

BLUE MORNING-GLORIES IN THE SKY:

CORRECTING SANCTIONS TO ENFORCE NUCLEAR NONPROLIFERATION IN IRAN

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INTRODUCTION

I noticed the flashing light. It was not really a big flash. But still it drew my attention. In a few seconds, the heat wave arrived. After I noticed the flash, white clouds spread over the blue sky. It was amazing. It was as if blue morning-glories had suddenly bloomed up in the sky . . . [w]hen I looked down on the town from the top of that hill, I could see that the city was completely lost. The city turned into a yellow sand. It turned yellow, the color of the yellow desert.¹

Over the past several decades, Iran has vigorously pursued nuclear technology under the pretense of its need for nuclear energy.² However, increasing amounts of evidence have surfaced that suggests that Iran's nuclear program has not been entirely based on peaceful purposes.³ The International Atomic Energy Agency (IAEA), the enforcement agency behind the Nuclear Nonproliferation Treaty (NPT), has attempted to enforce the NPT provisions of nonproliferation through the use of various sanctions.⁴ So far, Iran has refused to comply with NPT provisions.⁵ Iran's refusal to comply with the provisions of the NPT, despite IAEA sanctions, has become a reoccurring theme among nuclear threat nations.⁶

Various approaches have been proposed to deal with the Iranian nuclear

1. Isao Kita, Testimony of Isao Kita, <http://www.inicom.com/hibakusha/isao.html> (last visited Jun 12, 2009). Mr. Isao Kita was a survivor of the nuclear attack by the United States on Hiroshima. *Id.* He was thirty-three and “[h]e was working for the Hiroshima District Weather Bureau 3.7 km from the hypocenter. He was the chief weather man and his shift fell on August 5 to 6. He kept observing the weather even after he was exposed.” *Id.*

2. See ROGER HOWARD, *IRAN IN CRISIS?: NUCLEAR AMBITIONS AND THE AMERICAN RESPONSE 92-97* (Zed Books Ltd. 2004).

3. *Chief of U.N. Nuclear Agency to Meet with Iran's Leaders*, N.Y. TIMES, Jan. 8, 2008, at A4, available at 2008 WLNR 380490 [hereinafter *Chief of U.N.*].

4. See *infra* part IV.

5. Sharon Squassoni, *Looking Back: The 1978 Nuclear Nonproliferation Act*, ARMS CONT. TODAY, Dec. 1, 2008, at 64, available at 2008 WLNR 25134531.

6. See *infra* Part IV.

threat, which range anywhere from disbelieving the evidence,⁷ becoming more understanding of Iran,⁸ to heightened sanctions.⁹ Despite a general disagreement among the international community and critics on an effective approach to the Iranian nuclear threat, Iran's noncompliance and pursuit of nuclear weapons remains unchecked. Although the various asserted approaches each contain positives and negatives, an effective solution will require more than one or two sets of sanctions before Iran will comply with international nonproliferation policy.¹⁰ However, Iran must comply at some point; the dangers of a nuclear Iran pose too great a threat.¹¹

This Note will focus on the reasons why sanctions have not worked against various nuclear threats, and how those issues may be resolved. The evaluation will include a study of the broad concerns facing both Iran and other nuclear threat nations and how the NPT has affected those concerns. Part II will give a brief overview of the NPT, how and why it was formed, and its goals and various provisions. Part III will examine the Iranian nuclear program, including the evidence that points to Iran's pursuit of nuclear weapons and why Iran has determined that nuclear weapons are a necessity. Part IV will give a brief overview of sanctions that have been enforced on Iran and other nuclear threat nations. Part V will examine past sanctions and their effectiveness. Part VI will examine a few proposals that have been put forward as possible resolutions to the Iranian nuclear threat. Finally, Part VII will examine various solutions to make future sanctions upon Iran more effective. In consideration of the various problems and issues that have been presented through past

7. See Demetri Sevastopulo, *Iran Retains Nuclear Plans, Says US Intelligence Chief*, FIN. TIMES, June 2, 2008, available at <http://iran-focus.co.cc/2008/06/iran-retains-nuclear-plans-says-us-intelligence-chief>.

8. See Mehrzad Boroujerdi & Todd Fine, Symposium, *A Nuclear Iran: The Legal Implications of a Preemptive National Security Strategy*, 57 SYRACUSE L. REV. 619, 635 (2007).

9. Orde F. Kittrie, *Averting Catastrophe: Why the Nuclear Nonproliferation Treaty is Losing its Deterrence Capacity and How to Restore It*, 28 MICH. J. INT'L L. 337, 429-30 (2007).

10. See *infra* Part VI.

11. See Allan S. Weiner, *The Use of Force and Contemporary Security Threats: Old Medicine for New Ills?*, 59 STAN. L. REV. 415, 417-19 (2006); Jonathan Granoff, *The Nuclear Nonproliferation Treaty and its 2005 Review Conference: A Legal and Political Analysis*, 39 N.Y.U. J. INT'L L. & POL. 995, n.23 (2007).

Tens, if not hundreds, of thousands of people would perish in an instant, and many more would die from exposure to radiation. The global impact would also be grave. The attention of world leaders would be riveted on this existential threat. Carefully nurtured collective security mechanisms could be discredited. Hard-won freedoms and human rights could be compromised. The sharing of nuclear technology for peaceful uses could halt. Resources for development would likely dwindle. And world financial markets, trade and transportation could be hit hard, with major economic consequences. This could drive millions of people in poor countries into deeper deprivation and suffering.

Kofi Annan, U.N. Secretary-General, Address to the Nuclear Non-Proliferation Treaty Review Conference 1 (May 2, 2005), available at http://vienna.usmission.gov/np_annan.html; see also Louis Beres & Isaac Ben-Israel, *The Limits of Deterrence Israel Faces Genocidal Assault*, WASH. TIMES (Nov. 21, 2007), at A21, available at 2007 WLNR 23061347.

sanctions, the final section will conclude with a recommendation of what steps should be taken to force Iran to comply with international nonproliferation policy.

I. NUCLEAR NONPROLIFERATION TREATY

The NPT, a United Nations treaty,¹² came into existence in 1970¹³ after undergoing “several years of negotiations.”¹⁴ Prior to 1965, the unwillingness of the United States to agree to nuclear restrictions during the heart of the Cold War left the world with four nuclear powers and no effective international safeguards.¹⁵ However, the addition of China into the nuclear family changed the international nuclear equation. China’s acquiescence of nuclear weapons caused the United States and the Soviet Union to submit proposals to the Eighteen-Nation Disarmament Committee on Nuclear Nonproliferation.¹⁶ The adopted proposal called for the IAEA safeguards on nuclear weapons to only apply to Non-nuclear Weapon States (NNWS).¹⁷ Nuclear Weapon States (NWS) included the United States, Great Britain, France, Russia, and China.¹⁸ To calm the fears of the NNWS, the “United States and United Kingdom volunteered to have IAEA safeguards apply to all their nuclear facilities except those with direct national security significance.”¹⁹ In addition, the United States, Great Britain, and the Soviet Union agreed to “provide assistance to any NNWS party to the NPT that was subject to a nuclear attack or threat of a nuclear attack.”²⁰

The NPT opened for signature in 1968, and went into effect in 1970 after obtaining the signatures of ninety-seven countries, and ratification by forty-seven countries; however, two nuclear states—China and France—did not sign the

12. Sarah J. Diehl & James Clay Moltz, *Nuclear Weapons and Nonproliferation* 185 (2002).

13. NPT, Brief Background, <http://www.un.org/Depts/dda/WMD/treaty/> (last visited Oct. 13, 2007). [hereinafter NPT, Brief Background].

14. Diehl & Moltz, *supra* note 12, at 184.

15. *See id.* at 184-85.

16. *Id.* at 18. This committee was “[s]ponsored by the United Nations in 1962, the Conference of the Eighteen-Nation Committee on Disarmament [ENCD] attempted to establish a dialogue between the United States and the Soviet Union at the height of the Cold War.” University of Michigan Digital Library, Eighteen Nation Committee on Disarmament, <http://quod.lib.umich.edu/e/encd/> (last visited Jun. 12, 2009).

17. Diehl & Moltz, *supra* note 12, at 185. States that, prior to January 1, 1967, had “manufactured and detonated a nuclear weapon,” were known as Nuclear Weapon States (NWS). Michael Spies, *Iran and the Limits of the Nuclear Non-Proliferation Regime*, 22 AM. U. INT’L L. REV. 401, 402 (2007). “In July 1957, 18 states ratified the statute that created the International Atomic Energy Agency as an independent organization under the United Nations.” Diehl & Moltz, *supra* note 12, at 260-61.

18. Diehl & Moltz, *supra* note 12, at 185.

19. *Id.* (emphasis omitted).

20. *Id.* *See also* Treaty on the Non-Proliferation of Nuclear Weapons art. V, Mar. 5, 1970, 21 U.S.T. 483, T.I.A.S. No. 6839 [hereinafter NPT].

NPT until 1992.²¹ There are currently 187 members of the NPT,²² including Iran.²³

The main purpose behind the NPT is to “further the goal of non-proliferation.”²⁴ In the proclamation portion of the NPT, United States President Richard Nixon proclaimed that the NPT was formed in consideration of “the devastation that would be visited upon all mankind by a nuclear war,” and in belief that the “proliferation of nuclear weapons would seriously enhance the danger of nuclear war.”²⁵ President Nixon also proclaimed that the NPT would “[u]ndertak[e] to cooperate in facilitating the application of [IAEA] safeguards on peaceful nuclear activities”²⁶ The NPT does not ban the use of peaceful nuclear technology; it encourages its use and development.²⁷

The only mechanism that the NPT provides for monitoring member states is the IAEA,²⁸ an independent organization.²⁹ The IAEA Statute provides that

21. Diehl & Moltz, *supra* note 12, at 185.

22. NPT, Brief Background, *supra* note 13.

23. NPT, *supra* note 20, at art. XI. Members of the NPT include: Afghanistan; Albania; Algeria; Andorra; Angola; Antigua and Barbuda; Argentina; Armenia; Australia; Austria; Azerbaijan; Bahamas; Bahrain; Bangladesh; Barbados; Belarus; Belgium; Belize; Benin; Bhutan; Bolivia; Bosnia Herzegovina; Botswana; Brazil; Brunei Darussalam; Bulgaria; Burkina Faso; Burundi; Cambodia; Cameroon; Canada; Cape Verde; Central African Republic; Chad; Chile; China; Colombia; Comoros; Congo; Democratic Republic of Congo; Cook Islands; Cost Rica; Cote d'Ivoire; Croatia; Cuba; Cyprus; Czech Republic; Denmark; Djibouti; Dominica; Dominican Republic; Ecuador; Egypt; El Salvador; Equatorial Guinea; Eritrea; Estonia; Ethiopia; Fiji; Finland; France; Gabon; Gambia; Georgia; Germany; Ghana; Greece; Grenada; Guatemala; Guinea; Guinea-Bissau; Guyana; Haiti; Holy See; Honduras; Hungary; Iceland; India; Indonesia; Iran; Iraq; Ireland; Israel; Italy; Jamaica; Japan; Jordan; Kazakhstan; Kenya; Kiribati; Korea Democratic People's Republic of Korea; Republic of Korea; Kuwait; Kyrgyzstan; Lao; Latvia; Lebanon; Lesotho; Liberia; Libyan; Liechtenstein; Lithuania; Luxembourg; Macedonia; Madagascar; Malawi; Malaysia; Maldives; Malenego; Mali; Malta; Marshall Islands; Mauritania; Mauritius; Mexico; Micronesia; Moldova; Monaco; Mongolia; Morocco; Mozambique; Myanmar; Namibia; Nauru; Nepal; Netherlands; New Zealand; Nicaragua; Niger; Nigeria; Norway; Oman; Pakistan; Palau; Panama; Papua New Guinea; Paraguay; Peru; Philippines; Poland; Portugal; Qatar; Romania; Russian Federation; Rwanda; Saint Kitts and Nevis; Saint Lucia; Saint Vincent; San Marino; Sao Tome and Principe; Saudi Arabia; Senegal; Serbia and Montenegro; Seychelles; Sierra Leone; Singapore; Slovakia; Slovenia; Solomon Islands; Somalia; South Africa; Spain; Sri Lanka; Sudan; Suriname; Swaziland; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Timor-Leste; Togo; Tonga; Trinidad and Tobago; Tunisia; Turkey; Turkmenistan; Tuvalu; Uganda; Ukraine; United Arab Emirates; United Kingdom; United Republic of Tanzania; United States; Uruguay; Uzbekistan; Vanuatu; Venezuela; Viet Nam; Western Samoa; Yemen; Zambia; and Zimbabwe. United Nations, Status of Multilateral Arms Regulation and Disarmament Agreements, <http://disarmament.un.org/TreatyStatus.nsf> (follow “NPT” hyperlink on the left; then follow “Alphabetical Order” hyperlink under NPT link on the left) (last visited Jun. 14, 2009).

24. NPT, Brief Background, *supra* note 13.

25. NPT, *supra* note 20, at Proclamation.

26. *Id.*

27. *See id.*

28. Spies, *supra* note 17, at 403.

29. IAEA.org, The “Atoms for Peace” Agency, <http://www.iaea.org/About/index.html> (last visited Jun. 14, 2009) [hereinafter IAEA.org].

the IAEA is “to act as an intermediary for the purposes of securing the performance of services or the supplying of materials, equipment, or facilities . . . and to perform any operation or service useful in research on . . . atomic energy for peaceful purposes”³⁰ The bifurcated purpose of the IAEA and the NPT serves to provide NNWSs with nuclear material for the pursuit of peaceful nuclear technology.³¹ Prior to facilitating the transfer of nuclear materials, the IAEA primarily requires that participating NNWS agree not to use nuclear materials for the proliferation of nuclear weapons.³²

Iran signed the NPT in 1968 and later ratified it in 1970.³³ Iran has not been able to retain the level of commitment to the NPT that it had during the 1970’s.³⁴ This is largely due to Iran’s shift away from Western ideas in 1979.³⁵

Iran no longer sought nuclear assistance from the United States; instead, Iran sought assistance from communist Russia and China.³⁶ Iran’s lack of commitment to the NPT was evidenced by Iran’s reaction when, under IAEA scrutiny for NPT violations, Iran threatened to withdraw from the NPT in 2005.³⁷ Larijani, chief nuclear negotiator for the Iranian Supreme National Security Council, stated in 2005, “If [the IAEA] want[s] to use the language of threat, or send Iran’s case to the Security Council, Iran will think twice about implementing the Additional Protocol [snap inspections] and will resume uranium enrichment.”³⁸ The rocky relationship was further evidenced by the issuance of sanctions upon Iran by the IAEA in March 2007 when Manouchehr Mottaki, Iran’s Foreign Minister, proclaimed that Iran would limit its cooperation with the IAEA.³⁹

II. IRAN’S NUCLEAR PROGRAM

Since the 1950’s, Iran has frantically sought nuclear capabilities along with other Middle Eastern nations.⁴⁰ However, Iran has pursued its nuclear

30. Statute of the International Atomic Energy Agency art. III, cl. 1, July 29, 2007, 8 U.S.T. 1093 [hereinafter *The Statute*].

31. *See id.*; NPT, *supra* note 20, at art. V.

32. *The Statute*, *supra* note 30, at art. XI.

33. Alireza Jafarzadeh, *The Iran Threat: President Ahmadinejad and the Coming Nuclear Crisis* 129-30 (2007).

34. *See infra* Part III.

35. *See* Jafarzadeh, *supra* note 33, at 191, 197; Daniel Schwartz, Note, *Just War Doctrine and Nuclear Weapons: A Case Study of a Proposed Attack on Iran’s Nuclear Facilities from an American and Israeli Perspective*, 18 S. CAL. INTERDISC. L.J. 189, 214-16, (2008).

36. *See id.* *Can’t use id. here, two sources in previous citation. Which source is this citing to?*

37. *Id.*

38. *Id.* (citing Nazila Fathi & David Sanger, *Iran Warns Against Referral of Nuclear Issue to the UN*, N.Y. TIMES, Sept. 21, 2005, at A12, available at 2005 WLNR 24286944).

39. Thom Shanker & William Broad, *Iran to Limit Cooperation with Nuclear Inspectors*, N.Y. TIMES, Mar. 26, 2007, at A6, available at 2007 WLNR 5640525.

40. PAUL K. KERR, IRAN’S NUCLEAR PROGRAM: STATUS, CRS REPORT FOR CONGRESS 1 (Nov. 20, 2008), available at <http://www.fas.org/spp/crs/nuke/RL34544.pdf>.

program to the extent that Iran's "ambitions create a feeling that a nuclear race is underway."⁴¹ Iran obtained possession of its first nuclear reactor after receiving a small five-megawatt thermal reactor in the 1960's that the United States gave to it.⁴² Iran took another major step in its nuclear pursuit in 1974 by forming the Atomic Energy Organization of Iran (AEOI).⁴³ Along with the formation of this organization, the Shah, Mohammed Reza Pahlavi,⁴⁴ announced plans to build twenty-two reactors over a twenty-year span to meet Iran's energy needs.⁴⁵ Once again, Iran left the world with the impression that, as a State with no shortage in oil,⁴⁶ it was in a nuclear technology race.

Prior to the overthrow of the Shah in 1979,⁴⁷ Iran entered into an agreement with the United States to exchange nuclear technology and practice nuclear safety.⁴⁸ In addition to this new agreement, Iran contracted with West Germany to build two nuclear reactors at Bushehr.⁴⁹ The Shah believed that the nuclear reactors at Bushehr would create the infrastructure that was necessary

41. *Atomic Power Growth*, APS DIPLOMAT NEWS SERV., June 11, 2007, available at 2007 WLNR 10928882 [hereinafter *Atomic Power Growth*].

42. Joseph Cirincione, *Controlling Iran's Nuclear Program*, ISSUES SCI. & TECH., April 1, 2006, available at 2006 WLNR 5784586. The five-megawatt reactor was "installed at the Tehran Nuclear Research Center (TNRC) at Tehran University." Jafarzadeh, *supra* note 33, at 129. The United States provided Iran with the five-megawatt reactor as "part of the U.S. 'Atoms for Peace' program, in which nuclear technology was given to nations throughout the world in exchange for those countries' commitments not to develop nuclear weapons." *Id.*

43. Jafarzadeh, *supra* note 33, at 130.

44. FRANK BARNABY, *HOW NUCLEAR WEAPONS SPREAD: NUCLEAR-WEAPON PROLIFERATION IN THE 1990S* 114 (1993).

45. Jafarzadeh, *supra* note 33, at 130.

46. United States officials have been unconvinced by Iran's claim that nuclear technology was necessary to meet energy requirements, because "Iran has no need for nuclear energy because the country is superbly endowed with natural resources of oil and gas that are significantly cheaper to develop. Howard, *supra* note 2, at 97. According to Whitehouse Spokesman Ari Fleischer:

Such facilities are simply not justified by the needs that Iran has for their civilian nuclear programme. Our assessment when we look at Iran is that there is no economic gain for a country rich in oil and gas like Iran to build costly indigenous nuclear fuel cycle facilities. Iran flares ("burns") off more gas every year than the equivalent power that it hopes to produce with these reactors.

Id. at 97-98.

47. Cirincione, *supra* note 42.

48. JAFARZADEH, *supra* note 33, at 130.

49. Cirincione, *supra* note 42, at (page number). The reactors at Bushehr were under construction to become two "1,200-1,300-megawatt electric (MWe) pressurized water nuclear reactors." FAS.org, Bushehr, <http://www.fas.org/nuke/guide/iran/facility/bushehr.htm> (last visited Nov. 15, 2007) [hereinafter FAS, Bushehr]. Light water reactors are "the most widespread power reactor type found in the world today. It uses low enriched (3%) uranium as fuel, which enhances its efficiency as an electricity generator by enabling the fuel to stay longer in the reactor." DIEHL & MOLTZ, *supra* note 12, at 201. The West Germans agreed to build two 1,200-1,300-megawatt nuclear power plants near Bushehr. See Cirincione, *supra* note 42. By 1979, "one of the 1,200-1,300-megawatt nuclear power plants was already eighty-five percent complete." JAFARZADEH, *supra* note 33, at 130. Additionally, the second 1,200-1,300-megawatt nuclear power plant was partially completed. FAS, Bushehr, *supra* note 49.

to industrialize Iran.⁵⁰ Two additional “930-megawatt reactors” were also scheduled to be constructed at Ahwaz.⁵¹ Additionally, Iran was able to procure classified laser technology from the United States that could produce plutonium and “separate weapons-grade uranium from natural uranium.”⁵²

Iran’s nuclear progression took a giant step backwards when Ayatollah Ruholla Khomeini, leader of the Islamic regime that overthrew the Shah in 1979, ended the construction of all nuclear reactors.⁵³ However, the temptation of nuclear capability was too great, and Iran eventually reinstated its nuclear program.⁵⁴ Prior to officially reinstating the program, Iran was able to first obtain assistance from China to build a new nuclear research facility at the Isfahan Nuclear Technology Center (INTC) in 1984.⁵⁵ Iran also began to mine for uranium from its uranium reserves at Saghand,⁵⁶ where there is an estimated 5,000 tons of “high-grade uranium ore.”⁵⁷

Iran was able to make significant advances in its pursuit of nuclear technology throughout the nineties. In 1995, Russia and Iran agreed to an \$800 million contract for Russia to complete a 1,000-megawatt nuclear power reactor at Bushehr.⁵⁸ After nearly three decades of construction on the plant at Bushehr, Mottaki announced in February 2006 that “construction on the [Bushehr] plant was completed and that it would ‘be soon ready to receive nuclear fuel, which Russia has pledged to supply.’”⁵⁹ According to a later announcement by Mottaki, as of September 2007, the plant at Bushehr was ninety-five percent ready for operation.⁶⁰

Although Iran has claimed that its nuclear program is peaceful, there has been plenty of evidence to the contrary.⁶¹ The true nature of the Iranian nuclear

50. FAS, Bushehr, *supra* note 49.

51. JAFARZADEH, *supra* note 33, at 130.

52. *Id.*

53. Cirincione, *supra* note 42.

54. JAFARZADEH, *supra* note 33, at 131.

55. *Id.* (“China’s impact on the development of the INTC in the 1980s included supplying a ‘training reactor’ in 1985, the first of four small research reactors that China would install at the research center over the next ten years.”).

56. BARNABY, *supra* note 44, at 115.

57. *Id.*

58. MILTON M. SCHWARTZ, IRAN: POLITICAL ISSUES, NUCLEAR CAPABILITIES, AND MISSILE RANGE 84 (Milton Schwartz ed., Nova Science Publishers, Inc. 2006).

59. JAFARZADEH, *supra* note 33, at 137 (citing RIA Novosti, *Bushehr NPP to be Ready to Take Nuclear Fuel Soon - Iran*, <http://en.rian.ru/russia/20060214/43532161.html> (last visited Nov. 14, 2007)).

60. *Interfax Russia & CIS Diplomatic Panorama*, INTERFAX DIPLOMATIC PANORAMA, Sept. 12, 2007, available at 2007 WLNR 17979208.

61. See JAFARZADEH, *supra* note 33, at 138 (Despite the Iranian regime’s bullying insistence that it is only pursuing nuclear technology for energy, the reality is that there are two nuclear programs in Iran. One, the Atomic Energy Organization of Iran (AEOI), presents a legitimate nuclear face to the IAEA and the rest of the world . . . [t]he second nuclear program in Iran is secret in every aspect, from its invisible budget to its military-command hierarchy and its operative direction from the highest levels of power in the regime).

program must be evaluated by its public accomplishments and ambitions, as well as its rather extravagant and unexplainable secret accomplishments.⁶² Because the NPT allows States to peacefully acquire and develop nuclear technology so long as it is not used for military purposes, there is no reason for Iran to keep part of its program secret from the IAEA.⁶³ Yet, Iran has kept large portions of its nuclear program secret, e.g., Natanz, Arak, and dealings with Kahn.⁶⁴ The purpose for keeping the nuclear program a secret could not have been to hide Iran's energy capabilities from the international community, because development of peaceful nuclear technology is not a violation of the NPT.⁶⁵ Despite Iran's claim, experts have predicted that "Iran could potentially produce a nuclear bomb within the next few years."⁶⁶

III. SANCTIONS IMPOSED UPON NUCLEAR THREAT NATIONS

Iran is just one of several nations that have presented themselves as nuclear threats in the international community. In order to understand how various sanctions might affect Iran, it is necessary to evaluate sanctions that have been imposed against various nations that have conducted nuclear tests, developed nuclear capacity, or pursued nuclear capability in defiance of the international community.

A. Iran

Sanctions upon Iran have been unsuccessful in convincing Iran to abandon its nuclear program. After recurring violations of the NPT; the Security Council, consisting of the United States, Great Britain, France, Russia and China; along with Germany, imposed sanctions on Iran in 2006.⁶⁷ The Security Council adopted Resolution 1737 against Iran after it failed to comply with the United Nations demand in July 2006 that required Iran to suspend all uranium-enrichment activities.⁶⁸ The sanctions called for a block on the

62. Maggie Farley, *Iran Said to Test an Advanced Centrifuge*, L.A. TIMES, Feb. 2, 2008, available at 2008 WLNR 2424153.

63. See The Statute, *supra* note 30, at art. III.

64. See *infra* Part V.

65. See NPT, *supra* note 20, at art. V.

66. Jamie Lang, Note, *International Sanctions: The Pressure on Iran to Abandon Nuclear Proliferation*, 6 J. INT'L BUS. & L. 141, 141 (2007).

67. Elissa Gootman, *Security Council Approves Sanctions Against Iran over Nuclear Program*, N.Y. TIMES, Dec. 24, 2006, at 18, available at 2006 WLNR 22452307.

68. *Iran Urged to Respond to Nuclear Proposals*, CHINA DAILY, July 17, 2006, available at 2006 WLNR 12307356. Uranium must be enriched prior to being used in certain types of reactors and weapons. DIEHL & MOLTZ, *supra* note 12, at 204.

[T]he concentration of fissile U-235 must be increased by physical . . . means before it can be fabricated into fuel . . . [because] a concentration of 3 per cent is necessary . . . to sustain a chain reaction in an LWR . . . [and] 90 per cent enrichment is required before use in [High Temperature Gas Cooled Reactors] . . . or fission weapons.

“import or export of sensitive nuclear material and equipment and freezing the financial assets of persons or entities supporting its proliferation sensitive nuclear activities or the development of nuclear-weapon delivery systems.”⁶⁹ The Security Council agreed that the sanctions would be lifted if Iran complied with the measures within sixty days.⁷⁰ Compliance required Iran to “suspend . . . all enrichment-related and reprocessing activities, including research and development; and work on all heavy-water related projects, including the construction of a research reactor moderated by heavy water.”⁷¹ The Resolution was far weaker than originally proposed due to Russia’s unwillingness to accept more stringent sanctions.⁷² China was equally unwilling to adopt more stringent sanctions.⁷³

After Iran’s failure to comply with Resolution 1737,⁷⁴ the Security Council imposed further sanctions on it by adopting Resolution 1747 in March 2007.⁷⁵ The Security Council called for the “banning . . . [of Iran’s] arms exports and freezing the assets and restricting the travel of additional individuals engaged in the country’s proliferation-sensitive nuclear activities.”⁷⁶ The Resolution also required Iran to immediately “suspend all enrichment-related and reprocessing activities, including research and development.”⁷⁷ Iranian officials once again refused to comply with the Resolution.⁷⁸ After

Id.

69. Security Council, *Security Council Imposes Sanctions on Iran for Failure to Halt Uranium Enrichment*, Unanimously Adopting Resolution 1737 (2006), <http://www.un.org/News/Press/docs/2006/sc8928.doc.htm> (last visited Jan 8, 2009) [hereinafter Security Council].

70. *Id.*

71. *Id.*

72. Lang, *supra* note 66, at 144.

73. Syed Ali Zafar, *US and the Turmoil in Iran*, NATION, Feb. 6, 2008, available at 2008 WLNR 2468876.

74. Anna Mulrine et al., *Hello, I Must be Going . . . ; Deadlines Come, and Deadlines Go: Uneasy Talks for a Church Divided; A Place where Blogging is a Crime*, U.S. NEWS & WORLD REP., Mar. 5, 2007, available at 2007 WLNR 14230255; see also David Gollust, *VOA News: U.S. Hopes for Agreement on Elements of New Iran Resolution by March 1*, U.S. FED. NEWS, Feb. 26, 2007, available at 2007 WLNR 3752573 (“President Mahmoud Ahmadinejad said . . . there is no brake or reverse gear on his country’s nuclear efforts.”).

75. Security Council, *Security Council Toughens Sanctions Against Iran, Adds Arms Embargo*, With Unanimous Adoption of Resolution 1747 (2007), <http://www.un.org/News/Press/docs/2007/sc8980.doc.htm> (last visited Nov. 16, 2007) [hereinafter Adoption of Resolution 1747].

76. *Id.*

77. *Id.*

78. See George Jahn, *Queries Come Ahead of UN Report on Nukes*, CHI. TRIB., Nov. 15, 2007, at 16, available at 2007 WLNR 22589794 (“Iran’s defiance of a UN Security Council demand to suspend uranium enrichment led to two rounds of UN sanctions, and the U.S. and its allies are urging a third set if Tehran doesn’t clear up their suspicions.”); *Iran Gives U.N. Watchdog Nuke-Program Blueprints*, ORLANDO SENTINEL, Nov. 14, 2007, at A10, available at 2007 WLNR 22495651 (“[t]he report, expected today or Thursday, is likely to show substantial but not full compliance by Iran with its pledges to come clean on past activities - - and confirm at the same time that Tehran continues enriching uranium in defiance of the U.N. Security Council”).

Resolution 1747 was issued, alternate solutions were proposed.⁷⁹ Because Iran has not yet complied, a third Security Council Resolution appears to be imminent.⁸⁰

B. North Korea

North Korea, a member of the NPT,⁸¹ became a nuclear threat in 1992.⁸² In 1994, after it was revealed that North Korea had a secret nuclear military facility,⁸³ the United States negotiated a buyout to dissuade North Korea from pursuing nuclear weapons.⁸⁴ President Clinton offered North Korea “\$100 million worth of oil each year and [to] arrange with allies to build – free – a \$4 billion light-water reactor. . . .”⁸⁵ Although the United States approached the North Korean nuclear threat through positive incentives,⁸⁶ it was revealed in

79. See *A Special Report on Iran: Only Engage*, ECONOMIST, July 21, 2007, at 72, available at 2007 WLNR 13802682. In June 2006, members of the Security Council and eventually the United States, in return for Iran’s nuclear compliance offered a series of incentives to Iran that remain available:

These included the prospect of trade agreements with the European Union; Iran’s acceptance into the World Trade Organization; the easing of American sanctions; the sale to Iran of a light-water reactor and guarantees of nuclear fuel; EU help to modernize Iran’s oil and gas industries; support for a WMD-free zone in the Middle East; and the possibility of Iran being allowed to enrich uranium after all if it could show that this was for exclusively peaceful purposes.

Id.

80. See Quentin Peel, *Between the Lines – Quentin Peel: Russia and the West Face Slew of Deadlines*, FIN. TIMES ASIA, Nov. 8, 2007, at 3, available at http://www.ft.com/cms/s/0/41ea89d6-8d9e-11dc-a398-0000779fd2ac.html?nclick_check=1 (“[T]op diplomats of the permanent five members of the UN Security Council, plus Germany, will meet to consider whether further sanctions should be imposed on Tehran for lack of compliance with UN resolutions to stop uranium enrichment.”).

81. *State of Compliance North Korea Works to Close its Nuclear Program*, PITT. POST-GAZETTE, June 26, 2007, at B6, available at 2007 WLNR 12021398.

82. *North Adds New Demand in Koreans’ Nuclear Talks*, L.A. TIMES, Feb. 28, 1992, at 13, available at 1992 WLNR 4000526.

83. Paul Shin, *N. Korea Military Steps in to Head off Nuclear Inspection*, SEATTLE TIMES, Sep. 27, 1994, at A3, available at 1994 WLNR 1213541.

84. William Safire, *Clinton Caved in to North Korea*, TIMES-PICAYUNE, Oct. 25, 1994, at B7, available at 1994 WLNR 934278. In 1994, North Korea’s 5MW(e) reactor core in Yŏngbyŏn-kun burned up. Because of this, spent fuel rods had to be stored. NTI, NORTH KOREA PROFILE, http://www.nti.org/e_research/profiles/NK/Nuclear/index_157.html (last visited Feb 10, 2009) [hereinafter NTI]. This created tracking problems for the IAEA, which led President Clinton to suggest economic sanctions, which North Korea considered an “an act of war.” *Id.* The crisis was eventually settled by way of positive incentives. *Id.*

85. Safire, *supra* note 84, at B7. North Korea also signed the Joint Declaration on the Denuclearization of the Korean Peninsula with South Korea, that provides under the Joint Declaration, the Democratic People’s Republic of Korea and the Republic of Korea agree “not to test, manufacture, produce, receive, possess, store, deploy, or use nuclear weapons”; to use nuclear energy solely for peaceful purposes; and not to possess facilities for nuclear reprocessing and uranium enrichment. NTI, *supra* note 84.

86. See George Perkovich, *U.S. Policy on N. Korea not Perfect, but Sound*, N.J. REC., Sep.

2001 that North Korea had, once again, been in pursuit of nuclear weapons.⁸⁷ According to a published report by the National Intelligence Council, North Korea produced at least one and possibly two nuclear weapons despite sanctions.⁸⁸ After discovering that North Korea had not complied with the prior agreement, President George W. Bush suspended delivery of promised heavy fuel oil.⁸⁹ Finally, in 2005, North Korea proclaimed to the world that it had produced a nuclear weapon.⁹⁰ In 2006, North Korea tested its first nuclear weapon.⁹¹

The United Nations imposed economic sanctions on North Korea in 2006 for its violation of the NPT.⁹² The sanctions were unanimously adopted by the United Nations through Resolution 1718.⁹³ The Resolution restricted North Korea's use of "large-scale arms, nuclear technology and related training . . . as well as luxury goods."⁹⁴ These provisions were to be enforced by a committee of fifteen members that were required to report to the United Nations on compliance every ninety days.⁹⁵ The six parties developed a phase-by-phase denuclearization plan which North Korea accepted in October 2007.⁹⁶ Because a denuclearization plan could not be enforced by the military under previous

30, 1994, at B11, *available at* 1994 WLNR 1671481.

87. Notra Trulock, *North Korea's Nuclear Threat*, INSIGHT ON NEWS, May 20, 2002, at 46, *available at* 2002 WLNR 5182829.

88. NATIONAL INTELLIGENCE COUNCIL, FOREIGN MISSILE DEVELOPMENTS AND THE BALLISTIC MISSILE THREAT, http://www.dni.gov/nic/PDF_GIF_otherprod/missilethreat2001.pdf (last visited Jan. 3, 2008).

89. NTI, *supra* note 84. President Bush wanted an "improved implementation of the Agreed Framework." *Id.* In 2003, in response, North Korea informed the IAEA of its plans to withdraw from the NPT. *Id.* The withdrawal was to be effective on the following day of notification; however, "[t]he treaty requires 90-day notice before a withdrawal, but North Korea claims this is not necessary since Pyongyang already declared its intention to withdraw in 1993, only to suspend its intention to withdraw 89 days later." *Id.*

90. *Id.*

91. James Lyons, *Global Condemnation as North Korea Tests a Nuclear Device*, DAILY RECORD, Oct. 10, 2006, at 6, *available at* 2006 WLNR 17495608 ("North Korean Scientists set off the bomb at 2.36am BST in a mine shaft in the north-east of the country. Russia said the blast was as strong as the one at Hiroshima in 1945.").

92. Security Council, *Security Council Condemns Nuclear Test by Democratic People's Republic of Korea*, Unanimously Adopting Resolution 1718 (2006), <http://www.un.org/News/Press/docs/2006/sc8853.doc.htm>. (last visited Jan. 9, 2008) [hereinafter Security Council Condemns].

93. *Id.* Resolution 1718 is a Chapter Seven Resolution. Larry King, *Interview with U.S. Secretary of State*, ANALYST WIRE, Oct. 31, 2006, *available at* 2006 WLNR 18906259. Chapter Seven Resolutions are mandatory and are considered to be in response of "threats to the peace, breaches of the peace, and acts of aggression." U.N. Charter ch. VII, *available at* <http://www.un.org/aboutun/charter/chapter7.shtml> [hereinafter Chapter VII].

94. Security Council Condemns, *supra* note 92.

95. *Id.*

96. Jayshree Bajoria, *North Korea After Kim*, <http://www.cfr.org/publication/17322/> (last visited Mar. 30, 2009); *Differences Remain in N. Korea Nuke Talks, Joint Document Uncertain*, ASIAN POL. NEWS, Sept. 29, 2007, *available at* 2007 WLNR 24107296 [hereinafter Differences Remain].

sanctions,⁹⁷ the United States, once again, offered positive incentives for compliance.⁹⁸

C. India

India's nuclear program began well before the formulation of the NPT with the formation of the India Atomic Energy Commission in 1944.⁹⁹ After India lost a war with China in 1962, India asserted that "nuclear science and technology was common intellectual property" and that the "use of atomic energy was purely a state's sovereign prerogative."¹⁰⁰ India achieved that success by testing its first nuclear weapon in 1974.¹⁰¹

After hearing testimony before the United States Senate Committee that India did not violate any United States agreement¹⁰² and because India was not a signatory to the NPT,¹⁰³ the United States decided to "pressurize the Indian government not to pursue a vigorous nuclear policy."¹⁰⁴ Despite pressure from the United States, India began a series of five nuclear tests in 1998.¹⁰⁵

On May 11, 1998, India completed three underground nuclear tests.¹⁰⁶

97. See *infra* Part V.

98. See Differences Remain, *supra* note 96. The agreement calls for North Korea to dismantle all of its nuclear facilities and provide a declaration of all of its nuclear programs. See *id.* In exchange, the United States will provide North Korea with 950,000 tons of heavy fuel oil. See *id.* During the first phase, North Korea closed its Yongbyon facility. *Disablement does not Equal Denuked N. Korea*, NIKKEI WKLY., Nov. 11, 2007, available at 2007 WLNR 22355378. As part of the second phase, North Korea allowed IAEA inspections in exchange for 50,000 tons of heavy fuel oil. Differences Remain, *supra* note 96.

99. ARPIT RAJAIN, NUCLEAR DETERRENCE IN SOUTHERN ASIA: CHINA, INDIA AND PAKISTAN 208 (2005).

100. *Id.* In 1961, the United States became aware that India's nuclear program had the potential to create a nuclear bomb. *Id.* at 209. It has been asserted that the United States was advised to aid India in obtaining nuclear weapons in order to counter communist China. *Id.* The idea was asserted by George C. McGhee, head of the State Department's Policy Planning Council. NATIONAL SECURITY ARCHIVE, ANTICIPATORY ACTION PENDING CHINESE COMMUNIST DEMONSTRATION OF NUCLEAR CAPABILITY, April 28, 1995, <http://www.gwu.edu/~nsarchiv/nsa/DOCUMENT/950428.htm> (last visited March 6, 2009). McGhee claimed that "it would be desirable if a friendly Asian power beat Communist China to the punch," and that the United States "should depart from [its] stated policy that [the United States] is opposed to the further extension of national nuc. weapons capability." *Id.*

101. DIEHL & MOLTZ, *supra* note 12, at 15-16. "On May 18, India explode[d] a 12-kiloton plutonium bomb underground in the Rajasthan Desert near the town of Pkhran." *Id.* at 98.

102. RAJAIN, *supra* note 99, at 211.

103. *Trust is Key to India-China Relations*, CHINA POST, Jan. 30, 2008, available at 2008 WLNR 1717327. India had the opportunity to become a member of the NPT in 1995 when the NPT came up for its twenty-five year review. RAJAIN, *supra* note 99, at 219. India refused the opportunity, and even went so far as to attend the conference as an observer. *Id.*

104. RAJAIN, *supra* note 99, at 211.

105. Mark Brennock, World Review '98 Diplomatic Away Win but Own-Goal Loss at Home Diplomatic Success Abroad, Undiplomatic Rows at Home, IR. TIMES, Dec. 31, 1998, available at 1998 WLNR 2904219.

106. *Tests Have U.S., Other Nations Uneasy Officials Express Concern on India-Pakistan*

India ran two more nuclear tests two days later.¹⁰⁷ In response, President Clinton imposed tough “unambiguous” sanctions.¹⁰⁸ The United States ended all assistance to India with the exception of humanitarian aid.¹⁰⁹ Additionally, the United States ended the “export of certain defense and technology material . . . , terminate[d] any foreign military financing, end[ed] U.S. credit and credit guarantees to India, and bar[red] American banks from making loans or extending credit to the government except for purchasing food.”¹¹⁰

D. Pakistan

Pakistan began its nuclear program years before India tested its first nuclear weapon.¹¹¹ In 1987, Dr. A.Q. Khan announced that Pakistan had the ability to produce and had produced nuclear weapons.¹¹² In light of this information, the international community urged the United States to sanction Pakistan for its production of nuclear weapons.¹¹³ The United States placed restrictions on its aid to Pakistan in hopes that Pakistan would cease its nuclear activities.¹¹⁴ However, a Pakistani government official stated, “[n]o power on earth can deter Pakistan from pursuing its peaceful nuclear policy, no matter what difficulties Pakistan has to face and what sacrifices we have to undergo.”¹¹⁵

On May 28, 1998, Pakistan tested five nuclear weapons in response to India’s five nuclear tests that were conducted earlier that month.¹¹⁶ Two days

Tensions. Japan Calls for Cutoff of Aid, AKRON BEACON J., May 12, 1998, at A2, available at 1998 WLNR 1638162; Joseph Albright & Marcia Kunstel, *India Rejects Call to Slow Arms Race*, ATLANTA J. & CONST., June 29, 1998, available at 1998 WLNR 3393309. India conducted tests on a “fission device with a yield of about 12 kilotons, a thermonuclear device with a yield of about 43 kilotons, and a subkiloton device. DIEHL & MOLTZ, *supra* note 12, at 142.

107. *U.S. Hits India with Sanctions*, BUFF. NEWS, May 13, 1998, at A1, available at 1998 WLNR 1250683.

108. William M. McGlone & Timothy P. Trenkle, *International Sanctions and Export Controls*, 33 INT’L L. 257, 258 (1999); *India Tests Again – Clinton Orders Sanctions After Two Latest Nuc.*, CHARLESTON GAZETTE & DAILY MAIL, May 13, 1998, at 1A, available at 1998 WLNR 709110 [hereinafter *India Tests Again*].

109. *India Tests Again*, *supra* note 108, at 1A.

110. *Id.*

111. RAJAIN, *supra* note 99, at 281.

112. *Id.* at 288.

113. Eric Lindeman, *Glenn Seeks Suspension of Aid to Pakistan but Perle Wants Cutoff to be Last Resort*, NUCLEAR FUEL, Mar. 9, 1987, at 1, available at 1987 WLNR 484766. “Sen[ator] John Glenn (D-Ohio) . . . [and] Richard Perle, the Department of Defense . . . assistant secretary of defense for international security policy, urged [President Reagan] to consider withholding . . . aid,” to Pakistan. *Id.*

114. Marvin M. Miller, *Stemming the Spread of Nuclear Weapons*, TECH. REV., Aug. 1, 1987, at 68, available at 1987 WLNR 952157.

115. *Id.*

116. DIEHL & MOLTZ, *supra* note 12, at 195. The tests occurred in the “Chagai Hills, each with an announced yield of 40-45 kilotons.” *Id.*

later, Pakistan tested one more nuclear weapon.¹¹⁷ The United States applied economic sanctions on Pakistan just as it had against India.¹¹⁸ The sanctions included:

termination of U.S. foreign assistance[;] . . . termination of U.S. government sales of defense articles and service[] . . . items; termination of foreign military financing; denial of most U.S. government-backed . . . financial assistance; U.S. opposition to loans . . . from any international financial institution; [and] prohibition on . . . exports of 'specific goods'¹¹⁹

However, the economic sanctions imposed on Pakistan were eventually lifted following the terrorist attack on September 11, 2001, and Pakistan's nuclear program remains in place today.¹²⁰

E. France

France has been a member of the international nuclear family since nearly the beginning of the nuclear age and was allowed to possess, manufacture, and test nuclear weapons; however, France still rendered itself a nuclear threat as recently as 1995.¹²¹ France determined in 1995 that it was necessary to "maintain the credibility and reliability of French nuclear weaponry,"¹²² because France needed to test its nuclear weapons prior to the enforcement of a nuclear test ban treaty.¹²³

International pressure was applied to France hoping to persuade it to forgo plans to conduct a series of nuclear tests in 1995.¹²⁴ President Jacques Chirac pronounced that France would not alter its plans to test its nuclear weapons, and that France would "retaliate against any trade or diplomatic sanctions instigated by opponents of its nuclear tests."¹²⁵ On September 5,

117. *Id.* This test was announced to have a yield of 15-18 kilotons. *Id.*

118. DIANNE E. RENNACK, *INDIA AND PAKISTAN: CURRENT U.S. ECONOMIC SANCTIONS*, CONGRESSIONAL RESEARCH SERVICE, (2001), available at <http://fpc.state.gov/documents/organization/6202.pdf>.

119. *Id.*

120. The White House, *President Waives Sanctions on India, Pakistan*, Sept. 22, 2001, <http://www.whitehouse.gov/news/releases/2001/09/20010922-4.html> (last visited ???).

121. *France to Complete Nuclear Tests Despite Outcry*, DALLAS MORNING NEWS, Sept. 7, 1995, at 9A, available at 1995 WLNR 5253927 [hereinafter *France to Complete*].

122. Wang Fang, *France Resumes Nuclear Test to Maintain Deterrence*, BEIJING REV., Oct. 30, 1995, at 21, available at 1995 WLNR 250714.

123. *China, France Rebuff Criticism of Nuclear Arms Tests*, SOUTH FLORIDA SUN-SENTINEL, Sept. 28, 1995, at 16A, available at 1995 WLNR 4816776.

124. *Paris Ignores Protests, Sets Off Nuclear Blast*, BALTIMORE SUN, Sept. 6, 1995, at 3A, available at 1995 WLNR 961777.

125. *France to Complete*, *supra* note 121.

1995, France began the first of a series of six¹²⁶ nuclear tests at Mururoa Atoll.¹²⁷

France's nuclear tests became a security threat to surrounding countries,¹²⁸ but France was not legally required to end its nuclear testing because France has the right to maintain and develop nuclear weapons as a NWS.¹²⁹ France conducted its tests on the Island of Mururoa Atoll located in a Polynesian region.¹³⁰ France forced the Polynesian people in Mururoa Atoll to bear the risk of potential nuclear fallout.¹³¹ Following two French nuclear tests, photographs of Mururoa Atoll showed that the nuclear blast caused the island to crack and break apart while "spewing radioactivity into the water and air. . . ."¹³² Despite the evidence of the possible danger to the Polynesian people, France completed four more nuclear tests.¹³³

Despite international protests and objections from the United States and Southeastern countries, including Australia, Japan, New Zealand, and South Korea,¹³⁴ formal sanctions were not placed on France.¹³⁵ The United States responded by rebuking France's decision with a statement of "regret."¹³⁶ The South Pacific Forum severed diplomatic ties with France in retaliation to France's decision to continue nuclear testing.¹³⁷ Additionally, protesters worldwide called for a boycott of all French products.¹³⁸

126. *The Week*, DOMINION POST, Dec. 30, 1995, at 15, available at 1995 WLNR 2437345 [hereinafter *The Week*].

127. Christophe Marquand, *France Detonates Nuclear Test Blast Underground Explosion Somewhat Stronger than Bomb at Hiroshima – Seven More Tests are Planned*, AKRON BEACON J., Sept. 6, 1995, at A3, available at 1995 WLNR 1360782.

128. Eduardo Cue, *Paper Says Photos Show Nuke Tests Damaged Atoll*, CONTRA COSTA TIMES, Oct. 12, 1995, at B04, available at 1995 WLNR 1797247.

129. See NPT, *supra* note 20, at art. XI.

130. *More Controversy Over French Nuclear Tests Photos Reportedly Show Cracks in Atoll*, S.F. CHRON., Oct. 12, 1995, at A13, available at 1995 WLNR 3043704.

131. See Cue, *supra* note 128, at B04; William Drozdiak, *France Shrugs off Criticism Country to Continue with Nuclear Testing*, DENV. POST, Sept. 7, 1995, at A22, available at 1995 WLNR 471937.

132. Cue, *supra* note 128, at B04.

133. See *The Week*, *supra* note 126, at 15.

134. *South Pacific Forum Cuts Ties with France*, USA TODAY, Oct. 3, 1995, at 07A, available at 1995 WLNR 2553061.

135. *Id.*

136. *Id.*

137. *Id.* Editorial, *The South Pacific Forum is made up of sixteen countries in the South Pacific that adopted the South Pacific Nuclear-Free Zone Treaty*, DAILY YOMIURI, March 28, 1996, at 6, available at 1996 WLNR 1287517 [hereinafter *Editorial*]. Member countries include, Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu. Pacific Islands Forum Secretariat, Member Countries, <http://www.forumsec.org.fj/pages.cfm/about-us/member-countries/> (last visited Jan. 8, 2009).

138. *France: Nuclear Critics Still Buying Our Goods*, CHI. TRIB., Dec. 31, 1995, at 15, available at 1995 WLNR 4501259 [hereinafter *France: Nuclear Critics*].

IV. WHY PAST SANCTIONS HAVE NOT WORKED

A. *Inconsistent Rights*

The structure of the NPT has become one of the main reasons that sanctions have not prevented nuclear proliferation.¹³⁹ This is largely because the NPT has created two categories of nations labeled as “haves” and “have nots.”¹⁴⁰ The NWSs of the NPT are permitted to manufacture, develop, store, and test nuclear weapons, which has allowed them to become the “haves”¹⁴¹ of the NPT.¹⁴² NWSs are restricted from transferring nuclear weapons, and from “assist[ing], encourage[ing], or induce[ing] any [NNWS] to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control . . . such weapons or explosive devices.”¹⁴³ The NNWSs of the NPT are not permitted to receive or exercise control over any nuclear explosive device, either directly or indirectly, which has caused these nations to become the “have nots”¹⁴⁴ of the NPT.¹⁴⁵ The United States, France, Great Britain, Russia and China have a legal right to control and manufacture nuclear devices; yet India, Pakistan, North Korea and Iran do not have that legal right.¹⁴⁶

The creation of an exclusive weapons club¹⁴⁷ has been one of the prevailing complaints expressed by nuclear threat-nations.¹⁴⁸ The primary purpose behind giving nuclear rights to certain countries and not to others was to preserve the “exclusivity of a [nuclear] weapons club.”¹⁴⁹ Iran raised this concern in a United Nations Report following its first set of NPT sanctions: Iran’s representative told the Council that “confidence could only be built through respect for and non-discriminatory application of international law and international treaties.”¹⁵⁰ Pakistan and India have also cited the inconsistent rights granted in the NPT as a reason why neither country will comply with the NPT.¹⁵¹ As a result, neither Pakistan nor India is a signatory of the NPT, and

139. See NPT, *supra* note 20.

140. Peggy Mason, *The Nato Alliance, No First Use, and Nuclear Non-Proliferation*, 31 CASE W. RES. J. INT’L L. 633, 642 (1999).

141. *Id.*

142. See NPT, *supra* note 20.

143. *Id.*, at art. I.

144. Mason, *supra* note 140, at 642.

145. See NPT, *supra* note 20, at art. I.

146. Vejay Lalla, *The Effectiveness of the Comprehensive Test Ban Treaty on Nuclear Weapons Proliferation: A Review of Nuclear Non-Proliferation Treaties and the Impact of the Indian and Pakistani Nuclear Tests on the Non-Proliferation Regime*, 8 CARDOZO J. INT’L & COMP. L. 103, 128 (2000).

147. WILLIAM LANGEWIESCHE, *THE ATOMIC BAZAAR: THE RISE OF THE NUCLEAR POOR* 14 (Farrar, Straus and Giroux 1st ed. 2007).

148. Mason, *supra* note 140, at 642.

149. LANGEWIESCHE, *supra* note 147, at 14.

150. Security Council, *supra* note 69.

151. Nobuyasu Abe, Note, *Existing and Emerging Legal Approaches to Nuclear Counter-*

both remain outside its restrictions.¹⁵² Although Pakistan and India are not NPT members, and thus are not subject to the NPT, they have both been subjected to the NPT's nonproliferation standard by the international community.¹⁵³

The NPT's granting of inconsistent rights has created an international standard that has undermined the effectiveness of sanctions. The NPT has created an international standard that has been applied to nonmembers of the NPT as if the standard were international law for all nations.¹⁵⁴ This may have created a sense of false security among the NWSs that a NNWS would forgo the opportunity to obtain nuclear weapons solely on the basis of an accepted international standard.¹⁵⁵ International law "generally derives from the practice of states and is accepted by them as legally binding."¹⁵⁶ The problem with relying on this generality is that not all nations have followed the international standard of nuclear nonproliferation; thus, the NPT has not been accepted as international law for all nations.¹⁵⁷

NNWSs will not comply with sanctions and accept an international standard unless they have an incentive to adhere to the international standard. There are currently no incentives that would entice NNWSs into accepting an international standard.¹⁵⁸ However, it is easy to see why NWSs have adhered to the NPT international standard.¹⁵⁹ The ability to manufacture and use nuclear weapons can bring NWSs a sense of "[h]onor, prestige, and status . . . valued not because they induce some empty flattery but because they translate as influence when and where it counts."¹⁶⁰ On the other hand, NNWSs must rely on a lack of prestige and security as an enticement for adherence, which will continue to undermine the effectiveness of sanctions.¹⁶¹

The NPT's use of the words "inalienable right" when referring to the NWSs' and NNWSs' ability to use nuclear technology has also undermined the

Proliferation in the Twenty-First Century, 39 N.Y.U. J. INT'L L. & POL. 929 (2007); see also Daniel C. Rislove, *Global Warming V. Non-Proliferation: The Time Has Come for Nations to Reassert Their Right to Peaceful Use of Nuclear Energy*, 24 WIS. INT'L L.J. 1069, 1077 (2007).

152. Michael A. Becker, *The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea*, 46 HARV. INT'L L.J. 131, 138 (2005).

153. Kittrie, *supra* note 9, at 394. See also Kevin M. Brew, *The Emergence of Nuclear Weapons as "The Coin of the Realm" and the Return of Nuclear Brinkmanship in South Asia: The Nuclear Sword of Damocles Still Hangs by a Thread*, 52 NAVAL L. REV. 177, 188 (2005).

154. Guy B. Roberts, *The Counterproliferation Self-Help Paradigm: A Legal Regime for Enforcing the Norm Prohibiting the Proliferation of Weapons of Mass Destruction*, 27 DENV. J. INT'L L. & POL'Y 483, 499 (1999).

155. Kittrie, *supra* note 9, at 348.

156. BLACK'S LAW DICTIONARY INTERNATIONAL LAW 835 (8th ed. 2004).

157. See *supra* Part IV.

158. LANGEWIESCHE, *supra* note 147, at 178.

159. See COLIN S. GRAY, *THE SECOND NUCLEAR AGE* 68 (1999).

160. *Id.*

161. See GABRIELLE HECHT, *THE RADIANCE OF FRANCE: NUCLEAR POWER AND NATIONAL IDENTITY AFTER WORLD WAR II* 2 (1998); Mason, *supra* note 140, at 642; see also Edwin J. Nazario, Note, *The Potential Role of Arbitration in the Nuclear Non-Proliferation Treaty Regime*, 10 AM. REV. INT'L ARB. 139, 152 (1999).

effectiveness of sanctions.¹⁶² Article IV of the NPT refers to peaceful technology as an inalienable right that the NPT will not abridge.¹⁶³ Black's Law Dictionary defines inalienable right as "[a] right that cannot be transferred or surrendered; [a] natural right such as the right to own property."¹⁶⁴ The acknowledgement by the NPT of an inalienable right to possess and develop nuclear technology has fostered much of the defiance of the NPT.¹⁶⁵

Following the first round of NPT sanctions upon Iran, according to the United Nations report, "Iran's representative told the Council that . . . bringing Iran's peaceful nuclear programme to the Council . . . was not aimed at a solution, but at compelling Iran to abandon its *rights* under the NPT to peaceful nuclear technology . . . [h]e was here today because his country had not accepted that 'unlawful demand' . . ."¹⁶⁶ Following the second round of NPT sanctions upon Iran, Mottaki had a scathing response.¹⁶⁷ According to the United Nations report, Mottaki said, "If certain countries had pinned their hopes that repeated resolutions would 'dent the resolve of the great Iranian nation,' they should have no doubt that they had 'once again faced catastrophic intelligence and analytical failure. . . .'"¹⁶⁸ Mottaki went on to say that "[e]ven the harshest political and economic sanctions were too weak to coerce the Iranian nation to retreat from their legal and legitimate demands . . . all those . . . 'resolution[s] are . . . aimed at depriving the Iranian people of their *inalienable rights*, rather than emanating from any so called proliferation concerns."¹⁶⁹

North Korea also used the language of the NPT to justify its development of nuclear technology.¹⁷⁰ In 2002, North Korea claimed that it had a right to produce nuclear weapons.¹⁷¹ North Korea used its right of self defense against a United States nuclear attack as justification for asserting a right to develop nuclear weapons.¹⁷²

Additionally, both Pakistan and India have refused to join the NPT unless they are given the same rights as the NWSs.¹⁷³ In 1998, United States Secretary of State Madeline Albright, following the imposition of sanctions on Pakistan, stated that "the world community is united not just in outrage and dismay but in

162. See NPT, *supra* note 20, at art. IV.

163. *Id.*

164. BLACK'S LAW DICTIONARY 1348 (8th ed. 2004).

165. Matthew Liles, *Did Kim Jong-Il Break the Law? A Case Study on How North Korea Highlights the Flaws of the Non-Proliferation Regime*, 33 N.C. J. INT'L & COM. REG. 103, 115 (2007); see also Lalla, *supra* note 146, 127-28.

166. Security Council, *supra* note 69 (emphasis added).

167. See Adoption of Resolution 1747, *supra* note 75.

168. *Id.*

169. *Id.* (emphasis added).

170. See Spies, *supra* note 17, at 403.

171. NTI, *supra* note 84.

172. W. Michael Reisman & Andrea Armstrong, *The Past and Future of the Claim of Preemptive Self-Defense*, 100 AM. J. INT'L L. 525, 549 (2006).

173. Timothy McCormack, *From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law?*, 21 MELB. U. L. REV. 621, 633 (1997).

action.”¹⁷⁴ Secretary Albright’s comments were ironic in that the inconsistency in NPT policy allowed both the United States and France to engage in nuclear testing while Pakistan and India were not allowed to test their nuclear weapons.¹⁷⁵ Until the NPT eliminates its inconsistency in granting rights, sanctions will continue to be ineffective.

B. Lack of Security

The perceived lack of security that the NPT provides NNWSs has created a large counterweight that sanctions must overcome before a nuclear threat nation will comply with nonproliferation. Although the NWSs pledged to provide a blanket of nuclear protection over each NNWS,¹⁷⁶ it is very doubtful that countries such as Iran and North Korea trust the NWSs to provide them with adequate protection.¹⁷⁷ This may be because the NPT originated to deter proliferation of nuclear weapons in states like West Germany and Japan, not Arab states and other areas of the world that were remote from the cold war.¹⁷⁸ The NPT was successful in safeguarding the world from nuclear proliferation in West Germany and Japan because “[it] accepted the U.S. and Soviet nuclear umbrellas.”¹⁷⁹ Each of the five nuclear threat states discussed in this Note has expressed a concern over the lack of security under the NPT.¹⁸⁰

174. *U.S. Spurs Denial of India, Pakistan Loans*, BUFF. NEWS, June 12, 1998, at A3, available at 1998 WLNR 1280070.

175. Cue, *supra* note 128, at B04; United States Nuclear Tests - - By Date, <http://www.fas.org/nuke/guide/usa/nuclear/s09chron.pdf> (last visited Jan. 9, 2009). The United States and France enjoyed the ability to test nuclear technology and further nuclear weapons development without the fear of possible sanctions. See John Balsama, US has no Moral Force to Criticize India’s N-Tests, BOSTON GLOBE, May 15, 1998, at A18, available at 1998 WLNR 2415462. This inconsistency of granted rights was in part a continuing reason why Pakistan has not become a signatory of the NPT. See RAJAIN, *supra* note 99, at 342.

Pakistan has no real objections to being a part of the NPT per se . . . [b]ut it has the potential to ruin the NPT regime by selling nuclear technology, as it is not under any legal commitment to desist from assisting, encouraging or inducing any non-nuclear weapons state to manufacture or otherwise acquire nuclear weapons. . . . Pakistan is a *de facto* nuclear weapons state and can accede to the NPT, but only as a non-nuclear weapons state.

Id. at 341-42 (citations omitted).

176. DIEHL & MOLTZ, *supra* note 12.

177. See *id.*; BARNABY, *supra* note 44, at 115-16; RAJAIN, *supra* note 99, at 210, 281; NTI, *supra* note 84. One of the current NWSs, France, even created its nuclear program in response to a lack of security. *Id.* France gained its first success with nuclear technology in 1948 following its relatively quick defeat in World War II. HECHT, *supra* note 161, at 2. One French newspaper declared at the nuclear accomplishment, “a great achievement, French and peaceful, which strengthens our role in the defense of civilization.” *Id.* France viewed its initial nuclear program as a way to regain its international prowess and increase its defenses. *Id.* The French referred to France’s nuclear accomplishments as “the radiance of France,” which became interchangeable with “the grandeur of France.” *Id.*

178. LANGEWIESCHE, *supra* note 147, at 14.

179. *Id.*

180. See BARNABY, *supra* note 44, at 116; DIEHL & MOLTZ, *supra* note 12; RAJAIN, *supra*

Iran expressed its concern over security when it revived its nuclear program after claiming a need for heightened security. Iran's involvement and loss in the Iran-Iraq War was an important development in shaping its nuclear program.¹⁸¹ Iran's nuclear program reemerged after Iran gained an understanding of its military capabilities following its failed attempt to gain control of Iraq.¹⁸² Iran determined that it would need more powerful weapons, particularly nuclear weapons, in order to protect itself against its enemies.¹⁸³ Following the Iran-Iraq war, the Iranian Vice-President¹⁸⁴ stated that "because the enemy [Israel] has nuclear facilities, the Muslim states should be equipped with the same capacity."¹⁸⁵ Iran did not believe that it could defend itself against a nuclear capable Israel without such weapons if it could not even defeat Iraq, which did not have nuclear weapons capability.¹⁸⁶ Iranian President Hashemi Rafsanjani declared that Iran needed to "fully equip [itself] both in the offensive and defensive [through the] use of chemical, bacteriological and radiological weapons."¹⁸⁷

Mid-Eastern nations have claimed that nuclear capable Israel is their primary security concern.¹⁸⁸ Israel has developed nuclear weapons and has claimed that nuclear weapons are necessary to deter neighboring Mideast nations from attack.¹⁸⁹ Similarly, Iran and Egypt have proclaimed that the "Middle East is threatened by the Israeli nuclear program," and that "[t]his policy of terror has . . . created a situation where many disarmament and arms control instruments have failed to receive the full support of regional countries."¹⁹⁰ Mid-Eastern nations do not believe that they will receive proper protection from NWSs against Israel.¹⁹¹

Iran has also claimed that it cannot rely on western NWSs for protection under the NPT. In 1979 the Iranian shah was overthrown and replaced by a

note 99, at 210, 281; NTI, *supra* note 84.

181. See JAFARZADEH, *supra* note 33, at 132.

182. See *id.* Despite being three times larger in population than Iraq, Iran was unable to conquer Iraq as its first step to installing a Middle-Eastern Islamic government. *Id.*

183. *Id.* at 130.

184. Mohajerani was the Iranian Vice-President. BARNABY, *supra* note 44, at 115-16.

185. *Id.*

186. See *id.* "[T]he motivations by the . . . Middle East - regional adversaries - are consistent with realist concerns with anarchy and relative gains. States appear to react to the perceived threat of Israel, which is thought to have a well-developed nuclear program but has not ratified . . . the NPT. . . ." Sarah E. Kreps & Anthony C. Arend, *Why States Follow the Rules: Toward a Positional Theory of Adherence to International Legal Regimes*, 16 DUKE J. COMP. & INT'L L. 331, 362-63 (2006).

187. *Arms*, N.Y. TIMES, Oct. 31, 1991, at A7, available at 1991 WLNR 3426997).

188. Kreps & Arend, *supra* note 186, at 362-63.

189. Louis Rene Beres, *Israel After Fifty: The Oslo Agreements, International Law and National Survival*, 14 CONN. J. INT'L L. 27, 55-57 (1999).

190. Dr. M. Javad Zarif, Deputy Foreign Minister of the Islamic Rep. of Iran, Statement to Mr. President at the Conference to Facilitate the Entry into Force of CTBT (Nov. 11, 2001) available at <http://www.un.org/webcast/ctbt/statements/iranE.htm>.

191. See Beres, *supra* note 189, at 55-57.

regime that was skeptical of the West.¹⁹² The shah's rule was initially established through assistance from the United States assistance.¹⁹³ The post-shah regime believed that the "shah's nuclear program [was] a remnant of evil western influence."¹⁹⁴ Because the current Iranian regime is not favored by the United States, Iran does not believe that the United States will provide it with security against a nuclear attack.¹⁹⁵ It is also unlikely that the United States would trust Iran if the roles were reversed.¹⁹⁶

North Korea also expressed a concern about security when it defied the NPT. Since the Korean War, the United States and North Korea have been viewed as "enemies."¹⁹⁷ North Korea has consistently claimed that it needs nuclear weapons to protect itself against a "nuclear threat from the United States."¹⁹⁸ North Korea's fear of nuclear attack initially stemmed from the United States' deployment of nuclear weapons to South Korea in 1958.¹⁹⁹

Additionally, India's pursuit of nuclear weapons was a response to security concerns following the actions and inactions of the United States.²⁰⁰ After China tested its first nuclear weapon in 1964, the United States did not provide India with any security assurances.²⁰¹ Furthermore, the United States sided with Pakistan during India's war with Pakistan in 1971.²⁰² India pursued nuclear weapons as an answer to the lack of security displayed by the United

192. JAFARZADEH, *supra* note 33, at 131. Iran initially agreed to forgo its pursuit of nuclear weapons when it joined the NPT under the shah's rule. *Id.*

193. HOWARD, *supra* note 2, at 140.

194. JAFARZADEH, *supra* note 33, at 131. The Iranian government under the shah had been pro-west and received continuous aid from the United States. *See id.* at 129-31.

195. *See* HOWARD, *supra* note 2, at 140.

196. A Pakistan official said:

The best way to fight proliferation is to pursue global disarmament. Fine, great, sure—if you expect that to happen. But you cannot have a world order in which you have five or eight nuclear-weapons states on the one hand, and the rest of the international community on the other. There are many places like Pakistan, poor countries which have legitimate security concerns—every bit as legitimate as yours. And yet you ask them to address those concerns without nuclear weapons, while you have nuclear weapons *and* you have everything else? It is not a question of what is fair, or right or wrong. It is simply not going to work.

LANGEWIESCHE, *supra* note 147, at 178.

197. *See* John Feffer, *North Korea No Longer an Enemy?*, [http://www.fpif.org/fpifxt/\(last visited Feb. 10, 2009\)](http://www.fpif.org/fpifxt/(last%20visited%20Feb.%2010,%202009).). The Korean War ended in an ended in an "[u]neasy [t]ruce." *Id.*

198. NTI, *supra* note 84.

199. *Id.* The nuclear weapons remained in South Korea until 1991. *Id.* President George Bush ordered their removal. *Id.*

200. *See* RAJAIN, *supra* note 99, at 210. "It is believed that Pakistan received the materials they used to construct their nuclear weapons from China, a previously declared nuclear State and a signatory to the NPT. Apparently, the United States knew of China's proliferation of nuclear materials to Pakistan but did nothing to prevent it." Darren Mitchell Baird, Note, *The Changing Posture of the International Community Regarding the Threat or Use of Nuclear Weapons*, 22 SUFFOLK TRANSNAT'L L. REV. 529, 542 (1999).

201. Baird, *supra* note 200, at 542.

202. *Id.*

States,²⁰³ which initiated a chain reaction of security concerns between India and Pakistan, creating a nuclear arms race between the two countries.²⁰⁴ The stated purpose for Pakistan's nuclear program was to "strengthen its forces to be used as a diplomatic bargaining chip and to reduce its dependence on military alliances."²⁰⁵ After India's nuclear weapons test in 1974, Pakistan increased its efforts to acquire nuclear weapons capability.²⁰⁶

C. *The Inconsistent Goals of the NPT*

The inconsistent goals of the NPT have made it nearly impossible for the NPT to effectively monitor and enforce nuclear nonproliferation.²⁰⁷ The NPT's main purpose is to ban the use of nuclear technology for war-related purposes, but the treaty also provides for the facilitation of nuclear technology.²⁰⁸ Thus, the NPT encourages the use and development of nuclear technology.²⁰⁹ Article IV of the NPT provides that "[n]othing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties . . . to develop research, production and use of nuclear energy for peaceful purposes."²¹⁰ The NPT considers nuclear technology as an inalienable right, and it provides that all NPT parties "shall . . . cooperate in contributing . . . to the further development of the applications of nuclear energy for peaceful purposes, *especially in the territories of non-nuclear-weapon States*. . . ."²¹¹ This is a weakness of the NPT;²¹² the NPT seeks to eliminate the development and use of nuclear

203. DIEHL & MOLTZ, *supra* note 12, at 15-16.

204. Michael L. Feeley, Note, *Apocalypse Now? Resolving India's and Pakistan's Testing Crisis*, 23 SUFFOLK TRANSNAT'L L. REV. 777, 780 (2000) (citing Anthony Wanis St. John, *The Mediation Role in the Kashmir Dispute Between India and Pakistan*, 21 FLETCHER FORUM OF WORLD AFF. 174, 174 (1996)).

205. RAJAIN, *supra* note 99, at 281.

206. *Id.* at 285. Pakistan signed an agreement with France in 1976 to acquire a plutonium reprocessing plant. *Id.* Pakistan and India have indicated that they would be willing to undergo nuclear restraint; however, their decision to undergo restraint has not been in response to sanctions, but has been the result of an informal agreement between the two countries. *See id.*

207. Barry L. Rothberg, Note, *Averting Armageddon: Preventing Nuclear Terrorism in the United States*, 8 DUKE J. COMP. & INT'L L. 79, 117 (1997). *See also* Scott Barrett, *The Problem of Averting Global Catastrophe*, 6 CHI. J. INT'L L. 527, 532 (2006); Liles, *supra* note 165, at 112-18.

208. Thomas D. Lehrman, Note, *Enhancing the Proliferation Security Initiative: The Case for a Decentralized Nonproliferation Architecture*, 45 VA. J. INT'L L. 223, 237 (2004); Spies, *supra* note 17, at 403.

209. *See* NPT, *supra* note 20, at art. V.

210. *Id.* at art. IV.

211. *Id.* (emphasis added).

212. *See* Assia Dosseva, *North Korea and the Non-Proliferation Treaty*, 31 YALE J. INT'L L. 265, 268-69 (2006); Kitzrie, *supra* note 9, at 351 ("The overlap between civilian and military nuclear technologies poses perhaps the most significant challenge facing the nuclear nonproliferation regime. . . ."); Spies, *supra* note 17, at 403 ("At the core of the crisis currently facing the nuclear non-proliferation regime, the NPT upholds the right of all states to develop nuclear technology for peaceful purposes without discrimination.").

weapons, but also declares the development and use of peaceful technology to be an inalienable right.²¹³ The NPT also encourages all nations to share their peaceful nuclear technology with other nations.²¹⁴

The enforcement agency of the NPT suffers from the same inconsistent goals that have undermined the effectiveness of sanctions. The IAEA has “[t]hree main pillars – or areas of work – [that] underpin . . . [its] mission: Safety and Security; Science and Technology; and Safeguards and Verification.”²¹⁵ As referenced in the IAEA’s three-part mission, the IAEA suffers from the same bifurcated purpose as the NPT.²¹⁶ The IAEA statute provides that the IAEA is “to act as an intermediary for the purposes of securing the performance of services or the supplying of materials, equipment, or facilities . . . and to perform any operation or service useful in research on . . . atomic energy for peaceful purposes. . . .”²¹⁷ Paralleling the NPT, the IAEA is also authorized to “establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information . . . are not used in such a way as to further any military purpose. . . .”²¹⁸ This shows that the IAEA attempts to impede nuclear proliferation *and* facilitate nuclear technology.

The bifurcated purposes of both the IAEA and the NPT have served to provide NNWSs with nuclear material for the pursuit of peaceful nuclear technology, yet these states have used nuclear material for nuclear weapons production.²¹⁹ By facilitating the transfer of weapons-grade fissile material,²²⁰ the IAEA fulfills its mission of “Science and Technology,” but fails its mission of “Safety and Security.”²²¹ Nations that seek nuclear weapons capability are

213. See Spies, *supra* note 17, at 403.

214. NPT, *supra* note 20, at art. V.

215. IAEA.org, *supra* note 29, at IAEA Mission & Programmes.

216. See The Statute, *supra* note 30, at art. III.

217. *Id.* at pt. A, 1.

218. *Id.* at 5.

219. Erik Raines, Note, *North Korea: Analyzing the “New” Nuclear Threat*, 12 CARDOZO J. INT’L & COMP. L. 349, n.72 (2004) (citing Helen Cousineau, *The Nuclear Non-Proliferation Treaty and Global Non-Proliferation Regime: A U.S. Policy Agenda*, 12 B.U. INT’L L.J. 407, 425-26 (1994)).

220. Fissile material consists of “[s]ubstances possessing nuclei with a greater tendency to give off electrons and energy when bombarded by neutrons, enabling them to sustain a chain reaction.” DIEHL & MOLTZ, *supra* note 12, at 339. Weapons-grade fissile material “refers to purified fissile material that is most suitable for use in a nuclear weapon. A concentration of more than 90 percent is optimal for both uranium-235 and plutonium-239.” Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe*, http://nuclearterror.org/faq.html#faq_4 (last visited Nov. 10, 2007).

221. See WILLIAM KINCADE, NUCLEAR WEAPONS GRADE FISSILE MATERIALS: THE MOST SERIOUS THREAT TO U.S. NATIONAL SECURITY TODAY? (1995), available at <http://www.fas.org/irp/threat/ocp8.htm> (“Limits on access to fissile materials are the primary technical barrier to acquisition of nuclear weapons capability in the world today. But once these materials are acquired, construction of nuclear weapons should be assumed to be relatively straightforward.”).

able to procure most of the necessary nuclear technology and materials by disguising their purposes as being peaceful.²²²

For example, Iran received assistance from China in 1984, which allowed Iran to expand its facility at Isfahan from what had primarily been a research facility to a “uranium conversion facility.”²²³ Iran conducted secret experiments at Isfahan in uranium conversion and fuel production in violation of the NPT.²²⁴

Iran also violated the NPT when it secretly imported uranium to the Isfahan facility in 1982.²²⁵ Additionally, Iran entered into a contract with Russia for completion of one of its Bushehr plants, and engaged in a secret agreement to receive a “complete domestic fuel cycle” from Russia.²²⁶

The IAEA was also unable to detect the assistance Iran received for nearly two decades from Pakistan.²²⁷ From approximately 1985 until 2004, Iran received nuclear assistance from one of the world’s biggest nuclear black market dealers, Abdul Qadeer Khan.²²⁸ In 2003, Iran admitted to the IAEA that it had received “blueprints for centrifuge design” from Khan.²²⁹ Additionally, Khan sent Iran used centrifuges.²³⁰

Iran was also able to build two secret nuclear plants without the IAEA’s

222. See Jon L. Woodard, *International Legal Frameworks Relating to China’s Nuclear Exports to Iran: Safeguarding the Transfer of Dual-Use Nuclear Technology*, 25 N.C. J. INT’L L. & COM. REG. 359, 368-69 (2000).

223. Cirincione, *supra* note 42. This facility provided the first evidence that Iran’s nuclear program went beyond peaceful research alone. JAFARZADEH, *supra* note 33, at 131.

224. JAFARZADEH, *supra* note 33, at 130.

225. *Id.*

226. *Id.* at 137. The secret agreement for fuel was eventually abandoned. *Id.*

Russia was ready to supply a large research reactor, plants for manufacturing nuclear fuel, and a centrifuge enrichment facility, but when U.S. intelligence uncovered the secret deal, President Clinton urged Russian president Boris Yeltsin to halt the covert program. Yeltsin agreed to scrap all nuclear assistance except construction at Bushehr. *Id.* Iran entered into a later agreement in 2005 that provided for Russia to deliver fuel for Iran’s nearly completed reactor.

Id.

227. See *id.* at 133-35.

228. *Id.* Kahn was a scientist that was educated in the west, and he has been referred to as the “father of the Pakistani bomb.” *Id.* at 133. As an employee of a Dutch company, Physics Dynamic Research Laboratory, Kahn was able to steal uranium centrifuge designs. *Id.* He was able to gather enough classified nuclear technology and contact information for Pakistan, that Pakistan’s president, Zia ul-Haq, named Pakistan’s nuclear lab after him, Khan Research Laboratories. *Id.* “In the late 1980s, Khan had an overflow of equipment to sell on the black market Khan’s network went beneath the radar of international intelligence agencies for decades, and only after his criminal investigation is complete will a picture of his extensive involvement in various nuclear programs come to light.” *Id.* In 2004, CIA director George Tenet stated: “Khan and his network had been unique in being able to offer one-stop shopping for enrichment technology and weapons design information.” *Id.* (citing George J. Tenet, Director of Central Intelligence, Testimony Before the Senate Select Committee Intelligence, *The Worldwide Threat 2004: Challenges in a Changing Global Context* (Feb. 24, 2004), available at http://merln.ndu.edu/MERLN/PFIraq/archive/cia/dci_speech_02142004.pdf).

229. JAFARZADEH, *supra* note 33, at 134.

230. *Id.* at 130.

knowledge because the IAEA has not been able to effectively distinguish between peaceful nuclear technology and war-related nuclear technology. Iran admitted to the existence of two secret nuclear plants at Natanz²³¹ and Arak that the IAEA was unable to detect.²³² The IAEA was only able to discover the secret facilities after their location was disclosed by an Iranian opposition group in August 2002.²³³ Natanz raised international concern because the plant “was a huge and ‘extremely advanced’ facility to house gas centrifuges that enrich uranium, 160 of which were already in operating order, ready to test and process the uranium hexafluoride gas that constitutes the raw materials of the enrichment process.”²³⁴ The plant at Arak was constructed to be a heavy water nuclear plant.²³⁵ An IAEA report revealed that one of the Iranian facilities had trace elements of highly enriched uranium.²³⁶

North Korea was also able to develop its nuclear weapons program without detection by the IAEA. After agreeing to freeze its nuclear program in 1994, North Korea disabled the IAEA monitoring equipment in 2003, allowing North Korea to begin reprocessing spent fuel rods.²³⁷ By September 2003, a North Korean Foreign Ministry spokesman announced that North Korea had reprocessed the spent fuel rods, giving North Korea enough plutonium for “four to six nuclear bombs.”²³⁸ North Korea also began work on its highly enriched uranium (HEU) program during this period, which the IAEA was unable to monitor.²³⁹

231. HOWARD, *supra* note 2, at 98.

232. JAFARZADEH, *supra* note 33, at 141.

233. Atomic Power Growth, *supra* note 41. The Iranian opposition group that notified the IAEA of the violation was the National Council of Resistance of Iran. *Id.*

234. HOWARD, *supra* note 2, at 98 (“The site had the capacity for perhaps 50,000 more centrifuges, held in at least 1,000 specially designed machines, that could potentially feed a 1,000-MW reactor.”).

235. Atomic Power Growth, *supra* note 41.

In heavy water reactors, heavy water is used as both the moderator and coolant. Heavy water absorbs so few neutrons that it permits the use of natural uranium as fuel. . . . It is also a good producer of plutonium, and this type of reactor has been used in the United States without any turbo-generators attached to produce materials for weapon purposes. To produce Pu-239, rather than to minimize electricity generation costs, fuel re-loading takes place more frequently. Thus a distinction between civil and military use is the length of time the fuel remains in the reactor.

DIEHL & MOLTZ, *supra* note 12, at 201-02.

236. Atomic Power Growth, *supra* note 41.

237. NTI, *supra* note 83. North Korea began reprocessing approximately 8,000 spent fuel rods. *Id.* North Korea began reprocessing its spent fuel rods after claiming a need to produce energy following the United States’ decision to suspend shipments of heavy fuel oil to North Korea after the IAEA discovered that North Korea was not in compliance with the NPT. *Id.*

238. *Id.*

239. *Id.* Highly enriched uranium is a “different path to produc[ing] fissile material for nuclear weapons.” *Id.*

D. Lack of Uniformity

The lack of uniformity among NPT member nations has made it difficult to impose effective sanctions against nuclear threat nations.²⁴⁰ It is extremely difficult to impose a set of sanctions under the NPT, which extends the time a nation will be able to remain in violation of the NPT.²⁴¹ The difficulty has stemmed from the inability of NPT members to agree upon sanctions.²⁴² NPT members have been unable to agree on sanctions because both Russia and China, members of the Security Council, generally only consider “the short-term cost . . . of such sanctions, even though the sanctions costs may be a good long-term investment for the international community as a whole.”²⁴³

Russia has been a major roadblock in imposing tough sanctions against Iran. This is because Russia has been a primary producer of materials for Iran’s nuclear program and continues to supply Iran with nuclear materials despite protests from NPT members.²⁴⁴ As a result, the effectiveness of the NPT sanctions against Iran has been, and will likely continue to be, undermined by Russia’s resistance to placing tough sanctions on Iran.²⁴⁵ Because the NPT is unable to toughen sanctions against Iran, Iran has announced that it will continue uranium enrichment²⁴⁶ in defiance of the NPT’s second Resolution.²⁴⁷

The disunity among NPT nations also led to weaker sanctions against North Korea.²⁴⁸ After North Korea withdrew from negotiations in 2006, neither

240. 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, 539 (2007) [hereinafter *Emboldened by Impunity*].

241. Kittrie, *supra* note 9, at 430.

242. *Id.*

243. *Id.*; see also Christian M. Henderson, *The 2006 National Security Strategy of the United States: The Pre-Emptive Use of Force and the Persistent Advocate*, 15 TULSA J. COMP. & INT’L L. 1, 21 (2007).

244. *Putin in Iran*, STATESMAN, Oct. 25, 2007, available at 2007 WLNR 20918187 (“In Teheran, Mr. Putin said that Iran should be permitted to pursue its peaceful nuclear programme.”).

245. See Benjamin M. Greenblum, *The Iranian Nuclear Threat: Israel’s Options Under International Law*, 29 HOUS. J. INT’L L. 55, 96 (2006); Lang, *supra* note 66, at 142; *Arab European Relations – Sept 12 – Russia Rejects Tougher Stance on Iran*, APS DIPLOMAT RECORDER, Sept. 15, 2007, available at 2007 WLNR 19249304 [hereinafter *Arab European Relations*] (“Russia gives a clear indication that it will not back any immediate toughening in the U.N. approach to Iran’s nuclear programme. . .”).

246. *Iran to Continue Enrichment*, STATESMAN, Dec. 27, 2007, available at 2007 WLNR 25447324.

247. *Adoption of Resolution 1747*, *supra* note 75.

248. See Luis Ramirez, *US, China Urge North Korea to Return to Nuclear Disarmament Talks*, NEWS OF AMERICA, Oct. 20, 2006, available at <http://www.voanews.com/burmese/archive/2006-10-20-voa5.cfm>. [hereinafter *US and China*]; Mark Valencia, *The Proliferation Security Initiative: A Glass Half-Full*, ARMS. CONTROL. TODAY, June 1, 2007, at 12, available at 2007 WLNR 13208621 (“China was again the main obstacle to a more robust resolution. At China’s and Russia’s insistence, the authority to use military force was dropped from the draft resolution as was the requirement to check all cargo bound to or from North

South Korea nor China would initially agree to place economic sanctions on North Korea.²⁴⁹ Eventually, China and North Korea agreed to economic sanctions, which led to further negotiations with North Korea.²⁵⁰ Additionally, Resolution 1718 was initially created to authorize the use of force if necessary to enforce the provisions of the Resolution upon North Korea.²⁵¹ However, at the insistence of China and Russia, the provision allowing for the use of force was dropped,²⁵² and enforcement under U.N. Charter Chapter VII, Article 41 replaced the use of force provision.²⁵³ U.N. Charter Chapter VII, Article 41 restricts the Security Council to “measures not involving the use of armed force. . . .”²⁵⁴ The exclusion of the use of force has essentially left Resolution 1718 without any real consequences other than economic penalties should North Korea fail to comply.²⁵⁵ The disunity among nations continues to be an area of weakness that NNWSs will continue to exploit in the future.²⁵⁶

V. SOLUTIONS

Sanctions will not be effective until the international community addresses the underlying concerns which nuclear threat nations have raised.²⁵⁷ A few broad changes would greatly enhance the effectiveness of sanctions.²⁵⁸

A. Complete Nuclear Disarmament

One of the underlying tensions that has encouraged nations to resist nuclear compliance, despite sanctions, is that certain nations are granted the right to develop and manufacture nuclear weapons while others are refused that

Korea . . . South Korea also demurred.”).

249. *US and China*, *supra* note 248.

250. *See Bush Applauds China for Getting N Korea Back to Talks*, AUSTL. BROAD. CORP. NEWS, Oct. 31, 2006, available at 2006 WLNR 18905540.

251. Resolution 1718 was supposed to represent an international “codification” of President Bush’s Proliferation Security Initiative (PSI). Eric J. Lobsinger, *Post-9/11 Security in a Post-WWII World: The Question of Compatibility of Maritime Security Efforts with Trade Rules and International Law*, 32 TUL. MAR. L.J. 61, 123-24, (2007). “PSI is the practical policy manifestation of the National Strategy To Combat Weapons of Mass Destruction issued in December 2002 Overall, over 70 countries . . . have committed to PSI with varying degrees of support.” *Id.* at 118. PSI is not a codified set of international rules, instead, it is a formulation of an agreement among participating nations. *Id.* at 119. The purpose of PSI is to “[u]ndertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD[s], their delivery systems, and related materials to and from states and nonstate actors of proliferation concern.” *Id.* at 120 (citing U.S. Department of State, *The Proliferation Security Initiative: What is the Proliferation Security Initiative?*, <http://www.state.gov/t/isn/rls/fs/105217.htm> (last visited Jan. 9, 2009)).

252. Valencia, *supra* note 248, at 12.

253. *Security Council Condemns*, *supra* note 92.

254. Chapter VII, *supra* note 93.

255. *See Security Council Condemns*, *supra* note 92.

256. *See King*, *supra* note 93.

257. *See supra* Part V.

258. *See supra* notes 133-46 and accompanying text.

right.²⁵⁹ Complete disarmament by all countries is necessary before sanctions can be effective in enforcing nuclear nonproliferation.²⁶⁰ Article VI of the NPT requires member states 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.”²⁶¹ Despite this provision in the NPT, no timeframe has been adopted for complete disarmament.²⁶²

One concern that has been raised by both Iran and North Korea regarding sanctions is the discriminatory manner in which sanctions have been imposed.²⁶³ Both of these nations have these concerns because of the inconsistent nuclear rights created by the NPT.²⁶⁴ Certain states are given the inalienable right to manufacture nuclear weapons and develop peaceful nuclear technology, while other states are only given the inalienable right to develop peaceful nuclear technology.²⁶⁵ If complete nuclear disarmament were achieved, these concerns would no longer be relevant.²⁶⁶

The security and discriminatory concerns that Iran has raised as a condition precedent to complying with nuclear nonproliferation would no longer be valid if all nations agreed to complete nuclear disarmament.²⁶⁷ Iran's nuclear program only reemerged after its loss in the Iran-Iraq war.²⁶⁸ Iran also believed that nuclear weapons were necessary to defend itself against a nuclear capable Israel.²⁶⁹ If disarmament were adopted, Iran would no longer need nuclear weapons to defend itself against Israel's nuclear weapons, because Israel would no longer have nuclear weapons.²⁷⁰

The elimination of nuclear weapons by all parties would also eliminate Iran's need to gain international prestige as one of the few elite nuclear nations.²⁷¹ Iran believes that the acquisition of nuclear weapons would solidify

259. See Chamudeeswari Kuppaswamy, *Is the Nuclear Non-Proliferation Treaty Shaking at its Foundations? Stock Taking After the 2005 NPT Review Conference*, 11 J. CONFLICT & SECURITY L. 141, 143 (2006); Hu Qian, *Chinese Practice in Public International Law: 2005(II)*, 5 CHINESE J. INT'L L. 761, 764-65 (2006); Zhang Xinjun, *The Riddle of "Inalienable Right" in Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons: Intentional Ambiguity*, 5 CHINESE J. INT'L L. 647, 648-52 (2006).

260. See Xinjun, *supra* note 259, at 654-55; Qian, *supra* note 259, at 765.

261. Reaching Critical Will, *International Law and the Nuclear Age*, <http://www.reachingcriticalwill.org/technical/factsheets/law.html> (last visited Feb. 5, 2008) [hereinafter Reaching Critical Will].

262. Kuppaswamy, *supra* note 259.

263. See *supra* notes 155-175 and accompanying text.

264. See NPT, *supra* note 20, at art. V; *supra* Part V; notes 176-89 and accompanying text.

265. NPT, *supra* note 20.

266. See Security Council, *supra* note 69.

267. See *supra* Part V.

268. BARNABY, *supra* note 44, at 115-16.

269. *Id.*

270. See The Acronym Institute, *Disarmament Diplomacy: 8—State Call for New Nuclear Disarmament Agenda*, June 1998, <http://www.acronym.org.uk/27state.htm> (last visited Feb. 5, 2008).

271. GRAY, *supra* note 159, at 68.

its position as a regional power.²⁷² Iran specifically noted that the abilities of certain countries to maintain nuclear weapons legally under the NPT are discriminatory.²⁷³ Complete disarmament would make Iran's claims of international discrimination unfounded.²⁷⁴

One of the primary reasons that nuclear capable nations have not agreed to complete disarmament is that nuclear weapons have a deterrent effect on enemy nations.²⁷⁵ The use of nuclear weapons as a deterrent has been successful because it allows a nation to dramatically reduce the amount of time it would take to respond effectively to an attack.²⁷⁶ However, the risk of nuclear holocaust is so great that the use of nuclear weapons as deterrents no longer justifies the means.²⁷⁷ The availability of advanced military technology has made the possession of nuclear weapons for a quick and effective response no longer necessary.²⁷⁸ For example, the United States has become less reliant upon the availability of nuclear weapons by "replacing its traditional Cold War 'Triad' of missiles, submarines, and bombers with a 'New Triad' that incorporates important non-nuclear elements (including missile defenses)."²⁷⁹

Disarmament must also be met with a certain measure of caution.²⁸⁰ When nations undergo the process of complete nuclear disarmament, they should proceed through an agreement that would call for bilateral reductions.²⁸¹

A bilateral agreement based upon a sliding scale of reduction would avoid the potential problem of a single nation using its sole possession of all remaining nuclear weapons to its advantage.²⁸²

Complete disarmament will also bring the advantage of a more valid

272. Boroujerdi & Fine, *supra* note 8, at 629-30.

273. Security Council, *supra* note 69.

274. *Id.*

275. Matthew Klapper, *The Bush Doctrine and North Korea*, 8 GONZ. J. INT'L L. 2, n.26 (unpaginated original) (2004-2005); Michael J. Matheson, *The Twelfth Waldemar A. Solf Lecture in International Law*, 161 ML. L. REV. 181, 196 (1999).

276. Klapper, *supra* note 275, at n.26.

277. Nicholas Dixon, *Perilous Protection: A Reply to Kopel*, 12 ST. LOUIS U. PUB. L. REV. 361, 387 (1993).

278. See Christopher A. Ford, *The Nonproliferation Bestiary: A Typology and Analysis of Nonproliferation Regimes*, 39 N.Y.U. J. INT'L L. & POL. 937, 965 (2007).

279. *Id.*

280. See JAMES THOMPSON, *PSYCHOLOGICAL ASPECTS OF NUCLEAR WAR* 93-96 (1985).

281. *Id.*

282. *Id.* James Thompson, PH.D., of Middlesex Hospital, explained the following on how to effectively create sanctions to curb nuclear proliferation:

- (i) Initiatives must not leave one side with a monopoly of nuclear weapons. The aim should be reductions, but the final steps will require bilateral agreement.
- (ii) Initiatives must not cripple the capacity for conventional defence [sic].
- (iii) Initiatives should be graduated in risk according to the response. The first move must be fairly large and dramatic, and an immediate response should not be expected.
- (iv) Initiatives must be diverse, publicly announced, and then carried through. Cultural as well as military issues could be included, the steps to be taken should be announced in advance, and then adhered to.

Id. at 94.

excuse for the use of force if Iran fails to comply with nuclear nonproliferation.²⁸³ Under international law, a preemptive strike upon another nation must be preceded by an imminent threat.²⁸⁴ Subject to interpretation, Iran's possession of nuclear weapons may be considered an imminent threat.²⁸⁵

However, it would be difficult to claim that Iran's possession of nuclear weapons has created an imminent threat but the possession of nuclear weapons by the United States, Great Britain, France, Russia and China has not created an imminent threat.²⁸⁶ Complete disarmament would eliminate the need to create a distinction between Iran's possession of nuclear weapons and the NWSs' possession of nuclear weapons.²⁸⁷

Currently, there are no plans for the five NWS and the other nuclear nations to enter into a treaty for complete disarmament.²⁸⁸ At the 2005 NPT Review Conference, "[i]t was clear that nuclear weapons states were not going to agree on any disarmament commitments . . . at least not until 2010."²⁸⁹ Although disarmament would likely take several years to complete, a step in that direction might eliminate Iran's claim of discrimination.²⁹⁰

B. Coercive Sanctions and the Use of Force

Sanctions must only be imposed after an evaluation is made of what type of sanctions will most effectively coerce the receiving nation into compliance. Each nuclear threat must be evaluated according to its unique circumstances in order to create effective sanctions.²⁹¹ For example, North Korea is an economically impoverished country starving for resources.²⁹² As a result, the United States provided positive incentives as a form of sanctions,²⁹³ and the United Nations adopted Resolution 1718 as a form of economic sanctions.²⁹⁴ Although these sanctions failed initially, they were crafted to address specific

283. See Kelly J. Malone, Comment, *Preemptive Strikes and the Korean Nuclear Crisis: Legal and Political Limitations on the Use of Force*, 12 PAC. RIM L. & POL'Y J. 807, 828 (2003).

284. *Id.*

285. *See id.*

286. *See id.*

287. *See id.*

288. Kuppuswamy, *supra* note 259, at 146. There are currently four non-NWSs that have nuclear capability, including India; Pakistan; Israel; and North Korea. David S. Jonas, *The New U.S. Approach to the Fissile Material Cutoff Treaty: Will Deletion of a Verification Regime Provide a Way Out of the Wilderness?*, 18 FLA. J. INT'L L. 597, 642 (2006) (citing NTI.Org, Ending Further Production, Fissile Material Cutoff Treaty, http://www.nti.org/e_research/cnwm/ending/fmct.asp (last visited April 2, 2009)).

289. *Id.*

290. *See supra* notes 132-46 and accompanying text.

291. *See* Kittrie, *supra* note 9, at 356.

292. *See* Peter Sokgu Yuh, *Nuclear Diplomacy: Negotiating Peace on the Korean Peninsula*, 1 LOY. U. CHI. INT'L L. REV. 103, 106 (2004-2005).

293. *See* Perkovich, *supra* note 86.

294. *Security Council Condemns, supra* note 92.

issues in North Korea.²⁹⁵ However, Iran is not a country that is lacking economic resources, nor does Iran have a need for energy resources, like North Korea.²⁹⁶ Iran has the third largest oil reserves in the world,²⁹⁷ thus, a sanction that provides Iran with additional energy to entice compliance would be unlikely to succeed.²⁹⁸

Sanctions must be stringent enough to impose actual harm to the receiving country.²⁹⁹ “Sanctions contribute to the achievement of coercive foreign policy goals when the total costs imposed or threatened by the sanctioned activity are higher than the costs the target expects to incur from complying with the sender’s demands.”³⁰⁰ The coercive effect is lost if the cost of defiance is less than the cost of compliance.³⁰¹

It is also critical that sanctions only be imposed if the nation imposing them would be capable of enduring the sanctions itself.³⁰² The United States imposed sanctions on Pakistan and India in 1998 only after finding a way to exempt fertilizer from India’s economic sanctions package³⁰³ and wheat from Pakistan’s economic sanctions package.³⁰⁴ The United States was forced to consider that India was “the second-largest importer of American phosphate fertilizer” and that Pacific Northwest farmers would be unable to place a bid for a thirty-seven million dollar wheat order from Pakistan.³⁰⁵ This left the economic sanctions without sufficient coercive effect and created the impression that the United States was unwilling to endure the effects of sanctions against India and Pakistan.³⁰⁶

It is necessary to evaluate what form of sanctions will actually have a coercive effect that will produce a cost of defiance greater than compliance.³⁰⁷

295. See *id.*; Perkovich, *supra* note 86.

296. See Energy Information Administration, Iran, <http://www.eia.doe.gov/emeu/cabs/Iran/Oil.html> (last visited Feb. 2, 2008) [hereinafter Energy Information Administration].

297. *Id.* (It is estimated that Iran has 136.3 billion barrels of oil reserves).

298. See Catherine Altier, Note, *Putting the Cart Before the Horse: Barrier to Enforcing a Code of Ethics for Thoroughbred Auctions in the United States*, 72 BROOK. L. REV. 1061, 1091-92 (2007) (citing IAN FRECKELTON, *Enforcement of ethics, in CODES OF ETHICS AND THE PROFESSIONS* 130, 143-44 (Margaret Coady, & Sidney Bloch eds., 1996)).

299. *Emboldened By Impunity*, *supra* note 240, at 549.

300. Kittrie, *supra* note 9, at 356.

301. *Id.* at 356-57.

302. *France: Nuclear Critics*, *supra* note 138, at 15.

303. Wesley A. Cann, Jr., *Creating Standards and Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance Between Sovereignty and Multilateralism*, 26 YALE J. INT’L L. 413, 451 (2001).

304. *Id.*

305. *Id.*

306. See Sridhar Krishnaswami Washington, *Senate Exempts U.S. Farm Sector From Sanctions*, HINDU, July 11, 1998, available at 1998 WLNR 4480281.

307. See Kittrie, *supra* note 9, at 356; see also *National CNN*, CNN LIVE TODAY NOON, Dec. 25, 2006, available at 2006 WLNR 22485000 (“[W]hy haven’t the sanctions worked so far? In part because they cut off technical aid for Iran’s nuclear program. Aid Iran might not need as it moves closer to nuclear self-sufficiency and iranians [sic] at every level believe the need to create nuclear energy outweighs the impact of these sanctions.”).

Nations that have received sanctions as a result of nuclear noncompliance have typically been non-Western nations.³⁰⁸ Assuming that coercive sanctions are based on the Western-oriented goals of depriving a nation of “economic prosperity and physical pleasure,” these coercive sanctions may not raise the cost of defiance to an appropriate level.³⁰⁹ Instead, “[a]lternate potential target state motivators, such as nationalism, religious conviction, and other ideologies that exalt martyrdom and suffering can raise the level of pain necessary to achieve coercion. . . .”³¹⁰

It is often difficult to determine what form of sanction will be effective in coercing the defying nation into compliance. Iran is a nation that will be difficult to sanction because of its vast oil supply.³¹¹ Because oil is in such a high demand, imposing sanctions based on Iran’s oil exports would be unrealistic at best, and would likely prove to be more detrimental than it is worth.³¹² This, coupled with the goals behind Iran’s nuclear program, which are: prestige, influence, and security, require that the cost of defiance be high.³¹³ Because of this, it has been argued that coercive sanctions are largely ineffective.³¹⁴ One critic noted that “[e]conomic sanctions have two things in common: They have never worked, and they almost always harm those they are trying to help. But they do satisfy the emotions of those who want to ‘do something.’”³¹⁵ For example, sanctions against Cuba have been in place since 1961, “without the slightest impact upon Fidel Castro’s hold on power.”³¹⁶

When sanctions have been found to be ineffective, it is essential that the sending nations “up the ante.”³¹⁷ The imposition of never ending sanctions only accomplishes two things: first, the sender learns that the sanctions aren’t working and are likely to never succeed;³¹⁸ second, they allow the receiving country to remain in noncompliance.³¹⁹ Therefore, sanctions must include some form of deadline for compliance. An understanding of possible military

308. Friends Committee on National Legislation, Issues: Nuclear Weapons, http://www.fcnl.org/issues/persp8_nuclear_map.htm (last visited Feb. 4, 2008).

309. Kittrie, *supra* note 9, at 357.

310. *Id.* at 356.

311. See Energy Information Administration, *supra* note 296.

312. See Robert D Blackwill, *The Three Rs: Rivalry, Russia, 'Ran*, NAT'L INT., Jan. 1, 2008, at 68, available at 2008 WLNR 1356042; *The Background & Future of the Fear Factor Driving Up Energy Prices*, APS REV. OIL MKT. TRENDS, Dec. 24, 2007, available at 2007 WLNR 25820374.

313. Kuppuswamy, *supra* note 259, at 150.

314. *Deterrent Sanctions in International Environmental Agreements*, 27 MICH. J. INT'L L. 1131, 1140-41 (2006).

315. Malcolm Wallop & John J. Tierney, Jr., *No More Sanctions*, J. COM., June 30, 1998, at 5A, available at 1998 WLNR 1017097.

316. *Id.*

317. Katherine Hughes, *Operation "Drive Out the Trash": The Case for Imposing Targeted United Nations Sanctions Against Zimbabwean Officials*, 76 FORDHAM L. REV. 323, 352 (2007).

318. See Lang, *supra* note 66, at 157.

319. See Brew, *supra* note 153, at 188-91.

attack must also be included with any set of coercive sanctions.³²⁰ A series of sanctions that escalate the cost of defiance can be effective,³²¹ but there must still be some form of cutoff date for compliance.³²² It has generally been asserted that preemptive military action against Iran would be a violation of international law, and should only be used as “a last resort.”³²³

Although military action should be used only as a last resort, it must be accepted that at some point military action may become a necessity. Economic sanctions in Iran can only be effective to a certain degree, and at some point Iran must either comply or be forced to comply.³²⁴ The devastation that an Iranian nuclear attack could cause is far too great a risk to rely solely on diplomatic measures.³²⁵ Diplomatic measures will only work with those nations that are willing to be persuaded through diplomatic means.³²⁶ When considering the consequences of a purely diplomatic approach, it is important to remember which states bear the most risk. For example, as John F. Coverdale stated, “No Frenchman goes to bed nervous about Great Britain’s nuclear weapons . . . [e]very sane Israeli, Turk, or Bahraini, on the other hand, is deeply concerned about the possibility of an Iraq or Iran with nuclear weapons and medium-range ballistic missiles.”³²⁷

The United Nations Security Council has not yet authorized the use of force against Iran.³²⁸ Although the authorization has not yet been granted, past liberal interpretations of the United Nations Charter would likely justify the use of force against Iran should Iran fail to end its pursuit of nuclear weapons. For example, the United Nations Charter prohibits a nation from threatening to use unauthorized force against another country.³²⁹ Article 2(4) provides: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”³³⁰ Many commentators have suggested that the Article 2(4) is “dead” due to an international norm that has not been followed or enforced for decades.³³¹ These commentators suggest that violations of Article 2(4) have created a “one-way

320. See Cirincione, *supra* note 42.

321. Kittrie, *supra* note 9, at 358.

322. See John F. Coverdale, *An Introduction to the Just War Tradition*, 16 PACE INT’L L. REV. 221, n.85 (2004).

323. Lang, *supra* note 66, at 166; see also Boroujerdi & Fine, *supra* note 8, at 634-35; Mary Ellen O’Connell & Maria Alevras-Chen, *The Ban on the Bomb--And Bombing: Iran, the U.S., and the International Law of Self-Defense*, 57 SYRACUSE L. REV. 497, 513 (2007).

324. See Kittrie, *supra* note 9, at 356.

325. See LANGEWIESCHE, *supra* note 147, at 3-13.

326. See Coverdale, *supra* note 322, at 244-46.

327. *Id.* at n.85.

328. See *Adoption of Resolution 1747*, *supra* note 75.

329. *Id.*

330. *Id.*

331. See generally David Wippman, *The Nine Lives of Article 2(4)*, 16 MINN. J. INT’L L. 387 (2007).

ratchet, in which violations progressively undermine a norm with no room for recovery in between violations.”³³² The inability or unwillingness to enforce Article 2(4) has been recognized by United States officials, many of whom have positions that “favor abandoning treaty obligations inconsistent with U.S. national interests.”³³³ Although Article 2(4) may not be considered as significant as Article 51—the article that allows the use of force under certain circumstances—the threat that a nuclear Iran could pose would lead the same U.S. officials to conclude that Article 51, like Article 2(4), is nothing more than “a paper constraint unsuited to the contemporary strategic environment and likely, if respected, only to hinder the U.S. exercise of power.”³³⁴

Article 51 of the U.N. Charter provides for two exceptions to its prohibition against the use of force.³³⁵ The Article provides: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. . . .”³³⁶ One interpretation of Article 51 is that a Member State may only act in self-defense once an attack on that state has already occurred.³³⁷ If Iran were allowed to attack the United States, Israel, or any other nation with a nuclear weapon, the attack would be far too great to justify this interpretation of Article 51.³³⁸ However, there is an alternate interpretation that would allow a nation to exercise self-defense prior to an attack.³³⁹ This interpretation stems from preexisting international law of self-defense, and according to most experts, would require the “existence of an imminent threat.”³⁴⁰

The requirement that a threat be “imminent” before anticipatory action may be taken would allow the defending nation a little latitude when determining whether an “imminent” threat exists. President George W. Bush has suggested that the interpretation of “imminent,” following 9-11, “had to be adapted in order to face the new threats of [Weapons of Mass Destruction] and terrorism.”³⁴¹ This interpretation would allow the United States to preemptively strike against Iran, either shortly before Iran obtains nuclear weapons capability or shortly thereafter, to eliminate the “imminent” threat.³⁴² However, the

332. *Id.* at 390.

333. *Id.*

334. *Id.*

335. Roxana Vatanparast, Note, *International Law Versus the Preemptive use of Force: Racing to Confront the Specter of a Nuclear Iran*, 31 HASTINGS INT'L & COMP. L. REV. 783, 788 (2008).

336. *Id.*

337. *Id.*

338. See A-Bomb WWW Project, A-Bomb WWW Museum, July 10, 2000, <http://www.csi.ad.jp/ABOMB>.

339. Vatanparast, *supra* note 335.

340. *Id.* at 788-89.

341. *Id.*

342. *Id.*

United Nations may view a preemptive attack on a nuclear capable Iran as a “preventive action” and not a “preemptive action.”³⁴³ The difference between a “preventive action” and a “preemptive action” is that a “preventive action” is an act “against a more distant perceived threat.”³⁴⁴ However small the distinction between a more distant threat and a more imminent threat may seem, the misinterpretation of what is preventive and what is preemptive will have a large legal significance in the international realm.³⁴⁵ Yet President Bush has already begun to lay the framework for a defense should the United States determine that a nuclear capable or near nuclear capable Iran is close enough to an imminent threat to justify preemptive action.³⁴⁶

Additionally, any restrictions the United Nations may impose on the use of force will not hinder individual nations, or a coalition of nations, from using force outside the framework of the United Nations.³⁴⁷ When a nation’s well being is threatened, the decision-makers in that nation must act to protect the nation’s well being.³⁴⁸ “It is unlikely that any legal principle will be adhered to which runs counter to the instinctual urge to protect through preemption, no matter how the international community views anticipatory force.”³⁴⁹ International opinion and international law may perceive preemptive attacks as only justified under an imminent threat,³⁵⁰ but “any such line-drawing may be illusory.”³⁵¹

For example, President Bush side-stepped the United Nations through legal interpretation when he decided to use preemptive military force against Iraq in 2003.³⁵² United States intelligence indicated that Iraq was amassing weapons of mass destruction in violation of U.N. Resolution 1441.³⁵³ Iraq’s buildup of weapons of mass destruction was viewed as a serious potential security threat against the United States, which required “anticipatory action to defend [them]selves.”³⁵⁴ Although the 2003 Iraq war is not considered as a

343. Nobuyasu Abe, *supra* note 151, at 933.

344. *Id.*

345. *See id.*

346. Vatanparast, *supra* note 335, at 788-89.

347. *See* Rex J. Zedalis, *On the Lawfulness of Forceful Remedies for Violations of Arms Control Agreements: “Star Wars” and Other Glimpses at the Future*, 18 N.Y.U. J. INT’L L. & POL. 73, 114-15 (1985).

348. *Id.* at 114.

349. *Id.* at 115.

350. *Id.*

351. *Id.* “A total ban on reprisals . . . presupposes a degree of global cohesion that simply does not exist, and the circumstances may clearly arise wherein the resort to reprisal as a form of self-help would be distinctly law enforcing.” Guy B. Roberts, *The Counterproliferation Self-Help Paradigm: A Legal Regime for Enforcing the Norm Prohibiting the Proliferation of Weapons of Mass Destruction*, 27 DENV. J. INT’L L. & POL’Y 483, 508 (1999).

352. J M Spectar, *Beyond the Rubicon: Presidential Leadership, International Law & the Use of Force in the Long Hard Slog*, 22 CONN. J. INT’L L. 47, 50 (2006).

353. Robert F. Blomquist, *American National Security Presiprudence*, 26 QLR 439, 460-61 (2008); William H. Taft IV, & Todd F. Buchwald, *Agora: Future Implications of the Iraq Conflict*, 97 AM. J. INT’L L. 557, 560 (2003).

354. Blomquist, *supra* note 353, at 461 (“The Bush Administration assembled a ‘coalition of

preemptive self-defense action by United States officials, it is an example of the lengths the United States will go to justify a preemptive war when its security is threatened.³⁵⁵ Many experts have suggested that the United States' reliance on Resolution 1441 was a "strained reading of the relevant Security Council resolutions," and that the "real motive [of the war] was a neoconservative push to transform the politics of the Middle East through regime change in Iraq."³⁵⁶ The 2003 Iraq war is a perfect example that "any such line-drawing" between preventive action and preemptive action "may be illusory."³⁵⁷

C. Formation of a Nonproliferation Coalition

Before sanctions can be toughened, some form of consensus among the international community must exist.³⁵⁸ The NPT has been unable to deter China and Russia from becoming major road blocks in creating effective sanctions against Iran.³⁵⁹ The international demand for oil has strengthened Russia's oil market to the point where the demand has undercut the West's ability to leverage Russia into tougher sanctions on Iran.³⁶⁰ Russia's assistance is important because "[t]he Russians probably know more about Iran's nuclear ambitions than anyone else – they're helping to build Iran's new nuclear power plant – and Russia must agree if the U.N. Security Council is to impose punishing sanctions."³⁶¹ The Security Council consists of the five NWSs, which not only retain nuclear weapons, but have the power to veto any action under the NPT.³⁶² The Security Council is not the "most appropriate body to be entrusted with the authority for oversight over non-proliferation or nuclear disarmament."³⁶³

Fixing the NPT before Iran is able to produce nuclear weapons may be unrealistic.³⁶⁴ There are too many problems with the NPT and IAEA for the NPT to be the primary enforcement mechanism.³⁶⁵ The loophole granting NNWSs an inalienable right to obtain peaceful nuclear technology would have to be amended along with an agreement on complete nuclear disarmament before any form of uniformity among the international community could be

the willing' to press the war against Iraq, with the United States deploying 225,000 troops joined by only three other nations: Britain sending 45,000, Australia sending 2000, and Poland sending 200 troops.").

355. Wippman, *supra* note 331, at 400.

356. *Id.* at 399.

357. Zedalis, *supra* note 347, at 115.

358. See Kittrie, *supra* note 9, at 417.

359. See *Arab European Relations*, *supra* note 245; Kittrie, *supra* note 9, at 429-30; Lang, *supra* note 66, at 142.

360. Susan Taylor Martin, *Putin's Hard Line Takes Aim at West*, ST. PETERSBURG TIMES, Dec. 16, 2007, at 11A, available at 2007 WLNR 24835111.

361. *Id.* Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 98 AM. J. INT'L L. 606, 607 (2004).

362. *Id.*

363. *Id.*

364. See Kittrie, *supra* note 9, at 419-20. *But see* Spies, *supra* note 17, at 441.

365. See *supra* Part V.

created.³⁶⁶ “Many developing and Non-Aligned states, which have been generally more supportive of Iran’s position, are wary of accepting additional constraints on the development of nuclear technology, absent demonstrable progress on nuclear disarmament issues.”³⁶⁷

It is very unlikely that the NPT can be altered to create a level of uniformity before Iran is able to obtain nuclear capability. The NPT is only reviewed for changes every five years.³⁶⁸ Any significant progress in the 2010 NPT Review Conference is unlikely to occur, given that it took the 2005 NPT Review Conference nearly two and a half weeks “just to agree on how it should refer to the 2000 Disarmament Obligations.”³⁶⁹

The formation of a coalition outside the framework of the NPT that strives for complete nuclear disarmament is necessary to gain the required uniformity. Coalitions, such as the coalition formed during the Iraq war, have been instituted in the past to address similar international concerns.³⁷⁰ The NPT may even support an approach that calls for a separate coalition, because the NPT recommends that a separate agreement be formed for complete nuclear disarmament.³⁷¹ There is also support among NNWSs and NWSs.³⁷² For example, China and France initially refused to join the NPT, because NNWSs would be unable to obtain proper security guarantees unless there was full nuclear disarmament by all parties.³⁷³ As a consequence, “China and France did not sign the treaty until 1992.”³⁷⁴ Similarly, India and Pakistan refused to join the NPT for the same reasons.³⁷⁵

Nonproliferation coalitions that are currently in existence would become more effective if NWSs were to become members.³⁷⁶ The Acronym Institute is a coalition of eight nations that call for complete nuclear disarmament.³⁷⁷

366. See Kittrie, *supra* note 9, at 429-30; Mason, *supra* note 140, at 642; Spies, *supra* note 17, at 441.

367. Spies, *supra* note 17, at 442.

368. Kuppusswamy, *supra* note 259, at 143.

369. Spies, *supra* note 17, at 442.

370. Global Security.org, Iraq Coalition Troops--Feb. 2007, http://www.globalsecurity.org/military/ops/iraq_orbat_coalition.htm (last visited April 2, 2009).

371. Reaching Critical Will, *supra* note 261.

372. See DIEHL & MOLTZ, *supra* note 12, at 185.

373. *Id.*

374. *Id.*

375. Abe, *supra* note 151, at 929; Eric Young-Joong Lee, *Legal Analysis of the 2006 U.N. Security Council Resolutions Against North Korea’s WMD Development*, 31 FORDHAM INT’L L.J. 1, 20 (2006).

376. See *Editorial*, *supra* note 137, at 6; The Acronym Institute, *supra* note 270; THE LAWYERS’ COMMITTEE ON NUCLEAR POLICY INC., A NEW AGENDA FOR NUCLEAR DISARMAMENT: THE PIVOTAL ROLE OF MID-SIZE STATES (2001), <http://www.lcnp.org/disarmament/NAndsept2.htm> [hereinafter A NEW AGENDA].

377. The Acronym Institute, *supra* note 270. The eight member nations are: Brazil; Egypt; Ireland; Mexico; New Zealand; Slovenia; South Africa; and Sweden. *Id.* In its declaration, the Acronym Institute proclaimed that “[w]e can no longer remain complacent at the reluctance of the nuclear-weapon States and the three nuclear-weapons-capable States to take that

Additionally, a coalition of seven nations sponsored a U.N. resolution on nuclear disarmament in 1998 and 1999.³⁷⁸ A coalition of NWSs and NNWSs with the same goals as the two referenced coalitions would bring the uniformity needed to impose heightened sanctions on Iran, because the primary goal of each nation would be to enforce complete nuclear disarmament and could provide the necessary military capabilities to enforce nuclear nonproliferation.³⁷⁹

VI. PROPOSAL

Iran's current governmental regime has consistently viewed the West with disdain since coming to power.³⁸⁰ "From its first months in power to its latest dealings with the IAEA, the Iranian regime has related to the West with lies, deception, denial, and outright contempt."³⁸¹ Iran's past dealings with the IAEA illustrate that Iran is unwilling to undergo "honest, open relations with the international community."³⁸² Continuing on the current path, using the NPT and the IAEA through purely diplomatic means, will inevitably leave Iran with nuclear weapons capability.³⁸³

It has been repeatedly suggested that gaining a more broad understanding of Iran and what types of alternate policy options are available will make Iran more open to diplomatic measures.³⁸⁴ As part of this proposal, the United States should become more engaging, which would, in effect, lessen Iran's fears that the goal of the United States is to topple the Iranian regime.³⁸⁵ It has been asserted that these measures would allow the United States to have "a more reasonable image of Iran [so] that we can imagine their receptivity to offers of negotiation without assuming that their responses and intentions will always be hostile."³⁸⁶ As optimistic as this proposal sounds, Iran has a horrible track record with the IAEA, which leaves "no justification for trusting it in any negotiation process."³⁸⁷

fundamental and requisite step, namely a clear commitment to the speedy, final and total elimination of their nuclear weapons . . . and we urge them to take that step now." *Id.*

378. Patricia Hewitson, *Nonproliferation and Reduction of Nuclear Weapons: Risks of Weakening the Multilateral Nuclear Nonproliferation Norm*, 21 BERKELEY J. INT'L L. 405, 483-84 (2003). The seven nations were Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden. *Id.* at n.422 (citing The Lawyers' Committee on Nuclear Policy Inc. A NEW AGENDA, *supra* note 376).

379. See Kittrie, *supra* note 9, at 419-20 "Russian and Chinese veto of serious sanctions against Iran may force the United States and Israel into a choice between a preventive strike or facing the risk of an Iranian nuclear arsenal." *Id.* at 425.

380. JAFARZADEH, *supra* note 33, at 219.

381. *Id.*

382. *Id.*

383. *Id.*

384. Boroujerdi & Fine, *supra* note 8, at 635; O'Connell & Alevras-Chen, *supra* note 323, at 517.

385. Boroujerdi & Fine, *supra* note 8, at 635.

386. *Id.*

387. JAFARZADEH, *supra* note 33, at 219.

Additionally, it has been proposed that the best means of forcing Iran to comply with the NPT is for the international community to reaffirm a commitment to peaceful means.³⁸⁸ This requires the international community to re-invigorate the U.N. Charter Article 2(3) as a reminder that disputes are to be resolved through peaceful means.³⁸⁹ This proposal further specifies the importance for the United States to form a greater commitment to “international law and . . . to the NPT.”³⁹⁰ As a result of these measures, the international community may re-invigorate the nonproliferation regime.³⁹¹ To re-emphasize, Iran’s past dealings with the IAEA have led to “no justification for trusting it in any negotiation process.”³⁹²

Another proposal involves heightening existing sanctions against Iran and strengthening the NPT.³⁹³ The failure to impose sufficiently strong sanctions upon nuclear threats in the past has led to recent failures in nonproliferation enforcement.³⁹⁴ Strengthening sanctions can circumvent this problem, because it will increase the level of coerciveness and will put more pressure on Iran to comply.³⁹⁵ Also, the proposal parallels the weakness in sanctions with the weakness in the NPT.³⁹⁶ To correct this problem, it has been proposed that the NPT should be amended to enhance “the IAEA’s verification and monitoring authorities . . . through a U.N. Security Council resolution.”³⁹⁷ However, the possibility of an amendment to the NPT is unrealistic because of the lack of uniformity among the Security Council members.³⁹⁸ This proposal also recognizes the lack of uniformity in the international community when it comes to sanctions.³⁹⁹

Although strengthening current sanctions and enhancing the NPT are important steps toward attaining Iranian compliance, further steps must also be taken. A coalition of nations that are committed to complete nuclear nonproliferation should be formed outside the framework of the NPT. There are too many problems for the NPT itself to successfully enforce nuclear nonproliferation. A separate coalition would have the necessary uniformity to enforce nuclear nonproliferation. Complete nuclear disarmament is a critical and necessary step towards the prevention of Iran and other nations from obtaining nuclear weapons.⁴⁰⁰ Complete disarmament would resolve the concerns that Iran has cited as reasons for the development of its nuclear

388. O’Connell & Alevras-Chen, *supra* note 323, at 517.

389. *Id.*

390. *Id.*

391. *Id.*

392. See JAFARZADEH, *supra* note 33, at 219.

393. Kittrie, *supra* note 9, at 429.

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

398. See *Emboldened by Impunity*, *supra* note 240, at 539.

399. *Id.*

400. See *supra* notes 258-86 and accompanying text.

program; mainly, prestige, influence and security.⁴⁰¹ If no nation has nuclear weapons, Iran can no longer base its decision for noncompliance upon the discriminatory application of international law.⁴⁰² Furthermore, Iran may no longer feel it needs nuclear weapons to defend itself against other states with nuclear weapons.⁴⁰³

Along with complete nuclear disarmament, sanctions must be heightened and a cut-off date must be set. This note recommends a time period of three years for Iran to completely comply with the NPT. A three-year time period will allow Iran enough time to comply without creating a deadline that it could not possibly meet. This time period will also provide security to surrounding nations, because it is estimated that Iran will not be able to produce nuclear weapons within three years.⁴⁰⁴ Additionally, a series of goals or steps for complete compliance should be set and put in place in ninety day increments. A series of steps will ensure that Iran is on track to meet the three-year deadline. Along with a series of goals, a series of escalating sanctions should be developed and imposed on Iran every ninety days if Iran fails to comply with any ninety-day goal. For example, early sanctions could target the wealthy citizens of Iran by completely eliminating the import of luxury goods. In addition, a sanction that completely shuts off international travel of all Iranian governmental leaders could also be imposed. As the end of the three-year period draws closer, sanctions should be imposed that have an effect on the general Iranian population that could potentially lead to a regime change through Iranian resistance groups. At the end of three years, if Iran has not complied, military enforcement should be deployed.

The international community cannot let Iran resist compliance despite the use of sanctions as Cuba has been able to do.⁴⁰⁵ Iran would create too great a threat if it were able to obtain nuclear capability.⁴⁰⁶ Continuing ineffective sanctions will not coerce Iran into compliance. A cut-off date must be set and enforced, either through the NPT or through a separate coalition formed with the goal of complete nuclear disarmament.⁴⁰⁷ It is time for nuclear nations to take the necessary steps towards complete nuclear disarmament.⁴⁰⁸ As Mikhail Gorbachev once said, "A nuclear war cannot be won and must never be fought."⁴⁰⁹

401. See Kuppuswamy, *supra* note 259, at 150.

402. See Security Council, *supra* note 69.

403. See BARNABY, *supra* note 44, at 115-16; The Acronym Institute, *supra* note 270, ¶ 2.

404. Spies, *supra* note 17, at 441.

405. See Wallop & Tierney, Jr., *supra* note 315, at para. 7.

406. See Kittrie, *supra* note 9, at 429-30.

407. See *supra* notes 291-348 and accompanying text.

408. See *Abolish Nukes Don't Impose Sanctions*, PALM BEACH POST, June 9, 1998, at para. 2, available at 1998 WLNR 1812621.

409. *Id.* at para. 3.