INTRODUCTION

This chapter will analyze the NPT by using Grotian International Society approaches. It seeks answers to the following questions: How does the NPT reflect the dilemma between order versus various justice in world politics? How did the NPT evolve into the global international society? What is the meaning of the NPT as a modern international law to contribute to international nuclear order? What are the roles of diplomacy and great-powers in the NPT to international nuclear order? How did the international nuclear order change from the Cold War era to today? What is the role and meaning of the NPT to the legitimacy and efficacy of international nuclear order? This chapter starts to review International Society approach and Martin Wight’s three traditions of IR (Realism, Rationalism, and Revolutionarism). It goes on to analyze how the NPT reflect the dilemma between order versus justice, or various ideological approaches to justice in world politics. This chapter focuses on the Grotian approach to examine the NPT through the conceptual lenses of international society, international law, diplomacy and the great powers, and international nuclear order.

INTERNATIONAL SOCIETY APPROACH

"...The International Society tradition is a historical and institutional approach to world politics that focuses on human beings and their political values. Central to this approach is the study of ideas and ideologies that shape world politics. The basic assumptions are: (1) a claim that international relations are a branch of human relations at the heart of which are basic values such as interdependence, security, order, and justice; (2) a human-focused approach: the IR scholar is called upon to interpret the thoughts and
actions of the people involved in international relations; (3) acceptance of the premise of international anarchy. But International Society scholars argue that world politics is an anarchical society with distinctive rules, norms, and institutions that states people employ in conducting foreign policy..." (Jackson and Sorensen, 2003:139).

Several critiques of International Society approach include:

(1) Realists criticize that "the evidence of international norms as determinants of state policy and behavior is weak or non-existent.

(2) Liberals criticize that "the International Society tradition downplays domestic politics... and cannot account for progressive change in international politics."

(3) The International Political Economists point out that "it fails to give an account of international economic relationships.

(4) Global solidarists criticize that "it can not come to grips with an emerging postmodern world" because of its limitations as a theory of political modernity. (Jackson and Sorensen, 2003:166).

CLASSICAL APPROACHES TO THE NPT

Grotians draw arguments from Weberian sociology that our social world is a product of our understanding, meanings, values and beliefs. Not only practice but also materials make sense only by the meanings we give to them. As Oran R. Young argues, international regimes constitute a proper subset of social institution, thus human artifact whose distinguishing feature is the conjunction of convergent expectations and recognized patterns of behavior or practice.
The politics of nuclear weapons centered on the NPT regime is also a product of our social construction. Following Krasner’s definition, the NPT regime has a set of principles, rules, norms and decision-making procedure in the area of nuclear non-proliferation, arms control, disarmament and peaceful use of nuclear energy. This international security regime can work as much and as long as we attributes meanings to them. Wheeler and Davies argue that “…we attribute different meaning to total meanings to social problems and behaviour on the basis of subjective perceptions, values and beliefs. Our practices toward the problem of nuclear proliferation are therefore, like many others, the product of socially constructed theories…” (1996).

Contrary to Realist emphasis on power, the NPT is a social construction, where ideas, norms, and rules plays significant role, Dhanapala argues,

“…ideas can play a crucial role in the pursuit of specific interests. More specifically, … principles, customary practices, norms, taboos, and binding legal obligations constrain state behavior in profoundly significant and constructive ways.”

“I believe it is especially important to view the NPT as a treaty regime, one that shares many qualities with other regimes. The deeper we understand these qualities – in particular the factors that influence the behaviour of its states parties – the stronger will be our foundation for improving the overall health of this regime.” (2005:101-103)

In the early years of the NPT, the norm of nuclear non-proliferation was newly introduced to the international society and this non-proliferation norm enshrined in the NPT was not so strong as it is after the Cold War. Many states are reluctant to accept this non-proliferation norm to join the NPT as a non-nuclear weapon state. As many countries,
including Italy, Japan and Mexico, wanted to keep their nuclear options, the NPT set an
article to debate on the renewal after 25 years of it’s birth. Some states such as Israel,
India and Pakistan are free not to join the NPT and develop their nuclear capabilities.
Even some great powers such as France and China did not join the NPT till 1992 in spite
of their assured special status as a nuclear weapon state in the NPT. Therefore, in the
early years of the NPT, the norm of nuclear non-proliferation was not given the highest
importance by the international society as it is today. Sagas point out that due to the role
of the NPT, the norms of nuclear testing has significantly shifted from the 1960s to the
1990s.

“...Why are some nuclear weapons acts considered prestigious, while others
produce opprobrium, and how do such beliefs change over time? Why, for
example, was nuclear testing deemed prestigious and legitimate in the 1960s,
but is today considered illegitimate and irresponsible? The answer is that the
NPT regime appears to have shifted the norm concerning what acts grant
prestige and legitimacy from the 1960s notion of joining “the nuclear club” to
the 1990s concept of joining “the club of nations adhering to the international
nuclear agreements.” Moreover, the salience of the norms that were made
explicit in the NPT treaty has shifted over time...”(Sagan, 2000)

The NPT was created by the most powerful states. But, the NPT changed the
norms of nuclear weapons and constrain even these powerful actors

“...Existing norms concerning the nonacquisition of nuclear weapons (such as
those embedded in the NPT) could not have been created without the strong
support of the most powerful states in the international system, who believed
that the norms served their narrow political interests. Yet, once that effort was successful, these norms shaped states’ identities and expectations and even powerful actors became constrained by the norms they had created. The history of nuclear proliferation is particularly interesting in this regard because a major discontinuity—a shift in nuclear norms—has emerged as the result of the NPT regime…” (Sagan, 2000).

The meanings we give to the NPT have changed since its birth. The agenda of nuclear non-proliferation, arms control and disarmament gained more importance after the end of the Cold War. The NPT regime and their norms are broadly accepted as universal and legitimate in the international society. Almost all of the states in the world accepted the NPT. The membership states of the NPT came close to universal as much as one of the United Nations (notable exceptions are Israel, India, Pakistan and North Korea). France and China joined the NPT in 1992.

Little (2001) argue the NPT as a successful case of “full-blown security regimes”:

"...the 1968 Nonproliferation Agreement continues to act as a restraint on any increase in the number of nuclear weapons states. The agreement has been signed by over 170 states—the vast majority of states in the international system. Although fragile, the regime enjoys a very broad measure of support, so that any state breaching the agreement will confront widespread opposition....” (304).

However, Little deletes this sentence on the NPT in his revised article in 2008. The NPT regime faces in crises in these several years (2008: 301). Realists criticize liberal arguments on the constructive meaning of the NPT. Betts argues:
"...The NPT is useful as a symbolic international commitment against proliferation, but it will not stop proliferation. ... When a consensus develops in a nation that the NPT no longer serves its interests, there is nothing either legally or practically to prevent it from bailing out. There is no reason to believe that the NPT should be any more successful in preserving peace than the greatest international institution: the United Nations. Both are valuable symbols, effective at the margins, but insufficient to their purposes. They ... are hardly to be relied on."(Betts, 1993).

According to Sagan (2000), norms of nuclear weapons are products of both power (Realist explanation) and ideas (Liberal and Social Constructivist explanation).

"...The sociologists' arguments highlight the possibility that nuclear weapons programs serve symbolic functions reflecting leaders' perceptions of appropriate and modern behavior. ... such symbols are often contested and that the resulting norms are spread by power and coercion, and not by the strength of ideas alone. Both insights usefully illuminate the nuclear proliferation phenomenon..."(Sagan, 2000)

Grotians argue that the NPT regime can be flourish when it is given much importance as liberals insist, but the regime will be declining when it is given little meanings as realists say. It depends on concrete historical and social context and meanings whether the Treaty and the non-proliferation regime work well.
REALISM, RATIONALISM, REVOLUTIONISM AND THE NPT

Martin Wight argues that a dialogue between the three IR traditions is necessary for proper understanding of IR. Realists, Rationalists and Revolutionaries, or Hobbesians, Grotians, and Kantians see world politics, order and justice in different ways.

Realism is pessimistic to see international politics as competitive international anarchy and power politics, where conflicts and warfare are inevitable. Rationalism is cautiously optimistic to regard international politics as the anarchical society of states, where peaceful coexistence and evolutionary change is possible through "mutual respect, concord, the rule and law between states" (Jackson and Sorensen, 2003:147). Revolutionism is radically critical and idealistic to see international politics should be seen as the cosmopolitan world community of mankind as a whole, where revolutionary change is necessary to fundamentally change the inherently problematic inter-state system and to ensure human rights and peaceful world order (Wight, 1991; Bull, 1977, 1987; Jackson and Sorensen, 2003).

On the problem of nuclear weapons, Hobbesian Realists are pessimistic to predict further nuclear proliferation under anarchical and competitive international politics. Kantian Revolutionaries are idealistic to hope revolutionary change toward a nuclear-weapons-free world. Grotian Rationalists are cautiously optimistic to expect peaceful coexistence by rational controlling of nuclear non-proliferation through international law, norms and rules for the international society as a whole.
### Realist, Rationalist and Revolutionary Approaches to the NPT and nuclear order

<table>
<thead>
<tr>
<th>Basic assumptions</th>
<th>Realism, Hobbesian</th>
<th>Rationalism, Grotian</th>
<th>Revolutionism, Kantian</th>
</tr>
</thead>
<tbody>
<tr>
<td>International system;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cyclical repetition;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflict and warfare;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pessimism</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Roles and meanings</th>
<th>To conserve nuclear dominance for nuclear powers by non-proliferation</th>
<th>To improve stable international security as a whole by Non-proliferation, Arms Control, and Disarmament</th>
<th>To conserve nuclear dominance for nuclear powers by non-proliferation</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Ideal types and prospects for nuclear order and justice</th>
<th>Further nuclear proliferation, preventive war</th>
<th>Evolutionary change toward equal international order and security as a whole</th>
<th>Revolutionary change toward peaceful nuclear disarmament order for human rights and humanity as a whole</th>
</tr>
</thead>
</table>

### ORDER VERSUS JUSTICE AND THE NPT

Order and justice are inseparable. Three typical modern ideologies suggest different understanding of the relationship between order and justice. Both Conservatives and Revolutionaries believe that order and justice are essentially incompatible. For
Conservatives, order should be more important than justice. For Revolutionaries, justice should be more salient than order. Liberals believe that order and justice are compatible, and that unequal international order can be reformed into just world order for all (Bull, 1977).

**Conservatism and the NPT-based hierarchical nuclear order**

Conservatives argues that the unequal international nuclear order based on the NPT is better than nuclear anarchy based on equal rights to have nuclear weapons. “For the present, most states are likely to accept some ordered inequality in weaponry because anarchic equality appears more dangerous.”(Nye, 1985:123-131). According to Utgoff, “…unless and until the world finds a safe way to eliminate all NBC weapons, the United States should never let doubts develop about its capability to impose nuclear punishment when it is justified. In the end, while proliferation of NBC weapons remains a threat to peace, the threat of retaliation in kind remains an essential underpinning for the stability of the world order as we know it…”(Utgoff 2000: 301)

**Liberalism and the NPT-based progressive international nuclear order**

Liberals seek a balance between conservatives and revolutionarics. Liberals claims that the current unequal international nuclear order based on the NPT should be the basis of more just, equal, and stable international order for international security and world order for humanity as a whole. The NPT should seek balanced objectives of nuclear non-proliferation, civilian nuclear cooperation, and arms control and disarmament (Cirincione,2000; Dhanapala, 2001;Dhanapala with Rydell, 2005). According to Graham Jr.:

“…If the nuclear weapon states appear to be living up to their end of the NPT’s
central bargain, they will have a much better chance of persuading non-nuclear weapon states to restrict access to the fuel cycle, which until now has been guaranteed under the treaty. If the NPT’s central bargain can be reinvigorated ..., the treaty could be more than stabilized: it could be made stronger. It could become the instrument of international security that it was designed to be, thereby helping immeasurably to address the threat of nuclear weapons in the hands of rogue states and terrorist behind the principle of nonproliferation. Ultimately, a truly strong and effective NPT regime could banish President Kennedy’s nightmare forever and dramatically reduce the risk that the horrors of Hiroshima will ever be repeated…”(2005:147-152).

**Revolutionarism and critiques of the NPT-based discriminative nuclear order**

Revolutionaries deny the legitimacy of the current NPT regime. The NPT regime is fundamentally discriminative non-proliferation order imposed by five great powers. Revolutionaries deny the status-quo of nuclear unequal non-proliferation order maintained by the NPT regime. Instead of this “nuclear non-proliferation”, revolutionaries demands for “nuclear abolishment”, “complete and comprehensive disarmament” and “a nuclear-weapon-free world.” Revolutionism (Idealistic utopianism) challenge the NPT regime by idealistic peaceful means.(Falk, 1977; MccGwire, 1994; Rotbat, 1993, 1998). Nuclear non-proliferation can never achieve peace, security, order and justice in world politics. Only nuclear disarmament can bring security, freedom, liberty and justice for individuals and humanity as a whole.

... “the nuclear powers seemed unwilling to take even these modest steps to diminish the discriminatory character of the NPT system. At most, in other words, mainstream policy analysis discusses moderating discrimination against nonnuclear weapon states. It rarely acknowledges the dubious validity of a
world order system based on the inherent discrimination that flows from the distinction between nuclear and nonnuclear states. ... From a pragmatic perspective, denuclearization is the only way to overcome the inherent discrimination of the present world order system” ... (Falk, 1977: 79-93).

It is also noteworthy to point out that the characteristics of shared believes, symbols of contemporary Western culture of nuclear non-proliferation, arms control, and disarmament, Kraus argues.

“...Contemporary Western NACD [Nonproliferation, Arms Control and Disarmament] culture – comprising a specific set of widely shared beliefs, traditions, attitudes and symbols that inform approaches to non-proliferation, arms control and disarmament – has been shaped largely by the convergence of a deeply embedded Cold War arms control culture and a new discourse of threat and danger. The key supplementary elements of this culture are:

• a focus on proliferation as the principal threat to global security, and a commitment to non-proliferation rather than global disarmament;
• a belief that Western preponderance is the key to international peace and stability; and,
• a renewed commitment to regulating ‘inhumane weapons’.”(Kraus 1999)

Conservatism, Liberalism, and Revolutionism are based on fundamentally incompatible views of order and justice in world politics. This chapter focus on the Grotian/ International Society approach to examine the NPT. It is necessary to analyze the NPT as a basis of current international nuclear order and justice in the anarchical international society before exploring utopian world order and universal justice.
The problem of discrimination and inequality in the NPT

The most serious problem of the Nuclear Non-Proliferation Treaty is that the Treaty is regarded as a tool of “western domination”, “nuclear imperialism” or “nuclear apartheid”. China, France and other NAM states pointed out this problem of legitimacy in the 1960s. India strongly opposed this discrimination and hypocrisy of the Western non-proliferation discourse and the NPT-based unequal nuclear order:

“...In the colonial era when development of the colonial world was retarded and the colonies were being exploited the imperialists and their collaborators in the colonies used to sing praises of the colonial rule. Similarly now the nuclear imperialists and their collaborators in the developing world sing the praises of the neocolonial order – the Non-Proliferation Treaty regime...”(1985-86: 293)

Furthermore, the West “...promotes nonproliferation as a universal norm and nonproliferation treaties and inspections as means of realizing that norm... The non-Western nations, on the other hand, assert their right to acquire and to deploy whatever weapons they think necessary for their security [seeing weapons of mass destruction] as the potential equalizer of superior Western conventional power...”(quoted in Cirincione 2000b:133). This justification was seen just after India’s nuclear tests in 1998.

“...At the global level, the nuclear weapons states showed no signed of moving decisively toward a world free of atomic danger. Instead, the nuclear nonproliferation treaty (NPT) was extended indefinitely and unconditionally 1995, perpetuating the existence of nuclear weapons in the hands of five countries busily modernizing their nuclear arsenals. ... These differentiated standards of national security – a sort of international nuclear apartheid – are not
simply a challenge to India but demonstrate the inequality of the entire nonproliferation regime...”(Singh, 1998:41-52)

Using Hedley Bull’s word, the NPT and the current international nuclear order can never avoid “the dilemma between order versus justice” in world politics:

“...Perfect international justice with regard to the possession of nuclear weapons can be achieved only by complete nuclear disarmament, or by an international system in which nuclear weapons are available to every state. Since neither of these alternatives can be expected to come about, the world has to accept a situation in which some states have nuclear weapons and some do not. This does not mean that the present line of division is the only possible one, or that some other line of division could not be held to be at least relatively more just. But whatever expansion of the nuclear weapons club takes place, the argument that it is unjust can always be used by those who are left outside...”([1975]1987:222-223).

According to Bull, “That nuclear proliferation in general is undesirable is in fact recognized – in their actions if not always in their words – even by those powers that have been the strong opponents of antiproliferationist doctrine...”(223). Bull takes up the case of China, France, and India who officially opposed the NPT. As we know now, China and France formally joined the NPT in 1992. India shows more cooperative attitudes toward international nuclear non-proliferation efforts. The international community virtually accepts the reality of South Asian nuclearization. India gains more confidence in their status after the NSG admitted the US-India nuclear deal.

Bull’s insight is to the point. Virtually all states understand the desirability of
non-proliferation "except their own case".

"...The recalcitrant or dissenting states, in other words, do not challenge the doctrine that the spread of nuclear weapons is undesirable, but rather – like the United States, the Soviet Union and Britain before them – seek to show that an exception should be made in their own case. The argument between supporters and opponents of the NPT is not about the desirability or otherwise of non-proliferation but about where the line should be drawn..." (223).

Therefore, the dilemma between order versus justice is at the heart of the NPT and the international nuclear order. It is easily understood if we reflect on the main debates and issues in the NPT Review Conferences. On the one hand, the five NWS focuses on non-proliferation, on the other hand the Non-Nuclear-Weapon States ask for nuclear arms control and disarmament, the peaceful uses of nuclear energy, and security assurances. It is clear that nuclear proliferation is not desirable and nuclear disarmament is not feasible in the foreseeable future. The immediate task of our nuclear age requires to deal with this difficult dilemma in the anarchical international society.

INTERNATIONAL SOCIETY AND THE NPT

In his classic *The Anarchical Society* (1977), Hedly Bull argues that international order in the contemporary international system is sustained by five measures: the balance of powers, international law, diplomacy, war, and the great powers. The role of balance of powers was analyzed in CHAPTER 4 on realist perspectives on the NPT.
Grotian (International Society) theorists assume that the existence of the international society is a basis of world politics. (Jackson and Sorensen, 2003; Linklater, 2003; Linklater and Suganami, 2006). The NPT and the non-proliferation regime set norms and rules to facilitate common interests and security in the international society in the area of nuclear issues. The NPT as a modern international law set norms and rules of member states in the international society to observe and to inter-act with each other in regard to nuclear non-proliferation, civilian nuclear cooperation, arms control, and disarmament. These rules and norms of nuclear non-proliferation, arms control and disarmament have been widely accepted as legitimate in the society of states. Member states of the international society have both rights and duties on nuclear issues set by various international laws, agreements and regimes relating to the Nuclear Non-Proliferation Treaty (Wheeler and Davies, 1996; Kraus, 1999; Ungerer, 2001; Woods, 2004).

The number of the NPT membership indicates the horizontal universality of the international society in the area of nuclear arms control issues. The number of membership states increased to 63 by 1970, 113 by 1980, and 140 by 1990. The number increased rapidly just after the signing of the Treaty in 1968 and also before 1995 when the historic NPT Review and Extension Conference was held.

The number of participant member-states reflects the growing treaty membership—from 91 states parties in 1975 to 140 in 1990. In the 1995 NPT Review and Extension Conference, 175 of the treaty’s 178 states parties were in attendance, a statistic that no doubt reflects both the unique and historic nature of the ‘extension’ decision and the venue.” (Dhanapala, 2005, 18).
According to Walker, "...At its birth in the 1960s, the NPT was the child of a small group of states. By April 1995 when the Extension Conference convened, all but six states were represented, among which only three (Israel, India and Pakistan) remained defiantly opposed to membership. In consequence, the NPT appeared in the mid-1990s to be becoming the property and manifestation of a true international society – even a global society—of states..." (Walker, 2004:37)

As the NPT membership reaches almost 190, only three states do not join the Treaty out of 192 members of the United Nations. These states are exceptions but very significant because India and Pakistan are nuclear-weapon states since the 1998 nuclear tests (though not admitted legally by the NPT). Israel is also deemed to have nuclear weapons since the 1970s. Another exception, North Korea proceeded their nuclear programme under the Treaty as a NPT NNWS and then withdraw from it in 2003 and conducted nuclear weapon tests in 2006 openly. Iran (currently a NPT NNWS) has been regarded as a problematic case as it is also suspected to follow same course as North Korea.
The hierarchical global state system

<table>
<thead>
<tr>
<th>Types of states</th>
<th>Number</th>
<th>The regional location of states</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great powers</td>
<td>5</td>
<td>US, Russia, China, Britain, France</td>
</tr>
<tr>
<td>Highly substantial states</td>
<td>Approx.30</td>
<td>Europe, North America, Japan</td>
</tr>
<tr>
<td>Moderately substantial states</td>
<td>Approx.75</td>
<td>Asia and Latin America</td>
</tr>
<tr>
<td>Insubstantial quasi-states</td>
<td>Approx.90</td>
<td>Africa, Asia, Caribbean, Pacific</td>
</tr>
<tr>
<td>Unrecognized territorial political systems</td>
<td>Numerous</td>
<td>Submerged in existing states</td>
</tr>
</tbody>
</table>

(Based on Jackson and Sorensen, 2003:25)

The NPT as the international society set norms and rules of states. The NPT regime as the international society set “binding legal obligations” to constrain state behaviour “in profoundly significant and constructive ways”, Dhanapala claims.

“...The NPT regime as the international society affects states’ behaviours and enhance nuclear arms control, disarmament and non-proliferation... the society of states has its own independent effects upon state policy, just as ideas can play a crucial role in the pursuit of specific interests. More specifically, ... principles, customary practices, norms, taboos, and binding legal obligations constrain state behavior in profoundly significant and constructive ways. ... The multilateralist should be concerned, because the level of international cooperation in both nonproliferation and disarmament is far lower than it could- and should be...”(Dhanapala, 2001: 99-106)

MODERN INTERNATIONAL LAW AND THE NPT

Modern international law is a historical artifact. It is “...a product of the
revolutions in thought and practice that transformed the governance of European states after the French Revolution (1789)…” During the age of absolute monarch, both domestic and international law was God’s law (natural law), that is, “both of which embodied the command of God”. After the rise of liberalism and nationalism in the 19th century, however, modern “law was deemed legitimate to the extent that it was authored by those subject the law or their representatives” equally and in all like circumstances. International law also shifted from the command of God to contractural international law or positive law, reciprocally binding agreements with other states (Reus-Smit: 2008:282-283).

The modern institution of international law has distinctive characteristics informed by the values of political liberalism, Reus-Smit list four main characteristics: (1) its multilateral form of legislation, (2) its consent-based form of legal obligation, (3) its language and practice of justification, and (4) its discourse of international autonomy. According to Reus-Smit, “…The NPT is a concrete expression of the practices of international law and multilateralism in the field of arms control…”(Reus-Smit,2008:281).

(1) Multilateral legislation

First characteristics of modern international law is that, “…The principle mechanism modern states employ to ‘legislate’ international law is multilateral diplomacy, which is commonly defined as cooperation between three or more states based on, or with a view to formulating, reciprocally binding rules of conduct…”(Reus-Smit, 2008:285)

The NPT is a product of multilateral diplomacy. Irish Rcsolutions was adopted
in 1958-1961 at UN General Assembly (UN Doc.A/RES/1665, 5 December 1961). Eighteen-Nation Disarmament Committee (ENDC, consisting of Brazil, Bulgaria, Burma, Canada, Czechoslovakia, Ethiopia, France, India, Italy, Mexico, Nigeria, Poland, Romania, Sweden, United Arab Republic, UK, US, and USSR) submitted Eight-Nation Memorandum to set five Principles of a NPT. From 1965 to 1968, several drafts of a treaty were submitted to UN General Assembly. After negotiations between US and NATO countries, and the US and USSR, a Final draft of NPT was submitted by the US and USSR, and approved by UN General Assembly as Resolution 2373 (12 Jun 1968). Though the significant roles of two superpowers are evident, the legislating procedure of the Treaty was made through multilateral diplomacy (Ungerer, 2001: 195). Furthermore, the NPT Review Conference held every five years has a similar role of legislation to produce politically binding documents such as Principles and Objectives in 1995 and Practical Steps toward future nuclear disarmament and non-proliferation in 2000(Walker, 2007a, 2007b; Blacker and Duffy, 1984; Bunn, 1993; Sokolski, 2001).

(2) Consent and legal obligation

Second, modern international law needs consent for legal obligations. “...It is a norm of the modern international legal system that states are obliged to observe legal rules because they have consented to those rules. A state that has not consented to the rules of a particular legal treaty is not bound by those rules. The only exception to this concern is rules of customary international law, and even then implied or tacit consent plays an important role in the determination of which rules have customary status...”( Reus-Smit, 2008; 285)

The NPT has almost universal membership who consent legal rules and obligations of the Treaty. Thus the Treaty is regarded as a cornerstone of international
security regimes and arms control and disarmament efforts. Although only a few states do not consent the Treaty, these exceptions do matter: Israel, India, Pakistan (and North Korea declared of their withdrawal from the Treaty) are at the heart of regional security.

The problem this characteristics of consent and legal obligation is that non-members, who do not sign and ratify the treaty, are not bound by those legal rules of the NPT. Israel has not been pressured mainly because Israel has special relationship with the US, and partly because Israel use “ambiguous deterrence” not to openly declare their suspected nuclear weapon status. India and Pakistan did nuclear-weapon tests and openly declared their nuclear-weapon status in 1998. As they are not members of the Treaty, India and Pakistan do not violate the legal rules of the NPT. North Korea also did nuclear-weapon tests in 2006 after their declaration of withdrawal from the Treaty in 2003. Iran is suspected to follow this course. The NPT does not have power to enforce non-proliferation obligations to non-member states of the Treaty.

(3) Language and practice of justification

Third, “...Modern international law is characterized by a distinctive form or argument, justification, or reasoning. ... this practice is both rhetorical and analogical...”(Reus-Smit, 2008; 285)

It is apparent that the NPT has been one of the most contested international treaty. In making of an NPT, the Eighteen Nations Disarmament Committee was the place, many non-aligned and neutral states (NAM) claimed their justice. NPT Review Conferences are held every five years, and this is a place of argument, justification, and reasoning by various state-members. Interpretation of languages in articles and documents are always at the heart of contests (Stoiber, 2003; Dhanapala and Rydell,
2005). A case of India is noteworthy. India was strong critics of the NPT signed in 1968 and the CTBT signed in 1996. India was not a quiet observer, but an argumentative critique of the fundamental flaw and injustice of the NPT, the 1995 NPT Extension, and the 1996 CTBT.

(4) The discourse of institutional autonomy

Fourth, modern international law has its distinctive realm and autonomy. "...In many historical periods, and in many social and cultural settings, the political and legal realms have been entwined. For instance, the Absolutist conception of sovereignty bound the two realm together in the figure of the sovereign. In the modern era, by contrast, the political and legal realms are thought to be radically different, with their own logics and institutional settings. Domestically, this informs ideas about the constitutional separation of powers; internationally, it has encouraged the view that international politics and law are separate spheres of social action. This has not only affected how the academic disciplines of international relations and law have evolved, but also how state practice has evolved...In the political realm, claims of self-interest and barely veiled coercive practices are considered legitimate if distasteful, but in the legal realm legal reasoning and argument become the legitimate form of action..." (Reus-Smit, 2008; 284-285)

"...This imagining the political and legal realms as separate and distinct is a modern phenomenon. And, this imagining separate political and legal realms in international relations contributes to international order, and is thus politically functional for states. Perception of a legal realm, recognition that a spectrum of issues, practices, and processes are governed by legal rules and procedures, and mutual understanding that certain forms of action are empowered or foreclosed
within the legal realm, brings a certain discipline, structure, and predictability to international relations that would be missing in conditions of pure anarchy...”(285).

Convened pursuant to Article VII.3 of the Treaty, the NPT Review Conferences (RevCons) are held at five-year intervals from 1975 to review the Treaty’s operation. The process, discourse, final document and decisions in the NPT Review Conference play an important role in international order nuclear and justice.(Stoiber, 2003). Non-Nuclear-Weapon States played significant roles to set a discourse and debate on nuclear arms control and disarmament. NAM countries like India and Sweden demanded for nuclear disarmament since the 1960s’s negotiation for an NPT. NAM failed to make consensus at the 1995 NPT Review and Extension Conference to demand for more nuclear arms control and disarmament. The New Agenda Coalition (NAC) is a new movement which set a nuclear disarmament debate in the 2000 NPT Review Conference.(Carl Ungerer, 2001)

What is the role of law in relation to international order? International law can contribute to international order in three major ways, Bull argues:

(1) to identify as the supreme normative principle of the political organization of mankind, the idea of a society of sovereign states.

(2) To state the basic rules of coexistence among states and other actors in international society.

(3) To help mobilize compliance with the rules of international society.(1977:140-141)

The NPT has contributed to international nuclear order consisted of sovereign
states, to support coexistence among states, and to ensure compliance with the rules on nuclear non-proliferation, the peaceful use of nuclear energy, and arms control and disarmament (although the last objective is at the heart of debates).

Dhanapala and Rydell (2005) argue that the NPT-based regime and its rules and norms has permanence, legitimacy and "binding hard-law advantages" for international peace and security:

"...We live in a world of rules and norms. In a world of sovereign nation states, it is astonishing not only that such rules and norms persist, but also that compliance has itself become a norm. Louis Henkin's dictum – that 'almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time' – remains valid even in our current environment, which is often characterized by glaring headlines about the dangers arising from WMD..." (101-102).

"...[The NPT] treaty-based regimes remain enormously 'relevant' in serving international peace and security. They offer many hard-law advantages over their ad hoc political counterparts among the various regulatory regimes. They are binding. They have or are approaching universal membership. They have the permanence of law. Some have institutions staffed with fulltime professionals dedicated to building confidence in compliance. And they have the most precious treasure of all – legitimacy, both because they enshrine universal norms and because legislatures had to approve their ratification. We can only hope that the member states of these regimes will understand the benefits they stand to gain from the success and permanence of these regimes, and will provide them the support they deserve" (141).
From international law to supranational law?

Law and order/justice are inseparably related to each other. International law is for states as subjects and agents, and for inter-state order. "...So long as international law was designed to facilitate international order, it was circumscribed in key ways: states were the principle [1] subjects and [2] agents of international law; [3] international law was concerned with the regulation of inter-state relations; and the scope of international law was confined to questions of order... The principal objective of international law was the maintenance of peace and stability based on mutual respect for each state's territorial integrity and domestic jurisdiction; issues of distributive justice and the protection of basic human rights lay outside its brief..." (Reus-Smit, 2008:287)

The NPT was originally created by states as agents and for states as subjects to regulate inter-state relations, stability, and peace. It aimed to maintain international nuclear order by halting the spread of nuclear weapons to non-nuclear-weapon states, and nuclear proliferation to non-state actors such as terrorist groups was not expected. States including big, middle, and small powers, were the principle agents of creating the NPT, and non-state actors, such as NGOs, were not the members.

Modern international law has been transforming to adjust to increasing necessities of global governance and world order today. "...The quest for global governance is pushing international law into new areas, raising questions about whether international law is transforming into a form of supranational law... In recent decades states have sought to move beyond the simple pursuit of international order towards the ambitious yet amorphous objective of global governance, and international law has begun to change in fascinating ways..." (Reus-Smit, 2008:287)
First, "...although 'states are still at the heart of the international legal system',
individuals, groups, and organizations are increasingly becoming recognized subjects of
international law..."(287). The problem of the NPT has been discussed as this Treaty
does not expect non-state actors as its subjects. The revelation of Pakistani scientist A. Q.
Khan's nuclear black market highlighted this problem of nuclear proliferation. The
Proliferation Security Initiative (PSI) was established in June 2003 as a means for the
interdiction of trafficking in WMD, delivery systems, and related materials, which aimed
to deal with problems the traditional international law like the NPT can not cope with.

Second, "...non-state actors are becoming important agents in the international
legal process. While such actors cannot formally enact international law, and their
practices do not contribute to the development of customary international law, they often
play a crucial role in shaping the normative environment in which states are moved to
codify specific legal rules, in providing information to national governments that
encourages the redefinition of states and the convergence of policies across different
states, and, finally, in actually drafting international treaties and conventions..."(287).

NGOs (Non-Governmental Organizations) and IGOs (Inter-Governmental Organizations)
become participants at the NPT Review Conferences and the Preparatory Committees. According to Conference President Dhanapala, "...the efforts of the NGO community were vital to the achievement of disarmament goals and worked hard during the NPT review process and later in my capacity as Under-Secretary-General for Disarmament Affairs to enhance their participation in that process and in activities elsewhere in the United Nations disarmament machinery..."(Dhanapala with Rydell, 2005: 23).
Japanese government considers the roles of NGOs in the area of nuclear disarmament and non-proliferation. "...The Japanese government exchanges opinions with NGOs in order to seek ways of advancing the nuclear disarmament process... the Ministry has also been active in exchanging opinions and information with various NGO representatives, and attending their meetings in Tokyo or at other conference venues, before, during and after international conferences such as the UN General Assembly, the NPT Review Conference, and the Conference on Facilitating the Entry into Force of the CTBT..." (MOFA, Japan, 2004: 236).

Third, "...International law is increasingly concerned with global, not merely international, regulation. Where the principles of self-determination and non-intervention once erected a fundamental boundary between the international and domestic legal realms, this boundary is now being breached by the development of international rules that regulate how states should behave within their territories..." (287). The IAEA safeguards system is an international system to intervene the realm of traditional sovereignty. Initially, Japan, Sweden or other industrially developed countries were against these safeguards system for keeping their economic and technological competitiveness, but these NNWS are now ardent supporters of this IAEA safeguards system. As concerns of nuclear proliferation are increasing, non-proliferation efforts are also strengthened. After the revelation of the failure of the existing comprehensive IAEA safeguards system against suspected nuclear weapon programme by Iraq and North Korea, the IAEA started "Program 93+2" in 1993 and "Additional Protocol" was adopted in 1997 to strengthen the existing comprehensive IAEA safeguards system (MOFA, Japan, 2004: 90-91). As the concerns of suspected Iranian nuclear programme and other possible cases increase, the strengthening of inspection and safeguard system beyond sovereignty are also required.
These changes in the NPT as modern international law suggest that the NPT is required to change from the international law to sustain international order and security to a supranational law to manage global governance and world order.

DIPLOMACY AND THE NPT

International Society theorists understand IR as a human-domain. According to Bull, traditional International Society approach derives from “philosophy, history and law” and it is “characterized above all by explicit reliance upon the exercise of judgement”. “Foreign policy sometimes presents difficult moral choices to the statespeople involved—i.e. choices about conflicting political values and goals... States are not things: they do not exist or interact on their own. States do no have an existence separate from human beings—the citizens and governments—who compose them and who act on their behalf. International Society theorists view international relations as a special branch of human relations that occur in historical time and involve rules, norms, and values. IR is a study of that historical human world.” (Jackson and Sorensen, 2003:140-141)

Diplomacy is “the profession or skill of managing international relations” originated from French *diplomatie* (Soanes:2001). Sir Harold Nicolson defines that “Diplomacy is the management of international relations by negotiation; the method by which these relations are adjusted by ambassadors and envoys; the business or art of the diplomatist.” (quoted in Bull, 1977:162) Diplomacy has several function in relation to international order in the society of states. Bull point out functions of diplomacy:
communication, negotiation, information, minimization of friction, and symbolic function.

(1) Diplomacy facilitates communication between the political leaders of states and other entities in world politics.

(2) Diplomacy contributes to the negotiation of agreements in international relations.

(3) Diplomacy functions to gathering of intelligence or information about foreign countries.

(4) Diplomacy enhances minimization of the effects of friction in international relations and to build up confidence and trust.

(5) Diplomacy fulfils the function of symbolizing the existence of the society of states. (Bull, 1977: 170-172)

Diplomacy plays an important role in the dynamics and evolution of the NPT and the nuclear non-proliferation regime. Ireland spent so much diplomatic efforts to create an international treaty of nuclear non-proliferation to submit their proposals in 1958-1961. Though their efforts did not bear fruits in the early 1960s, their proposals were important steps to set international negotiations to create a treaty. In making of the NPT after the Cuban Missile Crises, the US and the USSR devoted their efforts in laborious negotiations. Many other countries including NAM states like India and Sweden played active roles to create an NPT for the sake of nuclear-non-weapon states. (Bunn, 1992; Sokolski, 2001).

Diplomacy is also required in the NPT Review Conferences held every five years since 1970. In the 1975 NPT Review Conference, "...due in no small degree to the determination and diplomatic skills of the Conference's President, Mrs Inga Thorsson of
Sweden, ... reached a consensus on a Final Declaration...”(Dhanapala with Rydell, 2005:18-19)

In the 1985 NPT Review Conference, Dhanapala argues, “...The ability of this Conference to agree a Final Declaration was due in large part to my authority, as Chairman of Main Committee I, to resolve a large number of contentious issues coupled with the efforts the Conference President – Ambassador Mohammed Shaker of Egypt – who relied on a small, informal group of advisers consisting of the Committee Chairmen..., representatives of regional groups and the Secretariat and other individuals...”(Dhanapala with Rydell, 2005: 20).

The 1990 NPT review Conference failed to reach consensus on a Final Declaration partly because “...the bad personal rapport among some delegates – even within the same regional group – contributed to an atmosphere that was scarcely conducive to the success of the Conference. Poor conference management skills were also evident...”(Dhanapala with Rydell, 2005:21).

Though the 1995 NPT Review and Extension Conference could not produce a Final Declaration “due to lack of consensus”, diplomacy played important roles to make consensus on three decisions. The ACDA of the US, especially Ambassador Thomas Graham Jr. did active efforts in realizing “indefinite NPT extension without conditions”(Graham Jr., 2002:257-293) though many countries especially the NAM states including Indonesia, Mexico, Egypt and Iran suggest critical views of the US and some Western countries’ influence on the NAM states concerning the NPT extension. According to Mr. Behrouz Moradi,

“A lot of pressures, ... promises and sometimes threats, .... Were put on
non-aligned countries…by certain nuclear weapon states, in particular, the United States, as well as certain Western countries… Some of the diplomats said very explicitly that pressure had been put on their governments. Again, this might call into question the method by which the indefinite extension was reached, namely the fact that the decision was neither taken in a healthy atmosphere, nor in a democratic way as such. Had members of the non-aligned had the opportunity to express themselves freely on the issue of extension, they would have decided otherwise, I am sure…”(Welsh, 1995).

It is acknowledged that Conference President Dhanapala’s skillful diplomacy or “conference management” contributed to the success of the NPT extension.

“…The importance of sound Conference management and confidence and trust among the key players were obvious needs… The device of the President’s Consultation for the negotiation of key-decisions… included group co-ordinators who were encouraged to report to the members of their respective groups on its proceedings and bring back responses ensured transparency and accountability. This mechanism of consultations was used to good effect in negotiating the decision on Principles and Objectives for Nuclear Non-Proliferation and Disarmament and the Decision on the Strengthening of the Review Process for the Treaty…”(Dhanapala with Rydell, 2005:8). South Africa’s initiative in the debate was “one of the defining moments of the Conference…. These ideas proved influential and provided the building blocks for the agreement that was finally reached…”(Dhanapala with Rydell:7).

The 2000 NPT Review Conference reached consensus on a Final Declaration but the 2005 NPT Review Conference failed. Skills and experiences of diplomats and
negotiators are regarded as important to make difference to the course and fate of these conferences.

**THE GREAT POWERS AND THE NPT**

What is the role of great powers in relation to international order? Bull argues that great powers can contribute to international order in two main ways: “by managing their relations with one another; and by exploiting their preponderance in such a way as to impart a degree of central direction to the affairs of international society as a whole.” More specifically, Bull points out six main roles to manage their great-powers relations with one another in the interests of international order by:

(i) preserving the general balance of power among great powers;
(ii) seeking to avoid or control crises in their great-powers relations,
(iii) seeking to limit or contain wars among great powers.

Great powers exploit their preponderance in relation to the rest of international society by:

(iv) unilaterally exploiting their local preponderance,
(v) agreeing to respect one another’s spheres of influence,
(vi) joint action, as is implied by the idea of a great power concert or condominium. (Bull, 1977,207)

Grotians assume the importance of great powers’ responsible diplomacy to the NPT-based non-proliferation regime and international nuclear order. Great powers have two-fold responsibilities on the current NPT regime: nuclear non-proliferation and
nuclear arms control and disarmament. Great powers have greatest capabilities of nuclear weapons in world politics. What great powers do matter to the fate of the NPT: an illegitimate and ineffective “dead letter regime” or legitimate and effective “full-brown regime”.

In the area of nuclear politics, the great powers need to restrain nuclear arms race like the Cold War, but to seek cooperation and concert among the great powers to reduce the strategic and political utility of nuclear weapons. The great powers also need careful foreign policy to influence their own spheres and respect other powers’ spheres. Extended nuclear deterrence and Nuclear-Weapons-Free Zone stabilize these great-powers relationship.

Furthermore, Bull suggest that the nuclear-weapons states need to show the decreasing importance of nuclear weapons in international society:

“...the control of proliferation depends, more than it depends on anything else, on the practice of restraint by the nuclear weapon states. What is important is not so much whether the nuclear weapon parties to the NPT make sufficient progress towards disarmament to satisfy the non-nuclear weapon parties, but whether the nuclear weapon states as a whole are able to demonstrate to international society at large that nuclear weapons are of limited and declining utility .... The first requirement of the nuclear weapon states’ contribution to the control of proliferation is that they should continue to display at least as much restraint as they have done in the past....”([1975]1987).

More specifically, Bull suggests, the five NPT NWS need to deal with nuclear arms control and disarmament agendas: (1) A comprehensive test ban treaty; (2)
No-first-use-declarations and policies; (3) Nuclear arms control negotiations and substantial and actual reductions (Bull, [1975]1987). Bull’s points have been debated in every NPT Review Conference till today.

Walker stresses the importance of obligation of great powers as the principal repositories of WMD: “...Great powers are, after all, the principal repositories of lethal technology and are the actors which can do the greatest harm. Indeed, the simultaneous pursuit of restraint in both respects is fundamental to the reciprocal obligation that has underpinned – and should still underpin – the WMD order...” (Walker, 2004).

INTERNATIONAL NUCLEAR ORDER AND THE NPT

As Brodie’s classic explored, the birth of nuclear weapons posed serious problems to international order, Walker argues:

“...the nuclear weapon has created an unparalleled problem of order within the state system (the subtitle of Bernard Brodie’s The Absolute Weapon of 1946 was Atomic power and world order. The problem has been the rightful concern of all states and peoples, given the weapon’s destructive power and global reach. Nuclear history has therefore been marked by the struggle to establish an order, that would be effective, legitimate and trustworthy despite unavoidable disparities in states’ access to and usage of the technology, and that would enable nuclear technology to be diffused for civil purposes without constantly spawning security dilemmas...” (Walker, 2007b)

The first “nuclear age” after the birth of nuclear weapons was largely
determined by the US and USSR confrontation. John Gaddis named this confrontation as “the long peace”. The Cold War was sustained by both nuclear strategy and nuclear diplomacy, confrontation and cooperation. Mandelbaum claims:

“...The history of the nuclear age has not been a tragedy; or rather, it has not been a tragedy of colossal, unprecedented destruction. It has been the continuation, with some modifications, of the history of politics among nations. The world has managed to live with the bomb. And this coexistence – of the age-old “anarchic” international system with the terrifying fruits of modern science – has arguably been the achievement, and unquestionably the purpose, of nuclear strategy and nuclear diplomacy.”(Mandelbaum, 1979: 223).

“...Nuclear diplomacy underwent an equally decisive shift, but in a different direction. Through the first three decades it was driven by the “special responsibility” that the United States and the Soviet Union felt. But from a revolutionary beginning it reverted to a familiar, traditional pattern. The American nuclear diplomacy of 1946 had differed radically from previous approached to negotiation. It had aimed at making the use of nuclear weapons impossible by removing them from the control of nation-states. By 1963 the aim and the method were far more modest – the adjustment of differences and the restraint of conflict. No longer did American officials aspire to do away with the bases of international conflict.”(Mandelbaum, 1979: 208).

During the Cold War, international nuclear order was based on two linked systems: a managed system of deterrence and a managed system of abstinence, Walker (2004) argues.
(1) A managed system of deterrence:

“where by a recognized set of states continued (for the time being) to use nuclear weapons to curb enmity and maintain stability, but in a manner that was increasingly controlled and rule-bound”

This system of nuclear deterrence involved,

- nuclear hardware deployed by the nuclear powers with extensive command-and-control systems and hotlines installed to aid communication in sudden crises;
- sets of understandings and practices, expressed in the deterrence theories of Brodie, Schelling and others and enunciated in nuclear doctrine, of how nuclear and conventional forces should be deployed and managed to ensure mutual vulnerability and restraint;
- the establishment of bilateral arms control processes, engaging policy elites in dialogue and limiting missile deployments and anti-missile defences through binding treaties.

(2) A managed system of abstinence:

“... whereby other states abandoned their sovereign rights to develop, hold and use such weapons whilst retaining rights to develop nuclear energy for civil purposes in return for economic, security and other benefits…”

This system of nuclear abstinence involved,

- the nuclear umbrellas (extended deterrence) held over allies of the US and USSR, and incorporated in NATO, the Warsaw Pact and the US-Japan Security Treaty,
which made allied NNWS feel reasonably secure despite their lack of nuclear weapons;

- the non-proliferation regime founded and developed especially through the NPT of 1968, which rested inter alia upon the reciprocal obligations of two classes of state, the NWS (limited legally to the five states that had undertaken test explosives before 1967) and the NNWS;

- an instrumental machinery to verify (through international safeguards) states’ renunciations through rigorous accounting and inspection of the material and technologies used for civil purposes, and to prevent (through export controls) weapon-related material from being transferred across boundaries without proper consent and regulation.

Two other facets deserve attention regarding this international nuclear order: “the legitimacy attained by embedding ideas of progress and universality; and the dominant role taken by the United States in its development.” (2004:27)

Both legitimacy and efficacy is required for stable, healthy and durable international nuclear order. During the Cold War, international nuclear order consisted of two inter-linked system of deterrence and abstinence was sustained by legitimacy, which was based on several foundations (Walker, 2004: 27):

- The adoption of the nonproliferation norm;
- The sharing of civil technology;
- The nuclear powers’ tacit commitment not to resort to preventive war;
- The nuclear powers’ increasingly formal commitment (through ‘negative security assurances’) not to use nuclear weapons against NNWS;
• The development of a safeguard system that was intrusive yet respected the norms of state sovereignty;
• The commitment of the NPT’s NWS parties to uphold both the systems of deterrence and abstinence in a manner that served the common good;
• A progressive ideal of nuclear disarmament in the NPT, resting upon the assumption that a world rid of nuclear weapons would be more orderly, just and resilient to catastrophe and the manipulation of great powers;
• Acknowledgement of reciprocal obligation, a commitment to cooperate in the social and political interest, and a shared trust in rational process.

Above all, Walker argues, “The legitimacy of the NPT’s arrangements thus rested heavily on the notion that possession of nuclear weapons by the acknowledged powers – the US, USSR and UK in the first instance—was a temporary trust, and that the Cold War’s expansion of armament should be eventually be followed by an irreversible contraction....” (Walker, 2004:28).

The international nuclear order during the Cold War was based on the symbiosis of Realist power and Liberal constitutionalism (or Rationalism). Liberal constitutionalism assumed the legitimacy of international nuclear order for all states, not just a few great powers, Walker argues:

“...Whereas Ikenberry juxtaposes the power balance and constitutional approaches to international order, the two developed symbiotically during the Cold War, at least from the Cuban missile crisis onwards. Constitutionalism helped to stabilise the balance of power, which in turn forced the superpowers to accept the restraints of constitutionalism, such as the abandonment of preventive war. It was not a case of either/or. However, constitutionalism had
other purposes: to facilitate reconciliation between the contrasting rights and obligations of the nuclear ‘haves’ and ‘have nots’, provide an instrumental framework for reconciling norms of sovereignty with the intrusive verification of renunciation, and offer a means of sustaining the hope of an eventual release from the threat of nuclear extinction. In this context, constitutionalism embodied the conviction the nuclear order was the property of all states, not just the great powers, and that they collectively possessed rights to define legitimate behaviour…” (Walker, 2004)

The end of the Cold War changed the context of legitimacy based on progressivism and the US power and policy. The NWS expected nuclear arms control and disarmament by the nuclear powers. The US became a sole superpower.

The end of the Cold War brought more attentions to nuclear proliferation and its' impacts on world order. The end of the Cold War developed two divergent paths to nuclear order in the US: a liberal constitutional approach based on multilateralism and a realist hegemonic approach based on unilateralism. First path is optimistic, cosmopolitan, placing trust in politico-legal solutions. Second is pessimistic, nationalistic, placing trust in politico-military solutions. Walker argues, “Initially the first [optimistic liberal multilateralism] dominated, but by the end of the 1990s the second [pessimistic realist unilateralism] had gained ascendancy” (31).

The problem of international nuclear order intensified since the latter half of 1990s. The NPT-based international WMD order started breakdown after 1998, Walker observes:

“... the problem of nuclear order intensified in the second half of the 1990s and
early part of the 2000s after a decade of apparently exceptional achievement in addressing it. This intensification was accompanied by increasing discord within the United States, and between the United States and most other states, over ordering strategies. However, both intensification and the discord also stemmed from a revisionist turn in the United States away from a certain public conception of order to which US governments had held, with only brief interruptions, across the decades...”(Walker, 2007b:757-762)

In 1998-2001, the major signed of this breakdown of WMD order include India and Pakistan’s nuclear tests in 1998, North Korean Taepo-Dong and the US missile defence, the demise of UNSCOM in Iraq, and the emergence of counter proliferation in the US (Walker, 2004:50).

In 2001-2003, more challenges to the NPT-based WMD order include catastrophic terrorism, the US National Security Strategy of 2002 indicating unilateralism, preemptive attack, preventive war, and counter-proliferation.

“...Taking these considerations [of nuclear proliferation to states and terrorist groups] into account, the problem of order becomes even more complicated, involving henceforth the optimization and interlinkage of three managed systems with their often different norms, rules and agencies, so that the problem of reconciling them becomes a hydra with even more heads. Along with the dangers of proliferation and renewed arms racing, this may lead states of all sizes and sorts to wonder afresh about the feasibility of the whole enterprise, especially if the attainment of order will require an ever deeper penetration of private spaces and state sovereignty in the quest for confidence that lethal technologies are not falling into the wrong hands. While I hold to my remark
that ‘the more desirable (in history disarmament) appears, the more elusive it becomes as order fragments and states look to their own defences”, we may be approaching a juncture when systems of governance are, certainly in perception, being overwhelmed by the challenges before them…”(Walker, 2007b).

Legitimacy, efficacy, and the NPT-based international nuclear order

Grotians argue that any stable international order needs legitimacy. A term “legitimacy” is derivatives of “legitimate”, which means “allowed by the law or rules (2) able to be defended with reasoning.”(Soanes, 2001) It is “the property that a regime’s procedures for making and enforcing laws are acceptable to its subjects.”(McLean and Mamillan, 2004,305-206). According to S. M. Lipset, “Legitimacy involves the capacity of the [political] system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society.”(quoted in McLean and Macmillan, 2004:305-306)

According to Dhanapala and Walker, legitimacy and efficacy are inseparable in any viable international order:

“…An international order that lacks legitimacy will not survive. Nor will one that lacks efficacy. The primary task is to seek order through the building of legitimacy and efficacy, while not allowing the search for one to obstruct the other…”(Walker, 2004: 74).

“…With legitimacy, the [NPT] regimes can continue to grow and to enhance the conditions of international peace and security. If they lost that legitimacy, they would lose all hope for effectiveness, and they would risk collapsing…”(Dhanapala with Rydell, 2005: 141).
Since the birth of nuclear age, scholars have explored the impacts of nuclear proliferation on international and world order. Hedley Bull was keen of the inherent tensions between order and justice in nuclear issues (1968, 1975). Bull warns that the strength of the NPT depends on a consensus of international society, especially the Third World and the non-nuclear-weapon states:

"...The principal weakness of the NPT, as a means of controlling nuclear proliferation, is that it is not based upon a consensus of international society as a whole but is perceived by a very substantial segment of international society, especially the Third World, as an instrument of superpower domination. ... An NPT which is regarded by the representatives of half the world’s population as simply the instrument of the nuclear weapon Haves in their struggle to maintain their ascendancy over the Have Nots will have as little to contribute to the control of nuclear proliferation as the League of Nations had to contribute to the maintenance of international security, when in the 1930s, it became simply the instrument of Britain and France..."(Bull, 1975:175-184).

The NPT can be strengthened if it is seen in favour of the international interests as a whole not of the specific interests of nuclear-weapon states. Bull’s note on the weakness of the NPT has been still quite relevant to the contemporary context of non-proliferation, Ungerer and Hanson argues:

"...The norm of nuclear non-proliferation has been a fundamental element of international society as it has developed over the past few decades. If this norm is weakening or at risk of further rejection, it has serious implications for the future international security order. The point here, as Rengger notes, is that prospects for non-proliferation and arms control are likely to be enhanced if they
are seen as developments aimed at sustaining and strengthening the international community as a whole rather than as simply entrenching the nuclear divide in favour of the interests of a few large powers. Rengger reiterated Bull’s point, that there is a ‘danger that arms control process would increasingly work to support narrow particular interests..... rather than the interests of international society as a whole’...”(Ungerer and Hanson 2001: 209)

The US has been regarded as a centre of the problems as the US broke many of international commitments and multilateral measures such as START II, ABM, CTBT and the NPT, Kimball and Mahbubani argues,

“...The global political consensus needed to implement these strengthening measures will not be achievable unless the nuclear-weapon states accelerate and deepen the disarmament process. U.S. opposition to two key commitments – the Comprehensive Test Ban Treaty and an effectively verifiable ban on fissile material production for weapons – is especially damaging.”(Kimball, 2005:3).

“...the NPT was fundamentally a social contract: the five nuclear weapons states agreed to reduce their nuclear weapons while the rest agreed not to develop them. But instead of reducing their arsenals, the five nuclear weapons states have been increased them. Since the NPT came into force in January 1970, their total stock of nuclear weapons has been both modernized and increased. ...The U.S. has been among the chief violaters of the letter and spirits of the NPT.”(2008:195).

Furthermore, Bush government develops their weapon programme such as missile defence system and new tactical nuclear weapons. The US is keen of coming contests with “a rise of China” or “a revival of Russia.” The norms set by the NPT are losing legitimacy and efficacy as a majority of the international society recognizes the
NPT as a means of NNWS's nuclear dominance.

The legitimacy and efficacy of the NPT has been eroding since the late 1990s. Trust in the NPT is eroding in both nuclear non-proliferation and arms control and disarmament. India and Pakistan did nuclear tests in spite of worldwide protests and develop their nuclear arsenals. North Korea stepped out of the NPT and continue their nuclear weapons programme to do nuclear and missile tests. Iran is widely believed to continue their nuclear programme under the NPT in spite of international inspections. The US-India nuclear deals are widely criticized that it would damage nuclear non-proliferation norms and system based on the NPT and the non-proliferation regime. Kapur argues that the old nuclear powers are helpless giants and the new nuclear powers may not be helpless pygmies to resist American intervention and the pressures from international society.

"...the NPT lacks universal legitimacy...The new nuclear states are few in number, but they function as regional powers in two important zones of conflict since the end of the Second World War. Their voices are not heard in NPT conference diplomacy; however, they have a resonance in many capitals of the world. Their public defiance of American leadership reveals a chink in the American diplomatic armor; it reveals Washington's inability to win the minds and the hearts of the Israelis, Pakistanis, and Indians when their vital interests are concerned. Such a successful challenge by the new nuclear states that are outside the NPT creates ideas and opportunities for some inside the NPT to rebel against P-5 authority in world affairs. That three medium powers – North Korea and Iran, not to mention Iraq – continue to resist American demands suggests that the old nuclear powers are helpless giants and the new nuclear powers outside and inside the NPT may not be helpless pygmies in select circumstances."
It seems that countries that involve themselves in significant international issues acquire a leverage that exceeds their economic and military power..."(Kapur, 1998).

For Grotian/ International Society theorists, a dialogue, not a debate, is important for understanding of international relations. Both Realist and Liberal (or Rationalist) perspectives and aspects are necessary for the NPT-based legitimate and effective nuclear order. Walker emphasizes to seek “difficult balancing” of Realist hegemonic, balance-of-power and Liberal constitutional approaches to order:

“...the essential objective of the architects of international nuclear order has largely been, and should remain, the achievement of mutual restraint and containment, out of concern that these qualities will not emerge naturally or predictably in the anarchic international system... this restraint and containment cannot be achieved only by a realist exercise of power, nor only by resort to constitutionalism through the NPT and other rule-bearing institutions. What is entailed is a pragmatic, judicious and inescapably difficult balancing of John Ikenberry’s hegemonic, balance-of-power and constitutional approaches to order...”(Walker, 2007b)

Thus, Grotian and sociological views regard that international nuclear order needs both legitimacy and efficacy, which can be sustained by both Liberal constitutionalism and Realist hegemonic/balance of power. In the context of the NPT debate, legitimacy and efficacy are inseparably linked, which are based on the NPT’s three pillars of nuclear non-proliferation and civilian nuclear cooperation, arms control and disarmament. As UNENDC suggested, this principle has been the grand bargains and the balance of obligations between the five NWS and the rest of the NPT member-states
consisted of the NNWS. Furthermore, the NPT-based international order needs to be supported by the responsible diplomacy of great powers, above all the United States who enjoys superpower in almost every aspect and field today.

A Grotian scholar Walker claims the importance of sound judgement, great powers’ cooperation and cooperative diplomacy to revitalize the NPT and international nuclear order:

“...its prospects would look very different if leading states parties, now with India’s tact support, pledged to re-honour its bargains and if the various proposals for strengthening the Treaty and its associated instruments were given a chance of realization. Whatever the Treaty’s prospects, the key to revival rests above all else on recovering the cooperative sensibility and capacity for good judgement that gave life and shape to the international nuclear order...” (2007a: 453)

CONCLUSION

This chapter analyzed the Grotian/ International Society perspectives on the NPT. International Society theory is a classical approach which focuses on human experience, conduct, and moral judgement. Martin Wight’s three traditions (Realist, Rationalist, Revolutionary or Hobbesian, Grotian, Kantian) suggest various normative approaches to the NPT and nuclear order versus justice in world politics. It argued that the Grotian tradition see the NPT as a modern international law in the international society. Diplomacy and the Great Powers can play positive roles to contribute to the NPT, which needs both legitimacy and efficacy, balancing of liberal constitutionalism and realist power politics in the management of international nuclear order. Grotians seek a middle path by difficult balancing of Realist power politics and competition in anarchy and Idealist cooperation and peace in world community.