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International Responses to Iranian Nuclear Defiance: The Non-Aligned Movement and the Issue of Non-Compliance

Tanya Ogilvie-White*

Abstract

This article explores the responses of the non-nuclear-weapon states (NNWS) to Iran's violation of the Nuclear Non-Proliferation Treaty (NPT), focusing on the stance adopted by members of the Non-Aligned Movement (NAM) in the International Atomic Energy Agency (IAEA). In February 2006, key NAM members voted to refer Iran to the UN Security Council in a move that stunned Iranian diplomats, and seemed to signal a collapse in NAM solidarity on fundamental non-proliferation issues. This article assesses the significance of this event, analysing the extent to which it represents a softening in the ideological divide between NAM and Western approaches to third-party non-compliance, and a convergence in attitudes towards the nuclear non-proliferation regime more generally. It draws on the interlinking concepts of international system, international society and global society to help explain these developments, exploring the hurdles and opportunities associated with any attempt to build on the fragile consensus emerging among the NNWS over the need to respond more decisively to NPT violations.

1 Introduction

In August 2002, the National Council of Resistance of Iran (NCR) held a press conference that astonished the international community: Iran, it alleged, had been engaging in illicit nuclear activities for nearly 20 years, secretly pursuing

* Director of the Diplomacy Programme, School of Political Science and Communication, University of Canterbury, New Zealand. This article is based on research conducted as part of a University of Canterbury and New Zealand government-funded project on strengthening the Nuclear Non-Proliferation Treaty (NPT). Email: tanya.ogilvie-white@canterbury.ac.nz.

a nuclear weapons capability under the cover of a civilian nuclear programme. This announcement coincided with four further proliferation-related crises: allegations of reconstituted weapons of mass destruction (WMD) programmes in Iraq; revelations that Libya had been secretly pursuing a nuclear weapons capability; news that North Korea intended to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)¹; and reports that a global nuclear black market network had been uncovered, headed by the former head of Pakistan's nuclear programme, Abdul Qadeer Khan. This combination of events threw the nuclear non-proliferation regime into disarray, highlighting fundamental ideological divisions among NPT members over the problem of how to deal with cases of third-party non-compliance. Although in the international media these divisions have often been portrayed as a dramatic battle between the Nuclear Weapon States (NWS) – particularly the US and UK – and a number of renegade regimes, the fissures exposed by these events are as deep as they are complex, penetrating well beyond 'superpower versus rogue' dynamics, and threatening to destroy the foundations of the NPT.²

The question of how to respond to Iran's illicit nuclear activities has been particularly fraught, as Tehran's diplomats and political leaders have insisted that the undeclared nuclear facilities uncovered in 2002 are part of an ongoing civilian nuclear

¹ The NPT, which was designed to stop the spread of nuclear weapons, entered into force in 1970 and has come close to achieving universality. Its members fall into two legally defined categories, known as nuclear weapon states (NWS) and non-nuclear-weapon states (NNWS). The NWS (China, France, Russia, UK and US) are those states that tested nuclear weapons before the NPT was opened for signature in 1968. Under the terms of the Treaty, the NWS are legally entitled to retain their nuclear weapon status but are obliged to work towards nuclear disarmament (Article VI). The remaining members of the NPT are referred to as NNWS, and have committed themselves not to develop nuclear weapons or engage in nuclear proliferation activities (Articles I and II). There are three 'holdout states' (India, Israel and Pakistan), which have refused to sign up to the Treaty on the basis that it is discriminatory and/or does not serve their security requirements. All three states possess nuclear arsenals and are referred to as the *de facto* nuclear weapon states. North Korea withdrew from the NPT in 2003 (the only state ever to do so) and conducted a partially successful nuclear test in 2006. See IAEA, Treaty on the Non-Proliferation of Nuclear Weapons, INF/CIRC/140, 22 April 1970, available at <http://www.iaea.org/Publications/Documents/Infcirc/Infcirc140.pdf>.

² The scholarly literature has also tended to present nuclear non-compliance issues in stark terms of P-5 states versus treaty violators. This is a useful perspective, but insight into the broader debates within the multilateral organizations charged with monitoring compliance and policing violations presents a more balanced picture of the health of the regime. For insight into P-5 approaches to non-compliance, see Orlov and Vinnikov, 'The Great Guessing Game: Russia and the Iranian Nuclear Issue', 28 *Washington Quarterly*, (2005) 49; Polack and Takeyh, 'Taking on Tehran', 84 *Foreign Affairs* (2005) 20; Bowen and Kidd, 'The Iranian Nuclear Challenge', 80 *International Affairs* (2004) 257; and Ogilvie-White, 'The Limits of International Society: China's Response to Nuclear Breakout and Third-Party Non-compliance', 1 *Asian Security* 2005 (Spring 2005) 129.

programme.³ They deny any wrongdoing, and claim that Iran's legitimate activities were 'driven underground' by a hostile international environment and a Western conspiracy of technology denial.⁴ Confronted with a combination of Iran's sophisticated diplomatic manoeuvring, the mammoth technical task associated with verifying allegations and counter-claims, and an IAEA culture of giving alleged violators the benefit of the doubt,⁵ NPT members have floundered, unable to build the necessary consensus required for the decisive application of enforcement mechanisms.⁶ In the period since the NCR announcement in August 2002, major divisions over how to respond to Iran's clandestine activities have emerged within and between the NWS and the non-nuclear weapon states (NNWS), and particularly within the regional and political groupings that usually present a united front in disarmament debates at the UN General Assembly, IAEA Board of Governors meetings, and NPT Review Conferences.

- 3 Evidence gathered during three years of intensive IAEA inspections suggest that Iran's nuclear activities may well have a significant military dimension, and at the very least constitute serious safeguards violations. From 1985 until the exposure by the NCR, Iran engaged in the illicit separation of plutonium and uranium enrichment activities (including centrifuge enrichment and atomic vapour laser and molecular isotope separation techniques), and imported material without declaring it. All of these activities constituted serious violations of IAEA safeguards and signalled a total disregard for NPT obligations. Huge efforts have been made by Iran to cover up these activities, but the facts have still gradually seeped out. Iran's clandestine activities are well documented in a series of IAEA Board of Governors reports, published between 2003 and 2006. For detailed and reliable information on this subject, see the following reports by the IAEA Director General: *Implementation of the IAEA Safeguards Agreement in the Islamic Republic of Iran*, GOV/2004/83, 15 November 2004; GOV/2005/67, 2 September 2005; GOV/2006/64, 14 November 2006. These reports are all declassified, and are available on the IAEA website at <http://www.iaea.org>. For an informed discussion of Iran's progress towards a nuclear capability, see Albright, 'When Could Iran Get the Bomb?'. 62 *Bulletin of Atomic Scientists* (July/August 2006), available at <http://thebulletin.metapress.com/content/d427773518542nn1/>.
- 4 Statement by H. E. Dr. M. Javad Zarif, Permanent Representative of the Islamic Republic of Iran before the Security Council, New York, 31 July 2006; author interview with Mansour Sadeghi (Political Advisor), and Reza Najafi, (Counsellor, First Committee) at the Permanent Mission of Iran to the United Nations, New York, 5 September 2006.
- 5 The IAEA has been affected by a culture of permissiveness, resulting from its dual role in promoting and controlling the use of nuclear energy. As part of its promotional role, the Agency supplies items to member states, and provides a guarantee that the material will not be diverted for nuclear weapons purposes. The Agency's conflict of interest starts if it suspects that a state is developing a nuclear weapons programme, since it implies that the Agency has made a mistake, as it should not have allowed the material or assistance to be provided in the first place. Hence the IAEA has an institutional incentive to find that nothing is wrong.
- 6 The NPT and the IAEA contain no independent enforcement mechanisms. Under the terms of the Treaty, confirmed cases of non-compliance are supposed to be passed by the IAEA Board of Governors to the UN Security Council, which has the authority to punish states that engage in clandestine nuclear proliferation activities. It took the IAEA Board of Governors three years to take this step. Although to some extent this delay can be explained by the desire of the IAEA and a number of NPT parties to verify allegations that Iran's secret activities represented a serious breach of its NPT obligations, the main reason for the delay relates to fundamental ideological differences between member states, as Sections 3 and 4 of this article explain.

During the last few years, the disagreements between the NWS over the issue of Iranian non-compliance have been addressed extensively in the scholarly literature,⁷ but the same cannot be said for the wider debate among the NNWS, which play a significant role in the functioning of the nuclear non-proliferation regime, despite their lack of veto in the UN Security Council. Understanding how the NNWS have responded to Iran's nuclear defiance is crucial, as in many respects these states hold the future of the NPT in their hands. If NNWS make every effort to ensure that Treaty violations are detected and dealt with in an appropriate and timely manner, this signals support for the Treaty's non-proliferation goals and a desire to ensure the Treaty's continued relevance and credibility. If, on the other hand, NNWS are reluctant to reinforce the Treaty's non-proliferation obligations and safeguards system (thus undermining its deterrence and confidence-building role) this is an indication of different membership priorities – less preoccupation with the Treaty's non-proliferation goals and a greater emphasis on its use as a vehicle for acquiring dual-use nuclear technologies for legitimate civilian programmes and, potentially, illegal nuclear weapon capabilities. The more NNWS that demonstrate an ambivalence or blatant disregard towards cases of non-compliance, the less likely it is that the NPT will recover from the recent series of proliferation shocks, as states permanently lose confidence in the Treaty's integrity and opt either to follow Iran's path towards a latent nuclear capability, or North Korea's strategy of nuclear breakout.⁸

⁷ The non-proliferation diplomacy of China and Russia has often been a source of frustration and confusion among policy-makers in the US, who have pushed hard for a more decisive application of the mechanisms for dealing with non-compliance in order to strengthen the non-proliferation regime and ensure its continuing relevance. With respect to the Iranian nuclear stand-off, there has been a gradual convergence between the Western NWS (France, the UK and the US) on the need to take punitive action against Iran to punish its violations, but this is at odds with the approaches of the Peoples Republic of China and the Russian Federation, which have displayed a reluctance to take steps that could be construed as coercive or overbearing. Instead, until recently, Chinese and Russian officials promoted a softly, softly approach to resolve each non-compliance crisis, avoiding strong words and actions and advocating patience and tolerance in finding political solutions to non-compliance through the IAEA. For a discussion of NWS divisions over the issue of non-compliance, see Ogilvie-White, *supra* note 2; Orlov and Vinnikov, *supra* note 2, at 49–66; and Tanya Ogilvie-White and John Simpson, 'The NPT and the 2003 PrepCom Session: A Regime in Need of Intensive Care', *The Nonproliferation Review* (Spring 2003).

⁸ There is no doubt that the recent series of non-compliance crises has already put significant strain on the Treaty, but most observers would agree that it remains the cornerstone of the nuclear non-proliferation regime despite these problems. See J. Dhanapala, 'The NPT: Yesterday, Today and Tomorrow', Keynote Address by the Under-Secretary General for Disarmament Affairs, Palais des Nations, 29 April 2003; Miller, 'Is the NPT System Slowly Dying? Seven Challenges to the Regime', paper prepared for the Athens Conference on Nuclear Proliferation, 30–31 May 2003, Athens, Greece, at 12–13; Ogilvie-White and Simpson, *supra* note 7; and Potter, 'The Once and Future NPT: In Search of Political Will', presentation prepared for the Public Hearing Before the European Parliament on the Future of the Nuclear Non-proliferation Treaty, Brussels, Belgium, 14 September 2006.

This raises interesting questions about the shifting non-proliferation diplomacy of the members of the Non-Aligned Movement (NAM)⁹ in response to Iran's illicit nuclear activities. Whereas the Western NNWS have adopted a consistent position that Iran should be held to account for its past safeguards violations, and should be punished for its failure to fully cooperate with the IAEA since the exposure of its secret nuclear activities, until relatively recently, members of the NAM were united in their public position on Iran, rejecting any strong condemnation of their NAM partner in the IAEA Board of Governors and other international forums, and refusing to accept that Iran should be held to account for its actions. This situation changed dramatically in 2005–2006, when key members of the NAM defected, deciding to support Western efforts in the IAEA Board of Governors to declare Iran in non-compliance with its safeguards agreement, and voted in favour of referring Iran to the Security Council for further action. Subsequently, NAM non-permanent members of the UN Security Council voted to demand that Iran immediately terminate its enrichment activities, and, when it failed to do so, supported the imposition of limited sanctions on Iran under UN Security Council Resolution 1737 (2006).

The key question is whether the sudden collapse of NAM unity signals the emergence of a consensus between the developed and developing world that NPT non-proliferation obligations should be more rigorously upheld and cheats punished. If so, does it also indicate growing support for a more ambitious policing and deterrent role for the IAEA and other global bodies? Or is the NAM split over Iran less significant in terms of long-term regime building, reflecting more immediate concerns, such as US diplomatic and economic pressure on NAM states to come into line and/or mounting unease over the nuclear intentions of Iran's maverick President, Mahmoud Ahmadinejad? This article explores these questions, drawing on the English School's interlinking concepts of international system and international society to help explain different responses to third-party non-compliance and the tensions between them. The next section sets out the article's theoretical framework, explaining the concept of international society and the insights that this concept can give

⁹ The Non-Aligned Movement is an international organization of over 100 states which consider themselves not formally aligned with or against any major power bloc, although in reality the organization has an anti-US orientation and tends to share common ground with China. The Havana Declaration of 1979 states that the purpose of the organization is to ensure 'the national independence, sovereignty, territorial integrity and security of non-aligned countries' in their 'struggle against imperialism, colonialism, neo-colonialism, apartheid, Zionism, racism and all forms of foreign aggression, occupation, domination, interference or hegemony as well as against great power and bloc politics'. Together, the states that make up the NAM represent nearly two-thirds of the membership of the United Nations and constitute a very significant voting block in the General Assembly. The organization's coordinating bureau is based in New York, and key offices (or 'Chapters') are located in Geneva, the Hague and Vienna. Nuclear non-proliferation and disarmament issues are dealt with by the Vienna and Geneva Chapters, the former representing NAM positions at the IAEA, and the latter representing NAM positions in the NPT review process and in the Conference on Disarmament. For further information on the history, structure and goals of the NAM and related documentation, see the official NAM website at www.nam.gov.za.

into attitudes towards global nuclear governance. The third section provides a history and empirical analysis of NAM responses to Iranian non-compliance, including the period 2005–2006 when the dramatic split occurred. Section 4 provides the theoretical analysis, highlighting the areas where the English School's interlinking concepts can help explain developments in attitudes towards third-party non-compliance and the nuclear non-proliferation regime in general.

2 The English School and the Concept of International Society

The English School distinguishes between the three interlinking concepts of international system, international society and global society, encouraging a constructivist and methodologically pluralist approach to understanding international relations.¹⁰ The international system is broadly understood in realist terms as a system of states competing within an anarchic international environment, where no overarching authority exists and where the goal of every state is to maximize its relative power in order to survive. This links to the concept of international society, which emerges when states decide that their survival under anarchy is more likely to be assured through cooperation rather than self-help: through the creation of norms, rules and institutions that constrain the competitive dynamics of anarchy. Although the first concept emphasizes self-help and the second cooperation, both locate power and authority within the state. The concept of global society, on the other hand, transcends the state system and places individuals and the global population as a whole at the centre of international relations. With states no longer the focus of international dynamics, new centres of power and authority must emerge that are considered universally legitimate and which serve the interests of global society.¹¹

The distinction between the concepts of international system, international society and global society, and the tensions between them, can be used to explain the evolution of the nuclear non-proliferation regime, and can help elucidate its current difficulties. The regime, with the NPT as its cornerstone, was created and maintained by states that identified and acted upon a shared interest in preventing the spread of

¹⁰ Buzan, 'The English School: An Underexploited Resource in IR', 27 *Review of International Studies* (2001) 474; Little, 'Neorealism and the English School: A Methodological, Ontological, and Theoretical Reassessment', 1 *European Journal of International Relations* (1995), at 15–16.

¹¹ A number of prominent theorists have noted the parallels between these three concepts and Martin Wight's articulation of 'three traditions' in IR theory: the Realism associated with Hobbes and Machiavelli, the Rationalism of Grotius, and the Revolutionism derived from the writings of Kant. Buzan, *supra* note 10, at 474; Cutler, 'The "Grotian Tradition" in International Relations', 17 *Review of International Studies* (1991), at 41–65; Makinda, 'Hedley Bull and Global Governance: A Note on IR Theory', 56 *Australian Journal of International Affairs* (2002) 363; M. Wight, *International Theory: The Three Traditions* (1991).

nuclear weapons and their use. It therefore represented a joint attempt to constrain anarchy by constructing institutions and informal arrangements that would reduce the incentives to engage in nuclear proliferation activities. As with international society generally, the effective functioning of the nuclear non-proliferation regime depends upon a number of interlinked factors, the most fundamental of which are (a) that states comply with their international obligations as defined by the treaties and agreements to which they are signatories; (b) that the institutions of the regime are both able and willing to detect cases of non-compliance when they occur; and (c) that states are prepared to punish rule breakers, using agreed procedures and tools that are legitimized by the regime.¹² The survival of the regime is thus contingent on the pillars of compliance, detection and enforcement, the absence or erosion of which would eventually result in the regime's demise, a return to self-help and the accelerated proliferation of nuclear weapons. Creating effective verification procedures that can foster confidence that states are not cheating on their commitments is therefore a key element of any regime, as is the development and utilization of appropriate non-compliance mechanisms.

The challenges associated with building confidence in a regime's effectiveness are partly material and functional and can be conceived of as the growing pains of international society – the difficulties that arise in any transition from self-help to cooperation, which can potentially be resolved by taking practical steps to improve the operation of its institutions. It could be argued that, given the necessary time, resources, and technology, most of these tensions will inevitably be ameliorated and the regime strengthened. But such an analysis would be misleading. At the heart of the nuclear non-proliferation regime lies a fundamental ideational conflict that may prove much more difficult to overcome. This conflict can be understood in terms of a transition from international society to global society, a complex notion that is central to English School analysis. The challenges associated with this transition are described in the work of Hedley Bull, who recognized that any move from international society to global society would require two crucial elements: a universally agreed concept of justice and a shift in authority from the level of sovereign state to that of global institutions.¹³ In such a society, actions would be based on what is right or good for humankind, rather than for individual states, making it a prerequisite that disagreements over competing values be resolved. In other words, a form of cultural unity would be required to progress from international security to collective security, from statist to post-statist governance, and from international society to global society. Writing in 1977, Bull claimed that any moves in this direction would be premature, but he also stressed that this did not mean that, at some point in the future, the conditions could

¹² See Miller, *supra* note 8, at 12–13.

¹³ H. Bull, *The Anarchical Society: A Study of Order in World Politics* (2nd edn. 1995); H. Bull and A. Watson, *The Expansion of International Society* (1984).

arise that would make it possible.¹⁴ Along with other English School theorists, however, Bull cautioned that any transition to global society would not be an easy one, as it would inevitably be accompanied by fierce resistance by sovereign states still wedded to the Westphalian order.¹⁵ Moreover, his own preference for international over global society stemmed from his belief in the potential fairness and inclusiveness of the former, and his reservations due to the possibility that actions taken in the name of the latter could actually constitute a cynical push for global hegemony.

The problems inherent in the evolution of international society as a whole are reflected in the attitudes of different states to the nuclear non-proliferation regime. Some states pay lip service to the norms on which the regime is founded, but ultimately remain unconvinced of its value except as a vehicle for disguising their self-interested pursuit of national priorities. Such states are not committed members of international society, but hang on to its coat tails when it serves their purposes. Other states view the nuclear non-proliferation regime as nothing more and nothing less than a series of useful state-based initiatives for reducing global threats. For states holding this view, the regime forms an international bridge, linking the common interests of a diverse group of sovereign states in a series of agreements and institutions that allows them to peacefully coexist. These states regard the nuclear non-proliferation regime as an important part of a classical, pluralist international society, aimed at the preservation of the Westphalian international order. They wish to protect the status quo, and view any attempt to relieve them of ultimate sovereign control with deep suspicion. Still others view the nuclear non-proliferation regime and related regimes and institutions in a more socially and politically ambitious light. They see a strong link between morality and international law, and are willing to cede some of their sovereign authority and power to global institutions in an attempt to move beyond what they see as the limitations of Westphalia. That is not to suggest that these states are willing to completely abdicate their rights and duties in favour of cosmopolitan global society, but they are more likely than the previous category of states to make sacrifices for what they believe represents global justice and the advancement of human rights.¹⁶

¹⁴ Bull, *supra* note 13, at 232. Other English School theorists have also explored these tensions, some of them reaching quite different conclusions on the nature of the relationship between international society and global society. For example, in *Systems of States*, Martin Wight argues that international society and global society would have to evolve in tandem rather than one after the other, with a high degree of cultural unity being a prerequisite for both. Buzan, *supra* note 10, at 477; and M. Wight, *Systems of States* (1977).

¹⁵ Buzan, *supra* note 10, at 478; Makinda, *supra* note 11, at 365.

¹⁶ In addition to the tripartite distinction made by the English School, an interesting parallel can be drawn between these approaches to the nuclear non-proliferation regime and the three 'Models of sovereignty' outlined by David Held. He makes a distinction between classical sovereignty (the law of states), liberal international sovereignty (the liberal concern with limited government, combining the law of states with the law of peoples), and cosmopolitan sovereignty (a system of public law that circumscribes all forms of power, including social power, and puts the law of peoples above that of the law of states). See Held, 'Law of States, Law of Peoples: Three Models of Sovereignty', *Legal Theory*, 8 (2002) 1.

These competing conceptions of international society offer an interesting perspective on the divisions between states over what constitutes appropriate action with regard to third-party non-compliance and nuclear breakout. Using this conceptual framework, it could be argued that states that push for a decisive response to violations, and demonstrate willingness to invest greater political and legal authority in the IAEA to facilitate effective action, are motivated by a desire to forge a more advanced form of international society – and possibly an embryonic global society – where sovereignty is increasingly ceded to international institutions in the interests of humanity. Any actions that undermine these structures would need to be dealt with swiftly, involving the development of new norms, the reinterpretation of statutory rights, and the imposition of increasingly intrusive procedures that impinge on narrowly defined national interests. Resistance to these efforts could be interpreted as an attempt to delay or limit the evolution of international society because the new standards and precedents on which it is based undermine existing rights and opportunities. It could also reflect the concerns that Hedley Bull outlined in the 1970s and 1980s: the prospect that the most powerful states that are pushing to strengthen the non-proliferation regime and create new international standards are motivated not by a desire to serve humanity, but by the selfish pursuit of global hegemony. But such resistance could easily be exposed as a double-edged sword, because failing to deal effectively with non-compliance could both restrict the movement towards a more advanced form of international society (a favoured outcome for its more reluctant members), and at the same time result in a backward step in the direction of anarchy, with the accompanying stresses and strains.

3 NAM Responses to Iranian Non-compliance

As an organization dedicated to promoting the needs of the developing world, the NAM has traditionally devoted its energy to ensuring that the inequalities of the international political order are addressed. A key NAM preoccupation with the NPT has therefore been to ensure that NNWS that have forgone the right to develop nuclear weapons are adequately compensated for their sacrifice via the provision of nuclear technology for peaceful purposes, and that the NWS, which have the legal right to nuclear weapons state status under the terms of the Treaty, are held to their pledge to disarm.¹⁷ NAM representatives in the UN General Assembly, the Conference on Disarmament, the IAEA Board of Governors, and the NPT Review Conferences therefore focus their efforts on holding the NWS to account for failing to meet their disarmament

¹⁷ NWS disarmament obligations include both the vague legal commitments outlined in Article VI of the NPT, and subsequent more clearly defined political pledges outlined in consensus decision documents agreed to during NPT Review Conferences. J. Simpson and T. Ogilvie-White (eds), *NPT Briefing Book, Vol. 1: The Evolution of the Nuclear Non-proliferation Regime* (2003).

obligations, and on trying to ensure that the ‘inalienable right’ of NNWS to nuclear energy is protected.¹⁸

Where the issue of non-proliferation is concerned, the NAM position is influenced by a number of factors that have led the organization to downplay the significance of third-party non-compliance crises. The first of these relates to the dual-use nature of nuclear technology and the resentment among many developing states over attempts by the developed world to tighten international controls on the movement of nuclear materials and expertise, which has made their own nuclear development more difficult and expensive. Inevitably, every non-compliance crisis has triggered a review of the effectiveness of the non-proliferation regime, leading the countries most concerned about nuclear proliferation to attempt to impose new transparency and compliance standards on NPT members, either within the Treaty framework or outside it.¹⁹ The NAM has attempted to act as a brake on this expansion of the non-proliferation regime, arguing that it impinges on important issues of national sovereignty, and is reinforcing economic inequalities in the international system through a process of technology denial.²⁰ Not surprisingly, therefore, a priority of the Vienna Chapter²¹ of the NAM has been to emphasize the nuclear assistance – rather than the safeguards – role of the IAEA, and to ensure that this is not undermined.

A second factor that affects NAM responses to third-party non-compliance relates to the existence of Israel’s nuclear weapons programme, and the failure of the non-proliferation regime – and the US in particular – to take a united stance against the

¹⁸ The issue of the ‘inalienable right’ of NNWS to nuclear energy, which is set out in Article IV of the NPT, goes right to the heart of the original NPT bargain: the NNWS agreed to forego the development of nuclear weapons but retained an inalienable right to develop nuclear energy for peaceful purposes. The phrase has often cropped up in NAM statements on the NPT, and became prevalent in the 1970s and 1980s, when leaders of the NAM referred to it often in their critiques of nuclear export control arrangements – especially the Nuclear Suppliers Group (established in 1975), which was seen by the NAM as an elite nuclear club and discriminatory regime that prevents poorer states from getting access to technologies that will aid their development. See Simpson and Ogilvie-White, *supra* note 17.

¹⁹ The first serious crisis was triggered by the discovery, in 1991, that Iraq had developed a sophisticated, clandestine nuclear weapons programme, which had not been detected during regular IAEA safeguards inspections. This led to a major review of the safeguards system, and resulted in the introduction of the new voluntary transparency measures known as the Additional Protocol (INFCIRC/540). A string of non-proliferation arrangements have evolved outside the NPT framework, some via the UN Security Council, such as Resolution 1540, and others via US-led initiatives, such as the Proliferation Security Initiative (PSI).

²⁰ A significant number of developing countries either quietly resist or openly oppose these new arrangements. Few have introduced the Additional Protocol, for example, and although all are obliged to fulfil their obligations under Resolution 1540, many do not cooperate fully with the 1540 Committee. CNS, ‘East Asian Governments Report on Export Control and Nonproliferation Progress: Review of Reports to the 1540 Committee’, *Asian Export Control Observer*, Issue 6, February/March 2005; Ogilvie-White, ‘Non-Proliferation and Counter-Terrorism Cooperation in Southeast Asia: Meeting Global Obligations through Regional Security Architectures’, 28 *Contemporary Southeast Asia* (2006).

²¹ See *supra* note 9.

Israeli government's violation of global non-proliferation norms. As far as NAM states are concerned, it is inappropriate to take decisive action against certain proliferators, if the international community turns a blind eye to others, as this smacks of hypocrisy and double standards.²² Thus, rather than denouncing states that have reneged on their non-proliferation obligations, the NAM has focused on keeping international attention on Israel's nuclear status, the need for Israel to disarm, and the benefits of establishing a nuclear weapon free zone (NWFZ) in the Middle East.²³ This is a highly charged issue among the domestic audiences of NAM states, particularly those in the Arab world, which tend to view Israel's nuclear programme as far more threatening than any other in the region, including Iran's.²⁴

Related to this issue of double standards, a third major factor that has influenced the official NAM response to cases of third-party non-compliance is the fact that most proliferation crises have been triggered by developing states, with violations by developed states seemingly overlooked by the international community. For example, when the IAEA uncovered evidence of safeguards violations by Japan²⁵ and

²² The US regularly votes against NAM proposals to hold Israel to account for its violation of non-proliferation norms and has allegedly assisted in Israel's nuclear development, causing huge resentment among the NNWS. The US administration argues that Israel's position is different from that of NPT violators, as Israel is not a Treaty signatory, and thus is not bound by its terms. See Note by the UN Secretary-General, 'Follow up to the Advisory Opinion of the International Court of Justice on the Illegality on the Threat or Use of Nuclear Weapons', UN Doc. A/55/131/Add.1, 18 September 2000; Cirincione, 'Iran and Israel's Nuclear Weapons', *The Globalist*, 11 March 2005; and Zunes, 'The Release of Mordechai Vanunu and US Complicity in the Development of Israel's Nuclear Arsenal', *Foreign Policy in Focus*, 21 April 2004, available at <http://www.fpif.org/fpiftxt/1134>.

²³ Every year, NAM members introduce two resolutions to the First Committee of the UN General Assembly in order to keep this issue in the spotlight. The text of these resolutions remains unchanged from year to year, and the voting pattern only alters minimally, with Israel and the US consistently voting against them, and most other states voting in favour. See UN General Assembly, 'Establishment of a Nuclear-Weapon-Free Zone in the Region of the Middle East', UN Doc. A/C.1/60/L3, 11 October 2005; UN General Assembly, 'The Risk of Nuclear Proliferation in the Middle East', UN Doc. A/C.1/60/L.6, 11 October 2005, available at <http://domino.un.org/UNISPAL.NSF/1ce874ab1832a53e852570bb006dfaf6/69e4d626145e3d0e8525709d00677dc7!OpenDocument>. The latter calls on Israel to join the NPT as a NNWS.

²⁴ 'Arab Attitudes Towards Iran's Nuclear Program: Government Views Vs. Public Opinion', *WMD Insights*, March 2006, available at http://www.wmdinsights.com/PDF/FP_MarIssue.pdf; 'Egyptian Political Class Divided on Iran's Nuclear Ambitions', *WMD Insights*, June 2006, available at http://www.wmdinsights.com/PDF/FP_JuneIssue.pdf; Cherian, 'Indian Betrayal', 23 *Frontline* (2006); and Morrison, 'Voice of Iran Echoes through Arab World', *San Francisco Chronicle*, 25 June 2006.

²⁵ About 200 kilograms of plutonium produced by a Japanese nuclear plant – enough to make 25 nuclear bombs – were discovered to be 'missing' in the 1980s. Inquiries into the whereabouts of this missing material began in 1987, after the IAEA, operating under its safeguards agreement with Japan, pointed out that the records of the Tokai nuclear reprocessing plant showed discrepancies. Japanese officials maintain that the shortfall was the result of miscalculation and measuring errors, rather than the plutonium being diverted for weapons production, but, according to some states, the issue has never been satisfactorily resolved. See Green, 'Missing Plutonium Leaves Nuclear Industry Red-Faced', *The Age*, 30 January 2003.

South Korea,²⁶ no condemnation of these states was forthcoming from Western NWS or NNWS. This has contrasted starkly with the response of the same states to alleged non-compliance by NAM states, which have been subjected to escalating demands and criticism and, in the case of Iraq, military invasion based on false intelligence. It is difficult for NAM members not to conclude that the international non-proliferation agenda is being driven by the West, and constitutes a form of cynical neo-colonial discrimination – exactly the type of activity that the organization was set up to tackle. This has allowed NAM members that have genuinely violated their NPT obligations, such as Iran and North Korea, and those that have violated global non-proliferation norms, such as India and Pakistan, to manipulate the sensitivities of their NAM partners, encouraging them to view their activities as a much-needed challenge to Western agenda-setting, rather than a serious challenge to international society as a whole.²⁷

This overview of the traditional NAM preoccupation with exposing and resisting the double standards of the nuclear non-proliferation regime helps put the organization's official response to Iranian non-compliance in context. It helps explain the initial consensus among NAM members on the need to minimize condemnation of their NAM partner, and their efforts to block any strong language in IAEA resolutions. NAM statements at IAEA Board of Governors meetings in 2003 and 2004 reflected this consensus, as, unlike the critical statements emanating from the Western NNWS, which highlighted Iran's failure to fully account for its undeclared nuclear activities, NAM participants praised Iran for its level of cooperation with the IAEA, and stated their satisfaction that, given adequate time, Iran would be given a clean bill of health (i.e. IAEA inspectors would conclude that Iran's claims that its nuclear programme is entirely peaceful would

²⁶ In 2004 IAEA inspectors discovered that South Korea's military scientists had secretly conducted plutonium reprocessing and uranium enrichment experiments at various times during the past 22 years. South Korean officials confessed that their scientists had been engaged in undeclared activities, and in the process had enriched uranium to 77 per cent (a level sufficient for weapons grade material). This was a serious violation of South Korea's non-proliferation obligations, yet South Korea, supported by the US government, succeeded in convincing the IAEA Board of Governors that a referral to the UN Security Council was unnecessary, contending that its previous violations did not reach the level of significance requisite for Security Council consideration. See Kang, *et al.*, 'South Korea's Nuclear Surprise', 61 *Bulletin of the Atomic Scientists* (2005), at 40-49; Joseph, 'IAEA Set Unwise Precedent on South Korea', *Defense News*, 3 January 2005, available at <http://defensenews.com/story.php?F=580844&C=commentary>.

²⁷ Among many others, the following documents and speeches illustrate this strategy: IAEA, 'Communication dated 3 June 1994 Received from the Permanent Mission of the Democratic People's Republic of Korea to the International Atomic Energy Agency', INF/CIRC/452, 13 July 1994; Embassy of India, 'Statement by Ambassador Savitri Kunadi, Permanent Representative of India, in the Plenary Meeting of the Conference on Disarmament', 2 June 1998, available at http://www.indianembassy.org/policy/CTBT/cd_june_02_98.htm; Islamic Republic of Iran, 'Report submitted by the Islamic Republic of Iran to the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons', NPT/CONF.2005/PC.III/33, 4 May 2004.

be verified).²⁸ It also helps explain why, outside IAEA Board of Governors meetings, NAM official statements avoided the subject of Iranian non-compliance altogether, with speeches at the NAM Summit, the UN General Assembly, and the NPT Preparatory Committee asserting the inalienable right of NNWS to develop nuclear energy for peaceful purposes, and the need for a NWFZ in the Middle East, with no reference to the issue of Iranian safeguards violations.²⁹

The serious NAM split that occurred in 2005 is all the more intriguing and significant in light of the initial NAM solidarity over Iran, and the principles underpinning it. In September 2005, key states chose to break away from the NAM consensus position and to support efforts to take more decisive action against Iran in the IAEA Board of Governors – actions that stunned the Iranian permanent representative to the IAEA, the Vienna and Geneva Chapters of the NAM, and the UN Missions of numerous NAM member states.³⁰ Initially, many in the developing world believed this to be a one-off event, an anomaly brought about by overbearing pressure and threats from US diplomatic officials.³¹ But their hopes faded as, on 4 February 2006, the NAM unity on Iran crumbled further, with more members deciding to defect and to support an

²⁸ See, for example, IAEA, 'Excerpt from the Record of the 1094th Meeting of the Board of Governors', GOV/OR.1094, 13 March 2004; NAM, 'Statement by the Non-Aligned Movement (NAM) on Agenda Item 5: Nuclear Verification', IAEA Board of Governors Meeting, Vienna, Austria, 8 September 2003; and NAM, 'Statement by the Non-Aligned Movement (NAM)', IAEA Board of Governors Meeting, Vienna, Austria, 12 September 2003 (these documents and others are available at via www.iaea.org).

²⁹ NAM, 'Final Document of the XIII Conference of Heads of State or Government of the Non-Aligned Movement', Kuala Lumpur, 24–25 February 2003; NAM, 'XIV Ministerial Conference of the Non-Aligned Movement (Midterm Review)', Durban, South Africa, 17–19 August 2004 (both available at <http://www.nam.gov.za/media/040820.pdf>); Working Paper submitted by Malaysia on Behalf of the Group of Non-Aligned and Other States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/PC.II/WP.19, 8 May 2005; and Statement by the Hon. Syed Hamid Albar, Minister of Foreign Affairs of Malaysia, on behalf of the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons at the General Debate of the 2005 Review Conference of the Parties to the NPT, New York, 2 May 2005.

³⁰ On 24 September 2005, the Board of Governors found Iran to be in non-compliance with its NPT safeguard obligations, adopting language to this affect for the first time. Past resolutions simply affirmed that Iran was in breach of its obligations but never stated its non-compliance (furthermore, in response to previous resolutions, which had been adopted without a vote, NAM states had 'withheld their strong support'). It was therefore a crucial turning point. States that voted for the resolution were: Argentina, Australia, Belgium, Canada, Ecuador, France, Germany, Ghana, Hungary, India, Italy, Japan, Netherlands, Peru, Poland, Portugal, Singapore, Slovakia, South Korea, Sweden, the UK and US. States that abstained from the vote comprised: Algeria, Brazil, China, Mexico, Pakistan, Russia, South Africa, Sri Lanka, Tunisia, Vietnam, and Yemen. Only Venezuela voted against the resolution. See IAEA Resolution GOV/2005/77, 24 September 2005; and Langenbach, Olberg, and Du Preez, 'The New IAEA Resolution: A Milestone in the Iran-IAEA Saga', *NTI Issue Brief*, November 2005, available at http://www.nti.org/e_research/e3_69a.html.

³¹ This conclusion is drawn from a series of interviews conducted by the author at various permanent missions to the United Nations in New York in September 2006.

EU-drafted resolution to refer Iran to the UN Security Council.³² NAM members still committed to the official NAM position scrambled to find explanations for the collapse of NAM support for Iran, arguing that the drafters of the February resolution had failed to give representatives to the IAEA Board of Governors enough time to consult on the text with their capitals.³³ But the reality of the split became difficult to deny, as NAM members sitting on the UN Security Council chose to chastise Iran for its safeguards violations, and for its rejection of long-running diplomatic efforts by the EU-3 to find a peaceful solution to the crisis.³⁴ Of the NAM states represented on the Security Council during negotiations over Resolution 1696 in 2006 (Argentina, Republic of the Congo, Ghana, Peru, Qatar, and Tanzania), only Qatar voted against the resolution. Latterly, following continued Iranian defiance, and further IAEA reports outlining Iran's failure to cooperate with the IAEA over key outstanding issues, the Security Council unanimously adopted Resolution 1737 in December 2006, imposing sanctions on Iran under Article 41, Chapter VII of the UN Charter.³⁵

³² In the February vote, Brazil, China, Russia, Sri Lanka, and Yemen switched their position from abstaining in September, to voting in favour of the new IAEA resolution. NAM members that had recently joined the Board of Governors in 2006 and also decided to vote in favour of Iran's referral included Colombia and Egypt. Overall, 27 of the 35 member states represented on the Board of Governors in 2006 voted in favour of the referral, with only five abstentions (Algeria, Belarus, Indonesia, Libya, and South Africa) and three votes against (Cuba, Syria, and Venezuela). This represented a significant increase in NAM defections over the Iran issue, signalling a greater sense of urgency and an apparent convergence of opinion between NWS and NNWS in favour of utilizing the appropriate mechanisms for dealing with cases of non-compliance. See 'IAEA Board Meeting on Iran: Statements Obtained on 2nd Feb', and IAEA Resolution GOV/2006/14, 4 February 2006 (both available at www.iaea.org); and anonymous, 'Non-Aligned Realigning to Confront Iran', *WMD Insights*, March 2006, available at http://www.wmdinsights.com/PDF/FP_MarIssue.pdf.

³³ The official NAM statement given at the 2–4 February meeting of the Board of Governors continued to praise Iranian cooperation with the IAEA, despite the Iranian decision to lift the suspension of its nuclear enrichment activities, and to emphasize the 'basic and inalienable right of all member states, as stipulated in the Statute of the IAEA, to develop research, production and use of atomic energy for peaceful purposes, without any discrimination.' 'IAEA Board Meeting on Iran: Statements Obtained on 2nd Feb', available at www.iaea.org.

³⁴ UN Security Council, 'Security Council Demands that Iran Suspend Uranium Enrichment by 31 August or Face Possible Economic, Diplomatic Sanctions', 5500th Meeting, UN Doc. SC/8792, 31 July 2006.

³⁵ Because this resolution was adopted under Article 41, Chapter VII, compliance is mandatory, but the resolution cannot be used to justify the use of force in response to any actions that constitute a violation. The sanctions adopted by the resolution are much more limited than the US and others would have liked, due primarily to Russia's insistence that they should be specifically tailored to hinder Iran's nuclear activities (except for those involving Russian cooperation at Bushehr) by placing restrictions on Iran's access to sensitive materials and expertise, and the movements of key nuclear scientists and officials known to be involved in Iran's nuclear programme. IAEA Director General, *Implementation of the IAEA Safeguards Agreement in the Islamic Republic of Iran*, GOV/2006/64, 14 November 2006; IAEA Director General, 'Statement to the Board of Governors, 23 November 2006', available at <http://www.acronym.org.uk/docs/0611/doc06.htm>; and UN, 'Security Council Imposes Sanctions on Iran for Failure to Halt Uranium Enrichment, Unanimously Adopting Resolution 1737 (2006)', 5612th Meeting, UN Doc. SC/8928, 23 December 2006.

4 An Analysis of NAM Divisions

How can the dramatic collapse of NAM solidarity in the IAEA Board of Governors be explained? To what extent does it represent a softening in the ideological divide between the approaches of NAM and Western NNWS to non-compliance and global nuclear governance? And to what extent are NAM defectors motivated by expediency, their break with tradition the result of intense US diplomatic and economic pressure rather than matters of principle? This section deals with these questions, drawing on the concept of international society to help explain NAM responses to third-party non-compliance and to the non-proliferation regime in general.

There are indications of growing support among NNWS for a more rigorous application of NPT enforcement mechanisms in response to cases of non-compliance, not only as a short-term response to current crises, but also as a longer-term attempt to strengthen the NPT and to ensure its continuing relevance. There is a sense, among Western NNWS and some NAM states, that new proliferation threats and challenges necessitate a two-pronged strategy: first, a shoring up of existing NPT mechanisms to help them function as originally intended, and second, where the existing mechanisms prove insufficient, the development of new procedures and practices to tackle the threat of proliferation and the potential for nuclear terrorism. Strengthening IAEA capacity and authority to deal with cases of non-compliance is a major part of this refortification and expansion of the nuclear non-proliferation regime, involving efforts to encourage member states to utilize the full powers granted to the Agency in the IAEA Statute,³⁶ and to support new initiatives intended to improve the Agency's ability to deal with new security challenges, such as the current expansion of nuclear energy and the threat of nuclear breakout.

In theoretical terms, this push for the creation of stronger, more effective global mechanisms to control the development, movement and use of sensitive nuclear materials can be understood as a transitional stage in the path towards a more ambitious form of international society – even an embryonic global society around the issue of

³⁶ Articles XII and XIX of the IAEA Statute specify significant punitive measures that the IAEA is authorized to take against states that violate their safeguards undertakings, including suspending IAEA rights and privileges, withholding IAEA assistance, and withdrawing materials and equipment made available by the Agency. These powers have long been available to the IAEA Board of Governors, but have rarely been used in the past due to high levels of resistance among member states, especially members of the NAM, and an IAEA culture of permissiveness. Article XII(a), paragraph 7, deals with safeguards violations and states that the agency shall have the right 'in the event of non-compliance and failure by the recipient state or states to take the requested corrective steps within a reasonable time, to suspend or terminate assistance and withdraw any materials and equipment made available by the Agency or a member in furtherance of the project'. Article XIX deals with the suspension of privileges, and states that: 'A member state which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference acting by a two-thirds majority of the members present and voting upon recommendation by the Board of Governors.' Statute of the IAEA, available at http://www.iaea.org/About/statute_text.html.

nuclear governance – with the IAEA at its centre. This is not to argue that this reflects a general trend towards the evolution of global society in all areas of international relations, but that it reflects a desire among many states to abdicate a certain degree of their independence with regard to nuclear governance, in the interests of humanity as a whole. Perhaps more than any other factor, a shared acknowledgement of the genuine threat posed by nuclear terrorism appears to be motivating this willingness to cede greater legal authority to the IAEA, as member states recognize the need for a much higher level of international cooperation to deal with this challenge.³⁷ Significantly, a number of the states that defected from the NAM position on Iran appear to share this vision with the Western NNWS, their approach to non-compliance issues reflecting a more general willingness among them to increase the legal authority of the IAEA and strengthen the non-proliferation regime generally.³⁸

This is an interesting and important trend, but it remains a weak one in terms of the NAM membership as a whole. Many of the organization's most powerful states continue to demonstrate an ambivalence to the changes in the nuclear non-proliferation regime, opposing steps to utilize legitimate non-compliance mechanisms; resisting moves to expand the IAEA mandate; and criticizing efforts to create new standards of transparency among IAEA member states.³⁹ Beyond the non-compliance issue, evidence of this ambivalence can be seen in the wariness that some NAM members display in response to the attempts by Mohammed ElBaradei, the IAEA Director General, to open up the debate on Article IV of the NPT (the right of NNWS to develop nuclear energy for peaceful purposes), including his efforts to encourage NNWS to adopt a new initiative that would involve future IAEA control over multilateral fuel

³⁷ See UN Security Council, 'Hearing Briefings from Committees Countering Terrorism, Security Council Considers Progress Made, Ways to Increase Effectiveness', UN Doc. SC/8840, Security Council 5538th Meeting, 28 September 2006. Also see the list of states that have signed up to the UN Security Council's counter-terrorism resolutions, which has expanded significantly since the terrorist attacks of 11 September 2001, available at <http://disarmament.un.org/TreatyStatus.nsf>.

³⁸ NAM members from all regions of the world fall into this category. South American NAM members (with the exception of Cuba and Venezuela) are particularly well represented, as are African members. Few Southeast Asian NAM members belong to this group, however (although Singapore is an important exception, as a state that goes beyond its non-proliferation obligations and is something of a trail blazer in terms of its export controls arrangements). Evidence of shared values with regard to nuclear governance can be seen in the enthusiasm among this group of states to sign up to existing and new non-proliferation arrangements, such as the IAEA Additional Protocol and the Nuclear Terrorism Convention, and to implement UN Security Council resolutions, such as Resolution 1540 (2004). See T. Ogilvie-White, *Preventing Nuclear and Radiological Terrorism: Nuclear Security in Southeast Asia*, Occasional Paper, The Australian Centre for Peace and Conflict Studies, April 2004, available at www.uq.edu.au/acpacs/docs/papers/NuclearSecurityOgilvie-White.pdf.

³⁹ For a discussion of the similar problems confronted by the UN Counter-terrorism committees, see Ruperez, 'The UN's Fight Against Terrorism: Five Years After 9/11', *ARI 83/2006*, 6 September 2006 (a UN analysis document, translated from Spanish and originally published by the Real Instituto Elcano of Spain, <http://www.un.org/terrorism/ruperez-article.html>).

centres.⁴⁰ NAM NNWS that fall into this category include those with existing nuclear programmes (such as Brazil⁴¹) and those with ambitious plans to develop indigenous nuclear energy programmes (such as Indonesia and South Africa) – states that, for now at least, wish to protect their existing rights and privileges and do not want to see them undermined by a new nuclear framework. Conscious of these tensions, ElBaradei has tried to take a softly, softly approach during discussions of new proposals, reassuring states that nuclear fuel arrangements will develop on an equitable basis, ‘in accordance with agreed nuclear non-proliferation norms’.⁴² However, many NAM states remain wary of these developments and have not responded enthusiastically to the Director General’s proposals.

Further evidence of this ambivalence was on display during the Board of Governors debate over whether to provide technical assistance for Iran’s Arak facility.⁴³ Whereas most Board of Governors representatives agreed that Iran’s request for assistance should not be approved due to its government’s failure to comply with a series of IAEA demands, a number of NAM representatives took Iran’s side in the dispute. In support of their NAM ally, they argued that it is the Agency’s duty to promote the civilian application of nuclear energy, and that technical cooperation is an

⁴⁰ Ongoing IAEA efforts to generate debate regarding new approaches to the nuclear fuel cycle are fundamental to the re-evaluation of the non-proliferation regime and the Agency’s role in it. In 2004, the IAEA established an independent international Group on Multilateral Approaches to the Nuclear Fuel Cycle, consisting of experts from 26 countries, which was tasked with exploring ways to remove the problems inherent in states developing ‘closed’ nuclear fuel cycles (i.e. developing complete control of the fuel cycle, including the enrichment processes that create the potential for nuclear breakout). The group’s report, which outlined a scenario in which the IAEA would assume control over an international fuel bank, was circulated to all IAEA Member States as INF/CIRC/640 and distributed at the 2005 NPT Review Conference. On 22 September 2006, the IAEA Director General held a special event during the 50th IAEA General Conference entitled ‘New Framework for the Utilisation of Nuclear Energy in the 21st Century: Assurances of Supply and Non-Proliferation’, which was intended to generate support for INF/CIRC/640. See Pellaud, ‘Nuclear Fuel Cycle: Which Way Forward for Multilateral Approaches?’ 46 *IAEA Bulletin* (2006); IAEA, Spotlight on the New Nuclear Framework: An IAEA Special Event Focuses on Multiple New Approaches to the Nuclear Fuel Cycle’, 48 *IAEA Bulletin* (2006); and IAEA, ‘Report of the Chairman of the Special Event, Mr. Charles Curtis’, GC(50)/OR.9 Annex, 22 September 2006.

⁴¹ Technically, Brazil has observer status with the NAM.

⁴² IAEA, ‘Report of the Chairman of the Special Event, Mr. Charles Curtis’, GC(50)/OR.9 Annex, 22 September 2006.

⁴³ The Arak project involves the construction of a heavy-water nuclear reactor, which could be used to produce high-quality, weapons-grade plutonium. When it is completed, which Iranians say could happen as early as 2009, it will be capable of producing enough plutonium for about two nuclear bombs a year. Iran has consistently claimed that it is building the reactor for peaceful purposes, to produce isotopes for medical, agricultural, and industrial purposes, but its rejection of an offer by France, Germany and the UK to replace the heavy-water reactor with one that poses less of a proliferation risk, set alarm bells ringing in the IAEA and resulted in calls to terminate the programme. Iran continues to insist that the project is peaceful, claiming that the request for technical assistance was based on a desire to ensure that the facilities are safe. One analyst recently made the point that using the Arak reactor for the production of isotopes is equivalent to using a 12-inch hunting knife to spread jam on your toast in the morning. See Einhorn, ‘Iran’s Heavy-Water Reactor: A Plutonium Bomb Factory’, Arms Control Association (Press Room Report), 9 November 2006, available at http://www.armscontrol.org/pressroom/2006/20061109_Einhorn.asp.

inalienable right under Article IV of the NPT and one of the fundamental privileges of IAEA membership.⁴⁴ Unlike the Western NNWS and a few NAM defectors, who favoured the removal of these privileges as a symbolic act designed to punish Iran for its defiance, some NAM members attempted to resist this move, resulting in days of heated debate.⁴⁵ The Board's eventual decision to block Iran's request for a period of at least two years represented an attempt to reach a compromise, leaving Iran with the option to submit another request for technical assistance for the Arak project in future. Significantly, though, during the same meeting, the Board approved technical assistance for seven other less contentious projects submitted by Iran, despite the fact that, according to the Statute, it had the legal authority to reject all eight applications in an effort to apply maximum pressure on Iran.⁴⁶ The Board's failure to use this option, and the battle involved even in trying to reach agreement over the denial of assistance to Iran's most controversial project, offers important insight into ongoing divisions between developed and developing states over what constitutes appropriate action in response to non-compliance.

A useful way to conceive of this resistance is to think of it in terms of a commitment among some states to a more minimalist type of international society. The majority of states that continue to offer support for Iran over the nuclear issue are motivated by a desire to limit the evolution of the new nuclear framework: they support the continued survival of the NPT and the functions of the IAEA, but they wish to hold onto their nuclear sovereignty, slowing efforts to move towards a more ambitious system of global nuclear governance. To the states that view the non-proliferation regime in these terms, responding to Iranian non-compliance poses a difficult problem: on the one hand, they want to ensure that the actions of Iran and other Treaty violators do not permanently undermine a regime that offers them a number of substantial benefits (access to materials and technical assistance for their indigenous nuclear development, and confidence that the illicit activities of non-state actors and renegade regimes will be identified and disrupted, if not halted altogether); on the other hand, they want to ensure that responses to Iran's actions do not set new precedents that curtail their own economic development. In other words, they are keen to prevent a return to an anarchic international system, with all the threats and challenges that this would entail, but they are also keen to prevent a transition to a more advanced international society, with the associated duties, obligations and commitments. States that favour this 'freeze' or 'go slow' on the evolution of the non-proliferation regime

⁴⁴ 'IAEA Indefinitely Freezes Iran Nuclear Aid Over Plutonium Risk', *Reuters*, 23 November 2006.

⁴⁵ Iran's Ambassador to the IAEA, Ali Asghar Soltanieh, accused the Western NNWS – particularly Australia and Canada – of 'shameful conduct' and 'double standards' during these discussions, on the basis that these and other developed states are denying crucial technologies to developing states, while at the same time supplying nuclear reactors to states that do not have safeguards agreements in place. When the Board of Governors decision to reject Iran's request for assistance for the Arak project was made public, Soltanieh announced that Iran would not be deterred from completing the project. 'Iran Expects IAEA Board Not to Politicize Technical Aid', *Islamic Republic News Agency*, 21 November 2006; 'IAEA Indefinitely Freezes Iran Nuclear Aid', *supra* note 44.

⁴⁶ See *supra* note 36 for details of IAEA legal authority to suspend member privileges.

are also highly suspicious that the states claiming to favour strengthening the regime on behalf of international society as a whole are actually using it as a cover for their own selfish agendas.

The decision of some states to abstain during the vote on whether to declare Iran in non-compliance with its safeguards commitments in September 2005, and to abstain again during the vote on whether to refer Iran to the Security Council, can be understood in terms of this dilemma. Two years of careful diplomacy by Iranian officials from early 2003 to mid-2005 had provided room for manoeuvre for NAM states: they could claim that Iran was cooperating with the IAEA; that its voluntary introduction of confidence-building measures was a positive step; and that the issue of Iran's undeclared activities could be resolved without resort to punitive measures and within the existing framework of the IAEA (i.e., without expanding IAEA legal authority, or referring the case to the Security Council).⁴⁷ Their aim had been to resist moves by some Western NNWS to use Iran's non-compliance to push for a more stringent application of enforcement mechanisms and tighter non-proliferation controls. But it was one thing to protect Article IV interests while Iran was demonstrating some semblance of cooperation, and it was quite another to continue to resist calls that Iran should be held to account once Mahmoud Ahmadinejad assumed the Presidency and began adopting a more confrontational stance over the nuclear issue.⁴⁸ The latter presented

⁴⁷ This position appeared reasonable to NAM states when Iran was appearing to cooperate with the IAEA, and seemed open to genuine negotiations with the EU-3, who were pushing hard to find a package of incentives that could persuade Iran to terminate its enrichment programme altogether. On the basis of the EU-3 initiative, Iran agreed to suspend its uranium enrichment activities via the November 2004 Paris Agreement, which set out terms for a voluntary moratorium. NAM states ignored the signs that Iran's commitment to the Paris Agreement was waning when in March 2005, Iran proposed running its pilot scale enrichment facility. NAM states also attempted to downplay the significance of Iran's announcement, in April 2005, that it would start up its uranium conversion plant unless negotiations with the EU-3 progressed (on Iran's terms). They adopted the position that Iran had no obligation to abide by the Paris Agreement, and was not legally committed to apply the Additional Protocol. Western states argued that Iran was politically and morally obliged to stand by the Paris Agreement and to continue with voluntary confidence-building measures, such as the Additional Protocol, because it had been knowingly breaching its safeguards obligations for over 20 years, and thus needed to rebuild the trust of the international community (i.e. address the 'confidence deficit'). See *Implementation of the IAEA Safeguards Agreement in the Islamic Republic of Iran*, GOV/2004/83, 15 November 2004; GOV/2005/67, 2 September 2005; GOV/2006/64, 14 November 2006; and 'Statement by the United Kingdom on Behalf of the European Union at the IAEA Board of Governors, 9 August 2005', available at www.iaea.org.

⁴⁸ Once Ahmadinejad assumed the Presidency, Iran began to adopt a more openly confrontational approach to the nuclear issue, terminating its voluntary confidence-building arrangements with the IAEA. Crucially, in August 2005, Iran announced that it would resume enrichment activities at Isfahan, and began taking off the IAEA seals. At the same time, Iran rejected a generous EU-3 package offering nuclear, economic and political cooperation with Iran, calling it 'without value and meaningless ... an insult to both the Iranian government and the people of Iran'. In January 2006, Iran abandoned its voluntary suspension of enrichment-related activities negotiations altogether, as well as the interim application of the Additional Protocol, prompting the February 2006 referral to the Security Council. See IAEA, 'Communication dated 1 August 2005 received from the Permanent Mission of the Islamic Republic of Iran to the Agency', INFCIRC/648, available at www.iaea.org; and Squassoni, 'Iran's Nuclear Program: Recent Developments', *CRS Report for Congress*, 6 September 2006.

NAM states with a difficult problem: How could they protect the NPT from Iran's fundamental challenge to its credibility, and at the same time restrain Western efforts to use non-compliance crises to generate momentum towards the creation of a new nuclear framework?⁴⁹ For states in this position, abstaining seemed the best option.

The decision of three NAM Board members – Cuba, Syria and Venezuela – to openly oppose the initiative to refer Iran can be understood as a rejection of international society in its most basic form, rather than resistance to the more ambitious global nuclear society pursued by Western NNWS.⁵⁰ Venezuela and Syria – and perhaps Cuba (though this is less certain, as its stance over Iranian non-compliance appears to be influenced to a large extent by its position and responsibilities as NAM Chair) – fall into this category, as states that would prefer to witness the destruction of the non-proliferation regime as it is currently constituted, rather than see it expanded. These states view the nuclear non-proliferation regime as an extension of the colonial past: a poor cover for Western imperial ambition and cultural arrogance, and a vehicle that is manipulated to serve the interests of the powerful at the expense of the weak. Despite this, they are willing to participate in its institutions, as long as they benefit from the rights and privileges that they have to offer. But their participation is limited and their commitment half-hearted. Full participation in international society involves fulfilling responsibilities and obligations, including working to ensure that challenges by third parties are dealt with via the legitimate mechanisms devised to deal with rule breakers. Opposition to the legal use of such mechanisms, even when non-compliance has been confirmed and defiance continues, speaks volumes about membership motives and attitudes to international society in general.

⁴⁹ During the period of NAM consensus on Iran between 2003 and summer 2005, the NWS were in disarray over the issue of how to respond to Iranian non-compliance: the EU-3 took the initiative to find a diplomatic solution outside the Security Council; the US pushed for a more decisive response; and Russia and China both urged caution, partially backing the EU-3 and opposing US calls for a Security Council referral. With the NWS so obviously divided, the pressure on the NAM to support Western initiatives was reduced. This began to change in spring 2005, as the approaches of the NWS and the NNWS began to coalesce, and a new pattern of NWS and Western NNWS agreement on the need to take a tougher line against Iran emerged in early 2006. Pressure on NAM states to support the emerging consensus thus began to build, causing some NAM states to fear the impact this might have on NAM solidarity over Article IV issues. See IAEA Resolution GOV/2005/77, 24 September 2005; 'IAEA Board Meeting on Iran: Statements Obtained on 2nd Feb', and IAEA Resolution GOV/2006/14, 4 February 2006, all available at www.iaea.org; and Langenbach et al., *supra* note 30.

⁵⁰ Venezuela, Syria and Iran are trying to find ways to bolster ties among themselves to compensate for their increasing international isolation. The deepening links between Iran and Syria are well known, but ties between Iran and Venezuela have received less attention, and have come about as a direct result of their mutual rejection of the Western – and especially US – non-proliferation agenda. In 2006, Iran and Venezuela signed a string of bilateral agreements, including accords that outlined cooperation in oil exploration and car manufacturing. Iran also backed Venezuela's bid for a seat on the Security Council in 2007 (although due to lack of support in Latin America for Venezuela's selection, Argentina eventually took the seat). When discussing Iran's nuclear defiance at the NAM Summit in Cuba in September 2006, Venezuelan President Hugo Chavez argued that Iran's activities were fully justified on the basis that Iran was under threat of invasion. See 'Iran and Venezuela Bolster Ties', *BBC News*, 17 September 2006; 'No State has Right to Sanction Iran: Venezuelan Envoy', *Islamic Republic News Agency*, 3 January 2007.

This division between a small minority of NAM states that reject international society altogether, the majority that still support it but wish to limit its evolution, and the few trailblazers that wish to expand it, is increasingly bitter. According to the states that voted against Iran's referral, and some that abstained, the NAM members that defected in September 2005 and February 2006 were motivated not by any worthy desire to rescue the NPT from terminal decline, but instead by fear and greed: fear that if they did not submit to US diplomatic pressure their own rights and privileges would be deliberately undermined by Washington; and greed for the potential rewards that cooperation might bring.⁵¹ They are traitors to the developing world, selling out to the 'great Satan' in return for short-term expediency.⁵² Reports of these activities are regularly recounted by NAM Board members, who have used them to justify their actions following the February vote: those who voted against, arguing that their vote represented a rejection of unfair US pressure tactics, and those that abstained, claiming that they had only broken with NAM solidarity because they had been subjected to overwhelming political pressure.⁵³

5 Conclusion

The development of a strong and genuine consensus in favour of adopting a decisive response to cases of third-party non-compliance is a highly desirable goal; the future of the NPT rests on the ability and willingness of its members to rise to this challenge. As long as states are able to flout the obligations associated with Treaty membership without serious consequences, abusing institutional privileges in the service of undeclared, illicit activities, the Treaty will remain weak and its future uncertain. No international legal framework, however resilient and universal in its membership,

⁵¹ There is some truth in these allegations. It is well known, for example, that US negotiators placed very strong pressure on Indian officials to support the resolutions in the IAEA Board of Governors, using the threat that Congress would reject the nuclear deal to bolster their case. The US and other Western states used similar pressure to persuade other NAM states to break with their traditional voting patterns, threatening not to support their requests for IAEA technical assistance if they refused to tow the line against Iran. Iranian diplomats were aware this was happening, but, despite this, did not predict the outcome of the vote in February 2006. They were said to be 'deeply shocked' by the 'betrayal' by their NAM partners. Interview with Mansour Sadeghi (Political Advisor), and Reza Najafi (Counsellor, First Committee) at the Permanent Mission of Iran to the United Nations, New York, 5 September 2006.

⁵² This view is shared by powerful domestic constituencies in some of the NAM states that decided to break with NAM tradition, including those on the left of the political spectrum in India, which was one of the original founders of the Non-Aligned Movement and one of the principal defectors in 2005. Kumaraswamy, 'India's Interests Collide Over Iran', *PINR*, 28 October 2005; 'Arab Attitudes Towards Iran's Nuclear Program: Government Views Vs. Public Opinion', *WMD Insights*, March 2006, available at http://www.wmdinsights.com/PDF/FP_MarIssue.pdf; Cherian, 'Indian Betrayal', 23 *Frontline* (2006); 'Egyptian Political Class Divided on Iran's Nuclear Ambitions', *supra* note 24; Morrison, 'Voice of Iran Echoes Through Arab World', *San Francisco Chronicle*, 25 June 2006.

⁵³ Interview with Permanent Mission of Pakistan to the United Nations, 5 September 2006; Permanent Mission of Malaysia to the United Nations, 6 September 2006; and Permanent Mission of Indonesia to the United Nations, 7 September 2006.

can withstand constant attacks on its credibility: eventually, the cumulative effect of slow or ineffective response to non-compliance will be to erode member confidence, causing states to fall back on self-help responses to insecurity. Thus, the huge ideological division between the developed and the developing world over the appropriate response to third-party non-compliance threatened the medium- to long-term demise of the NPT, with little hope of reversal.⁵⁴ In particular, NAM states appeared to be determined to resist Western pressure to hold Iran to account for its safeguards violations, fearful that their own rights would be undermined. But the voting behaviour of some NAM states in IAEA Board of Governors meetings in 2005–2006 seemed to signal a change of heart, creating an opportunity to strengthen the non-proliferation regime and ensure its continuing relevance.

As this article has revealed, however, it is too soon to talk of a lasting consensus within the NPT and IAEA on non-compliance issues. The collapse of NAM solidarity in the IAEA Board of Governors caused shock and bitterness within the organization, and for that reason it is easy to exaggerate its significance. Evidence suggests that the majority of NAM states remain deeply suspicious of the Western non-proliferation agenda, concerned that momentum in the direction of global nuclear governance will curtail their own nuclear ambitions and primarily serve the interests of the developed world.⁵⁵ They are international society's reluctant passengers: states that have no desire to live in the town called Nuclear Anarchy (that dangerous neighbourhood where nuclear weapons abound and where survival is dependent on self-help), but that are also unsure how far they want to travel along the road to Global Nuclear Society (they don't trust the driver; they're not sure they like what they see of the different places along the way; and they resent the fact that, at every stop, new rules are introduced). Any consensus that has emerged among NNWS over the need to strengthen non-compliance mechanisms is therefore very fragile and vulnerable to collapse.⁵⁶

⁵⁴ Potter, *supra* note 8; Steinberg, 'The Demise of the Non-Proliferation Treaty', *Jerusalem Post*, 8 October 2006.

⁵⁵ The composition of the UN Security Council and the IAEA Board of Governors in 2007 is crucial in this regard, in that a number of NAM defectors finished their terms serving as non-permanent members of both bodies in December 2006, and the incoming members are known to be more wedded to traditional NAM concerns. Indonesia and South Africa, Italy, Belgium and Panama joined the UN Security Council in January 2007, for example, replacing Tanzania, Japan, Denmark, Greece and Argentina. The positions that Indonesia and South Africa adopt with regard to Iranian non-compliance could have a significant impact, even though neither states has the power of veto. Further information on the composition of the UN Security Council is available at <http://www.un.org/Docs/sc/>.

⁵⁶ The point that US diplomatic pressure was partially responsible for the NAM split in 2005, playing an important part in the calculations of NAM defectors, has an important bearing not only on the strength and durability of any consensus between NAM and Western NNWS, but also on its impact. Had the NAM split occurred purely as a result of principled opposition to Iranian non-compliance, the pressure on Iran to suspend its enrichment activities would have been overwhelming. Suggestions that this was not the case reduced the moral force of Iran's referral, allowing Iran's skilled diplomats to continue to argue that the international community is being manipulated by a hostile and deeply biased US non-proliferation agenda. Although this assessment underestimates the role that principle played in the referral and exaggerates that of material factors, it nevertheless plays to a receptive audience among NAM states bent on preserving traditional NAM preoccupations.

This conclusion has important policy implications; as long as the emerging consensus remains weak, the opportunities to rebuild confidence in the NPT will be limited. So how can the NNWS consensus be consolidated, strengthened and expanded? What factors are likely to stiffen the resolve of NAM members when it comes to dealing with cheats and rule breakers? The principles underpinning NAM resistance to the decisive use of non-compliance mechanisms suggest that developing states would be far more likely to fulfil, enforce and even extend NPT obligations if they saw that genuine efforts were being made to address the real and perceived double-standards in the non-proliferation regime. While Israel retains its nuclear weapons with little sustained pressure from the US to disarm, while Washington pursues lucrative nuclear supplier arrangements with NPT holdouts, such as India,⁵⁷ and while the NWS continue to push their non-proliferation agenda without a parallel commitment to disarmament, any consensus is likely to be vulnerable. The reason for this is simple: double standards provide legitimate grounds for resistance; while they exist, states guilty of non-compliance, such as Iran, will continue to exploit NAM sensitivities and influential domestic political constituencies will continue to urge their governments to support nuclear defiance. Only when serious efforts are made to address genuine NAM concerns over development issues and double standards will the powerful incentives to resist what is seen as a discriminatory non-proliferation regime begin to weaken.

With this in mind, it may be an opportune moment for the emergence of a new political grouping dedicated specifically to the exercise of building consensus between NAM and Western NNWS.⁵⁸ The European NNWS are in a particularly strong position to lead this initiative, on the basis that they have often voiced their own strong opposition to the double standards of the nuclear non-proliferation regime, but have nevertheless remained committed to their NPT obligations, often leading the way in finding new and innovative solutions to the challenges confronting the

⁵⁷ In December 2006, the US Congress passed the US-India Peaceful Atomic Energy Cooperation Act, lifting long-standing legal restrictions on nuclear cooperation between the two countries. This has led to accusations of double-standards by many diplomats, political leaders, scholars and NGO representatives, who have argued that it weakens the nuclear non-proliferation regime. 'President Bush Signs US-India Civil Nuclear Agreement', *Global Security*, 18 December 2006 (accessible via www.globalsecurity.org); Robert Einhorn, 'Should the US Sell Nuclear Technology to India?' *Yale Global*, 8 November 2005 (accessible via www.yaleglobal.yale.edu); Deepak Nair, 'The US-India Nuclear Deal: An Error of Exception?' (accessible via www.OpinionAsia.org).

⁵⁸ The New Agenda Coalition (NAC), which fulfilled a similar role in the late 1990s, may no longer be effective due to significant divisions among its NAM (Egypt, South Africa, Brazil, Mexico) and Western (New Zealand, Sweden, Ireland) members. It was largely thanks to the activities of this group that the 2000 NPT Review Conference achieved the substantive outcome known as the '13 Steps' of the Final Document, which committed the NWS to a series of disarmament measures. No group of equivalent stature or influence has emerged to replace the seemingly defunct NAC. See Potter, *supra* note 8; and Potter, 'The NPT Review Conference: 188 States in Search of a Consensus', *The International Spectator*, Issue 3, 2005.

NPT.⁵⁹ As the states most clearly committed to strengthening the non-proliferation regime for the sake of international society as a whole, rather than for the pursuit of their own narrow interests, the European NNWS have the potential to engage in important bridge-building activities within the NPT and IAEA, ensuring that genuine NAM concerns are addressed, and that these are taken into account in any move towards the creation of a new nuclear framework. The more common ground that the NNWS share among themselves, the more they will be able to drive the agenda forward, holding the NWS to their disarmament commitments while ensuring that legitimate global non-proliferation concerns are also addressed.

⁵⁹ The point that the European NNWS are in the strongest position to perform this task is reinforced by the fact that the EU was the only effective political grouping at the 2005 NPT Review Conference. Whereas NAM, NAC, and P-5 (NWS) floundered throughout the conference, the EU presented a united front, with a well-defined set of positions, which were actively promoted by Luxembourg on behalf of the EU. See Potter, 'The NPT Review Conference', *supra* note 58.