University of Reading

School of Law

To What Extent Have the Obligations Under Article VI of the Nuclear Non-Proliferation Treaty Been Fulfilled?

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This is a dissertation submitted to the School of Law as part of the requirements for the award of an LLM.

Statement of Original Authorship

I declare that I have read the notes on plagiarism including its definition and cheating in the Postgraduate Programme Handbook and that this work is entirely free from plagiarism. I understand the consequences of committing plagiarism. I have acknowledged all quotations and ideas as advised in the Handbook. Where I have been in doubt about how to acknowledge an idea or quotation I have consulted my supervisor. Neither this piece of work nor any part thereof has been submitted in connection with another assessment.

Signature   David Giles   Date  11/09/2012

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Abstract

This dissertation shows that state parties of the Treaty on the Non-Proliferation Nuclear Weapons (NPT) and nuclear weapons states in particular have failed to fulfil their obligations under Article VI of the Treaty. Of the three pillars of the NPT, nuclear disarmament has been neglected. State interest is fixed upon the non-proliferation and civilian use spheres, for both security and economic development reasons. However, this work shows that all three pillars are interlinked and that each impacts upon the others. The longer that nuclear weapons are possessed by states, the greater the chance for their proliferation to other states and to non-state actors. Therefore it is in the interests of all that the obligations under Article VI are fulfilled.

Article VI is subjected to a number of interpretive tools in this research; namely treaty law, ICJ jurisprudence and the impact of NPT Review Conferences. Each perspective offers a different analysis of the obligations contained within the Article and each arrives at a similar conclusion. That the NPT, through Article VI and the object and purpose established by the preamble and travaux préparatoires, obliges state parties to pursue disarmament.

An examination of the recent developments in nuclear weapons policy and actions within the five NPT nuclear weapons states informs a conclusion that there has been some movement towards nuclear weapons-free states, but not nearly enough has been done for these states to claim that they have fulfilled their obligations under Article VI. They have started, within the past half-decade, to move in the right direction and certainly they can no longer be said to be in breach of the Article. The next test is the 2014 Preparatory Committee of the 2015 review cycle, when the nuclear weapons states are required to report on the progress made towards fulfilling their obligations.
Introduction

For a treaty that has been ratified by almost every state, the Nuclear Non-Proliferation Treaty (NPT) is remarkably, if unsurprisingly, controversial. One of the most disputed sections of this treaty is Article VI, which contains the Treaty's disarmament obligations. This provision was included at the behest of the non-nuclear weapon states (NNWS) to resolve the imbalance between obligations imposed upon states parties. As the Brazilian delegate said during 1967 negotiations, “[the drafts] contained practically only obligations for the non-nuclear nations.”

There are three so-called 'pillars' of the Treaty, which outline the main obligations imposed upon the states parties. Non-proliferation and peaceful civilian use are the most commonly discussed of these and have formed the main aim of states' nuclear policies for the past four decades. Nuclear weapons states (NWS) in particular have been more than ready to remind parties about their non-proliferation obligations, while NNWS have been enjoying their right to civilian nuclear energy, often making use of materials sold by the Nuclear Suppliers Group, of which all five NWS are members. Consequently, the issue of disarmament has conveniently been forgotten. Recently, however, there has been an attempt to address the issue and redress the imbalance between the pillars.

The three pillars are often said to have been grounded in President Eisenhower's Atoms for Peace speech, as it was the first time the core principles had been expressed together. Former Director-General of the IAEA, Mohamed ElBaradei said that the speech was to become “a dual commitment enshrined in the IAEA Statute and the landmark 1970 [NPT].” On the issue of disarmament,

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1 Azerdo da Silveira, in ENDC/PV.327 (31st August 1967) pp. 4-7.
however, the speech has been criticised for failing to go further than diplomatic overtures with no active proposal for remedy.

As mentioned above, states such as Brazil and members of the Non-Aligned Movement were the initiators of demands for the inclusion of a disarmament clause. This combined with tacit support of some elements in the West, a hangover from Atoms for Peace, is enough to show that the pillars do not work in isolation; they were intended to function as a whole and must be regarded equally. After all, the NPT would not have entered into force had the disarmament and civilian use pillars not been agreed.⁵

Article VI raises several questions before one attempts to unpick its meaning. First, the issue of a timescale for the fulfilment of its obligations; “cessation of the nuclear arms race at an early date” gives no idea whether this is to be before the extension conference outlined in Article X, during it or later. Secondly, there is no guide as to whether the goals of the negotiations are to be achieved in a particular order, with some interpreters suggesting that there is such an order and others disputing it.⁶ Lastly, the Article begins by identifying “each of the Parties to the Treaty”, which raises the possibility that NNWS would be equally culpable for a failure to fulfil Article VI obligations as NWS.

This research will attempt to apply the international legal rules of treaty interpretation to the NPT, in order to produce a balanced understanding of the provisions held in Article VI. These interpretations will be used to assess the extent to which states parties of the NPT have met their

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obligations. In doing so, it aims to show that the interpretations often expressed by states, and NWS in particular, fail to correctly identify the Article VI obligations. The focus will be on NWS for the simple reason that they are the states that have nuclear stockpiles. To show the extent to which states are fulfilling their obligations, different instruments of interpretation will be applied to the Article, from its conception to the present, and recent developments arising from states' nuclear weapons policies will be cross-examined to analyse whether these developments amount to a serious progression towards meeting their obligations under Article VI.

Chapter One will review a treaty interpretation of Article VI of the NPT. This primary document will be examined with reference to Articles 31 and 32 of the Vienna Convention on the Law of Treaties. The attached statements of the state signatories at the time of signing and comments made by state representatives will also be used, in conjunction with the Treaty's preamble, to better inform an interpretation of the object and purpose of the Treaty.

In Chapter Two, the jurisprudence of the International Court of Justice will be used to supplement the interpretation under Vienna Convention guidelines. In particular, the advisory opinion in the *Legality of the Treat or Use of Nuclear Weapons* case will be examined. There are a number of other opinions that can also be applied to build upon the understanding of Article VI that Chapter One will analyse.

Chapter Three will examine the work of the NPT Review Conferences and will provide a review of the changing attitudes of the states parties to the Treaty over the decades and the changing interpretation of Article VI, if any. Those in which disarmament was discussed and the 2010 Conference in particular, will be the main focus.
This will bring the interpretation side of the research up to date and will neatly tie in with Chapter Four, in which recent developments in nuclear disarmament will be reviewed. The implications of President Obama's Prague speech in 2009 and the subsequent 'New START' treaty between the Russian Federation and the US will be examined alongside the policies and actions of all five NWS to provide an understanding of the international position of disarmament in the twenty-first century.

The Conclusion will draw on the findings of the previous chapters to arrive at an understanding of the extent to which, obligations under Article VI have been fulfilled.
**Treaty Interpretation and Article VI**

As with all other treaties with disputed provisions, the NPT must be subjected to an examination using the rules of interpretation outlined by treaty law. If a state or a number of states parties fail to comply with their obligations under a treaty, the treaty could be suspended or dissolved, so it is important that any ambiguities are ironed out.

The need for clarity in the case of Article VI is evident after an examination of comments made by NPT parties and by commentators, such as Christopher Ford and Lewis Dunn. Ford is particularly vociferous in arguing that the only obligation undertaken in Article VI is the pursuit of negotiations in good faith. Dunn on the other hand, makes it clear that he believes the negotiating record shows that Article VI was an integral part of the drafting of the NPT and thus a fuller interpretation of the provision's text must be employed.

In order to examine a treaty law interpretation of Article VI, one must turn to the Vienna Convention on the Law of Treaties (VCLT). It entered into force in 1980 and is a fundamentally important element of international law because it was the result of the codification of interpretative guidelines. As a result, the provisions for interpretation outlined in Articles 31 and 32 are the first place to look if disagreement over treaty provisions occurs.

**The Vienna Convention and its Relevance**

Before applying the provisions of Article 31 and 32 of the VCLT to Article VI of the NPT, one must exercise caution. Article 4 states that it “applies only to treaties which are concluded by States after

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7 Ford, “Debating Disarmament”.
the entry into force of the present Convention.” As the NPT entered into force in 1970 the Convention cannot be applied directly to aid in its interpretation regardless of how useful it would be.

All is not lost, however, since Articles 31 and 32 are widely accepted as the codification of existing customary rules of international law. This can be seen in decisions of the ICJ, such as in the *Avena* case when it said that “customary rules of treaty interpretation [are] reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.” This is further strengthened by comments from states that are not party to the VCLT, acknowledging the customary position of Articles 31 and 32. Thus, the rules of interpretation, as outlined in the VCLT, can be applied to the NPT and, further, all five NWS agree on the customary position of the interpretation articles. This means that an interpretation resulting from the use of Articles 31 and 32 can be applied to every state party of the NPT without exception.

Article 31(1) of the Convention states that treaties must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” In other words, text must be understood at face value, with reference to the provision's place within the treaty as a whole, including the use of the preamble and annexes and subsequent agreements between, and practices of, the parties. If there is still doubt as to the proper meaning of a provision, Article 32 permits the use of supplementary rules, allowing for the

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12 China, Russia and the UK have ratified the VCLT. The USA is a signatory but has issued a statement saying that Articles 31 and 32 are custom. France is not a signatory, but has expressed its belief that the Articles are the codification of customary rules, but with the proviso that the Convention text itself cannot be examined too closely; “as would be the case if it were itself binding as between the Parties.” As quoted from the Permanent Court of Arbitration's unofficial English translation of the *Case Concerning the Auditing of Accounts (Netherlands v. France)* (2004) p. 17 para. 43.
13 Article 31 of the VCLT.
consideration of preparatory work on the treaty and the negotiating position at its conclusion.

Certainly, the wording of Article 31(1) suggests that of the four terms; 'good faith', 'ordinary meaning', 'context' and 'object and purpose', only one need be required to interpret a treaty. However, on reviewing the International Law Commission's (ILC) commentary on the Article, such a view cannot be sustained. “The [ILC], by heading the article 'General Rule of Interpretation' in the singular and by underlining the connexion between paragraphs [1, 2 and 3], intended to indicate that the application of the means of interpretation in the article would be a single combined operation.”

The concept of good faith is endemic in international law, from treaty interpretation to managing relations between states. It is also “widely used in quite a number of national legal systems, [but] has no single meaning.” However, in negotiations, ‘good faith’ is generally accepted to require the willingness to listen to the other side of the dispute and not dismissing their views off hand.

**Ordinary Meaning**

'Ordinary meaning' is slightly less abstract; the problem comes when the terms in question have several 'ordinary meanings'. Article VI shall be reproduced below with emphasis on some terms that are of particular importance:

“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
First, 'each of the parties' is important, not for its ambiguity, but because it clearly makes Article VI obligations applicable to all states parties. Therefore, if a breach of obligations can be shown, any state party could be held accountable under International Law. This would have serious ramifications for the NPT, as Article 60 of the VCLT allows for the suspension of a treaty “as a consequence of its breach.”

Applicability to all parties is certainly a possibility when one looks to the next term, 'to pursue.' Again, this phrase is fairly unambiguous by requiring states actively to seek negotiations. Engagement, if the other party is unwilling, is not required, but the onus is on active attempts to participate. Indeed, if the unwilling party is bound by the NPT, they could be held in breach if they refused to even enter negotiations. After all, there is nothing to say that they have to agree with one another.

The next phrase that is worth highlighting is 'negotiations in good faith.' A definition of good faith negotiations has already been offered, but it is worth repeating that this obligation requires states to engage with each other in a productive manner and be willing to let the other side present its case.

'Effective measures,' like 'strict and effective control', is fairly self-explanatory: a measure or control is effective if it does what it is intended to do. As a desired outcome of the good faith negotiations, both are dependent on such negotiations taking place, so if the outcomes are taken to be obligations, there is a requirement that states parties not only pursue negotiations, but also, to finish them with moves towards meeting these outcomes.

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16 Emphasis added.
17 Article 60 of the VCLT.
Cessation is quite simply the ending of an action, in this case the stockpiling of nuclear weapons. Early date is perhaps the most difficult phrase to define because it is very subjective. It does not mean immediately, but whether it means within a year or some time before the Extension Conference is a matter of opinion.

However, whilst 'at an early date' is so ambiguous, the obligation to pursue negotiations is not. Having said this, it is very important to highlight the fact that any interpretation based on this 'ordinary meaning' school of thought is highly subjective. What one person may consider to be the 'ordinary meaning' of a term is likely not to be the same as that of another person. For example, Ford, a vocal critic of the ICJ's *Advisory Opinion on the Threat or Use of Nuclear Weapons*, contends instead that Article VI presents only the 'goal' of disarmament and the obligation to pursue negotiations in good faith. He even allows for the failure to enter into negotiations, therefore the only obligation that he recognises within Article VI is not much of an obligation at all.

The 'ordinary meaning' of the terms of a provision, as previously displayed by the ILC commentaries, cannot be taken in isolation when one is seeking to interpret a treaty. Therefore, the context and the object and purpose of the NPT must also be considered.

**Object and Purpose**

David Harris agrees with the ILC commentary when he defined the use of the object and purpose as being “referred to in determining the meaning of the 'terms of the treaty' and not as an independent

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18 Ford, “*Debating Disarmament*” pp. 402-404.
19 For an in-depth analysis of the context of the Articles of the NPT see Daniel Joyner's “*Interpreting the NPT*” he explores the Treaty as a whole and can therefore provide a proper examination of the contextual interpretation.
basis for interpretation.”20 Therefore, it supplements an interpretation of the context and ordinary meaning.

‘Object and purpose’ is a term that is used without clarification. There is a binary definition, where ‘object’ and ‘purpose’ are considered separately and a unitary definition with the two considered together. Jonas and Saunders suggest that the unitary position is preferable “because the binary view complicates treaty interpretation without offering notable advantages.”21 They go on to define ‘object and purpose’ as referring, “broadly to a treaty's goals and the character of the means employed to achieve them.”22

To understand the goals of the NPT, one must first look to the preamble. The preamble is written to express the underlying motivation for the treaty. The NPT's preamble consists of twelve paragraphs, sorted according to the subject that they discuss. There are two that deal with civilian use, three that discuss non-proliferation and five that cover disarmament. The remainder are procedural in format. Daniel Joyner is correct to highlight the significance of this grouping, saying that “the NPT’s preamble demonstrates that it is not a treaty exclusively or even primarily focused on nuclear weapons proliferation.”23 Each of the groupings conforms to the three pillars identified above.

Whilst it may not be significant that there are two more paragraphs, and a good deal more words, attributed to the disarmament pillar than to non-proliferation, it certainly provides an insight to the direction in which the drafters wished to head. NWS argue that non-proliferation is the “exclusive or even the primary object and purpose of the NPT”, but it is not clear how this argument can be sustained when all three of the pillars are included within the preamble, and the Treaty generally.24

22 Ibid.
24 Ibid. p. 31.
The preamble makes it clear that the object and purpose of the NPT is jointly to achieve non-proliferation, civilian use and “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.”\(^\text{25}\) When this is considered along with Article VI it is clear that there is an obligation to do more than pontificate about disarmament.

Even with this interpretation of the object and purpose, Article 31(1) of the VCLT does not conclusively resolve the issue of whether the NPT goes beyond obliging states parties to pursue negotiations to reach disarmament. The next step would be to turn to Article 31(3) and review subsequent agreements; however, such meetings and agreements were provided for within Article VIII of the NPT. The Review Conferences will be covered in Chapter Three. This being the case, Article 32 is needed to supplement the interpretation with a review of the preparatory work and relevant contemporary sources, in an attempt to unravel the application of Article VI intended by the drafters.

**Applying Article 32**

Disarmament was an important bargaining chip during the drafting of the NPT. ‘Near-nuclear’ states in particular were keen to see the NWS promise to reduce and decommission their arsenals. They felt that this was only right if they were to be bound to give up a possible independent nuclear deterrent of their own. The goal of nuclear-free states was included in the original preamble, but there was no disarmament provision within the body of the Treaty until the 1967 draft and its amendments.\(^\text{26}\)

\(^{25}\) Preamble of the NPT.  
Up to this point, both the USA and USSR had made calls on each other to move towards nuclear disarmament. The Atoms for Peace speech is often cited as one such call. As has previously been suggested, the speech was the first time all three pillars of the NPT were raised together as an achievable set of goals. However, whether Eisenhower truly intended to carry out the proposals is a matter of debate. Osgood, for example, argues that Atoms for Peace “was quite possibly the largest single propaganda campaign ever conducted by the American government.” Indeed, despite calling for disarmament, Eisenhower failed to commit the US to anything more than being “instantly prepared to meet privately with such other countries as may be 'principally involved', to seek 'an acceptable solution' to the atomic armaments race.” There is a suggestion that Eisenhower was hoping that an expansion in civilian use, coupled with a strict non-proliferation regime, would result in fewer materials for military use and thus disarmament over time.

Naturally, the USSR “had doubts about the wisdom of the underlying concept and insisted that priority be given to [its] proposal for the total and immediate renunciation of nuclear weapons.” The Soviets feared that Eisenhower's proposal of an increased number of recipients of technology and materials, intended for peaceful use, would actually lead to greater proliferation of weapons. This position was not purely one of opposing the Americans for the sake of it, as senior US diplomat, Gerald Smith, put it; “I had to explain to Dulles that Molotov had been better informed technically than he. Subsequently, the Soviets asked how we proposed to stop this spread. The best we could reply was that ‘ways could be found.’”

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29 Address by President Dwight D. Eisenhower to the 470th Plenary Meeting of the UN General Assembly, 1953.12.08.
31 Dulles and Molotov were the US and Soviet foreign ministers at the time. Smith, Gerald “Nuclear Commerce and Non-Proliferation in the 1980s, Some Thoughts”, an address to the US Atomic Industrial Forum, 1982.04.29.
The reaction of the more technically-savvy Soviet minister certainly supports Osgood's view that “despite the enthusiastic reception, the speech did little to cope with the need for candor or to advance progress in arms control.”\(^3\)2 However, this does seem to be a rather limited analysis of the speech's impact. Whether or not it was a clever bit of propaganda is, to some extent, irrelevant. Atoms for Peace clearly helped to shape the international consciousness with regards to nuclear power and disarmament. Mohamed ElBaradei, as quoted above, is not alone in seeing the speech as having laid the foundations for the IAEA and NPT.

If it were purely a political tool, the speech does impact on how one can examine the position of the US in the years leading to, and perhaps following, the NPT. If Eisenhower was willing, and able, to broadcast such an influential speech saying one thing, while believing the opposite, the picture of the American position becomes less clear. Indeed, this has been a problem since Hiroshima; it is politically convenient to espouse nuclear disarmament, but so far only South Africa and a number of former USSR states have given up their nuclear weapons, self-developed or inherited.

Whether Eisenhower intended disarmament to be an issue to be seized upon is not the focus of this research. However, the first drafts of the NPT submitted to the General Assembly by the USA and the USSR were rejected and these drafts were without a provision binding parties to seek disarmament.

Looking back to 1967, it is clear that there was widespread unease about the lack of a binding disarmament obligation. The Mexican delegate within the Eighteen Nation Disarmament Committee (in which much of the negotiations were taking place) noted that the declaration of intent within the preamble would mean yet another treaty to create an obligation on general and

\(^3\)2 Osgood, “Total Cold War” p. 161.
complete disarmament.\textsuperscript{33} The original 1967 draft was labelled by the French as an attempt to “castrate the impotent,” and as a result there were a number of amendments during 1968.\textsuperscript{34} One of these amendments included Article VI, which was an expansion on the preamble’s declaration of intent. Thus, the intention to disarm was stated in two parts of the Treaty. Whilst this is not necessarily significant in and of itself, after all the preamble is not binding per se (although it does help to inform the object and purpose), this dual presence supports the argument that disarmament was an important sticking point for NNWS and near-nuclear states. And further, that disarmament is a pillar of the NPT on a par with non-proliferation and civilian use. The language of the Article was further strengthened in March 1968.\textsuperscript{35}

The wrangling over the provisions of the NPT is a clear indicator that disarmament was a fundamental part of the Treaty from the start. Further, the position of Article VI as one of the three pillars and that all three pillars are of equal worth is also evident. Therefore, whatever the obligations are, they should not play second or third fiddle to non-proliferation and civilian use. After all, there is nothing in the Treaty, and no widely accepted claim during negotiations, that elevates one pillar over the others. Thus, supporting the interpretation of the object and purpose during the earlier examination of the preamble.

\textbf{Attached Statements}

In addition to accounts of the negotiations, many of the signatories attached statements when signing, offering their perspective on the Treaty. These provide a valuable supplement to the instruments of interpretation. Indeed, that the majority of signatories discussed the issue of disarmament within their statements shows how fundamental it was to the NPT.

\textsuperscript{33} ENDC/PV 336, 1967.10.05, p. 9.
\textsuperscript{34} Young, “The Control of Proliferation” p. 11.
\textsuperscript{35} Ibid.
Italy considered “the Treaty not as a point of arrival, but only as a point of departure towards negotiations on disarmament.”\footnote{Declarations Made Upon Signature, Treaty on the Non-Proliferation of Nuclear Weapons, UN Treaty Series Vol. 729-20 No. 10485 p. 286.} A clear expectation that there would not be a breach of any of the articles of the Treaty and, further, that disarmament was an important part of these obligations. The government of Japan put it in stronger language; “it [is] essential for the attainment of the purposes of this Treaty that, above all, the nuclear-weapons States should take concrete nuclear disarmament measures in pursuance of this undertaking.”\footnote{Ibid. p. 290.} Clearly it is understood that the object and purpose of the NPT and Article VI includes the obligation, not just to pursue negotiations in good faith, but actually to disarm. Indeed, the then-Secretary of State for Defence in the UK, Frank Mulley put it succinctly when he said that “many countries made their support for the treaty conditional on its being followed by meaningful negotiations.”\footnote{ENDC/PV 381, 16th July 1968 p. 24.}

**Legislative Commentaries**

Whilst the attached statements are particularly useful to review the opinions of NNWS, the NWS opinions are slightly harder to locate. Having said that, the Hansard transcriptions of the proceedings of the UK Parliament do allow an examination of one NWS's policies. The government of Harold Wilson was initially in favour of unilateral disarmament, but by February 1969 the Prime Minister stated that: “we seek multilateral disarmament by international agreement.”\footnote{Wilson, Harold. As quoted in Hansard, House of Commons debate, 1969.02.06, Vol. 777, paragraph 580.} Certainly the NPT was one such agreement, as was the Geneva Disarmament Conference. In answering questions on the NPT and its disarmament obligations in 1968, Defence Secretary, Frank Mulley, offered two interesting answers. First, he suggested that if all European states were to sign up to the NPT “it will have the same effect as a nuclear-free zone.”\footnote{Mulley, Frank. As quoted in Hansard, House of Commons debate, 1968.11.27, Vol. 774, paragraph 502.} It is impossible to have a nuclear-free zone with a...
NWS within it, so Mulley's statement would suggest that the government of the time regarded the obligation to disarm seriously. Indeed, Mulley strengthened this a few answers later when he said that “one of the important aspects of the Treaty is the firm commitment to further measures of nuclear disarmament.”

Of course this does not mean NWS are expected to disarm immediately on becoming a party to the Treaty, but for a NWS to say that there is a 'firm commitment' to disarm clearly shows that it was widely understood and accepted, by the majority of parties to the NPT, that Article VI obliged them to pursue disarmament.

Records from the Congressional Committee that first considered the ratification of the NPT show that the preamble was held in high regard by US legislators. Senator Hickenlooper quoted from a speech made by the then-Foreign Minister of Italy, Giuseppe Medici, in the Chamber of Deputies, labelling the Soviet invasion of Czechoslovakia as being “in open conflict with the fundamental principles of the [NPT].” The Senators highlighted the importance of the preamble in determining the object and purpose of the NPT; the reminder to adhere to the UN's prohibition of the threat or use of force is held within one of the disarmament paragraphs of the preamble. Astonishingly, in the 34 pages recording the Senators' discussion of the NPT, Article VI and disarmament was not once mentioned. In light of their position on the status of the preamble, perhaps this suggests that there was, at the very least, no strong opposition to the idea of an obligation to disarm at the time.

An examination of these political debates within NWS supplements an understanding of the NPT that considers the opinions of all drafters of the Treaty and particularly informs of the acceptance by NWS that they were obliged to seek disarmament. This is often ignored by modern commentators and state representatives, such as Christopher Ford.

41 Ibid. paragraph 503, emphasis added.
42 Medici, Giuseppe quoted by Hickenlooper, Bourke. “Executive Sessions Of The Senate Foreign Relations Committee (Historical Series)” Vol. XX, Nineteenth Congress, Second Session (1968) p. 1042.
 Conclusion

The position of the NWS regarding the obligations of Article VI has, until recently, been rather muted. The NPT was proclaimed as the fundamental non-proliferation commitment, with non-proliferation the most important part of it, to the expense of all other possible sections. Ford enunciates this when he said that “clearly the core provisions of the treaty [were] those pertaining to nonproliferation.” Within the provisions of Article VI itself, officials, such as Ford, have argued that not only is the single obligation to try to engage in negotiations and not to worry if they fail, but they argue that the three outcomes of these negotiations, outlined in the Article, fall in sequence. For example, states are obliged to “pursue negotiations in good faith on effective measures relating to nuclear disarmament before the conclusion of a treaty on general and complete disarmament.” However, Joyner goes on to point out that this argument is based upon the preamble and not from the binding provision of Article VI.

An application of Articles 31 and 32 of the VCLT to the NPT helps to challenge these positions of NWS. The position of Article VI as a pillar of the NPT supports the contextual instruments of interpretation and the generous helping of paragraphs within the preamble supports the object and purpose tools, thus requiring an obligation to seek disarmament, with a view to international control. Further support for this is provided by the travaux préparatoires in the drafting of the NPT.

Thus, in conclusion, the Article 31 terms of 'good faith', 'ordinary meaning', 'context' and 'object and purpose', with support from the Article 32 use of the preparatory work, show that there is an obligation upon all states parties of the NPT to pursue negotiations, disarm and agree a treaty on strict and effective international control. The positions of NWS and their representatives, such as

43 Recent developments in NWS positions will be reviewed in Chapter 4.
44 Ford, “Interpreting Article VI” p. 401.
Ford, are based upon incomplete examinations, whether wilful or otherwise, of the NPT and Article VI. Chapter Four will examine the actions of NWS and inform a conclusion on whether enough has been done to comply with the obligations under treaty law discussed above.
The 1996 Advisory Opinion and implications for Article VI

In 1996, the International Court of Justice (ICJ) delivered an advisory opinion in response to a request made by the UN General Assembly (GA). The Opinion was needed because earlier cases, such as the Tests Cases and the WHO Request, had failed to address the re-emergence of nuclear disarmament as a diplomatic issue.

Members of the Non-Aligned Movement were increasingly active in getting the issue of nuclear disarmament raised and the 1995 NPT Review Conference saw the NPT indefinitely extended, while at the same Conference, the discussion of disarmament ended in “failure” due to disagreement.  

The GA resolution used to request the Opinion, made the sentiment of the majority of the Assembly clear when it said that it was “conscious that the continuing existence and development of nuclear weapons pose[d] serious risks to humanity.” This showed that the issue of disarmament was at the core of the GA’s desire for the opinion and it is no surprise that the Court felt that it was able to offer an understanding of the legal obligation to disarm. So, not only is the Opinion useful to gain clarity of the legal position of nuclear weapons generally, but this advisory opinion should be prominent in an examination of the obligations contained within Article VI.

Supporting Jurisprudence

The ICJ was right to state that “interpretation must be based above all upon the text of the treaty [and] as a supplementary measure recourse may be had to means of interpretation such as the

47 GA Resolution A/RES/49/75K.
When the text of a treaty and the supplementary means fail to yield an irrefutable interpretation, as was demonstrated in the case of the NPT in Chapter One, the GA, Security Council or the specialised agencies of the UN can turn to the ICJ for clarification. This is allowed under Article 96 of the UN Charter, which also states that a response to such a legal question will be in the form of an advisory opinion.

The Court may also provide explanation for terms in cases between two states parties. For example, in the 2011 Georgia v. Russia case, the ICJ defined the term 'negotiation' as;

“distinct from mere protests or disputations. Negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims. As such, the concept of 'negotiations' differs from the concept of 'dispute', and requires - at the very least - a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute.”

This is a clear definition of what it means to engage in negotiations and helps to inform an evaluation of whether the obligations under Article VI are being met. Even if one were to subscribe to Ford's argument that the only obligation is to pursue negotiations in good faith, it would be difficult to say that Georgia v. Russia negotiations are presently being conducted, or indeed pursued at all.

In 1974, France had to respond to separate cases in the ICJ, brought by Australia and New Zealand. The appellants claimed that French nuclear tests on Pacific islands infringed their legal rights and

48 Territorial Dispute (Libyan Arab Jamahiriya v. Chad), Judgement, ICJ Reports (1994), pp. 21-22, para. 41.
49 Article 96 UN Charter.
were requesting the Court to prevent further testing. The Court rejected the requests, as France had issued a number of public statements throughout the case, stating that it would no longer detonate nuclear devices on the islands.\textsuperscript{51} Dissenting judge, Sir Garfield Barwick, was not alone in suggesting that the Tests Cases were a missed opportunity for the Court to clarify the legal position of nuclear weapons. He labelled sections of the judgement as “erroneous and indicative of a failure on the part of the Court to perform its judicial duty of decision.”\textsuperscript{52}

The WHO Opinion

It was not until 1993 that there was an active attempt to establish the legal position of nuclear weapons using the ICJ. The World Health Organisation (WHO) requested that the Court examine the legality of the use of nuclear weapons in armed conflict in the light of states' health and environmental obligations. The Court concluded that the WHO was acting \textit{ultra vires} by requesting an advisory opinion on such an issue. Article 96(2) of the UN Charter allows for specialised agencies to request opinions on “legal questions arising within the scope of their activities.”\textsuperscript{53} The ICJ was of the opinion that “the competence of the WHO to deal with [the effects of nuclear weapons] is not dependent on the legality of the acts that caused them.”\textsuperscript{54} As such, the issue was outside the competence of the Organisation's constitution.

The other cause for the rejection of the request was that of speciality. The Court concluded that, the WHO was acting in a completely different field to that in which it was mandated. “For such competence could not be deemed a necessary implication of the Constitution of the Organisation in the light of the purposes assigned to it by its member states.”\textsuperscript{55}

\textsuperscript{53} Article 96(2) UN Charter.
\textsuperscript{55} Ibid. para. 25.
Whether the Court was correct or not in declining the WHO request, is a topic for a different place.\textsuperscript{56} The issues of \textit{ultra vires} and speciality led the GA to seek its own advisory opinion on the issue of nuclear weapons. The 1996 request was not limited to health or the environment, so the ICJ was able to examine wider obligations, including those of Article VI of the NPT.

\textbf{The 1996 Opinion}

Prior to the Court considering the request, it allowed states to submit letters and written comments on the case. Many states argued that the ICJ could not, or indeed \textit{should} not, consider the merits of the request, while others welcomed the Court's involvement and the potential contribution it could offer.\textsuperscript{57}

The submissions by states to the Court are an important tool to outline the positions of NWS and NNWS regarding the legality of nuclear weapons and their use or threat thereof. The interpretation of the law by these states allows for an understanding of their position on Article VI of the NPT.

While neither the UN Charter nor the Statute of the ICJ ensure that advisory opinions are binding upon states, such opinions do carry legal force: “the legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and in arriving at them, the Court follows essentially the same rules and procedures that govern its binding judgements.”\textsuperscript{58} This does not equal a binding force \textit{per se}, but if the Court were to be presented with a case, such as the Tests Cases, it is likely to reason in the same manner as in advisory opinions. Therefore, such

\textsuperscript{56} Michael Bothe discusses the issues of \textit{ultra vires} and speciality in “\textit{The WHO Request}” in ed. de Chazournes, and Sands, \textit{International Law}, pp. 103-111.

\textsuperscript{57} Germany being an example of the former and Ireland the latter. Both will be reviewed below.

\textsuperscript{58} Bekker, Pieter. “The UN General Assembly Requests a World Court Advisory Opinion On Israel's Separation Barrier” American Society of International Law (2003).
opinions are highly influential to the point of being legally significant.

Bekker goes on to add that “an advisory opinion derives its status and authority from the fact that it is the official pronouncement of the principal judicial organ of the United Nations.”\(^{59}\) Therefore, states cannot afford to ignore the Court, especially if its advisory opinion includes a review of the international obligations under Article VI of the NPT.

**The Submissions**

The phrasing of the GA resolution left states in little doubt as to the opportunity the question afforded the Court in seeking clarification on disarmament obligations. This allowed a large number of states to deliver statements to the Court, a few of which will be examined below.

The Democratic People's Republic of Korea was still a party to the NPT and a NNWS in 1996. It supported the aim of the resolution and multilateral disarmament, but opposed the consideration of the question at a time when the issue of disarmament was “under serious discussion.”\(^{60}\) While it is difficult to isolate these 'serious discussions', it is important to highlight the fact that the submission was made on the 18\(^{th}\) May 1995, just six days following the conclusion of the Review and Extension Conference. This can be offered as a form of mitigation for North Korea's optimism, as the Conference was hailed as a success and with the indefinite extension of the NPT, it is understandable that some NNWS expected their nuclear armed peers to be willing to engage in negotiations.

The statement presented by the Federal Republic of Germany refuted Pyongyang's optimism; “a

\(^{59}\) Ibid.

\(^{60}\) Letter dated 18\(^{th}\) May 1995 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations, No. 1 submission to the Court.
general legal ban on nuclear weapons has never been on the agenda in any negotiating forum.”

The Bundesrepublik considered the issue to be inherently political, even if the question appeared, *prima facie* to be a legal one. Germany pointed to the Court's opinion in the *Certain Expenses of the United Nations* case when it said that “the Court can give an advisory opinion only on a legal question. If a question is not a legal one, the Court has no discretion in the matter; it must decline to give the opinion requested.”

The statement continued, saying that even if the Court did decide that this was a legal issue, it should exercise its discretion and refuse to provide an opinion. If it were to proceed with the request it would be overstepping its role as “the principal judicial organ” of the UN and impinge upon the “‘legislative' prerogative of the states.”

The best way of resolving something that is so politically controversial, Germany said, is through gradual treaty law. Moving too quickly on the issue jeopardises what is a legal possibility and would be based “no longer [on] judicial fact-finding but rather guesswork regarding hypothetical scenarios”. This is a fair argument, but one that is let down by an interpretation of the NPT that perhaps even Ford might think is a little extreme. Germany stated that the “treaty by no means envisages a general ban on nuclear weapons.” As was shown in Chapter One, the object and purpose of the NPT clearly indicates that the aim of the Treaty was to achieve nuclear disarmament. Even if one subscribes to Ford's minimal interpretation of Article VI, it cannot be denied that the goal of disarmament is there in black and white, despite there being 'no obligation' to achieve it.

Germany concluded by adding a proviso, in effect saying that even if the Court rejected its arguments, Germany believed that the threat of use is only justifiable in the exercise of “the

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63 Ibid. p. 4.
64 Ibid. pp. 4-5.
65 Ibid. p. 4.
inherent right to individual or collective self-defence. This statement is a good example of how states' opinions can change. In the process of drafting the NPT, Germany was one of the more vocal proponents of the inclusion of an obligation to disarm, yet here, Berlin does not even recognise the NPT as adopting the goal of disarmament.

The inclusion of a proviso to the German submission showed a lack of confidence that their argument would be upheld. An admission, perhaps, that such a position was little more than attempt to express its opposition to an interpretation of Article VI, a position that was remarkably different to that during the drafting of the NPT.

Ireland took an opposing view to that of Germany. It began by declaring Dublin's firm belief in the need for general and complete disarmament. Ireland did not deny that the issue was politically controversial, and indeed, it listed its political achievements in getting disarmament discussed. Whilst the issue may have political application, Ireland ensured that it established that there is legal foundation in the request for the advisory opinion and that such an opinion would “clarify the legal issues which arise for states in relation to this most dangerous category of weapons.”

The political motivation behind Ireland's submission is potentially problematic for those that supported the Court's decision to respond to the request. Such heavy emphasis on the political side of the debate lends credence to the German submission.

The brief Irish examination of political reasons for the need of the advisory opinion is supported by the Iranian statement, which is more focussed on the legal position of nuclear weapons. In welcoming the request for the advisory opinion, Tehran drew on the Geneva and Hague

66 Ibid. p. 6.
67 Letter dated 16 June 1995 from the Secretary of the Department of Foreign Affairs of Ireland, together with Written Statement of the Government of Ireland, No. 9 submission to the Court. para. 11, p. 3.
Conventions and a number of treaties relating directly to nuclear weapons, including the NPT. The statement also made use of a number of GA resolutions in an attempt to show a prevailing tide of feeling on the matter. Most interestingly of all, perhaps, is the attempt to establish that the number of environmental treaties and agreements amount to an “opinio juris concerning the preservation of the environment.”68 This was an active attempt to link the 1996 Opinion to the WHO Opinion and perhaps to vindicate the WHO's failed request.

Iran also suggested that another opinio juris can be “deduced from the 1995 Review and Extension Conference,” in which there was a reiteration of states parties' belief in the “ultimate goal of complete elimination of nuclear weapons.”69 This was combined with a number of GA resolutions to conclude Iran's statement. The final words counter the 'it is not the right time' argument used by Germany. The end of the Cold War and improvements in international relations resulted in the ICJ being “in a better position to respond to the international public conscience and render its advisory opinion on the illegality of the threat or use of nuclear weapons.”70

The position of Tehran shows a legal radicalism that suggests an unwillingness to back down. Arguing that there is an established opinio juris is a clear example of this. Indeed, Iran's current position as a nuclear pariah could in some ways be linked to this legal radicalism. The perceived hypocrisy of the NWS may be used by Iran to justify its, alleged, nuclear weapons programme.

Like Iran, Russia also drew upon the link between the two requests for opinions. “[They] are very similar. In our opinion, the question contained in General Assembly resolution [...] is formulated in a more general manner and somehow covers the question put before the Court by the WHO.”71

68 Note Verbale dated 19 June, 1995 from the Embassy of the Islamic Republic of Iran, together with Written Statement of the Government of the Islamic Republic of Iran, No. 6 submission to the Court, p. 4.
69 Ibid. p. 6.
70 Ibid.
Moscow was quick to remind the Court of a fundamental principle of international law, that it “is a system of limitations, rather than permissions.” This is most certainly the case and is important for maintaining the sovereignty of states. However, the Russian statement discussed a lack of a “general prohibition of use of nuclear weapons *per se*.” This has all the hallmarks of the author attempting to cover themselves. If the author did not have doubts, such a sentence would have been worded in much stronger terms. There is an implicit admission of the need for clarification on the matter, even if there is an objection to this particular question.

There is also a slight hesitation in how Russia talks of the legality of nuclear weapons under international humanitarian law (IHL). “We are convinced that there is no general prohibition on the use of nuclear weapons as such in treaties codifying those rules.” The response to such a remark is 'of course.' Of course there is no specific reference to nuclear weapons in these documents. How can treaty drafters be expected to include a rule for each and every weapon that exists or will ever exist? Perhaps armaments as devastating as nuclear weapons could have been mentioned, but there really was no need; the provisions of the Geneva Conventions apply to all weapons, be they ICBMs or an impromptu club made from a table leg.

It is an act of picking at straws to say that there needs to be an explicit ban of nuclear weapons. Under IHL, weapons that are indiscriminate and disproportionate are prohibited. In other words, a weapon must not be directed against civilian targets, nor against military targets if there is anticipation of a high number of civilian deaths as 'collateral,' if the effect of the attack would cause unnecessary pain and suffering or was disproportionate to the threat caused by the target. It would be hard to argue that a modern strategic nuclear warhead could be accurately deployed to avoid a

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72 Ibid. p. 5.
73 Ibid.
74 Ibid. p. 10.
large number civilian deaths or prevent unnecessary pain and suffering, even if the latter is slightly harder to define.

Thus, whilst there is certainly no general prohibition, the outcomes of a strategic nuclear strike could well be interpreted to contravene *jus in bello*. Indeed, Moscow appears to be missing the point by claiming that a lack of a general prohibition precludes an advisory opinion on the issue. Surely if there were such a prohibition in treaty law an opinion would not have been required. It is precisely because there was uncertainty that the Court was approached in the first place.

Russia limited its objections to the discussion of the legality of the use of nuclear weapons. This, combined with recognising non-proliferation as the only obligation under the NPT, clearly shows Moscow's opinion regarding an obligation to disarm. In its view, there is no prohibition, *per se*, of the use of nuclear weapons and no obligation, *per se*, to achieve complete disarmament.

The French government was more willing to discuss disarmament and indeed went as far as to say that "it does not follow that the French government is opposed to efforts of nuclear arms reduction, and beyond, to general and complete disarmament under effective international control" and that it has demonstrated this commitment through its actions.\(^{75}\) That being said, this NWS also opposed the need for an advisory opinion, believing that this is an issue for multilateral negotiations and not a judicial panel.

Quoting delegates from Morocco and Benin, France agreed with the German position that the issue at hand was a political one and an opinion from the ICJ could adversely affect negotiations. France suggested that the Court would “introduce uncertainty about the basis on which negotiations are...

\(^{75}\) My own translation, taken from: Lettre en date du 20 juin1995 du Ministre des affaires étrangères de la République française, accompagnéede l'exposé écrit du Gouvernement de la République française, No. 19 submission to the Court, p. 2.
undertaken.”

Paris concluded stating that a number of GA and Security Council resolutions “far from offering a prohibition of nuclear weapons, [...] confirm the existence of a group of states with nuclear weapons, as does the NPT itself. It bears no assumption of guilt on the use of weapons involved.” The submission is useful as it shows that a NWS believed that there was a responsibility to move towards disarmament, whilst the last quote above makes it clear that it was not quite believed to be a fully-fledged obligation. Indeed, France perceived its nuclear weapons as a right bestowed upon it by the NPT and UN resolutions.

The Opinion

After considering these and other submissions, the Court delivered its opinion. It began by outlining that the GA was acting within its authority when making the request and that it was a legal one. “The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question'.” This being the case, Germany's request for discretion could have been applied. It was not. Finally, the Court rejected that an opinion on the issue would be tantamount to legislating; “it states the existing law and does not legislate.”

Perhaps the most controversial part of the opinion came at the end. Under the guise of the “broader context,” the ICJ built upon the submissions of states such as Ireland and France to provide an opinion on the obligation to achieve general and complete disarmament.

76 Ibid. pp. 10-11.
77 Ibid. p. 52.
79 Ibid. p. 237, para. 18.
80 Ibid. p. 263, para. 98.
The Court agreed with the view of NWS and individuals such as Christopher Ford, but took an extra step (or leap) to go “beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result.” Not only are states parties of the NPT obliged to pursue negotiations in good faith, but they were now expected to conclude these negotiations and in so doing, move closer to complete nuclear disarmament. When the Judges voted on this it was passed unanimously. However, it must be remembered that the advisory opinion was not binding per se, but it is an important indication of the international legal position of Article VI.

In the final four paragraphs the Court appears to be tentatively airing the idea that there is an emerging opinio juris. It points to the large number of states parties to the NPT, the history of GA resolutions dating back to the very first in 1946, treaty law in the form of the UN Charter and Security Council resolutions. However, it does state that “the emergence, as lex lata, of a customary rule specifically prohibiting the use of nuclear weapons [...] is hampered by the continuing tensions between the nascent opinio juris on the one hand, and the still strong adherence to the practice of deterrence on the other.”

A customary norm would bind all states regardless of whether a party to the NPT or not. This would make the position of the NPT NWS clear, as they could not credibly claim 'persistent objector' status. Indeed, the implications would go further than just the NPT. Israel, North Korea and Pakistan would have no choice but to comply with custom. Even India would have trouble claiming the position of a persistent objector to disarmament, as it has not ruled out the possibility of disarmament if other nuclear weapons states work towards it.

81 Ibid. p. 264, para. 99.
82 Ibid. pp. 33, para. 73.
Conclusion

The importance of negotiations to the application of Article VI is clear. ICJ jurisprudence sets out clear guidelines and requires an atmosphere of cooperation.

Despite the failure of the WHO to get its question answered, it provided the impetus for the General Assembly to request its own advisory opinion. This allowed for clarification of a number of things. First, the position of states with regard nuclear weapons and their use; the submissions from both NNWS and NWS provide a valuable insight into how they interpreted the NPT and required them to defend their legal position, whether confidently or otherwise. China was the only NPT NWS that did not submit a statement. Secondly, it confirmed the Assembly and Court's positions within the UN structure; the GA can ask for an opinion of anything as long as it requests it in a legal manner, whilst the Court can provide an opinion on any question with a legal basis. Lastly, and most importantly, the 1996 Opinion allowed for a solid interpretation, by all fourteen judges of the Court, to the effect that there is an obligation, on all states parties of the NPT, to pursue and conclude negotiations in good faith on nuclear disarmament.

Russia's reminder of the fundamental principle of state sovereignty within international law allowed David Kennedy to exasperatedly sum up the Opinion as a whole, by saying that “nuclear weapons are (generally) illegal, except when they are not.” Despite this, there is now a further interpretation to the effect of obliging states to move towards disarmament.

The role of NPT Review Conferences

Writing in 1969, Elizabeth Young described the NPT as an attempt to fix “a system of legal certainty [...] among the torrential fluidities of political and scientific progress.” This certainly accounts for the ambiguity of many of the provisions and the potential for the Treaty to become quickly outdated. Article VIII of the NPT shows that some thought of further clarification was present at the time of drafting. The process of amending the Treaty, outlined therein, is difficult. It requires a majority vote of the states parties, including the consent of all NWS and those on the Board of Governors of the IAEA at the time. This being the case, Section 3 of Article VIII allowed the majority of states parties to request a conference, to review the operation of the Treaty at five year intervals. These Review Conferences were held in this fashion every five years until 1995 when the NPT was indefinitely extended and the structure of the Review Conferences themselves was reformed.

“Nothing better illustrates the 'living' nature of international law than to observe the evolution of the NPT review process in recent years.” It is clear that the process itself has become more influential in determining whether the actions of the states parties conform to the undertakings of the Treaty. For this reason, NPT Review Conferences are of fundamental importance in the search for the obligations of Article VI and provide a regular assessment of the steps taken towards fulfilling these obligations.

The VCLT provides an insight into the customary legal position of these Review Conferences and allows the final declarations to be used in the interpretation of the treaty articles. “Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its

85 Young, “The Control of Proliferation”, p. 15.
provisions” should be taken into account alongside the context. The requirement that final declarations can only be issued with unanimous support, or at least without any objections, means that any discussion of the meaning of the Articles within these documents fits into the guideline of Article 31(3)(a) of the VCLT. Thus, the final declarations of the Review Conferences are relevant and useful when attempting to establish the legal obligations conferred by Article VI.

Despite the majority of the attendees being NNWS, the NWS could well influence the agenda of the meetings so as to discuss only the issues important to them, namely non-proliferation. However, this is not often the case. The Non-Aligned Movement (NAM) is a collection of NNWS and has its roots in the vocal neutral states of the Cold War. The arguments have invariably been between the non-proliferation-obsessed NWS and the disarmament-obsessed NAM. This has prevented NWS dominance, but has also resulted in gridlock preventing a final declaration, such as in 2005.

Combining the polarisation of the non-proliferation/disarmament debate with the need for unanimous support for the final declaration has led many to claim that these documents merely represent the “lowest common denominator.” If this were the case it would take many Review Conferences to make headway into untangling the ambiguities of the Treaty. However, the advances made by the 2000 and 2010 Conferences go some way to disputing this. Both Conferences went beyond the original role of reviewing the operation of the Treaty and laid down a path to achieve the fulfilment of the Treaty obligations.

The initial role of the Review Conferences was to allow the states parties to provide an oversight for the Treaty and to act as a check on each other to prevent breaches of the provisions. This role has been expanded over time and the final documents now include measures to encourage states to meet

87 Article 31(3)(a) of the VCLT.
their obligations. In the more recent Conferences this has increasingly been in the field of disarmament. This change over time reflects the states parties' desire to increase the pressure on NWS and helps to inform an understanding of the majority view of the obligations contained within Article VI.

This Chapter will review the final declarations and documents from the Conferences of 1985, 1995, 2000 and 2010. Each of these offers an interesting addition to the interpretation of Article VI and the position of the states parties at the time.

1985

The 1985 Review Conference was the first to follow the failure of a predecessor. The 1980 Conference failed to produce a consensus and thus a final declaration. The issue of disarmament, a stumbling block in 1980, raised concerns from the majority of states that few concrete steps had been taken to achieve the Treaty's aims.

What the final declaration has to say on the issue is important and shows the first tentative steps to clarify the disarmament obligations, despite polarised views. The lowest common denominator features quite heavily in the section on disarmament, which shows that the states parties believed any clarification was better than no clarification, or even, no document such as five years previously. However, sections can still be unpicked to discover the true feeling of the Conference.

The very first paragraph of the section discussing Article VI reads as follows:

“The Conference recalled that under the provisions of article VI all parties...
have undertaken to pursue negotiations in good faith:

• on effective measures relating to cessation of the nuclear arms race at an early date;
• on effective measures relating to nuclear disarmament;
• on a Treaty on general and complete disarmament under strict and effective international control.\textsuperscript{89}

That the Conference has split the three outcomes of the negotiations is interesting. This same format was used in 1980 and suggests that the Conference wished more attention to be directed at the reasons for negotiations rather than the negotiations themselves. It would be ambitious to claim that this alone elevates them to 'obligation status', but even if such an arrangement is purely a visual aid it reveals an underling importance of the objectives if nothing else. The attendees clearly felt that these three points needed highlighting rather than being 'hidden away' in the text of Article VI.

That these are 'merely' goals is made clear later in the declaration when it states that the “aspirations contained in preambular paragraphs 8 to 12 had still not been met, and the objectives under Article VI had not yet been achieved.”\textsuperscript{90} This is a prime example of the use of lowest common denominator language. Yet at the same time it says that these 'objectives' need to be achieved. This suggests that there is, if not a legal obligation, then a moral or political obligation to conclude negotiations to meet these objectives. Indeed, later Conferences showed that there is a clear expectation that states parties will do this and, further, that they must in order to comply with their Article VI obligations. However, this is not the place to go into a philosophical argument about the bearings of moral or political expectations on legal obligations.

By beginning the criticism of the failure to conclude agreements with “aspirations contained in

\textsuperscript{90} Ibid. p. 12.
preambular paragraphs,” the Conference confirmed the conclusion reached in Chapter One of this study regarding the object and purpose of the Treaty. The object and purpose of the NPT was, and remains, to achieve nuclear disarmament. That a Review Conference has reiterated this further strengthens the idea that Article VI obliges states to do more than just seek negotiations in good faith.

A contextual interpretation and the importance of Article VI is once again shown in the 1985 final declaration when the Article was called “essential” and “the Conference addressed a call to the nuclear-weapon States Parties in particular to demonstrate this commitment.”91 In other words, while all states are bound to fulfil the obligations, Article VI particularly applies to NWS.

1995

Article X(2) of the NPT required a conference to be held 25 years after the entry into force of the Treaty, for states parties to decide whether it should continue “in force indefinitely, or shall be extended for an additional fixed period or periods.”92 1995 was that year, and the fifth Review Conference was merged with the Extension Conference.

Not only does the extension element make the 1995 Conference an interesting one to review, but it was the first that all five NPT NWS attended as states parties and the first since the break-up of the USSR. Predictably, perhaps, the increase in state party numbers and the involvement of France and China resulted in a failure to produce a final declaration, but the NPT was extended indefinitely without the need of a vote.

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91 Ibid.
92 Article X(2) of the Nuclear Non-Proliferation Treaty, UN Treaty Series, No. 10485.
Bosch questions the logic behind the Treaty requiring unanimity for final declarations, but only a majority to extend the Treaty, calling it “one of the mysteries regarding the NPT.”\textsuperscript{93} However, it makes sense for this to be the case. In some ways extension is less important than review, as the Review Conferences are held every five years and have the chance to dramatically change the accepted interpretation of the Treaty articles, if the states were to agree of course. But on the other hand, extension is too important to require a unanimous vote. If even one state objected to the opinion of all the others, the Treaty could not be extended and the Extension Conference would have to continue until that one state was persuaded to agree, or the Treaty would lapse. This being a possibility would have given disproportionate power to an individual state, which may have tried to coerce the Conference into agreeing with its demands. For this reason there is an apparent disparity between the 'importance' of the two Conferences.

That being said, however, Review Conferences are still an extremely important part of the Treaty regime and it is precisely because they are frequently held that such stringent rules apply to their final declarations. Ultimately, this makes their declarations far more informative when it comes to establishing an interpretation of Treaty obligations, particularly in the case of Article VI and the controversial issue of disarmament.

No vote was needed to extend the Treaty, but there were still some agreements to ease its passage. The system of Review Conferences was reformed to ensure that a formal request was no longer needed. Conferences are now automatic and preceded by three years of Preparatory Committees, rather than the previous two. Conferences were explicitly mandated to set aims and objectives and, indeed, were expected to; “Review Conferences should look forward as well as back.”\textsuperscript{94}

\textsuperscript{93} Bosch, \textit{“The Non-Proliferation Treaty and Its Future”}, p.378.
In achieving the extension of the NPT, it seems likely that the Conference ran out of steam. The Review part of the Conference failed to produce a final declaration. However, in the attached document the Conference called on the Conference on Disarmament to conclude negotiations on a comprehensive test-ban treaty (CTBT) “no later than 1996.”95 It was on this that the fourth Conference in 1990 failed to agree, as did the 1980 Conference. So, one could argue that even without a final declaration, the 1995 Conference was able to make progress on the issue of disarmament.

On the other hand, considering the victory that extension conferred upon NWS, NNWS got very little in return.96 For an indefinite extension of non-proliferation obligations that prevent NNWS developing their own nuclear weapons, there were no new, concrete obligations on disarmament. NNWS could have held the NWS to ransom and demanded obligations that, unlike Article VI, would have left no doubt as to their purpose. Instead, they handed a “carte blanche” and surrendered their best chance for serious reform of the Treaty.97 For this reason, the need to unpack the obligations undertaken in Article VI has become even more important.

2000

The progression of the CTBT was not as successful as was hoped in 1995. As desired it was adopted by the General Assembly in 1996, but has yet to enter into force, requiring the remaining eight “Annex 2 States” to sign and/or ratify. However, the 2000 Conference attempted to increase the number of ratifications, by including “the early entry into force of the [CTBT]” as one of its 13 steps for “systematic and progressive efforts to implement article VI.”98

95 Ibid. Decision 2, p. 10, para. 4(a).
96 cf. Bosch, “The Non-Proliferation Treaty and Its Future”.
An examination of the obligations of Article VI would not be complete without including the 13 steps of the 2000 Review Conference. They at once became the standard, by which NWS disarmament policies and achievements would be measured. Ford was right to argue that the steps were by no means “an exclusive list of the ways in which states party can satisfy their Article VI obligations,” but his claim that they do not amount to a subsequent agreement under Article 31(3) of the VCLT is less convincing.99

Ford suggests that because there is no explicit mention of their position as a “'subsequent agreement' within the meaning of Article 31(3)” the steps have no bearing on the interpretation of Article VI.100 Joyner's response to this is far more sensible. He argues that “the most straightforward and clearest reading of the agreement” is simply that.101 An agreement between the states parties on the “primary means for complying with the obligations of Article VI.”102

If one takes Joyner's opinion to be the more logical on the matter, the 2000 Review Conference is clearly significant for the interpretation of Article VI. Thus, the 13 steps are to some extent a partial fulfilment of one of the Article obligations and the establishment of a route to achieve full compliance with states' undertakings. In other words, the steps represent the conclusion of negotiations on effective measures relating to disarmament, a requirement of Article VI and states parties are now obliged to follow the steps in order to meet with the object and purpose of the NPT.

2010

Despite the potential generated by the agreement on the 13 steps at the 2000 Conference, the US

100 Ibid.
101 Joyner, “Interpreting the Nuclear Non-Proliferation Treaty” p. 106.
102 Ibid.
withdrew their support at the Preparatory Committee in 2003.\textsuperscript{103} Unsurprisingly, the 2005 Conference failed to reach a consensus and thus produce a final declaration. However, signs that the NWS were being turned on the issue of disarmament have become more common at Conferences and Preparatory Committees.

In 2005, President Putin used the Russian statement to the Conference to say that Moscow “strictly complies with all of its disarmament obligations.”\textsuperscript{104} By the Committee of 2008 all five NWS stated that while they again wanted to dedicate more time to the issue of Iranian proliferation, they recognised their “enduring commitment to the fulfilment of our obligations under Article VI.”\textsuperscript{105} Perhaps the greatest lubricant for a successful 2010 Conference was President Obama's speech in Prague in 2009. It effectively marked the end of the Bush Doctrine and saw an easing of the US position on nuclear disarmament. Chapter Four will examine the speech in more detail, alongside other developments in NWS policy.

The stumbling point in 2005 was fundamentally the same as in the other failed Conferences; the polarisation of the non-proliferation/disarmament debate with little willingness to compromise. The Prague Speech and the Preparatory Committee statements paved the way for the 2010 Conference, showing that not only were NWS willing to compromise, but were willing to contribute actively to the disarmament debate.

This allowed 2010 to succeed. Indeed, for the purpose of building an understanding of Article VI obligations, it does more than merely succeed. Daniel Joyner puts it best when he describes the final

\textsuperscript{105} Statement on behalf of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the 2008 Non-Proliferation Treaty Preparatory Committee, p. 2.
document on Article VI as “interpretive gold.”

“The Conference reaffirms the unequivocal undertaking of the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI.”

This leaves no doubt whatsoever that the Conference believed Article VI confers the obligation to go further than just pursuing negotiations in good faith. Indeed, it goes beyond even the 1996 Advisory Opinion in the ICJ (as discussed in Chapter Two), which broke ground at the time by suggesting that the obligation was on concluding negotiations. This paragraph suggests that the obligation is not just to pursue and conclude negotiations relating to nuclear disarmament, but that disarmament itself is an obligation, regardless of whether negotiations are conducted.

The 13 steps that were adopted in the 2000 Conference, before being rejected by the US a few years later, were returned to the fore when the 2010 Conference “reaffirm[ed] the continued validity of the practical steps agreed to in the Final Document of the 2000 Review Conference.” So, in addition to unequivocally clarifying Article VI, the Conference of 2010 also restored the work of the 2000 Conference to relevance, allowing for a concrete, though not exhaustive, set of guidelines for the pursuit of disarmament.

It went further than merely reiterating the guidelines and informed NWS of the “reaffirm[ation of] the urgent need for the nuclear-weapon States to implement [these steps].” Not only are NWS

108 Ibid.
109 Ibid. p. 20.
expected to take note of the 13 steps, but they are expected to follow them. Indeed, the earlier remark that NWS were willing to actively engage in the disarmament debate in 2010 is vindicated by the NWS undertaking of additional commitments to “accelerate concrete progress on the steps.”

Action 5 provided an *inter alia* list of such additional commitments, with the proviso that the NWS report on their progress to the 2014 Preparatory Committee. A positive sign that the NWS were actively attempting to meet these additional commitments can be seen by their first ever follow-up meeting in Paris a year after the Conference to discuss how they were to progress.

Conclusion

Having examined the Conferences of 1985, 1995, 2000 and 2010, with a brief look at 2005, it is clear that NPT Review Conferences play an important part in holding states parties to account for breaches of, or lack of movement towards, their Treaty obligations. They have also played a vital role in aiding interpretation of the Treaty so that these obligations can be uncovered.

The apparent coup of the NWS in the 1995 Extension Conference and the blank cheque that was seemingly handed to them did not materialise. A statement made on behalf of the NAM at the 2005 Conference countered it by stating that “the indefinite extension of the NPT does not imply the indefinite possession by the nuclear-weapon States of their nuclear weapons arsenals.”

1995 showed that the Review Conferences occupy a position as an agenda-setting forum. Indeed,

110 Ibid. p. 21.
111 Final Joint Press Statement of the First P5 Follow-Up Meeting to the NPT Review Conference, 2011.06.30 to 07.01.
“the basic functions of the review process were not simply descriptive or analytical, but also prescriptive.”\textsuperscript{113} A clear acknowledgement of the function to aid interpretation and outline a path to meeting the Treaty's obligations.

The development of Article VI interpretation can be traced clearly over the decades. In 1985, good faith negotiations were brought into prominence and remained the accepted obligation of the Article. 1995 reiterated the need for a CTBT and set a deadline for the opening of the Treaty for signature. 2000 saw the establishment of a concrete plan for reaching disarmament and 2010 crowned the 40 years of the NPT by establishing a treaty interpretation that set disarmament up as an irrefutable obligation.

NPT Review Conferences have helped to strengthen the NPT regime, particularly the aim of nuclear-free states. There are still elements of the Treaty, however, that are open to speculative interpretation, but with regard to disarmament, the greatest and perhaps most difficult task is yet to come. The Conferences of the future must maintain the pressure on NWS to ensure that they abide by these newly discovered obligations. If a repeat of the US 2003 u-turn is allowed to happen, the credibility of the Treaty and the existence of the regime itself could be threatened.

\textsuperscript{113} Dhanapala, J. “Multilateral Diplomacy and the NPT”, p. 128.
What steps have been taken towards fulfilling the Article VI obligations?

In order to evaluate whether or not states parties to the NPT are fulfilling their obligations under Article VI, one must examine recent developments in policy and action.

The term 'recent developments' is fairly all-encompassing, but for the purposes of this Chapter, there will be an examination of shifts in policy and actions. The former includes nuclear deterrence strategies. The latter considers stockpile reductions and treaty ratification.

This Chapter will only focus on the NWS, as they are the ones that can disarm, and will do so in the timeframe from 2005 to the present. The aftermath of the failure of the 2005 Conference is a logical point from which to progress, allowing for the observance of any changes over time that may represent a trend.

If such a trend exists it would mean that the NWS have been moving towards disarmament in a steady manner and will, eventually, reach it. If not it would mean that the developments in NWS positions are, at the best, the first signs that such a trend is emerging, or at the worst, nothing more than a flash in the pan.

A few examples that support the idea of an established trend would be the end of the so called 'Bush Doctrine', reductions by the US and Russia through the Strategic Arms Reduction Treaty (START) and the unilateral reductions by France and the UK. Negotiations take time and trust, and a state would only pursue unilateral reductions if it felt the international circumstances allowed for such action to be safe. Thus, the will for reductions is grounded on the gradual emergence of a feeling of security.
One must remain sceptical when evaluating the actions of states, as one can never truly know what is being discussed in government behind closed doors. However, there have been some large steps made by most of the NWS, unilaterally or bilaterally, towards meeting their obligations under Article VI of the NPT. There may very well be a willingness to disarm, but none seems prepared to trail-blaze and do so unilaterally.

Before focussing on the results of NWS attempts to move towards nuclear disarmament, there will be a brief look at actions by NWS that have represented a move in the opposite direction. From there, the Chapter will examine the change in policy and then the actions that NWS have taken towards meeting their Article VI obligations.

**Going the Wrong Way**

In his 2006 statement to Parliament on the replacement of Trident, which forms the UK's nuclear stockpile and delivery system, Prime Minister Tony Blair set out his government's position as follows:

> “The risk of giving up something that has been one of the mainstays of our security since the war and, moreover, doing so when the one certain thing about our world today is its uncertainty, is not a risk I feel we can responsibly take.”

The replacement of Trident was the perfect opportunity for the UK to take unilateral action and fulfil its obligations under Article VI. A memorandum from Dr Richard Garwin, an American physicist, and others to the Defence Select Committee branded a replacement as “an unnecessary

and premature decision.”115 They suggested that the operating life of the British nuclear submarine fleet could be extended, which would be cheaper and would allow for the issue of an independent British deterrent to be considered again within the next half century.116

It was the first time that Parliament was given the opportunity to vote on the UK's nuclear deterrent, but though it saw the largest government rebellion since the vote on the Iraq war it passed safely through the Commons with Conservative support. Thus, Britain lost “a unique opportunity for world leadership.”117

2008 saw the entry into force of the 123 Agreement between the United States and India. It allows for the selling of fissile materials for civilian use to the non-NPT state. Whilst this is more of a non-proliferation issue than a disarmament one, it is important to remember that all three of the NPT's pillars are interlinked. At the very least it shows a lack of good faith in the application of the NPT as a whole by the US. At the worst, it would allow India to “free up […] its] domestic supplies to be used exclusively in its military nuclear sector.”118 This would be a gross infringement by the US of its non-proliferation obligations under the NPT. China responded to the US-India deal and the potential for a redistribution of India's resources by signing a similar agreement with Pakistan, thus exacerbating the situation.119

As these examples were the actions of previous administrations in the UK and US, it could be argued that they are no longer directly applicable. However, the current Coalition government of the UK has preceded with the replacement of Trident and the US is still selling materials to India, as is China to Pakistan.

116 Ibid.
117 Ibid.
118 Ban, Kimball, Staples et al. “Decision Time on the Indian Nuclear Deal: Help Avert a Nonproliferation Disaster” Open letter to German Foreign Minister, Dr. Steinmeier, 15.08.2008.
Moving Forward - Policy

States define their intended course of action by the policies they adopt. Nuclear policies include disarmament, but also military spending and the deterrence strategy employed by NWS, the latter will be reviewed below. However, policy is the thing, if anything, to be sceptical about; policy is easily manipulated to ensure the best possible image of a government. Another drawback of relying on policy to indicate fulfilment of Article VI obligations is that a change of government means a potentially whole new raft of policies and, depending on which state is under review, these policy changes could be incredibly contradictory.

This latter point has been particularly evident in the US with Obama's presidency replacing that of George Bush. The dramatic shift in foreign and nuclear policy will be discussed below and is particularly evident in the rescinding of the Bush Doctrine.

Both major parties of the UK have been fairly consistent with each other on nuclear weapons policy, although David Cameron's Conservatives lack the history of advocating unilateral disarmament that was a strong feature of the Labour party left-wing. After briefly suspending the replacement of Trident, the Coalition government secured a deal to allow for the replacement to go ahead. The renewal of Trident is potentially enough to unseat the UK from its position as being the NWS that “has in many ways taken the lead [...] in embracing the objective of a nuclear-weapons-free world.” Whether Trident has unseated the UK in this regard will be seen later.

120 Watts, Robert and Hennessy, Patrick. “Philip Hammond unveils £1bn deal to pave way for Trident replacement” published in The Telegraph on 2012.06.17.
From 1995 to 2012 France was led by Presidents from the same party. Even after the election of socialist François Hollande, there is little chance that nuclear weapons policy will change. Le Drian, Hollande's defence spokesman during the campaign made it clear that “we will keep our nuclear forces as they are.” Adding to this, the Royal United Services Institute provides an insight into the “Gaullist” French nuclear mind; “behind this also lies the traditional French nuclear posture the core of all resistance against changing the European nuclear landscape and undermining the role of nuclear weapons.” Realpolitik ensures that France remains resistant to external attempts to change its policies before it is ready and willing to do so itself.

President Putin's influence on Russian nuclear policy as current and former president and as prime minister under President Medvedev, has meant a stability in policy rivalled only by that of China. Russia's recent steps forward came under President Medvedev however, with the START treaty and National Security Strategy of 2010.

Hu Jintao has been President of China since 2003 allowing for policy continuity unrivalled by democracies. Indeed, Chinese nuclear weapons policy has changed very little since their acquisition. The Chinese approach appears to be one of ‘wait and see’; Beijing “favour[s] nuclear disarmament and would be prepared to join an arms-reduction process once states with larger nuclear arsenals, particularly the US and Russia, had significantly reduced these arsenals.”

Deterrence

A state's policy on nuclear weapons seems to be intrinsically linked to that of nuclear deterrence. For an understanding of a move towards fulfilling their obligations under Article VI NWS

123 Pertusot, Vivien. “Defence and Foreign Policy Under President-elect François Hollande” published in RUSI Analysis on 2012.05.06.
deterrence strategy, and how it has changed, can provide a window to the mind-set of the state. For example, if a state says it will respond with nuclear weapons to any attack, nuclear or conventional, upon its territory by another state, one could confidently argue that the deterring state is not only prepared to use its stockpile, but that this represents a roadblock on the path to disarmament.

In 1986, NATO's 'flexible response' strategy in Europe was criticised for being “outdated, not because of first use but because it is wholly-dependent on nuclear weapons.”\(^\text{125}\) Little had changed 22 years later prompting remarks such as “governments seem almost strategically attached to nuclear weapons” and “[NWS] have become dependent on the possession of such weaponry.”\(^\text{126}\)

An over-reliance on nuclear deterrence in a state's defence policy is an indication that the state in question is unwilling to disarm. As such, deterrence policy can reveal the extent to which a state's policies reflect its true intentions to disarm. At the same time it is worth remembering that deterrence is itself a policy and can easily be changed.

Each NWS has adopted its own deterrence strategy. Some have limited the use of nuclear weapons to responding to a nuclear attack, others are not so fussy. “The call for achieving a world without nuclear weapons has prompted renewed interest in the adoption of a universal no first use policy.”\(^\text{127}\)

China, alone of the NPT NWS, has explicitly stated that it will not be the first to make use of its nuclear weapons in a conflict.\(^\text{128}\)

The UK has not gone so far as to adopt a 'no first use' policy, but has limited its deterrent to

covering weapons of mass destruction (WMD) attacks, explicitly citing nuclear, but not ruling out a nuclear response to biological or chemical aggression.\textsuperscript{129}

The Russian National Security Strategy published in 2010, reveals the Federation's policy to be a possible retaliatory nuclear strike when nuclear or other WMDs are used against Russia “and(or) its allies, and also in the event of aggression against the Russian Federation involving the use of conventional weapons when the very existence of the state is under threat.”\textsuperscript{130}

The US also released a policy alteration in 2010. The Nuclear Posture Review makes it clear that the Bush-era policy of a possible nuclear response to any form of attack is defunct. Instead, the US commits itself to neither threatening nor using nuclear weapons on NNWS that are parties to the NPT “and in compliance with their nuclear non-proliferation obligations.”\textsuperscript{131} It is worth noting that, as far as the US is concerned, this commitment does not currently apply to Iran.

France is perhaps the most attached to its nuclear weapons. The earlier remark that, regardless of the political persuasion of the occupant of the Elysée Palace nuclear policy remains constant, is supported by a remark revealed in one of the cables leaked by the Wikileaks website. Referring to her French contact, Ambassador Burke of the US notes that “nuclear deterrence is part of his country's ‘international identity’ and that France does not want nuclear weapons to be de-legitimized.”\textsuperscript{132} Comments made by former Presidents Chirac and Sarkozy separate French deterrence policy from even that of President Bush. “Our nuclear deterrence protects us from any aggression [...] wherever it may come from and whatever form it may take.”\textsuperscript{133} Any target, NWS or

\textsuperscript{129} Ibid.
\textsuperscript{130} Voennaia Doktrina Rossiiskoi Federatsii, as quoted in Quinlivan, James and Oliker, Olga. “Nuclear Deterrence in Europe: Russian approaches to a New Environment and Implications for the United States”, RAND (2011), pp. 18-19.
\textsuperscript{131} Nuclear Posture Review Report, Department of Defense of the USA, April 2010, p. 15.
\textsuperscript{132} US embassy cables released by Wikileaks and reported in “US Embassy Cables: French tell US Britain is ready to abandon Trident”, published by the Guardian on 2010.12.08, para. 13.
\textsuperscript{133} Sarkozy, Nicholas as quoted in Perkovich and Acton. “Abolishing Nuclear Weapons”, p. 20.
not, is seen as legitimate for French nuclear retribution, regardless of the form of the initial attack.

Much can be learnt from comparing deterrent strategy to other policies held by the state. For this reason it is important to look closer at the shift from the Bush Doctrine to the new regime under Obama in the US.

The End of the Bush Doctrine

In 2009, Obama delivered a speech in Prague that proved to be a seismic alteration in US nuclear and foreign policy. Until this point the prevailing foreign policy position of the US had been named after Obama's predecessor. Bush equated states that harboured terrorists to the terrorists themselves, advocated pre-emptive strikes and the advancement of democratic values abroad.\textsuperscript{134}

In contrast, Obama spoke of the “moral responsibility to act” and “take concrete steps towards a world without nuclear weapons.”\textsuperscript{135} This, in itself, is not shocking, after all newly elected politicians have been known to indulge in a bit of hyperbole. Later in the speech, though, are more specific plans to achieve an international move towards disarmament. American ratification of the CTBT and Fissile Materials Cut-off Treaty (FMCT) alongside strengthening the NPT “as a basis for cooperation.”\textsuperscript{136}

He may have failed to bring about a ratification of the CTBT, but his position allowed the Conference on Disarmament to initiate negotiations for the FMCT. More importantly, this change in US policy allowed the 2010 Review Conference to be as successful as it was.

\textsuperscript{134} Bush, George W. “\textit{Decision Points}”, Virgin (2010).
\textsuperscript{135} Obama, Barack. “\textit{Remarks}” delivered in Prague 2009.04.05.
\textsuperscript{136} Ibid.
At one point, Obama criticised the attempted rocket launch of North Korea earlier that day, calling on Pyongyang to abandon “threats and illegal weapons.”\textsuperscript{137} He appears to be suggesting that the possession of nuclear weapons is itself contrary to international law. That the President of the USA would allow for such an interpretation, even if incorrect, to be taken from his words is a clear indicator that there has been more than a mere departure from his predecessor's position.

A speech such as this, delivered to an international audience, has more weight than a political statement made to 'just' an American public. Thus, whether or not Obama intended to pursue that which he claimed he would, he was able to generate a large amount of goodwill showing that there is a silver lining, if nothing else, to his potentially empty rhetoric. As a result, this helped to lubricate negotiations at the 2010 Conference and produce a final declaration that enlightened an interpretation of Article VI.

This goodwill also enabled Obama to fulfil his commitment to complete “a new agreement by the end of [the] year that is legally binding and sufficiently bold.” This agreement was with Russia and took the form of another START treaty, nicknamed the New START, which saw significant reductions to the nuclear stockpiles of both Russia and the US.

\textbf{Moving Forward - Actions}

Policy is a good barometer for the direction of states, but it is by their actions that they will be judged. In the case of progressing towards fulfilling the obligations of Article VI the clearest actions are those of reductions to nation stockpiles, but treaty ratification is also an important consideration. While the CTBT and FMCT have stalled, due to lack of ratifications or disagreements in negotiations, bilateral treaties have been more successful.

\textsuperscript{137} Ibid. Emphasis added.
The New START was the fourth of its kind, but the third on which negotiations were finished and only the second to be ratified by the US and Russia. It limited the number of deployed missiles and bombers to 700, deployed and non-deployed launchers to 800 and deployed warheads to 1,550, with these targets being met within seven years of the entry into force. 138

These reductions and the Treaties themselves are to be commended, however, the reminder stated above that one must remain slightly cynical to NWS' policy and actions could very well be exercised here. Reduction of the number of operational warheads is financially prudent now that the Cold War and its accompanying arms race has concluded. Why waste money on so many weapons when there is no obvious target at which to aim them? In acknowledging this, Richard Rhodes suggests that “it was not nuclear abolition, but it was a measurable stride down that road.” 139

Russia and the America may still possess the vast majority of all nuclear weapons on the planet, but it is worth remembering that their number “has declined by approximately 80% over the past two decades.” 140 The UK and France “have reduced their arsenals by equivalent percentages, while China has maintained a minimum deterrence.” 141

It is revealed by leaked cables, that the UK had “concerns about French attitudes, suggesting Paris has not 'come through the thought process' on eliminating nuclear weapons and worrie[d] about proposals for multilateral disarmament.” 142 From what has already been learnt about the French position on its nuclear arsenal, this is hardly surprising, but it does help to show that NWS are discussing routes to disarmament.

France has, however, made a number of important steps towards fulfilling its obligations under Article VI. When the time comes for the final multilateral push to eliminate national stockpiles, France may need to be pressurised more than others, but at least it is moving in the right direction. Unlike the US and China, France has ratified the CTBT and has closed and decommissioned its testing facilities and fissile material production plants.\textsuperscript{143} A move that must be applauded considering the fact that the FMCT has not even opened for signature yet.

In 2008, President Sarkozy announced that France would be reducing the size of its airborne nuclear forces. Moving to a predominantly submarine based system, he pledged that France would have “fewer than 300 nuclear warheads,” which amounts to “half the maximum number of warheads […] during the Cold War.”\textsuperscript{144}

Again, a look at the leaked US cables displays the French attitude toward nuclear weapons. “UK rhetoric suggests that nuclear weapons are inherently bad, thus implying that maintaining a deterrent force is immoral. For France 'nuclear weapons are not bad or good, they just are.'”\textsuperscript{145} Clearly, the French reductions in 2008 were not made on moral grounds or even on legal grounds.

The UK also pursued unilateral reductions, but as part of its attempts to conform to the 13 steps agreed upon at the 2000 Conference. Like France and Russia, the UK has ratified the CTBT. It has also suspended further production of weapons grade fissile materials.\textsuperscript{146} Again, the UK also made reductions to its arsenal, reducing it to “no more than 160.”\textsuperscript{147}

\textsuperscript{143} Perkovich and Acton “Abolishing Nuclear Weapons” p. 20.
\textsuperscript{144} Sarkozy, quoted in “France to reduce nuclear warheads” published by the BBC on 2008.03.21.
\textsuperscript{145} US embassy cables released by Wikileaks and reported in “US Embassy Cables: France fears Labour ‘demagogues’ will drop Trident”, published by the Guardian on 2010.12.08, para. 11.
\textsuperscript{146} Perkovich and Acton “Abolishing Nuclear Weapons” p. 21.
\textsuperscript{147} Ibid. p. 20.
Where the UK differs from France is the reason for these efforts. The British appear to be far more committed to the idea of full and comprehensive nuclear disarmament. Even when one looks at the valuable insight the leaked US cables show of state diplomacy, the UK is almost eager to disarm. One official even told the US Ambassador that “all our deterrent is now up for grabs but in the context of a multilateral negotiation,” although this was played down by another official.148 Regardless of the 're-clarification' of the second official, for the first to say, and be comfortable saying, something of that nature is a sign that something has clicked in the UK, even if they are only willing to pursue further disarmament through multilateral channels.

This is further demonstrated by the UK’s research in partnership with Norway. The two states attempted to discover methods to ease multilateral disarmament negotiations. The “definitive aim of seeking technical solutions to the verification of the dismantlement of a nuclear warhead” was tempered by trying to keep the methods as simple as possible to ensure the greatest transparency and trust between the states involved.149

Whilst the UK appears to be the shining example of how NWS can act in moving towards disarmament, one must remember that it only looks so good in comparison with its peers. In deterrence policy it falls behind the example set by China.

However, China's unique position among NPT NWS on deterrence policy has resulted in a lack of much activity towards disarmament. Indeed, this is supported by the only thing that can really be said about China's actions; that it has not ratified the CTBT. On the other hand, it “has exhibited exceptional restraint in the development of its nuclear weapons and the political-military

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148 US embassy cables released by Wikileaks and reported in “US Embassy Cables: UK civil servants reassure US that Trident will be replaced, whatever Brown may say”, published by the Guardian on 2010.12.08, para. 2.
prominence it gives them.”

China has done comparatively little because it was more responsible from the start of its nuclear age. It operated 'no first use' and a 'minimal deterrence' from the beginning and now has approximately 178 warheads in total. Although, because of a strategic wariness of Russia and the US it “has not indicated what, if any, limits it envisages for its future nuclear arsenal.”

That China has been able to get away with not doing much is attributed, by France and the UK, to its “hid[ing] behind the efforts of the other P-5 states to avoid pressure.” However, the main reason is that China had less to do than any of the other NPT NWS. It had fewer warheads and a policy best suited to a state gearing towards fulfilling its obligations. Now that the UK and France have caught up they want to see more being done, while at the same time all three are waiting to see further action by the top two; Russia and the US.

Conclusion

Thus, in conclusion, the UK and France have done a lot to move forward and China has always had a commendable policy, but the burden of leadership falls to the US and Russia by virtue of their huge stockpiles. The other NPT NWS are waiting for them to make further reductions to their stockpiles, although whether this is merely an excuse for the other three to stop it cannot be said. Obama agrees with them, but currently lacks the political will to take action, although this may change following the 2012 presidential election should he be re-elected.

150 Perkovich and Acton “Abolishing Nuclear Weapons” p. 21.
152 Perkovich and Acton “Abolishing Nuclear Weapons” p. 21.
It must, however, be a joint enterprise. The US will not budge without Russia and *vice versa*. After all, “Russia's positions are not merely reactive to the US” and Moscow can, in its own right, “facilitate or retard the evolution of a more secure global nuclear order.”\(^{154}\) It comes down to which state's leader has the will to initiate another round of negotiations.

It seems clear that, although there are a few stand-out examples prior to 2010, there was no trend influencing NWS to move towards disarmament. On the other hand, since 2010 there has been a lot to suggest that such a trend is emerging.

The revelations provided by Wikileaks and sources within departments show that one should remain sceptical of statements; states will only go so far, but will say what they must to relieve pressure. There exists a state of disarmament limbo; it could be the start of something, or it could go nowhere and leave everyone regretting being too optimistic.

Schultz et al described the joint position of states as being on a mountain; the summit is not yet in sight, but the consequences of giving up and descending would be dire.\(^{155}\) Therefore, the steps taken so far must be commended and further policy changes must be urged to ensure that the Article VI obligations are not forgotten.

\(154\) Perkovich and Acton *Abolishing Nuclear Weapons* p. 19.

\(155\) Schultz, George; Perry, William; Kissinger, Henry and Nunn, Sam. *Toward a Nuclear-Free World* in Opinion, Wall Street Journal 2008.01.15.
Conclusion: Have the obligations of Article VI been fulfilled?

In order to evaluate the extent to which the policy changes and actions taken by states are a move towards conforming to the obligations provided in Article VI, one must revisit the interpretations discussed in previous chapters.

Chapter One discussed an interpretation of Article VI using the VCLT and general rules of treaty interpretation. It concluded that Article VI of the NPT obliges states parties to achieve nuclear disarmament, with a view to international control. The ordinary meaning interpretation was supported by the object and purpose of the Treaty, provided in the preamble and the *travaux préparatoires*.

The ICJ’s 1996 Advisory Opinion was reviewed in Chapter Two, in which the Court made its position clear; the Court opined that Article VI requires states parties to pursue *and* conclude negotiations with a view to achieve nuclear disarmament.

Chapter Three examined the Review Conferences of the NPT and the agreements by the states parties on the meaning of Article VI. Despite the setbacks that emerged during the 2005 process, 2010 saw concrete support for an interpretation of Article VI that requires states parties to actively disarm.

**Differences between the interpretations**

As can be seen, there is a thread that runs through all three sources of interpretation (treaty law, court jurisprudence and Review Conference declarations). They all indicate that states parties must
pursue nuclear disarmament and there are few deviations within this. Such agreement between the three reduces the problems facing an attempted interpretation of Article VI.

However, differences between the interpretations are evident. The Chapter One interpretation allows for the possibility of nuclear-free states, while leaving the option of a nuclear stockpile controlled at the international level. This does not diminish the obligation on states to disarm, but does allow for a long term view for international security.

The highly influential nature of advisory opinions of the ICJ, as examined in Chapter Two, belies the fact that they are not, strictly speaking, binding upon states. As a result, the interpretation based upon the 1996 Opinion is the only one discussed above that does not *prima facie* bind states to their Article VI obligations. On the other hand, the legally significant influence of the Opinion informs a more rounded understanding of the obligations undertaken by states.

Chapter Three shows that states can agree on something during one review process yet rescind their support during the subsequent one. The 2015 process, which is already under way, is yielding some positive signs that this may not be the case following the successful 2010 Conference. This can clearly be seen in the 2012 Preparatory Committee Chairman's Statement: “states parties recalled the *unequivocal undertaking* of the nuclear-weapon States to accomplish the *total elimination* of their nuclear arsenals.”\(^\text{156}\) Despite this, it is too early to say whether the 2015 Conference will be able to produce a final document and cement the 2010 agreements.

**The role of recent developments**

These interpretations would mean little if left to themselves. Chapter Four examined recent developments...

developments in states policy and action. It showed that, prior to 2010, there were few stand out examples of NWS moving towards disarmament. Subsequent to Obama's election and the overhaul of US policy there has been a greater degree of multilateral agreement, or at least negotiation in good faith, on disarmament.

Such developments do not, by any stretch of the imagination, amount to a fulfilment of the states' obligations under Article VI that were highlighted by Chapters One to Three. So, to what extent have they fulfilled their obligations? A closer examination of the developments in state practice, assessed against the interpretations, is required to answer this question.

A material breach?

Joyner suggests that the NPT is effectively a contract treaty between those wanting non-proliferation and those wanting disarmament and that:

“A material breach by one party, and a fortiori an entire category of states parties to a contract treaty (e.g. the NWS in the NPT) will provide strong arguments for the aggrieved category of parties to the treaty (e.g. the NNWS in the NPT) pursuant to VCLT Article 60, to suspend the operation of the treaty as between themselves and the breaching state(s).”

He argues that, before 2008, the NWS were in material breach of their obligations under Article VI. This is a stronger argument than presented by this research, but it certainly supports the earlier view, expressed above, that 2008 was the point upon which NWS began to reform their behaviour

158 Ibid.
with a trend towards disarmament beginning to emerge by 2010.

However, it must be stated that the UK announced reductions to its nuclear stockpile in December 2006, so there is an argument that the UK at least was not in material breach of the NPT prior to 2008.\textsuperscript{159} Chapter Four highlighted that the French in particular have an attachment to their nuclear weapons, so their reductions in 2008 marked the turning point with the US-Russian START following in 2009 to make it a multi-party shift.

**Fulfilment of Article VI obligations**

While it is clear that the Article VI obligations do not form a sequence to follow one after another, it does appear to be the case that there will be a particular order in which they will be met, if at all.

Article VI requires that there be a “cessation of the nuclear arms race at an early date.”\textsuperscript{160} As far as the arms race between states parties is concerned, this has clearly been met. 'At an early date' can be discounted as being too ambiguous. Regardless, the fact that the US and Russia are now concluding reduction treaties is strong evidence that this has been fulfilled whatever the timeframe.

Indeed, further evidence for the end of Cold War nuclear production can be gleaned from the 2010 strategic policies of the two states. Obama discontinued the plans of his predecessor to develop and produce so called “bunker busters.”\textsuperscript{161}

Russia and the US must not, however, leave it at the New START. The acronym suggests that it is but the beginning and indeed Article VI insists that this is so. Effective measures on “nuclear

\textsuperscript{159} Blair, “Parliamentary Statement on Trident”.
\textsuperscript{160} Article VI, NPT.
\textsuperscript{161} Nuclear Posture Review Report, Department of Defense of the USA.
disarmament” are required by all.\textsuperscript{162}

The argument, as represented by Rhodes in Chapter Four that reductions are made because they are economically prudent, as opposed to a particular intent to move towards disarmament is in some respects irrelevant.\textsuperscript{163} The primary intention is not important, as long as there is a move towards meeting the obligation. Of course, what happens after stockpiles become more ‘cost effective’ is the important point. In other words, when the deployment of nuclear weapons is, to governments, no longer unjustifiably expensive, it is at this point that intentions make the difference between continuing to move towards fulfilling a state's obligations and stagnation, thus breaching the NPT.

With the first fulfilled and the second in a state of limbo, it is disappointing that the third obligation of the Article is not even on the horizon. A treaty on “general and complete disarmament under strict and effective international control” is unlikely to be raised as a credible suggestion while the CTBT and FMCT remain unfinished. Thus, this obligation remains unfulfilled and will continue to be while the Conference on Disarmament and Review Conferences are distracted by the stumbling blocks that are those treaties.

It is, to some extent, logical that a move towards nuclear disarmament has followed the cessation of the arms race, but to expect a treaty on general and complete disarmament to be agreed following disarmament is unlikely. If anything the reverse is more probable, with the treaty taking the form of the final step by the NWS to fulfil their obligations in full.

This leaves the NPT regime in a state of uncertainty. If further reductions are not carried out, unilaterally or bilaterally, and there is no progress on the CTBT or FMCT, the NWS may well fall

\textsuperscript{162} Article VI, NPT.
\textsuperscript{163} cf. Rhodes, “Arsenals of Folly: The making of the nuclear arms race”.

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back to breaching their obligations under Article VI and thus allow for the suspension of the NPT under Article 60 of the VCLT.

What does the future hold?

For the credibility of the NPT, if nothing else, the states parties and NWS in particular, must begin to move forward on disarmament. The perceived hypocrisy of the regime has led to states, such as Iran and North Korea to be, justifiably and regrettably, disobedient. In 2011, it was reported that Saudi Arabia is considering a nuclear weapons programme if Iran successfully develops nuclear weapons.\textsuperscript{164} The time for NWS action on disarmament has come, not only to preserve fragile systems of balanced power, but also to allow NWS to be more effective in enforcing non-proliferation obligations.

The CTBT must be ratified by the US and China. After all, both have sufficiently advanced computer infrastructure to be able to conduct highly accurate virtual tests.\textsuperscript{165} If nothing else, ratification would send a strong signal that the two states are taking the issue seriously and have the desire to affect change.

Treaty advancement is not just the preserve of the NWS, however and NNWS must be prepared to offer support. After all, Article VI obliges every NPT state party, not just those with nuclear weapons. The Non-Proliferation and Disarmament Initiative (Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey and the UAE) put it best in its 2012 Foreign Ministers' statement:

“While the nuclear-weapons States have a special responsibility in nuclear disarmament, the development of the draft reporting form is an example of the contribution that the non-nuclear-weapon States can make.”

Any treaty on general and complete disarmament will require heavy involvement from NNWS.

Such a treaty must have a view to the long term security of the planet, however. The NPT obliges states to be nuclear-free, but allows for an internationally controlled nuclear stockpile for emergencies. There is no explicit mention of a nuclear-free world in the Treaty, but it does allow for “strict and effective international control.”

There are situations in which the use of nuclear weapons and delivery systems are the only technological solution. Two such examples are; that a rogue state manages to develop a nuclear weapon and extra-terrestrial threats.

By extra-terrestrial, this research does not, of course, wish to suggest that an alien invasion is to be expected, but a meteor travelling on a collision course with the Earth is a possibility. In such a scenario, a targeted nuclear explosion may be the only method currently available to humanity to deflect it. Currently, rocket delivery systems and nuclear warheads are the only feasible options for such a manoeuvre.

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166 Istanbul Statement of the Foreign Ministers of Non-Proliferation and Disarmament Initiative, 2012.06.16, para. 7.
167 Article VI and Preamble, NPT.
168 NASA shows that a number of asteroids and other objects pass close to the Earth every year and there have been two sighted on a possible collision course since 2011. cf. The NASA Impact Risk tables.
169 Madrigal, Alexis. “Saving Earth from an Asteroid will take Diplomats, not Heroes” published on Wired, 2009.12.16. He also highlights the problem this would cause under the Partial Test Ban and Outer Space Treaties, which prohibit nuclear weapons in Space.
'Rogue development' would be a state manufacturing nuclear weapons contrary to its international obligations, or in supporting a non-state actor to do so. In such a situation, an internationally controlled nuclear deterrent could prove discouragement enough against such a programme in the first place, or would provide sufficient leverage to ensure the immediate dismantlement of the weaponry.

With or without these security considerations, any move to establish an international nuclear stockpile, would require a complete overhaul of the UN system and sufficient safeguards and protection for the storage of such an arsenal.

Cortright and Väyrynen suggest the possibility of a “virtual deterrence” that is reminiscent of the former policy of Pakistan to remain 'two screwdriver turns' away from an assembled weapon. This would allow for a more secure and manageable international arsenal, within the parameters of the NPT.

Regardless of these hypothetical scenarios, NPT states parties are obliged to disarm their nuclear stockpiles and while they have taken the first steps towards fulfilling these obligations, they must proceed with all haste.

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