

## LEGAL STUDIES

### World Order Case Study – Nuclear Warfare: “In relation to the challenge of nuclear disarmament, assess the role of both legal and non-legal measures in resolving conflict and encouraging cooperation”

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The possibility of nuclear warfare has been a controversial issue, with the dawn of the atomic era. To respond to this conflict and its disruption to world and regional order, a range of international legal and non-legal measures have been established in an attempt to resolve this issue and prevent further escalation of nuclear rearmament, by encouraging cooperation. Recent setbacks and cases however such as Iran, Israel and North Korea have highlighted and emphasised weaknesses within the legal measures, such as the Non-Proliferation Treaty (1970), sanctions and resolutions/ other treaties, and failures of these to encourage cooperation, undermining the effectiveness of such instruments. Although legal measures are only effective to a limited extent, non-legal measures, such as deals, review conferences, negotiations and independent commissions, also play a significant role and are slightly successful in encouraging participation, cooperation and when integrated with legal proceedings, increases their effectiveness.

The Non-Proliferation Treaty 1970 (NPT) is a legal measure that has been utilised in the struggle for international security. It is regarded as the ‘centrepiece of the nuclear non-proliferation regime’<sup>1</sup>, playing a major role in resolving conflict, and with 198 states as signatories, it is currently the only international legal measure which requires nation states to achieve complete nuclear disarmament. Already, the United States and Russia, reduced stockpiles to 5,113 from 31,255 and 5,830 from 16,000 respectively and China has reduced stockpiles to 350 from 1,260,<sup>2</sup> the size and positive results indicating the success of the NPT to some degree in encouraging cooperation and responding to the threat of nuclear warfare. The complete effectiveness of the NPT however in resolving conflict and encouraging cooperation, can be challenged through the integral Article VI. The article provides that parties ‘pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date... nuclear disarmament...’. The terms of this clause are vague and allow some nation states, such as Iran to avoid addressing disarmament obligations under the NPT by claiming that their nuclear activities are ‘peaceful’, hence undermining the NPT’s ability to completely resolve conflict over nuclear arms. The true meaning of ‘peaceful’ and ‘at an early date’ is controversial and it was not until recent legal measures in the form of revisions such as the NPT extension Principles and Objectives 1995, International Court of Justice interpretations and interpretations at the 2000 NPT review conference, which closely stated what the terms meant, that the NPT was clarified. Despite improvements, cooperation is still not completely encouraged as Iran still conducts sensitive atomic work.<sup>3</sup> Jackie Wolcott Sanders, a critic of the NPT furthermore suggests that ‘the loopholes that allow states to produce nuclear material under the cover of a civilian nuclear program must be eliminated... effective enforcement... requires close examination of what constitutes a violation.’<sup>4</sup> In conclusion, the NPT can be considered as an effective legal measure in resolving the threat of nuclear warfare and encouraging cooperation, due to the many participants and results that have already been obtained. Many avenues also exist to improve the NPT, however the inconsistencies of the terms included in the NPT reducing the effectiveness of the NPT and question the ability of the NPT to fulfil its role in reducing nuclear weapons.

The NPT, mostly successful in limiting nuclear rearmament does not always fulfil its role in encouraging cooperation and resolving conflict. The NPT sets international standards and

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<sup>1</sup> Australian Government Dept of Foreign Affairs and Trade, ‘Non Proliferation, Arms control and Disarmament’.

<sup>2</sup> “Q&A- Nuclear Disarmament” – BBC

<sup>3</sup> SMH article “Iran defies West and cranks up uranium work” – feb 10<sup>th</sup>.

<sup>4</sup> Jackie Wolcott Sanders, ‘how to strengthen the NPT’- EJournal USA, 1<sup>st</sup> March 2005.

objectives as it ultimately aims to 'eliminate nuclear weapons'<sup>5</sup>, reflecting the growth of interest in limiting conflict in the global community. These international standards are valuable and mostly effective in encouraging cooperation as it promotes messages that possession of nuclear armaments are unacceptable under international standards. Despite this, the NPT can be seen as only slightly effective in encouraging and maintaining cooperation as it often fails to address the source of the problem and cannot overcome the fundamental issues surrounding conflict, such as the 'arms race mentality', particularly within regions such as the Middle East, reducing its effectiveness. The 1995 NPT resolution on the Middle East introduced nuclear-weapon-free-zones, however as Salvador De Madariaga stated, 'Nations don't distrust each other because they are armed, they are armed because they distrust each other'<sup>6</sup>, highlighting the fundamental ideological differences and hostility between nation states that discourage cooperation and adherence to the NPT. The NPT is unable to entirely lower regional tensions and often, as predicted in Iran will 'provoke further nuclear proliferation in the Middle East'.<sup>7</sup>Hence overall the NPT, although successful in encouraging cooperation through its international standards, is not entirely effective due to the NPT's inability to address the sources of conflict and inequalities between nation states.

Sanctions, permitted and enforced through the UNSC are also legal measures in place to deal with threats of nuclear warfare. Although, to some extent they are effective in persuading nation states to cooperate, sanctions can be limited in effectiveness due to the political considerations surrounding them. Due to globalisation, nation states are interdependent on each other, increasing the effectiveness and impact of sanctions, particularly economic/trade. The NPT is only binding to signatories and can effectively impose restrictions and checks through the International Atomic Energy Agency<sup>8</sup> (IAEA), limiting their jurisdiction. The Security Council however, is an international legal measure that can act if it determines a nation state to be a threat to international security. The 5 permanent members of the SC all possess nuclear weapons, apparently only for defensive purposes but can respond directly to threats, through sanctions, providing results worldwide. The SC hence plays a valuable role in attempting to resolve nuclear conflict. This is evident in the Security Council's imposed sanctions towards Iran after its inability to verify if its nuclear arms were for 'peaceful reasons'. The UNSC imposed numerous trade and economic sanctions under resolutions such as the 1696, 1737, 1747 and 1803. Iran claims that it hasn't broken article VI and insists that however has refused IAEA inspections. The UNSC persuaded Iran to allow inspections and cease all enrichment activities, by banning sales of nuclear material to Iran. The effectiveness of the UNSC's sanctions in this instance is questionable, reflective in China's recent veto of further sanctions, due to fears of disruption to its oil supplies. Iran currently still possesses nuclear weapons, undermining the effectiveness of sanctions in resolving Iran's nuclear threat and deterring others. When compared with sanctions placed on Israel and North Korea, the equality of treatment between nation states also hasn't been addressed due to political considerations. North

Korea and Iran have received harsher sanctions than Israel despite evidence of possessing 'several hundred warheads'<sup>9</sup> and an expression of concern from the IAEA. The UN did not impose sanctions due to the USA's veto and close ties with Israel, reducing the effectiveness of such measures because of a lack of equal treatment between nation-states. Overall, sanctions from the UNSC cannot effectively resolve conflict and resolve cooperation due to the political nature of sanctions. In addition, many non legal measures, such as negotiations and reviews also exist to directly encourage cooperation and resolve the threat of nuclear warfare. Non legal measures lack the authority and binding legality of legal instruments however are valuable and relatively effective because of their easier access and attempts to balance international standards with the expectations of nation states. The 5-yearly review conferences held to review and assess the

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<sup>5</sup> As outlined in the NPT Extension Principles and Objectives, 1995.

<sup>6</sup> "Ban Nuclear Tests in Middle East"- [www.guardian.co.uk/2010/May-ban-nucleartests-middleeast](http://www.guardian.co.uk/2010/May-ban-nucleartests-middleeast)

<sup>7</sup> "Iran defies West and cranks up uranium work"- SMH February 10<sup>th</sup> 2010.

<sup>8</sup> Establishes safeguards to ensure that nuclear programs for peaceful purposes don't divert to other uses.

<sup>9</sup> 'Q & A- Nuclear Disarmament': BBC

successes of the NPT produce effective improvements and adapt to current issues. The 2000 Review Conference specified new measures to create a nuclear free zone in the Middle East, representing the valuable nature of non legal measures in producing outcomes. Recently the 2010 Review Conference renewed the 1991 Strategic Arms Reduction Treaty<sup>10</sup>, between Russia and the US, reflecting the important role of non legal measures in encouraging cooperation as the renewal of START, “set the stage for further cuts... provided a stern message for Iran”.<sup>11</sup> The policies arising from these review conferences allow policies to adapt and progress, balancing the needs of nation states with international values. Other non-legal measures such as independent commissions such as the Canberra Commission on the Elimination of Weapons1996 and the Tokyo Forum for Nuclear Non Proliferation 1998 also allow international measures to adjust and reflect the needs of individual nation states whilst recognising nation states sovereignty over its affairs. Overall, non- legal measures when compared to legal measures, lack enforceability however can be considered more effective in the recognition of nation states and their needs, and balancing them with the international community, through review conferences, playing a major role in encouraging cooperation.

Hence, overall both legal and non-legal measures play significant roles in resolving nuclear conflict and encouraging cooperation, but their effectiveness is undermined in some aspects. Therefore it is the combination of both legal and non legal measures that can deal with the current issue of nuclear armament and most successfully encourage cooperation.

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<sup>10</sup> Also known as the Moscow treaty. Significant step in eliminating weapons of mass destruction between Russian and the USA.

<sup>11</sup> “US, Russia sign nuclear pact”, Guardian News and Media.