

1997

## Securing the Strength of the Renewed NPT: China, the Linchpin "Middle Kingdom"

Gary J. Meise

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [International Trade Law Commons](#), and the [Military, War, and Peace Commons](#)

---

### Recommended Citation

Gary J. Meise, Securing the Strength of the Renewed NPT: China, the Linchpin "Middle Kingdom", 30 *Vanderbilt Law Review* 539 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol30/iss3/5>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# Securing the Strength of the Renewed NPT: China, the Linchpin “Middle Kingdom”

## ABSTRACT

*The consensus indefinite extension of the Nuclear Non-Proliferation Treaty (NPT) in 1995 and the more recent conclusion of a Comprehensive Test Ban Treaty, which was supported by all five of the world's declared nuclear weapons states, allow for unprecedented optimism by nonproliferation experts regarding nuclear weapons proliferation curtailment and weapons reduction. These recent inroads into the accomplishment of NPT goals raise new questions, however, regarding the underlying commitment level of nuclear powers. China's proliferation record, in particular, is marred with inconsistencies, but its current economic growth and increasingly nonisolationist policies may cause China to reconsider its past noncompliance with the NPT regime and help bring about long-term stability in South and Southeast Asia, culminating in a regional nuclear weapons-free zone.*

*This Note explores China's past role in nuclear proliferation and its reasons for not acceding to the NPT regime. Despite the ultimate success of the NPT regime to date, the Note discusses inherent weaknesses of the NPT, such as its inadequate enforcement and monitoring provisions, that could allow countries such as China to disregard their NPT obligations in the future and dismantle the NPT regime's effectiveness. Because of such dismantling concerns, the Note addresses recent efforts by the United States to induce engagements by China in nonproliferation diplomacy. Although some U.S. tactics, such as economic sanctions, have achieved limited success, linking trade with nonproliferation policy is criticized as being both a short-term solution that fosters resentment and distrust as well as a solution that frustrates the potential demilitarization that a more developed and integrated market economy may encourage. The Note concludes by offering U.S. policy strategies to assist China in its compliance with the NPT and its potential leadership role under the NPT regime.*

## TABLE OF CONTENTS

I.	INTRODUCTION.....	541
II.	THE NPT REGIME AND ITS LEGAL ACCOMPLISHMENTS..	548
	A. <i>Pre-NPT</i> .....	548
	B. <i>NPT Provisions</i> .....	550
	C. <i>NPT Shortcomings: Internal and External</i> .....	551
	1. Discrimination against the NNWS ....	551
	2. Lack of participation by certain proliferators and "threshold" states..	551
	3. Review Conference Failures .....	552
	4. Determination of peaceful and nonpeaceful purposes.....	552
	D. <i>Comprehensive Test Ban Treaty—Can It     be Enforced?</i> .....	554
III.	CHINA AS A PROLIFERATOR.....	556
	A. <i>Pre-1992</i> .....	556
	B. <i>Between 1992 and the NPT Extension     Conference</i> .....	559
IV.	CURRENT STATUS UNDER RENEWED NPT .....	560
	A. <i>Obligations of "Nuclear" States</i> .....	560
	B. <i>China's Current Nonadherence</i> .....	562
	C. <i>Consequences Under a Status-Quo System</i> ...	563
	1. Continued Sales of Nuclear and Dual System Technology .....	564
	2. Continued Vertical Proliferation .....	566
	3. Continued Assistance to and Noninterference with North Korea ....	566
	4. Result: No Progress Towards Nuclear Containment or Disarmament. ....	568
V.	REVERSING CHINA'S CURRENT ROLE AS A PROLIFERATOR	569
	A. <i>China Responds to the United States and     International Pressure.</i> .....	569
	B. <i>Linking Economic Sanctions with     Nonproliferation Impedes Long-Term     Diplomatic Objectives</i> .....	570
	C. <i>Diplomatic Strategies</i> .....	572
	1. United States as Nonproliferation Role Model .....	572
	2. Other Unilateral Nonproliferation Measures .....	574
	3. <i>Quiet Diplomacy: Bring China         Further into the Global Community.</i>	575
VI.	CONCLUSION .....	577

## I. INTRODUCTION

The renewal of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)<sup>1</sup> on May 11, 1995,<sup>2</sup> twenty-five years after the NPT first entered into force, extended indefinitely what many consider to be one of the most effective multinational agreements in existence.<sup>3</sup> The Extension Conference's<sup>4</sup> final statement, in an attempt to underscore both the ultimate goals of the original NPT and its past success, essentially required the five declared nuclear powers<sup>5</sup> to not only commit to complete nuclear disarmament, but to realize its goal as expediently as possible.<sup>6</sup> The unambiguous language of the NPT's goals,<sup>7</sup> its widespread support, the substantial unanimity present at the convention,<sup>8</sup> as well as the more recent activities of the Conference on

---

1. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT].

2. See *Report of the Drafting Committee*, 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Annex, at 7, U.N. Doc. NPT/CONF.1995/DC/1 (1995) [hereinafter Extension Conference] *adopting Extension of the Treaty on the Non-Proliferation of Nuclear Weapons*, 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, U.N. Doc. NPT/CONF.1995/L.6 [hereinafter Treaty Extension].

3. See Thomas Graham, Jr., *The Duration of the Nuclear Non-Proliferation Treaty: Sudden Death or New Lease on Life?*, 29 VA. J. INT'L L. 661, 665 (1989). The NPT has enjoyed widespread success in both the degree to which it has been supported and in realizing its underlying objectives. *Id.* See generally DIMITRIS BOURANTONIS, *THE UNITED NATIONS AND THE QUEST FOR NUCLEAR DISARMAMENT* (1993) (overviewing the key role played by the United Nations since its formation in bringing about nuclear disarmament).

4. See Extension Conference, *supra* note 2.

5. The United States, the former Soviet Union, China, France, and the United Kingdom were the only countries to have detonated a nuclear device prior to the signing of the NPT. GARY T. GARDNER, *NUCLEAR NONPROLIFERATION: A PRIMER* 37 (1994). For a concise but thorough history of global efforts to contain nuclear weapons, see *id.* at 37-51.

6. See Terry Atlas, *Nuclear Treaty Extended; Expiring Accord Made Permanent*, CHI. TRIB., May 12, 1995, at 1 (stating that the five major nuclear powers "pledged to work toward a comprehensive treaty banning nuclear testing . . . and rapid negotiation of a treaty to end production of nuclear bomb material.").

7. See NPT, *supra* note 1, preamble, 21 U.S.T. at 484-86, 729 U.N.T.S. at 169-71; see also *infra* note 73 (articulating specific NPT goals). These goals are consistent with the first purpose listed in Article 1 of the U.N. Charter: "to take effective collective measures for the prevention and removal of threats to the peace[.]" U.N. CHARTER art. 1, para. 1.

8. 175 signatory nations out of the 185 U.N. members agreed by consensus to the indefinite extension of the treaty. Extension Conference, *supra* note 2, at 5. See also Atlas, *supra* note 6.

Disarmament<sup>9</sup> and adoption by the U.N. General Assembly of a Comprehensive Test Ban Treaty (CTBT),<sup>10</sup> indicate an era of global nonproliferation and a promise of disarmament unequalled in the last fifty years.

Of course, the nuclear reality beneath the signatures of the more than 170 nations that participated in the Extension Conference<sup>11</sup> is quite different. While vertical proliferation<sup>12</sup> by the United States and the former Soviet Union posed the biggest nuclear threat to the global environment during the first twenty years of the NPT regime,<sup>13</sup> horizontal proliferation<sup>14</sup> has recently become the greatest danger.<sup>15</sup> Important concerns with respect to nonproliferation and disarmament of both U.S. and Soviet strategic nuclear weapons still predominate U.S. nuclear politics.<sup>16</sup> However, the threat of nuclear initiatives by militant

9. The Conference on Disarmament is a permanent multilateral negotiating forum on disarmament that conducts at least three six-week meetings in Geneva each year. It reports annually to the U.N. General Assembly and is serviced by the U.N. Secretariat. Its membership is small, having only 38 members in 1994, for example, but includes all NWS. See 1994 U.N.Y.B. 1520, app. 2.

The Conference has worked towards concluding some type of "nuclear-test ban" since its inception, with markedly increased support by the General Assembly to conclude a CTBT having come as early as 1984. See G.A. Res. 38/63, U.N. GAOR, 38th Sess., Supp. No. 47, U.N. Doc. A/Res 38/63 (1983) (calling on the urgent need for a comprehensive nuclear-test-ban treaty and requesting the Conference on Disarmament to work towards the creation of such a treaty); see also *infra* note 222 (discussing recent General Assembly resolutions that require the Conference on Disarmament to have concluded such a treaty in 1996).

10. See G.A. Res. 245, U.N. GAOR, 50th Sess., Annex 1, Agenda Item 65, at 1, U.N. Doc. A/RES/50/245 (1996), *adopting Comprehensive Test-Ban Treaty*, U.N. GAOR, 50th Sess., Agenda Items 8 and 65, U.N. Doc. A/50/1027 (1996) [hereinafter CTBT].

11. Atlas, *supra* note 6. Cf. Barbara Crossette, *U.N. Endorses a Treaty to Halt All Nuclear Testing*, N.Y. TIMES, Sept. 11, 1996, at A3 (a vote of 158 to 3 indicating similarly strong support by the General Assembly for the adoption of the CTBT).

12. Vertical proliferation is the further buildup or enhancement of nuclear weapons by states already possessing nuclear weapons.

13. GARDNER, *supra* note 5, at 41.

14. Horizontal proliferation is the acquisition of nuclear weapons by states not yet possessing them.

15. See George J. Church, *Who Else Will Have the Bomb?*, TIME, Dec. 16, 1991, at 42.

16. The U.S. Congress and the Clinton Administration have focused on the failure of the United States and the former Soviet Union to ratify the START II treaty as well as the movement of nuclear weaponry from the other former Soviet states to the former Soviet Union. Ivo H. Daalder, *What Vision for the Nuclear Future?*, WASH. Q., March 22, 1995, at 127, available in 1995 WL 15152565. In spite of drastic political and nuclear weapons related policy changes in the former Soviet Union, the United States still makes decisions of nuclear posture based on Cold War assumptions. *Id.*

Third World governments or by other renegade militias that may have acquired unaccounted-for fissile materials<sup>17</sup> is much more imminent.<sup>18</sup> Finally, the past NPT noncompliance of all five declared nuclear weapons states<sup>19</sup> (NWS) as well as the recent activities of some<sup>20</sup> states that are in clear defiance of the goals of the renewed NPT, may undermine any possibility that the NPT regime will stop and reverse nuclear proliferation.

China is particularly intertwined with many of the current nuclear proliferation problems, and, surprisingly, it may be the unanticipated linchpin that may ensure and strengthen the post-1995 NPT regime. During the Cold War, the United States looked upon China as the stepchild of the former Soviet Union, unable to adhere to pure Marxist-Leninist philosophy<sup>21</sup> or to advance the

---

17. See *infra* note 87 and accompanying text.

18. "Third World regimes [are] far more radical and unpredictable than any of the eight present members of the nuclear club." Church, *supra* note 15, at 42. North Korea may already possess nuclear weapons. See *id.* at 47. Both Algeria and Iran may possess atomic bombs within the decade. See *id.* at 47-48. Besides the five nuclear weapons states, India, Pakistan, and Israel are considered to be states that have nuclear weapons capabilities. *Id.*

19. All five countries have to some extent failed to meet their obligations under the treaty. While the former Soviet Union and the United States participated in a massive arms race from the NPT's inception to about 1990, such vertical proliferation alone may not constitute a violation of the NPT. However, Article VI of the NPT contemplates "good faith" negotiations on the part of NWS to take effective measures to reverse proliferation and achieve disarmament. See NPT, *supra* note 1, 22 U.S.T. at 490, 729 U.N.T.S. at 173. Many countries and nuclear policy experts believe this Article contemplates the enactment of a CTBT, something all five NWS had previously been loathe to pursue. See *infra*, part V.C.1.b; see also David A. Koplow, *Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?*, 1993 Wis. L. Rev. 301 (asserting the United States has violated Article VI).

20. Shortly after the Extension Conference, France announced plans to continue nuclear weapons testing in the South Pacific. George Bunn & James Leonard, *A Role in Nuclear Weapons Reduction*, San Diego Union-Trib., July 18, 1995, at B7, available in WESTLAW AllNews Database. China detonated a nuclear weapon days after the NPT renewal conference concluded and indicated that it would continue testing. Steven Mufson, *China Holds Nuclear Test; U.S., Japan Join Protests*, WASH. POST, May 16, 1995, at A13; see *infra*, part IV.B. However, after China's last nuclear explosion on July 29, 1996, it announced a moratorium on all nuclear testing effective the following day. See *Chronology of Nuclear Tests Conducted by China*, Reuters North American Wire, July 29, 1996, available in LEXIS, News Library, Wires File [hereinafter *Chronology*]. To date, China has complied with this self-imposed moratorium.

21. JOHN R. FAUST & JUDITH F. KORNBERG, *CHINA IN WORLD POLITICS 1* (1995). Marxism and Leninism were not ends in themselves, but:

instead means to achieve the more basic goals of China's leaders both before and after the triumph of Mao Zedong in 1949: freedom from foreign imperialism; unification of the Chinese nation; creation of effective political power (rule for the people but not by the people); order and stability; and

Communist Manifesto with the same vigor. China was still mysterious and untrustworthy, but less of a threat.<sup>22</sup> Now the United States can no longer overlook the dangers of a resurgent Chinese Nationalism as Chinese leaders embrace a Mandate of Heaven to restore their Middle Kingdom.<sup>23</sup> Neither can the United States afford to ignore China's unique position among NWS as a Third World leader in the United Nations<sup>24</sup> and the accompanying influence China can have on keeping these countries free of nuclear weapons, or its central role in affecting security alignments in East Asia.<sup>25</sup> Current regional conflicts exist regarding Taiwan,<sup>26</sup> the borders of the former Soviet Union, and the Korean peninsula.<sup>27</sup>

In the 1990s, global security transformation, from a bipolar international system to the present system dominated by the United States, coincided with the emergence of China as a market

promotion of prestige and well-being through the Four Modernizations—agriculture, industry, science and technology, and military capability.

*Id.*

22. See Brahma Chellaney, *Regional Proliferation: Issues and Challenges*, in NUCLEAR PROLIFERATION IN SOUTH ASIA: THE PROSPECTS FOR ARMS CONTROL 298, 308 (Stephen P. Cohen ed., 1991) ("... Americans underrate the China factor [because] they usually have been trained in the Soviet-American deterrence model").

23. "The Chinese people call their nation the Middle Kingdom, the center of the natural order and the world order as they knew it for centuries. China's emperors ruled so long as they held the Mandate of Heaven, the natural force that dictated whether a dynasty had sufficient rectitude to provide moral guidance to the people." FAUST & KORNBERG, *supra* note 21, at 11. For a recent overview of U.S. relations with a nationalistic China in light of the death of Premier Deng Xiaoping, see Johanna McGeary, *The Next China*, TIME, Mar. 3, 1997, at 50, and Bruce W. Nelan, *Can Jiang Hold the Reins of Power?*, TIME, Mar. 3, 1997, at 58.

24. During the Cold War, many Third World countries came to rely on China to champion their causes in the Security Council. FAUST & KORNBERG, *supra* note 21, at 18.

25. *Id.* at 19.

26. *Id.* China wants to force a timetable for reunification regarding Taiwan and has threatened to use military force if Taiwan fails to comply. Tom Post, *Riding the Tiger: How Tough Should Clinton be With Beijing?*, NEWSWK., Feb. 19, 1996, at 44.

In March of 1996, China strategically engaged in extensive military exercises off the coast of Taiwan during Taiwan's first direct presidential election. China deployed an extensive series of M-9 "test" missiles near Taiwan's busiest parts, and threatened to counter any U.S. military interference with a "sea of fire." See Kenneth Auchincloss, *Superpowers: Friend or Foe*, NEWSWK., April 1, 1996, at 28, 28-30 (noting a 76% voter turnout to elect Lee Teng-hui as Taiwan's President despite China's display of force).

27. FAUST & KORNBERG, *supra* note 21, at 20. North Korea has proclaimed its desire to reunify with South Korea and still maintains its Communist government. *Id.*

economy that has experienced unprecedented growth.<sup>28</sup> In addition, cutbacks on military expenditures by other NWS during the last five years have contrasted with increasing military budgets in China.<sup>29</sup> With the end of the Cold War and an accompanying power vacuum in Asia, China's new military and economic strength calls for it to reassess its traditionally isolationist attitudes to determine what kind of regional leadership to assert. With South and Southeast Asia as remaining hotbeds of potential nuclear engagement,<sup>30</sup> China's recent nonproliferation hypocrisies,<sup>31</sup> if continued, coupled with its growing sphere of influence, may ultimately lead to a completely disingenuous nonproliferation regime.

China's role as a proliferator is riddled with inconsistencies. In recent years, China has given more assistance and nuclear hardware to Iran, North Korea, and Algeria, the three non-nuclear weapons states (NNWS) under the NPT that are most likely to join the "nuclear club"<sup>32</sup> than any other NWS.<sup>33</sup> In spite of this fact, China's aid to these countries was never rooted in a desire to

---

28. China has experienced a 9% per annum growth of its GNP since 1978, the year Premier Deng Xiaoping instituted an "open door" policy with the world. FAUST & KORNBERG, *supra* note 21, at 27, 38. "[M]odernization of the nation's economy was the most important goal for the [Chinese] regime." *Id.* at 38. For a comprehensive view of China's phenomenal military and economic modernization over the last 15 years, see CHINA, MODERNIZATION IN THE 1980S, (J. Y. S. Cheng, ed. 1989). See also Auchincloss, *supra* note 26, at 32-33 (indicating certain economic predictions of a Chinese economy 1.5 times the size of the U.S. economy by the year 2025).

29. FAUST & KORNBERG, *supra* note 21, at 160. Furthermore, the International Institute of Strategic Studies (IISS) has estimated that the Chinese spend four times more on their military than what is reflected in their official budgets. This amounted to about \$28 billion in 1994. See *China's Defense Budget a Paragon of Obfuscation*, AGENCE FR.-PRESSE, Oct. 10, 1995, available in WESTLAW, Agfrp Database.

30. See *infra*, part IV.C.

31. See *infra*, part IV.B.

32. Church, *supra* note 15, at 47-48. The "nuclear club" refers to all nations that are confirmed to possess nuclear weapons. Besides the NWS, the countries of Israel, Pakistan, and India are all considered confirmed members of the nuclear club. None of these countries has acceded to the NPT. DAVID FISCHER, TOWARDS 1995: THE PROSPECTS FOR ENDING THE PROLIFERATION OF NUCLEAR WEAPONS 4-6 (1993).

33. U.S. Intelligence officials believe that Iran, with continued Chinese assistance, could have a nuclear bomb within six years, but that without China, Iran would not be able to develop an explosive bomb within the foreseeable future. *Id.* at 48. North Korea may already possess nuclear capabilities, and certainly created a stir in the international community when it announced plans to withdraw from the NPT in 1993. China has done nothing to prevent North Korea from developing a nuclear bomb and in fact is thought to have offered some assistance. See Andrew Higgins, *The Bomb-Makers of Asia*, INDEP., Nov. 21, 1991, at 29.



actually see them obtain nuclear weapons capabilities.<sup>34</sup> China was the only NWS to declare the right to conduct "peaceful nuclear explosions" prior to signing the CTBT.<sup>35</sup> Additionally, China and France are the only NWS that have tested strategic nuclear weapons since the NPT renewal.<sup>36</sup> Yet China insisted that it wanted a test ban treaty between all NWS<sup>37</sup> and, along with the other NWS, signed the CTBT on the first day it was opened for signature.<sup>38</sup> These contradictory signals, coupled with China's historic disregard of the NPT and other global regimes,<sup>39</sup> create an obvious concern about China's role under the renewed NPT.

Although the NPT regime has probably exceeded expectations during its first quarter century,<sup>40</sup> continued inconsistencies in China's proliferation policy could seriously undermine the regime's future strength. More precisely, for the nuclear balance between NWS and NNWS to remain as static over the next quarter century as it was between 1970 and 1995 under the NPT regime, China must not only adhere to NWS provisions within the treaty, it must also take a leadership role in nonproliferation diplomacy between NWS and its Third World friends that are on the verge of "going nuclear."

China is better positioned than other NWS to take on such a role. Third World countries that were often skeptical of Moscow and Washington under the bipolar international system of the previous three decades have come to rely on China to champion

34. As discussed *infra*, part III.A, China's commitment to selling nuclear technology only reaches as far as its economic incentives.

35. See Senator John Glenn, *Glenn Blasts Provision that Allows Resumption of U.S. Nuclear Testing*, CONG. PRESS REL., Aug. 4, 1995, available in LEXIS, News Library, Curnws File. As of June 1996, China conditioned its offer to join a CTBT on allowance within such a treaty to carry out peaceful nuclear explosions. See *Chronology*, *supra* note 20. See *China to Tighten Control on Arms Export, Wires*, May 26, 1996, available in LEXIS, News Library, Wires File. However, immediately prior to U.N. adoption of the CTBT, China announced its support of the draft of the CTBT produced at the Conference on Disarmament. *China Says Hopeful on Global Nuclear Test Ban*, Reuters World Service, Aug. 22, 1996 available in LEXIS, News Library, Wires File. The draft treaty, which was adopted by the U.N. General Assembly, does not give an exception for peaceful explosions. See CTBT, *supra* note 10, art. 1, at 7.

36. See Mufson, *supra* note 20.

37. *Id.*

38. Norman Kempster & Jonathan Peterson, *Nuclear Powers Lead in Signing Atomic Test Ban*, L.A. TIMES, Sept. 25, 1996, at A1.

39. For a definition of the word "regime," see *infra* note 51. China has run into conflict with other international regimes over issues including human rights, trade, finance, and the environment. See FAUST & KORNBERG, *supra* note 21, at 207-34.

40. See *supra* note 3 and accompanying text.

their causes in the U.N. Security Council.<sup>41</sup> China has the least democratic government of any declared NWS,<sup>42</sup> and thus may have the most in common politically with those foreign states considering a nuclear stockpile. China, as the only NWS currently increasing its military spending and number of nuclear warheads, may share similar incentives to proliferate (and incentives to curtail proliferation) with threshold nuclear states currently undergoing military buildup.<sup>43</sup> Like these threshold states, China has disdained U.S. control of nonproliferation diplomacy, and has largely ignored the NPT regime during the Cold War.<sup>44</sup> As China's "open door" policy<sup>45</sup> has created greater economic ties with the United States and other First World countries,<sup>46</sup> China has been forced to reconsider how it responds to U.S. actions and how it can bridge the sometimes irreconcilable differences between the First and the Third World.

This Note is divided into four main areas of discussion. Part II discusses the NPT regime and its goals, giving particular attention to the inherent weaknesses and surprising successes of the original NPT and the new CTBT. Part III addresses China's

---

41. FAUST & KORNBERG, *supra* note 21, at 18.

42. The Tiananmen Square incident of 1989 illustrates this point. Under the current leadership of the Russian Federation, such human rights oppression in Moscow is highly unlikely, but not in Beijing. In reference to the Tiananmen tragedy, one commentator noted that "[t]he leaders [Deng] in Beijing never intended that economic reforms should also lead to the demise of party authority." *Id.* at 45.

43. For example, China has had an ongoing military supplies relationship with both Iran and Pakistan. Iran, in particular, like China, is under strong central authority and a form of oppression (religious more than political). Both Pakistan and Iran seek well developed nuclear weapons programs. China has provided assistance to help Pakistan attain nukes. *see infra*, part III.A, and to bring Iran closer to nuclear capacity. "Despite the extent of its assistance, China is not believed to have helped Iran with weapons design or manufacture. China's aid is believed to be consistent with the NPT, and the Chinese-built facilities are under IAEA inspection." David Albright, *An Iranian Bomb? Development of Nuclear Weapons*, BULL. ATOM. SCIENTISTS, July 1, 1995, available in WESTLAW, Magsplus Database.

44. China specifically opposed the two-tiered system of the NPT, mainly owing to the clear manner in which nuclear states such as the United States and the former Soviet Union used it to their own advantage. Daalder, *supra* note 16. Cf. Roland M. Timerbaev, *Nonproliferation Organizations and Regimes Beyond 1995*, in 1995: A NEW BEGINNING FOR THE NPT? 5,7 (Joseph F. Pilat & Robert E. Pendley eds., 1995) (discussing how the changed political context after the demise of the Cold War led to the accession to the NPT by France and China); David B. Ottoway & Steve Coll, *A Hard Sell for Treaty Renewal; U.S. Campaign for Indefinite Extension Met with Skepticism*, WASH. POST, April 14, 1995, at A1 (indicating that Chinese nuclear missile generals and weapons designers have been involved in recent discussions with U.S. and Soviet generals—a step in the right direction.).

45. *See* FAUST & KORNBERG, *supra* note 21, at 38.

46. *Id.*

historic role as a nuclear proliferation, both horizontally and vertically. It examines attempts by China to accede to the nonproliferation policy of other NWS and possible reasons for such accession. Part IV compares China's obligations under the NPT renewal conference pronouncements and the CTBT with China's current activities and stated policies. In so doing, this section attempts to predict the likely consequences if U.S. policy towards China remains unchanged. Under current U.S. policy, China's actions may undermine the future of the NPT regime drastically. Finally, Part V discusses U.S. tactics to encourage compliance with the NPT, in light of evidence that systematic pressure by the United States and the United Nations to control Chinese proliferation efforts is effective. However, this section advises caution in using threats of economic sanctions and offers explanations for why the imposition of economic sanctions on China would not serve U.S. interests effectively. It also suggests diplomatic strategies the United States could employ.

The Note concludes by highlighting China's crucial role in determining the future success of the NPT. While China does not seem to pose a serious nuclear threat to any country at this time,<sup>47</sup> some of China's allies do. These countries<sup>48</sup> rely on China for economic and military support, and have historically undermined the effectiveness of the NPT regime. Consequently, they may follow China's lead if China complies with the newly extended NPT.

## II. THE NPT REGIME AND ITS LEGAL ACCOMPLISHMENTS

### A. Pre-NPT

The early 1960s saw several developments that created the desire for multinational arms control and nonproliferation agreements.<sup>49</sup> In 1960, the International Atomic Energy Agency (IAEA),<sup>50</sup> at just three years of age, began to provide nuclear safeguards to the growing number of bilateral and multilateral

---

47. Taiwan may be an exception to this statement. See generally *INHERITED RIVALRY: CONFLICT ACROSS THE TAIWAN STRAITS* (T. Cheng et al, eds., 1995) (exploring the political and economic rivalry between the two, its historic origins, and current political and military tension).

48. North Korea and Iran are prime examples of such countries. See *infra* part IV.C.3.

49. GARDNER, *supra* note 5, at 41.

50. The IAEA is an autonomous agency of the United Nations that was founded largely under U.S. initiatives such as President Eisenhower's "Atoms for Peace" address to the United Nations in December of 1953. *Id.* at 40.

transfers of nuclear goods.<sup>51</sup> Still, the number of NWS was growing, with France conducting its first atomic test in 1960 and China conducting its first test in 1964.<sup>52</sup> Perhaps more startling was the development of long-range rockets, as evidenced by the Sputnik satellite and the Cuban missile crisis, which underscored U.S. fears of a nuclear attack. In addition, India openly sought the opportunity to develop nuclear weapons, and both Japan and Germany were gaining the technological capabilities necessary for such an endeavor.<sup>53</sup>

The international community responded to these and similar developments by enacting a series of treaties, such as the Limited Test Ban Treaty of 1963,<sup>54</sup> the Outer Space Treaty of 1967,<sup>55</sup> the Treaty of Tlatelolco of 1967,<sup>56</sup> and ultimately the NPT.<sup>57</sup> The

---

51. *Id.* For example, Canada and the United States sold a research reactor and heavy water, respectively, to India in 1956; the United States and the United Kingdom supplied India with technology for a plutonium reprocessing facility in the 1950s; France "deliberately assisted [the] Israeli nuclear weapons program by selling Tel Aviv a research reactor and plutonium processing plant;" and the former Soviet Union provided China with uranium, as well as information on uranium enrichment and nuclear weapon design. *Id.*

52. *Id.* at 41.

53. *Id.*

54. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Underwater, Aug. 5, 1963, 14 U.S.T. 1313, 480 U.N.T.S. 43 [hereinafter Limited Test Ban Treaty] (banning nuclear weapon tests on land, in the atmosphere, and under water, but not underground). This treaty was signed by the United States, the United Kingdom, and the former Soviet Union, but the other two NWS refused to sign it. GARDNER, *supra* note 5, at 41.

55. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 (prohibiting the placement of any objects carrying nuclear weapons in orbit around the Earth as well as banning the testing or stationing of such weapons in outer space).

56. Treaty for the Prohibition of Nuclear Weapons in Latin America, *opened for signature* Feb. 14, 1967, 22 U.S.T. 762, 634 U.N.T.S. 281 (creating the world's first nuclear weapon-free zone).

57. At the original NPT conference, NWS sought commitments by NNWS not to pursue development of nuclear weapons, nor to obtain them from other nations. NNWS countered with demands that NWS would work towards specific disarmament goals as well as assurances that NWS would never target NNWS for nuclear attack. They also wanted assurances that they could be provided assistance in the development of nuclear power for peaceful purposes. As a result of the opposing interests of the two sides, two main bargains were struck: 1) the right of NNWS to develop nuclear energy for peaceful purposes in exchange for an agreement not to develop or obtain nuclear weapons and to accept safeguards on their peaceful nuclear activities and 2) the requirement that NWS move toward disarmament without, however, imposing specific deadlines on them save the threat of nonrenewal caused by a provision that limited the initial duration of the treaty to 25 years. GARDNER, *supra* note 5, at 42.

NPT is the backbone of the nuclear nonproliferation regime.<sup>58</sup> No other part of the regime has been "more symbolic of nonproliferation or has done more to institutionalize the norm of nonproliferation in foreign ministries and legislatures around the world."<sup>59</sup>

From the start, the United States was instrumental in the development of the NPT and the conceptualizing of the IAEA as the principal means of effectuating treaty enforcement.<sup>60</sup> The primary reason the United States wanted to control proliferation was obvious: to deter other countries' use and acquisition of nuclear arsenals, which would pose a direct threat to U.S. security.<sup>61</sup> The United States was also concerned that, without appropriate controls, the threat of an accidental detonation would increase as well as the danger of unauthorized use by nongovernmental parties.<sup>62</sup> Moreover, the acquisition of a nuclear weapon by a U.S. ally might have undermined U.S. credibility. Finally, the United States believed controls would lessen the task of nuclear disarmament.<sup>63</sup>

### B. NPT Provisions

At the heart of the NPT is a bargain between the NWS and the NNWS. Provisions that bind the NWS include: (1) the sharing of nuclear technology for peaceful purposes with interested nations,<sup>64</sup> (2) a ban on any type of aid to NNWS that would help them acquire nuclear weaponry,<sup>65</sup> (3) a requirement that nuclear exports to NNWS be safeguarded,<sup>66</sup> and (4) a good faith effort to reduce nuclear arsenals to zero.<sup>67</sup> NNWS agree: (1) not to pursue the acquisition or development of nuclear weapons,<sup>68</sup> (2) to place safeguards on their nuclear exports to other NNWS,<sup>69</sup> (3)

58. An "international regime" is a shorthand way diplomats and theorists view a patchwork of organizations, treaties, and regulations based on shared values and principles. *Id.* at 53.

59. *Id.* at 54.

60. See FISCHER, *supra* note 32, at 17-24 (1993).

61. See Bryan L. Sutter, Note: *The Nonproliferation Treaty and the "New World Order,"* 26 VAND. J. TRANSNAT'L L. 181, 184-85 (1993).

62. *Id.*

63. *Id.*

64. NPT, *supra* note 1, art. IV, 21 U.S.T. at 489-90, 729 U.N.T.S. at 172-73. The NPT does not seek to prohibit trade promoting the peaceful application of nuclear energy so long as states conduct that trade in compliance with the nonacquisition principles of the treaty. See Sutter, *supra* note 61, at 188.

65. NPT, *supra* note 1, art. VII, 21 U.S.T. at 491, 729 U.N.T.S. at 173-74.

66. *Id.* art. III, 21 U.S.T. at 487-88, 729 U.N.T.S. at 172.

67. *Id.* art. VI, 21 U.S.T. at 491, 729 U.N.T.S. at 173.

68. *Id.* art. II, 21 U.S.T. at 487, 729 U.N.T.S. at 171.

69. *Id.* art. III, 21 U.S.T. at 487, 729 U.N.T.S. at 172.

to accept all safeguards on all nuclear materials, both those imported and those provincially produced,<sup>70</sup> and (4) to share nuclear technology for peaceful purposes with interested nations.<sup>71</sup>

### C. NPT Shortcomings: Internal and External

#### 1. Discrimination against the NNWS

Structurally, the NPT inherently discriminates against NNWS, which could lead to its ultimate ineffectiveness. The NPT fundamentally divides the world between the nuclear haves and the nuclear have-nots, allowing the NWS to choose whether to remain NWS, but disallowing the same for NNWS.<sup>72</sup> Moreover, even though the stated goals of non-nuclear states are impressive,<sup>73</sup> the NPT lacks specific regulations or timelines to govern the cessation of nuclear weapons production or the disarmament of NWS.<sup>74</sup> Finally, as with treaties in general, adequate enforcement mechanisms are lacking.<sup>75</sup> Although Article VIII(3) of the NPT calls for a conference every five years to review the treaty, no mechanism to compel NWS to comply with the treaty exists, thus making the treaty *de facto* unenforceable and nonbinding.<sup>76</sup>

#### 2. Lack of Participation by Certain Proliferators and "Threshold" States

Problems outside the treaty structure itself have created greater nonproliferation concerns. Most obviously, China and France, constituting two-fifths of all declared NWS, failed to participate in the original NPT convention, both having acceded to

---

70. *Id.*

71. *Id.* art. IV, 21 U.S.T. at 490, 729 U.N.T.S. at 173.

72. See Sutter, *supra* note 61, at 193-94.

73. These goals, some discussed *supra* in part II, include: a) that the NWS enact a CTBT, b) the cessation of the production of fissionable materials, c) the freeze and reduction of stock of nuclear weapons, and d) a ban on the use of nuclear weapons as well as the assurance of the security of the non-nuclear states. NPT, *supra* note 1, at preamble, 21 U.S.T. at 484-86, 796 U.N.T.S. at 169-71. See also William Epstein & Paul C. Szasa, *Extension of the Nuclear Non-Proliferation Treaty: A Means of Strengthening the Treaty*, 33 VA. J. INT'L L. 735, 739-40 (1993).

74. See Sutter, *supra* note 61, at 195-97.

75. *Id.* at 199 (citing Pamela E. Kulsrud, *Nuclear Non-Proliferation for the 80's: Carrot and Stick Policy Reexamined*, 13 BROOK. J. INT'L L. 25, 37 (1987)).

76. See Sutter, *supra* note 61, at 199.

the NPT only within the last five years.<sup>77</sup> Furthermore, several states that had not acceded to the NPT currently have or are on the threshold of acquiring nuclear weapons. These include India,<sup>78</sup> Israel,<sup>79</sup> Pakistan,<sup>80</sup> Argentina, and Brazil.<sup>81</sup> Furthermore, the fact that any state can withdraw from the NPT with just three months' notice<sup>82</sup> has been noted by some commentators as an incentive that could encourage proliferation. The danger exists that a non-NPT country could first accede to the NPT, gain access to materials and technology (from an NWS) for a peaceful nuclear program and then withdraw to pursue a nuclear weapons program in an unbridled fashion.<sup>83</sup>

### 3. Review Conference Failures

The NPT Review Conferences of 1975, 1980, 1985, and 1990 have been generally regarded as unsuccessful primarily because the NWS disregarded their disarmament obligations, set forth in the Preamble and Article IV of the original treaty. For example, at both the 1980 and the 1990 conferences, the United Kingdom and the United States conceded that they adamantly refused to initiate negotiations on a test ban treaty.<sup>84</sup> Many of the NNWS as well as non-members objected to such failures by the NWS to make any firm commitments to discontinue vertical proliferation. These objections went unheeded and left the NNWS with no alternative except threatening to limit the NPT's duration at the 1995 renewal conference.<sup>85</sup> Consequently, going into the Extension Conference, the overriding concern of NNWS was to link the NPT's renewal to firm commitments by the nuclear states to engage in disarmament.<sup>86</sup>

### 4. Determination of Peaceful and Nonpeaceful Purposes

A final problem that has arisen as a result of the NPT is a blurring of the lines between what constitutes peaceful versus

77. See Timerbaev, *supra* note 44.

78. India detonated a nuclear device in 1974 and is believed to be stockpiling plutonium at this time. Sutter, *supra* note 61, at 192.

79. Israel undisputedly possesses undeclared nuclear weapons. *Id.*

80. *Id.* See also Church, *supra* note 15, at 48.

81. Both Argentina and Brazil have developed unsafeguarded plutonium and uranium processing facilities. Sutter, *supra* note 61, at 192.

82. NPT, *supra* note 1, art. X(1), 21 U.T.S. at 493, 729 U.N.T.S. at 175.

83. See Sutter, *supra* note 61, at 192.

84. See Epstein & Szasa, *supra* note 73, at 743.

85. *Id.* at 746.

86. See Ottoway & Coll, *supra* note 44.

military purposes under the NPT.<sup>87</sup> Popular myth aside, NNWS are not prevented from creating atomic weapons by a lack of knowledge.<sup>88</sup> Instead, these countries do not construct nuclear warheads as a matter of choice. Those NNWS that may desire such weapons do not acquire them for more practical reasons, primarily the lack of availability of fissile material, such as plutonium or enriched uranium,<sup>89</sup> and the lack of technological support to make such weapons economically feasible or strategically competitive in the 1990s.<sup>90</sup>

When an NWS supplies an NNWS with fuel or support technology, such as the sale of a nuclear reactor design and protocol, it is the responsibility of the IAEA, pursuant to the NPT, to safeguard the transaction and its use by the NNWS.<sup>91</sup> Because of increasingly sophisticated and overlapping technology, an NNWS could secretly use such fuel and technology without detection. This dilemma has two consequences: (1) some NWS restrict exports of equipment and technology, thus hindering the use of nuclear power for peaceful purposes by NNWS,<sup>92</sup> while (2) other NWS proliferate fuel and technology in a somewhat unrestricted fashion to both NNWS and to NPT non-members.<sup>93</sup> The latter consequence leads to an increased likelihood of horizontal proliferation, particularly in the hands of politically unstable or aggressive Third World countries.<sup>94</sup>

---

87. China has played a significant role in adding to this problem. See *infra* part III.

88. See KATHLEEN C. BAILEY, DOOMSDAY WEAPONS IN THE HANDS OF MANY: THE ARMS CONTROL CHALLENGE OF THE '90S 8-16 (1991).

89. Historically, insufficient trading of and supplies of nuclear fuels has been the basic impediment towards a nuclear weapons program. Compare DAVID FISCHER, STOPPING THE SPREAD OF NUCLEAR WEAPONS 75 (1992) (French nuclear activities between 1957 and 1963 frustrated by U.S. and U.K. control of all uranium supplies) with Tim Zimmerman, *Marching Toward a Showdown in Asia*, U.S. NEWS AND WORLD REP., Feb. 22, 1993, at 40 (North Korean plutonium supply enough for a few bombs at most).

90. See FISCHER, *supra* note 89, at 161-64.

91. NPT, *supra* note 1, art. III, 21 U.S.T. at 488, 729 U.N.T.S. at 172.

92. Ben Sanders, *Non-Proliferation Treaty: A Broken Record?*, BULL. ATOM. SCIENTISTS, July-Aug. 1990, at 17; see also Sutter, *supra* note 61, at 197-99.

93. China arguably falls under this category. See *infra* part III.

94. The discovery of an Iraqi clandestine nuclear weapons program demonstrated that an NNWS could pursue a weapons program undetected. Iraq invested several billion dollars, largely with the aid of foreign investors, including the United States. David S. Gualtieri et al., *Advancing the Law of Weapons Control-Comparative Approaches to Strengthen Nuclear Non-Proliferation*, 16 MICH. J. INT'L L. 1029, 1033 (1995). Through a secret network, Iraq began a program to enrich its indigenous uranium, avoiding scrutiny by the IAEA, which is limited to monitoring only declared nuclear power facilities. Iraq's designs may have escaped detection if it were not for the intrusion of the Gulf War. *Id.* There are two primary shortcomings inherent in the IAEA's ability to monitor and safeguard nuclear material: 1) the agency only monitors declared sites with notice, and 2)



D. *Comprehensive Test Ban Treaty—Can It be Enforced?*

The CTBT opened for signature on September 20, 1996.<sup>95</sup> On its terms, it may be the most far-reaching treaty of the NPT regime to impede the proliferation and use of nuclear weapons. Article 1 of the CTBT calls for each "State Party . . . not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control[,]"<sup>96</sup> and "to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion [anywhere]."<sup>97</sup> The CTBT establishes a new monitoring organization, the Comprehensive Nuclear Test-Ban Treaty Organization (hereinafter CTBT Organization), "to achieve the object and purpose of [the] Treaty, [and] to ensure the implementation of its provisions, including those for international verification of compliance with it[.]"<sup>98</sup> Furthermore, the CTBT establishes a "verification regime" consisting of an international monitoring system, specific consultation and clarification measures, on-site inspections, and confidence-building measures to help ensure compliance with Article 1.<sup>99</sup> The CTBT provides measures to redress violations, including damage "measures which are in conformity with international law[,]"<sup>100</sup> and allows for the settlement of disputes by mutual consent before the International Court of Justice.<sup>101</sup> In the alternative, the CTBT Organization's Executive Council may assist in arbitrating

---

the agency is vastly underfunded. See Sutter, *supra* note 61, at 197-98. For an argument that the IAEA and the effectiveness of the NPT would be better served by allowance of challenged inspections as is the approach for verifications and investigation under the recently concluded Chemical Weapons Convention, see Gualtieri, *supra*.

95. President Clinton was the first state delegate to sign the CTBT, using the pen John F. Kennedy used to sign the Limited Test Ban Treaty, at a ceremony in New York. Kempster & Peterson, *supra* note 38. China was among the first five states to sign the treaty. *Id.*

96. CTBT, *supra* note 10, art. 1, para. 1, at 7.

97. *Id.* art. 1, para. 2, at 7.

98. *Id.* art. 2, para. 1, at 8.

99. See *id.* art. IV, para. 1, at 19; see generally *id.*, art. IV, at 19-32 (detailing the operation of this verification regime); *id.* Protocol and Annexes, at 49-92 (explicit tables and procedural requirements regarding verification regime operation). On-site inspections must be requested by a State Party, and only after it is suspected that a nuclear explosion in violation of Article 1 has occurred, thus blocking ability for any surprise inspection before an explosion is thought to occur and arguably weakening the effectiveness of the regime. See *id.* art. IV, paras. 35-36, at 26.

100. *Id.* art. V, para. 3, at 33.

101. *Id.* art. VI, at 34.

disputes through various procedural mechanisms.<sup>102</sup> Finally, in keeping with the principles of the NPT's Preamble and of the Treaty Extension, the CTBT reiterates the NPT regime's goal of total disarmament calling for "the need for continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control[.]"<sup>103</sup>

The CTBT may actually lack adequate enforcement (and dispute-settlement) mechanisms, which are problematic with treaties in general.<sup>104</sup> However, the most immediate crisis endangering the CTBT's survival is India's unequivocal refusal to sign on to the treaty,<sup>105</sup> which may permanently bar the CTBT's entry into force.<sup>106</sup> India opposes the CTBT for two reasons: First, the treaty further entrenches the discriminatory categorization of the NPT between NWS and NNWS, effectively leaving all NWS with *status quo* nuclear capabilities, which for the United States are quite sophisticated, and thus a permanent comparative advantage over India's infantile nuclear weapons

---

102. *Id.*

103. *Id.* preamble, at 6.

104. See *supra* note 75, and accompanying text (regarding enforcement shortcomings of the NPT).

105. See *Adoption of the Agenda and Organization of Work, CTBT, Letter Dated 9 Sept. 1996 from the Permanent Representative of India to the United Nations Addressed to the President of the General Assembly*, U.N. GAOR, 50th Sess., Agenda Items 8 and 65, at U.N. Doc. A/50/1036 (1996); see also Jonathan Karp & Nigel Holloway, *Zero Yield*, FAR E. ECON. REV., Aug. 29, 1996, at 14, available in 1996 WL-FEER 10569686 (reporting India's Prime Minister H.D. Deve Gowda's statement that India would not accept the CTBT because he would not compromise national security). This year, India tested short-range "dual-technology" ballistic missiles, see Ranjan Roy, *India Tests Short-Range Missile Prior to Deployment*, AP, Feb. 23, 1997, available in 1997 WL 4857130, creating some concern that India will, in fact, engage in future nuclear testing.

Initially, members of the Conference on Disarmament hoped to adopt the CTBT at the Conference. However, because the Conference operates by consensus, India was able to veto the CTBT's adoption. Australia "saved" the CTBT by taking it directly to the General Assembly in the form of a resolution. See CTBT, *supra* note 10; Rebecca Johnson, *The In-Comprehensive Test Ban*, BULL. ATOM. SCIENTISTS, Nov. 21, 1996, at 30, available in 1996 WL 8994404.

106. See CTBT, *supra* note 10, art. XIV and Annex 2, at 43, 48 (requiring ratification to the Treaty by the 44 states with Nuclear Reactors, including China, India, and Pakistan, before the Treaty enters into force). One hundred and twenty-five states have signed the CTBT, but India and Pakistan still prohibit the Treaty from entering into force. See *Four Key Hold-Outs on CTBT*, AGENCE FR.-PRESSE, Oct. 16, 1996, available in 1996 WL 12158593. If India continues to refuse, the Treaty may still enter into force through some other international law mechanism. See CTBT, *supra* note 10, art. XIV(2), at 43.

program.<sup>107</sup> Second, China's nuclear threat<sup>108</sup> (which is a basic assumption of India's national security policy) remains unchanged by the treaty. The CTBT may, nevertheless, prove to be successful owing to its adherence by the five NWS and to possible alternative routes of entry into force.<sup>109</sup> Still, India's support of the treaty seems necessary, considering its continued tensions with Pakistan<sup>110</sup> and its membership in the nuclear club,<sup>111</sup> for the CTBT to have a lasting global impact.

### III. CHINA AS A PROLIFERATOR

#### A. Pre-1992

Before acceding to the NPT in 1992,<sup>112</sup> China's nuclear policy and its conduct contrasted sharply with the NPT's objectives for NWS. Although China's vertical proliferation since its inception into the "nuclear club" has been paltry compared to that of the United States or the former Soviet Union,<sup>113</sup> China's role in

107. See Karp & Holloway, *supra* note 105 (indicating India's assertion that the CTBT is technically flawed and that it is intentionally designed to allow the United States to retain nuclear superiority); see also *CTBT 'a Charade,' Says Indian Foreign Minister*, AGENCE FR.-PRESSE, Sept. 11, 1996, available in 1996 WL12135939 (indicating India's belief that the five nuclear "haves" "would continue tests undercover").

108. Karp & Holloway, *supra* note 105; see also Roy, *supra* note 105 (noting both the threat by China and Pakistan). Cf. Pravin Sawhney, *Standing Alone: India's Nuclear Imperative*, INT'L DEF. REV., Nov. 1, 1996, available in LEXIS, News Library, Arcnws File ("[A] more plausible reason why India [will not sign the] CTBT is that [it contains physical verification measures and] that any physical verification of the country's unsafeguarded nuclear installations would provide an accurate estimate of fissile materials in its stockpile[,] which is currently unknown, as India is not a member of the NPT.).

109. CTBT, *supra* note 10, art. XIV, at 43.

110. See Nazir Kamal, *Is a Thaw in the Offing in South Asia?*, STRAITS TIMES (Singapore), Feb. 19, 1997, available in 1997 WL 7205593; see also *infra* note 120.

111. See *supra* note 32.

112. China acceded in March 1992. Barry Kellman, *Bridling the International Trade of Catastrophic Weaponry*, 43 AM. U. L. REV. 755, 786 (1994).

113. In 1990, the world's nuclear arsenals contained a total of about 50,000 nuclear weapons. The former Soviet arsenal contained about 27,000 nuclear weapons. The United States had about 20,000 and China had only 300 nuclear weapons. FRANK BARNABY, *HOW NUCLEAR WEAPONS SPREAD: NUCLEAR-WEAPON PROLIFERATION IN THE 1990S* 64 (1993). China has 17 intercontinental ballistic missiles, each equipped with one nuclear warhead. Auchincloss, *supra* note 26, at 30. China also has two nuclear submarines, each carrying 12 ballistic missiles as well as up to 120 medium-range bombs. BARNABY, *supra* at 66. A ballistic missile

facilitating horizontal proliferation, as well as its role in exporting weapons in general, is most telling of its particular danger.<sup>114</sup> In fact, in light of China's delay in becoming an NWS, its limited and archaic nuclear capabilities compared to the United States or the former Soviet Union, and its fledgling market economy, the argument could be made that China has been the most egregious proliferator of the last fifteen years.

China's fundamental rationale for engaging in proliferation activities has been based on economics. Commentators have suggested that China proliferates simply to make a profit.<sup>115</sup> For example, China was a leading conventional arms supplier to Pakistan, India, and others from 1983 to 1990, accounting for export agreements worth \$16 billion,<sup>116</sup> with the largest growth percentage of arms exports going to the Middle East.<sup>117</sup> China's primary purpose in exporting these conventional weapons was to raise money to finance a rapid buildup of its own military forces and to increase its strategic nuclear capabilities.<sup>118</sup> In so doing, China decreased its number of troops and increased its high-tech defense capabilities.<sup>119</sup>

China's proliferation of nuclear capabilities to other countries has been even more aggressive. China has marketed whole nuclear weapons systems to countries such as Pakistan,<sup>120</sup> and has supplied comprehensive nuclear technology and materials, some for less than "peaceful purposes,"<sup>121</sup> to NNWS and undeclared nuclear states in the Middle East, Latin America, and other parts of Asia.<sup>122</sup> Of the five NWS, China has been cited as "the most reluctant to prevent North Korea and others from developing a nuclear bomb."<sup>123</sup>

Examples of China's more notable proliferation activities include: (1) the provision of technical assistance during the construction of Pakistan's Kahuta centrifuge enrichment

is a missile that the military is able to guide to the apex of its trajectory, falling free thereafter.

114. See Kellman, *supra* note 112, at 777-81.

115. *Id.* at 780.

116. *Id.* at 779.

117. *Id.* at 779-80.

118. Nazir Kamal, *China's Arms Export Policy and Responses to Multilateral Restraints*, 14 CONTEMP. SOUTHEAST ASIA 112, 113 (1992).

119. Kellman, *supra* note 112, at 780.

120. *Id.* at 782; see also SHRIKANT PARANJPE, US NONPROLIFERATION POLICY IN ACTION: SOUTH ASIA 77 (1987). China supplied nuclear aid to Pakistan as early as 1976. *Id.* Pakistan has struggled through regional conflicts with India since 1965. *Id.* Its interest in nuclear weapons is to deter future warfare with India.

121. NPT, *supra* note 1, art. IV, 21 U.T.S. at 489-90, 729 U.N.T.S. at 173.

122. Kellman, *supra* note 112, at 781. China is "the world's most aggressive exporter of nuclear technology and materials" to these regions. *Id.*

123. Higgins, *supra* note 33, at 29.

facility,<sup>124</sup> (2) the transfer to Pakistan of enough weapons-grade uranium to fuel two nuclear bombs,<sup>125</sup> (3) the provision of technological support to enable Pakistan to make and test nuclear weapons parts, and to test a whole design with a dummy nuclear core,<sup>126</sup> (4) the sale to Pakistan of an M-11 missile,<sup>127</sup> (5) the sale of 150 tons of "heavy water" to India,<sup>128</sup> (6) the sale of nuclear fuel to both Iraq and Iran during the Iran-Iraq War of 1980-1988 as well as the sale of Silkworm Missiles to Iran,<sup>129</sup> (7) the sale to Syria of the M-9 missile and its Transporter-Erector-Launcher equipment,<sup>130</sup> (8) the sale of "heavy water" and enriched uranium to Argentina,<sup>131</sup> (9) the sale of uranium, missile-fuel technology, and missile guidance to Brazil,<sup>132</sup> (10) the sale of 1,600 mile-range CSS-2 missiles to Saudi Arabia,<sup>133</sup> (11) the secret building of a "heavy water" reactor in Algeria,<sup>134</sup> and (12) the likely sale of missile technology to North Korea.<sup>135</sup> China has engaged in such widespread proliferation activities largely because rigid political controls over its weapons policy are absent. Until recently, China had no stated nonproliferation policy, making it the only NWS with such a distinction.<sup>136</sup>

Interestingly, China's proliferation activities coincided with increasingly warmer political and economic relations with the United States.<sup>137</sup> This is not to say that any cause-effect relationship exists, because, if anything, the opposite effect would be present. China does not proliferate out of defiance to the

124. Kellman, *supra* note 112, at 782.

125. *Id.*

126. *Id.*

127. *Id.* M-11 missiles can carry a nuclear warhead 185 miles. *Id.* Such missiles can actually carry both conventional and nuclear warheads and are therefore considered dual technology systems. It is unclear whether transfer of such systems violates the NPT.

128. Kellman, *supra* note 112, at 782. Heavy water is used as a moderating element in certain types of reactors, including those capable of producing weapons-grade plutonium, and is therefore a signal of the possibility that the purchaser is pursuing nuclear weapons development. *Id.* at 782 n.130.

129. *Id.* at 743.

130. *Id.* at 784-85. This is a modern, fully mobile system designed to carry a nuclear warhead about 375 miles. This system is worth well over \$200 million. *Id.* Syria is also negotiating to acquire a nuclear reactor from China. *Id.*

131. *Id.* at 783.

132. *Id.*

133. *Id.* at 784-85. These are also dual technology weapons.

134. *Id.* at 783.

135. *Id.* at 783-84.

136. *Id.* at 778; *see also infra* note 161, and accompanying text.

137. Kellman, *supra* note 112, at 778. *But see* Guocang Huan, *Changing China-Taiwan Relations*, in *THE CHINESE AND THEIR FUTURE* 418, 435 (Zhiling Lin & Thomas W. Robinson eds., 1994) (In the 1990s, "political tensions between Washington and Beijing have risen.").

United States. Rather, China's stated opposition to the NPT rested on what it viewed as a discriminatory gap in the treaty. To China, the underlying effect of the NPT was that it allowed the United States and the former Soviet Union to continue proliferating and thus increase both weapons and peaceful nuclear capabilities, while preventing such activities by the rest of the world.<sup>138</sup> Nevertheless, China itself has not posed a nuclear threat to the United States.<sup>139</sup> Moreover, during the Cold War, the United States did not push China to formally adhere to the NPT, largely because of the nuclear threat imposed on China by the vertical proliferation of the United States and the former Soviet Union.<sup>140</sup> During the 1980s, disputes over Mongolia, *inter alia*, caused Sino-Soviet relations to cool to a historic low.<sup>141</sup> China engaged in an arms buildup largely to protect itself from its hostile and dangerous northern neighbor.<sup>142</sup> When China did accede to the NPT, it was under heavy international pressure following France's public announcement that France would do the same.<sup>143</sup> Undoubtedly, the collapse of the Soviet Union and the Eastern European Bloc ultimately triggered both France and China's decision to join the treaty.

#### B. *Between 1992 and the NPT Extension Conference*

China's accession to the NPT in March of 1992 seems to be a step towards changing its nuclear policy. In addition, proliferation activities may have decreased since China's accession. Where China has made changes, it seems to have been in response to international pressure, most significantly "sporadic" U.S. pressure.<sup>144</sup> While China has still participated in certain proliferation activities, its response to the nonsystematic economic pressures of other countries may shed light on how those countries can control China's future nuclear policy.<sup>145</sup>

---

138. See FAUST & KORNBERG, *supra* note 21, at 140-47.

139. *Id.*

140. See *supra* note 44 and accompanying text.

141. FAUST & KORNBERG, *supra* note 21, at 4.

142. *Id.*

143. Kamal, *supra* note 118, at 130. See generally Timerbaev, *supra* note 44, at 7. Part of the diplomatic pressure to accede to the NPT comes from the presence of renewed optimism in global security after the Cold War. There is a relationship between willingness to join the NPT and the currently improved security environment. For France and China, the arms-race reversal and the new diplomacy between the former Soviet Union and the United States after the Cold War left them without a rationale to remain non-NPT states. See GARDNER, *supra* note 5, at 49.

144. Kellman, *supra* note 112, at 785.

145. See generally Harry Harding, *Cooperative Security in the Asia-Pacific Region*, in GLOBAL ENGAGEMENT - COOPERATION AND SECURITY IN THE 21ST CENTURY

Besides accession to the NPT, China has also recently accepted Missile Technology Control Regime (MTCR) guidelines.<sup>146</sup> However, speculation exists as to how closely China is expected to adhere to those guidelines. After agreeing to adhere to the MTCR, it seemed that Beijing had not consummated a prospective sale of M-9 missiles to Syria.<sup>147</sup> But the United States determined conclusively in August of 1991 that China had transferred components of the M-11 missile to Pakistan and that these actions violated the MTCR.<sup>148</sup> U.S. President Bill Clinton responded by imposing a new set of economic sanctions against China,<sup>149</sup> particularly affecting the sale of technology to bolster China's space programs, as well as the sale of other sophisticated computer technology.<sup>150</sup> Currently, no other violations of the MTCR by China are known.

#### IV. CURRENT STATUS UNDER RENEWED NPT

##### A. *Obligations of "Nuclear" States*

All countries at the Extension Conference adopted a set of "principles and objectives" that includes specific steps to turn back arms buildup.<sup>151</sup> Specifically, the agreement calls for "systematic and progressive efforts" to reduce nuclear arsenals on the part of the NWS.<sup>152</sup> The five NWS committed themselves to the "ultimate goal of eliminating" all nuclear weapons.<sup>153</sup> Such a

428-41 (Janne E. Nolan ed. 1994) (discussing cooperative security successes over the last few years between China and the former Soviet Union, Cambodia, Korea, and Vietnam respectively).

146. See Leonard S. Spector & Jonathan Dean, *Assessing the Tools of the Trade*, in GLOBAL ENGAGEMENT, *supra* note 121, at 131, 150 (noting China's acceptance of the guidelines as well as how these guidelines are applied). The MTCR is a system of parallel export controls, created in 1987 and designed to restrict the spread of missile technology, that are currently in adoption by more than 25 other industrialized states. *Id.*

147. FAUST & KORNBERG, *supra* note 21, at 145.

148. Kellman, *supra* note 112, at 782.

149. *Punishing China*, MACLEAN'S, Sept. 6, 1993, at 19. U.S. sanctions against China potentially blocked up to one billion dollars worth of exports to China. *Id.*

150. *Id.*

151. *Principles and Objectives for Nuclear Non-Proliferation and Disarmament*, Extension Conference, U.N. Doc. NPT/CONF.1995/L.5 (1995) [hereinafter *Principles and Objectives*].

152. *Id.* at 2. The Pentagon reportedly contends that this reduction will not fall below the 3000-warhead level of the START II. See Atlas, *supra* note 6, at 1.

153. *Principles and Objectives*, *supra* note 151, at 2.

commitment towards complete disarmament is unprecedented.<sup>154</sup> The NWS also formally pledged within the agreement to work toward a Comprehensive Test Ban Treaty (CTBT) by 1996 as well as to pursue rapid negotiation of a treaty to end production of nuclear bomb material.<sup>155</sup>

In spite of these "concessions" on the part of the NWS, the treaty's indefinite extension is unconditional.<sup>156</sup> Consequently, failure by the NWS to comply with any of these resolutions has no added legal ramifications. NWS are held only "to pursue negotiations in good faith" to attain nuclear disarmament as stated in the original treaty.<sup>157</sup> If a NWS were to breach its Article VI "good faith" duty, which the United States has arguably already done,<sup>158</sup> an NNWS could conceivably bring an action in the International Court of Justice, though such an action is unlikely.<sup>159</sup> Consequently, the only obligations for compliance

---

154. Atlas, *supra* note 6. In fact, China and the former Soviet Union were the only two countries to embrace the idea of disarmament, with France and the United Kingdom fighting unsuccessfully against any reference to nuclear elimination and the United States showing ambivalence. *Id.* For a brief view as to the rationale and actions taken by the United States, Britain, and France against full nuclear disarmament previously, see Ottoway & Coll, *supra* note 44; see also Daalder, *supra* note 16 (arguing that total disarmament would actually be much more dangerous for the United States than if it kept a "few hundred" nuclear warheads).

155. Atlas, *supra* note 6.

156. See *id.* (describing the reluctant acceptance by the United States of the "ultimate goal of eliminating" nuclear weapons language in the treaty). U.S. officials were still apt to point out at the Extension Conference that no timetable was employed to meet the goal of nuclear weapons elimination. *Id.*

157. NPT, *supra* note 1, art. VI, 21 U.T.S. at 490, 729 U.N.T.S. at 173.

158. See generally Koplow, *supra* note 19, at 301 (concluding that the United States has, indeed, transgressed the commitments of Article VI of the NPT).

159. However, on July 8, 1996, in an analogous matter, the ICJ issued an advisory opinion ("Legality Opinion") condemning the "first use" of nuclear weapons but finding that no specific treaty declares their use illegal. See *Legality of the Threat or Use of Nuclear Weapons*, 35 I.L.M. 809, 824, ¶¶ 57, 58 (July 8, 1996) (finding that a ban on recourse to nuclear weapons does not appear in treaties relating to weapons of mass destruction, and noting that international community has not produced a treaty prohibiting nuclear weapons use); see also *id.* at 829-30, ¶¶ 95, 97 (refraining to find the use of nuclear weapons would contravene customary international law in all circumstances and stating that the Court could not "reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a state in extreme circumstances of self-defense, in which it's very survival would be at stake").

The problem with use of the ICJ to enforce an Article VI breach of "good faith" action is that the I.C.J. does not have compulsory jurisdiction over many of the relevant parties, such as the United States. It is unlikely that NWS would consent to such an action. Koplow, *supra* note 19, at 382 n.341.

The I.C.J. has construed the phrase "good faith" as an affirmative obligation "to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a [self-advocating position.]" *North Sea Continental Shelf*



that effectively remain under the renewed treaty are purely political. Unfortunately, a country like China could easily rationalize that NPT compliance is not in its best interest.

### B. China's Current Nonadherence

U.S. Secretary of State Madeleine Albright has praised China's cooperation with the United States in the nonproliferation area, specifically because of China's support of the Treaty Extension, its signing of the CTBT, and efforts it has made to participate in cooperative security negotiations with North and South Korea.<sup>160</sup> Regardless of these attempts by Beijing to portray itself as having such a strong nonproliferation policy,<sup>161</sup> China currently acts as a nuclear proliferator in disregard of the aims of the renewed NPT.

China avows opposition to any arms race and support for disarmament.<sup>162</sup> It claims that as "long as there is no serious threat to the nation's sovereignty or security, [it] will not increase its defense spending substantially."<sup>163</sup> Nevertheless, China increased its official defense budget by twelve percent in 1995,<sup>164</sup> and according to the International Institute of Strategic Studies, China's actual defense spending is at least four times greater than the official figure.<sup>165</sup> Although China joined the NPT,<sup>166</sup> it continued regular nuclear testing until the month before the CTBT was opened for signature.<sup>167</sup> This occurred despite global

Cases (F. R. G. v. Den. and Neth.), 1969 I.C.J. 3, 47 (Feb. 20). Thus, it appears likely that U.S. violations of Article VI have occurred.

160. See Interview, Meet the Press, Jan. 26, 1997, available in 1997 WL 7887151.

161. ADDS *Details of White Paper. Analysis*, AGENCE FR.-PRESSE, Nov. 16, 1995, available in 1995 WL 11471357.

162. *Id.* Chinese Ambassador Sha Zhukang, in stating support for disarmament at the NPT extension conference, called its extension "an intermediate step toward the ultimate objective of complete prohibition and thorough destruction of nuclear weapons." Atlas, *supra* note 6.

163. *Id.*

164. *Id.*

165. See *China's Defense Budget a Paragon of Obfuscation*, AGENCE FR.-PRESSE, Oct. 10, 1995, available in 1995 WL 78660210.

166. See *supra* note 112 and accompanying text.

167. *U.S. Policy toward China: Security and Military considerations*, U.S. Dept. of State Dispatch, Oct. 23, 1995 (Vol. 6, No. 43, ISSN: 1051-7693) at 773. In fact, China detonated a nuclear weapon underground just days after signing the renewed NPT. Mufson, *supra* note 20. China conducted its last nuclear test July 29, 1996, one day prior to a self-imposed moratorium. *Chronology of Nuclear Tests Conducted by China*, Reuters North Am. Wire, July 29, 1996, available in LEXIS, News Library, Reuna File (reporting that the blast measured 4.3 on the Richter Scale); *White House Statement on China's Nuclear Testing*, U.S. Newswire, July 29, 1996, available in LEXIS, News Library, Usnwr File.

protest, particularly from the Association of South East Asian Nations<sup>168</sup> (ASEAN) and Japan.<sup>169</sup>

For some time after the Extension Conference, China also continued its plans to sell a two-unit nuclear reactor to Iran, a move that U.S. diplomats feared would bring Iran closer to nuclear weapons capabilities.<sup>170</sup> At present, China's stated intention is to abandon its deal with Iran.<sup>171</sup> Implementation of the sale, in light of the proliferation dangers posed by Iran,<sup>172</sup> would corroborate the notion that China's fundamental proliferation policy has not changed significantly in the last decade.<sup>173</sup>

### C. Consequences Under a Status Quo System

The primary criticism of nuclear policy experts launched against recent U.S. administrations has been their failure to "provide a clear statement of how [the United States] envisions the nuclear future."<sup>174</sup> The Pentagon's 1994 Nuclear Posture Review (NPR) retained the employment of Cold War assumptions and a Soviet threat as the basis for the nuclear future of the United States. One commentator has referred to this U.S. policy as essentially a "status quo" system.<sup>175</sup> Arguably, this policy, which calls for the maintenance of no less than 3,500 strategic

---

168. At the ASEAN Post Ministerial Meeting in Brunei in August of 1995, its seven members (Thailand, Malaysia, Singapore, Indonesia, the Philippines, Brunei, and Vietnam) criticized China for its nuclear tests, "which could lead to a renewed arms race." *Australia Raps France over Planned Nuclear Tests, Ties Worsen*, DEUTSCHE PRESSE-AGENTUR, Aug. 2, 1995 (International News), available in LEXIS, World Library, Dpa File.

169. For a view of the Japanese fury (including Japan's prime minister and house speaker) at China's testing activities, see Charles A. Radin, *Anger Erupts at Nagasaki Commemoration; Speakers Lash Out at Testing of Atom Arms*, BOSTON GLOBE, Aug. 10, 1995, at 2.

170. Steven Mufson, *Chinese Nuclear Officials See No Reason to Change Plans to Sell Reactor to Iran*, WASH. POST, May 18, 1995, at A22. Chinese officials believe that such a sale is completely within the letter and spirit of the NPT because the nuclear reactor will allegedly be used for "peaceful purposes" and "[t]he IAEA hasn't raised any reports about Iran having a military purpose." *Id.* For a neutral perspective that defends China's position with respect to this sale, see David Albright, *An Iranian Bomb? Development of Nuclear Weapons* BULL. ATOM. SCIENTISTS, July 1995, at 20.

171. U.S. Dept. of State Dispatch (Oct. 1995), *supra* note 167.

172. See Albright, *supra* note 170, at 20 (noting an abundance of independent reportings of secretive military work on the part of the Iranian government and military in an effort to procure a nuclear arsenal).

173. See *supra* part III.A.

174. Daalder, *supra* note 16, at 128.

175. *Id.* There, Daalder cites *Nuclear Posture Review*, vugraphs (Washington, D.C.: Dept. of Def., Sept. 22, 1994)

land, sea, and air-based nuclear weapons,<sup>176</sup> fails to address many current topics raised by recent nonproliferation experts. Such topics include Third World hostilities towards past U.S. nuclear domination, efficiencies and strengths of utilizing regional cooperative security agreements, and "good faith" obligations to disarm under the NPT on the part of the United States. More fundamentally, such a posture by the United States fails to recognize the most basic consequence of the end of the Cold War—that there is no longer a cognizable military threat to U.S. security that requires maintenance of nuclear hardware to retain military power.<sup>177</sup> Maintaining such a "status quo" system, one that contemplates a U.S. nuclear stockpile based on the presently nonexistent Soviet opposition, while ignoring U.S. NPT obligations under the Treaty Extension, creates a hopelessly confusing nuclear weapons policy. When the Pentagon chooses to ignore the diplomatic stature of the United States as a leader in the nonproliferation cause, it ultimately fosters a sense of distrust within the global community about underlying U.S. interests and also fosters increased opposition to the two-tiered system of the NPT.<sup>178</sup> As a result, under current U.S. nuclear policy, China would have little incentive to curtail proliferation activities, and the possibility of any significant nuclear disarmament would be unthinkable. China's activities, if left "status quo," illustrate how the NPT regime would flounder. Those activities are described in the subsections that follow.

### 1. Continued Sales of Nuclear and Dual System Technology

China's sale of ballistic missiles and other dual system technologies<sup>179</sup> as well as nuclear technology and fuel "for peaceful purposes" is likely to continue. Continued sales of such technology by China impacts nuclear proliferation fears through a two-step process. First, it encourages an arms-race buildup among Third World countries that have expressed an interest in

---

176. See Daalder, *supra* note 16, at 128.

177. See Robert S. McNamara, *The Military Role of Nuclear Weapons*, 62 FOREIGN AFF. 59, 79 (1983) (arguing that a nuclear weapons-free world benefits the United States because of its clearly dominant conventional military power). *But see* Daalder, *supra* note 16, at 2 (arguing that the United States should retain a "few hundred nuclear weapons" to sufficiently deter an attack on the United States or nuclear weapons acquisition by other countries that currently rely on U.S. protection).

178. Even First World countries such as France and Japan have proclaimed their opposition to the NPT's disparate treatment of nuclear have-nots compared to nuclear haves. Daalder, *supra* note 16, at 129.

179. Dual system technologies are weapon systems and launchers that have both conventional and nuclear warhead capabilities.

obtaining nuclear weapons,<sup>180</sup> particularly in regions that are politically unstable such as the Middle East.<sup>181</sup> Second, such sales have the practical effect of increasing the risk of nuclear use by an irrational, hostile leader with self-aggrandizing interests. The basic premise underlying these horizontal proliferation fears is that eventually one of the military leaders or dictators with which China does business will be able to deploy a nuclear bomb. Attainment of nuclear weapons by an NNWS through a Chinese nuclear pipeline would therefore prove to be a devastating blow to the strength of the NPT.

The frustrating aspect of China's nuclear technology sales is that they infringe upon the NPT regime although they are not technically violations of any NPT provisions. While Article I of the NPT calls for NWS not to "assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons,"<sup>182</sup> it is unclear whether IAEA recognition of nuclear weapons capabilities by an NNWS is required to trigger an Article I violation by the NWS, or whether the inducement or assistance language is applied before nuclear weapons are actually found. Either way, much to the dismay of critics that recognize the inherent inability for the IAEA to separate horizontal proliferation activities from non-proliferation ones under the NPT, the IAEA has never acknowledged any impropriety by China in its "proliferation" activities.<sup>183</sup>

Even if China has not been found to violate Article II, it presumably assisted Pakistan in becoming a nuclear power,<sup>184</sup>

---

180. Continued sales to Pakistan are certain to fuel an arms race between Pakistan and India, something India would like to avoid. Nevertheless, these countries were on the brink of warfare in the late 1980s, and hostilities between the two countries still exist. See Stephen P. Cohen, *Nuclear Neighbors*, in *NUCLEAR PROLIFERATION IN SOUTH ASIA*, *supra* note 22, at 11. If war were to break out, it is quite likely that China would be interested in selling arms to both countries as it does not have a security pact with either, and China's economic interests in selling arms would likely trump any diplomatic ties China has with, for example, Pakistan (the country it would likely side with if forced to choose).

181. Iran's desire for nuclear weapons serves as an excellent example. See Albright, *supra* note 170.

182. NPT, *supra* note 1, art. I, 21 U.T.S. at 487, 729 U.N.T.S. at 171.

183. See *supra*, part II.C.4.

184. As discussed in part III, *supra*, "China provided technical assistance [to Pakistan] during the construction of . . . [a] centrifuge enrichment facility, train[ing] Pakistani engineers to handle uranium fuel." Kellman, *supra* note 112, at 782. China also provided Pakistan with enough weapons-grade uranium to fuel two nuclear weapons, and "perhaps, gave Pakistan the . . . design of a tested nuclear weapon with a" 25 kiloton yield, as well as the capability to make and test other nuclear weapons parts. *Id.* China recently sold Pakistan the M-11 missile, capable of carrying a nuclear warhead 185 miles. *Id.* On the other hand, the United States played a significant role in supplying Pakistan with conventional arms in the 1970s and the early 1980s as a response to the Afghan crisis, but the

and could easily do the same for Iran, North Korea, Syria, and other countries if it continues to be a supplier of dual system missile, technology or nuclear fuel.<sup>185</sup> So long as China continues to find economic benefit in its sales of ballistic missiles and other weapon systems that can easily be modified for either conventional or nuclear use, these activities may continue to the detriment of the NPT regime.

## 2. Continued Vertical Proliferation

China would probably continue to build its nuclear stockpile, especially so long as it is not held to any bilateral or multilateral arms reduction agreements. Three interests pervade Chinese desires to engage in vertical proliferation: regional military hegemony, concern about the former Soviet Union, and restoration of the Middle Kingdom primarily through the reacquisition of Taiwan and the Spratly Islands. Though China undisputedly had a smaller nuclear stockpile than any other declared NWS as recently as 1996,<sup>186</sup> it is also the only NWS still undergoing a nuclear arms buildup.<sup>187</sup>

## 3. Continued Assistance to and Noninterference with North Korea

China's potential role in facilitating a North Korean nuclear arsenal is not as clear under the U.S. "status quo" policy as its continued engagement in other proliferation activities. China probably will not provide North Korea with further nuclear assistance. Nevertheless, until recently, China showed no signs of joining any multinational movement to block North Korea's nuclear program.<sup>188</sup>

United States never assisted Pakistan's nuclear capabilities. See PARANJPE, *supra* note 120, at 79-81.

185. Such nuclear fuel even includes the sale of heavy water, something China has been fond of doing as discussed *supra* in part III.A. China's actions may be the most important factor in determining the nuclear future of North Korea and Iran. Church, *supra* note 15, at 47-48. See also Chellaney, *supra* note 22, at 306-12 (asserting that China is the most underestimated determining factor in the nuclear future of India and Pakistan).

186. China has 300 nuclear weapons while the United Kingdom has about 400 and France has about 600. BARNABY, *supra* note 113, at 64; see also *Charting the Deng Revolution*, NEWSWK., Mar. 3, 1997, at 26.

187. See BARNABY, *supra* note 113.

188. Representatives from China, along with U.S. diplomats, met as planned with delegates from North and South Korea in New York beginning on March 5, 1997, to discuss a format for formal peace talks to end the unresolved Korean conflict. U.S., *Two Koreas Meet Again in New York*, AGENCE FR.-PRESSE, April 4, 1997, available in 1997 WL 2090327; Tyler Marshall & Teresa Watanabe, *Albright*

North Korea's nuclear ambition has been the most serious and immediate concern affecting the nonproliferation regime. The most convincing sign that U.S. fears of North Korea's activities were well-founded was present at the Extension Conference itself. North Korea was the only nation besides Iran that refused to join in the extension by consensus, and it actually withdrew from the final sessions of the conference.<sup>189</sup> North Korea had previously given notice of withdrawal from the NPT, though to this date it has not officially been withdrawn.<sup>190</sup>

While on one hand, a North Korea armed with nuclear weapons could pressure the rest of East Asia into negotiating a multilateral security pact, it also could easily lead to the possession of nuclear weapons by Japan, South Korea, and other states in order to counter such a North Korean threat.<sup>191</sup> Once again, the NPT would be imperiled.

China has done very little to dissuade North Korea from obtaining nuclear weapons, and this appears to be a conscious choice. China has a vested interest in preventing North Korean membership in the nuclear club because such membership would lessen China's military advantage and position as a regional power. However, China may be even more interested in maintaining good relations with the country. By maintaining a noncommittal attitude towards North Korean nuclear interests, China can play a mediator between its less cooperative Communist cousin and the rest of the world, thus reaping the fruit of both sides.<sup>192</sup> Also, China simply may feel an obligation to

---

*Sees Economic Hardship Pushing N. Korea Out of Isolation*, L.A. TIMES, Feb. 23, 1997, at A4. At these meetings, which have continued throughout March and April, North Korea has specifically sought for the United States to ease trade sanctions, and for both the United States and South Korea to dramatically increase food aid to North Korea, before it will consider formal four-party expanded peace talks. See Nigel Holloway, *North Korea: Politics of Famine*, FAR-EAST. ECON. REV., May 1, 1997, at 14, available in 1997 WL-FeeR 2010324; *North Korean Rejects Border Talks on Food Aid*, AP, April. 28, 1997, available in 1997 WL 4863930.

189. Atlas, *supra* note 6.

190. See Letter dated 12 March 1993 from the Minister for foreign Affairs of the Democratic People's Republic of Korea addressed to the President of the Security Council, U.N. Doc. S/25405 (1993). On May 11th, the Security Council responded to North Korea's letter of withdrawal with a resolution urging its reconsideration. See S.C. Res. 825 (1993) U.N. Doc. S/RES/825 (1993). North Korea responded to this affirmatively.

191. FAUST & KORNBERG, *supra* note 21, at 162.

192. For example, China has been able to play both sides of the Korean card quite nicely. Currently, South Korea is China's sixth-largest trading partner, with trade between the two countries only likely to increase so that China becomes less dependent on the relationships traditionally muddled with the United States and Japan. At the same time, China hopes to assist North Korea in its economic development and encourage it to follow China's lead towards modernization

not interfere with North Korean desires, as China has a history of cooperation and security commitments to North Korea that the current crisis has not erased.<sup>193</sup>

However, in spite of its past military assistance to and noninterference with Pyongyang, Beijing's own security and economic interests may compel action to deter North Korean efforts. If warfare were to break out between the two Koreas,<sup>194</sup> China would likely be forced to side with the North, which would severely impinge on current trade successes with South Korea, Japan, and the United States.

#### 4. Result: No Progress Towards Nuclear Containment or Disarmament

China itself and the rest of the world are the missing factors in hypothesizing what China's nuclear weapons activities will comprise under the current U.S. "status quo" policy. China has a history of acting in clear disregard of global interests. However, current international pressure to denuclearize is at its peak, and China has increasingly recognized the prudence of yielding to

because of the increased trading benefits such a relationship would provide China. See FAUST & KORNBERG, *supra* note 21, at 161-165. See also Thomas W. Robinson, *Post-Cold War Security in the Asia-Pacific Region*, in *THE CHINESE AND THEIR FUTURE*, *supra* note 127, at 386, 389-90. *Contra* Marshall & Watanabe, *supra* note 188 (quoting Pyan Jin I, a North Korean expert, as saying that "Pyongyang is suspicious of China's 'two-pocket policy' that tries to maintain influence with the North while reaping the rewards of increased economic ties with the South").

193. See FAUST & KORNBERG, *supra* note 21, at 164.

194. Some commentators believe a North Korea with nuclear weapons is inevitable. Robinson, *supra* note 192, at 389-90. *But see* GARDNER, *supra* note 5, at 49 ("The withdrawal of U.S. nuclear weapons from South Korea and the North and South Korea joint declaration making the peninsula a nuclear weapon-free zone appear to have given North Korea the confidence to abandon its nuclear aspirations."). In 1994, the United States and North Korea reached a tentative diplomatic agreement in which North Korea said it would contain its pursuit of a nuclear program in exchange for two "light water" nuclear reactors. Ottoway & Coll, *supra* note 44.

Secretary of State Madeline Albright has urged continued Congressional support for this Agreement stating that "[t]he 1994 Agreed Framework between the United States and North Korea froze that country's dangerous nuclear weapons program" and that "its full implementation would completely dismantle that program." Statement before the Subcomm. on Foreign Operations of the House Appropriations Committee, Cong. Testimony, Feb. 12, 1997 (statement of Sec. of State Madeline Albright) available in 1997 WL 8218900 (pg. unavail. online). Belief in the effectiveness of this agreement should be skeptical, however. See Richard Lloyd Parry, *INDEP.* (London), Feb. 15, 1997, at 17, available in 1997 WL 4478708 (indicating the continued volatility of the agreement). See generally Marshall & Watanabe, *supra* note 188 (noting recent international survey work for the proposed reactor sites).

such pressures.<sup>195</sup> Nonetheless, the United States has been at the forefront of nonproliferation diplomacy since its inception, and China's actions in this area, as with other issues of international concern, will likely depend on U.S. action. This dependence is what makes U.S. policy influential.

#### V. REVERSING CHINA'S CURRENT ROLE AS A PROLIFERATOR

As discussed above,<sup>196</sup> unless a shift in China's nuclear proliferation occurs, the unconditional indefinite extension of the NPT will not maintain the same degree of nuclear containment nor be viewed with the same degree of success as the NPT had during its first twenty-five years of existence.<sup>197</sup> How can the United States and the United Nations avoid such a dilemma? How can the United States foster a rehabilitation of Chinese proliferation and escape the consequences if NWS policies are left status quo? What changes in U.S. policy towards China and towards honoring NPT commitments must be made to contain proliferation and to strengthen the new NPT regime?

##### A. *China Responds to the United States and International Pressure*

Past efforts by the United States and other countries to control China's proliferation activities have had some degree of success. China acceded to the NPT only after France had announced it would accede to the treaty.<sup>198</sup> China's acceptance of MTCR guidelines was actually a *quid pro quo* with the United States to lift the embargo of satellite components and high-speed computers imposed on China because of its transfer of missile parts to Pakistan.<sup>199</sup> Furthermore, the U.S. Congress had threatened to terminate China's most-favored-nation (MFN) status if China failed to comply with the MTCR.<sup>200</sup> Finally, an escalated dialogue with China to reassure it of U.S. cooperation,

---

195. See Kellman, *supra* note 112, at 785.

196. See *supra* part IV.C.

197. While Chinese military activities, such as the reduction of armed forces coupled with both accelerating development of high-technology defense capabilities and increased arms exports in the 1980s, suggest some unified military policy, this Note contends that China's proliferation activities were the result of a failure to control proliferation rather than an overt attempt to foster the development of other aggressor nations. See Kellman, *supra* note 113, at 777-81.

198. This resulted in heavy international pressure placed on China to fulfill its obligation to join as the last non-NPT nuclear weapons state. See *supra*, notes 120-21 and accompanying text.

199. Kellman, *supra* note 113, at 785.

200. *Id.*



commencing with former U.S. Secretary of State Warren Christopher's meeting with China's Foreign Minister Qian Qichen at the ASEAN conference in Brunei on August 1, 1995,<sup>201</sup> led to Chinese willingness to forego sales of nuclear reactors to Iran,<sup>202</sup> implying a possible abandonment of future transfers of nuclear technology to threshold states.

China has shown a limited response towards U.S. efforts in other areas as well, indicating that U.S. attempts to affect Chinese policy can be successful. Criticisms of U.S. efforts to curb Chinese nuclear proliferation stress the lack of consistency or systematic pressure by recent U.S. administrations.<sup>203</sup> The suggestions below, with respect to basic U.S. policies and the cautioning against the use of economic sanctions, present a framework in which the United States can operate to facilitate China's regional and global leadership in advocating and pursuing nonproliferation.

### B. *Linking Economic Sanctions with Nonproliferation Impedes Long-Term Diplomatic Objectives*

Although U.S. threats of imposing economic sanctions against China owing to its proliferation activities have achieved limited success, they ultimately reveal a sense that U.S. nonproliferation policy towards China consists of ad hoc reactions to short-term political anxieties. Instead of demonstrating consistency and sophistication in developing strategic long-term relationships, the United States has sent out mixed signals. The obvious result has been confusion and resentment, rather than success in moving towards the realization of fundamental proliferation goals.

For the United States to positively affect the way China handles its nuclear weapons capabilities requires a twofold

201. *Australia Raps France Over Planned Nuclear Tests*, *supra* note 168.

202. U.S. Dept. of State Dispatch (Oct. 1995), *supra* note 167.

203. See Kellman, *supra* note 112, at 785.

The China problem is directly related to . . . [another] concern, the policy of the United States. Given the long and highly intense involvement of America in Asia, it is astonishing that Washington's . . . post-cold war policy [is one] of relative neglect of Asia. . . . [T]he [American] people also [continue to] demand that the Beijing regime be punished continuously for its transgression[s] and ignore the post-Tiananmen domestic transformation, while the American government discovers a wide range of perfidious Chinese acts in the economic and security realms. And so a crisis there too has emerged, a crisis America deliberately prolongs and worsens.

assessment involving: (1) a determination of what message needs to be conveyed, and (2) an understanding of what actions would be consistent with that message. Many experts believe that any message the United States sends to China must be couched in language that recognizes and respects China's heritage, the importance of sovereignty to its government, and its desire to remain free of constant interference with its internal affairs.<sup>204</sup>

While the United States should not back away from its position on issues that separate the two countries, the whole of Sino-U.S. dialogue cannot continue to dwell on these differences. Instead of threatening China each year, the United States should strive for "quiet diplomacy."<sup>205</sup> This approach would advocate, for example, the use of international organizations to pressure China to improve its human rights situation, rather than using the revocation of MFN status as a diplomatic tool.

Past threats of economic sanctions, such as the removal of MFN status, served two purposes. First, they served as a political rhetorical device that attached U.S. intolerance of Chinese actions to some concrete response. Second, they served as a behavioral modification tool to attempt to mitigate further political anxiety. Its use as a "message" for China has been problematic because of the inconsistencies in what was being conveyed.<sup>206</sup> As a behavioral tool, theorists would find economic sanctions to be a completely illogical consequence to proliferation behavior because the connection between trade issues and nuclear nonproliferation concerns is so attenuated.<sup>207</sup> Consequently, the United States should delink nonproliferation policy from economic concerns such as the annual extension of MFN. This decision, as President Clinton correctly pointed out when addressing the past policy link between human rights and MFN, offers "the best opportunity to lay basis for long-term sustainable progress in [nonproliferation] and for the advancement of our other interests with China."<sup>208</sup>

---

204. See, e.g., FAUST & KORNBERG, *supra* note 21, at 147-52.

205. *Id.* at 151.

206. For example, at the same time that the Clinton Administration officials were threatening to revoke China's MFN status, they were also set to approve one of the largest sales of U.S. military technology and hardware to China. Kevin Fedarko, *Confounded by the Chinese Puzzle*, TIME, April 25, 1994, at 39. Much of this hardware is easily converted to nuclear weapons use. *Id.* For a discussion of similar economic inconsistencies in U.S. President George Bush's administration with respect to China, see FAUST & KORNBERG, *supra* note 21, at 140-42.

207. See, e.g., Jane Nelson, POSITIVE DISCIPLINE 63, 67-68 (1981) (asserting that consequences must be related to behavior to work effectively).

208. FAUST & KORNBERG, *supra* note 21, at 146.

### C. Diplomatic Strategies

#### 1. United States as a Nonproliferation Role Model

##### a. Continue Moratorium on Testing

The United States must continue its moratorium on nuclear testing, which it enacted in 1992.<sup>209</sup> For many countries, this demonstrated a significant change in prior U.S. nuclear policy, and may have played a key role in their decision to consent to the NPT's unconditional indefinite extension. For Tom Graham, the chief U.S. diplomat to the conference for the NPT renewal, the United States and Russian moratorium on testing was an essential tool in negotiating support for the NPT's indefinite extension.<sup>210</sup>

Nevertheless, reports prior to the U.S. signing of the CTBT showed that the Clinton administration was considering resumption of testing.<sup>211</sup> In fact, many Washington insiders urged President Clinton to abandon the goal of the CTBT and to propose an agreement permitting NWS to test indefinitely at levels up to 500 tons of nuclear explosives.<sup>212</sup> Such a bill was presented in the U.S. Congress in 1995, and may still be passed,<sup>213</sup> in clear violation of our newly found commitment under the CTBT.<sup>214</sup>

The resumption of any kind of nuclear testing by the United States, as Senator John Glenn stated, "would . . . be seen as a fraud by" all of the nations that renewed the NPT.<sup>215</sup> China's

209. For a discussion of how the moratorium was considered an effective bargaining tool to encourage countries to support NPT treaty extension, see Ottoway & Coll, *supra* note 44. See also August, *infra* note 211 (arguing that no country will take a U.S. nonproliferation message seriously if it resumes testing after the Extension Conference).

210. See Ottoway & Coll, *supra* note 44.

211. Mark August, *Nuclear Club Risks Expansion with New Tastes*, TAMPA TRIB., July 10, 1995, at 4.

212. Paul C. Warnke, *Fifty Years after Trinity, We still Need a Test Ban*, BALT. SUN, July 28, 1995, at A15.

213. Glenn, *supra* note 35.

214. See CTBT, *supra* note 10, art. 1, at 7.

215. *Id.* The United States has considered hiding behind Article V of the NPT, which allows NWS to conduct "peaceful . . . nuclear explosions" (PNEs). NPT, *supra* note 1, art V, 21 U.S.T. at 490, 729 U.N.T.S. at 173. China continues to call its nuclear testing nothing more than the exercise of that right. *Id.* However, review conferences of the NPT have dispensed with the reaffirmation of Article V,

view of a United States that abides by a double standard would be justified. Any hope of China taking a leadership role in effectuating global nonproliferation can occur only if the United States by its own actions signals a clear mandate for achieving the goals of the NPT regime. For a U.S. administration to denounce China's nuclear testing<sup>216</sup> the same year it considers a resumption of its own testing undermines any credibility the United States has in calling for China to comply with the NPT, MTCR, or CTBT.

b. Ratify the CTBT and Work Alongside China to Encourage India's Signature

A CTBT is the only arms-control device named in the preamble of the NPT.<sup>217</sup> During key stages of negotiations of the NPT, many pivotal countries unambiguously asserted that a CTBT was the single "effective measure" that Article VI would mandate.<sup>218</sup> Although the United States persuaded countries to omit from the NPT any explicit reference to a CTBT in Article VI, it has continued to be considered the essential first step in fulfilling that provision.<sup>219</sup>

The five NWS, nevertheless, evaded conclusion of a CTBT for almost three decades. Consequently, as part of the principles and objectives pronounced collaterally with the NPT's indefinite extension at the Renewal Conference, the five pledged to work towards having a CTBT concluded by September of 1996.<sup>220</sup> After the Extension Conference, however, serious doubts were raised about the likelihood of successful CTBT negotiations this

---

which has been disdained owing to the opportunity for abuse the Article creates. Technological reasons remain for keeping the provision in the NPT. Nevertheless, the blatant misuse of Article V by China and the potential for misuse by the United States and other NWS make a good case for its deletion. See FISCHER, *supra* note 32, at 137-41 (describing the technology that supports the reason Article V exists); *id.* at 205-06 (discussing its potential for deletion).

216. For example, U.S. State Department spokesman Nicholas Burns denounced China's testing, finding it "particularly disappointing that China has not joined the testing moratorium." Mufson, *supra* note 20, at A13.

217. See NPT, *supra* note 1, at preamble, 21 U.T.S. at 485, 729 U.N.T.S. at 171.

218. See David A. Koplow, *Bonehead Non-Proliferation*, 17 FLETCHER F. WORLD AFF. 145, 150 (1993). According to Article VI of the NPT, "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." NPT, *supra*, note 1, 21 U.T.S. at 490, 729 U.N.T.S. at 173.

219. Koplow, *supra* note 218, at 150-51; FISCHER, *supra* note 32, at 144.

220. Atlas, *supra* note 6. The NWS also agreed in principle to the rapid negotiation of a treaty for the cessation of fissile material. *Id.*

year<sup>221</sup> because no NWS was willing to vote for the adoption of a U.N. resolution urging the "cessation of all nuclear testing."<sup>222</sup> Subsequent unanimity by the five NWS in support of the recently concluded CTBT was thus an incredible achievement.

The United States must now take further steps to see the CTBT enter into force. Ratification in the U.S. Senate is the necessary first step in encouraging China to consider honoring a test ban, because it demonstrates U.S. commitment to move nuclear weapons policy in the direction of diplomacy and international jurisprudence and away from purely self-serving military interests. Furthermore, the CTBT benefits the United States for practical reasons because it freezes current nuclear weapons development at a place where the United States is left with a decided advantage. By potentially pinching off the development of "third generation" nuclear devices,<sup>223</sup> the CTBT could lead to widespread nuclear disarmament talks and thus begin the process of effectively fulfilling the purpose of Article VI.

## 2. Other Unilateral Nonproliferation Measures

Following is a list of other unilateral measures:

- (1) Reduce arms sales and dual system technology sales;
- (2) Ratify the Strategic Arms Reduction Talks (START II).

Neither the former Soviet Union nor the United States has ratified the most recent START II. The former Soviet Union's main concern with START II is that the forced limitations on various types of weapons conform closely to the structure of U.S. strategic forces, but would compel a fundamental restructuring and modernization of the former Soviet Union's strategic forces, or an abandonment of strategic parity—none of which the former Soviet Union finds acceptable.<sup>224</sup> The United States can assist this process by agreeing to aid the former Soviet Union in its weapons restructuring, or by unilaterally disarming below the roughly 3,000 warhead level (imposed by START II) in a way that would not otherwise upset the U.S. nuclear triad of bomber,

221. *UN. adopts Resolution against Nuclear Testing*, JAPAN POLICY & POLITICS, Nov. 20, 1995, available in 1995 WL 11605301.

222. See G.A. Res. 50/65, U.N. GAOR, 50th Sess., Agenda Item 65, at 2, U.N. Doc. A/RES/50/65 (1995) (calling on the Conference on Disarmament to conclude that CTBT so as to enable its signature by the outset of the 51st Session of the General Assembly). This was not the first consensus resolution in support of a CTBT adopted by the U.N. General Assembly. See also G.A. Res. 48/70, U.N. GAOR, 48th Sess., Agenda Item 66, U.N. Doc. A/RES/48/70 (1993); G.A. Res. 49/70, U.N. GAOR, 49th Sess., Agenda Item 57, U.N. Doc. A/RES/49/70 (1994).

223. Koplou, *supra* note 218, at 156.

224. Daalder, *supra* note 16.

submarine, and missile warheads.<sup>225</sup> If the United States were to ratify the treaty with the former Soviet Union following suit, China has further disincentive to employ its previous rationale for an arms buildup;<sup>226</sup> and,

(3) Pursue conventional weapons alternatives to recent development of "micro" and "mini" nuclear systems.<sup>227</sup>

### 3. Quiet Diplomacy: Bring China Further into the Global Community

The United States needs to develop diplomatic instruments that are anti-isolationist rather than to employ harmful tension-creating political and economic weapons such as MFN status revocation. Conflict over nonproliferation and other volatile international issues should move into multilateral arenas such as the United Nations, where the accumulated weight of world opinion can have its effect. Present Sino-U.S. dialogue should involve a set of credible reciprocating moves that are clear and understood by both sides. Open dialogue and an emphasis on cooperation between the two countries must reach unprecedented levels for the United States to find success in its foreign policy with China.<sup>228</sup> Moreover, Sino-U.S. dialogue is necessary if the United States also hopes to improve its relations

---

225. *Id.*

226. Before the former Soviet Union and the United States agreed in principle to START II, Beijing claimed it would reduce its nuclear arsenal if Moscow and Washington agreed to destroy half of their nuclear arsenals. While ratification alone is not likely to trigger China to follow through on its promise, it does force China to consider the plausibility of reducing its own stockpiles. See FAUST & KORNBERG, *supra* note 21, at 217.

227. Such nuclear weapons are designed to destroy strategic locations without the fallout or the power of the bombs detonated in Hiroshima or Nagasaki. The Pentagon believes that "mini nukes" serve as a useful deterrent against Third World troublemakers interested in pursuing regional conflicts, as the United States could assert a greater justification in deploying such weapons successfully without the horrible toll on human life larger nuclear weapons create. Such a rationale is deadly and unnecessary: Deadly because no one can be sure what practical ramifications would be presented under a limited use of such weapons, and unnecessary because, as evidenced by the Gulf War, strategic use of conventional weapons would be an adequate deterrence against such countries (for instance, U.S. forces are already adequately superior to provide a deterrent effect and can be further enhanced along strictly conventional lines). To pursue development of "mini" and "micro" nuclear weapons would only confirm China's impression of an underlying U.S. motive to achieve a sort of world control, and would encourage proliferation by threshold states and China as a response to "our" seemingly lackadaisical attitude towards nonproliferation. The result would be a complete undermining of the renewed NPT regime. See Warnke, *supra* note 212.

228. The recent death of Premier Deng Xiaoping makes increased dialogue more necessary than ever. See generally McGeary, *supra* note 23, at 50-56.

and negotiating positions with such troublesome areas as North Korea, Pakistan, and Iran. Specific elements of such dialogue might include:

(1) A show of basic respect for China's desire for noninterference with its internal affairs;<sup>229</sup>

(2) Support for China's accession to the General Agreement on Tariffs and Trade (GATT)<sup>230</sup> and the World Trade Organization (WTO);<sup>231</sup>

(3) A presidential visit to China;<sup>232</sup>

(4) Encouragement of China's taking a leadership role in structuring cooperative security agreements with its Asian neighbors;

(5) Encouragement of China's enacting a formal nonproliferation implementation law policy similar to our own Nuclear Non-Proliferation Act (NNPA) of 1978;<sup>233</sup> and,

229. Such respect must, of course, be tempered by international obligations that nonetheless challenge China's sovereign powers: for example, basic human rights obligations that China has asserted to be "internal," but which fall clearly under the ambit of public international law.

Still, the United States must continue to respect and acknowledge systemic by-products of China's method of governmental organization.

230. *General Agreement on Tariffs and Trade*, Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187. China officially applied to rejoin GATT in 1986, citing the desire for enhanced international stature that GATT provides. Donald C. Clarke, *GATT Membership for China?*, 17 U. PUGET SOUND L. REV. 517, 517 (1994). See generally Ya Qin, *China and GATT: Accession Instead of Resumption*, 27 J. WORLD TRADE 77 (April 1993).

231. See Final Act Embodying the Results of the Uruguay Round of the Multilateral Negotiations, Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, Morocco, Apr. 15, 1994), in RESULTS OF THE URUGUAY ROUND 6-19 (GATT Secretariat ed., 1994). China has submitted an application to enter the WTO with negotiations currently undertaken to determine a timetable for China's possible entry. Arthur Dunkel, a chief spokesman of the International Chamber of Commerce believes, along with other international trade officials, that China's entry in the WTO is necessary, and that prospects for such entry are "very good." *China: Trade Officials Optimistic About China's WTO Bid*, BEIJING REVIEW, April 28, 1997, available in 1997 WL 10062842.

232. Significantly, President Clinton announced in his State of the Union address that he would go to China in 1997. See *Clinton Calls for Policy of Engagement with China*, AFX News, Feb. 5, 1997, available in WESTLAW, Afx Database. China's President Jiang Zemin has also stated its intent to visit the United States within the next two years. Terence Hunt, *Clinton, Chinese President to Exchange Visits*, AP, Nov. 24, 1996, available in 1996 WL 4451055.

233. 22 U.S.C. §§ 3201-82 (1994 & 1997 Supp.). The NNPA details the United States initiatives to provide adequate nuclear fuel supply and assist developing countries while also strengthening systems of international safeguards and controls. See § 3201-02 (indicating Congress' explicit declaration of policy and statement of purpose). Similar legislation by China's National Congress would give unambiguous international notice regarding both broad goals and detailed objectives of its non-proliferation policy.

(6) Negotiation of a multilateral arms reduction talk that involves all five NWS.<sup>234</sup>

## VI. CONCLUSION

China's government and people struggle to balance the tension between the politics of Mao Zedong and the market reforms of Deng Xiaoping, and between a sovereign Middle Kingdom (that alone can possess a mandate from heaven) and a developing global village that requires international cooperation rather than nationalist isolationism. In this context, China must recognize its role in facilitating nuclear proliferation and its responsibility under the NPT to move itself and others towards nonproliferation and eventual disarmament. The weaknesses inherent in the structure of a renewed NPT (i.e., the lack of timelines to force NWS disarmament, the lack of provisions for renegotiation, and the noncompliance of some non-NPT states), must not keep China from acting affirmatively in honoring its own commitments. For the NPT to remain a successful deterrent in blocking nuclear warfare, China will have to agree to work alongside other NWS to achieve a total ban on nuclear testing and to negotiate other collateral treaties. As a regional leader, China's cooperation is also needed to maintain peace in Asia. Positive U.S. engagement in China's future through respect, cooperation, and an unprecedented commitment towards open dialogue is necessary if China is expected to achieve such goals.

Madeleine Albright's recent visit to China, coinciding with the death of Deng Xiaoping, resulted in a tremendous opportunity for the United States to strengthen its commitment to the emerging conservative leadership in China. Secretary of State Albright was able to capitalize on this timing by honoring Premier Deng and promoting the two countries' common interests without abandoning unsettled differences.<sup>235</sup> If Secretary of State

---

234. An arms reduction conference involving the United Kingdom, Russia, France, China, and the United States would be unprecedented. Such a conference reinforces and expands commitments Russia and the United States have made under START II and is a logical next step for NWS fulfillment of the NPT goal of eventual disarmament. See NPT, *supra* note 1, at preamble, 21 U.T.S. at 484-86, 729 U.N.T.S. at 169-71. Furthermore, such a conference may be necessary before India would agree to sign the CTBT. See *India Wants Talks to Eradicate Nuclear Weapons*, AGENCE FR.-PRESSE, Jan. 23, 1997, available in 1997 WL 2045960 (reporting Indian External Affairs Minister Inder Kumar Gujral's stated desire for an international meeting aimed at *inter alia* the "time-bound elimination" of nuclear weapons); cf. Karp & Holloway, *supra* note 105.

235. See Michael Dobb, *Albright Takes Balancing Act to Beijing*, WASH. POST, FEB. 25, 1997, at A12 (noting Albright's resolve to press human rights and



Albright's rhetoric and President Clinton's recent overtures of strengthening Sino-U.S. ties are indicative of a U.S. policy shift during the final years of this century, then the United States has taken significant steps in helping China realize the importance of China's own commitment to the NPT regime.

*Gary J. Meise*

---

proliferation concerns while attempting "not to offend her Chinese hosts"). See generally Lee Siew Hua, et al., *Thumbs Up for U.S.-Asia Ties*, STRAITS TIMES (Singapore), Mar. 16, 1997 available in 1997 WL 7207537 (heralding Albright's successes on her February tour of China and other Asian states).