2. The NPT as founding treaty of nuclear rule

This chapter sets out the extent to which the NPT can be regarded as a founding treaty of nuclear rule. As a reminder, rule is defined in this study as ***a constant form of exercising power and means the institutionalization of relationships of super- and subordination, which systematically expands or restricts the actors' options for action and influence on control***. First, we discuss how the treaty is embedded in the nuclear order as a whole and what central role it plays in it (2.1). For this purpose, we examine what exactly can be understood by nuclear order, i.e. what rules apply to the possession and disposition of nuclear weapons and what organizing logics (or principles of order) underlie them. This includes a brief overview of international treaties and institutions involving nuclear weapons and the distinction between order and regime. On this basis, we will analyze the central position of the NPT in the nuclear order. This is followed by a summary of the NPT norm genesis and an analysis of its norm substance with a view to elements that establish nuclear rule (2.2). Its genesis, its provisions, its three pillars and the underlying "grand bargain" are therefore explored. Furthermore, the indefinite extension of the treaty and its (reinforcing) effects on patterns of rule in the NPT will be examined. In line with our conceptual link between rule and resistance, another section looks at the past dynamics of contestation of rule in the NPT (i.e. before the Humanitarian Initiative (HI) and the TPN) (2.3). The point here is to underscore the argument that the NPT embodies a nuclear rule and to give plausible examples of opposition and dissidence movements within it. This also illustrates the different perspectives of nuclear weapon states and non-nuclear weapon states on the treaty. Finally, we will investigate the extent to which this questioning of the legitimacy of the NPT and forms of resistance affect its stability and whether the regime is effective with regard to the goals associated with it (2.4). The focus will be on the fulfillment of the non-proliferation and disarmament promises. In addition to the academic debate on the issue, the performance of the regime will be subjected to empirical scrutiny.

2.1 The nuclear order

To identify rule in the nuclear order, it is first necessary to clarify what is meant by nuclear order. The term is usually used without explanation, as if it was self-explanatory. But what does it consist of, which organizing principles underlie it and how does it shape international relations as a whole?

To recognize order in a space, one looks at how things are distributed, arranged, sorted. If one looks at the world's total of approx. 12,500 nuclear weapons (Kristensen and Korda 2023, pp. 247–336), a North-South divide immediately comes to mind. All nuclear weapon states (NWS) – the United States (US), Russia, the United Kingdom (UK), France, China, India, Pakistan, North Korea and Israel – are located in the northern hemisphere. If we look closely at where else nuclear weapons are permanently stationed – in Germany, Belgium, the Netherlands, Italy, Turkey (Kristensen 2005) and presumably Belarus (Bugos 2023a), the focus remains on the north. These countries participate in NATO's so-called nuclear sharing and have US nuclear weapons stationed on their territory or, in the case of Belarus, it is about cooperation with Russia and the alleged stationing of Russian nuclear weapons. Regarding the distribution of nuclear weapons, it is therefore possible to draw up a ranking in three phases (nuclear weapon states (NWS), sharing states, non-nuclear weapon states (NNWS)). If one takes into account that approx. 90% of nuclear weapons belong to Russia or the US (Kristensen and Korda 2023), one arrives at a four-stage division with a concentration of possession and disposal in the Global North. If one includes the umbrella states – NATO member states, Japan, South Korea, Australia (as the only state in the southern hemisphere) – which are under the nuclear umbrella of the US (Erästö 2023), the result is a division into five groups (US/RUS, other NWS, sharing states, other umbrella states, NNWS).

The factual distribution clearly reveals three-, four- or five-layered relationships, but does not yet imply a normative structure. The latter results from existing rules relating to nuclear weapons. How is the distribution of and dealing with nuclear weapons organized? In general, four components are distinguished: nuclear deterrence, arms control, non-proliferation und disarmament (Horsburgh 2015). They form the basic elements and at the same time the subjects of dispute in the organization and regulation of nuclear weapons since the beginning of the nuclear age. Nuclear deterrence describes a military doctrine that seeks to prevent an adversary state from using nuclear weapons by threatening nuclear retaliation or complete nuclear destruction (Arbatov 2021). In the latter case, one also speaks of mutually (assured) destruction (MAD) (Sokolski 2004). Accordingly, it is not the ability to defend oneself that creates deterrence, but the ability to punish (Waltz 1981). Nuclear arms control, in turn, refers to treaties and monitoring between states to limit their nuclear military capabilities in order to minimize the likelihood and scale of a military conflict (Horsburgh 2015, p. 22). Nuclear non-proliferation is about preventing the

spread of nuclear weapons to other states, i.e. preventing the number of NWS from growing. Finally, nuclear disarmament involves the reduction of nuclear arsenals and/or their delivery systems up to their complete elimination.

These four elements cannot really be sharply separated from each other. Disarmament and non-proliferation, for instance, are two specific forms of arms control. In the terminology of this study, arms control thus functions as an umbrella term for agreements and processes aimed at regulating, limiting and reducing or even eliminating armament. It can refer to warheads, delivery systems or other technical components (such as, in the nuclear field, centrifuges for enriching nuclear material). The four-part distinction is nevertheless helpful in grouping the numerous regulations, treaties and institutions on nuclear weapons in terms of content. Even if disarmament and non-proliferation are conceptually sub-genres of arms control, they deserve to be mentioned separately, not least because they are treated and evaluated differently on the political level. NWS, for example, understand nuclear arms control as a whole in the context of strategic stability and prefer to regulate limitations and reductions bilaterally to improve their own security (Arbatov 2020, Gottemoeller 2020, Rogers *et al.* 2022). NNWS, on the other hand, focus on nuclear disarmament as a global good for the establishment of international security and insist on its implementation in a multilateral framework. From this angle, other arms control measures are partly criticized as diversionary tactics to avoid complete disarmament (Acheson 2022). NWS and NNWS are equally interested in non-proliferation and accept multilateral arrangements for this. Nuclear deterrence, on the other hand, is highly controversial. For NWS, sharing states and umbrella states, it preserves order and stability. NNWS see it, as well as the mere existence of nuclear weapons, as a source of disorder and instability.

Under international law, the four components are reflected in numerous bilateral and multilateral (regional and global) treaties. The following overview shows how far-reaching and ramified this body of rules is. Although the list is not exhaustive, it includes the most relevant agreements from the various areas. The year in which the negotiations were concluded is indicated in brackets. Nuclear arms control treaties that precisely regulate and monitor limitations and disarmament were exclusively negotiated among the NWS themselves. Most of them are bilateral treaties between the US and the Soviet Union (USSR), later Russia. They include the Strategic Arms Limitation Talks Agreements (SALT) I (1968) and II (1979), the Anti-Ballistic Missile (ABM) Treaty (1972), the Strategic Arms Reduction Treaties (START) I (1991) and II (1993), the Intermediate-Range Nuclear Forces (INF) Treaty (1987), the Strategic Offensive Reductions Treaty (SORT) (2003) and the updated Strategic Arms Reduction Treaty (New START) (2010). The Treaty on Open Skies (1992) is an example of a multilateral treaty with a regional scope (within the OSCE framework) that promotes confidence-building and transparency including nuclear facilities. Apart from the New START Treaty, which was extended until 2026 but suspended

by Russia at the beginning of 2023 in the course of its war against Ukraine, all these treaties have expired or been withdrawn from. The NWS are thus hardly bound by any bilateral or regional arms control limitations.

The best-known multilateral treaty on nuclear weapons with global reach is the Treaty on the Non-Proliferation of Nuclear Weapons or Non-Proliferation Treaty (NPT) (1968), which will be examined in more detail later. In addition, the Comprehensive Nuclear-Test-Ban Treaty (CTBT) (1996), ratified by 178 states, sets a globally recognized standard and has an effective monitoring system, although it has not yet entered into force. It has not been ratified by India, North Korea, Pakistan, Egypt, Israel, Iran, China and the US, which belong to the group of 44 states whose ratification is necessary for the treaty to enter into force, as they either possess nuclear weapons or have the technological prerequisites to do so (UNGA 1996, Annex 2). Both treaties are the result of intensive negotiation processes between NWS and NNWS, as will be shown in more detail later.

NNWS have taken on agency in the further development of international law on nuclear weapons and have concluded treaties on (regional) nuclear-weapon-free zones (NWFZ) among themselves. These include the Tlatelolco Treaty (1967) in Latin America and the Caribbean, the Rarotonga Treaty (1985) in the South Pacific, the Bangkok Treaty (1995) in Southeast Asia, the Treaty of Pelindaba (1996) in Africa, and the Semipalatinsk Treaty (2006) in Central Asia. In addition, Mongolia declared itself a single-state NWFZ in 1998.

It is noteworthy that most of these agreements were concluded despite political tensions and in regions where nuclear weapons were already developed or deployed or nuclear rivalries prevailed. In some cases, they were even triggered by crises, such as in Latin America and the Caribbean in the Cuban missile crisis or in the South Pacific, where the UK, the US and France tested nuclear weapons (which consequently was also prohibited). In Southeast Asia, the zone covers the entire ASEAN area, where transit by air and sea is prohibited, as is deployment on military bases. In total, the NWFZs cover 56% of the land surface of the Earth, 60% of the member states of the UN, but only 39% of the world population (Finaud 2014). The Treaty on the Prohibition of Nuclear Weapons (TPN) (2017), which has a global design and will be discussed in more detail, has so far likewise only been signed by NNWS. In a way, it links the various regional NWFZs into a global network of NWFZs.

All NWS except Israel are parties to the Antarctic Treaty (1959), which also establishes an NWFZ. And all NWS participate in the ban on nuclear weapons in the Outer Space Treaty (1967). But France, Pakistan, North Korea and Israel did not ratify the Seabed Arms Control Treaty (1971), and only Pakistan ratified the Moon Treaty (1979). Through the adoption of specific protocols by some NWS to individual NWFZ treaties, they are also subject to obligations not to deploy nuclear weapons in those zones or to use them against members of the zones.

In addition to international treaties, various international institutions and bodies also deal intensively with nuclear weapons. Since its foundation, the United Nations (UN) claims authority for dealing with the challenges raised by the existence and proliferation of nuclear weapons. After all, several of its main goals as defined in its Charter are at stake (UN 1945, article I): the safeguarding of world peace, the observance of international law, the protection of human rights and the promotion of international cooperation. In 1946, the UN General Assembly (UNGA) addressed the nuclear threat in its very first resolution, calling for the destruction of all nuclear weapons and other weapons of mass destruction (UNGA 1946). Since then, the so-called "UN disarmament machinery" has evolved over time. It refers to "multilateral processes, procedures and practices, and relevant international bodies whose purpose are to deal with issues of disarmament, non-proliferation and arms control" (UNIDIR 2010, p. 1). After many reforms, it now essentially comprises four bodies: The Conference on Disarmament (CD) consists of 65 member states, meets in Geneva and represents the UN's main body for arms control negotiations. It decides upon consensus. The UN Disarmament Commission (UNDC) is also conceived as a negotiating body and includes all UN member states. Decision-making is also based on consensus. The United Nations Security Council (UNSC) has the power to pass legally binding resolutions. Its quorum depends on the approval of the five permanent members and veto powers. The UNGA and its First Committee, which deals with disarmament and international security, decide according to the majority principle. However, their resolutions are not binding under international law (UNIDIR 2010, pp. 15–18).

The record of the UN and its disarmament machinery regarding nuclear weapons is very poor when measured against the aspiration formulated by the UNGA in 1946. Since the CTBT in 1996, no arms control treaty has been negotiated in the CD. There is no progress on the so-called "Four core issues" (Reif 2015): nuclear disarmament, a Fissile Material Cut-off Treaty (FMCT), the Prevention of an Arms Race in Outer Space (PAROS) and assurances for NNWS against the use of and threat with nuclear weapons, i.e. Negative Security Assurances (NSA).

The situation is different for the institutions that monitor compliance with obligations in the two above-mentioned multilateral treaties with global reach (NPT, CTBT). Both the International Atomic Energy Agency (IAEA), which is responsible for monitoring the non-proliferation provisions enshrined in the NPT, and the Comprehensive Test Ban Treaty Organization (CTBTO), which is responsible for the CTBT, have functioning verification instruments, fulfil their missions and are widely recognized as effective institutions of nuclear arms control. Considering that the CTBT is still awaiting entry into force, the CTBTO's performance is particularly remarkable.

This first and still superficial screening of international treaties and institutions dedicated to nuclear weapons already reveals differences between NWS and NNWS

regarding their room for maneuver in the four areas of deterrence, arms control, disarmament and non-proliferation: Treaties that regulate nuclear disarmament in a legally binding, precise and verifiable manner or noticeably affect the nuclear deterrence regime are exclusively concluded among NWS themselves, more precisely between the US and Russia. Restrictions on deterrence in connection with NWFZ treaties have so far been limited and incomplete. Arms control agreements which substantially restrict NWS in a verifiable manner and set deadlines are predominantly bilateral, and their monitoring remains under their own control. Currently, apart from the suspended New START treaty, almost no such treaty is in force (Russia and the US still respect treaties from the 1980s on information exchange and risk minimization). In contrast, NNWS are subject to their own agreements to renounce nuclear weapons (NWFZ) as well as to the multilateral obligation in the NPT.

If one looks at the institutions by which the rules are negotiated, monitored or sanctioned, this impression is reinforced. The area of non-proliferation is comprehensively monitored by the IAEA and violations can be sanctioned by the UNSC. Through their veto power in the UNSC and the consensus principle in the CD and UNDC, the NWS have control over the decision-making capacity of almost all bodies of the UN disarmament machinery. In practice, they make use of the resulting and far-reaching possibilities to nip any change in the *status quo* in the bud. UN institutions responsible for disarmament negotiations have thus been permanently blocked for decades. Only the UNGA and its First Committee can pass resolutions without the consent of the NWS, but these are not legally binding. The only nuclear arms control institution that monitors NWS and NNWS alike, the CTBTO, does so without an effective treaty.

Treaties and institutions have the greatest normative effect when they interact. This is how a fully developed regime emerges. In IR, a regime is defined as "sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner 1982, p. 185). There are thus more or less strongly developed, treaty-based and institutionalized regimes. The nuclear non-proliferation regime with the NPT as its center-piece is a striking example of a fully developed regime which, in addition to a far-reaching treaty, also comprises institutions and bodies interwoven with it. These include the IAEA, which was founded in 1957 to promote and monitor the peaceful use of nuclear technology. Its role was further strengthened by the more stringent verification measures incorporated in the Additional Protocol (IAEA 1998). Moreover, there is the so-called NPT review process with the Review Conferences (RevCon) at five-year intervals and the annual Preparatory Committees (PrepCom) in between. Finally, the regime has export control agreements and procedures, such as the Zangger Committee (1971), the Nuclear Suppliers Group (NSG) (1974) or the Wassenaar Arrangement (1996). The area of non-proliferation is thus the most

consolidated and most restrictively regulated of the four components of the international regulatory framework dealing with nuclear weapons.

The de facto international distribution of nuclear weapons proves to be normatively ensured by treaties, institutions and their interaction in a regime. While deterrence and disarmament are relatively weakly regulated and supervised, and NWS largely settle self-restricting arms control among themselves, non-proliferation is highly developed and NNWS are subject to a multitude of multilateral arms control arrangements. This suggests that the network of treaties, institutions and the non-proliferation regime follows an organizational logic. But what added value would the identification of such a principle of order bring compared to the mere observation of inequality in the de facto distribution of nuclear weapons or in the normative handling of them?

An answer to this is provided by William Walker's conceptualization of nuclear order (Walker 2000, 2007, 2011). He discerns an ordering force, or rather ordering forces, behind the nuclear order: The proliferation and regulation of nuclear weapons reflects power relations (which is neither surprising nor exceptional in international relations). These, in turn, ensure the preservation of certain principles of order or, in Walker's words, "management systems" (Walker 2000, 2007, 2011). This brings us to the very foundation of the nuclear order, in which the proliferation of nuclear weapons is not left to chance and the handling of them is not left to the free development of appropriate rules. According to Walker, the nuclear order can be understood as a configuration of power comprised of "a managed system of deterrence and a managed system of abstinence" (Walker 2000, p. 703). The nuclear order is thus based on two organizing principles or "systems" (Walker 2011, p. 24): a managed system of military engagement with nuclear technology (i.e. deterrence) and a managed system of military abstinence from, and civil engagement with, nuclear technology" (i.e. non-proliferation).

Nuclear arms control in the broader sense and nuclear disarmament would then be subordinate to these two systems. Walker thinks that their functioning logic is based on "patterns of thought and activity that serve primary goals of world survival, war avoidance and economic development; and the quest for a tolerable accommodation of pronounced differences in the capabilities, practices, rights and obligations of states" (Walker 2011, p. 12). Changes ("evolution") would be possible, both of ideas (e.g. the belief in deterrence or the vision of a world free of nuclear weapons) and practices (e.g. arms control measures or civil use of nuclear technology), which would serve to secure world survival, avoidance of war, and promotion of economic development ("goals"). Regardless of the validity of such an idealistic or even enlightened underpinning of the nuclear order, we can summarize for our investigation that nuclear power is distributed by a hierarchical, distinguishing principle of order. Whether this serves a good purpose, a "global good", or merely the assertion of power claims is debatable.

What are the implications of these organizational principles or "management systems" for the different groups of actors? Walker's first system includes first and foremost the NWS, which on the one hand practice nuclear deterrence to avoid (nuclear) war among themselves, and on the other hand maintain their arsenals to project power and gain prestige. The aforementioned scale of nuclear arsenals combined with the neglect of nuclear disarmament underline the importance of the latter motive. The second system comprises NNWS that do not seek nuclear weapons, use nuclear technology for civilian purposes or intend to do so, and subject these activities to international monitoring. Inherent in this dichotomy are two opposing forces that have to be balanced and reconciled in the nuclear order: armament and disarmament (Walker 2011, p. 751). The underlying interests diverge and separate the two groups of nuclear haves and nuclear have-nots. The differentiation of capabilities, practices, rights and obligations between groups of states means that different priorities are set and these can come into conflict.

More precisely, the interest group of the NWS also includes their allies in a graded manner. Through participation in nuclear deterrence and even more clearly through nuclear sharing or the deployment of nuclear weapons of an allied NWS on their territory, they become partly nuclear-haves and thus part of the system community of states that are militarily engaged with nuclear technology. At the same time, this affiliation (the nuclear umbrella or participation in the deployment of nuclear weapons) goes in hand with some degree of military abstinence from nuclear technology (renunciation of own nuclear weapons possession). This dual group membership is linked to the challenge of reconciling the two contradictory system logics. The majority of allies under the nuclear umbrella of the US (umbrella states) are confronted with this challenge, particularly the states participating in nuclear sharing. Since the alleged stationing of Russian nuclear weapons on its territory in 2023, Belarus is equally involved in the system of military engagement with nuclear technology, playing an exclusive role in Russia's revised nuclear posture (Russia 2024).

According to Walker, stabilizing the nuclear order by balancing both systems is an enduring task that sometimes succeeds more and sometimes less over time (Walker 2000). The NPT and its review process are the lynchpin for these recalibration efforts. The US, however, would have severely disrupted this fragile endeavor in the late 1990s and early 2000s at the height of its hegemonic power (Walker 2007) and thus caused considerable damage to the nuclear order, which it largely created itself. From this analytical perspective, the survival of the nuclear order is closely linked to the survival of the NPT as the "connecting instrumental and normative tissue" (Walker 2011, p. 24) between the two systems. To maintain the nuclear order, the NPT can help to find a "pragmatic middle way" (Walker 2011, p. 5) through self-restraint of NNWS and their acceptance of a temporary presence of nuclear weapons, while also setting limits on the possession and use of nuclear weapons that do not preclude

nuclear deterrence and the transfer of nuclear material and technology for civilian purposes.

The findings of this section can be summarized as follows. The uneven de facto distribution of nuclear weapons is reflected in the normative structure of treaties and institutions governing their possession and use. This arises from two conflicting organizational principles that restrict the military availability of nuclear weapons to different degrees for different groups of states. The resulting nuclear order translates prevailing power relations into two management systems with clearly differing scopes of action for different groups of states. Different interests prevail that have to be balanced. Options for action and possibilities of influence therefore vary considerably between NWS, states in which nuclear weapons are deployed, umbrella states, and NNWS without military nuclear cooperation arrangements. Against the backdrop of these observations and analysis, the nuclear order already comes very close to what is understood as "rule" in this study.

In stabilizing this fragile arrangement, the NPT and its review process play a central role as an instrument and mechanism for balancing. It therefore makes sense to take a closer look at the NPT, focusing on the question of rule. But it is not only the essential function of the NPT for the stability of the nuclear order that suggests using it as a *pars pro toto* in an analysis of rule and resistance in this context. Within the nuclear order, it forms the backbone of the non-proliferation regime, its largest web of norms, treaties and institutions. It reaches into all four areas of nuclear weapons regulation (deterrence, arms control, disarmament, non-proliferation), embodying their interrelations and tensions, confronting and interweaving them. The NPT includes the various groups of the nuclear order (two major NWS, smaller NWS, sharing states, umbrella states, NNWS without military engagement in nuclear technology) and must therefore also deal with the power imbalances between them. The next step is to describe how this large treaty community has come into being and how the nuclear order is consolidated within it. We will take a closer look at why the NPT also establishes nuclear rule.

2.2 The non-proliferation regime as a system of rule

The nuclear arms race between the US and the Soviet Union (USSR) and the resulting bipolar threat of nuclear annihilation during the Cold War form the geopolitical and international security background for the development of the NPT. The increasing proliferation of civilian use of nuclear technology, its dual use character and the importance attached to it for economic development fueled fears that the number of states acquiring the capability to produce nuclear weapons might increase. In the US, it was assumed in the early 1960s that the number of NWS could soon rise to more than twenty (ACA 2022). Worldwide, this was seen as a central security prob-

lem. The first efforts to initiate measures within the UN to prevent proliferation were made by Ireland between 1958 and 1961 (Chossudovsky 1990). But the negotiation and birth of the NPT was a turbulent process that took almost a decade. Detailed explanations of the origins and the process of formation of the treaty, the underlying resolutions, drafts and debates can be found in the respective standard work by the Egyptian diplomat Mohamed Ibrahim Shaker (Shaker 1980). In the following, we consider the norm genesis and norm substance of the NPT to further investigate the trace of a nuclear rule within the regime.

In December 1961, the UNGA adopted by consensus Resolution 1665, based on an earlier Irish draft, calling for negotiations to prevent the dissemination of nuclear weapons to other states. (UNGA 1961). It reflects the ideational basis for the NPT and ultimately led to its negotiation. The forum for disarmament negotiations at that time was the Eighteen Nation Disarmament Committee (ENDC), a precursor of the Geneva CD. The ENDC represented the international bipolar order more than the entire international community and consisted of five Western countries, five countries from the Soviet bloc and eight non-aligned countries. Since the UNGA repeatedly instructed the ENDC to work towards the general and complete elimination of nuclear weapons, non-proliferation and disarmament were closely linked in the discussions and negotiations within that forum. The US and the USSR always rejected this interconnection, but only gradually managed to shift the focus from disarmament to stopping the spread of nuclear weapons. Another demand repeatedly made by NNWS included security guarantees that nuclear weapons would not be used against them and that they would not be threatened with them.

In August 1965, the US submitted its first draft proposal for a treaty to the ENDC, followed in September by the USSR with its own. Both drafts were also submitted to the UNGA First Committee in the same year. However, a resolution submitted by the eight non-aligned ENDC members prevailed. In November 1965, the UNGA adopted Resolution 2028 (UNGA 1965), which called on the ENDC to begin negotiations as soon as possible on an international treaty to prevent the proliferation of nuclear weapons, but on condition that a balance be maintained between the responsibilities and obligations of NWS and NNWS. This included that the treaty to be negotiated would be a step towards achieving general and complete disarmament and would leave room for possible regional nuclear weapon-free zone treaties.

This led to the treaty negotiations in the ENDC between 1965 and 1968. In August 1967, the US and USSR separately submitted identical draft treaties. However, the discussions did not lead to the adoption of a final draft. Again, with a UNGA mandate, the ENDC reconvened in 1968, with the US and USSR separately submitting two identical revised drafts. Further revisions were made during the negotiations. In March 1968, the US and USSR finally submitted a joint draft treaty. It was not adopted by the ENDC, but it was included in its report for the UNGA (UNGA 1968a, Annex 1). The report also included a draft resolution (drafted by the US, USSR and

UK) for the UNSC on security assurances for NNWS (UNGA 1968a, Annex 2). The latter, however, did not contain a legally binding waiver of use and threat against NNWS (negative security guaranties) but merely the promise to assist them in the event of a nuclear attack (positive security assurances).

The First Committee considered the report instantly in the spring and early summer of 1968 and recommended that the UNGA should adopt a revised draft text. On 12 June 1968, UNGA adopted Resolution 2373 (UNGA 1968b) with the draft text of the NPT by 95 votes to 4 (Albania, Cuba, Tanzania, and Zambia) with 21 abstentions. The three depositary governments, the USSR, the UK and the US, were invited to open the treaty for signature and ratification at the earliest possible date. This happened on 1 July 1968 in London, Moscow and Washington D.C. In addition to the three depository states, more than fifty other states signed the NPT on the same day. On 5 March 1970, the NPT entered into force in accordance with its Article IX, requiring the ratification by the depositary states and 40 other states (UN 1968, Article X).

The protracted genesis of the NPT testifies to the struggle between NWS and NNWS for a balance on disarmament and non-proliferation, two central arms control components of the nuclear order. It demonstrates the efforts to reconcile the contradictory ordering principles (or management systems), i.e. military engagement in and military abstinence from nuclear technology. The drafts of the US and the USSR, which were repeatedly revised in these negotiations, as well as the final treaty itself did not end their nuclear status. On the contrary. The fact that the major nuclear powers are not only the original authors of the NPT, but also, together with the UK, the depository states (thus becoming its guardians) points to the treaty's supporting function for the establishment of a nuclear hierarchy that favors (certain) NWS. This is confirmed by a closer look at the treaty's provisions, especially Article IX. By defining a state "which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967" (UN 1968, article IX) as a NWS and endowing it with different rights and obligations than the other states, the NPT establishes the legally discriminatory treatment of recognized NWS and NNWS. Since then, a nuclear hierarchy has been anchored in international law.

The US had tested a nuclear weapon for the first time in 1945, the USSR in 1949 and the UK in 1952. When the NPT entered into force, the two other NWS recognized under Article IX, France (first test in 1960) and China (first test in 1964), were not yet parties to the treaty. China justified its refusal to sign with the discriminatory nature of the NPT. France gave assurances that even without signing it would behave like the parties to the treaty (ACA 2022). It was not until 1992 that both joined the NPT. South Africa (no test known yet) joined in 1991 after the end of the apartheid regime and the dismantling of its military nuclear program (van Wyk and van Wyk 2015). Belarus, Kazakhstan (Kassenova 2022) and Ukraine (Budjeryn 2022) were admitted to the treaty community after the collapse of the USSR and the elimination of the nuclear arsenals on their territories in the 1990s. India (first test in 1973), Pakistan

(first test in 1998), Israel (no known test so far) and North Korea (first test in 2006) are not recognized as NWS according to the definition in Article IX and currently outside the treaty (the legality of North Koreas withdrawal in 2003 being disputed).

The victorious powers of the Second World War and five permanent members of the UNSC (US, Russia, UK, France and China) thus also form the group of NWS recognized under international law by the NPT. The nuclear order codified by the NPT is thereby linked to the hierarchy of the international order established in the UN. The steering capacities of the permanent members of the UNSC, the only body with the authority to adopt (legally) binding resolutions, are expanded and linked to their nuclear status. With their veto power in the UNSC, the five NPT NWS also have the main control over the imposition of international sanctions, authorization of military interventions, selection of candidates for the UN Secretary General (UNSG) and the admission of new member states. By this interlocking the NPT translates and underpins the international privileges of the permanent UNSC members in the nuclear realm. Through this institutionalization of relationships of super- and subordination and the consolidation of different options for action and influence on control the NPT establishes rule in the nuclear order.

But how did such a clear distinction between different groups of states and a further legal privileging of the five permanent UNSC members succeed in an international treaty under sovereign equals? And how deep is the disparity within the relationships of super- and subordination enshrined in the NPT? How fundamental are the differences between NWS and NNWS regarding their options for action and influence on control? To answer these questions, it is helpful to examine its provisions and the "Grand Bargain" (Weiss 2003, Garvey 2013) behind them.

At first glance, the 11 articles of the NPT contain something for everyone (UN 1968). Article I prohibits the transfer of nuclear weapons and nuclear technology, Article II prohibits their receipt. Article III requires acceptance of safeguards by the IAEA. Article IV guarantees all Parties the "inalienable right" to the peaceful use of nuclear technology and the promotion of access to it. Article V assures participation in the benefits of research and development of nuclear explosions conducted by the NWS for peaceful purposes (in the 1950s and 1960s, infrastructure projects were still considered a possible area of application, but this is now obsolete). Article VI commits the NWS to negotiations for complete nuclear disarmament. Article VII allows for the creation of regional NWFZs. Article VIII creates the basis for the review process with RevCons at five-year intervals. Article IX regulates signature, ratification and entry into force and defines which states are recognized as NWS. Article X clarifies the conditions of withdrawal and limits the validity of the treaty to an initial period of 25 years. Article XI regulates the storage of the treaty text and its translations in the archives of the depositary governments.

In common understanding, the NPT rests on three pillars: Non-proliferation, disarmament and peaceful use. The first and third pillars are in tension with each

other. Since it is a dual-use technology, mastering its civilian use in principle also enables the development of nuclear weapons. Of course, there is a political compromise behind this, because a treaty that demands dual (military and civilian) nuclear abstinence would never have been accepted. After all, nuclear technology was considered a ticket to modernity and a guarantee for economic development. This nuclear nimbus is still valid today in many parts of the world. But it is not only this inherent logical contradiction between non-proliferation of military use and proliferation of peaceful use of nuclear technology that contributes to the fragile statics of the NPT. A closer examination of its provisions and the grand bargain reveals that there is a glaring imbalance between the three pillars.

If, roughly speaking, the legal recognition of the NWS and the non-proliferation provisions in Articles I and II are on one side of the NWS-NNWS deal, on the other side are Article IV ("inalienable right" to and access to peaceful use) and Article VI (nuclear disarmament). The deal does not seem to be a bad one in this simplified juxtaposition. The inclusion of Article VI was a central demand of the NNWS, especially of Brazil, India, Mexico and Sweden (Bunn 2008, Graham 2008). However, in return for non-proliferation, India and Sweden demanded a whole package of quid pro quos from the NWS, including a freeze on nuclear weapons production (Shaker 1980, p. 508), which did not make it into the NPT. The negative and positive security assurances repeatedly demanded by NNWS during the negotiations (Shaker 1980) did not become part of the treaty either and were instead separated from it and only partially included in a UNSC resolution (UNGA 1968a, Annex 2).

Most problematic, however, is the vague formulation of the disarmament obligation in Article VI, according to which each Party (*sic!*) – i.e. no distinction between NWS and NNWS – "undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control" (UN 1968, Article VI). The NNWS' demand for specification during the negotiations was not implemented in the treaty text due to the refusal of the US and USSR (Shaker 1980, p. 570). There are no detailed provisions on deadlines and verification, let alone sanction options in case NWS do not disarm. In addition, no one is committed to results, only to efforts to negotiate, and that again softened into subjectively interpretable "good faith". The fact that at least "effective measures" are mentioned corresponds to a compromise formulation proposed by Mexico (Shaker 1980, p. 571), but does little to reduce the leeway for interpretation. It remains equally unclear what can be understood by "early date". 75 years after the entry into force of the NPT, the world is still waiting for the fulfilment of its Art. VI.

Apart from the vagueness of Art. VI, the imbalance between the pillars stems from the disparity in control and verification. In terms of implementation, the non-proliferation obligations (Articles I and II) from Pillar I are strictly monitored. The

IAEA serves a fully developed supervisory body for this purpose. However, only the NNWS are under a legally binding obligation to conclude safeguards agreements with the IAEA (Article III). In contrast, with regard to Pillars II and III, the NWS only have to undergo a RevCon assessment after five years (and possible subsequent ones). The extensive exemption of the NWS from monitoring and verification reinforces the unequal treatment between the Pillars. Obligations are formulated with varying degrees of precision, monitored to varying degrees and sanctionable to varying degrees. The hierarchy between NWS and NNWS is thus enshrined in the wording, monitoring and verification of the NPT.

All this was acceptable to the NNWS mainly because of the initially provisional character of the NPT. A permanent distinction between "nuclear haves" and "nuclear have-nots", a lasting consolidation of the nuclear hierarchy was hardly enforceable at the time. Art X therefore leaves two exit options open to NNWS. Firstly, the possibility of withdrawal in case that "extraordinary events […] have jeopardized the supreme interests" of a Party (UN 1968, Article X). A state only has to notify all other parties and the UNSC three months in advance of its intention and explain the reasons. Such withdrawal clauses are common in international law. The inclusion of the UNSC (where the NWS have a veto) to take up the matter and act if necessary, demonstrates the already discussed institutional linkage of the NPT with the UN's highest governing body. It also shows that the NWS, despite all their rivalries, trusted that their overriding interests would converge in questions of nuclear rule and make cooperation possible. However, this only worked to a limited extent, as the case of North Korea shows (Habib 2016). The second and politically more significant exit option for the NNWS was to limit the validity of the treaty to an initial period of 25 years. A conference would then be convened to decide by majority whether the NPT should remain in force indefinitely or be extended for one or more periods which were to be specified.

Despite the fuzzy codification, Article VI combined with Article X provided political leverage to achieve nuclear disarmament in the long term. The legal anchoring of the nuclear hierarchy was subject to the caveat that the latter would only have a provisional character (Fehl 2015, p. 117). In its original design, the NPT was supposed to maintain a balance between the recognition of a (temporary) nuclear hierarchy and the concession to level it out in the long term. Only through this arrangement and potential equalizing mechanism it appeared compatible with the self-understanding of the NNWS as sovereign equals. By committing to complete nuclear disarmament, the NPT dedicated itself to the goal of eliminating inequality within the treaty community and abolishing the injustice inherent in the nuclear order (Müller 2010a, p. 195). The multilateral review process and the option to extend or limit the treaty's validity (UN 1968, Articles VIII & X) created a procedure that granted the NNWS an active role and opportunities for participation in the governance of

the nuclear order (Fehl 2015, p. 117). The NPT was thus designed as a time-limited system of rule that promised the NNWS influence on governance.

Therefore, Article VI and its (non-)fulfilment are closely linked to the NNWS' regulatory expectation of the NPT to reduce inequalities and hierarchy in the nuclear rule. The recognition of the (temporary) right of the NWS to possess nuclear weapons and the (progressive) initiation of equal rights for the NNWS are closely related in a dynamic (mutually reinforcing) regulatory sense. The provisional character of a discriminating nuclear rule is central to the recognition of legitimacy and thus to the stability of the NPT. In other words, the better Art. VI is fulfilled by NWS, the greater the acceptance of their (dwindling) nuclear status. The more NNWS feel involved in the governance of the nuclear rule via Article VIII (review process) and the more inclusive the nuclear disarmament machinery works, the less the exclusion effects caused by the possession of nuclear weapons by a minority will matter. Articles VI, VIII and X curb the relations of super-and subordination and the different options for action and influence on control inscribed in the NPT. In fact, they were intended to prevent the system of rule from becoming permanently entrenched.

From 17 April to 12 May 1995, the Review and Extension Conference of the NPT was convened in New York in accordance with Article X, 25 years after its entry into force. More precisely, the Extension Conference preceded the RevCon. This gave the NNWS an outstanding opportunity to press their demands. In the meantime, the group of NWS recognized by the NPT was fully represented with the accession of China and France in 1992. Following renewed calls for negative security assurances (NSA) (to refrain from attack with and the threat of nuclear weapons), the five NPT NWS and permanent UNSC members supported the adoption of Resolution 984 (UNSC 1995) in the run-up to the conference. However, this was essentially an update of Resolution 255 (UNSC 1968), adopted in the context of the 1968 NPT negotiations, which provided positive security assurance (PSA) to NNWS in the event of a nuclear attack, supplemented by a declaration of intent to provide procedures for the victim of aggression to receive compensation from the aggressor under international law.

After intensive weeks of negotiations, the States Parties agreed on a "renewed NPT bargain" (Dunn 2009, p. 160). Among other things, this provided for a significant expansion of the NPT review process (UNODA 1995d) through 3 annual PrepCom meetings preceding the RevCons. In addition, the review process should not only evaluate past work, but also develop recommendations for the future implementation of the treaty's provisions. Indonesia and South Africa in particular had advocated for this to better hold NWS accountable to their commitments (ACA 2022). Even more significant was the agreement on further commitments in the "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" (UNODA 1995b). These provided for negotiations on a FMCT and the conclusion of negotiations on a CTBT by 1996 at the latest.

While negotiations on an FMCT in the CD continue to be blocked, the CTBT was adopted on schedule. The background to this efficiency is remarkable. It was achieved through an unconventional circumvention of the CD by Australia (this country and its creative diplomatic approach will be recalled later). The almost completed CTBT draft, which was supported by most delegations at the conference, was rejected by India because of the lack of nuclear disarmament measures and the *status quo* it allegedly entrenched (Singh 1998, p. 41). Australia therefore proposed to submit the draft to the UNGA for a vote even without reaching consensus in Geneva. This was done at a specially convened meeting of the UNGA on 10 September 1996, at which the CTBT was adopted (UNGA 1996). The CTBT thus sets a precedent for circumventing the consensus principle in the matter of nuclear disarmament and arms control.

A further and final element of the extension package was a resolution urging the creation of a Weapons of Mass Destruction Free Zone (WMDFZ) in the Middle East (UNODA 1995c) to win the support of the Arab states, which were disturbed by the alleged nuclear weapons status of non-NPT member Israel. Whereas the Extension Conference agreed to the indefinite extension in conjunction with this comprehensive package (UNODA 1995a), a group of non-aligned states prevented the adoption of a joint final document for the RevCon. This was not least to express dissatisfaction over the lack of nuclear disarmament and the continuing inequality in the regime. However, from then on, the NNWS had given up the political leverage to maintain their room for maneuver and to exert pressure on the NWS. Through the indefinite extension of the NPT, the above-mentioned institutionalized relationships of super- and subordination in the nuclear rule and the differences between NWS' and NNWS' options for action and influence on control had been permanently enshrined.

The nuclear rule anchored in the NPT in 1968 and cemented in 1995 consolidates the hierarchy between "nuclear haves" and "nuclear have-nots". With its different rights and obligations for different groups of states, it is in tension with the basic principle of equality between sovereign states in international law and diplomacy (UN 1945, Articles I & II). By mirroring the permanent membership of the UNSC, the nuclear hierarchy contributes to a conflation of authority, influence, and nuclear possession. Nuclear For the five permanent members, the regime secures an extension of their privileged UNSC status. Extended indefinitely, the NPT cemented the exclusivity and control of the five recognized NWS over the nuclear rule, which was redesigned in such a way that decisions could only be made by consensus. Without political clout, Article VI, once conceived as a potential equalizer, became a fig leave to hide the encrustation of institutionalized relations of superiority and subordination. But can a system of rule, as firmly and permanently inscribed on paper as it is, survive if its legitimacy remains disputed?

2.3 Dynamics of rule & resistance within the NPT

From its inception, the NPT has been a matter of contestation. The NWS see its purpose in ensuring strategic security and their nuclear (great power) status, thus focusing on the area of non-proliferation. NNWS see its main purpose in achieving a nuclear weapons-free world and reducing hierarchy, therefore focusing on the area of disarmament. Do nuclear weapons contribute to stability, security and peace, or do they cause chaos, insecurity and war? The diverging perspectives and interests between the rulers and the ruled were always accompanied by disputes. Various dynamics of rule and resistance in the NPT can be traced in the past. The following illustrations from the time before 2010 may help to make our conceptualization of rule and resistance more vivid and plausible.

Examples for state resistance to nuclear rule enshrined in the NPT (object in the sense of *polity*) in its oppositional and dissident form are in the foreground. Alliances of states always resisted within the framework of applicable rules. When considering individual state resistance, some cases of refusal to comply with rules of the non-proliferation regime can be found. Most of these cases involve resistance behavior that at least partially addresses the *polity* of nuclear rule itself. This radical motivation, however, is not always articulated, and the occasion for resistant or even dissident behavior can be a concrete or absent political decision or change of direction in the sense of a *policy*. Dissatisfaction with the way a policy has come about and with political decision-making processes, i.e., *politics*, also plays a role. However, both oppositional and dissident forms of state resistance in the NPT context are dominated by the *polity* aspect and thus by a critical political motivation toward the *status quo*.

The so-called Group of 77 (G77) has long been the preferred forum for opposition to discrimination in the NPT by states from the Global South (Potter and Mukhatzhanova 2012). Founded in 1964 in Geneva by 77 non-aligned members on the occasion of the UN Conference on Trade and Development (UNCTAD), the coalition today comprises 135 developing countries. In addition to representing their economic interests and overcoming colonialism, global disarmament was one of its main concerns. As expected, at the first RevCon in 1975 (91 NPT parties), the lack of disarmament and the intensifying arms race was the most controversial issue. Nevertheless, the NPT member states were able to agree on a final declaration. This changed at the second RevCon in 1980 (112 NPT parties). Again, the debate revolved around the same matters, but the participants were unable to agree on a final declaration due to fundamental differences between the members of the G77 and the NPT NWS. The criticism that the NWS did not comply with Article VI, while the NNWS complied with Article II, grew louder and louder. At the 1985 RevCon (131 NPT parties), this was compounded by debate and differences of opinion between NWS and NNWS over the CTBT, particularly with regard to its integration into a comprehensive process for the elimination of nuclear weapons. Nevertheless, after intensive negotiations,

a compromise was reached in which certain contentious issues were excluded from the final declaration but remained part of the final document. In the course of the 1980s, the G77 gained stature and strength, becoming the driving oppositional force within the NPT. The G77's blocking of consensus, however, was not so much a fundamental challenge to the regime itself. Rather, it was aimed at improving the implementation of the disarmament commitment enshrined in the treaty in order to restore its balance (Daase 2003b, p. 353).

The situation was similar with the Non-Aligned Movement (NAM), whose membership largely coincides with that of the G77 and to which opposition activities shifted in the run-up to the RevCon 1990 (1940 NPT parties) (Singham and Hune 1986, Potter and Mukhatzhanova 2012). The NAM, which does not belong to any formal alliance with the (nuclear) superpowers, has repeatedly coordinated within the NPT and has been able to assert the concerns of its 120 members, mainly from the Global South. This has been achieved by the fact that the NAM unites two-thirds of the members of the UN and represents more than half of the world's population. The Final Communiqué of the Asian-African conference of Bandung in 1955, the founding document of the NAM, already emphasized concerns about the nuclear threat and described disarmament and the prohibition of the production, experimentation and use of nuclear weapons as "imperative to save mankind and civilization from the fear and prospect of wholesale destruction" (NAM 1955). Numerous NPT statements of the NAM express their criticism of the distinction between "nuclear haves" and "nuclear have-nots", as a database provided by the James Martin Center for Non-Proliferation Studies impressively shows (CNS 2023). Stockpile reductions by the US and USSR in the late 1980s failed to mitigate this. The NNWS pointed to the development of new weapons and continued adherence to doctrines. In addition, there were differences over the implementation of safeguard agreements, the promise of peaceful use, and the increasingly prominent issue of security assurances for NNWS. The major point of contention, however, remained the lack of progress on the CTBT (Simpson and Howlett 1990). This prevented the adoption of a final declaration and plunged the NPT into a deep crisis of legitimacy (Frankel 1990). At the center of this convulsion was again Article VI. From the NAM's point of view, its implementation was linked to the negotiation of a CTBT. Although nuclear weapons testing declined significantly in the 1990s (ACA 2023), negotiation of a CTBT remained a major NAM demand at the 1995 Extension Conference and RevCon (178 NPT parties). As described before, the NNWS organized in the NAM succeeded in negotiating substantial concessions for the indefinite extension, including UNSC Resolution 984 on security assurances (UNSC 1995), a strengthening of the review process (UNODA 1995d), the "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" (UNODA 1995b) which included the adoption of a CTBT by 1996 and FMCT negotiations, and the resolution calling for the establishment of a WMDFZ in the Middle East (UNODA 1995c). Repeated pushes for such a WMDFZ

and the adoption of the CTBT are among NAM's successes and prove its effective oppositions during the 1990s.

Another example for a successful alliance-based opposition is the New Agenda Coalition (NAC), in which Brazil, Egypt, Ireland, Mexico, New Zealand, and South Africa have joint forces. Slovenia was also an original member but withdrew immediately after its founding in spring 1998. For Brazil, which joined the NPT in the same year, membership in the NAC was an important compensation for the imbalance of power in the NPT. The goal of the alliance was to increase pressure for nuclear disarmament and to prevent the extension of the NPT from being interpreted in terms of a perpetuation of the right to possess nuclear weapons. Through its geographically mixed membership, the group aims to bridge the North-South divide in the NPT but sharply attacks the nuclear powers for their inadequate disarmament efforts. While prospects at the outset of the 2000 NPT RevCon (187 NPT parties) initially seemed bleak, the conference adopted both a final declaration and a substantial work program. The NAC played a central role for this outcome. It was instrumental in getting the NWS to agree to the 13 steps toward nuclear disarmament under Article VI of the NPT, including an "unequivocal undertaking by the NWS to accomplish the total elimination of their nuclear arsenals" (UNODA 2000, vol. I, part I, pp.14-15). The fact that the NWS agreed to the far-reaching 13 steps and the "unequivocal undertaking" was due not least to their concern to stabilize the regime and the NAC's bargaining power. The alliance became the de facto negotiating partner of the NWS and gained considerable authority among all NPT parties. These three collective initiatives, while clearly positioning themselves against the will of the nuclear powers, operated within the framework of the existing rules and pursued their concerns within the existing institutions. They can thus be understood as an opposition to the nuclear rule supported by an alliance of states.

In the case of individual state resistance to the nuclear rule inscribed in the NPT, the picture is different. The nuclear armament and rejection of the NPT by India (Perkovich 2001) can be understood as an example of dissidence (Daase 2003a). India has never been an NPT member and always rejected the non-proliferation regime as discriminatory. Since its independence, the country strongly advocated nuclear disarmament (Jain 1974) but kept open the option of acquiring its own nuclear arsenal (Kapur 1978). The country did test a nuclear device for the first time in 1974 after the third Indo-Pakistani war and following US intimidation attempts (Daase and Deitelhoff 2023b, p. 196). It was also a signal against the privileged position of the five NWS recognized under the NPT (Rajan 1975, p. 324). However, India emphasized the peaceful nature of that nuclear explosion (Müller *et al.* 1994, p. 24), refrained from further testing for 24 years thereafter and kept demanding nuclear disarmament from all. The indefinite extension of the NPT in 1995 and permanent establishment of the special status of the NWS recognized therein can be read as a defining moment for India's policy shift. Its nuclear tests in 1998 and its overt development of

nuclear weapons thereafter came at a time when the nuclear order was being expanded into an increasingly rigid system of rule that left less and less room for legitimate criticism (Daase 2003a, pp. 32–33). Indian security policy makers argued that the indefinite extension of the NPT formally legitimized the continued existence of nuclear arsenals and an unequal nuclear regime, which was not acceptable to India (Singh 1998). Although the indefinite extension of the NPT cannot be seen as a direct cause of India's nuclear weapons testing, the connection and its dynamics express the reciprocal relationship of rule and resistance in the nuclear context. In the same month, May 1998, archrival Pakistan tested nuclear weapons of its own. Even though Pakistan does not equally share India's great power ambitions, it wanted to catch up with its neighbor. "If India builds the bomb, we will eat grass or leaves, even go hungry, but we will get one of our own" (NYT 1979), former Pakistani Prime Minister Zulfikar Ali Bhutto expressed the desire to see eye-to-eye. In his testimonies written in the death cell he stated that "Christian, Jewish and Hindu civilizations possess this ability. The communist powers also possess it. Only Islamic civilization was without it, but that should change" (NYT 1979). Today, the number of Indian nuclear weapons is estimated at about 172, with the country expanding its nuclear arsenal as well as production facilities (SIPRI 2024, pp. 325–329). Pakistan is believed to have about 170 nuclear warheads and is also expanding its arsenal and delivery systems (SIPRI 2024, pp. 332–338), as well as the amount of fissile material for military purposes (SIPRI 2024, pp. 359–367). Both states are thus acting outside and against the rules of the game which are accepted by the vast majority of the international community. Their dissidence is critical of rule, but of dubious credibility. They both refused to recognize the status of the official nuclear powers and became NWS themselves.

North Korea's nuclear weapons program represents an even clearer case of dissidence. After all, North Korea had joined the NPT in 1985. Later, the country refused to allow the IAEA access to one of its nuclear facilities. In March 1993 Pyongyang announced its withdrawal from the NPT because of the disputes with the IAEA over non-proliferation safeguards and following a US-South Korean nuclear war exercise (Albright 1993) but suspended that withdrawal in June of the same year, one day before it would have entered into force (ACA 2022). Talks and agreements with South Korea, the US and China succeeded in restoring cooperation. In June 1994, an agreement was reached with the US to halt North Korea's nuclear weapons program. The country remained a member of the NPT until the publication of US intelligence reports in 2002 on prohibited nuclear activities on the peninsula. When the dispute with Washington escalated in January 2003, Pyongyang demonstratively declared its withdrawal (North Korea 2003), ten years after its initial announcement. The legal validity of the North Korean withdrawal remains controversial, but repeated calls by the UN and the IAEA for Pyongyang to return to the NPT speak for a recognition that North Korea is outside the treaty. The North Korean regime is confirming this by stepping up its military nuclear activities. In October 2006, North Korea conducted

its first nuclear weapons test (CTBTO 2006). 2016 and 2017 saw the height of North Korea's nuclear testing, with the latest having an explosive force similar to that of a hydrogen bomb (CTBTO 2017). Meanwhile, the North Korean arsenal is estimated at about 50 nuclear warheads (SIPRI 2024, pp. 393–353). The country also possesses, develops, and tests ballistic missiles across the range spectrum. No other country has challenged the NPT and the nuclear rule as much as North Korea. No other state has been subject to comparable sanctions. Even China, which is aligned with North Korea on security issues and has a geopolitical interest in its defense capability, approved sanctions and banned the import of raw materials and export of weapons-grade goods. This shows the willingness of the NPT NWS to cooperate despite all rivalries when their nuclear rule is challenged. Thus, North Korea's dissident behavior did not go unpunished. However, its resistance could not be broken and Russia's isolation in the context of the Ukraine war is reviving cooperation.

In the much-discussed case of Iran, things are more complicated. Tehran recognizes the NPT and has been so far complying with the obligations enshrined therein (Erästö *et al.* 2020). However, Iran is suspected of being interested in nuclear technology not only for civilian use but also for the development of nuclear weapons. In fact, Iran's proven enrichment activities have repeatedly exceeded what is necessary for civilian energy production, and the country has not always fulfilled its obligation to report all facilities to the IAEA. In June 2003, the IAEA published a report on clandestine nuclear activities that Tehran had failed to report to the organization, in violation of its safeguards agreement. The suspicion that Tehran was working on a nuclear weapons program was substantiated (Høiseth 2015). After nearly two years of inspections of undeclared nuclear activities, the IAEA found Iran in noncompliance with its safeguards obligations in September 2005 and referred the case to the UNSC in 2006. However, neither its condemnations (UNSC 2006a, 2006b, 2007, 2008a, 2008b) nor the imposition of numerous multilateral and bilateral sanctions could change anything. On the contrary, Iran threatened to withdraw from the NPT (The Guardian 2006). It was only after years of negotiations that the JCPoA was concluded in 2015, allowing for extensive controls on Iran's nuclear program and severely restricting enrichment. In return, sanctions imposed by the UN, the EU, and the US were to be eased. As the US unilaterally withdrew from the JCPoA in 2018 and imposed new sanctions (which also restricted third countries from trading with Iran), plunging the agreement into crisis, Iran gradually suspended its nuclear-related JCPoA commitments. Iranian nuclear activities thus represent a hybrid case of opposition and dissidence. Tehran openly criticizes restrictions on the use of nuclear technology. The country gropingly oversteps boundaries, only to revert to rules under certain conditions. Iran thus oscillates between the two forms of resistance to an apparently well-dosed degree. It deliberately keeps the expansion of its nuclear technology activities ambivalent and uses them to exert pressure. At the same time, it recognizes the fundamental obligations of the nonproliferation

regime and the associated authority of the IAEA. Tehran professes obedience, sometimes tricks, and remains a party to the NPT. That NWS sometimes have difficulty isolating Iran within the NPT community shows that the recalcitrant country, with its fickle method of challenging the legitimacy of the nuclear order, does enjoy sympathy.

Israel's nuclear armament represents a special case that cannot be grasped by the definition of resistance used here. That Israel is a nuclear power has long been suspected, but never acknowledged. As early as the 1950s, the construction and operation of nuclear research centers was supported by the US and France. Government documents from the US and Israel that have since been released suggest that the country began building its nuclear arsenal in the early 1960s, before the conclusion of the NPT (SIPRI 2020, p. 375). There have been repeated reports of uranium shipments and other aid, especially from the US (Smith 2012). During the 1973 Yom Kippur War, Israeli Prime Minister Golda Meir reportedly initiated preparations for a nuclear strike. Informed about this and seeking nuclear de-escalation, the US responded with extensive military support for Israel (Farr 1999). In late 1986, The Sunday Times published clues and photographs by Israeli nuclear technician Mordechai Vanunu about the nuclear research program in the Negev. To this day, Jerusalem pursues a policy of opacity that neither confirms nor denies possession of nuclear weapons. Experts estimate that there are about 90 nuclear warheads ready for use, some of which could be delivered by fighter planes, ballistic missiles and possibly submarine-launched cruise missiles (SIPRI 2024, pp. 354–358). Israel, like India and Pakistan, has never joined the NPT and refuses IAEA inspections of its nuclear facilities. Thus, the NPT rules of the game are not binding under international law for any of the three states. By keeping a low profile regarding its nuclear weapons activities and not criticizing the nuclear order, Israel's behavior differs from the other examples. Also, its status as a NWS presumably acquired at an earlier stage, would not, strictly speaking, be NPT-incompatible. In part, it has close alliance ties with nuclear-armed states, especially the US. Thus, Israel's exceptional behavior cannot be interpreted as a form of resistance or even dissidence according to the definition chosen here.

2.4 Regime failure on disarmament

The division into "nuclear haves" and "nuclear have-nots" has been a linchpin not only of political dispute but also of scholarly discussion and debate since the treaty's inception. The viability, permanence, and resilience of its inherently discriminatory structure have been problematized from the beginning (Brownlie 1966, Bloomfield 1975, Bull 1975, Falk 1977). There is consensus among researchers that the treaty is discriminatory and consolidates a hierarchy. But there is disagreement on the question

of its stability. For example, one analysis sees the NPT as dysfunctional but stable, which is explained by "nuclear conventionalism" (Jasper 2016). Over time states had internalized and habitualized its structures and schemes in the Bordieuan sense, thus ultimately naturalizing and reifying its hierarchical formation along with its dogmas. Some put the emphasis on the concept of trust (Ruzicka and Wheeler 2010), attributing the stability of the NPT to the development of a series of trusting relationships between states and showing how these underpinned the treaty from its inception.

Others see destabilizing tendencies (Müller 2005, Mukhatzhanova 2014, Potter 2016, Egeland 2017, Neuneck 2019) that could develop into threatening legitimacy crises. These revolve around the (non-) fulfillment of Article VI and the question of exclusion and inclusion of the NNWS in the governance of the regime. They can be understood as struggles for recognition of NNWS against permanent legal subordination (Egeland 2017). The less the disarmament commitment conducive to the elimination of inequality among NPT member states was implemented and the lower the level of NNWS involvement, the more precarious the legitimacy and recognition of the NPT was, the more fundamental the crisis of legitimacy was (Egeland 2017, pp. 34–37). However, the legitimacy crises did not lead to a collapse. Instead, they have caused a recalibration of the original NPT settlements and led to an expansion of the web of institutions that make up the multilateral disarmament framework (Egeland 2017).

But what does the empirical data say about the stability and performance of the NPT? In fact, the mixed substance of the regime translates into a mixed record. The non-proliferation performance is respectable, thanks to the verification carried out by the IAEA. The regime helped prevent states from crossing the threshold into nuclear weapons possession. Only India, Pakistan, North Korea and Israel have acquired nuclear weapons since the NPT entered into force. Thus, the number of NWS today is much smaller than had been feared in the 1960s. In contrast, the number of NPT member states grew steadily. Its disarmament performance, on the other hand, is vanishingly small. Despite the disarmament obligation under the NPT, no further multilateral nuclear disarmament agreement involving the NWS has entered into force to date, and no nuclear disarmament process has been placed under multilateral control.

Nevertheless, substantial disarmament progress did occur in the period between four NPT RevCons from 1985 to about 2000, predominantly on the bilateral level. The golden age of nuclear arms control (Lever 2014) found its credo with the famous formulation that "a nuclear war cannot be won and must never be fought" (Reagan and Gorbachev 1985) at the 1985 Soviet-American summit in Geneva. At the 1986 Reykjavík Summit, Ronald Reagan and Mikhail Gorbachev initiated the nuclear détente policy which was to last until the turn of the millennium and lead to important successes, including bilateral arms control treaties such as the

INF Treaty (1987), the START I (1991) and II (1993), and the Treaty on Open Skies (1992). At the multilateral level, the indefinite extension of the NPT (1995) and the adoption of the CTBT (1996), which has not yet entered into force, were successfully achieved. The NPT RevCon 2000 also agreed on the ambitious final document with 13 disarmament steps to implement Article VI (UNODA 2000). Russia ratified the CTBT as early as the fall of 2000, fulfilling the 1st of the 13 steps shortly after the RevCon. The debates in the First Committee of the UNGA in 2000 demonstrated that the non-proliferation versus disarmament balance in the NPT seemed to be restored in the eyes of many NNWS (Egeland 2017, pp. 157–158). In the years that followed, however, none of the 13 steps would materialize. The package still awaits full implementation to this day. The turn of the century marked the turning point for nuclear disarmament. Existing disarmament and arms control treaties were gradually dismantled.

The trend reversal was heralded by the change of administration in the US by George W. Bush in 2001. The terrorist attacks of September 11 had a direct impact on bilateral disarmament and arms control between Russia and the US as well as on multilateral regimes. Further decisive factors were the advancing technological development and military superiority of the US. Other security policy goals were subordinated to the implementation of the revolution of military affairs (Chapman 2003), the fight against "rogue states" (Bush 2002) and terrorism. This particularly affected the area of cooperative security. The administration at the time was fundamentally skeptical of, or even disregarded, the disarmament and arms control components of collective security and multilateral settings as a whole (Miller 2003).

As of 2001, the US refused to ratify the CTBT and thus abandoned the 1st of the 13 disarmament steps agreed upon in the final document of the NPT RevCon 2000 (UNODA 2000, vol. I, part I, pp.14-15). The already signed CTBT was not forwarded to the Senate for ratification. To date, this remains one of the key obstacles to its entry into force. In December 2001, the US revoked the 1972 Anti-Ballistic Missile (ABM) Treaty on the grounds that it prevented the government from protecting its population from future "terrorist or rogue state missile attacks" (NYT 2001), referring to the expansion of the US's missile defenses. In doing so, the US violated the 7th of the 13 disarmament steps (UNODA 2000, vol. I, part I, pp.14-15). At the same time, this also violated principle of mutual vulnerability, depriving the bilateral US-Russian disarmament and arms control architecture of its conceptual foundation – strategic stability. The Russian Duma had linked the ratification of START II, and thus its entry into force, to the ABM Treaty. The envisaged START III negotiations also defaulted under these conditions. The latter was replaced by the SORT (2003), which did not dismantle nuclear warheads but merely withdrew them from their operational status (Müller 2010a, p. 193).

The US (together with several other states) also opposed the negotiations on a FMCT in the Geneva CD and thus the 3rd of the 13 disarmament steps (UNODA

2000, vol. I, part I, pp.14-15). Any progress in the matter failed because of the consensus principle. In 2003, the US launched the Iraq War under the false pretext of preventing Saddam Hussein from acquiring weapons of mass destruction. It was no surprise, therefore, that from 2003 onward, skepticism and concern grew among NNWs about NWS's compliance with international law and arms control. The anger over this was increasingly vented by NAC and NWFZ members at the annual First Committee Sessions of the UNGA (Egeland 2017, pp. 159–160). The 2003, 2004, and 2005 NPT PrepComs also made the deep rift between NWS and NNWS abundantly clear (Simpson and Nielsen 2005, p. 274).

The NPT RevCon 2005 ended in a fiasco without adoption of a joint final declaration. The growing discord was rooted in the refusal of the US and France to even acknowledge the results of the RevCon 2000 as a basis for negotiations (Müller 2005, pp. 34–35). The Bush administration openly judged the 13 disarmament steps agreed upon in the 2000 NPT final document as legally non-binding, an interpretation that was echoed by France. In the summer of 2005, the US also undermined the credibility of the "grand bargain" by negotiating a nuclear agreement with non-NPT member India by 2006 and working toward a corresponding exemption in the NSG guidelines. This challenged the benefits enshrined in the NPT for parties to redeem the "inalienable right" (UN 1968, Art. IV, 1) to nuclear energy for peaceful purposes. But it was not only the NPT that was weakened. The entire multilateral disarmament machinery had come to a standstill. The Geneva CD was unable to negotiate new disarmament and arms control treaties, let alone adopt them. Since 1997, it could not even agree on a joint work program. Bit by bit, the erosion of nuclear disarmament and arms control was to continue for several more years (Neuneck 2019).

The analysis of the organizing principles of the nuclear order and examination of the NPT as a founding treaty of nuclear rule revealed the tension between the areas of non-proliferation and disarmament, between the goal of maintaining the nuclear hierarchy in the *status quo* and the expectation of a flattening of the relationships. The fundamental differences in perspectives and interests between NWS and NNWS fostered dynamics of rule and resistance within and beyond the treaty community. So far, these have included rule-compliant opposition by various alliances of states and multiple forms of dissidence by individual states. Although phases of intense resistance have led to veritable crises of legitimacy, the nuclear rule has not been overthrown. Despite its discriminatory character and the rejection of the consolidating hierarchy, despite its poor performance on disarmament and the resulting loss of faith in its legitimacy (*Legitimätsglaube*) among the ruled, the NPT remained in place. Meanwhile, its overall record is mixed. While the treaty has largely delivered on its non-proliferation promises, it has not had a substantial impact on NWS to push them to completely eliminate their arsenals. It can be argued that it has not produced any immediate disarmament gains at all. Stockpile reductions to date have been based on unilateral or bilateral initiatives. The performance of the

nuclear rule with regard to securing the exclusivity of the "nuclear club" has proven its worth. In terms of nuclear disarmament, one must speak of a regime failure.