Security Council Resolution 1887 and the Quest for Nuclear Disarmament

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In today's war waged on world order by terrorists, nuclear weapons are the ultimate means of mass devastation. And non-state terrorist groups with nuclear weapons are conceptually outside the bounds of a deterrent strategy and present difficult new security challenges.

—George P. Shultz, William J. Perry, Henry A. Kissinger, and Sam Nunn

"A country, which possesses the biggest nuclear arsenal, embarks on proliferation of nuclear weapons in defiance of the safeguards [of the Nuclear Non-Proliferation Treaty or NPT] and threatens to use them against others, is not competent to comment on peaceful use of nuclear know-how by other states."

—Mahmoud Ahmadinejad

Any man who has at least once in his career dealt with arms . . . at least to hunt or a rifle or whatever, he knows that it's much better, much safer to have it in stock disarmed, disassembled perhaps, rather than to have it in your arms and charged with bullets in it and with your finger on the trigger at the same time.

—Vladimir Putin

INTRODUCTION

Nuclear weapons pose an increased international threat to security in the modern era. Cheap transportation and the opening of national borders for trade have made it easy for nuclear materials to cross national boundaries. Informal networks have sprouted up, facilitating the proliferation and exchange of nuclear materials and the technology required to turn those materials into weapons. Advances in technology have made it easier to enrich

3. The President’s News Conference with President Vladimir V. Putin of Russia in Moscow, 38 WKLY. COMPILATION PRESIDENTIAL DOCUMENTS 887, 889–90 (2002).
5. For example, the Abdul Qadeer (A.Q.) Khan informal network, which was integral in facilitating the acquisition of nuclear weapons by Pakistan and North Korea, may have assisted Iran, Iraq, Libya, and Syria in their efforts to acquire nuclear weapons. See MICHAEL LAUPER, CARNEGIE ENDOWMENT FOR INT’L PEACE, A.Q. KHAN NUCLEAR CHRONOLOGY (8 Proliferation Brief, 2005), available at http://carnegieendowment.org/2005/09/07/a-q-khan-nuclear-chronology/6jq; William Langewiesche, The Wrath of Khan, ATLANTIC MONTHLY, Nov.
uranium, instilling concerns of increased nuclear weapons proliferation. If these fears are realized, the probability of a purposeful attack or even an accidental nuclear explosion increases significantly. A nuclear attack or explosion would have drastic international repercussions both physically and politically. A nuclear exchange between two states would lead to the deaths of thousands of civilians. Moreover, the environmental fallout would be catastrophic. With these enhanced threats to security, the world needs a strong international regulatory regime to curb nuclear proliferation and promote nuclear disarmament. Unfortunately, the international community has not developed a regulatory regime capable of handling modern nuclear threats. The several bodies of international law that do currently regulate nuclear weapons oscillate between promoting the goals of nonproliferation and disarmament. The


8. See Gloag, supra note 7, at 1546.


Nuclear Non-Proliferation Treaty (NPT) is the centerpiece of the international regulatory regime and focuses heavily on nonproliferation, but also purports to work towards the nonbinding goal of disarmament.\textsuperscript{12} The NPT, however, has failed to prevent the spread of nuclear weapons and has not adequately promoted disarmament.\textsuperscript{13} The treaty was adopted during the Cold War and addresses Cold War fears of proliferation by states outside the United States’ and Soviet Union’s nuclear umbrellas.\textsuperscript{14} It codifies a nuclear monopoly that has lost legitimacy over time, does not address current regional hotspots, and is silent about the threat of terrorism.\textsuperscript{15}

The United Nations Security Council has passed several resolutions responding to direct nuclear threats from specific actors but has never attempted to provide a framework for the global regulation of nuclear weapons.\textsuperscript{16} Security Council Resolution 1887 on nuclear nonproliferation and nuclear disarmament represents a potential shift in emphasis for the regulation of nuclear weapons in the post–Cold War era. Unlike the NPT, this resolution emphasizes disarmament as its primary mission, though it also continues to reaffirm the principle of nonproliferation.\textsuperscript{17} The Security Council’s unanimous adoption of Resolution 1887 indicates a willingness by international leaders to fully eliminate global nuclear stockpiles. It also recognizes that disarmament will limit regional proliferation fears and diminish the threat from terrorists.\textsuperscript{18} Resolution 1887, however, has several problems. It tries to salvage the framework of the NPT\textsuperscript{19} when it could have served better.

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\textsuperscript{13} See infra Part II.


\textsuperscript{15} See infra Part II.


\textsuperscript{18} \textsuperscript{Id.} ¶ 24.

\textsuperscript{19} See ORG. FOR ECON. CO-OPERATION & DEV., INTERNATIONAL NUCLEAR LAW: HISTORY, EVOLUTION AND OUTLOOK 100 (2010), available at http://www.oecd-nea.org/law/isnl/10th/insl-10th-anniversary.pdf ("The primary impetus for the resolution was the obvious need for the Council to support efforts to preserve the existing nuclear non-proliferation regime, as represented by the NPT."); WILLIAM C. POTTER, INSTITUT FRANÇAIS DES RELATIONS INTERNATIONALES [IFRI] SEC. STUD. CTR., IN SEARCH OF THE NUCLEAR
Security Council Resolution 1887

This Note analyzes the successes and shortcomings of Resolution 1887. Part I lays out the security threat posed by the presence of nuclear weapons and nuclear proliferation. Part II analyzes the shortcomings of present international efforts to regulate nuclear weapons and demonstrates that a new approach to dealing with nuclear materials is necessary. Part III highlights the benefits of an international regulatory regime focused on disarmament and also demonstrates how Resolution 1887 falls short of an ideal regime. Finally, Part IV concludes by outlining several additions that would strengthen Resolution 1887's ability to curb nuclear proliferation and achieve disarmament.

I. A SECURITY ANALYSIS OF NUCLEAR WEAPONS—
THE THREAT OF ARMAGEDDON

Disarmament and nonproliferation are admirable and necessary goals of an international nuclear regulatory regime. Some scholars, usually those aligned with the neorealist school of international relations thought, argue that nuclear weapons enhance global security by deterring armed conflict. This Part disputes this contention and shows that the presence of nuclear weapons poses a significant danger to global security. Currently, the primary fear associated with nuclear weapons is the possibility that terrorists will

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Taboo: Past, Present, and Future 21 n.41 (Proliferation Papers No. 31, 2010), available at http://www.ifri.org/?page=contribution-detail&id=5798&id_provenance=97 (“[T]he U.S. brokered Security Council Resolution 1887 was criticized by a number of Non-Aligned Member states for its alleged imbalance between nonproliferation and disarmament. In fact, however, the disarmament language in the initial U.S. draft resolution was diluted mainly due to the insistence of France.”).

20. See infra Part IV.

21. Id.

either build or steal a nuclear device and detonate it in a major city. This fear, however, is not the only one. Nuclear weapons can also be accidentally launched or used deliberately in a confrontation between states.

A. Nuclear Weapons Do Not Increase Global Security

One critique of eliminating nuclear weapons altogether is that doing so would lead to more war. This argument is championed by Kenneth Waltz, the pioneer of the neorealist school of thought, who argues that nuclear weapons deter states from going to war with one another. Waltz argues that nuclear weapons differ from conventional weapons because they allow a state not only to defend against a potential attack, but also to severely punish an attacking state. The threat of punishment from a nuclear strike changes a state's calculation for going to war with other nuclear-armed states. In a world with conventional weapons, states merely consider winning or losing battles. In a nuclear world, a state is concerned with the broader concepts of either survival or annihilation. By providing the predictability of mutu-
ally assured destruction, nuclear weapons limit the potential of a state declaring war or striking first—as they may have done in a conventional-weapons world—to obtain a strategic advantage. Moreover, nuclear weapons allow states to mitigate conventional disadvantages by deterring potential attackers with a nuclear retaliation.

Waltz also argues that the presence of nuclear weapons should not increase the frequency of war even in the hands of “minor” nuclear states. He contends that the presence of nuclear weapons should induce caution among all states, thus reducing the likelihood of war. Moreover, even if a war were to take place, nuclear weapons would limit the duration and intensity of those wars for two reasons. First, nuclear weapons would limit wars because a “country having them may retaliate if its vital interests are threatened.” Second, Waltz argues that a “few judiciously delivered warheads are likely to produce sobriety in the leaders of all of the countries involved and bring rapid de-escalation.” The presence of nuclear weapons, then, even in the hands of smaller powers, would help deter conflicts between states.

Waltz’s theory, though, is susceptible to several criticisms. Waltz discounts both the cost and difficulty of safely maintaining a nuclear weapons stockpile. Domestic military installations housing nuclear weapons require high levels of security and unique precautions, which come at a high cost.


See sources cited supra note 22.

SAGAN & WALTZ, supra note 25, at 33; see also Carol Brophy, The Forgotten Factor: Environmental Implications of Military Activity, 6 ADEPHI A. J. 63, 67 (1990) (describing how third-world countries “view military activity as a necessary tool” for their survival and display a “willingness to deploy any weapon system available”).

SAGAN & WALTZ, supra note 25, at 36; see also Saira Khan, IRAN AND NUCLEAR WEAPONS: PROTRACTED CONFLICT AND PROLIFERATION 28 (2010) (describing Waltz’s theory).

Id. at 37; see also Sagan et al., supra note 23, at 137 (arguing that without nuclear weapons, there is no way to deter actions of an acting party).

Id. supra note 23, at 139. Scott Sagan criticizes Waltz’s theory by highlighting three problems when a state first gets nuclear weapons: 1) increase in aggressive acts; 2) terrorist theft; and 3) loose controls and sales to terrorists.

Moreover, maintaining nuclear weapons and securing them requires a highly complex international system. An inability to properly maintain the organization of this system coupled with deficiencies ordinarily found within any functioning system leads to two potential problems. The first is that a failure in the system could lead to an accidental nuclear launch. The second, and more publicized, fear is that the nuclear technology or weapons themselves could get into the hands of a rogue state or terrorist organization. With more weapons in the hands of more states—some of them less developed than the United States and former Soviet Union—the opportunities for weapons to be stolen by, or sold to, rogue states or terrorist organizations increase. Already, lax security in the states of the former Soviet Union and Pakistan has raised these types of fears. While rogue states could be deterred according to Waltz’s theory, it is unlikely that the logic behind deterrence comes into play with regard to terrorist organizations. Terrorists, such as Al Qaeda, have shown that they place little value on human life, or even their own lives, when engaging armed states. Additionally, terrorist groups are loosely organized and cannot be easily targeted with a deterrent strike. Moreover, terrorists are rarely affiliated with a particular nation-state and thus have less to lose if they do in fact provoke a nuclear confrontation between states.


38. Nanda, supra note 22, at 331, 334.

39. See infra Part I.B.

40. See Allison, supra note 23, at 66 (describing the high frequency of recent attempts to steal a nuclear weapon and the enormity of the security problem).


42. See sources cited supra note 23.

43. Thomas L. Hemingway, In Defense of Military Commissions, 35 U. MEM. L. REV. 2, 5 (2004) (“Many are fanatics who believe that their greatest power is in their disregard for human life.”).

44. ERSEL AYDINLI & JAMES N. ROSENAU, GLOBALIZATION, SECURITY, AND THE NATION-STATE: PARADOXES IN TRANSITION 55 (2005) (discussing the difficulty of launching a successful offensive strike against a terrorist organization); see also Charles A. Horner, Policy Considerations in Using Nuclear Weapons, 8 DUKE J. COMP. & INT’L L. 15, 21 (1998) (“I do not believe in any deterrent effect of nuclear weapons because nuclear weapons are best used against cities where civilian casualties would be high.”).

45. Anne-Marie Lizin, Guantánamo: What Safeguards for the Fight Against Terrorism, 18 HELSINKI MONITOR 101, 102 (2007) (“Terrorist organizations act from the territory of sovereign states ... [I]t is impossible to dissuade these entities from acting since they have nothing to lose and conceal the origin of their attacks.”); see also Emanuel Gross, The Struggle of a Democracy Against the Terror of Suicide Bombers: Ideological and Legal Aspects, 22
Another concern that Waltz discounts is that states possessing nuclear weapons could use them in an armed confrontation. This fear largely stems from organizational tendencies within states, especially in the military. Military officials tend to believe that war is inevitable and "display strong biases in favor of offensive doctrines and decisive operations." Military officers are more likely to advocate the use of nuclear weapons, especially in the case of preventive war. For example, during the Cold War, "preventive nuclear attacks were clearly imagined, actively planned, and vigorously advocated by senior U.S. military leaders well beyond the initial development and deployment of nuclear weapons by the USSR." Current fears that Israel is planning a preventive attack against Iran suggest that the fear of a preventive nuclear strike has survived the Cold War. Moreover, a military official in the highest positions of power in a nuclear weapons state, such as Kim Jong Un, may be more inclined to authorize offensive nuclear war.

The second major criticism of Waltz's theory is that nuclear weapons have not been as successful in deterring general warfare as he claims. The presence of nuclear weapons in South Asia, for example, has arguably created more instability in India-Pakistan relations. Possession of nuclear

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46. Graham Allison & Philip Zelikow, Essence of Decision 361–62 (2d ed. 1999) (describing how the Soviets' fear that Castro would utilize nuclear weapons during the Cuban Missile Crisis was one of the major reasons for pulling weapons out of Cuba during the Missile Crisis).

47. Sagan & Waltz, supra note 25, at 55.

48. Id. at 56 ("During both the Truman and Eisenhower administrations, senior U.S. military officers seriously advocated preventive-war options and, in both cases, continued favoring such ideas well after civilian leaders ruled against them.").

49. Id. at 60.


weapons has consistently promoted aggressive behavior by Pakistan toward India. Although the presence of these weapons has shielded Pakistan from an all-out conventional (or nuclear) response by India to this aggressive behavior, India has countered with aggressive tactics of its own, leading to outcomes ranging from limited war to military mobilization. The most pronounced of these interactions occurred in 1999 during the Kargil Incident when Pakistani forces, disguised as local militants, crossed the Line of Control dividing India from Pakistani Kashmir. India responded with a “spirited air and ground offensive to oust the intruders.” The result was fighting at close quarters that led to over 1,000 military casualties. Nuclear weapons allowed Pakistan to launch such an incursion, despite India’s possession of nuclear weapons, because the Pakistani government knew full well that its nuclear capability discouraged a full-scale Indian retaliation. Rather than having a deterrent effect, the presence of nuclear weapons in India and Pakistan’s dispute over Kashmir has enabled Pakistan to take a more aggressive and offensive posture. This result directly contradicts the type of state behavior predicted by Waltz. Ultimately, this example suggests that in some cases, nuclear weapons may enable and encourage offensive behavior rather than prevent it altogether.

Beyond its effects on armed conflict, the existence of nuclear weapons carries several other risks to global security. Inherent in a state possessing nuclear weapons is the risk of an accidental launch or nuclear technology reaching a rogue state or terrorist organization. Nuclear weapons are not
effective in deterring the actions of terrorist groups, who have no territory to defend and are not accountable to any constituency for their actions. Ultimately, whatever deterrence value nuclear weapons possess is not enough to justify opposition to the goal of complete disarmament. The next Section further outlines the risks of nuclear weapons.

B. Nuclear Weapons Pose a Unique and Devastating Threat to Global Security

The last time a nuclear weapon was deliberately used in an attack was over sixty years ago. Yet many countries still consider weapons of mass destruction to be their top national security threat. Beyond traditional military uses, there are several methods by which a nuclear weapon could pose a serious international security risk.

1. The Risk of a Terrorist Attack or Dirty Bomb

Governments and international agencies have acknowledged that nuclear weapons pose a threat to global peace and prosperity. The National (arguing that nuclear terrorism is emerging as one of the foremost threats to Western security); David Krieger, What Happens If...? Terrorists, Revolutionaries, and Nuclear Weapons, 430 ANNALS AM. ACAD. POL. & SOC. SCI. 44, 47 (1977) (describing how a state could be tempted to sell a nuclear weapon to a terrorist group).

60. Rebecca Johnson, Politics and Protection: Why the 2005 NPT Review Conference Failed, DISARMAMENT DIPLO., Autumn 2005, available at http://www.acronym.org.uk/dd/dd80/80npt.htm (“The logic of nuclear deterrence, such as it was in the cold war, is worse than irrelevant when faced with extreme ideologues.”).


62. See Nanda, supra note 22, at 337 (describing how the call for disarmament came immediately after the bombs were dropped on Nagasaki and Hiroshima).

Security Strategy of the United States recognizes that "[t]errorists are determined to buy, build, or steal a nuclear weapon." China’s 2010 White Paper on national defense has an entire section dedicated to nuclear arms control. The U.N. Security Council discusses the threats associated with terrorists acquiring nuclear weapons in Resolution 1540 (on the nonproliferation of weapons of mass destruction) and reiterates its concerns in Resolution 1887.

Nonstate actors pose a different threat than state actors with respect to nuclear weapons. State actors are primarily concerned with their own preservation, while some nonstate actors have ulterior motivations and may not be as easy to deter with threats of destruction. Suicide attacks, such as the one orchestrated on September 11, 2001, suggest that some terrorist organizations are willing to sacrifice lives in order to accomplish their objectives. As a result, traditional deterrents against state action, such as threats of economic sanctions or even military strikes, are rendered obsolete against terrorist groups. Since some terrorist groups have already used biological weapons against individuals, it would not be surprising for a terrorist group to use a nuclear weapon if it could gain access to one.

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64. National Security Strategy, supra note 63, at 23.
66. S.C. Res. 1540, pmbl., U.N. Doc. S/RES/1540 (Apr. 28, 2004); S.C. Res. 1887, supra note 17, pmbl. ("Gravely concerned about the threat of nuclear terrorism, and recognizing the need for all States to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists . . . ").
68. Jonas & Swift, supra note 59, at 338; see W. Raymond Duncan et al., World Politics in the 21st Century 92 (2009) ("The other non-state actors are different. Drug and terrorist groups have their own violent agendas and operate in a shadowy world that is difficult for states to penetrate but whose actions serve to expose the state’s vulnerable underside.").
69. Martha Crenshaw, The Psychology of Terrorism: An Agenda for the 21st Century, 21 Pol. Psychol. 405, 411 (2000) ("Thus the ‘new’ terrorists seek to cause high numbers of casualties and are willing to commit suicide or use weapons of mass destruction in order to do so.").
70. See Record, supra note 28, at 3; David Cole, Less Safe, Less Free: A Progress Report on the War on Terror, 8 J. Inst. Just & Int’l Stud. 1, 1 (2008) (describing the Bush administration policy regarding terrorist actions, which was focused on prevention, not deterrence); Amitai Etzioni, Terrorists: A Distinct Species, 23 Terrorism & Pol. Violence 1, 5 (2011) (describing why terrorists have to be treated differently than common criminals).
71. Chesney, supra note 37, at 33–34 (describing the sarin nerve gas attacks of the Aum Shinrikyo religious cult on Matsumoto City and Tokyo, Japan).
Although states have institutional safeguards to prevent such a situation, terrorists could exploit any holes or weaknesses in their security systems. Nuclear weapons are expensive to maintain, as they must be constantly monitored to prevent against accident, theft, or attack. Moreover, with vast amounts of weapons and the poor security protecting some of the weapons, the international community has reason to be wary. These weapons are subject to security threats on multiple fronts. Stealing a nuclear weapon is the most likely method by which a terrorist group or rogue state could obtain a nuclear weapon. In Pakistan, however, terrorists have taken a more direct approach and launched direct attacks on nuclear weapon facilities with the intent of causing massive damage.

A terrorist organization or rogue state could also obtain either a nuclear bomb or highly enriched uranium (a key ingredient in making such a bomb) from the black market. Cross border trade for such material does exist, largely because the heightened interdependence of the global economy has led to increased vulnerability. Additional references and sources are included below to provide further context on the threat of nuclear terrorism and the challenges in preventing it.

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opened up trade networks facilitating such exchanges.\textsuperscript{79} The opening up of
borders for greater international trade has "resulted in the progressive commoditization of WMDs."\textsuperscript{80} Therefore, "rogue states and even advanced
terrorist syndicates can now purchase key materials and components à la carte from dispersed, disconnected, and even completely unrelated suppli-
ers."\textsuperscript{81} Much of this material comes from the poorly secured nuclear stockpiles found in the states of the former Soviet Union.\textsuperscript{82} The technical information needed to build a nuclear bomb is also widely available.\textsuperscript{83} The demand gives nuclear insiders an incentive to put nuclear material and infor-
mation on the black market in order to profit.\textsuperscript{84} With the know-how and
materials necessary to build a nuclear bomb available through decentralized,
often clandestine sources, the possibility of a terrorist group building a nu-
clear weapon exists, although it is far less likely to happen than terrorists
simply stealing a weapon from a nuclear weapons state.\textsuperscript{85} Given this very
real threat, the global community would be wise to heed the advice of for-
mer U.S. Secretary of Defense William Perry, who stated that "fewer
weapons of mass destruction in fewer hands makes . . . the world safer."\textsuperscript{86}

If a terrorist group acquires a nuclear weapon, the group could use it to
gain political power, influence international policy, or commit a heinous act
of violence.\textsuperscript{87} Moreover, once a terrorist group has obtained a nuclear weap-
on it will be difficult to prevent the group from detonating it because of the
lack of deterrents discussed above.\textsuperscript{88} Not only would complete disarmament
eliminate the risk of nuclear weapons being stolen by a rogue state or terror-

\begin{footnotes}
\item[79.] See Jonas & Swift, supra note 59, at 341.
\item[80.] Id. at 356.
\item[81.] Id.
\item[82.] Chesney, supra note 37, at 44–45.
\item[83.] Id. at 36.
\item[84.] Id. at 41–45 (arguing that a nuclear black market could be a large threat to national
security); Jagadish, supra note 73, at 235 (highlighting the threat of Pakistani officials selling
a nuclear weapon to terrorists in order to pay off debts); Jonas & Swift, supra note 59, at 358;
Ian Traynor & Ian Cobain, Intelligence Report Claims Nuclear Market Thriving, GUARDIAN,
Jan. 4, 2006, at 6 (describing, in depth, the network of engineering firms, middlemen, stu-
dents, and front companies that are involved in securing nuclear material for Pakistan, Iran,
and Syria).
\item[85.] See Frank Barnaby, The Risk of Nuclear Terrorism, in SECURE ENERGY? CIVIL
NUCLEAR POWER, SECURITY AND CLIMATE CHANGE 24, 25–26 (Frank Barnaby & Jack Kemp
online organize/sites/default/files/secureenergy.pdf (arguing that terrorists would have the capability
to build a nuclear weapon from enriched uranium alone); Boutwell et al., supra note 67, at
3–4 (arguing that terrorists could use highly enriched uranium to create a weapon); Uzi
Mahnaimi & Tom Walker, Al-Qaeda Woos Recruits with Nuclear Bomb Website, SUNDAY
TIMES (London), Nov. 6, 2005, at 25 (describing a manual produced by Al Qaeda that details
methods for making small-scale nuclear weapons).
\item[86.] Chesney, supra note 37, at 33.
\item[87.] Jonas & Swift, supra note 59, at 361.
\item[88.] Chesney, supra note 37, at 35–36 (preventing an attack on the back end is fruitless).
\end{footnotes}
ist group, but it would also limit the opportunities for terrorists to obtain the materials necessary to manufacture a nuclear weapon.89

2. The Dangers of Nuclear Proliferation

Beyond the threat of a terrorist attack, the proliferation of nuclear weapons to other state actors poses additional threats to global security. Since states keep their nuclear programs relatively concealed, it is difficult for the international community to assess the real safety risks associated with proliferation.90 As discussed above, while it seems unlikely that one nation will actively launch an unprovoked nuclear attack upon another state,91 holding nuclear weapons could cause a state to act more aggressively in its relationships with others.92 Past experience also suggests that the possibility of an accidental launch is not necessarily remote.93 Finally, as long as states possess these weapons, there will always be a danger that they will be used deliberately for military purposes.94

Furthermore, proliferation is a self-reinforcing problem: the mere presence of nuclear weapons encourages other states to obtain them, thereby exacerbating the risks discussed in this Section. Frank Charles Barnaby, a Nuclear Issues Consultant to the Oxford Research Group, highlights four

89. Thomas Graham, Jr., Nuclear Nonproliferation and Nuclear Terrorism, 17 TRANS-NAT’L LAW. 89, 94 (2004) (arguing that reducing stockpiles and fissile material is the most effective method for preventing a nuclear attack by terrorists); Alyn Ware, Nuclear Proliferation: Rule of Force or Rule of Law? Legal Responses to Nuclear Threats from Terrorism, Proliferation, and War, 2 SEATTLE J. SOC. JUST. 243, 250 (2003) (stating that “disarmament and international control of fissile materials” is the only solution for disarmament).

90. Sergio Duarte, Nuclear Weapons and the Rule of Law, 33 FORDHAM INT’L L.J. 573, 576 (2010); Jagadish, supra note 73, at 226 (describing Pakistan’s stockpile of weapons and how little is known about it); David E. Sanger & William J. Broad, Iran Says It Will Speed Up Uranium Enrichment, N.Y. TIMES, June 9, 2011, at A14 (describing the uncertainty surrounding Iran’s nuclear program and the accelerated efforts of Iran in seeking nuclear technology).

91. See supra Part I.A (discussing nuclear deterrence). But see Michael J. Matheson, The Opinions of the International Court of Justice on the Threat or Use of Nuclear Weapons, 91 AM. J. INT’L L. 417, 431 (1997) (arguing that unless nations are actually willing to fire, the policy of deterrence makes no sense).

92. See George Jahn, IAEA: Syria Very Likely Hid Nuke Program, ASSOCIATED PRESS, May 24, 2011 (describing a bombing by Israel—a nuclear weapons state—of a Syrian target believed to be a nuclear reactor site).

93. SAGAN & WALTZ, supra note 25, at 75 (stating that there were far more “near-accidents than previously recognized” between the United States and Soviet Union during the Cold War).

reasons why a state might seek nuclear weapons:¹⁵ 1) deterrence, ² 2) prestige, ³ 3) domestic power, ⁴ and 4) the domino effect. Moreover, the asymmetry of power between nuclear-weapons states (NWS) and non-nuclear-weapons states (NNWS) causes insecurity.¹⁰ This makes it more likely that NNWS will eventually seek to obtain nuclear weapons.¹⁰ With more nations in possession of nuclear weapons, it becomes increasingly difficult for international regulation to play an effective role in maintaining security.¹²

95. Frank Barnaby, From Civil Nuclear Means to Military Ends: Iran, a Case Study, in SECURE ENERGY?, supra note 85, at 32, 32.


97. E.g., Weixing Hu, New Delhi's Nuclear Bomb: A Systemic Analysis, 163 WORLD AFF. 28, 28–29 (2000) (describing global status as a major impetus behind India’s quest for nuclear weapons); Jonas & Swift, supra note 59, at 361 (noting that nuclear weapons “produce reputational effects, enhancing the credibility and standing of a terrorist syndicate among potential followers and allies”); Chris Peloso, Crafting an Updated Nuclear Non-Proliferation Treaty: Applying the Lessons Learned from the Success of Similar International Treaties to the Nuclear Arms Problem, 9 SANTA CLARA J. INT’L L. 309, 323 (2011) (“Similarly, North Korea developed nuclear weapons so as to be taken seriously as a country and to serve as a deterrent against perceived American aggression.”); see Amir Azaran, NPT Where Art Thou? The Non-proliferation Treaty and Bargaining: Iran as a Case Study, 6 CHI. J. INT’L L. 415, 421 (2005) (“[S]ome view the NPT not as a global effort to halt the spread of nuclear weapons for the good of humanity, but as a tool of the nuclear ‘haves’ to maintain their monopoly on nuclear weapons.”); Amalendu Misra, India at 50: Democracy, Nationalism and Foreign Policy Choices, 30 ASIAN AFF. 45, 53 (1999) (creating a nuclear weapon is partially for military purposes and partially to gain a level of international status and recognition); Sagan et al., supra note 23, at 137.

98. See, e.g., Misra, supra note 97, at 53 (discussing nuclear tests in India and the Bhatiapya Janata Party’s “conscious effort to associate populism with its foreign and defense policies”); Michael J. Garcia, Note, A Necessary Response: The Lack of Domestic and International Constraints upon a U.S. Nuclear Response to a Terrorist Attack, 1 GEO. J. L. & PUB. POL’Y 515, 552 (2003) (“In the United States, the power to use nuclear weapons belongs to the President and, during times of conflict, Congress is unlikely to limit his discretion because of constitutional and political restraints.”).

99. Ashton B. Carter, New Approaches for Addressing the Threat of WMD Proliferation, FLETCHER F. WORLD AFF. (SPECIAL EDITION), Fall 2006, at 113, 114 (describing the fear, in 1994, that the North Koreans’ acquisition of nuclear weapons would lead to other East Asian nations seeking to acquire weapons as well).


102. See Perkovich et al., supra note 52, at 14; Mark T. Clark, Law upon Order, 40 BRANDEIS L.J. 759, 770 (2001) (“[A]s more states acquire nuclear weapons, there will develop a greater probability of irrational choices in the future.”); Jonas, supra note 11, at 438 (“As
II. The Failures of the NPT Regime—Mutual Distrust

Many scholars have argued that the NPT and the current regulatory regime have done a tremendous job of limiting the proliferation of weapons and working towards disarmament. However, the existing regime was designed with the Cold War in mind. Thus, it fails to properly address the modern threats associated with rogue states and nonstate actors such as terrorist organizations. Attempts to improve the regime through NPT renewal conferences have failed, largely because of lack of trust between NWS and NNWS. Moreover, the commitment to disarmament found in the regime has proven to be a hollow one among the participants. Finally, the regime has failed in perhaps its most important role—enforcement of its provisions. Until there is wholesale reform of the NPT, these same problems will continue to plague this cornerstone of the nuclear weapons regulatory regime. To understand why this is the case, it is necessary to analyze the NPT, specifically its origins and its failures.

more states acquire nuclear weapons, and nuclear weapons proliferate, the risk of nuclear weapon-use increases and NPT relevance decreases.”); W. Michael Reisman, Holding the Center of the Law of Armed Conflict, 100 Am. J. Int’l L. 852, 859 (2006) (“The more states acquire nuclear weapons, the greater the likelihood of still further proliferation and nuclear wars—and nuclear terrorist actions . . . ”).

103. Graham, supra note 89, at 90 (describing how the NPT shifted an act of national pride—creating a nuclear weapon—into an act of international condemnation); David A. Koplow, Parsing Good Faith: Has the United States Violated Article VI of the Nuclear Non-Proliferation Treaty?, 1993 Wis. L. Rev. 301, 311 (1993) (highlighting the successes of the regime).

104. Koplow, supra note 103, at 381; Jonas & Swift, supra note 59, at 340–42; see also Condoleezza Rice, Promoting the National Interest, FOREIGN AFF., Jan./Feb. 2000, at 45, 61 (criticizing the NPT for being wrapped up in an antiquated adversarial relationship between the United States and Russia and explaining that the United States has not ratified the Comprehensive Test Ban Treaty partially because of lack of verifiability); Alastair Crooke, Defend the NPT: The US and Europe Are Trampling over Iran’s Right to Enrich Uranium, PROSPECT Mag., June 2006, available at http://conflictsforum.org/2006/defend-the-npt/ (“We should lift our eyes from this arcane long-term US debate on deterrence—fashioned largely by cold war specialists.”).

105. See Martha Finnemore, Fights About Rules: The Role of Efficacy and Power in Changing Multilateralism, 31 Rev. Int’l L. Stud. 187, 193 (2005) (describing the mutual distrust and resentment between the nuclear “haves” and “have-nots” that plagued the NPT renewal conference of 2005); Johnson, supra note 60 (discussing how “Iran’s intentions to enrich uranium . . . [have] divided the NPT regime between those who want limits to be placed on the nuclear fuel cycle and those who believe the curbs should be placed on ‘states of concern’ instead).


107. Jonas & Swift, supra note 59, at 349–50 (arguing that the major failures of the NPT are its nonbinding nature and its lack of enforcement capabilities).

The NPT was designed as a bulwark against the proliferation of nuclear weapons.\textsuperscript{109} The impetus for the treaty came from countries outside the United States' and Soviet Union's nuclear umbrellas.\textsuperscript{110} Moreover, the United States and the Soviet Union sought to put a "halt" to the nuclear arms race,\textsuperscript{111} specifically to prevent Japan and developed European powers (except France and the United Kingdom) from "feeling the need to build up their own nuclear arsenals."\textsuperscript{112} Proliferation was the subject of "intensive discussion and negotiation in the U.N.-sponsored Eighteen Nation Committee on Disarmament (ENDC)" in 1968.\textsuperscript{113} Eight non-aligned members of the ENDC—Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden, and the United Arab Republic (Egypt)—proposed a resolution calling for a treaty on the non-proliferation of nuclear weapons."\textsuperscript{114} This resolution advanced five principles, including preventing NNWS from developing nuclear weapons and taking steps toward the achievement of a "general and complete ... nuclear disarmament."\textsuperscript{115} While nonproliferation and disarmament were the principal concerns of the nonnuclear states negotiating the treaty, these states also sought increased assistance for peaceful uses of nuclear energy.\textsuperscript{116} This concern, though, was "secondary."\textsuperscript{117} After much debate and compromise, the NPT was formally opened for signature on July 1, 1968, and entered into force on March 5, 1970.\textsuperscript{118} The NPT divides the world into NWS and NNWS and places dueling obligations on both parties. NWS—Russia, the United States, France, the United Kingdom, and China—undertake not to transfer nuclear weapons to NNWS and not to "assist, encourage, or induce" NNWS to develop their own nuclear weapons.\textsuperscript{119} NNWS agree to refuse any such transfers and "not to manufacture or otherwise acquire nuclear weapons or other nuclear ex-

\begin{thebibliography}{119}
\bibitem{109} NPT, supra note 12, pmbl. ("[T]he proliferation of nuclear weapons would seriously enhance the danger of nuclear war . . . .").
\bibitem{110} Epstein & Szasz, supra note 10, at 739–40.
\bibitem{111} Id. at 740; see also David B. Thomson, A Guide to the Nuclear Arms Control Treaties 79–81 (2001).
\bibitem{113} Epstein & Szasz, supra note 10, at 736.
\bibitem{114} Id. at 738–39.
\bibitem{115} Harold Ullman, Strengthening the Nuclear Non-Proliferation Regime: A Draft Convention, 26 Colum. J. Transnat'l L. 167, 170–71 n.17 (1988) (describing the five principles).
\bibitem{116} Epstein & Szasz, supra note 10, at 740–41.
\bibitem{117} Id. at 741.
\bibitem{118} Id. at 736.
\bibitem{119} NPT, supra note 12, art. 1.
\end{thebibliography}
plosive devices.”¹²⁰ The NPT also authorizes the International Atomic Energy Agency (IAEA) to monitor the “flow of all nuclear material in a country.”¹²¹ NNWS are required, within two years of ratifying the NPT, to negotiate a detailed agreement establishing an accounting system for their nuclear material.¹²² Yet no complimentary obligation is placed on NWS.¹²³ The agreement also determines “the process and scope of [IAEA] inspections.”¹²⁴ If NNWS violate the agreement, the IAEA can refer the matter to the U.N. Security Council, which can determine how to proceed.¹²⁵ If a nation is in violation of the NPT, the only action that can be taken is to report the state to the U.N. Security Council.¹²⁶

The “grand bargain” of the NPT is that in exchange for NNWS forgoing their pursuit of nuclear weapons, NWS will move towards disarmament.¹²⁷ The NPT has several provisions aimed at nuclear disarmament. The preamble states that signatories to the NPT “declare[e] their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament.”¹²⁸ Article VI of the treaty states that “[e]ach 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.”¹²⁹ NPT parties hoped that future renegotiations of the

¹²⁰ Id. art. II.
¹²¹ Mozley, supra note 112, at 144.
¹²² Azaran, supra note 97, at 419–20.
¹²³ Priya Pillai, Opening Pandora’s Box: A New Era for Nuclear Weapon Proliferation, in 2 INDIA AND INTERNATIONAL LAW 99, 101–02 (Bimal N. Patel ed., 2008) (describing the divergent obligations of NNWS and NWS and identifying one of the obligations of a NNWS as signing an individual safeguard agreement within two years of ratifying the NPT).
¹²⁵ Azaran, supra note 97, at 419.
¹²⁶ See Sloss, supra note 124, at 890–91.
¹²⁷ Jonathan Marcus, An Old Treaty for a New World?, BBC News (May 2, 2005, 3:35 PM), http://news.bbc.co.uk/2/hi/americas/4504511.stm (“At the heart of the Non-Proliferation Treaty’s success lies a ‘grand bargain’... [A]s part of the ‘grand bargain,’ the five declared nuclear powers undertook eventually to give up their nuclear arms.”); see U.S. President Barack Obama, Remarks on Nuclear Nonproliferation and Disarmament at Hradčany Square, Prague, Czech Republic (Apr. 5, 2009), available at http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered (“The basic bargain is sound: Countries with nuclear weapons will move towards disarmament, countries without nuclear weapons will not acquire them, and all countries can access peaceful nuclear energy.”).
¹²⁸ NPT, supra note 12, pmbl.
¹²⁹ Id. art. VI.
NPT would lead to further developments towards disarmament. Unfortunately, this has not proven to be the case.

Since its inception, the NPT has become the cornerstone of global efforts to confront nuclear proliferation. Therefore, the successes and failures of efforts to curb nuclear proliferation are largely the result of the NPT. One hundred eighty-nine nations have signed on to the treaty. Its near-universal acceptance is considered a major benefit of keeping the treaty. In 1995, the signatories to the treaty approved its indefinite renewal. The NPT, however, has a mixed track record in achieving its dual goals of nonproliferation and disarmament.

**B. An Assessment of the NPT Regime**

The NPT’s goal of nonproliferation has been relatively successful: only four new states have joined the nuclear weapons club. India, Israel, Pakistan, and North Korea are all states that have built nuclear weapons since the treaty’s inception, and all have yet to sign the treaty or have withdrawn from it. As a result of being NNWS in 1970, however, these states cannot rejoin the treaty until, and unless, they have eliminated all their nuclear weapons. The addition of only four new nuclear states to the international nuclear order could be considered a victory. However,
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the NPT is likely not entirely responsible for containing proliferation. The bipolar world order created by the Cold War between the United States and the Soviet Union constrained proliferation because many states fell under the respective U.S. or Soviet nuclear umbrellas, reducing their incentives to pursue domestic production of nuclear weapons. With these arrangements terminating at the end of the Cold War, states had to fend for their own security in the international community, giving them a greater incentive to pursue nuclear weapons. Therefore, as the international order continues to adjust in the post-Cold War era, there will be more pressure upon the NPT and the international nonproliferation regulatory regime.

The NPT has also largely failed in persuading NWS to disarm. The NPT does not by itself require NWS to achieve complete nuclear disarmament; rather, the NPT member states commit to “pursue negotiations in good faith on effective measures” toward the goal of disarmament. Moreover, the text does not obligate any of the parties to even take affirmative steps toward disarmament. The only real movement towards disarmament has occurred largely outside the framework of the NPT. As a result of the bilateral Strategic Arms Reduction Treaties (START), signed outside the NPT framework, Russia and the United States have reduced their weapons stockpiles since the Cold War. Moreover, states have

138. Douglas Hurd et al., Start Worrying and Learn to Ditch the Bomb, TIMES (London), June 30, 2008, at 26 (“During the Cold War nuclear weapons had the perverse effect of making the world a relatively stable place. That is no longer the case.”).
140. Garvey, supra note 108, at 353–54 (discussing the false concept of sovereign equality under the NPT regime); see RECORD, supra note 28, at 6; see also, e.g., Hooman Peimani, Nuclear Proliferation in the Indian Subcontinent: The Self-Exhausting “Superpowers” and Emerging Alliances 7–9 (2000) (describing how following the Cold War, India’s nuclear program was pursued strictly for military objectives, which led to Pakistan pursuing a nuclear weapon in order to “catch up with India”).
141. See Azaran, supra note 97, at 422.
142. See Simpson, supra note 101, at 12–13 (showing that under the NPT, disarmament fell into the shadows of the movement for nonproliferation).
144. See Arsalan M. Suleman, Bargaining in the Shadow of Violence: The NPT, IAEA, and Nuclear Non-Proliferation Negotiations, 26 BERKELEY J. INT’L L. 206, 227 (2008) (“There is, however, no institution or implementation mechanism that is tasked with ensuring that the NPT’s disarmament goal is pursued.”).
taken unilateral action to reduce their nuclear stockpiles without reference to the NPT.\textsuperscript{146}

In addition, the NPT suffers from a host of other problems. States have little incentive to remain in the regime as they face only “limited penalties” for withdrawing.\textsuperscript{147} Article X of the NPT allows a state to exit the NPT on three months’ notice to the other parties when “extraordinary events” jeopardize that state’s “supreme interests.”\textsuperscript{148} The ease of withdrawing from the NPT creates another perverse incentive. Namely, states can reach the “brink” of nuclear capability within the framework of the NPT and then simply withdraw using the Article X exit provision.\textsuperscript{149} North Korea took this course of action in 1993.\textsuperscript{150}

Ultimately, the failures of the NPT can be traced back to the asymmetric structure it codifies.\textsuperscript{151} The “grand bargain” has led to distrust between states, making it difficult for NNWS to take the regime seriously.\textsuperscript{152} NNWS view the NPT as a codification of the nuclear monopoly that NWS have exercised over them.\textsuperscript{153} If the NPT maintains this relationship, NWS have little incentive to disarm and NNWS, realizing this reality, have little incentive to

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\textsuperscript{148} See, e.g., Hewitson, \textit{ supra} note 106, at 433 (discussing the consequences of North Korea’s withdrawal from the treaty in 2003); Jonas & Swift, \textit{ supra} note 59, at 349–50 (“[T]he regime is not universally binding and there are limited penalties for withdrawal.”); Suleman, \textit{ supra} note 144, at 247.

\textsuperscript{149} NPT, \textit{ supra} note 12, art. X(1).


\textsuperscript{151} See Perkovich et al., \textit{ supra} note 52, at 16; Mohamed ElBaradei, \textit{Towards a Safer World}, \textit{Economist}, Oct. 16, 2003, http://www.economist.com/node/2137602 (describing the insecurity that the asymmetry breeds and how the asymmetry was only meant to be temporary as NWS were set to move towards disarmament).


\textsuperscript{153} Epstein & Szasz, \textit{ supra} note 10, at 738 (describing how from the outset the NNWS felt that they were discriminated against); Koplow, \textit{ supra} note 103, at 310, 336 (clarifying that the NPT itself creates an asymmetric relationship).
take the NPT seriously. It is this mutual distrust that limits the effectiveness of the NPT regime.

Resolution 1887 states that, "the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy." But the world cannot move towards disarmament as long as the international regulatory regime continues to rely on the broken bargain of the NPT. The post-Cold War order requires a more complete framework—one that focuses on disarmament for all states and deals with nonstate security threats, rather than creating divergent obligations and mistrust among signatories.

III. AN ANALYSIS OF RESOLUTION 1887—
THE CALL FOR DISARMAMENT

Although calls for disarmament came as early as 1945, after the first nuclear weapon was used in World War II, disarmament has only recently come to the forefront of international policy on nuclear weapons. The NPT commits parties to the concept of nuclear disarmament in Article VI, but this has proven to be an empty promise. Past U.N. General Assembly Resolutions have advocated for disarmament but have failed to attach any requirements to their calls. These calls for disarmament are not binding under international law. In 1996, the International Court of Justice (ICJ) found that the threat or use of nuclear weapons was not illegal under international law in extreme circumstances. There is neither binding international law

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154. PERKOVICH ET AL., supra note 52, at 16 (noting that the NNWS' conviction that the nuclear states will not disarm has eroded their willingness to comply with the NPT); Hewitson, supra note 106, at 493–94.
155. See, e.g., Suleman, supra note 144, at 248–49 (highlighting the example of Iran to indicate the shortcomings of the "grand bargain").
156. S.C. Res. 1887, supra note 17, pmbl.
157. See Nanda, supra note 22, at 347 (advocating for a nuclear weapons convention to supplement the failed NPT regime).
158. Richard A. Falk, Nuclear Weapons, International Law and the World Court: A Historic Encounter, 91 AM. J. INT'L L. 64, 64, 66 (1997); see also Baird, supra note 7, at 532–33 (highlighting the Baruch plan, which was proposed immediately following World War II and sought to ensure that the United States would be the only party to ever possess nuclear weapons).
161. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 105 (July 8); Matheson, supra note 91, at 430 (pointing to the difficulty in trying to decipher what the court's holding means because nuclear arsenals were only meant to be used in extreme circumstances).
nor customary opinio juris to justify an absolute bar on use of nuclear weapons.\textsuperscript{162} Thus, under international law it is legal to possess and utilize nuclear weapons.\textsuperscript{163}

Resolution 1887 was drafted as a result of a push by the United States to shift the perspective of the international nuclear regulatory regime. In April 2009, U.S. President Barack Obama gave a speech in Prague envisioning a world free of nuclear weapons.\textsuperscript{164} The President’s speech outlined a number of concrete steps that could be taken towards this goal, including reducing the role of nuclear weapons in national security strategy, instituting a global ban on nuclear testing, and ending the production of materials that are essential for creating a bomb (fissile material).\textsuperscript{165} On September 24, 2009, President Obama chaired a heads-of-state-level U.N. Security Council meeting,\textsuperscript{166} and the dialogue from the meeting suggested a renewed, collective commitment toward promoting global disarmament.\textsuperscript{167} This meeting provided the impetus for Resolution 1887.

Resolution 1887 breaks from its predecessors by seeking to regulate all states rather than simply rogue nations and NNWS.\textsuperscript{168} Traditionally, calls for disarmament have come from NNWS or have been empty claims of individual NWS leaders.\textsuperscript{169} Resolution 1887 united both NWS and NNWS in the pursuit of disarmament.\textsuperscript{170} Thus, Resolution 1887 represents a collective agreement by the world’s most powerful nations to destroy weapons caches around the world and “to create the conditions for a world without nuclear weapons.”\textsuperscript{171}

Ultimately, though, Resolution 1887 is a mixed blessing for international efforts to eliminate nuclear weapons. While it commits to global disarmament, it does not provide a tangible method to achieve this goal.

\textsuperscript{162.} Baird, supra note 7, at 548–49.
\textsuperscript{163.} See Falk, supra note 158, at 65.
\textsuperscript{164.} Obama, supra note 127.
\textsuperscript{165.} Id.
\textsuperscript{166.} U.N. Doc. S/PV.6191, supra note 75, at 1.
\textsuperscript{167.} Id. at 2–3 (remarks of U.S. President Barack Obama).
\textsuperscript{168.} See David A. Koplow, How Do We Get Rid of These Things? Dismantling Excess Weapons While Protecting the Environment, 89 Nw. U. L. Rev. 445, 450 (1995) (“Moreover, several prominent international arrangements—notably, the 1968 Non-Proliferation Treaty—are designed to inhibit the spread of a designated weapon capability, without directly requiring the states that already possess the specified arms to dismantle or otherwise limit them.”).
\textsuperscript{169.} See Falk, supra note 158, at 65–66 (evaluating the ICJ advisory opinion on nuclear weapons and the opinion’s implicit criticism of the empty claims of NWS); Nanda, supra note 22, at 343–47 (describing NWS calling for disarmament in their white papers, but then failing to honor those calls at the negotiating table); Ware, supra note 89, at 245–46 (arguing that the NWS claim to support disarmament but enact policies that contradict that claim).
\textsuperscript{170.} See Quentin Peel & Gerrit Wiesmann, NATO Pressed on Nuclear Disarmament, Fin. Times, Nov. 16, 2010, http://www.ft.com/cms/s/0/41f93a76-f1a0-11df-bb9a-00144feab49a.html (“If the nuclear powers disarm, they will be much more credible in insisting that other states should not acquire nuclear weapons.” (quoting German foreign minister Guido Westerwelle)).
\textsuperscript{171.} S.C. Res. 1887, supra note 17, pmbl.
A. Success—Changing the Rhetoric from Nonproliferation to Disarmament

Resolution 1887 returns the concept of disarmament to a primary role in the international nuclear regulatory regime.\textsuperscript{172} The shift from nonproliferation to disarmament is significant, and if implemented in future international regulation, it would significantly increase international security.\textsuperscript{173}

Disarmament should be the primary goal of an international regime regulating nuclear weapons.\textsuperscript{174} A nonproliferation regime has proven difficult to maintain, as NWS have no motivation to reduce the size of their arsenals.\textsuperscript{175} The United States, for example, cannot in good faith seek to curb proliferation when it houses one of the world’s largest stockpiles and plans to build a global missile shield.\textsuperscript{176} As long as the United States maintains its nuclear stockpile, its major geopolitical rivals, China and Russia, will want to keep their arsenals as well. As long as China maintains its arsenal, India will keep an arsenal to counter the perceived threat posed by its neighbor. As long as India has weapons, Pakistan will keep developing weapons to compete with its main international rival. Until these states all agree to disarm, there can be no downward pressure on proliferation. Focusing on disarmament would go a long way toward helping global nuclear nonproliferation efforts.

Resolution 1887 recognizes the existential threat posed by nuclear weapons.\textsuperscript{177} It counsels states to "share best practices" to improve nuclear

\begin{itemize}
\item \textsuperscript{172} Daniel H. Joyner, \textit{Recent Developments in International Law Regarding Nuclear Weapons}, 60 INT’L & COMP. L.Q. 209, 212 (2011) ("Resolution 1887 is rather a unanimous statement by the Security Council supporting nuclear disarmament and calling upon UN Member States to redouble their efforts to achieve this goal.").
\item \textsuperscript{173} \textbf{National Security Strategy, supra} note 63, at 23–24. See also \textit{supra} Part I.
\item \textsuperscript{177} Nanda, \textit{supra} note 22, at 336–37 (arguing that nuclear weapons are the gravest threat to nuclear security); Chesney, \textit{supra} note 37, at 82.
\end{itemize}
safety and reduce the risk of nuclear terrorism.\textsuperscript{178} And it seeks to secure “all vulnerable nuclear material . . . within four years.”\textsuperscript{179} Both interstate cooperation and security improvements are necessary to prevent rogue states and terrorist organizations from obtaining nuclear weapons. Resolution 1887 calls for states to “detect, deter, and disrupt illicit trafficking in nuclear materials.”\textsuperscript{180} In addition, it calls for increased monitoring of nuclear materials.\textsuperscript{181} It also is “gravely concerned” with the threat of “nuclear terrorism” and recognizes that all states need to take “effective measures to prevent nuclear material or technical assistance [from] becoming available to terrorists.”\textsuperscript{182} Here, the Resolution recognizes that open borders have facilitated the flow of nuclear materials and spawned dangerous networks that encourage proliferation. Unlike the NPT, then, Resolution 1887’s concerns are not the traditional fears of state-to-state proliferation. Resolution 1887, rather, recognizes the unique challenge that globalization presents to non-proliferation.

Resolution 1887 covers the major issues that an ideal international regime would focus on. It prioritizes disarmament over nonproliferation. It recognizes that the world has changed since the Cold War and that a comprehensive, international effort is necessary to track nuclear networks. Finally, it explicitly mentions the threat to security posed by terrorists armed with nuclear weapons. Thus, Resolution 1887 provides an ideological framework for a potential new regulatory regime.

\textbf{B. Shortcomings—Ties to the Past}

Resolution 1887 has three major flaws that prevent it from becoming an ideal regime for nuclear disarmament. Specifically, Resolution 1887 remains attached to the problem-laden NPT regime, does not exclusively focus on disarmament, and lacks concrete benchmarks and enforcement procedures.

First, Resolution 1887 attempts to salvage the existing regulatory regime.\textsuperscript{183} The resolution holds itself to be “in accordance with the goals of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).”\textsuperscript{184} The end of the resolution calls on states to uphold their commitments to the NPT regime rather than develop a new strategy for dealing with nuclear weapons.\textsuperscript{185} Moreover, the resolution repeatedly refers to the importance of upholding

\begin{itemize}
\item \textsuperscript{178} S.C. Res. 1887, \textit{supra} note 17, ¶ 24.
\item \textsuperscript{179} \textit{Id.}
\item \textsuperscript{180} \textit{Id.} ¶ 26.
\item \textsuperscript{181} \textit{Id.} ¶ 28.
\item \textsuperscript{182} \textit{Id.} pmbl.
\item \textsuperscript{183} Joyner, \textit{supra} note 172, at 211 (“It essentially restates and supports a number of already existing legal obligations, and identifies and supports efforts to create new obligations.”).
\item \textsuperscript{184} S.C. Res. 1887, \textit{supra} note 17, pmbl.
\item \textsuperscript{185} \textit{Id.} ¶ 2.
\end{itemize}
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should break from this Cold War relic and formulate a new, more expansive nuclear regime centered on disarmament. Maintaining the NPT weakens Resolution 1887's legitimacy, particularly in the eyes of nonnuclear states. NNWS feel that maintaining the framework of the NPT perpetuates the power disparity between NWS and NNWS. Thus, NNWS will likely view Resolution 1887, alongside the recent renewal of the NPT, as a tool for cementing the NWS' existing nuclear monopoly.

Second, Resolution 1887 fails to focus exclusively on disarmament. While promoting disarmament, the resolution also reaffirms that "the proliferation of weapons of mass destruction, and their means of delivery, constitutes a threat to international peace and security." The resolution is thus noticeably silent about the legality of the possession and use of nuclear weapons. Reaffirming nonproliferation, moreover, is antithetical to disarmament efforts. While disarmament encompasses nonproliferation, each goal has a very different focus. Nonproliferation focuses on preventing nonnuclear states from obtaining weapons without scrutiny of nuclear states themselves. Disarmament, though, focuses on eliminating all nuclear weapons and examines the actions of both nuclear and nonnuclear states. As long as the resolution remains tied to the language of nonproliferation, it will be incredibly difficult to make a strong push towards disarmament.

Finally, Resolution 1887 lacks concrete goals and enforcement mechanisms. It only requests that all states work to create and enforce "a Treaty on general and complete disarmament under strict and effective international control." The resolution, then, is merely aspirational; it does not provide concrete benchmarks or suggestions for enforcement. Enforcement is necessary because of the fear that a state seeking nuclear energy is also

186. See id. ¶ 2–5. The Security Council called upon “States Parties to the NPT to comply fully with all their obligations and fulfil their commitments under the Treaty” and commented “that enjoyment of the benefits of the NPT by a State Party can be assured only by its compliance with the obligations thereunder.” Id. ¶ 2–3. The Security Council also called upon “Parties to the NPT, pursuant to Article Vt of the Treaty, to undertake to pursue negotiations in good faith on effective measures relating to nuclear arms reduction and disarmament.” Id. ¶ 5.
187. See discussion supra notes 151–157 and accompanying text; see also Perkovich et al., supra note 52, at 16; Nanda, supra note 22, at 343–46.
188. Perkovich et al., supra note 52, at 16.
189. Sharon Riggle, Could the Non-Proliferation Treaty Collapse? The Uncertain Road Ahead, DISARMAMENT F., no. 1, 2000, at 29, 35.
190. S.C. Res. 1887, supra note 17, ¶ 1.
192. Id.
194. S.C. Res. 1887, supra note 17, ¶ 5.
attempting to create nuclear weapons. Unfortunately, like many similar resolutions and treaties, there is neither an enforcement regime in place to make sure that the technologies given to a nonnuclear state are solely for civilian energy uses nor a proper check on the activities of the nonnuclear state. Resolution 1887 aims for the goal of disarmament but will likely fall short of achieving that goal.

IV. ADDITIONAL REQUIREMENTS FOR FUTURE INTERNATIONAL REGULATION—REPLACING MUTUAL DISTRUST WITH MUTUAL COOPERATION

The nuclear weapons regulatory regime is in need of a major overhaul. Resolution 1887 is a strong first step in moving from distrust among NWS and NNWS to cooperation between them. Both types of states can tap into the widespread public support for global disarmament. Until a binding international regulation is in place, however, achieving this goal will be difficult.

195. Roger Cohen, Op-Ed., Iran, the Paper Tiger, N.Y. TIMES (Oct. 11, 2010), http://www.nytimes.com/2010/10/12/opinion/12iht-edcohen.html (describing the overreaction of Western countries to Iran’s pursuit of nuclear power, and doubting Iran’s ability to produce a nuclear weapon); Roger F. Noriega, Chávez’s Secret Nuclear Program, FOREIGN POL’Y (Oct. 5, 2010), http://www.foreignpolicy.com/articles/2010/10/05/chavez_s_secret_nuclear_program (documenting Venezuela’s initial interest in acquiring nuclear power and the nuclear-weapons states’ suspicions of these actions). Consider Iran’s quest for nuclear power and the fear that they will use the technology to create nuclear weapons. See Ali Akbar Dareini, Iran: Nuclear Delay Due to Leak, Not Computer Worm, USATODAY.COM (Oct. 4, 2010, 4:12 PM), http://www.usatoday.com/tech/science/2010-10-04-iran-nuclear-delay_N.htm (“Iran denies any nuclear weapons ambitions and says its program is only for peaceful purposes like power generation and medical research.”); see also Gloag, supra note 7, at 1547 (comparing the risks associated with nuclear technology with the benefits of clean, efficient energy).


197. See Koplow & Schrag, supra note 94, at 1008 (arguing that cooperation is essential to achieving the goal of disarmament).

198. See Samina Ahmed et al., Public Opinion and Nuclear Options for South Asia, 38 ASIAN SURV. 727, 739 (1998) (“[A] whopping 94 percent in India and 97 percent in Pakistan expressed total or partial support for an international agreement to ban nuclear weapons, with only 1 percent opposed in India and none in Pakistan.”); Ware, supra note 89, at 271 (“An appeal calling for a treaty to ban nuclear weapons has gained over 60 million signatures, making it the largest petition in the world.”); What Is Global Zero, GLOBAL ZERO, http://www.globalzero.org/en/about-campaign (last visited Apr. 13, 2012) (petitioning for a world without nuclear weapons; the petition has already received over 400,000 signatures).

Either through a binding multilateral treaty\textsuperscript{200} or a binding Security Council resolution\textsuperscript{201}—coupled with a supporting General Assembly resolution to provide unanimity—the regulatory regime must be strengthened with unambiguous language tied to concrete deadlines and rigorous inspection and verification procedures.\textsuperscript{202}

Specifically, any successful regime must deter states from reneging on their commitment to disarm. In the past, military, political, economic, and moral consequences have seemingly dissuaded states from using nuclear weapons.\textsuperscript{203} These consequences need to be used as a stick to encourage disarmament. Moreover, there is precedent for international law to guide weapons controls. States were able to come together and create a strong regime governing both chemical and biological weapons.\textsuperscript{204} There is no reason why they cannot do the same for nuclear weapons.\textsuperscript{205} Yet there is more

the risks associated with nuclear weapons can only be "eliminated through the adoption of legally binding, verifiable and enforceable instruments culminating in a comprehensive prohibition and destruction of all nuclear weapons under effective controls"). \textit{But see} Ronald J. Sievert, \textit{Working Toward a Legally Enforceable Non-Proliferation Regime}, 34 \textit{FORDHAM INT'L L.J.} 93, 98–99, 101–06 (2010) (arguing that even a binding international regime could not result in disarmament and providing a framework for a new NPT, which would focus on creating binding legal rules against proliferation and first use). \textsuperscript{200}

Security Council Resolution 1887 itself calls for a disarmament treaty. S.C. Res. 1887, \textit{supra} note 17, ¶ 5; \textit{see also} Nanda, \textit{supra} note 22, at 349–50 (describing the nuclear-free-zone treaties, which have made the Southern Hemisphere virtually free of nuclear weapons). \textsuperscript{201}

\textit{See} Natasha Bajema & Mary Beth Nikitin, \textit{Assessing Nuclear Maturity: Determining Which States Should Have Access to What Nuclear Technology}, \textit{FLETCHER F. WORLD AFF.}, Summer 2004, at 157, 171–72 (arguing that the Security Council ought to take the lead on enforcing norms of the nonproliferation regime, but also highlighting the problems with this approach); Garvey, \textit{supra} note 108, at 346 ("The architecture best suited to maximizing and solidifying the advantages of multilateralism and the capacity of the United Nations Charter would be a Security Council resolution declaring nuclear weapons proliferation, whether involving states or non-state actors, a 'threat to the peace.'"). \textsuperscript{202}

\textit{Editorial, The Nuclear Security Summit}, \textit{N.Y. TIMES}, Apr. 12, 2010, at A24 (arguing that President Obama's 2010 Security Summit must result in concrete deadlines for the securing of fissile material); David Krieger, Remarks to the 4th Nagasaki Global Citizens' Assembly for the Elimination of Nuclear Weapons: A Nuclear Weapons Convention (Feb. 22, 2010) ("Verification must not have limiting factors. It must allow for full inspections. Countries must be prepared to open their facilities to challenge inspections at any time and in any place."); \textit{see also} Matheson, \textit{supra} note 91, at 434–35 (arguing that negotiations, not court decisions, will result in disarmament); Phillip R. Trimble, \textit{Beyond Verification: The Next Step in Arms Control}, 102 \textit{HARV. L. REV.} 885, 895–86 (1989) (arguing that an ICJ decision outlawing nuclear weapons would be ineffective). \textsuperscript{203}

\textit{E.g.}, Garcia, \textit{supra} note 98, at 515, 547 ("Many military options are available but never considered by the United States, for both moral and political reasons."). \textsuperscript{204}

\textit{See} sources cited \textit{supra} note 10. \textsuperscript{205}

\textit{See} Nanda, \textit{supra} note 22, at 346 ("Undoubtedly the only answer lies in nuclear-weapon states' setting a firm timeframe for the elimination of nuclear weapons and agreeing on specific, concrete steps toward that goal, and to implement them."). \textit{But see} Falk, \textit{supra} note 158, at 65–66 (arguing that there is a deep ideological split between nations about the
to a future disarmament regime than merely encouraging states toward dis-
armament and discouraging weapons use. New forms of international
regulation should utilize Resolution 1887 as a foundation, but strive to make
improvements to the regime and replace the broken bargain of the NPT.206
Below are suggestions for ensuring that future international regulation con-
tinues to work toward the eventual elimination of nuclear weapons.

A. Universality—Include Every Nation, Make Every Nation Equal

Nuclear disarmament is a global issue, yet the regulations that govern it
have not received universal endorsement. Resolution 1887 garnered
unanimous support from the Security Council; however, the Security
Council consists of only fifteen nations.207 One hundred and eighty-nine
states are party to the NPT; however, of the six states that are not signatories, four possess nuclear weapons.208 The IAEA operates in states
that are not party to the NPT to counter increased proliferation, but the
IAEA does not have adequate legal, technical, or political authority to
govern nonproliferation and disarmament globally.209 There is an
opportunity to solve these problems so long as every nation agrees to a new
regulatory regime. If the regime were to come in the form of a Security
Council resolution, then a parallel General Assembly resolution signed by
every member state would be sufficient to express universality. The General
Assembly has already indicated its interest in disarmament by adopting a
resolution entitled “Nuclear Disarmament,” which argues that now is the
opportune time to eliminate nuclear weapons.210

status of nuclear weapons, which makes the fashioning of a treaty governing nuclear weapons
like the Biological Weapons Convention or Chemical Weapons Convention unlikely).

206. See Epstein & Szasz, supra note 10, at 743 (stating that to overcome the provisions
of the NPT all states must elect to replace the NPT with a superseding treaty).

207. See Eckert, supra note 37, at 80 (claiming that there is often a suspicion that the Se-
curity Council acts as a conduit for U.S. policy, which could ultimately undermine the
effectiveness of Security Council policy); Ford, supra note 145, at 983–84; James Fry,
Dionian Disarmament: Security Council WMD Coercive Disarmament Measures and Their
Legal Implications, 29 MICH. J. INT’L L. 197, 286–87 (2008) (highlighting the drawbacks and
bene-
fits of fifteen nations creating policy for the entire world).

208. Suleman, supra note 144, at 220 (criticizing the claim that most states are parties to
the NPT).

209. See Peter Riley, Nuclear Waste: Law, Policy and Pragmatism 58 (2004) (de-
scribing how the IAEA is not as powerful as it was when it was first authorized in 1953);
Krieger, supra note 59, at 44, 49–50 (arguing that IAEA has the ability to recognize unauthorized
diversions of nuclear material, but does not have the capability to prevent these
violations); Sloss, supra note 124, at 847, 890 (arguing that the limits of IAEA will require
that it remain dependent on member states); Ling Zhong, Note, Nuclear Energy: China’s
(“[T]he IAEA has no unilateral authority to place safeguards on any nation’s nuclear program
unless a country voluntarily submits its nuclear materials and activities to IAEA safeguards
through bilateral or multilateral agreements between that country and the IAEA.”).

2011); see also Nanda, supra note 22, at 337–38.
A new regime cannot allow any outlier states; universality must be pursued. Such a regime would remedy the NPT’s mistake of creating a legal distinction between states with nuclear weapons and those without nuclear weapons. NWS must lead this charge away from the dichotomy of the NPT and toward a unified disarmament regime. The passage of a multilateral treaty or a binding Security Council resolution, coupled with a General Assembly resolution, designed to eliminate nuclear weapons would signal a fundamental shift in the global regulation of weapons.

B. Inspection and Verification—Build upon the IAEA

Resolution 1887 “stresses the importance for all Member States to ensure that the IAEA continue to have all the necessary resources and authority to verify the declared use of nuclear materials and facilities and the absence of undeclared activities, and for the IAEA to report to the Council accordingly as appropriate.” Yet the resolution fails to mandate that states support the IAEA monetarily or adhere to IAEA inspections.

The IAEA represents an integral part of the international regulatory regime, without which the collection of information on nuclear materials would be limited to espionage. The IAEA maintains an account of the worldwide supply of nuclear materials. Moreover, the IAEA has the ability to conduct special unannounced investigations into member states when necessary. It does an excellent job of providing credible and reliable information on nuclear materials across the globe.

However, the IAEA could also be improved in several ways. The IAEA, for instance, requires a larger budget to conduct deeper investigations into claims while maintaining its current operations. The IAEA should also

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213. Koplow & Schrag, supra note 94, at 1013–18 (suggesting that a new non-proliferation regime should not distinguish between NWS and NNWS and should “focus attention on real disarmament, rather than on partial or interim measures”).
214. S.C. Res. 1887, supra note 17, ¶ 15.
217. Sloss, supra note 124, at 863–64.
218. Ford, supra note 145, at 942 (describing the importance of the IAEA in Iran); George Jahn, *Syria to End Nuclear Secrecy*, GUARDIAN (London) (May 29, 2011), http://www.guardian.co.uk/world/feedarticle/9670525/print (describing the integral role that an IAEA report had in changing Syria’s policy on transparency in its nuclear program).
219. U.S. Gov’t ACCOUNTABILITY OFFICE, GAO-06-93, *Nuclear Nonproliferation: IAEA Has Strengthened Its Safeguards and Nuclear Security Programs, but Weaknesses Need to Be Addressed* 34–37 (2005) (describing the IAEA’s heavy reliance on voluntary contributions from the United States in order to support its limited budget); Karen
receive greater backing from the international community. If a nation fails to comply with IAEA inspections, the Security Council should be authorized to take immediate action.\textsuperscript{220} The IAEA should also allow for challenge inspections, which would utilize the resources of nations to check nuclear programs.\textsuperscript{221} Another suggestion to further improve transparency in nuclear technology, advocated by the Carnegie Endowment for Peace, is to have the U.N. Security Council ask all nations to produce white papers declaring stockpiles of fissile materials.\textsuperscript{222} The IAEA could help manage and enforce such a request.

Finally, the IAEA's verification process should be supplemented through domestic verification procedures. A verification policy laid out by the Lawyers' Committee on Nuclear Policy's Model Nuclear Weapons Convention (Model Convention) would provide an ideal supplement. The Model Convention supplements the standard verification procedures by encouraging individual citizens to report anomalies in the regime, offering an additional layer of national security to protect against nuclear weapons.\textsuperscript{223} If this policy were implemented it would provide an ideal supplement to high-level IAEA inspections because there would be checks on nations from above and below.

\textbf{C. Enforcement—Mandate Sanctions When Terms Are Violated}

The most poignant criticism of the current regulatory regime is its lack of enforcement capability.\textsuperscript{224} In the past, NPT states have tried to punish states that tested or developed nuclear weapons. However, the prospect of punishment has done little to deter states from developing nuclear

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\textsuperscript{220}. The IAEA merely has the power to report noncompliance to the Security Council but does not have any ability to promote action on behalf of the Security Council against a particular state. See IAEA, Statute of the IAEA art. XII(C), \textit{opened for signature} Oct. 26, 1956, 8 U.S.T. 1093, 276 U.N.T.S. 3 [hereinafter IAEA Statute], \textit{available at} http://treaties.un.org/doc/Publication/UNTS/Volume%20276/volume-276-1-3988-English.pdf; Diana L.W. Fernandez, Note, Nuclear Proliferation: Dim Prospects for Control, 3 Brook. J. Int'l L. 57, 63 (1977) ("[T]he Statute... charges the IAEA with safeguarding against the diversion of fissionable material from peaceful purposes to nuclear weaponry without giving the IAEA mandatory powers of enforcement.");

\textsuperscript{221}. Sloss, \textit{supra} note 124, at 887 n.233 (describing challenge inspections that would allow states to instigate an investigation that could only be blocked by a supramajority vote).

\textsuperscript{222}. Perkovich \textit{et al.}, \textit{supra} note 52, at 155.

\textsuperscript{223}. U.N. Doc. A/62/650, \textit{supra} note 199, at 8 ("Persons reporting suspected violations of the convention will be provided protection through the Convention including the right of asylum."); Ware, \textit{supra} note 89, at 273.

weapons.\textsuperscript{225} In 1974, for instance, India launched its first nuclear test.\textsuperscript{226} All Western nuclear states immediately cut off any foreign aid to India.\textsuperscript{227} Unfortunately, India still clandestinely pursued a nuclear program throughout the 1980s before publicly declaring its weapons in 1998.\textsuperscript{228} In the past, sanctions have been used unsuccessfully as a discretionary enforcement mechanism. With India, for example, the sanctions came primarily from Western states, leaving India free to purchase goods from the former Soviet Union and other nonsanctioning states.\textsuperscript{229} An example of this phenomenon is currently taking place with Iran. As the international community levies the threat of sanctions, the regime in Tehran seems ever more defiant.\textsuperscript{230}

Sanctions, though, if implemented correctly, can be an effective method of enforcing a future nuclear disarmament regime.\textsuperscript{231} The new regime should embrace sanctions that are universal, targeted, and automatic. While unilateral sanctions against potential nuclear states have occasionally proven effective,\textsuperscript{232} universal sanctions ensure that a potential violator cannot bypass the regime by trading with other states. Moreover, unilateral sanctions

\begin{enumerate}
\item See, e.g., Eckert, supra note 37, at 72–73 (describing how the failure of Security Council Resolution 1737, supra note 16, to curb Iran's pursuance of nuclear technology outside the NPT regime, can also be traced to a lack of adequate sanctioning).
\item Sumit Ganguly, India's Pathway to Pokhran II: The Prospects and Sources of New Delhi's Nuclear Weapons Program, INT’L SECURITY, Spring 1999, at 148, 148.
\item PEIMANI, supra note 140, at 10.
\item See David Albright, The Shots Heard 'Round the World, BULL. ATOMIC SCIENTISTS, July 1998, at 20, 20–24 (describing India's use of three simultaneous detonations to announce its presence as a nuclear power, which caught the world off-guard at the time).
\item Brahma Chellaney, South Asia's Passage to Nuclear Power, INT’L SECURITY, Summer 1991, at 43, 52 ("After India's 1974 nuclear explosion, the international nonproliferation regime was restructured to make safeguards and export controls the major political and security instruments of the greater nuclear powers. This, however, did little to stem proliferation trends on the subcontinent."); Ganguly, supra note 226, at 158–60 (describing Western condemnation of India’s first nuclear test in 1974 and the strategic arms and support alignment with the Soviet Union).
\item See Kittrie, supra note 159, at 434, 436.
\end{enumerate}
can have a costly impact on the sanctioning country.\textsuperscript{233} For instance, the U.S. sanctions against Iran and Cuba have hurt U.S. businesses, while European and Asian states have been able to easily capture these markets.\textsuperscript{234} Empirically, though, universal sanctions have a better track record of success as they put increasing pressure on a rogue state to conform to international norms.\textsuperscript{235} While not effective in every case, universal sanctions are politically more palatable than proposing armed intervention and not as toothless as a diplomatic rebuke. Ultimately, universal sanctions are harder to bypass, signal international consensus on an issue, and are arguably more effective than unilateral sanctions.\textsuperscript{236}

To make universal sanctions more effective, the regime must apply them automatically. While the regime could ensure that the degree of the punishment is proportional to the offense, the regime should embrace a strict liability method of applying the punishment. Presently, the IAEA submits a report of noncompliance to the Security Council and the Security Council is responsible for sanctioning countries that fail to comply with IAEA inspectors or defy the NPT.\textsuperscript{237} The Security Council, however, can deliberate for

\textsuperscript{233} See Hossein Askari et al., Case Studies of U.S. Economic Sanctions: The Chinese, Cuban, and Iranian Experience 257 (2003); William H. Kaempfer & Anton D. Lowenberg, Alternatives to Comprehensive Sanctions 4 (Ctr. for Econ. Analysis, Working Paper No. 00-17, 2000) (noting high costs for the United States when it imposed a grain embargo against the Soviet Union during the Carter administration).


\textsuperscript{235} See Roy E. Horton, Out of (South) Africa: Pretoria’s Nuclear Weapons Experience 29 (1999) (describing the failure of unilateral U.S. sanctions to curb South Africa’s nuclear ambitions); Wolff, supra note 234, at 341–43 (describing the effectiveness of multilateral sanctions and the relative ineffectiveness of unilateral sanctions in Libya and Syria).

\textsuperscript{236} See Charles Breckenridge, Sanction First, Ask Questions Later: The Shortsighted Treatment of Iran Under the Iran and Libya Sanctions Act of 1996, 88 GEO. L.J. 2439, 2469 (2000) (“[T]he United States should only employ these targeted sanctions when it has the support of its allies . . . . If such multilateral support existed for these efforts, then the sanctions would sting the target, not American companies . . . .”); Richard W. Parker, The Problem with Scorecards: How (and How Not) to Measure the Cost-Effectiveness of Economic Sanctions, 21 MICH. J. INT’L L. 235, 291 n.197 (2000) (describing how unilateral sanctions do not work, but multilateral sanctions can sometimes work). But see Adeno Addis, Economic Sanctions and the Problem of Evil, 25 HUM. RTS. Q. 573, 583 (2003) (arguing that sanctions were ineffective in the cases of both Afghanistan and Iraq).

\textsuperscript{237} Fernandez, supra note 220, at 62–66; see IAEA Statute, supra note 220 (showing that the IAEA merely has the power to report non-compliance to the Security Council but does
some time before taking action, and given the realities of international politics, its record for sanctioning parties pursuing nuclear weapons has been inconsistent. Moreover, the five permanent members of the Security Council all possess nuclear weapons, weakening the legitimacy of their decisions in the eyes of the international community.

Making sanctions subject to political deliberation thus creates some uncertainty as to whether they will be applied and be applied consistently. The current regime requires a unanimous vote by the Security Council to impose or relieve the sanctions. As a result, an offending state may be more likely to violate the regime, knowing that there is a chance it will not be punished. An automatic sanctions regime would make punishment the default, only to be abrogated in exceptional cases.

Finally, the sanctions should be targeted. Targeted sanctions involve a number of restrictions (economic, political, and diplomatic) directed at the materials necessary to create or maintain a nuclear weapon system.

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not have any ability to promote action on behalf of the Security Council against a particular state). See also discussion supra note 220 and accompanying text.


240. See George Perkovich & James Acton, Enforcement, in Abolishing Nuclear Weapons, supra note 143, at 99, 104 (describing the difficult role that the permanent five members of the Security Council would play in a disarmament debate at the Security Council considering that they all possess nuclear weapons); Ganguly, supra note 226, at 174 (describing how India, in 1974, utilized the justification that all five permanent members of the Security Council possessed nuclear weapons to justify its own nuclear program).


242. See generally U.N. Charter art. 41 (providing the Security Council with the power to levy sanctions).


244. See Garvey, supra note 108, at 350-53 (targeting sanctions to persons involved in nuclear activities is most effective).

245. MIKAEL ERIKSSON, TARGETING PEACE: UNDERSTANDING UN AND EU TARGETED SANCTIONS 1 (2011) ("Targeted sanctions involve measures such as financial sanctions, travel bans, arms embargoes, trade sanctions, flight bans, admissions restrictions, diplomatic sanctions, boycotts . . . ."); Dawn L. Rothe et al., Torture, Impunity, and Open Legal Spaces: Abu Ghraib and International Controls, 12 CONTEMP. JUST. REV. 27, 34 (2009) (describing a range of targeted sanctions that can be implemented by the United Nations, including arms embargoes, travel bans, financial restrictions, diplomatic restrictions, freezing of assets, and
Moreover, targeted sanctions focus on cutting off military access to those materials while ensuring that citizens continue to have their basic necessities, such as food and medicine. Targeted sanctions are a staple of the international system and have been effective in the past.

One criticism of targeted sanctions is that the current Security Council sanction regime already utilizes targeted sanctions focused on eliminating materials essential to weapons production and still has not been entirely effective. The problem with these sanctions, though, is not that they are targeted. Rather, the sanctions by the Security Council have not been deployed rapidly and have lacked sufficient support from nations outside the Security Council. In another criticism of targeted sanctions, scholars have argued that comprehensive sanctions are a more effective method of deterring divergence from a regime. Comprehensive sanctions, though, can devastate a country’s civilian population and should only be used in exceptional cases.

blocking transactions of political elites). See generally Christopher C. Joyner, United Nations Sanctions After Iraq: Looking Back to See Ahead, 4 Chi. J. Int’l L. 329, 331 (2003) (“A declaration by the Security Council of a sanctions decision legally obligates all member governments of the UN to impose and enforce the stipulated restrictive measures against the targeted state. In this regard, UN sanctions more closely resemble mandatory economic coercion than tools of international trade or diplomacy.”).

246. See Gary Clyde Hufbauer & Barbara Oegg, Economic Sanctions: Public Goals and Private Compensation, 4 Chi. J. Int’l L. 305, 328 n.52 (2003) (“Targeted sanctions are intended to focus their impact on leaders, political elites, and segments of society believed to be responsible for the objectionable behavior.”); Lund, supra note 238, at 773 (“[T]argeted sanctions are designed to hit a nation’s leaders where it will hurt them . . . .”).


249. See Boulden & Charron, supra note 247, at 8–9 (arguing that “the effectiveness of targeted sanctions remains an open question”); Lund, supra note 238, at 773–75 (describing the two-step process of imposing targeted sanctions).

250. See Orde F. Kittrie, Emboldened by Impunity: The History and Consequences of Failure to Enforce Iranian Violations of International Law, 57 Syracuse L. Rev. 519, 544-47 (2007) (describing the ineffectiveness of targeted sanctions, particularly in the case of Iran).

251. See, e.g., James C. McMillin, Book Review, 14 Fordham Int’l L.J. 867, 872 (1990) (reviewing M. Malloy, Economic Sanctions and U.S. Trade (1990)) (“Based upon this empirical data, Mr. Malloy concludes that the most effective sanctions programs are the ones that are most comprehensive and the least effective programs (most notably Nicaragua) impose a limited range of sanctions lacking intensive coordination or enforcement.” (footnote omitted)).

252. Kirk L. Wolcott, Seeking Effective Sanctions, 11 Emory Int’l L. Rev. 351, 357–58 (1997) (explaining that in Iraq, comprehensive sanctions were effective in curbing Saddam Hussein’s regime but also devastated the civilian population).
Sanctions provide a strong incentive not to defy the mandates of a nuclear regulatory regime. The main enforcement mechanism of any future disarmament regime should be sanctions, but the sanctions must be rapidly deployed, universal, automatic, and targeted.

D. Limit Domestic Control over Fissile Material

The unilateral conduct of NWS has reduced the supply of fissile material available to NNWS. The problem with this regime is that not all states are fully invested; thus, there can be leaks of material from time to time. Moreover, NWS refuse to reduce their supply of fissile material because they require weapons to serve as a deterrent against other countries possessing or creating nuclear weapons.

Ending the production of fissile material was one of the three key steps toward disarmament outlined by President Barack Obama in his 2009 speech in Prague. This requirement must be applied to both NWS and NNWS. Mandating the end of domestic production of fissile material would be an incredibly strong step towards disarmament, but it must be coupled with international requirements and controls.

Domestic control of the nuclear fuel cycle leads to fears of proliferation and armament. Therefore, international law must also require nations to de-enrich fuel, both unspent and spent, so that it no longer poses a risk of proliferation. Some domestic nuclear research reactors continue to use weapons-grade material for fuel; these plants must be renovated to make use of lower-grade material that does not pose a risk of proliferation.

New power plants based on so-called fast reactor technology utilize spent fuel for

253. See Koplow & Schrag, supra note 94, at 1014–15 (arguing that halfway measures will no longer be effective in nonproliferation or disarmament).
254. See id.
255. ElBaradei, supra note 151 (describing how nuclear weapons are valued precisely “for their perceived deterrent effect”). But see Daniel S. Geller, Nuclear Weapons, Deterrence, and Crisis Escalation, 34 J. CONFLICT RESOL. 291, 302 (1990) (finding that nuclear weapons have no deterrent effect on NNWS).
256. See supra Part 1B.2. (discussing the inherent problems with an asymmetrical regime).
257. See supra Part I.B.2. (discussing the renewed fears associated with spent nuclear fuel in light of the Fukushima Nuclear Power Plant disaster).
258. Nuclear fuel de-enrichment is the process by which highly enriched uranium, which is used for nuclear weapons, is diluted to low-enriched uranium, which is used for nuclear reactor fuel. See Andrew George, “Megatons to Megawatts”: The U.S.-Russia Highly Enriched Uranium Agreement, CENTER FOR DEF. INFO. (May 14, 2004), http://www.cdi.org/program/document.cfm?documentid=2210&programID=32.
260. Kraska, supra note 37, at 744 (“Approximately 130 research reactors in dozens of countries around the world still use weapons-grade HEU.”).
There are proliferation concerns about this process, however, because of the enriched uranium and plutonium that results from recycling spent fuel. Technology exists to de-enrich spent fuel to less than 20%, thus making the fuel incapable of reaching weapons-grade. International law should mandate that new nuclear power plants utilize the Radkowsky Thorium Reactor, which uses the element thorium to create a denatured form of uranium that cannot be utilized to create a weapon. Thus, there is a need for a reciprocal agreement that allows for international controls to govern unspent, spent, and reprocessed fuel.

A recent development signals a possible method for exerting international control over nuclear fissile material. Billionaire Warren Buffet has pledged fifty million dollars to the IAEA to help set up a global nuclear fuel bank. The global nuclear fuel bank would house fuel stores, ensuring safety, and would enable the trade of nuclear materials without fear of proliferation. By using a fuel bank, the international community would limit the risk of a state utilizing a domestic energy program for the purpose of producing weapons. States, however, must support such a program if it is to become a reality.
CONCLUSION

Nuclear weapons pose a very real danger to global security, one that has not been adequately addressed by international law. As shown in Part I, the presence of nuclear weapons creates a risk that they could be used by a terrorist organization or a rogue state. The easy transportation of goods across open borders, advances in enriching technology, and lax security systems in countries such as Russia and Pakistan have increased this fear. There is also no guarantee that states that currently possess nuclear weapons will not use them in a potential altercation. Already, nuclear weapons have changed the dynamics of several major global conflict zones—between India and Pakistan, North and South Korea, and Israel and Iran. As the Kargil altercation between India and Pakistan suggests, some states with nuclear weapons take advantage of their nuclear shield to act more aggressively. States with nuclear rivals, such as Iran, have an incentive to obtain nuclear weapons to equalize the asymmetry of power with their nuclear rival and to promote their own self-preservation.

In addressing these dilemmas, the international community ought to prioritize disarmament in any future nuclear regime. Doing so would curb proliferation by reducing the security threat to aspiring nuclear powers and would subsequently limit the possibility of terrorists using a nuclear attack. The current NPT regime, however, is inadequate to address this task. It is a relic of the Cold War, when it was effective primarily because nonnuclear states were usually protected by either the United States’ or the Soviet Union’s nuclear umbrella. As argued in Part II, the NPT divided the world into nuclear states and nonnuclear states and essentially codified the nuclear monopoly that the drafters of the NPT enjoyed. In a world where the source of potential conflict is likely a terrorist attack or a regional war between rival powers, a new nuclear weapons regulatory regime addressing these threats is necessary.

U.N. Security Council Resolution 1887 takes one step forward in providing the basis for such a regime by confronting the issue of a potential terrorist attack and putting disarmament at the heart of a potential new nuclear regulatory regime. It does, however, suffer from some serious drawbacks. It erroneously remains tied to the NPT regime, it fails to exclusively focus on disarmament, and it lacks any provisions to enforce a call for disarmament. With a few modifications—promoting universality, improving verification and enforcement, and limiting domestic control over fissile material—Resolution 1887 can provide a promising framework for an effective international nuclear regulatory regime.

See, e.g., Gharagozli, supra note 50, at 205 n.4 (describing how the acquisition of a nuclear weapon by Iran could alter the rivalry between Iran and Israel); Sung Chul Yang, South Korea's Sunshine Policy: Progress and Predicaments, FLETCHER F. WORLD AFF., Winter 2001, at 31, 37 (describing the “conflicting perceptions and perspectives” of the nuclear threat between North and South Korea).