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The moral implications of the subversion of the Nonproliferation Treaty regime

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Abstract

All non-nuclear-weapon states are morally and legally obliged by the Nuclear Nonproliferation Treaty (NPT) to refrain from acquiring nuclear weapons. These obligations cannot be overridden for reasons of mere prudence. Only (i) material breaches of the treaty and/or a corresponding; (ii) ‘fundamental change in circumstances’ (*rebus sic stantibus*) that undermines the integrity of the NPT may override states parties’ legal nonproliferation duties.

More than the violations of the NPT by ‘rogue’ states like North Korea or Iran, I argue that the failure of the de jure nuclear-weapon powers since 2001 to uphold their informal and some formal NPT commitments suggests the possibility of material breach and/or institutional subversion. If NPT subversion were to occur, the non-nuclear-weapon states’ collective responsibility to avoid complicity in that subversion leads them to choose between (a) individually seeking nuclear weapons capability for state security; or, more preferably, (b) a publicly announced and collective withdrawal from the NPT that simultaneously refuses to pursue the nuclear weapons option.

Keywords: *nuclear ethics; legal obligation—international treaties; obligation—international ethics; nuclear proliferation; withdrawal—international treaties; material breach—treaty obligations; subversion—treaty obligations*

INTRODUCTION

In his essay *Towards Perpetual Peace*, Immanuel Kant’s Sixth Preliminary Article states that ‘No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace.’¹ Kant warns that by following narrow prudential interests (or the oft-invoked but infrequently actualized condition of military necessity), belligerent states risk further their enemies’ existential interests and undermine the possibility of constructing a durable

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peace that is the ultimate aim of warfare. Kant's warning applies most forcefully to states capable of, or positioned to, achieve decisive victory; for in this context their immediate costs are relatively low in comparison to their anticipated benefits. Yet, the bitterness of a decisive defeat often becomes the soil in which seeds of future bitterness and renewed warfare are planted and grown. And if Kant's term 'at war' is applied to include 'cold wars,' his warning aptly applies to the contemporary nuclear imbalance of power that largely favors the nuclear-weapon states parties to the Nuclear Nonproliferation Treaty (NPT) regime. For despite their worries over Iranian and North Korean violations of the treaty, Kant's worries would be more focused on the nuclear-weapon states' conduct as guardians of the current international power arrangement.

In this paper, I adopt an international ethical perspective on international institutions partial to Rousseau and Kant, and then apply it to the NPT regime through the end of the Bush presidency. I contend that the *de jure* nuclear powers (i.e. the USA, Russia, Britain, France, and China) have injured the NPT regime more severely than the weaker powers like Iran, and possibly have even subverted it. The moral implications of the NPT regime's injury are real and serious, and in the worst case of subversion, truly terrifying. Even so, history shows that the non-nuclear-weapon states parties might use a strategy that could repair or reform the regime, analogous to the non-violent civil disobedience practiced by Mahatma Gandhi and Martin Luther King, Jr. Successfully undertaken, their joint refusal to remain in the NPT regime while at the same time not engaging in hostile nuclear arms acquisitions might shock the *de jure* nuclear powers into honoring their NPT disarmament commitments. If not, and if the NPT does in fact unwind, the nuclear-armed states would then deserve the insecurity whirlwind that they helped to sow.

THEORY SKETCHING

Over 40 years ago under conditions of superpower cold war, the NPT was constructed to prevent an expansion of the nuclear club beyond the original *de jure* nuclear powers.² Article II proscribes all modes of acquiring nuclear weapons and their related technologies or materials by non-nuclear-weapon states parties. Article I proscribes transfer of nuclear weapons or their materials and technologies to non-nuclear-weapon states. Many non-nuclear-weapon states objected that the original five nuclear powers were requiring sacrifices of nuclear capabilities that the latter were not willing to bear themselves. So, a 'grand bargain' was fashioned in which the nuclear-weapon states promised to 'pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.'³ Although the interpretation of Article VI is contested, as I will discuss more thoroughly later, these articles (along with the Additional Protocols) comprise the voluntarily adopted legal obligations of

all states parties to contain further nuclear weapons proliferation and to establish and implement effective disarmament mechanisms.

The moral nature of international legal obligation⁴ expressed by the *pacta sunt servanda* norm is such that states parties may not violate treaty commitments even if it brought (great) material advantage to do so.⁵ This does not mean that treaty commitments can never be violated, but it does mean that states parties ought to abide by them under all ordinary and some extraordinary circumstances. Otherwise, the general concept of obligation itself would be vacuous and inapplicable. It is therefore important to identify the conditions under which one set of normative requirements can legitimately override a conflicting set (or not).

Some nuclear and non-nuclear-weapon states parties have violated their NPT obligations, yet unsurprisingly no state in this category admits to wrongdoing. They have all justified their non-compliance under various applications of the necessity principle, which permits actors to do that which is ordinarily impermissible under conditions where their survival is immediately threatened. It is thus important to determine the nature of the Article II obligations on non-nuclear-weapon states parties, and under what conditions these duties might be excused, suspended, or canceled.

The claim that a legal duty might be rightfully excused, suspended, or canceled presupposes a situation of normative requirements conflict. From a moral theoretic viewpoint, if requirements X and Y conflict within a single normative system (e.g. a legal system), a resolution is possible only if X overrides Y (or vice versa).⁶ For instance, substituting 'obey the orders of superior officers' for X and 'never torture a prisoner of war' for Y, Y overrides X in cases where, under the relevant military codes, officers that issue illegal orders are to be disregarded. X is overridden by Y in all analogous cases (e.g. orders of police officers/suspected criminals) *and not vice versa*, because Y refers to a greater moral value. The responsible choice in all cases of requirements conflict is to preserve the higher moral value.

Of course, not all requirement conflicts originate within a single normative system. Let us now substitute 'extend the life of one's mother' for X and 'never steal another's property' for Y, where the former is a moral obligation and the latter is a legal duty. One might find that she can extend her dying mother's life only by stealing the necessary medications from a pharmacy. Yet, the legal requirement to not steal is not overridden by the moral requirement she bears to extend her mother's life. This actor is in the grip of a genuine dilemma across normative systems, one where her choice of X entails the violation of a non-overridden requirement Y, and vice versa.⁷

Suppose an actor violates Y to satisfy X where both requirements originate from diverse normative systems. What might follow? For the distraught daughter, the legal duty to protect property does not negate the moral requirement to extend her mother's life. If she steals the medication, she may be put in jail; but *ceteris paribus* she deserves moral praise for placing human life above property. A compassionate judge or jury might apply to her an appropriately reduced sentence. Now, suppose she chooses not to steal the medication and her mother dies. She might be subjected to serious moral opprobrium by her siblings or other relatives, but (counterfactually)

the pharmacy owner and broader community would commend her for obeying the law. After all, each day records the deaths of hundreds of women who are the mothers of even hundreds more. A universal norm that condoned illegal behavior to extend the lives of dying mothers is potentially catastrophic for society.

Why dwell on this example? Because it is possible for requirements within and across normative systems to conflict, and their resolution depends upon a generally recognized values-hierarchy. However, the informality of ethical or moral norms⁸ makes consensus on their rankings elusive or practically impossible. Only if a relevant set of bridging principles are introduced is it possible for moral requirement X to override moral or legal requirement Y. One such bridging principle in international law is *rebus sic stantibus*. On this principle, legal obligations might be impossible to enforce when the circumstances under which they were constituted fundamentally change.⁹ When the legal agreement is an international treaty like the NPT, fundamental changes might include: (a) significant alterations in the political or economic conditions affecting states—e.g. civil wars, economic depressions; (b) significant alterations in the relationships between states parties—e.g. movements from bipolarity to unipolarity; or (c) the subversion of a treaty by one or more states parties. Ordinarily, the proper response to treaty violations is to legally penalize and morally condemn the guilty states. Legal penalties follow from the terms of the treaties, and moral condemnation follows from *pacta sunt servanda*. However, assignments of guilt/blame are valid only if the circumstances under which the agreements were made are fundamentally unchanged. The *rebus* provision does two things: it excuses or cancels attributions of guilt or blame and it legitimately anchors the accused state's justification for doing that which is ordinarily impermissible.

The *rebus* provision is thus a formal expression of a generally held moral intuition on the limits of obligation and responsibility. Some leaders of state, however, appear to conflate *rebus* with their narrow prudential interests. On some accounts, for instance, Israel does not truly pose a security threat to Iran¹⁰ (notwithstanding President Ahmadinejad's bellicosity¹¹). If Iran's nuclear program is more about regime survival than vital national interest,¹² then it is fair to classify some Iranian justifications of nuclearization as a conflation of prudence with the *rebus* provision. I know of no prudential norm *on its own* (i.e. independent of an authoritative moral or legal norm) that overrides moral and legal obligations in any self-evident manner. If self-interest were authoritative in this way, a paradigm case of self-interest properly overriding legal requirements would be relatively easy to cite.

In short, given *pacta sunt servanda* and the *rebus* provision, as well as the lack of prudential norms that count as self-evident overrides, states' moral and legal commitments are not capable of being overridden by prudential interests alone. It follows that some states' legal obligations can be excused, suspended, or canceled if a legal institution is subverted by the material breaches of other states parties. What is meant here by the terms 'subversion' and 'material breach'? And how are these terms to be applied to the question of NPT violation? Space constraints prevent a thorough response to these questions. In the remainder of this section, however, I sketch one

line of response by turning to John Rawls and one of his commentators, Tamar Schapiro.

In his early work, Rawls distinguished between the founding rules and practice rules of social institutions.¹³ Founding rules are often found in the preambles of treaties, and in Rousseau's terms they express the parties/members' 'general will.' Practice rules are found in the treaties' articles, clauses, and subsequent policy documents that are adopted to uphold them. Practice rules institutionalize the members' general will into concrete procedures for collective action. The vast majority of Rawls's later and more familiar work is concerned mostly with developing the theory of just political and social institutions under ideal conditions.¹⁴

Tamar Schapiro extends the Rawlsian discussion of founding and practice rules to institutions suffering from various kinds of non-compliance.¹⁵ Her main objective is to differentiate between transgression and material breach, and then determine the moral implications of both kinds of violation. On her view, transgressions in themselves do not threaten (and perhaps even enhance) the founding rules. Richard Price's account of the chemical weapons taboo is consistent with Schapiro's view of transgression where he cites instances of its violation that augmented the taboo's greater legitimacy.¹⁶ In contrast, material breaches are the kinds of violations that (threaten to) alter the *de facto* purposes of an institution away from the founding rules and toward the particular self-interests of certain states parties. When a qualitatively sufficient number of material breaches have occurred, the institution is subverted. At this point, members' compliance with the practice rules might no longer uphold the institution's original purposes; instead it might perversely reinforce the subversion of the institution. In paradigm cases of material breach, compliance with the practice rules is tantamount to non-compliance with the founding rules.

Much more needs to be said than what is possible in this paper about these definitions of 'material breach' and 'subversion' to determine if the NPT regime *has in fact been* subverted. It is only possible here to offer a suggestive account at what might be the moral implications of material breaches that lead to NPT subversion. To do this, let's consider in slightly more detail the question 'What then distinguishes simple transgressions from material breaches?'

Schapiro contrasts simple transgressions from material breaches by referring to a popular American film of the 1990s, *L.A. Confidential*. By distinguishing ordinary criminal behavior from the corruption practiced by chiefs of police and their officers, Schapiro shows that official corruption has greater subversive effect on the institutions of law itself.¹⁷ This is because police officers possess special obligations to obey and defend the law. Their criminal behavior is a greater threat to the law itself than is the conduct of ordinary criminals. Suppose, that some chief of police and his officers engage in drug trafficking under the cloak of their badges and uniforms. They arrest some drug traffickers and kill others unjustly to control the turf and increase their ill-gotten profits. These officers are not simple law-breakers; they have breached the law materially. That is, they have altered the relations between officers and citizens away from serving the public interest to serving the officers' private interests. In Rousseau's terms, the general will is sacrificed for particular wills.¹⁸

What then is the difference between a subverted institution and that which merely suffers from ordinary non-compliance? It is the degree to which the public interest has been sublimated to the private interests of some elite or coalition. In Kantian terms, it is where actors make the realization of their selfish goals the condition for their upholding the public will.¹⁹ A full theory of institutional subversion would look for empirical indicators of general interest sublimation (e.g. number and kind of instances of official corruption known to have happened with impunity, evidence of public discourse in which the sublimation of the public interest to private interests is sufficiently evident, public opinion data on the institutional inequities, number and kind of non-compliance instances motivated by concerns for equity—i.e. civil disobedience, etc.) Similar to models of norm emergence and cascade, one can imagine a threshold line over which official corruption crosses to sufficiently re-orient the institution away from the members' general interest and toward partisan interests. Prior to crossing the threshold line, the institution has not been subverted but is under stress. In these conditions, even gross unfairness in practice does not qualify as subversion, since the overall institutional mission and identity might nonetheless continue to be served. After the line is crossed, though, the institution is subverted to greater or lesser degrees of severity. Thoroughgoing subversion amounts to the practical impotence of the institutional norms or founding rules. Minimal to moderate subversion might tolerate some instances of the public interest prevailing, but not enough to salvage the original institution (just as integral institutions might tolerate some instances of corruption without becoming subverted).

A clear case of subversion of domestic legal institutions is an illiberal police state that claims legitimacy under a democratic mandate or constitution. Ordinary crime is punished with varying degrees of effectiveness, but official corruption is conducted with impunity. Attempts by regular citizens to hold officials accountable are ignored or punished severely. The facade of justice is upheld, while great injustice is the *de facto* norm. Its countercase is the liberal democratic state where police powers are effectively regulated by civilian oversight genuinely committed to the public interest. Some instances of official corruption in liberal democracies might go unaddressed, but only as an exception to the general rule of official compliance. Borderline cases occupy the great middle range, but all of them are characterized by varying degrees of sublimation of the public interest across a qualitative continuum.

If the foregoing sketch is in the right direction, the moral implications of international institutional subversion are very serious; in some cases, they are truly terrifying. First and foremost, the founding rules (assuming these reflect justice and fairness) remain the normative standard to which all states parties are bound. Secondly, the continued compliance of non-guilty states parties with the practice rules can count as complicity in the subversion. If such conditions obtain, the non-guilty states parties are obliged to not adhere to the practice rules that perversely undermine the general interest. A negative third implication, though, is that powerful actors engaging in subversion are not likely to cooperate to restore the general interest. It unfortunately falls to the victims of subversion to try to restore or reconstruct a just regime, especially in contexts where outside intervention is not

possible or practicable (as is the case with the NPT). It is a difficult moral judgment to trade-off complicity in a subverted regime for the risky alternative of resisting a corrupt but advantaged (e.g. better armed) opponent.

RELATING THE THEORY SKETCH TO THE NUCLEAR NONPROLIFERATION TREATY (NPT) REGIME

In this section, I relate Rawls and Schapiro's philosophical analysis to particular events in the NPT's history that constitute injuries and perhaps material breaches to the regime. I stop short of claiming that subversion has happened; but were it reasonably ascertained that the NPT had been subverted, it is important to specify the moral implications in terms of the corresponding obligations of response on non-nuclear-weapon states. In this supposed case, their obligation to avoid complicity entails that they challenge the *de facto* power arrangements and/or NPT practice rules in an unambiguous way.

The general will of the Nuclear Nonproliferation Treaty (NPT) states parties

The NPT's Preamble expresses the states parties' general will or interest. All signatories recognized the necessity of securing humankind against the effects of nuclear war. By joining the NPT, states parties thus willed generally a constraint on the exercise of unfettered national interest. In language reminiscent of Kant's Sixth Preliminary Article quoted above, signatories desired to:

further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective control, . . .²⁰

Taking this statement at face value, states parties willed to return to the pre-WWII days of non-nuclear military capabilities, while retaining the economic benefits of civil nuclear energy. Of course, signatories did not intend that the NPT override state sovereignty in all aspects. Yet, their aim to establish and maintain *international* peace and security committed them to elevating the common good above mere national advantage in matters of nuclear weapons policy. Most important for our purposes, it is this general will that defines the conditions of the possibility of compliance and of material breach and institutional subversion.

Varieties of non-compliance and regime viability

Like most (or all) international treaties, the NPT has suffered from its share of members' non-compliance. The international security and nonproliferation literatures detail part of this history in depth, focusing on Article II violations by North Korea, Iran, and others that have sought nuclear weapons capabilities. For many

authors, these ‘rogue states’ pose the greatest threat to the NPT and to international security. Nonetheless, most of these scholars seem to think that the NPT remains legally and morally viable. On their view, the NPT failures are best addressed by strengthening the nuclear taboo and by augmenting the International capacities to contain proliferation activities.²¹

However, Article II violations cannot be the whole story. Article I and VI violations are *prima facie* as serious, and so it must be determined if the *de jure* nuclear-weapon states (i.e. the P5—and given its global status, the USA in particular) or the nuclear suppliers group (NSG) have violated the NPT in ways that count as material breaches and/or whether those violations amount to subversion. Recalling the caveat expressed earlier, I will present evidence that suggests at least the appearance of material breach and of NPT subversion: the P5’s failure to pursue Article VI obligations, the particular inconsistency of American foreign policy with the NPT, and the emergence of first-tier export proliferation.

Failure to pursue Article VI

Every NPT review conference since 1995 has been dominated by spokespersons from important non-nuclear-weapon states referring to the P5’s failure to pursue nuclear disarmament in good faith.²² While some of it might be ‘cheap talk,’ it is not difficult to conclude that the P5’s concerted efforts toward realizing Article VI have been tepid at best.²³ Article VI states that:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.

The French interpretation of Article VI appears to be that complete elimination of nuclear arsenals must await a general and complete disarmament of all states.²⁴ The tenor of American nuclear policy under the Bush Administration seemed consistent with this view.²⁵ However, if this were a valid reading of the article, it would not require that all states should disarm generally and completely *and then* require the liquidation of their nuclear arsenals, since the latter is included in the former.²⁶ By putting it slightly different, neither the grammar of Article VI nor the logic of disarmament requires that the liquidation of all nuclear arsenals must go hand-in-hand with conventional weapons disarmament. Any valid reading of Article VI, therefore, links compliance of states parties with it to their actual pursuit in good faith of effective and verifiable measures of stopping nuclear arms production and eliminating existing arsenals.

At a minimum, the failure of the USA and the other P5 countries to pursue meaningful disarmament negotiations in good faith counts as a political failure to meet expectations of a large segment of the non-nuclear-weapon states. On my view, it suggests the appearance of a material breach. Some American international security experts would object to this characterization. On their view, the unilateral

elimination of certain nuclear weapon systems from Bush 41 onward is in the spirit (and perhaps even the letter) of Article VI. The same is true for the Strategic Offensive Reductions Treaty (SORT) Treaty that commits the USA and Russia to reducing their strategic arsenals to 1700–2100 deployed missiles each.²⁷ Now, these experts are right in a fairly restricted sense. If all nuclear-weapon states unilaterally proceeded with a comprehensive nuclear disarmament, the ultimate outcomes that Article VI envisions would be satisfied. However, no one really expects a comprehensive and universal nuclear abolition by unilateral means. Given the context of on-going security dilemmas facing the P5 and several other states (especially in the Middle East and East Asia), adhering to the ‘spirit’ of Article VI implies adopting multilateral approaches more than the Sarkozy/Bush nuclear foreign policies have granted. The failure to meet non-nuclear-weapon states expectations in this regard contributes to the perception that the P5 have violated their treaty agreements.

For instance, Ambassador Ahmed Fathalla, Egypt’s Assistant Foreign Minister for Multilateral Relations, stated at the 2005 NPT Review Conference that:

Given the necessity of seeking a common vision on how to address and arrest these negative developments [i.e. the gradual decay of the normative force of the NPT], Egypt reiterates the centrality of the 13 practical steps for nuclear disarmament adopted in 2000, which represent the roadmap endorsed by the international community leading to the fulfillment of the obligation of nuclear disarmament under article VI of the NPT. We believe that progress is implementing the 13 steps should be the foremost criterion in reviewing progress in the implementation of the Treaty and assessing compliance with its provisions by the nuclear weapon states, as well as the determining factor with regard to acceptance by the states as parties of any further obligations under the NPT.²⁸

I read Ambassador Fathalla’s comments as the serious talk of an important American ally. He seems to say, first of all, that all states parties believe that the normative force of the NPT is declining, as indicated by the increased difficulty regarding enforcement of Articles II and IV. Secondly, he claims that the general will of states parties are affirmed by the Thirteen Steps that specify the concrete means by which that will is to be realized. The Thirteen Steps address the Article VI obligations that bind the nuclear-weapon states. These steps are to be understood, for Fathalla, as the ‘foremost criterion’ in determining if the NPT remains viable. His comments are consistent with many of the statements of other non-nuclear-weapon states leaders and representatives on this topic at this conference.²⁹

Ambassador Fathalla’s remarks correctly assume that the P5’s failure to meet Article VI expectations is not the same as the Iranian clandestine programs to acquire nuclear weapons or nuclear weapons technology. Iran’s (still alleged) illegal push to develop nuclear weapons is akin to a drug kingpin seeking the means to profitably sell cocaine; the political refusal to enter into good faith negotiations toward complete nuclear disarmament, if it truly is an instance of non-compliance, is akin to the police ignoring legal constraints on their behavior to secure personal advantage. If both parties are non-compliant, Iran’s conduct can be rectified by legitimately applied

economic or military sanctions, or by a series of positive incentives that might also defray regional tensions.³⁰ The P5's misbehavior must be addressed by less straightforward methods: self-imposed sanctions (which are very unlikely), threats to dissolve the regime through withdrawal, or violations of the NPT in the name of state survival or security (Article X). It is the self-imposed nature of the constraints on the P5 that makes the possibility of their regime subversion a legitimate worry, and which turns instances of their treaty failures into the appearance of material breach and possibly subversion. If they do not police themselves, any non-nuclear-weapon state leader may plausibly infer that the NPT has been diverted away from an arms control *and* disarmament regime that was the general will of the founding parties *toward* an arms control regime that primarily serves the exclusive national interests of the P5. Under these conditions, continued compliance with the NPT's articles no longer facilitates the goal of nonproliferation as *a means to eventual nuclear disarmament*. Instead, it reinforces a different institutional purpose, namely 'nuclear apartheid.'³¹

One might object that an acknowledgment of Article VI violations, as opposed to a mere failure to meet expectations, is not sufficient to establish the subversion of the NPT. After all, many argue with good reason that the P5's maintenance of their nuclear arsenals is responsible for containing horizontal proliferation to nine instead of 40 or more states. Despite the success at proliferation containment though, this same kind of consequentialist reasoning can be used to defend any kind of institutional misconduct that also happens to maintain some semblance of security or positive order. Proliferation containment is not a sufficient condition of the legitimacy of the NPT regime. The means by which that containment is procured and the motives by which the means are enacted is just as morally relevant and salient as achieving the objective.

Recent American foreign policy—additional material breaches?

At the time of writing this paper, it is too soon to discuss meaningfully the foreign policy of the Obama Administration. Hence, I limit myself to examining a few representative examples of the preceding Bush Administration's foreign policy, whose conduct was largely inconsistent with the spirit (and perhaps letter) of the NPT. First, the 2002/2006 National Security Strategies, in concert with the 2001 Nuclear Posture Review, emphasized the centrality of nuclear weapons for American national security and the security of its allies.³² It also argued for a doctrine of nuclear pre-emption that assumes the legitimate military use of nuclear weapons. The Bush Doctrine was thus inconsistent with the spirit of Article VI and the founding rules of the NPT by maintaining an indefinite relevance of nuclear weapons for American national security policy. Even notable 'realists' and defense hawks have called for a return to nuclear abolition.³³

Secondly, the Bush Administration refused to generally grant non-nuclear-weapon states a necessary set of broad negative security assurances that would nonetheless justify the maintenance of American nuclear weapons. According to Bunn, the NPT

includes an informal promise by each nuclear-weapon state of 'no-first-use' of nuclear weapons against non-nuclear-weapon states.³⁴ It is often forgotten or consciously overlooked that informal promises can become authoritative norms, even if they are not legally enforceable.³⁵ Bunn, however, reports that the no-first-use pledge is considered legally enforceable by the International Court of Justice.³⁶ Given that China is the only P5 country to pledge unconditionally to the no-first-use policy, what in particular explains the American refusal to live up to this expectation?

Originally, the USA offered strong but conditional negative security assurances. It reserved the right to a pre-emptive nuclear defense of an ally attacked by a nuclear-armed rival or rival non-nuclear state allied with a nuclear-armed state. This exemption seems justified during the Cold War, as it was connected to a reasonable anticipation of American expeditionary forces being overwhelmed by superior Communist conventional forces in East Asia or Eastern Europe, and where an Allied defeat might well lead to the falling dominoes of states to communism. In the absence of a credible and conventional pre-emptive capability, the limited option of nuclear-first-use seemed necessary and fitting. However, Bunn reports that the Clinton and Bush 43 administrations further relaxed the no-first-use promise in order to respond preventively to possible chemical and biological weapons attacks by a non-nuclear-weapon state.³⁷ As Luban has argued, the doctrine of prevention masked as a doctrine of pre-emption is a slippery slope to relaxing the moral and legal proscription on aggression.³⁸ On my view, the original and narrow exemption of nuclear first-use was plausible, but the latter and more expansive exemption constitutes a clear case of non-compliance with the practices and precedents established over the Cold War period. Together with the failures to live up to the expectations of Article VI, the American withdrawal of negative security assurances appears to breach the understanding that all NPT signatories had about the conditions for maintaining a system of nuclear haves and have-nots.

A related third point, the USA has concurrently weakened its position on honoring promises to provide positive security assurances to non-nuclear-weapon states within the larger structure of the United Nations Security Council (UNSC). These assurances are promises by the UNSC to defend non-nuclear powers from aggression by nuclear-armed rivals in exchange for abstention from acquiring nuclear weapons.³⁹ Many non-nuclear-weapon allies of the USA consider these assurances as 'a continuing obligation to them if they joined the NPT and refrained, as a result of joining, from acquiring their own nuclear weapons.'⁴⁰ The informality of these understandings is exactly what constitutes their moral bond,⁴¹ and within the structures of the NPT (or NATO, etc.) the failure to uphold such promises counts as an injury or breach.

Taken together, the negative and positive security assurances are arguably an important moral foundation of the NPT. They constitute the central legitimating conditions under which some nuclear-weapon states may permissibly hold onto some of their nuclear weapons. For this reason, the Bush Administration's attempt to classify these assurances as politically but not legally binding was, on my view, a conclusive signal that the USA was prepared to sublimate the states parties' general

will to American national interests.⁴² Thus, were a non-nuclear-armed American ally to fall victim to a nuclear attack and the USA refuse to honor its political agreement, it would not recognize any legal action initiated by that ally (were it to survive) in the International Court of Justice. Despite the 9/11 tragedy, Bush's policies here were inconsistent with the letter and spirit of the NPT. They are what the political theorist Habermas (following Apel) calls performative contradictions⁴³—actions that express the logical opposite of one's commitments. These failures are amongst the best candidates of material breach so far examined.

Fourthly, in December 2001 the Bush Administration withdrew from the Anti-Ballistic Missile Treaty (ABM)⁴⁴ and subsequently began developing a missile defense capability that makes it less likely that other P5 states will honor their Article VI commitments. Although this event happened some time ago, it remains salient for the question of failures that appear to rise to the level of material breach or subversion. The Clinton Administration supported the ABM treaty in the 1990s, but the Bush Administration believed that an adequate missile defense system was needed in the Czech Republic and Poland to deter terrorist organizations and their state sponsors (i.e. Iran) from attacking the USA or its allies following September 11, 2001.⁴⁵ Russia and China adamantly oppose American policy here, believing that the missiles might actually be aimed at them.⁴⁶ As long as the USA maintains this capability, it will be difficult to persuade the Russians and Chinese to stop their support for the civil nuclear energy (and suspected weapons) programs in the Middle East or to pursue in good faith their Article VI commitments. Moreover, American missile defense is likely to be linked to a further weakening of negative security assurances and thus motivate more than a few non-nuclear-weapon states to seek nuclear weapons programs under the cover of Article IV or to withdraw from the NPT.⁴⁷ In classic fashion, American unilateralism undermines the very objective of realizing security by increasing their rival's security.

Fifthly, the USA has not yet fully committed itself to banning nuclear testing. Its refusal to ratify the 1996 Comprehensive Test Ban Treaty (CTBT), along with similar refusals from China, India, and some others, make it impossible for this treaty to come into force for any state.⁴⁸ American resolve to sign and ratify the CTBT could put pressure on other reluctant states to adopt it, and there are some promising signs that President Obama will reverse the Bush Administration's obstructionism in this area and in the general area of nuclear disarmament. While Bush's action here is inconsistent with the NPT, it is also not a material breach. However, in combination with their persistent (but so far, failed) pursuits of new kinds of nuclear weapons, like the Robust Nuclear Earth Penetrator (RNEP),⁴⁹ the Bush Administration had signaled its intention to retain the possibility of future American nuclear testing programs. Were the USA to succeed in this regard, the NPT would be eroded even further.

Finally, in 2005, the Bush Administration entered into a formal and controversial nuclear agreement with India that appears to benefit both countries' national interests and the international nuclear fuel and technology industry at the expense of the NPT's general will. Under intense pressure from the Bush Administration, all

45 members of the NSG approved the deal in September 2008.⁵⁰ While advocates of the USA/India deal might invoke the virtue of accommodating political reality—inasmuch as India has been a *de facto* nuclear-weapon state since 1998 with little or no promise of eliminating its arsenal any quicker than the *de jure* nuclear states—it is unlikely that these same advocates would act consistently and accommodate political realities by recognizing a democratically elected Hamas in the Palestinian territories. The NPT is weakened, perhaps undermined, because the agreement provides India with the benefits of NPT membership without having to join the regime (even though India had to agree to IAEA inspections).⁵¹ The language used by President Bush and Prime Minister Singh that characterizes the agreement reinforces the appearance of institutional breach or subversion. Bush and Singh pledged to work to ‘*adjust international regimes* (including the nuclear nonproliferation regime) to enable full US civil nuclear cooperation and trade with India.’⁵² No state party, or minority group of states parties, can legitimately alter the practice rules (i.e. Article II) of a treaty unless most or all parties will it. Instead of the USA and India adjusting their conduct to conform to the NPT, the NPT is adjusted to conform to their particular political and economic interests.

To summarize: the six failures of the Bush Administration cited in this section suggest the appearance or the reality of material breach of the NPT. By themselves, each failure (or material breach) is not sufficient to constitute NPT subversion; taken together, they provide evidence that material breach and subversion are the more likely realities facing the states parties. I now turn to consider certain fundamental changes in circumstances that provide additional reasons for non-nuclear-weapon states to reconsider their status within the NPT.

The Case for *rebus sic stantibus*

In international law, parties to an agreement may be partially or completely excused from their obligations if the circumstances under which it was constructed have fundamentally changed. This is the *rebus sic stantibus* provision.⁵³ Some fundamental changes are caused by the P5’s failures to meet expectations or honor their legal obligations. Others are due to exogenous political and economic developments. In this section, I concentrate on these exogenous changes.

To begin with, the exports of sensitive nuclear technology and materials from P5 states to some non-nuclear-weapon states has caused a fundamental change in the nuclear trade market by stimulating the beginnings of a second-tier proliferation network. This ‘first-tier export proliferation’ is a violation of Article I.⁵⁴ For instance, Kroenig analyzes how Pakistan received reprocessing assistance from France between 1974 and 1982 and bomb designs, highly enriched uranium, and enrichment assistance from China between 1981 and 1986. In turn, he reviews how the A.Q. Khan network traded nuclear technology and materials with Iran, Libya, and North Korea.⁵⁵ Chyba, Braun, and Bunn show that other states have participated in this network, including Malaysia and Turkey.⁵⁶

For Chyba et al., the upshot is that the emergence of second-tier proliferation networks renders current nuclear export control regimes much less effective, which accordingly alters the security relationships between states that receive the nuclear assistance and their historic rivals. Such alterations imply a possible weakening of *pacta sunt servanda* vis-à-vis the non-nuclear states disadvantaged by those that benefit from the second-tier network. It bears some analogy to the police force giving arms to certain criminal gangs so that they protect themselves against their rivals; the police are then less effective in regulating the behavior of the favored gangs. The weakening of export control regimes gradually erodes respect for the legal norms, which is a *rebus* condition that has moral import. And although there is no evidence of a proliferation cascade arising from second-tier rings, its occurrence is more likely given the changing conditions.

A second fundamental change arises from the Bush Administration's foreign policy discussed above. In particular, the changes in American nuclear weapons doctrine and policy have been followed by similar changes in Russia and China. As the USA began to relax its position on negative security assurances, Russia did the same.⁵⁷ In response to the 2002 US National Security Strategy, Russia began to modernize its nuclear force and put more emphasis on the use of tactical nuclear weapons for deterrence than their intercontinental ballistic missiles (ICBMs).⁵⁸ Toward the end of the Bush Administration, Russia threatened to point missiles at Eastern Europe if the USA installed missile defense stations in the Czech Republic and Poland.⁵⁹ The same report revealed that Russia also adjusted its public position on the use of preventive force to match the corresponding change in American doctrine. And to some extent the changes in American policy toward Taiwan has motivated the expansion and modernization of the Chinese submarine force, along with its capacity to project nuclear force with MIRV-d missiles (i.e. missiles that carry more than one independently directed nuclear warhead).⁶⁰

These are changes in circumstances (as opposed to changes in status) that fundamentally alter the security context for Eastern European and East Asian countries. As with the problem of second-tier proliferation, insecure NPT states parties are unable to trust that the regime will look after their nuclear-related security interests. As Russia and China modernize their nuclear forces, and as they emphasize the non-legal character of their positive and negative security assurances (although China maintains a no-first-use policy), the affected Eastern European and East Asian states will experience greater pressure to acquire nuclear deterrent capabilities. If they do so, their rivals and neighbors will feel similar pressures, likely leading to a proliferation cascade that is consistent with the *de facto* dissolution of the NPT regime.

Other fundamental changes in circumstances have occurred independently of the P5's failures, yet they affect the non-nuclear-weapon states' compliance obligations variously. In general, such changes track the broader trends of globalization and decentralization of economic and political power.⁶¹ The NPT was constructed under and primarily responsive to bipolarity, where the USA and the Soviet Union dominated the global system. After the Cold War ended by 1991, the USA enjoyed a

‘unipolar hegemonic moment’ that has arguably receded.⁶² The result is increasingly a multipolar (though still asymmetric) distribution of economic and political power that cannot but affect the varied attempts to enforce or apply the NPT. Any significant decline in the relative economic and strategic power of the USA makes it likely that many non-nuclear-weapon states will necessarily take their nuclear cues from Russia, China, or other regional powers.

One example of this is the changing mission and force structure of NATO. As the Clinton and Bush Administrations have tried to re-shape NATO from a security regime to one that includes the expansion and solidification of democracy, Russia feels increasingly threatened. As far back as 1996, Stanley Kober predicted that NATO enlargement would ‘undermine Russia’s beleaguered democrats, intensify Russian suspicions about Western intentions, and play into the hands of militaristic elements that argue that Moscow must restore the Soviet empire to protect Russia’s security.’⁶³ He goes on to say:

Expanding NATO would also require the United States to extend security commitments to the new members—commitments that neither the United States nor the West European powers are prepared to fulfill. Reliable security guarantees must be based on more than verbal declarations, which means that Washington would be pressured to station conventional forces in the new member states. The Russians have emphasized that they would regard that as a provocation requiring countermoves on their part. NATO expansion, therefore, would risk recreating the division of Europe.⁶⁴

Recent events, as well as recent journalistic and scholarly analyses, seem to partially confirm Kober’s predictions.⁶⁵ As more Eastern European states were added to NATO (e.g. Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia⁶⁶), its mission shifted to include regime stabilization in Iraq⁶⁷ and the deterrence of states that ‘sponsor terrorists,’ like Iran. However, the Czech and Polish acceptance of US missile defense bases, as discussed earlier, has prompted aggressive Russian responses. The 2008 Russo-Georgian conflict, with the call of the USA to speed the admission of Georgia to NATO, seems to be a paradigm case of the current point. Unless the USA is willing to extend its nuclear umbrella over their missile defense partners, or give to NATO an independent nuclear capacity, these new NATO members will likely be forced to reconsider their nuclear choices.

CONCLUSION: THE MORAL IMPLICATIONS OF SUBVERTING THE NUCLEAR NONPROLIFERATION TREATY (NPT)

It is important to recall the moral implications of the sketch theory argument, and then relate it to the NPT case. Firstly, let us emphasize again that regime subversion is incapable of necessarily destroying the normative authority of its founding rules. Assuming these rules reflect justice and fairness, they remain the normative standard to which all parties are bound and their conduct assessed. Only in those cases where

the founding rules themselves are flawed (i.e. not genuinely expressing a general will) should the founding rules themselves be replaced by new and improved ones. For instance, illiberal police states dominated by oligarchies ought to draft constitutions that genuinely aspire to just and fair domestic orders. Liberal democratic states overrun by self-serving elites ought to restore the original norms of justice and fairness in domestic relations.

Secondly, we recall that Schapiro correctly infers that continued compliance with a subverted institution's practice rules can count as complicity in that subversion. Members' obligation to the founding rules entails a corresponding obligation to break the practice rules at the point when it is reasonable to believe that they no longer serve the general interest. This moral obligation trumps the conflicting duty to uphold the 'letter of the law.' In cases of subversion, therefore, non-compliance with the letter of the law counts as compliance with its spirit. That said, an important qualification ought to be emphasized. It is possible that non-compliance with the practice rules might occur in the context of subversion and it still is unjustified on just-war theoretic grounds. Were the Iranian government, for example, to take advantage of a presumed subverted NPT regime to build a nuclear arsenal, their non-compliance would still not be justified if the cause itself was not legitimate. For just war theorists, legitimate cause is constituted by, amongst other things, the conditions of right intention and proportionality. If it is possible in principle to determine if these conditions are genuinely met, then only rightly intended and proportional non-compliance avoids complicity in institutional subversion. All other non-compliance is an accessory to the crime.

A negative third implication, though, is that the self-serving states parties guilty of subversion are not likely to cooperate in the efforts to restore the general will. It unfortunately falls to the victims of subversion to try to restore or reconstruct a just international order, especially in contexts where outside intervention is not possible or practicable. The victims are unfortunate here because their relative power disadvantages make it difficult to effectively constrain the more powerful states parties. History shows, however, that asymmetries can run both ways. Elites have mistaken the lack of certain kinds of capability in others for the lack of capability as such. In the contest between the British Empire and Mahatma Gandhi, or between southern USA sheriffs in 1960s and Martin Luther King, Jr. (and other associations like the Student Non-violent Coordinating Committee), history found the latter pair of the parties to be more capable in their relative weaknesses.

Sadly, this third implication also requires qualification. The success of some asymmetric responses to domestic legal subversion cannot be permitted to mask the failures of most other attempts. Gandhi and King were historical outliers, and even their successes were marred by setbacks and defeats. And their adversaries were officials and citizens of liberal democratic orders; the civil rights advocates in illiberal states have not fared well at all. This does not mean that the victims of subversion necessarily ought to surrender and become resigned to the elite hijacking of (international) society. It is a difficult moral judgment to trade-off complicity in a

subverted regime for the risky alternative of resisting a corrupt but advantaged (i.e. better armed) opponent.

How should the general argument recalled here be applied to the history of the NPT regime? My object has not been to argue that the NPT regime *has been* subverted, although the evidence of apparent material breach and/or subversion is suggested by the accumulated failures of the P5 to act according to their informal promises on security assurances, their failure to meet Article VI expectations, and in the several events that are reasonably classified as triggering the *rebus* provision. Were NPT subversion to occur, it would follow that the general will of states parties remains authoritative, having been reaffirmed numerous times in the General Assembly, in the NPT Review Conferences since 1995, and in the 1996 International Court of Justice's Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons.⁶⁸ The international community has recognized the moral imperative of achieving nuclear abolition in a manner that does not simultaneously promote other sorts of security threats, political violence, or war.

Secondly, given the continued failure of the P5 to align their conduct with this general will, it falls to the non-nuclear-weapon states to do what they can to avoid complicity in any (continued) subversion of the NPT regime. Non-compliance with Article II obligations and/or an exercise of the Article X withdrawal provision seems to be the most powerful candidate responses. Recalling the distinction between the justified and unjustified non-compliance in conditions of subversion, I contend that the first option is *prima facie* unjustified. The most powerful statement that the non-nuclear-weapon states might make is to (threaten to) withdraw from the NPT on Article X grounds without taking steps to acquire nuclear weapons. This option is the closest, in my opinion, to disarmament-related civil disobedience. For one, the states to presumably withdraw from the NPT are not nuclear-armed to begin with, and many are global south countries whose international status bears some resemblance to the disadvantaged peoples of India under Gandhi and the southern USA at the time of Martin Luther King, Jr. Moreover, withdrawal is non-violent and publicly declaring a non-nuclear option is not aggressive. Such a response, however, confronts the injustice at the heart of the NPT regime and uses the moral suasion that is characteristic of non-violent protest to emphasize the necessity of the rectification of the P5's intentions and policies.

This option, of course, is not guaranteed to succeed. How the P5 would actually respond to such treaty withdrawal is a matter of speculation. But if the P5's response increases the level of insecurity in the already troubled regions of the Middle East and East Asia, it would not be surprising to see some of the non-nuclear-weapon states turning toward nuclear weapons capabilities out of necessity. For, all such states find themselves in a difficult trade-off: to resist a more powerful nuclear-armed club to preserve the goal of disarmament, or to avoid offending the powerful states by consenting to a discriminatory regime.

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NOTES

1. Immanuel Kant, 'Towards Perpetual Peace,' 320.
2. Richard Smoke, 'National Security and the Nuclear Dilemma: An Introduction to the American Experience in the Cold War,' 144–8.
3. *Treaty on the Non-Proliferation of Nuclear Weapons* (1968), <http://www.fas.org/nuke/control/npt/text/index.html>; *Ibid.*, 145.
4. I use the term 'nature' advisedly, since the worries concerning 'essentialism' in political theorizing are justified. In this instance, though, the term seems appropriate. If the claim is that *pacta sunt servanda* applies invariantly to all legal norms, then it seems that there is a constructed nature to the moral norm that ought to be recognized.
5. David J. Bederman, *International Law Frameworks*.
6. For an extended discussion of the concept of overriding and non-overridden requirements in morality, see Walter Sinnott-Armstrong, 'Moral Dilemmas.'
7. *Ibid.*
8. Bernard Gert, 'Morality,' 586–7.
9. David J. Bederman, *International Law Frameworks*, 39.
10. Etel Solingen, 'Nuclear Logics: Contrasting Paths in East Asia and the Middle East,' 151.
11. See, e.g. Y. Mansharof, *Editor of Kayan: 'A Country That Has . . . Uranium Enrichment is Only One Step Away from Producing Nuclear Weapons; This Step is not a Scientific or a Technical [One] – but a Matter of Political Decision.'* MEMRI 342.
12. Etel Solingen, 'Nuclear Logics: Contrasting Paths in East Asia and the Middle East,' chapter 8.
13. John Rawls, 'Two Concepts of Rules,' 3–32.
14. John Rawls, *A Theory of Justice*; John Rawls, 'Political Liberalism.'
15. Tamar Schapiro, 'Compliance, Complicity, and the Nature of Nonideal Conditions,' 329–55.
16. Richard M. Price, 'The Chemical Weapons Taboo.'
17. Tamar Schapiro, 'Compliance, Complicity, and the Nature of Nonideal Conditions,' 329–55.
18. Jean-Jacques Rousseau, 'The Social Contract.'
19. Immanuel Kant, 'Religion Within the Boundaries of Mere Reason,' 83. 'Hence the difference, whether the human being is good or evil, must not lie in the difference between the incentives that he incorporates into his maxim [which is the rule that the individual or collective actor uses to guide their conduct], but in their subordination (in the form of the maxim): which of the two he makes the condition of the other. It follows that the human being (even the best) is evil only because he reverses the moral order of his incentives in incorporating them into his maxims.'

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20. *Treaty on the Non-Proliferation of Nuclear Weapons* (1968), <http://www.fas.org/nuke/control/npt/text/index.html>.
21. See, e.g. Harold D. Bengelsdorf, 'Proposals to Strengthen the Nuclear Nonproliferation Regime'; George Bunn, 'The Nuclear Nonproliferation Regime and Its History', 75–125; George Bunn and Christopher F. Chyba, eds., 'U.S. Nuclear Weapons Policies for a New Era', 297–324; Christopher F. Chyba, Chaim Braun, and George Bunn, 'New Challenges to the Nonproliferation Regime', 126–60; Charles B. Curtis, 'Curbing the Demand for Mass Destruction', 27–32; Lewis A. Dunn, 'Countering Proliferation: Insights from Past 'Wins, Losses, and Draws'', 479–89; Neil Joeck, 'US Nonproliferation Policy', ; George Quester, '*Nuclear First Strike: Consequences of a Broken Taboo*'; Thomas Schelling and George Miller, 'Is Proliferation Inevitable? And Do we Need a New Regime to Manage It?'; Thomas C. Schelling, 'Managing Nuclear Proliferation'; Derek D. Smith, '*Detering America: Rogue States and the Proliferation of Weapons of Mass Destruction.*'
22. See, e.g. the official statements of the 2005 NPT Review Conference, New York, May 2-27, 2005. These can be accessed at <http://www.un.org/events/npt2005/statements.html>. (accessed December 21, 2007).
23. Richard Smoke, '*National Security and the Nuclear Dilemma: An Introduction to the American Experience in the Cold War,*' 145–8.
24. In person interview with Nicolas Roche, counselor in political affairs, Embassy of France (Washington, DC, 2008).
25. Interview and private correspondence with former nonproliferation official in the Bush Administration who did not want to be quoted for attribution.
26. Jozef Goldblat, 'Ban on Nuclear-Weapon Proliferation in Light of International Law,' 9–29.
27. George Bunn and Christopher F. Chyba, 'U.S. Nuclear Weapons Policies for a New Era,' 297–324.
28. H.E. Ambassador Ahmed Fathalla, 'Statement before the General Debate of the 2005 Review Conference of the NPT.' See note 22 above for full citation details.
29. See, e.g. <http://www.un.org/events/npt2005/statements.html>. For the 2000 NPT RevCon, see <http://disarmament.un.org/wmd/npt/nptrevhome.html>. For the 1995 NPT RevCon, see <http://disarmament.un.org/wmd/npt/1995nptrevconf.html>
30. For a suggestion on how to positively engage Iran, see Ali M. Ansari, '*Confronting Iran: The Failure of American Foreign Policy and the Next Great Conflict in the Middle East.*'
31. See, e.g. Kanti Bajpai, 'Hinduism and Weapons of Mass Destruction: Pacifist, Prudential, and Political,' 308–20; John L. Esposito, *Unholy War: Terror in the Name of Islam*; Ali A. Mazrui, 'Superpower Ethics: A Third World Perspective,' 9–21; Manohar Lal Sondhi, ed., '*Nuclear Weapons and India's National Security*'; Katherine K. Young, 'Hinduism and the Ethics of Weapons of Mass Destruction,' 277–307.
32. The White House, '*The National Security Strategy of the United States of America.*'
33. George P. Shultz, et al., 'A World Free of Nuclear Weapons,' A15.
34. George Bunn, 'The Nuclear Nonproliferation Regime and Its History', 75–125; Harold A. Feiveson and Ernst Jan Hogendoorn, 'No First Use of Nuclear Weapons,' 1–9.
35. Thomas E. Doyle, 'Norm Decay and the Nuclear Nonproliferation Norm.'
36. George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 105.
37. *Ibid.*, 105.
38. David Luban, 'Preventive War', 207–48.
39. George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 87–8, 104.
40. *Ibid.*, 104.
41. Bernard Gert, 'Morality,' 586–7.
42. George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 105.
43. Jurgen Habermas, '*Moral Consciousness and Communicative Action.*'
44. David Holloway, 'Deterrence, Preventive War, and Preemption,' 34–74.
45. *Ibid.*, 34.

46. Associated Press, 'U.S. and Poland Agree in Principle on Missile Defense'; Thom Shanker, 'Russian Criticizes U.S. Plan for Missile Defense System.'
47. George Bunn, 'The Nuclear Nonproliferation Regime and Its History', 75–125; Mitchell B. Reiss, 'The Nuclear Tipping Point: Prospects for a World of Many Nuclear Weapons States,' 3–17.
48. George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 83.
49. See, e.g. Sidney Drell et al., 'Issues in the US Nuclear Stockpile: Debate.'
50. Somini Sengupta and Mark Mazzetti, 'Atomic Club Votes to End Restrictions on India.'
51. George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 90–1; *ibid.*
52. Quoted in George Bunn, 'The Nuclear Nonproliferation Regime and Its History,' 90.
53. David J. Bederman, *International Law Frameworks*, 39.
54. Christopher F. Chyba, Chaim Braun, and George Bunn, 'New Challenges to the Nonproliferation Regime,' 133.
55. Matthew Kroenig, 'Exporting the Bomb: Why States Provide Sensitive Nuclear Assistance,' 129.
56. Christopher F. Chyba, Chaim Braun, and George Bunn, 'New Challenges to the Nonproliferation Regime,' 133.
57. Serge Schmemman, 'Russia Drops Pledge of no First Use of Atom Arms.'
58. Roger Speed and Michael May, 'Assessing the United States' Nuclear Posture,' 248–98.
59. Sheryl Gay Stolberg, 'Bush and Czech Leader Close to Deal on Radar.'
60. David Lague, 'Chinese Submarine Fleet is Growing, Analysts Say.'
61. Richard N. Haas, 'The Age of Nonpolarity: What Will Follow U.S. Dominance,' 44–56.
62. Thomas L. Friedman, *The World is Flat: A Brief History of the Twenty-First Century*; Charles Krauthammer, 'The Unipolar Moment,' 23–33; William C. Wohlforth, 'The Stability of a Unipolar World,' 5–41.
63. Stanley Kober, '*NATO Expansion and the Danger of a Second Cold War.*'
64. *Ibid.*
65. Andrew Kydd, 'Trust Building, Trust Breaking: The Dilemma of NATO Enlargement,' 801–28; Steven Lee Myers and Thom Shanker, 'NATO Expansion, and a Bush Legacy, Are in Doubt.'
66. See <http://www.nato.int/structur/countries.htm> (accessed December 22, 2007).
67. David Capezza, 'NATO Training Mission - Iraq: Implications for Future NATO Missions.'
68. International Court of Justice, '*Legality of the Threat or Use of Nuclear Weapons.*'

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