT Safeguards Agreements,

*Affirming* that withdrawal from a Treaty does not absolve a State of any violation of that Treaty as committed while the State was still a party to the Treaty,

*Affirming* the principle that any material, equipment and facility subject to IAEA safeguards must irreversibly remain under IAEA safeguards,

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<sup>3</sup> **Goldschmidt, Pierre**, *Concrete Steps to Improve the Nonproliferation Regime* (Carnegie Endowment for International Peace, 2009), No. 100, pp. 44-45. Available at < [http://carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](http://carnegieendowment.org/files/improve_nonpro_regime.pdf) > (accessed on 8 April 2009).

*Determined* to facilitate an effective response to global threats in the area of nuclear non-proliferation,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides that* if a State is reported by the IAEA to be in noncompliance [in the context of Article XII.C. of the IAEA Statute] with its NPT Safeguards Agreement and thereafter notify its withdrawal from the NPT under its Article X.1, before the IAEA has concluded that the State declarations [under its Safeguards Agreement] are correct and complete and that there is no undeclared nuclear material and activities in that State, this notification of withdrawal constitutes a threat to international peace and security under Article 39 of the Charter of the United Nations.

2. *Decides that* if a State notifies its withdrawal from the NPT under Article X.1 of the Treaty, the Security Council shall forthwith adopt a specific resolution under Article 41 of the Charter, requiring that any materials and equipment made available to the withdrawing State, or resulting from the assistance provided to that State, under a Comprehensive Safeguards Agreement (INFCIRC/153-Corrected) with the IAEA, shall immediately be sealed by the IAEA and as soon as technically possible, be removed from that State under IAEA supervision, and thereafter remain under IAEA Safeguards.

3. *Decides that* in the circumstances defined under point 2 above the Director General of the IAEA shall report quarterly to the Security Council on the implementation of this decision until all relevant material and equipment have been removed from the withdrawing State.

4. *Decides that* if the reports referred to in point 3 above show that the withdrawing State does not fully comply with the provision of point 2, the Security Council shall adopt a specific resolution under Article 41 of the UN Charter deciding that all States shall forthwith suspend the supply of any military equipment to, and cooperation with, the noncompliant State as long as it remains in noncompliance with Security Council resolutions.

5. *Decides that*, if the IAEA informs the Security Council that action by a State makes it impossible for the IAEA to implement the provisions of a Comprehensive Safeguards Agreement concluded with the IAEA, such action shall be considered, for the purpose of this resolution, as equivalent to a notification of withdrawal from the NPT.

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## Bibliography

1. **Ahlström, Christer**, *Withdrawal from arms control treaties*, Sipri Yearbook, 2004, pp. 763-777.
2. **Ahlström, Christer**, *United Nations Security Council Resolution 1540: non-proliferation by means of international legislation*, Sipri Yearbook 2007, pp. 460-473.
3. **Akande, Dapo**, *The International Court of Justice and the Security Council: Is there Room for Judicial Control of Decisions of the Political Organs of the United Nations?*, *International & Comparative Law Quarterly* (1997), Vol. 46, pp. 303-373.
4. **Albright, David**, *South Africa and the Affordable Bomb*, *Bulletin of the Atomic Scientists* (July/August 2004), Vol. 50, No. 4, pp. 37-47.
5. **Asculai, Ephraim**, *Syria, the NPT, and the IAEA*, *INSS Insight* (29 April 2008), No. 53. Available at < <http://www.rightsidenews.com/20080429824/global-terrorism/syria-the-npt-and-the-iaea.html> > (accessed on 6 June 2008).
6. **Alvarez, Jose**, *Judging the Legality of Security Council Action*, *American Journal of International Law* (1996), Vol. 90, pp. 1-39.
7. **Alvarez, Jose**, *Hegemonic International Law Revised*, *American Journal of International Law* (2003), Vol. 97, No. 4, pp. 873-888.
8. **Amerasinghe, C.F.**, *Interpretation of Texts in Open International Organizations*, *BYIL* (1994), Vol. 65, pp. 175-209.
9. **Amano, Yukiya**, *The Significance of the NPT Extension*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996).
10. **Amerasinghe, C.F.**, *Principles of the Institutional Law of International Organizations* (Cambridge: Cambridge University Press, 1996).
11. **Arangio-Ruiz, Gaetano**, *On the Security Council's "Law Making"*, *Rivista di Diritto Internazionale* (2000), Vol. 83, pp. 609-725.
12. **Asada, Masahiko**, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, *Journal of Conflict & Security Law* (Winter 2004), Vol. 9, No. 3, pp. 331-355.
13. **Aust, Anthony**, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2000).
14. **Back, Ian**, *UN inspectors investigate suspected nuclear site in Syria*, *Guardian* (2 June 2008). Available at < <http://www.guardian.co.uk/world/2008/jun/02/syria.nuclear?gusrc=rss&feed=networkfront> > (accessed on 6 June 2008).
15. **Bailey, S.D., and Daws, S.**, *The Procedure of the UN Security Council* (3<sup>rd</sup> ed.) (Oxford: Clarendon Press, 1998).
16. **Bedjaoui, Mohammed (ed.)**, *Droit international: bilan et perspectives* (UNESCO, Paris, Pedone, 1991), 2 vol.
17. **Bedjaoui, Mohammed**, *The New World Order and the Security Council. Testing the Legality of its Acts* (Dordrecht: Martinus Nijhoff Publisher, 1994).
18. **Behrens, Carl E.**, *Nuclear Nonproliferation Issues* (Congressional Research Service: updated January 20, 2006), available at < <http://www.fas.org/sgp/crs/nuke/IB10091.pdf> > (accessed on the 7<sup>th</sup> of June 2007).
19. **Berdal, Mats**, *The UN's Unnecessary Crisis*, *Survival* (Autumn, 2005), Vol. 47, No. 3, pp. 7-32.
20. **Bermudez, Joseph**, *North Korea's Nuclear Programme*, *Jane's Intelligence Review* (September 1991), pp. 404-412.
21. **Bernhardt, R.**, *Interpretation in International Law*, *Encyclopedia of Public International Law* (1995), Vol. 2, pp. 1416-1426.

22. **Bianchi, Andrea**, *Ad-hocism and the Rule of Law*, European Journal of International Law (2002), Vol. 13, No. 1, pp. 263–272.
23. **Black, Henry Campbell**, *Black's Law Dictionary*, 7<sup>th</sup> edition (St. Paul, Minn: West group, 1999).
24. **Blechman Barry M. and Mackay Jr. Leo S.**, *Weapons of Mass Destruction: A New Paradigm for a New Century*, Occasional Paper No. 40 (Washington, D.C.: Henry L. Stimson Center, 2000).
25. **Blix, Hans**, *Aspects juridiques des garanties de l'AIEA*, AFDI (193), pp. 37-58.
26. **Bothe, M.**, *The legitimacy of the Use of Force to Protect Peoples and Minorities*, in **Brölmann, C., (ed.)**, *Peoples and Minorities in International Law* (1993), pp. 289-299.
27. **Bothe, M.**, *Les limites des pouvoir du Conseil de Sécurité*, in **Dupuy, René-Jean.**, *Le Développement du Rôle du Conceil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993).
28. **Boulden, Jane**, *Double Standards, Distance and Disengagement: Collective Legitimization in the Post-Cold War Security Council*, Security Dialogue (September 2006), Vol. 37, pp. 409 - 423.
29. **Boulden Jane, Weiss Thomas G.**, *Tactical Multilateralism: Coaxing America Back to the UN*, Survival (Autumn, 2004), Vol. 46, No. 3, pp. 103-114.
30. **Boureston, Jack and Lacey, Jennifer**, *Shoring Up a Crucial Bridge: South Africa's Pressing Nuclear Choices*, Arms Control Today (January-February 2007). Available at <[http://www.armscontrol.org/act/2007\\_01-02/BourestonLacey](http://www.armscontrol.org/act/2007_01-02/BourestonLacey) > (accessed on 26 May 2007).
31. **Boutros, Ghali**, *Le Chapitre VII de la Charte des Nations Unies* (Pedone, Paris, 1995).
32. **Bowett, D.**, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, European Journal of International Law (1994), Vol.5, No. 1, pp. 89-101, available at <<http://www.ejil.org/journal/Vol5/No1/art7.pdf> > (accessed on 10 January 2007).
33. **Bowett, D. W.**, *The Law of International Institutions*, 4<sup>th</sup> edition (London: Stevens & Sons, 1982).
34. **Bowet, D.W.**, *United Nations Forces: A Legal Study of United Nations Practice* (London, Stevens & Sons, 1964).
35. **Braun Chaim and Chyba Christopher F.**, *Proliferation Rings: New Challenger to the Nuclear Nonproliferation Regime*, International Security (Fall 2004), Vol. 29, No. 2, pp. 5-49.
36. **Brooke, James**, *North Korea says it has nuclear weapons and rejects talks*, New York Times (10 February 2005). Available at <<http://www.nytimes.com/2005/02/10/international/asia/10cnd-korea.html?ex=1179892800&en=dc29d54bfb85af6a&ei=5070> > (accessed on 30 October 2006).
37. **Brownlie, Ian**, *The Decisions of Political Organs of the United Nations and the Rule of Law*, in **R. St. J. MacDonald (ed.)**, *Essays in Honour of Wang Tieya* (Dordrecht, 1993), pp. 91-102.
38. **Brownlie, Ian**, *International Law at the Fiftieth Anniversary of the United Nations, General Course of Public International Law*, Recueil des Cours, 1995 (Leiden/Boston: Martinus Nijhoff Publishers, 1995), Vol. 255, pp. 9-228.
39. **Brownlie, Ian**, *The Rule of Law in International Affairs. International Law at the Fiftieth Anniversary of the United Nations* (The Hague/London/Boston: Martinus Nijhoff Publishers, 1998).
40. **Brownlie, Ian**, *Principles of Public International Law* (7<sup>th</sup> ed.) (Oxford: Clarendon Press, 2008).



41. **Bunn, George**, *A Brief History of DPRK's Nuclear Weapons-Related Efforts in May*, **Michael (ed.)**, *Verifying the Agreed Framework* (Livermore, CA: Livermore National Laboratory's Center for Global Security Research and Stanford University's Center for International Security and Cooperation, 2001).
42. **Bunn, George**, *The Nonproliferation Regime under Siege* (CISAC, 1999). Available at < <http://se2.isn.ch/serviceengine/FileContent?serviceID=ESDP&fileid=A75AA1EA-2170-3E74-1164-DCCD4EAD5733&lng=en> > (accessed on 17 December 2007).
43. **Bunn, George**, *The Nuclear Nonproliferation Treaty: History and Current Problems*, *Arms Control Today* (December 2003). Available at < [http://www.armscontrol.org/act/2003\\_12/Bunn.asp](http://www.armscontrol.org/act/2003_12/Bunn.asp) > (accessed on 8 June 2007).
44. **Bunn, George and Braun, Chaim**, *Terrorism Potential of Research Reactors Compared with Power Reactors*, *American Behavioral Sciences* (February 2003), vol. 46, No. 6, pp. 714-726.
45. **Bunn, George and Rhinelander, John**, *Looking Back: The Nuclear Nonproliferation Treaty Then and Now*, *Arms Control Today* (July/August 2008). Available at < [http://www.armscontrol.org/act/2008\\_07-08/lookingback.asp](http://www.armscontrol.org/act/2008_07-08/lookingback.asp) > (accessed on 7 July 2008).
46. **Bunn, George and Rhinelander, John**, *The Right to Withdraw from the NPT: Article X is Not Unconditional*, *Disarmament Diplomacy* (April-May 2005), No. 79. Available at < <http://www.acronym.org.uk/dd/dd79/79gbjr.htm> > (accessed on 12 May 2005).
47. **Bunn, George and Rhinelander, John**, *NPT Withdrawal: Time for the Security Council to Step In*, *Arms Control Today* (May 2005). Available at < [http://www.armscontrol.org/act/2005\\_05/Bunn\\_Rhinelander.asp](http://www.armscontrol.org/act/2005_05/Bunn_Rhinelander.asp) > (accessed on 7 July 2008).
48. **Bunn, George**, *The Worlds' Non-Proliferation Regime in Time*, *IAEA Bulletin* (March 2005), Vol. 46, No. 2, pp. 8-9.
49. **Bunn George, Van Doren, Fischer David**, *Options & Opportunities: The NPT Extension Conference of 1995 (PPNN Study Two)* (Southampton: Mountbatten Centre for International Studies, 1991).
50. **Burns, E.L.M.**, *The Nonproliferation Treaty: Its negotiations and Prospects*, *International Organization* (1969), Vol. 23, No. 4, pp. 788-807.
51. **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press 2000).
52. **Byers, R.B.**, *The Denuclearisation of the Oceans* (New York, 1986).
53. **Campbell, Kurt M., Einhorn, Robert J., Reiss, Mitchell B., (ed.)**, *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004).
54. **Cannizzaro Enzo, and Bonafé Beatrice**, *Fragmenting International Law through Compromissory Clauses? Some Remarks on the Decision of the ICJ in the Oil Platforms Case*, *European Journal of International Law* (2005), Vol. 16, No. 3, pp. 481-497.
55. **Cannizzaro, Enzo**, *Recesso dal Trattato sulla non proliferazione nucleare e minaccia alla pace*, *Rivista di diritto internazionale* (2006), Vol. 89, fascicolo 4, pp. 1079-1082.
56. **Carnesale Albert, Doty Paul, Hoffmann Stanley, Huntington Samuel P., Nye Jr. Joseph S., and Sagan Scott D.**, *Living with Nuclear Weapons* (Cambridge, Mass.: Harvard University Press, 1983).
57. **Caron, D.**, *The Legitimacy of the Collective Authority of the Security Council*, *American Journal of International Law* (1993), Vol. 87,
58. **Carranza, Mario E.**, *Can the NPT Survive? The Theory and Practice of US Nuclear Non-proliferation Policy after September 11*, *Contemporary Security Policy* (December 2006), Vol. 27, No.3, pp. 489-525.
59. **Cassese, Antonio**, *International Law in a Divided World* (Oxford: Oxford University Press: 1994).

60. **Center for International Security and Cooperation**, *Preventing Nuclear Proliferation and Nuclear Terrorism Essential steps to reduce the availability of nuclear-explosive materials* (March 2005).
61. **Chadwick, Elizabeth**, *A Tale of two Courts: the 'Creation' of a Jurisdiction?*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 1, pp. 71–101.
62. **Chesterman, Simon**, *Does the UN Have Intelligence?*, *Survival* (Autumn, 2006), Vol. 48, No. 3, pp. 149-164.
63. **Cirincione Joseph, Wolfsthal Jon, Rajkumar Miriam**, *Deadly arsenals: tracking weapons of mass destruction* (Washington DC: Carnegie Endowment for International Peace, 2002).
64. **Cirincione, Joseph**, *A Global Assessment of Nuclear Proliferation Threats*, *The Weapons of Mass Destruction Commission* (June 2004). Available at < <http://www.wmdcommission.org/files/No10.pdf> > (accessed on 12 December 2007).
65. **Claude, Inis**, *Collective Legitimation as a Political Function of the United Nations*, *International Organization* (1966), Vol. 20, No. 3, pp. 367-379.
66. **Combacau, Jean**, *Le pouvoir de sanction de l'ONU: Etude théorique de la coercition non militaire* (Paris, A. Pedone: 1974).
67. **Committee on Nuclear Proliferation**, *A Report to the President* (21 January 1965). Available at <[http://www.gwu.edu/?nsarchiv/NSAEBB/NSAEBB1/nhch7\\_1.htm](http://www.gwu.edu/?nsarchiv/NSAEBB/NSAEBB1/nhch7_1.htm)> (accessed on 12 November 2007).
68. **Conforti, Benedetto**, *Le pouvoir discretionnaire du Conseil en matière de constatation d'une menace contre la paix d'une rupture de la paix ou d'un acte d'agression*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conceil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993).
69. **Corten, Olivier**, *La participation du Conceil de Sécurité à l'élaboration, à la cristallisation ou à la consolidation de règles coutumières*, *Revue belge de droit international (RBDI)* (2004), Vol. 37, No. 2, pp. 552-566.
70. **Cot, J., and Pellet, A. (ed.)**, *La Charte des Nations Unies* (2<sup>nd</sup> ed.) (Paris: Economica, 1991).
71. **Cotta-Ramusino, Paolo**, *Bringing Iran into the nuclear family*, *The Guardian* (18 March 2009). Available at < <http://www.campaigniran.org/casmii/index.php?q=node/7652> >.
72. **Cotta-Ramusino, Paolo**, *Nuclear non proliferation and disarmament* (June 2007). Available at < <http://www.pugwash.ru/publications/disarm/846.html> >.
73. **Cotta-Ramusino, Paolo** (report), *Pugwash Workshop on the Abolition of Nuclear Weapons* (Pugwash Meeting No. 251) (11-13 October 1999, New Delhi, India). Available at < <http://www.pugwash.org/reports/nw/nw10.htm> >.
74. **Cotta-Ramusino, Paolo**, *The unasked question*, *The Bulletin of the Atomic Scientists* (July/August 1999), pp. 42-45. Available at < <http://thebulletin.metapress.com/content/v6v623p14538u296/fulltext.pdf> >.
75. **Cotton, James**, *The Proliferation Security Initiative and North Korea: Legality and Limitations of a Coalition Strategy*, *Security Dialogue* (2005), Vol. 36, No. 2, pp. 193-211.
76. **Dahinden, Erwin**, *The Future of Arms Control Law: Towards a New Regulatory Approach and New Regulatory Techniques*, *Journal of Conflict & Security Law* (2005), Vol. 10, No. 2, pp. 263–277.
77. **Dahlitz, Julie**, *Introduction*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 13-17.

78. **Dahlitz, Julie**, *Security Council Powers and Possibilities*, in **Dahlitz, Julie (ed.)**, *Avoidance and Settlement of Arms Control Disputes*, Vol. II: *Arms Control and Disarmament Law* (New York: United Nations, 1994), pp. 57-83.
79. **Dahlitz Julie and Dicke, D.**, *The International Law of Arms Control and Disarmament*, Vol. I: *Arms Control and Disarmament Law* (New York: United Nations, 1991).
80. **Dean, Jonathan**, *Reviving the Non-Proliferation Regime*, Weapons of Mass Destruction Commission (WMDC) (1 June 2004). Available at < <http://www.wmdcommission.org/files/No4.pdf> > (accessed on 14 November 2006).
81. **De Brichambaut, Marc Perrin**, *The Role of the United Nations Security Council in the International Legal System*, in **Byers, Michael**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000), pp. 269-276.
82. **Dedring, Juergen**, *The United Nations Security Council in the 1990s: Resurgence and Renewal* (New York: State University of New York Press, 2008).
83. **Delcoigne G., Rubinstein G.**, *Non-prolifération des armes nucléaires et systèmes de contrôl* (Bruxelles, 1970).
84. **De Gara, John**, *Nuclear Proliferation and Security*. *International Conciliation* (May 1970), No. 578 (New York: Carnegie Endowment for International Peace, 1970).
85. **Delbrück, J.**, *Article 25*, in **Simma, Bruno (eds.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.), (Oxford: Oxford University Press, 2002).
86. **Delbrück, J.**, *Article 25*, in **Simma, Bruno (eds.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.), (Oxford: Oxford University Press, 2002).
87. **Delcoigne, G., Rubinstein, G.**, *Non-prolifération des armes nucléaires et systèmes de contrôl* (Bruxelles, 1970).
88. **Den Dekker, Guido**, *The Effectiveness of International Supervision in Arms Control Law*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 3, pp. 315-330.
89. **Department of Defence, Defence Science Board (DSB)**, *Report of the Defence Science Board Task Force on Future Strategic Strike Forces* (2004). Available at < <http://www.acq.osd.mil/dsb/reports/fssf.pdf> > (accessed on 7 June 2008).
90. **De Wet, Erika**, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart Publishing, 2004).
91. **Dhanapala, Jayantha and Rydell Randy**, *Multilateral Diplomacy and the NPT: An Insider's Account* (UNIDIR: Geneva, 2005) (UNIDIR/2005/3).
92. **Di Mohamed Sameh M. Amr**, *The Role of the International Court of Justice as the Principal Judicial Organ of the United Nations* (The Hague, New York: Kluwer Law International, 2003).
93. **Dinstein, Yoram**, *War, Aggression and Self-defence* (2<sup>nd</sup> ed.) (New York: Cambridge University Press, 1994).
94. **Doehring, Karl**, *Unlawful Resolutions of the Security Council and their Legal Consequences*, *Max Planck Yearbook of UN Law* (1997), Vol. 1, pp. 91-110.
95. **Dong-Joon Jo; Gartzke, Erik**, *Determinants of Nuclear Weapons Proliferation*, *Journal of Conflict Resolution* (February 2007), Vol. 51, No. 1, pp. 167-194.
96. **Donnelly, Eric**, *The United States-China EP-3 Incident: Legality and Realpolitik*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 1, pp. 25-42.
97. **Douglas M. Gibler and John A. Vasquez**, *Uncovering the Dangerous Alliances*, *International Studies Quarterly* (1998), No. 42, p. 786, < <http://www.blackwell-synergy.com/doi/pdf/10.1111/0020-8833.00106> > (accessed on 14 July 2006).
98. **Dunham Nikitin Mary Beth, Parillo Jill Marie, Squassoni Sharon, Andrews Anthony, Holt Mark**, *Managing the Nuclear Fuel Cycle: Policy Implications of Expanding Global Access to Nuclear Power* (CRS Report for Congress, 1 November 2007).

99. **Dulles, John Foster**, *War or Peace* (New York: Macmillan, 1950).
100. **Du Preez, Jean; Potter, William**, *North Korea's Withdrawal From the NPT: A Reality Check* (9 April 2003). Available at < <http://cns.miis.edu/pubs/week/030409.htm> > (accessed on 7 July 2008).
101. **Du Preez, Jean**, *The 2005 NPT review Conference: Can it Meet the Nuclear Challenge?*, *Arms Control Today* (April 2005). Available at < [http://www.armscontrol.org/act/2005\\_04/duPreez.asp](http://www.armscontrol.org/act/2005_04/duPreez.asp) > (accessed on 13 June 2005).
102. **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993).
103. **Dupuy, Pierre-Marie**, *Some Reflections on Contemporary International Law and the Appeal to Universal Values: A Response to Martti Koskenniemi*, *European Journal of International Law* (2005), Vol. 16 No. 1, pp. 131–137.
104. **Eagleton, Clyde**, *The Jurisdiction of the Security Council over Disputes*, *American Journal of International Law* (1946), Vol. 40, pp. 513-533.
105. **Eden, Lynn**, *Underestimating the Consequences of Use of Nuclear Weapons: Condemned to Repeat the Past's Errors?*, *Physics and Society* (2005), Vol. 34, No. 1, pp. 5-7.
106. **Edwards, D.M.**, *International Legal Aspects of Safeguards and the Non-Proliferation of Nuclear Weapons*, *International & Comparative Law Quarterly* (1984), pp. 1-21.
107. **Elaraby, Nabil**, *Practical Problems with Multilateral Arms Control Treaties*, in **Dahlitz Julie and Dicke, D.**, *The International Law of Arms Control and Disarmament*, Vol. I: Arms Control and Disarmament Law (New York: United Nations, 1991), pp. 45-57.
108. **Elaraby, Nabil**, *The Security Council and Nuclear Weapons*, Presented at a meeting of the NGO Working Group on the Security Council, May 28, 1996, < <http://www.globalpolicy.org/security/docs/elaraby.htm> > (accessed May 16, 2006).
109. **EIBaradei, Mohamed**, *Preserving the Non-Proliferation Treaty*, *Disarmament Forum* (2004), No. 4, pp. 4-7.
110. **EIBaradei, Mohamed**, *Safeguarding the Atom. The IAEA & International Nuclear Affairs*, *IAEA Bulletin* (1999), Vol. 41, No. 4, pp. 2-4.
111. **EIBaradei, Mohamed**, *Saving Ourselves From Self Destruction*, *The New York Times* (12 February 2004).
112. **EIBaradei, Mohamed**, *The Role of International Atomic Energy Agency Safeguards in the Evolution of the Nuclear Non-Proliferation Regime: Some Lessons for Other Arms Control Measures*, in **Dahlitz Julie and Dicke, D.**, *The International Law of Arms Control and Disarmament*, Vol. I: Arms Control and Disarmament Law (New York: United Nations, 1991), pp. 95-113.
113. **Epstein, Lee and Gary King**, *Empirical Research and the Goals of Legal Scholarship: The Rules of Inference*, *University of Chicago Law Review* (Winter 2002), Vol. 69, No. 1, pp. 1-209.
114. **Evans, Gareth**, *When is it Right to Fight?*, *Survival* (Autumn, 2004), Vol. 46, No. 3, pp. 59-82.
115. **Evans, Malcolm, D.**, *International Law*, (1<sup>st</sup> ed.) (Oxford: Oxford University Press, 2003).
116. **Farrow, Lachlan (ed.)**, *Accidental Nuclear War: A Post-Cold War Assessment*, *New England Journal of Medicine* (1998), Vol. 338, No. 18, pp. 1326-1331.
117. **Fassbender, Bardo**, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (The Hague: Kluwer Law International, 1998).

118. **Fischer, Adrian**, *Outlawry of War and Disarmament, Collected Courses of the Hague Academy of International Law* (1971), Vol. 133.
119. **Fischer, David**, *History of the International Atomic Energy Agency* (Vienna: IAEA, 1997).
120. **Fischer, David**, *Safeguarding the Atom: A Critical Appraisal* (London: SIPRI, 1985).
121. **Fischer, David**, *Towards the 1995: The Prospects for Ending the Proliferation of Nuclear Weapons* (Aldershot UK: Dartmouth Publishers for the United Nations Institute for Disarmament Research, 1993).
122. **Fitzpatrick, Mark**, *Assessing Iran's Nuclear Programme*, (Autumn, 2006), Vol. 48, No. 3, pp. 5-26.
123. **Fitzpatrick, Mark**, *Iran and North Korea: The Proliferation Nexus*, *Survival* (Spring, 2006), Vol. 48, No. 1, pp. 61-80.
124. **Fois, Paolo**, *Il consenso ad obbligarsi nel trattato contro la proliferazione nucleare*, *Rivista di diritto internazionale* (2008), Vol. 91, fascicolo 1, pp. 39-64.
125. **Fox, Hazel, (ed.)**, *The Changing Constitution of the United Nations* (London: British Institute of international and comparative law, 1997).
126. **Frank, Thomas M.**, *The Security Council and "Threats to the Peace": some Remarks on Remarkable Recent Developments*, in **Dupuy, René-Jean**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), pp. 83-110.
127. **Freeman, John.**, *Is Arms Control Law in Crisis?*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 3, pp. 303-313.
128. **Freudenschuß, H.**, *Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council*, *European Journal of International Law* (1994), Vol. 5, pp. 492-531.
129. **Frowein, J.A.**, *Article 40*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002) pp. 617-621.
130. **Frowein, J.A.**, *Article 41*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), pp. 621-628.
131. **Frowein, J.A.**, *Article 42*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), pp. 628-636.
132. **Frowein, J.A.**, *Article 43*, in **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002), pp. 636-639.
133. **Fujita, Hisakazu**, *Issues of Principle*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: Arms Control and Disarmament Law (New York: United Nations, 1996).
134. **Garvey, Jack**, *A New Architecture for the Non-Proliferation of Nuclear Weapons*, *Journal of Conflict & Security Law* (2008), Vol. 12, No. 3, pp. 339-357.
135. **Garvey, Jack**, *The International Institutional Imperative for Countering the Spread of Weapons of Mass Destruction: Assessing the Proliferation Security Initiative*, *Journal of Conflict & Security Law* (2005), Vol. 10, No. 2, pp. 125-147.
136. **Gazzini, Tarcisio**, *NATO's Role in the Collective Security System*, *Journal of Conflict & Security Law* (2003), Vol. 8 No. 2, pp. 231-263.
137. **Gazzini, Tarcisio**, *The Rules on the Use of Force at the Beginning of the XXI Century*, *Journal of Conflict & Security Law* (2006), Vol. 11, No. 3, pp. 319-342.
138. **Gerstenberg, Oliver**, *What International Law Should (Not) Become. A Comment on Koskeniemi*, *European Journal of International Law* (2005), Vol. 16 No. 1, pp. 125-130.

139. **Gill, Terry**, *Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter*, Netherlands Yearbook of International Law (1995), Vol. 26, pp. 33-138.
140. **Glennon, Michael J.**, *The Emerging Use-of-Force Paradigm*, Journal of Conflict & Security Law (2006), Vol. 11, No. 3, pp. 309-317.
141. **Goldblat, Jozef**, *Arms Control: The New Guide to Negotiations and Agreements* (fully revised and updated 2<sup>nd</sup> ed.) (London: SAGE Publications, 2002).
142. **Goldblat, Jozef**, *Can Nuclear Proliferation be Stopped?* (Geneva: Geneva International Peace Research Institute, 2007).
143. **Goldblat, Jozef**, *Contribution of the UN to arms control*, in **Bourantonis, D., Evriviades, M. (ed.)**, *A United Nations for the Twenty-first Century*, (Denver: Kluwer, 1996), pp. 243-257.
144. **Goldblat, Jozef**, *Issues Facing the 1995 NPT Extension Conference*, Security Dialogue (1992), Vol. 23, No. 4, pp. 25-32.
145. **Goldblat, Jozef**, *Nuclear-Weapon-Free-Zone Treaties: a Few Suggestions for Improvement*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: Arms Control and Disarmament Law (New York: United Nations, 1996), pp. 127-129.
146. **Goldblat, Jozef**, *Nuclear-Weapon-Free Zones: A History and Assessment*, The Nonproliferation Review (Spring 1997), Vol. 4, Issue 3, pp.18-32.
147. **Goldblat, Jozef**, *The Seabed Treaty and arms control*, in *Security of the Sea, Naval Forces and Arms Control* (Oxford, 1990), pp. 187-200.
148. **Goldschmidt, Pierre**, *Concrete Steps to Improve the Nonproliferation Regime* (Carnegie Endowment for International Peace, 2009), No. 100. Available at < [http://carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](http://carnegieendowment.org/files/improve_nonpro_regime.pdf) > (accessed on 8 April 2009).
149. **Goldschmidt, Pierre**, *Rule of Law, Politics and Nuclear Non-proliferation*, paper given at the Ecole Internationale de Droit Nucléaire, Université de Montpellier (Session 2007).
150. **Goldschmidt Pierre, Perkovich George**, *Iran: Next Steps for UN Security Council* (18 January 2006). Available at < <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=845&&prog=zgp&proj=znpp> > (accessed on 4 October 2009).
151. **Goodrich L. M., Hambro E., and Simons, A.**, *Charter of the United Nations: Commentary and Documents* (3<sup>rd</sup> ed.) (New York: Columbia University Press, 1969).
152. **Goodrich, L.M. and Simons, A.P.**, *The United Nations and the Maintenance of International Peace and Security* (2<sup>nd</sup> ed.) (Washington D.C., 1962).
153. **Gordon, E.**, *The World Court and the Interpretation of Constitutive Treaties: Some Observations on the Development of an International Constitutional Law*, American Journal of International Law (1965), Vol. 59, pp. 794-833.
154. **Gottemoeller, Rose**, *Nuclear necessity in Putin's Russia*, Arms Control Today (April 2004). Available at <[http://www.armscontrol.org/act/2004\\_04/Gottemoeller.asp](http://www.armscontrol.org/act/2004_04/Gottemoeller.asp) > (accessed on 22 June 2007).
155. **Gowlland-Debbas, Vera**, *The Functions of the United Nations Security Council in the International Legal System*, in **Byers, Michael.**, *The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000), pp. 277-313.
156. **Gowlland-Debbas, Vera**, *The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance*, European Journal of International Law (2000), Vol. 11, No. 2, pp. 361-383.

157. **Gowlland-Debbas, Vera**, *The Relationship between the International Court of Justice and the Security Council in the Light of the Lockerbie Case*, *American Journal of International Law* (1994), Vol. 88, pp. 643-677.
158. **Gowlland-Debbas, Vera**, *Security Council Enforcement Action and Issues of State Responsibility*, *International & Comparative Law Quarterly* (1994), Vol. 43, pp. 55-98.
159. **Guzman, Andrew**, *The Design of International Agreements*, *European Journal of International Law* (2005), Vol. 16, No.4, pp. 579–612.
160. **Harper, K.**, *Does the United Nations Security Council Have the Competence to Act as Court and Legislature?*, *New York University Journal of International Law and Politics* (1994–5), Vol. 27, pp. 103–157.
161. **Hart, John, and Kile, Shannon N.**, *Libya's renunciation of nuclear, biological and chemical weapons and ballistic missiles* (Sipri Yearbook, 2005), no. YEAR2005, pp. 629-648.
162. **Hawkins, Virgil**, *The Silence of the UN Security Council. Conflict and Peace Enforcement in 1990s* (Firenze: European Press Academic Publishing, 2004).
163. **Herndl, K.**, *Reflections on the Role, Functions and Procedures of the Security Council of the United Nations*, 206 *Recueil des Cours* (1987).
164. **Higgins, Rosalyn**, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?* *International and Comparative Law Quarterly* (1972), Vol. 21, No. 1, pp. 270-286.
165. **High-Level Panel on Threats, Challenges and Change**, *A More Secure World: Our Shared Responsibility*, A/59/565 (2 December 2004). Available at <<http://www.un.org/secureworld/report2.pdf>> (accessed on 21 May 2009).
166. **Hilderbrand, Robert**, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill: University of North Carolina Press, 1990).
167. **Hisakazu Fujita**, *The Advisory Opinion of the International Court of Justice on the legality of nuclear weapons*, *International Review of the Red Cross* (28 February 1997), No. 316, pp. 56-64. Available at <<http://www.icrc.org/web/eng/siteeng0.nsf/iwpList514/70C77AA9B80CD998C1256B66005A61FC>> (accessed on 10 October 2008).
168. **Hooper, Richard**, *The changing nature of safeguards*, *IAEA Bulletin* (June 2003), Vol. 45, No. 1, pp. 7-11.
169. **Howlett, Darryl and Simpson, John**, *Nuclear non-proliferation – how to ensure an effective compliance mechanism*, in **Schmitt, Burkard**, *Effective non-proliferation: the EU and the 2005 NPT Review Conference*, *Chaillot Paper* (April 2005), No. 77, pp. 9-25.
170. **Hulsroj, Peter**, *The Legal Function of the Security Council*, *Chinese Journal of International Law* (2002), Vol. 1, No. 1, pp. 59-93.
171. **Hunt, David**, *The International Criminal Court. High Hopes, 'Creative Ambiguity' and an Unfortunate Mistrust in International Judges*, *Journal of International Criminal Justice* (2004), Vol. 2, pp. 56-70.
172. **IAEA**, *Non-Proliferation and International Safeguards* (Vienna: IAEA, 1978).
173. **Jain, Neha**, *A Separate Law for Peacekeepers: The Clash between the Security Council and the International Criminal Court*, *European Journal of International Law* (2005), Vol. 16, No. 2, pp. 239–254.
174. **James, Paul and Nahory, Céline**, *Theses Towards a Democratic Reform of the UN Security Council*, *Global Policy Forum* (July 13, 2005), available at <<http://www.globalpolicy.org/security/reform/2005/0713theses.htm>> (accessed on 9 October 2006).

175. **Jentleson Bruce W., Whytok Chtistopher A.**, *Who "Won" Libya? The Force-Diplomacy Debate and Its Implications for Theory and Policy*, *International Security*, (Winter 2005/06), Vol. 30, No. 3, pp. 47-86.
176. **Johnstone, Ian**, *Security Council Deliberations: The Power of the Better Argument*, *European Journal of International Law* (2003), Vol. 14, No. 3, pp. 437-480.
177. **Johnson, Rebecca**, *Back from the Brink? The 2007 NPT PrepCom Report*, *Disarmament Diplomacy* (Summer 2007) Issue No. 85. Available at < <http://www.acronym.org.uk/dd/dd85/85npt.htm> > (accessed on 28 June 2009).
178. **Johnson, Rebecca**, *Is the NPT up to the challenge of proliferation?* *Disarmament Forum* (2004), No. 4, pp. 9-19. Available at < <http://www.unidir.ch/pdf/articles/pdf-art2186.pdf> > (accessed on 21 December 2007).
179. **Johnson, Rebecca**, *Looking Towards 2010: What does the Nonproliferation Regime need?* *Disarmament Diplomacy* (Spring 2007), No. 87. Available at < <http://www.acronym.org.uk/dd/dd84/84npt.htm> > (accessed on 21 June 2007).
180. **Johnson, Rebecca**, *NPT PrepCom 2008* (9 May 2008). Available at < <http://www.acronym.org.uk/npt/08pc07.htm> > (accessed on 10 May 2008).
181. **Johnson, Rebecca**, *Politics and Protection: Why the 2005 NPT Review Conference Failed*, *Disarmament Diplomacy* (Autumn 2005), No. 80. Available at < <http://www.acronym.org.uk/dd/dd80/80npt.htm> > (accessed on 10 June 2008).
182. **Johnson, Rebecca**, *Report on the 2004 NPT PrepCom*, *Disarmament Diplomacy* (May/June 2004), Issue 77. Available at < <http://www.acronym.org.uk/dd/dd77/77npt.htm> > (accessed on 28 July 2009).
183. **Johnson, Rebecca**, *The NPT in 2004: Testing the Limits*, *Disarmament Diplomacy* (March/April 2004), Issue 76. Available at < <http://www.acronym.org.uk/dd/dd76/76npt.htm> > (accessed on 28 July 2009).
184. **Johnson, Rebecca**, *The 2005 NPT Conference in Crisis: Risk and Opportunities*, *Disarmament Diplomacy* (April/May 2005), No. 79. Available at < <http://www.acronym.org.uk/dd/dd79/79npt.htm> > (accessed on 21 June 2007).
185. **Johnson, Rebecca**, *The 2008 NPT PrepCom: Good Meeting, but was it Relevant?*, *Disarmament Diplomacy* (Summer 2008), Issue no. 88. Available at < <http://www.acronym.org.uk/dd/dd88/88npt.htm> > (accessed on 6 July 2009).
186. **Joyner Christopher C., Schachter Oscar**, *United Nations Legal Order* (The American Society of International Law: Cambridge University Press, 1995), 2 vols.
187. **Kammerhofer, Jörg**, *Uncertainty in the Formal Sources of International Law: Customary International Law and Some of Its Problems*, *European Journal of International Law* (2004), Vol. 15, No. 3, pp. 523-553.
188. **Kanwar, Vik**, *Two Crises of Confidence: Securing Non-Proliferation and the Rule of Law Through Security Council Resolutions*, *Ohio Northern University Law Review* (2008), Vol. 34, pp. 1-49. Available at < [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=vik\\_kanwar](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=vik_kanwar) > (accessed on 10 September 2009).
189. **Kelsen, Hans**, *The Law of the United Nations* (New York: Frederick A. Praeger, 1964).
190. **Kelsen, Hans**, *The Law of the United Nations: a critical analysis of its fundamental problems: with supplement* (Union, N.J.: Lawbook exchange, 2000).
191. **Kervers, Onno**, *Strengthening Compliance with the Biological Weapons Convention: the Draft Protocol*, *Journal of Conflict & Security Law* (2003), Vol. 8, No. 1, pp. 161-200.
192. **Khalil, Mona Ali**, *Iraq, Afganistan, and the War on Terrorism: Winning the Battle and Losing the War*, *Georgia Journal of International and Comparative Law* (Fall 2004), Vol. 33, No. 1, pp. 261-272.



193. **Kirgis, Frederic**, *North Korea's Withdrawal from the Nuclear Nonproliferation Treaty*, ASIL Insights (January 2003), < <http://www.asil.org/insights/insigh96.htm> > (accessed on 28 November 2006).
194. **Kirgis, Federic**, *The Security Council's First Fifty Years*, American Journal of International Law (1995), Vol. 89, pp. 506-539.
195. **Kirgis, Federic**, *The United States Commitment to the Norms of the United Nations and Its Related Agencies*, Transnational Law & Contemporary Problems (Spring 1991), Vol. 1, No. 1, pp. 125-157.
196. **Kirk, Grayson**, *The Enforcement of Security*, Yale LJ (1946), Vol. 55, p.
197. **Kooijmans, Peter H.**, *The Enlargement of the Concept "Threat to the Peace"*, in **Dupuy, René-Jean.**, *Le Développement du Rôle du Conseil de Sécurité.// Peace-keeping and Peace-building. The Development of the Role of the Security Council* (Dordrecht: Martinus Nijhoff Publishers, 1993), pp. 111-121.
198. **Koskenniemi, Martti**, *The Police in the Temple. Order, Justice and the UN: A Dialectical View*, EJIL (1995), Vol. 6, No.1, pp. 325-348.
199. **Krass Allan S., Boskma Peter, Elzen Boelie, Smit Wim A.**, *Uranium Enrichment and Nuclear Weapon Proliferation* (Taylor and Francis/ Stockholm International Peace Research Institute, 1983).
200. **Kuppuswamy, Chamundeeswari**, *Is the nuclear Non-Proliferation Treaty shaking at its foundations? Stock taking after the 2005 NPT Review Conference*, Journal of Conflict and Security Law (2006), Vol. 11, No. 1, pp. 141-155.
201. **Lagoni, R.**, *Resolution, Declaration, Decision*, in **Wolfrum, Rudiger, (ed.)**, *United Nations: Law, Policies, and Practice* ((München: Beck, 1995).
202. **Lagrange, Evelyne**, *Le Conseil de sécurité des Nations Unies peut-il violer le droit international?*, Revue belge de droit international (RBDI) (2004), Vol. 37, No. 2, pp. 568-591.
203. **Lamb, Susan**, *Legal Limits to United Nations Security Council Powers*, in **Goodwin-Gill G., Talmon S. (ed.)**, *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), pp. 361-388.
204. **Lauterpacht, Elihu**, *The Legal Effect of Illegal Acts of International Organizations*, in *Cambridge Essays in International Law: Essays in Honour of Lord McNair* (London: Stevens, 1965), pp. 88-121.
205. **Lavoy, Peter R.**, *Nuclear Proliferation Over the Next Decade: Causes, Warning Signs, and Policy Responses*, Nonproliferation Review (November 2006), Vol. 13, No 3, pp. 433-454.
206. **Leaver, Richard**, *The failing NPT: the case for institutional reform*, Australian Journal of International Affairs (December 2005), Vol. <http://www.informaworld.com/smpp/title~content=t713404203~db=all~tab=issueslist~branches=59-v5959>, Issue 4, pp. 417-424.
207. **Lee, Eric Yong-Joong**, *The Geneva Agreed Framework and the Optimization of DPRK-US. Relationship for Nuclear Security: A Legal and Policy Analysis*, Chinese Journal of International Law (2003), Vol. 2, No. 1, pp. 289-309.
208. **Lektzian, David, and Souva, Mark**, *An Institutional Theory of Sanctions Onset and Success*, Journal of Conflict Resolution (2007), Vol. 51, No. 6, pp. 848-871.
209. **Levi, Michael A. and O'Hanlon, Michael E.**, *The Future of Arms Control* (Washington D.C.: Brookings Institution Press, 2005).
210. **Levi, Michael A., and Ferguson, Charles D.**, *U.S.-India Nuclear Cooperation: A Strategy for Moving Forward*, CSR No. 16 (June 2006) Council on Foreign Relations. Available at < <http://www.cfr.org/content/publications/attachments/USIndiaNuclearCSR.pdf> > (accessed on 13 July 2006).

211. **Lodding Jan, Rauf Tariq**, *IAEA and NPT: The verification Challenge. Challenging Nuclear Issues Point Way Forward*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 20-25. Available at < [http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea\\_npt.pdf](http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/iaea_npt.pdf) > (accessed on 28 December 2007).
212. **Lord, Carnes**, *The Past and Future of Nonproliferation*, Naval War College Review (Autumn 2001), Vol. 54, No. 4, pp.153-157.
213. **Lyon, Rod**, *Nuclear weapons, international security and the NPT*, Australian Journal of International Affairs (December 2005), Vol. 59, Issue 4, pp. 425-430.
214. **Lysen, Göran**, *The Adequacy of the Law of Treaties to Arms Control Agreements*, in **Dahlitz, Julie (ed.)**, *Avoidance and Settlement of Arms Control Disputes*, Arms Control and Disarmament Law, (New York: United Nations, 1994), Vol. 2, pp. 123-147.
215. **Lysen, Göran**, *The International Regulation of Armaments: The Law of Disarmament* (Uppsala: Iustus Förlag, Juridiska Föreningen i Uppsala, 1990).
216. **Malone, David M.**, *The High-Level Panel and the Security Council*, Security Dialogue (September 2005), Vol. 36, pp. 370 - 372.
217. **Manning, Robert A., Roberts, Brad., Montaperto, Ronald.**, *China, Nuclear Weapons, and Arms Control*, Council on Foreign Relations Press (April 2000). Available at <<http://www.cfr.org/content/publications/attachments/china.pdf>> (accessed on 22 June 2007).
218. **Martinez, Luis Miguel Hinojosa**, *The Legislative Role of the Security Council in its Fight Against Terrorism: Legal, Political and Practical Limits*, International & Comparative Law Quarterly (April 2008), Vol. 57, pp. 333-359.
219. **Matheson, Michael J.**, *Council Unbound: The Growth of UN Decision Making on Conflict and Post-conflict Issues after the Cold War* (United States Institute of Peace Press, 2007).
220. **Mazarr, Michael J.**, *North Korea and the Bomb: A Case Study in Nonproliferation* (New York: St. Martin's Press, 1995).
221. **MccGwire, Michael**, *The rise and fall of the NPT an opportunity for Britain*, International Affairs (2005), Vol. 81, No. 1, pp. 115-140.
222. **McConville Mike, Chui Wing Hong (ed.)**, *Research Methods for Law* (Edinburgh University Press, 2007).
223. **MCIS CNS**, *NPT BRIEFING BOOK 2008 EDITION, Part I, Section 1: Nuclear Energy and Nuclear Weapons: An Introductory Guide*. Available at < <http://www.mcis.soton.ac.uk/publications/briefingbook2008.html> > (accessed on 22 June 2008).
224. **Mendelsohn, Jack**, *Bush Announces Unilateral Cuts in Tactical Weapons' Alerts*, Arms Control Today (1991), Vol. 21, No. 8.
225. **Michie, Andrew**, *The Provisional Application of Arms Control Treaties*, Journal of Conflict & Security Law (2005), Vol. 10, No. 3, pp. 345–377.
226. **Morris, Justin**, *UN Security Council Reform: A Counsel for the 21st Century*, Security Dialogue (September 2000), Vol. 31, pp. 265 - 277.
227. **Mounir Zahran**, *The Relevance of the United Nations Charter*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 131-137.
228. **Myjer, E.**, *Supervisory Mechanisms and Dispute Settlement*, in **Dahlitz, Julie (ed.)**, *Avoidance and Settlement of Arms Control Disputes*, Vol. II: *Arms Control and Disarmament Law* (New York: United Nations, 1994), pp. 149-169.
229. **Mukhatzhanova Gaukhar, Adams Georgia, and du Preez Jean**, *UN Disarmament Committee Forecasts Troubled Nonproliferation Future* (March 2007),

- NTI (Working for safer World). Available at < [http://www.nti.org/e\\_research/e3\\_86.html](http://www.nti.org/e_research/e3_86.html) > (accessed on 17 December 2007).
230. **Murphy, S.D.**, *The Security Council, legitimacy, and the Concept of Collective Security After the Cold War*, Columbia Journal of Transnational Law (1994), Vol. 32, pp. 201-288.
231. **Müller, Harald**, *Farewell to Arms. What's Blocking Nuclear Disarmament?*, IAEA Bulletin (March 2005), Vol. 46, No. 2, pp. 12-15.
232. **Müller, Harald**, *The 2005 NPT Review Conference: Reasons and Consequences of failure and Options for Repair*, The Weapons of Mass Destruction Commission (2005), No. 31. Available at < <http://www.wmdcommission.org/files/No31.pdf> > (accessed on 12 December 2007).
233. **National Intelligence Estimates**, *Iran: Nuclear Intentions and Capabilities* (November 2007). Available at < [http://www.odni.gov/press\\_releases/20071203\\_release.pdf](http://www.odni.gov/press_releases/20071203_release.pdf) > (accessed on 4 December 2007).
234. **Nielsen, Jenny and Simpson, John**, *The NPT Withdrawal Clause and its Negotiating History* (MCIS NPT Issue Review: July, 2004). Available at < [http://www.mcis.soton.ac.uk/Site\\_Files/pdf/withdrawal\\_clause\\_NPT\\_nielsen&simpson\\_2004.pdf](http://www.mcis.soton.ac.uk/Site_Files/pdf/withdrawal_clause_NPT_nielsen&simpson_2004.pdf) > (accessed on 20 June 2005).
235. **Nolte, Georg**, *The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections in Byers, Michael, The Role of Law in International Politics: essays in international relations and international law* (Oxford, New York, N.Y.: Oxford university press, 2000).
236. **Notburga K. Calvo-Goller and Calvo, Michel**, *The SALT Agreements: Content, Application, Verification*, (Dordrecht: Martinus Nijhoff Publishers, 1987).
237. **Nye, Joseph**, *The International Nonproliferation Regime* (Stanley Foundation, 1980).
238. **Nye, Joseph**, *Maintaining a Nonproliferation Regime*, International Organization (Winter 1981), Vol. 35, No. 1, pp. 15-38.
239. **Oberdorfer, Don**, *The Two Koreas: A Contemporary History*, (Reading, MA: Addison-Wesley, 1997).
240. **Odello, Marco**, *Commentary On the United Nation's Hight-Level Panel On Threats, Challenges and Change*, Journal of Conflict & Security Law (2005), Vol. 10, No. 2, pp. 231–262.
241. **Ogilvie-White, Tanya**, *International Responses to Iranian Nuclear Defiance: The Non-Aligned Movement and the Issue of Non-Compliance*, The European Journal of International Law (2007), Vol. 18, No. 3, pp. 453–476.
242. **Orakhelashvili, Alexander**, *The impact of peremptory norms on the interpretation and application of United Nations Security Council resolutions*, European Journal of International Law (2005), Vol. 16, No. 1, pp. 59-88.
243. **Öberg, Marko Divac**, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, European Journal of International Law (2005), Vol. 16 No. 5, pp. 879–906.
244. **O'Neil, Andrew**, *Nuclear Proliferation and Global Security: Laying the Groundwork for a New Policy Agenda*, Comparative Strategy (October-November 2005), Vol. 24, No. 4, pp. 343 – 359.
245. **Osieke, Ebere**, *The Legal Validity of Ultra Vires Decisions of International Organizations*, The American Journal of International Law (April 1983), Vol. 77, No. 2, pp. 239-256.

246. **Österdahl, Inger**, *The Exception As The Rule: Lawmaking on Force and Human Rights by The UN Security Council*, *Journal of Conflict & Security Law* (2005), Vol. 10, No. 1, pp. 1–20.
247. **Pac, Henryk**, *The Anti-Proliferation Impact of CTBT*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 79-82.
248. **Papadopoulou, Marialena**, *The Security Council Reform*, <<http://www.eliamep.gr/eliamep/files/05.04.pdf>> (accessed November 1, 2006).
249. **Payne, Samuel B. Jr.**, *The Soviet Union and SALT* (Cambridge, MA: MIT Press, 1980).
250. **Pellet, Alain**, *Peut-on et doit-on contrôler les actions du Conseil de sécurité?* in **Boutros, Ghali**, *Le Chapitre VII de la Charte des Nations Unies* (Pedone, Paris, 1995).
251. **Perkovich, George**, *Strengthening non-proliferation rules and norms - the three-state problem*, *Disarmament Forum* (2004), Vol. 4, pp. 21-32.
252. **Perkovich, George**, *The End of the Nonproliferation Regime?* (Carnegie endowment: November 2006). Available at <[http://www.carnegieendowment.org/files/perkovich\\_current\\_history.pdf](http://www.carnegieendowment.org/files/perkovich_current_history.pdf)> (accessed on 21 December 2007).
253. **Perkovich George, Mathews Jessica T., Cirincione Joseph, Gottemoeller Rose, Wolfsthal Jon B.**, *Universal Compliance: A Strategy for Nuclear Security*, (Washington: Carnegie Endowment for International Peace, March, 2005).
254. **Petersen, Keith S.**, *The Business of the United Nations Security Council: History (1946-1963) and Prospects*, *The Journal of Politics* (November 1965), Vol. 27, No. 4, pp. 818-838.
255. **Petrovsky, Vladimir**, *Foreword*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 1-11.
256. **Pilat, Joseph F. and Pendley, Robert E. (ed.)**, *Beyond 1995: The Future of the NPT Regime* (New York: Plenum Press, 1990).
257. **Pilat, Joseph F.**, *The end of the NPT regime?*, *International Affairs* (2007), Vol. 83, No. 3, pp. 469-482.
258. **Pinto, M.C.W.**, *Making International Law in the Twentieth Century*, *International Law FORUM du droit international* (Koninklijke Brill N.V., Leiden, The Netherlands: 2004), Vol. 6, pp. 141–148.
259. **Pomerance, Michla**, *Case Analysis: The ICJ and South West Africa (Namibia): A Retrospective Legal/Political Assessment*, *Leiden Journal of International Law* (1999), Vol. 12, No. 2, pp. 425-436.
260. **Prantl, Jochen**, *Informal Groups of States and the UN Security Council*, *International Organization* (Summer, 2005), Vol. 59, pp. 559-592.
261. **Presbo, Andreas**, *Safeguards in Iran: prospects and challenges*, *Trust & Verify* (April-June 2009), Issue No. 125. Available at <<http://www.vertic.org/assets/TV/TV125.pdf>> (accessed on 11 August 2009).
262. **Ramana, M.V.**, *Bombing Bombay? Effects of Nuclear Weapons and a Case Study of a Hypothetical Explosion* (Cambridge, USA: International Physicians for the Prevention of Nuclear War (IPPNW), 1998).
263. **Rapacki, Adam**, *The Polish Plan for a Nuclear-Free Zone Today*, *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 39, No. 1 (January 1963), pp. 1-12.
264. **Rauf, Tariq and Johnson, Rebecca**, *After the NPT's Indefinite Extension*, *The Nonproliferation Review* (Autumn 1995), Vol. 3, Issue 1, pp 28-41.

265. **Rauf, Tariq**, *An Unequivocal Success? Implications of the NPT Review Conference*, *Arms Control Today* (July/August 2000). Available at < [http://www.armscontrol.org/act/2000\\_07-08/raufjulaug.asp](http://www.armscontrol.org/act/2000_07-08/raufjulaug.asp) > (accessed on 28 December 2007).
266. **Rauf, Tariq**, *The long road to a “Nukes-Free” World: States are preparing for the next Review Conference of the world’s Nuclear non-proliferation Treaty (NPT) in 2010*, *IAEA Bulletin* (September 2007), Vol. 49, No. 1, pp. 15-17. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull491/pdfs/06npt.pdf> > (accessed on 8 December 2008).
267. **Rauf, Tariq**, *The Nature of the Revised Review Process and the New Reporting and Consultation Procedures* (March 2002), pp 1-30. Available at < <http://www.mcis.soton.ac.uk/Annecy2002March/RAUF-Annecy.pdf> > (accessed on 8 December 2008).
268. **Rauf, Tariq**, *Successes of the Nuclear Non-Proliferation Regime* (8 October 1999). Available at < <http://cns.miis.edu/pubs/ionp/iaea.htm> > (accessed on 28 December 2007).
269. **Rauf, Tariq**, *Towards NPT 2005: An Action Plan for the 13 Steps Towards Nuclear Disarmament*, Report of the Center for Nonproliferation Studies (CNS) (2001). Available at < <http://cns.miis.edu/pubs/reports/pdfs/npt2005.pdf> > (accessed on 28 December 2007).
270. **Rauf, Tariq**, *Towards Nuclear Disarmament*, UNIDIR Disarmament Forum (2000), Vol. 1, pp. 39-50. Available at < <http://www.unidir.org/pdf/articles/pdf-art177.pdf> > (accessed on 28 December 2007).
271. **Rauf, Tariq**, *The 2000 NPT Review Conference: Challenges and Prospects*, Report of the Center for Nonproliferation Studies (CNS) (2000). Available at < <http://cns.miis.edu/pubs/ionp/21apr00.pdf> > (accessed on 28 December 2007).
272. **Rauf, Tariq and Vovchok, Zoryana**, *A Secure Nuclear Future*, *IAEA Bulletin* (September 2009), Vol. 51, No. 1, pp. 10-13. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull511/index.html> > (accessed on 14 September 2009).
273. **Rauf, Tariq and Vovchok, Zoryana**, *Fuel for thought*, *IAEA Bulletin* (March 2008), Vol. 49, No. 2, pp. 59-63. Available at < <http://www.iaea.org/Publications/Magazines/Bulletin/Bull492/49204845963.pdf> > (accessed on 14 September 2009).
274. **Reisman Michael, and Stevick Douglas**, *The Applicability of International Law Standards to United Nations Economic Sanctions Programmes*, *European Journal of International Law* (1998), Vol. 9, pp. 86-141.
275. *Repertory of Practice of United Nations Organs. The Charter of the United Nations*. Available at < <http://www.un.org/law/repertory/> > (accessed on 3 September 2008).
276. **Ress, G.**, *The Interpretation of the Charter in Simma, Bruno (ed.), The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002).
277. **Roberts, Brad**, *Revisiting Fred Ikle’s 1961 Question, “After Detection - What?”* *The Nonproliferation Review* (Spring 2001), pp. 10-24, <<http://cns.miis.edu/pubs/npr/vol08/81/81rob.pdf>>, (accessed October 11, 2006).
278. **Roche, Douglas**, *Nuclear Law & Disorder*, *IAEA Bulletin* (March 2005), Vol. 46, No. 2, pp. 10-11.
279. **Rockwood, Laura**, *The IAEA’s Strengthened Safeguards System*, *Journal of Conflict and Security Law* (2002), Vol. 7, No. 1, pp. 123-136.

280. **Rockwood, Laura**, *Safeguards and Nonproliferation: The First Half-Century from a Legal Perspective*, *Journal of Nuclear Materials Management* (Summer 2007), Vol. XXXV, No. 4, pp. 7-17.
281. **Rosenne, Shabtai**, *Developments in the Law of Treaties 1945-1986* (Cambridge: Cambridge University Press, 1989).
282. **Russel, Ruth**, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Washington: Brookings Institution: 1958).
283. **Sanders, Ben**, *IAEA Safeguard and the NPT*, *Disarmament Forum* (2004), No. 4, pp. 43-49.
284. **Sands, Philippe and Klein, Pierre**, *Bowett's Law of International Institutions* (London: Sweet & Maxwell, 2001).
285. **Sarooshi, Danesh**, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999).
286. **Sato, Tetsuo**, *Evolving Constitutions of International Organizations* (The Hague: Kluwer Law International, 1996).
287. **Saul, Ben**, *Definition of "Terrorism" in the UN Security Council: 1985-2004*, *Chinese Journal of International Law* (2005), Vol. 4, No. 1, pp. 141-166. <http://chinesejil.oxfordjournals.org/cgi/reprint/4/1/141.pdf> (accessed January 22, 2007).
288. **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency* (Legal Series No. 7) (Vienna: International Atomic Energy Agency, 1970).
289. **Scasz, Paul**, *The Law and Practice of the International Atomic Energy Agency 1970-1980: Supplement 1 to the 1970 edition of Legal Series No. 7* (Legal Series No. 7-S1) (Vienna: International Atomic Energy Agency, 1993).
290. **Scasz, Paul**, *The Security Council Starts Legislating*, *American Journal of International Law* (2002), Vol. 96, No. 4, pp. 901-905.
291. **Schabash, William A.**, *United States Hostility to the International Criminal Court: It's All About the Security Council*, *European Journal of International Law* (2004), Vol. 15, No. 4, pp. 701-720.
292. **Schachter, Oscar**, *Authorized Uses of Force by the United Nations and regional Organizations*, in **Damrosch Lori Fisler, Scheffer David (ed.)**, *Law and Force in the New International Order* (Boulder: Westview Press, 1991).
293. **Schachter, Oscar**, *The Quasi-judicial Role of the Security Council and the General Assembly*, *American Journal of International Law* (1964), Vol. 58, No. 4, pp. 960-965.
294. **Schachter, Oscar**, *Self-defence and the Rule of Law*, *American Journal of International Law* (1989), Vol. 83, No. 2, pp. 259-277.
295. **Schachter, Oscar**, *United Nations Law in the Gulf Conflict*, *American Journal of International Law* (1991), Vol. 85, p. 452-473.
296. **Scheffer, David**, *Commentary on Collective Security*, in **Damrosch Lori Fisler, and Scheffer David (ed.)** *Law and Force in the New International Order* (Boulder: Westview Press, 1991).
297. **Scheinman, Adam M.**, *Calling for Action. The Next Generation Safeguards Initiative*, *Nonproliferation Review* (July 2009), Vol. 16, No. 2, pp. 257-267.
298. **Scheinman, Lawrence**, *Nuclear Safeguards and Non-proliferation in a Changing World Order*, *Security Dialogue* (1992), Vol. 23, No. 4, pp. 37-50.
299. **Schiff, Benjamin**, *International Nuclear Technology Transfer: Dilemmas of Dissemination and Control* (Rowman & Allanheld, 1984).
300. **Schweigman, David**, *The Authority of the Security Council under Chapter VII of the UN Charter. Legal Limits and the Role of the International Court of Justice* (The Hague: Kluwer Law International, 2001).

301. **Shaker, Mohamed**, *The Evolving International Regime of Nuclear Non-Proliferation. Collected Courses of the Hague Academy of International Law*, 2006 (Leiden/Boston: Martinus Nijhoff Publishers, 2007), Vol. 321, pp. 9-202.
302. **Shaker, Mohamed**, *The 1995 NPT Extension Conference: A Rejoinder*, *Security Dialogue* (1992), Vol. 23, No. 4, pp. 33-36.
303. **Shaker, Mohamed**, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959-1979* (3 vols.) (New York, London, Rome: Oceana Publications, Inc., 1980).
304. **Shaker, Mohamed**, *Security guarantees and the role of the UN Security Council* in **Van Leeuwen, Marianne (ed.)**, *The future of the international nuclear non-proliferation regime* (Boston: M. Nijhoff Publishers: 1995), pp. 243-272.
305. **Shaw, Malcolm Nathan**, *International Law* (5<sup>th</sup> ed.) (Cambridge: Cambridge University Press, 2003).
306. **Shultz, George**, *Preventing the Proliferation of Nuclear Weapons*, *Department of State Bulletin* (1984), Vol. 84, pp. 17-21.
307. **Simma, Bruno (ed.)**, *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> ed.) (Oxford: Oxford University Press, 2002).
308. **Simpson, Gerry**, *The Situation of the International Legal Theory Front: the Power of Rules and the Rule of Power*, *European Journal of International Law* (2000), Vol. 11, No. 2, pp. 439-464.
309. **Simpson, John and Howlett, Darryl**, *The NPT Renewal Conference: Stumbling toward 1995*, *International Security* (Summer, 1994), Vol. 19, No. 1, pp. 41-71.
310. **Sinclair, Ian**, *The Vienna Convention on the Law of Treaties* (2<sup>nd</sup> ed.) (Manchester, Manchester University Press, 1984).
311. **Singer, J. David and Tago, Atsushi**, *The Proliferation of Nuclear Weapons: From Vertical to Horizontal?*, Paper presented at the annual meeting of the *The Midwest Political Science Association* (Palmer House Hilton, Chicago, Illinois 15 April 2004).
312. **Singh, Nagendra and McWhinney, Edward**, *Nuclear Weapons and Contemporary International Law* (2<sup>nd</sup> revised ed.) (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1989).
313. **Skubiszewski, K.**, *Remarks on the Interpretation of the United Nations Charter*, in **Bernhardt, R. (ed.)**, *Völkerrecht als Rechtsordnung, International Gerichtsbarkeit, Menschenrechte, Festschrift für Hermann Mosler* (Berlin: Springer-Verlag, 1983), pp. 891-902.
314. **Smith, Roger**, *The Legality of Coercive Arms Control*, *The Yale Journal of International Law* (1994), Vol. 19, No. 2, pp. 455-509.
315. **Smith, Roger**, *Explaining the Non-proliferation Regime: Anomalies for Contemporary International Relations Theory*, *International Organization* (Spring, 1987), Vol. 41, No. 2, pp. 253-283.
316. **Sokolski, Henry**, *Best of Intentions: America's Campaign against Strategic Weapons Proliferation* (Westport, Conn.: Praeger, 2001).
317. **Spector Leonard S., and Smith Jacqueline R.**, *North Korea: The Next Nuclear Nightmare?*, *Arms Control Today* (March 1991), Vol. 21, No. 2, pp. 8-13.
318. **Spector, Leonard**, *Nuclear Ambitions: The Spread Of Nuclear Weapons 1989-1990*, (Boulder: Westview Press, 1990).
319. **Stanley Richard and Kraig Michael Ryan**, *The NPT: Can this Treaty be Saved?*, *Bulletin of the Atomic Scientists* (Sep/Oct 2003), Vol. 59, No. 5, pp. 59-65.
320. Statement of the President of the UN Security Council, 3046th mtg., UN doc. **S/23500** (1992). Available at <<http://projects.sipri.se/cbw/docs/cbw-unsc23500.html>>.
321. **Strobe Talbott**, *Foreword* in **Levi Michael A. and O'Hanlon Michael E.**, *The Future of Arms Control* (Washington D.C.: Brookings Institution Press, 2005).

322. **Stumpf, Waldo**, *South Africa's Nuclear Weapons Program: From Deterrence to Dismantlement*, *Arms Control Today* (December 1995/January 1996), Vol. 25, No. 10, pp. 3-8.
323. **Sur, Serge**, *Conclusions in Boutros, Ghali, Le Chapitre VII de la Charte des Nations Unies* (Pedone, Paris, 1995).
324. **Talmon, Stefan**, *The Security Council as World Legislator*, *American Journal of International Law* (2005), Vol. 99, pp. 175-193.
325. **Taylor, G.D.S.**, *The Content of the Rule Against Abuse of Rights in International Law*, *British Yearbook of International Law* (1972-1973), Vol. 46, pp. 323-352.
326. **Texeira, Pascal**, *The Security Council at the Dawn of the Twenty-First Century: To What Extent Is It Willing and Able to Maintain International Peace and Security?* (New York: United Nations, UNIDIR, 2004).
327. **Thompson, Alexander**, *Coercion Through IOs: The Security Council and the Logic of Information Transmission*, *International Organization* (Winter, 2006), Vol. 60, pp. 1-34.
328. **Timerbaev, Roland**, *What Next for the NPT? Facing the Moment of Truth*, *IAEA Bulletin* (March 2005), Vol. 46, No. 2, pp. 4-7.
329. **Van Ham, Peter**, *Managing Non-proliferation Regimes*, in *Power, Politics and Policies* (London: Royal Institute of International Affairs, 1994).
330. **Voeten, Erik**, *The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force*, *International Organization* (Summer, 2005), Vol. 59, pp. 527-557.
331. **Vorobyev, Alexander**, *Dilemmas of Compliance in the CIS*, in **Dahlitz, Julie (ed.)**, *Future Legal Restraints on Arms Proliferation*, Vol. III: *Arms Control and Disarmament Law* (New York: United Nations, 1996), pp. 229-242.
332. **Waldock, Humphrey**, *Sixth Report on the Law of Treaties*, *Yearbook of the International Law Commission (YBILC)* (1966), Vol. 2, pp. 51-103.
333. **Waldock, Humphrey**, *Special Rapporteur to the ILC, The Third Report on the Law of Treaties*, *YBILC* (1964), Vol. 2, pp. 5-65.
334. **Wallenstein, Peter**, *Representing the World: A Security Council for the 21st Century*, *Security Dialogue* (March 1994), Vol. 25, pp. 63 - 75.
335. **Ward, Curtis A.**, *Building Capacity to Combat International Terrorism: The Role of The United Nations Security Council*, *Journal of Conflict & Security Law* (2003), Vol. 8, No. 2, pp. 289-305.
336. **Weapons of Mass Destruction Commission** (final report), *Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms* (Stockholm: EO Grafiska, 1 June 2006).
337. **Wedgwood, Ruth**, *Unilateral Action in the UN System*, *European Journal of International Law* (2000), Vol. 11, No. 2, pp. 349-359.
338. **Weiss, Leonard**, *U.S.-India Nuclear Cooperation: Better Later than Sooner*, *Nonproliferation Review* (November 2007), Vol. 14, No. 3, pp. 429-457. Available at <<http://cns.miis.edu/pubs/npr/vol14/143/143weiss.pdf>> (accessed on 10 April 2008).
339. **Weiss, Leonard**, *Atoms for Peace*, *Bulletin of the Atomic Scientists* (November-December 2003), Vol. 59, No. 6, pp. 34-44.
340. **Weiss, Thomas G.**, *An Unchanged Security Council: The Sky Ain't Falling*, *Security Dialogue* (September 2005), Vol. 36, pp. 367 - 369.
341. **Weiss, Thomas G., and Young, Karen E.**, *Compromise and Credibility: Security Council Reform?*, *Security Dialogue* (2005), Vol. 36, No. 2, pp. 131-154.
342. **Weiss, Thomas G.**, *The Illusion of UN Security Council Reform*, *The Washington Quarterly* (Autumn 2003), Vol. 26, No. 4, pp. 147-161.



343. **Wellens, Karel**, *The UN Security Council and New Threats to The Peace: Back to The Future*, *Journal of Conflict & Security Law* (2003), Vol. 8, No. 1, pp. 15–70.
344. **White, Nigel**, *The Future of Arms Control Law: an Overview of the Workshop*, *Journal of Conflict & Security Law* (2004), Vol. 9, No. 3, pp. 299-302.
345. **White N.D.**, *Keeping the Peace: the United Nations and the maintenance of International Security* (Manchester University press, 1993).
346. **White, N.D.**, *The United Nations and the Maintenance of International Peace and Security*, (Manchester, UK; New York, NY, USA: Manchester University Press, 1990).
347. **Williams, Joshua and Wolfsthal, Jon**, *The NPT at 35: A Crisis of Compliance or a Crisis of Confidence?* Available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16850> (accessed on 10 June 2008).
348. **Willrich, Mason**, *Non-Proliferation Treaty. Framework for Nuclear Arms Control*, (Charlottesville, Va.: The Michie Company, 1969).
349. **Wolfe, Thomas**, *The SALT Experience* (Cambridge, MA: Ballinger, 1979).
350. **Wolfrum, Rudiger, (ed.)**, *United Nations: Law, Policies and Practice* (München: Beck, 1995), Vol. I, II.
351. **Wood, Michael**, *Security Council Working Methods and Procedure: Recent Developments*, *The International and Comparative Law Quarterly* (1996), Vol. 45, No. 1, pp.150 -161.
352. **Wood, Michael**, *The UN Security Council and International Law. First Lecture: The Legal Framework of the Security Council*, Hersch Lauterpacht Memorial Lectures (University of Cambridge, 7<sup>th</sup>- 9<sup>th</sup> November 2006).
353. **Yemin, Edward**, *Legislative Powers in the United Nations and Specialized Agencies* (Leyden: Sijthoff, 1969).
354. **Zacklin, Ralph**, *A Personal Perspective on International Law*, in **Evans, Malcolm, D.**, *International Law*, (1<sup>st</sup> ed.), (Oxford: Oxford University Press, 2003).
355. **Zanders, Jean Pascal**, *International Norms Against Chemical and Biological Warfare: an Ambiguous Legacy*, *Journal of Conflict & Security Law* (2003), Vol. 8, No. 2, pp. 391–410.
356. **Zhang Xinjun**, *The Riddle of ‘Inalienable Right’ in Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons: Intentional Ambiguity*, *Chinese Journal of International Law* (2006), Vol. 5, No. 3, 647–662.